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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Barnwell County

Tanya A. Gee, The Honorable Tanya A. Gee

KEVIN BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001659

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF BARNWELL

CIRCUIT COURT

3 STATE OF SOUTH CAROLINA,

4 -vs-

5 KEVIN CHRISTOPHER BROWN, 2012-GS-06-00027-00030
6 ROOSEVELT KADEEM WORKMAN, 2012-GS-06-00049-00052
- & - JAMAAL RILEY, 2012-GS-06-00068-00071
Defendants.

8 TRANSCRIPT OF RECORD

9 HEARD ON SEPTEMBER 4, 5 & 6, 2012

10 BARNWELL, SOUTH CAROLINA

12 BEFORE:

13 THE HONORABLE CLIFTON NEWMAN

14 AND A JURY

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SELECTION OF THE JURY

1 ON TUESDAY, SEPTEMBER 4, 2012 AT 2:00 P.M.:

2 THE COURT: Good afternoon, ladies and gentlemen.

3 THE JURY (COLLECTIVELY): Good afternoon.

4 THE COURT: My name is Clifton Newman. And I am a
5 Circuit Court Judge assigned to preside over this week's
6 term of General sessions Court here in Barnwell County.

7 And y'all have been summoned to appear for jury duty
8 here in this county. In order to serve on jury duty, you
9 must be qualified to serve. As part of the juror
10 qualifications process it is necessary that an oath be
11 administered to you.

12 So if you will stand at this time and raise your right
13 hands, the clerk will administer the oath.

14 (Jury placed under oath.)

15 THE COURT: Now, ladies and gentlemen, the oath that
16 you took requires that you give complete and truthful
17 responses to all questions that you are asked during the
18 qualifications process with this case as well as the
19 selection process for any trial that you might be called
20 to serve on or to be considered for selection on.

21 The first part of the juror qualifications process is
22 the roll call. The juror that just -- the new juror came
23 in? Did a juror just come in, Mr. Bailiff?

24 THE BAILIFF: Yes, sir. He left to go to the
25 restroom.

SELECTION OF THE JURY

1 THE COURT: Was he sworn?

2 THE BAILIFF: No, sir.

3 THE COURT: All right, sir. If you'll stand to be
4 sworn.

5 (Late juror placed under oath.)

6 THE COURT: So you must give complete and accurate
7 information for the benefit of the lawyers in jury
8 selection. They're entitled to have complete and truthful
9 information to assist them in jury selection, but it's
10 also essential that you give complete and truthful
11 responses as part of the entire process of your jury
12 service.

13 The first part of the qualifications process is the
14 roll call where the clerk will have you stand and provide
15 the information that she's informed you that we need.

16 You may proceed, Madam Clerk.

17 (Thereupon, roll call was sounded.)

18 THE COURT: Ladies and gentlemen, I have some
19 additional questions to ask you to determine your
20 qualifications to serve.

21 It's not my intention to embarrass anyone. If you do
22 not wish to respond openly to any particular question
23 because of embarrassment, make a mental note of that
24 question and you will be given an opportunity to come
25 forward and share those answers here at the bench with me

SELECTION OF THE JURY

1 and the lawyers.

2 Remember, you must give complete and truthful
3 responses to all questions.

4 Is there any member of the jury panel who is not a
5 citizen of the United States of America? If you're not a
6 US citizen, please stand.

7 (No response.)

8 THE COURT: If you are not a citizen and resident of
9 Barnwell County, if you do not live in this county, please
10 stand.

11 (No response.)

12 THE COURT: If you cannot read, write, speak, or
13 understand the English language, please stand.

14 (No response.)

15 THE COURT: If you have less than a sixth-grade
16 education or its equivalent, please stand.

17 Yes, sir. You're -- tell me your juror number, please

18 THE JUROR: 200.

19 THE COURT: You're 200. And tell me why you're
20 standing.

21 THE JUROR: I got sixth grade equivalent.

22 THE COURT: Say that again.

23 THE JUROR: The question you say, sir?

24 THE COURT: How far did you go in school?

25 THE JUROR: I went to the 12th grade, but I didn't

SELECTION OF THE JURY

1 understand things.

2 THE COURT: You went to the 12th grade?

3 THE JUROR: Uh-huh.

4 THE COURT: But you didn't understand what was going
5 on in school?

6 THE JUROR: (Nods head.)

7 THE COURT: Can you read and write?

8 THE JUROR: Not that good.

9 THE COURT: Do you have a driver's license?

10 THE JUROR: No, sir.

11 THE COURT: And do you work?

12 THE JUROR: (Nods head.)

13 THE COURT: Where do you work?

14 THE JUROR: Take care of my father at the time.

15 THE COURT: Do you have a disability of some sort?

16 THE JUROR: Yes, sir.

17 THE COURT: All right. Are you Mr. Young?

18 THE JUROR: Yes, sir.

19 THE COURT: Okay. Mr. Young, we'll excuse you. Thank
20 you very much for coming.

21 If you have any physical or mental problems that you
22 think would prevent you from serving on jury duty, please
23 stand.

24 Yes, ma'am?

25 THE JUROR: Due to the car accident that I was in, I

SELECTION OF THE JURY

1 got my shoulder fractured and I've also got something
2 wrong with my rotary cuff. It's real painful, and I'm on
3 medication. And I don't know if I would be, be able to
4 listen and function with the pain and stuff that I'm in.

5 THE COURT: I understand. What's your juror number,
6 please?

7 THE JUROR: I can't remember the juror number, but I'm
8 Chrystie Blackwood.

9 THE CLERK: Number six.

10 THE COURT: Ms. Blackwood, we'll transfer you and send
11 you a notice to come back another time.

12 THE JUROR: Thank you.

13 THE COURT: Thank you. And you may go. Yes, ma'am?

14 THE JUROR: Wanda Croft. It's -- may I come up?

15 THE COURT: Pardon me?

16 THE CLERK: Juror 24.

17 THE JUROR: Can I come up?

18 THE COURT: If you do not wish to answer any questions
19 openly, make a mental note of the question and I will give
20 you an opportunity at the end of the process to come
21 forward and share those answers with me here at the bench
22 along with the lawyers. Thank you.

23 Yes, ma'am?

24 THE JUROR: Due to my health, I got COPD, I am on Soma
25 which is a muscle relaxer. I am on Lyrica which is a pain

SELECTION OF THE JURY

1 medicine. Plus I'm on oxygen which I should be on it
2 right now but I'm not. So, with the Soma, the muscle
3 relaxers, and the pain medication, I am in another world.

4 THE COURT: What is your juror number, ma'am?

5 THE JUROR: Fifty-three.

6 THE COURT: Juror Number 53.

7 THE CLERK: Melody Herman.

8 THE JUROR: Yes.

9 THE COURT: Okay, ma'am. You may go.

10 THE JUROR: Thank you.

11 THE COURT: Yes, sir?

12 THE JUROR: I have a slight hearing problem. And
13 sometimes I don't understand correctly.

14 THE COURT: Can you hear me okay?

15 THE JUROR: Yes, sir. I've been hearing you fairly
16 well.

17 THE COURT: Well, you're right here (indicating) on
18 the jury duty. The witnesses will be here. They'll be
19 talking into the mic. The lawyers will be standing in
20 front of you. And it will be their job to talk loud
21 enough for you to hear them.

22 THE JUROR: All right, sir.

23 THE COURT: Thank you, sir. Yes, ma'am?

24 THE JUROR: I got an out-patient surgery in the
25 morning for psoriasis for my inner thigh. I was supposed

SELECTION OF THE JURY

1 to go to pre-op today but they told me to come here.

2 THE COURT: You'd like to be transferred to serve at
3 another time?

4 THE JUROR: Yes.

5 THE COURT: Tell us your juror number again, please.

6 THE JUROR: I don't know.

7 THE CLERK: What's your name?

8 THE JUROR: Felester Johnson.

9 THE CLERK: Juror number 59.

10 THE COURT: Ms. Johnson, you may go. We'll send you a
11 notice to come back the next time -- another time.

12 THE JUROR: Thank you.

13 THE COURT: Yes, ma'am?

14 THE JUROR: I'm Number 54. I did call. I didn't
15 understand what she meant by transfer, but I called this
16 morning and she said she was going to call me back before
17 it started but since she hadn't called me back I came
18 anyway. But I have (inaudible) and he's in the hospital
19 having surgery.

20 THE CLERK: So we'll transfer you.

21 THE COURT: All right. And, ma'am, you're employed by
22 the Department of Corrections.

23 THE JUROR: Uh-huh.

24 THE COURT: And as an employee of the Department of
25 Corrections, you're entitled to an exemption from jury

SELECTION OF THE JURY

1 service. And if you exercise that exemption you may elect
2 not to serve. So you're free to go.

3 THE JUROR: Okay. Thank you.

4 THE COURT: Number 54; is that right?

5 THE CLERK: Yes, ma'am -- yes, sir.

6 THE JUROR: Yes, sir.

7 THE COURT: Has any member of the jury panel been
8 convicted by guilty plea or trial in a state or federal
9 court of a crime punishable by imprisonment for more than
10 one year and your civil rights have not been -- your civil
11 rights have not been restored by pardon or amnesty?

12 In other words, if you have a criminal record and it
13 involved a crime for which you could have gotten more than
14 one year in jail at any point in time in your lifetime,
15 you're not qualified to serve on jury duty and it must be
16 brought to my attention unless you've been granted a
17 pardon by the Governor or by the President of the United
18 States or you have been granted amnesty by some government
19 authority authorized to grant amnesty.

20 If that question applies to any of you, please stand.

21 (No response.)

22 THE COURT: And, ladies and gentlemen, as relates to
23 these questions, it's not optional as to whether or not
24 you stand. If the questions apply to you, under your
25 oath, you must bring it to my attention.

SELECTION OF THE JURY

1 And in connection with that, generally speaking, there
2 are record sheets run on jurors, too, so that we'll know
3 whether or not a juror is qualified to serve as it relates
4 to this particular question.

5 So if it applies to any of you, please stand.

6 (No response.)

7 THE COURT: All right. Madam Solicitor?

8 MS. RINGLER: (Hands document to the Judge).

9 THE COURT: Mr. Tommy Warner.

10 THE JUROR: Yeah.

11 THE COURT: Did you hear the last question I asked?

12 Are you the person with the hearing problem?

13 THE JUROR: No, I haven't never been in prison for a
14 year.

15 THE COURT: I didn't ask whether you've been in
16 prison. I said if you have a criminal record.

17 THE JUROR: I got in trouble with my wife a few years
18 back.

19 THE COURT: Contributing to the delinquency of a
20 minor.

21 THE JUROR: Oh, yes, sir. That was back when I was
22 real young.

23 THE COURT: It was still you. You haven't changed,
24 you're still the same person; aren't you?

25 THE JUROR: Yes, sir.

SELECTION OF THE JURY

1 THE COURT: Okay. Sir, you're disqualified from
2 serving. You may go.

3 THE JUROR: Thank you, sir.

4 THE CLERK: 124.

5 THE COURT: Is any member of the jury panel a clerk, a
6 deputy clerk, a sheriff, a commissioned law enforcement
7 officer, a constable, a county officer, or if you are
8 employed within the walls of any courthouse? If so,
9 please stand.

10 Yes, sir?

11 THE JUROR: Yes, sir. I'm a commissioned officer with
12 Wackenhut Services, Savannah River Site through the
13 Department of Energy.

14 THE COURT: A commissioned officer of which services?

15 THE JUROR: Wackenhut.

16 THE COURT: Sir, as a commissioned law enforcement
17 officer with Wackenhut?

18 THE JUROR: Wackenhut Services on-site.

19 THE COURT: And that commission that you have is given
20 by the State of South Carolina?

21 THE JUROR: No, sir. The federal Department of
22 Energy.

23 THE COURT: Federal Department of Energy. And the
24 authority is limited to --

25 MS. RIVERS: Yes, sir.

SELECTION OF THE JURY

1 THE COURT: -- the facility?

2 THE JUROR: Yes, sir

3 THE COURT: The site? And is that in Barnwell
4 County?

5 THE JUROR: Yes, sir.

6 THE COURT: Barnwell, and --

7 THE JUROR: Barnwell, Aiken and Allendale.

8 THE COURT: Barnwell, Aiken and Allendale. With the
9 powers of arrest within the jurisdiction of Savannah
10 River?

11 THE JUROR: Yes, sir.

12 THE COURT: I think that qualifies as, to exclude from
13 serving on jury duty as a commissioned law enforcement
14 officer. And, thank you. And you may go.

15 THE JUROR: Thank you.

16 THE COURT: Your name again, sir, is?

17 THE JUROR: Adam Causey.

18 THE COURT: Juror number?

19 THE JUROR: 150.

20 THE COURT: 150. All right. Thank you, sir.

21 Is there any member of the jury panel who has
22 previously served on jury duty in this court during the
23 past calendar year, 2011-2012?

24 (No response.)

25 THE COURT: If you served as a member of the jury of

SELECTION OF THE JURY

1 the grand jury of this county within the last three years,
2 please stand.

3 (No response.)

4 THE COURT: Ladies and gentlemen, those are the
5 qualifying questions. We now move to jury exemption.

6 An exemption means that you may choose not to serve if
7 you're entitled to be exempted from service. Our state
8 law provides for certain exemptions for jury service.

9 The first exemption is for those of you who may be 65
10 years of age or older and you may wish to be exempted
11 because of your age. We'd love to have you serve, but if
12 you are 65 years of age or older and you choose not to
13 serve, please stand.

14 (No response.)

15 THE COURT: The next exemption deals with those of you
16 who may have served on jury duty here in this courtroom
17 within the past three years. No person is required to
18 serve more often than once every three calendar years.

19 If you have served within the past three years and you
20 wish to be exempted from service, please stand.

21 (No response.)

22 THE COURT: If you served as a member of the grand
23 jury of Barnwell County within the past five years and you
24 wish to be exempted, please stand.

25 (No response.)

SELECTION OF THE JURY

1 THE COURT: The next exemption deals with those of you
2 who have small children under the age of seven and no one
3 to care for them while serving on jury duty and you
4 therefore wish to be exempted from service.

5 If that applies to any of and you wish to be exempted,
6 please stand.

7 (No response.)

8 THE COURT: The next exemption deals with those of you
9 who may be attending school or working at a school and you
10 have a conflict because of your school related
11 responsibilities. If so, and you wish to be transferred
12 to serve at another time when you do not have a
13 school-related conflict, please stand.

14 Yes, ma'am?

15 THE JUROR: I have school Tuesday through Saturday and
16 I have to pay for the hours I miss.

17 THE COURT: Can you start over, please?

18 THE JUROR: I have school Tuesday through Saturday and
19 I have to pay for the hours that I miss.

20 THE COURT: What time do you attend school?

21 THE JUROR: From 8:30 to three.

22 THE COURT: And what school is that?

23 THE JUROR: Aiken School of Cosmetology.

24 THE COURT: When will you be available to serve on
25 jury duty?

SELECTION OF THE JURY

1 THE JUROR: On Mondays.

2 THE COURT: We don't have -- we operate it by the
3 weeks as opposed to by the days. Which week will you be
4 available to serve?

5 THE JUROR: I'm not sure. I'll be done with school in
6 two months.

7 THE COURT: So, you'll be available after two months?

8 THE JUROR: Uh-huh.

9 THE COURT: All right. We'll transfer you and have
10 you come back later in the year.

11 THE CLERK: Tell --

12 THE COURT: Tell us your name, please.

13 THE JUROR: Hannah Sargent.

14 THE COURT: Sargent. Thank you, Ms. Sargent.

15 If are you employed with the Department of Corrections
16 and would like to be exempted from service, please stand.

17 (No response.)

18 THE COURT: If are you the caretaker of a person who
19 is incapacitated or elderly and you wish to be exempted to
20 care for them, if so please stand.

21 (No response.)

22 THE COURT: If you perform services for a business,
23 agricultural or commercial enterprise and the services
24 that you perform are so essential to the operation of the
25 business that it will have to close if you're required to

SELECTION OF THE JURY

1 be here and serve on jury duty and you therefore would
2 like to be exempted for that reason, if so, please stand.

3 (No response.)

4 THE COURT: Ladies and gentlemen, that concludes the
5 statutory list of exemptions and qualification for jury
6 service.

7 It may be that you are qualified to serve and not
8 entitled to an exemption but that service this week would
9 pose a hardship upon you and therefore you would like to
10 be transferred to serve at another time.

11 I cannot permanently excuse a person who is qualified
12 to serve and not entitled to an exemption, but under the
13 appropriate circumstances I can transfer you to serve at
14 another time.

15 Very briefly, in order to be qualified to serve on
16 jury duty you must be a citizen of the United States. You
17 must be a citizen and resident of Barnwell County. You
18 must be able to read, write, speak and understand the
19 English language. You must have at least a sixth-grade
20 education or its equivalent. You must be able to
21 physically and mentally render efficient jury service.

22 You must not have been convicted of a crime for which
23 you could have received more than one year in jail unless
24 you've been granted a pardon or amnesty. You must not
25 have served on jury duty within the past calendar year.

SELECTION OF THE JURY

1 And you must not work as a clerk, deputy clerk,
2 constable, sheriff, commissioned law enforcement officer,
3 county officer, or within the walls of any courthouse.
4 And must not have previously served on the jury in this
5 courtroom within the past calendar year or in the grand
6 jury within the past three years.

7 If you have any questions as to whether or not any of
8 those qualifying questions apply to you; if you have any
9 hesitancy or any question in your mind as to whether or
10 not they apply to you; if you did not respond to any
11 question that you think that you are required under your
12 oath to respond to; if you did not respond to any question
13 that you did not wish to respond to openly; if you have
14 any other questions or concerns about serving on jury duty
15 here in Barnwell County this week, please come forward at
16 this time.

17 Please come forward at this time. Come on. Talk to
18 me. Yes?

19 THE JUROR: I have COPD, and I'm supposed to be on
20 oxygen, and I'm on Prozac for my mental state.

21 THE COURT: All right. She's on COPD, Prozac,
22 supposed to be on oxygen.

23 THE JUROR: And fluid around my heart and lungs.

24 THE COURT: You got what?

25 THE JUROR: Fluid on my heart.

SELECTION OF THE JURY

1 THE COURT: Okay. I'll excuse you. Tell me your
2 name.

3 THE JUROR: Wanda Croft.

4 THE CLERK: Juror number 24.

5 THE COURT: Twenty-four. Thank you. You can go.

6 THE JUROR: My name is Mark Corell. I was married to
7 the young lady that was robbed at gunpoint for 18 and a
8 half years. I'm divorced from her now. I don't think it
9 would be appropriate.

10 THE COURT: Okay. Well --

11 THE JUROR: I will be -- transferred would be fine.

12 THE COURT: What was the person's name?

13 THE JUROR: Dona Corell. That's my ex-wife.

14 MS. RINGLER: The victim in our trial.

15 THE JUROR: The victim.

16 THE COURT: You'll be excused for cause, but it
17 wouldn't disqualify you from jury duty.

18 MS. RIVERS: That's fine. That's fine.

19 THE COURT: But we won't put him as a juror on the
20 case, but you'll still be in the number.

21 THE JUROR: I don't understand.

22 THE COURT: You'll still be in the number of jurors
23 serving on jury duty unless you'd rather be transferred to
24 come back another time.

25 THE JUROR: Transferred will be fine. I can come back

SELECTION OF THE JURY

1 anytime, sir.

2 THE COURT: Okay. We'll transfer you.

3 THE JUROR: That works.

4 THE CLERK: Juror number?

5 THE JUROR: Juror Number 22.

6 THE CLERK: Gotcha.

7 THE COURT: We'll send you another notice.

8 THE JUROR: Thank you very much, sir.

9 THE COURT: Okay. Yes, sir?

10 THE JUROR: I'm Floyd Kauffman. I believe it was
11 Number 65. Because of my religious conviction, I do not
12 feel that I can serve on the jury. I do appreciate our
13 government. I just don't think I would be fair to the
14 other jurors, and that I would be able to make a fair
15 judgment concerning the case.

16 THE COURT: All right.

17 THE JUROR: And I would ask to be dismissed.

18 THE COURT: Well, we'll have you stay but we won't
19 place you on any jury.

20 THE JUROR: Okay. Thank you.

21 THE COURT: All right. Thank you.

22 MR. HARTE: Number?

23 THE CLERK: Number 65.

24 THE COURT: Yes, sir?

25 THE JUROR: How are you? I'm --

SELECTION OF THE JURY

1 THE COURT: You like to whisper. I can't hear you.

2 THE JUROR: Yes, sir. I've been charged with CDV
3 before but I'm going through PTI.

4 THE COURT: So you don't have a record. If you went
5 through PTI, you don't have a record. You did the right
6 thing by not responding. But what's your name?

7 THE JUROR: Christopher Neal.

8 THE COURT: Neal?

9 THE JUROR: Uh-huh.

10 THE CLERK: You're going to Denmark Tech.

11 THE COURT: You're good to go. You can stay with us,
12 you just won't serve -- I mean, you might serve. You're
13 qualified to serve.

14 THE JUROR: All right.

15 THE COURT: All right.

16 THE CLERK: That's Juror Number 86.

17 THE COURT: Yes, sir?

18 THE JUROR: Yes, sir. My number is 117. The only
19 thing, I think I was on the grand jury five years ago.

20 THE COURT: Five years ago?

21 THE JUROR: Five years. I wasn't on it back to back,
22 but I want to be on this one.

23 THE COURT: You want to?

24 THE JUROR: Yeah. I just wanted to make sure I'd
25 clear that up.

SELECTION OF THE JURY

1 THE COURT: I said an exemption. It's not
2 disqualified. I'll ask you, what's his name?

3 THE CLERK: Steven Still.

4 THE COURT: Steven Still.

5 THE CLERK: Juror Number 117.

6 THE COURT: Did you all publicize which case is coming
7 for trial or something in the paper?

8 THE CLERK: No, sir. I'm sorry. I didn't do that.

9 THE COURT: Okay. Very good. All right.

10 THE CLERK: We got one that's late.

11 THE COURT: All right. Ladies and gentlemen, the
12 panel is now qualified. I want to welcome you all to this
13 week's term of Court here in Barnwell County.

14 I ask that all jurors stay in place unless excused by
15 me. I don't need jurors coming and going. All jurors
16 must share the same thing at the same time and we take
17 breaks as appropriate. It's not like high school when you
18 ask the teacher can you run to the restroom and so forth.
19 We will operate in a more orderly fashion.

20 At this time we're going to take a 15-minute break. I
21 ask that all jurors -- I'm speaking to jurors only --
22 everyone else have a seat. Everyone else have a seat.
23 We're going to take a 15-minute break and ask that all
24 jurors leave the courtroom through that door
25 (indicating).

SELECTION OF THE JURY

1 The bailiff in the back that's Mr. Webb and Officer?

2 THE CLERK: Trident.

3 THE COURT: Officer Trident. Go through that door.

4 You need to be back in 15 minutes in your seat. Thank you
5 very much. We'll see you in 15 minutes.

6 (Jury exits courtroom at 2:50 p.m.)

7 THE COURT: All right. If you'd raise your right
8 hand? You're here for jury duty? What's your name?

9 THE JUROR: Lacie Grubbs.

10 (Juror placed under oath.)

11 THE COURT: And you can put your hand down. At what
12 point in time did you come in?

13 THE JUROR: About two, two o'clock.

14 THE COURT: About two o'clock?

15 THE JUROR: Two, 2:15.

16 THE COURT: Did you miss the qualifications process or
17 came in after?

18 THE JUROR: I came in, I think I came in during.

19 THE COURT: During the process?

20 THE JUROR: Yeah.

21 THE COURT: Are you a citizen and resident of this
22 county?

23 THE JUROR: Yes.

24 THE COURT: Are you able to read, write and speak and
25 understand the English language?

SELECTION OF THE JURY

1 THE JUROR: Yes, sir.

2 THE COURT: Do you have any physical or mental
3 infirmity preventing you from serving on jury duty?

4 THE JUROR: No, sir.

5 THE COURT: Have you served on jury duty before?

6 THE JUROR: No, sir.

7 THE COURT: Do you have a criminal record involving a
8 crime for which you could have gotten more than one year
9 imprisonment?

10 THE JUROR: No, sir.

11 THE COURT: Do you know of any reason why you should
12 not -- that you're not available to serve on jury duty
13 this week?

14 THE JUROR: No, sir.

15 THE COURT: And where do you work?

16 THE JUROR: I'm a waitress.

17 THE COURT: A waitress?

18 THE JUROR: Uh-huh.

19 THE COURT: At what place?

20 THE JUROR: Fatz Cafe. Fatz Cafe in Aiken.

21 THE COURT: Fatz Cafe in Aiken. All right. Thank you
22 very much. We need you back in your seat there in 15
23 minutes with the other jurors.

24 THE JUROR: Thank you.

25 THE COURT: All jurors to leave the courtroom. All

SELECTION OF THE JURY

1 jurors to exit the courtroom for 15 minutes.

2 (Remaining jurors exit courtroom.)

3 THE COURT: All right. Are we ready to bring the
4 Defendants here? All right. They can come in the
5 courtroom.

6 (Thereupon, the Defendants enter the courtroom at
7 2:56 p.m.)

8 THE COURT: The Defendants, they have chains around
9 their legs. Do you all have a privacy or a courtesy
10 curtain, partition or something you generally put on the
11 counsel table?

12 MS. RINGLER: No, Your Honor. Usually they'll, they
13 kind of pull their pants up over them as best that they
14 can to try to conceal them from the panel.

15 MS. RIVERS: Judge, as I understand, the detention
16 center had the needle ox that go up under the pants.

17 THE OFFICER: We only have one pair.

18 THE COURT: All right. How long do we need to wait to
19 start the trial? We don't have defendants in court in
20 chains in the presence of the jury.

21 THE OFFICER: I can remove them.

22 THE COURT: All right.

23 MR. HARTE: Your Honor, for the record, when the
24 Defendants were being brought from the holding room, there
25 were jurors in the back hallway using and coming out of

SELECTION OF THE JURY

1 the bathroom. I don't know how many jurors and I don't
2 know what they saw.

3 THE COURT: Are these the jurors that I just told to
4 go out that door?

5 MR. HARTE: Yes, sir. Apparently they went under and
6 came up the back stairs.

7 THE COURT: Who's bright idea was that?

8 MR. HARTE: As I said, I don't know what they saw. I
9 know that my client and two others were coming out and
10 there were jurors in the hallway.

11 MS. RINGLER: Your Honor, with regard to the leg
12 chains, I knew there was something that we used but if we
13 don't have any, if court security is comfortable with it
14 we would be fine with no restraints for the trial.

15 With regard to the jurors that may or may not have
16 seen, we can speak to them when they came back in and see
17 if anybody --

18 THE COURT: Well, let me say this for the record. I
19 don't know whether these guys are guilty or not guilty,
20 but one thing that we will have here in Barnwell County is
21 a fair trial.

22 We will not have a trial where the Defendants are in
23 court in chains. We'll not have a trial where the
24 Defendants are paraded in through jurors in chains or
25 bound in any way.

SELECTION OF THE JURY

1 Whether the Defendants are in jail or out of jail
2 should be of no consequence to the jurors. They're
3 presumed to be not guilty and they'll be treated as such
4 unless and until the jury finds them guilty.

5 And that's the whole point of having the jurors leave
6 the courtroom so that they can come in and sit at the
7 counsel table with the presumption of innocence cloaked
8 all around them.

9 And to go through that exercise and then to have
10 jurors then come back to wherever the Defendants are, it,
11 it's not proper.

12 Now, how I can ferret out who those jurors were? Who
13 decided to send them back in the back after I sent them
14 out the door? You know, I have no idea.

15 All right. Mr. Harte, what do you say?

16 MR. HARTE: Your Honor, I think the problem with what
17 the Solicitor suggests is that if you ask the question in
18 front of the whole panel in order to find out which jurors
19 might have been affected, I think you effectively taint
20 the entire panel.

21 MS. RINGLER: I think we can just ask who used the
22 restroom, who came back and used the restroom and then
23 question those jurors individually.

24 THE COURT: Mr. Harte?

25 MR. JOHNSON: Your Honor, even by -- even if you would

SELECTION OF THE JURY

1 be questioning them whether they used the restroom, there
2 might have been some of them that had not and seen them.
3 By questioning them you taint them as well.

4 THE COURT: That's why you only have one judge in the
5 courtroom. And when the judge gives instructions,
6 everyone else abides by the judge's instruction. You
7 don't have the judge giving one instruction, bailiffs
8 giving another instruction, clerks giving other
9 instructions, deputies giving other instruction. You have
10 one judge in the courtroom. That's the process and it's
11 that way for a reason.

12 All right. We'll take about five minutes. The jurors
13 can come in after they remove the restraints and I'll
14 figure out what to do.

15 MS. RINGLER: Your Honor, we did have a few objections
16 to the voir dire questions. I'm sorry. I'm just now
17 seeing those.

18 THE COURT: All right. You can submit whatever those
19 objections are to the numbers and I'll look at them and
20 consider them.

21 MS. RINGLER: Thank you, Your Honor.

22 (Thereupon, a break was taken at three o'clock p.m.

23 At 3:07 p.m., the trial resumed:)

24 THE COURT: Let me see what you have, Madam Solicitor.

25 MS. RINGLER: (Hands document to the Court.)

SELECTION OF THE JURY

1 THE COURT: All right. Madam Solicitor, you may call
2 your case.

3 MS. RINGLER: Thank you, Your Honor.

4 The State calls the case of the State versus Roosevelt
5 Kadeem Workman, Indictment 2012-GS-06-49 for armed
6 robbery; Roosevelt Kadeem Workman, Indictment 2012-GS-
7 06-50 for possession of a weapon during a violent crime;
8 Indictment 2012-GS-06-51, Roosevelt Kadeem Workman for
9 conspiracy; Indictment 2012-GS-06-52, Roosevelt Kadeem
10 Workman for kidnapping.

11 The State also calls Indictment 2012-GS-06-68, Jamaal
12 Terrell Riley for possession of a weapon during a violent
13 crime; Indictment 2012-GS-06-69 for Jamaal Terrell Riley,
14 Indictment 2012-GS-06-70 for Jamaal Terrell Riley for
15 conspiracy; 12-GS-06-71, Jamaal Terrell Riley for
16 kidnapping.

17 Indictment 2012-GS-06-27 for Kevin Christopher Brown,
18 armed robbery; Indictment 2012-GS-06-28, Kevin Christopher
19 brown for kidnapping; indictment 2012-GS-06-29, Kevin
20 Christopher Brown for conspiracy; Indictment 2012-GS-06-30
21 for Kevin Christopher Brown for possession of a weapon
22 during a violent crime.

23 THE COURT: All right. And where are the
24 indictments?

25 MS. RINGLER: Your Honor, may I approach?

SELECTION OF THE JURY

1 THE COURT: Yes.

2 MS. RINGLER: (Documents handed to the Court.)

3 THE COURT: Ladies and gentlemen, before the break I
4 asked all the jurors to leave out of the front door to
5 exit the courtroom.

6 If any jurors during that period of time came to the
7 back of the courtroom, in the rear of the courtroom,
8 during the break to use the restroom or otherwise, please
9 stand.

10 And, give me your juror numbers please. Yes, sir?

11 THE JUROR: One seventy-three.

12 THE COURT: One seventy-three.

13 THE JUROR: Ninety-nine.

14 THE COURT: Ninety-nine.

15 THE JUROR: Seventy-two.

16 THE COURT: Seventy-two. You may be seated when --

17 THE JUROR: I'm not sure of mine.

18 THE COURT: What's your name, please?

19 THE JUROR: Leslie Williamson.

20 THE COURT: Williamson?

21 THE JUROR: Yes, sir.

22 THE JUROR: Forty-six.

23 THE JUROR: One hundred forty-seven.

24 THE JUROR: Eighty-eight.

25 THE JUROR: Eighty-seven.

SELECTION OF THE JURY

1 THE JUROR: I don't know my number. Robert Scruggs.

2 THE COURT: What's Mr. Scruggs' number?

3 THE JUROR: Thirty-nine.

4 THE COURT: Thirty-nine.

5 THE JUROR: Uh-huh.

6 THE JUROR: One forty.

7 THE COURT: One forty. All right. If each one of
8 those jurors would come up individually along with
9 counsel. Number 173.

10 THE BAILIFF: Number 173. Juror number 173.

11 THE COURT: Come up, sir. Yes, sir. I had the jurors
12 to leave the courtroom for a reason. And you came into
13 the back of the courtroom?

14 THE JUROR: It wasn't enough restrooms down, and
15 somebody in the office said we could come upstairs, use
16 the ones upstairs.

17 THE COURT: And when you came upstairs, were you let
18 in the rear of the room here?

19 THE JUROR: I reckon as you come upstairs.

20 THE COURT: And who was there in the area that you
21 encountered or saw?

22 THE JUROR: There were three court officials.

23 THE COURT: Was there anyone else there other than the
24 three court officials?

25 THE JUROR: I don't think so.

SELECTION OF THE JURY

1 THE COURT: Anything else the State would like for me
2 to ask?

3 MS. RINGLER: Nothing, Your Honor.

4 THE COURT: Defense?

5 MR. JOHNSON: I don't have anything, Your Honor.

6 MR. HARTE: No, sir.

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

8 THE CLERK: Judge, there is just one bathroom
9 downstairs.

10 THE COURT: Number 99. All right, sir. Right here.
11 I had the jurors to leave the courtroom and you heard that
12 part?

13 THE JUROR: Yes.

14 THE COURT: And then you came back into the
15 courtroom?

16 THE JUROR: Used the restroom.

17 THE COURT: And when you came in the restroom area,
18 who was there in area where you came into?

19 THE JUROR: I seen the sheriff..

20 THE COURT: The sheriff?

21 THE JUROR: Yeah.

22 THE COURT: And did you see anyone out there other
23 than the sheriff?

24 THE JUROR: I didn't --

25 THE COURT: Who is the sheriff?

SELECTION OF THE JURY

1 THE JUROR: I seen Mr. Carroll.

2 THE COURT: Mr. Carroll.

3 THE JUROR: Yeah.

4 THE COURT: He's the sheriff?

5 THE JUROR: He the sheriff, yeah.

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

7 THE JUROR: Yes, sir.

8 THE CLERK: That's Ed Carroll.

9 THE COURT: He's the sheriff or deputy sheriff?

10 THE CLERK: That's the sheriff.

11 THE COURT: The sheriff?

12 THE CLERK: The sheriff. Yes, sir. He's outside. He
13 doesn't like to come in because he says it's too cold in
14 here.

15 THE COURT: Oh. Number 72. Most sheriff's like to
16 come and take a bow.

17 THE CLERK: He has no opposition.

18 THE COURT: I see. Yes, sir?

19 MR. HARTE: Your Honor, we'd ask if they heard
20 anything.

21 THE COURT: All right. Sir, you're Number 72?

22 THE JUROR: Seventy-two; yes, sir.

23 THE COURT: I had all the jurors to leave the
24 courtroom but somehow or another you were redirected to
25 come into the court, well, not the courtroom but to leave

SELECTION OF THE JURY

1 the courthouse.

