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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

KENNETH WAYNE CHILES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001079

APPENDIX

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
 4 -vs-) TRANSCRIPT OF RECORD
 5) 2008-GS-42-5630
 6 Kenneth Wayne Chiles and) 2008-GS-42-5631
 7) July 6 - 7, 2009
 8 Defendants.) Spartanburg, South Carolina
 9
 10

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE; and a jury
 13

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 16 Attorney for the State

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2	<u>NO.</u>	<u>DESCRIPTION</u>		<u>ID.</u>	<u>EV.</u>		
3	S-1	Knife		76	123		
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Motion

1 (Proceedings July 6, 2009)

2 THE COURT: All right. We are here in the matter of
3 the State vs. Carnie Norris, III, indictment for armed
4 robbery, and the State vs. Kenneth Wayne Chiles, also an
5 indictment for armed robbery.

6 Mr. Barnette is here on behalf of the state; Mr. Poole
7 on behalf of Mr. Chiles; and Ms. Jones on behalf of
8 Mr. Norris.

9 Any motions or others matters we need to address prior
10 to the jury selection?

11 MS. JONES: Your Honor, at this point, as pursuant to
12 our conversations at the bench, Mr. Poole and I on behalf
13 of our clients have requested a hearing.

14 It's our understanding from the solicitor, Mr.
15 Barnette, that he intends to elicit or attempt to elicit an
16 in-court identification of our clients, and, Your Honor
17 we're requesting a hearing under Neil vs. Biggers, the
18 Cheatham case, and also Lewis, as well as the Rule 104 with
19 regard to identification issues pretrial to determine
20 whether any in-court identification is reliable or is the
21 subject or has been tainted or confused or further tainted
22 by outside activities.

23 We're also asking that the Court through the in-camera
24 hearing have the solicitor detail what, if any, attempts
25 were made at a showup or identification at the scene as it

Motion

1 would impact on an in-court identification by, he
2 indicates, three individuals, or both of our clients.

3 THE COURT: All right. Mr. Barnette.

4 MR. BARNETTE: Your Honor, briefly. We talked about
5 this at the bench.

6 I don't see a need for this hearing. I understand
7 they've made the motion for it or whatever, but the facts
8 of this case, just briefly, this occurred back on
9 July 16th of 2008.

10 Several people, including Andrew B. was playing
11 Frisbee golf there at North Dean Street and First Baptist
12 Church, that area there near Barnett Park.

13 As one of the Frisbees went on one of the buildings, I
14 believe the St. Lukes' free center there, Zack Blankenship
15 went up to get the Frisbee. Drew Bond and a couple of his
16 friends was standing below. Herb Blankenship and another
17 individual was standing with him down there.

18 And what they -- what happened was the defendant,
19 Carnie Norris, came across and pushed down Mr. Bond,
20 claimed he was a security guard. He pulled a knife on him.
21 And later on two of the individuals came back to help
22 Mr. Bond. He showed the knife to them.

23 The police was called. Zack Blankenship actually
24 called the police. Once he got off the roof he ran once he
25 heard they had weapons.

Motion

1 Mr. Bond was left by himself. He was there the whole
2 time. He saw both of the individuals. Mr. Norris was
3 right in front of his face. He saw Mr. Chiles and
4 basically was nearby them. They went through his wallet at
5 the time they asked him for it and took his card and so
6 forth.

7 When the police got there, Officer James saw
8 Mr. Norris over the top of Mr. Bond at the time in a
9 threatening manner. They went to talk to Mr. Bond.
10 Mr. Bond was visibly upset. Went over and talked.

11 Mr. Norris and Mr. Chiles went over to the house
12 across the street. They went over and talked. He never,
13 they never, left the location there. There never was a
14 showup and never was a lineup.

15 What they saw was there that night, and that would be
16 the important identification made by the three individuals
17 that was there, plus the two police officers, Your Honor.

18 THE COURT: All right. Well, how many lay witnesses
19 do you have that are going to make an in-court
20 identification?

21 MR. BARNETTE: Three, Your Honor.

22 THE COURT: All right. Well, since I don't know what
23 the facts are, why don't we just have those three witnesses
24 testify? And if the state's position is that there was no
25 suggestion or indication by any police officer to those

Motion

1 three witnesses as to the identification of either of these
2 defendants, then they can simply testify upon what their
3 identification is based. And I assume that would satisfy
4 the defense's inquiry into what the identification is based
5 upon.

6 Do I understand the defense is wanting to be certain
7 that there was no identification by those three lay
8 witnesses based upon any police suggestion or information?
9 Is that?

10 MS. JONES: Yes, sir, that, as well as that subsequent
11 to this night on the 16th of July there's been no attempt
12 in the intervening year for these individuals who are now
13 going to pick either -- if they, in fact, do pick either
14 client out -- that they have sought out a picture in order
15 to refresh their memory for the in-court identification.

16 THE COURT: Okay. Well, all right. Well, let's just
17 call those witnesses, Mr. Barnette.

18 MR. BARNETTE: Thank you, Your Honor.

19 How much detail do you want them to go into? Do you
20 want to go through the whole testimony or just the I. D.
21 part of it?

22 THE COURT: Well, I'm going leave that up to you. But
23 the purpose of this hearing is to simply determine whether
24 or not if they are going to make an in-court
25 identification, whether that in-court identification was

Andrew B. (In-camera)
Direct examination by Mr. Barnette

1 based upon their own perception or whether it was based
2 upon any information or suggestion by any person acting on
3 behalf of the state.

4 MR. BARNETTE: Yes, sir. Your Honor, I'd like to call
5 Andrew B. to the stand, please.

6 Andrew B. having
7 been first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. BARNETTE

9 Q Mr. Bond, if you would, give your full name for the
10 record, please.

11 A Andrew B.

12 Q And what town do you live in, sir?

13 A Spartanburg, South Carolina.

14 Q And back on July 16th of 2008, where was you that
15 night, that evening?

16 A I was in the First Baptist parking lot right near
17 North Dean Street.

18 Q And what was you doing, sir?

19 A We were playing Frisbee gold.

20 Q Who was with you there, sir?

21 A Zack Blankenship, Hub Blankenship, Kellen Mayfield,
22 Kyle Quinn, Joseph Holder and Maggie Tefteller and Woody
23 Alexander.

24 Q And as y'all was playing Frisbees y'all -- can you
25 tell me what happened to the Frisbee?

Andrew B. (In-camera)
Direct examination by Mr. Barnette

1 A Yes, sir. Hub Blankenship threw it on top of the
2 roof.

3 Q Was it accidental or --

4 A It was an accident, yes, sir.

5 Q And after it went on the roof, what happened?

6 A Zack Blankenship climbed a tree nearby and reached up
7 and got it off the roof and threw it down.

8 Q And who was standing beside you while that was
9 happening?

10 A Kellen Mayfield, Joseph Holder and Hub Blankenship.

11 Q And as he was throwing it down, what happened, sir?

12 A I was approached behind by Mr. Norris and pushed down
13 from behind and held down on the ground.

14 Q Did you know who he was prior to this?

15 A I did not, no, sir.

16 Q How did you find out his name later?

17 A Just hearing it from the police officers later that
18 night.

19 Q Okay. Do you see the man in the courtroom that
20 approached you that day?

21 A Yes, sir.

22 Q And can you identify what he's wearing?

23 A Blue pants and a blue shirt.

24 Q Can you point at him, sir?

25 A Yes, sir.

Andrew B. (In-camera)
Direct examination by Mr. Barnette

- 1 Q Okay.
- 2 MR. BARNETTE: Your Honor --
- 3 THE COURT: Who is he sitting next to?
- 4 THE WITNESS: The lady over there.
- 5 THE COURT: The female lawyer?
- 6 THE WITNESS: Yes, ma'am; yes, sir.
- 7 THE COURT: Okay.
- 8 Q And was --
- 9 THE COURT: The record shall reflect that he's
- 10 identified the defendant, Mr. Norris.
- 11 Q And what did he do to you, sir?
- 12 A He held me down and said that he was a, a security
- 13 guard and pulled a knife out.
- 14 Q And how close was he to you, sir?
- 15 A We were face to face.
- 16 Q Okay. Tell me what he said to you. And what did he
- 17 do to you?
- 18 A He said he'd like to see some I. D., that he was a
- 19 police officer. And so I reached in my pocket to pull out
- 20 my wallet and show him I. D.
- 21 Q And what did he do with the wallet, sir?
- 22 A He looked through it and began asking questions about
- 23 what was in there.
- 24 Q Okay. Was there another individual approached you
- 25 also?

Andrew B. (In-camera)
Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q And what did that individual do?

3 A He came from across the street where they both came
4 from and talked to Mr. Norris about what was going on.

5 Q And what did he do?

6 A He didn't say much to me. He just was talking to
7 Mr. Norris.

8 Q Did he do anything with your wallet after --

9 A Yes, sir. He looked through it and pulled some stuff
10 out of it.

11 Q Okay. And what was in your wallet, sir?

12 A \$6 and credit, dibit card, and some other materials,
13 social security number.

14 Q Okay. And did they take those items?

15 A Yes, sir.

16 Q Did you get your wallet back?

17 A Yes, sir.

18 Q Do you see that other individual that approached you
19 that night in the courtroom?

20 A Yes, sir.

21 Q If you would, point to him and identify what he's
22 wearing.

23 A The white shirt and the black pants, sitting next to
24 the man over there.

25 MR. BARNETTE: Your Honor, I'd like -- he's identified

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 the defendant Chiles for the record.

2 THE COURT: All right. The record shall reflect he's
3 identified the defendant, Kenneth Wayne Chiles.

4 Q Have you been shown any lineups, show, what I mean,
5 show, or any photographs or anything like that by the
6 police or anybody else?

7 A No, sir.

8 Q Are you basing your identification on what you saw
9 that night?

10 A Yes, sir.

11 Q Are these the two individuals you saw that night?

12 A Yes, sir.

13 Q Please answer any questions that the judge may have
14 for you or the attorney may have for you.

15 THE COURT: Ms. Jones.

16 MS. JONES: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. JONES

19 Q Mr. Bond, you indicated -- who went up on the roof?

20 A Zack Blankenship.

21 Q Okay. And you stayed where?

22 A I stayed on the ground in the parking plot.

23 Q Okay. Which parking lot are we talking about?

24 A It's the parking lot right next to the building that
25 Zack was on.

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 Q Okay. But which building?

2 A It's, it's the building right next to the cleaners on
3 Dean Street. I don't, I don't know the name of the
4 building.

5 Q Okay. So is the building right next to the cleaners?
6 So it's actually a doctor's office?

7 A Yes, ma'am. It's next to the building that he was on.
8 There's a parking lot in front of it.

9 Q Okay. And what part of the parking lot were you in?

10 A The very corner of it standing next to the building.

11 Q Okay. I'm sitting on Dean Street. Direct me which
12 corner. Is it the right front or back, left front or back
13 corner?

14 A The building he was on, there's a parking lot right
15 next to it. And I was standing right in that parking lot
16 from, about ten feet from the building Zack was on.

17 Q Okay. Which side of the building were you on, the
18 left side or the right side?

19 A If you're facing the building, on the right side.

20 Q Okay. And where in relation to the position you were
21 standing is the closest source of light?

22 A There's a light, a lamppost, about ten feet away, a
23 street light.

24 Q Okay. So you were only ten feet away from a street
25 where you were standing?

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 A Yes, ma'am, Dean Street.

2 Q Okay. And so were you -- you're in a parking lot next
3 to the cleaners. Is there not the building of the cleaners
4 between you and Dean Street? That's farther than ten feet,
5 isn't it?

6 A No. It is the health -- the ministry building that he
7 was on top of.

8 Q Okay.

9 A There's a parking lot right there, and that was the
10 parking lot I was in.

11 Q Okay. So you are, in fact, not at the building
12 directly next to the cleaners. You are three buildings
13 away at that point, are you not?

14 A It's two buildings away, standing right next to the
15 building that he was on.

16 Q Okay. And what building was he on? What's the name
17 of the building?

18 A It's a ministry building maybe. I'm not exactly sure
19 of the name of the building.

20 Q Okay. Is it connected to your church, First Baptist?

21 A I'm not sure.

22 Q I don't mean physically.

23 A No.

24 Q But is it part of their property?

25 A It may be part of their property.

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 Q How tall is this building?

2 A I believe it's a 1-story building. I'm not positive.
3 I've never been in it.

4 Q Okay.

5 MR. BARNETTE: Your Honor, I'm going to object to
6 this. I don't know the relevance of this question.

7 MS. JONES: I'm trying to establish the location so
8 that we can get to the lighting, Your Honor.

9 THE COURT: Okay. Well, don't y'all have some
10 pictures or something?

11 MS. JONES: No.

12 THE COURT: Okay. Go ahead.

13 Q So you think the closest source of light where you
14 were standing beside the health -- the ministry building is
15 a street light on Dean Street?

16 A Yes, ma'am.

17 Q Okay. Would that street light be in front of you,
18 behind you or beside you?

19 A Beside me.

20 Q Okay. And that street light is on Dean Street.

21 A Right.

22 Q Okay. Were you standing -- and you were standing
23 beside the building in the parking lot, you said?

24 A That's correct.

25 Q Are you familiar with whether there is a driveway that

Andrew B. (In-camera)
Cross-examination by Ms. Jones

- 1 goes beside the building?
- 2 A Yes.
- 3 Q Is that where you were?
- 4 A Yes.
- 5 Q Or were you in the parking lot that's behind the
- 6 building?
- 7 A I was right in between those. And I was not behind
- 8 the building. I was right in that driveway area.
- 9 Q Okay. And, again, where is the closest source of
- 10 light?
- 11 A It's about ten feet away. There's a street lamp.
- 12 Q Okay. Do you know if it was working that night?
- 13 A Yes. It was.
- 14 Q Were there any shadows?
- 15 A I'm sure there were, yes, ma'am.
- 16 Q When you were standing there beside the building,
- 17 could you see your friend on top of the building?
- 18 A Yes.
- 19 Q What was lighting him?
- 20 A Nothing. There were no lights up where I could see
- 21 him.
- 22 Q But you could still see him?
- 23 A He was right, he was in the tree reaching out, and
- 24 grabbed it and threw it back down.
- 25 Q Okay. Where is the tree in relation to the driveway

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 that you're standing in?

2 A It's on the other side of the building right at the
3 corner, at the top end of the building.

4 Q The top end of the building. So your friend is on,
5 got -- is there a building between you and your friend?

6 A No. I was, I was standing out where I could see him.
7 If the corner of the building was right here, I was
8 standing right here so I could see him up climbing the tree
9 up to the building.

10 Q And was the building in between you though?

11 A Yes, but I could still see him. It wasn't blocking my
12 view.

13 Q And you're down on the ground?

14 A Yes, ma'am.

15 Q And a 1-story or 2-story building, do you know?

16 A It's a 1-story building. I've never been in it, but I
17 think it is a 1-story building.

18 Q Okay. And you were watching your friend to make sure
19 that he didn't fall or to get the Frisbee, which one?

20 A I was waiting. Well, both of them. I was waiting for
21 him to throw it down, but I didn't want to see him fall
22 either.

23 Q Okay. Now, you testified that whomever did this to
24 you came up from behind you.

25 A Correct.

Andrew B. (In-camera)
Cross-examination by Ms. Jones

- 1 Q So you did not see the person approach you.
- 2 A No, ma'am. I did not.
- 3 Q And the person pushed you down.
- 4 A Correct.
- 5 Q Pushed you down on your face?
- 6 A No, ma'am. On my side.
- 7 Q Okay.
- 8 A I broke my fall with my hands.
- 9 Q Which side?
- 10 A If I was standing, my left side.
- 11 Q Like this?
- 12 A Yes, ma'am.
- 13 Q So when you fell were you still looking in the
- 14 direction of your friend on the top of the building?
- 15 A Yes.
- 16 Q And you still have your back to the person who's
- 17 pushed you.
- 18 A Yes.
- 19 Q Okay. And then how long were -- did you have your
- 20 back away from the person who pushed you down?
- 21 A Right after he pushed me down, I turned over and began
- 22 talking to him.
- 23 Q What did you say to him?
- 24 A I asked him who he was. He said that he was the
- 25 security-guard officer and he'd like to see some I. D.

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 Q Okay. And at that point the person is how far away
2 from you?

3 A Within 3 feet.

4 Q And is the street light behind you or behind him?

5 A It is kind of to the side of us. So we've turned
6 around now, because I turned around to look at him. So if
7 I'm facing this way, the street light's right here.

8 Q You're facing the street now.

9 A Yeah, yes. Could not -- we're like parallel with the
10 street.

11 Q Are you on the ground or on the asphalt in the
12 driveway?

13 A I'm on the asphalt.

14 Q What was this person wearing?

15 A I can't recall. I knew he was wearing -- I really
16 don't recall what he was wearing that night. It was a
17 t-shirt, and like it was white or gray. I don't really
18 recall exactly what he was wearing.

19 Q Based on the actions of your friends, the police
20 officers arrived, did they not, at the scene?

21 A They did arrive, yes, ma'am.

22 Q Okay. Where were you when they arrived?

23 A Where I was the whole time. I didn't move.

24 Q Which was where?

25 A Which was in the -- like in between the driveway and

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 the parking lot of that building.

2 Q Okay. Which officer arrived first?

3 A The officer in the black.

4 Q Okay. Do you know his name?

5 A Officer James.

6 Q Okay. How many officers arrived?

7 A I don't remember exactly. I remember four, or seeing
8 four. I talked to two of them.

9 Q Okay. Do you know what the other two officers that
10 you did not speak to did at the scene?

11 A They were there talking with my other friends.

12 Q Okay. At the time the officers arrived where were the
13 two folks who you allege robbed you?

14 A When the officers arrived they began walking back
15 towards their house.

16 Q Okay. At the exact moment that the first officer
17 arrived, where were they?

18 A He was over the top of me.

19 Q What about the second individual?

20 A I don't recall where he was. He was near us, but I
21 don't recall exactly where he was.

22 Q Okay. And when the police arrived, you indicated
23 those individuals walked away.

24 A Correct.

25 Q Did you see where they walked?

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 A Yes, ma'am.

2 Q Where did they walk?

3 A They walked back up on their porch at their house.

4 Q Which house is that?

5 A It's across the street. It has a big red door.

6 Q Okay. Well, there are several houses across the
7 street.

8 A Correct.

9 Q Do you know which one it is?

10 A Yes. It's the only one with a red door on it.

11 Q Okay. If you had to count from the end of the street
12 where the traffic light --

13 MR. BARNETTE: Excuse me, Your Honor. I'm going to
14 object.

15 THE COURT: Ms. Jones, we've got a limited purpose for
16 this hearing.

17 MS. JONES: Okay.

18 THE COURT: It's not just to find out what this
19 witness is going to say. He's going to testify during the
20 trial. .

21 The purpose of this hearing is to find out on what he
22 based his identification, whether or not it was based upon
23 some impermissibly suggestive police conduct.

24 MS. JONES: Thank you, Your Honor.

25 THE COURT: So let's focus on that.

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 Q Once the police arrived, which officer did you speak
2 to first?

3 A The officer I spoke to first is not here today.

4 Q He is not here today.

5 A No, ma'am, but...

6 Q Okay. What was your conversation with the officer who
7 is not here?

8 A He was trying to figure out what was going on.

9 Q Okay. And in what way? What questions did he ask
10 you?

11 A He asked me why, why I was on the ground and why he
12 was over the top of me.

13 Q Okay. How did he know anyone was over the top of you?

14 A Because when he arrived, he was there.

15 Q Okay. The first officer who is not here, do you know
16 his name?

17 A Tillotson.

18 Q Okay. Tillotson.

19 A Correct.

20 Q Officer Tillotson after he arrived let them walk away
21 from you?

22 A Correct.

23 Q Okay. Did you continue to converse with Officer
24 Tillotson, the one who is not here?

25 A No. After that I went over, and I started talking to

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 Officer James.

2 Q Which is the --

3 A Correct, in the black.

4 Q The dark uniform.

5 A Yes, ma'am.

6 Q And did Officer James ask you who -- first of all, you
7 told him what you allege happened, someone had robbed you.

8 A Correct.

9 Q Or pushed you down and taken something from you. Did
10 he ask you who had done that to you?

11 A Yes, ma'am.

12 Q How did you respond to that?

13 A I said the two gentlemen that were just here and
14 they'd walked back across to their house.

15 Q Okay. And did you indicate to him which house?

16 A Yes, ma'am.

17 Q And at that point did you look at that house?

18 A Yes, ma'am.

19 MR. BARNETTE: Your Honor, I'm going to object at this
20 point. I mean, we've went through this or whatever. If
21 she wants to talk about police conduct, I understand.

22 THE COURT: Sustained.

23 MS. JONES: Okay.

24 Q When you were talking to Officer James did he ask you
25 to point out those individuals?

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 A Yes, ma'am.

2 Q So he did. And who did you point to?

3 A The men that had just walked across the street that he
4 saw when he pulled up.

5 Q Okay. And did he tell you who they were?

6 A No.

7 Q In your statement you used the name Carnie Norris.
8 Had you ever met Mr. Norris before?

9 A I had not.

10 Q How did you know his name?

11 A I did not know his name until they told me when I
12 arrived to the police station.

13 Q So they told you what his name was before you wrote
14 your statement.

15 A Yes, ma'am.

16 Q And you included his name in your statement based on
17 them telling you that's who that was.

18 A Right.

19 Q So you accepted his name as the person you're accusing
20 of robbing.

21 A Correct.

22 Q Okay.

23 MR. BARNETTE: Your Honor, I'm going to object on
24 that. That's an assumption on the witness or whatever,
25 trying to go from there. I think we're talking about --

Andrew B. (In-camera)
Cross-examination by Ms. Jones

1 MS. JONES: I'm not going to go further on that.

2 THE COURT: Okay.

3 Q When you went to the police station did anybody ever
4 show you any photographs of Mr. Norris?

5 A No.

6 Q After the police arrived and you told them what had
7 happened, did they ever ask you to point out Mr. Norris to
8 them?

9 A Yes, they --

10 Q Or the individual who robbed you, not Mr. Norris.

11 A Will you restate that question one more time?

12 Q Once the officer arrived did he ask you to point out
13 the person who you claimed robbed you?

14 A No. He was standing over me, and I said this is --
15 that was the guy who robbed me. The man that was standing
16 over me is the one who robbed me.

17 Q Okay. I understand that. But once the officers got
18 there and you started talking to this officer, no one was
19 standing over you, was he?

20 A No. He had walked. He had walked back to the house.

21 Q Okay. At that point -- I'm sorry if I was not clear.
22 At that point did you -- were you asked to point someone
23 out for the officers?

24 A When he -- as they walked back over, it was the two
25 men that were standing there. I said those were the men

Andrew B. (In-camera)
Cross-examination by Ms. Jones

- 1 that robbed me.
- 2 Q Who did you tell that to?
- 3 A The officers.
- 4 Q Which one?
- 5 A Officer James.
- 6 Q Okay. So you did point him out.
- 7 A I said those two men.
- 8 MR. BARNETTE: Objection, Your Honor. This has been
- 9 asked and answered about four times.
- 10 THE COURT: Yes, ma'am.
- 11 Q How many individuals were on the porch that you
- 12 pointed out?
- 13 MR. BARNETTE: Your Honor, I'm going to object. I'm
- 14 going to object.
- 15 THE COURT: I've sustained it. He's already answered
- 16 it. But she's on another question now.
- 17 MS. JONES: I am sorry.
- 18 Q How many individuals were on the porch when you
- 19 pointed out someone to Officer James?
- 20 A There were two of them.
- 21 Q Okay. Only two?
- 22 A Yes. Only two I saw that were on the porch were those
- 23 two men.
- 24 Q Okay. And that is across Dean Street from you.
- 25 A Yes.

Andrew B. (In-camera)
Cross-examination by Ms. Jones

- 1 Q Do you know how far apart?
- 2 A Not exactly.
- 3 Q Okay. Do you know if there were any lights on the
- 4 porch?
- 5 A The porch was lit, yes, ma'am.
- 6 Q By what? What was it lit by?
- 7 A I do not know, but I could see clearly on the porch
- 8 the two men.
- 9 Q Okay. And what were the two men wearing that you saw
- 10 on the porch?
- 11 A I do not know exactly what they were wearing.
- 12 Q Okay. Since that night have you looked at any
- 13 pictures of Carnie Norris or Kenneth Chiles?
- 14 A No, not, no, ma'am.
- 15 Q No not?
- 16 A No, ma'am.
- 17 Q You have not looked at any pictures of them.
- 18 A No, ma'am.
- 19 Q You have not gone on any web site to see what they
- 20 look like.
- 21 A No, ma'am.
- 22 Q Have the police any time since then, or anyone
- 23 employed by the state, shown you any photographs?
- 24 A Not that I recall, no, ma'am.
- 25 Q Thank you for answering my questions.

Andrew B. (In-camera)
Cross-examination by Mr. Poole

1 CROSS-EXAMINATION

2 BY MR. POOLE

3 Q Mr. Bond, let me ask some of the similar questions on
4 behalf of my client.

5 Had you ever seen this person before that night?

6 A No, sir.

7 Q Okay. And did he ever put any hands on you? Did he
8 come close enough to put his hands on you?

9 A He was close enough, but he never put any hands on me.

10 Q Okay. And how were you able, by what light were you
11 able, to see his face?

12 A The street light.

13 Q All right. And how far was he away from you?

14 A At which point?

15 Q The closest.

16 A The closest, if I reached out I could have touched
17 him.

18 Q Okay. Did he bend over you?

19 A Did he bend over me?

20 Q Bend over you.

21 A Yes, sir. He stood, stood straight.

22 Q Just stood there.

23 A Yes, sir.

24 Q And did he say anything to you?

25 A Not directly to me.

Andrew B. (In-camera)
Cross-examination by Mr. Poole

- 1 Q Okay. And so how long of a period of time was he that
2 close to you?
- 3 A I don't know exactly, a couple of minutes.
- 4 Q Okay. And then it's my understanding that the police
5 got there pretty soon.
- 6 A Correct.
- 7 Q Is that a fair statement?
- 8 A How, how soon is soon? I mean, five or ten minutes.
- 9 Q Okay. And was he there the whole time, this
10 individual?
- 11 A Not the whole time.
- 12 Q Okay. I think you've already answered this, but let
13 me ask you. Do you know -- you don't know what kind of
14 clothes he was wearing.
- 15 A No, sir.
- 16 Q Okay. Did anybody ever say -- and what I mean by that
17 did any law enforcement individuals say what his name was
18 to you.
- 19 A I may have heard it once I got to the police station.
- 20 Q You don't recall.
- 21 A I don't recall, no, sir.
- 22 Q So you did not use a name Chiles in your statement,
23 right?
- 24 A Not that I recall.
- 25 Q Okay. And you've not been shown any pictures that

Herbert Eugene Blankenship (In-camera)
Direct examination by Mr. Barnette

- 1 have him in it, either in a lineup or individually.
- 2 A No, sir.
- 3 Q Since that time.
- 4 A Correct.
- 5 Q Okay. But you did not ever see him. You've never
- 6 seen this man, this individual, in your life until that
- 7 night, is that right?
- 8 A That's correct.
- 9 Q Okay. Thank you, Mr. Bond.
- 10 THE COURT: Thank you. Step down.
- 11 MR. BARNETTE: I would like to call Herbert
- 12 Blankenship, Your Honor.
- 13 HERBERT EUGENE BLANKENSHIP,
- 14 having been first duly sworn, testified as follows:
- 15 DIRECT EXAMINATION BY MR. BARNETTE
- 16 Q If you would, sir, give me your full name, please.
- 17 A Herbert Eugene Blankenship.
- 18 Q I'm going to try to shortcut it and just go to the
- 19 main point of what we're talking about.
- 20 A Okay.
- 21 Q Back on July 16th of 2008, was you playing Frisbee
- 22 golf that day?
- 23 A Yes, sir.
- 24 Q And who was you with, sir?
- 25 A I was with Jerry Bond, Zack Blankenship, Kellen

Herbert Eugene Blankenship (In-camera)
Direct examination by Mr. Barnette

1 Mayfield, Kyle Quinn, Joseph Holder and Maggie Tefteller
2 and Woody Alexander.

3 Q Okay. And was this around the First Baptist, North
4 Dean Street area?

5 A Yes, sir. That's where we were.

6 Q The -- when the Frisbee went up on the roof --

7 A Yes, sir.

8 Q -- who went up and got it?

9 A My brother, Zack Blankenship, right over there.

10 Q And who was you standing with during that time?

11 A Me, Jerry Bond, Kellen Mayfield and Joseph Holder were
12 standing further away from the building than everybody else
13 was.

14 Q What happened after your brother went up and got the
15 Frisbee?

16 A He was starting to throw it down, and Jerry Bond went
17 to go get the Frisbee. And at that time this male over
18 there went and put him down on the ground.

19 Q And when you mean this male, can you say where he's
20 located, on the end?

21 A He's on the far right end of the table with the blue
22 shirt on, and glasses.

23 Q And who is he sitting by, sir?

24 A The lady attorney.

25 MR. BARNETTE: Your Honor, I'd like the record to

Herbert Eugene Blankenship (In-camera)
Direct examination by Mr. Barnette

1 reflect that he's identified the defendant.

2 THE COURT: All right. The record reflects he's
3 identified Carnie Norris.

4 Q What happened after that?

5 A He put him on the ground. And I remember he said
6 that -- he said he was a security officer. And he told all
7 of us three as well to get on the ground, and-but he was
8 detaining Drew. And he had pulled a knife out and put a
9 knife on his neck.

10 And so then about that time we went to go ask him
11 since he was a security officer like why are you putting
12 him down with the knife and everything. And that's when he
13 told us to get back and get on the ground. And so then we
14 just started to step back away.

15 Q Okay. Was there another individual that came up
16 toward y'all?

17 A Later that man over there on the far end of the table,
18 he, he came over towards us. He didn't have any weapons or
19 anything though.

20 Q Can you describe what he's wearing and where he's
21 sitting at again, sir?

22 A Oh, he's on the far left end of the table. He's got
23 the, the light colored shirt on, and the dark pants.

24 Q And who is he sitting beside, sir?

25 A The male attorney.

Herbert Eugene Blankenship (In-camera)
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, I'd like the record to show
2 that he has identified the defendant Chiles.

3 THE COURT: It shall.

4 Q And how close was you to these individuals?

5 A I was probably -- at first I was probably 20 to
6 30 feet from the man on the far end. And then, and then
7 when he came, we stepped further back. There's two of them
8 at the time. So we decided to get out of harm's way.

9 Q And what did you do after that?

10 A After that when the other man came, we decided to go
11 up to the First Baptist to the parking lot or to the
12 parking lot where we were to see if they really were
13 security guards to make sure that was the truth. And he
14 said there wasn't any other security guard on the premises.
15 And so then we decided to ask him to call 9-1-1 for us to
16 make sure that the police officer would come and help Drew
17 out.

18 Q Did you go back down to the scene?

19 A I went back down to the scene in my car with a few
20 other people. And we came up on them, and we stopped in
21 the street, and we shone the light on, my lights on them
22 just to make sure nothing was happening from probably 20 to
23 30 yards away, a safe distance away and just --

24 Q And what did you see then?

25 A Mr. -- the man on the far end over there, he was on

Herbert Eugene Blankenship (In-camera)
Cross-examination by Mr. Poole

1 top of Mr. Bond. And the other man, he was, had a wallet
2 or some cards out fumbling, like just fumbling through them
3 with his hands.

4 Q And did the police shortly arrive after that?

5 A They arrived at the scene after that, yes, sir.

6 Q Was these the two individuals you saw that night, sir?

7 A Yes, sir.

8 Q Thank you. Please answer any questions the judge or
9 the attorneys have for you, sir.

10 CROSS-EXAMINATION

11 BY MR. POOLE

12 Q Mr. Blankenship, you had never seen this individual
13 prior to that night, is that right?

14 A No, sir. I hadn't.

15 Q Do you remember what kind of clothing he was wearing?

16 A I just remember he had a darker colored t-shirt on,
17 and the other man had a lighter colored t-shirt on. And
18 that's really all I can remember.

19 Q Okay. Were you ever told the name Chiles by law
20 enforcement or anyone else --

21 A No, sir, not at the time.

22 Q -- prior to your giving the statement that night?

23 A Oh, no, sir.

24 Q Okay. You were not given any names.

25 A No, sir. My statement doesn't reflect that either,

Herbert Eugene Blankenship (In-camera)
Cross-examination by Mr. Poole

1 sir.

2 Q Okay. And at one time you gave an estimation of a
3 range between you and these individuals as being 20 to
4 30 feet.

5 A Initially 20 to 30 feet from the man on the far end
6 here. And then I was a little further away from him when
7 he came. We stepped back a little further, so.

8 Q Okay. Did you ever get any closer than that range?

9 A No, sir.

10 Q Okay. And you had never seen this individual or that
11 individual prior to that evening, had you?

12 A No, sir.

13 Q Have you been shown any pictures by law enforcement or
14 anybody else for that matter of these individuals since
15 that night?

16 A Since that night? I saw their pictures in the
17 newspaper when I read the article the next, the following
18 day, but that only helped verify what I saw the night
19 before.

20 Q Okay. But nobody has shown you any pictures?

21 A Any picture of them and said this is this person and
22 this is that person?

23 Q Right.

24 A No, sir. I haven't been show that, only when I can
25 get it from my own estimation.

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 Q And then bear with me just a minute.

2 A That's fine.

3 (Pause.)

4 Q That's all I have.

5 CROSS-EXAMINATION

6 BY MS. JONES

7 Q Mr. Blankenship --

8 A Yes, ma'am.

9 Q -- where were you physically located on the lot of the
10 ministry's building when you were the closest point you
11 were to this individual?

12 A Where was I physically located?

13 Q Uh-hum.

14 A Okay. I'm sure -- see if I can try to describe it to
15 you.

16 The ministry building is -- okay. If we're standing
17 on Dean Street, the ministry building is on the left.
18 There's a small building that's kinda further back off the
19 street in the middle, and then there's the parking lot
20 on -- the next one down is the parking lot that Drew Bond
21 had been detained in. And I was standing in between where
22 my brother was and where Drew was. And then once this man
23 came towards Drew, we went closer to see what had happened.

24 Q Okay.

25 A So there's three buildings down, and the Frisbee's on

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 the far left. There's a middle building which nobody
2 really was involved with, and there's a building with a
3 parking lot out in front like on Dean Street, is where the
4 parking lot was, not behind the building, in front.

5 Q Okay.

6 A And that's where it all happened. That's where he was
7 detained at, was that parking lot.

8 Q Okay. In the parking lot. Okay.

9 A And I was close. I was on the sidewalk close enough
10 to the parking lot, probably 20 to, 20 to 30 feet right
11 from where Drew was.

12 Q How had you gotten there from where you were playing
13 Frisbee?

14 A Just walked down the street.

15 Q Which street?

16 A Dean Street. I was -- the sidewalk. Dean Street's on
17 my right. The sidewalk's a little bit closer to me. And I
18 was probably ten feet off the sidewalk walking that way.

19 Q Where had you been playing Frisbee?

20 MR. BARNETTE: Your Honor, I'm going to object, I
21 mean.

22 THE COURT: Sustained.

23 MS. JONES: Okay.

24 Q When you walked up to this point, you say the closest
25 point you got to this individual you were standing on the

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 sidewalk of Dean Street.

2 A Well, yes, ma'am, I was standing there. We went
3 closer, and I got closer off the sidewalk, so.

4 Q Okay. And what building were you in front of at that
5 point?

6 A I, I can't remember the building's name either.

7 Q Is it a -- do you know how tall the building is?

8 A Probably one or -- one to two story, a big 1-story
9 building, and possibly a 2-story building, depending on if
10 there's a basement or not.

11 Q Okay. And then from that point you walked how many
12 feet closer to where this individual was?

13 A Probably five to ten steps closer.

14 Q Okay. And that was the closest you ever got to this
15 individual.

16 A Yes, ma'am. Probably, probably from me to you.

17 Q Okay.

18 A Maybe a little closer when I was --

19 Q What was this individual wearing?

20 A He was wearing a lighter colored t-shirt. It was
21 either gray or white. I can't really remember. And that's
22 all I really can remember from right now.

23 Q Okay. At the -- where were you located when the
24 police arrived?

25 A I was, I had been in my car, and so I was just, just

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 shining the lights on them to see what was going on. And
2 when the police -- I saw a police car coming down the
3 street. I pulled my car up and parked it and then came
4 back out.

5 Q Okay. So you left after you moved ten --

6 A After I moved, this other man came over. The closest
7 point I got was before the other man came. He came. And
8 there's too many of them that we didn't want to mess with
9 them. So we decided to go back and tell the security
10 guard. So we had ran away.

11 Q Okay. And you got in your vehicle and you came back.

12 A Came back to make sure that Drew was still safe.

13 Q And you were driving on the road?

14 A Yes, ma'am. I came from Saint John Street and took a
15 right on Dean Street coming up the opposite way.

16 Q Okay.

17 A And took a right right there. And we had stopped.
18 And they were down in the parking lot. And so I maneuvered
19 my car from probably 20 to 30 yards away to make sure that
20 everything was still okay.

21 Q When the police arrived, did you have any
22 conversations with the police?

23 A Neither of these officers. But I was talking to a
24 lady officer who is not here today.

25 Q Okay. Did that lady officer ever tell you anything

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 about who the two individuals were that you --

2 A No, ma'am. I never knew who the individuals were
3 until the following day.

4 Q Okay.

5 A I just knew their face and what they -- and I do my
6 testimony based on their body build and height and weight
7 and stuff. I didn't know who, which one was which.

8 Q Okay. And did you -- were you involved in any process
9 with the police where they asked you to see if they were
10 still around while you were there?

11 A Yes, ma'am. They asked me to identify them when they
12 were on their porch before they went over to talk to them.

13 Q Okay. How many individuals were on the porch?

14 A These two right there.

15 Q How far away from the porch were you?

16 A Probably 30 yards.

17 Q Where were you at that point?

18 A I was on Dean Street looking that way towards their
19 house.

20 Q You were in the street?

21 A Yes, ma'am, kind of at an angle sort of. I wasn't
22 straight on looking at their house, but I was at a bit of
23 an angle.

24 Q Okay. And do you remember who the officer was that
25 asked you to point them out?

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 A He's the officer with the gray hair that wasn't here
2 today that Mr. Barnette was referring to, the first one
3 he --

4 Q Officer Tillotson, I believe.

5 A The same one that he talked to. I guess that's his
6 name. I don't remember his name.

7 Q Okay. Were you present when Officer Tillotson asked
8 Mr. Bond to point out the individual who had been involved?

9 A No. I think I was with Joseph and Kellen when they
10 asked us to show who was over there.

11 Q Okay. So you were with Joseph -- and I'm sorry?

12 A His name is Kellen -- Kellen.

13 Q Okay.

14 A I think. I'm not -- I, I'm, I was standing with them.
15 I don't know, you know, if we were --

16 Q And could they hear what you were saying or who you
17 indicated to the officer?

18 A I don't, I don't remember how close they were to me.
19 I just remember I was standing with them. And then the
20 officer talked to me. I don't know if they backed off or
21 what happened after that. I just remember telling the
22 officer that those are the two guys.

23 Q Okay. And did you hear any of your other friends be
24 asked a similar question by the officer and asked to point
25 across the porch, to the porch?

Daniel Kellen Mayfield (In-camera)
Direct examination by Mr. Barnette

1 A I don't -- not that I recall.

2 Q Okay. And you indicated also then the next day a
3 picture ran in the newspaper.

4 A Yes, ma'am.

5 Q A picture of whom?

6 A It had both of them on there.

7 Q Okay. And what did that picture show?

8 A It just showed their face. And it put their last name
9 underneath it.

10 Q Okay. Didn't show their body size or their body build
11 either, did it?

12 A I also identified him based on his salt-and-pepper
13 hair and his beard. And I could see that in the picture.

14 Q Okay. Thank you.

15 A You're welcome.

16 THE COURT: You may step down.

17 MR. BARNETTE: Your Honor, I would like to call Daniel
18 Mayfield to the stand, please.

19 DANIEL KELLEN MAYFIELD, having
20 been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BARNETTE

22 Q Mr. Mayfield, give your full name for the record,
23 please.

24 A Daniel Kellen Mayfield.

25 Q I'm going to do the same thing. I'm going to kinda

Daniel Kellen Mayfield (In-camera)
Direct examination by Mr. Barnette

1 short cut through the chase and get right to the point.

2 July 16th of 2008, was you playing Frisbee golf that
3 day?

4 A Yes, sir, I was.

5 Q And when the Frisbee went up on the roof and Zack
6 Blankenship got it, who was you standing beside, sir?

7 A I was standing with Kyle Quinn and Hub Blankenship and
8 Joseph Holder.

9 Q What happened after Zack got the Frisbee?

10 A Well, just as Zack started to climb down from the
11 tree, we noticed one of the, the gentleman walking across
12 the street. And that's when he identified himself as a
13 security guard. And he, he got Drew who was the closest to
14 him on the ground.

15 Q Okay. Do you see that man in the courtroom here
16 today?

17 A Yes, sir, I do.

18 Q Can you point at him and describe what he's wearing,
19 sir?

20 A He's right there. He's wearing the blue shirt and
21 blue pants.

22 Q And where is he sitting at? Who's he sitting beside,
23 sir?

24 A Beside the female attorney.

25 MR. BARNETTE: Your Honor, I'd like the record to

Daniel Kellen Mayfield (In-camera)
Direct examination by Mr. Barnette

1 reflect he's identified the defendant Norris.

2 THE COURT: It shall.

3 Q What happened next?

4 A After he got Drew on the ground I looked back to make
5 sure Zack got out of the tree safely.

6 And when I looked back, he had pulled Drew's wallet
7 out of his back pocket. He had Drew fixed on the ground
8 and pulled his wallet out of his pocket. And that's when
9 me and Hub Blankenship and Joseph Holder began to walk
10 toward him. And we started saying wow, wow. And that's
11 when we noticed that he had a knife. And he pointed the
12 knife at us and told us to get on the ground.

13 Q Was there another individual approached you also?

14 A Yes, sir.

15 Q What, where did -- tell us what he did.

16 A He, he also started walking across the street. He was
17 about maybe 20 or 25 feet behind the man in the blue shirt.

18 Q Do you see that man in the courtroom here today?

19 A Yes, sir, I do.

20 Q Can you identify him for us, point him out?

21 A Sitting on the far left in the white shirt and dark
22 pants.

23 Q And who is he sitting beside of, sir?

24 A Beside the male attorney with the glasses.

25 MR. BARNETTE: Your Honor, I'd like the record to

Daniel Kellen Mayfield (In-camera)
Cross-examination by Mr. Poole

1 reflect that he identified the defendant Chiles.

2 THE COURT: It shall.

3 Q And those are the two individuals you saw that night?

4 A Yes, sir.

5 Q And afterwards did -- when y'all came back and
6 everything did you see him on the front porch?

7 A Yes, sir, I did.

8 Q And was those the two individuals that you saw that
9 came over and basically robbed Drew?

10 A Yes, sir, they are.

11 Q Please answer any questions that Mr. -- the attorneys
12 may have for you, or Judge Cole.

13 CROSS-EXAMINATION

14 BY MR. POOLE

15 Q Just a couple of brief questions, Mr. Mayfield.

16 Is it fair to say that you were with Herb Blankenship
17 the entire time?

18 A Yes, sir, it is.

19 Q So what he testified to a moment ago was basically the
20 same thing that you saw?

21 A Yes, sir.

22 Q And heard and experienced?

23 A Yes, sir.

24 Q Is that a fair statement?

25 A Yes, sir, it is.

Daniel Kellen Mayfield (In-camera)
Cross-examination by Ms. Jones

1 Q Okay. And do you remember what kind of clothes this
2 individual was wearing that night?

3 A I'm not sure what clothes he was wearing. I remember
4 that Mr. Norris was wearing a gray, gray t-shirt.

5 Q Okay. That's all I have.

6 CROSS-EXAMINATION

7 BY MS. JONES

8 Q Mr. Mayfield, what was the closest you ever got to
9 Mr. Norris, this individual?

10 A Just a few feet away when he threatened us with the
11 knife.

12 Q What is a few feet? Use something for reference in
13 this room and tell me how far away.

14 A Probably from, from me to the end of this desk right
15 here.

16 Q Okay. And you got that close and then retreated.

17 A Yes, ma'am.

18 Q Okay. Did any officer ever ask you to point out
19 anybody that you saw that looked like the persons who were
20 involved?

21 A Yes, ma'am.

22 Q Who was that officer?

23 A I don't remember the name of the officer.

24 Q Can you describe him for us?

25 A I honestly don't. There were, there were several

Daniel Kellen Mayfield (In-camera)
Cross-examination by Ms. Jones

1 officers on the scene, and I don't remember which one asked
2 us.

3 Q Was it one of the ones present?

4 A I don't remember.

5 Q You don't remember.

6 A No, ma'am.

7 Q Okay. How did -- what did that officer say to you to
8 cause you to point out someone?

9 A Well, when we noticed that the two men had gone back
10 on the porch, that's when one of the officers asked me and
11 Hub Blankenship and Joseph Holder to identify the men that
12 had, that had robbed us and-or robbed Drew Bond. And we,
13 all three of us, identified those two as the men that had
14 done, that had done that.

15 Q Were you present when your other two friends did that?

16 A I'm sorry. Say that again.

17 Q Were you present when your other two friends
18 identified them?

19 A Yes.

20 Q And you heard them identify them.

21 A Yes.

22 Q Then you identified them.

23 A I identified them along with my friends.

24 Q At the exact same time?

25 A At the exact same time.

1 Q So he asked all three of you. Tell me their names
2 again. Herb Blankenship.

3 A Hub Blankenship, Joseph Holder.

4 Q Hub?

5 A Hub Blankenship and Joseph Holder.

6 Q Holder. Okay. Did you read the paper the next day
7 and look at the picture?

8 A I saw the picture, yes, ma'am. I read that article in
9 the newspaper.

10 MS. JONES: That's all, Your Honor.

11 THE COURT: Step down.

12 Anything else?

13 MR. BARNETTE: No, sir.

14 THE COURT: Anything on behalf of the defendant?

15 MS. JONES: Not at this point, no, sir.

16 MR. POOLE: No, sir.

17 THE COURT: Any argument you need to make?

18 MS. JONES: Your Honor, specifically asking
19 Mr. Blankenship and Mr. Mayfield, they both testified that
20 they saw a photograph that ran in the newspaper the
21 following day. So there has been intervening photographs
22 viewed by the individuals, which in our position on behalf
23 of Mr. Norris would taint an in-court identification.

24 There's also been testimony by Mr. Mayfield that he
25 was, in fact, present and heard and witnessed the

1 identification at the scene by his friends, Mr. Holder and
2 Mr. Blankenship, which is a tainting also, Your Honor.
3 That's not the appropriate procedure. They're supposed to
4 be done separately so there's no interference or influence
5 brought to bear.

6 And, Your Honor, for that reason, specifically as to
7 Mr. Mayfield and Mr. Blankenship, Your Honor, we would ask
8 that the Court disallow any in-court identification because
9 of intervening factors.

10 THE COURT: Mr. Poole.

11 MR. POOLE: The defendant, Mr. Chiles, joins in
12 Ms. Jones' motion.

13 THE COURT: Okay. Well, clearly in-court
14 identification of defendants by witnesses is ordinarily a
15 question that the jury has to decide unless the
16 identification is so inherently unreliable based upon
17 police suggestion or other factors that would indicate that
18 the witness' identification is not reliable.

19 No such factors exist in this case in my view. These
20 witnesses have each testified they were involved, or at
21 least clearly closely present at the time that an armed
22 robbery took place.

23 They observed the two defendants. They saw them
24 during the commission of the crime and saw them leave the
25 incident location and walk across the street and go up on a

1 porch.

2 And apparently, as I understand it, the police arrived
3 while Mr. Norris was still over at Mr. Bond's. So, and
4 they pointed out there they go across the street, on the
5 porch. And it clearly was all done in a close, close
6 period of time.

7 There was no police suggestion; there was no
8 suggestive lineup; there was no suggestion by the police as
9 to who they ought to pick out or what they ought to pick
10 out or who the perpetrators might be.

11 It clearly appears from the testimony that the three
12 witnesses that have testified saw them. And they pointed
13 them out for the police's benefit upon the questioning of
14 who committed the crime.

15 So, you know, while their identification and the
16 reliability of it might be subject to cross-examination,
17 and it might be discredited based upon that
18 cross-examination, the identification is not so inherently
19 unreliable that it should be excluded. It will be subject
20 to cross-examination.

21 Therefore, your motion to exclude the identification
22 of the three witnesses, the in-court identification, is
23 denied.

24 Anything else before we recess for lunch?

25 MS. JONES: Nothing on behalf of defendant Norris.

Jury qualification

1 MR. POOLE: Nor Mr. Chiles.

2 THE COURT: Court in recess until 2:00 o'clock.

3 (Whereupon, a recess was taken.)

4 THE COURT: All right. Any matters to address before
5 is jury is brought around?

6 MR. BARNETTE: None from the state, Your Honor.

7 MR. POOLE: None from the defense, Your Honor.

8 MS. JONES: No, sir, Your Honor.

9 THE COURT: Okay. Bring them around.

10 (The following takes place in the presence of the jury
11 venire.)

12 THE COURT: Good afternoon, ladies and gentlemen.

13 We are ready to begin with jury selection in the first
14 case that's going to require some of your participation.
15 And the title of that case -- there are actually two
16 separate defendants being tried together. The title of the
17 cases are the State vs. Kenneth Wayne Chiles and Carnie
18 Norris, III.

19 Each of these defendants have been charged with the
20 crime of armed robbery. And the state alleges by way of
21 these two documents referred to as the indictments --
22 they're simply the charging papers -- the state alleges
23 that each of these defendants did on or about July the
24 16th of 2008 commit the crime of armed robbery in that they
25 took, stole and carried away from the person or presence of

Jury qualification

1 one Andrew B. certain personal property, being
2 cash and credit cards, and that they took those items with
3 the intention of depriving the true owner of use and
4 possession of the property.

5 Now, as to those allegations each of the defendants
6 have entered a plea of not guilty. And that plea of not
7 guilty places upon the state the burden of proving the
8 allegations that are set forth in each of the indictments,
9 the burden of proving each of the essential elements that
10 constitutes the crime of armed robbery; and therefore the
11 burden is upon the state to establish each defendant's
12 guilt to the satisfaction of 12 jurors beyond a reasonable
13 doubt before any verdict of guilty could be returned.

14 So we're going to be selecting 13 of you. There'll be
15 12 primary jurors and one additional alternate juror. And
16 by way of your participation you're simply going to be
17 called upon to listen to the testimony and consider any
18 other evidence introduced during the trial of the case.

19 At the trial's conclusion you'll be called upon to
20 evaluate all of that evidence. From that evidence you'll
21 decide what you believe to be the true facts as they relate
22 to these cases.

23 And upon deciding the facts, you'll then apply the law
24 that I will have provided you. And you will determine
25 whether or not a defendant has been proven guilty beyond a

Jury qualification

1 reasonable doubt. And if he has, then your verdict would
2 be guilty. And if he has not, then your verdict would be
3 not guilty.

4 Now, before we begin with jury selection in this case
5 I've got several questions that I'm going to ask of you as
6 a group. And the purpose of the questions is to determine
7 if there's some reason why any one of you jurors should not
8 be selected to participate in the trial of this particular
9 case.

10 And so during the course of these questions if you
11 need to respond, I'll ask that you please stand. And I'll
12 address those matters with you individually.

13 Now, first of all, as I told you, the defendants in
14 this case are Kenneth Wayne Chiles and Carnie Norris, III.

15 First, let me ask that Mr. Chiles please stand and
16 face the jury panel. You'll have to turn around and face
17 the jury panel. All right. This is Kenneth Wayne Chiles.

18 (Whereupon, Defendant Chiles stood.)

19 THE COURT: All right. Mr. Chiles is represented by
20 Roger Poole, his lawyer. He'll be assisting him in the
21 trial of the case.

22 (Whereupon, Mr. Poole stood.)

23 THE COURT: The other defendant is Carnie Norris, III.

24 Mr. Norris, if you will, stand and face the jury
25 panel.

Jury qualification

1 (Whereupon, Defendant Norris stood.)

2 THE COURT: Mr. Norris is represented by Beverly Jones
3 who is standing with him. She's his lawyer. She'll be
4 assisting him in the trial of the case.

5 (Whereupon, Ms. Jones stood.)

6 THE COURT: Presenting the case on behalf of the state
7 is Barry Barnette, the principal deputy solicitor for the
8 7th Judicial Circuit.

9 (Whereupon, Mr. Barnette stood.)

10 THE COURT: Potential witnesses to be called during
11 the trial of the case include Jon Guest and B. L. James,
12 officers with the Spartanburg Department of Public Safety;
13 also David Reeves with the Spartanburg Public Safety
14 Department; Andrew B. Herbert Blankenship; Zachery
15 Blankenship; Daniel Mayfield; Kyle Quinn; and Joseph
16 Holder. He is not here?

17 MR. BARNETTE: No, sir.

18 THE COURT: Also, Russell Porter with the Spartanburg
19 Public Safety Department. And an additional witness, A. C.
20 Worthy.

21 All right. Now, the first question is is there any
22 member of the jury panel who is connected by blood or by
23 marriage, or do you otherwise have any personal, social,
24 business or personal relationship with any of the persons
25 who have just been identified for your benefit, as well as

Jury qualification

1 any members of their respective families.

2 I need to know if you know anybody who has been
3 identified or any member of their respective families. If
4 so, please stand.

5 All right. I'm going to start over here to my right.
6 I'll work across to my left. I'll do the front row and
7 then go each row back.

