

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Beaufort County

Edgar W. Dickson, Circuit Court Judge

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SC SUPREME COURT

CHRISTOPHER CLEMONS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001937

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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT

CASE NO. 2013-GS-07-00555

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

APRIL 22 & 23, 2013

TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

CHRISTOPHER CLEMONS

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE; AND A JURY.

WANDA H. ROWE, CVR-M

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14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
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ORIGINAL

HON. CARMEN T. MULLEN, JUDGE; AND A JURY.

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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1 BEGIN DAY ONE, MONDAY, APRIL 22,

2 2013, 2:50 P.M.

3 BY THE COURT:

4 BAILIFF: All rise. Court is now in session.

5 THE COURT: Thank you all. Please be seated. Thank
6 you. Welcome back, ladies and gentlemen. I know you all
7 have been here all morning long, and you have been to
8 lunch, and now we are back, and I expect to pull my jury
9 for this afternoon.

10 Ladies and gentlemen, I remind you, under the oath
11 that you took earlier, you need to respond to the
12 questions as is necessary. But before we do that, I'm
13 going to let Mr. Hall go ahead and call his case, if he
14 would like.

15 CASE CALLED:

16 MR. HALL: Thank you, your Honor. This is State of
17 South Carolina versus Christopher Clemons. This is Case
18 Number 2013-GS-07-555. Mr. Clemons is charged with one
19 count of armed robbery.

20 VOIR DIRE BY THE COURT:

21 THE COURT: Thank you. Ladies and gentlemen, if you
22 would give me your attention, we are about to begin the
23 trial of the case. It's entitled the State of South
24 Carolina versus Christopher Clemons, who is charged by
25 the bill of indictment by the Beaufort County Grand Jury

1 with the offense of armed robbery.

2 Ladies and gentlemen, in this case, the State is
3 being represented by Patrick Hall and Mary Concannon, if
4 you'd both stand and face the jury panel for me. Thank
5 you. You may be seated.

6 Also, ladies and gentlemen, the defendant in this
7 case, Mr. Christopher Clemons, is being represented by
8 Arie Bax. If you would both stand, sir, and face the
9 jury panel. Thank you. You may be seated.

10 Ladies and gentlemen, this case involves an alleged
11 armed robbery at the Kangaroo Pantry in Port Royal, in
12 Beaufort County, on December 24, of 2011. Ladies and
13 gentlemen, I've introduced you to the attorneys trying
14 the case, as well as the defendant. My questions to you
15 are as follows:

16 First, is there any member of the jury panel related
17 by blood or connected by marriage, with the defendant,
18 Mr. Christopher Clemons. If so, please stand.

19 Is there any member of the jury panel who's a close
20 personal friend, or share a special relationship with the
21 defendant, Mr. Christopher Clemons? If so, please stand.

22 Also, ladies and gentlemen, you've been introduced
23 to the attorneys trying this case. Again, it's Mr. Hall
24 and Ms. Concannon on behalf of the State, and Mr. Bax on
25 behalf of the defendant. My question is the same: is

1 there any member of the jury panel related by blood or
2 connected by marriage, with any of these attorneys trying
3 this case?

4 Also, is there any member of the jury panel who is a
5 close personal friend or share a special relationship
6 with any of the attorneys that are trying this case? If
7 so, please stand.

8 Additionally, ladies and gentlemen, is there any
9 member of the jury panel that has ever been represented
10 by, or prosecuted by, any of the attorneys that are
11 trying this case here over the next couple of days? If
12 so, please stand.

13 Additionally, ladies and gentlemen, has any member
14 of the jury panel ever been employed by any of these
15 attorneys or their respective offices? If so, please
16 stand. Or a member of your immediate family ever been
17 employed by any of these attorneys? Very well.

18 Ladies and gentlemen, the following is a list of
19 potential witnesses in this case, and if those witnesses
20 already in the courtroom, I'm going to ask that you stand
21 and face the jury panel.

22 They are Corporal Steve Reynard, of the Port Royal
23 Police Department. Sergeant Andre Massey, of the Port
24 Royal Police Department. Investigator Josh Dowling, of
25 the Beaufort Police Department. Robert Thomas. John

1 Eisenhower. And Jennifer Vyska.

2 Ladies and gentlemen, the question, again, is, is
3 there any member of the jury panel related by blood or
4 connected by marriage, or a close personal friend or
5 share a special relationship with any of these potential
6 witnesses? If so, please stand.

7 Ma'am, your name and juror number?

8 JUROR NUMBER 182: Laura Leadlove, 182.

9 THE COURT: Ms. Leadlove, who do you know?

10 THE COURT: John Eisenhower.

11 THE COURT: And what's your relationship with Mr.
12 Eisenhower?

13 JUROR NUMBER 182: Just friends.

14 THE COURT: You're friends. Ma'am, you understand
15 the allegations in this case. Have you discussed
16 anything regards to this case?

17 JUROR NUMBER 182: No, ma'am.

18 THE COURT: All right. Would you like further voir
19 dire for this potential juror from the State?

20 MR. HALL: Nothing from the State, your Honor.

21 MR. BAX: Your Honor, just the question of her
22 relationship with Mr. Eisenhower; would that affect her
23 ability to be fair and impartial in this case?

24 THE COURT: All right. Thank you. Ma'am, my
25 question is, is, based on your friendship with Mr.

1 Eisenhower, understanding that he may be a witness in the
2 trial of this case, would that affect your ability to be
3 fair and impartial to both the State and Defense of this
4 trial?

5 JUROR NUMBER 182: No, ma'am.

6 THE COURT: Are you sure of that?

7 JUROR NUMBER 182: I'm positive.

8 THE COURT: All right, ma'am. Thank you. You may
9 be seated. Anyone else?

10 Ladies and gentlemen, additionally, you have been
11 told, again, what the allegations are in this case. It
12 is an allegation of an armed robbery. My question is,
13 ladies and gentlemen, is just based on the nature of the
14 case, is there any person on the jury panel that simply
15 does not feel comfortable sitting and listening to an
16 armed robbery case? If so, please stand.

17 Ma'am, if you would stand, and give me your name and
18 juror number.

19 JUROR NUMBER 12: Diane Ashdown, Number 12.

20 THE COURT: Ma'am, I am going to ask that you
21 approach right here to speak with me. Anyone else?

22 ON-THE-RECORD, INDIVIDUAL VOIR

23 DIRE, OUT OF HEARING OF JURORS.

24 PRESENT: THE COURT, MR. HALL,

25 MS. CONCANNON, MR. BAX:

1 THE COURT: It's a pleasure to meet you.

2 JUROR NUMBER 12: Thank you. No, and I broke down
3 and started crying over the last daggone case.

4 THE COURT: I'm sorry, with Judge Kinard?

5 JUROR NUMBER 12: I am so sensitive with handguns.
6 My brother's house was broken into several years ago by
7 teenagers, and all his hunting rifles and everything were
8 stolen.

9 THE COURT: Okay. Okay. That's all right.

10 JUROR NUMBER 12: I'm just too sensitive.

11 THE COURT: That is okay. I don't want you to worry
12 about it. Let me tell you what I want to do. Is there
13 any way you would let us transfer you to a civil term of
14 court?

15 JUROR NUMBER 12: Yes. I cannot handle this kind of
16 stuff.

17 THE COURT: Absolutely. What I'm going to do is,
18 I'm just going to ask you, I will transfer you. You're
19 going to get another notice. If, for some reason, you
20 have a problem that it needs to be switched again, that's
21 fine.

22 JUROR NUMBER 12: Okay.

23 THE COURT: But I'm just -- I'm going to put you
24 down for a civil term of court.

25 JUROR NUMBER 12: Okay. All right.

1 THE COURT: Something light. It's fine. Don't
2 worry about it, but it was a pleasure to meet you.

3 JUROR NUMBER 12: Thank you. Where do I go?

4 END INDIVIDUAL VOIR DIRE.

5 THE COURT: Ms. Ashdown has been transferred to a
6 civil term of court. Anyone else? She can be released.
7 Have her call back after 6:00 o'clock, Al. Thank you.
8 Okay? Will you explain to her?

9 BAILIFF: Yes, ma'am, I'll take care of it.

10 THE COURT: Thank you. I appreciate it.

11 Ladies and gentlemen, has any member of the jury
12 panel seen, heard, or read anything about this case, or
13 have any independent knowledge about this case
14 whatsoever? If so, please stand.

15 Yes, ma'am. Again, give me your name and juror
16 number.

17 JUROR NUMBER 182: Laura Ludlow, 182.

18 THE COURT: Ms. Ludlow, come up and talk to me again
19 in private, please.

20 ON-THE-RECORD INDIVIDUAL VOIR
21 DIRE, OUT OF HEARING OF JURORS.

22 PRESENT: THE COURT, MR. HALL,

23 MS. CONCANNON, MR. BAX:

24 THE COURT: Come on over. It's so nice to meet you.

25 JUROR NUMBER 182: You, too.

1 THE COURT: Absolutely. All right. What do you
2 know about this case?

3 JUROR NUMBER 182: Well, I saw videos of it.

4 THE COURT: You did? Where?

5 JUROR NUMBER 182: Well, John Eisenhower's son
6 showed me videos from what had happened.

7 THE COURT: His son showed them to you?

8 JUROR NUMBER 182: From videos, I guess from the
9 camera or something from the store.

10 THE COURT: Okay. Where did he show them? At your
11 house or at his house?

12 JUROR NUMBER 182: Walmart.

13 THE COURT: At Walmart. Okay. And how did he show
14 them at Walmart?

15 JUROR NUMBER 182: He had it on his camera, on his
16 phone.

17 THE COURT: Very good. I understand.

18 JURORS 182: Okay.

19 COURT REPORTER: I can't hear you.

20 MR. HALL: That was something we actually talked
21 about back in Chambers. There was somebody that was
22 actually gone in and made a copy.

23 THE COURT: Thank you. Okay. Now I know exactly
24 what you're talking about. Okay. I'm going to go ahead
25 and excuse you from the trial of this case. I just don't

1 think it's appropriate for you to watch it or be a part
2 of it.

3 JUROR NUMBER 182: Yes, I understand.

4 THE COURT: What I am going to ask you to do is call
5 back after 6:00 o'clock tonight on the jury line.

6 JUROR NUMBER 182: Um-hmm.

7 THE COURT: It will tell you whether or not you need
8 to report. I believe it's probably going to say call
9 back tomorrow after 6:00 o'clock. If it tells you to
10 come back, come back. If not, don't worry about it.
11 Okay.

12 JUROR NUMBER 182: Okay.

13 THE COURT: But I appreciate it, and I appreciate
14 your candor.

15 JUROR NUMBER 182: Okay. Thank you. Uh-huh.

16 THE COURT: You're excused to go home.

17 JUROR NUMBER 182: Thank you.

18 END INDIVIDUAL VOIR DIRE.

19 THE COURT: Okay. Thank you. She is going to be
20 excused, and she's going to call back after 6:00 o'clock
21 tonight.

22 Ladies and gentlemen, is there any member of the
23 jury panel who is a member of or contributor to any group
24 which has as its primary concern the promotion of law
25 enforcement or victims' rights? And these groups would

1 include a group such as Citizens Against Violent Crime
2 known as CAVE; or MADD, Mothers Against Drunk Driving; or
3 SADD, Students Against Drunk Driving. Again, the
4 question is, is there any member of the jury panel who is
5 a member of or a contributor to any of these types of
6 groups? If so, please stand.

7 Ladies and gentlemen, is there any member of the
8 jury panel that is conscious of any interest or any bias
9 or prejudice for or against the defendant in this case,
10 Mr. Clemons? If so, please stand.

11 Ladies and gentlemen, is there any member of the
12 jury panel that knows of any reason whatsoever that you
13 cannot give both the state of South Carolina and the
14 defendant, Mr. Clemons, a fair and impartial trial in
15 this matter? If so, please stand.

16 Is there any further questions required of this
17 panel from the State?

18 MR. HALL: Nothing from the State, your Honor.

19 THE COURT: From the Defense?

20 MR. BAX: Approach, your Honor?

21 THE COURT: You may.

22 OFF-THE-RECORD BENCH CONFERENCE,

23 OUT OF HEARING OF JURORS. PRESENT:

24 THE COURT, MR. HALL, MS. CONCANNON.

25 END BENCH CONFERENCE.

1 THE COURT: Ladies and gentlemen, is there any
2 member of the jury panel or any member of your immediate
3 family ever been the victim of a violent crime? If so,
4 please stand.

5 Ladies and gentlemen, as you disclosed it before, I
6 understand that Judge Kinard did ask that question last
7 time, but the attorneys weren't necessarily in there for
8 it. So, I need to go ahead and ask you again. Again,
9 the question is, is there any member of the jury panel or
10 a member of their immediate family ever been the victim a
11 violent crime?

12 Sir, your name and juror number. I'm just going to
13 start right from you. Go ahead and stand up. Everyone
14 stand up. Name and juror number.

15 JUROR NUMBER 29: Scott Bloch, 29.

16 THE COURT: Mr. Bloch, who was it?

17 JUROR NUMBER 29: I owned businesses and they've
18 been robbed several times.

19 THE COURT: What type of businesses do you own, sir?

20 JUROR NUMBER 29: Franchise. I don't own any more.

21 THE COURT: A franchise. All right, sir. The fact
22 that you have had, it sounds like, businesses that have
23 been robbed, would that affect your ability to be fair
24 and impartial in the trial of this case?

25 JUROR NUMBER 29: No.

1 THE COURT: Are you sure?

2 JUROR NUMBER 29: Yes.

3 THE COURT: Thank you, sir. You may be seated.

4 Your name and juror number.

5 JUROR NUMBER 279: William Scott, Number 279.

6 THE COURT: Yes, Mr. Scott?

7 JUROR NUMBER 279: I've been a victim of a armed
8 robbery once and mugging.

9 THE COURT: How long ago was that, sir?

10 JUROR NUMBER 279: It was my freshman and sophomore
11 year in college. So, four or five years.

12 THE COURT: And was that case ever resolved?

13 JUROR NUMBER 279: More or less. I never called the
14 police or its --

15 THE COURT: Okay. Sir, I want to make sure that you
16 are comfortable sitting on a case that is an alleged
17 armed robbery. I want to make sure that --

18 JUROR NUMBER 279: Yeah, I don't mind.

19 THE COURT: I want to make sure that you -- although
20 I want to make sure that you can separate your experience
21 from the evidence that's presented here in this
22 courtroom, because, of course, they are two totally
23 different experiences.

24 JUROR NUMBER 279: Of course.

25 THE COURT: Is that correct?

1 JUROR NUMBER 279: Yeah.

2 THE COURT: Are you sure you can do that?

3 JUROR NUMBER 279: Yeah.

4 THE COURT: Okay. You may be seated, Mr. Scott.

5 Thank you.

6 Yes, ma'am? Your name and juror number.

7 JUROR NUMBER 110: Jeannine Gleason, 110. I was a
8 victim of an attempted kidnaping when I was younger. And
9 four motions ago, a peeping Tom.

10 THE COURT: Okay. Ma'am, the simple fact that it
11 sounds like you've been a victim twice now. Does that
12 affect your ability to be impartial in the trial of this
13 case or any criminal case?

14 JUROR NUMBER 110: No.

15 THE COURT: Is that a no for the record?

16 JUROR NUMBER 110: No.

17 THE COURT: Are you absolutely sure?

18 JUROR NUMBER 110: Yes.

19 THE COURT: I need to make absolutely sure. You are
20 fine; you are comfortable.

21 JUROR NUMBER 110: Yes.

22 THE COURT: And again, just as I asked Mr. Scott, I
23 want to make sure you can separate your experience from
24 what is before us. Is that correct?

25 JUROR NUMBER 110: Yes.

1 THE COURT: All right. You may be seated, and thank
2 you.

3 JUROR NUMBER 110: Thank you.

4 THE COURT: Yes, ma'am. Your name and juror number?

5 JUROR NUMBER 264: Flora Robinson, 264.

6 THE COURT: Yes, ma'am.

7 JUROR NUMBER 264: A sibling -- a sibling of mine
8 had a home invasion about a year ago, and some theft.

9 THE COURT: Okay. Ma'am, the fact that a sibling,
10 or brother or sister of yours was a victim of a home
11 invasion, would that affect your ability to be fair and
12 impartial in the trial of this case?

13 JUROR NUMBER 264: No, ma'am.

14 THE COURT: Thank you. You may be seated, Ms.
15 Robinson.

16 Sir?

17 JUROR NUMBER 180: Yeah, Dan Lauzon, Juror 180.

18 THE COURT: Yes, sir.

19 JUROR NUMBER 180: My wife was car-jacked about 15
20 years ago.

21 THE COURT: Mr. Lauzon, would that affect your
22 ability to be fair and impartial in the trial of this
23 case?

24 JUROR NUMBER 180: No, it will not.

25 THE COURT: And you're confident of that?

1 JUROR NUMBER 180: I am.

2 THE COURT: Thank you, Mr. Lauzon. You may be
3 seated, sir.

4 Sir, your name and number?

5 JUROR NUMBER 221: Jake Nazzaro, Number 221.

6 THE COURT: Yes, Mr. Nazzaro.

7 JUROR NUMBER 221: In 1998, I was a store manager
8 for CVS Pharmacies, and I was held up by three armed men.

9 THE COURT: Okay. Mr. Nazzaro, the fact that you
10 were held up, it sounds like, while working at CVS in the
11 past, would that affect your ability to be fair and
12 impartial in the trial of this case?

13 JUROR NUMBER 221: No, ma'am.

14 THE COURT: Are you sure?

15 JUROR NUMBER 221: Yes, ma'am.

16 THE COURT: Okay. Thank you.

17 Ma'am.

18 JUROR NUMBER 18: Patricia Beach, 18.

19 THE COURT: Yes.

20 JUROR NUMBER 18: I can't say it in front of all of
21 these people. I'd need to come up.

22 THE COURT: No worries whatsoever. I want you to
23 come up and speak with me in private. Okay?

24 BAILIFF: Right over here, ma'am.

25 THE COURT: We're right over here by the court

1 reporter, if you don't mind.

2 JUROR NUMBER 18: Okay.

3 THE COURT: And ma'am, give your number again.

4 JUROR NUMBER 18: It's 18. Oh, I'm sorry.

5 THE COURT: All right.

6 ON-THE-RECORD INDIVIDUAL VOIR

7 DIRE, OUT OF HEARING OF JURORS.

8 PRESENT: THE COURT, MR. HALL,

9 MS. CONCANNON, MR. BAX:

10 JUROR NUMBER 18: My son's -- my son threatened me
11 with a knife. He's, you know, he got taken out of the
12 home.

13 THE COURT: Okay.

14 JUROR NUMBER 18: A couple years ago. I didn't know
15 exactly what you meant. You're saying --

16 THE COURT: And that's okay, and that's fine.
17 That's fine.

18 JUROR NUMBER 18: Okay.

19 THE COURT: My question to you is, are you
20 comfortable sitting in the trial of this case? I
21 understand it's an alleged armed robbery.

22 JUROR NUMBER 18: Yes. I've had a little violence
23 in my life from my ex two husbands, and I don't really
24 know if I feel comfortable.

25 THE COURT: Okay. Let me do this, Ms. Beach. I do

1 not think you should be here in criminal court.

2 JUROR NUMBER 18: Okay.

3 THE COURT: If you don't mind, I am going to ask
4 that we transfer your service to a term of civil court,
5 okay, so, you don't have to deal with this. Is that all
6 right with you?

7 JUROR NUMBER 18: Yeah, that's fine.

8 THE COURT: Okay, Ms. Beach. I appreciate it. But
9 I'm going to go ahead and excuse you from the trial of
10 this case.

11 JUROR NUMBER 18: Okay.

12 THE COURT: Okay? So, you're excused.

13 JUROR NUMBER 18: So, what do I do?

14 THE COURT: You're excused. You're just going to go
15 give your badge to Al.

16 JUROR NUMBER 18: Okay.

17 THE COURT: And call after 6:00 o'clock tonight, and
18 Al will explain it to you. All right. Thank you.

19 JUROR NUMBER 18: Okay.

20 END INDIVIDUAL VOIR DIRE.

21 THE COURT: And out of this group, does anyone need
22 to talk to me privately? Come on. And Al, if you would,
23 just give me his number and name, if you would.

24 BAILIFF: Yes, ma'am.

25 THE COURT: Before he comes up.

1 BAILIFF: Mr. Bowser, Number 34, your Honor.

2 THE COURT: Very good. Come on up, Mr. Bowser.

3 ON-THE-RECORD INDIVIDUAL VOIR

4 DIRE, OUT OF HEARING OF JURORS.

5 PRESENT: THE COURT, MR. HALL,

6 MS. CONCANNON, MR. BAX:

7 THE COURT: It's a pleasure, sir.

8 JUROR NUMBER 34: Thank you.

9 THE COURT: Thank you.

10 JUROR NUMBER 34: I went through this in the other
11 courtroom. I wonder if I could use the testimony that I
12 gave earlier?

13 THE COURT: Okay. You don't want to re-live it
14 again. Okay.

15 JUROR NUMBER 34: Basically, yes.

16 THE COURT: What I'm going to do is this, Mr.
17 Bowser. Did Judge Kinard excuse you from the trial of
18 that case, or do you know?

19 JUROR NUMBER 34: No, but I wasn't called.

20 THE COURT: But you were not called. Okay.

21 JUROR NUMBER 34: The -- the prosecutor's, her jaw,
22 practically hit the floor.

23 THE COURT: Okay. Okay.

24 JUROR NUMBER 34: When I told my story.

25 THE COURT: Okay. What I'm going to do is this. I

1 will touch base with Judge Kinard. Okay? Is that okay?
2 You okay?

3 JUROR NUMBER 34: Yes.

4 THE COURT: All right. I'm going to have you go sit
5 down.

6 JUROR NUMBER 34: I think I remember what you said.
7 It's --

8 THE COURT: That's all right. No worries. No
9 worries.

10 JUROR NUMBER 34: It's hard for me to re-live it.

11 THE COURT: I understand. I understand. All right.
12 I don't want you concerned. Go back and sit down. You
13 don't need to --

14 JUROR NUMBER 34: Okay.

15 THE COURT: You don't need to answer anymore
16 questions. We're fine.

17 JUROR NUMBER 34: Thank you.

18 END INDIVIDUAL VOIR DIRE.

19 THE COURT: We're going to excuse Mr. Bowser, Number
20 34, from the trial of this case. Okay?

21 Sir, come on up.

22 BAILIFF: Mr. Abney, Number 1, your Honor.

23 THE COURT: Pleasure to meet you.

24 JUROR NUMBER 1: You, too.

25 THE COURT: Thank you. Come on over here, sir.

1 ON-THE-RECORD INDIVIDUAL VOIR
2 DIRE, OUT OF HEARING OF JURORS.

3 PRESENT: THE COURT, MR. HALL,
4 MS. CONCANNON, MR. BAX:

5 JUROR NUMBER 1: I'm John Abney, and I've had two
6 family members that were killed in the act of a robbery.

7 THE COURT: Okay.

8 JUROR NUMBER 1: Separate occasions.

9 THE COURT: And Mr. Abney, would that affect your
10 ability to be fair and impartial?

11 JUROR NUMBER 1: I don't believe that I'd think
12 negatively at all.

13 THE COURT: You don't?

14 JUROR NUMBER 1: Yes.

15 THE COURT: Okay. That's Mr. Abney. Okay. And
16 they were both killed?

17 JUROR NUMBER 1: Yes. Yes. One in 1985, one in
18 1991.

19 THE COURT: All right, sir. Where did these occur?

20 JUROR NUMBER 1: One in Oklahoma, and one in New
21 York City.

22 THE COURT: All right, sir. Okay. I appreciate it.
23 Thank you for staying with us, okay, Mr. Abney? All
24 right.

25 END INDIVIDUAL VOIR DIRE.

1 THE COURT: All right. Does anyone else need to
2 speak with me personally, or -- we okay? All right. You
3 attorneys can go ahead and sit down.

4 Yes, ma'am, your name and juror number?

5 JUROR NUMBER 115: Fatima Grajeda, 115.

6 THE COURT: Yes, ma'am.

7 JUROR NUMBER 115: I've been the victim of a
8 robbery, my business, in the past, and three times at my
9 house.

10 THE COURT: Okay. And what type of business do you
11 have?

12 JUROR NUMBER 115: It was a restaurant.

13 THE COURT: It's a restaurant. And again, tell me
14 your number, please.

15 JUROR NUMBER 115: 115.

16 THE COURT: 115. All right, ma'am. You may be
17 seated. Well, I do need to add, can you be fair and
18 impartial in the trial of this case, based on your
19 private experiences?

20 JUROR NUMBER 115: Yes, ma'am.

21 THE COURT: Are you sure?

22 JUROR NUMBER 115: Yes.

23 THE COURT: All right. You may be seated, ma'am.
24 All right. Yes, ma'am, your name and juror number?

25 JUROR NUMBER 333: Jeanne Williams, 333.

1 THE COURT: Yes, ma'am.

2 JUROR NUMBER 333: And my daughter was attacked at
3 knife-point.

4 THE COURT: Okay. Ma'am, how long ago was that?

5 JUROR NUMBER 333: About ten years ago.

6 THE COURT: Okay. Would that affect your ability to
7 be fair and impartial in the trial of this case?

8 JUROR NUMBER 333: No.

9 THE COURT: Are you sure?

10 JUROR NUMBER 333: Yes.

11 THE COURT: Thank you, ma'am. You may be seated.

12 Ladies and gentlemen, does anyone know of any reason
13 whatsoever that you cannot be fair and impartial in the
14 trial of this case, weighing the evidence that's
15 presented here in this courtroom, unaffected by any
16 outside experience? If so, please stand.

17 Is there anything further requested of this panel
18 from the State?

19 MR. HALL: Nothing from the State, your Honor.

20 THE COURT: From the Defense?

21 MR. BAX: Nothing to request from the panel, your
22 Honor.

23 THE COURT: Okay. We need to approach, and we need
24 to have a discussion. And I believe it needs to be on
25 the record, very briefly.

1 MR. BAX: That's correct, your Honor

2 THE COURT: Thank you. Ladies and gentlemen of the
3 jury panel, I apologize again for our construction
4 problems, but at this time, I need to ask all of you all
5 to step out of the courtroom for about five minutes or
6 so. All right? And if you will, stay close, and we'll
7 be right back with you. All right?

8 JURORS LEAVE COURTROOM 3:12 P.M.

9 ON-THE-RECORD BENCH CONFERENCE

10 REGARDING JURORS. PRESENT: THE

11 COURT, MR. HALL, MS. CONCANNON, MR. BAX:

12 BAILIFF: Jury's clear. Door's closed, your Honor.

13 THE COURT: Thank you. All right, you all, we need
14 to go through some of these lists, because, while many of
15 these people say they can be fair and impartial, I do
16 think there's a question. If they are personal
17 themselves victims of an armed robbery, it's too close;
18 it's too similar; if, again, they are personal victims.
19 So, we need to go through the list.

20 I can tell you, to start with, we had Mr. Bloch, who
21 owns a convenience store. I am not going to excuse him
22 for cause, because he has never personally been there, is
23 what I have heard. Now, I'm ready to hear from you, Mr.
24 Bax, as to whatever you want. He was not there and
25 present at the time. I think you need to use a strike on

1 him, but I think anyone who themselves is an actual
2 victim, we've got a concern with.

3 MR. BAX: Your Honor, --

4 THE COURT: So, you can give me any position you
5 want, Mr. Hall.

6 MR. HALL: Thank you, your Honor. I guess, for the
7 record, I'd just say that, what I wrote down, as far as
8 what he said was that he owned businesses that have been
9 robbed.

10 THE COURT: A franchise, I think is what he said.

11 MR. HALL: Yes. And he's an exterminator, or at
12 least, he is now. I'm not sure what the businesses were,
13 but.

14 THE COURT: Okay.

15 MR. HALL: Yeah, that's my recollection, as well,
16 that he had not been personally robbed.

17 THE COURT: Right. Your position on him?

18 MR. BAX: Your Honor, our position is that, I don't
19 disagree with what the Court said about what he said. He
20 said his businesses. He did, however, also say that they
21 were multiple businesses robbed at multiple times. He
22 said they were robbed. Clearly indicating over time, he
23 got more than one robbery at businesses that he owned.
24 He stated that they were franchises, as well. Obviously,
25 Kangaroo Pantry is a franchise business, and we would, of

1 course, have the position that he would not be able to
2 serve as a juror. He may not have been the personal
3 victim, but we're talking about money taken from a
4 franchise business, and he's been through that; and the
5 connection is enough to where I think it does impair his
6 ability to be impartial.

7 MR. HALL: Your Honor, just, I'll agree with Mr. Bax
8 to the extent this gentleman did say *businesses* that had
9 been --

10 THE COURT: It was a franchise, is what he said, not
11 franchises.

12 MR. HALL: Right.

13 THE COURT: He said a franchise. So, he may have
14 had multiple stores, but it was a franchise. But anyway,
15 I mean we're quibbling over words right now at this
16 point.

17 MR. HALL: Right.

18 THE COURT: Let's go on to Mr. Scott, Number 279.
19 He was the young gentleman that said he had been robbed
20 as a freshman in college, is what he stated. I am going
21 to strike him for cause. I mean, he has been, obviously,
22 armed robbed himself. So, Mr. Scott is gone, which is
23 Number -- do you have it, Diane?

24 MADAM CLERK: 279.

25 MR. BAX: 279.

1 THE COURT: 279. Okay? Also, Mr. Nazzaro, in the
2 back, who was a manager of a CVS pharmacy that had been
3 robbed at a CVS pharmacy, I am going to excuse him for
4 cause, as well. That is Number 221.

5 Mr. John Abney was the last number, second-to-last
6 gentleman that came up here, and the last gentleman that
7 approached me. He said he had had two family members
8 that were killed in armed robberies, one in 1985 and one
9 in 1991. While it isn't him personally, I have a hard
10 time with him having personal family members who have
11 actually been killed, you all, in an armed robbery, which
12 is what he said. So, I think we need to, out of an
13 abundance of caution, strike Mr. Abney for cause, as
14 well.

15 Also, we had Number 115, Ms. Grajeda -- or Ms.
16 Fatima Grajeda Lopez, who she says she's been a victim of
17 robbery. She's a restaurant owner. And again, because
18 she herself personally has been a victim, I think we need
19 to strike her for cause, as well. That's Number 115.

20 Give me a second, you all. Is there anyone else you
21 had any concerns about or that you would request to be
22 struck for cause? Mr. Bax?

23 MR. BAX: Well, going with what your Honor has been
24 talking about as far as personal victims, Number 110 said
25 she was the victim of a kidnaping when she was younger,

1 was my remembrance of her words, as well as a recent
2 victim of a peeping Tom.

3 THE COURT: Right.

4 MR. BAX: I know those aren't armed robberies, but
5 she is personally the victim of these. And when she said
6 recently peeping Tom, I don't know how recently it was,
7 but it certainly seemed to emit some emotion when she
8 responded to that question. So, that would be an
9 additional one under those same theories that I think
10 needs to be struck for cause, your Honor.

11 THE COURT: Okay. I'm going to go ahead and strike
12 her, just out of an abundance of caution, Mr. Hall.
13 That's Number 110?

14 MR. BAX: Yes, ma'am.

15 THE COURT: Anyone else, Mr. Bax?

16 MR. BAX: As far as people that personally suffered,
17 I don't see anyone else that did. Though, you did excuse
18 a couple that didn't really tell their stories, or I
19 didn't hear them, so. And that's fine. They're already
20 excused.

21 THE COURT: Right.

22 MR. BAX: So, there's no need to go into them. The
23 only other one, your Honor, I would say, I'm a little
24 concerned. I know he's not a personal victim, but a lot
25 of times -- and I know this is the case with me --

1 THE COURT: Which person are we talking about?

2 MR. BAX: I'm sorry, your Honor. Let me refer to
3 that. It was Number 180, male juror, stated that his
4 wife had been car-jacked. The only reason I want to put
5 that on the record is because one's relationship to your
6 spouse is very close. I know it is in my case, and
7 especially for a man to have his wife car-jacked is going
8 to evince a lot of anger and want for retribution. I
9 certainly would have those same emotions if my wife was
10 ever to go through something like that. I know there's
11 been some time, but that is a robbery.

12 THE COURT: I believe he said about ten years ago.
13 Was that what he said?

14 MR. BAX: I actually think he said 15.

15 THE COURT: He had said 15 years ago?

16 MR. HALL: Fifteen.

17 MR. BAX: He said 15. That's right.

18 THE COURT: I can tell you, I was not concerned
19 about Mr. Lauzon was his name, Number 180 was his number.
20 He was confident that he could put it aside. I think
21 car-jacking is certainly different enough. He didn't say
22 that there was any element, necessarily, of any weapon.
23 So, I think he is fine to sit. Anything else? Anyone
24 else?

25 MR. BAX: The only other thing I want to put on the

1 record, your Honor, and this is purely because I didn't
2 -- I don't really know. Number 333, I believe her name
3 is Williams, Ms. Williams. She stated her daughter was
4 attacked at gunpoint. She did not really go into any
5 other detail. So, I don't know if that was related to
6 any kind of robbery or not. There was no statement of
7 what the cause of that or the purpose of that was, and
8 that's the only thing that does concern me.

9 THE COURT: Is that the one I already excused?

10 MR. HALL: No, your Honor.

11 MR. BAX: No. I believe she was -- she was the last
12 one. She did not approach. She spoke to you from the
13 audience.

14 THE COURT: Oh, the women with the long hair, yes.

15 MR. BAX: Yes, sir -- yes, ma'am.

16 MR. HALL: It was not gunpoint. It was knife-point.

17 MR. BAX: It was knife-point. I just don't know
18 what the purpose of that attack, if any, whether it was
19 related to any kind of attempted robbery or successful
20 robbery.

21 THE COURT: I think you're going to have to exercise
22 a strike, if necessary. I don't see it's a reason for
23 cause. It wasn't similar enough, and it certainly wasn't
24 her.

25 Sure.

1 OFF-THE-RECORD DISCUSSION, THE
2 COURT, BAILIFF.

3 THE COURT: Let me ask you, Mr. Bax, will you ask
4 your client whether or not he is related to an Ebony
5 Bryant, in private, please.

6 MR. BAX: Thank you, your Honor. Will do. Is she a
7 member of the jury panel, your Honor?

8 THE COURT: No, she is not. And I will explain to
9 you the relationship. What it is, is this. There is a
10 woman who is on the jury by the name of Lisa Plavcan.
11 She is the manager at the Bed, Bath, & Beyond in
12 Bluffton. She states that one of her employees, Ms.
13 Ebony Bryant, had stated that her brother was coming to
14 court this week, and wanted to make sure that, if, in
15 fact, any of these people were the brother of her
16 employee, that she did not feel comfortable sitting on
17 the case. So, that's why I need to know.

18 MR. BAX: Okay. Thank you, your Honor. He says
19 that's not his sister.

20 THE COURT: Okay. Thank you.

21 MR. BAX: So, it's not.

22 THE COURT: All right. All right. Anything
23 further, you all?

24 MR. HALL: Your Honor, Number 34, the gentleman who
25 came up and could not repeat what he had told Judge

1 Kinard before, was he officially excused?

2 THE COURT: He was officially excused, and needed to
3 be officially excused.

4 MR. HALL: Okay. All right. I just wanted to make
5 sure.

6 THE COURT: Okay. I was filled in about what he
7 stated the last time, and he needed to be excused.

8 MR. HALL: Okay.

9 THE COURT: Okay? All right. He said he couldn't
10 re-live it again; he couldn't state it again; and he
11 couldn't sit; and did not feel comfortable. So, I
12 excused him. All right.