2 THE JUROR: Right.

3 THE COURT: And you came into the rear of the
4 courtroom. Who did you see there when you came in or who
5 was there?

6 THE JUROR: Just one of the officers that said we
7 could use the restroom upstairs.

8 THE COURT: And did you hear any conversation or --

9 THE JUROR: No, sir.

10 THE COURT: -- observe any other people other than
11 that officer?

12 THE JUROR: No, sir.

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

14 Anything else you want me to ask them other than
15 that?

16 MR. HARTE: No.

17 THE COURT: All right. Number 46. Did we get a
18 number for Ms. Williamson? Number 46. Yes, sir?

19 THE JUROR: Yes, sir.

20 MR. SLOCUM: One thirty-five.

21 THE COURT: When I had the jurors to leave the
22 courthouse, then you came back into the courthouse. I
23 guess one must have redirected you --

24 THE JUROR: Yes.

25 THE COURT: -- to some other part of the courthouse.

SELECTION OF THE JURY

1 THE JUROR: Right.

2 THE COURT: That's why I caution them to listen to the
3 judge and not other people. But who did you encounter
4 when you came back into the courthouse?

5 THE JUROR: Into here?

6 THE COURT: Not the courtroom, the back of the
7 courtroom.

8 THE JUROR: Oh. Just the deputy. He directed us to
9 the restroom.

10 THE COURT: Did you see any other people or overhear
11 any other conversation or anything?

12 THE JUROR: No conversations. I saw Sheriff Carroll.
13 That's it.

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

15 THE JUROR: Okay.

16 THE COURT: And Ms. Williamson?

17 THE CLERK: Number 135.

18 THE COURT: One thirty-five. All right.

19 Ms. Williamson, I had all the jurors to leave the
20 courthouse and then somehow or another you ended up back
21 in the courthouse --

22 THE JUROR: Yes, sir.

23 THE COURT: -- in opposition to my instruction to
24 leave the courthouse.

25 THE JUROR: Sorry.

SELECTION OF THE JURY

1 THE COURT: So when you came back in what did you
2 see? Observe?

3 THE JUROR: Just when I come in I saw the crowd of
4 people and kind of walked around them and went to the
5 restroom at the end of the hall.

6 THE COURT: Which crowd of people did you see?

7 THE JUROR: I couldn't tell you. I guess, I guess
8 other jurors.

9 THE COURT: Just the jurors who were coming with you?

10 THE JUROR: Uh-huh.

11 THE COURT: Did you overhear any conversation or
12 anything?

13 THE JUROR: No, sir.

14 THE COURT: All right. Thank you, ma'am. Number 147.

15 THE BAILIFF: One forty-seven.

16 THE COURT: Yes, sir; Number 147. I had the jurors to
17 leave the courthouse and you ended up back in the
18 courthouse. How did that come to be?

19 THE JUROR: They told us there weren't any bathrooms
20 available.

21 THE COURT: And who did you -- did you see any people
22 when you came back into the back?

23 THE JUROR: All the people that came with me.

24 THE COURT: Just the jurors?

25 THE JUROR: Yes.

SELECTION OF THE JURY

1 THE COURT: Anyone else other than jurors?

2 THE JUROR: No.

3 THE COURT: Any conversation about anything?

4 THE JUROR: No.

5 THE COURT: None. All right. Thank you, sir.

6 Juror Number 80. All right. Mr. Juror Number 80, I
7 had all the jurors to leave the courthouse and then
8 somehow or another you were redirected back into the
9 courthouse during the time I wanted the jurors to be out
10 of the courthouse. When you came into the courthouse did
11 you see anything --

12 THE JUROR: No, sir. I went before you even sent
13 everybody out. I didn't see anybody. Just went straight
14 to the bathroom and then went downstairs.

15 THE COURT: You're the funeral home director?

16 THE JUROR: Uh-huh.

17 THE COURT: Very good. Thank you, sir.

18 THE JUROR: All right. Number -- Mr. Scruggs, his
19 number is?

20 MR. SLOCUM: One-0-seven.

21 THE COURT: Mr. Scruggs.

22 THE JUROR: Thank you, sir.

23 THE COURT: How are you doing? I had all the jurors
24 to leave the courthouse.

25 THE JUROR: Yes, sir.

SELECTION OF THE JURY

1 THE COURT: Not just the courtroom, the courthouse,
2 but then someone redirected the jurors back into the
3 courthouse. And when -- you came back into the
4 courthouse; correct?

5 THE JUROR: Yes, sir.

6 THE COURT: What did you see? Observe?

7 THE JUROR: Just the sheriff said you can go to the
8 restroom here. I went straight to the restroom and came
9 out, went back outside.

10 THE COURT: Did you see any other people related to
11 this case --

12 THE JUROR: No, sir.

13 THE COURT: -- or talk to anyone or overhear any
14 conversation about the case or anything?

15 THE JUROR: No, sir.

16 THE COURT: Thank you very much.

17 THE JUROR: Yes, sir.

18 THE COURT: Number 39. Yes, ma'am. Oh. Number 139.
19 I told the jurors to leave the courthouse and then you
20 ended up back in courthouse. How did that come to be?

21 THE JUROR: I walked downstairs. I walked around the
22 back. I had another appointment coming up so I called,
23 told her I was here. After I finished doing that I put
24 the phone back in my car and I came in through the bottom
25 door and I used the restroom. I came back out and walked

SELECTION OF THE JURY

1 back --

2 THE COURT: You were downstairs, didn't come
3 upstairs?

4 THE JUROR: No, I stayed downstairs.

5 THE COURT: All right. Well, thank you. Number 87.
6 Yes, sir?

7 THE JUROR: Yes.

8 THE COURT: I had all the jurors to leave out of the
9 courthouse. Somehow or another you ended up back in the
10 courthouse while I had the jurors out of the courthouse so
11 it necessitates me finding out why you came back in the
12 courthouse and what occurred when you came in.

13 THE JUROR: Yeah. I was downstairs but one of the
14 officers directed us to come up to the top. And then one
15 of the guys in the red jacket stood by the door while we
16 used it. After I went out.

17 THE COURT: Did you see anyone else other than
18 jurors --

19 THE JUROR: No.

20 THE COURT: -- or overhear any other conversation?

21 THE JUROR: No. Huh-uh.

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

23 Number 140. Yes, sir, Number 140.

24 THE JUROR: Yes, sir.

25 THE COURT: I had all the jurors to leave out of the

SELECTION OF THE JURY

1 courthouse and somehow or another you ended up back in the
2 courthouse. How was that?

3 THE JUROR: I came back to use the restroom.

4 THE COURT: Did you go downstairs or upstairs?

5 THE JUROR: I came upstairs. One of the deputies or
6 the officers said that people could use the ones
7 upstairs.

8 THE COURT: All right. And did you -- who else, or
9 what else did you see, observe or hear when you came
10 upstairs?

11 THE JUROR: Nothing. They told us to hold up before
12 we came up. I guess you guys, like, whatever was going
13 on. They told us not to come out.

14 THE COURT: Not to come out.

15 THE JUROR: Yeah.

16 THE COURT: All right. And when you came out, who did
17 you see?

18 THE JUROR: Nobody.

19 THE COURT: Nobody. All right. Any other questions?

20 MR. HARTE: No.

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

22 THE JUROR: All right.

23 THE COURT: Before you go back, Charlie. Anything
24 else anyone else wants to put on the record regarding this
25 before we proceed?

SELECTION OF THE JURY

1 MR. JOHNSON: I have nothing, Your Honor.

2 MR. HARTE: No.

3 MS. RINGLER: Nothing.

4 THE COURT: All right. Ladies and gentlemen, the
5 State has called for trial the case of the State versus
6 Kevin Joseph Brown.

7 Mr. Brown, if you'll stand along with counsel.

8 THE DEFENDANT BROWN: (Complies.)

9 THE COURT: Mr. Brown has been indicted by the grand
10 jury of this county charging him with armed robbery,
11 possession of a weapon during a violent crime, criminal
12 conspiracy, and kidnapping. And he's represented by
13 counsel. Counsel, if you'll introduce yourself to the
14 jury.

15 MR. JOHNSON: My name is Charlie Johnson. I'm an
16 attorney out of Columbia.

17 THE COURT: All right. Thank you very much.

18 And the State has called for trial the case of the
19 State versus Jamaal Terrell Riley. Mr. Riley has been
20 indicted by the grand jury and charged with the offenses
21 of armed robbery, possession of a weapon during a violent
22 crime, conspiracy, and kidnapping.

23 He and Mr. Brown and the other co-defendant,
24 Mr. Workman, have each pled not guilty. They're presumed
25 to be not guilty, cannot be found guilty unless the State

SELECTION OF THE JURY

1 presents evidence which convinces a jury of each and every
2 Defendant's guilt beyond a reasonable doubt.

3 And Mr. Riley's in court with counsel. If you'll
4 introduce yourself to the jury panel.

5 MR. HARTE: My name is Bob Harte. I practice law out
6 of my office in Aiken. I practice in Aiken, Barnwell,
7 Bamberg and other adjoining counties.

8 THE COURT: All right. Thank you, Mr. Harte.

9 And the State has called for trial the case of the
10 State versus Roosevelt Kadeem Workman.

11 Mr. Workman has been indicted by the grand jury and
12 charged with the offenses of armed robbery, kidnapping,
13 criminal conspiracy and possession of a weapon during the
14 commission of a violent crime.

15 He's in court with counsel. And, counsel, if you'll
16 introduce yourself to the jury panel.

17 MS. RIVERS: I'm Martha Rivers. I live in Elko and my
18 office is in Williston.

19 THE COURT: All right. Thank you.

20 If any member of the jury panel is related by blood,
21 connected by marriage, friendship, any other acquaintance
22 with any of the Defendants, if you know any of them,
23 please stand.

24 All right. And, ma'am, tell me your name and juror
25 number.

SELECTION OF THE JURY

1 THE JUROR: Juror Number 70, Janice Livingston.

2 Mr. Riley, his mother is married to my cousin.

3 THE COURT: His mother is married to your cousin. And
4 would that fact affect your ability to be a fair and
5 impartial juror if picked in this trial?

6 THE JUROR: Yes.

7 THE COURT: It would affect your ability to be fair
8 and impartial?

9 THE JUROR: Yes.

10 THE COURT: All right. We'll not consider you for
11 selection as a juror in this case. Number 70 won't be
12 considered. Thank you very much. Please be seated.

13 Yes, ma'am?

14 THE JUROR: Juror Number 143. I know Mr. Riley as
15 well. He came through Guinyard-Butler Middle School. He
16 was in my class.

17 THE COURT: And, ma'am, would that fact affect your
18 ability to be a fair and impartial juror if selected in
19 this case?

20 THE JUROR: No, sir.

21 THE COURT: Thank you very much. Yes, ma'am?

22 THE JUROR: Juror 192. I went to school with
23 Mr. Workman.

24 THE COURT: The fact that you know him and you went to
25 school with Mr. Workman, would that fact affect your

SELECTION OF THE JURY

1 ability to be a fair and impartial juror?

2 THE JUROR: No, sir.

3 THE COURT: All right. Thank you very much. Yes,
4 sir?

5 THE JUROR: I'm Juror Number 23. I went to school
6 with him, too.

7 THE COURT: Your name?

8 THE JUROR: Neal. Chris Neal.

9 THE COURT: Chris Neal?

10 THE JUROR: Yes, sir.

11 THE COURT: And could you be a fair and impartial
12 juror?

13 THE JUROR: No, sir. Not in this trial.

14 THE COURT: All right. Well, we will not consider you
15 for selection as a juror but stay with us. Thank you very
16 much.

17 Ladies and gentlemen, the Defendants in this case are
18 charged with committing an armed robbery and committing
19 the other offenses alleged by robbing Jim Bo's Mini Mart
20 Number Nine located at 10,000 Dunbarton Boulevard in
21 Barnwell, and taking property, goods, from the presence of
22 Dona Corell.

23 Ms. Corell, if you'll stand. Thank you very much.
24 Face the jury panel, please. Thank you very much. You
25 may be seated.

SELECTION OF THE JURY

1 If any member of the jury panel knows anything about
2 this case, or have heard anything about this case which
3 allegedly occurred on July 21st, 2011, if you know
4 anything or heard anything about this case or if you're a
5 personal friend, acquaintance, or if you know Dona Corell,
6 if so, please stand.

7 All right. Yes, sir. Tell us your juror number
8 please.

9 THE JUROR: Eighteen.

10 THE COURT: Juror Number 18. And the fact that you
11 may know or have heard something about this case, would
12 that affect your ability to be a fair and impartial
13 juror? If you'll answer yes or no.

14 THE JUROR: Yes.

15 THE COURT: All right. And you cannot be a fair and
16 impartial juror based on what you know based on what
17 you've heard?

18 THE JUROR: Yes.

19 THE COURT: Thank you, sir. Juror Number 18,
20 Mr. Cash. You will not be considered for selection in
21 this case. Anyone else?

22 Ladies and gentlemen, I have a list of prospective
23 witnesses here who I would like to stand. The following
24 people may testify in this case. And if you're here, I'd
25 like for you to stand.

SELECTION OF THE JURY

1 Detective Frank Sutton. Detective Glenn Rice.

2 Sergeant Calvin Coach. Officer Jason Woodruff.

3 Investigator Brenda O'Berry; all from Barnwell Police
4 Department or Sheriff's Department.

5 Jermaine Priester. Kadarian Creech. Corey Creech.
6 Tanya Respers. Tevonn Respers. Cleopatra Carmichael.
7 Rodney Jenkins. Eartha Brown. Annette Jones. Roosevelt
8 Workman, Jr. Angel Brown Workman. Kendrick Workman.

9 Are there any additional prospective witnesses by the
10 State or the defense?

11 MS. RINGLER: None from the State, Your Honor.

12 MS. RIVERS: None, Your Honor.

13 MR. JOHNSON: I have none, Your Honor.

14 MR. HARTE: No, Your Honor.

15 THE COURT: Thank you. Thank you, sir.

16 If any member of the jury panel is a friend, relative
17 associate of any of the witnesses whose names I have
18 called, please stand. Yes, ma'am?

19 THE JUROR: Kadarian Creech and Tevonn Respers,
20 students at Guinyard-Butler School as well.

21 THE COURT: Your juror number again is number?

22 THE JUROR: One forty-three.

23 THE COURT: One forty-three. Thank you. Yes, ma'am?

24 THE JUROR: One seventy-nine. Corey Creech and
25 Kadarian Creech.

SELECTION OF THE JURY

1 THE COURT: Is what?

2 THE JUROR: Cousin.

3 THE COURT: Is your cousin? Would that fact affect
4 your ability to be fair and impartial if Mr. Creech should
5 testify?

6 THE JUROR: No.

7 THE COURT: All right. Thank you. And your juror
8 number, please, or name?

9 THE JUROR: One seventy-nine.

10 THE COURT: One seventy-nine. Thank you.

11 THE CLERK: Monica Odom.

12 THE COURT: Ms. Odom.

13 Ladies and gentlemen, if you or any member of your
14 immediate family has been the victim of a violent crime,
15 please stand. If you or anyone in your immediate family
16 has been the victim of a violent crime. A violent crime
17 is generally classified as being rape, robbery, murder,
18 kidnapping, or serious assault. If you or any member of
19 your immediate family has been the victim of a violent
20 crime, please stand. Yes, sir?

21 THE JUROR: My daughter was in a violent crime in
22 Aiken, a home break-in and robbery.

23 THE COURT: Thank you, sir. Your juror number is?

24 THE JUROR: Number 80.

25 THE COURT: Number 80. Thank you.

SELECTION OF THE JURY

1 THE JUROR: I'm Cotell Garrick. My nephew, Sammie
2 Garrick, he's, he's ill now, but he's convicted of murder.

3 THE COURT: All right. Thank you for bringing that to
4 our attention. Anyone else?

5 THE JUROR: Number Two.

6 THE COURT: Yes, ma'am?

7 THE JUROR: My home was robbed.

8 THE COURT: All right. Thank you.

9 For any of those jurors who have just stood, if those
10 experiences would prevent you from being a fair and
11 impartial juror, please stand.

12 No one's standing.

13 Additional questions. If you are related by blood or
14 marriage or a close acquaintance of anyone who works in
15 law enforcement, either as a member of a law enforcement
16 agency, a law enforcement officer, or a prosecution,
17 prosecuting agency such as the attorney general's office,
18 solicitor's office, or any other civilian or military law
19 enforcement agency, if you're a friend, relative, close
20 associate of anyone working in those positions, please
21 stand.

22 And just tell us your juror number and the agency
23 you're referring to. Yes, ma'am?

24 THE JUROR: Janice Livingston, Juror Number 70, Leon
25 Harrison is, by marriage. He's Barnwell County Sheriff's

SELECTION OF THE JURY

1 THE COURT: Thank you.

2 THE JUROR: Juror Number 21. My first cousin is
3 married to Officer John Trottie.

4 THE COURT: Yes, sir.

5 THE JUROR: Number Two, Richard Baker for Gwinnett
6 County, Georgia.

7 THE COURT: Thank you.

8 THE JUROR: One forty-three. My sister is an
9 assistant solicitor in York County.

10 THE COURT: Thank you.

11 If you are a contributor or a member of any agency
12 which has as its primary concern the promotion of law
13 enforcement or victims' rights or rights of the accused,
14 if so, please stand.

15 No one's standing.

16 If you have ever served as a witness or ever been a
17 witness in a criminal trial, if so, please stand.

18 (No response.)

19 THE COURT: If you've ever testified in a criminal
20 case, please stand.

21 (No response.)

22 THE COURT: If you have discussed this case with
23 anyone else or heard anyone discuss this case, or any
24 similar case to the one that's referenced today, please
25 stand.

SELECTION OF THE JURY

1 Department.

2 THE COURT: All right. Thank you. Yes, ma'am?

3 THE JUROR: Juror number 190, Nora Smith. My best
4 friend is a officer that works at the governor's mansion.
5 She's like a security, maybe, type officer.

6 THE COURT: All right. Thank you. We've taken you
7 out of the list. You don't need to stand. Yes, Sir?

8 THE JUROR: Juror number four. My sister-in-law works
9 for Barnwell County Sheriff's Office.

10 THE COURT: Thank you, sir.

11 THE JUROR: Juror Number 62. I have a close friend
12 who works for the Barnwell Police Department.

13 THE COURT: All right. Thank you.

14 THE JUROR: Close friend in Barnwell Police
15 Department.

16 THE COURT: Juror number?

17 THE JUROR: One seventy-four.

18 THE COURT: Thank you.

19 THE JUROR: Close friend that works for Barnwell and
20 Kline Police department.

21 THE COURT: Your juror number is?

22 THE JUROR: One eighty-four.

23 THE COURT: Thank you.

24 THE JUROR: I'm Juror Number 25. My sister-in-law
25 works with probation, parole and pardon services.

SELECTION OF THE JURY

1 No one's standing.

2 Ladies and gentlemen, as I said to you, the
3 Defendants, each Defendant is presumed to be not guilty of
4 the crimes charged.

5 The State has the burden of proof in the case. The
6 State must present evidence which convinces each and every
7 juror of guilt beyond a reasonable doubt, otherwise you
8 must under your oath find the Defendant not guilty.

9 If any juror cannot follow that instruction of law,
10 please stand.

11 No one's standing.

12 If you have formed an opinion about the guilt or the
13 innocence of the Defendant or any Defendant, please stand.

14 No one's standing.

15 Any other questions proposed by the State or the
16 defense?

17 MS. RINGLER: Your Honor, I didn't know if you wanted
18 Mr. Slocum and I to introduce ourselves to the jury.

19 THE COURT: Oh, absolutely. I'm sorry. Thank you.

20 The State is represented by counsel as well. Please
21 introduce yourself as well as anyone else you'd like to.

22 MS. RINGLER: I'm Susanna Ringler with the solicitor's
23 office.

24 MR. SLOCUM: Jay Slocum with the solicitor's office.

25 THE COURT: And Mr. Barnwell -- Mr. Bamberg.

SELECTION OF THE JURY

1 MR. BAMBERG: (Stands.)

2 THE COURT: All right. Ladies and gentlemen, if you
3 know of any reason whatsoever why you should not be
4 selected to be on this case, please let me know at this
5 time. We have plenty of jurors out there. We're about to
6 select the jury in this case. If you know of any reason
7 whatsoever why you should not be selected, based on having
8 a headache today, based on being sick, based on having a
9 backache, based on having some other type of personal
10 issues going on in your lives, if you know of any reason
11 why you should not be selected to be a juror in the trial
12 of this case, please let me know at this time. Please
13 stand and let me know.

14 All right. And if you each will come forward. Each
15 will come forward and let me know.

16 (Jurors approach.)

17 THE CLERK: Juror Number 168.

18 THE COURT: Yes, ma'am?

19 THE JUROR: My mother is 85. I see her once a year,
20 and she's here for this week.

21 THE COURT: Okay.

22 THE JUROR: And I would be glad to serve another time.

23 THE COURT: Okay. Well, we want you to be with your
24 mother.

25 THE JUROR: Okay.

SELECTION OF THE JURY

1 THE COURT: So we're going to transfer her. Her
2 mother is 85, in town, and she needs to visit with her
3 mother. Transfer her.

4 THE CLERK: Transfer her.

5 THE JUROR: Okay. Thank you.

6 MR. HARTE: What number is that?

7 THE COURT: Eighty-five.

8 THE CLERK: She's transferred. THE CLERK: One sixty-
9 eight.

10 THE COURT: I thought we cut you loose already; didn't
11 we?

12 THE JUROR: No, you didn't.

13 THE COURT: Well, you stood up about something right
14 off the bat. What was that about?

15 THE JUROR: Family, by marriage.

16 THE COURT: Oh to --

17 THE JUROR: Riley.

18 THE COURT: And you said it would affect your ability
19 to be fair and impartial.

20 THE JUROR: Right.

21 THE COURT: So we're not going to put you on it.
22 We'll put you on another one.

23 THE CLERK: What's your juror number again?

24 THE JUROR: Seventeen.

25 THE COURT: Your good to go. Stay with us.

SELECTION OF THE JURY

1 THE JUROR: Okay.

2 THE COURT: Stay with us. Yes, ma'am?

3 THE JUROR: I had over \$10,000 worth of merchandise
4 taken from my home. And my case is still open and
5 pending.

6 THE COURT: She's been a victim. She has an open
7 pending case and she thinks she cannot be fair and
8 impartial.

9 THE CLERK: Name?

10 THE JUROR: Number two. I do want to serve as a juror
11 on something else.

12 THE COURT: Well, stay with us.

13 THE CLERK: Transfer to a civil?

14 THE COURT: No, she'll stay with us. She's just not
15 selected on this case. She's on jury duty. She's not on
16 this case.

17 So anyone who's excused, when you call the names out
18 you skip the ones that we've excused for this case, not
19 for the whole week.

20 Yes, ma'am?

21 THE JUROR: I'm Juror Number 25. I was running a
22 business in Allendale County. If it's extended for a
23 certain amount of time, it's going be hard for me to stay
24 in there. If it's a few days, I might could do it.

25 THE COURT: Well, today is Tuesday. Who's running the

SELECTION OF THE JURY

1 THE COURT: Well, today is Tuesday. Who's running the
2 business?

3 THE JUROR: I have someone there now but because of
4 the economy we're shorthanded. If it goes on for a length
5 of time --

6 THE COURT: We don't expect it to go more than two or
7 three days at the max. See how long you can hang in there
8 with us. All right. Thank you. She'll stay with us.

9 Yes, sir?

10 THE JUROR: Juror 184, my ex-uncle is the owner of Jim
11 Bo's.

12 THE COURT: Your ex?

13 THE JUROR: Uncle is the owner of Jim Bo's.

14 THE COURT: Your ex-uncle is the owner of Jim Bo's?

15 THE JUROR: Yes. Thought you Might want to know
16 that.

17 THE COURT: Do you think it would affect your ability
18 to be fair and impartial?

19 THE JUROR: I think so but.

20 THE COURT: Well, only you know. So we have to bank
21 on what you say.

22 THE JUROR: I'm going to say it probably would.

23 THE COURT: You think it would?

24 THE JUROR: Yeah.

25 THE COURT: So we won't put you on it. Your name is?

SELECTION OF THE JURY

1 THE COURT: Stay with us. We won't put you on the
2 case. All right.

3 Anything else? Ready to pull them?

4 All right. Ladies and gentlemen, we'll press on with
5 jury selection. If you'll give the clerk your attention.

6 MR. JOHNSON: Your Honor, excuse me. Before we get
7 started, may we approach the bench?

8 THE COURT: Sure.

9 (Off-the-record discussion.)

10 THE CLERK: Juror Number 19, Brent Champy. Come up
11 here beside me, please.

12 THE COURT: As your names are called, tell them what
13 you want them to do, Madam Clerk.

14 THE CLERK: If you would come up here beside me so you
15 can face the solicitor and the Defendants.

16 THE JUROR: (White male comes forward.)

17 THE CLERK: I promise you, I won't bite. What says
18 the State?

19 MS. RINGLER: Please present this juror.

20 THE CLERK: What says the defense?

21 MR. HARTE: Please excuse the juror for the trial of
22 this case.

23 THE CLERK: Juror Number 80, John Mole.

24 THE JUROR: (White male comes forward.)

25 THE CLERK: What says the State?

SELECTION OF THE JURY

1 MS. RINGLER: Please present this juror..

2 THE CLERK: What says the defense?

3 MR. HARTE: Please excuse the juror for the trial of
4 this case.

5 THE CLERK: Juror number 135, Leslie Williamson.

6 THE JUROR: (White female comes forward.)

7 THE CLERK: What says the State?

8 MS. RINGLER: Please present this juror.

9 THE CLERK: What says the defense?

10 MR. HARTE: Please swear the juror.

11 THE BAILIFF: Come this way, ma'am.

12 THE CLERK: Juror Number 117, Steven Still.

13 THE JUROR: (White male comes forward.)

14 THE CLERK: What says the State?

15 MS. RINGLER: Please present this juror.

16 THE CLERK: What says the defense?

17 MR. HARTE: Please excuse the juror from the trial of
18 this case.

19 THE CLERK: Juror Number 108, Jamie Simmons.

20 THE JUROR: (Black female comes forward.)

21 THE CLERK: What says the State?

22 MS. RINGLER: Please present this juror.

23 THE CLERK: What says the defense?

24 MR. HARTE: Please swear the juror.

25 THE CLERK: Juror Number 28, Michelle Debruhl.

SELECTION OF THE JURY

1 THE JUROR: (White female comes forward.)
2 THE CLERK: What says the State?
3 MS. RINGLER: Please present this juror.
4 THE CLERK: What says the defense?
5 MR. HARTE: Please swear the juror.
6 THE CLERK: Juror Number 41, Evelyn Forshey.
7 THE JUROR: (White female comes forward.)
8 THE CLERK: What says the State?
9 MS. RINGLER: Please present this juror.
10 THE CLERK: What says the defense?
11 MR. HARTE: Please excuse the juror from the trial of
12 this case.
13 THE CLERK: Juror Number 136, Marty Williamson.
14 THE JUROR: (White male comes forward.)
15 THE CLERK: What says the State?
16 MS. RINGLER: Please present this juror.
17 THE CLERK: What says the defense?
18 MR. HARTE: Please swear the juror.
19 THE CLERK: Juror Number 39, Tonya Thomas.
20 THE JUROR: (Black female comes forward.)
21 MR. JOHNSON: What's the number again?
22 THE CLERK: Thirty-nine. What says the State?
23 MS. RINGLER: Please present this juror.
24 THE CLERK: What says the defense?
25 MR. HARTE: Please swear the juror.

SELECTION OF THE JURY

1 THE CLERK: Have a seat over there. Juror Number 38,
2 Delphine Felder.

3 THE JUROR: (Black female comes forward.)

4 THE CLERK: What says the State?

5 MS. RINGLER: Please present this juror.

6 THE CLERK: What says the defense?

7 MR. HARTE: Please excuse the juror from the trial of
8 this case.

9 THE CLERK: Juror Number 121, George Taylor.

10 THE JUROR: (White male comes forward.)

11 THE CLERK: One twenty-one. What says the State?

12 MS. RINGLER: Please present this juror.

13 THE CLERK: What says the defense?

14 MR. HARTE: Please swear the juror.

15 THE CLERK: Juror Number 25, Carol Davis.

16 THE JUROR: (White female comes forward.)

17 THE CLERK: What says the State?

18 MS. RINGLER: Please present this juror.

19 THE CLERK: What says the defense?

20 MR. HARTE: Please excuse the juror from the trial of
21 this case.

22 THE CLERK: Juror Number 32, Jarvis Dunbar.

23 THE JUROR: (Black male comes forward.)

24 THE CLERK: What says the State?

25 MS. RINGLER: Please present this juror.

SELECTION OF THE JURY

1 THE CLERK: What says the defense?
2 MR. HARTE: Please swear the juror.
3 THE CLERK: Juror Number 134, Margaret Williams.
4 THE JUROR: (Black female comes forward.)
5 THE CLERK: What says the State?
6 MS. RINGLER: Please excuse this juror.
7 THE CLERK: Thank you. Juror Number 78, Rhonda
8 McLeod.
9 THE JUROR: (White female comes forward.)
10 THE CLERK: What says the State?
11 MS. RINGLER: Please present this juror.
12 THE CLERK: What says the defense?
13 MR. HARTE: Please excuse the juror from the trial of
14 this case.
15 THE CLERK: Juror Number 72, David Lott.
16 THE JUROR: (White male comes forward.)
17 THE CLERK: What says the State?
18 MS. RINGLER: Please present this juror.
19 THE CLERK: What says the defense?
20 MR. HARTE: Please swear the juror.
21 THE CLERK: Juror Number, 118 Tony Still.
22 THE JUROR: (White male comes forward.)
23 THE CLERK: What says the State?
24 MS. RINGLER: Please present the juror.
25 THE CLERK: What says the defense?

SELECTION OF THE JURY

1 MR. HARTE: Please excuse the juror.
2 THE CLERK: Juror Number 107, Robert Scruggs.
3 THE JUROR: (White male comes forward.)
4 THE CLERK: What says the State?
5 MS. RINGLER: Please present this juror.
6 THE CLERK: What says the defense?
7 MR. HARTE: Please excuse the juror.
8 THE CLERK: Juror Number 105, Barbara Saxon.
9 THE JUROR: (Black female comes forward.)
10 THE CLERK: What says the State?
11 MS. RINGLER: Please excuse this juror.
12 THE CLERK: Juror Number 48, Lacie Grubbs.
13 THE JUROR: (White female comes forward.)
14 THE CLERK: What says the State?
15 MS. RINGLER: Please excuse this juror.
16 THE CLERK: Juror Number 106, Carolyn Scott.
17 THE JUROR: (Black female comes forward.)
18 THE CLERK: What says the State?
19 MS. RINGLER: Please -- I'm sorry. What was juror's
20 number again?
21 THE CLERK: One-0-six.
22 MS. RINGLER: Please present this juror.
23 THE CLERK: What says the defense?
24 MR. HARTE: Please swear the juror.
25 THE CLERK: Juror Number One, Virginia Amerson.

SELECTION OF THE JURY

1 THE JUROR: (White female comes forward.)
2 THE CLERK: What says the State?
3 MS. RINGLER: Please present this juror.
4 THE CLERK: What says the defense?
5 MR. HARTE: Please excuse the juror from this case.
6 THE CLERK: Juror Number 91, Janet Redingburg.
7 THE JUROR: (Black female comes forward.)
8 THE CLERK: What says the State?
9 MS. RINGLER: Please present this juror.
10 THE CLERK: What --
11 MR. HARTE: Please swear the juror.
12 THE CLERK: Juror Number 21, Adlisha Coleman.
13 THE JUROR: (Black female comes forward.)
14 THE CLERK: What says the State?
15 MS. RINGLER: Please excuse this juror.
16 THE CLERK: Juror Number 62, Edwin Jones.
17 THE JUROR: (White male comes forward.)
18 THE CLERK: What says the State?
19 MS. RINGLER: Please present this juror.
20 THE CLERK: What says the defense?
21 MR. HARTE: Please excuse the juror.
22 THE CLERK: Juror Number 103, Jeffrey Sanders.
23 THE JUROR: (Black male comes forward.)
24 THE CLERK: What says the State?
25 MS. RINGLER: Please present this juror.

SELECTION OF THE JURY

1 THE CLERK: What says the defense?
2 MR. HARTE: Please swear the juror.
3 THE CLERK: Juror Number 115, Lisa Still.
4 THE JUROR: (White female comes forward.)
5 THE CLERK: What says the State?
6 MS. RINGLER: Please present this juror.
7 THE CLERK: What says the defense?
8 MR. HARTE: Please excuse the juror.
9 THE CLERK: Juror Number Four, Bobby Baxley.
10 THE JUROR: (White male comes forward.)
11 THE CLERK: What says the State?
12 MS. RINGLER: Please present this juror.
13 THE CLERK: What says the defense?
14 MR. HARTE: Please excuse the juror.
15 THE CLERK: Juror Number 123, William Vojtech.
16 THE JUROR: (White male comes forward.)
17 THE CLERK: What says the State?
18 MS. RINGLER: Please present this juror.
19 THE CLERK: What says the defense?
20 MR. HARTE: Please excuse the juror.
21 THE CLERK: Juror Number 112, Justin Steadman.
22 THE JUROR: (White male comes forward.)
23 THE CLERK: What says the State?
24 MS. RINGLER: Please present this juror.
25 THE CLERK: What says the defense?

SELECTION OF THE JURY

1 MR. HARTE: Please excuse the juror.
2 THE CLERK: Juror Number 46, Charles Gooding.
3 THE JUROR: (White male comes forward.)
4 THE CLERK: What says the State?
5 MS. RINGLER: Please present this juror.
6 THE CLERK: What says the defense?
7 MR. HARTE: Please excuse the juror.
8 THE CLERK: Juror Number 113, Catherine Still.
9 THE JUROR: (White female comes forward.)
10 THE CLERK: What says the State?
11 MS. RINGLER: Please present this juror.
12 THE CLERK: What says the defense?
13 MR. HARTE: Please excuse the juror.
14 THE CLERK: Juror Number 137, Calvin Wilson.
15 THE JUROR: (White male comes forward.)
16 THE CLERK: What says the State?
17 MS. RINGLER: Please present this juror.
18 THE CLERK: What says the defense?
19 MR. HARTE: Please excuse the juror.
20 THE CLERK: Juror Number 99, Ned Rivers.
21 THE JUROR: (Black male comes forward.)
22 THE CLERK: What says the State?
23 MS. RINGLER: Please present this juror.
24 THE CLERK: What says the defense?
25 MR. HARTE: Please swear the juror.