8 I need for you to tell me your name and your juror
9 number. And then tell me how the question relates to you.

10 JUROR NO. 48: I'm Martha Fisher, Juror No. 48. I
11 teach at Pine Street with Drew Bond's mother, Ms. Bond.

12 THE COURT: All right. And is there anything about
13 that fact that would affect your judgment in this case?

14 JUROR NO. 48: No, sir. I'm not aware of any details
15 about the case.

16 THE COURT: And could you not allow that connection to
17 influence your judgment?

18 JUROR NO. 48: I think that I could disconnect, I
19 mean.

20 THE COURT: Ma'am?

21 JUROR NO. 48: I think that I would be able to.

22 THE COURT: Okay. Thank you. You may be seated.
23 Yes, sir.

24 JUROR NO. 2: Chris Allen, Juror No. 2. I know Kyle
25 Quinn and Joseph Holder. They went to high school with me.

Jury qualification

1 THE COURT: All right. And would either of those
2 facts have any impact upon your decision in this case?

3 JUROR NO. 2: No, sir.

4 THE COURT: Thank you. Be seated.

5 Next.

6 JUROR NO. 124: I'm sorry. I've known Mr. Holder and
7 Kyle Quinn.

8 THE COURT: Is there anything about that connection
9 that would affect your judgment in this case?

10 JUROR NO. 124: No.

11 THE COURT: Could you be fair to both sides,
12 notwithstanding you have that connection?

13 JUROR NO. 124: I would be fair, yes.

14 THE COURT: All right. Juror 124? You are Juror 124?

15 JUROR NO. 124: Yes, yes.

16 THE COURT: Thank you. Be seated.

17 Yes, ma'am.

18 JUROR NO. 17: Courtney Briscoe, Juror No. 17. I do
19 not directly know Mr. Norris, but I do attend church with
20 his father, his grandmother and his aunt. And I also go to
21 his brother's gym.

22 THE COURT: All right. Is there anything about those
23 connections that would have any impact upon your decision
24 in this case if you were selected?

25 JUROR NO. 17: Yes.

Jury qualification

1 THE COURT: All right. We'll excuse you from service
2 in the case. But don't leave yet.

3 Next.

4 JUROR NO. 113: Susan Noland, No. 113. And I know
5 Kellen Mayfield and his family.

6 THE COURT: And is there anything about that
7 connection that would have any impact upon your decision?

8 JUROR NO. 113: No, sir.

9 THE COURT: Thank you. Be seated.

10 Yes, ma'am.

11 JUROR NO. 19: I'm Barbara Burdick. I'm Juror No. 19.
12 And I know Kellen Mayfield and his family. And there's not
13 anything about them that would affect my decision.

14 THE COURT: Thank you. You may be seated.

15 Yes, ma'am.

16 JUROR NO. 67: Pamela Harris, Juror 67. And I know
17 Kyle Quinn and his family.

18 THE COURT: And is there anything about that
19 connection that would affect your judgment?

20 JUROR NO. 67: No.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am.

23 JUROR NO. 135: Nicole Schwendimann, 135. And I know
24 Officer Guest from high school.

25 THE COURT: You know Officer Guest?

Jury qualification

1 JUROR NO. 135: Yes.

2 THE COURT: And is there anything about that that
3 would have any impact upon your decision?

4 JUROR NO. 135: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NO. 143: Catherine Smith, Juror 143. And I
8 taught Zachery Blankenship's little sister in kindergarten
9 a few years ago.

10 THE COURT: And would that have bearing upon your
11 decision?

12 JUROR NO. 143: No, sir.

13 THE COURT: Thank you. You may be seated.

14 Yes, sir.

15 JUROR NO. 31: John Craig, Juror 31. I know
16 Mr. Norris from his days at Spartanburg High School. And I
17 also know the father of Mr. Blankenship, the father of the
18 defendant.

19 THE COURT: Okay. And would either of those
20 connections have any bearing upon your decision in the
21 case?

22 JUROR NO. 31: No, sir.

23 THE COURT: Thank you. You may be seated.

24 Anyone else know any of those persons who have been
25 introduced to you this morning or this afternoon? If so,

Jury qualification

1 please stand.

2 (No response.)

3 THE COURT: Now, this is a case, as I told you, where
4 each of the defendants is charged with having committed the
5 crime of armed robbery. And the event is alleged to have
6 occurred back on July the 16th of 2008. And it is alleged
7 to have occurred at or near the location of the First
8 Baptist Church, and specifically on North Dean Street
9 between Saint John Street and Main Street in a parking lot
10 there.

11 Has any member of the jury panel heard, seen or read
12 anything about the facts or circumstances that might relate
13 to this particular case? Have you received any information
14 about this case from any source? If so, please stand.

15 (No response.)

16 THE COURT: Has any member of the jury panel or any
17 members of your immediate family -- and let's define an
18 immediate family member as a parent, a spouse, a child or a
19 sibling -- a parent, spouse, child or sibling -- have you
20 or any members of your immediate family ever been the
21 victim of or ever been accused of the commission of any
22 type of violent crime?

23 And those crimes would include the crimes of murder,
24 manslaughter, burglary, armed robbery, criminal sexual
25 conduct, criminal domestic violence of a high and

Jury qualification

1 aggravated nature, or any other similar type of an offense.

2 I need to know if any juror, you or an immediate
3 family member, has ever been the victim of such a violent
4 offense of any kind, or you or a family member has ever
5 been accused of having committed such a crime. If so,
6 please stand.

7 All right. Let's get everybody standing. Is
8 everybody standing that needs to respond that question?
9 Anybody not understand the question?

10 Okay. I'll start with you, please ma'am.

11 JUROR NO. 50: Kay Fulton, Juror No. 50. My purse was
12 stolen from my car in my carport two years ago.

13 THE COURT: And would that experience have any impact
14 upon your decision in this case?

15 JUROR NO. 50: No.

16 THE COURT: Thank you. Be seated.

17 Yes, sir.

18 JUROR NO. 168: Brian Morgan, 168. I was a victim of
19 armed robbery about ten years ago.

20 THE COURT: And would that experience have any bearing
21 upon your decision if you were selected?

22 JUROR NO. 168: No.

23 THE COURT: Thank you. Be seated.

24 Yes, ma'am.

25 JUROR NO. 120: Erica Pauly, Juror 120. I have a

Jury qualification

1 sibling that was convicted of a criminal sexual conduct.

2 THE COURT: Would that have any bearing upon your
3 decision?

4 JUROR NO. 120: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NO. 147: Jean Sprouse, Juror No. 147. And my
8 home was -- my cars were recently, things stolen from it.
9 And then my sister's home was burglarized a few years ago.

10 THE COURT: And would either of those facts have any
11 bearing upon your decision in the case?

12 JUROR NO. 147: No, sir.

13 THE COURT: Thank you. Be seated.

14 Yes, ma'am.

15 JUROR NO. 11: I was recently robbed at my home.

16 THE COURT: You were recently what?

17 JUROR NO. 11: Robbed.

18 THE COURT: Okay. And your name and number, please?

19 JUROR NO. 11: Virginia Blackwell, No. 11.

20 THE COURT: And would that experience have any bearing
21 upon your decision?

22 JUROR NO. 11: I am afraid it would.

23 THE COURT: All right. We'll excuse you from service
24 in the case.

25 Yes, sir.

Jury qualification

1 JUROR NO. 32: Juror No. 32, and I was a victim of
2 assault and battery.

3 THE COURT: And would that have any bearing upon your
4 decision in this case?

5 JUROR NO. 32: No, sir.

6 THE COURT: Thank you. Be seated.

7 Yes, ma'am.

8 JUROR NO. 156: Juror No. 156, April Vaughn. My house
9 was broken into and my cars were vandalized.

10 THE COURT: Your house was broken into and what?

11 JUROR NO. 156: My cars were vandalized.

12 THE COURT: Okay. And would either of those facts
13 have any bearing upon your decision in this case?

14 JUROR NO. 156: No, Your Honor.

15 THE COURT: Thank you. Be seated.

16 Yes, ma'am.

17 JUROR NO. 154: Janice Turner, Juror 154. My house
18 was broken in.

19 THE COURT: And would that have any bearing upon your
20 decision?

21 JUROR NO. 154: Yes, sir.

22 THE COURT: All right. We'll excuse you from service
23 in the case.

24 Yes, sir.

25 JUROR NO. 16: Robert Brewton, Juror No. 16. And my

Jury qualification

1 sister's house was broken into last year.

2 THE COURT: And would that have any bearing upon your
3 decision in this case?

4 JUROR NO. 16: No, sir.

5 THE COURT: Thank you. You may be seated.

6 Anyone else need to respond to that question?

7 (No response.)

8 THE COURT: Is there any member of the jury panel who
9 is connected by blood or by marriage to any person who is
10 now or has ever been employed as a law enforcement officer,
11 as well as whether you have ever been employed as a law
12 enforcement officer?

13 So I need to know if you or some member of your
14 immediate family is now or has ever been employed as a law
15 enforcement officer. And that would be for any type of
16 agency charged with the responsibility of enforcing the
17 laws -- city, towns, county law enforcement agencies or
18 sheriff's departments, correctional facilities, state law
19 enforcement division, the F. B. I., military police
20 officers, any type of law enforcement officer.

21 All right. Let me start over here to my right and
22 work across.

23 JUROR NO. 4: My father was a constable.

24 THE COURT: If you will, give me your name.

25 JUROR NO. 4: Mike Barnett, Juror No. 4.

Jury qualification

1 THE COURT: Four?

2 JUROR NO. 4: Yes, sir.

3 THE COURT: And tell how that question relates to you.

4 JUROR NO. 4: I thought you said anybody in our
5 family.

6 THE COURT: I'm asking that.

7 JUROR NO. 4: My father.

8 THE COURT: I just didn't hear you.

9 JUROR NO. 4: My father was a constable, a state
10 constable.

11 THE COURT: Okay. Thank you.. You may be seated.

12 Yes, sir.

13 JUROR NO. 68: Juror 68. My wife is -- my wife's
14 uncle was an officer in Union County.

15 THE COURT: All right. Thank you. Be seated.

16 Yes, ma'am.

17 JUROR NO. 167: I'm Juror 167, Carol McBride. My son
18 is a city policer in the Town of Cowpens.

19 THE COURT: Thank you. Be seated.

20 Anyone else?

21 (No response.)

22 THE COURT: Is there any member of the jury panel who
23 is a member of, or do you otherwise contribute time or
24 money to any organization that might be characterized as a
25 law enforcement support type of organization or victims'

Jury qualification

1 rights or victims' advocacy type of organizations?

2 That would include like Mothers Against Drunk Drivers,
3 Citizens Against Violent Crime, the honorary sheriff's
4 association, the troopers' association, the fraternal order
5 of police, neighborhood watch program or any other type of
6 organization that has as part of its platform to assist law
7 enforcement or victims' rights in any fashion. If so,
8 please stand.

9 All right. I will start over here and work across.

10 JUROR NO. 50: No. 50. I have contributed to Mothers
11 Against Drunk Drivers.

12 THE COURT: All right. Thank you. Be seated.

13 Yes, ma'am.

14 JUROR NO. 13: Juror No. 13.

15 THE COURT: I'm going to go row by row, front to back.

16 Yes, ma'am.

17 JUROR NO. 13: Juror No. 13. I have contributed to
18 the troopers' association before.

19 THE COURT: Thank you. Be seated.

20 Yes, ma'am.

21 JUROR NO. 133: 133. Mothers Against Drunk Drivers
22 and the troopers' association.

23 THE COURT: Thank you.

24 Yes, sir.

25 JUROR NO. 68: No. 68, the state troopers'

Jury qualification

1 association.

2 THE COURT: Yes, ma'am.

3 JUROR NO. 99: Juror 99. The state troopers'
4 association.

5 THE COURT: Yes, ma'am.

6 JUROR NO. 75: Juvenile justice department downstairs,
7 volunteer.

8 THE COURT: And your name and number?

9 JUROR NO. 75: Vickie Henderson, 75.

10 THE COURT: Thank you, ma'am.

11 JUROR NO. 167: Carol McBride, Juror 167. I
12 contributed to the South Carolina Troopers Association.

13 THE COURT: Thank you. Be seated.

14 Yes, sir.

15 JUROR NO. 28: Jon Cochran, No. 28. And I contributed
16 money to the South Carolina Troopers Association.

17 THE COURT: Thank you. Be seated.

18 Yes, ma'am.

19 JUROR NO. 147: Jean Sprouse, No. 147. I contributed
20 to MADD and the state troopers' association.

21 THE COURT: Thank you, ma'am.

22 Next row.

23 JUROR NO. 6: Patricia Bedenbaugh, No. 6. The
24 troopers' association.

25 THE COURT: Next.

Jury qualification

1 JUROR NO. 44: Marcus Edge, Juror No. 44. Mothers
2 Against Drunk Driving.

3 THE COURT: Thank you.

4 Next.

5 JUROR NO. 59: Jan Griffin, No. 59. South Carolina
6 State Troopers Association and MADD.

7 THE COURT: Thank you.

8 Next.

9 JUROR NO. 70: William T. Harvey, No. 70. American
10 Center for Law and Justice and Piedmont Wilderness
11 Institute.

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

13 Anyone else?

14 (No response.)

15 THE COURT: Does any member of the jury panel know any
16 person employed in the 7th Judicial Circuit Solicitor's
17 Office and/or the Spartanburg County or the 7th Judicial
18 Circuit Public Defender's Office? Anyone know anybody
19 employed in the solicitor's office or the public defender's
20 office in this circuit? If so, please stand.

21 Yes, ma'am.

22 JUROR NO. 59: Jan Griffin, Juror No. 59. I'm not
23 certain, but my husband, my exhusband's, wife may be
24 employed here, Joy White.

25 THE COURT: Okay. Would that have any bearing upon

Jury qualification

1 your decision?

2 JUROR NO. 59: No, sir.

3 THE COURT: Thank you. Be seated.

4 Yes, ma'am.

5 JUROR NO. 120: Erica Pauly, Juror 120. I don't know
6 if it's the solicitor's office, but I know Sandy Sutton.

7 THE COURT: Would it have any bearing upon your
8 decision?

9 JUROR NO. 120: No, sir.

10 THE COURT: Thank you. Be seated.

11 Yes, ma'am.

12 JUROR NO. 147: I'm not sure which office. 147, Jean
13 Sprouse. But Edith Kimbrell works somewhere in the
14 judicial system.

15 THE COURT: Okay. Would it matter to you in this
16 case?

17 JUROR NO. 147: No, it would not.

18 THE COURT: Thank you. Be seated.

19 Yes, sir.

20 JUROR NO. 5: Joshua Barone, Juror No. 5. I know Trey
21 Gowdy.

22 THE COURT: And would that have any bearing upon your
23 decision?

24 JUROR NO. 5: No, sir.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 JUROR NO. 31: John Craig, No. 31. I know Solicitor
2 Trey Gowdy and Assistant Solicitor Barry Barnette.

3 THE COURT: And would either of those facts have any
4 bearing upon your decision?

5 JUROR NO. 31: No, sir.

6 THE COURT: Thank you. Be seated.

7 All right. Now, I've told you who the defendants are;
8 I've told you who the alleged victim is; I've told you a
9 little bit about what the event or the incident is about
10 and where it occurred.

11 I've introduced all of the witnesses to you; I've
12 introduced the lawyers to you. And of course you know a
13 little bit about what the case is about and what the
14 allegations are.

15 Does any member of the jury panel know of any reason
16 whatsoever why you believe you could not be fair and
17 impartial if you were selected to participate as a juror in
18 this particular case? If so, please stand.

19 (No response.)

20 THE COURT: Any other questions requested by the
21 state?

22 MR. BARNETTE: None from the state, Your Honor.

23 THE COURT: By defendant Chiles?

24 MR. POOLE: No, sir.

25 THE COURT: By defendant Norris?

Jury qualification

1 MS. JONES: No, sir.

2 THE COURT: All right. We're going to select a jury
3 in just a minute. And your names are going to be called,
4 selected and called, one at a time.

5 You will be asked to come forward. There's a lot of
6 people and equipment, so you'll have to come down the
7 center aisle.

8 I just need for you to take about two steps past where
9 the desks are where the lawyers are seated. Turn and face
10 your fellow jurors.

11 Each side has an opportunity to have you excused from
12 service in the case or to have you seated. If either asks
13 that you be excused, you can simply go back and have a seat
14 with the jury pool. If both agree to have you seated,
15 you'll be having a seat in the jury box to your right and
16 to my left.

17 So please simply come forward when your name is
18 called, and you'll be instructed if you're to be seated for
19 service in the case or excused from service in the case.

20 Let me ask one other question just in case anybody
21 wants to know.

22 Has any member of the panel ever been called to come
23 to court to testify as a witness in the trial of a criminal
24 case, whether it be for the state or for a defendant?
25 Anyone ever been called to testify in a case?

Jury qualification

1 All right. If you will, give me your names and
2 numbers, please.

3 JUROR NO. 26: Nancy Caulder, No. 26. I think it was
4 about two years ago. I testified in a sexual case.

5 THE COURT: Were you called by the state or the
6 defense?

7 JUROR NO. 26: By the defense.

8 THE COURT: Okay. Thank you. Be seated.

9 Yes, ma'am.

10 JUROR NO. 131: Juror 131. I have been called for --
11 by the state. I am a foster parent, so.

12 THE COURT: Called by the state what?

13 JUROR NO. 131: I'm a foster parent.

14 THE COURT: Okay. Thank you. Be seated.

15 Yes, sir.

16 JUROR NO. 47: Juror No. 47. And I have got something
17 by the state to testify against a D. U. I. case.

18 THE COURT: All right. Thank you. Be seated.

19 Yes, ma'am.

20 JUROR NO. 156: Juror No. 156. And I was called by
21 the state to testify for a murder case.

22 THE COURT: Testify by the state in what?

23 JUROR NO. 156: A murder case.

24 THE COURT: Okay. Thank you. Be seated.

25 (Pause.)

Jury qualification

1 THE COURT: This used to be a very simple process
2 until the computer programs were designed to make it
3 complicated.

4 MR. POOLE: May we approach, Your Honor?

5 THE COURT: Yes.

6 (Bench conference held off the record.)

7 (Whereupon, a jury was impanelled.)

8 THE COURT: All right. Those of you who have been
9 selected, I'll ask you to please go with the bailiff to a
10 jury room. And I'll bring you back shortly to begin with
11 the trial of the case.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Are there any matters that need to be
15 addressed regarding jury selection by the state?

16 MR. BARNETTE: None from the state, Your Honor.

17 THE COURT: By the defendant Chiles?

18 MR. POOLE: No, sir.

19 THE COURT: By defendant Norris?

20 MS. JONES: No, sir, Your Honor.

21 (Whereupon, the remaining members of the jury venire
22 were excused.)

23 (Knife marked State's Exhibit No. 1 for Identification;
24 knife marked State's Exhibit No. 2 for Identification;
25 photographs marked State's Exhibit No. 3 through 9 for

1 Identification.)

2 MS. JONES: Your Honor, could we approach again?

3 THE COURT: Yes.

4 (Bench conference held off the record.)

5 THE COURT: First you need to tell me what we're
6 doing.

7 MS. JONES: Thank you, Your Honor.

8 Your Honor, for the record, at the break, or before
9 the break, Mr. Norris told me his mother wanted to speak to
10 me. And I told him we can't do this while the Court is
11 still in session. I think she just wants to ask you a
12 question, I think is what he said.

13 When I left briefly for that break Your Honor gave me,
14 she stopped me in the hall and said I heard a bailiff --
15 she didn't call him a bailiff -- she said one of the
16 gentlemen in the red coats with white hair standing at the
17 back door as the jury was coming in and they were talking
18 about my son.

19 And I said and on -- on later inquiry I asked her what
20 she said the bailiff said. And she said that the bailiff
21 said that's Carnie Norris, he used to play football at
22 Spartan High, he's been in a lot of trouble, he's back up
23 here now and this time he won't go home, he's going to be
24 going down the road.

25 She also told me that the officer -- the policeman,

Mary Norris (In-camera)
Direct examination by Ms. Jones

1 and she gestured where Mr. Seay was seated at the time --
2 she said I know he heard that. And I said this one, and
3 she said, no, the one who was here before, which by the
4 process of elimination I determined was Officer Bennett.

5 I went and got him. On the way back into the
6 courtroom Officer Bennett tells me he has heard nothing.
7 He is still here. But-and Your Honor just inquired as of
8 one of the bailiffs if they had said anything in the
9 presence of the jury. The bailiff said he had no knowledge
10 of that.

11 I told that to Ms. Norris, and she insists that she
12 heard something being said in the presence of the jurors.

13 THE COURT: All right. Well, you can call her and
14 we'll place her under oath and she can tell us what she
15 heard if she heard something.

16 MS. JONES: Thank you, Your Honor.

17 Mary Norris.

18 MARY NORRIS, having been first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. JONES

21 THE COURT: All right. Ms. Jones.

22 MS. JONES: Thank you, Your Honor.

23 Q Ms. Norris, you are the mother of Carnie Norris, is
24 that correct?

25 A Yes, I am.

Mary Norris (In-camera)
Direct examination by Ms. Jones

1 Q And you obviously have been present here for some time
2 in anticipation of your son's trial, is that correct?

3 A Yes. That's correct.

4 Q How long have you been in this courtroom today?

5 A I've been in the courtroom since about 1:50.

6 Q Okay. And during that time -- and were you present
7 when the jury pool, the larger group, not the group we just
8 picked but the entire group, was brought back into the
9 courtroom in anticipation or preparation for the selection
10 of the jury?

11 A Yes, I was.

12 Q Where were you seated?

13 A I was seated in one of the red chairs there.

14 Q Behind where I'm standing now?

15 A Yes.

16 Q Okay. You told me at the break -- you met me in the
17 hallway as I returned from the break that His Honor gave
18 me. You told me you overheard a court official speaking
19 about your son.

20 A Yes. I did.

21 Q Okay. When did that happen?

22 A When the judge asked the jurors to be brought in, they
23 were present there at the door, everybody that was in the
24 jury pool.

25 First of all, I want to make it clear I'm not here to

Mary Norris (In-camera)
Direct examination by Ms. Jones

1 try to cause trouble. I respect the judge, the court
2 system and everything. I just want things to be done
3 fairly, because I know this is not fair.

4 It was said right in that doorway by one of the
5 bailiffs that that's Carnie Norris, the standout football
6 from Spartanburg High School, he is back in here again and
7 watch, this time he's going down that road. I detest that.

8 Q Well, ma'am, at the point that was said, where were
9 you seated?

10 A I was seated right in the red chair directly behind
11 the lawyer.

12 Q Okay. And where was His Honor?

13 A Pardon me?

14 Q Where was Judge Cole when that happened?

15 A Judge Cole was here. He had come in. And we stood.
16 And he had asked everybody to be seated.

17 Q Okay. And what was happening at the doorway when you
18 heard those comments being made?

19 A The jurors was to be waiting. They were waiting to
20 come in.

21 Q Waiting where?

22 A At the door, right there at that door.

23 Q Okay. And do you recollect who you saw, who you heard
24 or saw say the words you just repeated?

25 A I only know by hair.

Mary Norris (In-camera)
Direct examination by Ms. Jones

- 1 Q Okay. And describe that person.
- 2 A It's a white male, an older male, with white hair. I
- 3 didn't get to see the nameplate.
- 4 Q Okay. And at the time that comment was made were
- 5 there jurors coming in through the doorway?
- 6 A They were all standing. They were waiting to come in.
- 7 Q Where were they standing?
- 8 A They were standing in the doorway.
- 9 Q Okay. Were the doors open?
- 10 A The doors were open, yes.
- 11 Q Is that how you knew they were out --
- 12 A Yes, yes.
- 13 Q -- in the lobby or the vestibule?
- 14 A And the voice was very good, very visible.
- 15 Q I'm sorry?
- 16 A The voice and speaking, it was very visible. I mean,
- 17 you could hear.
- 18 Q I'm sorry. You were seated here. Was there anybody
- 19 between you and the doors?
- 20 A No. The jurors had not come in.
- 21 Q Okay.
- 22 A They were just standing waiting.
- 23 Q Okay.
- 24 MS. JONES: Your Honor, that's all. I'm sorry.
- 25 Q Did you -- could you tell from the reaction of the

Mary Norris (In-camera)
Direct examination by Ms. Jones

1 jurors nearest the door whether they heard anything?

2 A I'm sure they heard it because they were closer to
3 that door than they were to me.

4 Q And you heard it.

5 A I heard it, yes, I did.

6 Q Do you know which gentleman with the red coat and gray
7 hair it was? Do you see that person?

8 A Two gentlemen were there.

9 Q Well, do you see --

10 A There was the one that was on the left. That would
11 have been to the left.

12 Q But is that individual in the courtroom?

13 A Yes.

14 Q Okay. Who is it?

15 A This one.

16 Q This gentleman. Okay. Thank you.

17 MS. JONES: I have nothing else, Your Honor.

18 THE COURT: All right. Ms. Norris, let me be sure I
19 understand.

20 You're saying -- the gentleman behind you is
21 Mr. Bogan. And you're saying he was standing at the back
22 door when the jury came in?

23 THE WITNESS: Yes. He was there at the doors.

24 THE COURT: And you're saying he made a comment about
25 your son.

Mary Norris (In-camera)

1 THE WITNESS: That was the comment that I heard,
2 Judge.

3 THE COURT: And who do you contend that he was talking
4 to?

5 THE WITNESS: Well, I would assume he was talking to
6 the group.

7 THE COURT: So your position is, or what you observed
8 was he was talking to the jurors?

9 THE WITNESS: Yes.

10 THE COURT: You're saying that he was conveying to the
11 jurors who Mr. Norris was?

12 THE WITNESS: Exactly.

13 THE COURT: All right. As they were coming in the
14 door?

15 THE WITNESS: Yes, sir.

16 THE COURT: And you say you were seated in a chair
17 right behind Ms. Jones, where she's seated now?

18 THE WITNESS: Yes.

19 THE COURT: And Ms. Jones was seated where she is.

20 THE WITNESS: Yes.

21 THE COURT: And Mr. Poole was seated where he is.

22 THE WITNESS: Yes.

23 THE COURT: Your son was seated where he is.

24 THE WITNESS: Yes. They were busy doing notes back
25 and forth. And I tried to get her attention.

Mary Norris (In-camera)

1 THE COURT: And Mr. Chiles was seated where he is.

2 THE WITNESS: Yes.

3 THE COURT: And I was seated where I am.

4 THE WITNESS: Yes, sir.

5 THE COURT: And Mr. Barnette was seated where he is.

6 THE WITNESS: Yes, sir. They were standing.

7 THE COURT: Okay.

8 MS. JONES: Your Honor, may I clarify?

9 BY MS. JONES

10 Q Was there only one gentleman with the red jacket on
11 standing when that happened?

12 A There were two -- there were two.

13 Q Okay. That's that I thought you said to me.

14 A It was two.

15 THE COURT: Do you recognize the other one?

16 THE WITNESS: No, sir.

17 THE COURT: And it wasn't the one that's seated at the
18 back door now?

19 THE WITNESS: No, sir. I didn't see him.

20 THE COURT: You didn't see him.

21 THE WITNESS: No, sir.

22 THE COURT: But you saw another bailiff?

23 THE WITNESS: But I know there's two red coats.

24 THE COURT: You're saying there was another bailiff
25 back there beside Mr. Bogan?

Mary Norris (In-camera)
Cross-examination by Mr. Barnette

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. Mr. Barnette, do you want to ask
3 her anything?

4 CROSS-EXAMINATION

5 BY MR. BARNETTE

6 Q Ma'am, you said if I understood it right, in an
7 audible voice distinctly heard by you?

8 A Yes.

9 Q And if I understand right, you're at least -- he was
10 standing back here when he was talking?

11 A Yes.

12 Q Do you realize that I was closer to him than you were?

13 A You were busy.

14 Q No, ma'am. When a jury is coming in I'm watching the
15 jurors.

16 A I did not say coming in. I said they were standing.
17 They had not been told to come in.

18 Q But you said in a voice that was easily heard by you
19 where you were sitting at.

20 A Yes, I did.

21 THE COURT: Anything else?

22 MS. JONES: No, sir.

23 THE COURT: Okay. You can step down.

24 All right. Ms. Jones, do you want to call anybody
25 else?

Bailiff Bogan (In-camera)

1 MS. JONES: No, sir, Your Honor.

2 THE COURT: All right. Mr. Bogan, let me ask you to
3 take the witness stand, please.

4 BAILIFF BOGAN, having been
5 first duly sworn, testified as follows:

6 THE COURT: Were you one of the bailiffs at the back
7 door when the jury panel was brought in?

8 THE WITNESS: No, sir. I brought you in and stopped
9 here.

10 THE COURT: And do you know who was at the back door,
11 which bailiffs were working the back door?

12 THE WITNESS: I think Mr. Hawkins was here at the
13 front to seat the jury.

14 As to who brought the jury over, Mr. O'Shields and
15 Mr. Mack were working with them earlier. I'm not sure who
16 brought them over.

17 THE COURT: But your position in the courtroom was at
18 this back door.

19 THE WITNESS: Yes.

20 THE COURT: The door next to the witness box.

21 THE WITNESS: Yes, sir.

22 THE COURT: And did you ever have a conversation with
23 any juror about the nature of this case or what the case
24 was about or who the defendants were?

25 THE WITNESS: No, sir.

1 THE COURT: Do you want to ask him any questions?

2 MS. JONES: No, sir.

3 MR. BARNETTE: No, sir.

4 THE COURT: Okay. Thank you. Step down.

5 All right. Ms. Jones, do you have any other bailiff.
6 or other person that you'd like for the Court to call to
7 inquire?

8 MS. JONES: Not as a bailiff, but I don't know if Your
9 Honor wants to inquire when the panel is brought in if
10 there has been -- I don't know how to ask.

11 THE COURT: Well, I'd be happy to ask them. But you
12 were sitting there right next to Ms. Norris. Did you hear
13 such a conversation?

14 MS. JONES: No, sir, Your Honor.

15 THE COURT: Mr. Poole, did you hear such a
16 conversation?

17 MR. POOLE: No, sir.

18 THE COURT: Mr. Chiles, did you hear such a
19 conversation?

20 DEFENDANT CHILES: No, sir.

21 THE COURT: Mr. Norris, did you hear such a
22 conversation?

23 DEFENDANT NORRIS: Sir, my mother, she got my
24 attention and she did like that -- I'm sorry.

25 THE COURT: Well, did you hear such a conversation?

1 DEFENDANT NORRIS: No. I couldn't talk because you
2 was talking at the time.

3 THE COURT: Right. Okay. I was talking. So you
4 didn't hear any conversation like that.

5 DEFENDANT NORRIS: No, I didn't. I didn't have a
6 chance to.

7 THE COURT: Okay. Well, did you notice what bailiff
8 was at the back door?

9 DEFENDANT NORRIS: No, sir. I didn't pay attention to
10 her. When she, when she made the sign language, she
11 pointed to, did like that, pointed to the back. So, I
12 mean, that's why I kept asking her, you know, could my
13 mother say something to her.

14 THE COURT: Okay.

15 DEFENDANT NORRIS: Because my mother, she worked at
16 the Deaf and Blind School, and that's what she do, sign
17 language at.

18 THE COURT: They were doing sign language?

19 DEFENDANT NORRIS: No. My mother. And that's, that's
20 what she was telling me, that somebody was back there
21 talking.

22 THE COURT: Okay. Mr. Hawkins, were you at the back
23 door? And did you usher the jury in?

24 BAILIFF HAWKINS: Yes, I did.

25 THE COURT: Let me ask you to come around, please.

Bailiff Hawkins (In-camera)

1 BAILIFF HAWKINS: I didn't usher the jury in. I
2 walked to the front so I could see them.

3 THE COURT: Who brought them into the courtroom?

4 BAILIFF HAWKINS: Mr. Scruggs and Mr. Seay was at the
5 back door, and I forgot who brought them down the aisle.
6 But I stood in the middle of the floor right there until
7 they rounded the corner. And then I walked in.

8 THE COURT: Okay. If you will, stand up there and
9 take the witness stand.

10 BAILIFF HAWKINS, having been
11 first duly sworn, testified as follows:

12 THE COURT: And you are Mr. Hawkins. You're the
13 bailiff. You were at the back door when the jury came in.

14 THE WITNESS: No. I was up front when they came in.
15 I was at the back door when they turned the corner down
16 here to come in here.

17 THE COURT: That's what I'm saying. You preceded them
18 in the courtroom.

19 THE WITNESS: As soon as I seen them I moved to the
20 front. And then they come in right behind me.

21 THE COURT: Okay. And did you have any conversation
22 about Mr. Norris or anything else that relates to this case
23 with any person?

24 THE WITNESS: I did not.

25 THE COURT: Did you hear any such conversation?

Bailiff Hawkins (In-camera)
Cross-examination by Ms. Jones

1 THE WITNESS: I did not.

2 THE COURT: By any other person, bailiff or otherwise?

3 THE WITNESS: No, I didn't.

4 THE COURT: All right. Ms. Jones, do you want to ask
5 him anything?

6 MS. JONES: Your Honor, I am confused, I think, about
7 who, who Mr. Hawkins actually said was in the back door as
8 they were being assembled.

9 THE COURT: Well, ask him.

10 CROSS-EXAMINATION

11 BY MS. JONES

12 Q Who were the bailiffs that were at the back door as
13 they were waiting to come into the courtroom? We've
14 established it wasn't you, because you moved up. But who
15 was standing there?

16 A Mr. Seay was there and Mr. Gantt Scruggs was there. I
17 forget who brought them all the way from the jury assembly
18 room. He led them down here. O'Shields. Mr. O'Shields is
19 the one that brought them down the hall and into the back
20 door.

21 Q Okay.

22 A The back door. They came to me up front. And I don't
23 remember them hesitating before they come in, but I was
24 already up here when they came in, come through the door.

25 Q Thank you, Mr. Hawkins.

1 THE COURT: Okay. Thank you. Step down.

2 Anything else?

3 MS. JONES: Your Honor, I hate to belabor the point,
4 but just for the clarity of the record, could we ask for
5 the gentlemen who actually brought them into the courtroom?

6 THE COURT: Well, if you'd like to find them and bring
7 them around.

8 But, now, as I understood it, Ms. Norris was emphatic
9 and certain that it was Mr. Bogan. And of course, as you
10 know, Mr. Bogan was not at the back door. He's been here.
11 But she said it was him. So I don't know -- I don't know
12 how to get around that.

13 MS. JONES: Well, she also said there was a second
14 person that she could not identify. She's been very clear
15 in her direct --

16 THE COURT: Well, let's see if we can find whoever is
17 in the courthouse -- Mr. Scruggs, Mr. O'Shields, anybody
18 else wearing a red coat with white hair.

19 The record can also reflect I didn't hear any such
20 conversation either.

21 MR. BARNETTE: Your Honor, for the record, I think --
22 I did not hear any conversation like that. And I've got
23 several witnesses on this side that said they never heard
24 anything and didn't see anything.

25 (Pause.)

Gantt Scruggs (In-camera)

1 THE BAILIFF: Your Honor, Mr. Scruggs and Mr. Seay are
2 the only two still here.

3 THE COURT: Okay, well, let me first ask.

4 Mr. Scruggs, did you -- did you participate in
5 bringing the jury panel around to the courtroom at the
6 beginning of this trial?

7 BAILIFF SCRUGGS: Yes, sir, I did.

8 THE COURT: And were you at the back door as the jury
9 was coming in?

10 BAILIFF SCRUGGS: Yes, sir, I was.

11 THE COURT: All right. If you will, let me ask you to
12 take the witness stand. I want to ask you a couple of
13 questions.

14 GANTT SCRUGGS, having been
15 first duly sworn, testified as follows:

16 THE COURT: There has been an allegation made that a
17 bailiff standing in the back door prior to the jury being
18 brought into the courtroom was having a conversation with
19 another bailiff regarding this particular case, and
20 specifically Carnie Norris.

21 Did you have such a conversation regarding Mr. Norris
22 with any other bailiff or any other person?

23 THE WITNESS: No, sir, I did not.

24 THE COURT: Did you hear any other bailiff or any
25 other person having such a conversation about Mr. Norris --

Bailiff Seay (In-camera)

1 THE WITNESS: No, sir, I didn't.

2 THE COURT: -- as the jury was brought in?

3 THE WITNESS: No, sir, I did not.

4 THE COURT: Okay. Ms. Jones, do you want to ask him
5 anything?

6 MS. JONES: No, sir.

7 THE COURT: Thank you. Step down.

8 Mr. Seay, let me ask you.

9 Did you participate in bringing the jury around?

10 BAILIFF SEAY: No, sir, but I was out there when they
11 got here.

12 THE COURT: You were out in the hall.

13 BAILIFF SEAY: Yes, sir.

14 THE COURT: Okay. If you will, please, take the
15 witness stand.

16 BAILIFF SEAY, having been
17 first duly sworn, testified as follows:

18 THE COURT: What I want to find out is there has been
19 an allegation that a bailiff was having a conversation
20 about Mr. Norris as the jury was coming into the courtroom,
21 and prior too as they stood outside the courtroom before
22 they were ushered in.

23 Did you have such a conversation with any bailiff or
24 any other person regarding Mr. Norris?

25 THE WITNESS: Not that I -- no, sir.

Bailiff Seay (In-camera)

1 THE COURT: Did you hear any other bailiff or any
2 other person discussing Mr. Norris either in the lobby, in
3 the hallway or in the courtroom?

4 THE WITNESS: No.

5 THE COURT: All right. Ms. Jones, do you want to ask
6 him anything?

7 MS. JONES: No, sir.

8 THE COURT: All right. Thank you. Step down.

9 Were there any other bailiffs involved in ushering the
10 jury around?

11 BAILIFF SCRUGGS: Dexter O'Shields, but he's gone for
12 the day, Your Honor.

13 THE COURT: Okay. Well, when Mr. O'Shields gets back
14 we'll ask him too.

15 BAILIFF SCRUGGS: And Mr. Hebert Mack may have been
16 out there, but he's gone.

17 THE COURT: Well, this was a white. Thank you.

18 BAILIFF SCRUGGS: Yes, sir. It would be Dexter.

19 THE COURT: Okay. Thank you.

20 Any other matters we need to address before the jury
21 is brought in?

22 MR. BARNETTE: None from the state, Your Honor.

23 MR. POOLE: None from defendant Chiles.

24 MS. JONES: Your Honor, only if Your Honor would
25 inquire -- well, I withdraw that.

1 Any comment that Ms. Norris alleges was made prior to
2 Your Honor qualifying them and asking them questions on
3 what they knew of the case, anyway so I will not ask for
4 any --

5 THE COURT: Well, I'm going to ask them if they heard
6 any conversation about this case from any source.

7 All right. Bring the jury in. And ask Ms. Duncan,
8 Juror No. 43, Ms. Duncan, to take the foreperson's seat.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: All right. Ladies and gentlemen, we are
12 ready to begin with the trial of the case for which each of
13 you were selected.

14 And before we do that I've got one other question I
15 need to ask you. As you can imagine, during the course of
16 a week when you're having court there are a lot of people
17 involved in trials.

18 There are a lot of people who are down at the
19 courthouse as spectators. There are a lot of people who
20 have been subpoenaed to appear as witnesses. There's also
21 court personnel, including bailiffs and clerk of court
22 personnel, people from my office, lawyers involved in cases
23 and lawyers not involved in cases.

24 And sometimes they're having discussions about cases,
25 whether they might come up this week or come up some other

1 week. But they're having discussions about cases.

2 And I simply need to find out whether or not any juror
3 who has been selected for service in this case at any time
4 prior to your selection or after your selection or as you
5 were being ushered into the courtroom for potential
6 selection have overheard any conversation, any discussion
7 by any person whatsoever about any fact that relates to
8 this case, including who the defendants are, who the
9 alleged victim is, who the lawyers are, who the witnesses
10 are or anything about the case.

11 I need to know if any juror has overheard or been
12 exposed to any discussion or conversation about anything
13 that relates to this particular case.

14 If you have, I'd ask that you please indicate so by
15 raising your right hand.

16 (No response.)

17 THE COURT: All right. All jurors have responded
18 negatively to that question.

19 So we are now ready to proceed with the trial of the
20 case for which you were selected.

21 And, Ms. Duncan, I'm going to ask you to serve as the
22 foreperson of this jury. And as the foreperson you're
23 going to have three specific duties that none of the other
24 jurors will have.

25 Number one, you'll be asked to serve as the

1 spokesperson for the jury. And so if during the trial
2 something arises that needs to be brought to my attention,
3 that is you or some fellow juror has any difficulty or
4 problem or question, if you'll let the bailiff know, he'll
5 let me know, and I'll address those questions or address
6 those issues.

7 Secondly, you'll also be called upon to preside over
8 the jury deliberations when the time comes. And that of
9 course will not be until the end of the trial after all of
10 the evidence has been received and I have instructed you on
11 the law that's applicable in the case.

12 But when the time does come for jury deliberations
13 you're going to be called upon to preside over that process
14 in the jury room to ensure that those deliberations are
15 carried out in some orderly fashion.

16 And, thirdly, you'll be asked to actually write the
17 verdict or the decisions of the jury. And you'll do that
18 on a verdict form that I'll provide you prior to you going
19 back to begin deliberations on which you will indicate the
20 jury's unanimous decision.

21 Now, the foreperson has those specific duties that
22 I've just indicated. That does not however mean that she
23 is any more important than any of you other jurors, because
24 the decision of a jury is the unanimous consensus opinion
25 of all 12 jurors. And so each of you will have an equal

1 say and an equal vote in what the ultimate decisions will
2 be in this case.

3 Someone simply has to be delegated those
4 responsibilities that I have indicated, and I have
5 delegated those to Ms. Duncan in appointing her as the
6 foreperson. But each of you jurors are equally important
7 so far as the ultimate decisions in this case are
8 concerned, because, as I've stated, the verdicts have to be
9 unanimous. All 12 of you must be in agreement.

10 Now, Mr. Allen, you've been selected as an alternate
11 juror. And the function of an alternate is to take the
12 place of one of the original 12 jurors if during the trial
13 one of these original 12 cannot continue to serve for some
14 reason.

15 If one is called away because of an emergency or an
16 illness and they can't continue, then you would be called
17 upon to take that person's place. In that event you would
18 become the 12th juror. And in that event you would
19 participate throughout the trial, including in the jury
20 deliberations at the trial's conclusion.

21 If however when the time comes for jury deliberations
22 the original 12 are able to participate in that process,
23 then your service would end and you would not participate
24 any further, because the decision of a jury is that of 12.
25 But no more than 12 can participate in that process.

Jury sworn

1 But it is important that you pay just as careful
2 attention as we ask of all of the jurors in the case,
3 because it does occur from time to time for one reason or
4 another one of these original 12 may be called away.

5 In that event you would be called upon to become the
6 12th. So we do appreciate your participation as an
7 alternate, just as we appreciate the participation of each
8 of you who have been selected for the purpose of deciding
9 the verdicts in this particular case.

10 You may swear the panel.

11 (Whereupon, the jury was duly sworn.)

12 THE COURT: All right. Ladies and gentlemen, as you
13 know, this is a criminal case.

14 Each of the defendants in this case have been charged
15 with the crime of armed robbery. Those charges are set
16 forth in a document called an indictment, which is the
17 document that I referred to prior to your selection to
18 inform you as to what the charges are and what the
19 allegations are.

20 In this case, as you know, each of the defendants,
21 Kenneth Wayne Chiles and Carnie Norris, III, have been
22 accused of the crime of armed robbery.

23 The state alleges that that occurred on or July the
24 16th of 2008. And they allege that on that date they did
25 while armed with a deadly weapon take, steal and carry away

1 personal property that belonged to Andrew B. and
2 took that property and intended to deprive the owner of use
3 and possession of his property.

4 Now, as to those allegations and as to those charges
5 each defendant has entered a plea of not guilty. And, as I
6 told you, that plea of not guilty therefore places upon the
7 state the burden of proving the allegations that are set
8 forth in the indictment, the burden of proving each of the
9 essential elements that makes up the crime of armed
10 robbery; and therefore the burden is upon the state to
11 establish each defendant's guilt to the satisfaction of you
12 12 jurors beyond a reasonable doubt before any verdict of
13 guilty could be returned as to that particular indictment
14 and that particular defendant.

15 The indictments themselves are not evidence of
16 anything. They're not proof of anything. They're simply
17 the means by which a person is brought into this court and
18 formally accused of a crime.

19 And of course the document serves to put them on
20 notice as to what crime the state claims they have
21 committed. But other than serving as a notice document to
22 the defendant and also serving as the verdict form, the
23 indictments serve no purpose so far as you jurors are
24 concerned. As I say, they are not evidence of anything
25 upon which you will base your decision.

1 Now, each defendant has entered a plea of not guilty,
2 and therefore the burden is on the state to establish their
3 guilt beyond a reasonable doubt. And, in fact, every
4 person who is accused of a crime is always presumed to be
5 innocent of any charge brought against them.

6 That presumption of innocence remains with any
7 defendant, as it does with each of these defendants, from
8 the time that they are placed under arrest and throughout
9 the course of the criminal process and even throughout the
10 course of the actual trial.

11 That presumption of innocence will be with each of
12 these defendants throughout this trial. And it'll be them
13 even as you go back to begin with your deliberations in
14 this case at the trial's conclusion.

15 That presumption of innocence will be with them in
16 that jury room, and it'll be with them forever unless you
17 12 jurors determine that they are no longer entitled to
18 that presumption of innocence.

19 That is after you've carefully considered all the
20 evidence in the case, and from that evidence you've decided
21 the facts, and upon deciding the facts you apply the law,
22 you determine that a defendant's guilt has been proven
23 beyond a reasonable doubt, then that defendant would no
24 longer be entitled to that presumption of innocence.

25 But it's only if, unless and until you are satisfied

1 of a defendant's guilt beyond a reasonable doubt that the
2 presumption of innocence would no longer be applicable.

3 Now, the way the trial will proceed is that in a
4 moment each of the lawyers will have an opportunity to
5 address you in what are called opening statements.

6 There are two occasions in the trial of a case where
7 lawyers are permitted to address the jury. And that is at
8 the beginning of the trial before any evidence has been
9 introduced and then again at the conclusion of the trial
10 after all of the evidence has been received.

11 Keep in mind however that the lawyers' statements are
12 not evidence. The lawyers are not witnesses to anything.
13 They're not going to be telling you anything about this
14 case that they know of their own personal knowledge or
15 experience like witnesses will be.

16 They're not going to take the witness stand; they're
17 not going to testify under oath. They will be not
18 subjected to direct and cross-examination as witnesses will
19 be. And therefore what they tell you is not to be
20 considered by you as any evidence upon which you will base
21 your decision. But it is important that you listen to what
22 they have to say, because their statements do serve a
23 purpose.

24 The opening statements will serve to provide you with
25 a basic understanding as to what this case is about so that

1 you'll have some context in which to place the evidence
2 that we will be receiving shortly thereafter.

3 The closing statements occur after all of the evidence
4 has been received. And, again, while those statements are
5 not evidence, it allows the lawyers an opportunity to
6 discuss with you the evidence that you have seen and heard
7 during the trial. And through that discussion each will
8 have an opportunity to try to persuade you or to convince
9 you that that evidence does or does not support a
10 particular decision.

11 It's in between those statements that we actually
12 receive the evidence upon which you will base your
13 decision. The state has the burden of proof, as you've
14 been told. So they will go forward first in their
15 presentation of evidence.

16 After they've concluded each defendant has the same
17 opportunity to present evidence by way of testimony and
18 otherwise. But a defendant in a criminal trial is under no
19 obligation to testify or present evidence, because the
20 burden is never upon a defendant to prove anything. A
21 defendant does not have to prove that he or she is not
22 guilty because sometimes that might not even be possible.

23 The burden is always upon the state to establish a
24 defendant's guilt beyond a reasonable doubt. But a
25 defendant is afforded an opportunity to testify or to

1 present evidence should a defendant wish to do so.

2 But if a defendant does not testify or does not
3 present evidence, that's not something that a jury can
4 consider in any way whatsoever during your deliberations or
5 in your determination as to whether or not their guilt has
6 been proven beyond a reasonable doubt.

7 Now, after all of the evidence has been received and
8 you hear the final summations of the lawyers -- you are
9 going to have to put that down.

10 (Comments were directed to the clerk of court.)

11 THE COURT: I will then instruct you on the law that's
12 applicable in the case. And then you'll be asked to go
13 back and begin with your deliberations. And through that
14 process you'll carefully examine all of the evidence. From
15 that evidence you'll determine what you believe to be the
16 true facts.

17 Upon deciding those facts you'll apply the law that I
18 will have provided you, and you will determine whether or
19 not a defendant's guilt has been proven beyond a reasonable
20 doubt. And if it has, then your verdict would be guilty.
21 If it has not, your verdict would be not guilty.

22 So all we're going to ask for you to do is to pay
23 careful attention throughout the course of the trial. Do
24 not begin making up your minds or formulating your opinions
25 as to what any ultimate decision ought to be until all of

Opening statements

1 the evidence has been received, until I have instructed you
2 on the law and until you've been asked to begin with your
3 deliberations. That is the process that is designed for
4 you 12 jurors to arrive at a fair and just decision.

5 So please give the lawyers your attention now as they
6 give you their opening statements.

7 MR. BARNETTE: May it please the Court, Your Honor.

8 THE COURT: Yes, sir.

9 MR. BARNETTE: Madam Forelady, ladies and gentlemen of
10 the jury, as Judge Cole introduced me, I'm Barry Barnette.
11 I'm a deputy solicitor here. I'll be the one presenting
12 the case to you, along with the witnesses.

13 The victim in this case is Andrew B. or commonly, he's
14 known as Andrew B.

15 Him and several friends was playing what we call
16 Frisbee golf. And you may have seen it in different parks,
17 around Barnett Park, different parks where they throw the
18 different objects trying to score a point like you just, in
19 golf where you try to hit it in so many throws and things
20 like that.

21 But they was in the First Baptist parking. You know
22 where Barnett Park is. You've got First Baptist there.
23 You've got several buildings, and you've got what we call
24 Dean Street, right off Dean Street.

25 They were picking several objects on the evening of

Opening statements

1 July the 16th of 2008. As they was throwing it, working
2 with it, the Frisbee went up on top of one of the
3 buildings.

4 Well, a friend of his, Zack Blankenship, went up a
5 tree to get the Frisbee from the roof. During that time
6 Drew and two of his other friends was down there waiting on
7 the Frisbee to be thrown back down.

8 As Drew was waiting, they threw the Frisbee down. The
9 defendant, Carnie Norris, comes from across the street,
10 throws Drew down and tells him, basically, I want your
11 wallet.

12 He takes a knife out, indicates he's some kind of
13 security guard. He puts the knife to Drew's throat. Drew
14 asked him, said if you're a security guard, where is your
15 badge, where's your identification. He doesn't have
16 anything. He says I want your wallet.

17 Meanwhile, Mr. Chiles comes around behind him and
18 starts coming towards him. At that time you hear from Hub
19 Blankenship and Daniel Mayfield they went to try to help
20 Drew.

21 Mr. Norris takes a knife and points it at them and
22 tells them to get down on the ground too. Well, they're
23 able to run. And they see Mr. Chiles coming behind them.

24 They run. Zack Blankenship and some other fellows up
25 there with them run. They go to see a security guard at

Opening statements

1 First Baptist and find out there's no other security guard
2 out there. They call 9-1-1, call law enforcement.

3 While Drew Bond is there by himself they go through
4 his wallet. Mr. Norris goes through the wallet first. Mr.
5 Chiles go through the wallet. They take his credit cards.
6 They take items out like identification cards where they
7 play golf. Had the credit card. You'll see the different
8 cards and pictures of them that they took.

9 Meanwhile, law enforcement's coming. You'll hear from
10 Officer James. Officer James comes to the location. When
11 he comes to that location he finds Mr. Norris over the top
12 of the victim in this case. Drew is there on the ground.

13 When he comes walking up both men go back across the
14 street and get on the porch. All the kids come back to the
15 scene and say there's the men right over there.

16 They go over and talk to them. They find out they
17 have -- when they talk to them, they go ahead and search
18 them. He consents to search.

19 They find a knife that was identified as Drew Bond's,
20 the knife that was used, on Mr. Norris. They also find the
21 credit cards on Mr. Chiles.

22 This is plain and simple, ladies and gentlemen. This
23 is an armed robbery, a crime of opportunity. They saw an
24 opportunity.

25 They saw some young kids out on the evening of

Opening statements

1 July 18th. It was around 11 o'clock that night. They'd
2 been out there quite a long time still playing. They saw
3 an opportunity to take it, and they did take it, and they
4 tried to rob him, and they did rob him. And that's what
5 the case is going to be about.

6 Like I said, I'm going to give you preview or idea of
7 what the case is about. Armed robbery is simply that if
8 use a weapon or representation of a weapon. In this case
9 there's a knife. Use force. When you take those items
10 from somebody, that's armed robbery, ladies and gentlemen.
11 They took his credit cards. He had \$6 in his wallet. They
12 had them on them.

13 You'll be hearing from the witnesses. We'll be
14 calling them. You'll be hearing from two officers. You'll
15 be hearing from the three, the three guys that was there
16 telling you what they saw.

17 And we'll be coming back to you after the case is
18 presented and I'll be asking you a very simple question.
19 This is armed robbery. And I ask you as your duties as
20 jurors to find them guilty on both counts of armed robbery,
21 because that's what this is, ladies and gentlemen. Thank
22 y'all very much.

23 THE COURT: Mr. Poole.

24 MR. POOLE: May it please the Court.

25 THE COURT: Yes, sir.

Opening statements

1 MR. POOLE: Good afternoon, ladies and gentlemen.

2 Judge Cole told you that as lawyers we -- obviously,
3 we're not witnesses. We don't know what happened. We
4 weren't there. But we do have to do what we have to do
5 because it's our job.

6 I represent Mr. Kenneth Chiles. My name is Roger
7 Poole. And my colleague, Beverly Jones, represents Carnie
8 Norris.

9 Now, my job is to get a point of view across to you
10 the best way that I can of what was going through
11 Mr. Chiles' mind, what was he aware of, and what was he
12 doing that night.

13 Mr. Chiles lives at . The
14 incident location is . Now, Judge
15 Cole has hold you that Dean Street connects Saint John with
16 Main Street. And I'm sure most of you are probably aware
17 of the area.

18 If you know where, you know, the St. Lukes Medical
19 Center is, well, it's right in that area right there.
20 There's some parking lots. There are some trees. There
21 are some houses. Some of the property belongs to First
22 Baptist Church.