13 MR. BAX: I'm sorry, your Honor.

14 THE COURT: Yes.

15 MR. BAX: I want to just put on the record at this
16 point, by my count, -- and I would defer to the Clerk's
17 count more than mine. My accounting skills are not the
18 best sometimes. But by my count, we're either at 50 or
19 under 50, with everyone that has been -- is it right at
20 50? Right at 50. And as we've discussed, a number of
21 these individuals, based on your Honor's ruling, which we
22 respect, are still in the pool.

23 At this point, I would have to move that the trial
24 be rescheduled, because we don't have a sufficient jury
25 pool for my client to get a fair jury with a pool of 50.

1 The fact that we have, by my count, one, two, three, four
2 people still in the jury pool, and it's only a 50-person
3 jury pool who have responded to this question, that I'm
4 going to have to exercise strikes on, in addition to any
5 of my other notes, means that those are pretty much --
6 pretty close to guaranteed that those are going to come
7 off, at least, I would say, by my calculations, at least
8 three of the four are going to come off, just based on
9 statistics. So, I don't think we have enough with those
10 still in the pool to be able to pick a jury that's going
11 to be fair to my client.

12 THE COURT: We have plenty of jurors. There's no
13 question. We've got 50, and you've got strikes of five
14 and ten on armed robbery. I don't think there's any
15 question. I could even strike the four that you don't
16 like, and I'd still have enough jurors.

17 Mr. Hall, do you have any position?

18 MR. HALL: I think we're fine with the jury pool
19 we've got, your Honor.

20 THE COURT: All right. Let's go ahead and bring the
21 jury back in. You all, are we going to do pre-trials
22 this afternoon and start in the morning, just based on
23 the time? Is that okay with Mr. Bax and Mr. Hall?

24 MR. HALL: Whatever the Court wants. I have Josh
25 Dowling here, ready to do the Denno hearing. So, it's

1 just a matter --

2 THE COURT: Do you all have a preference?

3 MR. BAX: Your Honor, that's what I was kind of
4 planning on. So, that's fine with me.

5 MR. HALL: I mean, it makes no difference to me
6 either way? If we do it first thing or this afternoon,
7 makes no difference.

8 THE COURT: Just for a second, come up here.

9 OFF-THE-RECORD BENCH CONFERENCE.

10 PRESENT: THE COURT, MR. HALL,

11 MS. CONCANNON, MR. BAX.

12 END BENCH CONFERENCE.

13 JURORS ENTER COURTROOM 3:25 P.M.

14 JURY SELECTION:

15 THE COURT: Do we have everybody?

16 BAILIFF: I think so, your Honor.

17 THE COURT: You think so. All right. I always tell
18 my jury panels, the last time you probably were head
19 counted was when you were on a school bus as children.
20 But at this time, ladies and gentlemen, we're going to go
21 ahead and pull the jury in this case. As I'm sure Judge
22 Kinard told you in the last case, all I simply need you
23 to do, if your name is called, is to stand in your place.
24 You're going to either be invited to take a seat up here
25 in the jury box, or you're going to be asked to go ahead

1 and sit down. It doesn't mean you can leave quite yet,
2 ladies and gentlemen. So, just go ahead and keep your
3 seat.

4 If you are chosen, and you do come up here to the
5 jury box, make sure you bring all your belongings with
6 you. All right?

7 MADAM CLERK: I'm pulling it right now, Judge.

8 THE COURT: Pardon?

9 MADAM CLERK: I'm pulling the list right now.

10 THE COURT: Thank you. How long is it going to
11 take?

12 MADAM CLERK: Just a couple of minutes.

13 THE COURT: Okay. Ladies and gentlemen, just bear
14 with us. Diane is required to pull a list. It's a
15 random list of those of you that have been qualified.
16 And we'll go ahead and get you seated as soon as
17 possible.

18 BAILIFF: Unlike with Judge Kinard, when you see me
19 say come on up, we'll come up as you're chosen.

20 THE COURT: You'd like them to sit and wait, Al? Is
21 that what you're saying?

22 BAILIFF: Oh, no, ma'am. That's what Judge Kinard
23 did, but I think, in an abundance of caution, we'll just
24 bring them up as they're chosen.

25 THE COURT: Oh.

1 BAILIFF: He had them all wait till we chose all 14.

2 THE COURT: It's tight quarters. I understand that.

3 I'm happy -- I'm happy to let them stay where they are.

4 BAILIFF: We have room now, Judge. We can bring
5 them up.

6 THE COURT: Okay. Little bit of elbow room, you
7 all.

8 I will tell you, we look so forward to the
9 courthouse being re-done. It's been a long process, and
10 Jerri Roseneau, our Clerk of Court, and it's her husband
11 who's the facilities manager for Beaufort County, who is
12 in charge of the construction project, have worked
13 tirelessly. I can't tell you how many hours they have
14 spent. And of course, most of the construction has to go
15 on after court hours. So, they have worked hard. It is
16 going to be wonderful once it's done, but we've just got
17 to get through the process.

18 So, with that said, ladies and gentlemen, Ms. Cade
19 is going to go ahead and call your name. Again, stand in
20 your place, and we'll go from there. All right?

21 MADAM CLERK: Yes, Judge.

22 THE COURT: Are you ready?

23 THE COURT: Okay.

24 MADAM CLERK: Yes, Judge. Juror Number 309,

25 Michelle Tanis. What says the State?

1 MR. HALL: Please seat Ms. Tanis.

2 MADAM CLERK: What says the Defense?

3 MR. BAX: Please seat the juror in the trial of this
4 case, your Honor.

5 THE COURT: Come on, Ms. Tanis.

6 MADAM CLERK: Juror Number 61, Veronica Chadwick.

7 What says the State?

8 MR. HALL: Please seat Ms. Chadwick.

9 MADAM CLERK: What says the Defense?

10 MR. BAX: Please excuse the juror from the trial of
11 this case.

12 MADAM CLERK: Juror Number 323, Paula Verity. What
13 says the State?

14 THE COURT: Al, I think you're in the way.

15 BAILIFF: No, right there, your Honor.

16 THE COURT: Well, I think for Mr. Bax.

17 BAILIFF: Sorry.

18 THE COURT: I apologize.

19 MR. BAX: It's all right. It's all right.

20 MR. HALL: Please seat Ms. Verity.

21 MR. BAX: Sorry. What was Ms. Verity's number,
22 please?

23 MADAM CLERK: 323.

24 MR. BAX: 323. Please excuse the juror in the trial
25 of this case. Thank you very much.

1 MADAM CLERK: Juror Number 171, Beverly Kuzmenko.

2 What says the State?

3 MR. HALL: Please seat Ms. Kuzmenko.

4 MADAM CLERK: What says the Defense?

5 MR. BAX: Please seat the juror in the trial of this
6 case.

7 THE COURT: Come on forward, ma'am.

8 MADAM CLERK: Juror Number 123, Sayward Hackett.

9 What says the State?

10 MR. HALL: Please seat Mr. Hackett.

11 MADAM CLERK: What says the Defense?

12 MR. BAX: Please excuse the juror from the trial in
13 this case.

14 MADAM CLERK: Juror Number 26, April Bigham. What
15 says the State?

16 MR. HALL: Please seat Ms. Bigham.

17 MADAM CLERK: What says the Defense?

18 MR. BAX: Please seat the juror in the trial of this
19 case.

20 MADAM CLERK: Juror Number 304, Thomas Suhor. What
21 says the State?

22 MR. HALL: Please seat Mr. Suhor.

23 MADAM CLERK: What says the Defense?

24 MR. BAX: Please seat the juror in the trial of this
25 case.

1 MADAM CLERK: Juror Number 237, Dixie Paul. What
2 says the State?

3 MR. HALL: Please seat Ms. Paul.

4 MADAM CLERK: What says the Defense?

5 MR. BAX: Please excuse the juror from the trial of
6 this case.

7 MADAM CLERK: Juror Number 332, Mitchell Whitman.
8 What says the State?

9 MR. HALL: Please seat the Mr. Whitman.

10 MADAM CLERK: What says the Defense?

11 MR. BAX: Please excuse the juror from the trial of
12 this case.

13 MADAM CLERK: Juror Number 120, Darren Greenlee.
14 What says the State?

15 MR. HALL: Please seat the Mr. Greenlee.

16 MADAM CLERK: What says the Defense?

17 MR. BAX: Please seat the juror in the trial of this
18 case. Thank you.

19 MADAM CLERK: Juror Number 130, Patrice Hardy. What
20 says the State?

21 MR. HALL: Please seat Ms. Hardy.

22 MADAM CLERK: What says the Defense?

23 MR. BAX: Please excuse the juror from the trial of
24 this case.

25 MADAM CLERK: Juror Number 291, Catherine Smith.

1 What says the State?

2 MR. HALL: Bear with me, Madam Clerk. I'm getting
3 there. Please seat Mrs. Smith.

4 MADAM CLERK: What says the Defense?

5 MR. BAX: Please seat the juror in the trial of this
6 case.

7 MADAM CLERK: Juror Number 80, Lauren Davis. What
8 says the State?

9 MR. HALL: Please seat Ms. Davis.

10 MADAM CLERK: What says the Defense?

11 MR. BAX: Please seat the juror in the trial of this
12 case.

13 MADAM CLERK: Juror Number 239, Terry Peek. What
14 says the State?

15 MR. HALL: Please seat Ms. Peek.

16 MADAM CLERK: What says the Defense?

17 MR. BAX: Please excuse the juror from the trial in
18 this case.

19 MADAM CLERK: Juror Number 116, Edward Green. What
20 says the State?

21 MR. HALL: Please seat Mr. Green.

22 MADAM CLERK: What says the Defense?

23 MR. BAX: Please seat the juror in the trial of this
24 case.

25 MADAM CLERK: Juror Number 247, Alan Prenoveau.

1 What says the State?

2 MR. HALL: Please seat Mr. Prenoveau.

3 MADAM CLERK: What says the Defense?

4 MR. BAX: Please excuse the juror from the trial in
5 this case.

6 MADAM CLERK: Juror Number 43, Christopher Burden.

7 What says the State?

8 MR. HALL: Please seat Mr. Burden.

9 MADAM CLERK: What says the Defense?

10 MR. BAX: Please excuse the juror from the trial of
11 this case.

12 MADAM CLERK: Juror Number 257, Julie Richardson.

13 What says the State?

14 MR. HALL: Please seat Ms. Richardson.

15 MR. BAX: Please seat the jury in the trial of this
16 case.

17 MADAM CLERK: Juror Number 29, Scott Bloch. What
18 says the State?

19 MR. HALL: Please seat Mr. Bloch.

20 MADAM CLERK: What says the Defense?

21 MR. BAX: Please seat the juror in the trial of this
22 case.

23 MADAM CLERK: Juror Number 33, Kathleen Borreggine.

24 What says the State?

25 MR. HALL: Please seat Ms. Borreggine.

1 MADAM CLERK: And what says the Defense?

2 MR. BAX: Please seat the juror in the trial of this
3 case.

4 MADAM CLERK: Juror Number 324, Rebecca Wade. What
5 says the State?

6 MR. HALL: Please seat Ms. Wade.

7 MADAM CLERK: What says the Defense?

8 MR. BAX: Please excuse the juror from the trial in
9 this case.

10 MADAM CLERK: Juror Number 159, Grace Keenan. What
11 says the State?

12 MR. HALL: Please seat Ms. Keenan.

13 MADAM CLERK: What says the Defense?

14 MR. BAX: Please seat the juror in the trial for
15 this case.

16 THE COURT: Strikes are one and two.

17 MADAM CLERK: No, just one alternate.

18 THE COURT: One alternate.

19 MADAM CLERK: Now for our alternate juror, 131,
20 Doris Hare. What says the State?

21 MR. HALL: Please seat Ms. Hare.

22 MADAM CLERK: What says the Defense?

23 MR. BAX: Please excuse the juror from the trial
24 from this case.

25 MADAM CLERK: Juror Number 321, James Vaught. What

1 says the State?

2 MR. HALL: Please seat Mr. Vaught.

3 MADAM CLERK: What says the Defense?

4 MR. BAX: Please excuse the juror from the trial in
5 this case.

6 MADAM CLERK: Juror Number 244, Lisa Plavcan. What
7 says the State?

8 MR. HALL: Please seat Ms. Plavcan.

9 MADAM CLERK: What says the Defense?

10 MR. BAX: Please seat the juror in the trial of this
11 case as alternate.

12 THE COURT: Are there any matters of law we need to
13 take up, regarding the jury selection process from the
14 State?

15 MR. HALL: Nothing from the State, your Honor.

16 THE COURT: From the Defense?

17 MR. BAX: Nothing further, your Honor.

18 BY THE COURT:

19 THE COURT: All right, ladies and gentlemen. Those
20 of you who are back there on the panel, obviously, you
21 were not chosen on one of the first two juries that we
22 are trying this week. Ladies and gentlemen, I need to
23 ask that you call back tonight after 6:00 o'clock to the
24 juror line. There will be a recorded message that states
25 whether or not you need to come tomorrow, or possibly to

1 call back tomorrow after 6:00 o'clock. Ladies and
2 gentlemen, simply follow the prompts. If, for some
3 reason, it says to come back, please be here. I do need
4 each and every one of you to be able to pull another
5 jury, if we are able to get that far this week.

6 So, again, I thank you for being here. I'm going to
7 go ahead and excuse you. Al is going to collect your
8 badges as you walk out. And again, thank you, and we
9 look forward to seeing you again.

10 JURORS NOT CHOSEN LEAVE COURTROOM

11 3:43 P.M.

12 BAILIFF: Jury panel is clear, your Honor.

13 THE COURT: Thank you, sir. Welcome, ladies and
14 gentlemen. As I'm sure you understand, you are my jury
15 for the trial of this case. Just for scheduling
16 purposes, I want to tell you just how we're going to
17 proceed, ladies and gentlemen. Also, I have to give you
18 a few cautionary instructions before we part.

19 What my plan is today, because it is so near the
20 5:00 o'clock hour, and because there are matters of law I
21 need to take up to these attorneys, I don't want you
22 waiting back there for us for just a few minutes of
23 testimony. It just wouldn't make any sense. So, I'm
24 going to excuse you for the remainder of the day.

25 Ladies and gentlemen, we can start at either 9:30 or

1 10:00 tomorrow morning. Does anyone have a real problem
2 with getting here at 9:30, or would you all prefer 10:00
3 o'clock? 9:30 is all right. Very good. Okay. And as
4 the week progresses, we'll see if we can possibly do it
5 more quickly or earlier.

6 Ladies and gentlemen, to begin with, you are not to
7 discuss this case, not only with each other, but with
8 anyone you may come in contact with, or a family member
9 or friend. The only thing you are permitted to do when
10 you go home tonight or to the grocery store or anywhere
11 else is tell someone else that you have been chosen as a
12 juror in a criminal trial. You cannot say the attorneys
13 who are trying the case. You can't say the charges. You
14 can't say the defendant or any of the witnesses.

15 Ladies and gentlemen, the reason is this. Someone
16 is going to try to tell you something about something,
17 and they are going to have absolutely no information
18 whatsoever in regards to this case. And it would be
19 inappropriate for you to be influenced in any way.
20 Therefore, out of an abundance of caution, I'm
21 instructing you not to discuss it.

22 Ladies and gentlemen, also, the attorneys have been
23 instructed, as well as the witnesses and any parties
24 coming and going during the trial of the case, if they
25 pass you in the hallway over the next couple of days,

1 they are not to speak to you. And the reason why is
2 this. Even an innocent conversation out in the parking
3 lot that it looks like it's going to pour, is going to be
4 relayed. And again, I'm going to have to ask you about
5 it. So, out of an abundance of caution, do not speak
6 with them, understanding that they are not being rude or
7 unkind. They have been instructed not to speak to you.

8 Additionally, ladies and gentlemen, you are not to
9 do any of your own independent research. Again, I know
10 you know nothing about this case, but as the case
11 progresses, I don't want you looking up anything on the
12 Internet or any other source. You are going to have
13 everything you need to decide this case right here in
14 this courtroom, based on the evidence. Again, it would
15 be inappropriate for you to be influenced in any other
16 way. So, I need to tell you not to do research.

17 Additionally, ladies and gentlemen, I don't know if
18 there's going to be anything in the paper or on the news
19 about this case. I don't think so, because if there
20 were, they would have already requested a release. I
21 don't see anyone here, but out of an abundance of
22 caution, if you wake up and the Beaufort Gazette or the
23 Island News or some other newspaper has anything about
24 this case, you are to disregard it. Again, it's not
25 factual, ladies and gentlemen, and it wouldn't be

1 appropriate for you to read it. If there is something, I
2 will ask you about it, if it's on the news or in the
3 newspaper. All right?

4 Ladies and gentlemen, lastly, if you were able to
5 get in here today with a cell phone or any type of
6 electronic device where you can find information, I'm
7 going to simply ask that you leave it back either in your
8 car or back at home. You can get so much information, as
9 you all know, off of a phone these days and anything else
10 that, again, to keep you from -- or to prevent you from
11 doing that, it's that much more important, when you sit
12 as jurors, to leave it back in the car. Or ladies and
13 gentlemen, if you are very concerned about it, when you
14 come in, you can hand it to your bailiff, and let him
15 know.

16 Ladies and gentlemen, if you think someone may need
17 to contact you emergently while you're here, just give
18 them the Clerk of Court's phone number, and tell them
19 that you are sitting as a juror in Carmen Mullen's jury.
20 I can assure you that Ms. Roseneau will be with me
21 immediately to get you and take care of you all. Okay?

22 Ladies and gentlemen, the last thing I'm going to
23 ask you to do, and you're going to do this tomorrow
24 morning when you come back, is that I'm going to ask you
25 to elect a foreperson among yourselves. The foreperson

1 doesn't have anymore say than anyone else. They're
2 simply the person that speaks with me regarding
3 scheduling during the trial of this case. And
4 additionally, they're the person that, when the case goes
5 to the jury for its deliberations, they're the one that's
6 going to get everyone talking, and kind of get the ball
7 rolling, and get you all giving your input.

8 I am going to ask that that person, tomorrow
9 morning, when they come in, give their name to Bob, your
10 bailiff, as well as sit in this first seat. As far as
11 the rest of you in coming and going during the trial of
12 this case, you don't have to stay in the same seat. You
13 can move around as you come and go from the courtroom.
14 The only thing that I ask is my foreperson keeps the same
15 seat and my alternate keeps her same seat. All right?

16 Ladies and gentlemen, I will also tell you that I
17 have no idea what's going on with the HVAC here. It has
18 gone this morning from being a hundred degrees back in
19 the jury assembly room, to pretty cold in here. I will
20 tell you that we do have blankets back there, if you need
21 them, but my suggestion to you is bring layers. Bring
22 some cardigans and pile up. If you need a blanket,
23 please don't be shy. Ask for it.

24 I will tell you that everyone's job here, and
25 particularly Bob and all the bailiffs, and you met Al is

1 here, and Norman's over here, is to take care of you. If
2 you need anything, let them know. Again, they will
3 assist you. You will have coffee, Cokes, whatever you
4 need, during your, not only deliberations, but also
5 during your breaks. We want this to be as comfortable as
6 possible for you, ladies and gentlemen.

7 Please understand this is important business you are
8 doing in helping us resolve this case, and others, as
9 well. And again, you aren't called upon very often to
10 serve as jurors, ladies and gentlemen, and it is
11 important business, and I just expect that you come
12 prepared and ready to go.

13 As far as the rest of the scheduling is concerned, I
14 hope to start at 9:30 each morning, if possible. Now, I
15 will already go ahead and tell you, on Wednesday morning,
16 I cannot start at 9:30, because I have a meeting that's
17 been pre-scheduled for a month. So, we are going to
18 start a little later on Wednesday.

19 But I do not expect this case to last past Thursday,
20 and I will tell you that right now. So, any of you have
21 Friday plans, I don't want you concerned. You will be
22 able to make them. Okay?

23 Ladies and gentlemen, again, thank you for being
24 here. I'm going to excuse you now. Bob is going to show
25 you where you're going to report to tomorrow. You're

1 going to come in through a separate door, and you're
2 going to go to your jury room. So, simply, ladies and
3 gentlemen, if you will elect your foreperson in the
4 morning for me, let us know, and we look forward to
5 seeing you all at 9:30.

6 I will tell you ladies and gentlemen, I need all of
7 you all here. If one of you is missing, I've got to go
8 out and find you. So, again, make sure that you make it.
9 Okay? Thank you.

10 BAILIFF: Thank you, your Honor.

11 JURORS LEAVE COURTROOM 3:50 P.M.

12 MADAM CLERK: Good night, you all. Thank you.

13 BAILIFF: Jury is clear, your Honor.

14 THE COURT: Thank you. All right, you all. I have
15 another matter I need to take up with some attorneys. By
16 the clock back there, it looks like it's about twelve
17 till four. What I'd like to do is go ahead and do any
18 pretrial motions if we can, beginning at 4:00 o'clock.
19 As you know, like I said, I listened to the tape. I've
20 actually seen the one in the convenience store, as well
21 as the one. And I want to make clear, I had no audio on
22 the actual one in the convenience store, and I want to
23 make sure that was correct.

24 MR. HALL: That is correct, your Honor. There is no
25 audio.

1 THE COURT: Okay. Just making sure. Okay. All
2 right. So, we'll be at ease for about ten minutes. If
3 you'll get your people in order, Mr. Hall, and we'll go
4 forward then. Okay?

5 MR. HALL: Thank you, your Honor.

6 MR. BAX: Thank you, your Honor.

7 THE COURT: Thank you. Thank you.

8 OFF THE RECORD 3:51 P.M.

9 BACK ON THE RECORD 4:15 P.M.

10 BY THE COURT:

11 MR. HALL: Actually, your Honor, I think, pursuant
12 to some discussions we had back in Chambers before, I
13 think Mr. Bax had some -- had a matter he wanted to put
14 on the record prior to us getting to the *Denno* hearing.

15 THE COURT: Okay. Thank you.

16 MR. BAX: Your Honor, as I mentioned -- thank you,
17 Mr. Hall. As I mentioned, my client still wishes to move
18 before the Court for a continuance, as I had stated in
19 Chambers. To relay for the record, I had informed him of
20 the content or the gist of the Court's ruling before, in
21 March. I have relayed to him that I did not believe the
22 Court was going to continue the case. However, in order
23 to give my client all the opportunities that he wishes to
24 avail himself of, I do wish to put that motion before the
25 Court.

1 My client has informed me that the basis for his
2 continuance motion at this point would be the fact that
3 he is aware, as I've had to tell him, I have taken a
4 position with the Beaufort County Public Defender's
5 Office, which starts next Monday, and as a result, I will
6 not be able to continue representing him.

7 The plan that has been stated to him, and which he
8 has had no objection to, your Honor, is for his
9 representation on the other charges that may -- that will
10 continue to be pending after this trial, your Honor,
11 would be to transfer that representation to my partner,
12 Naki Richardson Bax. She has not worked on this case,
13 per se, but she is aware of it. She's aware of the facts
14 just through discussion with me, as counsel in her
15 office, as she is with most of my cases.

16 The substance of his continuance motion at this time
17 is, he informs me is that he would wish to have the same
18 attorney be lead counsel throughout all of his trials.
19 Considering the importance of the fact that these are a
20 series of armed robberies, we have been informed as I've
21 told him, that, after this trial, if there is a
22 conviction, that they will try to seek life without
23 parole under the statute, provide notice if they get a
24 qualifying pre-conviction. And so, he believes, and
25 there's some merit to this, that he wants the same lead

1 counsel on all of his cases, and that would be his
2 motion, your Honor.

3 THE COURT: Mr. Hall?

4 MR. HALL: Well, for the record, your Honor,
5 obviously, the State would oppose the motion for a
6 continuance. This has been continued once already from
7 the March term, and the State's ready to proceed.

8 THE COURT: Obviously, Mr. Clemons is entitled to
9 counsel, not counsel of his choice. Both Mr. Bax and
10 Richardson Bax are both excellent attorneys. I have
11 every confidence that Mr. Bax can go forward. These are
12 separate events. They are not being tried at the same
13 time, certainly. So, at this time, we are going to go
14 forward. I don't see any reason to burden Ms. Richardson
15 Bax with yet another charge.

16 It's my understanding in this case that there was
17 some discussion at one point about a global resolution,
18 but of course, there has not been one between the
19 attorneys and the Solicitor's Office. Therefore, we are
20 going forward. Mr. Hall is trying them in the manner he
21 sees appropriate, and according to his choice. So, we're
22 going to go ahead and try this first armed robbery that I
23 understand occurred in Port Royal, at the Kangaroo
24 Express. So, we're going to go ahead and go forward.
25 So, I respectfully deny your motion for a continuance,

1 Mr. Bax.

2 MR. BAX: Thank you, your Honor.

3 BEGIN JACKSON VERSUS DENNO HEARING:

4 MR. HALL: With that, we'll take up the Denno issue.
5 The State would call Josh Dowling.

6 THE COURT: Come on forward, sir.

7 MADAM CLERK: Would you place your left hand on the
8 Bible and raise your right hand for me, please. Do you
9 solemnly swear to truthfully answer all questions asked
10 of you by this Court, so help you God?

11 INVESTIGATOR JOSHUA DOWLING: I do.

12 MADAM CLERK: Please be seated. State your name,
13 and spell it for the Court, please.

14 INVESTIGATOR DOWLING: My name is Investigator
15 Joshua Dowling. Spelled J/o/s/h/u/a, last name Dowling,
16 D/o/w/l/i/n/g.

17 MR. HALL: And your Honor, I guess, as an initial
18 matter, is the Court taking how we are addressing the
19 video issue?

20 THE COURT: We'll go ahead -- is this the copy you
21 want to make as a court's exhibit, the one you provided
22 to me?

23 MR. HALL: Yes.

24 THE COURT: Wanda, will you go ahead and mark this
25 is Court's Exhibit Number 1, for purposes of the Jackson

1 v. Denno hearing?

2 COURT REPORTER: Yes, ma'am.

3 THE COURT: And we'll go ahead and note for the
4 record.

5 MR. HALL: And I'm sorry, your Honor. And just so
6 counsel's aware, this is the un-redacted version, the
7 version that Mr. Bax has. I intend to give him the
8 redacted version, God willing, if my video skills are up
9 to it, tomorrow morning.

10 THE COURT: All right, and I appreciate it. Of
11 course, I needed to see the entire version of it to make
12 sure that it was free and voluntary, so, any statements
13 given, so, thank you.

14 MR. HALL: Thank you.

15 ITEM IDENTIFIED AS UNREDACTED

16 VIDEO MARKED COURT'S EXHIBIT

17 NUMBER 1, JACKSON VERSUS DENNO

18 HEARING.

19 INVESTIGATOR JOSHUA DOWLING

20 DIRECT EXAMINATION BY MR. HALL:

21 Q Investigator Dowling, who do you work for?

22 A I work for the city of Beaufort Police Department,
23 in South Carolina.

24 Q And you're aware of a case involving Christopher
25 Clemons.

1 A I am.

2 Q And do you see Mr. Clemons here in court?

3 A I do. He's present next to his defense attorney.
4 White t-shirt, with a tie.

5 Q And were you present when Mr. Clemons was
6 questioned?

7 A I was present, correct.

8 Q Who else was present during the questioning?

9 A Present was Investigator Suarez. She works for the
10 Port Royal Police Department, or she did. She was an
11 investigator.

12 Q And to your knowledge, she no longer works for the
13 Port Royal Police Department.

14 A That is correct.

15 Q Now, when you were questioning Mr. Clemons, did he
16 appear to be under the influence of alcohol or drugs to
17 the extent that it would impair his ability to understand
18 what was going on?

19 A No.

20 Q In your experience, did it appear that he was under
21 the influence of anything while you were speaking to him?

22 A From my interaction with him, he did not appear to
23 be under the influence that would affect his abilities,
24 his mental abilities.

25 Q Did he appear to have any physical or mental

1 disabilities that would have impaired his ability to
2 understand what was being said and what was being asked
3 of him?

4 A No. He articulated himself well, and he had
5 indicated that he had completed the 9th grade.

6 Q Where was Mr. Clemons questioned?

7 A He was questioned at the Port Royal Police
8 Department, which was audio and video recorded.

9 Q And how long was -- how long did the questioning
10 take place?

11 A I would estimate roughly an hour, a hour and 20
12 minutes.

13 Q Were there any breaks taken during this time?

14 A At various intervals of the interview we had with
15 the defendant, he had requested that his handcuffs be
16 moved to the front, which we accommodated. He was
17 handcuffed in the front. And at various intervals of the
18 interview, we obtained water for him.

19 Q But the entire interview, all of it is on video. Is
20 that correct?

21 A The entire interaction we had was all on video,
22 correct.

23 Q And that's kind of -- you've kind of answered the
24 question already, but was he denied access to a
25 telephone, to the bathroom, to food or drink, anything

1 like that?

2 A Any request that he had made at that time, we -- we
3 accommodated him.

4 Q Were there any threats or promises made in exchange
5 for any statements that he made?

6 A No.

7 Q Was he under arrest at the time that you questioned
8 him?

9 A He was.

10 Q And what were the circumstances surrounding the
11 interview? Why were you talking to him?

12 A He was interviewed by the Port Royal Police
13 Department, because he was caught in the act of an
14 alleged armed robbery, within the jurisdiction of Port
15 Royal. The reason for my presence there is, I was
16 investigating an unrelated robbery that had occurred the
17 night prior, where there was some suspicion that the
18 defendant may have been involved in it.

19 Q So, being that he was under arrest, was he free to
20 leave?

21 A No, he was not free to leave.

22 Q And he was being interrogated.

23 A That is correct.

24 Q Was he advised of the nature of the investigation?

25 A He was by Investigator Suarez.

1 Q All right. And you were present throughout all of
2 this.

3 A I was present through the entirety of the interview,
4 correct.

5 Q Was he advised of his *Miranda* rights?

6 A He was advised of his *Miranda* rights both orally,
7 and in writing, which he affixed his signature to, and I
8 was a witness to.

9 Q Investigator Dowling, I'm going to show you what's
10 been marked as Court's Exhibit 2. Can you identify that?

11 A Yes. That's a -- the *Miranda* right form that was
12 provided to defendant. The reason why I recognized it is
13 the date that's affixed and to include my signature on
14 the witness portion of it, me signing off witnessing the
15 defendant signing this. That's how I recognize this
16 exhibit.

17 Q Thank you. And I believe you stated that the
18 *Miranda* rights were given to him orally in, of course,
19 the video.

20 A That is correct, yes.

21 Q And was he asked to read back any portion of that
22 *Miranda* form?

23 A I believe he had read it aloud, as well, yes.

24 Q Did he appear to have any trouble understanding his
25 rights?

1 A No.

2 Q Did his answers appear to be rational and responsive
3 to the questions that he was being asked?

4 A Yes.

5 Q Did anyone threaten or coerce him in any way or
6 offer him hopes of any reward?

7 A No.

8 Q How did he respond when you asked him whether he
9 wanted an attorney before he spoke?

10 A I think he initially inquired about the context of
11 the attorney, and Suarez advised -- went into depth with
12 that; he could have an attorney now or one later; it was
13 completely his option. And at that time, he elected to
14 speak with us.

15 Q So, that was his decision.

16 A Yes, correct. He did not invoke his *Miranda*.

17 Q To the best of your knowledge, were his statements
18 freely and voluntarily given?

19 A Yes.

20 Q And knowing that the Court has taken the opportunity
21 to take a look at the video, can you just recount for the
22 Court what statements the defendant made, that were in
23 relation to this Port Royal armed robbery.

24 A Pertaining to the Port Royal robbery, it was -- it
25 was a very extended interview. In a roundabout way, he

1 acknowledged being present at the instant location of the
2 alleged robbery. He also had stated that his actions
3 were contributing to him being under -- he alleged to be
4 under the influence of alcohol as a contributing factor.

5 In addition, he apologized for his actions on the
6 video of the alleged armed robbery.

7 Q And you took that to mean that he was apologizing
8 for his involvement in the armed robbery.

9 A Correct.

10 MR. HALL: I don't have any other questions, your
11 Honor.

12 INVESTIGATOR JOSHUA DOWLING

13 EXAMINATION BY THE COURT:

14 THE COURT: Can I ask you a question, sir? From the
15 time of the alleged armed robbery when the police
16 arrested him at the site, and to the time you interviewed
17 him, what's the time frame we're talking about?

18 A Your Honor, to the best of my memory, I would say
19 within probably an hour to an hour and a half. I was on
20 call that week, so I can't give you a specific time. But
21 he was detained at the gas station, brought to the Port
22 Royal Police Department, where we were contacted.

23 Investigator Suarez and I. So, it would not have been -
24 - it would have been within an hour time period, if I had
25 to take an educated guess.

1 THE COURT: Is there any way, Mr. Hall, that you can
2 look on the police report? And I'm assuming he has seen
3 it, and might be able to refresh his recollection. My
4 only concern, and I just want to make sure, that he made
5 the comment that he was under the influence of alcohol.
6 And if it was very near or contemporaneous in time, I
7 want to make sure he wasn't.

8 A Right, your Honor.

9 THE COURT: Okay.

10 MR. HALL: Well, what I can show Investigator
11 Dowling, of course, is a Port Royal Police Department
12 investigation form. He was there to question Mr. Clemons
13 on several matters.

14 THE COURT: I understand that. I understand that.

15 MR. HALL: Okay. Okay.

16 OFF-THE-RECORD DISCUSSION BETWEEN

17 MR. HALL AND MR. BAX.

18 MR. BAX: Your Honor, the only thing I -- I have to
19 put this on the record. As far as the dispatch times,
20 obviously, this is Port Royal. Investigator Dowling is
21 with the city of Beaufort Police Department. This is a
22 document I don't think he has any independent knowledge
23 of, experience with, or any way to testify to.

24 THE COURT: Okay.

25 MR. BAX: So, I don't think he can testify just by

1 reading an incident report that's not from his department
2 and that he didn't have any hand in offering.

3 THE COURT: Okay. My question, though, is just --
4 what I want to know is this. At what point he was
5 apprehended. I'm assuming whoever one of the officers
6 are that responded after he was tackled, either one of
7 those two victims can testify as to what time this
8 occurred, or the responding police officer can testify as
9 to what time it occurred. And then, if you all want me
10 to, I can go back to the interview, and I can play the
11 beginning again, which should say the date and time.
12 Although, if you all can't agree on what the date and
13 time is right now, and actually, just tell me when that
14 interview was done.

15 MR. HALL: Well, --

16 THE COURT: If that's what you want me to do, I
17 will, although I find that ridiculous.

18 MR. HALL: According to the incident report, the
19 dispatch says they were dispatched at 1840, which is
20 6:40.

21 THE COURT: Okay.

22 MR. HALL: They departed at 2130. Okay?

23 THE COURT: Um-hmm.

24 MR. HALL: Now, what I don't know, and Investigator
25 Dowling is saying he thinks perhaps it was an hour to 90

1 minutes later.

2 THE COURT: It should be on the interview. It
3 should be at the beginning of the interview.

4 MR. HALL: I'm not sure if the interview is time or
5 date stamped. The only thing that I know about the
6 interview is that he was taken directly there from the
7 Kangaroo Pantry, and was interviewed at the Port Royal
8 Police Department, prior to being taken to Booking at
9 BCDC.