SELECTION OF THE JURY

1 THE CLERK: Our two alternates next.

2 MR. HARTE: Strikes?

3 THE COURT: One and two as to each alternate.

4 MR. HARTE: Thank you.

5 THE CLERK: Juror Number 127, Latisha White.

6 THE JUROR: (Black female comes forward.)

7 THE CLERK: What says the State?

8 MS. RINGLER: Please present this juror.

9 THE CLERK: What says the defense?

10 MR. HARTE: Please swear the juror.

11 THE CLERK: Juror Number 87, Paul Nelson.

12 THE JUROR: (Black male comes forward.)

13 THE CLERK: What says the State?

14 MS. RINGLER: Please present this juror.

15 THE CLERK: What says the defense?

16 MR. HARTE: Swear the juror.

17 THE COURT: Are there any matters of law regarding
18 jury selection?

19 MS. RINGLER: None from the State, Your Honor.

20 MR. HARTE: None from the defense, Your Honor.

21 THE COURT: All right. Ladies and gentlemen, you all
22 have been selected to be the jury in the trial of this
23 case.

24 Ladies and gentlemen, those of you who have not been
25 selected, we're going to excuse you all -- let's see now,

1 Madam Clerk, do you have a call-in system?

2 THE CLERK: Yes, sir. We do.

3 THE COURT: If you all will call in tomorrow after
4 six p.m. to determine when and if you'll be needed to come
5 back.

6 You're certainly free to return to your jobs. We may
7 not get an opportunity to do another case. We may not see
8 you again, but we need you all to call back tomorrow after
9 six p.m. to be sure.

10 I think she's going to give you your juror
11 certificates just in case, but if we don't see you again,
12 thank you all very much for your cooperation.

13 (Jury panel exits courtroom at 4:10 p.m.)

14 THE COURT: Ladies and gentlemen, those who were
15 selected, we're going to have you go to the jury room
16 which is through that door. Please don't discuss the
17 case. We're going to talk about some scheduling. We'll
18 have you come back soon. Thank you very much. If you'll
19 go in that direction.

20 (Jury exits courtroom at 4:10 p.m.)

21 THE COURT: All right.

22 The jurors are out of the courtroom. Do you want to
23 place a few things on the record? First regarding the
24 severance motion, Ms. Rivers?

25 MS. RIVERS: Judge, last week we filed a motion to

1 sever the trial of the case with the two co-Defendants.
2 After discussing it with my client, he's asking me to
3 withdraw that motion and to proceed with the joint trial.

4 THE COURT: All right. Is that right, Mister --
5 what's his name?

6 MS. RIVERS: Workman.

7 THE COURT: Mr. Workman?

8 THE DEFENDANT WORKMAN: Yes, sir, Your Honor.

9 THE COURT: And regarding the presentation strikes
10 jointly, Mr. Harte?

11 MR. HARTE: Yes, Your Honor. As you know the defense
12 was entitled to 20 strikes. We talked among ourselves and
13 among our clients and agreed that we would jointly strike
14 the jury as we did.

15 THE COURT: Is that right, Mr. Johnson?

16 MR. JOHNSON: That's correct, Your Honor.

17 THE COURT: And, Ms. Rivers?

18 MS. RIVERS: Yes, sir.

19 THE COURT: All right. Very well.

20 Are there preliminary matters or pretrial matters?
21 Anything else?

22 MS. RINGLER: None from the State, Your Honor.

23 THE COURT: All right.

24 MS. RINGLER: Well, I think -- my objections to some
25 of the voir dire I passed up in a note. I don't know if

1 you go into that, but I don't think you asked any of the
2 questions that we objected to. I don't think we need to
3 put it on the record.

4 THE COURT: Are -- there are no requests for any
5 additional voir dire?

6 MS. RINGLER: Okay.

7 THE COURT: With regard to plea offers. The most
8 recent supreme court PCR case, this is US Supreme Court
9 case. I think it's US versus Martinez reference the
10 obligation of defense counsel to confer with the
11 defendants regarding plea offers made by the State and for
12 the record to be clear on that issue.

13 And so I think it's best that we address it on the
14 record at this time. Madam Solicitor?

15 MS. RINGLER: Yes, Your Honor. With regard to
16 Defendant Kevin Brown, the solicitor at the time, Kip
17 McAlister, made an offer on December 27th, 2011, that
18 expired on January 4, 2011 (verbatim).

19 He offered to allow him, the Defendant to plead to two
20 -- excuse me, January 4th, 2012 is when it expired. He
21 offered to allow the Defendant to plead to four counts or
22 four separate charges; armed robbery, kidnapping, armed
23 robbery and kidnapping, all to run concurrent. And those
24 are warrants M-565457, M-565477, M-565463 and M-565469.
25 All other charges would be dismissed.

1 THE COURT: And at the time and still now, same
2 counsel for the defense?

3 MR. JOHNSON: Yes, it was, Your Honor.

4 MS. RIVERS: No, sir.

5 THE COURT: And Mr. Johnson then, you represent
6 Mr. Brown --

7 MS. RINGLER: Just Mr. Brown. I'm sorry.

8 MR. JOHNSON: Yes, sir.

9 THE COURT: And you relayed those offers to
10 Mr. Brown?

11 MR. JOHNSON: At that time I did, Your Honor. And we,
12 Mr. Brown and I conferred and we passed it back to the
13 State that we declined their offer.

14 THE COURT: Is that right, Mr. Brown?

15 THE DEFENDANT BROWN: Yes, Your Honor.

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

17 MS. RINGLER: There was a note about willingness. If
18 the Defendants were willing to cooperate the State might
19 amend the offer. So there was that note at the bottom of
20 the offer sheet for, I believe all three Defendants had
21 that note at the bottom of their plea offer sheet.

22 For Jamaal Riley, his offer was extended by
23 Mr. McAlister on December 27th, 2011, and expired on
24 January 4th, 2012. He was represented by Mr. Harte at
25 that time. Was to plead to two counts of armed robbery to

1 run concurrent M-56550, M-5 -- excuse me. M-65468 were
2 the other armed robbery warrants. And that was for this
3 armed robbery and also one of the Morris's Quick, Quick
4 and Easy -- for another quickie-mart armed robbery, Your
5 Honor. And then all other charges were dismissed.

6 And, again, the State did make a note that if he was
7 willing to cooperate the State might amend that plea
8 offer.

9 The last one is for Kadeem Workman. His attorney at
10 that time was Lauren Maurice.

11 MS. RIVERS: Lauren Maurice was his prior attorney.

12 MS. RINGLER: And that was extended on December 27th,
13 2011, and then expired on January 4th, 2012. His was to
14 plead to armed robbery, burg first, kidnapping, armed
15 robbery, kidnapping, armed robbery, kidnapping, all to run
16 concurrent. And those are warrants M-65520, M-56521,
17 M-565522, M-565458, M-565489, M-565464 and M-565482. And
18 then all other charges would be dismissed.

19 THE COURT: Those plea offers related to the offenses
20 that we're on trial for and also other --

21 MS. RINGLER: This was --

22 THE COURT: -- other crimes?

23 MS. RINGLER: This sort of a group of defendants along
24 with others. There were about four total armed robberies
25 that occurred in a short amount of time. And different

1 sort of make ups were charged with each of the four.

2 So this, the plea offers would resolve all of the
3 charges for that particular defendant for whichever armed
4 robberies he was charged with.

5 THE COURT: All right. Mr. Harte, this -- all those
6 offers were communicated to your client?

7 MR. HARTE: They were, Your Honor.

8 THE COURT: And rejected by him?

9 MR. HARTE: That is correct, Your Honor.

10 THE COURT: Is that right, Mr. Riley?

11 THE DEFENDANT RILEY: Yes, sir, Your Honor.

12 THE COURT: And then Ms. Rivers?

13 MS. RIVERS: Judge, I was appointed in March. At that
14 time I did review the plea offer that was previously given
15 to Ms. Maurice. I also had discussions with the prior
16 assistant solicitor handling it, discussing potential
17 pleas by my client and we did discuss it.

18 And it was put in writing to him and he has rejected
19 it.

20 THE COURT: Is that right, Mr. Workman?

21 THE DEFENDANT WORKMAN: Yes, sir, Your Honor.

22 THE COURT: All right. Thank you. Well, all right.
23 What else do we need to know at this stage of the game?

24 MS. RINGLER: I think we're all set to start in the
25 morning. And we'll just start beginning the trial in the

1 morning.

2 THE COURT: All right. Bring the jury out and let
3 them go until 9:30. Let them come in and cut them loose
4 until nine.

5 MS. RINGLER: We may have a short plea in the morning
6 that, it's really the only time that the attorney could be
7 here all week, if it's possible to do that. He said he'll
8 be here at nine a.m. to get that done.

9 THE COURT: We'll have them come in at ten then
10 tomorrow morning.

11 MS. RINGLER: Okay.

12 THE COURT: We'll do that at 9:30. We're not going to
13 try to get here by nine. Mr. Johnson?

14 MR. JOHNSON: Your Honor, as you know, I'm driving
15 every day from home. It's about an hour and a half, two
16 hours ride. If it's possible, if we could adjust it to
17 ten o'clock?

18 THE COURT: I'm going to let this jury come at ten and
19 do that plea at 9:30.

20 MR. JOHNSON: That will be fine. Thank you, Your
21 Honor.

22 (Jury enters courtroom at 4:22 p.m.)

23 THE COURT: All right. Ladies and gentlemen, we've
24 got our schedule straight. We're going to start at ten
25 tomorrow morning. And you all are free to go for the

1 day.

2 We need you all here tomorrow morning at ten. Once
3 you have been selected on a jury, you're not to discuss
4 the case in any form or fashion with each other or with
5 anyone else. It would be totally improper for you to
6 decide to go out and do some Internet searching and
7 private investigation and all of those various things to
8 find out as much as you can about this case.

9 You're to do none of that and it will be a violation
10 of your oath as jurors to do any of that. Any and
11 everything that you are -- will need to know about this
12 case, you will hear in this courtroom. And all jurors
13 will hear exactly the same thing and then the jurors will
14 deliberate based on what everyone has heard.

15 So it would be improper and a violation of your oath
16 to discuss the case with anyone else who's not on the
17 jury, family members or friends. It would be improper to
18 discuss the case with any fellow juror until it's time for
19 you to deliberate and to decide the case.

20 And it would be improper for you to get exposed to any
21 information other than that which is presented in the
22 courtroom with all jurors present and hearing the same
23 thing and all jurors deliberating who have heard the same
24 thing.

25 Also, in that connection you may be familiar with the

1 lawyers or some of the other court personnel or other
2 people around the courthouse. But you are to shy away
3 from having any conversations with any of those
4 individuals, including court officials, bailiffs, anyone
5 else other than requesting certain information that might
6 be for your benefit. But generally, loose talk, casual
7 conversation, should be avoided because it would appear to
8 be improper and in many instances it may be improper.

9 Also when you come to the courtroom you should avoid
10 coming through the courtroom. You should avoid milling
11 around outside of the jury room. When you come, your task
12 will be to come through the direction that the bailiffs
13 tell you. Come directly into the jury room and to stay
14 there until you come directly into the courtroom.

15 That's a tried and true procedure that's satisfied the
16 demands of our American justice system. And we want you
17 all to comply with that procedure. And everyone else here
18 in Bamberg (verbatim) County will do likewise.

19 So thank you very much and we will see you all
20 tomorrow morning at what time?

21 THE JURY (COLLECTIVELY): Ten o'clock.

22 THE COURT: Ten o'clock. Anyone can't be here at ten
23 o'clock? All right. We don't want any stragglers. Ten
24 o'clock. Thank you very much. We'll see you all
25 tomorrow. I mean, Barnwell County. I'm looking at

1 Mr. Bamberg. Barnwell County.

2 (Jury exits courtroom at 4:25 p.m.)

3 THE COURT: All right Barnwell County. Get it
4 straight.

5 So, the -- since the Defendants are in custody then,
6 we'll need all the jurors to be in the jury room before
7 the -- well, first of all. Wherever the Defendant's are
8 housed, is there some type of, I guess, lockup back there
9 somewhere?

10 THE OFFICER: We usually put them in the grand jury
11 room, shut the door.

12 THE COURT: So they will need to be in the grand jury
13 room before the jurors come. So what time do they
14 normally get here?

15 THE CLERK: Anywhere from 45 to 30 minutes before.

16 THE COURT: So we will need them here by 9:15, I would
17 think that should be fine, to be in that room. And then
18 the jurors are in the jury room, then the jurors won't
19 come into the courtroom until the Defendants are seated in
20 the courtroom. We shouldn't have any problem doing that.
21 And so the -- which means that if the -- when -- someone
22 let some gnats in here, too. I'm trying to kill these
23 gnats.

24 So, the court personnel will need to make sure that if
25 you have early-arriving jurors who get here before the

1 Defendants get here, I guess they all use the same
2 entrance; don't they?

3 THE CLERK: Only way to come in.

4 THE COURT: You just have some natural problems
5 inherent in some of these type situations. But the
6 Defendants should be here by 9:15 and hopefully we won't
7 get any jurors that early because they don't have to be
8 here until ten. But we need them here as early as
9 possible to avoid the interaction with jurors and
10 Defendants.

11 Well, all right. Anything else we need to talk about
12 today on this case?

13 MS. RINGLER: Nothing from the State, Your Honor.

14 MS. RIVERS: No, sir.

15 MR. JOHNSON: I have nothing, Your Honor.

16 THE COURT: And you want to do some other pleas or
17 other things?

18 MS. RINGLER: We have folks here, Your Honor. So we
19 can work until five if you'd like.

20 THE COURT: Absolutely. All right. Well, we'll break
21 down on this case until ten in the morning. We'll take
22 some pleas.

23 (Thereafter, other matters were heard by the Court.)

24 END OF DAY'S PROCEEDINGS FOR THIS CASE: 4:47 P.M.

25

1 ON WEDNESDAY, SEPTEMBER 5, 2012 AT 10:16 A.M.:

2 THE COURT: Any matters before the jury comes in?

3 MS. RINGLER: I think there's going to be a motion to
4 sequester witnesses. We're just getting everybody in that
5 back room at the moment, Your Honor.

6 MS. RIVERS: She beat me to it, Your Honor. We move
7 to sequester the witnesses.

8 THE COURT: What says the State?

9 MS. RINGLER: We would just ask that the same apply
10 for their witnesses.

11 THE COURT: The State consents or opposes the motion?

12 MS. RINGLER: We would consent on the condition that
13 the same apply to the defense; any witnesses that they
14 have be sequestered as well.

15 MR. HARTE: That, of course, would exclude the
16 Defendants, Your Honor.

17 MS. RINGLER: Yes, Your Honor.

18 THE COURT: Well, what's the basis for the
19 sequestration motion?

20 MS. RIVERS: Judge, this case involves several
21 statements by different witnesses. Some changed
22 statements, a lot of detail-oriented stuff as to time and
23 place and how information came about. And if all the
24 witnesses are to remain in here, I don't think the jury
25 would get an accurate picture of what their actual

1 testimony is. They would be able to feed off each other's
2 testimony, Your Honor.

3 THE COURT: And the lawyers would have no impact on
4 anything?

5 MS. RIVERS: Of course not.

6 THE COURT: The evidence and due process would be
7 meaningless if they stayed in?

8 MS. RIVERS: Yes, sir.

9 THE COURT: The statements that you're referring to,
10 are they not documented or written statements?

11 MS. RIVERS: In some cases, in a couple of statements,
12 but there are some witnesses that I believe they will
13 probably try to add additional information or to clean up
14 some information if they were allowed to remain in the
15 courthouse and hear other's testimony -- I mean, the
16 courtroom.

17 THE COURT: I don't make it a practice of just
18 randomly excluding everyone from the courtroom and just
19 granting sequestration motions just because a motion is
20 made. It's very inconvenient to try to find these people,
21 try to keep them separated. You know, in this courtroom
22 you have the -- courthouse, you have seemingly no place to
23 keep the Defendants.

24 And where are you going to keep these witnesses that
25 you want to sequester?

1 MS. RIVERS: Judge, there are two holding rooms near
2 the solicitor's office that we use for family court
3 purposes typically that I think would be appropriate.

4 THE COURT: The State has no objection to the
5 sequestration. It will be granted on that basis, but
6 otherwise I don't -- the motions are just made routinely
7 and they're routinely rejected by me absent some showing
8 of where you have witnesses who have given written
9 statements and will be subject to being cross-examined and
10 impeachment if they testified contrary to those written
11 statements.

12 I don't just grant it to grant it. But that's an
13 academic discussion in this case since I've granted it
14 based on there being no objection.

15 MS. RIVERS: Thank you, Your Honor.

16 THE COURT: All right. Other than that, what else do
17 we have? We need the Defendants in here.

18 MR. HARTE: Your Honor, earlier this morning the State
19 provided us with some photographs. There are four
20 photographs that I would object to that I believe counsel
21 for the other Defendants would also object to.

22 MR. JOHNSON: Yes, we would.

23 MR. HARTE: Normally I would bring it up when they
24 were about to be introduced, but if you want to take it up
25 in advance.

1 THE COURT: How many photographs are un-objected to?

2 MR. HARTE: I didn't count them, Your Honor. There's
3 a number of them not objected to. A large number.

4 MS. RINGLER: Your Honor, we have, I believe it's 60
5 photos total. And there are four that are booking
6 photos. They're booking photos, Your Honor, that the
7 State has gone and omitted any sort of, cropped it in a
8 way to omit any kind of a jumpsuit or any indication that
9 they are booking photos.

10 So they are just shots of the Defendants' heads, all
11 four Defendants. And that is because in the security
12 footage video from the robbery, at some point one of the
13 Defendants' masks comes down. He's got a red bandana over
14 his face and that does come down at some point.

15 We have two Defendants, excuse me, two witnesses who
16 will identify that particular Defendant.

17 THE COURT: You might not have heard the question.

18 MS. RINGLER: I'm sorry.

19 THE COURT: The question is: How many photos are
20 un-objected to?

21 MS. RINGLER: I believe the other 54, or 56. Sorry.

22 THE COURT: Is that correct, Mr. Harte?

23 MR. HARTE: From my standpoint.

24 THE COURT: Mr. Johnson?

25 MR. JOHNSON: Mine as well.

1 THE COURT: Ms. Rivers?

2 MS. RIVERS: Yes, sir.

3 THE COURT: The photographs that the parties stipulate
4 to as being, or there is no objection to their
5 admissibility of them, they will come in without objection
6 and they can be marked.

7 MS. RINGLER: Okay. We marked them already and I can
8 go ahead and --

9 THE COURT: Anything that's been objected to, you can
10 pass them up and we'll proceed and take them up in the
11 course of time.

12 MS. RINGLER: And the video that was provided, the
13 security video from the store, is there any objection to
14 that?

15 MR. HARTE: Do you have an objection to the video at
16 the scene?

17 MS. RIVERS: No.

18 MR. HARTE: No, sir. We do not object to the store
19 video.

20 THE COURT: All right. The store video would be
21 admitted without objection as well.

22 MS. RINGLER: And then we just have -- we -- we have
23 printed out exhibits that we'll introduce but we also have
24 the digital files that we will project on the screen and
25 so we just have all the photos in JPEG form on a disk. Is

1 there any objection? This is actually what was provided
2 to the defense, the JPEG file..

3 THE COURT: Does that include the four objected to?

4 MS. RINGLER: It does. So we'll hold off on that
5 then, Your Honor.

6 But we can -- if it turns out they don't come in we
7 can substitute that. It's more for the record since this
8 is what use to project. We generally do admit the disk
9 with all the files on it. We can just omit those and
10 re-burn another disk if we end up not -- if they end up
11 not coming in.

12 THE COURT: All right.

13 MS. RINGLER: But the paper ones --

14 THE COURT: Assuming that the four photographs are not
15 included, will there be any objection to the disk?

16 MS. RIVERS: No.

17 MR. JOHNSON: No, Your Honor.

18 MR. HARTE: No, Your Honor.

19 THE COURT: Be admitted. And we'll address the four
20 photographs.

21 MS. RINGLER: So all but State's 59, 60, 61 and 62
22 are in.

23 THE COURT: Those four will be marked for
24 identification purposes. And you can pass them up to me.

25 MS. RINGLER: Yes, sir. And the disk we'll just --

1 And, Your Honor, there is one shot where some of the
2 orange jumpsuit's showing. That's going to be our
3 cooperating co-defendant. He's not one of the three on
4 trial, Your Honor.

5 THE COURT: All right. So that I'll be able to think
6 of this in context, what's the basis for your objection to
7 these photographs?

8 MR. HARTE: Well, Your Honor, first of all, it appears
9 to me that they do indicate they are mug shots. They do
10 look like mug shots.

11 Secondly, there's no relevance to them other than to
12 try to get the jury to believe these are mug shots. The
13 mask may have come down, but the jury doesn't need a
14 photograph to look and see if it matches any of the
15 Defendants in the case.

16 The Defendants are right here. They can look and see
17 if they look like the person that they are, sitting next
18 to me or next to Mr. Johnson or next to Ms. Rivers.

19 THE COURT: All right.

20 MR. HARTE: They are prejudice -- their prejudice
21 overweighs their probative value.

22 THE COURT: Mr. Johnson?

23 MR. JOHNSON: Your Honor, I agree with the previous
24 statements as well, Your Honor, the photographs were not
25 taken the night that this occurred. It makes the

1 connection to the pictures as well as the pictures they
2 intend on showing on the video, it's just a blow-up of
3 them trying to connect them.

4 They have no relevance to the particular area. And
5 they are mug shots, regardless of how they explain -- how
6 they try to clean them up. They are mug shots.

7 THE COURT: What's a mug shot anyway?

8 MR. JOHNSON: Well, Your Honor, my understanding is a
9 mug shot is a picture that's taken of an individual when
10 he's arrested and taken by the police down at the
11 detention center.

12 At least, that's my description of what I mean when I
13 say mug shots.

14 THE COURT: Ms. Rivers?

15 MS. RIVERS: Judge, I concur with the previous
16 arguments by the other defense counsel.

17 I think it's the same kind of thinking of why we don't
18 have them here in other attire that is akin to an arrest.
19 They have that presumption of innocence around them. And
20 to give them something that looks like they may have been
21 convicted of a crime previously --

22 THE COURT: Well, I'm not sure who -- this Number 61,
23 I'm not, I'm not sure who this is. Must be Mr. Harte's
24 client, I guess. No. Or, is this your client?

25 MS. RIVERS: I didn't -- I do not believe so, Judge.

1 THE COURT: Well, anyway, I assume that this is one of
2 the three Defendants since she said it is. It's a picture
3 of his head. Now, what makes it a mug shot or what
4 indicates that he's in jail?

5 MS. RIVERS: Judge, I think a mug shot is fairly
6 standardly known in our culture in the sense of, you have
7 the head shot. It generally has a shoulder, which they
8 have redacted out of this, but you have that head shot.

9 There's one on the front page of the paper today, in
10 the Barnwell Sentinel, the mug shot of the guy arrested.
11 These pictures have that quality about them of that head
12 shot with the person staring blankly.

13 They're clearly not doing anything else. They're not
14 in the back yard having a picnic. They're not at school
15 having a school photo made. There's no blue backdrop or
16 tree backdrop or anything like that.

17 It's the type of photograph that's made for a
18 criminal.

19 And that's the objection, is that it would put that in
20 the jury's mind.

21 THE COURT: So we have a picture with a white
22 background. A picture of a face, a head with a white
23 background. And that suggests that the person in the
24 picture is in jail?

25 MS. RIVERS: In this context I believe it does, Your

1 Honor. That type of photograph.

2 THE COURT: The context of us having a trial?

3 MS. RIVERS: Yes, sir.

4 THE COURT: All right. So that person has dreads.

5 Then, Number 39, I believe this must be Mr. Johnson's
6 guy.

7 MR. JOHNSON: That's correct, Your Honor.

8 THE COURT: Having a white T-shirt and some dreads.
9 He looks different today. He has a close haircut today.
10 What makes this, what makes it prejudicial to present
11 this picture?

12 MR. JOHNSON: The thing that makes it prejudicial, Your
13 Honor, is it, as I stated before, it has no relevance to
14 when it was taken. There's no foundation that they can
15 set except to say that it was a mug shot because that
16 actually is the mug shot that they took.

17 THE COURT: Well, if something's not relevant then
18 that's a different question as to whether it's unduly
19 prejudicial or suggestive of some criminal activity.

20 MR. JOHNSON: Well, those are all my objections as
21 well, Your Honor. Its relevance, it's unduly
22 prejudicial.

23 As stated, it indicates that my client is looking at a
24 camera. He has a white T-shirt on. It's just a squared-
25 off picture that looks like it has been adapted. We are

1 in courtroom proceeding. And I would suggest that the
2 jury would perceive that person was of a normal -- anyone
3 that's seen mug shots before, Your Honor, on TV or in the
4 newspaper, I believe that that would project a picture of
5 a mug shot.

6 And, in fact --

7 THE COURT: Basically any picture of a person's head
8 is a mug shot, and a jury shouldn't see it?

9 MR. JOHNSON: No, Your Honor.

10 THE COURT: Unless they have a tree in the background
11 or some outdoor scene or -- go ahead.

12 MR. JOHNSON: But, Your Honor, that's my exact point.
13 That in the background, it's a white background. There's
14 no trees in the background. That's not a picture that was
15 taken out in the -- out in the country. That's not a
16 picture that was taken in somebody's home. It looks like
17 those pictures that was taken as a mug shot.

18 THE COURT: It could be taken in a courtroom, this
19 courthouse if it's a white background, standing against
20 the wall there.

21 MR. JOHNSON: Your Honor, there's a number of
22 possibilities. And that's my point as well, Your Honor.
23 It would call the jury -- a jury could look at that
24 picture and say, well, it could have been taken in a
25 courtroom, it could have been taken here.

1 But, Your Honor, they could also say that that's a mug
2 shot. It doesn't eliminate that possibility. And it'd
3 cause the jury to speculate.

4 THE COURT: All right. Then, Mr. Harte, I guess we'll
5 note this is your guy or which guy is this Number 62?

6 MR. HARTE: I think that's --

7 THE COURT: Ms. Rivers' guy?

8 MR. HARTE: I'm not sure who that is. That's not my
9 client.

10 THE COURT: It shows the whole issue of eyewitness
11 identification, if I'm looking at them in the picture and
12 I can't tell who's who.

13 Well, anyway, any response?

14 MS. RINGLER: Just, Your Honor, that the testimony we
15 intend to elicit is that these are photos of the
16 particular Defendants that will be described by the
17 witness.

18 Just -- the date that the photos were taken, that they
19 were shortly after the robbery, just to establish that.
20 And the purpose of the photos is, yes, while we're in the
21 courtroom the jury will be able to look at the Defendants,
22 but during deliberation they won't have that ability or
23 that capability.

24 So we intended to admit the photos primarily for the
25 deliberation for the jury to have that during that time,

1 so ...

2 THE COURT: All right.

3 MR. HARTE: Your Honor, maybe I wasn't clear. I hate
4 to belabor the point, but my understanding was that the
5 purpose for these photos was for the jury to somehow see
6 if they could match up the person whose mask came down in
7 the robbery. And they have a witness who is going to say
8 that it was one of these three people.

9 And now they're saying they're using them for
10 eyewitness identification for having seen all three people
11 or all four people at some other place.

12 And that raises another issue that to my knowledge the
13 witnesses were never shown a photographic lineup where
14 they could make an objective identification with the
15 persons they saw at a different location at a different
16 time.

17 So, I object to the photographs and the eyewitness
18 identification based on that.

19 THE COURT: All right.

20 MS. RINGLER: Perhaps I need to clarify my argument
21 then.

22 We have a still shot from the security footage where
23 the mask does come down. We will have two witnesses who
24 will ID that particular Defendant. And so we, again, have
25 a still shot from that video.

1 Also the jury will have the video back there as well
2 as the TV to be able to watch it if they want to watch it
3 again during deliberation.

4 And so the book -- the photos of the Defendants are
5 there for them to review as part of deliberations since
6 they won't be able to look at the Defendants during that
7 time.

8 THE COURT: All right.

9 MS. RINGLER: So if they choose to compare it to the
10 video or choose to compare those photos with the still
11 shots they will be able to since they won't have the
12 Defendants here.

13 Also, as you pointed out, their appearance has changed
14 since then. And so those are photos closer in time to the
15 incident.

16 THE COURT: All right. We'll start the trial. I
17 don't agree with defense counsel that any photograph taken
18 when someone is in custody automatically gives the jury,
19 suggests to a jury that the person is in custody.

20 I think photographs can be modified or at least in the
21 manner in which they have been done here in order to
22 remove any taint from the photographs.

23 However -- and further, that the solicitor has a right
24 to try her case as she sees fit subject, however, to all
25 other rules regarding relevance and probativeness of

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 testimony.

2 So we'll see how it goes. And I'll rule when I need
3 to rule on these issues.

4 Anything else?

5 (No response.)

6 THE COURT: Well, let's bring the jury.

7 (Thereupon, State's Exhibit Nos. 1 through 59,
8 photographs, and State's Exhibit No. 63, CD of
9 photographs, were received into evidence. exhibits were
10 received into evidence.

11 State's Exhibit Nos. 59, 60, 61, and 62, photographs,
12 were marked for identification.)

13 (Jury enters courtroom at 10:30 a.m.)

14 THE COURT: All right. Good morning, ladies and
15 gentlemen of the jury.

16 THE JURY (COLLECTIVELY): Good morning.

17 THE COURT: If you all will stand at this time to be
18 sworn.

19 (Jury impaneled.)

20 THE COURT: Well, ladies and gentlemen, I want to
21 welcome you back here today to the trial of this case.
22 Seated next to me is my law clerk, Ms. Tanya Redline, in
23 case are you wondering who she might be.

24 This case that we're about to try is the case of the
25 State versus Defendant Kevin Brown -- Kevin Christopher

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 Brown, Roosevelt Kadeem Workman and Jamaal Terrell Riley.

2 Each Defendant is charged with the same offenses.

3 Each indictment or each case or each Defendant has four
4 charges; armed robbery, possession of a weapon during a
5 violent crime, criminal conspiracy and kidnapping.

6 They have each plead not guilty to each and every
7 charge in the indictment. And that plea places the burden
8 on the State to prove the Defendants guilty.

9 A person charged with committing a crime in South
10 Carolina is presumed to be not guilty of the crime, and
11 cannot be found guilty unless evidence is presented that
12 convinces a jury of guilt beyond a reasonable doubt.
13 Therefore, the State has the burden of presenting evidence
14 which convinces each and every one of you of guilt beyond
15 a reasonable doubt as to each and every element of each
16 and every defense.

17 And though the Defendants are being tried jointly, you
18 are to make an individual determination as to each
19 Defendant in relation to each charge.

20 And out of all the other people who live in this
21 county, out of all the other people who live in this
22 state, out of all the other people who were summoned here
23 for jury trial, only the 12 of you who deliberate can make
24 that determination. It will be up to you, the 12 of you
25 who will deliberate, to decide whether a particular

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 Defendant is guilty or not guilty. You must make that
2 decision based solely on the evidence presented during
3 this trial and you are the sole deciders of those facts.

4 Now, just as only you can determine the facts of this
5 case, as the Presiding Judge, I am the sole judge of the
6 law of this case. And you must accept as correct the law
7 as I state it to you at this time, during the trial, and
8 in much greater detail at the end of the trial.

9 You will take the facts as you find them to be and
10 apply the law as I give it to you, and make -- and reach
11 your verdict. Your verdict will be guilty or not guilty
12 as to each particular charge.

13 Now I'll do all that I can to keep this case moving.
14 We don't want anyone to get worn out sitting for too long
15 a period of time. I do understand that you're probably
16 not accustomed to just being, sitting in such a formal
17 setting for a long period of time as some of us may be
18 more accustomed to.

19 So we'll take breaks as necessary to keep you fresh
20 and alert. It is essential, however, that you give this
21 case your undivided attention, that you focus on what you
22 hear, what you see, and so that you will be in a position
23 to participate in the deliberations in this case and to
24 decide this case.

25 As I mentioned to you yesterday, you are not to read

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 anything, listen to anything, do any extra research,
2 engage in any form of conversation or social networking or
3 newspaper reading or anything regarding this case because
4 you are to decide the case solely based on the evidence
5 presented here in court. And all jurors are to decide the
6 case having listened to the same evidence and not being
7 exposed to any other information. You're also not to
8 discuss the case with each other or allow anyone else to
9 discuss the case in your presence.

10 In just a minute the State through the solicitor's
11 office will make an opening statement in which she will
12 outline what she believes the evidence will show in this
13 case and explain the case from the State's perspective.

14 After she has had an opportunity to do that, then the
15 defense will have the same opportunity to make an opening
16 statement, opening statements on behalf of the respective
17 Defendants.

18 Then we will listen to the testimony. The testimony
19 will be witnesses who will testify. It will be your role
20 to evaluate the credibility of witnesses who testify as
21 well as the credibility of evidence that is offered during
22 the course of the trial.

23 I look forward to working with you. And we will --
24 well, I want to mention one additional thing.

25 And that is, later on in the process I will appoint

OPENING STATEMENTS TO THE JURY: BY THE STATE

1 one of you to serve as the foreperson of the jury. That
2 person will be the spokesperson for the jury who will also
3 have the responsibility of presiding over the jury
4 deliberations and completing the verdict form representing
5 the unanimous verdict of the jury.

6 And, if you can get someone to move that, what is
7 that --

8 MS. RINGLER: Oh, sorry.

9 THE COURT: -- the podium from in front of the juror.
10 She has -- you shouldn't have to look sideways to see the
11 Judge.

12 THE JUROR: Thank you.

13 THE COURT: And definitely not to see witnesses.

14 I will appoint one of you to serve as the foreperson
15 for the jury to preside over the jury deliberations and to
16 complete the verdict form representing the unanimous
17 verdict of the jury.

18 Opening statement from the State, Madam Solicitor.

19 MS. RINGLER: Thank you, Your Honor.

20 Good morning.

21 THE JURY (COLLECTIVELY): Good morning.

22 MS. RINGLER: We're here today about the choices,
23 because of the choices made by four men. Three of those
24 men are in this courtroom here today.

25 We have Jamaal Riley, Kevin Brown, whose nickname is

OPENING STATEMENTS TO THE JURY: BY THE STATE

1 Juicy. So you may hear that name coming up at some point
2 during the trial. We also have Roosevelt Kadeem Workman.
3 He might be called Kadeem during the course of the trial.

4 And the fourth man involved is Jermaine Priester. And
5 you're going to hear from him. He's going to testify
6 either later today or early tomorrow morning. And he's
7 going to tell you about the armed robbery that he
8 committed along with these three men.

9 Now the armed robbery took place at Jim Bo's, the
10 convenience store/gas station just down the hill from this
11 courthouse.