23 And this occurred around 11:00 or 12:00 o'clock at
24 night. It was at night. And on behalf of Mr. Chiles I
25 will -- my job is to show that he lives at

Opening statements

1 and that he was -- he lived there. And he was at
2 that location where the incident allegedly occurred.

3 But the evidence will show from his point of view that
4 he did not know that an alleged crime was going on. He was
5 merely present. He was around but not actively engaged in
6 what the state contends happened.

7 And I want to, to the best of my ability, present that
8 case and that point of view with the supporting facts to
9 the best degree that I can.

10 I just ask that you keep an open mind. There is
11 nothing wrong with young men playing Frisbee anywhere where
12 you can have fun any time of day and night as far as I know
13 on public property or where this occurred.

14 But from Mr. Chiles' point of view he did not
15 participate in, because he was not aware of, a crime. We
16 intend to show that, although he is not obligated to take
17 the witness stand or present any evidence whatsoever,
18 because the burden is on the state to prove their case
19 beyond a reasonable doubt. You've heard all about that.

20 But just keep an open mind throughout this entire
21 case. I know you will, because when you are picked, you
22 saw us talk. And we were saying good things about you, and
23 that's why you're here. You're the best qualified jury
24 that we could pick out of all of the people that filled
25 this courtroom up.

Opening statements

1 We know that you'll do the right thing, just ask that
2 you let -- listen to my side that I will present on behalf
3 of Mr. Chiles, and return a verdict at the end of this case
4 of not guilty, because I believe that what you will hear
5 and what you will see will convince you that Mr. Chiles is
6 not guilty of armed robbery. Thank you.

7 THE COURT: Ms. Jones.

8 MS. JONES: Thank you, Your Honor.

9 Madam Forelady and ladies and gentlemen of the jury, I
10 am Beverly Jones. I'm a public defender. And it is my
11 honor to represent Carnie Norris.

12 Mr. Norris is 47 years old. He is a lifelong resident
13 of Spartanburg County. His mother, Mary Norris, is seated
14 behind him in the pews, the spectator pews.

15 And, ladies and gentlemen, this is today, tomorrow and
16 perhaps Wednesday, these are the most important days in
17 Carnie Norris' life.

18 You, as Mr. Poole reminded you, you were brought here
19 in a very orderly methodical fashion. Mr. Norris seated
20 next to me, as did Mr. Chiles next to Mr. Poole,
21 participated in your selection. Mr. Norris, as I am sure
22 Mr. Chiles, has faith in you. He trusts you. He
23 participated in the selection of you as jurors.

24 Now, ladies and gentlemen, today is July 6th. Two
25 days ago we celebrated as a nation Independence Day. You

Opening statements

1 may have shot fireworks or watched somebody else do it.
2 You may have had barbecue, hash, hot dogs, whatever your
3 family or your friends celebrated, and you enjoyed it.

4 You may have watched some of the festivities on T. V.
5 as the nation celebrated a milestone, another year of
6 independence.

7 You sit there, and you say why are we talking about
8 July 4th when I'm in a jury, on a jury in a courtroom where
9 I've been made to come to court.

10 You, ladies and gentlemen, are the most important
11 people -- no offense to the Court and all the court
12 officials -- in this room. You as a juror are what we
13 celebrated two days ago, this process.

14 This is one -- this entire criminal justice system is
15 part of the framework that we celebrate as a nation and our
16 independence and our rights in this country.

17 You as a jury collectively are one of the reasons why
18 there are countries in the world that despise this nation
19 and attacks us because of it. Those are the very rights
20 and liberties that you were called upon by the oath that
21 you have now taken from Judge Cole to abide by.

22 Mr. Norris trusts you on this most important day of
23 his life. Mr. Norris, as does Mr. Chiles, remain cloaked
24 in innocence until, and only if, Mr. Barnette and his
25 witnesses remove all doubt from your mind.

Andrew B.

Direct examination by Mr. Barnette

1 You must like Mr. Poole --

2 MR. BARNETTE: Your Honor, I'm going to object to that
3 statement of law right there.

4 THE COURT: Beyond a reasonable doubt.

5 MS. JONES: Yes, sir.

6 Beyond a reasonable doubt. It is Mr. Barnette's
7 person as the state with his witnesses to erase doubt and
8 prove what has happened.

9 Mr. Norris, as does Mr. Chiles, has nothing to prove
10 to you. As Mr. Poole implored, I will also ask you to keep
11 an open mind. All of these individuals were out at night,
12 midnight.

13 As you begin to hear from the witnesses, not the
14 summary of the prosecutor, what he hopes to prove, as you
15 begin to hear the evidence or what they can prove, please
16 remember your oath. Please remember this is Mr. Norris'
17 most important day in his life and he trusts you. Thank
18 you.

19 THE COURT: Mr. Barnette.

20 MR. BARNETTE: Your Honor, I'd like to call Andrew
B.
to the stand, please.

22 Andrew B. having
23 been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BARNETTE

25 Q Mr. Bond, if you would, make sure you keep your voice

Andrew B.

Direct examination by Mr. Barnette

1 up if you can. And look at the jury and make sure they can
2 hear you too.

3 Okay. If you would, give me your full name, please.

4 A Andrew B.

5 Q And, Mr. Bond, what city do you live in, sir?

6 A I live in Spartanburg.

7 Q And what -- how old was you back on July 16th of 2008?

8 A I was 17 years old.

9 Q And what grade was you in then, sir?

10 A I was a rising senior.

11 Q Back on July 16th of 2008, what was you doing that
12 evening, sir?

13 A That evening we decided to go out and play some
14 Frisbee golf.

15 Q And who went with you, sir?

16 A Zack Blankenship, Hub Blankenship, Kellen Mayfield,
17 Joseph Holder, and Kyle Quinn, and two other females.

18 Q And had y'all played out there before?

19 A Yes, sir, we had.

20 Q And had people at First Baptist known that y'all
21 played out there before?

22 A Yes, sir. We let the security guard know that we were
23 playing.

24 Q During that time -- can you tell a little about
25 fris -- I know some people on the jury may know what

Andrew B.

Direct examination by Mr. Barnette

1 Frisbee golf is. Can you tell them a little bit about how
2 the game is played and everything?

3 A Yes, sir. It's just like regular golf. You have
4 strokes. You count your strokes as how long it takes you
5 to get to the designated hole.

6 Q And as y'all was playing that evening, what happened
7 to the Frisbee?

8 A Hub Blankenship accidentally threw his Frisbee, and it
9 landed on top of the -- right on top of a building that we
10 were close to.

11 Q What area was you in, sir?

12 A We were close to the First Baptist parking lot on
13 North Dean Street. There's a building back behind the
14 parking lot that the Frisbee landed on.

15 Q And this is in the city of Spartanburg, Spartanburg
16 City.

17 A Yes, sir.

18 Q Did Zack go up and go get the Frisbee?

19 A Yes, sir. He climbed the tree and picked it off the
20 roof and threw it down to me.

21 Q And who was standing with you when he did that?

22 A As he threw it down, I was standing with Kellen
23 Mayfield and Hub Blankenship. And as he threw it down, I
24 walked over to pick it up.

25 Q And then what happened, sir?

Andrew B.

Direct examination by Mr. Barnette

1 A I was pushed down from behind by a man. And as I
2 turned around, he asked me for I. D. And he told me he was
3 a security guard, officer, and that I was under arrest.

4 Q And what happened next?

5 A He reached in my pocket and pulled out my wallet and
6 began looking through it and pulling stuff out of it.

7 Q And did you ask him? Do you see that man in the
8 courtroom here today?

9 A Yes, sir, I do.

10 Q Can you identify him for me?

11 A Yes, sir.

12 MS. JONES: Your Honor, I am going to object subject
13 to our previous objection.

14 THE COURT: Overruled.

15 Q If you would, could you point to the person and
16 identify him for us, please?

17 A Yes, sir, the man sitting next to the lady in the
18 light blue shirt.

19 Q And is he wearing anything on his face?

20 A Yes, sir, with the glasses on.

21 MR. BARNETTE: Your Honor, I'd like to let the record
22 reflect he's identified the defendant Norris in this case.

23 THE COURT: It shall.

24 Q After he got your wallet and everything did you ask
25 him anything or --

Andrew B.

Direct examination by Mr. Barnette

1 A I asked him to see a badge or some sort of
2 identification that he was actually an officer.

3 Q And what did he do in response to that?

4 A That's when he pulled his knife out and put it to me.

5 Q When you say he put it to you, where did he put your
6 knife, the --

7 A He put the knife on my throat.

8 Q How, how close was he to you, sir?

9 A At that time he was pretty much on top of me.

10 Q And let me show you what's been marked as State's
11 Exhibit 3. Does that picture fairly represent the object
12 he had in his hand?

13 A Yes, sir. That's the knife.

14 Q Is that the knife? And let me show you what's been
15 marked as State's Exhibit No. 1. State's Exhibit 1, do you
16 recognize that, sir?

17 A Yes, sir. That's what he had.

18 Q Is that that knife, or the knife that it appeared that
19 he had in his hand?

20 A Yes, sir.

21 Q What did you do once he put the knife to your throat?

22 A Once he put the knife to my throat, I just decided it
23 wasn't worth trying to struggle or anything. I just kinda
24 laid back and waited to see what would happen.

25 Q And during this time did another individual approach

Andrew B.

Direct examination by Mr. Barnette

1 y'all?

2 A Yes, sir. One, another individual, as my friends
3 walked up to see what was going on, came from across the
4 street and began to approach us.

5 Q So when your friends came up to you, what did
6 Mr. Norris do?

7 A Mr. Norris pulled the knife out and pointed at them
8 and told them to get on the ground also.

9 Q And what happened after that?

10 A After that the guys kind of stepped back. Hub and
11 Kellen stepped back and turned and run off so that the
12 other man coming across the street wouldn't get them also.

13 Q So during this time did Mr. Norris come back to you?

14 A Yes, sir. He was standing over me again. And that's
15 when I thought I'd try to get up and get away from him.
16 And he put the knife back to my throat and said that if I
17 tried to get away he'd kill me.

18 Q During this time did Mr. Chiles come up too?

19 A Yes, sir. And Mr. Norris handed the wallet to
20 Mr. Chiles, and he began pulling stuff out of it too.

21 Q Do you see the man that was pulling stuff out of the
22 wallet too?

23 A Yes, sir.

24 Q Can you identify him in the courtroom for us, please?

25 A Yes, sir. He's the man in the dark pants.

Andrew B.

Direct examination by Mr. Barnette

1 MR. POOLE: Objection, Your Honor, subject to our
2 previous objection.

3 THE COURT: Overruled.

4 Q Go ahead, sir, if you would.

5 A In the dark pants and the white shirt sitting next to
6 the man over there.

7 MR. BARNETTE: Your Honor, I'd like the record to
8 reflect he has identified the defendant Chiles in this
9 case.

10 THE COURT: It shall.

11 Q So he was going through your wallet also?

12 A Yes, sir.

13 Q Okay. Do you have your wallet with you?

14 A Yes, sir, I do.

15 Q Can you pull it out, please? Is this the wallet you
16 had that night?

17 A Yes, sir.

18 Q Did you get it back after this incident?

19 A Yes, sir.

20 Q And did you have cards and things in here?

21 A Yes, sir.

22 Q And is this the way your cards and everything were?

23 A No, sir. They were all gone when I got my wallet
24 back.

25 Q Right. So they was all gone when you got your wallet

Andrew B.

Direct examination by Mr. Barnette

1 back.

2 A Yes, sir.

3 Q Let me show you what's been marked as State's Exhibits
4 Nos. 6, 7, 8 and 9, I believe. Let me make sure. Let me
5 show you State's Exhibits 6, 7, 8 and 9. Do those pictures
6 fairly represent items that was in your wallet?

7 A Yes, sir, they do.

8 Q And was these items taken out of your wallet?

9 A Yes, sir.

10 MR. BARNETTE: Your Honor, I'd like to enter these
11 into evidence at this time.

12 MR. POOLE: No objection from defendant Chiles.

13 MS. JONES: None from defendant Norris.

14 THE COURT: They are admitted.

15 (Photographs marked State's Exhibits Nos. 6, 7, 8 and
16 9.)

17 Q These items, as he's looking through your wallet, what
18 happened then, sir?

19 A As he was looking through it he kept telling me to
20 stay down and not to move or he'd kill me and began
21 removing objects from my wallet.

22 Q Then what happened after that, sir?

23 A After a couple of minutes, maybe four to five minutes,
24 that's when the police arrived.

25 Q And during this time did he ever get ahold of your

Andrew B.

Direct examination by Mr. Barnette

1 cell phone?

2 A Yes, sir. He took -- I handed him my cell phone
3 because he asked me to empty all of my pockets and began
4 looking at my cell phone.

5 Q And during this time did the police pull up?

6 A Yes, sir, they did.

7 Q And as the police pulled up -- and did your friends
8 also come back too?

9 A Yes, sir, some of them.

10 Q And how did they come back, your friends?

11 A Two -- one of them was behind the building, and I want
12 to say four or five of them were in a car that had pulled
13 back up.

14 Q And did they have headlights on them?

15 A Yes, sir. They had turned their headlights on.

16 Q And did the headlights shine where you were?

17 A Yes, sir, they did.

18 Q What did they do once those cars started pulling back
19 up? What did Mr. Norris and Mr. Chiles do?

20 A As the cars pulled back up and the first police
21 officers arrived, Mr. Norris handed my cell phone back, and
22 my empty wallet.

23 Q And where did he go after that?

24 A And he walked across the street back to the house that
25 he came out of.

Andrew B.

Direct examination by Mr. Barnette

1 Q And did you have any money in your wallet?

2 A I did, but not after they walked off. It was all
3 gone.

4 Q How much money did you have in your wallet?

5 A Six dollars and a debit card.

6 Q The debit card was one of the items they took?

7 A Yes, sir.

8 MR. BARNETTE: Your Honor, I'd like to publish State's
9 Exhibits 5, 6 -- 6, 7, 8 and 9 to the jury, sir.

10 THE COURT: You may.

11 Let me ask the bailiff to take that rope down so the
12 jurors can move down one more seat. It gives you a little
13 bit better opportunity to see the screen.

14 (Pause.)

15 Q So as the police went -- they walked back over to the
16 porch across the street?

17 A Yes, sir.

18 Q Did the officers come up too?

19 A Yes, sir. A couple of the officers approached me
20 trying to figure out what had happened.

21 Q And did you tell them what happened?

22 A Yes, sir.

23 Q And did they go over and talk to the two defendants in
24 this case?

25 A Yes, sir. They walked back over and went up on the

Andrew B.

Direct examination by Mr. Barnette

1 porch.

2 Q And they were still on the porch. They walked from
3 you over to that porch.

4 A Yes, sir. They were still on the porch.

5 Q And those are the same two fellows that came over to
6 you.

7 A Yes, sir.

8 Q And they were the two fellow that robbed you?

9 A Yes, sir.

10 Q Afterwards, did you get your cards back?

11 A Yes, sir, I received my cards back.

12 Q Where did you get them back at?

13 A After we went to the Spartanburg Safety office
14 downtown.

15 Q You got them back from the police?

16 A Yes, sir, the police gave them back.

17 Q And did they show you the knife also?

18 A They showed me a picture. I never saw the actual
19 knife.

20 Q Okay. And State's Exhibit 3 and State's Exhibit 1 was
21 a picture and is the item that he used or was the knife he
22 used on your neck.

23 A Yes, sir, that's the knife.

24 MR. BARNETTE: Your Honor, I'd like to move State's
25 Exhibits 1 and 3 into evidence at this time.

Andrew B.

Direct examination by Mr. Barnette

1 MS. JONES: No objection from Norris.

2 MR. POOLE: None from Chiles.

3 THE COURT: They are admitted.

4 (Knife marked State's Exhibit No. 1; photograph marked
5 State's Exhibit No. 3.)

6 MR. BARNETTE: Your Honor, permission to publish
7 State's Exhibits 1 and 3 to the jury also.

8 THE COURT: You may.

9 Q Okay. This is the knife that he used on you, sir, is
10 that correct?

11 A Yes, sir, that's right.

12 Q And State's Exhibit 3, this is just the same picture
13 of the knife that was used in this case?

14 A Yes, sir. That's what the police showed me.

15 MR. BARNETTE: And let me publish State's Exhibit
16 No. 6.

17 Q Are these the cards that was taken from your wallet?

18 A Yes, sir, they were.

19 Q And the items? These are the items that was taken.
20 Whose social security number is that, sir?

21 A That's mine.

22 Q

23 A Yes, sir. That's correct.

24 Q Was this also your bank card that was taken?

25 A Yes, sir. That was my check card and debit card.

Andrew B.

Direct examination by Mr. Barnette

1 Q Is this your VISA card, sir?

2 A Yes, sir. That's his.

3 Q Is that your golf card that was taken?

4 A Yes, sir.

5 Q Is this the card you also had in your wallet?

6 A Yes, sir. That was one they got.

7 Q And was this also a card in your wallet?

8 A Yes, sir.

9 Q And was that another card, the gift card, VISA gift
10 card?

11 A Yes, sir.

12 Q And was that a card that you received from high
13 school?

14 A Yes, sir, it was.

15 Q Was that just a card that was inside of your wallet
16 also?

17 A Yes, sir. That's just a business card.

18 Q Let me show you State's Exhibit No. 7. I believe this
19 is a closeup picture. Is that your check card that was
20 taken?

21 A Yes, sir, it was.

22 Q State's Exhibit No. 8, was that a closeup of your golf
23 card?

24 A Yes, sir.

25 Q State's Exhibit No. 9, is that your social security

Andrew B.

Direct examination by Mr. Barnette

1 number?

2 A Yes, sir, that's it.

3 Q Did you write that out or had somebody else written
4 that out for you?

5 A I believe I wrote that down.

6 Q And you kept that in your wallet just to refer to?

7 A Yes, sir, because I had used it for jobs, a job
8 reference.

9 Q And these are the items that were taken from you, is
10 that correct?

11 A That's correct.

12 Q And the two men that did this to you, they're in the
13 courtroom here today?

14 A Yes, sir, they are.

15 Q And you're sure that these are the two fellows that
16 did this to you.

17 A Yes, sir. I'm positive.

18 MS. JONES: Your Honor, that question's been asked and
19 answered.

20 Q No further questions. Please answer any questions
21 that Ms. Jones or Mr. Poole may have for you.

22 MR. POOLE: May it please the Court.

23 THE COURT: Mr. Poole.
24
25

Andrew B.

Cross-examination by Mr. Poole

1 CROSS-EXAMINATION

2 BY MR. POOLE

3 Q How are you doing, Mr. Bond?

4 A I'm good.

5 Q On this night the first individual that you saw and
6 who made contact with you, physical contact, was
7 Mr. Norris, is that right?

8 A That's correct.

9 Q And you did not have a chance to see him until he
10 pushed you onto the ground.

11 A That's correct, yes, sir.

12 Q Okay. And you had never seen him before.

13 A No, sir, not before tonight -- not before that night.

14 Q Okay. And it is your testimony that he held you on
15 the ground and placed the knife to your throat.

16 A That's correct.

17 Q And that during the process of this that he took the
18 wallet, your wallet, from you.

19 A That's correct.

20 Q And did he take the wallet from you while you were on
21 the ground?

22 A Yes, sir.

23 Q Okay. Did he take it out of your pocket?

24 A Yes, sir, he did.

25 Q Did you have it in your back pocket?

Andrew B.

Cross-examination by Mr. Poole

1 A My back right pocket just like I took it out now.

2 (Whereupon, the witness demonstrated.)

3 Q Okay. And how long of a period of time was it between
4 the time that you were pushed to the ground and your wallet
5 was taken from your pocket?

6 A Probably about a minute, if not less.

7 Q Okay. A minute or less.

8 A Yes, sir.

9 Q Okay. And during this time he was talking with you.

10 A That's correct, yes, sir.

11 Q And he stated that he was a security guard or gave you
12 that -- or something to do to that effect.

13 A Yes, sir. That's correct.

14 Q And then you asked to see some sort of identification
15 to verify it.

16 A Right.

17 Q And so you were actually having a conversation with
18 him in this position on the ground.

19 A Yes, sir, or attempting to.

20 Q Right. Okay. And when was the first -- well, let me
21 ask you this.

22 Mr. Chiles. Did you get -- had you ever seen him
23 before this evening?

24 A No, sir, not before that evening.

25 Q And when did you see him after? From the time that

Andrew B.

Cross-examination by Mr. Poole

1 Mr. Norris pushed you to the ground, how long was it before
2 you saw Mr. Chiles?

3 A After the -- my friends came up trying to talk to him
4 to clear everything out, that is when I saw him cross Dean
5 Street coming towards them.

6 Q Okay. So another event occurred, and that event was
7 that your friends were coming toward you.

8 A That's correct.

9 Q Is that right?

10 A Yes, sir.

11 Q And as they were doing so, that's when you noticed
12 Mr. Chiles coming from across the street?

13 A That's correct. Yes, sir.

14 Q All right. And so Mr. Chiles was not with Mr. Norris
15 when you were pushed.

16 A When I was pushed they were not together, no, sir.

17 Q Okay. And Mr. Chiles. Did he actually touch you?

18 A No. He never actually put his hands on me.

19 Q Okay. Do you remember any remark that Mr. Norris made
20 to Mr. Chiles?

21 A That Mr. Norris made to Mr. Chiles?

22 Q Uh-huh.

23 A Yes. He was acting like he was going to call for
24 backup. And he was talking to him telling him who I was so
25 that he could call backup to come in and arrest us.

Andrew B.

Cross-examination by Mr. Poole

- 1 Q So that who could call?
- 2 A So that Chiles could call backup for him so that they
- 3 could arrest us.
- 4 Q So Mr. Norris was telling Mr. Chiles to call 9-1-1?
- 5 Am I hearing you right?
- 6 A Not call 9-1-1. But they said they were police
- 7 officers.
- 8 Q Okay.
- 9 A So that they would call backup to come and help them.
- 10 Q Okay. But you didn't hear Mr. Chiles say that he was
- 11 a police officer, did you?
- 12 A No, sir. That's correct.
- 13 Q Okay. So when you testified they said they were
- 14 police officers, you're not saying Mr. Chiles said he was a
- 15 police officer, are you?
- 16 A Well, he was talk -- he was talking like he was on a
- 17 phone to other, quote, unquote, police officers.
- 18 Q Now, but Mr. Chiles didn't have any type of weapon.
- 19 A Not that I had seen or that I was aware of.
- 20 Q Nor did he touch you in any manner.
- 21 A That's correct.
- 22 Q And he came upon the scene a period of time after you
- 23 had been pushed to the ground.
- 24 A Yes, sir.
- 25 Q Okay.

Andrew B.

Cross-examination by Ms. Jones

1 A He was across the street coming. After I got pushed
2 down he start coming across.

3 Q So he was not present when you were pushed down.

4 A That's correct.

5 Q And if Mr. Norris took the contents of your wallet out
6 of your wallet, he was not present when that occurred, was
7 he?

8 A No, sir. That's not correct. He, Mr. Norris, looked
9 through and pulled my I. D. out and started reading it.
10 That's why they had the conversation about calling backup.
11 And maybe a minute or two passed. And Mr. Chiles walked
12 over and began looking through my wallet, as well as
13 Mr. Norris.

14 Q Okay. So it was a minute or two before Chiles got to
15 where you were.

16 A That's correct. Yes, sir.

17 Q The space of a minute or two --

18 A Yes, sir.

19 Q -- from getting from his house to where you were.

20 A Yes, sir.

21 Q Okay. All right. Thank you, Mr. Bond.

22 CROSS-EXAMINATION

23 BY MS. JONES

24 Q Mr. Bond, what time of the night did this happen?

25 A This occurred around 11:00 o'clock.

Andrew B.

Cross-examination by Ms. Jones

- 1 Q At night.
- 2 A Yes, ma'am. That's correct.
- 3 Q And it was dark.
- 4 A Yes, ma'am. It was.
- 5 Q Okay. Now, there were six total of you folks playing
- 6 the game, correct?
- 7 A There were seven of us -- two girls that are not
- 8 present today and one other man.
- 9 Q Okay. Where did the game start?
- 10 A It started in the First Baptist parking lot.
- 11 Q Which part of the First Baptist parking lot?
- 12 A Closer to the church over near the, near the hanger,
- 13 because we spoke to the security guard officer before we
- 14 left.
- 15 Q Okay. And the security guard officer that you spoke
- 16 to was where?
- 17 A In the hanger.
- 18 Q In the hanger.
- 19 A Yes, ma'am. That's correct.
- 20 Q And what time did you start playing the game?
- 21 A I want to say around 9:00 or so.
- 22 Q Was it already dark?
- 23 A It was just starting to get dark, yes, ma'am.
- 24 Q Is the fact -- do you often play this game outside at
- 25 night? Is that part of the element of skill to it?

Andrew B.

Cross-examination by Ms. Jones

1 A No, ma'am. That's just what we had decided to do that
2 day.

3 Q Okay. And you say that the course of this type of
4 game is basically broken up like holes on a golf course,
5 correct?

6 A Yes, ma'am. That's right.

7 Q Okay. What, what was the element? I'm sorry. What
8 was the goal that you were trying to hit when the person
9 accidentally threw the Frisbee on top of the building?

10 A It was going towards a trailer that was behind the
11 building that the Frisbee landed on.

12 Q Okay. What was the goal though? Where was -- does
13 the game have like a hole like in golf?

14 A Yes, ma'am. It's just -- it's not a hole. It's a
15 spot.

16 Q An object you're trying to hit.

17 A Correct.

18 Q Correct? Okay. What was the person -- what was
19 trying to be hit when it went on top of the roof?

20 A The trailer behind the building that the Frisbee
21 landed on.

22 Q Okay. What building did the Frisbee land on top of?

23 A I do not know the exact name, but I believe it's a
24 ministry building on North Dean Street.

25 Q Okay. And what kind of roof does it have?

Andrew B.

Cross-examination by Ms. Jones

- 1 A I do not know, ma'am.
- 2 Q Okay. You were not the one that went up on the roof.
- 3 A That's correct.
- 4 Q Okay. Now, at the time your, your role or position at
- 5 the time the person went on top of the roof was to do what?
- 6 A Well, I was just, I was making sure that, that when
- 7 the Frisbee came down we could find it.
- 8 Q Okay. You were kind of a spotter for the Frisbee man.
- 9 A Sure.
- 10 Q Kinda tossed at.
- 11 A Yes.
- 12 Q Where were you standing when that happened?
- 13 A I was standing in between the driveway and the parking
- 14 lot right next to the building.
- 15 Q Of that ministry's building.
- 16 A Of that ministry's building, that's correct.
- 17 Q Okay. And in that ministry's building, does it have
- 18 frontage on Dean Street?
- 19 A By frontage, you just mean like a yard?
- 20 Q Is it on Dean Street? Yeah.
- 21 A Yes. That's correct.
- 22 Q Okay. And you were facing, I guess, the building
- 23 looking up at the roof --
- 24 A That's correct.
- 25 Q -- looking for your friend.

Andrew B.
Cross-examination by Ms. Jones

1 A Yes, ma'am.

2 Q And it's 11:00 o'clock or 12:00 o'clock at night,
3 correct?

4 A Right at 11:00, yes, ma'am.

5 Q Okay. And you say all of a sudden you were pushed
6 down.

7 A That's correct. Yes, ma'am.

8 Q Did you see where the person came from that pushed you
9 down?

10 A I never saw him coming, no, ma'am.

11 Q Okay. And did you see the person prior to being
12 pushed down who actually pushed you down?

13 A Beforehand, no, I did not.

14 Q Okay. How many of your friends were on the roof of
15 the building?

16 A One.

17 Q Okay.

18 A And he never actually got all the way on the roof. He
19 reached up and grabbed it and threw it down.

20 Q From the tree he had climbed?

21 A That's correct.

22 Q Okay. At what point -- when you testified you said
23 that the person who approached you told you that he was a
24 security guard.

25 A That's right.

Andrew B.

Cross-examination by Ms. Jones

- 1 Q Okay. When did that happen?
- 2 A Right after he pushed me down and was starting to get
- 3 on top, like hold me down.
- 4 Q Okay. And is that when the person told you you're
- 5 under arrest, I want to see your I. D.?
- 6 A That's correct, yes, ma'am.
- 7 Q Okay. Is this the first time that you and your
- 8 friends have played this game at 11:00 to 12:00 o'clock on
- 9 North Dean Street?
- 10 A On North Dean Street, yes, ma'am.
- 11 Q Okay. Did you tell the security guard that you were
- 12 going to be going over to North Dean at midnight in the
- 13 dark?
- 14 A We never went on the street. We were right around it.
- 15 We never got on the actual street. But, no, we did not
- 16 tell him we were going right on Dean Street.
- 17 Q And in the past when you've gone and played this game,
- 18 have you played within the parking lot of the church or
- 19 around the hanger?
- 20 A We play the same course every time. There's a set --
- 21 they had a set course that we always played.
- 22 Q Okay. But something must have been different this
- 23 night because you got off the course and went somewhere you
- 24 said you didn't play the game.
- 25 A That's not right. We -- they had played it before.

Andrew B.

Cross-examination by Ms. Jones

1 This is the first time I had ever played it.

2 Q Okay. When -- are you aware if they normally went to
3 North Dean Street to play the game?

4 A I was not aware of the course. I had never played it
5 before.

6 Q Okay. Are you familiar other than the little bit of
7 description you have given us today with what the various
8 buildings on Dean Street are?

9 A I know there's a dry cleaners. And that's really the
10 only thing I have ever seen.

11 Q Other than your church, because it is on the corner of
12 Dean and Main, correct?

13 A Right. That's the --

14 Q The church building.

15 A Yeah, the church.

16 Q Okay. Are you aware that at or near this ministry's
17 building there is a medical clinic, the St. Lukes Medical
18 Clinic?

19 MR. BARNETTE: Your Honor, I'm going to object at this
20 time unless there's some relevance to all of these
21 questions.

22 THE COURT: Overruled.

23 Go ahead.

24 MS. JONES: Thank you.

25 Q Are you aware that there is a medical clinic called

Andrew B.

Cross-examination by Ms. Jones

1 St. Lukes Free Medical Clinic next to the ministry's
2 building you're referring to?

3 A No, ma'am. I don't -- I never heard of that building.

4 Q Okay. You said, now, several times you didn't play
5 this course. So if that was a medical clinic that had
6 medicine and other items, you wouldn't know it.

7 A I would not know. I did not know what that building
8 is, no, ma'am. You're right.

9 Q Okay. And you frankly don't appear -- not to even
10 know what the building was you were standing next to
11 waiting on a Frisbee to come from, correct?

12 A That's correct. Yes, ma'am.

13 Q Okay. Now, we've seen a photograph, No. 6, of the
14 items that you say were taken out of your wallet. Let me
15 hand it to you. The Suntrust card that has been blown
16 up -- and there's also a photo in, No. 7 -- is that a debit
17 card?

18 A That is a debit card, yes, ma'am.

19 Q Can that be used without some kind of PIN number?

20 A No, ma'am, it cannot.

21 Q Okay.

22 A Unless it is swiped at a gas station or, you know,
23 but --

24 Q Another vendor.

25 A Right. But you can't withdraw money from ATM.

Andrew B.

Cross-examination by Ms. Jones

1 Q Okay. Are you one of the people who do what the bank
2 tells you not to do and put a sticky on it that has your
3 PIN number on it?

4 A No, ma'am.

5 Q Okay. So your PIN number was in not on those cards.

6 MR. BARNETTE: Your Honor, objection. I don't know
7 what the relevance of this is.

8 THE COURT: Well, I'm not sure.

9 But is there some, Ms. Jones?

10 MS. JONES: Your Honor, just as to the value of the
11 item itself without a PIN number.

12 THE COURT: Well, does he know?

13 MS. JONES: I will withdraw the question, Your Honor.

14 THE COURT: Okay.

15 A But to answer your question, it can be used without
16 your PIN number at any gas station or Bi-Lo or grocery
17 store, whatever.

18 Q Okay. You indicated that once you were pushed down
19 from behind, at that point you did not know who had pushed
20 you down.

21 A That's correct.

22 Q Where were your friends?

23 A Kellen and Hub were about 20 to 30 feet away from me.
24 Zack Blankenship was coming down the tree.

25 The two girls were farther back away. I couldn't -- I

Andrew B.

Cross-examination by Ms. Jones

1 don't even remember if I could see them or not. And Joseph
2 Holder was also with me, Kellen. Or Joseph was with Kellen
3 and Hub standing about 20 to 30 feet away from me.

4 Q Okay. And what did your friends do at that point?

5 A After they saw me get pushed down and see the man over
6 the top of me, he, Joseph, Hub and Kellen, walked over to
7 us saying wow, wow, let's figure this out, trying to figure
8 everything out.

9 Q Okay.

10 A So they came towards me and the man.

11 Q Okay. They came towards you. How close did they get
12 to you?

13 A I don't know exactly how close, but probably from me
14 to the -- Mr. Barnette.

15 Q Okay. And then they stopped and they left.

16 A After they saw the other man coming across the street
17 and after the man who was on top of me pointed the knife at
18 them, yes, ma'am.

19 Q Okay. Where did the other man who was coming across
20 the street come from?

21 A He came from the other sidewalk on the other side of
22 Dean Street.

23 Q And you were able to see this, although you were down,
24 face down, on the ground?

25 A Well, when we turned around I was not face down. I

Andrew B.

Cross-examination by Ms. Jones

1 was -- I had been pushed over on my side. And I turned up
2 and began speaking with the man on top of me. And when I
3 saw my friends come over, I started watching them, because
4 we were both talking to him trying to get everything
5 straightened out.

6 Q Okay. You are on the ground, and a man is over the
7 top of you with a knife. And you're able to see someone
8 else doing something else across the street.

9 A Well, when, when his attention turned to them, he
10 wasn't concentrating on me any more. He was worried about
11 them approaching him. And so I was able to see the other
12 men, the other guys, coming towards them.

13 Q And at some point your friends left, did they not?

14 A That's correct.

15 Q Left you there alone.

16 A That's correct.

17 Q Did they not?

18 A Yes, ma'am.

19 Q And it's been your testimony that you have never
20 before this night seen either Carnie Norris or Kenneth
21 Chiles before, is that correct?

22 A That's correct, yes, ma'am.

23 Q When you gave a statement to the police you went so
24 far as to call Mr. Norris by name.

25 A That statement was not written by me. It was written

Andrew B.

Cross-examination by Ms. Jones

1 by an officer as I spoke.

2 Q Okay. Well, how did you know Mr. Norris' name if you
3 had never seen him before that night?

4 A I did not know Mr. Norris' name.

5 Q So, in other words, the police put words in your mouth
6 and wrote the statement the way they wanted to, not the way
7 you wanted it written, is that correct?

8 A That's not true. No, ma'am. They wrote as I spoke.
9 And when I said the man who was on top of me, the officer
10 identified him.

11 Q Okay. So the officer made sure you knew who it was
12 that they said did this to you that night.

13 A We had looked at the -- I had pointed him out at the
14 scene of the crime and pointed out this man that had done,
15 what another man had done, what, and the officer as we
16 wrote the statement together identified the man I had
17 pointed out being on top me as Carnie Norris.

18 Q And at the time that you pointed out Mr. Norris, where
19 was he?

20 A He was walking back towards the porch.

21 Q Across the street from the building that you had been
22 standing at before.

23 A Right. He had just left. And he was from maybe me to
24 the bench.

25 Q Walking away.

Andrew B.

Cross-examination by Ms. Jones

1 A Right. Talking to the police officers.

2 Q Okay. And he walked right back and stood on the porch
3 after you say he had robbed you.

4 A That's correct. Yes, ma'am.

5 Q Just standing there looking at you as you were looking
6 at him.

7 MR. BARNETTE: Objection, Your Honor. Is this a
8 question or is this commentary?

9 Q Is that correct?

10 THE COURT: Put in it the form of a question.

11 A He, he -- restate the question, please.

12 Q He just stepped across the street, stood on the porch,
13 and was still standing on the porch as you spoke to the
14 officers and calmly pointed him out, correct?

15 A That is correct. But the officers were trying to
16 figure out who was the guilty party at the time and did not
17 know what had been happening when they arrived.

18 Q Okay. The officers did not know what had been
19 happening at the time because you -- not you, but at least
20 one of your friends -- had been on top of a building,
21 correct?

22 A He had reached out and grabbed the Frisbee, that's
23 correct.

24 Q Okay. On top of a building that is next door to a
25 medical clinic, is that correct?

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 A Yes. But we were not aware that there was a medical
2 clinic there. We weren't aware of what either of the
3 buildings were. All we wanted to do was get the Frisbee
4 off the roof and continue playing.

5 Q And when the officers arrived they didn't know, not
6 know, what had happened. So they just separated y'all in
7 the meantime, correct?

8 A Correct, so that there would be not be any stories
9 getting mixed up. They wanted everybody's own story.

10 Q Thank you for answering my questions, Mr. Bond.

11 MR. BARNETTE: No further questions, Your Honor. I
12 ask the witness be excused.

13 THE COURT: You may step down.

14 (Whereupon, the witness was excused.)

15 MR. BARNETTE: I would like to call Mr. Blankenship,
16 Your Honor. Herbert Blankenship.

17 HERBERT EUGENE BLANKENSHIP,
18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BARNETTE

20 Q Sir, if you would, tell the jury your full name, sir.

21 A I'm Herbert Eugene Blankenship.

22 Q Mr. Blankenship, what town do you live in, sir?

23 A I live in Spartanburg.

24 Q And back on July 16th of 2008, how old were you then,
25 sir?

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 A I was 19 years old.

2 Q And do you work right now, sir?

3 A I do. I work right now for Spartanburg County Parks
4 Commission.

5 Q Going back to July 16th of 2008, was y'all playing
6 Frisbee golf?

7 A Yes, sir.

8 Q And who was with you, sir?

9 A I was with the guys you see there -- Drew Bond; Zack
10 Blankenship; Kellen Mayfield; Kyle Quinn; two girls, Maggie
11 and Lidia; and Joseph Holder who is not here today.

12 Q As y'all was playing -- this is the North Dean Street
13 area, First Baptist area?

14 A That's the hole we were on at the time, yes, sir.

15 Q And had y'all played there before, sir?

16 A Many times. I'd played there probably five or six
17 times before. And my brother had played there probably as
18 many times. And I think it was some of these guys' first
19 times playing there.

20 Q And had y'all talked to the security guard about
21 playing and so forth?

22 A Yeah. Before we go we always tell the security guard
23 we're going to go out and play Frisbee. And he says, okay,
24 go ahead and have fun and this and that and the other.

25 Q Did -- as y'all was playing Frisbee golf, what

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 happened to the Frisbee that night?

2 A We were playing a hole. And it kinda goes around a
3 building, down to a trailer, down a little alleyway. And I
4 was trying to throw it across the building, over the top of
5 it. And it got stuck on the edge of the building, got hung
6 up there.

7 So my brother climbed up the tree beside the building
8 and went to try to grab the Frisbee off the side of the
9 building.

10 Q And while that was going on, who was you standing by
11 or who did you hear about --

12 A Me and Jerry Bond and Kellen and Joseph Holder were
13 all standing in a group watching to make sure that the
14 Frisbee would come off and it wouldn't go on another roof
15 or wouldn't disappear. So we were spotting the Frisbee.
16 And that's where we were standing, kinda off to the side.

17 Q If you would, tell the jury what happened next.

18 A What happened next was we see a man that came across
19 the street. And he started coming towards us. And at the
20 time Drew Bond was the closest to him. So he grabbed Drew
21 Bond and put him on the ground and said everybody get on
22 the ground, I'm a security officer. And at that time he
23 had pulled out a knife.

24 And we went over to walk, to talk to him, you know,
25 because I've never seen a security officer that just, you

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 know, threatens somebody like that and throws them on the
2 ground. They're usually pretty calm.

3 And so we're like are you really -- we wanted to see
4 if he really was a security officer. So we walked over and
5 headed towards him, and he pulled the knife out and pointed
6 at us and said y'all get on the ground too, I'm a security
7 officer and you're trespassing and stuff like that.

8 So at the time simultaneously the other man came
9 across the street, and he was coming towards us. And we
10 decided we didn't want to get in a bunch of trouble. So we
11 just decided to run off so we wouldn't get hurt as well.

12 Q Do you see the man that had the knife -- that man?

13 A Yes, sir. The man with the knife is over on that end
14 of --

15 MS. JONES: Your Honor, I object, subject to previous
16 objections.

17 THE COURT: Overruled.

18 Q If you would, go ahead, sir. Do you see --

19 A He's on the far-right end of the table next to the
20 lady attorney. He's got a light blue shirt on.

21 MR. BARNETTE: Your Honor, I'd like the record to
22 reflect he's identified the defendant Norris in this case.

23 THE COURT: It shall.

24 Q And do you see the other man that came over too?

25 A Yes, sir. He's the guy at the other end of the table

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 next to the male attorney with the glasses on.

2 MR. POOLE: Objection. Subject to previous objection.

3 THE COURT: Overruled.

4 MR. BARNETTE: Your Honor, I'd like the record to
5 reflect he's identified defendant Chiles in this case.

6 THE COURT: It shall.

7 Q And you said that once he pulled the knife -- and what
8 did you do then, sir?

9 A Once he pulled the knife we started to approach him to
10 talk to him, and then he pointed the knife at us and told
11 us to get down as well. So we decided to draw back, and we
12 decided to run around the building. And we were going to
13 go talk to the security officer at First Baptist that we
14 had talked to previously.

15 So me and Joseph and Kellen, we went and ran back up
16 to the office of the hanger building. It's the student
17 building at First Baptist.

18 And we talked to the security officer. And we asked
19 them if there's any other security officers on the premises
20 to make sure that, see if these guys actually were security
21 officers or not. And he said there were no other security
22 officers, he was the only one that was available that
23 night. And so we then knew that there wasn't a security
24 officer and these guys were, weren't who they said they
25 were.

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 So we asked that security officer at the hanger to
2 call the police, and which he did, which was the second
3 time the police had been called that night.

4 And we returned and got back in my car and drove back
5 down Saint John Street and came back up Dean Street. And
6 we stopped about 20 to 30 yards away from where Drew Bond
7 was being held hostage, held down on the ground.

8 And I turned the lights on in my car and held my
9 lights on top of Mr. Norris over here and on Drew to make
10 sure nothing happened and he wasn't going to kill him or
11 whatever he was trying to do. And we sat in the car until
12 the police came. And the police arrived shortly after.

13 Q And did -- you said that there was a second call. Who
14 else called?

15 A My brother who was on top of the roof had called. And
16 I think he stayed at the scene of the crime around the
17 building so he could kinda give the play-by-play to the
18 person, to the police officer he had called, he had talked
19 to, so.

20 Q He'd already called 9-1-1?

21 A He called 9-1-1, yeah.

22 Q And when you pulled back up, where was Drew Bond at
23 when you pulled the car up?

24 A He was on the ground. And the man on the far right,
25 he was on top of him.

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 Q Did the police shortly arrive after you pulled up?

2 A The police arrived a few seconds after we pulled up,
3 ten to 20 seconds after, sir, afterwards.

4 Q Okay. And did they talk to y'all at the scene?

5 A Yes, sir. They, they approached us and asked us what
6 was going on, because neither one of us -- nobody really
7 had any idea of what was going on. And we just told them
8 our side of the story.

9 And about the same time those two men had walked back
10 across the street towards, I guess, to their house. It
11 was -- they're off to a house. And then we told them what
12 had happened. And the officers went and followed them and
13 went over to their house and started questioning them as
14 well.

15 Q Let me show you what's been marked as State's Exhibit
16 1, as well as State's Exhibit 3. Showing you No. 1, do you
17 recognize that knife?

18 A I do recognize that knife.

19 Q Did it appear to be the knife you saw that night?

20 A Looks just like it.

21 Q And is that just a picture of the same knife?

22 A Yes, sir.

23 Q So these two gentlemen walked back to the porch. So
24 you really never lost sight of them.

25 A No, sir.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 Q And these are the same two that was around Drew Bond.

2 A The same two. When we returned they were in the same,
3 same position. He was on top of Drew Bond. The other man
4 was standing beside him.

5 Q And this occurred in the City of Spartanburg, is that
6 right?

7 A Sir?

8 Q This was in the City of Spartanburg.

9 A Yes, sir; yes, sir.

10 Q Please answer any questions that Ms. Jones and
11 Mr. Poole may have for you.

12 CROSS-EXAMINATION

13 BY MR. POOLE

14 Q Mr. Blankenship, you'd -- had you played this course
15 before?

16 A Yes, sir, numerous times.

17 Q Okay. And on this particular night did the Frisbee
18 get stuck in a tree or did it get stuck on a building?

19 A No, sir. The Frisbee was stuck on top of the
20 building.

21 Q Okay. And you gave a statement that night, didn't
22 you?

23 A Yes, sir.

24 Q And the statement was written out by a police officer.
25 And you signed it.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

- 1 A Yes, sir.
- 2 Q You stated at that time that the Frisbee was thrown
3 into a tree. Was it really a building --
- 4 A Yes, sir.
- 5 Q -- it got stuck on?
- 6 A Well, it was, it was in the tree. The limbs kind of
7 overhang onto the building. Like it's a tree that touches.
8 The limbs of the tree touch the building.
- 9 Q Right.
- 10 A And the Frisbee was right there between a limb, stuck
11 between a limb and a, and the roof. So that's why it was
12 stuck up on the roof.
- 13 Q All right. And so you're in the process, or you and
14 your friends are in the process, of trying to get this
15 Frisbee down.
- 16 A Yes, sir.
- 17 Q And then did you see -- and you saw your friend,
18 Mr. Bond, get thrown down?
- 19 A Yes, sir.
- 20 Q Did you see that?
- 21 A I did.
- 22 Q Okay. And Mr. Chiles was nowhere around at that time,
23 is that right?
- 24 A Not at the time. He wasn't there.
- 25 Q Okay. And then some events occurred. And I want to

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 ask you about those events. Okay?

2 A Okay.

3 Q So Mr. Bond is thrown down.

4 A Yes, sir.

5 Q And then what did you do after he was thrown down?

6 A After he was thrown down we stopped to see what he was
7 doing. And we heard him telling Mr. Bond that he was a
8 security officer and to take out his stuff and that he was
9 going to put the knife to his throat.

10 And so then we started to approach him to make sure he
11 really was a security officer or to see what the story was,
12 you know, to make sure everything was okay. And at that
13 time he got off of Mr. Bond and pointed the knife at us and
14 told us that he was also a security officer and that he
15 wanted us to get on the ground and give us his stuff as
16 well.

17 Q Okay. And so did he -- but when Mr. Norris -- it's
18 your testimony that Mr. Norris asked Mr. Bond to give him
19 his stuff?

20 A His stuff, yes, sir, his wallet.

21 Q His wallet?

22 A Yes, sir.

23 Q So did Mr. Bond produce the wallet?

24 A I don't remember if he had it or not. He was walking
25 towards us by the time he'd asked him that.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 Q Okay. And did you see if anything -- did you see the
2 wallet?

3 A I saw -- I didn't see the wallet then. But when I
4 came back around after I, like I told you, I parked my car
5 on the street and shined the lights at him, I saw him going
6 through Mr. Bond's wallet.

7 Q Okay.

8 A So sometime between --

9 Q So you didn't see the wallet at the time that they
10 were on the ground.

11 A No. I -- he never pulled the wallet out of his pocket
12 that I saw.

13 Q Okay.

14 A I just heard them ask for it. And then when I came
15 back around the wallet had been out.

16 Q Okay. So all right. So Mr. Norris was asking
17 Mr. Bond to give him his wallet.

18 A Uh-huh.

19 Q And then after that you go back to get your other
20 friends.

21 A No. We had gone to tell the security officer at the
22 hanger what was going on.

23 Q Okay. So the next event is that you go and seek out a
24 legitimate security officer.

25 A Yes, sir.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 Q And ask them if there are any other security officers
2 in the area.

3 A Yes, sir.

4 Q Is that right?

5 A Yes, sir.

6 Q Did the security officer that was there, did he offer
7 any aid or anything?

8 A He told us he would -- he told us he would call and
9 see if there's any security officers, which he did. And he
10 told us he could call 9-1-1. And he said that's all I can
11 do, so.

12 Q All right. And what was the next event? Did you come
13 back to the scene where your friend was on the ground?

14 A Got back in the car and returned to the scene of the
15 crime.

16 Q Okay. To where Drew was?

17 A Yes, sir.

18 Q All right. Was Mr. Chiles there then?

19 A Yes, sir.

20 Q Okay. But so you don't know when Mr. Chiles came up
21 on the scene.

22 A No. I do. I saw him come across the street.

23 Q Okay. All right. You saw him come across the street.

24 A Yes, sir, at the same time that Mr. Norris had come
25 over towards us, and with the knife and said he was a

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

- 1 security officer, we saw Chiles coming cross the street.
- 2 Q Okay.
- 3 A And that's why we decided to run, because we saw two
- 4 of them instead of one.
- 5 Q All right. Did Mr. Norris say anything to Mr. Chiles?
- 6 A I never heard anything.
- 7 Q You do remember giving your statement, don't you?
- 8 A Yes, sir.
- 9 Q And you didn't know anybody's name at that time, did
- 10 you?
- 11 A No, sir.
- 12 Q All right. And you referred to these individuals as a
- 13 skinny black male and a heavier black male.
- 14 A Yes, sir.
- 15 Q Do you remember that?
- 16 A Yes, sir.
- 17 Q Let me show you.
- 18 Do you remember -- is it your testimony you don't
- 19 remember if Mr. Norris asked Mr. Chiles to do anything?
- 20 A I don't remember now. It's been almost a year ago.
- 21 Q That's right.
- 22 A Okay.
- 23 Q Just a few days short.
- 24 But let me show you this statement and see if it
- 25 refreshes your memory.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 A All right.

2 Q This is your signature, isn't it?

3 A Yes, sir.

4 Q Okay. And it reads that, "He told Drew to get out his
5 wallet and I. D. Drew took out his wallet. And the black
6 male started going through his wallet and taking stuff
7 out."

8 A Yes, sir.

9 Q Is that what happened?

10 A Yes, sir.

11 Q Okay. "Another black male who was skinnier and taller
12 with a white shirt walked up."

13 A Okay.

14 Q "And the heavy black --

15 A "Guy."

16 Q -- guy asked the skinny black guy to call for backup."

17 A Yes, sir.

18 Q So do you remember now that Mr. Norris asked
19 Mr. Chiles to call for backup?

20 A If it was in, if it was in my testimony, then that's
21 probably a better representation than what I know of today.

22 Q Okay. Like you say, it has been more than a year.

23 A Uh-huh.

24 Q Let me ask you this. When the heavy black guy asked
25 the skinny black guy to call for backup, had you already

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 been to check to see if they were legitimate security
2 guards with the legitimate security guard?

3 A No, sir. I believe that was the time where we started
4 to run.

5 Q Okay. And then in this statement you don't mention
6 anything about getting into your car and coming around with
7 the lights.

8 A I mean, if it wasn't in my statement, then I didn't
9 mention it in my statement.

10 Q Okay. So by the time you got into your car and came
11 around the police were there?

12 A No, sir. They arrived shortly after I had gotten
13 there.

14 Q Okay. So they came before you got in your car?

15 A No. They were --

16 Q I may be not asking a clear question. But when did
17 the police get there?

18 A After I had been in my car for a matter of seconds.
19 And then they arrived.

20 Q Okay.

21 A Like I had been, I had stopped at the scene of the
22 crime and was shining my lights on them to make sure
23 nothing was going on, and then the police arrived shortly
24 after that. I got to the scene of the crime before the
25 police officers did in my car.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 Q Okay. When you, so when you, came around in your car
2 with the lights pointed to where everything was happening,
3 what was Mr. Chiles doing?

4 A He was fingering through Jerry Bond's wallet --

5 Q Okay.

6 A -- with the cards. He had cards and stuff in his
7 hands and he was --

8 Q Did he have the wallet in his hand?

9 A I can't remember. I just know he had his cards and he
10 was looking through all of them.

11 Q He was looking through them.

12 A Uh-huh.

13 Q Through a stack of cards.

14 A Yes, sir.

15 Q Okay. Because you can't testify that he actually had
16 possession of the wallet, can you?

17 A I can't testify he had possession of the wallet.

18 Q Okay. And when the police come, did he run from the
19 scene?

20 A No. They both just walked back across the street to
21 the house, to one of the houses. I assume it was one of
22 their houses.

23 Q And they stood there.

24 A On the porch.

25 Q Okay. And they never went inside the house or tried

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

1 to leave.

2 A No, sir. They stood on the porch.

3 Q Okay. Thank you, Mr. Blankenship.

4 CROSS-EXAMINATION

5 BY MS. JONES

6 Q Mr. Blankenship, when you left to go to the hanger, is
7 that when you got your vehicle?

8 A My vehicle was parked in between that spot and the
9 hanger. So what I did was we ran pretty much to the hanger
10 first and talked to the security officer and then got back
11 to the car.

12 Q Okay. And that's about a block away, correct?

13 A It's probably a little more than a block away.

14 Q Okay. And why did you get in the vehicle?

15 A Because of protection so I'm not out in the open with
16 these guys that have knives or guns and so --

17 Q Did you see a gun? Now, that's no --

18 A No.

19 Q Not anything in your statement.

20 A No. I, we -- no. The girls who were there said that
21 he had. We didn't know what he had. We didn't know if he
22 had a gun or a knife. I saw a knife, so.

23 Q Okay. Now, why did you have -- you said a couple of
24 times now that you made the turn from --

25 A Saint John Street.

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

1 Q -- Saint John, made a right onto Dean Street. And you
2 made a point of saying you shined your lights.

3 A Uh-huh.

4 Q That's not a very well-lit area, is it?

5 A I mean, it's more light with my, my headlights than it
6 is with no light, well, just that street light that was
7 there.

8 Q Okay. With virtually no light, is what you were going
9 to say, right?

10 A I mean --

11 Q You wanted to illuminate the scene which was not lit
12 up before, correct?

13 A I mean, it was fairly lit.

14 Q You made such a point of talking about how you
15 returned to the scene of the crime and pointed your
16 headlights so you got a good look.