10 THE COURT: Okay. I can tell you, and typically
11 most interviews, they will state that it is such and such
12 a date, at such and such a time, and we're talking to so
13 and so. Now, whether or not Port Royal Police does that,
14 I have no idea.

15 MR. HALL: And that is a -- that is a kind of an
16 ongoing issue that we have kind of been battling with
17 the Port Royal Police Department, in hopes that they're
18 going to --

19 THE COURT: Okay.

20 MR. HALL: -- do that.

21 THE COURT: Mr. Bax, is it safe to say it isn't on
22 there?

23 MR. BAX: It isn't on there, your Honor. It's
24 actually a webcam that sits atop of, I believe it's
25 Detective Massey's computer, because I, in my, you know,

1 career, have watched quite a few videos from that very
2 same webcam, on that very same computer, with other
3 people. And I have yet to see any date stamp or anything
4 on it. Now, some interviews they might say time. Some
5 they don't. I don't recall Detective Suarez saying what
6 time it was. It was Christmas Eve night.

7 THE COURT: I know that.

8 MR. BAX: We all know that. And it was dark
9 outside, but I don't recall, in my viewing of it, I
10 watched about two or three times, of hearing them state a
11 time that they brought him in.

12 THE COURT: Okay. Okay. Anything further for
13 Investigator Dowling from you?

14 MR. HALL: Nothing from me, your Honor.

15 THE COURT: Okay. Mr. Bax.

16 MR. BAX: Thank you very much, your Honor.

17 INVESTIGATOR JOSHUA DOWLING

18 CROSS-EXAMINATION BY MR. BAX:

19 Q Good afternoon, Detective. Good to see you.

20 A Good afternoon. Good to see you.

21 MR. BAX: Moment's indulgence, your Honor. I'm just
22 taking a look at Court's 2.

23 BY MR. BAX:

24 Q Detective Dowling, you testified that you were there
25 because of some other alleged crimes that you have reason

1 to believe or felt that Mr. Clemons might have had
2 something to do with. Is that correct?

3 A That is correct.

4 Q The first time that you came into contact with Mr.
5 Clemons, was it in that interview room with Detective
6 Suarez? That night?

7 A Yes, that would have been the first contact,
8 correct.

9 Q So, you didn't respond to the store there at
10 Kangaroo Pantry.

11 A No, sir.

12 Q Okay. All right. And you don't recall exactly what
13 time of night it was when they first brought Mr. Clemons
14 into that office with Suarez.

15 A I do not have recollection of the exact time, no.

16 Q Okay. Was it dark outside? Nighttime?

17 A Yeah, it was -- it was in the -- well after dinner,
18 because I recollect, you know, Christmas Eve, I figured
19 I'd be called out, and here, I had to go. I remember it
20 being well after dinner, so. But the exact time, I do
21 not recollect.

22 Q Okay. All right. And obviously, we've heard some
23 testimony that this was videotaped. Were you aware of
24 the fact that it was being videotaped?

25 A Yes, she -- the Investigator Suarez had activated

1 the recording device.

2 Q What is your memory of what that recording device
3 was? Was it a webcam sitting on top of a computer
4 monitor?

5 A That's my understanding. It would appear to be a
6 webcam that's affixed to the computer device.

7 Q Okay. And was it aimed at Mr. Clemons?

8 A Yes. They have a chair positioned in the
9 investigation room where they see people, and it captures
10 the defendant, yes.

11 Q And do you recall, independent from the video, that
12 Mr. Clemons stated early on in the interview that he was
13 intoxicated prior to this incident?

14 A I can't remember the exact verbiage of when alcohol
15 came up. What I do remember is he was trying to, what I
16 believe, give the investigators the impression that he
17 did this act, alleging that he was under the influence.
18 But based upon my interaction with him, he was -- to me,
19 there was no signs that he was under the influence
20 whatsoever.

21 Q Well, let me ask you this. You're testifying now
22 that he wasn't under the influence at all. Earlier, you
23 testified -- you were very specific about this -- you
24 said under the influence to the extent that he would
25 impair his ability to understand what he was doing. Let

1 me ask you this question. Which one is it? Was he
2 impaired, but not enough to impair his ability to
3 understand, or was he not impaired at all?

4 MR. HALL: Objection, your Honor. I don't think
5 that's -- I don't think that was my question.

6 THE COURT: Well, the question is, are we talking
7 about at the time of the incident, or are we talking
8 about the time of the interview? And that's where we're
9 getting tripped up.

10 MR. HALL: Right. I just think that the question
11 was perhaps a bit misleading, because I don't think
12 Investigator Dowling was ever implying that Mr. Clemons
13 was impaired at all. And the question that I asked was a
14 standard question; did you notice anything that his
15 ability was impaired -- seemed to be impaired by alcohol
16 or drugs that he didn't understand what was going on.

17 MR. BAX: Your Honor, and we can go back to the
18 testimony. I've got it noted down. I tried to quote it
19 in my notes as specifically as possible. Investigator
20 Dowling responded specifically that, no, he was not under
21 the influence enough to impair what he was doing. He
22 made sure to say it in that exact language, but we can go
23 back to the testimony.

24 THE COURT: Okay.

25 MR. BAX: And the reason I'm asking is, because now

1 he's saying he wasn't impaired at all at the time of the
2 interview. And that's two different answers to the same
3 question.

4 THE COURT: Okay.

5 BY MR. BAX:

6 A My response to that is, as far -- as far as
7 detecting him being under the influence of, let's say,
8 cocaine or PCP, those detections are much more difficult.
9 Alcohol detection of someone being under the influence is
10 much easier, because of the smell that it emits from the
11 person.

12 When I made that statement, it did not appear that
13 he was under the influence of any drugs or narcotics, to
14 include alcohol. That's why I had specified it would
15 appear that he is not under the influence of any other
16 substance, which would be much more difficult to detect.
17 Given the time that I spent with him interviewing him, he
18 gave no symptoms to me that would indicate he was under
19 the influence.

20 Q Detective, during the interview, do you recall Mr.
21 Clemons asking for water to drink?

22 A Yes. If memory serves me correctly, I believe two
23 times he requested water.

24 Q Okay. If you were to view the video and see that it
25 was more than five times, would that surprise you?

1 A If -- if that's what you're stating. I mean, he was
2 accommodated with water on his request.

3 Q Do you remember him -- well, you've already
4 testified he requested that he get his hands moved in
5 some way. Said his cuffs were uncomfortable. Is that
6 correct?

7 A Yes. At the initial portion of the interview, he
8 indicated that his handcuffs were uncomfortable.

9 Q After his handcuffs had been removed from the back
10 of him to the front of him, do you recall if he ever put
11 his head in his hands?

12 A I don't recollect that specifically, no. There was
13 some movement throughout the interview, I mean, but he --
14 that specific moment, I don't recollect.

15 Q Okay. And do you recollect that he told you about
16 this friend of his, the person that he alleged was with
17 him, getting him to drink and making the statement, I
18 never wanted to drink again.

19 A I don't recollect that specific statement.

20 Q If it were on the video, would you disagree with
21 what's on the video?

22 A No, I wouldn't disagree with what's on the video,
23 no.

24 Q Then, you don't disagree with the fact that he did
25 say that he had been drinking?

1 A Well, that statement, I inferred, based upon my
2 experience of interviewing people over the years, that
3 that was more or less he was trying to what I would
4 describe as blame his actions on something else. And I
5 did not believe for one moment that he was under the
6 influence of alcohol.

7 Q Let me rephrase. I'm not asking you what your
8 opinion of that is. I'm asking you did he say that he
9 had been drinking before this incident? Yes or no.

10 A That's what he alleged was the reason why he
11 committed the robbery, yes, that he had been drinking and
12 committed that action due to alcohol.

13 Q Do you recall asking him if he'd taken any other
14 narcotics that night?

15 A I do not recollect specifically. It may be -- it
16 may be on the *Miranda* form.

17 MR. BAX: Approach the witness, your Honor?

18 THE COURT: You may.

19 MR. BAX: Thank you.

20 BY MR. BAX:

21 A Each agency has different *Miranda* forms, but he
22 was --

23 Q Let me just hand that to let it refresh your memory.
24 In looking at that, --

25 A It says:

1 I understand and know what I am doing.

2 I am not under the influence of any drugs or
3 alcohol.

4 Which he affixed his signature to.

5 Q Now, earlier -- thank you, Detective. Earlier, you
6 testified that he responded, you know, accordingly, to
7 all these *Miranda* rights, and seemed to understand what
8 you were going over with him. Do you recall if he -- did
9 he respond to them, or did he just initial down the row?
10 Did he actually physically speak as Detective Suarez went
11 over this with him? Do you recall?

12 A I can't say specifically. I -- I believe -- he had
13 the form in front of him, and she -- she was reading --
14 reading it off, and he was initialing. If he orally
15 repeated it, I think I'd have to refer to the video.

16 MR. BAX: No further questions, your Honor.

17 THE COURT: Anything further, Mr. Hall?

18 MR. HALL: Nothing from the State, your Honor.

19 THE COURT: Okay. You may step down, sir.

20 A Thank you, your Honor.

21 THE COURT: Anything further as to this issue?

22 MR. HALL: No other witnesses on this issue, your
23 Honor.

24 THE COURT: Any witnesses, Mr. Bax?

25 MR. BAX: Yes, your Honor. Defense would call Mr.

1 Christopher Clemons to the stand.

2 THE COURT: Come on, Mr. Clemons.

3 MADAM CLERK: Would you place your left hand on the
4 Bible, and raise your right hand for me, please, sir? Do
5 you solemnly swear to truthfully answer all questions
6 asked by this Court, so help you God?

7 DEFENDANT CLEMONS: Yes, ma'am.

8 MADAM CLERK: Please be seated. State your name and
9 spell it for the Court, please.

10 DEFENDANT CLEMONS: I am Christopher Clemons.

11 DEFENDANT CHRISTOPHER CLEMONS

12 DIRECT EXAMINATION BY MR. BAX:

13 Q Thank you, Mr. Clemons. Briefly, you've obviously
14 been present for the testimony that we've had so far here
15 today, correct?

16 A Yes, sir.

17 Q You've been in here and heard the testimony so far.

18 A Yes, sir.

19 Q Okay. Let me ask you to lean up to the mic and
20 answer verbally to all questions. The reason I ask you
21 that is for the information of the Court and for the
22 court reporter, is that she has to take everything down.
23 So, we need to hear all of your answers clearly. Okay?

24 A Yes, sir.

25 Q Thank you, Mr. Clemons. Mr. Clemons, we're here

1 about an incident that happened on Christmas Eve 2011,
2 December 24, 2011. Do you recall that date?

3 A Yes, sir.

4 Q Have you been locked up since that date?

5 A Yes, sir.

6 Q Okay. That evening before your arrest, had you had
7 any kind of alcohol to drink?

8 A Yes, sir.

9 Q What did you have to drink?

10 A I'd been drinking some gin and Bud Light.

11 Q Okay. Did you have any other substances? Did you
12 have any illegal substances?

13 A I was smoking marijuana and sniffing cocaine.

14 Q Any other substances, besides marijuana and coke?

15 So, we've got marijuana and cocaine, beer, and gin.

16 Anything else?

17 A I had a few ecstasy.

18 Q A few ecstasy pills.

19 A Yes, sir.

20 Q And that was all that day. Is that correct?

21 A Yes, sir. It was that day.

22 Q What time of day did you start drinking that day, on
23 December 24, Christmas Eve?

24 A I don't -- I don't even know. I don't remember.

25 Q Do you recall?

1 A No, sir, I don't know.

2 Q All right. Mr. Clemons, do you recall being at the
3 Port Royal Police Department and speaking with Detective
4 Suarez and Detective Dowling?

5 A I don't remember. The only thing I knowed, I woke
6 up in jail the next morning. I didn't know where I had
7 been at.

8 Q Okay. So, your testimony is, is that you don't
9 recall. Now, I have shown you the video of the
10 interview. Is that correct?

11 A Yes, sir.

12 Q Okay. Outside of me showing you the video, do you
13 have any independent recollection of that interview that
14 night?

15 A No, sir, I don't remember. I don't remember
16 anything that night.

17 MR. BAX: No further questions, your Honor.

18 MR. HALL: Thank you, your Honor. Your Honor, may I
19 approach the witness?

20 THE COURT: You may.

21 DEFENDANT CHRISTOPHER CLEMONS

22 CROSS-EXAMINATION BY MR. HALL:

23 Q Mr. Clemons, what's your middle name?

24 A Jamar.

25 Q Is this -- is this your signature at the bottom of

1 this form? I'm showing you, for the record, showing
2 what's marked as Court's Exhibit 2. Does that appear to
3 be your signature at the bottom?

4 A Yes, sir.

5 Q And you've just testified that you were drinking
6 beer, gin, ecstasy, marijuana. Does your signature look
7 any different here than it normally does? Is that how
8 your signature normally looks?

9 A No, sir.

10 COURT REPORTER: I'm sorry. Is no, sir? No, sir?
11 Is that what you said?

12 THE COURT: What was your response?

13 COURT REPORTER: Does your signature look different?

14 A Yes, ma'am. You're looking at my signature, but I
15 don't remember anything, so.

16 Q But this is your signature.

17 A Yes, sir.

18 Q Okay.

19 A Name and everything.

20 Q So, you're saying you don't recall telling
21 Investigator Suarez and Investigator Dowling that you
22 were sorry for your involvement in the armed robbery?

23 A I don't remember anything.

24 Q Do you recall telling them that your cousin, William
25 Allen Fields, was with you?

1 A No, sir. I don't remember nothing.

2 Q Do you recall giving a rather vivid description of a
3 vehicle that you were in shortly before arriving at the
4 Kangaroo Pantry?

5 A No, sir.

6 Q So, you're saying the entire night is a distant
7 memory to you? You don't even remember any of it?

8 A No, sir. I don't remember.

9 Q Okay. Do you remember making a statement that you
10 went into the store, and the next thing you knew, you
11 woke up in cuffs.

12 A I don't remember that.

13 MR. HALL: Okay. Your Honor, I have no other
14 questions.

15 THE COURT: Anything further?

16 MR. BAX: Nothing further, your Honor.

17 THE COURT: All right. You may step down, sir.
18 Thank you. Anything further as to this issue?

19 MR. HALL: Nothing from the State, your Honor.

20 THE COURT: Okay.

21 ARGUMENT REGARDING JACKSON VERSUS

22 DENNO HEARING:

23 MR. BAX: Your Honor, the argument of the Defense,
24 obviously, I refer to the video. Your Honor has looked
25 at that hour and 20 minutes, and I'm sure your Honor may

1 look back at it, and --

2 THE COURT: And that's what I was going to say. I
3 can tell you, in light of Mr. Clemons' testimony, and
4 also, I think it's obvious that Investigator Dowling
5 probably hasn't reviewed it recently, based on his not
6 remembering a few things, I am going to go back and look
7 at it again, you all.

8 MR. BAX: And in that case, your Honor, in my
9 remembrance of the video, as I've said, I've watched it
10 myself; I've watched it with my client; and I have
11 reviewed it. And there's a number of videos I've had to
12 review in this case, not just for the case that we're
13 trying here today. But I would ask the Court to look for
14 my client's behavior, for how many times he asked for
15 water, especially how many times he asks for, how many
16 times he actually gets water. The video speaks for
17 itself.

18 THE COURT: I thought he asked for coffee. I
19 thought at one point he asked for coffee, or I don't even
20 know if I heard him say it, but the officer said, do you
21 want --

22 MR. BAX: I think the officer said it. Yeah, I
23 think at one point, Detective Suarez offered him coffee.

24 THE COURT: Right.

25 MR. BAX: Which seems to be like, hey, let's sober

1 you up. I mean, that's what I've been offered several
2 times. But anyway, she does offer him coffee, and she
3 suggests that, because he keeps asking for water. He
4 also puts his hands in his -- his head in his hands
5 multiple times. His speech is not the best. He's
6 erratic in his behaviors. It's hard to tell from the
7 video, but he appears to be sweating. I mean, all of
8 these things are there on the video for your Honor to
9 make a ruling for. I'm only talking about it. It's
10 there. You know, you don't have to take my word for it.

11 He does talk about the fact that he's been
12 intoxicated, and he does talk about this as the fault,
13 but it doesn't change the fact that he does say that he'd
14 been drinking, and drinking heavily.

15 So, it would be the Defense's position that his
16 statement is not voluntarily given. The video actually
17 supports this, and shows, especially due to the erratic
18 nature of it, how long it took, because that's how long
19 it took for them to try and get him onto topic, onto
20 focus. And it doesn't really ever really happen.

21 So, that would be the position of the Defense. And
22 I would leave it up to the Court in the review of the
23 video. Obviously, you're going to have to do that over
24 the evening hours.

25 MR. HALL: Your Honor, obviously, I've got an

1 entirely different take on how that video plays out, so
2 I'm going to trust that the Court's going to review it.
3 I think you've got someone who is caught red-handed in
4 the store, and is upset over the fact that he's been
5 caught. He's actually asked to talk to his momma at one
6 point. Head in the hands, crying, upset -- oh, my gosh,
7 what have I done. Apologizes for what he's done, beats
8 around the bush about who was with him, who also was
9 involved. Very succinctly describes the car that he was
10 in when he arrived there. Described the plan, that
11 somebody didn't have 20 bucks to get home, and therefore,
12 that this is why the robbery happened.

13 THE COURT: I can tell you, the one thing that
14 really jumped out at me in the video, and I'm going to go
15 back and re-look at the whole thing, based on Mr.
16 Clemons' testimony, but the one that jumped out to me is
17 he kept trying a number of times to ask both Dowling and
18 Suarez how they could help him with the solicitor and the
19 judge. And they have repeatedly said, *listen, we can't*
20 *promise you anything.* The only thing Suarez said is,
21 *when we're done with this, I'll let you get, you know, a*
22 *phone call.* I mean, that was quite repeatedly asked,
23 which, to me, indicates someone who knows what they're
24 doing.

25 MR. HALL: Right.

1 THE COURT: You know, is looking for some help
2 somewhere. But I do want to go back and take a look at
3 the video, and maybe suggest the investigator do the
4 same, if he's going to testify.

5 A Yes, your Honor.

6 THE COURT: Okay. All right. Anything else, you
7 all, as far as pretrial motions are concerned? Are there
8 any motions to sequester witnesses, anything along those
9 lines?

10 MR. BAX: Your Honor, I would have a motion to
11 sequester State's witnesses. We are not going to have, I
12 believe, any witnesses. Of course, as I stated in
13 Chambers, I would ask your Honor to colloquy my client at
14 the appropriate time.

15 The only other thing I'd like to bring up, your
16 Honor, and this is just a preventative, none-of-us-want-
17 to-mistry-this-case-and-have-to-do-it-over-again kind of
18 measure. Obviously, your Honor, we've talked about this
19 in chambers and on the record. There are other charges
20 my client has, even from that same store. I would ask
21 the State, and I'm sure Mr. Hall's going to do this
22 anyway, to instruct his witnesses to be very careful to
23 stay away from any reference to any other robbery,
24 because I certainly would be moving for a mistrial in
25 that case.

1 THE COURT: Okay. And I am confident Investigator
2 Dowling knows, obviously, he cannot state why he was
3 there; that he was investigating other robberies; but
4 simply that he was there, in addition to Suarez, so.

5 MR. HALL: And I think that's probably not his only
6 concern. One of the -- one of the witnesses that I'm
7 calling was actually the clerk in the store when the
8 State would allege that Mr. Clemons robbed the same store
9 on a different date.

10 MR. BAX: Yeah.

11 MR. HALL: So, that, but we're not -- I'm not
12 dealing with anything with that. I'm not touching it
13 with a ten-foot pole.

14 THE COURT: Okay. And I just want to make sure that
15 your victim knows that.

16 MR. HALL: Yes.

17 MR. BAX: And all three victims, really, your Honor,
18 because Ms. Vyska, who is to be called to authenticate
19 the videotape of the store, which I do appreciate them
20 doing, because that's what I would ask them to do, she's
21 the listed victim in another case, and she works with Mr.
22 Eisenhower, and I forget the other gentleman's name off
23 the top of my head.

24 MR. HALL: Mr. Thomas no longer works there.

25 MR. BAX: But obviously, there would be

1 conversations between the two of them -- or three of
2 them, excuse me -- about hey, the store got robbed the
3 other day and this, that, and the other.

4 THE COURT: Okay.

5 MR. BAX: So, all three of them are going to know
6 about this, and probably have talked about Mr. Clemons
7 being the one who did it. And that's my concern.

8 THE COURT: I understand. Mr. Hall's going to take
9 care of the witnesses, and instruct them all, both the
10 victims or alleged victims or whatever witnesses, as well
11 as the investigating officers. Who is your lead officer
12 on this?

13 MR. HALL: If it's going to be Steve Reynard from
14 Port Royal. He's the officer that came in and made the
15 arrest on the video in the store.

16 THE COURT: Okay.

17 MR. HALL: I mean, he's basically there, and he's
18 going to have some brief testimony they came in and
19 arrested Mr. Clemons, but he's basically going to be here
20 as the basic law enforcement. He's not really -- I have
21 a video. You know what I'm saying? It's not -- I'm not
22 relying on law enforcement a great deal.

23 THE COURT: Okay. All right. Anything further we
24 need to put on the record?

25 MR. HALL: Nothing from the State, your Honor.

1 MR. BAX: No, your Honor.

2 THE COURT: You all, are you okay to be here about
3 9:15 tomorrow morning? We're going to go ahead and start
4 with opening arguments. Is that fine with everyone?

5 MR. HALL: That's fine, your Honor.

6 MR. BAX: That's fine, Judge.

7 THE COURT: Okay. Good to go?

8 MR. HALL: Will we be getting an idea of how the
9 Court's going to rule on --

10 THE COURT: I'll let you know probably at 9:15.

11 MR. HALL: All right. That will impact, perhaps,
12 what I might say in my opening argument.

13 THE COURT: I'll let you know before you open.

14 MR. HALL: All right.

15 MR. BAX: And for scheduling, your Honor, I'm going
16 to try to be here by 9:00 o'clock. Obviously, the other
17 concern is, looking at the redacted copy and checking
18 those redactions. And that's an issue we'll have to make
19 sure we resolve before we go further in front of the
20 jury.

21 THE COURT: Patrick, what time can you be here? I
22 mean, Is there a way for the two of you to get together?
23 It's going to take awhile.

24 MR. HALL: I'll be here, you know, at the very
25 latest 8:30, but more likely, 8:15. I can be here

1 earlier, but I'm hoping that the hour and 20 minutes that
2 currently exists on that video can be edited to down
3 under 20 minutes. I'm talking about, hopefully, making
4 two, maybe three edits, to get out all of the excess
5 stuff that doesn't belong in anyway, that the jury would
6 never hear in a million years, but also kind of get to
7 the point of what I would want to present.

8 You know, there's a statement that he apologizes.
9 There's a statement which, you know, maybe not really
10 help me about the -- I mentioned, actually on the record,
11 that, you know, he was drinking liquor, and next thing he
12 knew he was in cuffs. And then, there's the whole story
13 about how it was his buddy or cousin, William Alan
14 Fields, that he was with; and that they needed the money
15 to get back to Richland; and then, that's when the store
16 got robbed. He didn't really comes out and says, I
17 marched into the Kangaroo Pantry, and I robbed the store.
18 It's just, you know, I'm sorry I did it; I was really
19 drunk; and then, I was in cuffs; and we needed money to
20 get home and the store got robbed. I mean, that's
21 essentially what I'm looking to -- the kind of the
22 greatest hits and put in the video. Because there's
23 information in there about his prior criminal record.
24 There's information that's interspersed from Investigator
25 Dowling that he once talked to him about this Beaufort

1 armed robbery that happened the night before, it presents
2 some challenges, certainly, for me to redact it, but I'm
3 going to do my best, and make sure that I hit the
4 highlights without putting in anything that the jury
5 shouldn't hear.

6 THE COURT: Okay. Can I ask you both to be here at
7 8:30 to start going through it. Because there are going
8 to be some portions that, while you want just the
9 highlights, I mean, I assume Mr. Bax wants in there that
10 he thinks are helpful to him, particularly, if I allow
11 this in, you know, based on, you know, less than the
12 standard, he may want the jury to do their own judging of
13 whether or not there was any police coercion or anything
14 else. There's a possibility. I don't know. I don't
15 know what else you're going to want in or not want in.
16 Quite frankly, he's somewhat sympathetic in it.

17 MR. HALL: And to be honest, that's a consideration
18 that I have had in trying to decide whether I was going
19 to use it at all.

20 THE COURT: Considering you caught him at the site.

21 MR. HALL: Well, frankly -- and I have no problem
22 saying this to you in front of Mr. Bax or anybody else --

23 THE COURT: Yes.

24 MR. HALL: Frankly, my whole point in, really,
25 because I've had bad experiences with juries here in

1 Beaufort County where I've presented cases that I thought
2 were excellent cases that resulted in acquittals. And I
3 guess I'm trying to cross my t's and dot my i's. I want
4 the jury to see him in that coat in the video, is the
5 same coat that he's wearing in the interview at Port
6 Royal, to remove any doubt whatsoever that the same guy
7 in the video is the same guy that they're talking to at
8 the Port Royal Police Department. I understand him
9 sitting there crying and all of that. It does make him
10 look sympathetic. And frankly, I've gone back and forth
11 about whether or not I'd even use the video.

12 THE COURT: Okay. Well, I appreciate that. I
13 didn't make the connection. I didn't realize it, so.

14 MR. HALL: Yeah, he's wearing the coat.

15 THE COURT: Okay. Okay. All right, you all. So,
16 let me take a look at it. And again, you both get
17 together 8:30 tomorrow morning, get through that, and see
18 what we can do. And Mr. Bax, and if there's something
19 that you want added back in or whatever you need, you all
20 need to work on it, so we can go forward. Okay?

21 MR. BAX: Yes, your Honor.

22 THE COURT: And again, I think I told you all that I
23 am not going to be able to start until late on Thursday.
24 Really, what my --

25 MR. HALL: Wednesday?

1 THE COURT: Wednesday, sorry. Thank you. So, my
2 thought is, you all, is that we have an early start, like
3 maybe 12:30ish would be my hope, and then, go for the
4 rest of the day on Wednesday. But I just tell you that
5 for witnesses. I mean, I'm hopeful we get through your
6 case tomorrow, because it sounds like we can.

7 MR. HALL: Yes.

8 THE COURT: Okay. Okay.

9 MR. HALL: I think so.

10 THE COURT: All right. We'll do what we have to do.
11 Again, we don't want to -- so, we can work hard. I think
12 everyone just plan on running hard and moving along, if
13 that's okay. All right?

14 MR. HALL: That's fine. And your Honor, --

15 THE COURT: Yes.

16 MR. HALL: -- the other video, the surveillance
17 video, that was not marked as -- yes, I'll take that
18 back, if you don't mind.

19 THE COURT: Thank you.

20 MR. HALL: Thank you.

21 THE COURT: I need that back. Thank you. You're
22 way ahead of me. All right, you all. I appreciate it,
23 and I'll see you all in the morning?

24 MR. BAX: Yes, your Honor.

25 THE COURT: Okay? Thank you.

1 COPY OF DOCUMENT IDENTIFIED AS
2 MIRANDA RIGHTS FORM MARKED COURT'S
3 EXHIBIT NUMBER 2, JACKSON VERSUS
4 DENNO HEARING.

5 OFF THE RECORD 5:01 P.M.

6 END DAY ONE.

7 BEGIN DAY TWO, TUESDAY, APRIL
8 23, 2013, 9:35 A.M.

9 RULING ON JACKSON VERSUS DENNO
10 HEARING BY THE COURT:

11 BAILIFF: All rise. Court is now in session. The
12 Honorable Carmen Mullen presiding.

13 THE COURT: Thank you all. Please be seated.

14 MR. HALL: Sorry, your Honor. I was just speaking
15 with Officer Dowling.

16 THE COURT: Oh, very good.

17 All right. Let's go ahead. We had a brief
18 conference back in Chambers. And let's go ahead and put
19 it on the record before we start this morning. Mr. Hall?

20 MR. HALL: Thank you, your Honor. There have been
21 some discussion yesterday about the video involving Mr.
22 Clemons', quote/unquote, confession; the interrogation
23 that took place after he was arrested. I was originally
24 going to go through the video and redact it to take out
25 things that the jury should not hear.

1 In consultation with some of my colleagues, and in
2 light of some other conversations that I've had, I
3 decided not to use the video. I had one intent in doing
4 so. It wasn't so much to have the jury hear what Mr.
5 Clemons had to say, because frankly, he didn't really say
6 a whole lot. It was more to have the jury make the
7 connection between him wearing the jacket in the video
8 during the robbery, and him wearing the jacket during the
9 interrogation, just to kind of put it all together it was
10 one and the same person.

11 It was my intent to go forward today having
12 Investigator Dowling from the Beaufort Police Department
13 testify as to the contents of that interrogation, and
14 that's how I would want to proceed today on that issue.

15 THE COURT: All right. Mr. Bax?

16 MR. BAX: Thank you, your Honor. And as we
17 discussed in chambers, I would have to object to the use
18 of Investigator Dowling's testimony, based on the *Best*
19 *Evidence Rule*. We have a videotape of the statement, and
20 that rule indicates that that would trump the testimony
21 of an investigator giving it secondhand through his
22 remembrance of that. So, we would object to the video --
23 I mean, we would object to his testimony.

24 THE COURT: As opposed to the video.

25 MR. BAX: As opposed to the video.

1 THE COURT: Okay. Well, I can tell you, just in
2 briefing the *Best Evidence Rule*, typically, it's when
3 there's contents in a writing, you're required to produce
4 the writing. But what concerns me about this is, in this
5 interview, number one, there is not an outright
6 confession to anything specific.

7 Additionally, Investigator Dowling had asked Mr.
8 Clemons about a number of robberies. And I can tell you
9 that, in my watching it, it's not even clear what he's
10 apologizing for, if it's for this specific robbery or any
11 of the other robberies. I just don't think, looking at
12 the totality of the circumstances, it's fair for
13 Investigator Dowling to give his characterization of what
14 he believed or interpreted that he was either apologizing
15 for or talking about. I don't think it's clear, quite
16 frankly. So, I'm not going to let it in under
17 Investigator Dowling simply testifying.

18 If you want to redact it and play the video, that's
19 one thing. I reviewed it again overnight. I do find
20 that it was voluntary. Certainly, he wasn't coerced in
21 any way. We know he wasn't in custody. I went back and
22 looked again, questioning whether or not he was
23 intoxicated when he gave it. Again, he, for a very long
24 time, did not say anything. And you could tell, he did
25 have this very internal struggle about whether or not he

1 should say anything and whether or not it would be in his
2 best interests. And he kept asking the officer to try to
3 help him and give him a promise of either some type of
4 leniency, which both officers repeatedly said, I cannot
5 do; I don't have the power to do that; all I can do is
6 say you cooperated; that's simply it.

7 And I think, even if it weren't for the *Best*
8 *Evidence Rule*, I think even as far as the investigator
9 testifying, I think the prejudice would outweigh any
10 probative value, because again, I don't think the officer
11 can talk about how he interpreted it. The jury would
12 have to see it, and it would be for them to interpret it.
13 So, to that end, I am not going to allow him to testify
14 to it. Okay?

15 So, anything else before we bring the jury in this
16 morning?

17 MR. HALL: Nothing from the State, your Honor.

18 THE COURT: Okay. Any more?

19 MR. BAX: No, your Honor. We're prepared to go
20 forward.

21 THE COURT: Okay. And we've sequestered the
22 witnesses that are necessary, is that correct, this
23 morning?

24 MR. HALL: Yeah, I don't know if there's been a
25 formal sequestration request.

1 MR. BAX: I believe I did state that yesterday, but
2 I'll state it again. I was going to ask that the
3 witnesses, at least the lay witnesses especially, be
4 sequestered.

5 THE COURT: Okay. Very good.

6 MR. HALL: Yeah, I can --

7 THE COURT: Okay.

8 MR. HALL: I can tell you for the record that
9 Sergeant Massey is a chain witness only.

10 THE COURT: And that's fine, yeah.

11 MR. BAX: No objection.

12 THE COURT: I don't think the officer saw anything
13 anyway, other than one responded, so.

14 MR. BAX: No.

15 THE COURT: And took him into custody. Anyway, as
16 long as the lay witnesses are sequestered, I think we're
17 fine. All right. Anything further, you all?

18 MR. HALL: Nothing from the State.

19 THE COURT: Anything from the Defense?

20 MR. BAX: No, your Honor.

21 THE COURT: Let's bring the jury in, Norman.

22 BAILIFF: Yes, ma'am.

23 Your Honor, the jury is entering.

24 THE COURT: Thank you.

25 JURORS ENTER COURTROOM 9:45 A.M.

1 BY THE COURT:

2 BAILIFF: Your Honor, the jury is seated.

3 THE COURT: Thank you. Good morning, ladies and
4 gentlemen.

5 RESPONSES OF GOOD MORNING FROM JURORS.

6 THE COURT: It's a pleasure to see you all. At this
7 time, we are going to go ahead and begin the trial of
8 this case. What I am going to do is have you sworn in as
9 a trial jury in this case. I am going to make a few
10 brief remarks; and then, you're going to hear the opening
11 statements from the attorneys. All right?

12 So Lasandra, would you please administer the oath to
13 the jury. If you all would please rise and raise your
14 right hand.

15 JURORS SWORN:

16 MADAM CLERK: Do you solemnly swear or affirm that
17 you shall well and truly try and true deliberance make
18 between the State of South Carolina and accused at the
19 bar, and a true verdict give, according to the evidence,
20 so help you God? Please answer by saying I do.

21 RESPONSES FROM JURORS.

22 MADAM CLERK: You may be seated. Thank you.

23 THE COURT ADDRESSING JURORS:

24 THE COURT: Thank you, ladies and gentlemen. Ladies
25 and gentlemen, what I am now going to say to you are not

1 instructions on the law. It is simply an explanation for
2 you to understand how the trial is going to unfold, so
3 you know what is going on, ladies and gentlemen.

4 Ladies and gentlemen, the defendant in this case is
5 charged by an indictment that is filed in the Court, with
6 the offense of armed robbery, the elements of which I
7 will explain to you at the end of the trial.

8 Ladies and gentlemen, the indictment is simply the
9 charge by which a case is brought into court, and it is
10 not in any sense evidence of any of the allegations it
11 contains. Now, the defendant in this case, Mr. Clemons,
12 has pled not guilty to that indictment. Therefore, the
13 State has the burden of proving each of the elements of
14 the indictment beyond a reasonable doubt. And it's your
15 duty, ladies and gentlemen of the jury, to determine
16 whether or not the State has met that burden.

17 Now, your purpose as jurors is to find and determine
18 the facts. You, the jury, are the sole judge of all
19 facts in this case. If, at any time, I make any comment
20 regarding the facts of this case, you must disregard it,
21 and you are only to determine the facts in the case from
22 the testimony you're going to hear from the witness
23 stand, as well as any other evidence that's entered into
24 this case, and any other stipulations that the attorneys
25 may enter into.

1 Ladies and gentlemen, please understand that it is
2 especially important that you perform your duty of
3 determining the facts diligently and conscientiously,
4 because ordinarily, there is no way to correct an
5 erroneous determination of the facts by a jury.

6 On the other hand, and with equal emphasis, the same
7 law that makes you, the jury, the judge of the facts,
8 makes me the judge of the law. The law given by the
9 Court is the only law that you may consider. You must
10 accept and follow it, even if you disagree with it. I
11 cannot tell you what the facts of this case are, and you
12 cannot disagree with me about what the law is, or what
13 you think the law ought to be. Your job is to take the
14 law as I give it to you, and apply it to the facts as you
15 find them. And from there, render a true and just
16 verdict under the oath you just took.