12 And that night, well, it was actually early in the
13 morning of July 21st, 2011. Dona who's the clerk working
14 that night is here and is the victim in this case. And
15 this was her first night working alone at Jim Bo's. It
16 was that Wednesday night into that early Thursday morning,
17 and it was around 1:30 in the morning that this robbery
18 took place.

19 And Jermaine is going to talk about how the four of
20 them got together and decided to commit this armed
21 robbery. That they went over to the Lakeside Grille and
22 stood up on the patio, on the balcony up there, and from
23 there they had a viewpoint of the convenience store. And
24 they stood there and waited until the coast was clear.
25 And so there was a good opportunity to commit this armed

OPENING STATEMENTS TO THE JURY: BY THE STATE

1 robbery.

2 And then once they had their plan, they went down to
3 Jim Bo's and committed the armed robbery. And each man
4 had his role in the armed robbery.

5 We have Jamaal Riley. And during the armed robbery,
6 he stood just outside the door and it was his job to let
7 them know if somebody came along.

8 And then we have Kevin Brown. He is the one that had
9 the gun on the clerk during the robbery.

10 And then we have Roosevelt Workman. And he's the one
11 who jumped over the counter and took the money. And
12 together, altogether they took about \$1,200. And that was
13 from the register and also the money underneath. So they
14 took the money and then they ran.

15 And you'll hear from the clerk who was the victim that
16 night. Dona is going to take the stand and she's going to
17 tell you about the terror that she felt and what this
18 experience was like for her. And she'll describe to you
19 what that early-morning armed robbery felt like, what she
20 experienced.

21 And as I said, you're going to hear from the, from one
22 of the other men involved, from Jermaine Priester. And
23 he's going to talk about the planning that took place, the
24 preparation, committing the armed robbery, and then what
25 happened afterwards.

OPENING STATEMENTS TO THE JURY: BY THE STATE

1 So, from all the witnesses, the State's going to put
2 together and let you see what happened that night into the
3 early-morning hours on July 21st, 2011.

4 And now all Defendants have been charged with four
5 separate offenses. They've been charged with armed
6 robbery and that's because this robbery took place while
7 at least one of them was armed with a deadly weapon, with
8 a gun.

9 They've also been charged with conspiracy. And that
10 was because there was a plan. There was an agreement to
11 commit this armed robbery.

12 And they've also been charged with kidnapping. And in
13 this state, kidnapping isn't necessarily always, you know,
14 a child in a white van. Kidnapping can be detaining a
15 person, preventing a person from leaving for any amount of
16 time. And so they've been charged with that as well.

17 And they've also been charged with possession of a
18 weapon during a violent crime. And in this state,
19 kidnapping and armed robbery are both violent crimes.
20 They've been given that category. And so that's why
21 they've been charged with that offense as well.

22 Now, as I said, we're here because of the choices of
23 these men. And you're going to hear about these choices
24 and the effect that their choices had on this victim and
25 this community.

OPENING STATEMENTS TO THE JURY: BY THE DEFENSE/RIVERS

1 And the State is confident that after hearing all of
2 this testimony, when it comes the time for y'all to make
3 your choice, to go back there and deliberate, the State is
4 confident that you'll make the right one and convict these
5 men of all charges.

6 Thank you.

7 THE COURT: Ms. Rivers?

8 MS. RIVERS: Thank you, Judge. If it please the
9 Court.

10 THE COURT: Yes.

11 MS. RIVERS: Good morning again.

12 THE JURY (COLLECTIVELY): Good morning.

13 MS. RIVERS: I'm Martha Rivers. I stood up yesterday
14 and introduced myself to y'all.

15 I do appreciate your service. I know you're told to
16 come, but we do appreciate what you do here.

17 We have three Defendants over here, but they are three
18 separate individuals involved in this case. What's
19 happened is the State has chosen to try them together.
20 They're not here together necessarily. And that's why
21 there's three different attorneys here for them.

22 I think that's very important for you all to know
23 because as the Judge told you to begin with and as he's
24 going to instruct you later, you have to make a decision
25 as to each one individual. You sort of have to put a

OPENING STATEMENTS TO THE JURY: BY THE DEFENSE/RIVERS

1 blinder over two of them and look at each one and do that
2 for each of them. That's not an easy task to do but we
3 chose y'all because we feel confident that the 12 of you
4 all or the two alternates if they have to come in, will be
5 able to do that collectively.

6 There's a couple other hard things about a criminal
7 jury trial. We have a system where there's the
8 presumption of innocence. And that's very difficult to
9 do. Anybody who's ever had to chide a child for something
10 that you think they did knows how hard that is; to look at
11 something that you think looks dead on and say that I'm
12 not sure, I don't know that that, that's what happened.

13 And these Defendants here are cloaked in the
14 presumption of innocence. Anytime anyone's charged with
15 anything, beware of that; that presumption of innocence.
16 Very important to our judicial system.

17 And the Judge will instruct you on that. I'm not here
18 to tell you what the law is. The Judge is here to tell
19 you what the law is. And at the appropriate time he will
20 explain all of that to you.

21 I don't know a jury that doesn't try to follow a
22 judge's instructions. I know that juries take this very
23 important -- very seriously. And I just ask y'all to do
24 the same thing at the right time.

25 Now the other thing you always hear of that I want you

OPENING STATEMENTS TO THE JURY: BY THE DEFENSE/JOHNSON

1 to keep in mind is reasonable doubt. When you're in
2 criminal court, the jury has to find someone guilty beyond
3 a reasonable doubt.

4 And there again, that's something the Judge is going
5 to explain to you later. But these are the things you
6 have to keep in mind in the beginning because as the State
7 presents its evidence, the defense will come up and add
8 some things or ask some other questions.

9 And you need to know the presumption of innocence and
10 keep in mind reasonable doubt. Just keep an open mind.
11 Just make sure that you listen to everybody, to everything
12 that's being said.

13 You have to bring your life experiences to this, but
14 we just ask that you keep an open mind about what's being
15 presented to you so that when you go back in the jury room
16 you feel comfortable with your decisions.

17 Thank you.

18 THE COURT: Mr. Johnson?

19 MR. JOHNSON: Thank you, Your Honor. If it please the
20 Court.

21 Good morning, ladies and gentlemen.

22 THE JURY (COLLECTIVELY): Good morning.

23 MR. JOHNSON: My name is Charlie Johnson as has been
24 told to you before.

25 I represent Kevin Brown. Kevin Brown is 23 years

OPENING STATEMENTS TO THE JURY: BY THE DEFENSE/JOHNSON

1 old. He grew up here in Barnwell. He went to Barnwell
2 High School. He went as far as the 12th grade and he has
3 a GED. At the time he was arrested he was working, doing
4 jobs such as cutting grass and doing other things around
5 the community.

6 Now this case is a case where the State has no
7 evidence. I want you to look at this. They have no
8 physical evidence. The State have (verbatim) two
9 witnesses who are saying that my client along with the
10 other two gentlemen committed a crime.

11 So it's going to come down to credibility. It's going
12 to come down to whether you believe the State's witnesses
13 and that -- or whether or not you don't believe them,
14 because there's no physical evidence.

15 The victim in this case cannot identify anyone sitting
16 over there. They did not recover a gun, did not recover
17 money. They have nothing but statements from individuals
18 who all has (verbatim) a reason to lie.

19 And I grew up in a little, small little country town
20 in the Low Country. And there was a little saying they
21 have there. And that is "a lie don't care who tells it."
22 But there's a lot of lies you're going to hear today.

23 All I ask you to do is to look at the evidence, to
24 give it your complete and serious thought about what is
25 said, who said it and then weigh it. Do they have a

OPENING STATEMENTS TO THE JURY: BY THE DEFENSE/HARTE

1 reason to lie? Do they have a reason to do this? Did the
2 police give them some reason?

3 My client along with the other two gentlemen are
4 presumed innocent. They're not presumed guilty. The
5 State must prove that they're guilty. You as a jury, your
6 job is to determine whether or not the State proves their
7 case.

8 My client is not required to prove he's innocent.
9 He's presumed innocent by the law.

10 All we ask that you do is to look at the evidence.
11 Take your time. There's nobody rushing you. It's very
12 important that you look at the evidence.

13 Question evidence. Just because a policeman said it,
14 doesn't make it a truth. Just because a witness says
15 something, doesn't make it the truth. Only the truth.
16 And comparing the evidence in the light of all of the
17 circumstances can you determine what is the truth.

18 I believe that after looking at all the evidence,
19 after making a sincere looking into all the evidence, that
20 you will come to the same conclusion that -- I believe
21 that you will come to the same conclusion and that is that
22 my client is not guilty.

23 Thank you.

24 THE COURT: Mr. Harte?

25 MR. HARTE: May it please the Court.

OPENING STATEMENTS TO THE JURY: BY THE DEFENSE/HARTE

1 THE COURT: Yes, sir.

2 MR. HARTE: Madam Solicitor, ladies and gentlemen of
3 the jury. My name is Bob Harte. Good morning.

4 THE JURY (COLLECTIVELY): Good morning.

5 MR. HARTE: It is my pleasure to represent this young
6 man, Jamaal Riley. He is innocent. It's not just me that
7 says it. It's not just the defense attorneys. It's not
8 just the Judge. It's what the law of this state and the
9 law of this country is.

10 He is innocent. And only, only if and when you as a
11 jury determine that there is sufficient evidence, that
12 you're convinced beyond a reasonable doubt that he's
13 guilty, does he no longer become innocent.

14 I do not believe that will happen in this case.

15 Beyond a reasonable doubt is the highest level of
16 proof that is required in any case. In a civil case or
17 somebody suing over the sale of a three-legged horse or a
18 defective car or an automobile wreck, the burden of proof
19 that the plaintiff has is proof by a preponderance or
20 greater weight of evidence.

21 In some cases there's what's called clear and
22 convincing evidence where the plaintiff has to prove their
23 case even more than just beyond the greater weight.

24 Only in criminal cases is the State required to prove
25 beyond a reasonable doubt, only in that case. And that's

OPENING STATEMENTS TO THE JURY: BY THE DEFENSE/HARTE

1 what we have today.

2 Now there are a lot of technical terms about types of
3 evidence; circumstantial, direct. I want to talk a little
4 bit about common-sense evidence. Mr. Johnson indicated to
5 you that there's no physical evidence in this case.

6 I want to propose to you that, what type of evidence
7 should a jury look for? Let's say with physical
8 evidence. Well, you would look for how, a gun or a
9 something, a door or something that somebody had touched
10 and the police came in and found a fingerprint and that
11 matched up and they could talk about that.

12 Or there could be DNA. That's been going on for
13 awhile now, but it seems to be an incredibly important
14 thing in criminal law. And that's the kind of thing that
15 jurors such as yourself would look for in physical
16 evidence.

17 What about testimonial evidence? What would you look
18 for in those cases? Wouldn't it be important if the
19 testimony of the person giving the physical evidence had
20 been consistent with the statements that had been given?
21 Wouldn't it be important if you had two or three or more
22 witnesses, that their statements were consistent with each
23 other? What would you do if it wasn't? Would you give it
24 such credit that it would be beyond a reasonable doubt? I
25 submit that you would not.

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1 And I submit that that's what you're going to find in
2 this case. I ask you to pay very close attention,
3 especially to the testimonial evidence. And I think
4 you'll come to the right decision with regards to my
5 client, Jamaal Riley, who sits in that chair, innocent.

6 Thank you.

7 THE COURT: First witness, please.

8 MS. RINGLER: Thank you, Your Honor. The State calls
9 Dona Corell.

10 DONA CORELL, having been duly sworn, was examined and
11 testified as follows:

12 THE CLERK: Please be seated and state your name for
13 the record. Okay.

14 THE WITNESS: I'm Dona Corell.

15 DIRECT EXAMINATION

16 BY MS. RINGLER:

17 Q. Good morning, Ms. Corell. How long have you lived in
18 Barnwell?

19 A. On and off for, since '86.

20 Q. Would you consider Barnwell your home?

21 A. Yes, ma'am.

22 Q. And where do you work?

23 A. Jim Bo's.

24 Q. And how long have you worked there?

25 A. Right at a year, a year and two months.

DONA CORELL - DIRECT

1 Q. And do you remember the early-morning hours of July
2 21st, 2011?

3 A. Oh, yes, ma'am.

4 Q. And why is that?

5 A. Because I was robbed. That was my first night alone
6 at the store.

7 Q. I'm going to ask you a little bit about that. So you
8 were there alone that night. What were you doing just
9 prior to the robbery?

10 A. Restocking.

11 Q. And what kind of caught your attention? Or when did
12 you realize what was going on?

13 A. Well, I was kneeling down in front of the Pepsi cooler
14 counting my stock that I needed to be bringing from the
15 back. And I heard the chime on the door and just as I
16 looked up a gun was pointed in my face.

17 Q. And what happened at that point?

18 A. I was told not to look at the man that was holding the
19 gun and not to look at the other people, to keep my eyes
20 down and do what I was told.

21 Q. And how many people came in the store that night?

22 A. There was three men.

23 Q. And what do you remember about their appearance?

24 A. One of them was wearing light-colored clothes, what
25 color I could not tell you. The other two was wearing

DONA CORELL - DIRECT

1 predominantly black clothes and their faces were covered.

2 Q. And do you remember at least one gun?

3 A. Yes, ma'am. There was -- I could tell you all about
4 the gun.

5 Q. And what happened when they first came in?

6 A. They just, they came in and told me to, like I said,
7 not look at them and to do what they -- I was told to do
8 and I wouldn't be hurt.

9 Q. And where was each man standing at that point?

10 A. One was standing in front of the door. The other one
11 was standing right in front of me and the other man was
12 already behind the register.

13 Q. And what was he doing behind the register?

14 A. Trying to open the register.

15 Q. And as he was trying to open the register, what
16 happens then?

17 A. He couldn't get it open. And I was instructed to go
18 back behind the counter and open the register for him.

19 Q. And you talked a little bit about the gun. Can you
20 talk about that a little bit more?

21 A. Yes, ma'am. I could see every bullet in it. It was
22 literally like six inches from my face.

23 Q. And what do remember about the type of gun?

24 A. It was a black revolver because I could see the
25 bullets.

DONA CORELL - DIRECT

1 Q. And when you got the gun to your face, what happens at
2 that point? Or, what if anything is said at that point?

3 A. To the best of my recollection all I can remember them
4 telling me is just not to look at them and do as I was
5 told.

6 Q. And, one of the men asked to help open the register.
7 Did you do that?

8 A. Yes, ma'am.

9 Q. Can you talk a little bit about that?

10 A. Well, they -- he told me to get behind the counter and
11 open the register and then to get out of their way. And
12 so that's exactly what I did.

13 Q. And at this point -- well, sorry. After they took the
14 money, where did they take the money from?

15 A. They took it from the register and then they asked me
16 where the bag was, the bank bag.

17 Q. And did they take the bank bag?

18 A. Yes, ma'am.

19 Q. And did they take any money from the register?

20 A. They took all the money from the register except for
21 the change and they took the bank bag and several cartons
22 of cigarettes. I think I counted five cartons after they
23 left that I had to restock.

24 Q. And so about five cartons of cigarettes. And then
25 about how much money do you think that they took?

DONA CORELL - DIRECT

1 A. It was well over a thousand. As far as the actual
2 amount, I did not know.

3 Q. And when the men left Jim Bo's, were you able to see
4 in which direction they ran or?

5 A. No, ma'am; I wasn't.

6 Q. And I'm going to show you what's been previously
7 admitted as State's Exhibits One through Nine. And they
8 have been admitted without objection.

9 THE COURT: Yes.

10 MS. RINGLER: Thank you, Your Honor.

11 BY MS. RINGLER:

12 Q. I'm handing you State's Exhibits One through Nine. If
13 you want to look at those. And then, Your Honor, we would
14 ask at this time to publish those to the jury and so that
15 the victim can describe what's being depicted in the
16 photos.

17 THE COURT: You can do that.

18 MR. HARTE: Excuse me, Your Honor. We were shown the
19 very small pictures. If we could just confirm that
20 they're the same by seeing these larger pictures.

21 MS. RINGLER: Sure.

22 THE WITNESS: Let me look at them real quick.

23 MS. RINGLER: Okay.

24 THE WITNESS: These are all -- yeah.

25 (Photographs shown to defense counsel.)

DONA CORELL - DIRECT

1 MS. RINGLER: Thank you, Your Honor.

2 At this time we'll publish State's Exhibits One
3 through Nine. And we may need the two alternates, Your
4 Honor, to move to the opposite side because the screen is
5 going to be right, right there. If that's possible.

6 THE COURT: All right.

7 THE BAILIFF: Sure. That's all right.

8 (Alternates switch seats. Photographs displayed for
9 jury on projector.)

10 BY MS. RINGLER:

11 Q. I'm going to show you State's Exhibit Number One. And
12 if you could please just kind of talk to us about what's
13 in this State's Exhibit One.

14 A. That is a picture of the, Jim Bo's store from the,
15 looking at it from the right-hand side.

16 Q. And State's Exhibit Two?

17 A. A straight-on picture of Jim Bo's.

18 Q. And is that the door then?

19 A. Yes, ma'am.

20 Q. The front door?

21 A. That's the front door.

22 Q. And State's Exhibit Number Four?

23 A. That's the front counter at Jim Bo's.

24 Q. But you weren't behind the counter when this --

25 A. No, ma'am. I was out, almost -- well, catty-corner

DONA CORELL - DIRECT

1 from it.

2 Q. And State's Exhibit Five?

3 A. That's the ice cream cooler at Jim Bo's.

4 Q. And State's Exhibit Six?

5 A. That's a picture of the front door from the inside of
6 Jim Bo's.

7 Q. State's Exhibit Seven?

8 A. That's behind the counter.

9 Q. And can you point out where the night deposit or the
10 deposit bag is kept?

11 A. You see the gray machine next to the lottery tickets?
12 It's right there. Down -- the cigarettes that are hanging
13 upright above the register --

14 Q. If you want to --

15 A. -- straight.

16 Q. -- come down and maybe point it out on the picture?

17 A. (Complies.) I would keep the bag right up in here.
18 We have shelves in there. And I would keep the bag right
19 up in there.

20 Q. And then the register?

21 A. The register is right here.

22 Q. Okay. And then the cigarettes?

23 A. The cigarettes is through here and here with the
24 Newports.

25 Q. And State's Exhibit Eight?

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1 A. That's the register.

2 Q. And State's Exhibit Nine?

3 A. That's the cigarettes right here that was stolen. It
4 was full after I had restocked, before I went to restock
5 the drinks. All of this right here was full.

6 Q. And you can please have a seat. Thank you.

7 A. (Complies.)

8 Q. And I'm handing you what's been previously admitted as
9 State's Exhibit 32. Have you had an opportunity to view
10 that?

11 A. Yes, ma'am.

12 Q. And does it truly and accurately depict what happened
13 that night in the store?

14 A. Yes, ma'am.

15 MS. RINGLER: Your Honor, at this time the State would
16 move to request to publish State's Exhibit 32.

17 THE COURT: What says the defense?

18 MS. RIVERS: Judge --

19 MS. RINGLER: The video, security video.

20 MS. RIVERS: -- no objection.

21 MR. JOHNSON: No objection, Your Honor.

22 MR. HARTE: No objection.

23 THE COURT: So admitted.

24 MS. RINGLER: And at this time, Your Honor, we'd like
25 to publish that to the jury.

DONA CORELL - DIRECT

1 THE COURT: Okay.

2 (Thereupon, State's Exhibit No. 32, security video,
3 was received into evidence.)

4 (Thereupon, the video was played for jury.)

5 BY MS. RINGLER:

6 Q. And if we could just pause it for one second. If you
7 can kind of describe what's going on with the four
8 screens.

9 A. I'm standing in the top right-hand screen. I am
10 standing in front of one of the drink coolers counting how
11 many drinks I need to pull from the back.

12 Q. And these are four separate cameras?

13 A. Yes, ma'am; four separate cameras.

14 (Playing of video resumed.)

15 BY MS. RINGLER:

16 Q. And what are you doing at this point?

17 A. Calling 9-1-1, and walking around to lock the door.

18 (Playing of video resumed.)

19 BY MS. RINGLER:

20 Q. And so this is just one of the camera shots?

21 A. Yes, ma'am. That would be number two camera blown up.

22 Q. And you talked about having the gun six inches from
23 your head. Was that shown on the camera or was that off
24 camera?

25 A. No, ma'am. It wasn't shown on the camera. Whenever

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1 they first walked in, whenever I first realized that they
2 were even in the store, as soon as I looked up the gun was
3 right in my face. And it was too low for the camera to
4 catch it.

5 Q. And which of the men had the gun on you?

6 A. The one that came all the way over to the left side.
7 The one with the red bandanna.

8 (Playing of video resumed.)

9 BY MS. RINGLER:

10 Q. And then this is just one of the other cameras?

11 A. Yes, ma'am. That's the camera that we keep behind the
12 register.

13 MS. RINGLER: Thank you. Please answer any questions
14 defense counsel might have.

15 CROSS-EXAMINATION

16 BY MS. RIVERS:

17 Q. Are you okay?

18 A. Yes. It's just a little unnerving.

19 Q. I'm sure it is. I'll try not to take up too much of
20 your time. Okay?

21 A. Okay.

22 Q. This night that you were robbed at Jim Bo's, you
23 called the police?

24 A. Yes, ma'am.

25 Q. All right. Did you describe anybody to the police

DONA CORELL - CROSS

1 right then?

2 A. No, ma'am; I couldn't.

3 Q. All right. Did you say three men or anything like
4 that?

5 A. Yes, ma'am. I told them three men and that two of
6 them was wearing predominantly black; but other than that
7 I really couldn't tell them anything.

8 Q. Okay. Now you said that you could see the gun really
9 clearly?

10 A. Oh, yes, ma'am. It was right in my face.

11 Q. And I imagine that's really what you focused in on; is
12 that right?

13 A. Yes, ma'am. Especially whenever they told me don't
14 look at them. I -- whenever they said don't look at them
15 and you got a gun pointed in your face, you do what you're
16 told.

17 Q. You didn't really try to look at them?

18 A. Right.

19 Q. When you go through it, did it all happen pretty fast
20 to you?

21 A. Yes, ma'am.

22 Q. And how would you describe it then, if we just went --
23 I mean, this tape took a while to get up. It seems like
24 everybody's walking a little more slowly.

25 Is that how it seemed at the time?

DONA CORELL - CROSS

1 A. No, ma'am.

2 Q. How was it then?

3 A. It, it's hard to explain. It was terrifying is what
4 it was.

5 Q. Really quick?

6 A. And, at the time, yes, ma'am. But I have relived it
7 over and over and over since then.

8 Q. I'm sure. So when they asked you how to describe
9 them, you really couldn't describe them with a lot of
10 detail; could you?

11 A. No, ma'am.

12 Q. Just three guys, black hoodies; that sort of thing?

13 A. Pretty much; yes, ma'am.

14 Q. Jim Bo's, that's a pretty small convenience store;
15 right?

16 A. Yes, ma'am.

17 Q. And in these long shots we just saw by the prosecutor,
18 I mean, that looks like it goes way on back there. But if
19 I'm correct, it's really like just one big room; is that
20 right?

21 A. Yes, ma'am.

22 Q. And you're in pretty close quarters if anybody else
23 comes into the convenience store?

24 A. Yes, ma'am.

25 Q. Did you hear any names or anything?

DONA CORELL - CROSS

1 A. No, ma'am.

2 Q. Can you remember anything anybody said?

3 A. Just for me to do what I was told and not to look at
4 them.

5 MS. RIVERS: Okay. Thank you, ma'am.

6 THE WITNESS: Uh-huh.

7 MR. JOHNSON: If it please the Court, Your Honor.

8 THE COURT: Yes.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON:

11 Q. Good morning, Ms. Corell.

12 A. Good morning.

13 Q. I'm not going to take a lot of your time. I'm not
14 going to try to upset you. I just want to ask a couple of
15 questions.

16 It's very important, you know, about identifying the
17 people so that we can get the correct people that did this
18 to you.

19 A. Right.

20 Q. Okay. The police that came to you, you said that you
21 didn't have a chance to really give them a good
22 description; is that correct?

23 A. Correct. I told them that they were predominantly
24 dressed in black, and had black hoodies. Their faces was
25 covered. I couldn't identify anybody.

DONA CORELL - CROSS

1 Q. But you did tell them that -- on the police report
2 that I have it stated that you did tell them that it was
3 three black males approximately the same size,
4 approximately 160 pounds?

5 A. I didn't give them any weight; no, sir.

6 Q. You didn't?

7 A. No, sir; I did not.

8 Q. So --

9 A. I'm going to tell you right now. I couldn't guess
10 your weight much less somebody else's.

11 Q. So if it was on the police report that was just
12 something that was mistaken?

13 A. They might have gotten it off of the videos, but I
14 never told them an approximate weight.

15 Q. Okay. I'm just looking at the police report that said
16 that you indicated that everybody was about 160 pounds?

17 A. No, sir.

18 Q. Okay. The other question is: You had never
19 identified my client or, for that matter, any of the
20 individuals over there as the people that robbed you; have
21 you?

22 A. I've already stated, sir; I could not identify them.

23 Q. So it's fair that the people that robbed you, you have
24 no idea; do you?

25 A. No, sir.

DONA CORELL - CROSS

1 MR. JOHNSON: No other questions.

2 CROSS-EXAMINATION

3 BY MR. HARTE:

4 Q. Ms., is it Corell?

5 A. Yes, sir.

6 Q. Ms. Corell, do you remember talking to Officer Rubin
7 Black that night?

8 A. Yes, sir. He was the first one on the scene.

9 Q. And do you know him?

10 A. Yes, sir.

11 Q. And do you remember telling him that all three
12 subjects were wearing blue jeans and black hoodies?

13 A. I told them that all of them was wearing black
14 hoodies. And that they could have been wearing blue jeans
15 or black pants, but I wasn't sure.

16 Q. But --

17 A. Yes, sir. There was one that was not, but you look
18 down the barrel of a gun and see if you get everything
19 right.

20 Q. Let me ask the question first. Okay? From the video,
21 obviously one of them had on white, a white top?

22 A. Yes, sir.

23 Q. Now, do you remember because it's hard to tell from
24 the video, there's something black hanging way down --

25 A. You can tell --

1 Q. -- that person's back.

2 A. -- from the video that that's the bandana tied around
3 his face.

4 Q. That's what it was?

5 A. Yes, sir.

6 Q. That wasn't hair?

7 A. No. That was his bandana tied around or a do-rag.

8 Q. Okay. I'll take your word for it.

9 Do you remember telling Officer Black that they all
10 three were about five-ten?

11 A. I told them that they were all a little bit taller
12 than me.

13 Q. And how tall are you?

14 A. I'm five foot five.

15 Q. You're five-nine?

16 A. Yes, sir.

17 Q. And all three of them were --

18 A. The ones that were in the store, yes, sir, they was
19 all a little bit taller than me.

20 Q. None of them were shorter than you at five-nine?

21 A. Well, I was never right up against them but, no, they
22 did not appear to be.

23 MR. HARTE: Thank you, ma'am.

24 THE COURT: Any redirect?

25 MS. RINGLER: None from the State, Your Honor.

1 THE COURT: All right. Thank you, ma'am. You may
2 step down.

3 Ladies and gentlemen, we'll take a break now for about
4 10, 15 minutes. Please go to the jury room. Please do
5 not discuss the case.

6 (Jury exits courtroom at 11:23 a.m.)

7 THE COURT: We'll take a break.

8 (Thereupon, a recess was taken at 11:23 a.m. until
9 11:49 a.m., when the trial resumed:)

10 THE COURT: The media requests --

11 NEWS REPORTER: Right.

12 THE COURT: You are aware that you cannot photograph
13 the jurors?

14 NEWS REPORTER: Yes, sir.

15 THE COURT: All right. All right. I've signed it.
16 Are you ready for the jury?

17 MR. HARTE: We need our clients, Your Honor.

18 THE COURT: All right. Waiting for the Defendants.

19 MS. RINGLER: And, Your Honor, do you prefer that we
20 rise when the jury comes in?

21 THE COURT: I don't have a preference. It's up to you
22 all.

23 MS. RINGLER: Okay.

24 THE COURT: You only rise for the Judge. You can rise
25 for the jury if you want to. Most, you know, it depends

RODNEY JENKINS - DIRECT

1 on where you are. People do it differently.

2 (Defendants enter the courtroom.)

3 THE COURT: Ready for the jury.

4 (Jury enters courtroom at 11:51 a.m.)

5 THE COURT: Your next witness.

6 MS. RINGLER: Thank you, Your Honor. The State calls
7 Rodney Jenkins.

8 RODNEY JENKINS, having been duly sworn, was examined
9 and testified as follows:

10 THE CLERK: Please be seated and state your name for
11 the record. Okay?

12 THE WITNESS: Rodney Jenkins.

13 DIRECT EXAMINATION

14 BY MS. RINGLER:

15 Q. And, Rodney, where are you from?

16 A. Barnwell.

17 Q. And did you grow up here?

18 A. Yes, ma'am.

19 Q. Okay. And do you know Roosevelt Workman?

20 A. Yeah.

21 Q. And do you see him here in this courtroom?

22 A. Yeah.

23 Q. Do you mind pointing him out for us?

24 A. Right there (indicating).

25 Q. And is he in the pink and white stripe shirt?

RODNEY JENKINS - DIRECT

1 A. (Nods head.)

2 Q. And do you see Kevin Brown?

3 A. (Nods head); yeah.

4 Q. Do you see him in the courtroom?

5 A. (Nods head.)

6 Q. And do you mind pointing him out to us?

7 A. Right there.

8 THE COURT: You need to talk up. Talk into the mic
9 and you need to talk louder.

10 BY MS. RINGLER:

11 Q. Is he wearing the blue shirt?

12 A. Yes, ma'am.

13 Q. Okay. And then Jamaal Riley; do you know him?

14 A. Yes, ma'am.

15 Q. And do you see him in the courtroom?

16 A. Yes, ma'am.

17 Q. Do you mind pointing him out to us?

18 A. Right there (indicating).

19 Q. Is he the man in the white shirt?

20 A. Yes, ma'am.

21 Q. Now, how do you know them?

22 A. I grew up with them, something like that.

23 Q. Growing up in Barnwell?

24 A. Yeah.

25 Q. Now do you remember the night that, or the early

RODNEY JENKINS - DIRECT

1 morning that Jim Bo's was robbed?

2 A. Yeah.

3 Q. That early Thursday morning, kind of Wednesday night?

4 A. Yeah.

5 Q. And where were you that Wednesday night before?

6 A. Where I was before that happened?

7 Q. Yeah. Before the robbery, where were you that night?

8 A. At one of my homie's house.

9 Q. And at some point did you leave your friend's house?

10 A. Yeah.

11 Q. And where did you go?

12 A. To my mama job.

13 Q. Where's your mom work?

14 A. At the nursing home.

15 Q. And where is the nursing home?

16 A. By the hospital.

17 Q. And for you to walk from your friend's house to the
18 nursing home, do you walk near or by Jim Bo's?

19 A. Yes, ma'am.

20 Q. And as you were walking that way, did you run into
21 anybody?

22 A. Yes, ma'am.

23 Q. Okay. And where did you see someone, where was that?

24 A. Like, on the road by Jim Bo's.

25 Q. Do you remember where? As you come to Jim Bo's, where

RODNEY JENKINS - DIRECT

1 they were, where someone was?

2 A. Like, in the muddle of the road basically.

3 Q. And who all -- who did you see there?

4 A. I walked up to Kadeem and Juicy and some other boys.

5 Q. And do you know Juicy's real name?

6 A. Uh.

7 Q. Or do you see Juicy in the courtroom?

8 A. Yeah.

9 Q. And who's Juicy?

10 A. Right there in the blue.

11 Q. Okay. So you saw Kadeem and Juicy and who else?

12 A. Some other boys by, I guess, Jamaal.

13 Q. And just who do you remember? Do you remember other
14 men? Do you know who they were or not?

15 A. No.

16 Q. Okay. So you saw Kadeem and Juicy?

17 A. Yeah.

18 Q. And how many people were there total?

19 A. Like, four.

20 Q. Okay.

21 A. Four.

22 Q. And, the other two guys, were they black or white?

23 A. Black.

24 Q. And two men?

25 A. Yeah.

RODNEY JENKINS - DIRECT

1 Q. Okay. And did you -- did any of these guys say
2 anything to you?

3 A. They were, like, I walked up and when I seen them, I
4 talked to Kadeem and he asked where I was going. I was
5 like, I'm going to my mama's job. That was it.

6 Q. Did he say anything to you?

7 A. Like, that's what he said.

8 Q. Okay. Did he say anything about what they were doing
9 there?

10 A. No, ma'am.

11 Q. He didn't?

12 A. (Shakes head.)

13 Q. And did you see any guns?

14 A. I seen one gun.

15 Q. Okay. And what kind of gun did you see?

16 A. Like, revolver-type gun.

17 Q. Did you see who had a gun?

18 A. (Nods head.)

19 Q. And who had a gun?

20 A. Just Juicy and Kadeem. I mean, well, it was two guns
21 but they had a gun.

22 Q. Okay. So they each had a gun?

23 A. Yeah.

24 Q. And who had the revolver?

25 A. Kadeem.

RODNEY JENKINS - DIRECT

1 Q. And did anything else happen when you were there with
2 the four men?

3 A. No, ma'am. I left. Just kept walking.

4 Q. And where did you go at that point?

5 A. At my mama job.

6 Q. And what happened when you got to your mom's job?

7 A. She wasn't there. So I called off the people phone
8 and she picked me up.

9 Q. At some point did you end up going back to your house
10 that night?

11 A. Yes, ma'am.

12 Q. And what if anything happened when you got home?

13 A. I just heard on the scanner that the store had been
14 robbed.

15 Q. And do you remember what Juicy was wearing?

16 A. No. No, ma'am.

17 Q. Did you see a red bandana or a red flag anywhere?

18 A. Yes.

19 MR. JOHNSON: Your Honor, object to leading.

20 THE COURT: Don't lead the witness.

21 BY MS. RINGLER:

22 Q. And about how far from Jim Bo's were the four men?

23 A. Like, like a little up by the, by the newspaper place,
24 I guess, that's what they call it.

25 Q. So could you see Jim Bo's from where they were

RODNEY JENKINS - CROSS

1 standing?