17 A A better look, yes, ma'am.

18 Q Okay. With light.

19 A Yes, ma'am.

20 Q Correct?

21 A Uh-huh.

22 Q You indicated that when -- or did you indicate that
23 when you saw your friend Drew get pushed to the ground --

24 A Uh-huh.

25 Q Did you see the face of the person doing that?

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

- 1 A Yes, ma'am.
- 2 Q Did you see a weapon?
- 3 A Yes, ma'am. I saw a knife, this knife right here.
- 4 Q At that point.
- 5 A Yes, ma'am.
- 6 Q Okay. And did you see Mr. Bond take his wallet out
- 7 and give it to someone?
- 8 A I can't remember right now if I did or not.
- 9 Q Okay.
- 10 A I know I saw him going through the cards later on. So
- 11 it's a possibility that I saw him get the wallet.
- 12 Q You saw through Drew going through his cards later on?
- 13 A No. Mr. Chiles going through Drew's cards later on.
- 14 Q Okay. And do you remember telling the officer when
- 15 you gave your statement that he took Drew Bond by force and
- 16 put him in the handcuff position flat on his chest on the
- 17 ground --
- 18 A Yes, ma'am.
- 19 Q -- with his hands behind his head?
- 20 A Yes, ma'am.
- 21 Q Okay. And you indicated that you heard that
- 22 individual identify himself to your friend Drew as
- 23 security.
- 24 A Uh-huh.
- 25 Q Okay. Are you aware of -- you played this golf course

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

1 several times.

2 A Yes, ma'am.

3 Q A number of times, you said.

4 A Yes, ma'am.

5 Q Are you aware of what these various businesses on this
6 street are?

7 A I don't know what all of them are. But I knew that
8 one was a building that's tied with First Baptist. And
9 then on the corner is the dry cleaners. And there's a few
10 other buildings. I didn't know what, what were down the
11 street.

12 Q Okay. Do you know that one of them is a medical
13 clinic that dispenses medicine?

14 A I didn't at the time.

15 Q Okay. Do you know that on the other side of the one
16 tied to the church is also a doctor's office?

17 A I didn't.

18 Q Okay. And the dry cleaners is a commercial business.

19 A We hadn't played the dry cleaners though.

20 Q Okay. But you know that the dry cleaners is on that
21 street, correct?

22 A Uh-huh. The hole that we do is around a building
23 that's tied to First Baptist Church.

24 Q The ministry's building.

25 A Ministry's building, yes, ma'am.

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

1 Q Okay. And if you -- do you think it's unusual for
2 someone to be on the roof of a building?

3 MR. BARNETTE: Objection, Your Honor. That's calling
4 for speculation.

5 Q Have you ever been on the roof of this building at
6 midnight before?

7 A No.

8 Q Is that something you would have volunteered to do?

9 A Well, if I could climb a tree like my brother could, I
10 would have.

11 Q Okay. You didn't see anything wrong with being on the
12 roof of a building at midnight on Dean Street.

13 A That's why we -- nobody got on the roof of a building.
14 We told them not to. That's why they climbed the tree and
15 not the ladder.

16 Q Okay. And the security guard at the hanger you had
17 checked with before --

18 A Uh-huh.

19 Q -- did you tell him how far over you were going to go
20 from the church?

21 A I mean, we never have told him before. We just told
22 him we played around the church, and he said that's okay.
23 So, you know, just keep an eye out.

24 Q Okay. And do you often play at midnight around the
25 church?

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

1 A No, ma'am. We usually -- well, we started at
2 9:00 o'clock. And we usually finished in about two and
3 half hours 18 holes. And the reason we play at night is
4 because it's cooler and there's less traffic than playing
5 in the summer in the middle of the day when there's cars
6 around and businesses are open.

7 Q Okay. Did you have a cell phone that night?

8 A I think I did, yes, ma'am.

9 Q Why did you go all the way to the hanger just to get
10 the police? Why didn't you call for the police yourself?

11 A My brother had called for the police. And the reason
12 I went to the hanger was to see if there was another
13 security guard on the premises.

14 Q Okay. And when you went to the hanger to see the
15 security guard, he didn't even come back over there with
16 you, did he?

17 A No, ma'am.

18 Q He wasn't concerned enough to leave the hanger and go
19 with you --

20 MR. BARNETTE: Objection, Your Honor. Calling for
21 speculation again.

22 THE COURT: Sustained.

23 Q Did he come with you back to the scene of the crime,
24 to use your words?

25 A No, ma'am, he didn't. He is just the hanger security

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

1 guard.

2 Q Okay. If he's just the hanger security guard, you
3 made a point of going to see him though.

4 A Yes, ma'am, because I know him.

5 Q Okay. But he did not come with you.

6 A No, ma'am.

7 Q Thank you for answering my questions.

8 MR. BARNETTE: No further questions, Your Honor.

9 Your Honor, may I approach for a second?

10 THE COURT: Yes.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: All right. Ladies and gentlemen, we are
14 going to recess for the afternoon.

15 Let me caution you before you leave that at no time
16 except during jury deliberations are you to discuss the
17 case with any person whatsoever in any fashion whatsoever.
18 And that includes family, friends.

19 That includes your fellow jurors. You're only
20 permitted to talk about the case when you are instructed to
21 begin deliberations. And, as you know, that won't be until
22 the end of the trial after all of the evidence has been
23 received and I have instructed you on the law.

24 So during the overnight recess don't talk about this
25 case with anybody whatsoever. Also, do not in any way

1 conduct any research or do your own investigation into any
2 issue that arises.

3 Any time you're selected to decide a case you must
4 base your decision upon the evidence received during the
5 trial. You're not permitted to supplement that knowledge
6 by doing any outside research or investigation from any
7 source whatsoever. So no research, no investigation, no
8 discussions.

9 Do have a good evening. Please report to your jury
10 room at 9:30 in the morning, 9:30 in the morning.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: All right. Court is in recess until
14 9:30 in the morning.

15 END OF PROCEEDINGS JULY 6, 2009
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1 (Proceedings July 7, 2009)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are there any matters that need to be
5 addressed prior to the jury being brought in?

6 MR. BARNETTE: None from the state, Your Honor.

7 MR. POOLE: Not here, Your Honor.

8 MS. JONES: Your Honor, just for the record -- and I
9 have not conveyed this to my client's mother, but she will
10 hear it as the Court hears it -- Your Honor sent word to me
11 that Mr. O'Shields, the last remaining bailiff, was
12 present.

13 And Mr. Barnette and Mr. Poole and I met with him
14 briefly this morning before we met with Your Honor in
15 chambers. And he told me, as he did in front of the other
16 officers of the court, the other attorneys, that he had not
17 engaged in the conduct that was discussed yesterday. And I
18 just wanted to thank the Court for making him available.
19 And I did have that inquiry with him.

20 THE COURT: Okay. Anything else?

21 Bring them in, please.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: We have got -- this thing is not right.

25 Gentlemen, y'all have got to do better than this. Let

Daniel Mayfield
Direct examination by Mr. Barnette

1 me ask these front five if you'll move down one seat. And
2 let me ask the gentleman on the back row if you'll move to
3 the front seat. And the rest of you on the back row move
4 down one seat. Thank you.

5 All right. Ladies and gentlemen, as you know, when we
6 recessed yesterday the state was in the midst of their
7 presentation. So we'll continue with that presentation
8 this morning.

9 Mr. Barnette.

10 MR. BARNETTE: Thank you, Your Honor. May it please
11 the Court.

12 I'd like to call Mr. Mayfield to the stand, please.

13 DANIEL MAYFIELD, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BARNETTE

16 Q Sir, if you would, make sure you speak loud enough so
17 that the person on the back row can hear you. Okay?

18 A Yes, sir.

19 Q Give me your full name, please.

20 A Daniel Kellen Mayfield.

21 Q And, Mr. Mayfield, what town do you live in, sir?

22 A Spartanburg, South Carolina.

23 Q And how old was you back on July of 2008?

24 A I was 20 years old.

25 Q And going back to that day or whatever, was you

Daniel Mayfield
Direct examination by Mr. Barnette

1 playing Frisbee golf that evening?

2 A Yes, sir.

3 Q And who was you playing with, sir?

4 A I was playing with Kyle Quinn, Drew Bond, Joseph
5 Holder, Zack Blankenship, Hub Blankenship and two other
6 girls that were with us.

7 Q And during that time did the Frisbee go on top of the
8 roof of a building?

9 A Yes, sir, it did.

10 Q And where -- who was you standing with when that
11 happened?

12 A At that time I was standing beside Joseph Holder and
13 Hub Blankenship.

14 Q And was Drew Bond with y'all too?

15 A Yes, sir. He had moved a little bit away from us to
16 catch the Frisbee when it was thrown from the roof.

17 Q If you would, tell the jury what happened after that.

18 A Well, when Drew moved to, to catch the Frisbee, he
19 moved a little bit away from, from our group. And Zack
20 climbed the tree to, to get the Frisbee.

21 And at that time we noticed the, the man walking, one
22 of the men walking, toward us. And he told us that he was
23 a security guard, and he told us that we didn't need to be
24 where we were.

25 I had my attention focused on him for a, for a moment.

Daniel Mayfield
Direct examination by Mr. Barnette

1 And then when I looked back I saw Zack had already thrown
2 the Frisbee, and he was climbing down the tree. I made
3 sure that he got out of the tree safely.

4 When I looked back the man had already had Drew on the
5 ground, and he had taken his wallet out of, out of his
6 pocket.

7 Q And what happened next?

8 A He took the wallet out of his pocket. Once we saw
9 that, me, Hub Blankenship or, excuse me, Hub Blankenship,
10 Joseph Holder and I walked toward him saying wow, wow,
11 what's going on. And that's when he pulled me -- we
12 noticed he had a knife. He pointed it toward us and moved
13 away from Drew and told us to get on the ground as well.

14 Q Let me show you State's Exhibit No. 1. Does that
15 appear to be the knife you saw that night?

16 A Yes, sir. It is.

17 Q So he pointed the knife at y'all and told y'all to get
18 on the ground?

19 A Yes, sir. That's correct.

20 Q And where was Drew at at this time?

21 A Drew was on the ground already.

22 Q And do you see the man that had the knife that night?

23 A Yes, sir.

24 MS. JONES: Objection, Your Honor.

25 THE COURT: Overruled.

Daniel Mayfield
Direct examination by Mr. Barnette

1 Q If you would, if you'd point him and describe where
2 he's at and what he's wearing, sir.

3 A He's wearing the blue shirt and glasses on the end, at
4 the end of the table.

5 Q And who is he sitting besides?

6 A The female attorney.

7 MR. BARNETTE: Your Honor, I'd like the record to show
8 that he has identified the defendant in this case.

9 THE COURT: It shall.

10 Q Later on did another man approach y'all?

11 A Yes, sir. As the man with the knife approached us, we
12 also noticed that another man had begun to walk across the
13 street toward us.

14 Q And do you see that man in court here today?

15 A Yes, sir, I do.

16 Q Would you identify him for us, please?

17 A He's wearing the light, the light shirt and the tan
18 pants.

19 MR. POOLE: Objection, Your Honor, based upon prior
20 objection.

21 THE COURT: Overruled.

22 Q And who is he sitting beside, sir?

23 A The male attorney with the glasses.

24 MR. BARNETTE: Your Honor, I'd like to reflect that's
25 the defendant Chiles for the record. And then of course

Daniel Mayfield
Direct examination by Mr. Barnette

1 the first gentleman is defendant Norris.

2 THE COURT: It shall.

3 Q After this happened, what happened then, sir?

4 A Well, when he pulled the knife on us, that's when
5 we -- Joseph Holder, Hub Blankenship and I and the girls --
6 ran around the other side of the building to the, to the
7 big parking lot behind the ministry building.

8 When we, when we ran around to the other side of the
9 building, we assumed that since the man with the knife had
10 moved away from Drew that Drew was able to get away, and we
11 thought that he had noticed that the man with the knife
12 had, had walked away. So we assumed that he was able to
13 get away himself.

14 When we noticed that he wasn't with us, Kyle Quinn
15 went. And he said he was going to make sure that nothing
16 happened to Drew. And so he went on the other side of the
17 building to make sure that nothing happened to our friend,
18 make sure he didn't get hurt. That's when we tried to
19 decide what we were going to do.

20 Q What happened then, sir?

21 A Well, I think we, we stood there for a couple of
22 minutes trying to decide what we were going to do. And we
23 realized we needed to call the cops.

24 So then I think a minute or two later Hub Blankenship
25 pulled around in his car. He went to get his car from -- I

Daniel Mayfield
Direct examination by Mr. Barnette

1 believe his car was near the hanger. And he went and
2 pulled around and got us in his car. And that's when he
3 went to the hanger to alert the security guard and call the
4 police.

5 Q Did you also have find out Zack Blankenship had also
6 called the police?

7 A Yes, sir, we did.

8 Q Did he come back in the car, back to where Drew was?

9 A Did Zack come back in the car?

10 Q No. Did Hub? Did Hub come back in the car later, or
11 was you with him in the car?

12 A Yes, I was.

13 Q Did he come back? And what happened once he came
14 back?

15 A When they had, when they called the police and they
16 came back to the car, that's when we pulled around. And I
17 don't remember if the police were already there or if they
18 got there a minute or two later.

19 I was sitting in the back with the, with the girls,
20 but I do remember that they were at the latest, they were
21 there very shortly after we got there. And so that's when
22 we, we got out and talked to them.

23 Q Okay. If you would, please answer any questions
24 Ms. Jones or Mr. Poole may have for you.

25 MR. POOLE: May it please the Court.

Daniel Mayfield
Cross-examination by Mr. Poole

1 THE COURT: Mr. Poole.

2 CROSS-EXAMINATION

3 BY MR. POOLE

4 Q How are you doing, Mr. Mayfield?

5 A Good. .

6 Q Just a few questions. Okay. Had you ever played this
7 course before?

8 A No, sir, I haven't.

9 Q Okay. But of course you were there and you knew
10 everybody that was around. Y'all were friends, weren't
11 you?

12 A Yes, sir.

13 Q And the -- it seems to me that everything started
14 becoming a little tense after the Frisbee got caught up in
15 the tree or on top of the roof, is that right?

16 A Yes, sir. That's correct.

17 Q Is that about the time that when you were looking up
18 at the tree to see if the Frisbee was being retrieved, then
19 you turned and you looked at Drew? And by that time
20 somebody had him down on the ground?

21 A Zack was climbing down out of the tree.

22 Q Okay.

23 A That's when I looked and noticed that Drew was on the
24 ground, yes, sir.

25 Q Okay. So you went up into the tree.

Daniel Mayfield
Cross-examination by Mr. Poole

1 A No, sir. I did not go in the tree.

2 Q Okay. Who was climbing down from the tree?

3 A Zack Blankenship was.

4 Q Zack was climbing down from the tree.

5 A Yes, sir.

6 Q You were looking at him. And then did you see Drew
7 being knocked to the ground?

8 A I didn't see Drew knocked to the ground, no, sir.

9 Q Okay. And when in the context of all of these events
10 did you see him on the ground?

11 A When I -- once I looked back to make sure Zack had
12 gotten safely out of the tree, that's when I looked back
13 and saw Drew was already on the ground. And the man with
14 the knife was pulling his wallet out of his pocket.

15 Q Okay. Could you hear him say anything -- Drew or the
16 man?

17 A I heard the man with the knife say stay on the ground.

18 Q Okay. Anything else?

19 A No, sir, not, not to Drew. That's when he pulled the
20 knife on us and told us to get on the ground also.

21 Q Okay. Did he say -- did you hear him say anything
22 about being a security guard?

23 A Yes, sir.

24 Q He did that?

25 A He identified himself as a security guard.

Daniel Mayfield
Cross-examination by Mr. Poole

- 1 Q Okay. And did he pull the wallet out of Drew's
2 pocket?
- 3 A Yes, sir, he did.
- 4 Q Out of which pocket did he?
- 5 A Out of one of his back pockets.
- 6 Q Okay. And did he go through the wallet?
- 7 A I didn't see him go through the wallet, no, sir.
- 8 Q Okay. And at this time you were looking in the
9 direction of Drew and this other man on the ground.
- 10 A Yes, sir.
- 11 Q And the Frisbee has been retrieved from the tree.
- 12 A Yes, sir.
- 13 Q And then you noticed another male that started walking
14 from across the street.
- 15 A That's correct.
- 16 Q Is that right?
- 17 A Yes, sir.
- 18 Q Now, how far was the distance between where Drew and
19 the man were on the ground and when you first saw the other
20 male across the street?
- 21 A How far away was, was the man with the knife from Drew
22 from the, from the second male that approached us?
- 23 Q Yes.
- 24 A About 20 to 25 feet maybe.
- 25 Q Okay. Twenty to 25 feet.

Daniel Mayfield
Cross-examination by Mr. Poole

- 1 A That's the first time I noticed him, yes, sir.
- 2 Q Okay. And he was across the street.
- 3 A Yes, sir.
- 4 Q Did you see him as he came from a porch or from a yard
- 5 or from the sidewalk, or do you remember?
- 6 A I believe he was near the sidewalk walking towards us.
- 7 Q Okay. So you saw him starting to walk in that
- 8 direction from across the street.
- 9 A Yes, sir.
- 10 Q On the sidewalk.
- 11 A Yes, sir.
- 12 Q And that was about 20 or 25 feet.
- 13 A Yes, sir.
- 14 Q Did you hear him say anything as you drew closer?
- 15 A I did not.
- 16 Q Did he make any threatening remarks to you and your
- 17 group?
- 18 A Not that I heard.
- 19 Q Okay. Did you hear him say anything as he got closer
- 20 to Drew and the other man?
- 21 A No, sir.
- 22 Q Okay. Did you see him do anything antagonistic?
- 23 A No, sir, I didn't.
- 24 Q Okay. And at that time, is that when you made a
- 25 decision to maybe call the police?

Daniel Mayfield
Cross-examination by Mr. Poole

1 A Once we, once we got around the back of the building,
2 that's when we decided to call the police.

3 Q Okay. And was it at that point that you got in the
4 car?

5 A When we were in the parking lot behind the ministry
6 building?

7 Q Uh-huh.

8 A That's when Hub Blankenship pulled around with his
9 car, yes, sir.

10 Q Okay. And then all of you got in the car?

11 A Yes, sir.

12 Q And you rode around with the lights on? Where did you
13 go after you got in the car?

14 A We went to the hanger once we got in the car --

15 Q Okay.

16 A -- and called the police. And then we left the hanger
17 and went back to the scene of the crime.

18 Q Okay. And was the car pointed toward this scene --

19 A Yes, sir. The lights, you mean?

20 Q Uh-huh.

21 A Yes, sir.

22 Q And the lights were on?

23 A Yes, sir, they were.

24 Q And was the man still on the ground -- Drew?

25 A Yes, sir, he was.

Daniel Mayfield
Cross-examination by Ms. Jones

1 Q Where were the police? Were they there yet or not?

2 A When I looked, I believe they were there.

3 Q Pardon me?

4 A I believe they were there when I looked.

5 Q Okay. So the police were there, Drew is on the
6 ground, and a man is on top of him or keeping him, keeping
7 him on the ground.

8 A Yes, sir.

9 Q And a second man is nearby this, both of these folks.

10 A I don't remember. I don't remember where the second
11 man was at this point.

12 Q Okay. And the police were already there.

13 A I believe they were, yes, sir.

14 Q And you don't know if the second man was there at that
15 scene or not.

16 A I don't remember where he was.

17 Q Okay.

18 A I didn't see him.

19 Q Okay. All right. Thank you very much.

20 A Thank you.

21 CROSS-EXAMINATION

22 BY MS. JONES

23 Q Mr. Mayfield, where were you standing waiting on the
24 Frisbee to come down from the roof or the tree?

25 A I was standing about -- there are two -- there are two

Daniel Mayfield
Cross-examination by Ms. Jones

1 like brick columns next to the sidewalk kind of where the
2 entrance to the building is. I was standing close to
3 those.

4 Q Okay. Now, how far away from the tree that was being
5 climbed were you?

6 A It was on the other side of the building. I don't
7 remember how far I was from it. Maybe about 15 or 20 feet.

8 Q Okay. So you're at the front of the building. The
9 tree is on the right or left side of the building?

10 A If I'm facing the building --

11 Q Yes.

12 A -- the tree's on the left side of the building.

13 Q Okay. And you're standing next to a brick column that
14 is, has the building between you and the tree, correct?

15 A I'm sorry. The column, the column is about this high.

16 Q Okay.

17 A You know, it's not, not very high.

18 Q Okay.

19 A The tree is, is clearly visible from the point I was
20 standing at, yes, ma'am.

21 Q Okay. So were you in front of the building and not
22 beside the building?

23 A I was in front of the building, yes, ma'am.

24 Q Front of the building. Okay. At that point where was
25 Drew from your vantage?

Daniel Mayfield
Cross-examination by Ms. Jones

- 1 A Drew --
- 2 Q The pillar is here, the tree is here, the building's
3 in front of you.
- 4 A Drew is --
- 5 Q Dean Street is behind you.
- 6 A Correct, yes, ma'am.
- 7 Q Where is Drew?
- 8 A Drew is to my right near the driveway area which was
9 on the right side of the building.
- 10 Q Okay. And this is which building?
- 11 A This is the ministry building.
- 12 Q Okay. That is part of the church property.
- 13 A I believe so. At the time I didn't know what building
14 it was.
- 15 Q Okay. And to the right of the building there is a
16 driveway that goes all the way down the building --
- 17 A Yes, ma'am. That's correct.
- 18 Q -- to a parking lot in the back.
- 19 A Yes, ma'am.
- 20 Q Okay. So Drew was in the driveway or beside the
21 driveway?
- 22 A I believe he, he was near the driveway. I don't
23 remember if he was on the driveway, but he was a good 20 or
24 30 feet away from us.
- 25 Q Okay. Twenty or 30 feet away from you. And you're

Daniel Mayfield
Cross-examination by Ms. Jones

1 kind of looking back and forth waiting on the Frisbee. You
2 turned to look. Then when you turned back Drew is on the
3 ground.

4 A Yes, ma'am.

5 Q And there is another person there.

6 A Yes, ma'am.

7 Q And because you had your, your attention diverted over
8 to watching the Frisbee come down and the rescuer of the
9 Frisbee coming down safely, you did not see where that
10 person came from that was with Drew on the ground.

11 A Well, before we noticed, before we even started this
12 hole, when we started toward this house, we noticed that
13 the two men were on the porch. So we knew where they had
14 come from.

15 Q Did you tell the police that when you gave your
16 statement that night?

17 A I don't remember if I did or not.

18 Q Okay. If it is not in here would that be an oversight
19 on your part?

20 A An oversight? I am sorry.

21 Q Okay. Just review it and see if you see in there that
22 you told the police that you had already seen these two
23 people on the porch.

24 (Pause.)

25 A No, ma'am.

Daniel Mayfield
Cross-examination by Ms. Jones

1 Q Okay. So that's something you remember now but did
2 not remember at 12:56 the morning this happened, excuse me,
3 12:36 the morning this happened.

4 A I remember that happening, but I didn't believe that
5 was, I didn't believe that was relevant. I didn't, I
6 didn't understand the relevance of it.

7 Q Okay. And so you have looked over. As you were
8 saying, you have looked over. You're making sure the
9 Frisbee is down and the fellow rescuing it is down. You
10 look back. And at this point your friend is on the ground
11 and there's another gentleman. There's a gentleman with
12 him.

13 A Standing over him, yes, ma'am.

14 Q Okay. And what you heard that person say was I am a
15 security guard or something to that effect. He identified
16 himself as a security guard.

17 A Yes, ma'am.

18 Q Okay. And you're 20 or 30 feet or yards away from
19 this?

20 A From Drew?

21 Q Uh-huh.

22 A Yes, ma'am. About 20 or 30 feet.

23 Q Okay. And you also indicated you were able to hear
24 the same person say you don't, y'all don't need to be where
25 you are at about the same time he said he was a security

Daniel Mayfield
Cross-examination by Ms. Jones

1 guard.

2 A After he identified himself as a security guard,
3 that's when he told us y'all don't need to be here.

4 Q Okay. And did you hear this individual, since you
5 could hear those two comments, tell your Drew I need to see
6 your -- tell your friend Drew -- I'm sorry -- I need to see
7 your I. D.?

8 A I didn't hear him say that.

9 Q Okay. And at that point you indicated -- again, the
10 attention was diverted somewhat. Hub had pulled the car
11 into the parking lot behind the mission?

12 A Yes, ma'am.

13 Q Is that parking lot behind the mission actually
14 connected to the First Baptist parking lot? Can you drive
15 through?

16 A I believe, I believe you can, yes, ma'am.

17 Q Okay. And you got in the vehicle with them?

18 A Yes, ma'am, I did.

19 Q How did you get out of the parking lot? Do you
20 remember which route you took?

21 A I believe we, we, we went, like you said. I think, I
22 believe it connects. And we went to the larger. I think
23 there's a larger parking lot behind that. And we went
24 through that larger parking lot.

25 Q Okay. A larger parking lot behind what? You weren't

Daniel Mayfield
Cross-examination by Ms. Jones

1 specific.

2 A There was, there's, I believe there's a smaller
3 parking lot behind the building, behind the ministry
4 building. And then I believe it empties into a, a bigger
5 parking lot. And I believe there's another exit that we,
6 that we took to go to the hanger.

7 Q Okay. Did you go backwards toward First Baptist
8 through that parking lot or go up the driveway out past the
9 mission?

10 A We went towards -- we didn't go out in front of the
11 mission where the, where the scene was taking place. We
12 went toward the hanger.

13 Q Okay. So you left. And you were gone for some period
14 of minutes, correct?

15 A Yes, ma'am.

16 Q And when you got back, you're not sure whether the
17 police were there. You have consistently said I believe, I
18 believe, but no certainty, is that true?

19 A Right, because of that's what I saw, yes, ma'am.

20 Q Okay. You're not certain.

21 A Not certain, no, ma'am.

22 Q Okay. Thank you.

23 A Thank you.

24 MR. BARNETTE: No further questions, Your Honor. I'd
25 like to have this witness excused.

Bradford James
Direct examination by Mr. Barnette

1 THE COURT: You may step down.

2 MR. BARNETTE: I'd like to call Officer James to the
3 stand.

4 BRADFORD JAMES, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BARNETTE

7 Q If you would, sir, please give your full name for the
8 record.

9 A Bradford James.

10 Q And where do you work at, sir?

11 A Spartanburg County Sheriff's Office.

12 Q What's your present position with the sheriff's
13 department?

14 A Patrol deputy.

15 Q Back on July 16th of 2008, where was you working at
16 then, sir?

17 A At Spartanburg Public Safety Department.

18 Q And what was your position there, sir?

19 A I was a K-9 handler.

20 Q And was you working on the evening of July 18th of --
21 July 16th of 2008?

22 A Yes, sir, I was.

23 Q Did y'all receive a call?

24 A Yes, sir. We received a call for a disturbance with
25 weapons.

Bradford James
Direct examination by Mr. Barnette

1 Q Okay. And when you received that call did y'all
2 proceed to the location?

3 A They give us a general area. They could not pinpoint
4 exactly where they were. They said to check the area of
5 Dean Street and Saint John Street around the church. They
6 couldn't tell us exactly the location as it was.

7 Q And did officers respond to that?

8 A Yes, sir.

9 Q When you got there when you found them, can you tell
10 the jury what you saw?

11 A Yes, sir. I arrived at approximately 11:15. When I
12 turned onto Dean Street off of Saint John Street, I made
13 the right-hand turn.

14 As I pulled onto Dean Street I observed two black
15 males, and a white male laying back on the ground. And the
16 black male was standing over him. One was standing over
17 him in an intimidating fashion.

18 I got out of the car. I observed one black male had a
19 black object in his hand. I couldn't tell at the time
20 because I was probably 30 to 40 feet from him when I was
21 getting out of the car.

22 As he looked up and seen me, he handed the black
23 object back to the white male that was on the ground. I
24 approached them. The two black males looked at me and
25 walked across the street back to the house that was

Bradford James
Direct examination by Mr. Barnette

1 directly across the street. I asked the male that was on
2 the ground what had happened. He stated that they were
3 robbing him.

4 At that time the rest of his friends come back from
5 the back side of the building up to where I was at. They
6 gave the same account as to what had happened. I asked
7 them who had done this.

8 MS. JONES: Objection, Your Honor.

9 THE COURT: Overruled.

10 A I asked them who had done this.

11 THE COURT: When you, when you refer to somebody,
12 refer to who you're actually talking about though.

13 A Okay. I'm sorry, sir. I asked Mr. --

14 Q Did you talk to Mr. Bond?

15 A I did. Mr. Bond was actually on the ground. I was
16 speaking with Mr. Bond. I asked him who had done this.

17 MS. JONES: Your Honor, I would object again. I don't
18 think we've had a foundation for why this is not
19 inadmissible hearsay.

20 THE COURT: Overruled.

21 A I spoke with Mr. Bond. I asked him who had done this,
22 and I asked them to explain what had happened. He began to
23 tell me the story as far as the fact that they had
24 approached him as you've heard from them and what had
25 happened as far as the guy throwing him down from behind

Bradford James
Direct examination by Mr. Barnette

1 and standing over the top of him.

2 He stated that he identified himself as a
3 security-guard officer and told him he needed to see some
4 I. D. and went in his wallet and took the I. D. and was
5 going through his wallet.

6 He stated the second black male had come over to him
7 and the first black male had handed him the wallet and he
8 began going through the wallet while the first male held
9 him still with a knife.

10 At that point Officer Guest arrived on the scene.
11 Myself and Officer Guest walked across the street to where
12 they were still visible. They stated that they had not
13 went in the house. When I had talked to Mr. Bond, he
14 stated that they never went in the house, they'd still been
15 sitting on the front porch the whole time.

16 I walked over to talk to the two defendants, which is
17 Mr. Norris and Mr. Chiles.

18 Q Okay. When you got to them, did you talk to them?

19 A Yes, sir, I did.

20 Q And did y'all ask for consent to search?

21 A Yes, sir. I asked them. I advised them that the
22 gentleman had stated that they had robbed him and took his
23 items.

24 I asked him, I said, do you have anything that belongs
25 to the gentleman. Both parties said no. But Mr. Chiles

Bradford James
Direct examination by Mr. Barnette

1 reached in his pocket and pulled out a few cards and handed
2 them to Officer Guest. I'll let him testify as far as
3 that. But Mr. Norris -- I asked him did or --

4 Q Go ahead. So you asked him for consent to search.

5 A I asked Mr. Norris. I said, "Do you have anything on
6 you that belongs to Mr. Bond?" He stated no.

7 I said, "Do you care if I search just to make sure so
8 we can find out exactly what's going on?" He stated, "No,
9 sir. You can."

10 Upon searching Mr. Norris I located a black-handled,
11 what appeared to be a, kitchen knife in his pocket.

12 At that time we got statements from the rest of the
13 individuals involved. And Mr. Norris, as well as
14 Mr. Chiles, were placed under arrest.

15 Q Okay. Was this State's Exhibit 1, was this the knife
16 that you recovered from Mr. Norris?

17 A Yes, sir.

18 Q And do you see the person you recovered that knife
19 from here in the courtroom today?

20 A Yes, sir.

21 Q Can you identify him for us, please?

22 A Yes, sir. He's sitting on the right side of the
23 table, blue shirt and khaki pants and black glasses,
24 sitting beside the female attorney.

25 MR. BARNETTE: Your Honor, for the record let -- he's

Bradford James
Direct examination by Mr. Barnette

1 identified the defendant Norris in this case.

2 THE COURT: It shall.

3 Q And did you take this knife and show it to Mr. Bond at
4 a later time? And did they identify this knife as being
5 the knife that was used in the robbery?

6 A Yes, sir, they did.

7 Q And Officer Guest. Was he there when -- was you there
8 when he talked to defendant Chiles?

9 A Yes, sir. We were standing side by side on the front
10 porch of the residence.

11 Q And did he get consent to search also?

12 A Yes, sir, he did.

13 Q And did Officer Chiles recover some credit cards?

14 A Yes, sir. Officer Guest did.

15 Q And did you see those credit cards that he got from
16 defendant Chiles?

17 A Yes, sir.

18 Q And do you see defendant Chiles, the gentleman that he
19 got the credit cards from, in the courtroom today?

20 A Say that again.

21 Q Do you see the defendant he got the credit cards from
22 in the courtroom?

23 A Yes, sir, I do.

24 Q If you would, identify him, sir.

25 A The gentleman sitting on the left side of the table,

Bradford James
Cross-examination by Mr. Poole

1 white long-sleeve shirt, khaki pants, sitting beside the
2 male attorney with glasses.

3 MR. BARNETTE: Your Honor, for the record, it will
4 show that he's -- defendant Chiles identified by Officer
5 James.

6 THE COURT: It shall.

7 Q Did y'all place him under arrest later?

8 A Yes, sir, we did.

9 Q And you arrested -- both defendants were arrested.

10 A Yes, sir.

11 Q And this did occur in the city of Spartanburg.

12 A Yes, sir, it did.

13 Q In Spartanburg County.

14 A Yes, sir.

15 Q If you would, answer any questions Mr. Poole or
16 Ms. Jones may have for you.

17 CROSS-EXAMINATION

18 BY MR. POOLE

19 Q Officer James, I would just like to ask you a few
20 questions about your initial arrival at the scene.

21 Okay. You were the first officer to respond?

22 A Yes, sir.

23 Q Was anybody else in the car with you?

24 A No, sir, besides the dog.

25 Q Except?

Bradford James
Cross-examination by Mr. Poole

- 1 A My dog.
- 2 Q Yeah. That's right. Your K-9.
- 3 A Yes, sir.
- 4 Q Okay. And when you got there was there a car
5 illuminating the scene, or was there plenty of light
6 available?
- 7 A When I arrived my attention went directly to the
8 individual standing over the top of the other male who was
9 laying on the ground.
- 10 I wasn't looking at anywhere else except for, because
11 we had got a call. The disturbance of weapons was a friend
12 being held at knifepoint, was the description we got later
13 on. And so I was looking for the person being held at
14 knifepoint at the time.
- 15 Q So you saw an individual standing over someone on the
16 ground.
- 17 A Yes, sir.
- 18 Q And that individual was fully standing.
- 19 A Yes, sir.
- 20 Q All right. Now, and this is one person over another.
- 21 A Yes, sir.
- 22 Q All right. Did you see -- where was Mr. Chiles at
23 this point in time?
- 24 A He was standing maybe 3 to 5 feet beside Mr. Norris.
- 25 Q Okay. So you saw two, three people there, one on the

Bradford James
Cross-examination by Mr. Poole

1 ground, one standing over the other and Mr. Chiles about 3
2 to 5 feet away.

3 A Yes, sir. He was within arm's reach of Mr. Norris.

4 Q Okay. And you got out of your car.

5 A Yes, sir.

6 Q And you approached these three people.

7 A Yes, sir.

8 Q Okay. And now tell me what happened from then. Who
9 started moving in what direction?

10 A I asked them what was going on. Mr. Norris and
11 Mr. Chiles began backing away, because they actually were
12 closer to Dean Street. Mr. Bond was on the ground
13 almost -- I think it's like a driveway or a parking lot.
14 He was on the other side of them.

15 They began walking back across Dean Street back to the
16 residence that we actually later found them in.

17 Q Okay. So they started walking.

18 A Yes, sir.

19 Q And they were not running.

20 A No, sir.

21 Q And did they walk across the street?

22 A Yes, sir.

23 Q And did they stay on the front porch, or do you know?

24 A Yes, sir, they stayed on the front porch as far as I
25 know.

Bradford James
Cross-examination by Mr. Poole

1 Q So they did not attempt to run at any point in time.

2 A No, sir.

3 Q All right. Now, when you got upon this area where
4 there were three people, you saw, I believe you testified,
5 a black object that was given back to Mr. Bond.

6 A Yes, sir.

7 Q Okay. Now, what would that have been?

8 A It was later identified once I got closer to Mr. Bond
9 as being a cell phone.

10 Q Okay. So who gave him back the black object which was
11 later shown to be a cell phone?

12 A Mr. Norris.

13 Q All right. And how was it presented to him?

14 A In a very rapid manner as if I'm not supposed to have
15 this. It was kind of almost tossed to him as he was on the
16 ground.

17 Q Okay. Where was the wallet found?

18 A I never seen the wallet until later on.

19 Q Okay.

20 A The only object I seen was the cell phone.

21 Q And after anybody -- did anybody, any other officers,
22 come on the scene?

23 A Yes, sir. There were several other officers arrived.

24 Q Okay. Were you among the group that went to speak to
25 the two individuals on the other side of the street on

Bradford James
Cross-examination by Ms. Jones

- 1 North Dean Street?
- 2 A Yes, sir.
- 3 Q And how many other officers went over there?
- 4 A Just two.
- 5 Q Okay. And who was with you?
- 6 A Myself and Officer Guest who is sitting right behind
- 7 you.
- 8 Q Okay. And, and when you approached and started
- 9 talking with Mr. Norris and Mr. Chiles neither attempted to
- 10 run or escape.
- 11 A No, sir.
- 12 Q Is that right?
- 13 A You're correct.
- 14 Q All right. Thank you very much.
- 15 A Yes, sir.
- 16 CROSS-EXAMINATION
- 17 BY MS. JONES
- 18 Q Officer James, you stated earlier that you responded
- 19 and you had been given information that there was someone
- 20 who was being held at knifepoint.
- 21 A Yes, ma'am.
- 22 Q Okay. Do you have a copy of your incident report or
- 23 the incident report of the public safety office that was
- 24 generated?
- 25 A I do.

Bradford James
Cross-examination by Ms. Jones

1 Q Could you review briefly the first two lines of that?

2 A Which, my statement or the other officer's statement?

3 Q The incident report.

4 A I understand that, but I did a supplemental.

5 Q Your name and the name of Officer Guest.

6 MR. BARNETTE: Your Honor, I'm going to object at
7 this. Your Honor, I'm going to object at this point. If
8 he's reading -- I mean, obviously he can go to his
9 supplemental. But if it's another report, I don't know how
10 he can go refer to it.

11 MS. JONES: If I may try to lay some foundation about
12 his name being on it and whether it's his or not --

13 THE COURT: Okay.

14 Q The incident report at the bottom --

15 THE COURT: Just show it to him and ask him if that's
16 it.

17 MS. JONES: Okay.

18 Q I believe it's the same one you have got.

19 A It is.

20 Q Okay. Does that bear the name at the bottom of both
21 John Michael Guest and B. L. James?

22 A It does, because my supplemental is attached to that
23 incident report.

24 Q Okay. So you're not responsible for any of the
25 language that's on this.

Bradford James
Cross-examination by Ms. Jones

1 A Not the original. But if you look at the
2 supplemental, that's what I'm responsible for.

3 Q And show me what you are deeming as supplemental. The
4 short one?

5 A Yes, ma'am. The one that says B. James at the top of
6 it.

7 Q Well, I don't have one that says B. James at the top
8 of it. So if you'd let me look at it, that might be
9 helpful.

10 A It's the same thing. It just has the header on it.

11 Q No, it is not the same thing that I have.

12 MS. JONES: If Your Honor will give me just a moment
13 to review the documents, I have not seen this before.

14 (Pause.)

15 MS. JONES: Your Honor, may we approach?

16 THE COURT: Yes, ma'am.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: Let me ask the jury to please go to your
20 jury room. I have got one matter I need to address. And
21 I'll bring you back shortly. Don't discuss the case.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: All right. Now, what's the issue?

25 MS. JONES: Your Honor, in response to a question on

Bradford James
Cross-examination by Ms. Jones

1 cross Mr., excuse me, Officer James has now produced to me
2 two sheets, one of which is his narrative that he's
3 referred to to the -- in front of the jury that does, in
4 fact, bear his name.

5 I've never seen this document. I've never had a copy
6 of it. And in my quick review of it, at least within the
7 third line, there's already a discrepancy about what -- the
8 position Mr. Bond was in when he first got there.

9 We just need a few minutes to look at it, is all we
10 need if we could have that indulgence.

11 THE COURT: Okay.

12 (Pause.)

13 MS. JONES: Your Honor, on behalf of the defendant
14 Norris I'm ready to proceed. I've had plenty of time to
15 look at the document.

16 I would ask at some appropriate break that we be
17 allowed to have a copy of it since we only have one.

18 THE COURT: We can make a copy of it right now.

19 MS. JONES: Okay. Thank you, Your Honor.

20 (Pause.)

21 MS. JONES: Your Honor, may I ask the officer if I can
22 look through the rest of his documents to make sure there's
23 nothing else there I don't have?

24 (Pause.)

25 THE COURT: All right. Bring the jury in, please.

Bradford James
Cross-examination by Ms. Jones

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: Ms. Jones.

4 MS. JONES: Yes, sir. Thank you.

5 BY MS. JONES

6 Q Officer James, I've had the opportunity to review the
7 document you allowed me to look at. And I had asked this
8 question prior to the short break that we took.

9 Any description as your call being in reference to
10 someone being held at gunpoint is an issue that does not
11 derive from your statement, your supplemental. That's
12 something that Officer Guest will --

13 A I never said anything about a gun.

14 Q Okay. So if, if the original report says something
15 about a gun, that'll be something Officer Guest can
16 explain, not you.

17 A If that's something that he typed in his narrative,
18 that will be on his.

19 Q Okay. And, in fact, yours just says in reference to a
20 disturbance with a weapon.

21 A Yes, ma'am.

22 Q Pretty bland or innocuous in describing.

23 Now, let me ask you.. You said when you first arrived
24 that when you first pulled up you were 30 to 40 feet away
25 from the two black males and the young while male, correct?

Bradford James
Cross-examination by Ms. Jones

- 1 A Yes, ma'am.
- 2 Q And in your narrative you describe the white male as
3 being in a seated position. Is that true?
- 4 A A seated as in leaning back on his hands. He was
5 sitting down, but he was actually leaning back away from
6 the individuals.
- 7 Q Okay.
- 8 A So it was kind of in between.
- 9 Q Okay. But you said in your report that he was sitting
10 on the ground.
- 11 A Yes, ma'am.
- 12 Q Okay. And you indicate that there was some object
13 that you saw pass between the two that you later identified
14 as a cell phone, correct?
- 15 A Yes, ma'am. I did.
- 16 Q Okay. And you also indicated that upon your arrival
17 the two black males started -- I believe your original
18 description was backing away. But then you said they just
19 crossed Dean Street and went up on the porch of a home.
- 20 A Yes, ma'am.
- 21 Q Okay. And you later on went up there to that home
22 yourself, correct? .
- 23 A Yes, ma'am. I did.
- 24 Q Do you remember how much later that was?
- 25 A Maybe five to ten minutes at most.

Bradford James
Cross-examination by Ms. Jones

1 Q Okay. What transpired between the time they backed
2 away or turned and walked on the porch and when you
3 actually went to see them? What all did you do?

4 A I spoke --

5 Q -- task-wise?

6 A I spoke to the parties involved.

7 Q Okay. How many of them? There were about eight
8 teenagers there. I'm sorry. Young folks. They're not all
9 teenagers.

10 A I didn't speak with the rest of the individuals. The
11 only people I spoke with were Mr. Bond and Mr. Chiles and
12 Mr. Norris.

13 Q Okay. So --

14 A The other officers on scene spoke with the other
15 individuals alone.

16 Q And how many did you say there were? You never
17 actually gave us a figure for that. How many total
18 officers?

19 A I'd have to go back and pull from dispatch. I
20 couldn't tell you. I don't, I didn't keep a head count as
21 to why I was there, I mean.

22 Q Okay. Who, who was the supervisor during this call?

23 A During this call?

24 Q Uh-huh.

25 A Supervisors don't respond to every call.

Bradford James
Cross-examination by Ms. Jones

1 Q Well, that really wasn't the question. Was there a
2 supervisor there?

3 A Was there a supervisor on scene?

4 Q Uh-huh.

5 A He responded after everything had been taken care of,
6 yes.

7 Q Okay. Who was that?

8 A Lieutenant Art Littlejohn.

9 Q Okay. But he did not come until what point?

10 A Until the individuals had been placed under arrest.
11 He arrived on scene.

12 Q Okay. And during the course of your investigation
13 talking to Mr. Bond, crossing the street and talking to the
14 other individuals who were there waiting on the porch, you
15 don't have any recollection of how many other officers
16 arrived?

17 A No, ma'am.

18 Q What did they do? It sounds like you did everything.
19 Why did you need more officers?

20 MR. BARNETTE: Objection, Your Honor. That asks for
21 speculation from the witness.

22 THE COURT: Well, if he knows.

23 A Restate the question, please.

24 Q Okay. You indicated, first of all, that you not only
25 spoke to the victim but you spoke to the two gentlemen who

Bradford James
Cross-examination by Ms. Jones

1 were ultimately arrested and charged.

2 A Yes, ma'am.

3 Q Okay. What did the other responding officers other
4 than Officer Guest who we're going to hear from, I assume,
5 what did they do when they got there?

6 A I cannot speak on their behalf.

7 Q Okay. Did you see them?

8 A I seen them, yes, but my attention was not as to what
9 they were doing. My attention was as to what my job is and
10 talking to the people that were on the scene.

11 Q Okay. At any point while you were there talking to
12 whomever you were talking to, including the other officers,
13 did anybody check the building that the Frisbee had been
14 thrown on top of to see if anything had happened to it?

15 A That, I didn't myself.

16 Q Okay.

17 A Like I said, I can't speak for the other officers. I
18 did not.

19 Q Okay. Did anybody canvass any of the other buildings
20 to make sure nothing was amiss or wrong with the other
21 buildings?

22 MR. BARNETTE: Your Honor, I'm going to object at this
23 point. I don't know whether it's relevant in this case.

24 THE COURT: Overruled.

25 A Did any other officers? Yet, again, I can only speak

Bradford James
Cross-examination by Ms. Jones

- 1 for myself. I can't speak for everyone else.
- 2 Q Okay. Now, you're the first officer there.
- 3 A Yes, ma'am.
- 4 Q Does that give you some kind of control of the
- 5 situation?
- 6 A At that point, yes.
- 7 Q So it is your scene because you got there first.
- 8 A Yes, ma'am.
- 9 Q Okay. And if there was some part of investigating
- 10 this activity or this alleged crime that needed to be done
- 11 and you either couldn't or didn't have time to do it, you
- 12 could have told someone else to do it, correct?
- 13 A Yes, but the fact is that was not part of the call.
- 14 The call was not somebody breaking into a building. The
- 15 call was a disturbance with weapons.
- 16 Q Okay.
- 17 A In a disturbance with weapons I'm not going to search
- 18 every building in the area.
- 19 Q Okay. Now, so you arrived. And at that point,
- 20 shortly thereafter, Mr. Norris and Mr. Chiles go across the
- 21 street and wait on a porch --
- 22 A Yes, ma'am.
- 23 Q -- for five to ten minutes until you come and talk to
- 24 them.
- 25 A Yes, ma'am.

Bradford James
Cross-examination by Ms. Jones

- 1 Q Okay. And when you went to talk to them, you now
2 indicate or testify that the items that -- the card type
3 items that had Mr. Bond's name on them were still in the
4 possession of Mr. Chiles, correct?
- 5 A Yes, ma'am.
- 6 Q And a kitchen knife, paring knife, was in the
7 possession of Mr. Norris, correct?
- 8 A Yes, ma'am.
- 9 Q Five to ten minutes later when they're over there by
10 themselves, correct?
- 11 A Yes, ma'am.
- 12 Q Okay. In talking to them was any idea conveyed to you
13 that they had seen some people on the roof of a building
14 across the street?
- 15 A Yes, ma'am.
- 16 Q Okay. And at that point it didn't concern you that
17 you might need to check these buildings and see what was
18 going on with the building?
- 19 A Yet again, I can't rule out the fact that it didn't
20 happen, because I did not do it. I can't tell you what the
21 officers did, the other officers that were on the scene.
- 22 Q Okay. You didn't as the officer in charge of the
23 scene direct anybody to make sure that none of the
24 buildings had been bothered while -- or damaged or broken
25 into or anything while people were in and on top of the

Bradford James
Cross-examination by Ms. Jones

1 buildings.

2 A No, ma'am, because we were told that they were
3 recovering a Frisbee by both parties involved.

4 Q Okay. But had not one individual also told you they
5 were on top of a building where they should not have been?

6 A They told me they were on top of the building
7 recovering the Frisbee.

8 Q That's what the victim told you, correct?

9 A Yes, ma'am.

10 Q Okay. That's one of the parties.

11 MR. BARNETTE: Your Honor, I'm going to object at this
12 point. This has been asked and answered.

13 MS. JONES: And I'm moving on, Your Honor.

14 Q As the officer in charge you talked to Mr. Bond only
15 out of that group, correct?

16 A Yes, ma'am.

17 Q Okay. Then you went across the street where
18 Mr. Chiles and Mr. Norris had waited, and you talked to
19 them.

20 A Yes, ma'am.

21 Q And at that point were you the officer that made the
22 decision to accept one version over the other?

23 A I took into --

24 Q No. My question was merely were you the officer that
25 made the decision to accept one version.

Bradford James
Redirect examination by Mr. Barnette

1 A I didn't accept one version. I took all the
2 circumstances involved in the case.

3 Q Okay. Thank you.

4 MR. BARNETTE: A couple on redirect, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. BARNETTE

7 Q When you came to the scene did Mr. Norris come over to
8 you and tell you what happened?

9 A No, sir.

10 Q Did he stop you and say I need help?

11 A No, sir.

12 Q Where did he go? He went over on the porch?

13 A He left the scene and went across the street to the
14 other house.

15 Q Did they ever approach you to tell you what happened?

16 A No, sir.

17 Q You had to approach him.

18 A Yes, sir.

19 Q Did Mr. Chiles go to you and say what happened?

20 A No, sir.

21 Q Did you have to approach him?

22 A Yes, sir. We had to walk across the street to speak
23 to both of them.

24 Q And the call you received, you didn't receive a call
25 breaking in, did you?

John Michael Guest
Direct examination by Mr. Barnette

1 A No, sir.

2 Q What kind of call did you receive?

3 A We received a call for a disturbance with weapons.

4 And while we were in route we were given a second call that

5 they said a second caller called in and said their friend

6 was being held at knifepoint.

7 Q Thank you, sir.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you, sir.

10 MR. BARNETTE: Your Honor, we would ask for this
11 witness to be excused.

12 THE COURT: He may be.

13 (Whereupon, the witness was excused.)

14 MR. BARNETTE: I would like to call Officer Guest to
15 the stand, please.

16 JOHN MICHAEL GUEST, having
17 been first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BARNETTE

19 Q If you would, sir, give your full name for the record,
20 please.

21 A John Michael Guest.

22 Q And where do you work at, sir?

23 A Spartanburg Public Safety.

24 Q And what's your position there, sir?

25 A Patrol officer.

John Michael Guest
Direct examination by Mr. Barnette

1 Q Back on July 16th of 2008, was you working that
2 evening, sir?

3 A I was.

4 Q If you would, tell the jury. Did you receive a call?

5 A Yes. I had just come on shift. We received a call in
6 reference to a disturbance with weapons.

7 We actually received two calls. Later we found out it
8 was from the security guard at the hanger and one of
9 Mr. Bond's friends.

10 One call said knife, that a knife was involved; one
11 call said possibly a gun.

12 Several officers responded to the area around the
13 church there at Dean and Main and Saint John Street.

14 While I was on Saint John Street, Officer James called
15 out on Dean Street in front of 174 and stated that he
16 thinks he had found the disturbance.

17 I turned right onto Dean Street off of Saint John,
18 parked my vehicle right near Officer James, probably about
19 the length of this courtroom, 30 to 40 yards away from
20 them, and walked up the hill.

21 As I got out of the car just in the general motion of
22 getting out of the car, pointed to North Dean Street, which
23 is the residence that we found Mr. Norris and Mr. Chiles
24 at, is basically across the street.

25 As I was getting out of the car I noticed two

John Michael Guest
Direct examination by Mr. Barnette

1 gentlemen sitting on the porch. I didn't have any idea at
2 that time that they were involved.

3 After speaking with Officer James, he stated that
4 these young men -- it was Mr. Bond and all of his friends.
5 There were seven or eight individuals out there -- said
6 they were -- Mr. Bond had been robbed and the two gentlemen
7 had gone across the street to that house.

8 And myself and Officer James then proceeded to go
9 across the street and interview them.

10 Q And when you went over did you speak to them?

11 A We did. We asked both Mr. Chiles and Mr. Norris what
12 was, what was going on tonight.

13 They had mentioned something at that point of the kids
14 were up near the roof, around the roof, and they had -- we
15 asked them if they approached them or talked to them. And
16 he said, yeah, we're just trying to wait until y'all got
17 here. But he never -- they never -- they didn't volunteer
18 that information. We had to ask.

19 Q They never approached you or anything.

20 A No, no. They were sitting on the porch and never went
21 inside or left the porch from the time we got there.

22 Q And when you went over did you ask for consent to
23 search?

24 A We did. I asked them if they -- I asked Mr. Chiles.
25 I said, "Look. If you guys have anything on you that might

John Michael Guest
Direct examination by Mr. Barnette

1 belong to Mr. Bond over here, if you don't, they'll be on
2 their way. If you do, you know, we'll take care of it, do
3 you mind if we check." And he said absolutely.

4 And before I could even check he handed me a stack of
5 cards and business cards and credit cards and other items
6 that belonged to Mr. Bond.

7 Q So those were Mr. Bond's cards.

8 A Yes. They had his name on them, on several of the
9 cards, already.

10 Q Let me show you what has been marked as -- and the
11 jury has seen these. They're State's Exhibits, I believe,
12 9, 8, 7 and 6. Were those the cards you recovered from
13 Mr. Chiles?

14 A Yes, sir.

15 Q And all of those cards, who did they belong to?

16 A Andrew B.

17 Q And did you later return those to Mr. Bond?

18 A We did. After I photographed them, I gave them back
19 to him.

20 Q Okay. And during the time did Mr. James search
21 Mr. Norris?

22 A He did. He asked Mr. Norris for consent. Mr. Norris
23 complied and said absolutely. On his pockets he found a
24 black kitchen knife.

25 Q Okay. This is State's Exhibit No. 1, is what was

John Michael Guest
Cross-examination by Mr. Poole

1 found.