17 Now, ladies and gentlemen, until I advise you to
18 begin your deliberations, you must not discuss this case
19 with anyone, and that does include your fellow jurors,
20 family members, friends, or anyone that's involved in
21 this case. And after the case is submitted to you, you
22 may only discuss it back in your jury room.

23 I remind you ladies and gentlemen, that I've
24 instructed the attorneys and the witnesses and the
25 parties in this case not to speak to you in coming and

1 going from the courthouse over the next couple of days.
2 Again, if you happen to pass them and they don't even say
3 hello, they're not being unfriendly. They're simply
4 following my orders.

5 Also, ladies and gentlemen, I don't think there's
6 going to be anything in the news or in the newspaper
7 about this case, but again, I'm instructing you not to
8 read, listen to, or watch anything about this case, and
9 that includes anything that could be in the newspaper,
10 the Internet, or the radio or the television. You must
11 not consider anything that you may have read or heard
12 about the case outside the courtroom, whether before or
13 during the trial.

14 Please understand that it is important that you keep
15 an open mind and not decide any issue in this case until
16 all of the evidence has been presented, the parties have
17 made their closing arguments, and I've instructed you on
18 the law that's applicable to this case.

19 It is your solemn duty to determine the guilt or
20 innocence of the defendant, and your verdict must be
21 based solely on the evidence that's presented to you in
22 this trial, weighing it fairly and impartially, as I have
23 every confidence you will.

24 Now, ladies and gentlemen, in just a moment, the
25 Solicitor is going to make an opening statement, in which

1 he's going to explain to you what he believes the issues
2 are in this case, and the attorney for the defendant is
3 also going to make an opening statement, although, he is
4 not required to do so.

5 Ladies and gentlemen, what these attorneys tell you
6 in their opening statements is not evidence in this case.
7 It is simply their contention as to what the issues are.
8 I remind you again, the evidence comes from the witness
9 stand, as well as other evidence that's entered into.

10 Now, I want you to know that, from time to time
11 during the trial of the case, you may hear the lawyers
12 say something like, your Honor, I believe we have a
13 matter of law we need to take up, or may we approach the
14 Bench; or I myself may summon them up here, and we may
15 have a conversation over in private. What I want you to
16 know is that we're not hiding anything from you.

17 Oftentimes, when I need to rule as a matter of law
18 whether or not certain evidence is admitted, I may make a
19 comment on the facts of this case. And again, I wouldn't
20 want anything I say to influence you in your
21 determination of the facts. So, out of an abundance of
22 caution, we do it outside of your presence.

23 Now, ladies and gentlemen, in determining what the
24 true facts are in this case, you must decide whether the
25 testimony of the witnesses is believable. It's my

1 responsibility to rule as a matter of law whether or not
2 certain testimony is admitted, but whether or not you
3 believe it is solely for you to determine.

4 In deciding whether to believe a witness, you have a
5 right to consider the interest of the witness, the bias
6 of the witness, the prejudice of the witness, and you can
7 look at the opportunity that that witness had to see the
8 matters and things about which they're testifying. You
9 can also look at the way the witness acts on the witness
10 stand. You have the right to consider anything that is
11 in the record that will help you evaluate the testimony
12 of the witness. That means, ladies and gentlemen, it's
13 your duty to pay close attention to the witnesses, so you
14 can adequately and accurately remember, when you go back
15 to your jury room for your deliberations, their
16 testimony.

17 Ladies and gentlemen, because I believe this case is
18 going to be relatively short, I am not going to permit
19 you take notes. If I think it will aid you in some way,
20 we will give you pens and pencils and pads to do that.
21 At this time, ladies and gentlemen, I'm just asking that
22 you sit back, relax, and pay attention to the attorneys
23 during their opening statements, and the witnesses
24 that'll be following. All right?

25 Is there anything further from the State?

1 MR. HALL: Nothing from the State, your Honor.

2 THE COURT: From the Defense?

3 MR. BAX: No, your Honor.

4 THE COURT: Ladies and gentlemen, we're going to
5 begin the trial of this case.

6 MR. HALL: May it please the Court?

7 THE COURT: Yes, sir.

8 OPENING STATEMENT ON BEHALF OF

9 THE STATE BY MR. HALL:

10 MR. HALL: Good morning, ladies and gentlemen. I'm
11 going to start out by just kind of dispelling some myths
12 and, you know, rumors, some things you might have heard.
13 Trials are not like they are on T.V. Okay. This is not
14 going to be like an episode of *Law and Order*. My opening
15 is not going to be that exciting. I don't anticipate
16 that my closing is going to be that exciting. I'm simply
17 here to give you information about why I think
18 Christopher Clemons, the man seated at that table, is
19 guilty of armed robbery. There's going to be no ah-ha
20 moment here.

21 On Christmas Eve, 2011, Christopher Clemons walked
22 into the Kangaroo Pantry, located just on the other side
23 of the Broad River. It's in Port Royal, here in Beaufort
24 County. He ran into the store. He was wearing a ski
25 mask. He was wearing a hoodie. He was wearing a plaid

1 jacket. He also came in with his hand in his right-hand
2 coat pocket.

3 John Eisenhower was a clerk that was working that
4 night. He saw this person rush by the counter. Mr.
5 Clemons then circled around the end of the counter;
6 approached Rob Thomas, who was the cashier that was
7 working that night; demanded money from Mr. Thomas; and
8 got a one hundred dollar bill out of Mr. Thomas' hand.
9 All the while, Christopher Clemons had that right hand in
10 the coat pocket.

11 Mr. Clemons then went from Mr. Thomas' register to
12 the next register, where John Eisenhower was standing.
13 Mr. Eisenhower saw him coming, and Mr. Clemons got around
14 to the side of Mr. Eisenhower, started grabbing money out
15 of the register. While he was approaching Mr.
16 Eisenhower, there was still this hand in the pocket. Mr.
17 Thomas will testify, saw the hand in the pocket. Mr.
18 Eisenhower will testify, saw the hand in the pocket.
19 They both believe that Christopher Clemons was armed that
20 night.

21 Now, a curious thing happened while Mr. Clemons was
22 grabbing money from the second cash register. He
23 realized that Christopher Clemons had taken his hand out
24 of that right-hand coat pocket, and was using that hand
25 to grab money from Mr. Eisenhower's register. Once that

1 happened, Mr. Eisenhower turned and tackled Christopher
2 Clemons, and held him down on the ground. Now, this is
3 how I know that Christopher Clemons did this armed
4 robbery, because he was held in the store until the Port
5 Royal Police Department arrived, where he was placed in
6 handcuffs and walked out. It's all on video.

7 Now, I've mentioned the finger in the pocket. It
8 turned out, it was a finger. He didn't have a gun on him
9 that night. However, in the state of South Carolina, you
10 can still be charged with armed robbery, because under
11 the statute, it's what the person that's being robbed
12 reasonably believes. And you'll hear testimony today
13 from John Eisenhower and Rob Thomas that, during the
14 course of this armed robbery, they believed that the hand
15 in the pocket was, in fact, a gun. That makes it armed
16 robbery in South Carolina.

17 Once you hear this testimony, and once you see this
18 video, you'll see that there's really only one conclusion
19 that can be reached in this case -- that Christopher
20 Clemons, the man seated at that table, is guilty of armed
21 robbery.

22 Thank you very much for listening to me. Please
23 listen carefully to the opening statements from Attorney
24 Arie Bax. Thank you.

25 THE COURT: Thank you, Mr. Hall.

1 MR. BAX: May it please the Court, your Honor?

2 THE COURT: Yes, sir.

3 MR. BAX: Thank you very much. Thank you, Solicitor
4 Hall.

5 OPENING STATEMENT ON BEHALF OF

6 DEFENDANT BY MR. BAX:

7 MR. BAX: Good morning, ladies and gentlemen. Thank
8 you for being here. I know I got to stand up in front of
9 you earlier. Have not had a chance to address you yet.
10 My name is Arie Bax. I'm an attorney here in Beaufort,
11 and Mr. Clemons is my client. You have been introduced
12 to him briefly. And also sitting at the table is my
13 partner, an attorney with my firm, as well, Ms.
14 Richardson Bax.

15 We're here today because everybody has their right
16 to come and contest issues. Everybody has rights. Okay?
17 That's something that we have all seen and, in many
18 cases, worked ourselves to defend. Whether it was your
19 right to contest a bill at the electric company, whether
20 it was your right to read the newspaper, whether it was
21 your right to go to church, we exercise rights that we
22 have fought for and that our families have fought for
23 throughout the history of this country.

24 You are here in the exercise of one of the most
25 fundamental rights that we have that has been fought for,

1 and that's the right to say, I'm going to go to trial,
2 and I'm going to have a jury of my peers decide the
3 facts; I am not going to let the state of South Carolina
4 decide my fate; I am going to let the people of the
5 community I live in decide what happened.

6 Now, what's important, I think, for all of you to
7 know, and I know that you're going to pay attention, and
8 I know that you guys are going to all follow your duty
9 and look at this critically, and hold the State to its
10 burden. The State has, under our rules in criminal
11 court, the highest burden, out of any kind of legal case,
12 is beyond a reasonable doubt. They have to prove each
13 and every element of the armed robbery they've chosen to
14 charge my client, Mr. Clemons, with beyond a reasonable
15 doubt to each and every one of you. There has to be a
16 unanimous vote of all twelve jurors. And if somebody
17 gets sick or something happens, the alternate would join
18 in.

19 So, when you go back in deliberations, there will be
20 twelve of you. When you do that, it has to be everybody.
21 Everybody has to agree yes or no. Everybody has to agree
22 either they have proven those elements, or it's a not
23 guilty. Any doubts that you have, the Judge is going to
24 instruct you on the law and how to define that, and I
25 defer to the Judge on the law, because her Honor is the

1 sole and final judge on the law. What she instructs you
2 is what you're going to follow. But what you are going
3 to hear from her is that, if you have a reasonable doubt,
4 you must resolve that in favor of Mr. Clemons. That's
5 his right. It's the same right we all enjoy as citizens
6 of this country.

7 Another thing to remember, I will agree with Mr.
8 Hall, this is not *Law and Order*. Okay. This is not --
9 you're not going to have ah-ha moments. It's a fairly
10 simple case. However, that does not mean that it is not
11 important. It is very important.

12 The other thing to remember is that asserting your
13 right to trial has many elements. There's many reasons
14 to assert your right to trial. I want to say this right
15 here and right now. Mr. Clemons, through myself as his
16 defense attorney, is not here to come in and say it
17 wasn't him that they held down in the store. That would
18 be ludicrous. That would not have any credibility. He
19 was held down. The police came. This nice gentleman
20 here that you're going to hear from, came. They took him
21 to the police station; and then, they locked him up; and
22 he has been in custody ever since. So, there's no
23 question, and we would be wasting your time to say so.

24 However, that's not the only reason that someone in
25 this country can go to trial. There are other reasons,

1 such as the fact that, if the State chooses to charge you
2 with a crime that does not fit the facts of what
3 happened, you still get to go to trial if you want to.
4 And that's what Mr. Clemons has chosen to do, and I agree
5 with him, because the State is overreaching.

6 As they've said, there is no gun; you're not going
7 to see a gun; you're not going to hear a gun. You're
8 going to see, on the video, that Mr. Clemons does never -
9 - he never leaves the store until this officer takes him
10 out in custody. He was not successful. He was not
11 smart. Mr. Clemons knows that. He's had talks with me,
12 and he admits that. It was dumb. He was desperate.
13 Okay. He was in a bad way, and he did something dumb,
14 but he didn't succeed in it. He didn't have a gun. He
15 never said that he had a gun. You're not going to hear
16 that.

17 And you're going to see that those clerks were so
18 not scared of him that they tackled him to the ground and
19 held him down, and were not afraid. You're going to see
20 on the video, even though there's no audio, you're going
21 to see through the actions of the people in the store
22 that no one was afraid of Mr. Clemons -- no one, to the
23 point where you're going to see on that video that a
24 patron comes; calls police at the instructions of the two
25 clerks that are holding Mr. Clemons down; and then,

1 perhaps at their request, or perhaps because they wanted
2 to -- it appears to be at the request -- takes his iPhone
3 out and takes a video for Facebook or YouTube of them
4 holding this guy down. They were not scared of him.
5 They were not scared of him, and he did not get away.
6 And so, armed robbery is the inappropriate charge for
7 this gentleman.

8 Thank you very much.

9 THE COURT: Thank you, Mr. Bax. The State will call
10 their first witness.

11 MR. HALL: Thank you, your Honor. The State calls
12 Jennifer Vyska.

13 THE COURT: Thank you.

14 BAILIFF: Go right up there to be sworn, please.

15 MADAM CLERK: Could you place your left hand on the
16 Bible, and raise your right hand for me, please, ma'am.
17 Do you solemnly swear to truthfully answer all questions
18 asked of you by this Court, so help you God?

19 JENNIFER VYSKA: Yes.

20 MADAM CLERK: Be seated. State your name and spell
21 it for the Court, please.

22 THE COURT: Please, ma'am, spell your last name for
23 my court reporter. Thank you, and just state your name,
24 as well.

25 JENNIFER VYSKA: My name is Jennifer Vyska. The

1 last name is Vyska, V/y/s/k/a.

2 THE COURT: Thank you.

3 MR. HALL: Thank you, your Honor.

4 JENNIFER VYSKA

5 DIRECT EXAMINATION BY MR. HALL:

6 Q Good morning, Ms. Vyska.

7 A Good morning.

8 Q On December 24, 2011, were you employed by the
9 Kangaroo Pantry?

10 A Yes, I was.

11 Q And what store was that?

12 A 907, by the Broad River Bridge.

13 Q All right. And what city is that in?

14 A It's in Beaufort. Port Royal.

15 Q It's in the city of Port Royal?

16 A Yes.

17 Q Town of Port Royal?

18 A Yeah.

19 Q Is that within Beaufort County?

20 A Yes, it is.

21 Q Did you have occasion to have to be at work that
22 night for any reason?

23 A Yes. I got called in, actually, saying that there
24 was an attempted armed robbery.

25 Q And when you arrived there, what was going on?

1 A There was a person in the back of a patrol car
2 already. The stuff had already happened, and a officer
3 asked me if I would record a video for him.

4 Q And did you do that?

5 A Yes, I did.

6 Q All right. And what did you do with that video?

7 A I handed it directly to the Port Royal officer.

8 MR. HALL: Your Honor, I have no other questions of
9 this witness.

10 THE COURT: Okay. Mr. Bax?

11 JENNIFER VYSKA

12 CROSS-EXAMINATION BY MR. BAX:

13 Q Ms. Vyska, good morning.

14 A Good morning.

15 Q And if I say your name wrong, let me know. Okay?

16 A That's correct.

17 Q So, you were not on duty or working at the Pantry
18 that evening when this incident occurred. Is that right?

19 A No, not when the incident occurred.

20 Q Okay. All right. And you were at home when you got
21 this call that an attempted armed robbery had occurred?

22 A Yes.

23 Q Okay. And when you went in, you were able to pull
24 some kind of video out of the surveillance system there?

25 A Correct. I'm the one most familiar with our

1 surveillance system.

2 Q Okay. Was that something that got burned to a disc
3 or a videotape? How did that work?

4 A It got -- it was a DVR. It got burned to a DVD.

5 Q Okay. And who did you hand that to, again?

6 A The officer with the Port Royal Police Department.

7 Q Is it the same officer that's here in the courtroom
8 today?

9 A Yes.

10 MR. BAX: Okay. No further questions. Thank you
11 very much.

12 THE COURT: Anything further?

13 MR. HALL: No thank you, your Honor.

14 THE COURT: Anyone have any objection to Ms. Vyska
15 being excused?

16 MR. BAX: No objection, your Honor.

17 A Thank you.

18 THE COURT: You are excused, ma'am. Thank you.
19 Will you call your next witness?

20 MR. HALL: Thank you. The State calls Sergeant
21 Andre Massey.

22 THE COURT: Okay. Come on forward, Sergeant Massey.

23 MADAM CLERK: Would you place your left hand on the
24 Bible, and raise your right hand for me, please? Do you
25 solemnly swear to truthfully answer all questions asked

1 of you by this Court, so help you God?

2 STAFF SERGEANT ANDRE MASSEY: Yes, ma'am.

3 MADAM CLERK: Please be seated. State your name and
4 spell it for the Court, please.

5 STAFF SERGEANT MASSEY: My name is Andre Massey.
6 Last name spelled M/a/s/s/e/y.

7 STAFF SERGEANT ANDRE MASSEY

8 DIRECT EXAMINATION BY MR. HALL:

9 Q Where do you work, sir?

10 A Port Royal Police Department.

11 Q And what is your current rank?

12 A I'm a staff sergeant.

13 Q And what are your responsibilities?

14 A I'm a chief investigator. Also, I'm in charge of
15 the evidence locker, which is also known as the evidence
16 custodian.

17 Q So, when evidence is brought back to the police
18 department, you're in charge of logging that in?

19 A Yes, sir.

20 Q Were you involved in logging in evidence from an
21 armed robbery that occurred on December 24, 2011?

22 A Yes, sir.

23 Q And what piece of evidence, specifically, did you
24 log in that evening?

25 A Log in -- okay, it would have been on the 27th that

1 I logged it in, but it was a DVD of this video
2 surveillance from Pantry 907, and a black ski mask that
3 was in a paper bag.

4 Q And until today, where has the original of that
5 video resided?

6 A Locked in the evidence locker.

7 MR. HALL: Your Honor, may I approach the witness?

8 THE COURT: You may.

9 BY MR. HALL:

10 Q Staff Sergeant Massey, I'm going to ask -- I'm going
11 to show you what's been marked as State's Exhibit 1, and
12 ask if you can identify that.

13 A Yes.

14 Q And what is it?

15 A It's the -- the CD from the Pantry.

16 Q And what tells you that it's the CD from the Pantry?

17 A When we actually logged it in, we actually put a
18 case number on it, which is 110292. I'm sorry. 11-0292.
19 I also write Pantry 907 at the bottom, which actually
20 tells me that this is the surveillance video from the
21 Pantry 907. I also write the initials B.C. on it, which
22 stands for bar code.

23 We actually have a bar code reader, and everything
24 we log into evidence gets a bar code number. So, we go
25 to inventory, we just scan the bar code. We don't put

1 the actual bar code on the actual disc, because it'll --
2 it'll cause it not to play properly in a DVD player or
3 any kind of computer. So, what we do is, we'll put the
4 disc inside of a binder, and we'll put the bar code over
5 the top of the binder cover that shows this is the actual
6 disc. We put the bar code number on there in case when
7 we take the disc out, we know this is bar code 353151,
8 and we slide it right back into this same slide.

9 Q And this is the disc that -- the very disc that you
10 brought from evidence, from Port Royal Police Department
11 this morning.

12 A I gave it to Officer Reynard, and he brought it in.

13 Q And he brought it here.

14 A Yes.

15 MR. HALL: All right. Your Honor, I have no other
16 questions.

17 MR. BAX: Briefly, your Honor.

18 THE COURT: Yes, sir.

19 STAFF SERGEANT ANDRE MASSEY

20 CROSS-EXAMINATION BY MR. BAX:

21 Q Good to see you again, Sergeant Massey. How are you
22 doing today?

23 A Likewise, sir. Doing great.

24 Q Just one brief question. You indicated that it was
25 log -- that you have indicated it was logged in or

1 brought to you as evidence custodian on December 27,
2 2011?

3 A Yes. What -- what happened is, the officers
4 actually get the evidence the night they get it. We have
5 a series of lockers that's in a wall at the Port Royal
6 Police Department. Once the officer gets his evidence,
7 he puts it in that locker. He fills out what is an
8 Evidence Examination Form, which we recently created, to
9 where he puts it in the evidence locker, and he closes
10 that locker. Once he closes that locker, that evidence
11 cannot be accessed until I go into the back of the
12 lockers and open it, which is inside the evidence locker.

13 So, if it's a weekend, like the 24th was Christmas
14 Eve, so it was a holiday, so I wouldn't have come in and
15 removed that evidence from the locker. I come in on the
16 27th, which is the next business day, and actually take
17 it out of the evidence locker. Then, I'll log it into
18 the computer, and put it in there. That's why the
19 evidence form will show as it was logged in on the 27th.

20 Q And so, Sergeant Massey, whichever officer dropped
21 it in that locker could have dropped it in on the 24th or
22 the 25th or the 26th, and you would have gotten it out of
23 the locker on the 27th. Is that right?

24 A That's correct.

25 MR. BAX: Okay. Thank you. No further questions.

1 Thank you for being here.

2 MR. HALL: I have no other questions for Sergeant
3 Massey.

4 THE COURT: Any objection to Sergeant Massey being
5 excused?

6 MR. HALL: No.

7 MR. BAX: No, your Honor.

8 THE COURT: You are excused, sir. Thank you.

9 A Thank you, ma'am.

10 THE COURT: If you would call your next witness, Mr.
11 Hall.

12 MR. HALL: Thank you. Call Officer Steve Reynard.

13 THE COURT: Come on forward, sir.

14 MADAM CLERK: Would you place your left hand on the
15 Bible, and raise your right hand for me, please. Do you
16 solemnly swear to truthfully answer all questions asked
17 of you by this Court, so help you God?

18 CORPORAL STEVE REYNARD: I do.

19 MADAM CLERK: Please be seated. State your name and
20 spell it for the court, please.

21 MR. HALL: May Mr. Bax and I approach briefly?

22 THE COURT: You may.

23 OFF-THE-RECORD BENCH CONFERENCE,

24 OUT OF HEARING OF JURORS. PRESENT:

25 THE COURT, MR. HALL, MR. BAX.

1 END BENCH CONFERENCE.

2 CORPORAL REYNARD: My name is Stephen Reynard. My
3 last name is spelled R/e/y/n/a/r/d.

4 THE COURT: Thank you. Ladies and gentlemen, it's
5 my understanding we need to cue up a video. So, rather
6 than have you wait on us, we're going to go ahead and
7 take a break right now. I need to remind you, ladies and
8 gentlemen, you are not to discuss this case. It wouldn't
9 be appropriate to do so. You haven't heard all of the
10 evidence; you haven't heard from the arguments from the
11 lawyers; nor my charge on the law. Simply go back to the
12 jury room, grab a cup of coffee, a Coke, whatever you
13 need, and we'll bring you right back out. Refresh
14 yourselves, and we should be ready to go within about ten
15 minutes at the most. Okay? Thank you.

16 BAILIFF: Thank you, your Honor.

17 THE COURT: Thank you, Bob.

18 JURORS LEAVE COURTROOM 10:33 A.M.

19 BAILIFF: The jury is clear, your Honor.

20 THE COURT: Thank you.

21 MR. HALL: Thank you, Judge. I just didn't want to
22 look clumsy, being the T.V. and moving it.

23 THE COURT: No problem whatsoever.

24 Officer Reynard, I also want to remind you, I know
25 that there was allegations that there are other armed

1 robberies committed by this defendant, and my
2 understanding is there was a previous armed robbery,
3 previous, earlier, possibly, at the Kangaroo. I want to
4 make sure you don't say anything about that, obviously.

5 CORPORAL REYNARD: Yeah.

6 THE COURT: Only even if they try to solicit
7 something about that, I don't want it coming out in any
8 way. If you've got a problem and you feel like you need
9 to respond to a question that's something along those
10 lines, we need to stop and say, *Judge, I need to talk to*
11 *you.* Okay?

12 CORPORAL REYNARD: Yes, ma'am.

13 THE COURT: So, I just want to make sure we don't
14 anything to have a mistrial. Okay?

15 CORPORAL REYNARD: Thank you.

16 THE COURT: Thank you, sir. I appreciate it. And
17 you are free to step down while you're up here. Again,
18 you can't discuss your testimony, not that you've started
19 yet, but you're welcome to step down if you'd like.
20 Okay?

21 And we're going to go ahead and we'll take, you all,
22 just about a quick ten minutes. Okay?

23 OFF THE RECORD 10:14 A.M.

24 BACK ON THE RECORD 10:32 A.M.

25 BY THE COURT:

1 THE COURT: Come on back. Officer Reynard, come on
2 up, please. State ready?

3 MR. HALL: Yes, your Honor.

4 THE COURT: Defense ready?

5 MR. BAX: Yes, your Honor.

6 THE COURT: All cued up. Let's go. Let's bring the
7 jury in.

8 BAILIFF: Yes, ma'am.

9 BAILIFF: Jurors are entering, your Honor.

10 THE COURT: Thank you.

11 JURORS ENTER COURTROOM 10:33 A.M.

12 BAILIFF: The jury is seated, your Honor.

13 THE COURT: Thank you. Welcome back, ladies and
14 gentlemen. Mr. Hall, you can go ahead and continue, sir.

15 MR. HALL: Thank you, your Honor.

16 CORPORAL STEVE REYNARD

17 DIRECT EXAMINATION BY MR. HALL:

18 Q Where do you work?

19 A Sir?

20 Q Where do you work?

21 A I work for the Port Royal Police Department, sir.

22 Q And how long have you been employed there?

23 A I've been employed with the Port Royal Police
24 Department for six years.

25 Q And what is your current rank?

1 A I'm a corporal.

2 Q And what are your responsibilities?

3 A I'm primarily road patrol.

4 Q Were you asked to respond to the Kangaroo Pantry in
5 Port Royal, near the Broad River, on December 24, 2011?

6 A Yes, sir, I was.

7 Q And what happened when you arrived there?

8 A When I arrived on-scene, I was met at the front door
9 by one of the clerks, and informed that there had been a
10 robbery, and that they had the suspect pinned on the
11 floor.

12 I then entered the business and saw two clerks
13 holding down a gentleman, and at which point, I placed
14 him into handcuffs and escorted him out of the business.

15 Q And the person that you placed in cuffs and escorted
16 out of the Pantry, do you see him here in court here
17 today?

18 A Yes, sir, I do.

19 Q And can you point him out for me, please.

20 A Yes, sir. He's sitting right over there next to the
21 attorney.

22 MR. HALL: Your Honor, I'd ask the record reflect
23 that Corporal Reynard has identified the defendant as the
24 person that he took from the store.

25 BY MR. HALL:

1 Q After securing the defendant, what did you -- after
2 securing Mr. Clemons, what did you do?

3 A I began to gather statements from individuals who
4 were involved in the incident. I also collected
5 evidence. Collected a video from Ms. Jennifer Vyska, and
6 a ski mask.

7 Q And the video -- I'm going to ask you -- or I'm
8 going to show you what's been marked as State's Exhibit
9 1, and ask you if you can identify this.

10 A Yes, sir. This is the video from the Pantry 907.

11 Q All right. And what tells you it's the video from
12 Pantry 907?

13 A It is marked on the -- on this disc, with my case
14 number from this incident. It is also marked Pantry 907,
15 and initialed by myself.

16 Q And the other markings that are on there, can you
17 tell the Court what those are.

18 A Yes, sir. At the bottom of the disc are my initials
19 and today's date. I've reviewed this disc. It is
20 unmolested.

21 Q And it's in the same condition it is today as it was
22 when you recovered it from the scene?

23 A Yes, sir.

24 Q Once you had this disc, what did you do with it?

25 A Once I had the disc, I returned with Mr. Clemons to

1 the Port Royal Police Department, so he could be
2 interviewed by our on-duty detective, and I placed the
3 disc and the other evidence into an evidence locker.

4 Q And you did it that evening, on December 24th?

5 A Yes, sir, I did it that evening.

6 MR. HALL: Your Honor, at this time, I'd ask that
7 State's Exhibit 1 be moved into evidence, and I be
8 allowed to publish to the jury.

9 THE COURT: Go ahead and publish it.

10 MR. HALL: Thank you.

11 MR. BAX: No objection.

12 ITEM IDENTIFIED AS VIDEO FROM
13 PANTRY 907 MARKED STATE'S EXHIBIT
14 NUMBER 1, ADMITTED AS EVIDENCE.
15 VIDEO PLAYING.

16 END VIDEO PLAYING.

17 BY MR. HALL:

18 Q Corporal Reynard, do you recall roughly how long it
19 took you to respond to where you were at?

20 A It had to be less than ten minutes, sir.

21 MR. HALL: I don't have any other questions for this
22 witness, your Honor.

23 MR. BAX: Moment's indulgence, your Honor.

24 THE COURT: Yes, sir.

25 MR. BAX: Your Honor, no questions. Thank you very

1 much for being here. Your Honor, no objections to him
2 being released.

3 THE COURT: You may step down, sir. Thank you.

4 MR. HALL: State calls Rob Thomas.

5 BAILIFF: Just go right up there to be sworn.

6 MADAM CLERK: Would you place your left hand on the
7 Bible, and raise your right hand for me, please? Do you
8 solemnly swear to truthfully answer all questions asked
9 of you by this court, so help you God?

10 ROBERT THOMAS: Yes.

11 MADAM CLERK: Please be seated. State your name and
12 spell it for the Court.

13 MR. THOMAS: It's Robert Thomas.

14 THE COURT: Spell your last name, sir.

15 MR. THOMAS: T/h/o/m/a/s..

16 THE COURT: Thank you.

17 ROBERT THOMAS

18 DIRECT EXAMINATION BY MR. HALL:

19 Q Good morning, Mr. Thomas. On December 24, 2011,
20 where were you working?

21 A B.P., by Broad River Bridge.

22 Q It's also known as the Kangaroo Pantry?

23 A Yes.

24 Q Is that in the town of Port Royal?

25 A Yes.

1 Q Do you know if it's in Beaufort County?

2 A Yes.

3 Q While you were working that evening, did anything
4 unusual happen?

5 A There was a robbery.

6 Q What did you notice? I guess, tell the jury exactly
7 what it was that you saw, if you would.

8 A A black male came into the store, came around the
9 counter.

10 Q Now, let me stop you there. How was this black male
11 dressed?

12 A Ski mask and a jacket. It was a plaid jacket.

13 Q All right. And was there anything else about his
14 appearance that was unusual?

15 A He had his hand in his pocket like he had a gun.

16 Q And so, when he entered the store, he came around
17 the counter. What happened next?

18 A He told me to give him the money that was in my
19 hand.

20 Q So, you had money in your hand at that time?

21 A Yes.

22 Q What did you have in your hand?

23 A I had a hundred dollar bill that I had just gotten
24 change.

25 Q And so, he said, give me the money?

1 A Yes.

2 Q Took the hundred dollar bill from your hand?

3 A Correct.

4 MR. BAX: Objection. Leading, your Honor. This is
5 a direct witness.

6 THE COURT: Thank you. Do not lead him.

7 MR. HALL: Thank you.

8 BY MR. HALL:

9 Q What happened?

10 A He told me to give him the money. He took it out of
11 my hand. Went past me to the other clerk, and attempted
12 to try to get the money out of his register. And when he
13 pulled the hand that was in his pocket out, that's when
14 the scuffle started. And they fell past me, and I went
15 to help him.

16 Q When this person approached you, you said he had his
17 hand -- something in his pocket.

18 A Correct.

19 Q And it's your testimony today that you believe that
20 he was armed with a weapon?

21 A Correct.

22 MR. HALL: If I could have a moment, your Honor.

23 Your Honor, I do not have any other questions for
24 this witness.

25 THE COURT: Mr. Bax?

1 MR. BAX: May it please the Court?

2 ROBERT THOMAS

3 CROSS-EXAMINATION BY MR. BAX:

4 Q Good morning, Mr. Thomas. How are you doing today?

5 A Pretty good. How are you?

6 Q I'm doing all right. Thank you for being here. And
7 do you still work at that same convenience store?

8 A No, I do not.

9 Q And where do you work now?

10 A I work at Outback.

11 Q Outback? Okay, here in Beaufort, South Carolina?

12 A Yes.

13 Q Okay. All right. Now, Mr. Thomas, do you recall
14 how long between the time that this individual came into
15 the store, and the time that he grabbed the money out of
16 your hand?

17 A Matter of seconds.

18 Q Matter of seconds? Okay. And right after that, he
19 went straight over to John. Is that right?

20 A Correct.

21 Q Okay. How many seconds was it between the time that
22 he grabbed that from you, and went over to John?

23 A One, maybe two.

24 Q One, maybe two seconds? And how long after he went
25 over to John did John grab him and begin to have that

1 struggle?

2 A One, maybe two seconds.

3 Q Maybe -- just so -- really, just a short amount of
4 time.

5 A Yes, sir.

6 Q Okay. Now, you're aware of the fact that there was
7 a video. There was surveillance in that store. Is that
8 right?

9 A Correct.

10 Q Okay. And you were aware that night that they
11 pulled that surveillance video, and gave it to the law
12 enforcement. Is that right?

13 A Yes.

14 Q Okay. Did you ever look at that video yourself?

15 A Not until it was on the Internet.

16 Q Not until it was on the Internet?

17 A Yeah.

18 Q So, it's been distributed on the Internet?

19 A I didn't -- right.

20 Q Gotta love the Internet these days, right? Let me
21 ask you this. So, it was a very short amount of time
22 between the time he came in the store and was on the
23 ground with John?

24 A Right.

25 Q And then, you started helping him, right?

1 A Right.

2 Q Now, just from my looking at it, you didn't look
3 like you were very frightened after that money. Just had
4 your hands loose by your sides; and then, John tackled
5 him; and you went right in there to help him.

6 A Correct.

7 Q Were you scared?

8 A It's kind of hard to tell, it happened so fast. I
9 mean.

10 Q Okay.

11 A It doesn't happen every day that you get robbed.

12 Q Okay. Obviously. And that's a good thing. We
13 certainly don't want that to be the case.

14 Now, you stated in your direct testimony to the
15 Solicitor that the individual had his hands in his
16 pocket. But this all happened -- I mean, what was your
17 opportunity to observe the hand in the pocket?

18 A That's the first thing I looked at.

19 Q The first thing you looked at when he came in the
20 store, or after he went around --

21 A When he came around the counter.

22 Q When he came around the counter.

23 A Correct.

24 Q Okay. And obviously, the jury has the video to look
25 at, but that portion, after he went around the counter,

1 how many seconds before he was tackled after he went
2 around the counter? Do you remember?

3 A Five, six. I mean, --

4 Q Maybe five, six seconds.

5 A Been over a year, so.

6 Q I understand. Okay. And so, in that five or six
7 seconds, let me ask you this. And in that five, six
8 seconds, you had some money taken from you. Did you
9 actually think, I'm scared; he might have a weapon.

10 A After he pulled his hand out of his pocket,
11 obviously not. But beforehand, there was no telling.

12 Q There was no time?

13 A No.

14 Q Okay. All right. There was no time to really think
15 about that in that five seconds?

16 A No, before he pulled his hand out of his pocket --

17 Q Um-hmm.

18 A -- that's -- I believe there was, but after he
19 pulled it out, obviously, there was nothing to be worried
20 about.

21 Q In that five seconds?

22 A Prior to.

23 Q Um-hmm.

24 A Yes.

25 Q Now, have you ever been convicted of evading arrest

1 or detention in any other states?

2 A Yes.

3 Q Okay. And where was that at?

4 A Texas.

5 Q Okay. Have you ever been convicted of any marijuana
6 charges?

7 A Yes.

8 MR. HALL: Your Honor, may we approach?

9 THE COURT: You may.

10 ON-THE-RECORD BENCH CONFERENCE,

11 OUT OF PRESENCE OF JURORS:

12 PRESENT: THE COURT, MR. HALL,

13 MR. BAX.

14 END BENCH CONFERENCE.

15 THE COURT: You can continue, Mr. Bax.

16 MR. BAX: Thank you very much, your Honor.

17 BY MR. BAX:

18 Q I'm sorry for the interruption, Mr. Thomas. I think
19 the last question I asked was if you'd been convicted of
20 a marijuana possession charge in Texas, as well.