2 A. Yeah. You could see the back of Jim Bo's.

3 Q. And at some point have you seen the security footage
4 from this robbery?

5 A. Yes, ma'am.

6 Q. And did you recognize anybody in that video?

7 A. Yeah. Juicy.

8 Q. And which one was Juicy? Or, how were you able to
9 recognize him?

10 A. Like, the one that his hoody fell off his head, yeah.

11 Q. And you could see his face at that point?

12 A. Yes, ma'am.

13 Q. And that's when you -- is that when you were able to
14 identify him?

15 A. Yes, ma'am.

16 MS. RINGLER: Thank you. Please answer any questions
17 defense counsel might have.

18 CROSS-EXAMINATION

19 BY MS. RIVERS:

20 Q. Mr. Jenkins?

21 A. Yes, ma'am.

22 Q. You are Roosevelt's cousin; correct?

23 A. Yes, ma'am.

24 Q. And, in fact, he lived with you for a little while;
25 right?

RODNEY JENKINS - CROSS

1 A. Yeah.

2 Q. You and your mom?

3 A. Yeah.

4 Q. Y'all don't always get along though; right?

5 A. No, ma'am.

6 Q. That night at Jim Bo's, were y'all getting along
7 then? Had you all been hanging out, doing things
8 together?

9 A. No.

10 Q. And you saw him over by the People Sentinel?

11 A. Yeah, like, just the road, people standing right here
12 where the driveway at, right there.

13 Q. Let's get some bearing here. If I go down the hill
14 from the courthouse and Jim Bo's is in that curve, right?
15 I go down the road and there's Jim Bo's on the right?

16 A. Yeah, yeah.

17 Q. And there's a road that goes up by Jim Bo's. Where
18 were you?

19 A. I was walking this way. Jim Bo's. They walking this
20 way. I walking this way.

21 Q. You were walking on that little road between Jim Bo's
22 and Lakeside Grille and that ice cream shop?

23 A. Yeah.

24 Q. And you're walking across Dunbarton?

25 A. I don't know the name of the road but.

RODNEY JENKINS - CROSS

1 Q. The main road, the four-lane road. You're walking
2 across there from the park over there or what?

3 A. I was walking from the west side.

4 Q. I'm sorry?

5 A. I was walking from the west side. What we call the
6 west side.

7 Q. Is the west side the other side of the big road?

8 A. No. The west side is the other side of town. Like,
9 behind McDonald's.

10 Q. Okay. You were walking from way back there?

11 A. Yeah.

12 Q. You were coming across town to the hospital?

13 A. Yes.

14 Q. To see your mama?

15 A. I meets her there, and that's how I get home.

16 Q. All right. What time of night is that?

17 A. I'm not sure.

18 Q. You live way out in the country; right?

19 A. Yeah.

20 Q. What time does your mama normally get off?

21 A. At 11.

22 Q. So you're trying to make it to the nursing home by 11
23 o'clock?

24 A. Yeah.

25 Q. So you go by the ice cream shop between Lakeside and

RODNEY JENKINS - CROSS

1 Jim Bo's. Had you gotten to Jackson Street, right there
2 where the law firm is and all of that? Regions Bank? Had
3 you gotten up to that street?

4 A. Like before I met them?

5 Q. Uh-huh.

6 A. No.

7 Q. So you're still in that little pathway?

8 A. Yeah, I'm right there in road.

9 Q. All right. Y'all say, hey man, kind of stuff?

10 A. Yeah.

11 Q. And you walk on your way?

12 A. Yeah.

13 Q. You said you saw one gun?

14 A. Actually I seen two guns.

15 Q. So when you said you saw one gun, that wasn't right.
16 You saw two guns?

17 A. Yeah. I actually saw two guns.

18 Q. And we're real clear on that?

19 A. Yeah, we're real clear.

20 Q. All right. Now, you went and heard something on a
21 scanner?

22 A. Yeah, when I got home.

23 Q. Did you go to anybody else's house after you didn't
24 see your mom?

25 A. No.

RODNEY JENKINS - CROSS

1 Q. Okay. So your mama's the one that has the scanner?

2 A. Yeah, at our house.

3 Q. All right. Did you hear a description of anything on
4 the scanner?

5 A. I guess, four dudes, black or some -- basically I just
6 heard somebody robbed the store.

7 Q. You heard the police call about the robbery?

8 A. Yeah.

9 MS. RIVERS: Okay. Judge, I have nothing further.
10 Thank you.

11 THE COURT: Mr. Johnson?

12 MR. JOHNSON: Thank you, Your Honor. If it please the
13 Court.

14 CROSS-EXAMINATION

15 BY MR. JOHNSON:

16 Q. Rodney, isn't it true that you had a run-in with these
17 people before?

18 A. What you mean? Like --

19 Q. Y'all had some disagreements before?

20 A. Yeah, like back in the days.

21 Q. Okay. Also, isn't it true that you heard what
22 happened at the store on the scanner; correct?

23 A. Yeah.

24 Q. Where they described it was four black males wearing
25 black and all of that; right?

1 A. Yeah.

2 Q. Then you showed up to the police department and told
3 them the same thing; correct?

4 A. Yeah.

5 Q. Okay. One important question: Did you ever see any
6 of the individuals rob the store?

7 A. No, sir.

8 Q. You don't know nothing about who robbed that store; do
9 you?

10 A. No. I can't say that they robbed it. I ain't sure.

11 MR. JOHNSON: I have no other questions for you.

12 THE COURT: Mr. Harte?

13 CROSS-EXAMINATION

14 BY MR. HARTE:

15 Q. Wasn't it four days later before you ever went to the
16 police?

17 A. Sir?

18 Q. Wasn't it four days later before you ever went to the
19 police and told them what you told them?

20 A. I mean, because I had knew what was --

21 Q. I didn't ask you why. I asked you: Wasn't it four
22 days later before you went to the police?

23 A. I don't know if it was four days later.

24 MR. HARTE: Thank you.

25 THE COURT: Any redirect?

COREY CREECH - DIRECT

1 MS. RINGLER: Nothing from the State, Your Honor.

2 THE COURT: Any further questions? You may step down.

3 MS. RINGLER: Thank you, Your Honor. The State calls
4 Corey Creech.

5 COREY CREECH, having been duly sworn, was examined and
6 testified as follows:

7 THE CLERK: Please be seated and state your name for
8 the record. Okay?

9 THE WITNESS: Corey Creech.

10 DIRECT EXAMINATION

11 BY MS. RINGLER:

12 Q. Corey, where are you from?

13 A. Barnwell.

14 Q. Have you lived here all your life?

15 A. (Nods head.)

16 THE COURT: Can't hear you.

17 THE WITNESS: Yes.

18 BY MS. RINGLER:

19 Q. Do you remember last year when Jim Bo's was robbed?

20 A. Yes, ma'am.

21 Q. And were you in that area that night?

22 A. Yes, ma'am. I stay in that area.

23 Q. Okay. So, you live around there?

24 A. (Nods head.)

25 Q. At some point were you near Jim Bo's walking around?

COREY CREECH - DIRECT

1 A. Walking?

2 Q. Or driving?

3 A. No, ma'am. Yeah. We was in the car, yeah.

4 Q. Sorry. At some point you were driving around in that
5 area?

6 A. Yes, ma'am.

7 Q. And did anything -- did you see anybody kind of in the
8 area of Jim Bo's when you were driving around?

9 A. Well, we was going down the road and one person ran
10 across the road. And then when I seen him, I observed
11 maybe three or four other people.

12 And I was going to Jim Bo's but I didn't stop there
13 because I seen it looked a little suspicious, so I kept on
14 going.

15 Q. And where did you see -- I guess, the one guy went and
16 joined the other guys. Where were those other guys
17 standing?

18 A. It was a white van behind the Peoples Sentinel, I
19 guess.

20 Q. So the guy you saw running, did he end up joining with
21 those other three guys?

22 A. Yeah. Yes, ma'am.

23 Q. So at some point did you see four men standing by the
24 white van?

25 A. It was two years ago. It was either three or four.

COREY CREECH - DIRECT

1 I'm not sure, but I don't know at the moment.

2 Q. And what do you remember about the men you saw by the
3 van?

4 A. I couldn't tell you much about them. It was dark.
5 They was in a dark area, about all I can tell you.

6 Q. And at some point, did you hear sirens that night?

7 A. (Nods head.)

8 MR. JOHNSON: Your Honor, objection. She's leading the
9 witness.

10 THE COURT: At some point did you hear sirens that
11 night. Calls for a yes or no.

12 THE WITNESS: Yes.

13 BY MS. RINGLER:

14 Q. Would you say that was shortly after seeing these guys
15 or how much time about do you think that was since you saw
16 the guys there?

17 A. I'm not sure. It's been two years ago.

18 Q. But, was it that night?

19 A. Yeah.

20 Q. And after hearing the sirens, what did you decide to
21 do?

22 A. Since I was in the vicinity, I end up going back to
23 the store because -- what it was, me and my baby mama was
24 going to the store. When we seen that we kept on going.

25 So we heard the sirens. We went, we didn't think much of

COREY CREECH - CROSS

1 it. So we ended up going back to Jim Bo's to try get
2 gas. That's when the cop was there and he asked me did I
3 see anybody.

4 Q. And you told him what you had seen?

5 A. Yeah.

6 MS. RINGLER: Thank you. Please answer any questions
7 defense counsel might have.

8 CROSS-EXAMINATION

9 BY MS. RIVERS:

10 Q. Mr. Creech, do you have any idea what time of night it
11 was you first went to go to Jim Bo's?

12 A. It had to be late because it was only store open.

13 Q. Okay. So ten o'clock? Eleven o'clock?

14 A. Around that area. Say 10:30 or 11.

15 Q. Okay. And these guys you saw -- and I heard a couple
16 of things. You said one guy ran across. Was it -- did he
17 run across and join the other guys or did the other guys
18 run across to join him?

19 A. He ran across to join the other guys.

20 Q. All right. And you said there were -- I heard you say
21 one time that there were four or five. One time there
22 were three or four.

23 Do you got any exact number?

24 A. No. And I couldn't tell you if they was a white,
25 black, orange or purple.

COREY CREECH - CROSS

1 Q. Really?

2 A. Yeah.

3 Q. Okay. Now, can you -- do you have any idea what age
4 they were?

5 A. It was dark. I ain't see -- I couldn't give you no
6 kind of age or nothing like that.

7 Q. Do you recall ever saying that one of them looked to
8 be older than the others?

9 A. No.

10 Q. Okay. Where do you stay? You said you stay around
11 there.

12 A.

13 Q. All right. ?

14 A. By the lake.

15 Q. That's like a block up from the lake; right?

16 A. Yeah.

17 Q. A block or two up? And that's that road with the
18 median. You go on the right of the trees to go this way,
19 you go on the left of the trees to go that way?

20 A. Yeah.

21 Q. Is that right? You're on the corner right there?

22 A. Yeah.

23 Q. I know where you are. And that's near the hospital?

24 A. Yeah.

25 Q. All right. And there's a lot of sirens around the

1 hospital; right?

2 A. Could be possible.

3 Q. All right.

4 MS. RIVERS: Thank you, Mr. Creech.

5 THE COURT: Mr. Johnson?

6 MR. JOHNSON: Thank you, Your Honor. If it please the
7 Court.

8 CROSS-EXAMINATION

9 BY MR. JOHNSON:

10 Q. Mr. Creech, just one simple question.

11 A. Uh-huh.

12 Q. You don't know nothing; do you?

13 A. I don't know nothing.

14 MR. JOHNSON: I have no questions for this witness.

15 MR. HARTE: No questions.

16 THE COURT: All right. Anything further?

17 MS. RINGLER: Nothing from the State, Your Honor.

18 THE COURT: Thank you. You may step down. Next
19 witness?

20 MS. RINGLER: Thank you, Your Honor. The State calls
21 Kadarian Creech.

22 And, Your Honor, we may have to do a, handle a matter
23 outside of the presence of the jury with this witness when
24 you want to perhaps handle that.

25 THE COURT: Well, when the maybe becomes certain, then

KADARIAN CREECH - DIRECT

1 we'll deal with it.

2 MS. RINGLER: Okay. Thank you, Your Honor.

3 KADARIAN CREECH, having been duly sworn, was examined
4 and testified as follows:

5 THE CLERK: Please be seated and state your name for
6 the record. Okay?

7 THE WITNESS: My name's Kadarian Creech.

8 DIRECT EXAMINATION

9 BY MS. RINGLER:

10 Q. And, Kadarian, how old are you?

11 A. Sixteen.

12 Q. And are you in school now?

13 A. Yes, ma'am.

14 Q. And what grade are you in?

15 A. Eleventh.

16 Q. And have you grown up in Barnwell?

17 A. Yes, ma'am.

18 Q. Do you remember when Jim Bo's was robbed last year?

19 A. No, ma'am; I don't remember.

20 Q. Do you remember that happening or?

21 A. Yes, ma'am.

22 Q. And at some point last year, were you at a -- were you
23 with Jamaal Riley?

24 A. Yes, ma'am.

25 Q. And do you see Jamaal Riley in the courtroom here

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1 today?

2 A. Yes, ma'am.

3 Q. Do you mind pointing him out to me, to us?

4 A. (Complies.)

5 Q. Is that him in the white shirt?

6 A. Yes, ma'am.

7 Q. And do you remember being with Jamaal when he was on
8 the phone at some point?

9 A. Yes, ma'am. Yes.

10 Q. And do you remember your -- what he said on the phone?

11 A. I remember him talking to someone, you know, saying
12 how he, you know, he heard that Juicy jumped over a
13 counter and --

14 MR. JOHNSON: Your Honor, objection, Your Honor.

15 THE COURT: What's the basis for the objection?

16 MR. JOHNSON: It's what we discussed earlier, Your
17 Honor, about --

18 THE COURT: What we discussed earlier?

19 MR. JOHNSON: It's a Bruton issue, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, we'll
21 have you go to the jury room. Please do not discuss the
22 case.

23 (Jury exits courtroom at 12:14 p.m.)

24 THE COURT: All right. Mr. Johnson?

25 MR. JOHNSON: Your Honor, it's a statement, a Bruton

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1 issue related to -- what he's about to say what a
2 co-defendant said about another co-defendant. It's my
3 belief that he did not mention my client's name in the
4 statement that he makes concerning what another
5 co-Defendant said in his presence.

6 THE COURT: All right. Ms. --

7 MS. RINGLER: And, Your Honor, I think if we can
8 elicit the testimony from him, I think we can then redact
9 the names of the other two co-defendants and cure any kind
10 of Bruton issue that there might be.

11 MR. JOHNSON: At this point, Your Honor, he's already
12 said the name Juicy.

13 THE COURT: He's already said what?

14 MR. JOHNSON: He said the name Juicy to the jury.

15 THE COURT: All right. Recount for me exactly what
16 you're saying in a full statement.

17 MR. JOHNSON: Your Honor, the witness has given
18 testimony as to what he overheard a co-defendant state in
19 his presence. But he's saying what the co-defendant said
20 about another co-defendant.

21 In Bruton it's my understanding that he can only say
22 what the co-defendant said about his self, not about
23 another co-defendant.

24 In this particular case he mentioned the name Juicy
25 which the State have (verbatim) already tried to attach to

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1 my client as being the person Juicy.

2 THE COURT: All right. What says the State?

3 MS. RINGLER: Your Honor, I believe we can remedy
4 this. When the jury comes back in we can clarify and,
5 again, redact any names, any nicknames as well so that
6 there's no --

7 THE COURT: How can you do that? How can you redact a
8 nickname?

9 MS. RINGLER: We would just say --

10 THE COURT: You told the jury in opening statements
11 that a person --

12 MS. RINGLER: Yes, Your Honor.

13 THE COURT: -- known as Juicy. So how can you redact
14 your statements?

15 MS. RINGLER: And I hoped to remedy this before that
16 came out, Your Honor. But I think that we can get out
17 this testimony by saying that Jamaal Riley stated that he
18 and another individual, and just leave it at that. And
19 what --

20 MR. HARTE: Well, Your Honor, at this point she's
21 putting words in the witness's mouth. We need to find out
22 what he's going to say. And then I would suggest that we
23 would then resolve this issue after that.

24 THE COURT: All right.

25 BY MS. RINGLER:

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1 Q. You can just continue with what you were saying
2 about -- what did you hear Jamaal state on the phone?

3 A. Well, he wasn't talking loud. So, like, I assume,
4 because I heard him say something about Juicy jumping over
5 the counter, but not once did I hear him say about -- not
6 once did he tell me he robbed a store, that he did it or
7 anything like that.

8 Q. Okay. That's not my question. My question is: What
9 did you hear him say on the phone? He talked about
10 somebody jumping over the counter. Okay. Did he say
11 anything about some money?

12 A. Well, that same day we was gambling at Fuller Park.

13 Q. And I'm just talking --

14 A. And he was saying that --

15 Q. -- about, on the phone that night, did he say anything
16 about --

17 A. He was saying that he didn't get enough money.

18 Q. Okay. Did he talk about how much money other people
19 might have gotten?

20 A. No, ma'am.

21 Q. Okay. Did the name Jermaine Priester come up at all
22 on the phone? Or Jermaine?

23 A. Yes, ma'am.

24 Q. What was said about Jermaine?

25 A. The same thing the streets was saying about the store

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1 robbery, that he was part of it.

2 Q. And is that -- what did Jamaal say on the phone about
3 Jermaine?

4 A. That he heard about Jermaine at the store robbery.

5 Q. So he didn't say anything about what he saw --

6 A. No, ma'am.

7 Q. -- with Jermaine? And do you remember meeting with
8 Detective Sutton and Detective Rice on August 22nd, 2011?

9 A. I don't remember, but I remember --

10 Q. Do you remember meeting with detectives?

11 A. -- I remember -- yeah.

12 Q. And at that time, did you say, make a statement that
13 Jamaal was making fun of the way Jermaine was running?

14 MR. HARTE: Your Honor, I object. The solicitor's
15 impeaching her own witness.

16 THE COURT: Impeaching her own witness?

17 MR. HARTE: It appears to be, Your Honor; yes, sir.
18 Or using a prior, what appears to be inconsistent
19 statement.

20 THE COURT: All right. Solicitor?

21 MS. RINGLER: That's correct, Your Honor. I believe
22 that he is not being forthcoming, about that. And he has
23 a prior inconsistent statement.

24 THE COURT: The testimony is outside the presence of
25 the jury. I overrule your objection.

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1 BY MS. RINGLER:

2 Q. Okay. Did Jamaal say anything about somebody getting
3 \$500?

4 A. No, ma'am.

5 Q. Did he say anything about someone getting \$1,000?

6 A. No, ma'am.

7 Q. Did he say anything about another guy getting \$200?

8 A. No, ma'am.

9 Q. Did he say anything about Jermaine getting \$90?

10 A. No, ma'am.

11 MS. RINGLER: Your Honor, if I could just have a
12 moment?

13 (Pause.)

14 MS. RINGLER: Your Honor, I think at this point the
15 only testimony that the State would elicit from this
16 witness in front of the jury would be Jamaal's statement
17 on the phone that somebody jumped over a counter and that
18 Jamaal complained about not getting enough money.

19 And those would be the two statements, Defendant's
20 statements that we would elicit from this Defendant
21 (verbatim) in front of the jury.

22 THE COURT: Mr. Johnson?

23 MR. JOHNSON: Your Honor, once again, I object to that
24 because of the name Juicy's already been --

25 THE COURT: All right. The witness has testified that

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1 Jamaal stated that Juicy jumped over the counter.

2 MR. JOHNSON: That's correct, Your Honor.

3 THE COURT: And on that basis, what are you seeking?

4 What are you asking? What do you want?

5 MR. JOHNSON: I don't believe that -- one moment, Your
6 Honor.

7 As relates to my client, Your Honor, I'm trying to
8 think of a solution to this. I don't want to request a
9 mistrial.

10 I believe that the State should not be allowed to even
11 ask that question.

12 THE COURT: What do you want me to do?

13 MR. JOHNSON: Basically rule that the State cannot ask
14 the witness that question. That question would not be
15 allowed.

16 THE COURT: Who jumped over -- who jumped over the
17 counter? Or what question? What question do you want me
18 to bar them from asking?

19 MR. JOHNSON: As to who jumped over the counter.

20 THE COURT: I thought your complaint was that he
21 already testified to who may have jumped over the counter.

22 MR. JOHNSON: My belief is that at the present point
23 it's not as damaging to my client as if it's asked again
24 and then put in the context of them being the individual
25 because at that point he's still saying Juicy in the jury

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1 mind.

2 If it's not asked again, I believe that it's not as
3 damaging as it is if asked a second time to have a
4 blanket -- you know, just instead of Juicy as the named
5 individual. It would be a question that was then asked
6 twice. And I think the jury would then infer that it's my
7 client.

8 THE COURT: What says the State?

9 MS. RINGLER: Your Honor, I would just say that those
10 two statements that we attempt to elicit, that someone
11 jumped over the counter and that Jamaal complained about
12 not getting enough money, that there would be no Bruton
13 issue with those two statements by this defendant -- or,
14 excuse me, by this witness. And that would be the extent
15 of the State's direct.

16 THE COURT: All right. Anything else by any other
17 counsel?

18 MS. RIVERS: No, sir.

19 MR. HARTE: No, Your Honor.

20 THE COURT: All right. All right. I sustain the
21 defense's objection to re-asking the same question.

22 MS. RINGLER: Thank you, Your Honor. We're ready.

23 THE COURT: All right. Back to the issue, Mister --
24 and of course the solicitor said we may have a Bruton, we
25 may have a matter outside the presence of the jury.

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1 I have no clue as to the details of this case and who
2 intends to testify as to what. The facts of this case are
3 known by the parties involved. I'm hearing it all for the
4 first time.

5 If the State intended to ask the witness a question
6 such as: What did you hear? And in the process of asking
7 that question eliciting a response, then I heard a
8 co-defendant say that -- a Defendant say that another
9 co-Defendant jumped over the counter, then clearly that
10 would have been a matter that not only we might need to
11 have a hearing outside of the presence of the jury, but
12 absolutely we would have to have a hearing outside of the
13 jury.

14 So I have no clue as to what the State is suggesting
15 about what we may need to do. That's a matter in which
16 the issue was -- the issue was brought up in pretrial, but
17 as to what witness is going to testify as to what fact,
18 you know, I have no clue as to any of that.

19 Nevertheless, we are at this juncture of where we
20 are.

21 Mr. Johnson, having heard the testimony at this point,
22 you've indicated that you do not seek to have any further
23 hearing or testimony on this particular issue and that you
24 do not seek a mistrial or severance as relates to your
25 client; is that right?

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1 MR. JOHNSON: That's correct, Your Honor.

2 THE COURT: Is that also your client's wishes?

3 MR. JOHNSON: I believe it is, Your Honor.

4 THE COURT: All right. So I'll question Mr. Brown.

5 THE DEFENDANT BROWN: (Conferring with counsel.)

6 MR. JOHNSON: Your Honor, my client states he wishes to
7 go forward and ask the Court to address him.

8 THE COURT: All right. Mr. Brown, then you've heard
9 the testimony and you've discussed with Mr. Johnson this
10 witness's testimony that Jamaal, that he heard Jamaal say
11 that Juicy jumped over the counter. You've heard that
12 testimony.

13 Mr. Johnson has previously discussed with you the
14 issue of whether or not the three Defendants wanted to be
15 tried together or whether any Defendant wanted a separate
16 trial; is that right?

17 THE DEFENDANT BROWN: Yes, Your Honor.

18 THE COURT: And you heard me have this discussion with
19 Mr. Johnson as to this issue being raised and, which is
20 improper for one co-Defendant to make an admission
21 against -- one Defendant to make an admission against
22 another co-Defendant or against a co-Defendant in a joint
23 trial.

24 In other words, that it's improper for this witness to
25 testify that, as he did, that he heard that Jamaal -- that

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1 he heard Jamaal say that Juicy jumped over the counter.

2 That's improper testimony; do you understand that?

3 THE DEFENDANT BROWN: Yes, Your Honor.

4 THE COURT: And you have the right to have ME consider
5 granting a mistrial as to -- or a severance of this trial
6 as to you. And the case would, if I granted that motion
7 it would proceed against the remaining two defendants and
8 your case would come at another date in time if I granted
9 that motion.

10 Do you understand that?

11 THE DEFENDANT BROWN: Yes, Your Honor.

12 THE COURT: And you do not wish me to grant that
13 motion?

14 THE DEFENDANT BROWN: No, Your Honor.

15 THE COURT: And you've discussed this fully with
16 Mr. Johnson and you fully understand?

17 THE DEFENDANT BROWN: Yes, Your Honor.

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

19 MR. JOHNSON: Thank you, Your Honor.

20 THE COURT: All right. Anything else before the jury
21 comes in?

22 MS. RINGLER: Nothing from the State, Your Honor.

23 MS. RIVERS: No, sir.

24 THE COURT: All right. Let's bring the jury back.

25 (Jury enters courtroom at 12:31 p.m.)

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1 THE COURT: All right. You may proceed.

2 The last objection was sustained. You may proceed.

3 BY MS. RINGLER:

4 Q. Kadarian, that phone call that you heard Jamaal have,
5 did Jamaal complain about not getting enough money?

6 A. Yes, ma'am.

7 Q. And did you hear him say exactly what money he was
8 talking about on that phone call? Not guessing or
9 speculating or anything like that, did he say what money
10 he was talking about?

11 A. No, ma'am.

12 MS. RINGLER: Please answer any questions defense
13 counsel might have.

14 MS. RIVERS: Nothing.

15 MR. JOHNSON: I have nothing. Well, Your Honor, I do
16 have one question.

17 CROSS-EXAMINATION

18 BY MR. JOHNSON:

19 Q. You know nothing about the robbery; do you?

20 THE WITNESS: No, sir.

21 MR. JOHNSON: No other questions.

22 CROSS-EXAMINATION

23 BY MR. HARTE:

24 Q. Mr. Creech, at no time did Jamaal Riley ever tell you
25 that he had anything to do with that robbery; did he?

1 A. No, sir.

2 Q. Were y'all gambling earlier that day?

3 A. Yes, sir. Fuller Park.

4 Q. Did that have something to do with him not getting
5 enough money?

6 MS. RINGLER: Objection, Your Honor. He's already
7 answered that he doesn't know.

8 THE COURT: Cross-examination. Overruled.

9 BY MR. HARTE:

10 Q. Is that what he could have been referring to?

11 MS. RINGLER: Your Honor, it calls for speculation.

12 THE COURT: Mr. Harte?

13 BY MR. HARTE:

14 Q. Did Jamaal win or lose?

15 A. He was winning. Then he start losing. So I could
16 assume that, you know --

17 MS. RINGLER: Objection, Your Honor.

18 BY MR. HARTE:

19 Q. In the end, did he lose?

20 A. Yes, sir.

21 Q. Thank you.

22 THE COURT: Further questions by the State?

23 MS. RINGLER: None from the State, Your Honor.

24 THE COURT: All right. You may step down. Next

25 witness?

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1 MS. RINGLER: Your Honor, the State calls Detective
2 Frank Sutton.

3 FRANK SUTTON, having been duly sworn, was examined and
4 testified as follows:

5 THE CLERK: Please be seated and state your name for
6 the record.

7 MS. RINGLER: Your Honor, the State will publish
8 several photos through this witness, so I didn't know if
9 the alternates, if we could ask them to sit on the
10 opposite side so they can view them.

11 THE COURT: All right. That will be fine.

12 (Alternates change seats.)

13 THE WITNESS: Frank Sutton.

14 DIRECT EXAMINATION

15 BY MS. RINGLER:

16 Q. Detective Sutton, where do you work?

17 A. Barnwell Police Department.

18 Q. And how long have you worked there?

19 A. I've been with the Barnwell Police Department 23
20 years. I was employed by the Swansea Police Department
21 for ten years prior to that.

22 Q. What do you currently do at the police department?

23 A. Crime scene and major criminal investigations.

24 Q. And how long have you been an investigator?

25 A. Four years.

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1 Q. And did you investigate the robbery at Jim Bo's on
2 July 21st, 2011?

3 A. Yes, ma'am.

4 Q. And I'm showing you what's been previously admitted as
5 State's Exhibits 11 through 58.

6 THE COURT: Eleven through 58?

7 MS. RINGLER: Yes.

8 (Documents handed to defense counsel.)

9 BY MS. RINGLER:

10 Q. I'm handing you what's been previously admitted as
11 State's Exhibit 11 through 58. If you want to look at
12 those. I'm sorry, State's Exhibit Ten as well.

13 (Document handed to defense counsel.)

14 BY MS. RINGLER:

15 Q. I apologize. State's Exhibit Ten too, as well. Have
16 you had a chance to look at those?

17 A. Yes, ma'am.

18 Q. And, Your Honor, at this time the State would move to
19 publish State's Exhibits Ten through 58.

20 MS. RIVERS: No objection.

21 MR. JOHNSON: No objection, Your Honor.

22 MR. HARTE: No objection.

23 THE COURT: All right. You may publish anything
24 that's in evidence.

25 (Exhibits displayed on large screen.)

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1 BY MS. RINGLER:

2 Q. Now I'm showing you State's Exhibit Ten. What is this
3 a photo of?

4 A. That's a white Dodge van parked in the People Sentinel
5 parking lot directly behind Jim Bo's.

6 Q. And State's Exhibit 11?

7 A. That's the same Dodge van. It's been broken down for
8 several months there.

9 Q. And State's Exhibit 12?

10 A. That's the same Dodge van from the other side. The
11 sandy area to the front and on this side is where we
12 photographed most of the shoe prints.

13 Q. And State's Exhibit 13?

14 A. That is just a close-up of the same shot in the
15 general area where the shoe prints are.

16 Q. And 14?

17 A. It's just a different angle on the shoe prints toward
18 the front of the van.

19 Q. And State's Exhibit 15?

20 A. That's a photograph of one of the shoe prints.

21 Q. And what were you able to note about those shoe
22 prints?

23 A. Well, it was hard to pick up any detail because it's
24 an asphalt parking lot and the only shoe prints were just
25 in kind of loose sand that had built up on top of the

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1 asphalt. We could tell there were at least three,
2 possibly four different types of shoes.

3 Q. Could you tell anything about the relative age of the
4 shoe prints?

5 A. Well, they had to be fairly fresh. It's on a
6 hilltop. The wind would have worn away --

7 Q. And when did you take this photo?

8 A. That was approximately 2:30 in the morning after the
9 robbery.

10 Q. And State's Exhibit 15 -- or 16? I'm sorry.

11 A. That is another one of the shoe prints. I recognize
12 that as an Air Force 1. It's a very common shoe, very
13 popular.

14 Q. And anything you noted about the relative age of the
15 shoe prints?

16 A. They looked very fresh. They weren't worn.

17 Q. And State's Exhibit 17?

18 A. That is another picture of the Air Force 1. And just
19 a different print. Like I say, it was a hard parking
20 lot. It was almost impossible to get a clear shot of it.

21 Q. And did you document any other shoe impressions or
22 shoe prints that night or that early morning?

23 A. Yes, ma'am. We found some more back of the Lakeside
24 Grille which is kind of across the street next door to Jim
25 Bo's.

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1 Q. And I'm showing you State's Exhibit 18.

2 A. That's an Air Force 1. It was directly behind
3 Lakeside Grille. It's in the loose sand on the edge of
4 the roadway. I think you can kind of see the imprint of
5 the tire it's on top of.

6 Q. And what could you say about the relative age of this?

7 A. That would have to be very fresh. It's on the edge of
8 the highway. Like I said, it's on top of tire tracks. It
9 had to be put there recently.

10 Q. And when did you take these photographs? These are
11 the photographs from Lakeside.

12 A. That was taken probably 15 minutes after the ones by
13 the van.

14 Q. So still the early-morning hours of July 21st?

15 A. Yes, ma'am.

16 Q. And then State's Exhibit 19?

17 A. That's another shoe print. Again, directly behind the
18 Lakeside Grille. You can also see the tire tracks. Those
19 two shoe tracks were consistent with prints that we
20 photographed beside the van.

21 Q. So, the -- whatever shoe made this impression is
22 similar to the one that made the impression --

23 MR. JOHNSON: Your Honor, objection. She's leading
24 the witness.

25 THE COURT: Don't lead the witness, please.

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1 BY MS. RINGLER:

2 Q. How would you compare the impressions you found by
3 Lakeside with the ones found by the van?

4 A. They were consistent. Similar.

5 Q. Can you talk a little bit more about that or ...

6 A. Well, the Air Force 1 is, you know, like I said, it's
7 a very popular shoe. We could -- I'm not sure what kind
8 of shoe this is, but we could pick out the wave design and
9 the, kind of a fork pattern at the front of the shoe in
10 the prints at the van and this print.

11 Q. And State's Exhibit 20?

12 A. That is a daylight shot of Jim Bo's. That's from the
13 Lakeside Grille. That's the front of the Lakeside Grille.

14 Q. And what is that in the background there?

15 A. That -- you can -- I think, yeah. That's the white
16 van on top of the hill behind Jim Bo's. It just barely
17 shows up.

18 Q. And the building that it's in front of?

19 A. Jim Bo's.

20 Q. Oh, I'm sorry. The building that, it's just behind
21 Jim Bo's that?

22 A. Would be People Sentinel parking lot. The building
23 would be the People Sentinel.

24 Q. And then State's Exhibit 21?

25 A. That is a side view of Lakeside Grille and the

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1 stairway leading up to the rooftop deck.

2 Q. And State's Exhibit 22?

3 A. That's just another shot of the deck on the back of
4 the Lakeside Grille.

5 Q. State's Exhibit 23?

6 A. That's showing some of the solar lights that were not
7 working that night.

8 Q. State's Exhibit 24?

9 A. That's showing some more of the solar lights. Someone
10 had removed the caps to the solar lights so they would not
11 light and turned all the lights off.

12 Q. State's Exhibit 25?

13 A. That just shows a series of the solar lights with the
14 tops removed so they wouldn't burn.

15 Q. State's Exhibit 26?

16 A. That's more solar lights with the tops removed.

17 Q. And State's Exhibit 27?

18 A. That's another solar light with the top removed.

19 Q. And 28?

20 A. Those were two where they were completely removed. As
21 a matter of fact, we found them in the lake and they were
22 still glowing that night.

23 Q. So with the lights removed with the -- were the lights
24 able to work? Were they operable when you showed up and
25 took these photos?

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1 A. There were two that were removed and thrown in the
2 lake. I don't believe that's those. Those look like
3 those more caps removed.

4 Q. With the caps removed, would they have worked?

5 A. No, no. That was the purpose of taking the caps off.

6 Q. So, how many of the lights had the caps removed?

7 A. I don't know the exact amount. The only three that
8 still had the caps on were three that the owner said were
9 already not working.

10 MR. HARTE: Objection. Hearsay, Your Honor.

11 THE COURT: Which location is this again?

12 MS. RINGLER: This is the patio over the Lakeside
13 Grille.

14 THE COURT: As to the objection, Mr. Harte, aside from
15 it being hearsay, what's the significance of the -- the
16 basis for the objection otherwise?

17 MR. HARTE: I don't think there's an exception in this
18 case to the owner saying that the lights didn't work.

19 THE COURT: All right. Anything on that issue from
20 the solicitor?

21 MS. RINGLER: I would just say it's just not being
22 offered for the truth -- I would -- nothing from the
23 State, Your Honor.