2 A Yes.

3 Q And in identifying that, that was the knife that was
4 used in the robbery.

5 A Yes. Once we had placed them under arrest we verified
6 with Mr. Bond that that was the knife. And he said, yes,
7 said that's it right there. And he said absolutely.

8 Q And you placed them under arrest.

9 A Yes. We detained them at the house before we even
10 moved them to our cars. We detained them there and showed
11 the knife. I showed the knife to Mr. Bond. And he said
12 that was it.

13 Q You never received any call about any break-ins or
14 anything like that.

15 A Absolutely not. It was all disturbance that we got.

16 Q All disturbance with weapons.

17 A Yes.

18 Q And please answer any questions Mr. Poole or Ms. Jones
19 may have.

20 CROSS-EXAMINATION

21 BY MR. POOLE

22 Q Officer Guest, were you the last officer on the scene?

23 A No. I was the second officer on the scene.

24 Q The second one. Okay. How many eventually responded?

25 A Five or six. I don't know. I didn't -- I don't know

John Michael Guest
Cross-examination by Mr. Poole

1 exactly who all was out there. I know a couple of, but I
2 don't know how many eventually showed up.

3 Q Are you and Officer James the only ones that went
4 across the street to, speak to Chiles, Mr. Chiles, and Mr.
5 Norris?

6 A We are.

7 Q Okay.

8 A At the same time that we -- other officers were
9 arriving, we left Mr. Bond and his friends in their
10 presence. And then we walked across the street.

11 Q Okay. Now, and it's your testimony that you asked
12 both of them if they had any property that belonged to
13 Mr. Bond.

14 A Right.

15 Q And it's your further testimony that Mr. Chiles
16 readily handed over to you a stack of cards.

17 A Right.

18 Q Okay. And he was, he was on the porch.

19 A Yes, sir.

20 Q He was the porch of this house.

21 A Yes, sir.

22 Q And he was on the porch when you got there.

23 A Yes, sir.

24 Q And he was on the porch when you talked to him.

25 A Yes, sir.

John Michael Guest
Cross-examination by Ms. Jones

1 Q And he didn't attempt to leave.

2 A No, not from the time that I had got on the scene.

3 Q Okay. And he did not attempt to flee or run away.

4 A No, sir.

5 Q And basically he complied with your request --

6 A Yes, sir.

7 Q -- without hesitancy.

8 A Yes, sir.

9 Q Okay. Thank you.

10 CROSS-EXAMINATION

11 BY MS. JONES

12 Q Officer Guest, after the decision was made that
13 Mr. Chiles and Mr. Norris were going to be arrested, did
14 you actually take them to jail? Do you recollect that?

15 A Yes, ma'am.

16 Q Did you take them both together?

17 A Yes, ma'am.

18 Q Okay. Do you recollect -- now, you indicated when you
19 got there in the process, I think you said, of getting out
20 of the car, you noticed that these gentlemen were already
21 across the street, correct?

22 A Yes. They were already on the porch.

23 Q On the porch where they remained until you took them
24 off in your car to the jail, correct?

25 (No response.)

John Michael Guest
Cross-examination by Ms. Jones

1 Q Okay. During that time and during your discussions
2 with Mr. Norris did he indicate to you anything about
3 seeing individuals on the roof of a building?

4 A We had asked him why he was over the street with the
5 boys. And he said that they were -- one of them was up on
6 the building and, "We were just making sure they didn't
7 leave until y'all got here."

8 Q Okay. Did he ever use the word trespassing? Do you
9 remember that?

10 A Not that I remember.

11 Q Okay. Did he indicate to you --

12 MR. BARNETTE: Your Honor, I'm going to object at this
13 point. May we approach the bench for a second?

14 THE COURT: Yes.

15 (Bench conference held off the record in the presence
16 of the jury but out of the hearing of the jury.)

17 THE COURT: Objection is sustained.

18 Q Again, Officer, excuse me. But you indicated you were
19 the second officer on the scene and there were five or six
20 other officers.

21 Do you recollect if -- what the other officers did
22 while you and Officer James were basically talking to all of
23 the parties involved?

24 A To clarify, around five or six. I don't -- I didn't
25 count them. It was a hand full, half a dozen.

John Michael Guest
Cross-examination by Ms. Jones

1 Q Yes, sir.

2 A When we went across the street, I know that we left
3 Mr. Bond and the other witnesses in their presence. And I
4 would assume they were speaking to them on what had
5 happened and getting more details and preparing to take
6 written statements from them, that kind of thing.

7 Q Okay. But you weren't involved in that so you
8 don't --

9 A I was not involved in that, no.

10 Q Okay. Did you yourself conduct any sweep or check of
11 the building that anyone -- that the building that Mr. Bond
12 was in front of that may have at one time had a young
13 person on top of the roof that night?

14 A Did I?

15 Q Did you check it?

16 A Did I check the building?

17 Q Yeah.

18 A No.

19 Q Okay. Did you see anybody else check the building?

20 A For the brief period of time that I was over near the
21 building, I didn't. But most of my attention and time was
22 over across the street.

23 Q Okay. Thank you, Officer.

24 MR. BARNETTE: No further questions. We would like
25 the witness to be excused, Your Honor.

1 THE COURT: You may step down.

2 (Whereupon, the witness was excused.)

3 MR. BARNETTE: That would be the state's case, Your
4 Honor.

5 THE COURT: Ladies and gentlemen, that is all of the
6 testimony or other evidence to be offered by the state, at
7 least in their case in chief.

8 Before we go further I've got some matters I'll need
9 to address. So I'll ask you to please go to your jury
10 room. Do not yet discuss the case. I'll bring you back
11 shortly to continue with the trial.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: All right. Any motions or other matters
15 to address before we continue?

16 MR. POOLE: Your Honor, on behalf of the defendant
17 Kenneth Chiles I would make a motion. Of course our first
18 motion is that, renew our prior motion on the in-court
19 identification and its attendant presentation of that
20 matter. Renew that motion.

21 And we move for a motion for a directed verdict of not
22 guilty on the part of this defendant. Viewing the light --
23 the evidence most favorable to the state, in the light most
24 favorable to the state, it's our position that Mr. Chiles
25 was removed from the scene of this alleged crime, that he

1 was by various accounts at the beginning 20 to 30 feet
2 away, he appeared on the actual proximity of the scene
3 minutes later, and he was not a participant in the alleged
4 incident in that he did not have any weapon, was not acting
5 in an intimidating or antagonistic fashion, and that later
6 on they found some items that belonged to the victim in
7 this case in his possession, which merely indicates that he
8 was present nearby. His mere presence, I don't think, is
9 enough to -- it's not evidence to the degree that it should
10 be submitted to the jury.

11 It is our position there's no evidence whatsoever that
12 indicates that, that he was a participant in this alleged
13 incident of armed robbery.

14 THE COURT: Well, clearly, there's evidence to
15 indicate that he's more than merely present.

16 But considering the evidence that has been presented
17 and all reasonable inferences that might be drawn, I do
18 find there is sufficient evidence to establish that the
19 defendant Chiles was acting in concert with defendant
20 Norris at the time of this event; and therefore your motion
21 for a directed verdict on that ground is denied.

22 MS. JONES: Your Honor, for the record, I also on
23 behalf of the defendant Norris renew our motion regarding
24 the admissibility of the in-court identifications. And
25 also I make for the record a motion for a directed verdict

1 based on the insufficiency of the evidence. Thank you.

2 THE COURT: All right. Each of those motions are also
3 denied.

4 Any others?

5 MR. POOLE: No, sir.

6 MS. JONES: No, sir.

7 THE COURT: Have each of you, Mr. Poole and Ms. Jones,
8 talked to your clients about their right to testify or not?

9 MR. POOLE: Yes, sir, I have.

10 THE COURT: And does Mr. Chiles indicate to you he
11 wishes to testify or not?

12 MR. POOLE: Yes, sir. But could I have just a few
13 more minutes to go over that with him in light of the
14 evidence that's been presented since the last conversation
15 I've had with him on that topic?

16 THE COURT: Okay. Well, let me discuss with them
17 their rights.

18 Mr. Chiles and Mr. Norris, each of you, do you
19 understand that now that you have been accused of a crime,
20 now that the case has gone to trial, you have an absolute
21 right to remain silent?

22 In other words, nobody can make you testify; nobody
23 can require that you take the witness stand; nobody can
24 ever require that you make any statement or answer any
25 questions that relate to the charge that has been brought

1 against each of you.

2 At the same time, if you wish to testify or if you
3 wish to provide evidence, now is the only opportunity that
4 you will have to do so.

5 In other words, you can't wait until after the jury
6 has rendered a decision and if that decision does not go to
7 your liking, you can't change your mind about your
8 decision. It can't be reversed.

9 So now is the time that you must make a determination
10 as to whether or not you will testify during the trial of
11 this case, as well as whether or not you will call any
12 other witnesses or produce any other evidence in the case.

13 Mr. Chiles, do you understand that it is your decision
14 as to whether or not you will testify?

15 DEFENDANT CHILES: Yes, sir.

16 THE COURT: Do you understand that nobody can require
17 you or make you testify?

18 DEFENDANT CHILES: Yes, sir.

19 THE COURT: Do you understand that you have to make
20 the decision, but you have that choice, but you only have
21 one opportunity to testify if you want to?

22 DEFENDANT CHILES: Yes, sir.

23 THE COURT: And, Mr. Norris, do you understand each of
24 those facts also?

25 DEFENDANT NORRIS: Yes, sir.

1 THE COURT: Have each of you had time to discuss with
2 your lawyers the advantages and disadvantages of
3 testifying, as well as not testifying?

4 Mr. Chiles.

5 DEFENDANT CHILES: As my lawyer said, I would like to
6 go over with him if it's possible.

7 THE COURT: Well, you can. But up to this point have
8 you discussed with him the advantages and disadvantages of
9 testifying, as well as not testifying?

10 DEFENDANT CHILES: Yes, sir. We have.

11 THE COURT: Mr. Norris, have you discussed with Ms.
12 Jones the advantages and disadvantages of testifying, as
13 well as not testifying?

14 DEFENDANT NORRIS: Yes, sir.

15 THE COURT: And I understand right now neither of you
16 have reached a decision about whether or not you'll
17 testify.

18 Is that true?

19 DEFENDANT CHILES: I want to testify.

20 THE COURT: Well, I thought you had to talk to your
21 lawyer first.

22 DEFENDANT CHILES: I want to go over some things with
23 him first on my testimony.

24 THE COURT: Okay. Well, in any event, you understand
25 it's your choice.

1 DEFENDANT CHILES: Yes, sir.

2 THE COURT: And I'm going to take a break and you're
3 going to talk to your lawyer. When we come back you'll let
4 me know if you're going to testify or not.

5 DEFENDANT CHILES: Yes, sir.

6 THE COURT: Mr. Norris, do you understand the same
7 thing?

8 DEFENDANT NORRIS: Yes, sir.

9 THE COURT: Discuss it with your lawyer. When I come
10 back we'll talk about whether you will or will not testify.

11 All right. Let's take 15 minutes.

12 (Whereupon, a recess was taken.)

13 THE COURT: Mr. Poole, have you and Mr. Chiles had
14 plenty of time now to discuss whether or not he is going to
15 testify?

16 MR. POOLE: Yes, sir, we have.

17 THE COURT: And what does he indicate to you he wishes
18 to do?

19 MR. POOLE: He indicates that he wishes to testify.

20 THE COURT: Is that right, Mr. Chiles?

21 DEFENDANT CHILES: Yes, Your Honor.

22 THE COURT: Do you understand it's your choice and
23 only you can make it?

24 DEFENDANT CHILES: Yes, sir.

25 THE COURT: And you've made the decision to testify?

1 DEFENDANT CHILES: Yes, sir.

2 THE COURT: Have you made that decision of your own
3 free will and accord?

4 DEFENDANT CHILES: Yes, sir.

5 THE COURT: Anybody pressure you into it or force you
6 into it?

7 DEFENDANT CHILES: No, sir.

8 THE COURT: Okay. All right. What about Mr. Norris,
9 Ms. Jones?

10 MS. JONES: Mr. Norris at this point indicates he
11 wishes to testify.

12 But as I indicated to the Court in chambers, I would
13 like to have the opportunity briefly at the conclusion of
14 Mr. Chiles' testimony to confer again briefly and see if
15 his opinion has changed if that's logistically possible.

16 THE COURT: All right. Mr. Norris, right now it is
17 your belief that you will testify?

18 DEFENDANT NORRIS: Yes, sir.

19 THE COURT: All right. And is that a decision that
20 you've made of your own free will and accord?

21 DEFENDANT NORRIS: Yes, sir.

22 THE COURT: And do you understand it's your decision?
23 Only you can make it. Your lawyer can't make it for you.
24 Only you can make it.

25 DEFENDANT NORRIS: Yes, sir.

1 THE COURT: Do you understand you can make it -- you
2 can testify or not testify? It's totally up to you.

3 DEFENDANT NORRIS: Yes, sir.

4 THE COURT: You can change your mind. I'm not trying
5 to require you to tell me right this minute. But what I'm
6 going to assume is after Mr. Poole gets through presenting
7 Mr. Chiles' case, it's going be your turn to testify and/or
8 present other evidence.

9 So if you take the witness stand, I'll assume that you
10 made that decision on your own. And if you don't take the
11 witness stand, I'm going to assume you made that decision
12 on your own. Is that fair?

13 DEFENDANT NORRIS: Yes, sir.

14 THE COURT: Because you understand it is your
15 decision, only you can make it.

16 DEFENDANT NORRIS: Yes, sir.

17 THE COURT: All right. Bring the jury pack please,
18 sir.

19 MR. BARNETTE: Your Honor, one, one matter we might
20 need to take up in the course of their testifying.

21 I understand Mr. Chiles, in the last ten years he's
22 been convicted of criminal domestic violence in the third
23 degree or third offense and shoplifting. I'll probably ask
24 him about those charges. Obviously, they're impeachable
25 crimes.

1 And for Mr. Norris, he has been in the last ten years
2 found guilty of common-law robbery, as well as burglary
3 second. I'll be asking him about those crimes as possible
4 impeachment. I just wanted to make sure there was part of
5 the record. And I told Ms. Jones and Mr. Poole that and --

6 THE COURT: All right. Mr. Chiles has been convicted
7 of shoplifting and criminal domestic violence third offense
8 within the past ten years?

9 MR. BARNETTE: That's correct, Your Honor.

10 THE COURT: Okay. Mr. Poole, do you contend that
11 either or both of those should not be permitted for
12 impeachment purposes?

13 MR. POOLE: Your Honor, I think that they are
14 permitted under the law. I think, as you know, do you have
15 a conviction for shoplifting, do you have a conviction for
16 criminal domestic violence.

17 THE COURT: And the reason criminal domestic violence
18 is an impeachable offense, because it is a third offense
19 which carries more than one year.

20 MR. BARNETTE: That's correct, Your Honor.

21 THE COURT: First and second do not carry more than a
22 year.

23 MR. BARNETTE: At that time back in 2003, that's
24 correct, Your Honor.

25 THE COURT: All right. Well, are you intending simply

1 to ask him if he has been convicted of criminal domestic
2 violence, or criminal domestic violence third offense?

3 MR. BARNETTE: I would like to ask the third. But I
4 understand if the Court limits me to criminal domestic
5 violence. The third would qualify as an impeachable
6 offense.

7 THE COURT: But only because of the two priors?

8 MR. BARNETTE: That's correct, Your Honor.

9 THE COURT: But the two priors are not admissible.

10 MR. BARNETTE: That's correct.

11 THE COURT: All right. Than we'll limit it to the
12 fact that he has been convicted of criminal domestic
13 violence, not what offense it might be.

14 MR. BARNETTE: Yes, sir.

15 MR. POOLE: May it please the Court. I'll be glad to
16 ask him.

17 THE COURT: About the third offense?

18 MR. POOLE: No, sir, about his record, shoplifting and
19 C. D. V.

20 THE COURT: Okay. All right. Anything else?

21 Ms. Jones, do you have any convictions that Mr.
22 Barnette has referenced with Mr. Norris that you contend
23 should not be permitted for impeachment purposes?

24 MS. JONES: No, sir, Your Honor. The two that Mr.
25 Barnette has spoken of, he has provided me documentation.

A. C. Worthy
Direct examination by Mr. Poole

1 And to clarify for the Court, these will be the only
2 two that are qualifiable and impeachable. Is that correct?

3 MR. BARNETTE: That is within the last ten years, Your
4 Honor. Obviously, both of them have records beyond that,
5 but I understand under the rules I can't ask them about
6 that.

7 MS. JONES: And that would be a 1996 common-law
8 robbery and a 1995 burglary second nonviolent.

9 THE COURT: Okay. All right. Bring the jury in,
10 please.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: All right. Ladies and gentlemen, as you
14 know, the state has rested in their presentation. So we
15 will now proceed with any to be offered by the defendants.
16 Mr. Poole.

17 MR. POOLE: May it please the Court. The defense for
18 Mr. Chiles calls Mr. A. C. Worthy to the stand.

19 A. C. WORTHY, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. POOLE

22 Q You are Mr. A. C. Worthy?

23 A Yes, sir.

24 Q And, Mr. Worthy, where do you live right now?

25 A

A. C. Worthy
Direct examination by Mr. Poole

- 1 Q Okay. And do you work during the day?
- 2 A Yes, sir.
- 3 Q Where do you work?
- 4 A At --
- 5 THE COURT: Excuse me. Let me ask you to get closer
- 6 to that microphone, please.
- 7 A At Civitan Rehabilitation Center.
- 8 Q Is that the Civitan Rehabilitation Center?
- 9 A Yes, sir.
- 10 Q Okay. And, Mr. Worthy, have you lived in Spartanburg
- 11 County all of your life?
- 12 A Yes, sir.
- 13 Q Okay. And do you know Mr. Kenneth Chiles?
- 14 A Yes, sir.
- 15 Q And how do you know him?
- 16 A As a friend. We used to sit out there in the field
- 17 where we used to stay at and drink beer and stuff. Been
- 18 doing it, what, a couple of years.
- 19 Q All right. And were you at his house on the late
- 20 night hours of July 16, 2008?
- 21 A Yes, sir.
- 22 Q You're going to need to speak up just a little bit
- 23 louder. Okay?
- 24 A Yes, sir. I were.
- 25 Q Okay. And speak as clearly as you can. Okay?

A. C. Worthy
Direct examination by Mr. Poole

1 A Yes, sir.

2 Q So were you at Mr. Chiles' house on the late night --
3 in the late night hours of July 16, 2008?

4 A Yes, I were.

5 Q Okay. What were y'all doing there?

6 A Mr. Chiles was laying down on the bed looking at the
7 wrestling that night.

8 Q Well, let me back up before we get to that.

9 Were you spending the night there?

10 A Yes, sir.

11 Q What time did you get there that day?

12 A About 8:00.

13 Q About 8:00?

14 A Yes, sir.

15 Q So what did y'all do between 8:00 and, say,
16 10:00 o'clock?

17 A Well, we sat there and drunk a few beers and was
18 watching wrestling that night.

19 Q Drank some beers and watched wresting.

20 A Yes, sir.

21 Q All right. And this was at Mr. Chiles' home?

22 A Yes, sir.

23 Q Do you know his address?

24 A Not really. I don't know the address, but I know he
25 stay on North Dean Street.

A. C. Worthy
Direct examination by Mr. Poole

- 1 Q All right. And what did you do after you got through
2 drinking a few beers and watching wrestling?
3 A Well, after wrestling went off I turned on the news.
4 Then I heard Mr. Norris come to Mr. Chiles' window and
5 called him.
6 MR. BARNETTE: Objection, Your Honor. Hearsay.
7 THE COURT: Sustained.
8 A And Mr. --
9 THE COURT: No. You can't answer it.
10 Q Okay. All right. Did Mr. Norris come into the house?
11 A No, sir. He stood outside.
12 Q Do you know the sound of his voice?
13 A Yes, sir.
14 Q Okay. Now, you can't say what he said. Okay?
15 A All right.
16 Q Mr. Norris said.
17 A Yes, sir.
18 Q But as a result of what was said, what did Mr. Chiles
19 do?
20 A He didn't do nothing. He laid on the bed for the time
21 being.
22 Q Okay. And what happened then?
23 A And Mr. Norris came and said Kenneth --
24 MR. BARNETTE: Objection, Your Honor. Hearsay.
25 THE COURT: You're not going to be able to testify to

A. C. Worthy
Direct examination by Mr. Poole

1 what somebody else said. They'll have to say it
2 themselves.

3 THE WITNESS: Yes, sir.

4 Q Okay. What happened? Did Kenneth say anything in
5 response to any statement made by Mr. Norris?

6 MR. BARNETTE: Objection, Your Honor. Hearsay.

7 A No, sir.

8 THE COURT: Sustained.

9 Q As a result of the, a remark made by Mr. Norris, what
10 did Mr. Chiles do?

11 A He, like I said he, laid on the side of the bed, and
12 he stood up and asked Mr. Norris what did he want.

13 MR. BARNETTE: Objection, Your Honor. Hearsay.

14 MR. POOLE: That's Mr. Chiles said.

15 THE COURT: That's hearsay too, isn't it? It's an
16 out-of-court statement.

17 Q What did Mr. Chiles do as a result of the exchange?

18 A Nothing. He just sat there on the side of the bed and
19 kept asking Mr. Norris what did he wanted.

20 Q Okay. And then was Mr. Chiles in bed ready for sleep?

21 A Yes, sir.

22 Q And what did he do? Did he put on some clothes?

23 A Yes, sir. He got up and put his clothes on and then
24 went to the door to see what Mr. Norris wanted.

25 And then when Mr. Norris said that some guys were

A. C. Worthy
Direct examination by Mr. Poole

1 across the street --

2 MR. BARNETTE: Objection, Your Honor. Hearsay.

3 Q Okay. All right. So he got up out of bed.

4 A Yes, sir.

5 Q He was ready for sleep.

6 A Yes, sir.

7 MR. BARNETTE: Objection, Your Honor. He's leading
8 the witness now.

9 MR. POOLE: Your Honor, could you let me lead this
10 particular witness to a certain degree?

11 THE COURT: He's already testified to it. Go ahead.

12 Q All right. Did he -- what -- did he put on clothes?

13 A He got up and put his clothes on and went and took,
14 asked Mr. Norris what did he need, wanted. And Mr. Norris
15 said that he wanted to use the telephone.

16 MR. BARNETTE: Objection, Your Honor.

17 THE COURT: You can't.

18 Mr. Worthy, you're not going to be able to testify. I
19 know this is difficult for you to understand, but that's
20 just the rules.

21 You can't testify as to what anybody else said. Now,
22 you can testify as to what they did as a result of what
23 they heard. You can testify as to what action they took,
24 you know, what you saw them do. But you can't testify as
25 to what they said. Okay?

A. C. Worthy
Direct examination by Mr. Poole

- 1 THE WITNESS: Yes, sir.
- 2 A Well, he got up and started to put his clothes on and
3 went to the door. And after that I don't know what
4 happened, after that.
- 5 Q Did it take a period of time for him to put his
6 clothes on?
- 7 A No, sir.
- 8 Q It didn't take --
- 9 A It took about five minutes to put his clothes on.
- 10 Q About how long?
- 11 A About five or ten minutes to put his clothes on.
- 12 Q Okay. And what kind of clothes did he put on?
- 13 A Some, I think it was, blue jeans, I believe.
- 14 Q Okay. Did he put a shirt on?
- 15 A Yes, sir.
- 16 Q Or do you know?
- 17 A I think he put a shirt on. I'm not for sure.
- 18 Q Did he have a cell phone with him?
- 19 A If he had it, he had it on his dresser.
- 20 Q Okay. All right. After he left his house, do you
21 know what happened?
- 22 A No, sir. Mr. Chiles come back in to get the cell
23 phone, I think, what Mr., what Mr. Norris used.
- 24 Q Okay. Mr. Chiles came back into the house?
- 25 A Yes, sir.

A. C. Worthy
Cross-examination by Mr. Barnette

1 Q After he left one time?

2 A Yes, sir.

3 Q And what happened when he came back into the house?

4 A He picked the cell phone up.

5 Q Okay.

6 A Kept that for Mr. Norris to use.

7 Q All right. Did you know anything about what else
8 happened after that?

9 A No, sir.

10 Q Do you know anything about the investigation?

11 A No, sir. The only thing that I remember when I was
12 sitting looking at the wrestling when the officers come
13 back, and they had Mr. Chiles with them in handcuffs.

14 Q Okay. Thank you, Mr. Worthy.

15 THE COURT: Ms. Jones.

16 MS. JONES: I don't have any questions. Thank you.

17 THE COURT: Okay.

18 CROSS-EXAMINATION

19 BY MR. BARNETTE

20 Q Yes, sir. Y'all was drinking beer?

21 A Yes, sir.

22 Q What kind of beer was y'all drinking?

23 A Mr. Chiles was drinking Bud Light and I had Colt 45.

24 Q And did y'all have a case, did y'all have a 6-pack?

25 What did y'all have?

A. C. Worthy
Cross-examination by Mr. Barnette

1 A No, sir. Just he had just came there, a 45 bottle.

2 Q And you didn't see what happened outside or anything
3 like that.

4 A No, sir.

5 Q And you said that Mr. Chiles had a cell phone.

6 A Yes, sir.

7 Q Did you ever talk to either one of these officers?

8 A No, sir. As a matter of fact, I just, the only person
9 I think I saw was one of the officers came to the door with
10 Mr. Chiles in handcuffs.

11 Q Let me ask you a question.

12 You never did pay any attention to any of the police
13 officers that came outside?

14 A Well, the door kind of shut, was pushed up when the
15 officer came to the door.

16 Q No. What I mean is you didn't hear any of the sirens
17 or any police officers coming in or anything like that?

18 A No, sir. The only thing, I just heard some guys on
19 the porch talking.

20 Q Thank you, sir.

21 THE COURT: You may step down.

22 MR. POOLE: We call Mr. Kenneth Chiles to the stand.

23

24

25

Kenneth Wayne Chiles
Direct examination by Mr. Poole

- 1 KENNETH WAYNE CHILES, having
2 been first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. POOLE
4 Q Your name, please, sir.
5 A Kenneth Wayne Chiles.
6 Q And, Mr. Chiles, how old are you?
7 A I'm 47 years old.
8 Q Okay. Do you live here in Spartanburg County?
9 A Yes, sir.
10 Q Have you always lived in Spartanburg County?
11 A Yes, sir.
12 Q Okay. Are you married?
13 A No, sir.
14 Q How much education do you have?
15 A I went to high school, up to the 11th grade, and went
16 back and got my G. E. D.
17 Q Okay. Do you have any children?
18 A I have a daughter that go to U. S. C., and a son.
19 Q How old are they?
20 A My daughter is 20, right at 20, and my son is 17.
21 Q Okay. Do you have a good relationship with them?
22 A Yes, sir, I do.
23 Q Now, how about your work history? Where have you
24 worked for the past 25 years?
25 A The past 20 or 25 years I been at a restaurant called

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 Piccadilly Restaurant. I started out with them when they
2 was at the mall. They left the mall and went to another
3 location right up above Sams, right below Sams. A little,
4 almost 19 years, I've been with them.

5 Q Okay. Were you with them in July? Were you working
6 there in July of 2008?

7 A I was working there up until this incident happened.

8 Q Okay. And so you were with the Piccadilly when they
9 were at once upon a time Westgate Mall. And then they
10 moved. When was that, about ten years ago?

11 A Yeah, something like that.

12 Q They moved near --

13 A Right below Sams, right across the street from
14 Applebee's out there off of Reidville Road, out through
15 that way, Westgate area.

16 Q Okay. All right. Were you ever in the military?

17 A No, sir, not in military.

18 Q Do you have family, other family, in Spartanburg
19 County other than your children?

20 A Yeah. I have my mother, her brother, uncles and
21 cousins. I've got, I have a few family.

22 Q Okay. And while we're on your background, is it true
23 that within the past ten years you have obtained a
24 conviction of shoplifting and criminal domestic violence?

25 A Yes, sir. I have.

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 Q Okay. Is that something you're proud of?

2 A No, sir. I'm not. At the time I was going through a
3 few things, alcohol, so far. But since then I've gotten
4 better, gotten myself better, and gotten into the church.

5 Like I said, since this incident came up, I had a
6 decent job. After the incident happened I lost that job
7 and also the place, my place, of residence. So I'm not,
8 you know, this really, this incident really set me back.

9 Q Okay. You lost your home?

10 A I lost my home, yeah.

11 Q Where was your home located?

12 A Right there at Dean Street.

13 Q How long had you lived there before July 16 of 2008?

14 A About three to four years.

15 Q Okay. All right. What's your relationship with
16 Carnie Norris?

17 A Me and Carnie, I consider we good associates. Well,
18 we went to school together. We, we don't hang out
19 together. I just know him. He stayed down the street from
20 me. I see him, I say hello, and he speak back, you know.
21 We don't, we don't hang out or nothing, you know. We just
22 have a relationship where we see each other and speak to
23 each other.

24 Q Okay. Now, on this particular night in question did
25 you see Mr. Norris?

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 A Yes, I did.

2 Q When did you first see him?

3 A I didn't -- actually, I didn't see him until that
4 night when he came to my house and knocked on the door.

5 Q Okay. What happened?

6 A Me and Mr. -- me and a friend of mine was watching T.
7 V.

8 Q Who was your friend? What's his name?

9 A Oh, A. C. -- a. C. Worthy, the one that just
10 testified. Like he said, we drunk a couple of beers and
11 watching, watching, watching T. V.

12 I happened to fall asleep. I don't know. He was up
13 after I did. I think he stayed up a few, a little later.
14 But I had fell asleep when, you know, I heard a knock on
15 the door. I went to the door and it was Mr. Norris. You
16 know, he told me --

17 MR. BARNETTE: Objection, Your Honor.

18 MR. POOLE: Your Honor, this is not hearsay and it's
19 not offered for the truth of the matter asserted.

20 THE COURT: Well, let me see y'all just a minute.

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 THE COURT: Overruled.

24 Q What did Mr. Norris say to you?

25 A He told me it looked like somebody was trying to break

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 into a building, could I get my cell phone or possibly
2 could he use the phone to try to --

3 Q Hold on just a minute, Mr. Chiles. I'm hard of
4 hearing.

5 A Yes, sir.

6 Q And could you speak a little slower and a little
7 louder, please?

8 A Okay. He said it looked like somebody was breaking
9 into a building across the street. He said he observed
10 somebody down on top of the building. And at the time I
11 didn't have on too much clothes. So I said, well, hold on
12 a minute, let me go and get my phone and put on something,
13 you know, so I can come, come back out and see what's going
14 on. And he said okay.

15 So I went back into the, my bedroom, put on a pair of
16 shorts. A. C. thought I had on a pair of pants, but
17 actually it was a pair of shorts I throwed on and a
18 t-shirt.

19 I went outside. I didn't even put my shoes on. I was
20 barefooted. I went outside barefooted. I noticed two,
21 might have been two, or three guys on top of the building.

22 And the tree was shaking. So when I went over there
23 to see what was going on, well, actually I thought, wait a
24 minute, I thought by the time I went and got my phone and
25 went back out, he had one of the guys, what's his name,

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 Andrew , said he was sitting on the ground. And he had his
2 hand on his shoulder. And he, he asked me would I hold his
3 I. D. in case he tried to run, that this was one of the
4 guys that was on top of the roof.

5 So me, me, you know, knowing, I just grabbed like his
6 I. D. and just stuck it in my pocket. I said okay.

7 He said have you called 9-1-1 yet. I said no, I'm in
8 the process of calling them. And at that time one of the
9 officers was coming from Saint John and one officer was
10 coming down Dean Street the other way. So I never did get
11 to make the phone call. The officer was already en route.

12 Q Okay. Did you have a cell phone with you?

13 A Yeah, I had a cell phone with me. That's -- he said
14 something, like I heard him say something about did he call
15 for backup. He didn't say -- I didn't -- he didn't say
16 nothing about calling for backup. He asked me did I call
17 9-1-1. That's what he said.

18 Q Okay. Mr. Norris said did you call 9-1-1.

19 A Yeah. He asked me did I call 9-1-1 yet.

20 Q What was your impression of what was going on right
21 then?

22 A I was -- it's 12:30, 12:00 or 12:30 at night. You
23 know, I'm, I don't know what's going on. I'm thinking I'm
24 making a citizen's arrest. I didn't know it was just kids.
25 You know, if that -- if I had knowed it was just kids

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 playing, I would have stayed in my bed. I never would have
2 went out there.

3 And, and Mr. Bond, I'm sorry that happened to you like
4 that. But, like I say, I didn't know what was going on. I
5 just didn't know what was going on.

6 Q Okay. Did you have a weapon with you?

7 A No, sir, I didn't have a weapon. The only thing I had
8 on me was my cell phone.

9 Q All right. Did you obtain some credit cards and other
10 small papers from Mr. Bond?

11 A When I, when I went across the street, that was what
12 Mr. Norris had, had handed me. He had a stack of cards.

13 I hadn't even seen a wallet. I couldn't tell you what
14 color it is or what it looked like. He said, he just said
15 hold this I. D. until the police come. I didn't even look
16 at it. I didn't go through it or nothing. I just stuck it
17 in my pocket.

18 Q Okay. And you indicated that you stuck your -- you
19 put your left hand as if you were holding something in that
20 hand. And you put left front. Did you put them in your
21 left front pocket?

22 A I believe this pocket here, yes.

23 Q Okay. Of your pants.

24 A Yeah.

25 Q Okay. And did you say anything to Mr. Bond who was on

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 the ground at that time? Did you say anything?

2 A No, I didn't say nothing to him. I didn't even go
3 near him after I --

4 Q Did you --

5 A After I, after I had, after he gave me the cards, I
6 just kind of just laid back to see what was going to
7 happen, because the police was coming and I wanted to tell
8 them my version of the story of what happened.

9 Q Okay. Well, what happened when the police got there?

10 A When the police came, we talked to about two or three
11 polices, and we hadn't even crossed the street yet. I
12 heard. I heard them say we, we crossed the street without
13 even talking to the police. We talked to two or three
14 polices before they even, you know, told us we can go on.
15 That's when we went across the street.

16 Q Okay. So you walked across the street. And did you
17 stand on your porch?

18 A Yeah. Me and Mr. Norris stood on the porch.

19 Q Okay. And what happened then?

20 A At that point the officer behind you came up and asked
21 me about the cards. And I reached in my pocket and I gave
22 it to him without any hesitation. I said, oh, okay, here
23 his I. D. is right here. I didn't know nothing about no
24 bank cards or nothing like that. I just considered it to
25 be I. D.

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 Q Okay. All right. So you cooperated with the officer
2 who asked you if you had any property or anything that
3 belonged to Mr. Bond.

4 A Yes, sir.

5 Q Is that right?

6 A Yes, sir. I did.

7 Q Okay. Now, during the course of my representation of
8 you, Mr. Chiles, I have shared with you and gone over
9 what's called discovery materials.

10 A Yes, sir.

11 Q Is that true?

12 A Yes, sir.

13 Q And that's, you know, the files and the evidence that
14 the state has against you.

15 MR. BARNETTE: Your Honor, I'm going to object at this
16 point. I don't know what the relevance would be of --

17 THE COURT: Well, let me see y'all.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: Overruled.

21 Go ahead.

22 Q I've shown you certain information that has been
23 provided to me by the state in preparation for your case,
24 is that true?

25 A Yes, sir.

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 Q And one of them is an incident report that was
2 prepared by Officer John Guest of the city police.

3 A Yes, sir.

4 Q And relates to the cards that you gave them, right?

5 A Yes, sir.

6 Q And I went over this information with you. And in
7 that report Officer Guest states that you said, "They fell
8 out of that man's wallet so we just picked them up. There
9 ain't nothing wrong with that."

10 Now, what was really said? I mean, what did you say
11 when you were interviewed by the police about how you got
12 the cards?

13 A Like I said earlier, that was just a mistake on his
14 part, I guess. You know, I stated when I walked across the
15 street Mr. Norris handed me the cards and told me to hold
16 his I. D.

17 The cards was on the ground. They was setting next to
18 Mr. Bond. Like I said, I ain't never seen no wallet. I
19 didn't go through his wallet. I couldn't tell you until
20 today what his wallet look liked.

21 Q Did you ever take those cards out and look at them?

22 A I, I never did. I thought that was just I. D.

23 Q Okay.

24 A Like I said, I thought I was making a citizen's
25 arrest, and until the officer told me it was against the

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 law. The officer behind me actually came later on and told
2 me, no, that was against the law, that he can arrest us for
3 that, which he did.

4 Q Let me ask you this, Mr. Chiles. Did you -- in your
5 mind did you participate in any type of crime?

6 A No, sir; no, sir. Like I said, I thought I was making
7 a citizen's arrest. It's 12:00 or 12:30 at night.

8 Q Okay. And did you know that there was a robbery, an
9 alleged robbery, in progress when you were there?

10 A Not that I know of.

11 Q Okay. And have you been truthful today?

12 A Yes, sir, I have.

13 Q Okay. So let's go back to one or two other points.

14 When Mr. Norris came to your house were you in bed
15 asleep, or in bed getting ready to go to sleep, or not in
16 bed at all?

17 A I was in bed. I was in bed asleep.

18 Q Okay.

19 A I had fell asleep.

20 Q All right. When Mr. Norris came to your house, what
21 did you do to go outside, before you went outside?

22 A I went to the door to see what was, people, because
23 it's right across from my house where the incident
24 happened.

25 I looked outside to see what was going on. And I did

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 see some movement in the trees. And it looked like a
2 couple of guys on top of the roof.

3 Q Okay.

4 A And then I went back and put on a pair of shorts,
5 threw on a pair of shorts, and t-shirt and got my phone.
6 Actually, it took a minute to get my phone because I had
7 forgot where I put it at. I remember that.

8 Q Okay. So you were trailing -- were you trailing
9 Mr. Norris? Did he wait for you on the front steps?

10 A No. I don't think -- he was already across, had left
11 the house and went across the street.

12 Q So did you know what was going on across the street
13 before you got there?

14 A No, sir, I don't.

15 Q Okay.

16 A I don't know what was going on. I don't know what
17 happened, because I stayed. It took me about three to four
18 minutes, you know, to put my shorts on and find out what I
19 did with my phone, because I kind of like threw on a pair
20 of shorts and a t-shirt. And then I had remembered where I
21 put my phone at.

22 Q Okay. All right, now, Mr. Worthy said y'all had been
23 drinking some beer that night, is that right?

24 A Yes, sir. We was.

25 Q Had you been drinking beer?

Kenneth Wayne Chiles
Cross-examination by Ms. Jones

1 A Yes, sir.

2 Q Were you intoxicated? Was you intoxicated?

3 A No. It take more than one beer to me down -- to get
4 it.

5 Q How many beers did you have?

6 A One beer. I just had one. It was about 24 ounces.

7 And he drinks Colt 45s in a, a bottle, about four beers,
8 sort of round.

9 Q So you had one 24-ounce beer.

10 A Yeah.

11 Q Which is the equivalent of two regular.

12 A Two regular 12-ounce beers, yes, sir.

13 Q Okay. All right.

14 MR. POOLE: Ask the Court's indulgence for just a
15 moment, please.

16 (Pause.)

17 Q Mr. Chiles, did you have a weapon at any point in time
18 that night?

19 A No, sir.

20 Q Knife or otherwise, or any other type of weapon?

21 A Unless you want to count cell phone.

22 Q Okay. Thank you, sir.

23 CROSS-EXAMINATION

24 BY MS. JONES

25 Q Mr. Chiles, you told your lawyer, Mr. Poole, that you

Kenneth Wayne Chiles
Cross-examination by Ms. Jones

1 had lived there on Dean Street, North Dean Street, for
2 several years as of the day, the night this happened,
3 right?

4 A Yes, sir; yes, ma'am.

5 Q Okay. Do you consider that your neighborhood?

6 A Yes, ma'am. It is.

7 Q At that time?

8 A Yes, ma'am.

9 Q And across the street from the house you lived in,
10 what were the businesses there and the establishments
11 across the street?

12 A We have a St. Lukes.

13 Q Okay. What is St. Lukes? Explain what that is.

14 A St. Lukes is a free medical clinic where people go to
15 get help. You know, they can't do for theirselves.

16 Q If they can't afford to go to --

17 A They can't afford to go.

18 Q -- Regional or to a regular doctor's office, can they
19 go to St. Lukes and get what they need for free?

20 A Yes, ma'am, they can.

21 Q Have you been there? Have you used St. Lukes?

22 A On occasions. Not lately, but I have.

23 Q Okay. Is that something that is needed, or does it
24 get a lot of business in that neighborhood?

25 A Yes, ma'am, it do.

Kenneth Wayne Chiles
Cross-examination by Ms. Jones

1 Q Okay. Go ahead. Tell me about some of the other
2 businesses.

3 A Next to St. Lukes is, is another place like that gives
4 you clothes and stuff.

5 Q Okay. If I said the name would you maybe recognize
6 it?

7 A Yes, ma'am.

8 Q Helping Hands Mission?

9 A Mission. It is kind of like a mission, yes, ma'am.

10 Q Ministry?

11 A Yeah, ministry, yes, ma'am.

12 Q Okay. Do you know if it's connected to the church,
13 First Baptist, or not? If you don't, that's okay.

14 A I believe First Baptist have something to do with it,
15 the whole line all the way down to the cleaners, I think,
16 you know.

17 Q Okay. And at the mission or the ministry's building
18 they give out things also to people who can't afford to go
19 buy them?

20 A Correct.

21 Q What kind of stuff?

22 A Clothing, shoes, different stuff to kind of help
23 people out that can't do for theirselves.

24 Q And in that neighborhood is that important? Does it
25 get a lot of business?

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 A It's very important, yeah. It's crowded just about
2 every day.

3 Q Okay. And that is the neighborhood that you had lived
4 in for several years at the time this happened, right?

5 A Yes, ma'am.

6 Q Okay. And you have indicated after Mr. Norris came
7 and knocked on the door and you got dressed, while you were
8 getting dressed, you saw the tree shaking and saw some
9 folks on top of one of those ministry buildings, is that
10 right?

11 A Correct.

12 Q Did that concern you?

13 A Yes, ma'am, it did.

14 Q Why is that?

15 A It's 12:00, like I said, it's 12:00 or 12:30 at night.

16 Q Okay. And why did you go out?

17 A I wanted to see what was going on in my neighborhood.
18 I thought somebody was breaking into the building.

19 Q Thank you. That's all.

20 CROSS-EXAMINATION

21 BY MR. BARNETTE

22 Q So you was getting your clothes on, sir?

23 A Yes, sir.

24 Q Where was you getting your clothes on at?

25 A In my home.

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

- 1 Q Where is your room at?
- 2 A It's located right in the front right, right as you go
3 through the door. My bedroom is right here on the left.
- 4 Q How many rooms do you have in the house?
- 5 A Oh, it's a few rooms.
- 6 Q Okay. So your bedroom is in the front.
- 7 A Correct.
- 8 Q Where is the kitchen at?
- 9 A The kitchen is about two or three rooms back. You go
10 through a door. And the kitchen is right there in the
11 back.
- 12 Q Where's the living room?
- 13 A The living room is right there in the front.
- 14 Q Okay. So your bedroom --
- 15 A My bedroom was on the left. The living room was on
16 the right.
- 17 Q And when you're putting your clothes on, you're
18 checking this tree out.
- 19 A No, sir. When I went to the door I checked the tree
20 out.
- 21 Q Well, you just testified when you was putting your
22 clothes on when Ms. Jones asked you the questions that you
23 were watching the tree and seeing these people on top of
24 the building.
- 25 A How can I do that if I'm in my bedroom putting on my

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 clothes?

2 Q That's my question.

3 A I couldn't see. I couldn't see what was going on
4 until I went to the front door. He indicated I had a red
5 door. I went to that door and noticed what was going on.
6 twice.

7 Q Yes, sir. You said you picked up your cell phone.

8 A Yes, sir.

9 Q Why didn't you call immediately right there if you
10 thought a burglary was occurring?

11 A Because I didn't know. I wanted to see for myself
12 what was going on.

13 Q Wasn't it kinda dangerous to go over and see what was
14 going on? Doesn't the normal person usually call the
15 police and have them handle it?

16 A No, not when Mr. Norris had already came and got me.
17 Like I said, I got to see what was going on if he -- you
18 know, he might have seen something that he didn't see.

19 Q Why didn't Mr. Norris ask you for his cell phone, your
20 cell phone, to make a phone call to the police?

21 A I'm the only one that he knows of in the area, I
22 guess.

23 Q Why was he over there at 12:00 or 12:30 that night?

24 A Your guess is better than mine. I was sleeping. I
25 was asleep. Why would I know? Your guess is better than

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

- 1 mine.
- 2 Q Yes, sir. And you went out, you said, in your bare
- 3 feet.
- 4 A Barefooted.
- 5 Q You went barefooted over there. And how many of these
- 6 fellows did you see over there?
- 7 A I seen two on the roof when I first looked out the
- 8 door. And the tree indicated there was somebody else in
- 9 the tree, because the tree was moving. It was shaking.
- 10 Q So you saw two on the roof.
- 11 A They was just running around on the roof, yeah.
- 12 Q How could you see them running up on the roof where
- 13 you're at?
- 14 A My, my apartment is right across the street.
- 15 Q But you don't have the angle to see running all over
- 16 that roof. There's no way you can see the whole roof.
- 17 A Yes, I do. I can take you over there right now, and
- 18 you can see across the street, dark, light or no light.
- 19 Q Was there lights on top of that roof?
- 20 A No, there wasn't no light. But I know, I know a
- 21 person when I see them if they're moving.
- 22 Q Okay. Well, how many people did you see on the
- 23 ground?
- 24 A I didn't, I didn't even see anybody on the ground.
- 25 Like I said, I seen the tree shaking and two bodies on top

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 of the roof.

2 Q Okay. Who did you see down on the ground, I mean, on
3 the property?

4 A I just told you I didn't see anybody on the ground. I
5 see a tree moving indicating that somebody had to be in the
6 tree, and two individuals on top.

7 Q Okay. When you went outside, who did you see outside,
8 when you followed Mr. Norris? That's what I'm talking
9 about. When you followed Mr. Norris, what did you see?

10 A When I got across the street, Mr. Norris had already
11 had Mr. Bond in the seating position on the ground.

12 Q How many other folks was there?

13 A The other guy that got into that Jeep and was riding
14 up and down the street. I think they testified to that.

15 Q So your testimony is the only person you saw was Mr.
16 Bond?

17 A That's the only person I seen.

18 Q You didn't see Mr. Mayfield?

19 A No. The only person, the only thing I seen was a Jeep
20 going back and forth up the street.

21 Q You didn't see --

22 A Well, they was riding and checking on him.

23 Q How long did this take?

24 A How long did what take?

25 Q How long did all of this take, or how long did this

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 take until the police got there when you went out the door,
2 out a number --

3 A My the time I got up with Mr. Bond the police was
4 already en route. That's why I never did get to use my
5 phone.

6 Q Well, let me ask you a question.

7 How is this Jeep driving back and forth so much and as
8 soon as you get over the police show up?

9 A I don't know. I think they testified they had called,
10 didn't they?

11 Q How many times did the Jeep drive up and down then?

12 A Two are three times. Like I said, they told the
13 truth. They was checking on him.

14 Q Okay. When you got over there, you said that
15 Mr. Norris handed you his wallet.

16 A No. I said he handed me a stack of, a stack of cards
17 which I thought to be his I. D.

18 Q So Mr. Norris handed you a stack of cards. That's
19 what you're saying. Not a wallet.

20 A I never seen a wallet.

21 Q Okay. When you got over there where was Mr. Norris
22 and where was Mr. Bond?

23 A Mr. Bond was on the ground in the sitting position.

24 Q Okay.

25 A Mr. Norris had his hand on his shoulder, you know, and

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

- 1 like he was holding him there until the police come.
- 2 Q Was, was Mr. Bond saying anything?
- 3 A Not that I know of. He didn't say nothing.
- 4 Q He didn't say anything.
- 5 A Uh-uh.
- 6 Q Mr. Norris didn't say anything.
- 7 A He didn't say anything but hold his I. D. until the
- 8 police come. Oh, and then he asked me had I called 9-1-1.
- 9 Q Where did this come from?
- 10 A I don't know. I got no idea.
- 11 Q You never saw this knife?
- 12 A I don't know anything about a knife.
- 13 Q You never saw Mr. Norris with this knife?
- 14 A No, sir, I haven't.
- 15 Q You don't know where this knife came from.
- 16 A No, sir.
- 17 Q You never showed it, you never, you never --
- 18 Mr. Mayfield and Mr. Blankenship. You never saw him show
- 19 the knife to him?
- 20 A No, sir. I'm not going -- I'm going to stop it right
- 21 here. I don't know anything about that knife. The only
- 22 thing I know is I went over there and he gave me the card
- 23 to hold until the police come. As far as the knife, I
- 24 don't know anything about it.
- 25 Q But can see people on the roof but you can't see a

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 knife held in front of you, is that correct?

2 A You, you -- a person is a whole lot bigger than a
3 knife. Wouldn't you agree?

4 Q When you're standing right beside Mr. Norris. How
5 close was you to Mr. Norris getting --

6 A That, that area is not well-lit.

7 Q No. What I was asking you, sir, was how close was you
8 to Mr. Norris when he gave you the card.

9 A Close enough, about right there where you're at from
10 me.

11 Q Okay. So he handed the cards to you.

12 A Yes, sir.

13 Q Did you see where he got the cards from?

14 A They were on the ground.

15 Q The cards were on the ground?

16 A Yeah. And I guess you're going to ask me how did they
17 get on the ground. That I don't know.

18 Q Who picked them up off the ground?

19 A He picked them up and handed them to me.

20 Q Why did you tell the police officer, Officer Guest,
21 you told, "They fell out of the wallet, so we just picked
22 them up, there ain't nothing wrong with that"?

23 A My lawyer already asked me that question. And I told
24 you that was a mistake. That statement was never made from
25 me.

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 Q Well, let me ask you this question. Officer James was
2 the first one up, right?

3 A No, sir. Me and Mr. Norris talked to two or three
4 officers before he even got there. The only time we talked
5 to him was when we came over across the street and asked me
6 did I have the cards. We, we did not talk to him over at
7 St. Lukes or across the street from me.

8 Q So as soon as he arrives, why don't you just run up to
9 him and say this person is breaking in this center and
10 we're holding them here for you, here's the cards, we've
11 got them here for you, they tried to break in that
12 building? Why didn't you do that?

13 A We talked to officers before they even -- before I
14 even talked to them. We done talked to two or three
15 officers. One of them I know in particular because he was
16 a black man. I hadn't talked to them until later.

17 Q Well, let me ask you this question. You're making a
18 citizen's arrest, right?

19 A I'm trying to.

20 Q Trying to. Okay. So it's now we're trying to make a
21 citizen's arrest?

22 A That's what I said.

23 Q So now you don't call. The first thing, you never
24 called the police, did you?

25 A I didn't get a chance to. It was already -- one was

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 coming down Dean and one was coming Saint -- Saint John.

2 Q So you're, you say as soon as you walked out you go
3 over there and the cops show up.

4 A By the time I got over to Mr. Bond, yes, sir.

5 Q So it wasn't five or ten minutes. Someone had to go
6 call folks and try to find them and everything else. That
7 didn't happen is what you're saying. It didn't go five or
8 ten minutes.

9 A Five or ten minutes for what?

10 Q For the police to get there. You wasn't out there in
11 five or ten minutes.

12 A No, no. Once I got over there the police was already
13 coming up, up the street.

14 Q From the time you left the front of your house to get
15 over to where Mr. Norris and Mr. Bond was, how long did
16 that take you?

17 A That didn't take me but a minute. It don't take but a
18 minute to walk across the street. It don't even take a
19 minute to cross the street.

20 Q Yes, sir. And how long before the police arrived
21 there?

22 A By the time I got across the street and Carnie asked
23 me had I called 9-1-1, I told him no. And they was already
24 en route.

25 Q Isn't it true Mr. Norris tried to identify himself as

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 a security guard?

2 A I didn't hear that. That must have happened before I
3 come out the door.

4 Q Well, let me ask you a question. You had the cards on
5 you, right?

6 A Yes, sir.

7 Q They were in your pocket. Why didn't you just leave
8 them there? Why didn't you give them to the police officer
9 who supposedly talked to you?

10 A For one thing, out of all of the commotion I actually
11 forgot I had them in my pocket until he asked me about
12 them. It was a lot going on that night.

13 Q You forgot to give the police -- you're making a
14 citizen's arrest or attempting to make a citizen's arrest
15 and you're going to -- you're not going to give them to any
16 cop that talks to you that --

17 A Once, once that officer came over there to talk to me,
18 he got the cards.

19 Q What about the black officer? What about the two or
20 three officers you talked before? Why didn't you give the
21 cards to them then?

22 A I had -- like I said, I hadn't even, I hadn't thought
23 about it. I mean, it happened. I thought they was I. D.

24 And really I, I just forgot about it. It was a lot of
25 stuff going on that night, a lot of people, the officers

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 asking me questions. I forgot about it, because as soon as
2 that officer came and asked me about the cards, I reached
3 in my pocket and gave it to them.

4 Q Just like you forget about the knife too?

5 A I don't know anything about a knife. I had a cell
6 phone.

7 Q And you never called the police, did you?

8 A No, sir, I didn't. They was already en route.

9 Q How did you know they was en route?

10 A I'm looking. I just told you one was coming down Dean
11 Street and one was coming up Saint John.

12 Q Within a minute, as soon as you come out of the door.

13 A Didn't they tell you that they called the police, one
14 of the guys?

15 Q No. I am asking you what you know. I know what they
16 testified to, and it's completely different to what you're
17 testifying to.

18 A Evidently they told the truth, because the police
19 came.

20 MR. BARNETTE: One moment, Your Honor, please.

21 (Pause.)