21 A Yes.

22 Q Okay. All right. Now, let me ask you this, Mr.
23 Thomas. After John tackled this individual to the
24 ground, you all determined there was no weapon. Is that
25 right?

1 A Correct.

2 Q All right. And I believe, in fact, there was a
3 patron, a gentleman with a green shirt and a white hat,
4 that ended up helping you all out. Do you remember that?

5 A He -- I had asked him, while we were in the
6 struggle, to push the button again.

7 Q Um-hmm.

8 A And it took them a minute to actually help us at
9 all, but yeah, he came over there and pushed the button,
10 and I think he tried to call the police, but.

11 Q Um-hmm. Now, did you know that patron, or was it
12 just somebody that was in the store?

13 A No, just a customer.

14 Q Okay. Now, he doesn't appear like he's very scared.
15 I mean, he looked -- was he scared at all, from what you
16 could observe?

17 A No.

18 MR. HALL: Objection, your Honor. That calls for
19 speculation.

20 THE COURT: Okay. Sustained. He can't speculate.

21 BY MR. BAX:

22 Q But when you asked him to come behind the counter,
23 he came behind the counter. Is that correct?

24 A After a few times of me yelling and asking.

25 Q Okay. And after that, he dialed on the phone and

1 handed it to one of you all. Who did he hand it to? Do
2 you remember?

3 A I think he handed it to me. I'm pretty sure he
4 handed it to me.

5 Q Okay. So, while restraining the individual, you
6 were able to talk on the phone for a second?

7 A I had -- John had him at the top half of his body;
8 and then, another customer had him in the middle section.
9 I had his legs, and I had my knees on his legs, with the
10 telephone in my hand.

11 Q So, you were one of three individuals that was
12 restraining this individual?

13 A Yes, sir.

14 Q Okay.

15 A After me and John had him on the ground, there was a
16 customer came and helped us hold him down. And the guy
17 in the green shirt came back there and pushed the button
18 again and called the police.

19 Q Okay. And do you recall the individual in the green
20 shirt also getting his iPhone out and doing something
21 with it?

22 A No, I don't.

23 Q You don't recall that?

24 A No. Yeah, it was kind of all a blur after that.

25 Q Okay. Okay. But you said you've seen something on

1 the Internet about this.

2 A Yes.

3 Q Okay. And do you recall if patrons were still
4 coming in and out of the store throughout all this?

5 A Like I said, it's been a long time. I don't -- I
6 wasn't paying attention to the customers that much.

7 MR. BAX: No further questions, your Honor. Thank
8 you.

9 THE COURT: Anything further?

10 MR. HALL: Thank you, your Honor.

11 ROBERT THOMAS

12 RE-DIRECT EXAMINATION BY MR. HALL:

13 Q Mr. Thomas, would it be fair to say that, in the
14 midst of struggling with this person on the ground, that
15 customer service was not your first priority?

16 A Correct.

17 Q What is the policy at Kangaroo Pantry when the store
18 is being robbed?

19 A Open the register and step back.

20 Q And is that what you did in this case?

21 A At first, yes.

22 MR. HALL: I have no other questions, your Honor.

23 THE COURT: Mr. Bax, anything further?

24 MR. BAX: Briefly, your Honor.

25 ROBERT THOMAS

1 RE-CROSS-EXAMINATION BY MR. BAX:

2 Q Mr. Thomas, you wrote a statement for law
3 enforcement that night, correct?

4 A Correct.

5 Q Do you recall if you said anything about his hand in
6 his pocket or being afraid of him being armed in your
7 statement?

8 A I couldn't tell you.

9 MR. BAX: Approach the witness, your Honor?

10 THE COURT: You may.

11 BY MR. BAX:

12 Q I'm just handing this to refresh your memory. Okay?
13 I just want you to take a look at that for me, please.

14 A Okay.

15 Q Now, with having a chance to look at that, Mr.
16 Thomas, does that refresh your memory about giving that
17 statement?

18 A A little bit.

19 Q Do you make any reference to his hand in the pocket
20 or being afraid he was armed?

21 A No, I do not.

22 MR. BAX: Thank you very much. No further
23 questions, your Honor.

24 MR. HALL: Your Honor, just a brief followup.

25 THE COURT: Of course.

1 MR. HALL: Thank you.

2 ROBERT THOMAS

3 RE-RE-DIRECT EXAMINATION BY MR. HALL:

4 Q It's your testimony here today that you believe that
5 Mr. Clemons had a gun?

6 A Correct.

7 Q It's your testimony today that there was a demand
8 made of you to give you the money?

9 A Yes.

10 MR. HALL: That's all I have. Thank you.

11 THE COURT: Anything further?

12 MR. BAX: No, your Honor.

13 THE COURT: Anyone object to Mr. Thomas being
14 excused?

15 MR. HALL: No.

16 MR. BAX: No, your Honor.

17 THE COURT: You are excused, sir. Thank you.

18 MR. HALL: Your Honor, may we approach?

19 THE COURT: You may.

20 MR. HALL: Thank you.

21 ON-THE-RECORD BENCH CONFERENCE,

22 OUT OF PRESENCE OF JURORS.

23 PRESENT: THE COURT, MR. HALL,

24 MR. BAX.

25 END BENCH CONFERENCE.

1 MR. HALL: Your Honor, if I may?

2 THE COURT: You may.

3 MR. HALL: Thank you. The State calls John
4 Eisenhower.

5 THE COURT: You all okay? Anyone need a break?
6 Come on forward, Mr. Eisenhower. Right up through here.

7 BAILIFF: Right this way, please. If you will, go
8 right up there to be sworn.

9 MADAM CLERK: Would you place your left hand on the
10 Bible, and raise your right hand for me, please? Right
11 here, sir. Do you solemnly swear to truthfully answer
12 all questions asked of you by this Court, so help you
13 God?

14 JOHN EISENHOWER: Yes, ma'am.

15 MADAM CLERK: Please be seated. State your name and
16 spell it for the Court, sir.

17 MR. EISENHOWER: My name is John Eisenhower.
18 Eisenhower, E/i/s/e/n/h/o/w/e/r.

19 THE COURT: Thank you.

20 JOHN EISENHOWER

21 DIRECT EXAMINATION BY MR. HALL:

22 Q Good morning, Mr. Eisenhower.

23 A Good morning.

24 Q Where do you currently work?

25 A Kangaroo.

1 Q And where is that located?

2 A 845 Robert Smalls Parkway.

3 Q Do you know what town or city that's in?

4 A I'm pretty sure that's Beaufort.

5 Q Is it in Beaufort County?

6 A Yeah.

7 Q Okay. Were you working there on December 24, 2011?

8 A Yes, sir.

9 Q And while you were working there, did anything
10 unusual happen?

11 A Yes.

12 Q And can you tell the jury what it was that you saw?

13 A Well, I seen a young, black male running in the
14 dark, said this was a robbery.

15 Q Okay. Let me stop you there for a sec. Did you
16 happen to see what this young man was wearing?

17 A He had a plaid jacket. Had his hand in his right
18 pocket, and a ski mask.

19 Q Now, the hand in the pocket, did that signify
20 anything to you?

21 A Oh, yeah.

22 Q And what was that?

23 A Well, I thought he had a weapon.

24 Q So, he enters the store. What happens next?

25 A He ran in the store. Went around to the other

1 attendant, Robert. Took a hundred dollars out of his
2 hand.

3 Q Okay. Did you hear him say anything?

4 A Yes.

5 Q What did he say?

6 A He told him, *give me the money.*

7 Q And who was he saying that to?

8 A I guess the both of us.

9 Q Okay. You saw him take money from Mr. Thomas?

10 A Yes.

11 Q And after he took money from Mr. Thomas, what
12 happened next?

13 A He ran over to me. Went onto my -- the right side
14 of me. Now, at that time, I was trying to do a
15 transaction with a customer. I had my drawer open. And
16 like I said, he came around the side and started taking
17 money out of my drawer, with his right hand.

18 Q Okay. And the fact that he was doing it with his
19 right hand told you what?

20 A Told me that he wasn't armed.

21 Q And what is the normal -- the regular policy of the
22 Kangaroo Pantry with respect to robberies of any kind?

23 A To just let them take it.

24 Q Okay. What made you decide to kind of buck the
25 policy?

1 A Well, when he took -- when he had taken his hand out
2 of his -- out of his pocket, I realized that he wasn't
3 armed.

4 Q And we're talking about which hand, specifically?

5 A His right hand.

6 Q His right hand. And so, after you decided -- after
7 you saw the right hand, what happened next?

8 A He started taking the money out of the drawer. I
9 took it back from him. And he snatched it again, and ran
10 back. And that's when I turned around and grabbed him.

11 Q Okay. And what happened after you grabbed him?

12 A We wrestled, and I knocked him to the floor.

13 Q Did you have any help?

14 A Yes. Then, Robert came over and -- well, we all
15 struggled.

16 Q Okay.

17 A All three of us.

18 Q I know it must have seemed like an eternity, --

19 A God.

20 Q -- but how long do you think you had him down there
21 on the ground?

22 A Well, it felt -- it felt like a good 20 minutes. I
23 mean, I was out of breath and everything.

24 Q And how many of you were holding him down?

25 A Me, Rob, and I think there was another guy, a

1 customer.

2 Q Okay. Was Mr. Clemons making any statements to you
3 all while you were holding him down?

4 A Yes, sir. He was telling me, *please let me go.*

5 MR. BAX: Objection, your Honor.

6 THE COURT: Okay. Again.

7 MR. BAX: Can we approach?

8 THE COURT: You may.

9 ON-THE-RECORD BENCH CONFERENCE,

10 OUT OF PRESENCE OF JURORS.

11 PRESENT: THE COURT, MR. HALL,

12 MR. BAX:

13 END BENCH CONFERENCE.

14 BY MR. HALL:

15 Q Mr. Eisenhower, I'll withdraw that last question.
16 Please don't answer it.

17 MR. HALL: If I could have a moment, your Honor.

18 THE COURT: You may.

19 MR. HALL: Thank you. I don't have any other
20 questions of this witness at this time, your Honor.

21 THE COURT: Mr. Bax?

22 MR. BAX: May it please the Court, your Honor?

23 THE COURT: Yes, sir.

24 MR. BAX:

25 JOHN EISENHOWER

CROSS-EXAMINATION BY MR BAX:

Q I believe it's still morning, so good morning, Mr. Eisenhower. How are you doing?

A Good morning, sir.

Q Thank you for being here. Mr. Eisenhower, just a few questions for you. You testified that he came in the store; came around; had some interaction with Robert; and then, came to you, correct?

A Yes, sir.

Q Can you tell us, as best you can remember, how long between the time that he came in the store, and the time he came and made contact with you? How long was that?

A It -- it was just seconds.

Q Seconds. Okay. And when he -- when did you notice him? Did you notice him as soon as he came in the store?

A Soon as he came in. He slammed the door open and ran in.

Q Okay. So, he was moving fairly quickly. Is that correct?

A Yes.

Q Okay. And he went right around the counter, correct?

A Yes, sir.

Q Could you see his hands before he got around the corner?

- 1 A Yes.
- 2 Q Okay. Did he have both hands in his pockets?
- 3 A No.
- 4 Q Just one hand in his pocket. What was he doing with
5 the other hand?
- 6 A The other hand, he was --
- 7 Q The other hand that was not in the pocket, what was
8 he doing with it?
- 9 A He was taking the money out of Rob's hand.
- 10 Q Okay. What was he doing with that hand before he
11 got to Robert, anything?
- 12 A Not that -- not that I know of. I don't remember.
- 13 Q Make sure you can speak up.
- 14 A Okay.
- 15 Q The court reporter has to take everything down.
16 Thank you Mr. Eisenhower. I apologize.
- 17 A Okay.
- 18 Q Let me say that again, so we don't miss anything.
19 Before he got to Robert with the other hand, nothing that
20 you are aware of?
- 21 A No.
- 22 Q Okay. Could you see that -- the other hand that was
23 not in the pocket, could you see that hand?
- 24 A The hand that wasn't? Yes.
- 25 Q Okay. All right. But you don't recall what he was

1 doing with that.

2 A No.

3 Q Okay.

4 A Not as he was going around the counter.

5 Q Okay. And then, the time between -- well, let me
6 ask you this. He moved at a fairly fast clip and got
7 around the corner. After he got inside the counter or
8 through the little door there at the counter, how long
9 before he got to you and was reaching in the --

10 A It was a split second.

11 Q Okay. Now, so, your testimony is, is that you
12 observed his hand in his pocket, and you were afraid he
13 was armed in that split second.

14 A Yes, sir.

15 Q Okay. But you very quickly became aware that he was
16 not. Is that right?

17 A Yes.

18 Q As I believe your testimony was, when he started
19 grabbing money with that right hand, you knew he wasn't
20 armed, right?

21 A Right.

22 Q Okay. And because he wasn't armed, did that impact
23 your decision to get into a physical scuffle with him?

24 A My adrenaline was going.

25 Q Now, this individual, was he taller or shorter than

1 you?

2 A A little taller.

3 Q A little taller, okay. But that didn't stop you
4 from grabbing him when you realized he wasn't armed. Is
5 that right?

6 A No.

7 Q Okay. And you were successful in subduing him,
8 correct?

9 A Yes, sir.

10 Q In fact, he never left the store.

11 A No.

12 Q Until the cops came.

13 A Yes, sir.

14 Q Okay. And I think you testified before, it felt
15 like about 20 minutes that you were keeping him down.

16 A Yes, sir.

17 Q And you had the aid of probably two other people.

18 COURT REPORTER: Is that yes?

19 A Yes, ma'am.

20 Q I'm sorry. We've got to ask you to --

21 A Okay.

22 Q I know what the nod means; the jury knows what the
23 nod means; but she's got to take it down. I apologize.

24 Let me get back on track here. You all had him
25 detained until the police arrived, but was there any

1 other patrons that were helping you all during that time
2 in any way?

3 A As far as I know, there was one other guy, and it
4 was a customer.

5 Q Uh-huh. And he actually came behind the counter and
6 helped hit that button again, right?

7 A Yes.

8 Q Okay. And do you recall if he took the phone that
9 comes with the business and called 911 for you all again?

10 A Yes, he -- uh, no. No.

11 Q Do you remember if he made a phone call with the
12 phone?

13 A I'm not sure. He did push the button.

14 Q Um-hmm.

15 A Several times.

16 Q Um-hmm.

17 A As far as I knew, Rob got the phone and called the
18 cops.

19 Q Okay. Do you remember if he ever picked up the
20 phone and handed it to Rob?

21 A Yes.

22 Q Is that what happened?

23 A Yes.

24 Q Okay. And so, Robert was actually able to help you
25 all, and have his hand on the phone.

1 A Yeah.

2 Q Now, this individual, could you, from your
3 observations, estimate how tall he was?

4 A I don't know. It just hap -- it just happened so
5 fast. He was a little taller than me.

6 Q A little taller than you. And obviously, with
7 holding him down for ten or 20 minutes, whatever it was,
8 could you estimate how much he weighed?

9 A I would say 155 maybe, 150.

10 Q Was he a thin guy?

11 A He -- he was thin.

12 Q He was a thin guy?

13 A Yeah.

14 Q Okay. Now, we obviously have seen the video. Let
15 me ask you this. Were you aware that there was a
16 surveillance video through the store?

17 A Yes, sir.

18 Q Okay. Were you aware of the fact that one of your
19 co-employees came and gave a copy of that video to law
20 enforcement?

21 A Yes, sir.

22 Q Okay. And you, in fact, gave a statement to law
23 enforcement that night. Is that right?

24 A Yes, sir.

25 Q Have you watched that surveillance video?

1 A Yes.

2 Q Okay. Now, you certainly appear un-scared and
3 somewhat heroic in that role. Were you scared, or?

4 A Oh, I was scared.

5 Q You were scared? Okay. All right. And like you
6 said, split second. Okay. Let me ask you briefly. Have
7 you ever been convicted, upon a plea of guilty, for DUI
8 in another state?

9 A Yes, I have.

10 Q And do you have a pending charge of CDV, or criminal
11 domestic violence, here in South Carolina?

12 MR. HALL: Your Honor, may we approach?

13 THE COURT: You may.

14 MR. HALL: Thank you.

15 ON-THE-RECORD BENCH CONFERENCE,

16 OUT OF PRESENCE OF JURORS.

17 PRESENT: THE COURT, MR. HALL,

18 MR. BAX.

19 END BENCH CONFERENCE.

20 BY MR. BAX:

21 Q Thank you, Mr. Eisenhower. Briefly, do you still
22 work with that same convenience store?

23 A Yes, sir.

24 Q Okay. All right. And any other jobs?

25 A No.

1 MR. BAX: That's it? Okay. All right. Thank you
2 very much. No further questions.

3 THE COURT: Mr. Hall?

4 MR. HALL: Thank you, your Honor. Just a couple.
5 Maybe even just one.

6 JOHN EISENHOWER

7 RE-DIRECT EXAMINATION BY MR. HALL:

8 Q Mr. Eisenhower, Mr. Bax referred briefly to a
9 domestic violence charge. Are you aware with what
10 happened to that charge?

11 A Yes, that was supposed to be dropped.

12 MR. HALL: Okay. Thank you. That's all I have.

13 THE COURT: Anything further?

14 MR. BAX: No, your Honor.

15 THE COURT: Okay. Any objection to Mr. Eisenhower
16 being excused from anyone?

17 MR. HALL: No.

18 MR. BAX: No, your Honor.

19 THE COURT: You are excused, sir. Thank you.

20 A Thank you.

21 THE COURT: All right. Mr. Hall?

22 STATE RESTS:

23 MR. HALL: With that, the State rests, your Honor.

24 BY THE COURT:

25 THE COURT: All right. Ladies and gentlemen of the

1 jury, at this time, the State has rested their case.
2 What I'm going to do is this. I'm going to send you back
3 to your jury room. Again, I'm going to ask you not to
4 discuss your case -- or this case as of yet. It wouldn't
5 be appropriate to do so at this time. I am going to
6 speak with the lawyers about scheduling. I think very
7 shortly I'm going to go ahead and send you to an early
8 lunch, and then, bring you all back, where, my
9 understanding is, we're going to conclude this case
10 today.

11 Ladies and gentlemen, again, do not discuss the
12 case. It wouldn't be appropriate to do so. And we'll be
13 right back with you. Okay?

14 BAILIFF: Thank you, your Honor.

15 JURORS LEAVE COURTROOM 11:21 A.M.

16 BAILIFF: The jury is clear, your Honor.

17 THE COURT: All right. Let's hear motions. And
18 then, we will -- I'll go over your client's rights with
19 him. Okay? And then, we'll send the jury to lunch. I
20 just want to make sure -- and if you don't intend on
21 putting anyone up, Mr. Bax, I think maybe I'll have you
22 rest before the jury before they come back from lunch.
23 Sometimes there's kind of an expectation that something
24 more is going to happen. So, I think it's sometimes
25 better to let them know when they go that this is it.

1 Okay?

2 MR. BAX: Certainly, your Honor. Your Honor, I want
3 to ask one brief favor of the Court.

4 THE COURT: Sure.

5 MR. BAX: My inestimable partner has looked up some
6 case law for me.

7 THE COURT: Okay.

8 MR. BAX: And I don't want to quote it wrong to you.

9 THE COURT: Okay.

10 MR. BAX: If we could have two minutes to consult,
11 so I know which cases I'm referring to, so I do it
12 correctly on the record.

13 THE COURT: Absolutely.

14 MR. BAX: If that's no problem.

15 THE COURT: Not a problem at all. Let's go ahead
16 and take about five minutes, and then, we'll come back.
17 No problem, you all.

18 MR. BAX: Thank you, your Honor.

19 THE COURT: Thank you.

20 MR. BAX: I appreciate it.

21 THE COURT: Thank you all.

22 OFF THE RECORD 11:22 A.M.

23 BACK ON THE RECORD 11:33 A.M.

24 MOTION FOR DIRECTED VERDICT:

25 THE COURT: All right. Any motions?

1 MR. BAX: Yes, your Honor. The Defense, at this
2 time, would be moving for a directed verdict of dismissal
3 of the armed robbery. Your Honor, the Defense's position
4 is that the State has failed to prove the elements of
5 armed robbery, which is what we're here on. That's the
6 indictment that we have.

7 Your Honor, the case law concerning armed robbery,
8 which I'm sure your Honor is well aware of, you have two
9 choices as the prosecution. You can either allege that
10 the person was armed, and that you intend to prove that
11 there was a weapon. Or you must allege in the indictment
12 that this was an armed robbery due to the defendant,
13 through actions or words, alleging that he was armed.

14 THE COURT: Hold on for a second. I'm sorry, I
15 don't mean to interrupt you.

16 MR. BAX: That's all right.

17 THE COURT: Go ahead, I'm sorry.

18 MR. BAX: That's all right, your Honor. That the
19 defendant was alleging, either by actions or words, that
20 he was armed while using a representation of a deadly
21 weapon. The case law talks about the fact that that is
22 not an or; that is an and; that you have to have both.
23 You have to, through actions or words, allege that you
24 are armed. Obviously, the case law does say you don't
25 actually have to say, I have a gun, which no one has

1 testified to in this case. Obviously, no --

2 THE COURT: It's clear that we're talking about
3 actions with the finger under the jacket.

4 MR. BAX: Well, your Honor, I would point to the
5 testimony. No one has testified that there was a finger
6 or point. Everyone has testified very specifically. Mr.
7 Thomas --

8 THE COURT: Go ahead.

9 MR. BAX: Thank you, your Honor. The testimony from
10 Mr. Thomas and from Mr. Eisenhower was quite clear that
11 he had his hand in his pocket, period. They never said
12 that he lifted the shirt up with his finger juttet out;
13 that there was any kind of pointy object presented
14 through the pocket. None of that was ever testified to.
15 They only said his hand was in his pocket, period. End
16 of story.

17 Your Honor, they have failed to prove the required
18 second prong of that aspect of armed robbery. A
19 representation of a deadly weapon is required. The
20 assumption from these clerks that his hand in his pocket
21 meant that he was armed does not constitute meeting that
22 requirement.

23 Your Honor, I would cite *State v. Jones* at 342 South
24 Carolina 248, where the defendant did not point the
25 finger. As a result, that was considered not meeting the

1 requirements. And if I misquote this, I apologize,
2 because I've kind of quickly been briefed on it. But you
3 had the lines that it was not pointed at. So, *State v.*
4 *Jones*, the reason that that was not considered meeting
5 the elements of armed robbery was because there was no
6 finger pointed through a pocket or otherwise.

7 *State v. Muldrow* also talked about the fact that the
8 and is important:

9 *While armed with a deadly weapon or*
10 *alleging to be armed, and using a*
11 *representation of a deadly weapon.*

12 I think the argument here is that they have alleged
13 that he, through actions or words, represented that he
14 might be armed, but there has been absolutely no
15 testimony, your Honor, that he presented any
16 representation of a weapon.

17 THE COURT: So, you're saying that no one testified
18 that there was actual finger pointing.

19 MR. BAX: That's correct. There was no represen --
20 a hand in your pocket, Judge, mine's sewed up right now.
21 But just putting your hand in your pocket, number one,
22 that is not, in and of itself, as you're walking down the
23 street, an illegal action. Obviously, going behind the
24 corner and grabbing money is not legal, but you still,
25 for armed robbery -- and I think the case law here is

1 clear -- and there is the -- that language is quoted in
2 the indictment, your Honor. They have correctly quoted
3 that language with the word *and* in there.

4 *While using the representation of a deadly*
5 *weapon*, that's not been testified to at all. They can't
6 meet the elements of armed robbery.

7 Additionally, your Honor, other cases that stand for
8 the same proposition, *State versus Amin* at 578 Southeast
9 2nd 32. That's a 2003 case. Also talks about the fact
10 that it is required that it has to be both. There's two
11 prongs when you're using -- when you're using the
12 allegation of someone representing that they were armed,
13 even when they weren't, that you have to meet both. You
14 have to have the actions or the words, and you have to
15 have a representation of a weapon. And they just -- they
16 just fall short here.

17 The testimony, they've had their witnesses on the
18 stand. They had the opportunity to ask the questions.
19 Both witnesses, the clerks, Mr. Thomas and Mr.
20 Eisenhower, were very clear; he just had his hand in his
21 pocket. They clearly did not say that he ever pointed at
22 them, lifted it, finger jutting out; and then, he pulled
23 that hand out and started grabbing money. And as a
24 result, was tackled to the ground and restrained. And
25 afterwards, you've seen what's happened. I mean, it's

1 all there for us to see.

2 So, the directed verdict motion here, your Honor, is
3 for dismissal of armed robbery. They have not met the
4 elements.

5 THE COURT: Mr. Hall?

6 MR. HALL: Your Honor, I believe we've met all of
7 the elements. In fact, I'd point to one of the cases
8 cited by Mr. Bax. It's *State v. Muldrow*. I think Mr.
9 Bax is -- I don't want to say he's misquoted, but what
10 the Court of Appeals has said in this case is that it
11 requires that either the robber allege he or she was
12 armed while using a representation of a deadly weapon, or
13 that the robber alleged he or she was armed while using
14 any object that a person present during the armed robbery
15 reasonably believed to be a weapon.

16 We have testimony in this case that Eisenhower
17 believed that Mr. Clemons had a weapon on him. Rob
18 Thomas testified that he believed that Mr. Clemons had a
19 gun on him. I think both of those are satisfied by the
20 testimony, and I think there's more than enough evidence
21 to go forward on an armed robbery charge.

22 MR. BAX: Briefly, in response, your Honor, and also
23 my apologies. There's another element here that I wanted
24 to address, and I forgot to do that, so I'd like to put
25 that on the record.

1 Number one, in response to the State's argument,
2 *State v. Jones*, as well as *State v. Muldrow* -- and I
3 don't know if I put the cite on the record, your Honor.
4 I think *State v. Muldrow* is 348 South Carolina 264. But
5 they talk about the fact that -- I think the situation
6 here is that they're saying the hand in the pocket is the
7 actions that led them to believe that he was armed. You
8 can't use it for both. You can't say that was the action
9 and the representation, because it's not. They did not
10 say that there was anything that was a representation.
11 They said the fact that he would pocket -- his hand was
12 in his pocket.

13 THE COURT: Where does the case law say that the
14 action cannot be both the action and the representation
15 of a deadly weapon?

16 MR. BAX: Well, your Honor, because of the fact that
17 both *Muldrow*, *Amin*, and *State v. Jones* all talk about the
18 fact that it's two prongs. How can you have one action
19 satisfy both prongs? Otherwise, you wouldn't have two
20 prongs. You wouldn't have it at the end of that.

21 THE COURT: It doesn't say, though, and. The case
22 law that I'm looking at is that the robber alleged that
23 he or she was armed with a deadly weapon, either by
24 action or words, while using a representation of a deadly
25 weapon.

1 MR. BAX: And your Honor, our argument is that while
2 using the representation of a deadly weapon is the fatal
3 flaw here. Because of the fact --

4 THE COURT: You're stating it can't be both.

5 MR. BAX: I think it's taking it too far to say that
6 if your hand is in your pocket, that, alone, is a
7 representation of a weapon, your Honor. And I think that
8 the Courts are going to agree with that, in light of this
9 case law. You're taking it too far. In other words, the
10 idea here is that just having your hand in the pocket
11 without doing anything else, pointing, lifting it up,
12 doing that; without that, you're stretching that too far.
13 He never -- there's been no testimony that he said, I
14 have a gun. There's been no testimony that he pointed or
15 that they had some kind of pointing through the --

16 THE COURT: What did the video show? What did the
17 video show when he was running in and had his hand in his
18 pocket?

19 MR. HALL: It showed him with his hand in his
20 pocket. And I mean, also, there was testimony that there
21 was a demand for money made, in conjunction with the hand
22 being in the pocket.

23 THE COURT: All right. I certainly understand your
24 argument, Mr. Bax.

25 MR. BAX: And I apologize, your Honor. The second

1 aspect that I didn't get a chance to go into, just to
2 make sure I do, because I think it's important, is,
3 asportation in this case has not been proven either. The
4 video, the testimony was that the individual had took
5 some money from Mr. Thomas, and moved to Mr. Eisenhower,
6 which was further in behind the counter. He never made
7 it any further than that.

8 Your Honor, the case law talked about the fact that
9 asportation doesn't just have to be taking one step. You
10 have to take a step towards relative freedom or toward
11 some kind of relative escape. He never made it to any
12 kind of escape, your Honor. He went to the next source
13 of loot or stolen goods, and was in the process of taking
14 those goods, by the testimony, when he was, basically,
15 apprehended by the clerks. There was no step towards the
16 door. There was no reaching any kind of relative
17 freedom. It doesn't require that you necessarily can get
18 all the way away from the location, but -- and I would --

19 THE COURT: Lasandra?

20 MR. BAX: -- quote to you. This is out of a case --
21 let me cite it, if your Honor would allow, and then, go
22 back down to it. Your Honor, this is *State versus Moore*.
23 This is a South Carolina appellate case from 2007. It
24 can be found at 649 Southeast 2nd 84. And let me get
25 back to the section here that I wanted to reference. A

1 moment's indulgence. Okay. I got it.

2 Your Honor, quoting from that case, it says:

3 In instances where -- when a thief must
4 use force to retain the stolen property, the
5 thief does not acquire full possession of
6 the property until the force of threat of
7 force has overcome the custodian's resistance
8 to the taking.

9 He didn't overcome these clerks' resistance to his
10 taking. He never did.

11 THE COURT: How do you explain, though, that he put
12 his right hand or right arm around, took a hundred dollar
13 bill out of Anderson's [sic]; and then, walked to the
14 next guy, and was attempting or going to take money from
15 that till that was open before Anderson [sic] tackled
16 him?

17 MR. BAX: Well, it's -- the problem is, and that's
18 exactly what this is talking about. It's a continuous
19 action. He was not done. He was in the act of, and
20 never overcame their resistance.

21 As your Honor has seen from the video, Mr. Thomas,
22 after having some money taken from him, turns and looks
23 at Mr. Eisenhower with his arms down on the loose, and as
24 soon as Mr. Eisenhower begins to have a physical
25 altercation with the individual, he joins in. So, the --

1 he was never over -- he never overcome -- overcame --
2 excuse me -- their resistance to his taking. And in
3 fact, was not successful. He was not successful. It
4 says that:

5 *Thus, a taking is not complete. That*
6 *is to say, has not come to an end until*
7 *the perpetrator has neutralized any*
8 *immediate interference with his or her*
9 *possession. This does not mean, of*
10 *course, that a thief has not committed*
11 *a robbery or larceny unless or until*
12 *the resistance of possession is overcome.*

13 However, it says the point of asportation still has
14 to be -- it's not absolutely determinative.

15 *The criminal guilt of the crime, and not*
16 *merely an attempt. If he moves the stolen*
17 *goods a short distance, the crime is ongoing*
18 *until the thief has reached a place of temporary*
19 *safety.*

20 *See Ball versus State.*

21 And that's a -- I mean, it's quoting a -- it says
22 347 MD 156, which, I believe, is a Maryland case. But
23 it's being quoted in a South Carolina case. So, that
24 makes it South Carolina law. And it says:

25 *The crime is ongoing until the thief*

1 has reached a place of temporary safety.

2 He never made that. He never got there. He just
3 didn't succeed, Judge. I think that's what we're trying
4 to say here. He just -- he didn't succeed.

5 THE COURT: I think that might be an argument for a
6 charge on attempted armed robbery or attempted, but I
7 think we all know case law says the slightest removal of
8 the property, or the complete removing of the property,
9 even for an instant. I mean, the case law says even for
10 an instant. And an instant can be from the one cash
11 register to another, is sufficient to show a taking and
12 carrying away of the property. I don't think he has to
13 succeed.

14 MR. BAX: Well, and your Honor, our position would
15 be going from one cash register to the next does not
16 constitute possession. I mean, if he had walked towards
17 the door, I think that would be a better way to say it,
18 but he was still in the act. He was still going to
19 another clerk. He was still taking stuff. He wasn't
20 even out of arm's length from these gentleman.

21 THE COURT: All right. Well, I respectfully
22 disagree with that. I think the case law is clear that,
23 if he removes the property or possesses it, even for an
24 instant, sufficient to show a taking and carrying away of
25 the property. Okay. That, we're not going to talk about

1 anymore, unless you want to put something else on the
2 record, Mr. Hall?

3 MR. HALL: I think in light of what the Court has
4 stated, I don't think there's anything I need to add.

5 THE COURT: Okay. All right. Other than those two
6 issues, anything else? They're very well-argued, by the
7 way. Thank you. I just want to make sure there was
8 nothing else.

9 MR. BAX: No, your Honor.

10 THE COURT: Okay.

11 MR. BAX: I mean, this is what's charged.

12 THE COURT: I understand.

13 MR. BAX: And the position is that they have not met
14 the elements.

15 THE COURT: I understand. Okay. I do think, based
16 or taking the evidence in the light most favored to the
17 State, based on the video and what it portrayed, based on
18 what the two alleged victims or clerks that were working
19 there, I think that they can find that -- I think the
20 jury can find that the defendant was armed with a deadly
21 weapon, or what appeared to be, by his actions, and while
22 using a representation of a deadly weapon. And I think
23 it's appropriate to send to the jury.

24 DEFENDANT'S RIGHTS, BY THE COURT:

25 THE COURT: Would you like for me to query your

1 client on whether he wishes to testify. And then, we'll
2 talk about the jury charge?

3 MR. BAX: That will be fine, your Honor.

4 THE COURT: Okay. All right. Sir, if you would
5 please stand, and I'm just going to go ahead and swear
6 you in, sir. If you'd just stand and raise your right
7 hand.

8 THE COURT: Sir, do you swear or affirm the
9 testimony you give will be the truth, so help you God?

10 DEFENDANT CLEMONS: Yes, ma'am.

11 THE COURT: All right, sir. And if you'll just
12 speak up for my court reporter. Sir, at this time, I'm
13 going to explain to you certain rights that you have. If
14 there's anything I say -- let me turn on my microphone --
15 if there's anything I say that you don't understand, sir,
16 I want you to stop me and ask me to explain it a
17 different way, or you can ask me questions. All right,
18 sir?

19 DEFENDANT CLEMONS: All right.

20 THE COURT: And you're going to need to speak up,
21 because I'm having a hard time hearing you. Okay?

22 DEFENDANT CLEMONS: Yes, ma'am.

23 THE COURT: Thank you. Sir, we've now reached the
24 stage in the trial where you may present your defense.
25 You have the right to claim the protections that are

1 given to you by the *Fifth Amendment* to the Constitution
2 of the United States, which states in part, sir, that no
3 person shall be compelled in any criminal case to be a
4 witness against himself.

5 Sir, this means you cannot be required to testify.
6 I also do want you to know that you have the right to
7 testify, if you choose. However, sir, no one can make
8 you testify. And understand, sir, that whether or not
9 you testify is a personal right, and no one can waive
10 your rights for you except you.

11 Sir, if you decide to testify, you'll be subject to
12 the same rules that govern other witnesses, and you may
13 be examined and cross-examined on any relevant issue in
14 this case.

15 In addition, sir, if you have any convictions
16 involving dishonesty or false statement, or for crimes
17 punishable by imprisonment for more than one year, and
18 the Court determines that the probative value of
19 admitting the evidence outweighs its prejudicial effect
20 to you, the Solicitor may be able to introduce your
21 record to attack your credibility.