24 THE COURT: I sustain the objection.

25 BY MS. RINGLER:

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1 Q. So the vast majority of lights had their caps taken
2 off?

3 A. Yes.

4 Q. And State's Exhibit 29?

5 A. That is the view from the rooftop video showing Jim
6 Bo's, People Sentinel parking lot, and also officer's view
7 of the whole surrounding area.

8 Q. And this was -- so where did you take this photo?
9 Where were you standing, exactly?

10 A. Well, actually I had to get on top of one of the
11 tables on the rooftop patio to get over a little barrier
12 wall, but that's what the view was.

13 Q. And State's Exhibit 30?

14 A. That's just another view of Jim Bo's from the same
15 height.

16 Q. And State's Exhibit 31?

17 A. That's the view of the lake where we found the two
18 still-burning lights in the water. They were right at the
19 edge of the water.

20 Q. And you've reviewed the security video of the Jim Bo's
21 robbery; is that correct?

22 A. Yes.

23 Q. And did you take any kind of still shots?

24 A. Yes, ma'am. I did some what are commonly referred to
25 as vid caps, video capture. You actually capture each

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1 frame of the surveillance video.

2 Q. And did you alter the image in any way when you were
3 taking those shots or those vid caps?

4 A. No. They're just freeze frames of the video.

5 MS. RINGLER: Your Honor, at this time the State would
6 publish Exhibits 33 through 58.

7 THE COURT: What says the defense?

8 MR. JOHNSON: No objection.

9 MS. RIVERS: No objection.

10 MR. HARTE: No objection.

11 THE COURT: Admitted without objection.

12 (Thereupon, State's Exhibit Nos. 33 through 58,
13 photographs, were received into evidence.)

14 BY MS. RINGLER:

15 Q. At this time, I'm showing you State's Exhibit Number
16 33, Number 34, Number 35, Number 36, Number 37, Number 38,
17 Number 39, Number 40, Number 41, Number 42, Number 43,
18 Number 44, Number 45, Number 46, Number 47, Number 48,
19 Number 49, Number 50, Number 51, Number 52, Number 53,
20 Number 54, Number 55, Number 56, Number 57, Number 58.

21 Your Honor, if you do have the State's Exhibits ...

22 (Pause.)

23 BY MS. RINGLER:

24 Q. And I'm handing you what's been previously marked as
25 State's 59, 61, and 62. Can you please look at those

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1 without showing them to the jury?

2 A. (Complies.)

3 Q. Now State's Exhibit 59, what is that?

4 A. That's a photograph of Kevin Brown.

5 Q. And do you know when that photo was taken?

6 A. July 27th, 2011.

7 Q. And does it truly and accurately depict how Kevin
8 Brown looked on that date?

9 A. Yes, ma'am; it does.

10 MS. RINGLER: Your Honor, at this time the State would
11 move to admit State's Exhibit 59.

12 MR. JOHNSON: Your Honor, just renew my objection to
13 that particular item.

14 THE COURT: All right. I'll overrule the objection.

15 MR. JOHNSON: Thank you, Your Honor.

16 (Thereupon, State's Exhibit No. 59, photograph, was
17 received into evidence.)

18 BY MS. RINGLER:

19 Q. And State's Exhibit 61?

20 A. Yes, ma'am.

21 Q. What or who is being depicted in that photo?

22 A. Jamaal Riley.

23 Q. And when was that photo taken?

24 A. August the 5th, 2011.

25 Q. Does that truly and accurately depict how he looked on

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1 that date?

2 A. Yes, ma'am; it does.

3 MS. RINGLER: Your Honor, at this time the State would
4 move to admit State's Exhibit 61.

5 MR. HARTE: I have no objection, Your Honor.

6 THE COURT: Admitted without objection.

7 (Thereupon, State's Exhibit No. 61, photograph, was
8 received into evidence.)

9 BY MS. RINGLER:

10 Q. And State's Exhibit 62, who or what is being depicted
11 in that photo?

12 A. That's Roosevelt Kadeem Workman.

13 Q. And when was that photo taken?

14 A. July 27th, 2011.

15 Q. And does it truly and accurately depict how he looked
16 on that date?

17 A. Yes, ma'am; it does.

18 MS. RINGLER: Your Honor, at this time the State would
19 move to admit State's Exhibit 62.

20 THE COURT: What says the defense?

21 MS. RIVERS: Your Honor, we renew our objection with
22 the caveat that we don't know, we don't believe the
23 picture was taken on the date as indicated.

24 THE COURT: The objection is overruled.

25 (Thereupon, State's Exhibit No. 62, photograph, was

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1 received into evidence.)

2 MS. RINGLER: Your Honor, at this time the State will
3 publish State's Exhibit 59, 61 and 62.

4 (Photographs published to the jury.)

5 BY MS. RINGLER:

6 Q. And this is State's Exhibit 59. And, again, who is
7 this?

8 A. Kevin Brown.

9 Q. And State's Exhibit 61. And who is this?

10 A. Jamaal Riley.

11 Q. And State's Exhibit 62. And who is in this photo?

12 A. Roosevelt Kadeem Workman.

13 MS. RINGLER: Thank you. Please answer any questions
14 defense counsel might have.

15 THE COURT: Ms. Rivers?

16 CROSS-EXAMINATION

17 BY MS. RIVERS:

18 Q. Mr. Sutton?

19 A. Yes, ma'am.

20 Q. Detective. I'm sorry. I want to address you
21 properly. You are a detective?

22 A. Yes, ma'am.

23 Q. Okay. Detective Sutton, the night of the robbery were
24 you the one handling the scene?

25 A. Yes, ma'am.

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1 Q. All right. You were out there as soon as you could
2 get there?

3 A. Yes, ma'am.

4 Q. And did you take any fingerprints?

5 A. I was told from the officers on the scene that the
6 cashier had stated they had gloves on. And whenever we
7 got the video, it confirmed that.

8 Q. So we don't have any fingerprints?

9 A. No, ma'am.

10 Q. Do you have anything you picked up for DNA?

11 A. No, ma'am.

12 Q. All right. And you've testified these shoe prints
13 were Air Forcers, popular shoes?

14 A. Yes, ma'am.

15 Q. And the other shoes, we don't know what those were?

16 A. No, ma'am.

17 Q. Okay. Had you been to the rooftop of the Lakeside
18 Grille before you investigated this crime?

19 A. No, ma'am. Not before that night.

20 MS. RIVERS: Okay. Thank you, Detective.

21 MR. JOHNSON: If it please the Court, Your Honor.

22 THE COURT: Yes.

23

24

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CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Detective Sutton, did you get a description of the individuals at the scene that night when you got there?

A. Just three individuals, you know, all dressed in black, wrapped up with hoodies and masks. That's about it.

Q. And did you get on the report -- I notice on the police report they say weight of 160 pounds?

A. I don't know where that came from, sir. They didn't tell me that.

Q. Okay. Did -- the footprints you took, they was at the white van; correct?

A. Yes, sir.

Q. And then they were all the way over at the boat house you say or somewhere in that area?

A. Behind the Lakeside Grille.

Q. None of those footprints you found was at the scene of the crime; was it?

A. Not at Jim Bo's.

Q. That's the scene of crime; isn't it?

A. Yes, sir.

Q. So none of the footprints you have, all the pictures you showed, it was like 40, 30-some pictures, had nothing to do with the crime; did it?

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1 A. I can't say that, sir.

2 Q. You can't say it did; did it?

3 A. I believe it did; yes, sir.

4 Q. Does -- in those pictures you showed indicate that
5 that footprint or the people that had those shoes on was
6 ever at the scene of the crime?

7 A. They indicate they were near the scene of the crime.

8 Q. How many people would you say would walk by that area
9 in a day where you found the footprints?

10 A. Where we found the footprints?

11 Q. Uh-huh.

12 A. Behind the Lakeside Grille? Dozens.

13 Q. Okay. But you found no footprints at the scene of the
14 crime where the crime actually happened; did you?

15 A. No.

16 Q. You found no fingerprints?

17 A. No, sir.

18 Q. No DNA?

19 A. No, sir.

20 Q. You have no evidence that my client had anything to do
21 with that that you found?

22 A. No, sir; not that I found.

23 MR. JOHNSON: Nothing else.

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FRANK SUTTON - CROSS

CROSS-EXAMINATION

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BY MR. HARTE:

Q. Detective Sutton, just explain how you go about checking for fingerprints.

A. Well, you usually put down latent lift powder.

Q. You put down powder where you think there might be a fingerprint?

A. Yes, sir.

Q. And that will show what's called a latent?

A. Yes, sir.

Q. So if I put my finger on this piece of glass and then you come back later, even though I can see it right now, even if you couldn't see it you could lay that powder down and it will show that fingerprint; is that correct?

A. Yes.

Q. And then later on you'd go back to the database, and if my fingerprint is in the database you can compare the two?

A. Yes, sir.

Q. All right. Now, with regards to these solar lights, how do you take the cap off the solar lights?

A. I assume they just unscrew.

Q. And it's quite possible that while unscrewing it the person who's doing that might have held the lamp, part of the light that was lit; right?

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1 A. It's possible. We didn't recover any of the caps.

2 Q. Did you put any latent fingerprint powder on the
3 remaining parts of the solar panel to see if there were
4 any fingerprints there?

5 A. No, sir.

6 Q. If you had and if the person had held it while they
7 unscrewed you, then we might be able to identify who did
8 it; might we?

9 A. It's possible. If they weren't wearing gloves.

10 Q. Well, you indicated that the reason you didn't check
11 the store was because you heard that they were wearing
12 gloves.

13 A. Yes, sir.

14 Q. You heard that they were all dressed in black but in
15 fact one was dressed in white; weren't they?

16 A. Yes, sir.

17 Q. And is it your contention after looking at the video
18 again that that clearly shows they were wearing gloves the
19 whole time?

20 A. It appeared to me they did; yes, sir.

21 Q. But you didn't check any fingerprints to make sure?

22 A. No, sir.

23 Q. And you never checked the van for fingerprints
24 although they were standing right there in front?

25 A. Yes, sir; we did dust the van all the way around.

FRANK SUTTON - REDIRECT

1 Q. You did dust the van?

2 A. Yes, sir.

3 Q. Did you find anything?

4 A. No, sir. There was a layer of dust and mildew all
5 over the van.

6 MR. HARTE: Thank you. No further questions.

7 THE COURT: Anything further?

8 REDIRECT EXAMINATION

9 BY MS. RINGLER:

10 Q. In your experience as an investigator and doing crime
11 scene work, do you always find fingerprints?

12 A. No, ma'am; not hardly.

13 Q. What conditions can affect or circumstances can affect
14 your ability to find fingerprints?

15 A. Just the age of the print, the atmospheric conditions,
16 the layer of dust would protect the fingers from putting
17 down a print, wearing gloves.

18 Q. So the, wearing the gloves would prevent a person from
19 leaving fingerprints?

20 A. Yes, ma'am.

21 MS. RINGLER: Nothing further from the State, Your
22 Honor.

23 THE COURT: Anything further from this witness?

24 MS. RIVERS: No, sir, Your Honor.

25 MR. HARTE: No, Your Honor.

1 MR. JOHNSON: I do have one.

2 MR. HARTE: Oh, sorry.

3 RECROSS-EXAMINATION

4 BY MR. JOHNSON:

5 Q. Officer Sutton, you wouldn't know if there were
6 fingerprints there that night because you didn't check;
7 did you?

8 A. I'm sure there were. For instance, there inside the
9 store, I don't believe they would be the suspects' because
10 they were wearing gloves.

11 Q. But you never checked; did you?

12 A. No, sir.

13 MR. JOHNSON: No other questions.

14 THE COURT: All right. You may step down, sir. I
15 guess it's lunchtime. One o'clock.

16 All right. Ladies and gentlemen, we'll break for
17 lunch till 2:15. Please do not discuss the case. Again,
18 when you leave for lunch, if you all will leave and when
19 you come back, you'll come back into the jury room.

20 And have a good lunch. We'll see you after that.

21 (Jury exits courtroom at 1:07 p.m.)

22 THE COURT: All right. Anything else we need to talk
23 about?

24 MS. RINGLER: Nothing from the State, Your Honor.

25 MR. JOHNSON: I have nothing.

1 MS. RIVERS: No, sir.

2 MR. HARTE: No, Your Honor.

3 THE COURT: All right. With respect to the
4 photographs that have been admitted, the only question you
5 asked the witness is whether or not they looked the same
6 now as they did when they were arrested, I guess.

7 Do you intend to offer any other relevant information
8 concerning those photographs?

9 MS. RINGLER: No, Your Honor, just that they reflect
10 how the Defendants looked near the time of the incident.
11 So that would be all.

12 THE COURT: All right. The fact that something has
13 been admitted into evidence doesn't mean it cannot be
14 later excluded prior to being submitted to the jury.

15 You know, I need to -- the cases say that there must
16 be some demonstrable need for the photographs. And I
17 would have to weigh whether or not that's a demonstrable
18 need.

19 But to admit photographs solely for the jury to have
20 them in the jury room would not be a demonstrable need, in
21 my opinion. I just want to throw that out as a
22 consideration. We'll talk about it later if anyone needs
23 or wants to.

24 MR. HARTE: Thank you.

25 THE COURT: All right; 2:15.

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1 (Thereupon, at 1:09 p.m., the luncheon recess was
2 taken. At 2:18 p.m., the trial resumed:)

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

4 Do we have anything before we bring the jury, other
5 than the Defendants?

6 MS. RINGLER: Nothing from the State, Your Honor.

7 THE COURT: All right. Let's bring them on.

8 MR. JOHNSON: Your Honor, I think we need our clients.

9 THE COURT: Yeah. They're going to get them.

10 (Defendants enter courtroom.)

11 (Jury enters courtroom at 2:32 p.m.)

12 MS. RINGLER: Your Honor, if we could just have them
13 sit on the other side. We would just have one exhibit to
14 put up with this next witness.

15 THE COURT: Okay.

16 (Alternate jurors move.)

17 MS. RINGLER: Thank you, Your Honor. The State calls
18 Investigator Brenda O'Berry.

19 THE COURT: Okay. O'Berry.

20 BRENDA O'BERRY, having been duly sworn, was examined
21 and testified as follows:

22 THE CLERK: Please be seated and state your name for
23 the record.

24 THE WITNESS: Brenda O'Berry.
25

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DIRECT EXAMINATION

BY MS. RINGLER:

Q. Investigator O'Berry, where do you work?

A. Barnwell County Sheriff's Office.

Q. And how long have you worked there?

A. Sixteen years.

Q. How long have you been an investigator?

A. Four years.

Q. And where are you from originally?

A. I'm from Barnwell.

Q. Have you lived here all your life?

A. Yes, all my life.

Q. Have you had the opportunity to review the security video from the robbery in this case?

A. Yes, I have.

Q. And in reviewing that video, did you recognize anybody in the video?

A. One I, I said it looks like someone I knew.

Q. And who did it look like?

A. It looked like --

MR. JOHNSON: Your Honor, Your Honor, I have an objection.

THE COURT: What's the objection?

MR. JOHNSON: Your Honor, Ms. O'Berry is investigating the case. She is -- it's a video that the jury makes the

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1 termination as to who it appears to.

2 There's no basis for her opinion as to how she can
3 identify someone from looking at a video and they've set
4 no foundation or background for her identification.

5 THE COURT: What do you say about that, Madam
6 Solicitor?

7 MS. RINGLER: Just, Your Honor, I was in the process
8 of establishing the foundation.

9 THE COURT: All right.

10 BY MS. RINGLER:

11 Q. Who did you identify in the video?

12 MR. JOHNSON: Your Honor, objection. She has to
13 establish a foundation before she can ask her to identify.

14 THE COURT: How about the foundation first before the
15 identification?

16 BY MS. RINGLER:

17 Q. Do you know Kevin Brown?

18 A. I do.

19 Q. How do you know him?

20 A. I've known him since he was a little boy, but I've
21 also worked in the schools for many years and I've had
22 interaction with him there.

23 Q. So for most of his life you've known him?

24 A. Oh, yeah.

25 MR. JOHNSON: Your Honor, objection to leading the

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1 witness.

2 THE COURT: Objection's overruled.

3 BY MS. RINGLER:

4 Q. And do you see Kevin Brown in the Courtroom here
5 today?

6 A. I do.

7 Q. Can you point him out for us?

8 A. He's the one in the blue shirt and blue striped top.

9 Q. Thank you. And in reviewing the video, was there
10 anybody that you recognized on the video?

11 MR. JOHNSON: Your Honor, objection. I do not think
12 that just knowing Kevin Brown is not, is not substantial
13 enough for her to --

14 THE COURT: All right.

15 MR. JOHNSON: -- state her opinion.

16 THE COURT: What about that, Madam Solicitor?

17 MS. RINGLER: Your Honor, I feel she said she's known
18 him all his life. She's had numerous interactions with
19 him in the school system and just known him from the
20 community. She was born and raised here in Barnwell. She
21 states she knows the Defendant.

22 THE COURT: Mr. Johnson?

23 MR. JOHNSON: Once again, Your Honor, it's irrelevant.
24 There are a lot of people that know the Defendant, but as
25 far as looking at a video and making a determination, I

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1 think that's a question for the jury.

2 And the jury can make their own determination. They
3 can see the Defendant as well.

4 THE COURT: All right.

5 MR. JOHNSON: Her statement would be extremely
6 prejudicial and it has no relevance.

7 THE COURT: Madam Solicitor?

8 MS. RINGLER: Your Honor, I would say that we've
9 established our foundation in this case. And certainly if
10 he has any question about her identification, he certainly
11 is free to ask her about that on cross.

12 THE COURT: I sustain the objection.

13 BY MS. RINGLER:

14 Q. Can you just -- Investigator O'Berry, can you describe
15 the interaction that you've had with the Defendant?

16 MR. JOHNSON: Your Honor, objection. It's already been
17 sustained, my motion (verbatim). And she's going back
18 into it again.

19 THE COURT: She asked a different question.

20 Overruled.

21 BY MS. RINGLER:

22 Q. Can you describe the interaction that you've had with
23 Mr. Brown?

24 A. Like I said, I've worked in the schools. I've talked
25 with him. There's been incidents of where I've taken him

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1 home after school. Just a number of things that, you
2 know, I've been involved with, with him.

3 Q. And, can you describe the length of the conversations
4 that you've had with him and the amount of time that
5 you've spent with him?

6 MR. JOHNSON: Objection. Again, Your Honor, relevance
7 to this case.

8 THE COURT: Overrule the objection.

9 BY MS. RINGLER:

10 Q. Would you please answer the question?

11 A. I'm sorry?

12 Q. That's okay. Can you just describe the amount of time
13 that you've spent with him when you would have
14 interactions with him?

15 A. They've been number of different things. I mean,
16 maybe 10 minutes, 20 minutes at a time or during the
17 period of his high school years when he was at the high
18 school in Barnwell.

19 Q. And, did this occur more than once a year or?

20 A. Oh, yes. More than once a year.

21 Q. More than once a month?

22 A. No, not more than once a month.

23 Q. But several times throughout the year?

24 A. Yes.

25 Q. And, in reviewing the tape, did you have the

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1 opportunity to pause it and review as much as you needed
2 to?

3 A. I did.

4 Q. And you did determine and you were able to make an
5 identification based on viewing it?

6 A. I -- yes.

7 MS. RINGLER: Your Honor, at this time I feel like we
8 have met the requirements for foundation. We could ask --

9 MR. JOHNSON: Your Honor, I renew my objections. It's
10 already been ruled on.

11 THE COURT: The -- I'm going to have the jury step to
12 the jury room for just a moment while we continue this
13 discussion. Do not discuss the case.

14 (Jury exits courtroom at 2:39 p.m.)

15 THE COURT: Any further argument?

16 MS. RINGLER: Your Honor, I just feel as though the
17 State has met its foundational requirements. We've
18 established that she's known this Defendant for many
19 years. She's had a period of, you know, 15- 20-minute
20 interactions with him over his time in school. She has
21 known him since he was a child, known him his whole life.
22 She's had the opportunity to view the video, to pause it,
23 to determine the identification.

24 I feel like the State has met its requirements for
25 this ID. We've established that the witness does know the

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1 Defendant, has had the ample opportunity to interact with
2 him, to view him, has had ample opportunity to review the
3 video.

4 And I feel like we have established our foundation for
5 the identification.

6 THE COURT: And as a result of everything that you've
7 said, she can look at the video that you showed the jury
8 and say that that is the Defendant?

9 MS. RINGLER: Yes, Your Honor.

10 THE COURT: Based on that past interaction?

11 MS. RINGLER: Yes, Your Honor.

12 THE COURT: And not based on anything else, but based
13 on what you've said up to this point?

14 MS. RINGLER: Yes, Your Honor. That she's had --
15 she -- and we'll put one of the still images. She's
16 already reviewed the video. She knows she can make an
17 identification. She knows this Defendant.

18 And we'll show it to her again, and ask her to point
19 out the Defendant on the screen.

20 I feel like we have established the foundation for
21 that and that she knows the Defendant. She's had the
22 opportunity to view it. She'll again make the ID here in
23 the courtroom.

24 THE COURT: Mr. Johnson?

25 MR. JOHNSON: Your Honor, once again, my motion has

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1 already been ruled upon by the Court. The prosecution
2 then goes into other questioning.

3 THE COURT: Well, you remember when F. Lee Bailey
4 wrote the book The Defense Never Rests? It's sort of the
5 same with the State.

6 MR. JOHNSON: I understand, Your Honor.

7 THE COURT: I mean, here the fact that the Court rules
8 doesn't mean that you're forever precluded from trying a
9 different angle or direction or whatever.

10 MR. JOHNSON: Your Honor, I renew the same, my same
11 motion. And that it is it's extremely prejudicial. The
12 jury is going to see the same film that she has. My
13 client is sitting here for the jury to make that
14 determination. She was not present at the scene. She is
15 not an investigating officer.

16 We have never received any report that she reviewed
17 anything. This is our first time of hearing her
18 identification at all, Your Honor. There was no reports
19 given. There was no, anything at all relating to her
20 identification of my client.

21 THE COURT: Your objection is in essence the State is
22 offering her as an expert witness on identification?

23 MR. JOHNSON: That's correct, Your Honor. And she's
24 not an expert.

25 THE COURT: All right.

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1 MR. JOHNSON: As well, Your Honor, just for the record,
2 I'd also like to say that it's extremely prejudicial and
3 not relevant to this case.

4 THE COURT: Yes, ma'am?

5 MS. RINGLER: And, Your Honor, the State is not --
6 we're not asking for an opinion other than an
7 identification. We're not asking for any kind of
8 expertise, merely if -- whether she's an investigator or
9 not, she could be any witness at this point.

10 We're calling her as a witness who's familiar with
11 this Defendant and who's able to identify him on the video
12 based on her experience with him and her interactions.

13 THE COURT: The problem I have, I guess, at this point
14 is that the jury is familiar with the Defendant as well at
15 this point. As Mr. Johnson said, he's sitting right
16 there.

17 So is it for this witness to say or for the jury to
18 make that determination?

19 And if there is something special, particular,
20 peculiar, or some insightful basis that she might have,
21 you know, typically you have someone might say, I can
22 recognize him because of that gold tooth, or I can
23 recognize him because of the tattoo behind his ear, the
24 teardrop on his face, the burn mark on his arm, something
25 that sets this witness's testimony apart or brings some

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1 additional insight to the jury to make it probative as
2 opposed to, I see him on the tape. I recognize him so
3 therefore you should accept my testimony as being true.

4 I don't for a second doubt her belief as to, I can
5 look at this tape. And I don't know. You haven't, you
6 haven't asked her why she can identify him. You know, you
7 see three guys in, on the video with hoodies and masks
8 bandanas and all of that. I don't know why it's her view
9 that she can identify him. I haven't heard anything in
10 that connection other than I know him and because I know
11 him or have known him therefore that's him.

12 And I don't believe that that's enough to give this
13 witness a right to impose her view on the jury, on the
14 jury that's sitting here looking at him as well.

15 There has to be something. Is there something else?

16 MS. RINGLER: Your Honor, I think --

17 THE COURT: Is there some basis over and above what
18 you asked to this point?

19 MS. RINGLER: Your Honor, I would just argue that
20 we're asking the jury to look from across the courtroom at
21 someone in a screen and, you know, an image that we're
22 putting up there only for a brief amount of time.

23 And this is someone who has known the Defendant, has a
24 much greater --

25 THE COURT: I understand.

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1 MS. RINGLER: -- knowledge of --

2 THE COURT: I understand. But they'll have an
3 opportunity to do everything that she's done. They can
4 look at it, pause it, look at it any way they want to,
5 maybe zoom it in, zoom it out; I don't know.

6 And I hear your argument, but I agree with the defense
7 on this. So I'm sustaining the objection.

8 MS. RINGLER: Could I ask the why question, Your
9 Honor? Would that --

10 THE COURT: Well, that's --

11 MS. RINGLER: Okay.

12 THE COURT: I mean --

13 MS. RINGLER: Okay.

14 THE COURT: -- that's part of foundation is --

15 BY MS. RINGLER:

16 Q. Can you describe why -- how you're able to or why you
17 were able to identify him on the video?

18 A. Again, I said it looked like him to me. And it was
19 just, I slowed it down, I paused it. And the facial
20 features, his body shape, the way he moved made me think
21 it was Kevin.

22 THE COURT: All right.

23 MS. RINGLER: And, Your Honor, I think that her also
24 the identification went beyond merely the, that she was --
25 that his movement, his body shape and movement of his body

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1 was also something that she used as part of her
2 identification.

3 MR. JOHNSON: Just renew my same objection, Your
4 Honor. That's something the jury can make that
5 termination.

6 THE COURT: At this point, that's what -- you're
7 testifying now, not the witness. You're telling me what
8 factors the witness considered --

9 MS. RINGLER: I believe she --

10 THE COURT: -- but you're not a witness.

11 MS. RINGLER: I'm sorry.

12 THE COURT: Pardon me?

13 MS. RINGLER: Your Honor, I apologize. I thought that
14 was her testimony, that she used his movement as part of
15 her identification.

16 BY MS. RINGLER:

17 Q. Can you please describe again how you made your -- and
18 what you took into account in making your identification?

19 A. I used -- again, I say it looked like him to me
20 because I slowed it down. I paused it. I looked at the
21 face when the bandana dropped. The way he moved, the size
22 of his body, the shape of his body.

23 MR. JOHNSON: Your Honor, once again, the State is
24 offering no new evidence to my initial objection. As I
25 stated, it's just the same thing that the jury has an

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1 opportunity to do. My client is here. Her testimony
2 offers no -- she's not an expert. It offers -- it's
3 extremely prejudicial, allowing her to state that to the
4 jury.

5 Any number of reasons, Your Honor, that her testimony
6 should not be allowed. And I ask you to continue to
7 sustain my motion, or my objection. I'm sorry.

8 THE COURT: All right. I'll take a moment to see if I
9 see any authority one way or the other on this issue.

10 (Pause from 2:50 p.m., until 2:55 p.m.:)

11 THE COURT: I sustain the objection. I think that to
12 attempt to have the witness say, I know that this is the
13 Defendant because I knew the Defendant beforehand, without
14 anything more, it would be improper testimony and would
15 place this witness in the position of usurping the role of
16 the jury in the process.

17 If there's anything peculiar to be pointed out that
18 would give the basis for the testimony, the State can go
19 at it but otherwise I sustain the objection.

20 MS. RINGLER: Thank you, Your Honor.

21 THE COURT: Anything else?

22 MS. RIVERS: No, sir.

23 THE COURT: All right. Let's stretch, stand for a
24 couple seconds so we can stretch.

25 (Jury enters courtroom at 2:58 p.m.)

JASON WOODRUFF - DIRECT

1 THE COURT: All right. I sustained the objection.

2 The next question, please.

3 BY MS. RINGLER:

4 Q. Investigator O'Berry, are you familiar with the Jim
5 Bo's convenience store?

6 A. I am.

7 Q. And is that in Barnwell County?

8 A. It is.

9 MS. RINGLER: Thank you. Please answer any questions
10 defense counsel might have.

11 MS. RIVERS: None, Your Honor.

12 MR. JOHNSON: I have none, Your Honor.

13 MR. HARTE: No questions, Your Honor.

14 THE COURT: All right. Thank you. You may step
15 down.

16 MS. RINGLER: Thank you, Your Honor. The State calls
17 Officer Jason Woodruff.

18 JASON WOODRUFF, having been duly sworn, was examined
19 and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. RINGLER:

22 Q. Officer Woodruff, where do you work?

23 A. City of Barnwell Police Department.

24 Q. And how long have you worked there?

25 A. Three and a half to four years.

JASON WOODRUFF - DIRECT

1 Q. And are you familiar with Kadeem Workman?

2 A. I've heard the name. I've had a few dealings with him
3 throughout my job, but that's about it.

4 Q. Did you place Kadeem Workman under arrest?

5 A. No, ma'am. Sergeant Coach got out with Kevin Brown
6 and Kadeem Workman at the site of IGA on Allen Street and
7 by the time I had already arrived they were both in
8 handcuffs. And I transported Kevin Brown to county jail.

9 Q. Did you transport Kadeem Workman to the county jail?

10 A. No, ma'am. Kevin Brown.

11 Q. Kevin Brown. And when, when you transported Kevin
12 Brown to the detention center or to the jail, did you ask
13 him any questions?

14 A. No, ma'am, not at all.

15 MS. RINGLER: Court's indulgence.

16 (Pause.)

17 BY MS. RINGLER:

18 Q. And I do apologize. When you were transporting Kevin
19 Brown, did you ask him any questions?

20 A. No, ma'am.

21 Q. Did he volunteer anything while you were transporting
22 him?

23 A. The only thing that was said, he asked why he was
24 being arrested. I informed him it was for armed robbery
25 and he told me that he was innocent, that if we did not

JASON WOODRUFF - CROSS

1 have a face we did not have a case. And that was on the
2 way to the jail.

3 Once he got to the jail, he repeated "no face no case"
4 several times. And that was the only thing, words
5 exchanged between me and him that we had other than I told
6 him I needed his shoes for evidence.

7 Q. And his response, "no face no case," that wasn't in
8 response to any kind of question or anything; was it?

9 A. No, ma'am. That was, that was volunteered on his
10 own. I asked him no questions other than proper booking
11 questions when we get to the jail, but no questions
12 pertaining to his charge.

13 MS. RINGLER: Thank you. Please answer any questions
14 defense counsel might have.

15 CROSS-EXAMINATION

16 BY MS. RIVERS:

17 Q. Officer Woodruff, do you know Kendrick Workman?

18 A. By name, I don't think so. I might know his face.

19 MS. RIVERS: Thank you.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q. Officer Woodruff, just two questions. One is, that:
23 He cooperated with you; correct?

24 A. When I got to the scene where Sergeant Coach had him
25 at, at the site of the IGA, he was cooperative and he had

JASON WOODRUFF - CROSS

1 got in the car. He did everything I asked him to do.

2 Q. All right. And he stated, "I am innocent"; correct?

3 A. That's what he told me in the car. He said he was
4 innocent, "no face no case."

5 Q. All right. And you have no evidence to prove that
6 what he told you when he said he was innocent was not
7 true?

8 MS. RINGLER: I object to that question, Your Honor.
9 I'm not quite sure what's being asked.

10 MR. JOHNSON: Well, I just asked: You have no
11 evidence, you have no evidence to prove that what he said
12 when he said he was innocent was not true; do you?

13 MS. RINGLER: Your Honor, I think he's asking for the
14 ultimate question that we're here for today, Your Honor.

15 THE COURT: I'll overrule the objection.

16 BY MR. JOHNSON:

17 Q. You have no evidence yourself, have no evidence to
18 prove that when my client said he was innocent that he was
19 not telling the truth; do you?

20 A. Myself, no, because I did not investigate the case.
21 So --

22 MR. JOHNSON: That's all I want to know. Thank you.

23 MR. HARTE: No questions, Your Honor.

24 THE COURT: Any redirect?

25 MS. RINGLER: Nothing from the State, Your Honor.

JERMAINE JAQUA PRIESTER - DIRECT

1 THE COURT: Thank you. You may step down.

2 MS. RINGLER: Your Honor, the State calls Jermaine
3 Priester.

4 THE COURT: All right.

5 JERMAINE JAQUA PRIESTER, having been duly sworn, was
6 examined and testified as follows:

7 THE CLERK: I want you to be seated, please, and state
8 your name for the record. Okay?

9 THE WITNESS: Jermaine Jaqua Priester.

10 DIRECT EXAMINATION

11 BY MS. RINGLER:

12 Q. Jermaine, how old are you?

13 A. Eighteen.

14 Q. And where did you grow up?

15 A. In Barnwell.

16 Q. And where did you live in Barnwell or where did you
17 grow up?

18 A.

19 Q. And where does your grandma live?

20 A.

21 Q. Is an apartment complex or
22 buildings?

23 A. Yes, ma'am.

24 Q. And do you know Roosevelt Kadeem Workman?

25 A. Yes, I do.

JERMAINE JAQUA PRIESTER - DIRECT

1 Q. Do you see him here in the courtroom?

2 A. He's right there (pointing).

3 Q. And are you pointing to the man in --

4 A. The pink.

5 Q. -- the pink? How do you know Kadeem?

6 A. I ain't really know him until last year and he came
7 home off his Y.

8 Q. You said that you met him last year. And can you
9 describe how much time -- how did you -- how much time did
10 you spend with him? Or, describe your relationship.

11 A. It wasn't really much of a relationship. It was,
12 like, you know what I'm saying, you go to a party
13 together, you know what I'm saying, and from where my
14 grandma stayed at we hang around there, you know what I'm
15 saying, maybe smoke weed and that's it.

16 Q. So you spent some time with him and hung out with
17 him?

18 A. Yes, ma'am.

19 Q. And do you know Kevin Brown?

20 A. I didn't know him until last year.

21 Q. And does he have a nickname?

22 A. Juicy.

23 Q. Do you see Kevin Brown in the courtroom today?

24 A. Right there in the blue.

25 Q. In the blue with the glasses?

JERMAINE JAQUA PRIESTER - DIRECT

1 A. Yes, ma'am.

2 Q. And how do you know Kevin Brown? You said you met him
3 last year?

4 A. I didn't really meet him until the robbery, pretty
5 much.

6 Q. So around that time?

7 A. Yes, ma'am.

8 Q. And then, how do you -- do you know Jamaal Riley?

9 A. Yes, I do.

10 Q. How do you know Jamaal?

11 A. Grew up together ever since maybe second grade,
12 second, third grade.

13 Q. At the time of the robbery, would you describe him as
14 a friend?

15 A. Yeah, you could say that.

16 Q. And do you see him in the courtroom here today?

17 A. Yeah, with the white shirt on.

18 Q. Now you talked about your grandma's house there in
19 . Where were you on July 21 -- well,
20 that Wednesday, so July 20th, 2011?