22 MR. BARNETTE: Thank you, Your Honor.

23 MR. POOLE: No redirect.

24 THE COURT: You may step down.

25 MR. POOLE: No further witnesses here.

Carnie Norris, III
Direct examination by Ms. Jones

1 MS. JONES: Defense calls Carnie Norris.

2 CARNIE NORRIS, III, having
3 been first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MS. JONES

5 Q Mr. Norris, state your name for us, please.

6 A My name is Carnie Norris, III.

7 Q How old are you, Mr. Norris?

8 A I'm 40 years old.

9 Q Okay. Were you born here in Spartanburg County?

10 A Yes, ma'am.

11 Q Is your family in the courtroom today, Mr. Norris?

12 A Yes, ma'am.

13 Q Identify who is present.

14 A My father is seated on the back row, and my son is in
15 the middle, and my mother is on the end.

16 Q Okay.

17 A It is Carnie, Alton and Mary.

18 Q I'm sorry. I interrupted you.

19 A Carnie, Carnie, Jr., Alton and Mary Norris.

20 Q Okay. Now, let's go back if you will, Mr. Norris, to
21 the event we're talking about in July of 2008. On that
22 particular evening where were you staying in Spartanburg?

23 A I was staying on Northview Street. It's a block and a
24 half over from Dean Street.

25 Q Okay. From the house on North Dean that we've heard

Carnie Norris, III
Direct examination by Ms. Jones

1 Kenneth Chiles lives in, how would you get to where you
2 lived then?

3 A I just walked. When I come out of my yard, I just
4 make a right and get on Dean Street.

5 Q Okay. So it's basically just a side street off of
6 Dean Street.

7 A Yes, ma'am.

8 Q Is that right?

9 A Uh-huh.

10 Q And prior to that time had you lived in Anderson and
11 run a business?

12 A Yes, ma'am. I owned my own business down in Anderson,
13 down on Shockley Ferry. I had a fitness center.

14 Q A gym?

15 A Yes, ma'am.

16 Q Okay. Now, back in July of 2008, you've indicated you
17 lived on a side street off of North Dean Street. Did you
18 during the time you lived there, did you consider yourself
19 part of the neighborhood too?

20 A Yes, ma'am. I was a part of the community.

21 Q Okay.

22 A That's where I resided at.

23 Q Okay. And you've heard reference in here to a couple
24 of missions or -- and then, or a mission, and then St.
25 Lukes Free Medical Clinic. Are you familiar with those

Carnie Norris, III
Direct examination by Ms. Jones

1 businesses?

2 A Yes, ma'am.

3 Q Okay. Have you ever utilized those services?

4 A I attempted to utilize them back in 2005, I think,
5 when I was in a bad car accident.

6 Q Okay. So you know generally they provide free
7 services and free goods to people in the community that
8 can't afford it, is that right?

9 A Yes, ma'am; yes, ma'am.

10 Q Okay. Now, on the evening of July 16th of 2008 did
11 you see something happening around those businesses that
12 concerned you?

13 A Yes, ma'am. I was walking up Dean Street. And if you
14 ever heard a tree shake or the wind blowing hard, that's
15 what caught my attention, the rustling of the leaves on the
16 trees. And that's when I looked up. And I saw a couple of
17 individuals on the top of the building. And I saw the tree
18 shaking. And I, I stepped right up the walkway, because
19 the light was on. And I tapped on his window.

20 Q On -- I'm sorry. On whose window?

21 A On Kent's window. His, his, his room is on the front
22 side.

23 Q Are you referring to Mr. Chiles?

24 A Yes, yes, yes, ma'am, Chiles.

25 Q Okay. And what did you do?

Carnie Norris, III
Direct examination by Ms. Jones

1 A I, I knocked on, on the window because the door, when
2 the door, coming out of his room, his room be locked. And
3 he have to make a sharp right. And that will be the front
4 door. So that's why I knocked on the window, because if I
5 knocked on the door couldn't nobody hear me.

6 Q Okay. Let me stop you and back up a minute and ask a
7 couple of questions before we get into what you're going to
8 explain happened.

9 Mr. Norris, back in 1995, the winter of '95, were you
10 convicted in this court of a burglary?

11 A Yes, ma'am, I was.

12 Q Okay. And just a few months later, Mr. Norris, were
13 you also convicted in this very courtroom of a robbery?

14 A Yes, ma'am.

15 Q Okay. During that period of your life did you have a
16 drug problem?

17 A Yes, ma'am. That was over 15 years ago, yes, ma'am.

18 Q Okay. And you admitted your involvement and were
19 punished, correct?

20 A Yes, ma'am.

21 Q Okay. Now, I'm sorry. I didn't mean to interrupt
22 you. You were explaining. You hear the restling or
23 rustling of the tree. You go and you knock on the door, on
24 the window. And what happened?

25 A I didn't really hear anybody. So I, I come down off

Carnie Norris, III
Direct examination by Ms. Jones

1 the porch and walked, walked. I had to reach over to knock
2 on it, because there's a railing and what not. And the
3 window is kind of far off. So I come off the porch and
4 went around where I could reach up and knock on the window.
5 And I knocked on the window. And I heard somebody answer,
6 and in a couple of minutes came to the door. Chiles came
7 to the door.

8 I told him what was going. I said come, come out here
9 on the porch, I want to show you something. He said, oh,
10 man, what are you talking about, I'm asleep. I said come
11 over here and I'll show you something, something going on
12 over across the way, just like that.

13 And he walked down his steps and looked, and he saw
14 the same thing that I saw, guys running around on the top
15 of the roof.

16 Q Okay. And at that point what did you do?

17 A I asked him did he have his cell phone on him. And he
18 went back in the house and got it, you know, and put on his
19 clothes. It took him a couple of minutes to put on his
20 clothes. He came back out with the cell phone.

21 Q And what did you do?

22 A I walked down to the edge, edge of the walkway. And I
23 walked across the street. And once I got across the
24 street, I was walking up the street.

25 I said, hey, what are y'all doing. And they looked

Carnie Norris, III
Direct examination by Ms. Jones

1 and saw me. And it scared them. I was about, I don't
2 know, probably from here to the first bench from Mr. Bond.
3 He had his back to me. And he turned around.

4 The guys that was on the roof that was on that side of
5 the building, it was I think two people on the ground.
6 They took off. They flew, phew, down beside the building.

7 He turned around and started running toward me. I did
8 my arms like this. I said, wow, where are you going, what
9 are you doing. And he stopped, because either he had to
10 jump over a ledge to get away or he had to run around me.
11 I had my arms out.

12 And it, it kind of scared me. And I asked him where
13 was he going and what was they doing. Said, oh, we just
14 messing around. I said but y'all on top of a roof.

15 And Mr. Chiles, he had walked across the street --

16 Q Okay.

17 A -- and asked what was going on. I asked him had he
18 already, had he already called. And by then polices had
19 pulled up. I mean, in about two minutes the police was
20 there.

21 The first car came down Dean Street. And the officer
22 testified that he came off Saint John. That's not true.
23 The first officer came down Dean Street. And then the
24 officer turned on Saint John Street.

25 Q Okay.

Carnie Norris, III
Direct examination by Ms. Jones

1 A The car that Mr. --

2 Q Wait, Mr. Norris. Let me ask you.

3 When you walked across the street from the home that
4 Kent -- as you referred to him -- Mr. Chiles lived, what
5 were you going to do?

6 A Well, basically, I wanted to know what were they doing
7 on top of the building. That's a medical, that's a medical
8 clinic. And they looked to me as if it was a possible
9 break-in or something.

10 Q Okay.

11 A And, basically, actually when Kent had first came on
12 the porch, I thought, I thought it was funny. I said you
13 got these white guys over here in this neighborhood on top
14 of a building breaking in, call the police on them. If it
15 was us, it would have been done to us. I took it as a joke
16 at first.

17 Q Mr. Norris, when you went across the street was your
18 intention to rob Mr. Bond?

19 A No, ma'am; no, ma'am. I never committed a crime.

20 Q Okay.

21 A No.

22 Q What were you doing?

23 A Actually, I wanted to know what was going on, whether
24 or not they were breaking in and what they was doing over
25 there. I wanted to know who he was. You know, that was

Carnie Norris, III
Direct examination by Ms. Jones

1 basically it.

2 Q Did you ask him for his I. D.?

3 A I asked him who was he. He pulled out his wallet. He
4 was scared. And he pulled out his cell phone. And he
5 pulled some cards out, and he showed them to me. And then
6 he sat back down.

7 Q Okay.

8 A Actually, he just sat down because he knew -- I guess
9 he kind of figured he wasn't, he wasn't going to be able to
10 move anywhere. So he sat down.

11 Q Okay. Did you prevent him from moving?

12 A No, I didn't.

13 Q And leaving?

14 A No, I didn't prevent him from moving. I just told him
15 wait until the police get here.

16 Q Okay.

17 A That's what I told him, and he sat down.

18 Q Why did you want him to wait until the police got
19 there?

20 A Because I felt like he was committing a crime.

21 Q Okay.

22 A Him and the rest of them.

23 Q Okay. And when the police got there did you talk to
24 them?

25 A I tried to. The first officer when he pulled up, I

Carnie Norris, III
Direct examination by Ms. Jones

1 tried to tell him that these people was in the process of
2 burglarizing. That's what I told him. And he tell me to
3 step back. I want to talk to him. You see, I mean, he
4 started. He started talking to Mr. Bond.

5 Q Did you go across the street and wait on the porch and
6 then voluntarily talk to the officers?

7 A The officers told us. We were escorted across the
8 street. We did not back up or walk away. We were
9 escorted, because five or six cars pulled up in a matter of
10 minutes.

11 Q Okay. Did you ever try to get away?

12 A No, ma'am.

13 Q Did you ever try to do anything with anything you had?

14 A No, ma'am.

15 Q Okay.

16 A I mean, like he said, we was trying to make a
17 citizen's arrest.

18 Q Okay.

19 A I mean, I have too much to lose to try to, I mean, do
20 something like that. My own neighborhood?

21 Q Thank you, Mr. Norris. I appreciate you answering my
22 questions.

23 A Thank you.

24 THE COURT: Mr. Poole, let's let you go next.

25

Carnie Norris, III
Cross-examination by Mr. Poole

1 CROSS-EXAMINATION

2 BY MR. POOLE

3 Q Just a few questions, Mr. Norris.

4 You were present when you heard the testimony of
5 Mr. Chiles.

6 A Yes, sir.

7 Q Is that right? And of course he was present when he
8 heard your testimony.

9 A Yes, sir.

10 Q And basically your testimony is the same as far as
11 Mr. Chiles is concerned.

12 MR. BARNETTE: Objection, Your Honor.

13 THE COURT: Sustained.

14 Q You came that night, and you knocked on his window or
15 door to tell him that something was going on, is that
16 right?

17 A Yes, sir.

18 Q He came out and took a momentary look at what was
19 going on and then went and put on his clothes and got his
20 phone, is that right?

21 A Yes, sir.

22 Q You walked across the street.

23 A Yes, sir. I walked down the hill and was barely in
24 the middle of the street when he started coming down behind
25 me.

Carnie Norris, III
Cross-examination by Mr. Poole

1 Q And later on he comes across the street.

2 A Yes, sir.

3 Q Is that right?

4 A Yes, sir.

5 Q And then when he gets across the street, the police
6 come.

7 A Yes, sir.

8 Q Is that right?

9 A Basically, basically, yes, sir.

10 Q So things are happening pretty fast.

11 A Yeah. It happened, the whole process from three to
12 four minutes, just that fast.

13 Q Okay.

14 A Like I said, Mr. Bond figured out he couldn't get
15 anywhere. He just, he just sat down when I told him to,
16 you know, just wait on the police and everything.

17 Q Okay. And you told Mr. Chiles that somebody was
18 trying to break into a building.

19 A Yes, sir.

20 Q Okay. In response to that information, he came across
21 the street.

22 A Yes, sir.

23 Q Okay. Thank you Mr. Norris.

24 THE COURT: Mr. Barnette.

25 MR. BARNETTE: May it please the Court.

Carnie Norris, III
Cross-examination by Mr. Barnette

1 CROSS-EXAMINATION

2 BY MR. BARNETTE

3 Q Mr. Norris, from the time you knocked on the
4 windowpane until the time you went over to Mr. Bond, how
5 long did that take until the police got there?

6 A How long did it take?

7 Q Yes, sir.

8 A Like I said, the process was about three or four
9 minutes.

10 He went in the house for a couple of minutes to put on
11 his clothes. And he got his phone and came back out.

12 Q Why didn't you just --

13 A I was across the street.

14 Q Why didn't you just ask to use his phone?

15 A I was across the street. Mr., Mr., Mr. Bond, he said
16 he wanted to call his father. That's what he said. I
17 said, no, you can't call anybody, just wait until the
18 police come. That's what was said to him.

19 Q So now he wanted to call his father?

20 A That's what he said. He wanted to, he wanted to call
21 his father. And I said, no, just wait until the police
22 come because y'all was on top of the building.

23 Q You had his cell phone too, didn't you?

24 A No, sir. I didn't have his cell phone.

25 Q So you're testifying you never had his cell phone?

Carnie Norris, III
Cross-examination by Mr. Barnette

- 1 A I never had his cell phone.
- 2 Q Did you have his wallet?
- 3 A No, sir, I never had his wallet.
- 4 He handed me the cards to show me the cards. He
- 5 handed me some of the cards to show them to me. And, like
- 6 I said, he was sitting on the ground.
- 7 And he had dropped some cards. And I picked them up
- 8 and I told Mr. Chiles to hold these cards until the police
- 9 get here, because he said this is his I. D.
- 10 Q So he's one that pulled the wallet out.
- 11 A Yes, sir.
- 12 Q He's the one that pulled the cards out.
- 13 A Yes, sir. He's the one that pulled them out to show
- 14 me his I. D.
- 15 Q Why was he showing you his I. D.?
- 16 A Because I asked who, who was he. That's how he pulled
- 17 out his cards, because if I'm not mistaken, he didn't have
- 18 a picture I. D. or something. And he was trying to show me
- 19 his name and everything matched up on the cards.
- 20 Q Did you hold him down on the ground?
- 21 A No, sir.
- 22 Q Did you force him down on the ground?
- 23 A No, sir, I didn't. He sat down when he figured out he
- 24 couldn't go anywhere. I stood. I stood back from him
- 25 probably about 2 feet like this while he is sit down.

Carnie Norris, III
Cross-examination by Mr. Barnette

1 Q Why couldn't he run the other, the other direction
2 then?

3 A Beg your pardon?

4 Q Why couldn't he run the other direction?

5 A Why did he run to the other direction?

6 Q Yes, sir.

7 MS. JONES: This is calling for speculation on his
8 part. Objection.

9 THE COURT: Sustained.

10 Q So your testimony, as he sat there he takes the wallet
11 out and gives you the cards or drops the cards on the, on
12 the ground.

13 A Yes, sir. He, he was trying to show me his name and
14 everything on the card.

15 Q Why did you hand them to Mr. Chiles then? Why didn't
16 you just look at them then?

17 A I told him to hold them because I was standing over
18 him to make sure he didn't, he didn't try run off and get
19 away or something because the police was in, en route.

20 Q What about the evidence -- excuse me. Go ahead.

21 A Go ahead.

22 Q What about Mr. Mayfield and the other fellows that was
23 there?

24 A They took off running. When I hollered what y'all
25 doing, they flew. I mean, they took off down beside the

Carnie Norris, III
Cross-examination by Mr. Barnette

1 building. Gone.

2 Q So they never came back and checked on their friend?

3 A They -- when I noticed who they were, it was a vehicle
4 driving up and down the street. And then by the time
5 Mr. Chiles got -- well, the vehicle had stopped at Saint
6 John and Dean Street and it was just sitting there, hadn't
7 made the turn. Just sitting there.

8 When the police car came down the street, that's when
9 he pulled up and pulled right there by the, by the
10 cleaners. And he's -- and the police got out of the car.
11 That's when they got out of the car and walked and met the
12 police.

13 Q Now, Mr. Chiles had these cards, right?

14 A Yes, sir. I handed. I handed them to him.

15 Q When these police officers approached you or whatever,
16 why didn't y'all just give them the cards?

17 A I tried to tell the police officer then. He didn't,
18 he didn't want to hear anything about a break-in. He, he
19 wanted to know his version of the story. And I said we was
20 the ones initiated this, these guys was trying to break in.

21 Q But you never --

22 A They told us to stay across the street.

23 Q Where did you see them break in at?

24 A I observed them under my observations. That's what I
25 thought they was doing.

Carnie Norris, III
Cross-examination by Mr. Barnette

- 1 Q Where were they breaking in at?
- 2 A Beg your pardon?
- 3 Q Where were they breaking in?
- 4 A They were on top of the building. I perceived that to
- 5 be an attempt burglary.
- 6 Q How many, how many people did you see on the top?
- 7 A I saw two people.
- 8 Q And you was walking down the street and saw this.
- 9 A Yes, sir. I wasn't that far away, just right across
- 10 the street.
- 11 Q What was you doing out there?
- 12 A What was I doing?
- 13 Q Yes, sir.
- 14 A I had just come from a guy's house from cleaning fish.
- 15 That's, that's a fish -- the only knife that I have in my
- 16 pocket.
- 17 Q So you had to clean fish with this knife?
- 18 A Yes, sir.
- 19 Q Okay. You just got finished cleaning the fish with
- 20 it?
- 21 A Yes, sir.
- 22 Q Okay. So you never used this knife on them?
- 23 A No, sir. I never pulled out a knife.
- 24 Q You didn't hold him against his will?
- 25 A No, sir; no, sir. I put up my hand. I never pulled

Carnie Norris, III
Cross-examination by Mr. Barnette

1 out a, a knife.

2 Q You never pulled a knife on Mr. Mayfield or --

3 A No, sir. They were not present. They took off and
4 ran. When, when they searched us again, that's when the
5 police had pulled up.

6 Q When the police -- they asked you did you have
7 anything on you there, right, of Mr. Bond's? They asked
8 you that.

9 A They asked me, yes, sir.

10 Q Why didn't you tell them before they searched you that
11 you had a knife on you?

12 A I did tell the police I had a knife in my pocket. I
13 did tell him. He asked me do you have anything in your
14 pocket that will stick me. Said, yes, sir, I have a, I
15 have a knife in my pocket.

16 Q And you --

17 A And he put his gloves on.

18 Q And where was your pocket at? Where was the pocket
19 at?

20 A It was my, it was my right pocket. It was stuck down
21 in, in the middle of my wallet to keep from cutting, cause
22 the, because the blade doesn't, don't close.

23 Q So it was in the middle of your wallet.

24 A Yes, sir, just like that because the blade won't
25 close.

Carnie Norris, III
Cross-examination by Mr. Barnette

1 Q So this took -- how long, again, did this take from
2 the time you knocked on the window until you went over and
3 held, until the police got there?

4 A It was about three or four minutes at the most.

5 Q At the most.

6 A It was, yeah, about three or four minutes.

7 Q So it --

8 A He went back in the house to come back out.

9 Q It wasn't like the other witnesses that testified that
10 it took five or ten minutes or so.

11 A No. It didn't, it didn't take no five or ten minutes,
12 no.

13 Q But you never called the police.

14 A I didn't have a phone. That's why I knocked on the
15 window so I can, so he can call the police.

16 Q Why didn't you just stand over there with him and call
17 the police and watch until the police got there?

18 A By the time we got -- when I got over there they had
19 done called the police. I was waiting on Ken to come on so
20 he can call the police.

21 Q You don't know if they've called the police or not.

22 A The police coming down the street. I tell you. It
23 happened. A couple of minutes up there and a minute or two
24 right across the street.

25 Q And you said Mr. Bond tried to call his father.

Carnie Norris, III
Cross-examination by Mr. Barnette

- 1 A No. He didn't try to call him.
- 2 Q He wanted to call his father.
- 3 A He said I need to call my daddy and let him know where
4 I am. I said just wait until the police get here.
- 5 Q Why didn't you use his cell phone to call the police?
- 6 A Why did I?
- 7 Q How did you know the police was coming? That's what I
8 want to know. How did you know the police was coming? We
9 know Mr. Chiles ain't called the police. You haven't
10 called the police. Who called them?
- 11 A You can see the police. The police coming down the
12 street -- the police coming down the street.
- 13 Q In other words, you got to make up a good story
14 because you just got finished robbing that -- robbing him,
15 didn't you.
- 16 A No, sir. I'm not making up the story. I'm telling
17 exactly what happened.
- 18 Q You're telling me exactly what happened.
- 19 A Yes, sir.
- 20 Q Which is completely different from the story that we
21 have heard in here already.
- 22 MS. JONES: Objection, Your Honor. Witness pitting.
- 23 THE COURT: Sustained.
- 24 Q But you never approached the officers with the cards
25 telling them that these are the cards and I saw these

Carnie Norris, III
Cross-examination by Mr. Barnette

1 people rob, I mean, break into the building or anything
2 like that.

3 A I answered the question. I tried to tell them what
4 was going on on top of that roof and everything. They,
5 they asked, had us escorted across the street.

6 Q Why didn't you just call and tell them that, sir?

7 A Beg your pardon?

8 Q Why didn't you just call and tell them?

9 A I didn't have a phone yet.

10 Q He did though, didn't he?

11 A Like I said, it was just a matter of a couple of
12 minutes and the police was there.

13 Q You just made a citizen's arrest.

14 A I didn't. I didn't make a citizen's arrest. I was
15 trying to. We was both trying to.

16 Q And you've done robbery before, haven't you, Mr.
17 Norris?

18 A Yes, sir.

19 Q And you've broke into buildings before, haven't you,
20 sir?

21 A Yes, sir. That's my past record. I hope that my past
22 record will not do anything to harm me.

23 THE COURT: Ms. Jones.
24
25

Carnie Norris, III
Redirect examination by Ms. Jones

1 REDIRECT EXAMINATION

2 BY MS. JONES

3 Q When you went, Mr. Norris, across later, when you over
4 across on the porch and the officer spoke to you, at that
5 point they searched you. Did you have anything on you at
6 that point that belonged to Andrew B.

7 A No, ma'am.

8 Q Thank you.

9 THE COURT: You may step down.

10 MS. JONES: Your Honor, defendant Norris rests.

11 THE COURT: Any reply?

12 MR. BARNETTE: No, sir.

13 THE COURT: All right. Ladies and gentlemen, that is
14 all of the testimony or evidence to be offered in the trial
15 of the case.

16 What remains to be done are the lawyers' final
17 summations, after which I'll instruct you on the law. And
18 then you'll begin deliberations.

19 We're going to stop now for lunch. We will resume at
20 1:45, at 1:45 this afternoon.

21 So while you are now excused for lunch, continue to
22 follow the instruction. There's to be no discussions about
23 the case, no research, no investigation.

24 Do have a good lunch. And please report to your jury
25 room at 1:45 this afternoon, 1:45.

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: Do y'all want to renew your motions?

4 MR. POOLE: Yes, sir. Defendant Chiles renews all
5 motions previously made based upon the same grounds.

6 MS. JONES: As does defendant Norris.

7 THE COURT: All right. Each of those are denied.
8 Do you have any instruction requests?

9 MR. POOLE: May we approach, Your Honor?

10 THE COURT: Yes.

11 (Bench conference held off the record.)

12 THE COURT: Court's in recess until 1:45.

13 (Whereupon, a recess was taken.)

14 THE COURT: Are we ready for the jury?

15 MR. BARNETTE: The state is ready, Your Honor.

16 MR. POOLE: The defense is.

17 THE COURT: Okay. Bring them in.

18 (The following takes place in the presence of the
19 jury.)

20 THE COURT: All right. Ladies and gentlemen, as you
21 know, when we recessed for lunch all the evidence had been
22 received; and therefore what remains to be done are the
23 lawyers' final summations, after which I'll instruct you on
24 the law. And then you can begin with your deliberations.

25 So please give the lawyers your attention now as they

Closing arguments

1 give you their final summations.

2 MR. POOLE: May it please the Court.

3 THE COURT: Mr. Poole.

4 MR. POOLE: Madam Forelady and ladies and gentlemen of
5 the jury, a little less than 24 hours ago you were sworn in
6 to listen to this case. And I want to thank you, each and
7 every one, for the attention that you paid the witnesses,
8 to the evidence presented, to the remarks that were made as
9 applies in this entire case against these two defendants.
10 Thank you for your time and thank you for your continued
11 attention and consideration.

12 And I will tell you so that everybody in the courtroom
13 can hear me that I wish the greatest success and the best
14 of luck to these young men who have come in today and
15 yesterday and testified as to the events that occurred on
16 June -- July 17th of 2008.

17 And I understand it probably was a trying time for
18 them to experience certain events on that date and
19 certainly a trying time on them and their families to come
20 into court and have to go through this process. I do wish
21 them success in life as I most assuredly am convinced that
22 they will be experiencing.

23 I think I told you that what my job was to represent
24 Kenneth Chiles as the defendant, a defendant, in this case.
25 I told you that I needed to, and it was incumbent upon me

Closing arguments

1 to, bring to you a point of view that he had when this
2 incident occurred on that date and at that place. And he
3 has done so.

4 In, basically in, the first year of law school you
5 take criminal law. And one of the basic elements of the
6 history of law that you learn is that to be convicted of a
7 crime you have to have a guilty mind and a guilty hand.

8 You have to have, and this is Latin. We've learn some
9 of it still in law school. I guess they still teach it. I
10 don't know. It's been a long time. But a mens rea and an
11 actus reus. You have to have a guilty mind and you have to
12 have a guilty hand.

13 So as it applies to Kenneth Chiles, all of the
14 evidence that has been presented -- and the evidence that
15 is presented, let us start with the state's testimony
16 through their witnesses.

17 Let's see how there has been any connection shown by
18 the state who bears the burden of proving the case as it
19 relates to those two, two things, that is the state of mind
20 of Kenneth Chiles and what he did on July 16 of 2008.

21 Now, I thought a moment ago as I was looking through
22 my notes -- I carried a tablet around just like it was
23 peanuts, like carrying a security blanket around. I do
24 that. And I have it right here, and because I have to
25 refer to my notes because I can't remember everything that

Closing arguments

1 was said, nor am I going to try to go over everything that
2 was said. But I want to highlight to you some of the
3 things that distinguish this case as it applies to Kenneth
4 Chiles.

5 The -- we've heard the evidence as a whole. You know
6 that there was a wallet taken. There has been testimony of
7 a knife and all of this bit about an armed robbery.

8 But the very first witness was the young man, Andrew
B.
9 He testified that the defendant, Carnie Norris, got
10 his wallet and that he was the one that began removing
11 objects from that wallet.

12 And also during cross-examination I asked the young
13 man, Mr. Bond, you know, how long was it before Mr. Chiles
14 came upon this scene. And he said it was a minute or two
15 after he was knocked down.

16 So there was a trailing of time and a trailing of
17 space between the presence of Mr. Norris and that of
18 Mr. Chiles. That is, that trailing is, what I want to talk
19 about, that gap, that distance, because it's that distance
20 that's going to be so important in his defense. And the
21 testimony goes on to confirm this distance over and over
22 and over again.

23 The next witness, the young man, Hub Blankenship,
24 testified that Mr. Norris told Drew to get out his I. D.
25 and his wallet and then Mr. Chiles came up a little later

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1 and that Mr. Chiles went through the stack.

2 And that the next witness, Daniel Mayfield, testified
3 that Mr. Norris pulled the wallet or touched the wallet
4 from Mr. Bond and that Mr. Chiles was 20 to 25 feet behind
5 him when he first saw him. That is across the street.

6 So what we have, we have no actual physical contact of
7 Mr. Chiles on any weapons, on any wallet, and we have him
8 at a distance from where the alleged crime is being
9 committed.

10 The young Mr. Mayfield stated that Mr. Chiles was not
11 antagonistic and that immediately upon his arrival there --
12 and this seems to be a common thing of most all of the
13 witnesses -- that this occurred very quickly right after
14 Mr. Chiles got there.

15 The police came like almost instantaneously, a little
16 conflicting testimony as to from which directions they
17 came, but I believe the most consistent testimony is that a
18 police car came up from the Saint John Street area, down
19 Dean Street, and one from Main Street area and converged.
20 We have two cars there pretty quickly, and on the scene.

21 So this thing when Mr. Chiles was there, he was
22 exposed only to a brief, brief exposure to circumstances at
23 the place where then and there something was going on.

24 Officer Guest testified that officer -- that
25 Mr. Chiles -- he fully cooperated. He handed over the

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1 stack of cards and information that were in his possession
2 readily and without any hesitancy and that there was no
3 attempt on the part of Mr. Chiles to elude, evade or run.
4 And then that's basically the testimony that we have from
5 the state's witnesses.

6 Now, I think that in and of itself when we talk about
7 the state being able to prove their case is such that there
8 is not enough evidence to warrant a conviction against
9 Mr. Chiles, because he has not touched the wallet. He is
10 at a distance from what was going on. And its exposure to
11 the environment where anything was going on was minimal.
12 He didn't touch a wallet, didn't have a weapon. No
13 communication was overheard from, by him, by any witness.

14 So that's the end of the state's case. So there's
15 reasonable doubt right there, I mean, right there at that
16 juncture.

17 Now, we move onto what is the state of mind of
18 Mr. Chiles when he does become involved. Now, there's only
19 one way to get that across, and that is to, to bring a
20 witness in and have Mr. Chiles testify, because that's all
21 there is on his behalf. And, you know, that infamous
22 saying you go to war with the Army that you've got, you
23 know, you go to, you go to the courtroom with the witnesses
24 you have.

25 So we put Mr. Worthy who had no idea on June,

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1 July 15th of 2008 that on July 7th of 2008 he was going to
2 be in a courtroom testifying that he was there drinking
3 some beer.

4 He was there. Mr. Norris comes up, says something.
5 Mr. Chiles is asleep. They had been watching wrestling, I
6 think, on television, or at least Mr. Worthy was.

7 He has to get out of bed. Mr. Chiles gets out of bed
8 to accommodate Mr. Norris and is trying to find out what's
9 going on. And then later on in the testimony Mr. Chiles
10 says, yeah, there was something going on, some, some action
11 in the trees, two people were up on the roof and I wanted
12 to, you know, just go ahead and do as I was asked to and
13 come on down there and see what was going on.

14 So he said it took about three, three to five minutes
15 for him to catch up. He had to wake out of a sleep, look
16 out of a window to see what was going on, put some clothes
17 on, which wasn't much, which was like a pair of shorts
18 maybe and a shirt, put a cell phone in his pocket and go
19 and see what was happening.

20 By the time he got there he received into his
21 possession this stack of cards that he put into his pocket
22 thinking that there may have been some sort of attempted
23 burglary or breaking and entering that was going on.

24 That's all the information that he had at the time.
25 He didn't investigate it. Should he have gone over there?

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1 No. Should he have even gotten out of bed? No.

2 But what are you supposed to do? You go and actually
3 see something happening and say, okay, maybe I should walk
4 over there. And that's when his problem began, when he did
5 cross that distance and come upon that scene.

6 So what you have is no intent on him to commit a
7 crime. He did not even know a crime was going on, if any
8 there was. He simply obtained the stack and put them in
9 his pocket, left front pocket, and kept them there, didn't
10 look at them.

11 And by his testimony he talked to some officers. And
12 I believe by defendant Mr. Norris' testimony he said that
13 they talked to some officers too. Neither one of them
14 intended to run off. They, they stood around. They went
15 back across the street, stood on the porch. And Mr. Chiles
16 cooperated across the board giving the police any
17 information they needed to have.

18 Now, is that armed robbery? No. Poor judgment?
19 Maybe. I don't know. I'm going to say it maybe one more
20 time. But at the end of the state's evidence there's not
21 enough evidence to convict Mr. Chiles.

22 Surely, at the end of the defense, and, I mean, our
23 defense, Mr. Chiles' defense, which is simply two
24 witnesses, Mr. Worthy and Mr. Chiles, that what I just said
25 and what he was thinking he was doing and his actions

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1 portray or belie no criminal intent, no intent up here to
2 do anything wrong, not to steal Mr. Bond's cards, not to
3 take them from his possession or person as a robbery, his
4 phone, not to use a weapon in the commission of that crime
5 of robbery.

6 Those are the types of things that the state has to
7 prove. And I'm alluding to some elements of the crime,
8 that Judge Cole will tell you what armed robbery is and
9 that you have to, you have to take the evidence, apply it
10 to the law and render a verdict of guilty or not guilty,
11 and it must be unanimous, and that type of thing. But
12 he'll tell you exactly what the elements are.

13 Now, the state, they're going to come back and say,
14 well, the hand of one is the hand of all. And that's true.
15 That is a principle of law also.

16 If you're with somebody and a crime occurs and you
17 know that a crime is about to occur and you aid or abet in
18 the commission of that crime, then you're guilty. The hand
19 of one is the hand of all.

20 But, folks, and this is so basic that I don't know why
21 they had to put it into platinum (sic) to begin with.
22 You've got to have that intention. You have to have that
23 state of mind. You have to be aware that a crime is
24 occurring. You have to know that something is going on,
25 and you have to intentionally aid and abet in the

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1 commission of that crime.

2 So even under that argument, which the state will
3 argue is the reason that you should have defendant Chiles
4 found guilty, it fails also because there has not been
5 anything presented in this courtroom from yesterday
6 afternoon to this afternoon to show otherwise.

7 Mr. Chiles -- the best way to say not guilty is simply
8 to say that he is innocent. He is innocent. He lived
9 there for three or four years. He knows the neighborhood.
10 He didn't want to commit a crime, much less create a
11 problem.

12 That's his own back yard, and it's a place where it
13 should be nothing like this ever going on. It's a place
14 where the poor are helped, where they get the treatment,
15 where there's a church where you can worship God, where you
16 can get clothing, where you can get free medical care if
17 you can't afford it.

18 And my client, Mr. Chiles, lives in that area. And
19 it's senseless to think that he in his own back yard is
20 going to walk across the street and actively participate in
21 an armed robbery in that environment. Think about it.

22 And I submit to you one final thing, that when he
23 testified he was testifying truthfully. There was no
24 deceit, no coverup, no hedging of answers, no lack of
25 forthrightness, no hesitancy in his responses to questions

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1 by me, my colleague, Ms. Jones, or Mr. Bland (sic).

2 All of it adds up to one inescapable conclusion, and
3 that is this. I ask that you consider all of these things
4 and render a verdict that speaks the truth. That is what
5 verdict means, that which speaks the truth. And that which
6 speaks the truth in this case is a not-guilty, singly not
7 guilty against the defendant, Kenneth Chiles.

8 That's what I'm asking you to do, because that is the
9 benefit of the doubt, the doubt that is legally required
10 under our law, our constitution and our process.

11 Thank you for listening to me. I hope you have a
12 great week.

13 THE COURT: Ms. Jones.

14 MS. JONES: Thank you, Your Honor.

15 Madam forelady and ladies and gentlemen of the jury, I
16 too, as Mr. Poole has indicated to you, thank you for your
17 attention. You have paid close attention.

18 As I indicated to you in my brief patriotic message in
19 opening, that this is Carnie Norris' most important day of
20 his life. I too in opening and again now in closing will
21 illuminate or point out some things that have been offered
22 by way of evidence or things that have not been offered by
23 way of evidence that you should think about.

24 My comments, as are Mr. Poole's and Mr. Barnette's
25 follow -- just our own comments. It's basically like the

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1 talking heads you see on the news programs. It's our spin
2 on what's happened.

3 The evidence as you know it and as you've heard it all
4 came from the witness stand, as well as a few photos and
5 exhibits. If you have any question as to what the actual
6 testimony by any single witness or person was, you have the
7 right to know that from the Court. You don't have to take
8 our impression of it or our spin of it.

9 The Court will tell you in instructions after we all
10 finish with our summations or our spins or our comments and
11 beliefs about what's been shown and not shown that the
12 state has the absolute burden of proving Carnie Norris
13 guilty.

14 The Court is also going to explain to you as he has
15 touched on before that there is an indictment that charges
16 Mr. Norris with taking while armed with a weapon the goods
17 or monies of Andrew B. with the intent to deprive the
18 owner permanently of such property -- the intent to deprive
19 the owner permanently of such property.

20 I too think it's important as you consider the
21 evidence during your deliberation that you focus and
22 consider the intentions, perceptions and the states of mind
23 of the individuals involved. And I'm not only talking
24 about my client, but I am talking about the individuals
25 Mr. Bond and his friends, as well as the officers, more

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1 especially Mr. Bond, of Blankenship, and Mr. Mayfield.

2 Throughout the questioning it's probably becoming
3 obvious that I was always the attorney that asked about the
4 free medical clinic or about the mission. And it is
5 important I believe that as you look at this case you
6 understand the perspective of the individuals involved.

7 Let's state and basically set the scene, if you will.
8 You've got these young men who as I believe, as Mr. Poole
9 believes, they'll be successful in their futures. And of
10 course we mean nothing ill toward them at all, or I don't,
11 in my comments. I'm sure Mr. Poole's words are very heart
12 felt as well.

13 But let's look from a perception standpoint at what
14 was happening and what this scene was that night. It is
15 11:00 to 12:00 o'clock in an area that, quite honestly, is
16 probably not very well-lit. And that was kind of a vein
17 that went through the answers.

18 As a matter of fact, 'twas from one of the state's own
19 witnesses, Mr. Blankenship, that I think you get the best
20 insight as to how unlit the area is because he made such a
21 big deal, for lack of a better phrase, that's not very, an
22 artful phrase, but he made -- he took a great deal of
23 effort to explain how he brought his car around and angled
24 it to shine a light on what was happening. This is not a
25 very well-lit area. It is not a very good area.

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1 And I take the chance of offending my own client and
2 Mr. Chiles when I say that, but parts of this part of town
3 are not a good area. And in that area you've got this home
4 that Mr. Chiles lives in a block off. Well, one street off
5 one part of North Dean is where my client testified he
6 lived.

7 Nestled in the middle of this neighborhood are two
8 businesses involved, or two agencies. They're not really
9 businesses because I think they're not for profits. But
10 you've got the St. Lukes Free Medical Clinic and you've got
11 this mission, the Helping Hands Ministry Mission. That's
12 where this activity takes place. That is the neighborhood
13 of Mr. Norris and Mr. Chiles.

14 No offense to these young men, but they were
15 completely out of their element there. And what were they
16 doing? At 11:00 or 12:00 o'clock they're there playing.
17 There's nothing wrong with that. They're young.

18 They were totally without perception where they were.
19 They couldn't even each time one of them was asked to name
20 where they were, they couldn't even actually tell you what
21 businesses they were on or near, okay, the -- as opposed to
22 Mr. Norris and Mr. Chiles who know this area.

23 You've got Mr. Norris who is in the area because he
24 lived in the area. He is struck by this suspicious
25 activity next to this medical clinic and this mission where

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1 people get free shoes and free clothes. The tree is
2 shaking. And he becomes concerned that somebody is
3 committing some kind of crime or trespass. Again, I'm
4 concentrating on what the perceptions and the state of mind
5 of the participants are.

6 The -- by Mr. Norris' testimony, he seeks the
7 assistance of Mr. Chiles, or Kent as he called him, who he
8 knows lives across the street. Come over here, come look
9 at this. And whatever he tells him causes him to look out
10 and see it. Call the police. Somebody is trespassing and
11 trying to break into the building.

12 What is his state of mind? What is he intending to do
13 as he crosses the street to confront the people who are in
14 his neighborhood doing wrong in his perception? What are
15 you doing? Who are you?

16 And Mr. Bond's wallet is produced. And it was very
17 interesting because it came at the very end of the case.
18 There's no evidence that Drew Bond had a picture I. D. of
19 himself. We know he had a Suntrust card, a Krispy Kreme
20 card, a card from a math group. He didn't have a photo I.
21 D. The card is flipped out as someone is asking him show
22 me an I. D., why are you here, flip, flip, flip. And he
23 begins to show his name on these cards -- the take with the
24 intent to deprive from the owner permanently such property.

25 Consistently throughout the testimony there was

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1 discussion of who had called, who was going to call and who
2 should call the police. We have various folks saying I
3 told him to call the police, I think he called the police,
4 they had called the police already.

5 We don't have any evidence from the state who actually
6 did call the police, how many different times the police
7 were called by various participants in this evening event.
8 We're missing that evidence.

9 Also, in considering this case, as Mr. Poole told you
10 and as I've told you before, the state does have the burden
11 of proof.

12 Where were all of the other officers? We've heard
13 discussion of five to six. You had at least one called by
14 name, Art Littlejohn, who we know was there.

15 One of the duties that you have as a juror under the
16 oath that you took yesterday about, well, just as Mr. Poole
17 said, shortly, a little bit less than 24 hours ago, you
18 have a duty to consider all of the evidence. And if you
19 have a doubt, His Honor is going to instruct you, you must
20 resolve that doubt in favor of the defendant. Okay. That
21 is a -- he is going to tell you have to -- the state has to
22 prove this case beyond a reasonable doubt.

23 When you get into the jury room you should take your
24 common sense with you. Use that to guide what you perceive
25 as a doubt and whether it's a reasonable doubt, whether it

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1 is a doubt that would cause you to hesitate to act.

2 Is there a question that is unresolved in your mind
3 and does that question cause you to hesitate? If you reach
4 such a question which causes you such a hesitation, you
5 have landed upon reasonable doubt. And under your oath,
6 then you must acquit the defendant.

7 Again, the state has brought an indictment that
8 charges Mr. Norris with taking while armed property of
9 Mr. Bond with the intent to permanently deprive the owner
10 of such property.

11 I too have a pad. We've heard a lot of information.
12 We've taken a lot of notes. It's almost impossible to
13 summarize without referring to notes.

14 But in looking at the evidence and considering whether
15 the state has met their burden that an armed robbery was
16 committed and property was taken with the intent to deprive
17 the owner permanently of the property, consider a few
18 issues and a few facts that you've heard.

19 The very last question that Mr. Norris was asked as a
20 witness was when the police got to you, and you consented
21 to search, and they searched you, did you have a single
22 thing on you that belonged to Drew Bond.

23 His answer was no, and there is no evidence to
24 controvert that, the intent to permanently deprive Drew
25 Bond of his property, property he did not even have,

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1 property that according to the evidence that's been
2 presented was handed over to another individual and he was
3 told hold onto this for the police, when the police get
4 here.

5 The testimony was the presentation, the sorting
6 through of the cards, was because Drew Bond didn't have a
7 photo I. D. and he was trying to show the person who
8 believed he was committing a crime, who he was by showing
9 him his creek golf course card that says Drew Bond and his
10 other cards that say Drew Bond.

11 Further, as you consider the elements of the crime as
12 has been noted earlier, you've got to determine beyond a
13 reasonable doubt that Carnie Norris crossed the street,
14 Dean Street, approached Drew Bond, demanded property that
15 he intended to keep permanently to keep Drew Bond from
16 having it beyond a reasonable doubt to convict him of an
17 armed robbery. The evidence does not show that.

18 Thank you, ladies and gentlemen for your time, for
19 your attention and for your patience. On behalf of the
20 defendant Carnie Norris I merely ask that you remember the
21 oath that you have taken. Thank you.

22 THE COURT: Mr. Barnette.

23 MR. BARNETTE: May it please the Court, Your Honor.

24 Madam forelady and ladies and gentlemen of the jury,
25 Drew Bond and his friends had every right to be out there

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1 doing what they wanted to do.

2 Anybody in this county should be able to enjoy the
3 playing Frisbee golf, enjoy going out to the playground,
4 enjoy watching a ballgame if they're playing softball,
5 baseball, throwing a football. They should be able to
6 enjoy that.

7 This is a case that shows you that people can enjoy --
8 they cannot go out, and, unfortunately, they've got to do
9 where their surroundings, where they're at. You shouldn't
10 have to worry about that.

11 And they came here. Andrew B. came and told
12 you what happened. That was probably the most important
13 knife, this knife to his throat standing there.

14 You heard the testimony. You heard the three people
15 that stood there and saw him point this knife at him. They
16 told you what happened coming through.

17 And if you look through the testimony of the state's
18 witnesses, it's consistent all the way through. Officer
19 James comes up and catches Mr. Norris over the top of him
20 with his cell phone in his hand. He throws it back to him.

21 The officers told you what happened when they got
22 there. They keep saying about these other officers. Both
23 sides gets to call witnesses, ladies and gentlemen. We
24 brought you the witnesses that brought you the pertinent
25 information in this case.

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1 Look at their testimony. The two codefendants can't
2 even get it right. And I asked this question specifically
3 over and over again. I apologize. But I wanted to make
4 sure there was no confusion about it.

5 Mr. Chiles got up and testified. I said when you got
6 over what was Mr. Norris doing to Mr. Bond. He said, well,
7 he was holding him down, had his hand on his shoulder.

8 I asked Mr. Norris what he had done, and he said I
9 never touched him. He was specific about that. I never
10 touched him. There's inconsistency in their story right
11 there, big inconsistency, starting off with that.

12 And that's one thing the judge will tell you. You
13 weigh the credibility of the witnesses. You believe
14 whatever you want. You're the judges of the facts. You
15 decide what facts are true and what's not true. You've got
16 two sides that are so diametrically opposed on what
17 happened that night. You've got the state's version and
18 you've got the defendant's version.

19 They want you to believe -- these are two gentlemen
20 that's been familiar with the criminal justice system.
21 Both of them has been convicted of different offenses. And
22 you heard what those offenses was. And that's part of what
23 you can weigh with the credibility of their testimony. And
24 the judge will tell you about that. It's called
25 impeachment -- impeachment. The defendants can be asked

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1 about it.

2 Here they want you to believe -- they could have
3 called the police. Any reasonable person -- that's the one
4 thing, ladies and gentlemen. You bring your own life
5 experiences with you.

6 What's the first thing you do if you see a crime being
7 committed? You call 9-1-1. They had a phone available to
8 them the whole time.

9 Mr. Norris says he goes over there. And he said I
10 just did like this. Well, human nature is if you've got a
11 strange man that's coming up to you and trying to do this
12 to you, what are you going to try to do? Get away from him
13 unless he grabs ahold of you and puts you down and holds
14 you down with a knife.

15 He would have ran too if he could have just like the
16 other ones, the victims. But that man right over there
17 kept him there.

18 He gets his wallet. Ms. Jones made a big deal about
19 this. Well, look at the items they took. Do you think his
20 driver's license are worth anything? A driver's license is
21 not worth anything to anybody. As a matter of fact, you
22 don't want to have somebody's driver's license because it's
23 probably not going to get you anything anyway.

24 You're going to have their VISA cards. Cards, like I
25 said, they're looking through the wallet to find out what

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1 cards they can use and what they can't use. And some they
2 may not be able to see them plain out there, so we're going
3 to take them anyway because there might be some we could
4 use.

5 The police come up. And you heard Officer James
6 testify that Carnie Norris is right on top of Andrew B.
7 He's got a cell phone in his hand. If he wanted to call
8 police, he could have took the cell phone and called the
9 police. Anybody can dial 9-1-1.

10 Did he go around and tell Officer James these guys I
11 caught just breaking into the building? No. They didn't
12 do that. They go across the street.

13 Mr. Chiles. I'm talking to him and asking him
14 questions. And I said why didn't you just run over. Said
15 these are these guys I. D.'s or credit cards here. They
16 don't do that. Then he stuffs them in the pocket. And I
17 asked him why did you. He said, well, I talked to three
18 other officers. I said why didn't you give the officers
19 those cards. He said I forgot about it. You forget about
20 something like this? You saw somebody you think is
21 breaking into a house, do you forget about that?

22 Ladies and gentlemen, the one thing, like I said, we
23 bring is common sense in here. They make a big deal about
24 their not running. Well, they knew who they are. I. D. is
25 not an issue in this case.

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1 I know they're asking, you know, how can you see the
2 lighting or anything. These are the two men that did this.
3 That was their oath. There's no question about that.

4 There's no question that Carnie Norris had this knife
5 on him. He says it was in his wallet, he had just finished
6 fishing or whatever and put it inside of his wallet after
7 he cleaned fish with it.

8 No question Kenneth Chiles has got his credit cards.
9 These are credit cards that are not his, and they're ^{Andrew} B.
10 just like he said he took them away from him.

11 Here are just young people. They have a right to do.
12 They'd played Frisbee golf there before. They should have
13 that right to do it and it shouldn't be interfered.

14 What happened was Carnie Norris saw an easy target.
15 And the one thing that kept driving me crazy, he kept
16 saying they called the police, they called the police.

17 How did they know they called the police? They don't
18 know. They have no idea. They're committing a robbery,
19 saying go right back over. When the police shows up,
20 they've got to figure out some kind of story to tell. And
21 they came up with their story hoping that y'all would buy
22 it. I hope you don't, ladies and gentlemen.

23 We're very fortunate Andrew B. is here to testify.
24 We're very fortunate that his friends was here to testify.
25 I'm glad we're just talking about an armed robbery case and

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1 not something else. With Andrew B. there's no question
2 what happened to him that night. He got put in a situation
3 he never dreamed that night.

4 You can say, well, he shouldn't have been there that
5 night. But the bottom line is in our country, in our
6 county, you should have a right to do legal things, to have
7 fun, to do things. And you shouldn't have to go through
8 what he went through that night and what the other folks
9 went through that night. They shouldn't have to be faced
10 with that situation.

11 If these men truly thought that they were breaking
12 into that building they should have called 9-1-1. They
13 shouldn't have handled it themselves.

14 Common sense tells you if somebody is breaking into my
15 house, that's different. If it's at my house and I'm
16 sitting there, I'm going to handle it. I'm going to call
17 the police and I'm going to protect myself.

18 If I see somebody else going into somebody else's,
19 then I'm going to call and get the police there as soon as
20 I can. They didn't do that.

21 Like I said, they saw an opportunity that night and
22 they took advantage of it, thought they was going to get
23 away with it. They're hoping to get away with it now.

24 And, like I told you before, when I came up when we
25 first started the case, I know it's been a short case.

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1 It's a tough case from that standpoint, because any time
2 you get into judgment with something like this. But look
3 at the facts. There is no question what happened.

4 Carnie Norris went over there to commit a robbery, and
5 he went to commit an armed robbery. They took the cards,
6 the money out of that wallet, the six bucks or whatever.
7 That's armed robbery, ladies and gentlemen. They did it
8 and they're guilty of it.

9 And the one thing -- there was another thing that was
10 kind of interesting. You heard Andrew B. testify. And
11 Mr. Chiles comes up. And Mr. Norris, and this is per
12 policeman -- says you're my backup, aren't you, because
13 when Mr. Mayfield or Mr. Blankenship came to try to help
14 him, Mr. Chiles came over at that time. He was his backup.

15 And you're right. I am going to tell you about the
16 hand of one, hand of all. And the judge is going tell you
17 about it. The hand of one hand, hand of all, is where two
18 or more people are involved in the commission of a crime.
19 It's accomplice liability when you're an accomplice to each
20 other.

21 You don't even have to be there to be an accomplice.
22 For example, if Mr. Chiles is up on the street corner just
23 watching for the police while Mr. Norris is committing a
24 crime, he don't even have to be there. But he's helping
25 him by being a lookout for him. That's the same thing.

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1 That's the hand of one is the hand of all.

2 I know they make this big deal about, well, Mr. Norris
3 didn't have any money on him or any of these credit cards
4 on him. Will that mean if I commit a crime and I hand over
5 to this officer, Officer James, and that when they catch me
6 I, you know, robbed them, I don't know. Am I not guilty of
7 armed robbery? That's crazy.

8 The hand of one is the hand of all. If you are
9 involved working, aiding, abetting, doing anything
10 involving the crime, you're as guilty. You're both as
11 guilty.

12 And that's why I ask you, ladies and gentlemen of the
13 jury, in this case. I think it's the only verdict that
14 speaks the truth in this case. Once you've looked at the
15 evidence and looked, you know, what testimony is there and
16 the consistent testimony, no question the state's witnesses
17 was consistent all the way through. The defendant's was
18 not.

19 Which side do you want to believe? Do you want to
20 believe them or the state's witnesses? That's what it
21 comes down to, ladies and gentlemen. And I'm going to ask
22 you to return verdicts of guilty on both of them. Thank
23 you for your time.

24 THE COURT: Madam forelady and ladies and gentlemen,
25 you of course have heard and seen all of the evidence.

Jury charge

1 You've now heard the final summations of the lawyers; and
2 therefore now I'm going to instruct you on the law that's
3 applicable. And then you'll be asked to go back and begin
4 with your deliberations.

5 It is your exclusive duty to determine what the facts
6 are. And you do that through your own common sense
7 examination and evaluation of all of the testimony and
8 other evidence received during the trial of the case.

9 And you 12 jurors alone will decide what weight, value
10 and effect to give to any particular witness' testimony or
11 other evidence in the case. Your sole objective is to
12 simply reach the truth in the matter, and by doing that you
13 will have fulfilled your obligations as jurors, and that is
14 to simply give both the state and each of these defendants
15 a fair and impartial trial.

16 Now, as you aware, in this case the state has charged
17 each of these defendants with the crimes of armed robbery.
18 And there are two separate indictments. One relates to
19 Kenneth Wayne Chiles; the other relates to Carnie Norris,
20 III. They're separate indictments. You are to consider
21 the evidence separately and apply the law to each
22 indictment separately.

23 In this case your verdicts may be the same; they may
24 be different as to each of the indictments. That will
25 depend of course upon your determination of fact and then

Jury charge

1 your application of the law as I will have provided it to
2 you.

3 But in this case each of the defendants are charged
4 with the crime of armed robbery, the state alleging by way
5 of the indictment that on or about July the 16th of 2008
6 that Mr. Chiles and Mr. Norris did commit the crime of
7 robbery while armed with a deadly weapon and that they
8 took, stole and carried away from the person or presence of
9 Andrew B. by the use of force or intimidation
10 certain personal property that belonged to Mr. Bond.

11 Now, as to those allegations and as to each of those
12 indictments each defendant has entered a plea of not
13 guilty. And as I've told you, that plea of not guilty
14 places upon the state the burden of proving the allegations
15 that they have set forth in each of the indictments, the
16 burden of proving each of the essential elements that makes
17 up the crime of armed robbery; and therefore the burden is
18 upon the state to establish each defendant's guilt to your
19 satisfaction beyond a reasonable doubt before any verdict
20 of guilty could be returned.

21 As I also told you, these indictments are not evidence
22 in the case. They're not proof of anything.

23 The indictments will be in the jury room, Madam
24 Forelady, because it's going to be on the back of each
25 indictment that you will indicate the jury's unanimous

Jury charge

1 decision. But other than serving as the verdict form, the
2 indictments serve no function so far as you jurors are
3 concerned.