22 Sir, I remind you that, if you decide to testify,
23 this decision on your part must be freely, voluntarily,
24 and intelligently made, with the knowledge of the
25 protections that are given to you under the *Fifth*

1 Amendment, and you must understand the consequences of
2 your decision to testify.

3 Sir, if you decide not to testify in this case,
4 during my instructions to the attorneys [sic], I am going
5 to tell them that the fact that you did not testify is
6 not to be discussed in any way back in the jury room, nor
7 to enter into their consideration of your guilt or
8 innocence in this case.

9 As you know, the State has the burden of proving
10 your guilt beyond a reasonable doubt, and that's not even
11 something they should consider or discuss.

12 Now, Mr. Clemons, have you understood what I've
13 explained to you?

14 DEFENDANT CLEMONS: Yes, ma'am

15 THE COURT: And have you had an opportunity to speak
16 with your lawyer about whether or not you wish to
17 testify?

18 DEFENDANT CLEMONS: No, ma'am.

19 THE COURT: Okay. Sir, my question is, is, has Mr.
20 Bax talked to you about whether or not you should
21 testify?

22 DEFENDANT CLEMONS: Yes, ma'am, he had spoke to me
23 about it, but I choose not to testify.

24 THE COURT: And that's fine, sir. I just want to
25 make sure you understand that this is your right. So,

1 it's my understanding from you now, sir, that you do not
2 wish to testify. Is that correct?

3 DEFENDANT CLEMONS: Yes, ma'am.

4 THE COURT: All right, sir. You may be seated.
5 Thank you. All right.

6 And I apologize. Our jury is still here. What I
7 wish to do now is bring them back in here. I'll go ahead
8 and have you rest for the record, Mr. Bax, in front of
9 the jury. I'm going to send them to lunch. And when we
10 come back, we will argue and charge. But I'm going to
11 ask that you all remain here after I send them to lunch,
12 and we'll go over the charge. All right? Okay.

13 Let's bring the jury in, Norman.

14 BAILIFF: Yes, ma'am.

15 THE COURT: Thank you.

16 BAILIFF: The jurors are entering, your Honor.

17 JURORS ENTER COURTROOM 11:54 A.M.

18 BY THE COURT:

19 BAILIFF: The jury is seated, your Honor.

20 THE COURT: Thank you. Welcome back, ladies and
21 gentlemen. All right. Mr. Bax?

22 DEFENSE RESTS.

23 MR. BAX: Thank you, your Honor. The Defense rests
24 at this time.

25 THE COURT: Ladies and gentlemen of the jury, at

1 this time, the Defense also rests. We're going ahead and
2 take our lunch break, because there are further matters
3 of the law that I need to take up with the lawyers, and I
4 want to make sure you all get fed in a timely manner.

5 What we have left to do, ladies and gentlemen, is
6 hear the closing arguments of the lawyers, my charge on
7 the law, and we are going to send this case to you for
8 your deliberations today.

9 Ladies and gentlemen, by the clock back there, it's
10 about six or seven minutes to twelve. I am going to ask
11 that you be back in your jury room at 1:15, where we're
12 going to go ahead and finish up the trial of this case,
13 ladies and gentlemen. I don't want to do it any quicker
14 than that, because I know that I am going to be busy with
15 the lawyers, and I want to keep you -- try to keep you
16 from waiting.

17 Ladies and gentlemen, I need to remind you that,
18 even though you have heard all the evidence in this case,
19 you have not heard the arguments from the lawyers, nor my
20 charge on the law, and it would be inappropriate for you
21 to discuss this case with each other or with anyone else,
22 ladies and gentlemen. Additionally, it would be
23 inappropriate for you to do any independent research.

24 Go get a bite to eat, come back. We look forward to
25 seeing you all back in the jury room at 1:15, where we're

1 going to go ahead and conclude this case. Thank you.

2 BAILIFF: Thank you.

3 JURORS LEAVE COURTROOM 11:56 A.M.

4 ON-THE-RECORD DISCUSSION REGARDING

5 JURY CHARGE. PRESENT: THE COURT,

6 MR. HALL, MS. LEMPESIS, MR BAX:

7 BAILIFF: The jury is clear, your Honor.

8 THE COURT: Okay. All right. Mr. Bax, --

9 MR. BAX: Yes, your Honor.

10 THE COURT: -- what is your position on what you
11 would like charged as far as substantively? Obviously,
12 I'm charging armed robbery. Is there any other lesser
13 includeds you would like charged?

14 MR. BAX: Yes, your Honor. I would like the jury
15 also be charged with attempted armed robbery, as well as
16 strong armed robbery.

17 MR. HALL: For the record, I think the State would
18 oppose those lesser included charges. I think the
19 evidence that's been produced at trial supports the armed
20 robbery charge, and it does not support the inclusion of
21 lesser included offenses.

22 THE COURT: All right. While I do --

23 MR. BAX: I'm sorry.

24 THE COURT: I'm sorry.

25 MR. BAX: I do just want to put on the record the

1 issue, as your Honor stated, on the directed verdict
2 motion about whether that element of armed robbery is met
3 for the purposes of being armed is a question. I mean,
4 that does go to the jury. And if they find that he's not
5 armed, then, it has to go to strong armed robbery.

6 THE COURT: I agree with you. I plan on charging
7 stronged arm -- or, excuse me -- strong armed robbery, as
8 well. The attempted armed robbery -- and I apologize;
9 I'm trying to pull it up again. Has anyone looked at
10 exactly the charge for it?

11 MR. BAX: I have Anderson's book here, and I was
12 just going to -- I mean, that's where I usually go to
13 with that. Their general charge on attempted armed
14 robbery is fine with me, out of Anderson's black charge
15 book, Judge.

16 THE COURT: Okay. I'm going to look and see what we
17 have in the bench book versus -- the one thing I am a bit
18 concerned is it can get somewhat convoluted when we're
19 charging three different things. I will tell you right
20 now, my intent is, is to send this entire charge to the
21 jury. I just think for clarity purposes, so they will be
22 able to understand, that is my intention.

23 Anything else, other than the -- pretty standard,
24 everything else I am going to charge. And I can go
25 through it with you all. I think you both have tried

1 plenty of cases with me. I, obviously, charge a
2 presumption of innocence; reasonable doubt; that the
3 jurors are the finders of fact; I'm the judge of the law.
4 I charge direct and circumstantial evidence; how to weigh
5 the credibility of the witnesses; if the defendant did
6 not testify is not to be discussed back in the jury room.
7 Do you want me to charge criminal intent?

8 MR. BAX: A moment's indulgence, your Honor.

9 Your Honor, I don't require that that be charged. I
10 don't see that that's an issue in question in this case,
11 your Honor.

12 THE COURT: Okay.

13 MR. BAX: And to make this more brief as much as
14 possible, of course, there's no need for it.

15 THE COURT: Okay. All right. Anything else as far
16 as -- I'm going to then charge, obviously, armed --
17 excuse me -- armed robbery, strong armed robbery. And
18 I'm going to go back and look at the attempted charge,
19 just to double-check to make sure we aren't overlapping.

20 Yes, sir.

21 MR. HALL: I guess my -- and the Court will
22 determine that when it looks, but with, specifically,
23 attempted armed robbery, if it's the asportation issue, I
24 think that's already been addressed in that directed
25 verdict portion of this.

1 My only concern with respect to the robbery
2 instruction is that it obviously includes the basis of my
3 case for the armed robbery is that, obviously, the people
4 that were being robbed believed that Mr. Clemons was
5 armed with a gun. And that's that statute that I,
6 obviously, paraphrase right now the statute, but it is
7 statutory language. I just want to make sure that that's
8 included in the armed robbery jury instruction.

9 THE COURT: Yes, sir.

10 MR. BAX: Your Honor, as far as the armed robbery
11 charge, in looking at your request to charge by Judge
12 Anderson, the number -- what I have done in the past and
13 what I've requested is, when there is not -- when they're
14 not going forward on the idea that this individual had a
15 weapon, we can leave out Number 2, where it says:

16 *While armed with a pistol, dirk,*
17 *slingshot.*

18 There's no need to go into that, because it says --
19 or we can go into Number 3, which is what they're
20 alleging:

21 *While alleging either by actions or*
22 *words, he was armed while using a representation*
23 *of a deadly weapon or any object which a person*
24 *present during the commission of the robbery*
25 *reasonably believed to be a deadly weapon.*

1 THE COURT: Okay.

2 MR. BAX: I'm fine with that. That's got the
3 believed word that Mr. Hall wants.

4 THE COURT: He's looking for. Okay.

5 MR. HALL: And your Honor, that is language directly
6 out of the statute, as he was reading it, so.

7 THE COURT: And that's fine. Okay. All right.
8 Anything else, you all?

9 MR. HALL: Nothing from the State.

10 MR. BAX: I don't believe so, your Honor.

11 THE COURT: Okay. All right, you all. Yes.

12 MR. BAX: For record purposes, your Honor, my
13 understanding's always been that, after I rest, I have to
14 re-make my motions.

15 THE COURT: Absolutely.

16 MR. BAX: So, for the record, at this time, I
17 re-assert all my previous motions made during the course
18 of this trial, including the directed verdict motion made
19 at the conclusion of the State's case, and cite all the
20 arguments made so far as reasons for those to be granted.

21 THE COURT: All right. Thank you. And
22 respectfully, I am denying all those motions, based on my
23 earlier stated grounds. I appreciate that. Anything
24 else, you all, other than you all be at ease until 1:15,
25 and we'll go ahead and finish up this case.

1 MR. HALL: Thank you.

2 MR. BAX: Thank you, your Honor.

3 THE COURT: Okay. Thank you all.

4 OFF THE RECORD 12:02 P.M.

5 BACK ON THE RECORD 1:30 P.M.

6 BY THE COURT:

7 THE COURT: Let's go forward.

8 All right, you all, let's talk about the charge.

9 I've given you both the portions of armed robbery and
10 strong armed robbery. I will tell you that I am not
11 going to charge Anderson's armed robbery and strong armed
12 robbery. It's so convoluted, by the time you're done
13 explaining it to them what in the world the difference is
14 between an armed robber, a robbery, and a larceny, I
15 don't think they can understand what's going on.

16 So, let me hear from you, Mr. Hall, as far as the
17 charge is concerned. Anything additional?

18 MR. HALL: I have no additions. It appears that the
19 State would be fine with the charge as is.

20 THE COURT: Okay. From the Defense.

21 MR. BAX: Your Honor, on the armed robbery charge, I
22 am not familiar with this particular language. I haven't
23 seen --

24 THE COURT: Which one?

25 MR. BAX: Well, --

1 THE COURT: Which portion of it?

2 MR. BAX: Well, specifically, the second paragraph
3 under armed robbery. It says:

4 *Property is in the presence of a*
5 *person if it is within the person's reach,*
6 *inspection, observation, or control.*

7 THE COURT: That's straight from Anderson.

8 THE COURT: That portion is straight -- that portion
9 is straight from Anderson.

10 MR. BAX: Okay. And it looked to me like there was
11 portions from Anderson's. It's just reversed the order
12 that he has it in.

13 THE COURT: My problem, again, like I said, is, with
14 Anderson, you have to say that he committed a robbery;
15 you've got to talk about the while alleged. And then, he
16 goes on to robbery; and then, he goes on and defines
17 larceny. And by the time you're done, as much as I love
18 Judge Anderson, he is incredibly verbose, and we all know
19 that. So, I don't want to confuse this jury. I think
20 it's already difficult enough without it.

21 But other than that portion of it, --

22 MR. BAX: The reason I just asked is because I
23 thought that -- and I may be incorrect. I'm trying to
24 look at the exact language in here, was that it's:

25 *Properties in the presence of a person.*

1 I thought that was supposed to be:

2 *Properties in the possession of a person.*

3 It's not --

4 THE COURT: It's presence of a person. It's
5 presence of a person. If you go to Page 61 of
6 Anderson's.

7 MR. BAX: I'm there.

8 THE COURT: First paragraph, where it says, starts,
9 larceny. And then, it says:

10 *A thing is in the presence of a person.*

11 Do you see that portion of it?

12 MR. BAX: Where it starts:

13 *Larceny is the felonious taking and*
14 *carrying away of goods of another?*

15 THE COURT: No. No, the paragraph above it.

16 MR. BAX: Oh.

17 *Robbery is larceny from a person*
18 *or immediate presence of another.*

19 THE COURT: Keep going.

20 MR. BAX: *A thing is in the presence of --*

21 THE COURT: *In the presence of a person.*

22 MR. BAX: Your Honor, I'm fine with the language.

23 The only other thing I wanted to ask your Honor was I
24 thought that -- and I don't know that I'm objecting to
25 this.

1 THE COURT: Okay.

2 MR. BAX: So, I'm just stating it for the record. I
3 have written down that your Honor had ruled prior to the
4 lunch break that you were charging armed robbery,
5 attempted armed robbery, and strong armed robbery.

6 THE COURT: I actually did not rule on attempted.

7 MR. BAX: Okay.

8 THE COURT: Armed robbery. And I looked -- went
9 back and looked at the intent charge, and I can tell you
10 that, based on the facts that I've heard in this case;
11 that he went around; that he actually took a hundred
12 dollar bill out of one of the tills; and began to leave;
13 I don't think there's any possible way a jury could
14 conclude or that the facts support a charge for attempted
15 armed robbery. I think it's either armed robbery or it's
16 a strong armed robbery, one or the other. But I just
17 don't see the facts in this case supporting it.

18 I will tell you that I looked at it twice. I read
19 and went through. What occurred in this was more than an
20 attempt.

21 MR. BAX: Your Honor, we're not going to object to
22 that ruling.

23 THE COURT: Okay.

24 MR. BAX: Armed robbery and strong armed robbery is
25 fine by us.

1 THE COURT: Okay.

2 MR. BAX: Okay?

3 THE COURT: Anything else as far as the charge? The
4 one thing I wanted to make sure, that the strong armed
5 robbery is quite short as far as the charge is concerned;
6 that it accurately reflects exactly what strong armed
7 robbery is. I can't imagine the Defense would want me to
8 get anymore definitive about it, but you're -- or either
9 side. But I mean, it flat out is what it is. So, unless
10 no one has any objection to that portion of it either, I
11 think we're good to go. Okay?

12 MR. BAX: No objection, your Honor.

13 THE COURT: Okay?

14 MR. HALL: None from the State, your Honor.

15 THE COURT: Okay.

16 MR. BAX: And for the record, your Honor, just to
17 make sure we've gone over this, I've discussed it with
18 Solicitor Hall; since I have not presented any evidence,
19 I'm presuming I get last argument, and I believe he
20 agrees, just to make sure.

21 THE COURT: He didn't put anything in, so.

22 MR. HALL: That's correct.

23 THE COURT: He gets last argument. All right.

24 MR. BAX: Thank you.

25 THE COURT: Gentlemen, give me an estimate or

1 guesstimation on how long you're going to charge -- or,
2 sorry, or how long are you going to argue.

3 MR. HALL: If I go more than five minutes, I'd be
4 surprised.

5 THE COURT: Okay. Well, you can go more than that,
6 if you would like, but you're welcome to. Mr. Bax?

7 MR. BAX: Just based on my own fallacy of verbosity,
8 I --

9 THE COURT: You will be longer than five minutes.

10 MR. BAX: I will. I don't think I'm really going to
11 be longer than 15, though, Judge.

12 THE COURT: Okay. Very good. Okay. And both of
13 you have seen the verdict form. Is there any objection
14 from the State as to the verdict form?

15 MR. HALL: None from the State.

16 THE COURT: From the Defense?

17 MR. BAX: None, your Honor.

18 THE COURT: All right, you all. You ready to go?

19 MR. HALL: Yes, your Honor.

20 MR. BAX: Yes, your Honor.

21 THE COURT: For those of you in the back, I will
22 tell you that, out of respect for the attorneys, and we
23 want the jury paying attention to the attorneys, I want
24 to make sure no one moves or coughs or rolls their head
25 or anything during closing arguments or concerns. Just

1 keep your seats. If, after you hear their closing
2 arguments, if you don't want to stay and be dazzled by my
3 charge on the law, I suggest you get up and leave. I
4 will say that it's not exactly exciting, because the
5 doors are going to be locked after that. So, that's just
6 to let you know. Okay? As you see, the people with
7 experience are leaving.

8 All right. All right. Let's bring them on in,
9 Norman.

10 BAILIFF: Yes, ma'am.

11 Your Honor, the jury is entering.

12 JURORS ENTER COURTROOM 1:38 P.M.

13 CHARGE TO JURORS, BY THE COURT:

14 BAILIFF: All right, your Honor, jury is seated.

15 THE COURT: Thank you. Welcome back, ladies and
16 gentlemen. I trust you all had a good lunch. At this
17 time, you are going to hear the closing arguments from
18 the attorneys. I am going to charge you on the law
19 that's applicable to this case, and we're going to send
20 it to you for your deliberations. All right? So, if
21 you'd give Mr. Hall your attention, please.

22 MR. HALL: Thank you. May it please the Court?

23 THE COURT: Yes, sir.

24 MR. HALL: Mr. Bax.

25 CLOSING ARGUMENT ON BEHALF OF

1 THE STATE BY MR. HALL:

2 MR. HALL: Good afternoon, ladies and gentlemen.
3 Thank you very much for listening closely this afternoon
4 and this morning. Actually, just this morning.

5 You had a chance to look at the video earlier, kind
6 of in real time as it was going. And really, what I
7 wanted to do while I have the opportunity to address you
8 one final time in this case, was kind of take you through
9 point by point, and kind of give you the State's
10 interpretation of what was going on in this case.

11 So, you'll see at 39 to 40 seconds into the video,
12 Mr. Clemons enters the store. You heard John Eisenhower
13 testify that he saw Clemons immediately, because he heard
14 the door bang open. That drew his attention, he looked
15 up, he saw someone that was wearing a hoodie, a ski mask,
16 and a plaid jacket. He had his hand in his pocket, and
17 Mr. Eisenhower testified that he believed at that point
18 that Christopher Clemons was armed with some type of
19 weapon.

20 At 41 seconds -- we're at 43 now -- but at 41
21 seconds, you saw on the video that Rob Thomas, the other
22 cashier, they were originally together at Eisenhower's
23 register. At 41 seconds, Thomas turns away to go back to
24 his register. At 43 seconds, as you can see in the
25 video, Thomas has seen Christopher Clemons approaching

1 around the corner. And you can see right there in his
2 hand, Rob Thomas has that hundred dollar bill in his
3 hand.

4 Right there at 44 seconds, you see Mr. Clemons very
5 close to Mr. Thomas, that right hand still in the pocket.
6 Mr. Thomas testified that he believed that Christopher
7 Clemons had a gun. And Christopher Clemons then
8 approached; testified that -- and I'm sorry, he --
9 Clemons approached. And Mr. Thomas testified that
10 Clemons said to him, *give me the money*. And at that
11 point, Mr. Clemons took the hundred dollar bill out of
12 Rob Thomas' hands.

13 At 46 seconds, one second later, he heads past Rob
14 Thomas' register and heads towards John Eisenhower's
15 register. You can see in the video, you know it's not
16 incredibly clear, but you can see in the video that, at
17 that point, Mr. Eisenhower appears to be looking up at
18 Chris Clemons coming at him.

19 At 49 seconds, Christopher Clemons now is alongside
20 John Eisenhower, and at his register grabbing money. You
21 heard Mr. Eisenhower testify that Christopher Clemons was
22 grabbing money; Mr. Eisenhower was grabbing it back from
23 him.

24 Right there, at about 53 seconds, that's when Mr.
25 Eisenhower testified that he realized that Christopher

1 Clemons possibly didn't have a weapon on him, and that's
2 when he decided to either be (a) a hero; (b) stupid; a
3 little bit of both; and turn around and begin the process
4 of tackling Christopher Clemons and taking him to the
5 ground.

6 Now, you will remember from watching the video
7 earlier, there was then this pretty significant gap where
8 it took about eight minutes for police to arrive.

9 Corporal Reynard testified that he entered the store, he
10 found Christopher Clemons being held down by the clerks
11 and one of the patrons that had been in the store. Took
12 a little bit to get him up off the ground. Placed him in
13 cuffs. Walked him out.

14 Now, all told, we're talking about a 19-second span
15 of time, from the moment that Christopher Clemons entered
16 the store, to the point where he takes money from Rob
17 Thomas. The State would argue at that point, at the
18 point where he approached Rob Thomas with his hand in the
19 pocket and took that hundred dollar bill, the armed
20 robbery was complete. He decided to continue on to see
21 what else he could get from John Eisenhower. And
22 fortunately, for the State, and unfortunately for Mr.
23 Clemons, he found himself on the wrong end of this armed
24 robbery when they decided to hop on him and hold him
25 until police arrived.

1 Mr. Bax had talked before about, you know, split
2 seconds; you know, how much time did you have to see
3 this? You're talking about two clerks that were working
4 in the store that both testified that they believe that
5 the person that was in that store that was robbing that
6 store was armed. A split second in an instant like this
7 can mean the difference between living or dying in an
8 armed robbery.

9 The question that you have to answer, and what I'm
10 hoping that you're going to answer in favor of the State
11 is, was it reasonable for Robert Thomas and John
12 Eisenhower to believe that Christopher Clemons had a gun
13 on him? I believe that, based on the video that you've
14 seen, and that I've been able to break down and show you
15 almost frame by frame over the course of the 19 seconds,
16 that it was reasonable for them to conclude that he was
17 armed. Now, the fact that he wasn't, doesn't matter in
18 the end. It's what they believed as it was happening.

19 And I think after you consider video, all the
20 testimony that we heard this morning, I think there's
21 only one conclusion that you could come to -- that
22 Christopher Clemons is guilty beyond a reasonable doubt
23 of armed robbery, and I'd ask that you so find.

24 Thank you very much for your time. Please listen to
25 the closing statements of Mr. Bax.

1 THE COURT: Thank you, Mr. Hall.

2 MR. BAX: Please the Court, your Honor?

3 THE COURT: Yes, sir.

4 CLOSING ARGUMENTS ON BEHALF OF

5 THE DEFENDANT BY MR BAX:

6 MR. BAX: Thank you very much. Thank you, Mr. Hall.
7 Good afternoon, ladies and gentlemen. Thank you so much
8 for paying so close attention. You're going to have this
9 case in a very short while. The Judge is going to charge
10 you on the law after I'm finished and I sit down. And
11 you're going to go back, and you're going to deliberate
12 this case.

13 The State's take on this and our take on this is
14 really not so much a question as they may want you to
15 believe. It's the fact that there is language in the
16 statute that you're going to get charged by the Judge
17 that you must pay attention to that, frankly, they
18 haven't talked to you about. Okay? It's not just what
19 they believed, whether that was reasonable or not.

20 You have sat through this patiently. We appreciate
21 that so much. You have paid attention to the witnesses
22 and everything that's come out of their mouths. I want
23 to talk to you a little bit about what it is that you're
24 here to do. And then, I want to talk to you about the
25 law and the facts.

1 First of all, I want everybody to understand that a
2 jury, the reason that the founders put that in place, was
3 not just for some machine-like determination. Okay? If
4 they wanted a machine to do it, even back then, they
5 would have said it, or we would have changed the law by
6 now. But we don't want a computer to decide our fate, at
7 least not here. Unfortunately, that happens too much in
8 our lives as it is.

9 The reason for that is, as peers in your community,
10 you have the life experience to have what we like to call
11 common sense. Now, as my mom always said, *sense ain't*
12 *common*. But I know you have it. That's why I picked
13 you.

14 Every one of you comes from a background where you
15 have had to work in this community and live in this
16 community. And there's a reason that that's important,
17 because it gives you the common sense to know what's
18 going on, what's really going on. And so, that bears on
19 how you interpret what you've seen from the witness
20 stand. You're not here just to judge what has come out
21 of someone's mouth, but also what has not come out of
22 their mouth.

23 The Judge is going to talk to you about some of
24 those general things, and she's going to refer to
25 credibility. That's someone's believability. That's

1 just the old phrase. Are they lying to me? Are they
2 telling a half truth? Are they telling the story in a
3 way that makes them feel better about it? Whatever it
4 is, you do this every day. You go to the bank and they
5 tell you a story. In your head, you're going to be
6 making a judgment on that. It's second nature. That's
7 the same thing here.

8 You've heard what has been solicited by the
9 Solicitor from the witnesses, but you've also heard what
10 they've answered on my cross-examination questions, and
11 you have something that they didn't used to have. You
12 have a video right here that you're entitled to take back
13 in that jury room and watch as many times as you need to
14 see what you need to see. It's right there. It's not
15 black and white. It's close to black and white. But
16 it's right there. So, I urge all of you, take a look at
17 that video again.

18 The Solicitor has showed you this video piece by
19 piece, and I think that it strengthens the argument that
20 I have brought out through the witness throughout this
21 trial. This was a very short amount of time. The
22 Solicitor has already shown that, between the time he
23 comes in and the time he's down on the ground is less
24 than 20 seconds. Less than 20 seconds.

25 You have two individuals here who have testified

1 that they observed something in about a four-second time
2 span; and that they made it crystal-clear decision about
3 it. Now, we weren't there, but we have to use our common
4 sense. You have to use your common sense, because I
5 don't get to come back. And your deliberations are
6 secret. I don't get to know about what was said by
7 anybody, and I wouldn't want to. Okay? And I'm not
8 going to come ask you about it afterwards. All right?
9 It's going to be what it's going to be. But when you're
10 in that room and you're deliberating, you're going to be
11 looking at that, and you're going to be saying, well, you
12 know, in my life, if I were in that situation, what would
13 I have been able to observe? What would I have been able
14 to decide in four seconds?

15 The other thing is, you've got the body language of
16 the individuals on this video to look at. I told you I
17 wanted to talk to you about the facts, and I'm going to
18 talk to you about that in just a second. Now, the law --
19 and I think this is probably the most important thing to
20 talk to you about, from our standpoint. The law
21 requires, and her Honor is going to charge you with this,
22 that it is not just what the witnesses believe. The law
23 does require more, and you are going to hear from the
24 Bench, from the Judge, that they have to prove beyond a
25 reasonable doubt to all twelve of you that go back in

1 that room, that the defendant, Mr. Clemons, through words
2 or actions, while representing a firearm -- or a weapon,
3 while presenting a representation of a weapon.

4 Now, I think that there is a decision that has to be
5 made by you as critical jurors as to what the witnesses
6 actually believed, considering their actions. But there
7 is also the fact that there was not one single piece of
8 testimony. Not once did any of the individuals on the
9 stand, Mr. Thomas or Mr. Eisenhower or anyone else, tell
10 you that there was a finger pointed. There was never
11 anything like this. Okay? There was never a
12 representation. Their testimony -- and you can go back
13 and listen to it again if you need to -- was that there
14 was a hand in the pocket, period, end of story. Hand in
15 the pocket. They never said it was lifted. They never
16 said that there was a pointed end to it to make me think
17 maybe it was a gun. There was no representation. They
18 are saying that the actions of this individual rushing in
19 with a hand in the pocket, that's it. That's not enough.
20 It says:

21 *While presenting a representation*
22 *of a weapon.*

23 I submit to you it didn't happen. You don't have
24 that to consider, because it was not testified to. You
25 have the video. You can look at it. There's never a

1 lifting or a pointing. It's just not there. Check me.
2 Look at it again.

3 All this, of course, has to be proven beyond a
4 reasonable doubt, because this is someone's freedom.
5 While our society, I think, to some degree, some days
6 when I listen to the news, I think that money has become
7 more important in people's lives. Today, you get to say
8 that lives are more important than money, because we're
9 not here about money. We're here about someone's life.
10 And that's why it's beyond a reasonable doubt. It's not
11 preponderance of the evidence. It's not maybe it
12 happened or more likely than not. It's beyond a
13 reasonable doubt. They have to prove that he had a
14 representation of a firearm, in addition to any kind of
15 actions, in order to get armed robbery. Without that,
16 without that, you can decide whether it's a strong armed
17 robbery or innoculate. That's what you get to decide.
18 And I feel confident when you look at that, at best,
19 you're going to find it's a strong armed robbery, and
20 that's it.

21 Like I said at the beginning of this trial, we have
22 not come in here and said, that's not him; he wasn't
23 there; he didn't do it. I haven't come in and said it,
24 because it would lose all credibility for me. You get to
25 judge my credibility, too. The Judge is going to tell

1 you that my argument is not evidence. What I'm saying is
2 not evidence for you to consider, but it's our take on
3 what you have seen. And so, my credibility does matter
4 to you. It matters to me how you present my credibility.
5 And I'm telling you, I didn't come say that, because it
6 would be ridiculous. But what I am telling you what is
7 not ridiculous is that Mr. Clemons was at the bottom of
8 the barrel. He did something incredibly stupid, and he's
9 been paying for it since then, still today, and he will
10 pay for it.

11 But in this country, we say to ourselves and to
12 everyone else, that we do not punish someone for more
13 than what they did; that we do not hold them accountable
14 for more than what they did. And what we're asking you
15 is hold him accountable for what he did, but do not hold
16 him accountable for more, because that's what the State
17 wants. You are that barrier between the State and the
18 citizens of this country. And if they overreach, you're
19 there to stop them.

20 Now, I want to talk about the facts a little bit.
21 You'll be able to go back and look at what I'm talking
22 about. You have the testimony of Mr. Thomas and Mr.
23 Eisenhower, who I submit to you were pretty capable
24 people in that situation. They did not show any signs to
25 me, either on this stand or on this video, of being

1 terribly afraid of anything, especially not skinny,
2 little Mr. Chris Clemons up here, who they held down
3 while talking on the phone, and having patrons take
4 pictures of him on Facebook, or videos, or whatever it
5 was.

6 I submit to you, when you look at this video, in
7 fact, even in the portions where it was stopped by the
8 Solicitor, you'll see Mr. Thomas standing there, arms
9 loose, after he takes the money and goes to Mr.
10 Eisenhower. Back is to the camera, standing like this.
11 That's not the stance of a man who is scared that there
12 is a weapon in the room. A man who thinks there's a
13 weapon in the room, is he going to do this? Yes. Is he
14 going to do this, and walk towards the situation? Not
15 unless he's crazy, and I don't think they're paying him
16 enough at the Pantry to be that crazy. If they are, I
17 need to go get a job there, because I know I'm not going
18 to go walking towards a situation like that, if I really
19 think there's a gun there. Not me.

20 So, you look at it. It was quick, and there is no
21 evidence of the kind of fear that they're talking about.
22 Soon as he got to that second one, they thought, you know
23 what, this ain't happening; and I don't think you got
24 nothing; we're taking you down. And that happened, and
25 here we are today.

1 I know you'll do what's right. Thank you for your
2 attention.

3 THE COURT: Thank you. Is the video off?

4 MR. HALL: Your Honor, may we approach briefly?

5 THE COURT: Sure. I want to make sure the video is
6 turned off, Ms. Concannon. Is that correct?

7 MR. HALL: Yes, it's a black screen, Judge, yes.

8 ON-THE-RECORD BENCH CONFERENCE,

9 OUT OF PRESENCE OF JURORS.

10 PRESENT: THE COURT, MR. HALL,

11 MR. BAX:

12 END BENCH CONFERENCE.

13 CHARGE TO JURORS, BY THE COURT:

14 THE COURT: Madam Foreperson, members of the jury,
15 you've followed very patiently, and listened very
16 attentively, to the presentation of the evidence in this
17 case, and I want to thank you for that, and also, the
18 arguments made by Solicitor Patrick Hall on behalf of the
19 State, and Arie Bax on behalf of the defendant, Mr.
20 Clemons.

21 Ladies and gentlemen, it now becomes the duty of the
22 trial judge and of the constitution of the State to
23 charge and instruct you on the law that's applicable to
24 this case. And it's your duty, as jurors, to accept and
25 apply the law as the Court will now state it to you. As

1 jurors, it is your exclusive duty to decide all issues of
2 fact in this case. You must determine the effect, the
3 value, the weight, and the truth of the evidence.

4 Both the State of South Carolina and the defendant,
5 Mr. Clemons, have a right to expect that you will
6 carefully consider and evaluate the evidence, and apply
7 the law to the case in that evidence and apply the law of
8 the case to the evidence. By doing so, both the State of
9 South Carolina and the defendant will receive and obtain
10 a fair and impartial trial.

11 Now, ladies and gentlemen, the State of South
12 Carolina, by the bill of indictment in this case, charges
13 the defendant, Christopher Clemons, with armed robbery.
14 I remind you that the fact that the defendant was
15 arrested, charged, and indicted in this case is not
16 evidence in this case, and cannot be considered by you as
17 evidence of guilt in this case. Nor does it create any
18 presumption or inference of guilt.

19 The indictment is simply the formal written
20 instrument which contains the charge that's made against
21 the defendant. It's the formal document by which the
22 case is brought into this courtroom.

23 Now, ladies and gentlemen, the defendant Mr.
24 Clemons, has pled not guilty to this indictment, and that
25 plea puts the burden on the State to prove the defendant

1 guilty beyond a reasonable doubt. Now, a person charged
2 with a criminal offense in California -- excuse me -- in
3 South Carolina -- wrong state -- is never required to
4 prove himself innocent. I charge you that it's an
5 important rule of law that the defendant in a criminal
6 trial, no matter what the seriousness of the charge may
7 be, will always be presumed to be innocent of the crime
8 for which the indictment was issued, unless guilt has
9 been proven by evidence satisfying you, the jury, of that
10 guilt beyond a reasonable doubt.

11 Now, this perception of innocence does not end when
12 you begin your deliberations, but it accompanies the
13 defendant throughout the trial, until you, the jury,
14 reach a verdict of guilt, based on evidence satisfying
15 you of that guilt beyond a reasonable doubt.

16 Ladies and gentlemen, the presumption of innocence
17 is not a mere legal theory. It's not just a legal phrase
18 we use. It is a substantial right to which every
19 defendant is entitled, unless you, the jury, are
20 satisfied from the evidence of the defendant's guilt
21 beyond a reasonable doubt.

22 What is a reasonable doubt in the law? A reasonable
23 doubt is the kind of doubt that would cause a reasonable
24 person to hesitate to act. Now, the State has the burden
25 of proving the defendant guilty beyond a reasonable

1 doubt. And some of you may have served as jurors in
2 civil cases, where you were told that it was only
3 necessary to prove that a fact is more likely true than
4 not true, such as by the greater weight, or what we call
5 the preponderance of the evidence. In criminal cases,
6 the State's proof must be more powerful than that. It
7 must be beyond a reasonable doubt. Proof beyond a
8 reasonable doubt is proof that leaves you firmly
9 convinced of the defendant's guilt.

10 Now, ladies and gentlemen, there are very few things
11 in this world that we know with absolute certainty, and
12 in criminal cases the law does not require proof that
13 overcomes every possible doubt. If, based on your
14 consideration of the evidence, you are firmly convinced
15 the defendant is guilty of the crime charged, you must
16 find him guilty.

17 On the other hand, if you think there's a real
18 possibility that he is not guilty, you must give the
19 defendant the benefit of that doubt, and find him not
20 guilty.

21 Now, I remind you that, during the trial, you and I
22 have certain duties to perform. As the trial judge, it's
23 my responsibility to rule on the evidence in this case.
24 And as well, ladies and gentlemen, I need to instruct you
25 that you are to consider only the competent evidence

1 that's before you. If there is any testimony that was
2 ordered stricken from the record or anything withdrawn,
3 again, you must disregard that testimony. You are to
4 consider only the testimony which has been presented from
5 the witness stand, and any other exhibits which have been
6 entered and made a part of the record of this case.