21 A. I was at my grandmother's house. Maybe, I was
22 about -- I think I was about to take some medicine.

23 Q. So you were at her house. And did anybody come by
24 that day?

25 A. Yeah. My uncle. My uncle came in the room when I was

JERMAINE JAQUA PRIESTER - DIRECT

1 about to take my medicine and he was, like, there's two
2 guys --

3 Q. I'm sorry. That evening, did anybody come by that
4 night or that evening?

5 A. Yes; Kadeem Workman and Jamaal Riley.

6 Q. And what did they want?

7 A. I asked Kadeem, Kadeem wanted -- he said, he asked me
8 did I want to hit a lick, you know what I'm saying. I
9 told him, well, since -- due to the fact I had just got
10 shot, you know what I'm saying, I couldn't hit no lick or
11 whatever.

12 Q. And when said hit a lick, what did you take that to
13 mean?

14 A. As in, I took it as in maybe breaking in a house or
15 something, not intending as a robbery.

16 Q. But -- what's the purpose of hitting a lick?

17 A. Stealing something, basically.

18 Q. So when he said that, what was your response?

19 A. I told him, I told him yeah.

20 Q. Was there any talk about money?

21 A. Yeah, it was. It was talk about money about, you know
22 what I'm saying, if I had been the lookout, that he was
23 going to give me, you know what I'm saying, a portion of
24 the money.

25 Q. Did the topic of a gun ever come up?

JERMAINE JAQUA PRIESTER - DIRECT

1 A. Yes. He asked me did I have a gun and I told him I
2 had a BB gun.

3 Q. And when you said he, who do you mean?

4 A. Kadeem.

5 Q. At this point, who all is it; you, Kevin and Kadeem?

6 A. No. It's just me, Kadeem and Riley.

7 Q. And Riley. I'm sorry. And so who's doing most of the
8 talking at this point?

9 A. Kadeem is.

10 Q. But Jamaal is there also?

11 A. Yes.

12 Q. And did he say anything when y'all -- what did Jamaal
13 say when this was going on?

14 A. He was just sitting off to the side.

15 Q. And, sorry. So you're talking to Kadeem and the idea
16 of a gun comes up?

17 A. Uh-huh.

18 Q. Can you continue there?

19 A. Uh, after the gun situation came up he ran through the
20 rundown saying that we was supposed to -- well, it was
21 him, Riley and Juicy were going to go in the Texaco and I
22 was going to be the lookout.

23 Q. I think you're kind of jumping ahead a little bit.

24 When you're back at your grandma's house --

25 A. Right.

JERMAINE JAQUA PRIESTER - DIRECT

1 Q. -- When it's just you, Jamaal and Kadeem --

2 A. Uh-huh.

3 Q. -- did the idea of a gun come up at that time?

4 A. Yes, it did.

5 Q. Can you talk a little bit about that?

6 A. Pretty much he was just talking about a gun. And
7 Juicy, he said that Juicy had the gun, you know what I'm
8 saying. So later on, that's when we went to his house and
9 got a gun. And that's pretty much all that was said.

10 Q. Okay. So you went to Juicy's house?

11 A. Uh-huh.

12 Q. What if anything was said at Juicy's house?

13 A. Uh, once we, once we had a ride to Juicy house, Kadeem
14 knocked on the window and Juicy had came to the door all
15 ready for bed and he had came to the door with the .38
16 snub nose.

17 Q. Had you all called him beforehand or --

18 A. No, we didn't.

19 Q. Okay. When you show up the first time, you talked to
20 Juicy that day?

21 A. Yes, ma'am.

22 Q. Okay. Please continue.

23 A. Uh, we got to the house, knocked on the door and Juicy
24 came to the back door and he opened the door. And he had
25 showed us, you know what I'm saying, the .38 snub nose.

JERMAINE JAQUA PRIESTER - DIRECT

1 And that's when Kadeem ran through the rundown with him of
2 what was, what was going to go down.

3 Q. And a .38, is that a revolver?

4 A. Yes, it is.

5 Q. And when you say the rundown, what do you mean by
6 that?

7 A. The rundown as in Juicy was supposed to go in the
8 Texaco with the real gun. And then Riley was supposed to
9 go behind him and that Kadeem was supposed to be in the
10 very back grabbing the money.

11 Q. And how many guns do you all have at this point?

12 A. One, one -- one real gun and one BB gun.

13 Q. And who has the BB gun?

14 A. Kadeem has all, both the guns at this time.

15 Q. Did they have the BB gun when they showed up at your
16 house?

17 A. No, I gave them the BB gun.

18 Q. So it was your gun but Kadeem was holding it?

19 A. Yes.

20 Q. Did y'all have a car?

21 A. No, ma'am.

22 Q. So were y'all walking everywhere?

23 A. Yes, ma'am.

24 Q. I know you said, give a rundown. Does that mean fill
25 them in on what y'all had talked about or?

JERMAINE JAQUA PRIESTER - DIRECT

1 A. Yes.

2 Q. Okay. So you filled in Juicy what y'all had discussed
3 about, what y'all had discussed so far?

4 A. Yes, ma'am.

5 Q. And you mentioned Texaco. What was the original plan?

6 A. The original plan was that Juicy was supposed to go in
7 with the .38 snub nose. Riley was supposed to follow
8 behind him with the BB gun. And Kadeem was supposed to
9 come behind him. And I was supposed to be the lookout due
10 to the fact I had just got shot.

11 Q. And that was at --

12 A. At Texaco; yes, ma'am.

13 Q. -- at Texaco? So at some point, did you leave? Did
14 anything else happen at Juicy's house?

15 A. No, ma'am. We went straight through the rundown and
16 walked out to Texaco.

17 Q. And what if anything happened while you were at
18 Texaco?

19 A. Kadeem had said it was too active. So that's when me,
20 Juicy and Riley, you know what I'm saying, we suggested
21 that we all go home, you know what I'm saying. And then
22 Kadeem was like, no, you know, let's do Jim Bo's.

23 So that's when everybody kind of, you know what I'm
24 saying, contemplated about it and that's when it was
25 decided that Jim Bo's was the official spot.

JERMAINE JAQUA PRIESTER - DIRECT

1 Q. At that point did y'all walk towards Jim Bo's?

2 A. Yes, ma'am.

3 Q. And where did you go when you first kind of got to
4 that area?

5 A. When we got there we was right behind Jim Bo's, you
6 know what I'm saying. It was a white van that's always
7 parked right behind Jim Bo's. And we kind of pulsed it
8 right there for a little minute.

9 Q. So you all just sort of hung out by the van for a
10 little bit?

11 A. Maybe no more than, like, five minutes; yes, ma'am.

12 Q. And what did you do? At some point do you leave the
13 van?

14 A. Uh.

15 Q. Where do y'all go?

16 A. We walked right across the street. And we, we end up
17 spotting a figure but, you know what I'm saying, we
18 couldn't really tell -- I couldn't really tell who it
19 was. And they looked at us like they knew us.

20 Q. So where are you all standing right now?

21 A. We're standing right beside the van, right beside the
22 van.

23 Q. Is that near a road?

24 A. It is right beside the road. I don't know the road
25 name.

JERMAINE JAQUA PRIESTER - DIRECT

1 Q. But it is near a road?

2 A. Yes, ma'am.

3 Q. And at some point, do you see somebody walking by?

4 A. Yes, ma'am.

5 Q. And could you tell who that person was?

6 A. I couldn't tell who it was, but they was looking at us
7 like they knew us though.

8 Q. Did that person stop at some point?

9 A. No, ma'am.

10 Q. Did you see him talking to anybody?

11 A. I can't remember.

12 Q. Okay. So after your -- you said he just looked over
13 and acted like he might have known y'all?

14 A. Yes, ma'am.

15 Q. And where did you go after that, or what happened
16 after that?

17 A. We walked across the street. The Lakeside Grille, we
18 all three of -- all four of us, we walked on top the
19 balcony and when we got on top the balcony me and Riley,
20 we set off to the other side on top of the balcony.

21 Q. And on top of the balcony, were there any lights on
22 top of the balcony?

23 A. Yes, there was.

24 Q. And was anything done to those lights?

25 A. Yeah. Juicy and Kadeem, they were unscrewing them,

JERMAINE JAQUA PRIESTER - DIRECT

1 throwing them into the lake.

2 Q. Unscrewing the tops?

3 A. Yes, ma'am.

4 Q. And what happened after the tops were unscrewed?

5 A. The lights went out.

6 Q. So it was dark up there when you were --

7 A. Yes, ma'am.

8 Q. -- on top of the, kind of porch area of Lakeside?

9 A. Yes, ma'am.

10 Q. And what did y'all do with the tops?

11 A. They threw them in the lake.

12 Q. And so what did y'all do up there on the porch on
13 Lakeside?

14 A. Me and Riley, we sat off to the side talking about
15 school or whatever. And Juicy and Kadeem, they sat off to
16 the side talking about, I don't know, God knows what. And
17 so I couldn't tell you what, exactly what they was talking
18 about.

19 Q. And so, y'all stayed up there for some period of time?

20 A. We stayed up there for at least, about two, two, two,
21 three hours.

22 Q. Okay. And from that porch, what do see when you're up
23 on the porch?

24 A. You see Jim Bo's right across the street.

25 Q. And were y'all waiting for something or what were you

JERMAINE JAQUA PRIESTER - DIRECT

1 all doing up there on the porch?

2 A. Waiting for the coast to clear.

3 Q. At some point do y'all leave the porch?

4 A. Yes, we do. When we was on top of the balcony, it was
5 like 10 minutes before the store got robbed, I was like, I
6 suggested that, you know what I'm saying, that I leave
7 because I had some medicine to be taking.

8 And that's when Juicy got all -- he got rowdy and he
9 be like saying, now you ain't going nowhere, you know what
10 I'm saying. You ain't about to snitch on us, this and
11 that.

12 And that's when Kadeem, you know what I'm saying, he,
13 he agreed with them. So Kadeem handed me the BB gun and
14 that's when Juicy said, yeah, you're going to have your
15 part in this, too.

16 So from that point we walked off the balcony, all four
17 of us. Riley stayed across the street. He stayed at
18 Lakeside Grille while Juicy was in front of me. I was
19 second and Kadeem was behind me to make sure I didn't go
20 nowhere.

21 Q. And did -- what was Jamaal's role now?

22 A. To be the lookout.

23 Q. And what was he supposed to do if he saw anybody?

24 A. Inform us that somebody was coming.

25 Q. So he was supposed to signal y'all somehow?

JERMAINE JAQUA PRIESTER - DIRECT

1 A. Uh-huh.

2 Q. So originally you were the lookout and then that
3 changed and you were now going be one of the guys to go
4 in?

5 A. Yes, ma'am.

6 Q. So when y'all get to the, get to Jim Bo's what happens
7 then?

8 A. Juicy was first.

9 Q. I'm sorry. Who has -- where are the guns at this
10 point?

11 A. Juicy has the .38 snub nose while I have the BB gun
12 and Kadeem has nothing.

13 Q. Okay. And so when y'all get to the store, if you can
14 continue there.

15 A. Juicy walks in the store first. Then I walk in, and
16 as soon as I walk in Kadeem walks in behind me. And
17 Juicy, he's doing all the talking, you know what I'm
18 saying, telling the clerk to get on the floor, where is
19 the money; anything a robber would say, basically.

20 So I walk in and I'm kind of set off to the side, you
21 know what I'm saying. I'm not saying anything, showing no
22 sign I have a gun. And then Kadeem walks in and as soon
23 as Kadeem walks in he hops across the counter.

24 So be like five seconds later Kadeem yells, "cash
25 register." So that's when Juicy tells the clerk to go

JERMAINE JAQUA PRIESTER - DIRECT

1 behind the counter and open the cash register.

2 Q. So Juicy has one of the guns right now?

3 A. Yes, ma'am.

4 Q. And what's he doing with the gun?

5 A. He's pointing it at the clerk.

6 Q. And where are you standing when this happens?

7 A. I'm standing by the sodas, like, the time you walk in
8 to the left.

9 Q. Do you take anything while you're in the store?

10 A. Yes, ma'am. I reach across the counter and take three
11 cigars.

12 Q. And then Roosevelt is behind the counter?

13 A. He's behind the counter.

14 Q. Juicy's got a gun on the clerk and then Jamaal is
15 looking out, being the lookout on the outside?

16 A. Yes, ma'am.

17 Q. After Kadeem says, "register," what happens then?

18 A. Juicy, he tells the clerk to go behind the cash
19 register and open the drawer. So that's when she gets up
20 and she goes open the cash register. And Kadeem, he
21 starts grabbing all the money, throwing the money in the
22 bag.

23 And that's when I go up to the cash register, and I
24 grab, like, I grab, like, three, maybe four cigars.

25 Q. And then after Kadeem grabs the money out of the

JERMAINE JAQUA PRIESTER - DIRECT

1 register, did --

2 MR. JOHNSON: Your Honor, objection. She keeps
3 testifying. He's already said that. She keeps repeating
4 it.

5 THE COURT: Objection's overruled.

6 BY MS. RINGLER:

7 Q. After Kadeem grabs the money from the register, what
8 do you see him do at that point?

9 A. I see him constantly going in the cash register and
10 taking all the money, lifting the cash register up, taking
11 everything that's under it, going under, like, like, it's
12 like right under the cash register, it's like an open area
13 where, I guess the money bags were and --

14 Q. Well, could you see where he was or you saw him
15 fiddling with something under the register?

16 A. I saw him filling it up.

17 Q. Did see him fill it up?

18 A. Yes, ma'am.

19 Q. Please continue.

20 A. And from that point Kadeem hops across the counter,
21 and he runs out the door. Juicy runs out the door second,
22 and I run out the door third. And Juicy, he pulls in
23 behind me, he makes sure I doesn't go nowhere. And Kadeem
24 and Riley, they done took off, so.

25 Q. So they were up ahead of you all?

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1 A. Yeah, they were way up ahead of us.

2 Q. And are y'all running at this point?

3 A. They, they were running. I couldn't run. Yes,
4 ma'am.

5 And as I seen them up ahead they, I seen them, I saw
6 Riley and Kadeem exchange the money, you know what I'm
7 saying. Dollar bills dropping on the ground. Juicy
8 picking them up, you know what I'm saying.

9 And we were running. It was the same route that we
10 came which is the, the Texaco way to get back to

11 . And we ran all the way, all the way back to

12 .

13 And Kadeem and Riley, they had already made it there
14 before us. Me and Juicy, we was pulsed way in the back,
15 you know what I'm saying, due to the fact that I couldn't
16 run.

17 So, they had already reached Cleo's house.

18 Q. Now, who's Cleo? Or do you just know her as Cleo?

19 A. I know her as Cleo.

20 Q. But she lives there in ?

21 A. Yes, ma'am.

22 Q. And what happens when y'all get to her house?

23 A. Me and Juicy we went to the house and once we get
24 there we walk in. I sit on the couch. And Juicy sits on
25 the opposite couch from me. And that's when Cleo comes

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1 from around the corner and she asks me, what's going on,
2 this and that.

3 So I tell her, you know what I'm saying, I don't know,
4 just throw her off.

5 Q. Let's talk a little bit about the money. You said
6 that you saw them exchanging the money as you ran?

7 A. Yes, ma'am.

8 Q. What happens with regard to the money when you get to
9 the house?

10 A. Repeat that question.

11 Q. I'm sorry. Did you -- what -- did you ever get any
12 money?

13 A. Yes, I did.

14 Q. Okay. Can you talk about that a little bit?

15 A. Kadeem, he hands Riley three- \$400, hands Juicy three-
16 to \$400 and hands me \$90.

17 Q. And so you're sitting on the couch. What do the other
18 guys do when you get to Cleo's house?

19 A. Riley and Kadeem, they like come minutes after we had
20 arrived to the house. I heard the shower running so
21 that's when Juicy got up.

22 And he wanted to see what was going on in the bathroom
23 so he gets up and he goes in the bathroom.

24 So I want to see what was going on, too. So I kind of
25 peeped down the hallway a little bit and once I recognize

JERMAINE JAQUA PRIESTER - DIRECT

1 Juicy was in the bathroom, you know what I'm saying, I'm
2 saying, well, hey, you know what I'm saying, make this my
3 time to go.

4 So as soon as I turned around, that's when Juicy came
5 out the bathroom. So I just went ahead and I just took a
6 seat. That's when Juicy came back around there and sat on
7 the couch.

8 And then a couple minutes later Riley and Kadeem they
9 come out the bathroom and that's when the money was
10 exchanged.

11 Q. And at some point did you leave Cleo's house?

12 A. Yes, ma'am; I did. After, after they had called
13 somebody for some weed, he, he was asking me why I was
14 there, you know what I'm saying. And, you know what I'm
15 saying, I had no business being there or whatever. So, he
16 told me, you know what I'm saying, you need to go home.

17 So that's when I got up and I went home.

18 Q. Now when you first spoke with law enforcement, were
19 you completely honest?

20 A. No, I wasn't.

21 Q. At some point did you tell the truth about what
22 happened?

23 A. Yes, I did.

24 Q. And do you have a shoplifting conviction?

25 A. Yes, ma'am.

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1 Q. And why didn't you tell the truth initially?

2 A. Because, me just getting to know Kadeem, you know what
3 I'm saying, which was last year, I knew that he had --

4 Q. If you can -- were you afraid or scared?

5 A. Yeah, pretty much.

6 Q. And are you telling the truth today?

7 A. Yes, ma'am.

8 MS. RINGLER: Your Honor, at this time the State would
9 publish State's Exhibit 32.

10 Your Honor, at this time we would ask for the witness
11 to be able to come down and point out a few things in the
12 video.

13 THE COURT: You may step down, sir.

14 THE WITNESS: (Complies.)

15 BY MS. RINGLER:

16 Q. If you can just stand to the side there facing the
17 jury.

18 A. (Complies.)

19 (Video played for the jury simultaneous to questions
20 being asked.)

21 Q. If you can kind of point out and identify who's in the
22 video at this time.

23 A. That's Juicy right there. And that's me.

24 Q. And Juicy being Kevin Brown?

25 A. Yes, ma'am.

JERMAINE JAQUA PRIESTER - DIRECT

- 1 Q. And that's you with the white --
- 2 A. Yes, ma'am.
- 3 Q. -- over your face?
- 4 A. Yes, ma'am.
- 5 Q. And who's that there?
- 6 A. That's Kadeem.
- 7 Q. And where's Jamaal when this is going on?
- 8 A. He's posted on the outside of Jim Bo's.
- 9 Q. What's going on there?
- 10 A. That's when I grabbed the cigars.
- 11 Q. And where's Kadeem at this point?
- 12 A. He's just getting around to the cash register.
- 13 Q. And Juicy's standing over -- where's Juicy?
- 14 A. Right there. Right to the right.
- 15 Q. And where's the clerk?
- 16 A. She's on the ground right now, still kind of shocked
- 17 about the situation.
- 18 Q. Okay. And so at this point do you have the BB gun?
- 19 A. Yes, ma'am.
- 20 Q. And where are you holding it?
- 21 A. Right hand.
- 22 Q. Do you hold it there at your side?
- 23 A. Yes, ma'am.
- 24 Q. If you can back that up?
- 25 MR. BAMBERG: (Complies.)

JERMAINE JAQUA PRIESTER - DIRECT

1 BY MS. RINGLER:

2 Q. Now the guy there with the red bandana, who is that
3 again?

4 A. Kevin Brown.

5 Q. And that's him lifting up his -- is that Kevin who
6 lifts up his hood?

7 A. Yes, ma'am.

8 Q. And what's going on there?

9 A. He's about to yell to Kevin Brown and tell him the
10 cash register.

11 Q. And what's happening there?

12 A. The clerk is about to open the cash register.

13 Q. And what's going on there?

14 A. He's going under the cash register to look for the
15 money bag.

16 MS. RINGLER: If you can please have a seat.

17 THE WITNESS: (Complies.)

18 BY MS. RINGLER:

19 Q. Now, did you ever go back behind the register?

20 A. No, I didn't.

21 Q. So when you're walking off camera, you're just
22 standing to the side of the store. Where are you when you
23 walk off camera?

24 A. I stand right beside the potato chips, like standing
25 right there.

JERMAINE JAQUA PRIESTER - CROSS

1 Q. And now are the three men that helped you commit this
2 armed robbery in this courtroom?

3 A. Yes, ma'am.

4 Q. Can you point them to me?

5 A. Kadeem in the pink, Kevin in the blue and Riley in the
6 white.

7 MS. RINGLER: Please answer any questions defense
8 counsel might have.

9 CROSS-EXAMINATION

10 BY MS. RIVERS:

11 Q. Mr. Priester.

12 A. Yes, ma'am.

13 Q. Did you get offered these pleas before or after you
14 were offered a good deal?

15 A. I didn't get offered anything.

16 Q. You haven't been getting any plea offers?

17 A. No, ma'am.

18 Q. Whatsoever?

19 A. No, ma'am.

20 Q. Well, what were you charged with?

21 A. I was charged with armed robbery, kidnapping,
22 possession of a weapon during a violent crime, and
23 criminal conspiracy.

24 Q. And nobody told you if you came up here you'd be okay?

25 A. No, ma'am.

JERMAINE JAQUA PRIESTER - CROSS

1 Q. Nobody told you, I want other people, I want -- you're
2 100 percent golden with me?

3 A. No, ma'am.

4 Q. You don't remember that on the video?

5 A. (Shakes head.)

6 Q. Think about it.

7 A. Yeah.

8 Q. Yeah. You remember that?

9 A. You mean committing a robbery?

10 Q. No. When you talked to the police the first time.

11 A. No, I wasn't completely honest.

12 MS. RINGLER: Your Honor, may we approach?

13 THE COURT: Yes. Stand for a moment, everyone.

14 (Off-the-record discussion.)

15 THE COURT: We'll proceed.

16 BY MS. RIVERS:

17 Q. Mr. Priester, you were represented by Mr. Koger?

18 A. Yes, ma'am.

19 Q. Mr. Koger talked to you a good bit?

20 A. Yes, ma'am.

21 Q. Went with you to the police station to give a
22 statement?

23 A. Yes, ma'am.

24 Q. Told you you'd be all right if you talked to the
25 police?

JERMAINE JAQUA PRIESTER - CROSS

- 1 A. No, ma'am.
- 2 Q. He never told you about your plea offer?
- 3 A. No, ma'am.
- 4 Q. Never told you that as long as you cooperated with
- 5 them everything's going to be okay?
- 6 A. No, ma'am.
- 7 Q. Do you remember the policeman telling you if you
- 8 cooperated everything's going to be okay with you?
- 9 A. No. I just, I just told because I knew it was the
- 10 right thing to do.
- 11 Q. Okay. Which time was it the right thing to do?
- 12 A. The second time.
- 13 Q. Well, how many times did you talk to the police?
- 14 A. I talked to them two times.
- 15 Q. All right. Do you remember going the first time with
- 16 your mama?
- 17 A. Yes, I do.
- 18 Q. Okay. And what did you talk about that time?
- 19 A. I talked about the robberies basically, the Jim Bo's
- 20 robbery, Bi-Rite.
- 21 Q. And at that time you didn't have anything to do with
- 22 it; right?
- 23 A. No, ma'am.
- 24 Q. In fact you said, "I'm being set up?"
- 25 A. Yes, I did.

JERMAINE JAQUA PRIESTER - CROSS

1 Q. So you thought they had some bloodhounds on you; is
2 that right?

3 A. No. Kadeem thought that we had, they had the
4 bloodhounds on us.

5 Q. All right. Now the first day you talked to them you
6 came in your street clothes?

7 A. Yes, I did.

8 Q. Blue jeans, T-shirt, ball cap?

9 A. Yes, ma'am.

10 Q. And you walked out in your street clothes; right?

11 A. Yes, ma'am.

12 Q. And you thought everything was straight?

13 A. No, I didn't.

14 Q. You didn't think everything was straight?

15 A. No, I didn't.

16 Q. Why?

17 A. Because I knew I did wrong. And I knew sometime it
18 would come to an end.

19 Q. Yeah, it's funny how that happens.

20 THE COURT: Is that a question --

21 MS. RIVERS: Yes, sir.

22 THE COURT: -- or a comment?

23 MS. RIVERS: The second time you talked with --

24 THE COURT: Just a moment, ma'am.

25 MS. RIVERS: Yes, sir.

JERMAINE JAQUA PRIESTER - CROSS

1 THE COURT: The jury is to disregard the comment of
2 counsel. Just ask questions. Don't make your comments.

3 MS. RIVERS: Yes, sir. I apologize.

4 BY MS. RIVERS:

5 Q. The second time you talked to them, what did you tell
6 them then?

7 A. I told them about Jim Bo's robbery and some other
8 robberies that I didn't commit.

9 Q. And the second time you didn't get to leave; did you?

10 A. No, ma'am; because I was already locked up.

11 Q. If I recall, you didn't go completely into the Jim
12 Bo's robbery the second time; right?

13 A. No, I went directly in. I told them that. The Jim
14 Bo's robbery.

15 Q. Well, what about the third time you talked to them?

16 A. I didn't talk to them a third time.

17 Q. Okay. Mr. Priester, you're saying you only spoke to
18 the police twice?

19 A. Yes, I did.

20 Q. Do you recall telling them that you had a thing with
21 Kadeem because he was messing with your lady?

22 A. No, actually I didn't. I mean, yeah.

23 Q. You didn't say it?

24 A. Yeah, yeah. He did. And I also told him that I
25 had -- me and his lady supposedly had a thing. That's

JERMAINE JAQUA PRIESTER - CROSS

1 mentioned in there, too.

2 Q. That's mentioned in the interview or you told that to
3 Kadeem at some time?

4 A. I told that to Kadeem.

5 Q. Okay. You do recall in the police interview telling
6 them that he was messing with your lady?

7 A. Yes, ma'am.

8 Q. Old lady, I think maybe is how you put it; is that
9 right?

10 A. Yes, ma'am.

11 Q. All right. Just a second, Your Honor.

12 Mr. Priester, do you remember talking to the police on
13 7-28-2011?

14 A. No, I don't.

15 Q. You don't recall that one?

16 A. No, ma'am.

17 Q. Do you remember talking to them on September 1st,
18 2011?

19 A. Yes, I do.

20 Q. Okay. You do recall that one.

21 Court's indulgence please, Your Honor.

22 But you don't recall talking to them a third time?

23 A. No, I can't remember.

24 Q. All right. But you do remember this robbery real
25 clear?

JERMAINE JAQUA PRIESTER - CROSS

1 A. Yes, I do.

2 Q. Real specific. But not the first time you talked
3 about it, you weren't so clear on the first time?

4 A. Well, yeah, I was clear on it.

5 Q. How many times have you watched the video?

6 A. Maybe four times.

7 Q. Does it help your memory?

8 A. No, because I remember it all in here (pointing).

9 MS. RIVERS: Thank you, Mr. Priester.

10 THE WITNESS: You're welcome.

11 MS. RIVERS: That's all I have.

12 THE COURT: Mr. Johnson?

13 MR. JOHNSON: Thank you, Your Honor. If it please the
14 Court.

15 CROSS-EXAMINATION

16 BY MR. JOHNSON:

17 Q. Mr. Priester, let me ask you some questions.

18 A. Yes, sir.

19 Q. Do you understand the importance of telling the truth?

20 A. Yes, sir.

21 Q. All right. You do not -- are you telling the jury
22 today you do not remember giving three different
23 statements at three different times?

24 A. I can't remember.

25 Q. You can't remember?

JERMAINE JAQUA PRIESTER - CROSS

1 A. No, I'm sorry.

2 Q. Let me see if I can help you. Do you remember the
3 first time that you had contact with the police where they
4 brought you down by yourself to talk to you? Where they
5 took you in a room --

6 A. Uh-huh.

7 Q. -- and they were talking to you; do remember that
8 time?

9 A. Yes, I do.

10 Q. And, now remember, they told you it was being
11 recorded?

12 A. Uh-huh.

13 Q. And you're aware that we have a copy of that video?

14 A. And that's when I was in the blue.

15 Q. Right. And you told them that you did not have
16 anything to do with the crime?

17 A. Yes, I did.

18 Q. And you told them you didn't know who did it?

19 A. Yes, I did.

20 Q. All right. You remember that time?

21 A. Yes, sir.

22 Q. And you told them you didn't know anything about it;
23 correct?

24 A. Yes, sir.

25 Q. And you left?

JERMAINE JAQUA PRIESTER - CROSS

- 1 A. Yes, sir.
- 2 Q. All right. Then you came back a second time with your
3 mother?
- 4 A. No, the first time was with my mother.
- 5 Q. Okay. So the second time you came by yourself, was
6 after you and your mother came?
- 7 A. No. The second time was when I was in Barnwell
8 County, and I told them that I wanted to tell the truth.
- 9 Q. All right. But you came one time by yourself?
- 10 A. Uh-huh.
- 11 Q. You came another time with your mother?
- 12 A. No. I came one time with my mother and I came one
13 time with myself when I was in Barnwell County.
- 14 Q. Okay. And then you came back another time with your
15 attorney, Josh Koger?
- 16 A. Yeah, yeah, Joshua Koger, he was there with me, too.
- 17 Q. So, that's three times?
- 18 A. No, that's two times.
- 19 Q. All right. Let's try this one more time. You talked
20 to the police by yourself?
- 21 A. Uh-huh.
- 22 Q. One. We're in agreement with that, regardless of what
23 time. That's one time?
- 24 A. Uh-huh.
- 25 Q. Am I wrong so far?

JERMAINE JAQUA PRIESTER - CROSS

1 A. Unless you're speaking of Joshua Koger with me.

2 Q. No, I'll get to that.

3 A. Uh-huh.

4 Q. You came the next time, you talked again to the
5 police, with your mother?

6 A. Yes, I did.

7 Q. Two. One and one is two; right?

8 A. Uh-huh.

9 Q. Then you talked to the police again with Joshua Koger.

10 A. Uh-huh.

11 Q. Three times.

12 A. I only talked to them two times from what I remember.

13 I'm sorry if I don't remember the third time.

14 Q. Okay. Which time -- you don't remember talking with
15 Joshua Koger?

16 A. That's when I was in Barnwell County.

17 Q. You remember that?

18 A. That was in February -- that was in January, as a
19 matter of fact.

20 Q. And you remember that?

21 A. Yes, I do.

22 Q. You remember talking with -- your mother was there?

23 A. Yes, I do. And those are the only two times I do.

24 Q. You don't remember talking by yourself when you say
25 you came there by yourself?

JERMAINE JAQUA PRIESTER - CROSS

1 A. No, I don't.

2 Q. You just said a minute ago you did?

3 A. No, I did not. It was Joshua Koger with me. If you
4 consider that by myself, then it is.

5 Q. Didn't the police bring you in one time by yourself to
6 question you about the robbery?

7 A. Yeah. That's when I was in the county.

8 Q. And you told them you didn't know anything about it?

9 A. No. That's when I came forth and I told them.

10 Q. A minute ago you said that you told the police you
11 didn't know anything about it.

12 A. That was the first time when I came with my mother.

13 Q. Okay. So --

14 MS. RINGLER: Your Honor, I would just -- I feel like
15 we've covered this, Your Honor.

16 THE COURT: What's the objection?

17 MS. RINGLER: Asked and answered.

18 THE COURT: The objection is overruled.

19 BY MR. JOHNSON:

20 Q. You told the police at least one time that you didn't
21 know what was going on, and -- you didn't know what was
22 going on?

23 A. Yes, I did.

24 Q. Do you remember sitting in that room talking to your
25 mother about the case, too? It's on the video, and we'll

JERMAINE JAQUA PRIESTER - CROSS

1 be happy to show it to you if you can't remember.

2 THE COURT: How many questions are you asking?

3 MR. JOHNSON: I'm sorry, Your Honor. I'll slow down.

4 BY MR. JOHNSON:

5 Q. Do you remember talking to your mother in the room
6 prior to the police coming in there? That's on the
7 video.

8 A. No, I don't.

9 Q. But you wouldn't say that that didn't happen; would
10 you?

11 A. No, I won't.

12 Q. Do you remember telling your mother that you didn't do
13 it?

14 A. Yes, I do.

15 Q. Okay. And that you didn't know anything about the
16 robbery?

17 A. Yes, I did.

18 Q. Okay. And you told that to your mother?

19 A. Yes, I did.

20 Q. Now, did you remember the police telling you that they
21 thought that you might've been involved in some other
22 things during that interview?

23 MS. RINGLER: Objection, Your Honor. Relevancy.

24 THE COURT: Objection's overruled.

25 THE WITNESS: All of them except for the Elmer case

JERMAINE JAQUA PRIESTER - CROSS

1 and that's it.

2 BY MR. JOHNSON:

3 Q. The Elmer case?

4 A. Yes.

5 Q. That's the case I'm talking about. You remember that;
6 right?

7 A. I remember that, yeah.

8 MS. RINGLER: Objection, Your Honor. He's asking
9 about a case that we're not here for.

10 MR. JOHNSON: It goes to bias of the --

11 THE COURT: Pardon me?

12 MR. JOHNSON: I was saying --

13 THE COURT: Do you want me to listen to you or rule on
14 the motion or --

15 MR. JOHNSON: No, Your Honor.

16 THE COURT: Objection's overruled.

17 MR. JOHNSON: Thank you, Your Honor.

18 BY MR. JOHNSON:

19 Q. The police during that interview told you that they
20 had some evidence against you against another case;
21 correct?

22 A. Yes, they did.

23 Q. And they told you that if you cooperate that it would
24 go better for you?

25 A. No, they didn't.

JERMAINE JAQUA PRIESTER - CROSS

1 Q. They didn't tell you that?

2 A. No, they didn't.

3 Q. Why did they tell you about the other case?

4 A. Because they supposedly thought that I had my dealing
5 in it.

6 Q. Didn't the police at that time tell you they had DNA
7 on you?

8 A. No, they didn't.

9 Q. Think real hard about it.

10 A. Yeah.

11 Q. Because, remember, there's a video.

12 A. No, they didn't.

13 Q. What did they tell about it?

14 A. They just told me that it was, uh, they had heard, you
15 know what I'm saying, that I committed the robbery and
16 that was it.

17 Q. And they also said that they thought you was involved
18 in some other robberies; correct?

19 A. No.

20 Q. You just mentioned that you remember that one but not
21 the other one?

22 A. No, it was only -- it was only Jim Bo's and that.
23 Nothing else.

24 Q. Do you remember the police telling you that everybody
25 else was telling on you already when they interviewed you?