4 Now, the burden is never upon a defendant to prove
5 that he or she is not guilty or to prove that he or she is
6 innocent because in many cases that might not be possible.
7 The burden is always upon the state because they bring the
8 charge against these defendants to prove their guilt to
9 your satisfaction beyond a reasonable doubt.

10 Your are instructed that it is a vital, important and
11 cardinal rule of law that every defendant in a criminal
12 trial, and it doesn't matter how serious the offense might
13 be for which that person stands charged, that person is
14 always under the law presumed to be innocent of that
15 charge.

16 That presumption of innocence remains with any
17 defendant, as it does with these defendants, from the time
18 that they are placed under arrest and throughout the course
19 of the criminal process and even throughout the course of
20 the actual trial in the case.

21 As I have told you, that presumption of innocence will
22 be with each of these defendants even as you go back to
23 begin with your deliberation in this case. And that
24 presumption of innocence will be with each of them in that
25 jury room, and it will remain with them forever unless you

Jury charge

1 12 jurors determine that they are no longer entitled to
2 that presumption of innocence. That is after you've
3 carefully considered all the evidence in the case, and from
4 that evidence you determine what you believe to be the true
5 facts, and upon determining those facts you apply the law
6 that I will have provided you, if you 12 jurors unanimously
7 determine beyond a reasonable doubt that a defendant's
8 guilt has been proven, then that defendant would no longer
9 be entitled to that presumption of innocence. But it's
10 only if, unless and until you are satisfied of a
11 defendant's guilt beyond a reasonable doubt that the
12 presumption of innocence would no longer be applicable.

13 Now, while the state does have the burden of proving a
14 defendant's guilt beyond a reasonable doubt, that doesn't
15 mean that the state has to prove a defendant's guilt beyond
16 all doubt or beyond any possible doubt. But it does
17 require the state to prove a defendant's guilt to your
18 satisfaction beyond a reasonable doubt.

19 The term reasonable doubt should be given its plain
20 and ordinary meaning. A reasonable doubt is the kind of
21 doubt that would cause a reasonable person to hesitate to
22 act upon the information provided.

23 A defendant in a criminal trial is entitled to any
24 reasonable doubt that arises from the evidence or lack of
25 evidence in a case. And if upon any factual issue

Jury charge

1 essential to a finding of a verdict of guilty you have some
2 reasonable doubt as to how that issue should be resolved,
3 it would be your duty to resolve that reasonable doubt in
4 favor of a defendant.

5 And therefore if upon your consideration of the whole
6 case you have a reasonable doubt as to a defendant's guilt,
7 you must resolve that reasonable doubt in that defendant's
8 favor and return a verdict of not guilty.

9 And at the same time after you've carefully considered
10 all the evidence in the case and determined the facts and
11 applied the law, if you have no reasonable doubt as to a
12 defendant's guilt, then it would be your corresponding duty
13 to convict that defendant or to find him guilty if you are
14 satisfied of his guilt beyond a reasonable doubt.

15 Now, the same law that provides that you are the
16 judges of the facts also provides that I am the judge of
17 the law. And that simply means that nobody is going to
18 tell you how to arrive at your determination of fact in
19 this case.

20 You do that, as I've already stated, through the
21 exercise of good judgment and common sense conscientiously
22 applied to the testimony and evidence received during the
23 trial of this case.

24 You must however under your oath as a juror accept the
25 law as I provide it to you as being the law that you are to

Jury charge

1. apply in this case. In other words, you're never to
2. concern yourself with what you thought the law was before
3. you came to serve as a juror or what you think the law
4. ought to be.

5. Under your oath you must simply accept the law as I
6. provide it to you as being the law that is applicable in
7. this particular case. And then you take that law and you
8. apply it to the facts as you 12 jurors determine those
9. facts to be based upon your own common-sense examination
10. and evaluation of all of the testimony and evidence
11. received during the trial of the case.

12. Now, as I've told you, you are the sole judges of the
13. facts in this case. And therefore you are necessarily the
14. sole judges of the credibility or the believability of each
15. witness that has testified during the trial of this case.

16. You 12 jurors alone will decide what weight, value and
17. effect to give to any particular witness' testimony, or
18. even portions of testimony. And so there are several
19. factors which you should consider in arriving at your
20. assessment as to a particular witness' credibility, and I'm
21. going to list those factors for you.

22. You may consider the demeanor of the witness, that is
23. how the witness appeared to you when the witness testified
24. from the witness stand. Was the witness straightforward in
25. responding to questions, or was the witness hesitant or

Jury charge

1 evasive in responding to questions that were asked of that
2 witness?

3 Simply put, did the witness appear to you to be
4 telling the truth and to have knowledge of the facts to
5 which that witness has testified.

6 You may also consider whether or not the testimony of
7 a witness is consistent, or is it inconsistent with that
8 witness' own testimony or statements made in court or
9 outside of court by that witness.

10 You may also consider whether or not the testimony of
11 a witness is consistent or inconsistent with other
12 witnesses' testimony or with other evidence received during
13 the trial of the case.

14 You may also consider how the witness came to know the
15 facts to which that witness has testified. In other words,
16 what was that witness' opportunity and ability to perceive
17 the existence of those facts to which that witness has
18 testified by having previously used his or her senses. And
19 then what is that witness' ability to be able to come into
20 court and to accurately recollect to you as to what they
21 have previously seen or heard, or felt for that matter.

22 You may also consider any bias or prejudice or
23 interest that a witness might have. In other words, do you
24 find some reason that a particular witness would come into
25 court and would testify one way or another to help or to

Jury charge

1 hurt one side or the other.

2 You may consider any interest that a witness might
3 have in the outcome of the case if you determine that a
4 witness does have such an interest and you find that it
5 would bear upon that particular witness' credibility.

6 You may also consider whether or not the testimony of
7 a witness is strengthened, or is it weakened by other
8 testimony or other evidence received during the trial of
9 the case.

10 Now, during the course of this trial you have heard
11 certain evidence relating to a defendant having prior
12 convictions for certain types of criminal offenses.

13 Ordinarily, evidence of any prior convictions of a
14 defendant is not admissible during the trial of a criminal
15 case because it's not ordinarily relevant to any issue that
16 the jury must determine.

17 However, where a defendant has a prior record of
18 convictions for certain types of criminal offenses and
19 where that defendant takes the witness stand and testifies
20 during the trial of the case, then evidence of those
21 convictions may be admitted during that testimony.

22 But that evidence may be used for a very and strictly
23 limited purpose by the jury, and that is as it relates to
24 the impeachment of a witness' or a defendant's testimony
25 given during the trial. In other words, you may consider

Jury charge

1 such evidence on the issue of the credibility and/or the
2 believability of a defendant and that defendant's
3 testimony, but you may not consider it for any other
4 purpose.

5 It is not being introduced as evidence of a
6 defendant's guilt for the crime for which he now stands
7 charged, and you are not permitted to consider it on that
8 issue.

9 The sole purpose for which it is introduced, the sole
10 reason that it is allowed and the sole purpose for which
11 you may consider it is solely as to the issue of the
12 credibility and the believability of a defendant's
13 testimony in the event you find such evidence to be
14 probative on that particular point or issue.

15 Now, because you are the finders of the facts and you
16 are the judges of the credibility of each witness you are
17 permitted to believe as much or as little of what a witness
18 has testified to as you deem is appropriate.

19 And therefore you may believe everything that a
20 witness testified to. You may choose to believe none of
21 it. You may believe some portion of a witness' testimony
22 and reject some other portion of that same witness'
23 testimony. You may believe one witness as opposed to
24 several, or several as opposed to one.

25 But whatever your good judgment and common sense tells

Jury charge

1 you is the most believable and credible testimony is the
2 testimony you should accept, and you should reject any
3 testimony or other evidence that you find not to be
4 credible or believable.

5 Again, your sole objective is to simply reach the
6 truth in the matter. And by doing that you will have
7 fulfilled your obligations as jurors, and that is to simply
8 give both the state and each defendant a fair and impartial
9 trial.

10 Now, while there are various forms of evidence such as
11 testimony, photographs, documents, charts and other types
12 of physical exhibits, there are really only two types of
13 evidence. Either or both of those types of evidence may be
14 used to prove any fact in issue. But the two types of
15 evidence are direct evidence and circumstantial evidence.

16 Now, direct evidence is the testimony of a person who
17 testifies from actual knowledge of a fact. It is testimony
18 by a person who has perceived the existence of some fact by
19 means of his or her senses, and then they come into court
20 and testify as to what they have previously perceived.

21 Circumstantial evidence, on the other hand, is the
22 proof of some other fact or set of facts which taken either
23 singly or collectively may prove the existence of a fact in
24 question as a necessary consequence, that is through an
25 inference.

Jury charge

1 An inference is simply a deduction of fact which may
2 logically and reasonably be drawn from the proof of some
3 other fact or set of facts. In other words, it's not a
4 fact proven by the direct testimony of a person based upon
5 personal perception, but it is a conclusion which might
6 reasonably be drawn from the proof of other facts.

7 In other words, you may infer that a particular event
8 occurred or that a particular fact exists based upon the
9 proof of sufficient factual circumstances which would
10 reasonably warrant your arriving at that conclusion.

11 Now, the law makes absolutely no distinction between
12 the weight or value to be given to either direct evidence
13 or to circumstantial evidence, nor is a greater degree of
14 certainty required of circumstantial evidence as opposed to
15 direct evidence.

16 Whatever the type of evidence used to prove any fact,
17 you should consider all of the evidence presented during
18 the trial of the case. And after carefully weighing and
19 considering that evidence in your minds if you are not
20 convinced of the guilt of a defendant beyond a reasonable
21 doubt, then you must resolve that doubt in that defendant's
22 favor and return a verdict of not guilty.

23 Now, in this case, as you know, each defendant is
24 charged with the crime of armed robbery. Armed robbery is
25 a statutory offense. And that just means that it's been

Jury charge

1 codified in a statute. The legislature has prescribed and
2 defined what armed robbery is.

3 That statute is set forth in 16-11-330, and that
4 statute provides in its relevant parts that a person who
5 commits the crime of robbery while armed with a pistol,
6 dirk, slingshot, metal knuckles, razor or any other deadly
7 weapon, or a person who commits the crime of robbery while
8 alleging either by actions or by words that he is armed
9 while using a representation of a deadly weapon, or any
10 object which a person present during the commission of a
11 robbery reasonably believed to be a deadly weapon is guilty
12 of the crime of armed robbery.

13 Now, in order to be guilty of the crime of armed
14 robbery it would be necessary that the state has proven the
15 lesser included offense of the crime of robbery. And the
16 crime of robbery is commonly referred to as a larceny by
17 force.

18 Larceny is taking, stealing and carrying away the
19 personal property of another. A robbery is the commission
20 of a larceny, a theft by force.

21 And robbery is further defined in the law as the
22 taking and the stealing and carrying away of the personal
23 property of another person having any value whatsoever from
24 the person or from the presence of that person without his
25 or her consent and with the intent to steal by using force

Jury charge

1 or violence to accomplish the theft or by threatening the
2 use of force or violence in order to accomplish the theft.

3 And under the law a deadly weapon is defined as any
4 device or instrument which in the manner it is used or is
5 intended to be used is known to be capable of producing
6 death or serious bodily harm. And deadly weapon would
7 include the terms firearms and other edged instruments.

8 So therefore under this particular statute an armed
9 robbery may be proven in one of two ways. Number one, it's
10 a robbery which is committed while the perpetrator is
11 actually armed with any type of deadly weapon. Or it's a
12 robbery committed while the perpetrator alleges either by
13 actions or by words that he is armed while using a
14 representation of a deadly weapon or any object which a
15 person present during the commission of the robbery
16 reasonably believed to be a deadly weapon.

17 And you are further instructed that one who is charged
18 with the commission of a crime may be convicted of that
19 crime as a principal or as an accomplice. And an
20 accomplice is one who knowingly and voluntarily and with a
21 common intent with the principal offender unites with the
22 principal offender in the commission of a crime. An
23 accomplice may be also -- maybe also be referred to as an
24 aider or an abettor in the commission of the crime.

25 In this case the state is alleging that the defendants

Jury charge

1 are guilty of the crime of armed robbery either as a
2 principal or as an accomplice.

3 The law provides that where two or more people act
4 together with a common intent and they combine, conspire,
5 plan or otherwise agree to the commission of a crime, each
6 person who is present at the scene of the crime to aid,
7 abet, assist or otherwise participate in the commission of
8 the crime is equally guilty of any crime which is
9 accomplished thereby.

10 Therefore any person who joins with another to
11 accomplish an illegal purpose is held to be criminally
12 responsible for everything done by any other person which
13 occurs as a natural or probable consequence of the acts
14 done pursuant to and in furtherance of the common plan or
15 purpose.

16 And therefore where two or more persons are acting
17 together and they are aiding, abetting, assisting and
18 participating with each other in the commission of a crime,
19 the acts of one become the acts of all. The hand of one
20 becomes the hand of all. And all are equally guilty of any
21 crime which is accomplished thereby.

22 You are further instructed that prior knowledge by a
23 defendant that some person is intending to commit a crime
24 without more is not sufficient to make that person guilty
25 of the crime which he has shown to have had knowledge of.

Jury charge

1 And, likewise, the mere presence of a defendant at the
2 scene of a crime or in close proximity thereto even with
3 knowledge that another is intending to commit a crime is
4 not sufficient standing alone to prove that defendant
5 guilty of the crime under the legal theory of accomplice
6 liability.

7 In order for a defendant to be found guilty of a crime
8 under the legal theory of accomplice liability or aiding
9 and abetting it must be proven beyond a reasonable doubt
10 that the defendant was actually present at the scene of the
11 crime with the intention of aiding, abetting, assisting or
12 participating in the common plan which culminates in the
13 commission of the crime.

14 And you are further instructed that a criminal intent
15 is also a necessary element of any crime which must be
16 proven beyond a reasonable doubt, for there must have been
17 a common design or intent to commit a crime, and the crime
18 must have been committed pursuant thereto.

19 Intent means the state of a person's mind which
20 directs his actions towards a specific object or goal. And
21 criminal intent is a state of mind that operates jointly
22 with the commission of an act in the commission of a crime.

23 Criminal intent is a mental state of conscious
24 wrongdoing in contrast to the commission of an act which is
25 the result of an accident, inadvertence or mistake.

Jury charge

1 And intent may be proven by acts, declarations and
2 conduct of a defendant, as well as any other circumstances
3 which are established by the evidence in the case from
4 which you might naturally and reasonably infer any such
5 intent.

6 Now, Madam Forelady and ladies and gentlemen of the
7 jury, I am not in any way concerned with what your
8 decisions are, but you are instructed that any decision
9 that you reach must be unanimous. All 12 jurors must be in
10 agreement.

11 As I've told you, as you go back, Madam Forelady,
12 you'll be called upon to preside over the jury
13 deliberations simply to ensure that they are carried out in
14 some orderly fashion. But all jurors are expected to
15 participate in the deliberations, because, as I have
16 stated, the verdict has to be unanimous. All of you must
17 be in agreement.

18 Again, Madam Forelady, you're going to be asked to
19 indicate the jury's decisions on the back of the
20 indictments that will be sent back along with any other
21 evidence. But, again, these aren't evidence. They're
22 simply the verdict forms.

23 There are two separate indictments. One relates to
24 the charge against Mr. Chiles; the other relates to the
25 charge against Mr. Norris.

Jury charge

1 As I have stated, you are to consider the indictments
2 separately as to the evidence and as to the law. Your
3 verdicts in these cases may be the same, they may be
4 different. That will depend upon your determination of
5 facts as it relates to the particular defendant and then
6 your application of the law to those facts as you determine
7 them to be.

8 But with respect to each of the indictments you have
9 two possible verdict forms. Those two possible verdict
10 forms are guilty and not guilty. So whatever that decision
11 is, Madam Forelady, simply indicate it on the back of the
12 indictment in the space provided. You'll see on the back
13 of each indictment the word verdict. And it's beneath that
14 word that you'll indicate the jury's unanimous decision.

15 There's also a line where you are to sign your name as
16 the foreperson. No other juror needs to sign the verdict
17 form, just the foreperson. And then there's a place for
18 the appropriate date.

19 Now, during the course of your deliberations you may
20 have questions that you try to resolve in your minds
21 through your discussions. And if you are wondering at any
22 time if there's some additional piece of evidence that you
23 can have that might assist you in resolving the case,
24 understand that no additional evidence may be received now
25 that the case is going to be submitted to you for your

Jury charge

1 deliberations.

2 So even if other evidence existed, it can't be
3 introduced. It can't be received. You can't have it. So
4 don't inquire as to the existence or whether or not you can
5 have other evidence in the event that issue should arise.

6 If however you have a question of fact that can be
7 resolved by having testimony of a witness replayed in whole
8 or in part, we can make arrangements for you to come back
9 into the courtroom to have testimony replayed in whole or
10 in part as the case might be.

11 I don't have transcripts of a witness' testimony. So
12 I can't send back a transcript. But if you need to have
13 testimony replayed, let the bailiff know. Identify the
14 witness and what portion, if you need just a portion of it,
15 and we'll bring you back to provide you with that replay of
16 testimony.

17 If at any time you have a question about the law that
18 you are to apply, I can always answer questions that relate
19 to the law that's applicable. So while I cannot respond to
20 questions of fact, if you have a question about the law
21 that you are to apply, I can respond to that.

22 So, Madam Forelady, if at any time you need to address
23 a question to me, if you'll write it on a piece of paper,
24 give it to the bailiff, he'll provide it to me, and I'll
25 respond accordingly.

Jury charge

1 I don't know if we have any smokers on the jury. But
2 if you want to smoke, you can smoke during deliberations.
3 But you cannot smoke in the jury room. You'll have to go
4 outside for that purpose. So if anybody wants to smoke,
5 you let the bailiff know, and they'll take you outside.

6 You are instructed however that deliberations may not
7 be engaged in unless all 12 jurors are present. So if at
8 any time any juror is absent for an authorized purpose the
9 deliberations must stop. And they may only resume when all
10 12 are present so that all may participate.

11 I think that's all I have for you. But I've got to
12 address some matters with the lawyers before you can
13 actually start your deliberations.

14 So while I am going to ask you to go back to the jury
15 room, do not yet begin deliberations. I'll address those
16 matters with the lawyers. If I don't need to bring you
17 back I'll send word by way of the bailiff that you may
18 begin with your deliberations. In that event he'll bring
19 to the jury room each of the exhibits which have been
20 introduced.

21 And to you, Madam Forelady, he's also bring the
22 indictments which will serve as the verdict form.

23 So, Mr. Allen, if you will, stay with me. The
24 original 12 jurors, if you'll please retire and await my
25 instruction as to when to begin your deliberations.

Jury charge

1 (Whereupon, the jury retired to deliberate at
2 3:00 p.m.)

3 (Whereupon, the alternate juror was excused.)

4 THE COURT: Are there any exceptions taken to the
5 instruction or requests for additions to the instruction by
6 the state?

7 MR. BARNETTE: None from the state, Your Honor.

8 THE COURT: By defendant Chiles?

9 MR. POOLE: No, sir.

10 THE COURT: By defendant Norris?

11 MS. JONES: No, sir, Your Honor.

12 THE COURT: Let me ask y'all to verify each of the
13 exhibits before they go back.

14 (Pause.)

15 THE COURT: Everything in order?

16 MR. POOLE: Yes, sir.

17 THE COURT: If you will, send the evidence back and
18 tell the jury to begin deliberations and notify us when
19 they've concluded.

20 We will be in recess for 15 minutes.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. Bring the jury in, please.

23 (Whereupon, the jury returned to the courtroom at
24 3:56 p.m.)

25 THE COURT: Madam Forelady, I understand that you and

Jury charge

1 your fellow jurors would like some clarification on the
2 instruction that related to the legal theory known as
3 accomplice liability.

4 All right. I'm going to reinstruct you on the
5 accomplice liability. And if what I reinstruct you as to
6 does not answer your question, when you go back to the jury
7 room just simply send me another inquiry, because I'm not
8 always certain exactly what you're looking for, what it is
9 that you need.

10 So I'm going to give you what I think you've asked
11 for. In the event that's not it or you need something
12 additional, don't hesitate to provide me with another
13 request.

14 One who is charged with the commission of a crime may
15 be convicted either as a principal or as an accomplice.
16 And an accomplice is one who knowingly and voluntarily and
17 with a common intent with the principal offender unites
18 with the principal offender in the commission of a crime.
19 An accomplice is also referred to as an aider or as an
20 abettor.

21 In this case the state alleges that each of the
22 defendants is guilty of the crime of armed robbery either
23 as a principal or as an accomplice.

24 The law provides that where two or more people act
25 together with a common intent and purpose and they combine,

Jury charge

1 conspire, plan or otherwise agree to the commission of a
2 crime, each person who is present to aid, abet, assist or
3 otherwise participate in the commission of the crime is
4 equally guilty of any crime accomplished by those efforts.

5 Any person who joins with another to accomplish an
6 illegal purpose is held to be criminally responsible for
7 everything done by any other person which occurs as a
8 natural or probable consequence of the acts done pursuant
9 to and in furtherance of the common plan and purpose.

10 Therefore where two or more persons are acting
11 together and they are aiding, abetting, assisting and
12 participating with each other in the commission of a crime,
13 the acts of one become the acts of all, the hand of one
14 becomes the hand of all, and all are equally guilty of any
15 crime accomplished thereby.

16 Prior knowledge that a defendant -- excuse me. Let me
17 start over with that. Prior knowledge by a defendant that
18 some other person is intending to commit a crime without
19 more is not sufficient to make him guilty of the crime of
20 which he may be shown to have had knowledge.

21 And, likewise, the mere presence of a defendant at the
22 scene of a crime or in close proximity thereto, even with
23 knowledge that another is intending to commit a crime, is
24 not sufficient standing alone to prove the defendant guilty
25 of the crime under the legal theory of accomplice

Jury charge

1 liability.

2 In order for a defendant to be found guilty of a crime
3 under the legal theory of accomplice liability it must be
4 proven beyond a reasonable doubt that the defendant was
5 actually present at the scene of the crime with the
6 intention of aiding, abetting, assisting or participating
7 in the common plan which culminates in the commission of
8 the crime.

9 A criminal intent is also a necessary element of any
10 crime that must be proven beyond a reasonable doubt, for
11 there must have been an intent to commit a crime and the
12 crime must have been committed pursuant thereto, and each
13 defendant was aiding, abetting and assisting in the
14 commission of that crime by some overt act.

15 The word intent means the state of a person's mind
16 which directs his actions towards a specific object or
17 goal.

18 Criminal intent is a state of mind that operates
19 jointly with an act in the commission of a crime. Criminal
20 intent is a mental state of conscious wrongdoing in
21 contrast to the commission of an act which is the result of
22 accident, inadvertence or mistake.

23 And intent, as well as criminal intent, may be proven
24 by acts, declarations and conduct of a defendant, as well
25 as any other circumstances which are established by the

Jury charge

1 evidence in the case from which you may naturally and
2 reasonably infer any intent.

3 In other words, intent may be proven by direct
4 evidence, as well as circumstantial evidence, from which
5 you might reasonably infer any such intent.

6 All right. That's it. Now, if you'll go back and
7 continue with your deliberations, and if that did not
8 answer the question that you needed answering, you let me
9 know. And I'll try to provide additional clarification.

10 (Whereupon, the jury retired to deliberate at
11 4:04 p.m.)

12 THE COURT: Any exception taken by the state?

13 MR. BARNETTE: None from the state, Your Honor.

14 THE COURT: Any exception taken by the defendant
15 Chiles?

16 MR. POOLE: No, sir.

17 THE COURT: Defendant Norris?

18 MS. JONES: No, sir, Your Honor.

19 THE COURT: We will be at ease while the jury
20 continues to deliberate.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. I am told the jury has reached
23 a decision. Are we ready to receive it?

24 MR. BARNETTE: The state is ready, Your Honor.

25 MS. JONES: Yes, sir.

Verdict

1 THE COURT: Okay. Bring them in.

2 (Whereupon, the jury returned to the courtroom at
3 4:25 p.m. to report its verdict.)

4 THE COURT: Madam Forelady, have you and your fellow
5 jurors reached a unanimous decision as to each of the
6 separate indictments?

7 THE FOREPERSON: We have, Your Honor.

8 THE COURT: Have you indicated those decisions on the
9 back of the indictments as requested?

10 THE FOREPERSON: I have.

11 THE COURT: Did you sign your name as the foreperson
12 and date it?

13 THE FOREPERSON: Yes, sir.

14 THE COURT: If you will, please hand those up by way
15 of the bailiff.

16 You may publish the verdicts.

17 THE CLERK: Indictment No. 2008-GS-42-5631, the State
18 of South Carolina, in the Court of General Sessions, the
19 State vs. Carnie Norris, III, indicted for armed robbery,
20 verdict, guilty. Signed by the foreperson this 7th day of
21 July of 2009.

22 In Indictment No. 2008-GS-42-5630, the State of South
23 Carolina vs. Kenneth -- Kenneth Wayne Chiles, indicted for
24 armed robbery, the verdict, guilty. Signed by the
25 foreperson the 7th day of July, 2009.

1 Ladies and gentlemen of the jury, is this your verdict
2 and still your verdict? If so, please raise your right
3 hands.

4 (Whereupon, all responded in the affirmative.)

5 THE CLERK: So say you all.

6 THE COURT: All right. Does either defendant wish to
7 have the jury polled?

8 MS. JONES: Defendant Chiles does not. I'm sorry.
9 Norris. Defendant Norris does not.

10 MR. POOLE: Defendant Chiles does not either.

11 (Whereupon, the trial jury was excused.)

12 THE COURT: All right. Any matters to address prior
13 to the imposition of sentence?

14 MR. POOLE: Your Honor, at this point in time the
15 defendant Chiles would move for a new trial. That is based
16 on prior motions made prior to the trial, during the trial
17 and after the return of the verdict.

18 THE COURT: All right. Motion for a new trial is
19 denied.

20 MS. JONES: And defendant Norris makes a similar
21 motion, Your Honor.

22 THE COURT: That motion is also denied.

23 (Pause.)

24 THE COURT: All right. Anything further on behalf of
25 the state?

Sentence

1 MR. BARNETTE: Your Honor, I do have the defendants'
2 prior record.

3 THE COURT: All right. Who are you going to start
4 with?

5 MR. BARNETTE: I'll start with Mr. Norris, Your Honor.

6 THE COURT: Okay.

7 MR. BARNETTE: 1979, he was convicted of driving under
8 the influence; 1983, interfering with operation of a school
9 bus; 1983, public drunk, shoplifting; 1983, petty larceny;
10 1984 attempted carbreaking; 1985, shoplifting second
11 offense; 1986, receiving stolen goods; 1988, possession of
12 crack with intent; 1991, simple possession of cocaine;
13 1993, accessory after the fact of felony; 199 --

14 THE COURT: What was that? What felony was that, do
15 you know?

16 MR. BARNETTE: Your Honor, I had them go down to the
17 clerk's office and try to find it. I'm not sure what the
18 felony was.

19 1995, unlawful weapon; 1995, common-law robbery. He
20 received a sentence of 15 years suspended to nine years and
21 five years probation consecutive to any other sentence. A.
22 T. U. was recommended.

23 In 1995 he was -- ten years was revoked on the
24 accessory-after-the-fact-to-a-felony conviction. And on
25 burglary second nonviolent, he was convicted. Then he

Sentence

1 received a 15-year sentence.

2 And, Your Honor, he received a public disorderly
3 conduct in 2007. I believe his probation -- he was back --
4 he is back in the D. O. C. now. I think it was revoked
5 again at that time.

6 Your Honor, Kenneth Chiles. 1981, he was convicted of
7 storebreaking. He received a 5-year, suspended to 5-year
8 probationary sentence.

9 He also got another housebreaking and grand larceny
10 conviction in 1982. He received five years on that.
11 Shoplifting in 1987; shoplifting, second offense, 1988;
12 shoplifting third, 1988; 1989, received another shoplifting
13 offense. His probation was revoked at that time one
14 year. Both his probations was revoked, both the
15 shopliftings.

16 1991, driving under suspension more than one offense;
17 1992, criminal domestic violence; 1992, habitual traffic
18 offender and driving under suspension more than one
19 offense; 2000, he was convicted of criminal domestic
20 violence third or subsequent; and 2000, Your Honor, he was
21 convicted of shoplifting in that case.

22 I've talked to the victim, Andrew B. and talked to
23 his family, his mother. Your Honor, they do not want to
24 address the Court. They feel like you already know what
25 the case is about and just trust the Court's judgment in

Sentence

1 this case.

2 THE COURT: All right. Mr. Poole.

3 MR. POOLE: May it please the Court, Your Honor.

4 You've already heard certain biographical information
5 on Mr. Chiles. At this point in time he is 47 years old.
6 He does have two grown children. He's been working for 19
7 or 20 years up until the time of this arrest, as I
8 understand it, at Piccadilly.

9 And the prior record that he has, as I understand it,
10 is like in 2000, was his last conviction. And that was a
11 C. D. V. third or subsequent.

12 Your Honor, I would ask the Court to extend to him any
13 consideration you possibly can. This is for eight years,
14 nine years he's not been in any trouble whatsoever.

15 I think he exercised some extremely poor judgment in
16 what he did. And I know that he is remorseful about what
17 happened. So I would ask the Court to extend to him any
18 consideration and mercy that you possibly can.

19 Would you like to say anything, Mr. Chiles?

20 DEFENDANT CHILES: You said everything.

21 THE COURT: Ms. Jones.

22 MS. JONES: Your Honor, as you also know, Mr. Norris
23 is 48 years of age.

24 You've heard now the complete record on Mr. Norris.
25 He, as you are aware -- members of his family have been

Sentence

1 present throughout the trial. His mother, his father and
2 his son, Alton, are present.

3 Mr. -- Your Honor, much is known within the community
4 about Mr. Norris because of the great opportunity that the
5 community I think feels he squandered. He was a -- he
6 graduated from Spartan High as a record athlete, was
7 offered the opportunity -- I believe it was the University
8 of Georgia -- to play football.

9 THE COURT: It was.

10 MS. JONES: I'm not a football aficionado, but I do
11 know that.

12 And he had a great promising future and along the way
13 squandered that. And I would say to Your Honor I know from
14 my dealings with him he regrets that. Part of the problem
15 was a substance abuse problem as he alluded to earlier
16 today when talking about the '96 and '95 events.

17 Obviously, none of his infamous history and his
18 criminal history can be laid at the feet of his parents,
19 who I think all people in the community who know them
20 recognize them as upstanding citizens, and that oftentimes
21 they felt sorry for them because of what they have had to
22 watch their son become and the opportunity he had to go
23 away because of his own substance abuse problems and
24 conduct or criminal conduct.

25 Your Honor, on Mr. Norris' behalf I've asked any

Sentence

1 members of his family to speak. I've not gotten a clear
2 indication from them as to whether they wish to. I think
3 they seem somewhat reluctant.

4 They are -- at least his mother has expressed the
5 opinion of being disappointed. But she has been present
6 for the testimony. So I think she perhaps understands.
7 And disappointment may be more of a statement as to what
8 her son has become than what the system has done and what
9 he faces, finds himself faced with today.

10 I do on his behalf wish to extend an apology to the
11 persons involved and also -- and on his behalf an apology
12 to Mr. Chiles.

13 But, Your Honor, I would ask, as Mr. Poole has asked,
14 for any mercy that Your Honor feels he can bestow on
15 Mr. Norris.

16 THE COURT: Mr. Norris, have you got anything you want
17 to add to what your lawyer has told me?

18 DEFENDANT NORRIS: Yes, sir. Just, I just apologize
19 to everyone involved individually. I would ask for
20 leniency based on my age and the things that I've, that
21 I've been through. I have been through it for years.

22 THE COURT: What have you been through?

23 DEFENDANT NORRIS: As far as drug addiction and
24 earlier.

25 THE COURT: Well, how long ago has that been?

Sentence

1 DEFENDANT NORRIS: That was back in '95, well, '93 and
2 '94.

3 THE COURT: All right. This is 2009. You're not
4 still addicted to drugs, are you?

5 DEFENDANT NORRIS: No, sir; no, sir. But that's,
6 that's basically where my trouble started back then.

7 MS. JONES: Your Honor, to clarify one point Mr.
8 Barnette brought up, he seemed unclear as to what the
9 reason for Mr. Norris' current incarceration at the
10 Department of Corrections is.

11 As Your Honor has now heard, Mr. Norris received a
12 sentence that was, in essence, a split sentence in '96 on a
13 robbery charge and a burglary charge.

14 He did a portion of active time and got out and had a
15 parole obligation. He received a parole-violation warrant
16 right after the arrest of this and on September 17th of
17 2008 was returned to custody for a parole violation and
18 received a sentence of two years, 11 months and 17 days.
19 That's according to probation. That was the remainder of
20 the '96 sentence. So that is what he's -- the short amount
21 he is still doing, so.

22 THE COURT: And why was he violated?

23 MS. JONES: Your Honor, I was not present for the
24 parole hearing. It's my understanding, is in a large part
25 this arrest.

Sentence

1 THE COURT: Okay.

2 MS. JONES: He had indicated to me as he, we briefly
3 touched on at the beginning of his testimony that late
4 2007, 2008 the parole people allowed him to transfer back
5 here for supervision from Anderson where he was trying to
6 undertake the operation of a gym, much like his brother who
7 operates a successful gym on Main Street.

8 And beyond that I cannot explain. But I did, I did
9 know that at the same time he was arrested a
10 parole-violation warrant was levied against him. And what
11 seemed like almost immediately, they took him for a
12 hearing. And he never returned to the jail. He has only
13 returned to the jail in the last two weeks in preparation
14 for this trial.

15 THE COURT: Okay. Anything else?

16 MS. JONES: Nothing from defendant Norris.

17 I'm sorry. I believe his mother has now stood and
18 would like to speak briefly to Your Honor.

19 THE COURT: Okay.

20 MARY NORRIS: In all respect to you, Judge, and
21 apologies to the families, that my son has this problem.
22 Right now the only thing I would ask of you is leniency
23 here, because he has a grandmother that's dying from
24 cancer. I have cancer as well myself. And we have one
25 grandson that's in college and two great grandchildren

Sentence

1 which are his. And I would ask for leniency and ask God to
2 guide you. Thank you.

3 THE COURT: Okay. Thank you, ma'am.

4 All right. On Indictment 2008-42-5630, that's the
5 indictment against Kenneth Wayne Chiles for armed robbery,
6 wherein you have been found guilty by a jury of that
7 offense, the Sentence of the Court is you, Kenneth Wayne
8 Chiles, be confined to the South Carolina Department of
9 Corrections for a period of 18 years.

10 Indictment 2008-5631, the State vs. Carnie Norris,
11 III, wherein you have been found guilty by a jury of the
12 offense of armed robbery, Sentence of the Court is you,
13 Carnie Norris, III, be confined to the South Carolina
14 Department of Corrections for a period of 28 years.

15 Each of you have a right to appeal the decision of the
16 jury and the Sentence of the Court. You must file any
17 notice of your intention to appeal those decisions within
18 ten days of today's date.

19 END OF REQUESTED TRANSCRIPT OF RECORD

20

21

22

23

24

25

Sentence

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 6th and 7th days of July 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 6, 2009



Linda D. Moffitt
Circuit Court Reporter

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FORM 5

2012-CP-42-1824

STATE OF SOUTH CAROLINA

COUNTY OF

SPARTANBURG

Kenneth Wayne Chiles, #101250

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

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 the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg County
3. Name(s) of co-defendant(s) (if any) Carrie Morris, III
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2008-95-42-05630; Armed Robbery
 (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) May 1, 2009; Eighteen (18) years
 (b) _____

Revised 3/2003

1. Wisacky Highway Bishopville, South Carolina 29010
2. Court of General Sessions, Spartanburg, South Carolina 29300

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ☒ _____
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes, I did.

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. June 28, 2011

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such

results:

i. Unpublished Opinion No. 2011-UP-346

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

FILED
 CLERK OF COURT
 SHERBORN COUNTY
 2012 APR 30 PM 3:22
 M. HOYE BLACKLEY

- DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL -

10. A) I WAS DENIED MY SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL FAILED TO PREPARE FOR TRIAL IN THAT HE FAILED TO SUBPOENA WITNESSES.

10 A.) CONTINUED. DISCUSSED THE ISSUE OF SEPARATE TRIAL ONCE WHILE DETAINED IN COUNTY JAIL AND ONCE WHILE OUT ON BOND. SUBJECT NEVER ~~came up~~ ^{came up} AGAIN.

BOOKED ME IN AS HAVING A KNIFE WHEN IN FACT I DID NOT HAVE ANY WEAPON. THERE WERE TWO KNIVES INVOLVED AND THEY WERE BOTH TAKEN OFF CO-DEFENDANT. COUNSEL NEVER QUESTIONED BOOKING OFFICER J. GUEST CONCERNING THIS.

10. B) - DENIAL OF RIGHT TO CONFRONTATION -

THE SIXTH AMENDMENT'S CONFRONTATION CLAUSE PROVIDES A CRIMINAL DEFENDANT THE RIGHT TO DIRECTLY

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CLERK OF COURT
SOUTHERN DISTRICT OF CALIFORNIA
2025 APR 30 PM 1:22
M. HOPE BLACKLEY

- DENIAL OF Right to Confrontation -

ENCOUNTER HOSTILE WITNESSES, the right to cross-examine adverse witnesses, and the right to be present at any stage of the trial that would enable the defendant to effectively cross-examine adverse witnesses. By guaranteeing these rights, the Confrontation Clause serves to "ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing" in an adversarial proceeding.

11. A) THESE ISSUES WERE BROUGHT TO THE ATTENTION OF MY COUNSEL BUT WAS NOT ADDRESSED AT ANY POINT AND TIME AND MAY HAVE CHANGED THE OUTCOME OF THE TRIAL. SEE 10A)

1. DISCUSSED THE FACT THAT I TALKED TO TWO OFFICERS BEFORE I LEFT THE SCENE AND THEY ALLOWED ME TO PROCEED BACK TO MY PORCH AFTER QUESTIONING ME. ONE REASON BEING I WAS BAREFOOTED AND MY FEET WERE HURTING. I TOLD HIM I KNOW ONE OFFICER BY NAME BECAUSE I WENT TO SCHOOL WITH HIM. NEITHER OFFICER WERE AT THE TRIAL. (ONE WHITE - ONE BLACK)

FILED
CLERK OF COURT
SOUTHERN DISTRICT OF CALIFORNIA
HOPE BLACKLEY
2017 APR 30 PM 1:32

- (a) Denial of Effective Assistance of Counsel
 (b) Denial of Right to Confrontation
 (c) /

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Failure to Investigate Case and Prepare for Trial
 (b) Resulting from Counsel's Ineffectiveness
 (c) /

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No.
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 (d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
 ii. /
 iii. /
 iv. /

(b) the name and location of the Court in which each was filed:

- i. N/A
 ii. /
 iii. /
 iv. /

(c) the disposition thereof:

- i. N/A
 ii. /
 iii. /

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2012 APR 30 PM 11:22
 M. HOPE BLACKLEY

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes, I were.
- (c) your sentencing? Yes, I were.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, I were.
- (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. J. Roger Poole,
- ii. Calhoun County Jail, Post Office Box 11587,
- iii.

- (b) the proceedings at which each such attorney represented you:

- i. Trial and Sentencing
- ii. South Carolina Court of Appeals
- iii.

19. State clearly the relief you seek in filing this application:

Conviction and Sentence Vacated or in the

20. Are you now under sentence from any other court that you have not challenged?

No, I am not.

FILED
CLERK OF COURT
SOUTH CAROLINA
2012 APR 30 PM 1:22
MC HOPE BLACKLEY

18. (a)(ii) Columbia, South Carolina 2/21/11
19. alternative, Reversed and Remanded for a New Trial.

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

SPARTANBURG)
Kenneth Wayne Chiles, #167250)
 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.

Kenneth Chiles

SWORN to and subscribed before me this 27
 day of April, 2012.

Debra Sines (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2012 APR 30 PM 1:22
 M. HOPE BLACKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Kenneth Wayne Chiles, #11,7250

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kenneth Chiles
Applicant

SWORN or affirmed to and subscribed before me this

27 day of *April*, 2012

Debra Sines
Notary Public

My Commission Expires: *11-4-2015*

FILED
CLERK OF COURT
SPRING COUNTY
2012 APR 30 PM 1:22
M. HOPE BLACKLEY

April 27, 2012

Ms Hope Blackley
Clerk of Court
Spartanburg County
Post Office Box 3483
Spartanburg, South Carolina 29304

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 APR 30 PM 1:22
M. HOPE BLACKLEY

Re: PCR Application

Dear Madam Clerk:

Will you PLEASE BE ADVISED and TAKE NOTICE that I am writing your office in the regards to the above referenced matter.

Enclosed you will find an Application for Post-Conviction Relief that needs to be filed within your office.

After such filing, I am sending a copy back to me, a copy to the Office of the Seventy Circuit Solicitor's, and a copy to the Office of the Attorney General in accordance with the Uniform Post-Conviction Procedure Act.

If the Attorney General's Office is in response to the application now filed, - please do not hesitate to inform me at the following address:

Kenneth W. Chiles, #167250
 Lee Correctional Institution
 Richland C-123
 770 Wisacky Highway
 Bishopville, South Carolina 29010

M. HOPE BLACKLEY

2012 APR 30 PM 1:22

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY

Thank you for your attention and assistance in this matter. I do look forward to hearing from your office in these regards.

Kindest Regards. I So Remain,

Sincerely,

S/ Kenneth Chiles
 Kenneth W. Chiles

HWG/
 CC3 file

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-1824
Kenneth Wayne Chiles, #167250,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 30, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted by the Spartanburg County Grand Jury at the September 2008 term for armed robbery (08-GS-42- 5630). He was represented by J. Roger Poole, Esquire. On July 6, 2009, the Applicant proceeded to trial after which a jury convicted him of the charge as indicted. He was sentenced by the Honorable J. Derham Cole, to confinement for eighteen (18) years.

A timely Notice of Appeal and Anders brief were filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Kenneth Chiles, Op. No. 2011-UP-336 (S.C. Ct. App. filed June 28, 2011). The Remittitur was submitted on July 14, 2011.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed "to investigate case and prepare for trial"
 - b. Counsel failed to subpoena witness
 - c. Counsel failed to question Officer Guest regarding knives
2. "Denial of Right to Confrontation"
 - a. "resulting from counsel's ineffectiveness"

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

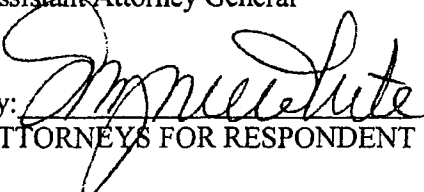
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

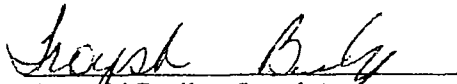
February 25, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2012-CP-42-1824
	)	
Kenneth Wayne Chiles, # 167250	)	
	)	
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:

Stephen M. Bingman, Esquire
Post Office Box 2593
Spartanburg, SC 29304

DATED this 25th day of February, 2013


Troyeshi Brailey, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 KENNETH WAYNE CHILES,)
 5 APPLICANT,)
 6 vs.)
 7 STATE OF SOUTH CAROLINA,)
 8 RESPONDENT.)

TRANSCRIPT
 OF
 RECORD
 2012-CP-42-1824

9
 10
 11 September 17th, 2014
 12 Spartanburg, South Carolina

13
 14 B E F O R E:

15 THE HONORABLE ROGER L. COUCH, Judge.

16
 17 A P P E A R A N C E S:

18 LEAH B. MOODY
 19 ESQ.
 Attorney for the Applicant

20 J. CLAYTON MITCHELL
 21 ASSISTANT ATTORNEY GENERAL
 Attorney for the State

22

23

24

25

PAMELA E. GREEN
 Circuit Court Reporter
 Seventh Judicial Circuit

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P R O C E E D I N G S

THE COURT: Yes, sir.

MR. MITCHELL: Your Honor, the next case is Kenneth Wayne Chiles versus the State of South Carolina. Docket Number 2012-CP-42-1824.

Applicant was indicted by the Spartanburg County Grand Jury at the September 2008 term for armed robbery. He was represented by J. Roger Poole, and on July 6th, 2009, Applicant proceeded to trial and was convicted by a jury. He was sentenced by the Honorable J. Derham Cole to confinement for 18 years. A timely notice of appeal was filed and an Anders brief was filed in his behalf. The South Carolina Court of Appeals dismissed that appeal. The remittitur was issued on July 14th, 2011.

Applicant filed this PCR application on April 30th, 2012, where he's raised various allegations of ineffective assistance of counsel. Applicant is present today and represented by Leah Moody.

THE COURT: All right.

MR. MITCHELL: And I'll turn it over to her now.

THE COURT: Ms. Moody, you ready to go forward?

MS. MOODY: I beg the Court's indulgence one moment.

THE COURT: Yes, ma'am.

(Pause.)

Kenneth Chiles - Direct examination
by Ms. Moody

1 MS. MOODY: Your Honor, at this time I would call
2 Mr. Chiles.

3 THE COURT: All right. Come forward, sir, to be sworn.
4 Over here to my left please right over here.

5 (Witness complies.)

6 THE COURT: All right. Mr. Chiles, if you'll put your
7 papers down, I'd like for you to put your left-hand on the
8 Bible and put your right or raise your right-hand.

9 KENNETH WAYNE CHILES, being first duly
10 sworn, testified as follows:

11 THE COURT: Have a seat in the witness stand please.

12 (Witness complies.)

13 THE COURT: State your name, sir.

14 THE WITNESS: My name is Kenneth Chiles.

15 THE COURT: Thank you.

16 Ms. Moody, your witness.

17 MS. MOODY: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. MOODY:

20 Q Mr. Chiles, where are you currently being held?

21 A At Lee Corrections in Bishopville, South Carolina.

22 Q Okay. How long have you been at Bishopville?

23 A Since 2000 -- July 2009.

24 Q Okay. And you were there -- what charges are you
25 serving time on?

Kenneth Chiles - Direct examination
by Ms. Moody

- 1 A I have a charge of armed robbery.
- 2 Q And what was your sentence?
- 3 A Eighteen years.
- 4 Q And with that charge, what, if any -- well, excuse me.
- 5 who was your attorney during that time?
- 6 A Mr. Poole.
- 7 Q Okay. And Mr. Poole was your attorney during your
- 8 trial?
- 9 A Yes, ma'am.
- 10 Q Okay. Now, you went forward on this trial.
- 11 was there anybody else present at this trial that might
- 12 of been a codefendant?
- 13 A Yes, Carnie Norris, III.
- 14 Q Okay. And just briefly, you're here before the Court.
- 15 Can you please explain to the Court what your grounds
- 16 are for post-conviction relief?
- 17 A I would like -- I'm here for ineffective assistance --
- 18 ineffective, ineffective counsel is what I'm trying to say.
- 19 Q Okay. Ineffective assistance of counsel?
- 20 A Yes, ma'am.
- 21 Q Okay. Against Mr. Poole?
- 22 A Yes, ma'am.
- 23 Q All right. And specifically do you recall the grounds
- 24 that you filed in your PCR application?
- 25 A Well, one of the grounds was the -- the reason, the

Kenneth Chiles - Direct examination
by Ms. Moody

1 reason I was arrested. I was there for a citizen's,
2 citizen's arrest, and they, they, they charged me with armed
3 robbery, but the reason that I, the reason -- the whole
4 reason that I was there was for the citizen's arrest, which
5 I don't, I don't know a lot, a whole lot about that the law.
6 I study the law every now and then as much as I can, and I
7 came up with the, the issue of the citizen's arrest.

8 Q Well, wait. We're gonna come to that in a second.

9 All right. When you filed your PCR application you
10 allege that your lawyer failed to investigate in your case.

11 A Yes, ma'am.

12 Q All right.

13 A As a matter of fact, he failed to investigate a lot of
14 things. There were two officers at the scene.

15 Q All right. We're gonna come to that.

16 A Okay.

17 Q I'm just trying to get---

18 A Okay.

19 Q ---the grounds out so the Court knows exactly what your
20 grounds are.

21 A Yes, ma'am.

22 Q So one of them was failure to investigate.

23 Failure to prepare for trial?

24 A Yes, ma'am.

25 Q And failure to subpoena witnesses?

Kenneth Chiles - Direct examination
by MS. Moody

1 A Yes, ma'am.

2 Q Okay. And questioned an officer by the name of Officer
3 Guest?

4 A Oh, the one that was suppose to been at trial?

5 Q Yes, sir.

6 A I -- I've, I've -- I believe it's, from what I've
7 studied, it was Officer Tillison --

8 Q Okay.

9 A -- if you remember. But actually there were two
10 officers. One was, one was white and one was black. I
11 know -- I remember the black one cause I went to school with
12 him.

13 Q Okay. But just follow me here.

14 Your grounds, those are your grounds that your---

15 A Yes, ma'am.

16 Q ---lawyer did not do those things and that's why you
17 filed a post-conviction relief?

18 A Yes, and I, I mentioned those to him before, before
19 trial even started.

20 Q Okay. And so what is the relief that you're seeking
21 from the Court?

22 A What is the relief?

23 Q Yes.

24 A What you mean by that, ma'am?

25 Q What do you want the Court to do for you as it relates

Kenneth Chiles - Direct examination
by MS. Moody

1 to your PCR application?

2 A I would like for my application to be my -- it be
3 overturned---

4 Q Okay.

5 A ---or dismissed.

6 Q So when you -- you want to go into the citizen's
7 arrest.

8 Can you explain to the Court what exactly the facts
9 were as it relates to you in this case?

10 A Ms. Moody, I -- a robbery was committed without my
11 knowledge. On this particular night, the guy came to my
12 house and said that a robbery was going on outside of my
13 house and I was in the bed asleep.

14 when he came to me and asked me can he have my phone so
15 he can call the police. Somebody was on the -- on top of
16 the roof. I didn't have no problem with it. I got up out
17 of my bed and looked out the window and I seen somebody on
18 top of the roof. So I said okay then. Give me a minute.

19 So he went on out there. I didn't get to the scene
20 five or six minutes later. When I got out there he told me
21 had I called the police and I told him I hadn't had, hadn't
22 had a chance to call the police yet. But when -- once I put
23 the phone to my ear it was -- police were coming. One from
24 one end of the street and one from the other. So I never
25 did get to use my phone.

Kenneth Chiles - Direct examination
by Ms. Moody

1 Q So let me ask you this.

2 When you say you got up out your bed and you got to
3 where this robbery was suppose to be committed, how far was
4 that location in relation to your house?

5 A From here to the -- it's a probation officer -- office
6 across the street from here. About from here to there.

7 Q So it's across the street?

8 A Yeah.

9 Q Okay.

10 A Yeah, it took me at least five minutes to get over
11 there.

12 Q Okay.

13 A I didn't know what was going on at the time. But I
14 later found out, you know, that he was armed with a knife.
15 I didn't find out till later.

16 Q Okay. So when you say he, you're talking about your
17 codefendant?

18 A My codefendant, yes, ma'am.

19 Q All right. So, you -- did you relay any of this
20 information to your attorney?

21 A Yeah, I think he know, he knowed it.

22 Q So when you indicated to your attorney the nature of
23 the circumstances, what, if anything, did your attorney do
24 to help you prove this to be the case?

25 A Well, he, he represented me during the trial. I mean

Kenneth Chiles - Direct examination
by Ms. Moody

1 I'm not here to judge him or God, God talking not to, not to
2 judge people, and I really do think he did the best he
3 could. He's just some things -- a lot of things that he
4 missed during the trial that could been -- could of resulted
5 in a -- something different, outcome of the trial.

6 Q So what did he miss in the trial?

7 A I, I, I talked to Mr. Poole before the trial about a
8 lot of things.

9 Q What were those things?

10 A One of the things I, I mentioned like some things that
11 happened during the trial. Mr. Bonds stated that we ran
12 from the scene of the crime. I have, where I've studied the
13 transcript, where it says otherwise. He never questioned
14 Mr. Bond about that.

15 Q So what in the transcript did it say?

16 A The transcript said -- let me see. I have to remember.
17 Mr. Bonds, Mr. Bonds said, when the police got there, they
18 had to separate us. So -- let me see what, what page was
19 that?

20 Mr. Bond stated that they had to separate us so they
21 can, so they can talk to us separate.

22 Q Okay.

23 A And it was stated that we ran from the scene. So right
24 here he's -- he contradicts his, he contradicts his -- what
25 he said. Let me see here.

Kenneth Chiles - Direct examination
by Ms. Moody

1 Okay. Two officers can verify that I did not run from
2 the scene of the crime. Page 143 of the transcript.

3 THE COURT: Just one second, sir. Let me go to 143.

4 (Pause.)

5 THE COURT: All right. I'm there.

6 A Okay. Exactly that it starts at five, five through
7 nine.

8 Q Okay. Can you read that into the record?

9 A No, I don't have my transcript with me.

10 Q Okay. So when you're talking about where they could
11 verify it, it's Page 143 Lines---

12 A The two, the officers, if they had came to the trial,
13 they also could of verified it. But it says it right there,
14 right there in the transcript on Page 143, five through
15 nine, or where they had to -- I don't have my transcript,
16 but I remember reading it. They had, they had to talk to
17 him, and then they had -- they separated us. One to talk to
18 him and one to talk to us.

19 MS. MOODY: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 Q This is your transcript and that is Page 143 Line 5
22 through 9.

23 Could you please read that into the record?

24 A Starting at line where it says when the officer
25 arrived, they did -- they didn't know not -- they didn't

Kenneth Chiles - Direct examination
by Ms. Moody

1 know what happened. So they just separated y'all. So he --
2 so he's asking them, so he just separated y'all in the mean
3 time, correct, and Mr. Bond says correct, so that there
4 would be not any stories getting mixed up. They wanted
5 everybody's story on their own.

6 Q So those officers that you're speaking of are the two
7 officers that were there -- reported to the scene that
8 night?