7 Ladies and gentlemen, I have the additional duty to
8 charge you to the law that is applicable to this case.
9 As the presiding judge, I am the sole judge of the law,
10 and it's your duty as jurors to accept and apply the law
11 as I will now state it to you.

12 If you already have any idea as to what the law is,
13 or what the law ought to be, and it does not agree with
14 what I now tell you the law is, you must abandon this
15 idea, because you are sworn to accept the law and apply
16 it exactly as I give it to you.

17 Now, ladies and gentlemen, in every case in this
18 court before a jury, the jury becomes the sole and
19 exclusive judge of the facts of the case. A trial judge
20 cannot intimate, comment on, or make any statement to a
21 trial jury about the facts in a case. Since you, the
22 jury, are the sole judge of the facts in this case,
23 you're not to infer from what I've said during the
24 progress of the trial in ruling upon the admissibility of
25 evidence or otherwise, or anything that I now say during

1 the course of this instruction, that I have an opinion
2 about the facts of this case. The law does not allow me
3 to have an opinion as to the facts of this case. Ladies
4 and gentlemen, again, this is a matter solely for you,
5 the jury, to determine.

6 Now, ladies and gentlemen, there are two types of
7 evidence which are generally presented during a trial --
8 direct evidence and circumstantial evidence.

9 Direct evidence is the testimony of a person who
10 claims to have actual knowledge of a fact, such as an
11 eyewitness. It is evidence which immediately establishes
12 the main fact to be proved.

13 Circumstantial evidence is proof of a chain of facts
14 and circumstances indicating the existence of a fact. It
15 is evidence which immediately establishes collateral
16 facts from which the main fact may or may not be
17 inferred. Circumstantial evidence is based on inference,
18 and not on personal knowledge or observation. The law
19 makes absolutely no distinction between the weight or
20 value to be given to either direct or circumstantial
21 evidence; nor is a greater degree of certainty required
22 of circumstantial evidence than of direct evidence.

23 Ladies and gentlemen of the jury, you should weigh
24 all the evidence in this case. And after weighing all of
25 the evidence, if you are not convinced of the guilt of

1 the defendant beyond a reasonable doubt, you must find
2 the defendant not guilty.

3 On the other hand, after hearing all of the evidence
4 in this case, if you are convinced of the guilt of the
5 defendant beyond a reasonable doubt, you must find the
6 defendant guilty.

7 Ladies and gentlemen, necessarily, you must
8 determine the credibility of the witnesses that have
9 testified in this case. And credibility simply means
10 believability. It becomes your duty as jurors to analyze
11 and to evaluate the evidence, and determine which
12 evidence convinces you of its truth.

13 In determining the believability of witnesses who
14 have testified in the case, you may believe one witness
15 over several witnesses, or several witnesses over one
16 witness. You may believe a part of the testimony of a
17 witness, and reject the remaining part of the testimony
18 of that same witness. You may believe the testimony of
19 the witness in its entirety, or you may reject the
20 testimony of a witness in its entirety.

21 You can also consider whether a witness has
22 exhibited to you any interest, any bias, any prejudice,
23 or other motive in the case. And you may also consider
24 the appearance and manner of the witness while they were
25 on the witness stand.

1 Now, ladies and gentlemen, I instruct you and
2 emphasize that the fact that the defendant did not
3 testify is not a factor to be considered by you in any
4 way in your deliberation and in your consideration of the
5 question of the guilt or innocence of the defendant. It
6 must not be considered by you in any manner whatsoever.
7 A defendant has the constitutional right to remain
8 silent, and the assertion of this right must not be
9 considered by you in your deliberations. I repeat, under
10 your oath, you are to draw no conclusion whatsoever from
11 the fact the defendant in this case did not testify. The
12 fact that this defendant did not testify should not even
13 be discussed in the jury room. I remind you, the burden
14 is on the State. The defendant is not required to prove
15 his innocence. And I remind you, the burden remains on
16 the State to prove guilt beyond a reasonable doubt.

17 Now, ladies and gentlemen, in this case, the
18 defendant is charged with armed robbery. In order to
19 prove this offense, the State must first prove beyond a
20 reasonable doubt that the defendant took personal
21 property from the person or presence of another person.

22 Now, ladies and gentlemen, property is in the
23 presence of a person if it is within the person's reach,
24 inspection, observation, or control, so that the person
25 could, if not overcome with violence or prevented by

1 fear, keep possession of the property.

2 The State must also prove beyond a reasonable doubt
3 the defendant carried the property away, intending to
4 permanently deprive the owner of the property and to keep
5 the property for the defendant's own use.

6 Ladies and gentlemen, the slightest removal of the
7 property, or the complete possession of the property,
8 even for an instant, by a defendant is sufficient to show
9 a taking and carrying away of the property.

10 Ladies and gentlemen, the taking and carrying away
11 of the property must have been done with violence, or by
12 putting the owner of the property in fear of violence.

13 Ladies and gentlemen, finally, to prove armed
14 robbery, the State must prove beyond a reasonable doubt
15 that the defendant alleged that he was armed with a
16 deadly weapon, either by actions or by words, while using
17 a representation of a deadly weapon, or any object which
18 a person present during the commission of a robbery
19 reasonably believed to be a deadly weapon.

20 Ladies and gentlemen, a deadly weapon is any
21 article, instrument, or substance which is likely to
22 cause death or great bodily harm.

23 Now, ladies and gentlemen, if you find that the
24 State has failed to prove the defendant has committed
25 armed robbery, you may then consider whether the State

1 has proved beyond a reasonable doubt that the defendant
2 committed strong armed robbery. Strong armed robbery is
3 defined as the felonious or unlawful taking of money,
4 goods, or other personal property of any value from the
5 person of another, or in his presence, by violence,
6 intimidation, or by putting such person in fear.

7 Madam Foreperson, and ladies and gentlemen of the
8 jury, as you retire to begin your deliberations, I wish
9 to express the hope that each one of you are mindful of
10 the importance of your duty here today. You're not
11 called upon very often to serve as jurors, and the proper
12 performance of that duty requires that each of you reach
13 the height of freeing your mind of all improper
14 influences. You and I are acting for the community, and
15 that is why we must see to it that this trial is fair and
16 the verdict is just.

17 You've observed the presiding officer of the Court
18 is addressed as your Honor. The reason is that the Court
19 is entrusted with the honor of this community, the honor
20 of this state, and the honor of this country, in seeing
21 that every case tried here in this courtroom receives
22 fair and impartial justice.

23 Now, you, the jury, take into your care and keeping
24 the honor of this community, the honor of this state, and
25 the honor of this country.

1 Now, ladies and gentlemen, please don't get an idea
2 that I'm trying to tell you how you should decide this
3 case. As I've already told you, under the laws of the
4 state of South Carolina, you, the jury, are the sole
5 judge of all questions of fact, and it would be highly
6 improper for me to influence you in your performance of
7 that duty.

8 So, again, I'm not trying to tell you what your
9 verdict should find, but ladies and gentlemen, as the
10 presiding officer of this court, I am vitally concerned
11 that whatever verdict you find will be the result of you
12 going back into your jury room and confining your
13 consideration to the evidence and the law that you've
14 heard here in this courtroom, weighing it fairly and
15 impartially, as I have every confidence you will.

16 Ladies and gentlemen, everyone is entitled to
17 justice in this case, both the State and the defendant.
18 You owe no support or sympathy to anyone. Ladies and
19 gentlemen, the Court is of the confirmed opinion that
20 whatever verdict you reach will represent truth and
21 justice for all concerned.

22 Madam Foreperson, I remind you, your verdict must be
23 unanimous. It must be the verdict of all twelve jurors,
24 and to that end, my law clerk has prepared a verdict
25 form. It has the case caption, the State of South

1 Carolina versus Christopher Clemons; and it states,
2 Verdict Form; and has the indictment number. It states,
3 in question number one:

4 As to the charge of armed robbery, we,
5 the jury, unanimously find the defendant,
6 Christopher Clemons,
7 either
8 not guilty or guilty.

9 Under that it says:

10 If you answer this question guilty,
11 stop your deliberations. You have reached
12 a verdict.

13 If you find the defendant not guilty
14 as to Question Number 1, --
15 it says:

16 -- answer Question Number 2.

17 As to the charge of strong armed
18 robbery, we, the jury, unanimously find the
19 defendant, Christopher Clemons, --
20 again, either

21 -- not guilty or guilty.

22 Ladies and gentlemen, please don't infer anything on
23 whatever I put first, either guilty or not guilty. Every
24 single trial, I just reverse them. All right?

25 After that, Madam Foreperson, there is a line for

1 you to sign, and a place for you to date. When the jury
2 has reached a unanimous verdict, I'm going to ask that
3 you knock on the jury room door, and we're going to
4 accept you back into the courtroom to receive your
5 verdict.

6 Madam Foreperson and members of the jury, for the
7 very last time, I'm going to send you back to your jury
8 room, and I am going to instruct you not to begin your
9 deliberations. If there's something further in the law
10 the lawyers would like me to instruct you, I'm going to
11 bring you back out here, and I'm going to instruct you
12 further. If not, Madam Foreperson, I'm going to send
13 back the verdict form, my instructions or jury charge on
14 the law, as well as the evidence that's been introduced
15 into this case, and that is going to be your signal to
16 begin your deliberations. All right?

17 Ladies and gentlemen, you are excused back to your
18 jury room. We look forward to being with you shortly.

19 BAILIFF: Thank you, your Honor.

20 THE COURT: Thank you.

21 JURORS LEAVE COURTROOM 2:12 P.M.

22 BY THE COURT:

23 BAILIFF: Your Honor, the jury is clear.

24 THE COURT: Thank you. Any exceptions or additions
25 from the State?

1 MR. HALL: None from the State, your Honor.

2 THE COURT: How about the Defense?

3 MR. BAX: No, your Honor. I wanted to ask a
4 question of the Court, if I could.

5 THE COURT: Yes, sir.

6 MR. BAX: You indicated that you would be sending a
7 printout of your charge back with the jury, which I don't
8 object to. I was just wondering, are they going to get
9 everything, including the reasonable doubt stuff and all
10 that?

11 THE COURT: Everything.

12 MR. BAX: All right.

13 THE COURT: The entire thing from front end.

14 MR. BAX: All right. That's all I have.

15 THE COURT: Okay?

16 MR. BAX: Just because we only received this
17 portion, I just want to know.

18 THE COURT: I understand. It's the only portion
19 that may be questionable. It is standard from the bench
20 book.

21 MR. BAX: All right.

22 THE COURT: So, what I'm going to do is have Wanda
23 go ahead and mark it as a Court's exhibit. Obviously,
24 we'll get it back, so it'll be a part of the record of
25 this case.

1 THE COURT: Yes, sir?

2 MR. HALL: I have one issue.

3 THE COURT: Yes.

4 MR. HALL: And it has to do with the sole piece of
5 evidence in the case.

6 THE COURT: We need to send a computer back there
7 with them.

8 MR. HALL: Exactly, because I tried it on the DVD
9 player.

10 THE COURT: Doesn't work?

11 MR. HALL: And it doesn't. I have, in my trunk, and
12 don't ask me why, but I have, in my trunk, a clean PC.
13 Okay? It's a reject PC from the Solicitor's Office that
14 was signed out to me that they never want to see again,
15 that has been sitting in my trunk since it was given to
16 me. It's got a fresh installed Windows XP on it, and no
17 other information. In fact, I may need to install
18 Windows Media Player on it to even get it to play the
19 video. But I'd be willing to go do that. Otherwise, we
20 have to send someone's computer back in, and having it
21 hooked up to the T.V. in order for it to work.

22 THE COURT: Okay. I think we're going to go ahead
23 and send my law clerk, Alison's, computer back. That's
24 typically how we do it.

25 MR. HALL: Okay.

1 THE COURT: That way, we don't have to wait, but I
2 appreciate the offer. But let's go ahead and -- okay. I
3 need to go ahead and get this marked, Wanda.

4 DOCUMENT IDENTIFIED AS JUROR
5 CHARGES MARKED COURT'S EXHIBIT
6 NUMBER 3, TRIAL.

7 And you all, we'll go over the evidence. And once
8 we do that, we will also get the alternate out.

9 ATTORNEYS AND COURT REPORTER
10 REVIEWING EVIDENCE TO BE TAKEN
11 TO JURORS.

12 COURT RELEASES ALTERNATE JUROR.

13 DELIBERATION BEGINS 2:17 P.M.

14 THE COURT: All right. Thank you. We will be at
15 ease until you all come tell me that there's something
16 else you all need. Is that fine?

17 MR. HALL: Sure.

18 MR. BAX: We'll just hang around here.

19 THE COURT: All right. I'll know where to find you
20 all. Okay. We'll wait until we hear from the jurors.

21 MR. HALL: Thank you, Judge.

22 THE COURT: Thank you.

23 VERDICT:

24 THE COURT: All right. It's my understanding that
25 we have a jury verdict. For anyone that's in the

1 gallery, ladies and gentlemen, I just want to make sure
2 that you are aware that, whatever the verdict is, I don't
3 want to have any repercussions or any outbursts. If you
4 don't think you can contain yourself, please, remove
5 yourself now. I would hate to have to take you into
6 custody, but I will, if necessary. All right? Thank
7 you. Let's bring the jury in.

8 BAILIFF: Yes, your Honor.

9 The jury is entering, your Honor.

10 THE COURT: Thank you.

11 JURORS ENTER COURTROOM 3:56 P.M.

12 THE COURT: You all be seated. You can take a seat,
13 thank you. Madam Foreperson, I understand the jury has
14 reached a verdict.

15 FOREPERSON: Yes, it has.

16 THE COURT: Would you please hand it to Bob?

17 BAILIFF: Your Honor.

18 THE COURT: Thank you. In the case of the State of
19 South Carolina versus Christopher Clemons, as to Question
20 Number 1, the jury has not indicated either way.

21 As to Question Number 2, as to the charge of strong
22 armed robbery, the jury has unanimously found the
23 defendant, Christopher Clemons, guilty of strong armed
24 robbery.

25 Ladies and gentlemen of the jury, if this is your

1 verdict, would you please indicate by raising your right
2 hand?

3 All members of the jury have raised their right
4 hand. Would anyone like this jury individually polled?

5 MR. HALL: No, thank you, your Honor.

6 THE COURT: The Defense?

7 MR. BAX: No, your Honor. Thank you very much.

8 THE COURT: Okay. Thank you. Ladies and gentlemen,
9 at this time, I am going to go ahead and sentence Mr.
10 Clemons. Is there anyone who wants to leave before that?
11 Are you all okay? To stay? You are welcome to go if you
12 want. I will tell you that it's up to you.

13 Again, you have completed your job in this case, and
14 I'm sure you understand, I am going to have to ask you to
15 call after 6:00 o'clock tonight. It will let you know
16 whether or not you need to come tomorrow morning, but I
17 don't think you're going to have to. There hasn't been a
18 final determination. Do you know?

19 HON. HUNTER SWANSON DEYSACH: Yes. I'm sorry,
20 Judge. The jury is free for the rest of the week.

21 THE COURT: Very good. Thank you. Ladies and
22 gentlemen, you are free for the remainder of the week.
23 So, we have heard the word, and we can go ahead and
24 relieve you. Again, you're absolutely welcome to leave,
25 sir, and I appreciate you being here.

1 FOREPERSON: Thank you very much.

2 THE COURT: Thank you again. Thank you for your
3 service. All right. Thank you.

4 RESPONSES OF THANK YOU.

5 THE COURT: Thank you.

6 MR. HALL: Your Honor, Ms. Concannon went to grab a
7 sentencing sheet for strong armed robbery off the copier
8 downstairs.

9 THE COURT: Oh, okay.

10 MR. HALL: I didn't have one prepared.

11 THE COURT: Okay. All right. Well, ladies and
12 gentlemen of the jury, until she gets back up here and I
13 have a sentencing sheet, I will just give you a few final
14 instructions. At this time, it is permissible for you to
15 discuss this case. When you go home tonight, it's fine
16 to tell your family members or friends, or whomever you
17 want to what you've been doing up here.

18 Ladies and gentlemen, sometimes the attorneys or
19 witnesses will ask you what you thought about their
20 performance or their testimony, and that's allowed. Of
21 course, you're not required in any way, shape, or form to
22 ever discuss your verdict. If someone persists, I want
23 you to simply call to the Clerk of Court's Office, tell
24 them who it is, and I will take care of them. All right?

25 I will tell you, you all have worked so hard on this

1 case. I know it was relatively short, but you all have
2 really helped us take care of this one case, and
3 certainly other cases at the beginning of the week. When
4 I start, I have a docket of some 40-odd cases that are up
5 for trial. And based on different means, we either
6 settle them, or something different may happen, or they
7 may plead guilty, or there may be other diversionary
8 methods. I mean, I could never try everything that comes
9 up here. But again, ladies and gentlemen, I can't do --
10 and I say this all the time -- literally cannot do the
11 county's business and take care of what we need to do up
12 here in the courthouse without having jurors that are
13 willing to serve, because it does allow us to get guilty
14 pleas and other things and other methods.

15 So, with that said, I actually think we can go
16 ahead, and you can make your presentation, and I can
17 sentence him. Then, I'll go ahead, and I can just sign
18 the sentencing sheet when I'm done. So, if you all want
19 to go forward.

20 MR. BAX: No objection, your Honor. Would you like
21 us to approach the Bar or stay where we are?

22 THE COURT: You're welcome to stay where you are,
23 Mr. Bax. You're fine.

24 MR. BAX: Okay. Thank you.

25 THE COURT: Thank you.

1 SENTENCING:

2 MR. BAX: First and foremost, we'd like to thank the
3 jury for hearing the case. Your Honor, obviously, you've
4 heard the facts of the case, you're well aware. You've
5 seen the video evidence in the case. So, I am going to
6 speak to mitigation in this situation.

7 My understanding is that -- okay, I'm just getting
8 indicated, there are some family members of my client who
9 are present here today. We'll asked to see if there is
10 anyone who wishes to speak in his behalf, and his uncle,
11 Mr. Green, does wish to speak on the family's behalf at
12 the appropriate time, your Honor.

13 Mr. Clemons, my understanding, obviously, this is an
14 incident that happened on Christmas Eve, 2011. It is now
15 2013. He has been incarcerated in pretrial detention for
16 that entire time. At the time that this happened, I
17 believe that he was 20 years old. I think he has
18 actually had two birthdays since that time, if I'm not
19 mistaken.

20 I do believe that, as I stated before, he was at
21 very much rock bottom at that time. My client has
22 indicated, and actually, the police have information in
23 their file, that he was living in a car with another
24 gentleman who was living in a car. And his family, his
25 mother, whom I've spoken to, did not have a place to

1 live, either. So, life was not in a good place for Mr.
2 Clemons. That does not excuse what he did, and that's
3 not why I'm bringing it up, your Honor, but to give you
4 background.

5 This gentleman is a young man, in my estimation,
6 especially, if you look at how old he was when it
7 happened. My understanding, and Mr. Hall will address
8 this at the appropriate time, hadn't really had any kind
9 of significant record prior to these incidents, to this,
10 what he was arrested for. So, we would ask the Court for
11 whatever leniency that the Court can provide.

12 We have understand, and I've explained to my client,
13 what strong armed robbery carries, up to 15 years. We'd
14 also ask for credit for time served, obviously. And you
15 know, understanding what he is facing in this case, we'd
16 ask for any leniency the Court can see fit to give in
17 this case.

18 THE COURT: Okay.

19 MR. BAX: I would leave it up to your Honor when
20 you'd like to hear, and where you'd like to hear from.

21 THE COURT: I'm happy to hear from Mr. Green at this
22 time.

23 MR. BAX: Mr. Green?

24 THE COURT: Sir, give me -- come on up, sir. Sir,
25 if you would just give me your full name for the record.

1 MR. GREEN: Leroy Green.

2 THE COURT: Yes, sir.

3 MR. GREEN: Your Honor, I've known Christopher
4 Clemons from being married to his aunt. And you know,
5 kids is kids, but I know he made a mistake. And I feel
6 like he is -- I understand the mistake that he made, and
7 I hope that, if the court have any leniency, to please do
8 so. And anything that I can do to help, just give me a
9 call.

10 THE COURT: Thank you, Mr. Green. I appreciate you
11 being here, and I appreciate you being here on behalf of
12 your nephew. Thank you, sir.

13 Anyone else, Mr. Bax?

14 MR. BAX: Your Honor, I don't think anyone else
15 wishes to speak. I do want to let you know that his
16 brothers and sisters are here, as well as his aunt, who
17 Mr. Green has spoken for. And they have been present for
18 the testimony in this trial, and they have expressed
19 their support for him to me, but they don't wish to
20 address the Court at this time.

21 THE COURT: Thank you. Mr. Hall?

22 MR. HALL: Thank you. Your Honor, I'm not going to
23 go back through the facts, obviously.

24 THE COURT: I don't need to hear the facts. What I
25 need to hear is his prior record. And I also need to

1 hear, he has a number of armed robberies pending against
2 him.

3 MR. HALL: He does. Yes, he does. As we discussed,
4 I guess in Chambers yesterday, he had Georgia convictions
5 for 2009 for non-finger-printable offenses. I never
6 figured out exactly what that was, but that was -- he had
7 two of those.

8 2010, he had a shoplifting offense, and an
9 obstruction of officer offense, all in Georgia.

10 He does, after this, still have pending armed
11 robbery charges for robberies that were committed
12 allegedly on December 6, 2011; strong armed robbery
13 committed on December 19, 2011; and armed robbery,
14 committed on December 23, 2011. And there's an
15 additional armed robbery that he's been charged with out
16 of Jasper County. They all involve the same, basically
17 the same group of three people, along with Mr. Clemons.
18 There's co-defendants by the name of Jerel Tyson and
19 Ayuba Cunningham. And we didn't need to address it here
20 in this case, but it's the State's contention that the
21 getaway driver in this case was Ayuba Cunningham, who was
22 involved, the State would allege again, in several of the
23 other robberies.

24 One of the co-defendants, Jerel Tyson, was actually
25 up front with law enforcement right after he was

1 arrested, and gave up himself, Mr. Clemons, and Mr.
2 Cunningham, tying him to all the other remaining armed
3 robberies that I have charged against him, and the strong
4 armed robbery. So, I do have sufficient basis to go
5 forward from this point on these other charges.

6 I would ask that -- the maximum is 15 years. I see
7 no reason, under the circumstances, to ask for anything
8 other than the maximum in the case.

9 THE COURT: Thank you. And Mr. Bax, I didn't ask if
10 your client wished to say anything.

11 MR. BAX: Your Honor, my client does not. And of
12 course, this is on Counsel, you know.

13 THE COURT: Right.

14 MR. BAX: He has other things to deal with, and I
15 just think the safe thing, as his attorney, is just to
16 let his attorney speak for him at this time.

17 THE COURT: Okay.

18 MR. BAX: Your Honor, I have had my client sign, and
19 I have signed the sentencing sheet. The only thing we
20 would bring up to your Honor -- and I'm going to show
21 this to Mr. Hall -- is, we have the most serious checked,
22 and that just needs to be removed.

23 THE COURT: Thank you.

24 MR. BAX: The strong armed is not a most serious.
25 But we've checked the CDR code. It is correct, and the

1 non-violent is correct. And I've had issues with the CDC
2 and CDR codes. That's why I've checked that. So, I
3 believe that's correct.

4 THE COURT: So, it is not an 85 percent?

5 MR. BAX: No, ma'am, it is not.

6 MR. HALL: It's not.

7 THE COURT: Okay.

8 MR. HALL: And your Honor, I did have most serious
9 checked, because that is the -- I had changed the
10 previous one that was for the armed robbery, and I just
11 forgot to un-check that box. So, may I approach.

12 THE COURT: I understand. You may.

13 MR. HALL: Thank you.

14 THE COURT: Anything further from anyone?

15 MR. HALL: Nothing from the State, your Honor.

16 MR. BAX: No, your Honor.

17 THE COURT: On Indictment 2013-GS-7-00555, for
18 strong armed robbery, the sentence of this Court is that
19 you be committed to the Department of Corrections for a
20 period of 15 years. I am giving you credit for the time
21 served, sir. Good luck to you.

22 MR. BAX: Thank you, your Honor.

23 THE COURT: There you go.

24 MR. HALL: Thank you, your Honor.

25 THE COURT: Ladies and gentlemen of the jury, at

1 this time, I'm going to go ahead and excuse you. You of
2 course, have earned your exemption for the next three
3 years. If you get called and wish to serve before then,
4 we look forward to seeing you all. But again, thank you
5 for being here, and you're excused for the remainder of
6 the week.

7 BAILIFF: Jury is clear, your Honor.

VERDICT FORM MARKED COURT'S

EXHIBIT NUMBER 4, TRIAL.

END DAY TWO, END TRIAL 4:10 P.M.

CERTIFICATE OF REPORTER

APRIL 22 & 23, 2013 TRANSCRIPT OF TRIAL

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 22 & 23, 2013 Transcript of Trial is a true, accurate, and complete record of the proceedings had on said dates and exhibits admitted in the case of State versus Christopher Clemons, Beaufort County, South Carolina, Court of General Sessions, Case Number 2013-GS-07-555.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature December 11, 2013.


Wanda H. Rowe, CVR-M
Official Court Reporter

AW
14

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Beaufort)Christopher Clemmons 355221)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-07-2204

APPLICATION FOR

POST-CONVICTION RELIEF

13 AUG 27 PM 5:05
CLERK OF COURT
BEAUFORT COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Ridgeland CI
2. Name and location of Court which imposed sentence Beaufort County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-G5-0700555-Arm Robbery
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4-23-13
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) ineffective assistance of counsel
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective assistance of counsel
- (b) Violation of Brady
- (c) Violation of Due process

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Fail To Advise me of Right To Appeal
- (b) With Holding Exculpatory Evidence
- (c) Fail To properly investigate False Testimony of Codefendant

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? _____

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. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) NA
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? ✓
- (b) your trial, if any? _____
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. ARIF Bax - Richardson Bax
- ii. 69 Robert Smalls Parkway - Beaufort SC 29902
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. PLEA Sentencing
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate Sentence or Resentencing

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA

County of

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Christopher Clemons

SWORN to and subscribed before me this 21
day of August, 2013.

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 20, 2021

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Christopher Clemons
Applicant

SWORN or affirmed to and subscribed before me this
21 day of August, 2013.

Virginia Robinson
Notary Public

My Commission Expires: May 20, 2021

Christopher Clemmons

pg.
10.

Counsel Fail to investigate Testimony of
Codefendant That Has proven To Be
False That Resulted in pending Charges
Being Dropped That Could Have had
an effect in Sentencing.

Counsel Fail To advise me or To discuss
an Appeal with me or Ask For a Reconsideration.

The State or Prosecution Fail To Reveal
That Codefendants Testimony was False
Regarding The Five Pending Charges
That Played a Role at Sentencing and
was an important Factor in Sentencing.

S/Christopher Clemmons
#

Mr. Bax

4-28-13

on Strong armed Robbery. And Mr. Tyson did mention this in the Confession letter that the criminal Activities he called my name on were created by false pretense by himself, so why does the solicitor keep pursuing Mr. Tyson false Confession Statement, Mr. Tyson wrote to Exclude me from the allegations, I want you to get me a reasonable plea so I can hurry up and get back home to my family, and thank you, you did a phenomenal job defending me in trial on April 23, and I Appreciate your Time and hard work. Can you please get me back in court for an Appeal as soon, as, possible so I can get a Lesser sentence so I can get back to my family and move on with my life, please put me in front of a reasonable Judge so I can get a reasonable plea. Thank you and have a God bless day.

Sincerely yours
Christopher Clemons

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

2013-CP-07-2204

Christopher Clemons, #355221,)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post-conviction relief (PCR) filed August 27, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the March 2013 term of the Beaufort County Grand Jury for armed robbery (2013-CP-07-555). The Applicant was represented by Arie Bax, Esquire.

On April 22-23, 2013, the Applicant proceeded to trial and was convicted of the lesser included offense of strong arm robbery. The Applicant was sentenced by the Honorable Carmen T. Mullen to confinement for a period of fifteen (15) years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject conviction, the Applicant's trial transcript, and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to advise the Applicant of his right to appeal.
 - b. Failure to properly investigate the false testimony of co-defendant.
2. Brady violation.
 - a. The State withheld exculpatory evidence.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland.

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 the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant claims the State withheld evidence in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

The Respondent submits that this ground for relief is totally without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: AKR.WS
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Sept. 9, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CHRISTOPHER CLEMONS, #355221

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

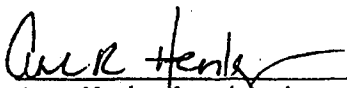
2013-CP-07-2204

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the abovecaptioned 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:

Tristan M. Shaffer, Esquire
 Axelrod & Associates, P.A.
 4701 Oleander Drive
 Myrtle Beach, SC 29577

DATED this 8th day of September, 2014


 Anne Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2013-CP-07-02204

CHRISTOPHER CLEMONS

APPLICANT

VERSUS

OCTOBER 27, 2014

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

B E F O R E:

HON. EDGAR W. DICKSON, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PLAINTIFF

HON. TRISTAN M. SHAFFER
AXELROD & ASSOCIATES, P.A.
604 SIXTEENTH AVENUE NORTH
MYRTLE BEACH, SOUTH CAROLINA 29577
TELEPHONE 843-916-9300
tristan@gotaxelrod.com

ON BEHALF OF STATE
OF SOUTH CAROLINA:

HON. ASHLEIGH R. WILSON
ASSISTANT ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549
TELEPHONE 803-734-3693
@scag.gov

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10-27-14 CLEMONS V. STATE

1 BEGINNING 10:25 A.M.

2 BY THE COURT:

3 MS. WILSON: May it please the Court, your Honor?

4 THE COURT: Yes, ma'am.

5 MS. WILSON: This is Christopher Clemons versus the
6 State of South Carolina. It's Ashleigh Wilson for the
7 State, Docket Number 2013-CP-07-02204. Mr. Clemons was
8 indicted in March 2013 of one count of armed robbery.
9 That was Indictment Number 2013-GS-07-00555. He
10 proceeded to trial, and was convicted on April 23, 2013.
11 He was sentenced by Judge Mullen to a 15-year sentence.

12 He filed an application for post-conviction relief
13 on August 27, 2013. The State's filed its return. He's
14 here today and represented by Mr. Shaffer, and he was
15 represented at trial by Mr. Ari Bax. And the State
16 would just ask, in this matter, that Mr. Shaffer express
17 which allegations that are in his application he intends
18 to proceed on today.

19 THE COURT: Okay. Mr. Shaffer?

20 MR. SHAFFER: Your Honor, essentially, we're
21 arguing that Mr. Bax was ineffective in failing to bring
22 up -- well, to give you a little bit of background about
23 the case, my client, more or less, admitted that there
24 was a strong-armed robbery that occurred. He disputed
25 the fact that he was armed at the time. He was caught

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1 on the scene. He had been charged with other armed
2 robberies and other offenses, based off the statement of
3 the co-defendant, Mr. Jarrel Tyson, or Jakel Tyson. He
4 had been charged with armed robbery, strong-armed
5 robbery -- well, a couple armed robberies and a strong-
6 armed robbery.

7 He, prior to trial, he had gotten a copy of a
8 statement from the co-defendant, essentially saying that
9 he had nothing to do with it. Our allegation is
10 basically that trial counsel was ineffective for failing
11 to bring this up in plea negotiations with the
12 Solicitor's Office, or bring it up at sentencing, that
13 there had been a recantation for the other charges.

14 He had gotten maxed out in a strong-armed, your
15 Honor. After he had gone to jail, he discovered that
16 the other charges against him had been dismissed. I
17 think Mr. Bax specifically said that Jarrel Tyson had
18 been caught lying about his involvement and another co-
19 defendant's involvement in armed robbery. Therefore,
20 they had been dismissed, all the other charges.

21 He's essentially saying -- he's not disputing that
22 he was guilty of the strong-armed robbery, your Honor.
23 What he's disputing is that -- or, he's saying that
24 Counsel was in -- trial counsel was ineffective in
25 failing to bring up his recantation to the judge, which

10-27-14 CLEMONS V. STATE

1 might have influenced sentencing, your Honor.

2 THE COURT: Okay. Because he admitted he was
3 guilty of strong-armed, he was convicted of strong-
4 armed.

5 MR. SHAFFER: Yes, your Honor.

6 THE COURT: Okay. All right. All right. Ms.
7 Wilson, you now understand what his position is?

8 MS. WILSON: I do. Thank you, your Honor.

9 THE COURT: Okay. All right. Mr. Shaffer.

10 MR. SHAFFER: Yes, your Honor. Applicant would
11 call Mr. Bax to the stand.

12 THE COURT: Mr. Bax.

13 MADAM CLERK: Left hand on the *Bible*. Raise your
14 right hand. Do you solemnly swear or affirm that the
15 testimony you give the Court in this trial shall be the
16 truth, so help you God?

17 ARI BAX: Yes, ma'am.

18 THE COURT: Mr. Bax, how are you this morning?

19 ARI BAX: Good morning, Judge. How are you?

20 THE COURT: Doing well, sir.

21 ARI BAX: Good.

22 THE COURT: All right. If you'd get comfortable,
23 and you know to speak up.

24 ARI BAX: Yes, sir.

25 THE COURT: Okay. Thank you. All right. Mr.

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DIRECT - ARI BAX

1 Shaffer.

2 MR. SHAFFER: Thank you.

3 ARI BAX

4 DIRECT EXAMINATION, BY MR. SHAFFER:

5 Q And Mr. Bax, is it Bax or Bax?

6 A It's Bax.

7 Q Okay. I'd heard it pronounced both ways, and I
8 just wanted to make sure.

9 A Thank you.

10 Q Mr. Bax, you represented Mr. Clemons for his
11 strong-armed robbery, or his armed robbery trial,
12 correct?

13 A That's correct.

14 Q All right. During the course of that trial, what
15 was your defense?

16 A Our defense was that the State had over-charged Mr.
17 Clemons with a armed robbery; and that, what was an
18 accurate interpretation of the events that transpired
19 was a strong-armed robbery instead.

20 Q Okay. And basically, that defense was successful,
21 right?

22 A That's correct. It was successful.

23 Q And he was convicted of strong-armed and acquitted
24 of armed robbery, correct?

25 A That's correct. The -- the issue at case was

10-27-14 CLEMONS PCR

DIRECT - ARI BAX

1 obviously one where that defense was -- was really
2 factually accurate, but also one of the only ones
3 available to us, because Mr. Clemons, in this particular
4 event that was tried, is all on video. The entire event
5 is captured on video, fairly good quality video. And it
6 showed what ends up being Mr. Clemons coming in the door
7 to the convenience store and the events thereafter,
8 because the clerks ultimately subdued Mr. Clemons and
9 held him down until police came and got him, and he was
10 incarcerated up until the point of his trial. So, there
11 was no question as to identity.

12 Q Okay. And tell me this. Did he ever -- did they
13 ever make any offer to you, the Solicitor?

14 A Any offers were on armed robbery, that I recall. I
15 did have several discussions with Mr. Hall about this
16 case, and they were discussions I had after Chris and I
17 talked at the jail. We had discussed an offer, and Mr.
18 Clemons, I think, was trying to be realistic, because he
19 knew about the video and getting caught on-scene. We
20 had countered Mr. Hall with, I think, seven years under
21 strong-armed robbery, is what we had asked Mr. Hall to
22 consider. And he did take time to consider it. He
23 didn't just reject it outright. He said, I will look at
24 it; I will talk to my bosses; I will go to my office,
25 and I will contact you back, via email, and let you know

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1 if we can do that. And he responded within a day or
2 two, and indicated that they were not willing to do
3 that... And I actually printed that email out and took it
4 to Mr. Clemons at the Detention Center and showed it to
5 him.

6 Q Okay. And during -- while he was incarcerated, he
7 had picked up several other charges, correct?

8 A Well, it was kind of something that they charged
9 him with all en masse. Based on the way that I viewed
10 what I had in discovery, after the fact, or after
11 initially being appointed on the case under 608, was
12 that they had suspected that he was a part of this group
13 that was going around and -- and committing these
14 robberies, quote/unquote, at a lot of different gas
15 stations around the area. In fact, some of the
16 robberies that they suspected might be from the same
17 group crossed jurisdictional lines. They were
18 supposedly some that occurred in Jasper County, and then
19 a lot of them that occurred in Beaufort County. And in
20 fact, several of the stations were in different
21 jurisdictions within Beaufort County. There was a Port
22 Royal gas station, which was in the jurisdiction for the
23 one he was tried on. And then, there were some others
24 that were county jurisdiction, as well.

25 Q Okay. And so, he -- by the time you had gotten

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1 appointed, he had already previously been charged with
2 all the armed robberies, correct?

3 A That's correct. I got all those charges appointed
4 to me all at one time.

5 Q Okay. And the plea offers that you talked about
6 with Mr. Hall, would those have then taken care of the
7 other charges, as well?

8 A That's correct.

9 Q Okay. So, he was -- the Solicitor, basically, was
10 viewing them as one point. That's fair to say. And
11 they were -- or one -- one string of events that should
12 be pled together, correct?

13 A He was looking at it, at that time, as a global
14 resolution.

15 Q Okay.

16 A And the intention at that time was to go forward
17 with all the charges, but they would have had to have
18 been separate, because there were very separate facts
19 for all of those cases.

20 Q Yes.

21 A In looking at the case in preparing for the PCR,
22 you know, I had looked at several issues. I had looked
23 at the fact that the allegations for his other armed
24 robberies did pre-date his arrest. I've had that issue
25 come up. I knew he was not in jail at the time of any

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1 of the accusations. The incident that we tried occurred
2 on Christmas Eve, 2011. The allegations of the other
3 armed robberies were in the days and weeks proceeding
4 that. In fact, I think one of them was even, in fact,
5 the day before that, on December 23rd, instead of 24th.
6 The other issue was credibility of the witnesses that
7 led to his being charged with some of those others.

8 However, the sticking point that we had, which is
9 with Mr. Hall, and Mr. Hall was well aware of, was the
10 fact that he was arrested on this one was due to him
11 being caught on video doing it, subdued by the clerks,
12 and the officers arresting him. There was no getting
13 around that charge. And Mr. Hall made a decision to go
14 forward, which I have happen quite a bit, and I
15 certainly don't fault it from a strategy standpoint to
16 go forward with his strongest case first, which we knew
17 he was going to do, and I discussed with Mr. Clemons.

18 Q Okay. And the other -- the other charges, the one,
19 obviously, the one that he wasn't caught at the scene
20 at, those charges, do you recall any evidence, or were
21 they primary credibility cases, or did they have direct
22 evidence involved?

23 A Those cases did not have the kind of direct
24 evidence that the one we tried did. There were videos
25 in those cases. I viewed the videos in those cases, but

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1 those videos did not have -- the people were not caught
2 on scene. And in the cases in the videos that I can
3 recall, just from my memory, they're either their faces
4 were obscured by either handkerchiefs or hoods or hats
5 and glasses. And so, in those cases, there was not an
6 I.D. of Mr. Clemons. In fact, there was a questions as
7 to whether he was even one of the ones that went in the
8 store in those cases. I was prepared to try those other
9 cases, as well.

10 Now, as is revealed in the transcript, I had been
11 offered and accepted a position with Gene Hood's office,
12 the Public Defender's Office here, in the weeks
13 immediately prior to this trial. We knew that, if we
14 were going to try the others, it was going to be
15 subsequent to this trial. And I informed the Court that
16 the plan was, and Mr. Clemons was made aware of this,
17 and we asked if he had objections, was that the
18 representations on the other charges would transfer to
19 my wife, who was going to remain in private practice,
20 and she fully intended to try those other cases, if they
21 went forward with them.

22 Q Okay. What ended up happening with those other
23 cases?

24 A Ultimately, they were dismissed. My understanding,
25 from what was told to me by Ms. Richardson-Bax, and then

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1 later on by Mr. Hall, was that, after this trial, some
2 time after this trial, one of the other co-defendant's
3 attorneys, I think it was Jim Brown, who was
4 representing Mr. Cunningham, I believe, revealed to him
5 that Mr. Cunningham was, in fact, in jail during one of
6 the robberies that Mr. Tyson alleged he was at.

7 And so, the issue of credibility, to my
8 understanding, was Mr. Tyson's credibility was now
9 called in question, because he had clearly lied about
10 Mr. Cunningham being present at one of the robberies
11 that he alleged Mr. Cunningham was a part of. But as a
12 result of that problem with the credibility, Mr. Hall
13 chose to just dismiss all of Mr. Cunning -- or Mr.
14 Clemons's other charges.

15 Q Okay. Now, Mr. Clemons, he wrote you a lot,
16 correct?

17 A Relatively, I guess. He wrote me some.

18 Q Did he write you frequently?

19 A Certainly not near as much as some of my other
20 clients, but yeah.

21 Q But he wrote you fairly frequently?

22 A Yes.

23 Q And he asked a lot of questions about his case, I
24 imagine.

25 A He did. And I also met with Mr. Clemons on several

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1 occasions, and I would go over any questions that I had
2 seen in letters, and any others that he had for me when
3 we met.

4 Q Okay. Do you recall him providing you with a
5 statement from Mr. Tyson, the co-defendant, Mr. Tyson?

6 A Not specifically. I know that he sent me letters
7 talking about, you know, having heard from the other co-
8 defendants, and we talked about what they had said. I
9 vaguely recall having a discussion about the possibility
10 of a statement from one of the other clients -- or,
11 excuse me -- co-defendants.

12 Q If I handed you this --

13 MR. SHAFFER: Your Honor -- your Honor, I actually
14 do not have a copy of this, but.

15 THE COURT: Okay. Has Ms. Wilson seen it?

16 MR. SHAFFER: No, she has not.

17 MS. WILSON: Your Honor, the State objects to the
18 admission of this letter. We don't have Mr. Tyson, who
19 allegedly wrote the letter, here and available for the
20 State to cross-examine, based off of this testimony that
21 he puts in the statement.

22 MR. SHAFFER: And your Honor, I'm not actually
23 producing it for the truth off the matter asserted. I'm
24 actually not even trying to introduce it into evidence.
25 All I'm trying to get him to say is that there's some

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1 writing, allegedly from a co-defendant, that might have
2 been a confession saying that he wasn't involved. I'm
3 not saying that it actually is true. I'm not saying
4 that he's actually innocent, or anything like that, your
5 Honor.

6 THE COURT: You just want to ask Mr. Bax if he's
7 seen it?

8 MR. SHAFFER: Yes.

9 THE COURT: If he hasn't seen it, then he can't ask
10 you any questions about it.

11 MR. SHAFFER: Yes, your Honor. Thank you.

12 THE COURT: Okay. But if he's seen it before, you
13 know, then, he can -- I'll let you have him explain it.

14 ARI BAX: Thank you, sir.

15 THE COURT: And we'll mark, just so we can identify
16 that.

17 MR. SHAFFER: For purposes of identification.

18 THE COURT: If you would mark it, just for I.D.
19 purposes, so we'll know what we're talking about. This
20 will be Applicant's 1.

21 MR. SHAFFER: Yes, sir.

22 THE COURT: For I.D. only.

23 MR. SHAFFER: Yes, sir.

24 ARI BAX: Thank you, sir.

25 MR. SHAFFER: Thank you.

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1 DOCUMENT IDENTIFIED AS LETTER MARKED
2 APPLICANT'S EXHIBIT NUMBER 1, FOR
3 IDENTIFICATION.
4 BY MR. SHAFFER:

5 A To best of my remembrance, I may have had this and
6 read it, and I may have discussed it with Mr. Clemons.
7 I don't have an independent recollection of it. I do
8 vaguely recall knowing that any trials on the other
9 charges were going to come down to the credibility of
10 this particular witness. He was represented by Matt
11 Walker.

12 I think, actually, now that I think about it, I
13 even discussed with Matt Walker that his client was
14 telling -- talking to other co-defendants, and that his
15 credibility was going to be an issue. I don't have a
16 specific recollection of this piece of paper, but I have
17 no reason to believe I didn't have it.

18 Q Okay. Do you recall speaking to the Solicitor at
19 any point concerning whether or not Mr. Tyson was
20 possibly recanting his previous statement?

21 A I do recall that being part of my negotiations with
22 Mr. Hall. I did talk to him about the fact that Mr.
23 Tyson, who is the one who -- Mr. Tyson was the one who
24 started singing, as it were, right away. He was
25 arrested in Jasper. I specifically recall watching the

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1 video where Andre Massey of the Port Royal Police
2 Department and another officer from the Beaufort County
3 Sheriff's Department went to either Ridgeland or
4 someplace in Jasper, where Jarrel was being held, had
5 been arrested, and having a videotape interview with
6 him, where he talked about all these robberies.

7 Now, in that video, I specifically remember, there
8 was not a talk about dates. They didn't say what, you
9 know, when this happened, when this happened, because
10 Tyson couldn't quite remember it. He would talk about
11 this gas station or that gas station. I remember that
12 the officers continually were asking about different gas
13 stations and locations. There was one in Callawassie
14 that was supposedly robbed. There was these in Port
15 Royal. In fact, the one, I think, that Mr. Clemons was
16 arrested at and was tried on had been hit maybe one or
17 two times in the days proceeding.

18 But I do recall talking to Mr. Hall, when I talked
19 about that strong-armed robbery, and talked to him about
20 trying to get seven years on strong-armed robbery, that
21 Jarrel Tyson's testimony was going to be problematic,
22 because he had been talking to the co-defendants and
23 saying that maybe they weren't involved; and that, you
24 know, that was going to come up during his direct.

25 Q Okay. But Mr. Hall never made you an offer after

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1 that?

2 A He didn't make me any offers that Mr. Clemons was
3 willing to accept. I mean, I think that Mr. Hall, from
4 my remembrance, was willing to -- to do a minimum on the
5 armed robbery. I think he was willing to do that, at
6 one point. But that would have been ten years on an
7 armed robbery, which is ten years, 85 percent. Which,
8 Mr. Clemons was well aware he would have had to have
9 done eight-and-a-half years before being released, and
10 that was something he did not want to do. Additionally,
11 he would have those strikes on his record, and different
12 classification in the Department of Corrections.

13 Q Do you recall raising that to the judge, the fact
14 that -- well, when he -- after he had gotten convicted,
15 during the sentencing hearing, the solicitor mentioned
16 the other charges, correct?

17 A That's correct.

18 Q Okay. Did you raise to the judge the fact that
19 there might have been some question as to whether or not
20 that was, you know, whether or not they could even prove
21 those charges?

22 A I did not raise that on the record. My
23 recollection is, we had several in-chambers meetings
24 with Judge Mullen on this case. I recall, at one point,
25 she had inquired about whether Mr. Clemons would be

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1 willing to plead to armed robbery. I remember that
2 Judge Mullen indicated that, if he pled straight up,
3 that she would give him a sentence of 20 years. I
4 remember that Judge Mullen did not believe that we would
5 be successful in getting a verdict of guilty on strong-
6 armed robbery. I remember her specifically saying,
7 *there's no way, Mr. Bax, that you're going to get a*
8 *strong-armed robbery in this case.* I mean, because when
9 she said 20 on that, I said, well, you know, my client
10 believes, and I believe, there's a strong argument that
11 they may come back with strong-armed robbery, which only
12 carries a maximum of 15 years, and that's not 85
13 percent. And that was in an attempt to see if the Judge
14 would consider more of a minimum sentence on the armed
15 robbery, in case Mr. Clemons wanted to consider that.
16 But she did not agree with me.

17 I remember that we did discuss in chambers that he
18 had other charges, and I told the Judge, I said we would
19 be defending against those, and he has defenses against
20 those. I don't typically go into the details of my
21 defenses, especially not with a resident judge, who may
22 be the one trying those other charges. No offense to
23 the Bench, but I do not like laying my cards out for the
24 Bench, even though a lot of times, the Bench wants to
25 know what I'm up to.

THE COURT: And we take no

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1 exception to that comment.

2 ARI BAX: Thank you, sir.

3 THE COURT: Thank you.

4 BY MR. SHAFFER:

5 A So, I try to resist those efforts as politely as I
6 possibly can. So, I didn't really go into the details
7 of my defenses, and I have a strategic reason for it.

8 Q Okay. Did you inform Mr. Clemons about the maximum
9 sentence that strong-armed carried?

10 A Yes, sir, I did.

11 Q Okay. And he was aware of that whenever you
12 brought the minimum armed robbery, the 10-year armed
13 robbery plea to him?

14 A I did. We had very detailed discussions in the
15 Detention Center about the differences between a strong-
16 armed robbery sentence and an armed robbery sentence.
17 We talked about 85 percent and how that affects your
18 release date. We talked about parole eligibility under
19 the strong-armed robbery statute versus the armed
20 robbery statute. We talked about the fact that, on a
21 strong-armed robbery, he could be eligible for parole in
22 around 60 to 65 percent.

23 I also discussed with him that that's only an
24 estimation, and he needs to be prepared that the
25 Department of Corrections is going to make whatever

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1 decisions it makes, but that, typically, because it was
2 not considered a 85 percent offense, it wasn't even
3 considered a violent offense, I don't believe, at that
4 time, and I don't think it is now, that he would be --
5 he would serve less of the overall time than he would on
6 an armed robbery. And I felt like the facts supported
7 our argument to strong-armed robbery. And Mr. Clemons
8 was very pleased, as I was, when we obtained the verdict
9 that we wanted. I mean, we basically won that trial.

10 MR. SHAFFER: No further questions.

11 ARI BAX: Thank you.

12 THE COURT: Ms. Wilson.

13 MS. WILSON: Thank you, your Honor.

14 ARI BAX

15 CROSS-EXAMINATION, BY MS. WILSON:

16 Q Just generally, Mr. Bax, do you recall how far
17 before Mr. Clemons' trial you were appointed? Was it a
18 year, or?

19 A It was -- I mean, off the top of my head, it was --
20 it was -- it was quite a while. I had had the case for,
21 I think it was between eight to eleven months, in that
22 area. I think it was maybe -- it wasn't over a year, I
23 guess I can say.

24 Q Okay. And did you file *Brady* and Rule 5 motions
25 for Mr. Clemons?

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CROSS-EXAMINATION - ARI BAX

1 A Yes, I did.

2 Q And the materials that you received, did you review
3 that with him?

4 A I did.

5 Q And was it your practice with Mr. Clemons to
6 discuss with him the elements of the charges he was
7 facing and what the State was required to prove?

8 A I did, and, in fact, I discussed the elements in a
9 lot more -- even in more detail, because there was a
10 question factually, which I argued at trial, about
11 whether the accusation -- the allegations about Mr.
12 Clemons' hand being in the pocket of his jacket or
13 sweatshirt would necessarily rise to the level of armed
14 robbery. We had the factual question that armed robbery
15 does allow, if you present what appears to be a firearm,
16 and what I read in the statute and I argued at trial was
17 that the statute and the case law actually requires not
18 only that you have to present what appears to be a
19 firearm, you have to accompany that with either words or
20 actions that portray that it's a gun, and that you
21 intend to use it in a manner that would be designed to
22 make someone comply with your request for money or
23 goods. I mean, that's -- that's the basic gist of what
24 the case law and the statute says.

25 And so, Mr. Clemons and I discussed in detail,

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1 prior to trial, the fact that that was the primary
2 question that we were going to have the jury looking at
3 is, his hand being in his pocket in that video; did it
4 constitute a, you know, (a) representation of a firearm;
5 and (b), was there any acts that he did during that
6 fairly short video of about 15 minutes or so, that would
7 be interpreted by the jury as overt acts to be
8 interpreted that he was armed. It was only about a
9 couple of minutes before he was taken down by the clerks
10 and held down. And so, there was a short period of time
11 where that was to have occurred. And I argued to the
12 jury that his hand being in his pocket, that there's no
13 evidence, either from the testimony of the clerks or
14 from the video, that he stuck his finger out like it was
15 a gun; and the only words that were attributed to him
16 was, give me the f-ing money or give me the money, and
17 then, that was it. There was no other discussion about,
18 you know, I'm going to shoot you, or I'm going to --
19 none of that came out. So, I argued that, without that,
20 they don't get armed robbery, and I had discussed all of
21 that with him. And I did tell him there's no guarantee
22 of success. The jury may disagree with us, as far as
23 the interpretation of the video.

24 Q Okay. Thank you. And just for purposes of
25 clarity, for the record, Mr. Clemons didn't have any co-

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1 defendant on the charges that we're on here today. Is
2 that correct?

3 A No. In fact, there was really no substantial
4 allegation that -- that there was anyone else involved
5 with this one but him. I think the police suspected
6 that maybe one of the other two fellows might have been
7 outside of the store waiting on him, but that was never
8 produced in any kind of admissible evidence, either at
9 trial -- that was literally just the belief, I think, of
10 Mr. Massey, who I had discussed the case with in
11 preparation for trial, just to know what it was he was
12 going to testify to.

13 Q Okay. And you just were shown Applicant's Exhibit
14 1, for identification, and you said that it -- that it's
15 possible that you could have received that. Is that
16 correct?

17 A That's correct.

18 Q And the thing -- the content of the letter from Mr.
19 Tyson, it didn't make any allegations, with regard to
20 the charges that are on here today. Is that correct?

21 A It -- it lists -- and, you know, I don't have an
22 independent recollection of this -- but it lists three
23 -- or, excuse me -- four different arrest warrants. And
24 it has -- he lists the warrant numbers, and he lists the
25 charges; and he even lists statutes, is what it looks

1 like, but he doesn't list dates with it. And without
2 being able to cross-reference that with the arrest
3 warrants, I have no way of knowing if that included the
4 one that he was caught at.

5 Q Okay.

6 A Obviously, if it included the arrest warrant that
7 he was caught doing, then Mr. Jarrel Tyson saying that
8 he wasn't involved with that one hurts his credibility
9 to our detriment. It shows that it was a false attempt
10 to get Mr. Clemons out of his charges. I don't recall
11 independently whether that was something I looked at and
12 discussed with him.

13 I did talk with Mr. Clemons, though, about the fact
14 that, even if a co-defendant recants, that doesn't mean
15 that the State won't still call that person, and just
16 try to rehabilitate them, if it's brought up by the
17 defense attorney during their cross-examination. You
18 know, it is entirely possible, and has happened in many
19 of my cases in the past, where co-defendants exchange
20 letters in the jail. But still, in the end, one decides
21 to testify against the other, and it's up to the jury to
22 determine the credibility of the individual.

23 Q Okay. But Mr. Tyson's credibility wasn't an issue
24 at this trial. Is that correct?

25 A No. Mr. Tyson wasn't a factor in this trial at

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1 all. And I did inform my client that, regardless of
2 what happens with the other charges, this trial was not
3 going to get dismissed, and was going to go forward;
4 because with the video evidence, they didn't need to
5 rely on co-defendants' credibility.

6 Q Now, do you recall the sentencing proceeding, after
7 Mr. Clemons was convicted?

8 A I vaguely recall it. I have read the transcript to
9 refresh my memory. It appears that I asked some people
10 to stand and talk with him from his family. I don't
11 independently recall them. I do remember asking the
12 judge to be lenient with him, but I did also -- and I do
13 recall this, and it's not on the record -- remember
14 telling Mr. Clemons that, if we were successful in
15 getting a strong-armed, that it was possible that the
16 Bench would give him the max, because it was my belief
17 that the Bench thought that the armed robbery was the
18 more appropriate charge.

19 Q Now, your testimony today that you said that you
20 had a strategic basis for not informing the Court that,
21 on the other charges, there would be some challenge to
22 Mr. Tyson's credibility. Can you expound on that?

23 A Well, I can tell you, for two reasons. Number one,
24 by doing so, I would reveal to the prosecution what are
25 potential -- you know, more details about my potential

1 defense. Now, obviously, as I said, I had already
2 discussed the fact with Mr. Hall that the credibility of
3 Mr. Tyson and/or Mr. Cunningham would be called into
4 question if they were used as witnesses against my
5 client in that other -- in those other charges, and he
6 was aware of that. But by going into it in front of the
7 Judge, you know, there could be more discussion and
8 wanting more details, which I would then have to try to
9 avoid talking about, without revealing my defense and
10 giving them pre-warning, so that they could prep their
11 witnesses accordingly, in order to avoid the attack that
12 I was -- was preparing.

13 Additionally, the -- Judge Mullen could be the
14 judge who would try those cases, since she is the
15 resident judge here in Beaufort County and the Chief
16 Administrative Judge for General Sessions. And I don't
17 really particularly find it a good idea to let the judge
18 know what my defenses are, either.

19 MS. WILSON: Thank you, Mr. Bax.

20 THE COURT: Anything on re-direct?

21 MR. SHAFFER: Nothing, your Honor.

22 THE COURT: Thank you, sir. You may step down.

23 ARI BAX: Thank you, Judge. Good to see you.

24 THE COURT: Good seeing you. Any other witnesses
25 by the Applicant?

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1 MR. SHAFFER: Yes, your Honor. Applicant would
2 call Christopher Clemons.

3 THE COURT: Mr. Clemons.

4 MADAM CLERK: Please raise your right hand. Do you
5 solemnly swear or affirm that the testimony you give the
6 Court in this trial shall be the truth, so help you God?

7 CHRISTOPHER CLEMONS: Yes, ma'am, I do.

8 MADAM CLERK: Have a seat.

9 THE COURT: Get comfortable. Okay. And you need
10 to speak up loudly, please, sir.

11 CHRISTOPHER CLEMONS: All right.

12 THE COURT: Okay. Mr. Shaffer.

13 MR. SHAFFER: Thank you, your Honor.

14 CHRISTOPHER CLEMONS

15 DIRECT EXAMINATION, BY MR. SHAFFER:

16 Q Mr. Clemons, you're not disputing the fact that you
17 committed strong-armed robbery, correct?

18 A Yes, sir.

19 Q You are disputing it, or you're not?

20 A No, I'm not, sir.

21 Q Okay. So, you're saying you're guilty of strong-
22 armed robbery. Is that correct?

23 A Yes, sir.

24 Q Okay. What was your purpose in bringing this PCR?
25 What do you want it to accomplish?

1 A Reconsideration, because I feel like, on my pending
2 charge, that like, affect my -- like, my plea, because
3 she ain't give me no plea. She say, I'm going to give
4 you the max, with like, like, based on my pending
5 charges.

6 Q Okay. So, basically, you're saying you think that
7 she didn't take -- or, she took into account your
8 pending charges, and gave you more of a sentence because
9 of that?

10 A Yes, sir.

11 Q Okay. So, basically, you want a re-sentencing
12 hearing. Is that right?

13 A Yes, sir.

14 Q Okay. Prior to going to trial, have you had a
15 chance to review Applicant's Exhibit 1, that document in
16 front of you?

17 A A document?

18 Q There's a letter in front of you with a pink
19 sticker on it. You had given it to --

20 A Yes, sir.

21 Q The sticker says, *Applicant's Exhibit 1*, for the
22 purposes of identification. Do you recall giving that
23 to Mr. Bax?

24 A Yes, sir, when he came to see me.

25 Q Okay.

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1 A Yes, I had give him a copy.

2 Q All right.

3 COURT REPORTER: I'm sorry. *Yes, sir, when he came*
4 *to see me, and what did you say?*

5 A Well, I had given him like, a copy of my own paper,
6 on my own, co-defendant statement.

7 Q Okay. So, you gave that to Mr. Bax, correct?

8 A Yes, sir.

9 Q Okay. And that was before your trial?

10 A Yes, sir. Like, a week, something like that.

11 Q After your trial, you found out your other charges
12 were dismissed, right?

13 A Yes, sir.

14 Q How long after your trial was that?

15 A My trial was in April. The 23rd of -- June --
16 about June the 13th.

17 Q Okay. And they were dismissed. How did you find
18 out they were dismissed?

19 A Mr. Bax had wrote -- well, he had write me at the
20 prison.

21 Q Okay. And he told you they were dismissed?

22 A Yes, sir.

23 Q Okay. And at that point, you decided to file your
24 PCR. Is that right? Or were you going to file your PCR
25 ahead of time?

1 A I think I filed that, like, after I got his letter.

2 Q Okay.

3 A After I got that letter.

4 Q Okay. So, what you're saying today, you don't want
5 to go back to trial, right?

6 A No, sir.

7 Q Okay. And you basically just want -- you wanted
8 the Judge to consider the fact that those other charges
9 weren't -- that this was your first offense?

10 A Yes, sir.

11 MR. SHAFFER: Okay. No further questions.

12 THE COURT: Anything on cross?

13 MS. WILSON: Nothing from the State.

14 THE COURT: You may step down, Mr. Clemons. Thank
15 you, sir. Any other witnesses?

16 MR. SHAFFER: No, your Honor. The Applicant rests.

17 APPLICANT RESTS.

18 THE COURT: Okay. All right. Any witnesses on
19 behalf of the State?

20 MS. WILSON: Yes, your Honor. The State would
21 briefly like to recall Mr. Ari Bax.

22 THE COURT: Okay. Mr. Bax. Mr. Bax, you
23 understand you're still under oath.

24 ARI BAX: Yes, sir.

25 THE COURT: Okay. Get comfortable.

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ON RECALL - RE-DIRECT - ARI BAX

1 ARI BAX: Thank you.

2 THE COURT: Ready?

3 ARI BAX: Yes, sir.

4 THE COURT: All right. Ms. Wilson.

5 MS. WILSON: Thank you, your Honor.

6 ARI BAX ON RECALL

7 RE-DIRECT EXAMINATION, BY MS. WILSON:

8 Q Mr. Bax, in your opinion, would information about
9 Mr. Wright's -- Mr. Clemons' co-defendant Tyson's
10 credibility on other charges have served as any
11 mitigation for Judge Mullen on these charges?

12 A I honestly do not believe that they would have made
13 any impact on her sentence.

14 MR. SHAFFER: Objection. Speculation, your Honor.

15 THE COURT: Well, I think I understand your
16 objection. I think attorneys that appear in front of
17 judges have a really good feel for what attorneys do --
18 what judges are going to do and like that. And I
19 realize that he is giving his professional opinion as an
20 attorney in dealing with those, so I'm going to overrule
21 your objection and allow him to testify to it. But I
22 will note your objection, on the record, and preserve
23 it. Okay?

24 MR. SHAFFER: Thank you, your Honor.

25 THE COURT: Yes, sir.

1 MS. WILSON: Thank you, your Honor.

2 THE COURT: Go ahead.

3 A Thank you, sir.

4 THE COURT: You may answer.

5 BY MS. WILSON:

6 A As I was saying, I don't believe that it would have
7 changed her sentence or reduced it for two reasons.
8 Number one, as I had stated before, I believe that the
9 Judge's interpretation of the events that were revealed
10 on the video of the event were that it should be
11 considered an armed robbery. So, when the jury came
12 back with strong-armed robbery, I think she felt that
13 Mr. Clemons was getting all of the benefit that he
14 really should get, by the jury coming back with strong-
15 armed robbery, and that the Bench wasn't going to
16 provide any additional benefit by going under the
17 maximum for the -- for what the Bench considered a
18 lesser charge.

19 Number two, in making statements on the record
20 about the other -- the credibility of witnesses in other
21 armed robberies, or robberies that weren't being tried,
22 my experience with this judge, which is extensive, tells
23 me that, most likely, the Bench would have said, well,
24 that's not what we're here for on trial, and there's no
25 question of credibility in this case, and would have

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ON RECALL - RE-DIRECT - ARI BAX

1 discounted that as -- as a factor that -- that she was
2 relying on.

3 MS. WILSON: Thank you. No further questions.

4 THE COURT: Anything on cross?

5 MR. SHAFFER: Nothing, your Honor.

6 THE COURT: Thank you, sir. You may step down
7 again.

8 ARI BAX: Thank you.

9 THE COURT: Appreciate it. Any other witnesses on
10 behalf of the State?

11 MS. WILSON: Nothing further from the State.

12 STATE RESTS.

13 THE COURT: What I will do is, I will review the
14 transcript, because I haven't had an opportunity to do
15 that, and I'll get back with you all on my decision.

16 MS. WILSON: Thank you, your Honor.

17 THE COURT: Okay. Thank you.

END PROCEEDING 11:01 A.M.

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CERTIFICATE OF REPORTER

OCTOBER 27, 2014 TRANSCRIPT OF

POST-CONVICTION RELIEF HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 27, 2014, Transcript of Post-conviction Relief Hearing is a true, accurate, and complete record of the proceedings had one exhibit I.D.'d on said date, in the case of Christopher Clemons, Beaufort County, South Carolina, Court of Common Pleas, Case Number 2013-CP-07-02204; that I am of neither kin, counsel, nor interest to any party hereto.

THIS CERTIFICATE OF REPORTER CONTAINING MY DIGITAL SIGNATURE IS ATTACHED TO THIS COPY OF THIS TRANSCRIPT. PURSUANT TO SCACR 607, REQUESTS FOR COPIES OF THIS TRANSCRIPT MUST BE MADE TO THE COURT REPORTER. UNAUTHORIZED COPYING OF THIS TRANSCRIPT IS PROHIBITED.

Witness my signature September 24, 2015.

S/Wanda H. Rowe

Wanda H. Rowe, CVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
Christopher Clemons, #355221,	)	Case No. 2013-CP-07-2204
Applicant,	)	
v.	)	ORDER OF DISMISSAL
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 27, 2013. Respondent made a timely Return on or about September 8, 2014. The Court convened an evidentiary hearing into the matter on October 27, 2014. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Arie D. Bax, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the pleadings in this matter, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. Applicant was indicted at the March 2013 term of the Beaufort County Grand Jury for armed robbery (2013-CP-07-555). Applicant was represented by Arie D. Bax, Esquire ("trial counsel"). On April 22-23, 2013, Applicant proceeded to trial and was convicted of the lesser included offense of strong arm

robbery. Applicant was sentenced by the Honorable Carmen T. Mullen to confinement for a period of fifteen (15) years. Applicant did not appeal his conviction or sentence.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to advise the Applicant of his right to appeal.
 - b. Failure to properly investigate the false testimony of co-defendant.
2. Brady violation.
 - a. The State withheld exculpatory evidence.

At the evidentiary hearing, Applicant proceeded on only ground 1(a), ineffective assistance of counsel for failing to investigate the false testimony of a co-defendant.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced 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.

The Court finds Applicant failed to meet his burden to show trial counsel ineffective in failing to investigate testimony of a co-defendant. Initially, the Court notes Applicant was the only person charged with the crime for which he was tried. Although Applicant had co-defendants in his numerous other pending burglary cases, there was no co-defendant in this case. The Court finds very credible trial counsel's testimony that he had no strategic reason to raise issues relating to the credibility of those co-defendants in this trial. The Court also finds credible trial counsel's testimony that he would have attacked the credibility of the co-defendant at

subsequent trials if the State had brought the other charges to trial. The Court also notes trial counsel testified he did not recall Applicant providing him any statement from the co-defendant prior to trial.¹ The Court finds not credible Applicant's allegation that he wanted trial counsel to pursue issues of the co-defendant's credibility in relation to this trial. Accordingly, the Court finds trial counsel articulated a valid strategic reason for not further investigating the co-defendant in preparation for this trial and for not presenting matters of the co-defendant's credibility here. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Trial counsel's pre-trial investigation and consultation with Applicant were reasonable under the circumstances, and did not fall below professional norms.

Furthermore, the Court finds Applicant wholly failed to demonstrate he was prejudiced by counsel's performance in this case. Applicant was charged with armed robbery, but counsel effectively presented a defense that the State had overcharged Applicant, and ultimately the jury found Applicant guilty of the lesser-included offense of strong arm robbery.² Furthermore, Applicant was caught on video committing the robbery and restrained by the victims until police arrived. In light of this overwhelming evidence of guilt, none of counsel's actions prejudiced

¹ See, e.g., Strickland, 466 U.S. at 691 ("[W]hen a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable."); Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) ("Because of Moody's dishonesty to his own counsel, however, counsel were limited in their possibilities for mitigation investigation."); U.S. v. Pellerito, 878 F.2d 1535, 1543 (1st Cir. 1989) ("If counsel was ineffective in any sense, it was only because the client rendered him so, first by keeping Noriega in the dark, and then, by refusing to heed his advice. That is not the sort of 'ineffectiveness' for which relief can be granted."); Rodriguez v. State, 74 S.W.3d 563, 568 (Tex. App. 2002) ("Moreover, we opt not to fault trial counsel for the intentional withholding of vital information by his client." (citations omitted)).

² The Court notes Applicant admitted his guilt to this crime at the evidentiary hearing and indicated he does not want a new trial, merely resentencing. Thus, the Court does not even have the power to grant the relief sought by Applicant. Gilstrap v. State, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (successful habeas petition "entitled only to a new trial").

Applicant. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). Accordingly, the Court finds Applicant failed to show he was prejudiced by trial counsel's decision to not further investigate the co-defendant's credibility in preparation for this trial.

B. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. 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. 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.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14th day of August, 2015



EDGAR W. DICKSON
Presiding Judge

Orangeburg, South Carolina

WITNESSES

S. Heynard, Port Royal PD

DOCKET NO. 2013GS0700555

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

March Term 2013

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2013GS0700555

THE STATE

VS.

ACTION OF GRAND JURY

Christopher Clemons

Defendant

Forfeiture of Grand Jury Date: MAR 28 2013

VERDICT

Indictment for
Armed Robbery

Witness:

True Bill

SC Code: 16-11-0330(A)
CDR Code: 0139

C.C.C. PLS. and G.S.

Forfeiture of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

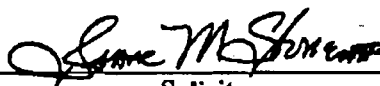
INDICTMENT
2013GS0700555

At a Court of General Sessions, convened on March 28, 2013, the Grand Jurors of Beaufort County present upon their oath:

Armed Robbery

That in Beaufort County, South Carolina, on or about December 24, 2011, the Defendant, Christopher Clemons, by use of force, threats, or intimidation and while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods or monies from the person or immediate presence of John Eisenhower, Rob Thomas, clerks employed at the Kangaroo Pantry store located at 845 Robert Smalls Parkway, with the intent to permanently deprive them of possession thereof; in violation of Section 16-11-330(A) of South Carolina Code of Laws, 1976, as amended.

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



Solicitor

COUNTY OF Beaufort
COUNTY OF Beaufort
STATE VS.
Christopher Clemons

up to 15 yrs

AKA:
Race: AFRICAN AME Sex: M Age: 21
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2013GS0700555
A/W#: 2013GS0700555
Date of Offense: 12/24/2011
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Common law robbery, strong arm robbery

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Patricia Hall 76643 Christopher Clemons Chris D. Boys 72488
Hall, Patricia SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment
Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: Certified - A True Copy

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk: Shondra G. Jones

Court Reporter: Wanda Lowe

SCCA/217 (03/2011)

Presiding Judge:

Judge Code: 2192

Sentence Date: 4-28-13