9 A Them the two officers, yeah, that, that was first on
10 the scene. I'm sorry. I'm kind of nervous.

11 Q And so you wanted your attorney to subpoena those
12 officers to testify?

13 A Exactly.

14 Q Okay. And did you inform him that they could verify
15 that you didn't run?

16 A Yes, on, on two occasions before the trial ever started
17 we talked. We had a discussion.

18 Q Now, the two occasions that you talked, did you -- did
19 y'all talk -- use the term of a defense that you could offer
20 to -- in your case?

21 A No, we basically was just going over what happened at
22 the time of the crime.

23 Q I guess what I'm asking you, did your attorney and you
24 try to come up with your defense, how y'all want to approach
25 the case?

Kenneth Chiles - Direct examination
by Ms. Moody

1 A I, I -- it appeared, it appeared to me that, that he
2 would do that for the defense or once the trial started. I
3 thought maybe he would -- had -- he's all -- well, maybe I
4 thought these officers would already be there, you know, and
5 he wouldn't even have to subpoena them cause they was at the
6 scene of the crime.

7 Q Well, during the trial, did you ask your attorney to
8 call those officers to the stand?

9 A It was mentioned during the trial even when
10 Mr. Barnette was -- I had told Mr. Barnette, solicitor,
11 where are the officers at that suppose to be here. I don't
12 remember exactly what he said. But the---

13 Q You did question where the officers were?

14 A Yeah, I mean I was on the witness stand.

15 Q Okay. Okay. And when you spoke of Mr. Bond, Mr. Bond
16 is the -- one of the victims?

17 A He is the victim that my codefendant supposedly had
18 robbed.

19 Q Okay. So when you explained to your attorney all that
20 you did with, with regard to this potential burglary that
21 was going on, what, if anything, did he explain to you about
22 your possibility of getting convicted?

23 A I don't remember. I don't recall.

24 Q Well, did you-all discuss your citizen's arrest --

25 A No, ma'am.

Kenneth Chiles - Direct examination
by Ms. Moody

1 Q -- issue?

2 A No, ma'am, I -- we never -- that, that never did come
3 up during the trial.

4 Q Okay. So you explained to your attorney about
5 citizen's arrest?

6 A Yes.

7 Q Okay. And you knew that you could effectuate a
8 citizen's arrest?

9 A I didn't, I didn't know it at the time, but what I was
10 just doing what come -- what came natural I mean.

11 Q And when you say what comes natural, what were you
12 doing?

13 A I was -- I thought I was detaining somebody that was
14 committing a crime.

15 Q Okay. And did you tell your attorney that?

16 A Well, actually I wasn't trying to detain him. My, my
17 codefendant told me to hold his ID, which is what I thought
18 I was doing, in case he tried to run, and that was my whole
19 purpose for being there.

20 Q But listen to my question.

21 Did you inform your attorney of that, that you were
22 just trying to make sure that you prevented a crime?

23 A Oh, yeah, he knowed that. Yeah, he knowed that. He
24 already---

25 Q So you told your attorney?

Kenneth Chiles - Direct examination
by Ms. Moody

- 1 A Yeah, he know that.
- 2 Q Okay. So when you gave him that information, what, if
- 3 anything, did he say about presenting that to the jury?
- 4 A He didn't, he didn't, he didn't say anything about it.
- 5 It never came up.
- 6 Q Didn't you testify in this case?
- 7 A Yes, I testified.
- 8 Q Okay. And, at that time, did you have an opportunity
- 9 to explain your version of what happened?
- 10 A I got up on the stand and told my, told my side of the
- 11 story.
- 12 Q Okay. And when you told them that information about
- 13 you were trying to detain somebody from committing a
- 14 robbery, did your attorney ask you anything about it being a
- 15 citizen's arrest?
- 16 A No, ma'am.
- 17 Q And what did you want him to do with this citizen's
- 18 arrest or that -- the fact that you were trying to prevent a
- 19 robbery?
- 20 A I just wanted the jury to know the truth about what
- 21 happened that night. My whole reason for even coming across
- 22 the street. I didn't even -- I mean I didn't know what was
- 23 going on until I got across the street until it was too
- 24 late.
- 25 Q So---

Kenneth Chiles - Direct examination
by Ms. Moody

1 A I, I didn't know my codefendant had a weapon or
2 weapons. All this I -- was, you know, I'm, I'm just getting
3 up out the bed. I'm asleep. I didn't know what was going
4 on. I come over with myself attempting to find out what was
5 you going on.

6 Q And so when your -- you say your attorney didn't
7 investigate.

8 what -- who else would you of had your attorney discuss
9 your case with or investigate or -- excuse me.

10 who else would you have had your attorney to talk to?

11 A The officers --

12 Q Okay.

13 A -- if, if, if any cause they was the only one out there
14 at the time, the two officers that -- what they call them,
15 first responders?

16 Q Yes.

17 A I would like for him to talk to him, like for them to
18 been present to testify as to what went on that night.

19 Q And, to your knowledge, did he ever talk to them?

20 A No, cause they wasn't at -- they wasn't there.

21 Q Well, now not---

22 A You talking about that night?

23 Talking about---

24 Q I understand they weren't there.

25 But I'm saying did, at any point during your

Kenneth Chiles - Direct examination
by Ms. Moody

1 representation that he was representing you, did he contact
2 those officers?

3 A Not to my knowledge.

4 Q Were there any other witnesses that you wanted him to
5 subpoena?

6 A No, nobody else was there except for the ones in
7 question.

8 Q Who was Mr. A.C. Worthy?

9 A Mr. A.C. Worthy was, was with me the night of the
10 crime.

11 Q And---

12 A He was spending, he was spending the night at my house.

13 Q And what -- did he testify in your behalf?

14 A Yes, he did.

15 Q Okay. What else did your attorney not do that you felt
16 that he should have done?

17 A I would like to have had character witness. I didn't
18 know if I was able -- if that, under the law, was I able to
19 have a character witness. He didn't ask me if I had
20 somebody to talk, you know, my employer maybe. I been on my
21 job for 17 years. My employer would of been glad to come
22 and say a few words. My pastor. I'm an usher at my church
23 every Sunday. Sometime I go during the week. My pastor
24 would of been glad to say a few words.

25 Q Did you tell your attorney that?

Kenneth Chiles - Direct examination
by Ms. Moody

1 A Yes, I did.

2 Q Okay. And those persons were not there?

3 A No.

4 Q Now, you also alleged in your application your denial
5 of rights to confront a witness.

6 A Mr. Bond, yes.

7 Q Okay. And so what did you mean you were not allowed to
8 confront Mr. Bond?

9 A Well, it was just something I was reading while I was
10 in the law library about how I could -- I had the right to
11 question him or I didn't know. I don't know exactly.
12 Confrontation or something of that.

13 Q You -- your attorney questioned Mr. Bond.

14 A Yes, he did.

15 Q Okay. So that's your right to confrontation, that your
16 attorney questioned him in your trial.

17 A Yes.

18 Q You realize that that was your right to ask him
19 questions?

20 A At the time, like I say, I don't know a whole lot about
21 the law. I didn't know I could do that.

22 Q Okay. So your right to confrontation didn't -- it also
23 extends to those officers as well.

24 A Yes, ma'am.

25 Q Okay. And your attorney did not---

Kenneth Chiles - Direct examination
by Ms. Moody

1 A It's, it's, it's some questions that he didn't ask that
2 I found out later that he should of asked.

3 Q What were those questions?

4 A Those -- the, the questions -- those questions I had, I
5 got them wrote down, but I don't have -- like I said, I'm
6 not -- a couple of questions. One I remember I would like
7 to know about.

8 It was a question of the money.

9 whatever happened to the money?

10 I mentioned this to him during the trial. He never
11 brought it up. It was something about some money being
12 missed, and I thought maybe that might of been important,
13 you know, during the trial. I don't know. Maybe, maybe
14 not. But it was suppose to been some money taken.

15 He never did -- this, this, this never did come up
16 during the trial. I don't know what happened. It never did
17 come back up. But Mr. Bond's statements, it -- he
18 contradicts himself a whole lot as I read his statement and
19 his comments, and his friend's statement that were there
20 that night.

21 It's one, one of his statements I think is in my
22 paperwork over there. He say that we come out together.
23 Mr. Poole never did question him about that. He said we
24 came out the, the door together.

25 Q Okay. When you say he, who are you referring,

Kenneth Chiles - Direct examination
by Ms. Moody

1 referring to?

2 A Mr. Bond. Mr. Bond stated that we -- that me and my
3 codefendant came out there together and did the crime
4 together. He was never questioned about that. It's just,
5 it's just some things that, that I, that I came across after
6 I was reading the transcript.

7 Q Okay. But do you understand you need to tell the Court
8 so the Court can understand what are your allegations when
9 you say your attorney was not prepared to trial?

10 A I feel, I feel like he didn't, he didn't testify or
11 question these people accurately like, you know, like he
12 should have.

13 Q Okay. And so, with that, based on him not subpoenaing
14 the witnesses or having the officers there, after seeing
15 that they were not there for the trial, and the preparation
16 for your trial, you're saying that your attorney's failures
17 prejudiced, prejudiced you in some kind of way?

18 A Yes, it's, it's a lot of things that he, that he, that
19 he just missed during the, during the course of the trial.
20 They was said they booked me in as having a knife at they --
21 when they booked me in. He never questioned the officer in
22 question about that.

23 It was -- it was already just determined that I had --
24 didn't have a weapon at all. I had a cell phone I come
25 across the street. They booked me in as having a knife.

Kenneth Chiles - Direct examination
by Ms. Moody

1 It's in, it's in my booking -- it's on my booking sheet
2 inside my folder, and he never did question the officer why,
3 why would they book me as having a knife when I didn't have
4 a weapon at all. It's just, it's just certain things in
5 there that --

6 Q What else?

7 A -- that should have been asked.

8 Q Well, what else?

9 You need to put it on the record.

10 What else was not questioned?

11 A The part -- the point that I, that I had a knife.

12 That's what I'm talking about.

13 Q Okay. Is there anything else?

14 A No, it's some other things, Ms. Moody, but I, I got
15 them wrote down and they jumbled my stuff when I was coming
16 down here and I just don't have it on me right now.

17 Q So let me ask you this.

18 Of the officers, did your attorney talk to all the
19 officers that reported to the scene that night?

20 There were two that were not at the trial, but they
21 were others that---

22 A There was two that was on the porch, yeah, that, that
23 arrested us. I think he questioned them during the trial.
24 I'm not---

25 Q Okay.

Kenneth Chiles - Direct examination
by Ms. Moody

1 A I can't remember what they name. Guest, Guest might of
2 been one of them and there was another one I think.

3 Q So as far as all the officers that responded on the
4 scene, you were not able to discuss with your attorney what
5 their version of the events were?

6 A Correct.

7 Q Okay. And then as far as the victim is concerned, you
8 are -- you told your attorney about the issues with his
9 conflicting statements?

10 A I was under the, under the impression that he was
11 caught up on that --

12 Q Okay.

13 A -- his conflicting statements. If you read his
14 statements -- if he read all the statements that they gave
15 that night and the statement that's on the, the transcript,
16 they conflict. They contradict each other.

17 Q Is there anything else your attorney did not do that
18 you felt he should have done?

19 A No, ma'am, as far as I can -- Mr., Mr. Poole did a
20 fairly, a fairly decent job especially on closing arguments.
21 Like I say, I'm not here to judge him or get him in any kind
22 of trouble. It's just some things that were missed during
23 the course of the trial that I think may have affected the
24 outcome a whole -- you know.

25 Q Okay. When you say it affects the outcome, you're

Kenneth Chiles - Direct examination
by Ms. Moody

1 saying that that impacted you negatively?

2 A Yes, ma'am. Correct.

3 Q Okay. And how did it impact you negatively?

4 A Because I went to jail for 18 years. They gave me 18
5 years for a crime that I didn't commit, a crime I wasn't a
6 part of.

7 I lost a job. I have a daughter that I ain't get -- I
8 didn't get to see graduate. I had a life before this guy
9 came into my, to my -- my door that night and I'm just I'm,
10 just, I'm just frustrated. I just -- I did -- I made up --
11 I made a wrong decision, as Mr. Poole said. I remember him
12 saying that. He was right about that. I made a poor
13 decision about coming out.

14 Maybe I should of stayed in my bed, but I mean what
15 would you do if something's going on outside, outside your
16 house, some kind of commotion. You do what anybody would
17 do.

18 Q Okay. So in your application you state that you asked
19 the Court to deal with your conviction and vacate, vacate
20 your sentence?

21 A Yes, ma'am.

22 Q Okay. So you want the Court to overturn your
23 conviction and vacate your sentence?

24 A Yes, ma'am.

25 Q You understand that, if they overturn it, that means

Kenneth Chiles - Direct examination
by Ms. Moody

1 that you would start all the way over as if it was the first
2 day that you were arrested?

3 A Yes, ma'am, I'm mean -- I mean I'm here to tell the
4 truth and nothing but the truth. I just want to be treated
5 fairly on this, on this, on this, this situation.

6 Q Okay. Is there anything else that you wish to relay to
7 the Court regarding this application?

8 A No, ma'am, I had a -- some things I wanted to, I wanted
9 to present concerning mere presence, but I don't have
10 that -- you know, mere presence don't exactly mean that you
11 committed a crime. I just want the Court to know that I
12 didn't have anything to do with that, that, that, that
13 crime. That's all I wanted to know. That's all I want to
14 say.

15 MS. MOODY: Okay. Thank you. No further questions.
16 Could you please answer any questions Ms. White may
17 have for you.

18 THE COURT: All right. You may proceed and
19 cross-examine.

20 CROSS-EXAMINATION

21 BY MR. MITCHELL:

22 Q Morning, Mr. Chiles.

23 So you're charged with armed robbery?

24 A Yes, sir.

25 Q And you were convicted of that?

Kenneth Chiles - Cross-examination
by Mr. Mitchell

- 1 A Yes, sir.
- 2 Q And you testified at trial, right?
- 3 You, you got to say your side of the story?
- 4 A Yes, sir.
- 5 Q And you testified that you talked to the officer before
- 6 you went to the house, right?
- 7 Didn't you -- you testified that, after the incident,
- 8 you talked to an officer and then walked across the street?
- 9 A No, I talked to -- I asked him for -- was it all right
- 10 for me to go back to, to -- across the street cause---
- 11 Q Right. Right.
- 12 A ---I was barefooted. I had on shorts and my feet was
- 13 hurting me, and then he, he said yeah, go ahead.
- 14 Q So you talked to him and then you walked across the
- 15 street?
- 16 A Yes, sir.
- 17 Q And you said that in your testimony at the trial,
- 18 right?
- 19 A Yes.
- 20 Q And you testified that your codefendant was the one
- 21 that had the knife?
- 22 Isn't that right?
- 23 A I think I did, yeah.
- 24 Q So the jury knew that you didn't have the knife, right?
- 25 A I think that was established. I hope it was.

Kenneth Chiles - Cross-examination
by Mr. Mitchell

1 Q All right.

2 A I had a cell phone.

3 Q You testified that -- you also testified you, you
4 didn't run, that you talked to that officer?

5 A I didn't run, no. We walked -- after we got through
6 talking with the officers he allowed us to go back across
7 and we didn't even go in the house. We went on the porch
8 cause I wanted to see what, what else was gonna happen, what
9 was going on.

10 Q Now, those two officers testified at trial though,
11 first two first responders, right?

12 A No, they wasn't there. That's, that's what---

13 Q There were two that did testify?

14 A Them the one that came later on, later on.

15 Q Okay. And they were the ones that took the statements
16 from the witnesses, from the kids?

17 A On the -- I seen there was a Tillitson on one of the
18 statements at the bottom of the paper. I think he's the one
19 took their statements.

20 Q Okay.

21 A He wasn't at the trial.

22 Q Okay. So -- but the ones that interviewed him
23 initially were the two that testified at trial?

24 Isn't that right?

25 A No, they wasn't at the trial.

Kenneth Chiles - Cross-examination
by Mr. Mitchell

- 1 The first responders?
- 2 Q Right.
- 3 A They talked to us and then they talked to Mr. Bond, the
- 4 victim.
- 5 Q Okay. But there were two officers that testified,
- 6 Guest and---
- 7 A Guest and I can't remember the other one --
- 8 Q Okay.
- 9 A -- the other name.
- 10 Q And your attorney had a chance to cross-examine them?
- 11 Isn't that right?
- 12 A Yes, sir.
- 13 Q He tried to bring out different issues that they had?
- 14 A Concerning what happened that night, yes, sir.
- 15 Q Right. Right.
- 16 Going back to your testimony, you also testified about
- 17 the citizen's arrest, didn't you?
- 18 A Citizen's arrest?
- 19 Q Right.
- 20 A Yes.
- 21 Q You said that you were going -- trying to make a
- 22 citizen's arrest?
- 23 A I talked to him about it.
- 24 Q Well, you testified to that too though, right, to the,
- 25 to the---

Kenneth Chiles - Cross-examination
by Mr. Mitchell

1 A About citizen's arrest?

2 Q Uh-huh. (Affirmative).

3 A This been about six, six years ago. I don't know if I
4 testified or not.

5 Q Okay.

6 A I remember talking to my lawyer about it.

7 Q Okay.

8 A That was the whole reason me even coming out the house.

9 Q Uh-huh. (Affirmative).

10 Now, did you talk to your -- you talked to your
11 attorney about accomplice liability, the hand of one, hand
12 of all?

13 A Did I talk to Mr. Poole about that?

14 Q Right.

15 A No, that never came up.

16 Q You didn't?

17 A I don't even know what that means.

18 Q Did you talk about the mere presence?

19 A No.

20 Q You never talked to him about -- you mentioned that
21 earlier, the mere presence.

22 A Yeah, I say I -- it was something that I studied up
23 later that I should of been on top of. I should of knew
24 about it. But I didn't -- I -- like I say, I don't know
25 much about the law.

Kenneth Chiles - Cross-examination
by Mr. Mitchell

1 Q So he never---

2 A It's just something that I, that I been studying over
3 the years.

4 Q So he never talked to you about mere presence?

5 A No, sir.

6 Q He never talked to you about the hand of one, hand of
7 all?

8 A No, sir.

9 Q Do you remember that being charged to the jury?

10 A I remember him saying something to the, to the jury
11 about the hand of one.

12 Q The judge saying something to the jury?

13 A But I don't -- I didn't know exactly what that meant at
14 the time.

15 Q And when you talked about where Mr. Bonds said that the
16 officer separated everybody, wasn't he talking about the
17 witnesses so they could keep their stories consistent?

18 A The witnesses?

19 Q Remember you, you testified just earlier about how the
20 officers -- that Mr. Bonds said that the officers
21 separated---

22 A One officers -- one officer talked to him and the other
23 officer talked to me.

24 Q So they separated y'all, the, the witnesses, everyone,
25 to get their statements to make sure that they matched up?

Kenneth Chiles - Cross-examination
by Mr. Mitchell

1 A I, I didn't, at the time, I didn't see them talking to
2 nobody but Mr. Bond.

3 Q Okay. So he was alone with the officers though, isn't
4 that right?

5 A Yeah.

6 MR. MITCHELL: That's all the questions I have.

7 THE COURT: Redirect?

8 MS. MOODY: No redirect, Your Honor.

9 THE COURT: All right. You may step down, sir.
10 Applicant may call its next witness.

11 MS. MOODY: Your Honor, I'd call Mr. Poole.

12 THE COURT: Mr. Poole, come forward and be sworn
13 please.

14 ROGER POOLE, being first duly
15 sworn, testified as follows:

16 THE COURT: Thank you. Have a seat.

17 (Witness complies.)

18 THE COURT: State your name please.

19 THE WITNESS: My name is Roger Poole.

20 THE COURT: Ms. Moody, your witness.

21 MS. MOODY: Thank you, Your Honor.

22 May it please the Court?

23 THE COURT: Yes, ma'am.

24 DIRECT EXAMINATION

25 BY MS. MOODY:

Roger Poole - Direct examination
by Ms. Moody

1 Q Good afternoon, Mr. Poole.

2 A Good afternoon.

3 Q You represented Mr. Chiles in an armed robbery trial?

4 A That's right.

5 Q Okay. And can you just kind of -- do you recall the
6 facts in this case?

7 A Yes, ma'am.

8 Q Okay. Do you recall having a conversation with Mr.
9 Chiles about his involvement in this case?

10 A Yes, ma'am, we, we talked on several occasions. He was
11 out on bond and we met in my office on numerous occasions
12 before his trial.

13 Q Okay. And those times that you met in your office,
14 what, if anything, did you-all discuss?

15 A Well, we discussed his -- we went over the discovery
16 together. We went over the -- what the State alleged
17 happened and I got his side of the story, and we talked
18 about it on those matters on -- that was the subject, the --
19 that was the content of all of our conversations---

20 Q Okay.

21 A ---in the office.

22 Q Okay. What, if any, investigation was performed on
23 behalf of Mr. Chiles?

24 A He indicated that he had a witness by the name of A.C.
25 worthy and I located that witness and subpoenaed him, and he

Roger Poole - Direct examination
by Ms. Moody

1 came to trial and testified in the defense of Mr. Chiles.

2 Mr. Worthy's presence was to confirm -- presence at
3 trail was to confirm that Mr. Chiles was not with Mr. Norris
4 when the initiation of this robbery occurred, and,
5 therefore, Mr. Chiles had to get up out of bed in response
6 to a request made by Mr. Norris to come outside.

7 The whole strategy of the defense was to distance, as
8 much as possible, Mr. Chiles from Mr. Norris. Mr. Chiles'
9 defense was that he basically had no intent to commit a
10 crime or be an accompish to a crime. That was our
11 objective.

12 Q well, what, if anything, did you-all discuss about
13 citizen's arrest?

14 A We talked a little about that, but basically that
15 concept, in the context of this case, initiated from
16 Mr. Norris. Mr. Norris was on the scene and, during the
17 course of his testimony, he stated that he thought that
18 there was a burglary transpiring and he was trying to effect
19 a so called citizen's arrest based upon what he thought.

20 Q And so are you saying that that was not a position that
21 Mr. Chiles could take?

22 A I'm saying that I didn't regard that as being important
23 for Mr. Chiles to start talking about a citizen's arrest at
24 his own trial because the whole idea was to distance himself
25 from Mr. Norris.

Roger Poole - Direct examination
by Ms. Moody

1 Q Okay.

2 A Do you understand what I'm trying to say?

3 If Mr. Norris wants to bring that, that idea up, let
4 him do so, but Mr. Chiles' defense was he had no idea that a
5 crime was being committed by Mr. Norris, and, therefore, he
6 could not be an accomplice to it.

7 Q Okay. Did you file for a motion and to sever the
8 trial---

9 A No, ma'am.

10 Q ---in this case?

11 All right. And was there a strategy behind not doing
12 that?

13 A Well, the basic strategy is that it would not have been
14 granted.

15 Q Well---

16 A The judge would not of granted a severance in this
17 case. Ms. Jones, in our office, represented Mr. Norris, and
18 we talked about this matter to a good extent. The, the
19 defenses were not antagonistic nor were they inconsistent
20 with one another.

21 Q Okay.

22 A So the chances of getting a severance was just like
23 nil.

24 Q Okay. But you---

25 A I've never been successful in getting a severance of

Roger Poole - Direct examination
by Ms. Moody

1 defendants I don't think ever.

2 Q Okay. So your decision not to move for a severance was
3 based on your previous cases that you represent other people
4 on?

5 A Partly.

6 Q Okay. Now, as far as the defense of citizen's arrest
7 as it relates to Mr. Chiles, did you not think that it might
8 be helpful if the jury understood that that's what
9 Mr. Norris was trying to do as well as Mr. Chiles joined in
10 in trying to prevent a crime as well?

11 A I think it was clear to the jury, through Mr. Norris'
12 testimony, that Mr. Norris was trying to effect a citizen's
13 arrest and the jury got that. I think they understood it
14 sufficiently.

15 Q Okay. And so -- okay. So your strategy was that he,
16 he was not trying to commit a crime. He was not with
17 Mr. Norris when he first approached the victims.

18 was there anything else that you could of said how Mr.
19 Chiles would have gotten on that scene?

20 I mean --.

21 A Well, the whole idea was to distance Mr. Chiles in
22 space and time from Mr. Norris, and that came out during the
23 conversation -- the testimony of Mr. Worthy that while the
24 robbery was going on or being initiated, Mr. Chiles was in
25 bed minding his own business, and, in fact, asleep. It took

Roger Poole - Direct examination
by Ms. Moody

1 him some time to put on some clothes, to get his cell phone,
2 and to go outside at the request of Mr. Norris. And, when
3 he did so, I tried to bring out the fact that he kept his
4 distance away from Mr. Norris and he kept his distance away
5 from the victim --

6 Q Okay.

7 A -- and did not have any knowledge of what was
8 transpiring --

9 Q Okay.

10 A -- by way of the robbery.

11 Q Okay. What investigation, outside of subpoenaing
12 Mr. Worthy, did you perform?

13 A That was basically it. Just talking to Beverly Jones,
14 having numerous conversations about our joint strategies so
15 to speak, talking to Mr. Worthy, contacting and finding
16 Mr. Worthy, and talking to him, subpoenaing him, talking to
17 Mr. Chiles and going over the evidence. That's the extent
18 of it.

19 Q Okay. What, if any, opportunity -- well, I, I
20 understand you, you say that was the extent.

21 Did you attempt to try and contact the officers that
22 also came in contact with Mr. Chiles?

23 A No, I did not.

24 Q Okay. And is -- was there a reason for that?

25 A I don't have anything in my notes to indicate what

Roger Poole - Direct examination
by Ms. Moody

1 their names were or what they could bring forward on behalf
2 of Mr. Chiles that -- and I don't recall what Mr. Chiles
3 said that they -- in what way they would be beneficial.

4 Q Okay.

5 A I, I can't conceive of how law enforcement would be, in
6 this case, would be beneficial to a defendant.

7 Q Okay. So I guess when you say you're trying to
8 distance in the time and space and all of that, maybe the
9 first responders would of had some information or they could
10 of told you where they were when they arrived on the scene.

11 A That's possible, but that's speculation.

12 Q Okay. So that was part of your strategy that it wasn't
13 necessary to talk to any officers?

14 A well, I didn't know what they were going to say.

15 Q well now---

16 A You know, I, I don't remember. I don't have their
17 names and---

18 Q Okay.

19 A ---I, I can't recall, in honesty, what was going
20 through my mind about talking or not talking to them --

21 Q Okay.

22 A -- whoever they are.

23 Q Okay. Now, in preparation for the trial, did
24 you-all -- based on your theory, what did you discuss with
25 Mr. Chiles like what you were trying to get across to the

Roger Poole - Direct examination
by Ms. Moody

1 jury?

2 A Basically what I've told you I think --

3 Q Okay.

4 A -- and I tried to explain -- Mr. Chiles was a very
5 cooperative client. He, he was, he was forthright. We'd
6 have civil conversations. He would tell me who would talk
7 and, and was just a lot of going back and forth, and I tried
8 to explain everything the best way I could.

9 Q Okay. This is the last question. I just want to --
10 when Mr. Chiles testified about the citizen's arrest, he did
11 mention it in his testimony.

12 At that time did y'all discuss whether that was gonna
13 be -- how that might be perceived coming from him?

14 A I don't think we talked about that.

15 MS. MOODY: Okay. All right. No further questions for
16 this witness. Thank you.

17 THE COURT: You may cross-examine.

18 CROSS-EXAMINATION

19 BY MR. MITCHELL:

20 Q Morning, Mr. Poole.

21 A Good morning.

22 Q So how long have you been practicing law?

23 A Thirty-four years.

24 Q Thirty-four years.

25 How did you, how did you become involved with Mr.

Roger Poole - Cross-examination
by Mr. Mitchell

1 Chiles case?

2 A I came to the Public Defender's Office after closing
3 down a private practice in January of 2009. I inherited
4 this case from the attorney who had it before and that was
5 Cynthia Codispoti. So I was handed the file and did the
6 job.

7 Q So you met with the Applicant?

8 I mean -- yeah, the Applicant.

9 A (Witness nods affirmatively.)

10 Q You discussed the discovery and the statements with the
11 witness or witnesses?

12 A We went over everything, yes, sir.

13 Q So he knew what their statements were before trial?

14 A Yes, sir.

15 Q And he knew what they would likely would testify at
16 trial?

17 A Yes, sir.

18 Q And they did testify at trial?

19 Isn't that right?

20 A They did.

21 Q And you cross-examined them at trial?

22 A That's true.

23 Q Mr. Chiles makes a point of saying some of the
24 inconsistencies in their statements.

25 Did you see some minor inconsistencies there?

Roger Poole - Cross-examination
by Mr. Mitchell

1 A There may have been. I don't recall and I have not
2 really looked through the statements in preparation for this
3 testimony. I don't even remember if I brought out any
4 inconsistencies or not.

5 Q Yeah, I think you even mentioned in closing that there
6 are some minor inconsistencies.

7 A Oh, okay.

8 Q But nothing, nothing very serious there.

9 Now, about to -- about the citizen's arrest, was that
10 something you considered as a defense?

11 A Not really. I mean that was primarily in the, the area
12 of Carnie Norris, and whether it was a citizen's arrest or
13 not I didn't think that mattered that much vis-a-vis Mr.
14 Chiles because he didn't know that a crime was going down,
15 and, therefore, couldn't be an accomplice.

16 Q So your trial strategy was to try to negate the intent,
17 the mens rea of the crime of armed robbery?

18 A Right.

19 Q And he didn't intend to rob anybody that night?

20 A That's it. That's the nail on the head, yes, sir.

21 Q And you think that was presented at trial and that was
22 your strategy?

23 A Yes.

24 Q And that's what he testified to?

25 A Absolutely.

Roger Poole - Cross-examination
by Mr. Mitchell

1 Q That he didn't know that he was down there robbing
2 them, that he didn't know he had a knife, that Mr. Norris
3 had a knife?

4 A That's right.

5 Q Speaking of Mr. Norris, he was represented by Beverly
6 Jones, is that right?

7 A That's correct.

8 Q I think you may of said Ms. Tanya Jones. I just wanted
9 to make sure that was---

10 A Yeah, it's Beverly Jones.

11 Q Okay. Did you discuss how he could be liable under the
12 hand of one hand of all with him or---

13 A I'm sure we went over that. I don't recall the exact
14 time or content of the conversation.

15 Q So you did advise him on mere presence and the
16 accomplice liability?

17 A Yes, and we got a mere presence charge.

18 Q Right. You did get a mere presence charge.

19 So the jury had that before them. They could of
20 considered him -- they could of found him not guilty on
21 that?

22 A They could of inferred it from the facts in applying,
23 applying the law of mere presence.

24 Q To the severance issue, you said that you, you did not
25 think that would of been a successful motion to make, to

Roger Poole - Cross-examination
by Mr. Mitchell

1 sever the trial?

2 A I don't think I could of shown prejudice against Mr.
3 Chiles.

4 Q Well, there weren't any inconsistencies in their
5 defense really?

6 A That's right.

7 Q I mean they had the same story, the same overall
8 strategy?

9 A That's correct.

10 Q It was a consistent defense on both fronts, is---

11 A That's right.

12 Q They weren't antagonistic, antagonistic to each other?

13 A No.

14 Q Mr. Norris testimony didn't hurt Mr. Chiles testimony
15 or his case---

16 A Not in my opinion, no.

17 Q ---did it?

18 Do you recall the officer that testified, the first
19 officer that testified in the trial?

20 A No, I don't. I've got the record right, but I don't
21 recall.

22 Q Right.

23 Okay. That was -- was it Mr. -- was it Officer James?

24 Do you recall generally what his testimony was, that he
25 arrived at the scene?

Roger Poole - Cross-examination
by Mr. Mitchell

1 I think it starts on 186 of the transcript, Officer
2 Brad James.

3 A I'm with you.

4 Q Okay. Now, in there he testified that he pulled up and
5 saw Mr. Norris on top of the victim, Mr. Bond, isn't that
6 correct?

7 A Yes, on Page 187.

8 Q So he had to be one of the first, if not the first
9 officer, on the scene?

10 Isn't that right?

11 A Yes, sir.

12 Q Now, he testified that you didn't call anymore officers
13 that would of been beneficial to the case.

14 A I don't see how it could of been.

15 Q So there were two officers that did testify at the
16 trial, Mr. Guest, Officer Guest and Officer James, isn't
17 that right?

18 A That's right.

19 Q And you cross-examined both of them?

20 A Yes, sir.

21 Q You and co-counsel, Ms. Jones?

22 A That's right.

23 MR. MITCHELL: One second, Your Honor.

24 (Pause.)

25 MR. MITCHELL: No further questions.

Roger Poole - Redirect examination
by Ms. Moody

1 THE COURT: Anything further?

2 MS. MOODY: Yes, sir, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. MOODY:

5 Q Mr. Poole, you -- earlier you stated they were
6 consistent defenses.

7 A They were not inconsistent.

8 Q They were not inconsistent defenses.

9 A That's right.

10 Q Did you do any research as to a citizen's arrest?

11 A No.

12 Q Did you ask the Court to give an instruction on
13 citizen's arrest?

14 A No, I did not.

15 Q And I understand you said initially that was not your,
16 your, your strategy to say citizen's arrest. But after Mr.
17 Chiles got on the stand, he inserted that it was a citizen's
18 arrest being made.

19 A I think that's right, yes.

20 Q And when you spoke with I believe it's Ms. Jones who
21 represented Mr. Norris?

22 A Uh-huh. (Affirmative).

23 Q What, if any, research did she do on citizen's arrest?

24 A I'm -- I don't know. I just really don't know.

25 Q So what did y'all discuss in terms of showing -- okay.

Roger Poole - Redirect examination
by Ms. Moody

1 You didn't file a motion for a severance, and so y'all had
2 to discuss the defenses at some point in time.

3 A Right.

4 Q So what did you discuss about them or did you -- or was
5 the conversation just that---

6 A Well, basically I, I told -- when I was talking to
7 Beverly I would just put forth Mr. Chiles position that he
8 didn't know what was happening or what was going down and
9 that I was going to try to show that he was no -- not close
10 enough or have enough time to knowingly participate in a
11 crime.

12 Q Okay.

13 A That's it in a nutshell. We didn't sit around all
14 afternoon talking about citizen's arrests.

15 Q I mean I understand that. I'm just trying to
16 understand if Mr. Norris' defense was gonna be citizen's
17 arrest, the only information that he -- someone called him
18 out of his bed to come across the street because there was
19 a, a robbery or a burglary going on.

20 A Right.

21 Q So he knew something -- that something was happening?

22 A Uh-huh. (Affirmative).

23 Q And as Mr. Norris is contended that he was not trying
24 to rob the victims?

25 A Right.

Roger Poole - Redirect examination
by Ms. Moody

1 Q But he was trying to prevent a burglary.

2 A I think that's it.

3 Q Okay. And so I mean wouldn't it been something to,
4 one, say that while he didn't know that there was a burglary
5 going on it, a specific crime was going on, he was coming to
6 aid someone in stopping a crime?

7 A Well, my only response to that question can be that, at
8 some point in time, the -- what was on Mr. Chiles mind
9 was -- may have been to help Mr. Norris make a citizen's
10 arrest. May have been.

11 Q Okay. So I guess that takes me back to the question
12 again that even though that wasn't something you-all
13 discussed, when it came down to it and your client is on the
14 stand and he says he's trying to make a citizen's arrest,
15 did you not ask -- well, why didn't you ask the Court for a
16 charge on citizen's arrest?

17 A I know that I didn't and whether or not I should have,
18 that's -- I can't answer, answer that. I, I just did not.

19 MS. MOODY: Okay. Okay. No further questions for this
20 witness. Thank you.

21 THE COURT: Anything further from the witness?

22 MR. MITCHELL: Oh, just two quick ones.

23 THE COURT: Yes, sir.

24 RECROSS EXAMINATION

25 BY MR. MITCHELL:

Roger Poole - Recross examination
by Mr. Mitchell

1 Q Citizen's arrest isn't an affirmative defense to armed
2 robbery, right?

3 A That's right.

4 Q So it was consistent with your strategy to try to
5 negate the mens rea element by presenting facts as the
6 defendant thought that there was -- he was making a
7 citizen's arrest and, therefore, did not intend to commit
8 armed robbery?

9 A That's right.

10 MR. MITCHELL: Okay. That's it. Thank you.

11 THE COURT: Anything further, Ms. Moody?

12 MS. MOODY: No, I think I'm --.

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

14 Anything further from the Applicant?

15 MS. MOODY: No other witnesses, Your Honor.

16 THE COURT: Any witnesses for the State?

17 MR. MITCHELL: No, Your Honor.

18 THE COURT: All right. Ms. Moody, I'll be happy to
19 hear from you.

20 MS. MOODY: Your Honor, as it relates to my client's
21 allegations of failure to investigate and prepare for trial,
22 we take the position that Mr. Poole failed to investigate by
23 talking to the other officers that were on the scene. I
24 understand that there were two officers that came and
25 testified. But there were other officers who, according to

1 the discovery, were the first, first to respond and that was
2 officer Tollison and Officer James was the second person who
3 came.

4 So, Your Honor, I think that had Mr. Poole talked with
5 them that I think it would of shed a little bit more light
6 into Mr. Chiles citizen's arrest. I think that also, based
7 on the Statute 17-13-20, Subsection E being under
8 circumstances, circumstances which give rise to just a
9 suspicion of design, of his design to seal or commit some
10 felony, flees when he is haled. That is one of the
11 circumstances in which a person can effectuate a citizen's
12 arrest.

13 Further, under the case Nail -- excuse me -- State v.
14 Nail and State v.---

15 THE COURT: Yes, ma'am, but I was reading the
16 transcript and I -- your client did testify that he thought
17 he was making a citizen's arrest, which was, I think,
18 evidence which would negate intent, would it not?

19 MS. MOODY: Yes, sir. But also---

20 THE COURT: Well, I mean the fact that you're
21 attempting to effectuate a citizen's arrest is not a defense
22 to an armed robbery, is it?

23 MS. MOODY: It's not necessarily---

24 THE COURT: It would negate---

25 MS. MOODY: ---a defense.

1 THE COURT: It would negate intent.

2 MS. MOODY: Yes, sir, and he could of asked for a
3 charge from the Court to the jury.

4 THE COURT: well, he got a charge on mere presence
5 saying if you're just merely present.

6 So you're saying the fact that there was no charge as
7 to one's right to effectuate a citizen's arrest?

8 MS. MOODY: Yes, sir.

9 THE COURT: Is it argued that they didn't have the
10 right to do that?

11 MS. MOODY: No, sir, Your Honor. But I think that that
12 would of been something that I would of asked -- well, I
13 personally would think that that would be something that
14 would have -- it's the law that you can do that. Mr. Chiles
15 couldn't testify from the stand that it's the law.

16 THE COURT: But just -- I was just scanning the
17 transcript. I didn't see that anyone argued that you
18 couldn't make a citizen's arrest. I didn't see anything in
19 the case saying that that was something that couldn't of
20 been argued.

21 MS. MOODY: well, I understand that. I guess what
22 you're saying is, if nobody's arguing against it, then
23 there's no need for the jury to---

24 THE COURT: well, he testified that he was. I mean it
25 came into the record. It wasn't objected to. The Court let

1 it go in front of the jury that that's what he thought he
2 was doing.

3 MS. MOODY: And I guess, just like if you would ask the
4 Court to make a mere presence charge, that---

5 THE COURT: which they did.

6 MS. MOODY: Okay. So likely you could also ask the
7 Court to make a citizen's arrest charge as well.

8 THE COURT: Okay. Well, I just---

9 MS. MOODY: I know that you're saying---

10 THE COURT: I just didn't see---

11 MS. MOODY: ---that it may not arise to that level.

12 THE COURT: I just didn't see that anyone had, had
13 argued that you couldn't do that.

14 MS. MOODY: Right.

15 THE COURT: I didn't see that the jury was -- the
16 solicitor didn't argue that that I saw.

17 MS. MOODY: Okay.

18 THE COURT: I was scanning it. I wasn't reading it
19 word-for-word, but I didn't find anything in there where
20 anyone -- your client did testify to it, that that's what he
21 thought he was doing on about three occasions that I found,
22 and I just never heard anybody say well, you know, that's
23 poppycock. He couldn't do that because it's against the law
24 for him to do that. I never heard that issue raised in
25 front of the jury, that he couldn't have done that.

1 So, I just I -- if I'm missing something, tell me.

2 MS. MOODY: Well, I think maybe I'm missing something
3 because if the State is alleging that he committed this
4 armed robbery, they're asking for certain charges. I'm
5 assuming that any charges that would be applicable to the
6 case, because they're saying that he robbed these
7 individuals, that it might be -- it may not rise to the
8 level that the Court feels that he was prejudiced in some
9 kind of way.

10 THE COURT: That's my, my question is that, that he's
11 still got to raise -- the issue was raised in front of the
12 jury.

13 MS. MOODY: By himself.

14 THE COURT: Yes. Well, he, he -- in his testimony.

15 MS. MOODY: But also---

16 THE COURT: In response to his lawyer's questions.

17 MS. MOODY: Yes.

18 THE COURT: Okay.

19 MS. MOODY: But I -- from the testimony from his
20 lawyer, that wasn't a defense and I don't think he was
21 expecting for his client to testify as to that.

22 THE COURT: Well, I kind of understand Mr. Poole's
23 testimony from the prospective that he said that his
24 client -- this gentleman's testimony was he didn't know what
25 was happening. He just went out to investigate. He didn't

1 see the crime being committed. Somebody came in and told
2 him somebody was outside committing a crime, and, and in
3 looking at this, it says -- well, it's an, it's an old Code
4 section. It goes way way back. 1866. Last cite I see on
5 there. Cause it refers to people breaking into out-houses.
6 That's one reason I noticed it was a pretty old statute.

7 MS. MOODY: Uh-huh. (Affirmative).

8 THE COURT: That doesn't happen very often.

9 But at any rate, any rate, I'll consider your argument.
10 I'm not dismissing your argument. I'm just saying that
11 it's, that it seemed to me that the question of whether or
12 not a citizen's arrest was taking place, those facts were
13 testified to in front of the jury. It appeared that the
14 defense was your client had no intent to commit a crime. He
15 wasn't a part of that. He just happened to be on the scene.
16 He was merely present and that would of been evidence that
17 would of negated intent, and it was my understanding of the
18 facts that Mr. Norris was the one who got the guy on the
19 ground and held the knife to his throat.

20 MS. MOODY: That's correct.

21 THE COURT: Okay. So I'm not sure your client effected
22 an arrest to begin with. He may of thought he was
23 participating in one. But I'm not sure he was the guy who
24 actually grabbed the fellow and put him on the ground.

25 MS. MOODY: No, he's not the guy that did it. I --

1 well, I would just ask the Court to look at these cases --

2 THE COURT: Okay.

3 MS. MOODY: -- and I can hand them up to the Court.

4 One is a 1995 case that is State v. Cooney.

5 THE COURT: Uh-huh. (Affirmative).

6 MS. MOODY: C-O-O-N-E-Y. The cite for that case is 463

7 S.E.2d 597, and the second case is a 1991 case, State v.,

8 I'm saying that last name right, Nall, N-A-L-L, and the cite

9 for that case is 404 S.E.2d 202.

10 THE COURT: All right. You want to pass those up to my
11 law clerk we'll go ahead and take a look at them.

12 MS. MOODY: Okay. Can I make some copies?

13 THE COURT: Those are your copies?

14 MS. MOODY: I wrote on them. I'm not sure I need to
15 give them to you.

16 THE COURT: All right. Anything else?

17 Anything else, Ms. Moody?

18 MS. MOODY: No, sir, Your Honor. I believe that would
19 be all.

20 THE COURT: All right. The State.

21 MR. MITCHELL: Your Honor, it's our position that the
22 Applicant has failed to meet his burden here in that there's
23 definitely no prejudice from any alleged errors by counsel.

24 I note that Officer James was the first witness called
25 or was the fourth witness called by the State. He was the

1 first officer on the scene or one of the firsts, one of the
2 first two. So he was there. He was there. He was able to
3 cross-examine him and do all that.

4 THE COURT: Well, these are the same officers that
5 brought the charges I assume, aren't they?

6 MR. MITCHELL: I believe so.

7 THE COURT: You know, I didn't, I didn't hear any
8 testimony from the Applicant as to what these officers might
9 have offered that would of been exculpatory. I didn't hear
10 that.

11 MR. MITCHELL: I didn't either, Your Honor. I'm -- and
12 we would just argue that all this was presented to the jury
13 and they made a decision to convict. I know the Applicant
14 doesn't agree that he had the mens rea to do it. But I
15 think that counsel articulated strategy and not moving to
16 sever the case and articulated a strategy in defending the
17 case on mens rea on that and I think, you know, the jury
18 could of taken it one way or the other. Unfortunately, for
19 Mr. Chiles, they came out guilty.

20 THE COURT: All right.

21 MR. MITCHELL: Thank you.

22 THE COURT: Thank you, sir.

23 I'll take it under advisement. Thank you very much.

24 MS. MOODY: Your Honor, if I just may address one point
25 made.

1 THE COURT: Yes, ma'am, certainly.

2 MS. MOODY: He indicated I think -- I'm not sure if he
3 indicated that the officers that brought the charge.
4 Officer Guest is the actual affiant of the affidavit that
5 was not present.

6 THE COURT: But my point was -- the reason I said that
7 was that because -- I'm, I'm not sure if these are the
8 officers, the group of officers, who investigated the case.

9 MS. MOODY: Uh-huh. (Affirmative).

10 THE COURT: I take it that they agreed with one of them
11 going down and swearing out a warrant, which I guess
12 happened, that they were the people who brought the charges,
13 and I didn't hear your client testify to anything that the
14 officers knew or would have testified to that would of been
15 somehow exculpatory in his case. I would think if they went
16 down and charged him, they would not have been positive
17 testimony -- witnesses in his case is the way I would tend
18 to take that, but maybe I'm wrong.

19 MS. MOODY: Well, and I get what you're saying.

20 THE COURT: You think that they might of---

21 MS. MOODY: I don't know what---

22 THE COURT: Officers who bring charges generally
23 testify for defendants?

24 MS. MOODY: I don't know whether they would of been --
25 it would of been exculpatory other than if it was---

1 THE COURT: Well, I think your client has an obligation
2 to bring, if somebody didn't testify, to bring to the Court
3 some evidence that their testimony would of been helpful in
4 some fashion. I haven't heard how it would of been.

5 MS. MOODY: I think that what he was trying to say
6 about those witnesses that were not there is that he did not
7 run from the scene. So I think that's the main reason why
8 he thought that those witnesses would of been helpful. Not
9 that they would of said that when they arrived there that
10 these were the circumstances as far as what the testimony---

11 THE COURT: But, again, I did not hear any of those
12 witnesses come forward and say that they would of testified
13 that he did not---

14 MS. MOODY: Oh, I get what you're saying.

15 THE COURT: ---run from the scene. That's what I said.

16 All right. Thank you very much. I'll take it under
17 advisement.

18

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20 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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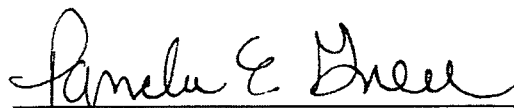
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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 17th day of September, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 10th, 2015

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Kenneth Wayne Chiles, #167250,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-1824

ORDER OF DISMISSAL

SPARTANBURG COUNTY
2015 MAY -8 PM 4:01
M. HOPE BLACKLEY

This matter comes before this Court by way of an application for post-conviction relief filed April 30, 2012. Respondent filed its Return on March 1, 2013. A hearing was convened at the Spartanburg County Courthouse on September 17, 2014, at which time Applicant was present in court and represented by Leah B. Moody, Esquire. J. Clayton Mitchell of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, J. Roger Poole, Esquire. The Court had before it the Spartanburg County Clerk of Court records', Applicant's South Carolina Department of Corrections records, the PCR application, Respondent's Return, Applicant's appellate records, and the trial transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the September 2008 term of the Spartanburg County Grand Jury for armed robbery (2008-GS-42-5630). Applicant was represented by Counsel Poole. On July 6, 2009, Applicant proceeded to trial after which a jury convicted him of the charges as indicted. He was sentenced by the Honorable J. Derham Cole to confinement for eighteen (18) years.

A timely Notice of Appeal and Anders brief were filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Chiles, Op. No. 2011-UP-336 (S.C. Ct. App. filed June 28, 2011). The remittitur was issued on July 14, 2011.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in failing to move to sever the case from codefendant Norris's.
2. Ineffective assistance of counsel in failing to investigate and present witnesses at trial.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified he was convicted of armed robbery and was sentenced to eighteen (18) years' imprisonment. He testified he was represented by Counsel Poole. He was tried jointly with codefendant Carnie Norris III. Applicant testified at trial in his own defense. Applicant explained that his codefendant, Norris, came to his house and told him it looked like someone was breaking into a building across the street. The two went to see what was going on, and Norris had taken the wallets of one of the men. Applicant testified that he was not robbing the victim in the case, but that he was making a citizen's arrest as he believed the victim was attempting to break into a nearby building. Applicant testified he did not have any intent to steal the victim's wallet and that Norris had the knife.

Applicant testified that there was another officer that he spoke to before he was arrested that may have provided helpful testimony in his defense. Applicant testified at trial that his statement to investigators was that the victim's bank cards and identification fell out of his wallet.

and he picked it up. Applicant acknowledged that Counsel mentioned the contradictory statements made by the State's witnesses in his closing argument.

Counsel J. Roger Poole's Testimony

Counsel testified he represented Applicant on the charges currently before the Court. Counsel testified he met with Applicant multiple times and reviewed discover with him. Counsel testified Applicant told him he thought he was making a citizen's arrest and never had any intent to rob the victim.

Counsel testified he did not move to sever the trial because he did not believe a severance motion would be successful and saw no meritorious grounds to move for a severance. He believed the defenses of the two defendants were consistent and not antagonistic. He testified that no specific rights would be compromised with the trial proceeding jointly. He explained that Norris was also going to claim that he was making a citizen's arrest in order to negate the *mens rea* element of armed robbery. Counsel noted that he attempted to point out that Applicant kept a distance from Norris and that he was at least less culpable than Norris.

Counsel testified he investigated the other responding officers to see if they would be helpful and decided not to call them as witnesses in his defense. Counsel noted that law enforcement officers are generally not good witnesses for defendants. He explained that the first responding officer did testify and was cross examined on his testimony.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

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SPARTANBURG COUNTY
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J. ROGER POOLE

cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the appellate records, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

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M. HOPE BLACKLE

Ineffective Assistance of Counsel

Failure to Move for a Severance

This Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to move to sever the case. This Court finds trial counsel's credible and persuasive testimony that there were no grounds to move for a severance and agrees with his analysis. "Criminal defendants who are jointly tried [...] are not entitled to separate trials as a matter of right." State v. Dennis 337 S.C. 275, 281, 523 SE2d 173, 176 (1999) (citing State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972)). Instead, a court should only grant a severance "when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent a jury from making a reliable judgment about a co-defendant's guilt." Id. at 282, 523 S.E.2d at 176. This Court finds Counsel was not deficient in his decision to not move for severance. Counsel testified there was no basis to move to sever the cases. Applicant and codefendant Norris were arrested and charged with armed robbery. Applicant and Norris presented nearly identical defenses. Where counsel articulates valid reasons for employing certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). This Court finds that the legal and strategic decision to not move for a severance was reasonable in this situation. This Court further finds no specific trial right was violated by trying Applicant and codefendant Norris together.

Regardless, Applicant was not prejudiced by the joint trial with Norris. A cautionary instruction as to multiple defendants is sufficient to protect each co-defendant from prejudice that might result from a joint trial. See State v. Holland, 261 S.C. 488, 494, 201 S.E.2d 118, 121 (1973). Here, the trial court gave an instruction on the jury's duties regarding multiple

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M. NOBLE LAKE

defendants. (Trial Tr. p. 311, lines 16-22; p. 327, lines 1-14). These instructions negated any prejudice that may have resulted from the joint trial. Furthermore, Applicant has failed to show that a motion for severance would have been successful. Accordingly, Applicant has failed to prove prejudice from trial counsel's decision.

Failure to Investigate and Call Witnesses

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to investigate and to call the other responding officers as witnesses. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). In light of Counsel's credible testimony that he evaluated and apprised Applicant on the matter, Applicant has produced no reliable testimony that would even remotely diminish his culpability in the armed robbery charge. Regardless, the allegation rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Applicant failed to present any evidence or testimony from the officers. This Court finds Counsel articulated a reasonable trial strategy in not calling law enforcement officers in support of his defense as the officers were not likely to provide beneficial testimony. Thus, this allegation is readily denied and dismissed as Applicant has failed to meet his burden in proving deficiency and resulting prejudice.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

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matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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SPARTANBURG COUNTY
2015 MAY -8 PM 4:01
M. HOPE BLACKLEY

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 9th day of May, 2015.


ROGER L. COUCH
Presiding Judge

, South Carolina

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SPARTANBURG COUNTY
2015 MAY -8 PM 4:01
M. HOPE BLACKLEY

WITNESSES

Spartanburg Public Safety Deputy

SENTENCE MADE

2. REPORT ENDED

3. CARD FILLED

4. INDEXED

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE
M022992

8. TRAFFIC VIOLATIONS COPY

ACTION OF GRAND JURY

VERDICT

Guilty

Foreperson of Grand Jury
Date: 7-17-08
Foreperson of Petit Jury
Date: July 7, 2009

DOCK

08-GS-42-520

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

SEP 22 2008

TERM

THE STATE
vs.

Kenneth Wayne Chiles

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

MARC KITCHENS

2008 SEP 24 AM 11:16

FILED
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SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 19 2008

At a Court of General Sessions, convened on _____, the Grand
Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Kenneth Wayne Chiles, did in Spartanburg County, on or about
July 16, 2008, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or
other deadly weapon or while alleging, either by actions or word, he was armed while
using a representation of a deadly weapon or any object which a person present during
the commission of the robbery reasonably believed to be a deadly weapon feloniously
take from the person or presence of Andrew B. by means of force or
intimidation goods or monies of Andrew B. described as follows: a check
card, two gift cards, various business cards and \$6.00 in cash money, with intent to
deprive the owner permanently of such property, in violation of Section 16-11-330 (A),
Code of Laws of South Carolina (1976, as amended).

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


DEPUTY SOLICITOR