JERMAINE JAQUA PRIESTER - CROSS

1 A. No, they didn't tell me that.

2 Q. They didn't?

3 A. No, they didn't.

4 Q. So what did the police tell you to get you to
5 cooperate?

6 A. I told myself to cooperate, in the county. That's why
7 I did it.

8 Q. You told yourself --

9 A. Uh-huh.

10 Q. -- to cooperate?

11 A. Uh-huh.

12 Q. So you lied to your mother?

13 A. Uh-huh. Yes, I did.

14 Q. You lied to the police?

15 A. Yes, I did.

16 Q. And now you want the jury to believe you're telling
17 the truth?

18 A. I mean, there's no reason to lie about it.

19 Q. What was the reason to lie the first time?

20 A. Because I was trying to save them because I knew they
21 had already been in trouble.

22 Q. And now you're saving yourself?

23 A. No, I'm telling the truth.

24 MR. JOHNSON: I got no other questions for you.

25 CROSS-EXAMINATION

JERMAINE JAQUA PRIESTER - CROSS

1 BY MR. HARTE:

2 Q. Mr. Priester, let me see if I can help refresh your
3 memory a little bit.

4 A. Yes, sir.

5 Q. The first time you were interviewed was a 45-minute
6 interview in which you, your mother and another man who
7 was outside the picture started in the interview. Do you
8 remember that?

9 A. I remember, I remember the interview.

10 Q. And you remember your mother being there?

11 A. I can't -- I can't remember.

12 Q. Detective Glenn Rice was the one questioning you; do
13 you remember that?

14 A. Yes, I do.

15 Q. And you were not under arrest at that time; were you?

16 A. No, I wasn't, sir.

17 Q. And he started talking about what people were saying
18 to you, and he asked you how old you were; didn't he?

19 A. Yes, he did.

20 Q. And you said you were 17 and he said because you're
21 17, you can ask your mother to leave; didn't he?

22 A. Yes, he did.

23 Q. And you asked your mother and the other man, I don't
24 know who that was, to leave; isn't that correct?

25 A. I can't remember.

JERMAINE JAQUA PRIESTER - CROSS

1 Q. And at that point Lieutenant Rice said, "Juicy says he
2 didn't do it. He's putting it on you." And you said, "I
3 didn't do it;" didn't you?

4 A. Yes, I did.

5 Q. You told him after your mother left the room that you
6 saw three boys come to Cleo's house and you watched them
7 from the fence?

8 A. Yes, I did.

9 Q. That was a lie; wasn't it?

10 A. Yes, it was.

11 Q. Or was that the truth and today's a lie?

12 A. No.

13 Q. How are we supposed to tell the difference?

14 A. Because, because it's simple.

15 Q. How many times -- how many stories have you told?

16 A. I've only told two.

17 Q. How many times have you said you didn't do it?

18 A. Once.

19 Q. Well, that same interview that I've just told you
20 about, you changed your story and said you went by Jim
21 Bo's and saw Kadeem at Jim Bo's; didn't you?

22 A. That's because I was lying. I lied the first time.

23 Q. So you told them you didn't do it again. That's twice
24 you told them you didn't do it.

25 A. I told them -- that's just -- that's just one day,

JERMAINE JAQUA PRIESTER - CROSS

1 period. I told them simply that I didn't have nothing to
2 do with it.

3 Q. Now let me ask you this. You remember the day you
4 were arrested?

5 A. Yes, sir.

6 Q. And that was in September of 2011, September 1st.
7 Shortly after school had started?

8 A. Yes, sir.

9 Q. And they came and got you at school; didn't they?

10 A. Yes, sir.

11 Q. And they brought you down to the jailhouse?

12 A. Yes, sir.

13 Q. And you were upset?

14 A. Yes, I was.

15 Q. You were angry?

16 A. Yes, I was.

17 Q. You were cussing like crazy. How do you suppose I
18 know that?

19 THE COURT: Which question do you want him to answer?

20 BY MR. HARTE:

21 Q. Were you cussing like crazy?

22 A. Yes, I was.

23 Q. Were you hollering?

24 A. Yes, I was.

25 Q. How do you suppose I know that?

JERMAINE JAQUA PRIESTER - CROSS

1 A. I guess you got a video.

2 Q. Because I watched a video on September 1st; isn't that
3 right?

4 A. Yes, you did.

5 Q. And that would be a second time that they interviewed
6 you; isn't that right?

7 A. Yes.

8 Q. And didn't Lieutenant Glenn Rice at that point say,
9 "We got DNA on your stuff on Elmer's robbery?"

10 A. Yes, they did.

11 Q. So that's two interviews. And during that entire
12 interview you never said what you told this jury today;
13 did you?

14 A. No, I didn't.

15 Q. So then there was a third interview?

16 A. Uh-huh.

17 Q. In January of 2012?

18 A. (Nods head.)

19 Q. Correct?

20 A. Yes.

21 Q. Does that help refresh your memory a little bit?

22 A. Thank you.

23 Q. In the second -- first interview, you said you went to
24 Jim Bo's and saw Kadeem but you didn't have anything to do
25 with that?

JERMAINE JAQUA PRIESTER - CROSS

1 A. Yes, I did.

2 Q. In the third interview, you said you don't know
3 anything about -- the second interview, second interview;
4 right? The day you got arrested?

5 A. Uh-huh.

6 Q. Said, "I don't know anything about Jim Bo's." Isn't
7 that what you said?

8 A. Yes, I did.

9 Q. That's a direct quote.

10 A. Uh-huh.

11 Q. In that same interview you said, "put the Bible down
12 here, put the Bible down here. I'll put my right hand on
13 it and say I didn't do it and don't know anything about
14 it?"

15 A. I don't remember me saying that.

16 Q. You don't remember you saying that?

17 A. Maybe I did, but I don't remember it.

18 Q. You took the Bible today; didn't you?

19 A. Yes, I did.

20 Q. And you lied; didn't you?

21 A. Not today, I didn't.

22 Q. The fifth time during that 43-minute interview you
23 said you had nothing to do with it?

24 A. Uh-huh.

25 Q. Correct?

JERMAINE JAQUA PRIESTER - CROSS

1 A. Yes, I did.

2 Q. Now during that same interview Lieutenant Rice told
3 you -- didn't he tell you, "If you're a hundred percent
4 with me you're going to be okay." Didn't he say that?

5 A. I don't remember.

6 Q. Didn't he say, you're the least one I'm trying to get?

7 A. I don't remember.

8 Q. Didn't he say, "They're trying to put you as the main
9 one?"

10 A. I don't remember.

11 Q. Didn't he say he had already talked to the solicitor
12 about you?

13 A. I don't remember that.

14 Q. Don't remember that. The second time he told you, the
15 second interview when you were by yourself, he said,
16 "People are lying on you." Didn't he say that?

17 A. I don't remember.

18 Q. He brought up DNA about every five minutes or every 30
19 seconds during that interview; didn't he?

20 A. Yes, he did.

21 Q. Said he had DNA on you?

22 A. Yes, he did.

23 Q. Did you ever find out about whether he had it or not?

24 A. Yes, I did.

25 Q. Found out he didn't have it; didn't you?

JERMAINE JAQUA PRIESTER - CROSS

1 A. Found out that he did have it.

2 Q. On Jim Bo's? I mean, I'm sorry. On Elmer's. He also
3 said, "Everybody's getting deals, everybody's talking."

4 A. I don't remember that.

5 Q. He said, "They're trying to make you out the
6 mastermind." Didn't he say that?

7 A. I don't remember that.

8 Q. Didn't he say, "It's a golden opportunity for you to
9 come out okay and help yourself right now?" Didn't he say
10 that?

11 A. Don't remember that.

12 Q. Don't remember that. And didn't you say, towards the
13 end of that interview, "I know the game and how it's
14 played"?

15 A. Don't remember that.

16 Q. You don't remember any of those things?

17 A. No, I don't. I remember -- I remember the interviews
18 now.

19 Q. You remember the interviews?

20 A. Yes, I do.

21 Q. You don't remember, "I know the game and how it's
22 played"? And then right after that you said, "I ain't
23 robbed nobody"?

24 A. Yes, I did.

25 Q. So how is this jury to determine which time you're

1 telling the truth after you reported on a video that
2 you've seen four times?

3 A. Uh-huh. Just like I told her, you know what I'm
4 saying, there's no reason to lie this time. I came forth
5 and I told the truth.

6 Q. And you've been offered a deal?

7 A. No, I was not.

8 Q. Lieutenant Rice made it clear to you over and over and
9 over again --

10 A. Uh-huh.

11 Q. -- that if you told him not the truth but told him
12 what he wanted to hear, that you'd get off light?

13 MS. RINGLER: Objection, Your Honor.

14 THE WITNESS: No, I didn't.

15 THE COURT: Your objection is sustained.

16 MR. HARTE: No further questions.

17 THE COURT: Redirect? Ladies and gentlemen, we're
18 going to have you go to the jury room for a break. Please
19 do not discuss the case.

20 (Jury exits courtroom at 4:00 p.m.)

21 THE COURT: We'll take a few minutes.

22 (Thereafter, a break was taken until 4:12 p.m. after
23 break.

24 THE COURT: Do you have some additional questions?

25 MS. RINGLER: Yes, Your Honor, just a brief redirect.

JERMAINE JAQUA PRIESTER - REDIRECT

1 THE COURT: All right. Bring the jury.

2 (Jury enters courtroom at 4:13 p.m.)

3 THE COURT: Yes, ma'am. Redirect?

4 MS. RINGLER: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. RINGLER:

7 Q. Now, Jermaine, the last time that you talked to law
8 enforcement; do you remember that?

9 A. Yes, ma'am.

10 Q. And was your lawyer present then?

11 A. Yes, ma'am.

12 Q. Was that a long statement and were you there for a
13 while?

14 A. Yes, ma'am.

15 Q. And was your lawyer there? Could you have asked your
16 lawyer any questions if you had any?

17 A. Yes, I could have.

18 Q. Did you tell the truth that time?

19 A. Yes, I did.

20 MR. HARTE: Objection, Your Honor. That's not a
21 proper redirect.

22 THE COURT: I didn't hear the question. Say it
23 again. What's the question?

24 MS. RINGLER: I was just asking about the last
25 statement that he gave and asked: When you gave that

JERMAINE JAQUA PRIESTER - REDIRECT

1 statement, were you telling the truth?

2 THE WITNESS: Yes, I was.

3 MR. HARTE: And my objection was that's not a proper
4 redirect.

5 THE COURT: All right. I sustain the objection.

6 BY MS. RINGLER:

7 Q. Now including today you've watched the video four
8 times, you said?

9 A. Yes, ma'am.

10 Q. Has the video changed any of the times you watched it?

11 A. No, it hasn't.

12 Q. Is that still you in the video there?

13 A. Yes, it is.

14 Q. Is that still Kadeem Workman in that video?

15 A. Yes, it is.

16 Q. Is that still Jamaal Riley in the video?

17 MR. HARTE: I object to that question. This is also
18 not proper redirect.

19 THE COURT: Objection's overruled.

20 BY MS. RINGLER:

21 Q. Is that still Kevin Brown in the video there?

22 A. Yes, it is.

23 Q. And is that still -- is that still Juicy in the video
24 there?

25 A. Yes, it is.

1 MS. RINGLER: Thank you.

2 THE COURT: Anything further?

3 MS. RIVERS: Nothing.

4 MR. JOHNSON: I have nothing, Your Honor.

5 MR. HARTE: No, sir.

6 THE COURT: All right. You may step down. Your next
7 witness.

8 MS. RINGLER: Nothing further from the State, Your
9 Honor.

10 THE COURT: All right. Ladies and gentlemen, the
11 State has rested. This means the State has presented its
12 case. We'll need to take another break before
13 proceeding. Please go to the jury room.

14 When you come back -- Mr. Jeffrey Sanders, I'm going
15 to appoint you to serve as the the Foreperson of the
16 jury. You'll take the first seat which will be the
17 Foreperson's seat.

18 The responsibility of the Foreperson is to preside
19 over the jury deliberations and to sign the verdict form
20 representing the unanimous verdict of the jury.

21 Do you understand?

22 THE FOREPERSON OF THE JURY: Yes, sir.

23 THE COURT: All right. I'll have you go to the jury
24 room for a few minutes.

25 (Jury exits courtroom at 4:17 p.m.)

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1 THE COURT: Any matter of law at this time?

2 MS. RINGLER: Nothing from the State, Your Honor.

3 MS. RIVERS: Yes, Your Honor. On behalf of Kadeem
4 Workman -- Roosevelt Kadeem Workman, I move for a directed
5 verdict as to all charges against him.

6 And the reason being is that the only testimony
7 solicited here today was that he was on a street long
8 before the alleged robbery and saw his cousin. Other than
9 that, you have the co-defendant's statement of Jermaine
10 Priester which I think has been sufficiently shown as
11 rather tainted and not worthy of credibility by the Court
12 or by the jury.

13 THE COURT: Is that an argument to the jury or to the
14 Court?

15 MS. RIVERS: Your Honor, I think when the Court sees
16 that there is very little veracity in a statement, such as
17 we've seen today, that it can be an argument to the
18 Court. And the fact that when it's a co-defendant and you
19 see that inherent bias in a co-defendant testifying for
20 his own gains that that can be a matter by the Court to
21 take up when there's no other bolstering evidence to go
22 along with the story that he's told.

23 THE COURT: All right. Mr. Johnson?

24 MR. JOHNSON: Thank you, Your Honor. If it please the
25 Court.

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1 Your Honor, I also make a motion for directed verdict
2 on behalf of my client, Mr. Kevin Brown.

3 Your Honor, my first issue would be one of directed
4 verdict as related to the charge of kidnapping. I did not
5 feel that the State had presented any evidence at all to
6 support the charge of kidnapping.

7 The State have (verbatim) not presented any evidence
8 that would have placed my client at the scene of the crime
9 except for the statement of the co-defendant who has
10 admitted that he gave several contradictory statements
11 which means that his statement is questionable at best.

12 I also would like to make motion for directed verdict
13 based on the remaining charges based -- that the State
14 have (verbatim) not met its burden of proof as required by
15 law with enough evidence to present to this jury.

16 The State (verbatim) own witnesses, there have been no
17 witnesses except for the co-defendant to connect my client
18 to the crime scene or even involved in the crime. The
19 only person identified my client even being at the scene
20 is the co-defendant.

21 As a result I do not think that the State has met its
22 burden of proof. And that as a matter of law, I request
23 that the Court issue a directed verdict.

24 THE COURT: All right. Mr. Harte?

25 MR. HARTE: Your Honor, I also move for a directed

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1 verdict on behalf of Jamaal Riley.

2 With regards to the testimony in this case, the State
3 presented the testimony of Rodney Jenkins who indicated
4 that he saw Kadeem and Juicy near Jim Bo's on the night in
5 question. He stated that he knew Jamaal well from his
6 background. And when asked if he could identify the other
7 two, he said, "I guess Jamaal." And then he said, "I only
8 knew the two," meaning Kadeem and Juicy.

9 Corey Creech indicated he saw some people on the road
10 near Jim Bo's but he was unable to identify anybody.

11 Kadarian Creech testified that he overheard a phone
12 conversation in which there was some talk about not
13 getting enough money. He explained that that problem
14 could have been or probably, I'm not sure exactly what the
15 wording was, as a result of gambling earlier that day and
16 he stated that at no time did Jamaal Riley ever tell him
17 that he had been -- robbed the store or been involved in a
18 robbery.

19 Officer Sutton, Officer O'Berry and Officer Woodruff
20 had no testimony with regards to Jamaal Riley at all.

21 As a result, the only testimony is that of the
22 co-defendant, Jermaine Priester.

23 I believe that the law is that testimony of
24 co-defendants is inherently suspect and in this case where
25 the co-defendant has given numerous, admittedly numerous

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1 contradictory statements, I would ask the Court as a
2 matter of law to rule that there's insufficient evidence
3 for the case to go forward to a jury, that a reasonable
4 jury sitting in this case could not find my client guilty
5 beyond a reasonable doubt.

6 THE COURT: Any reply?

7 MS. RINGLER: Your Honor, I believe in the light most
8 favorable to the State that we have met our burden thus
9 far. We have established that an armed robbery did occur
10 as did a kidnapping, and also that a weapon was used.
11 There's clearly a gun in the video. The clerk discussed
12 that it was, she had a gun her face. She could see the
13 bullets in chamber.

14 So we have established that those crimes occurred and
15 the Defendant, co-defendant's statement as to who
16 committed those crimes, we believe that's a matter of law
17 for the jury and that he clearly states that he knows the
18 Defendants, points them out and says that, "I committed
19 these crimes and these are the men that committed them
20 with me."

21 So the State feels in the light most favorable to the
22 State that we have met our burden and would ask that the
23 directed verdict motion be denied.

24 THE COURT: Let me hear your argument again as to what
25 constitutes a kidnapping.

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1 MS. RINGLER: That under the law that she was held at
2 gunpoint. She was not free to leave. And there is no
3 time requirement. If a person's held, even for a moment,
4 that's sufficient for a kidnapping.

5 And in this case she had a gun on her. She was not
6 free to leave and thus that should support the charge of
7 kidnapping. She was detained. I mean, she had a gun in
8 her face.

9 THE COURT: So every armed robbery is also a
10 kidnapping as well?

11 MS. RINGLER: Kidnapping, the offense of kidnapping
12 has occurred when a person is detained and prevented from
13 leaving. And that's what happened in this case, Your
14 Honor.

15 THE COURT: Every armed robbery is a kidnapping, if
16 you say that --

17 MS. RINGLER: I mean, I can't think of particular
18 scenario --

19 THE COURT: -- a person is detained -- well, she can't
20 take both of us down at the same time.

21 If the -- the law is that once a person is detained,
22 even for an instance as you indicated, that that
23 constitutes a kidnapping. That would suggest that every
24 armed robbery would have to be a kidnapping or --

25 MS. RINGLER: I --

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1 THE COURT: At what point does it constitute a
2 kidnapping? Even in this case, for example, at what
3 point?

4 MS. RINGLER: Your Honor, I believe when the men walk
5 into the store and point a gun at her and she's not free
6 to leave the store, that the crime of kidnapping has
7 occurred.

8 And they also told her, you know, do what we say, open
9 the register, you know. They were commanding her as they
10 were there. She was clearly not free to leave, was
11 clearly held there against her will during the crime.

12 THE COURT: She was ordered from one place to another
13 within the store?

14 MS. RINGLER: Yes, Your Honor.

15 THE COURT: All right. What do you say about it,
16 Mr. Johnson?

17 MR. JOHNSON: Your Honor, it's my belief that the State
18 presented no evidence to indicate that she was detained.

19 The State evidence is that she was -- that the place
20 that she was being held, they never questioned her as to
21 whether she felt detained or that she couldn't leave. I
22 understand the State argument about the gun, but that's
23 just an assumption.

24 I think the State, as the Court has stated before, any
25 armed robbery under her scenario would be a kidnapping.

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1 And that is not the case. I believe that the State has
2 not presented enough evidence to meet the elements of
3 kidnapping in this case.

4 They have not presented any case or solicited any
5 evidence even from the victim in this case to sustain the
6 charge of kidnapping.

7 MR. HARTE: Your Honor, if I could add to that?

8 THE COURT: Yes, sir.

9 MR. HARTE: There are certainly certain scenarios in
10 which armed robberies would include a kidnapping. I can
11 think of numerous times when I've been involved in cases
12 where the store clerks were put into a closet or a freezer
13 or something like that and were locked and thereby
14 detained, and that that was separate and distinct from the
15 actual armed robbery.

16 And I think without testimony from the victim in this
17 case concerning the kidnapping part, element of it that
18 the matter stops with the armed robbery unless there is
19 some additional evidence of detention.

20 MS. RINGLER: Your Honor, I would disagree with the
21 defense's characterization of what the kidnapping law is.
22 It requires merely a detainment, a person being prevented
23 from leaving.

24 And she submitted to the authority of these Defendants
25 in that she was ordered to open the register, to do this,

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1 to do that, don't look at me. And she submitted to that.
2 She was not free to leave. She was at their mercy when
3 they came in and pointed that gun at her.

4 And that does, Your Honor, we believe that does fit
5 the statute of kidnapping.

6 THE COURT: This issue comes up quite frequently since
7 the kidnapping statute was modified some years ago. At
8 one time kidnapping carried life imprisonment. It was a
9 life sentence because most people thought of it in terms
10 of tying someone to a tree or some other form of being
11 bound in one area and taken from one area to the other.

12 And so kidnapping was considered almost like murder;
13 it carried life imprisonment, up to life.

14 The statute was modified some years ago, making it
15 still a most-serious offense. It carries up to 30 years,
16 but it's a most-serious offense. But it, it took away the
17 life sentence possibility. But nevertheless, it's a most-
18 serious offense.

19 And it seems as if as a result of the change at then
20 whenever there's, could be a criminal sexual assault where
21 a person is confined for an instance while they're being
22 molested, a burglary where the person goes in the house
23 and points a gun and says -- against a family member,
24 armed robbery where they go in the store. So many other
25 instances in which every most-serious offense now seems to

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1 be coupled with a kidnapping charge.

2 And the question is whether it's a duplication or one
3 offense. And I have had the occasion of un-duplicating it
4 in instances by eliminating the kidnapping charge.

5 Now, to prove kidnapping the State must prove beyond a
6 reasonable doubt that the Defendant seized, confined,
7 kidnapped, abducted or carried away another person.

8 So to seize a person, confine a person, inveigle, I
9 don't know that I ever got a full understanding of what
10 that is, kidnapped, abducted or carried away.

11 Seized means to take hold of or suddenly or
12 forcibly -- to take hold of suddenly or forcibly. That's
13 to grab and hold.

14 Confine means to limit, restrict or to close within
15 bounds, imprison or shut or keep in.

16 So, I take it that the State's theory here is to -- is
17 the confinement within the store during the course of the
18 robbery constitutes the kidnapping; is that right?

19 MS. RINGLER: Yes, Your Honor. I think I used the
20 word detained, but the word I should have used or meant to
21 use would be confine for that.

22 THE COURT: Right.

23 Inveigle means to lure. Decoy is to lure.

24 Kidnap is to take from one place or another.

25 Abduct means to carry away.

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1 So the law does not require a carrying away if the
2 person is confined, restricted or enclosed or imprisoned
3 or shut up within a particular place.

4 Anything? Any further argument on that? The only
5 thing that could apply would be confine.

6 I go to you, Mr. Johnson.

7 MR. JOHNSON: Your Honor, I believe the kidnapping,
8 once again, is under a scenario of armed robbery at some
9 point the person that's being robbed by gunpoint or
10 whatever would, must be confined to some degree because
11 they have to be confined in order for the person to take
12 whatever they're taking from them.

13 THE COURT: Yes, sir.

14 MR. JOHNSON: They would have to be confined in order
15 for the person to take whatever's allegedly being taken
16 from the victim.

17 There is a period of confinement if only for a second
18 on any armed robbery, Your Honor. Under that scenario
19 that the State is proposing, then it would still meet a
20 kidnapping charge and an armed robbery if that's what
21 confinement is considered.

22 It's my belief that the confinement would be the
23 victim saying, you know, once again, within a store or
24 something saying, you know, putting all the people in a
25 store in a particular area and holding them there while

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1 the robbery is being committed or not allowing them to
2 leave or something of that nature.

3 This robbery at best took maybe ten, 15 seconds. The
4 individual was allowed even in the store to go to the cash
5 register and different locations. There was no
6 confinement.

7 Also, Your Honor, it was not solicited from the victim
8 any evidence to question whether she was confined or
9 whether she was held against her will or whether she felt
10 like she couldn't leave. The State is asking the Court to
11 assume that that's what the victim felt. The State did
12 not question or present any evidence to support the charge
13 of kidnapping.

14 THE COURT: She asked him whether -- they told her not
15 to look at her, to hold her head down, not to look at her,
16 and not to bother them or stay out of the way or something
17 like that.

18 What else did you ask her? What else did she say,
19 Madam Solicitor?

20 MS. RINGLER: She was told to not look, I think, do
21 what we say, open the register, stay out of our way, do
22 what you're told. And then was told to open the
23 register.

24 And at that point is when the revolver's about six
25 inches from her head such that she's able to see the

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1 bullets and the cartridge. So I believe that does
2 establish the fact that she was not free to leave that
3 store and she was being confined.

4 And she did, she submitted to them and did what she
5 was told. She opened the register. She said repeatedly
6 she tried not to look at the man who had a gun on her.

7 So she submitted to them. She was confined. She was
8 not free to leave.

9 MS. RIVERS: Judge?

10 THE COURT: Yes, ma'am.

11 MS. RIVERS: I beg to differ. I don't recall any
12 testimony saying she didn't feel like she was free to
13 leave.

14 I think what we're looking at, there has to be some
15 separate element between these two offenses, like you
16 said. And I think it does get into the intent, the
17 criminal intent required for each crime.

18 And there is a problem with the two statutes as far as
19 that goes. I don't think there's any evidence of a
20 criminal intent on the kidnapping.

21 THE COURT: All right.

22 MS. RIVERS: They did intend to take the lady's money,
23 if it was them.

24 THE COURT: One or two more go arounds. Go ahead,
25 Mr. Harte.

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1 MR. HARTE: Your Honor, I just, I don't know what the
2 solicitor was reading from. It may have been notes that
3 they expected to elicit from the witness, but my notes do
4 not reflect a lot of what she said that was testified to.

5 My notes reflect that she was instructed to open the
6 cash register and to provide the location of the bank bag
7 and that was basically what she was ordered to do.

8 I'm not saying that I'm right and they're wrong. My
9 notes do not jive with what their notes say.

10 THE COURT: Do you want to clarify what you just
11 said?

12 MS. RINGLER: Your Honor, the testimony that I
13 understand the victim to have given was that she was told
14 to do -- immediately when they walk in, and the gun is
15 pointed at her, she was told to do, do what she was told.
16 Something to that effect, and not to look at them.

17 And then later on when the man who we believe to be
18 Kadeem Workman was behind the register and he couldn't get
19 the register open and then the other man said, go open the
20 register. So that was one of the other commands that was
21 given to her. And at that point she did go and open the
22 register.

23 So those -- so she was given a series of commands when
24 they entered the store. We would say that the confinement
25 began as soon as the men entered the store. And they have

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1 a gun on her, and she is not free to leave at that point.

2 We do believe that that would be -- the crime has been
3 committed at that point in time.

4 Later on is when the armed robbery crime occurs, when
5 they demand money and take money from her. That's the
6 taking that occurs which actually occurs after the crime
7 of kidnapping and then they leave the store.

8 So, I believe that there is, these are not
9 duplicitous. There are certainly different elements in
10 these offenses and they do cover separate conduct here.

11 THE COURT: Well, let's see. State V Pernell Hudson
12 East out of, out of Anderson County. He was indicted for
13 seven counts of robbery and kidnapping and the judge
14 denied the motion for directed verdict on the kidnapping.
15 Was found guilty and sentenced to life without parole.

16 He went into a fast-food store in Powdersville, held a
17 knife to the employees. Says, this is a robbery. And
18 when the employee told him that he didn't have the key to
19 open the cash drawer, the robber with the knife and the
20 employee walked to the manager's office.

21 The manager came to the door. The robber grabbed the
22 phone from the manager, cut the cord with the knife and
23 then went back to the manager's office carrying a gun,
24 grabbed the manager, took him into the office. The
25 manager came out of the office, told seven employees to

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1 lay on the ground. They were in there for several minutes
2 while the robbers took \$2,300.

3 And the defense in that case moved for a directed
4 verdict on the ground that the brief, brief confinement of
5 the victims during the course of the armed robbery was not
6 a separate and distinct offense. And also made a separate
7 directed verdict motion as to one employee who did not
8 appear at the trial and testify.

9 Relying on State V Hall the Court directs -- denied
10 the directed verdict motion. And he appealed, claiming
11 the brief confinement during the course of armed robbery
12 was not sufficient.

13 The issue is whether the act of confinement can
14 constitute a separate offense of kidnapping incidental to
15 the commission of another crime.

16 And referencing State V Hall, in State V Hall the
17 victim was abducted at gunpoint. She was making a phone
18 call near a clubhouse and was then sexually assaulted near
19 an adjacent swimming pool. And he was convicted of
20 kidnapping and sexual assault.

21 It says: It appears that South Carolina may be in the
22 minority of jurisdictions which have considered this
23 issue. The overwhelming majority of jurisdictions hold
24 that kidnapping statutes do not apply to unlawful
25 confinements or movement incidental to the commission of

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1 other crimes.

2 That's also in the model penal code which requires
3 movement over a substantial distance or confinement for a
4 substantial period of time.

5 Nevertheless, in this case the appellate court agreed
6 with the trial judge that the decision in State V Hall
7 controlled, moreover they noted that the judge charged the
8 jury that in order to convict of either or both of these
9 offenses must find the requisite intent to commit two
10 separate offenses.

11 It's a close question.

12 I think in my mind, I'm probably with the majority of
13 jurisdictions versus the minority of jurisdictions, in
14 this case South Carolina is in minority on this issue.
15 And I think that there is, there exists overcharging on
16 this issue and this is probably an instance of it.

17 But under a technical application of the law when he
18 orders, when the robber orders the victim to go -- at the
19 very least when he orders the victim to go from where she
20 was to behind the register and open the register, that's a
21 sufficient movement to constitute a kidnapping.

22 As it relates to all the other grounds raised by the
23 defense, it's a jury issue.

24 The young man testified that he was with these three
25 Defendants and they committed the robbery together. It's

1 up to the jury to believe or not believe that testimony.
2 That is competent testimony.

3 The Court cannot conclude as a matter of law that they
4 should not believe -- despite the withering cross-
5 examination by the defense, the jury may still believe his
6 testimony.

7 And I deny the motion for directed verdict as to all
8 matters.

9 What else?

10 MS. RINGLER: Nothing from the State, Your Honor.

11 MR. HARTE: That's all, Your Honor.

12 THE COURT: All right. Y'all ready to roll for the
13 defense?

14 MR. JOHNSON: Yes, we are, Your Honor.

15 THE COURT: All right. Let's bring the jury.

16 MR. HARTE: Excuse me, Your Honor. I believe there is
17 a matter that Your Honor needs to do, and that is to
18 discuss with the Defendant, my Defendant --

19 THE COURT: All right. Hold it for a moment.

20 MR. HARTE: -- their decision whether or not to
21 testify.

22 THE COURT: All right. If I could have the three
23 Defendants come right here.

24 MR. HARTE: All at once, Your Honor?

25 THE COURT: Yes, all at once. I'll be addressing each

1 Defendant individually, Mr. Brown, Mr. Riley and
2 Mr. Workman. Brown, Riley, Workman.

3 (Defendants approach, face the Court and are placed
4 under oath.)

5 THE COURT: We have reached the stage of the trial
6 where you may present your defense. Now you have the
7 right to claim the protections given to you by the Fifth
8 Amendment to the Constitution of the United States.

9 The Fifth Amendment to the US Constitution states in
10 part that: No person shall be compelled in any criminal
11 case to be a witness against himself. This means that you
12 cannot be required to testify.

13 And I'm speaking separately to each one of you even
14 though the three of you are standing here at the same
15 time.

16 As it relates to each one of you, you cannot be
17 compelled to testify. You have the right to testify,
18 however, on your own behalf if you would like to. But no
19 one can make you testify. The Fifth Amendment protects
20 you from being compelled to testify. Whether or not you
21 testify is a personal right and no one can waive this
22 right except you.

23 Now if you decide to testify, you will be subject to
24 the same rules that govern the other witnesses who took
25 this witness stand. And you may be examined and cross-

1 examined on any relevant issue in this case.

2 In addition, if you have any convictions involving
3 dishonesty or false statements, or if you've been
4 convicted of any crimes punishable by imprisonment of more
5 than one year and I determine that the probative value of
6 admitting this evidence outweighs its prejudicial effect
7 to you, the solicitor then will be able to introduce your
8 record to attack your credibility.

9 Do you understand, Mr. Workman?

10 THE DEFENDANT WORKMAN: Yes, sir.

11 THE COURT: Mr. Brown?

12 THE DEFENDANT BROWN: Yes, sir.

13 THE COURT: Mr. Riley?

14 THE DEFENDANT RILEY: Yes, sir.

15 THE COURT: If you decide to testify, this decision
16 must be a free, voluntary and intelligent decision made by
17 you with the knowledge, with full knowledge of the
18 protections given to you by the Fifth Amendment and the
19 consequences of your decision to testify.

20 Now if you decide not to testify, I will instruct the
21 jurors that they cannot give the fact that you did not
22 testify any consideration whatsoever, and that there is to
23 be absolutely no prejudice to you because you did not
24 testify.

25 It is left entirely up to you whether or not you

1 testify. You may talk with your lawyer, your family, your
2 friends, or anyone else that you might have access to to
3 talk to, but the final decision will be left entirely up
4 to you.

5 Do you understand that, Mr. Riley?

6 THE DEFENDANT RILEY: Yes, sir.

7 THE COURT: Mr. Workman?

8 THE DEFENDANT WORKMAN: Yes, sir.

9 THE COURT: And, Mr. Brown?

10 THE DEFENDANT BROWN: Yes, sir.

11 THE COURT: Do you understand what I have explained to
12 you, Mr. Brown?

13 THE DEFENDANT BROWN: Yes, sir.

14 THE COURT: Mr. Riley?

15 THE DEFENDANT RILEY: Yes, sir.

16 THE COURT: Mr. Workman?

17 THE DEFENDANT WORKMAN: Yes, sir.

18 THE COURT: Have you talked with your lawyer about
19 whether or not you should testify, Mr. Workman?

20 THE DEFENDANT WORKMAN: Yes, sir.

21 THE COURT: Mr. Riley?

22 THE DEFENDANT RILEY: Yes, sir.

23 THE COURT: Mr. Brown?

24 THE DEFENDANT BROWN: Yes, sir.

25 THE COURT: Do you want to talk with them any more

1 about whether or not you should testify, Mr. Brown?

2 THE DEFENDANT BROWN: No, sir.

3 THE COURT: Mr. Workman?

4 THE DEFENDANT WORKMAN: No, sir.

5 THE COURT: Mr. Riley?

6 THE DEFENDANT RILEY: No, sir.

7 THE COURT: Have you made up your mind as to whether
8 or not you're going to testify, Mr. Brown?

9 THE DEFENDANT BROWN: Yes, sir. Yes.

10 THE COURT: Mr. Riley?

11 THE DEFENDANT RILEY: Yes, sir.

12 THE COURT: Mr. Workman?

13 THE DEFENDANT WORKMAN: Yes, sir.

14 THE COURT: All right. Very well.

15 Anything further then? Any questions about what we're
16 now talking about?

17 THE DEFENDANT RILEY: No, sir.

18 THE DEFENDANT WORKMAN: No, sir.

19 THE DEFENDANT BROWN: No, sir.

20 THE COURT: Do you need any more time to make up your
21 mind, Mr. Brown?

22 THE DEFENDANT BROWN: No, sir.

23 THE COURT: Mr. Riley?

24 THE DEFENDANT RILEY: No, sir.

25 THE COURT: Mr. Workman?

1 THE DEFENDANT WORKMAN: No, sir.

2 THE COURT: Very well. Are you all ready for the
3 jury?

4 MR. HARTE: Thank you, Your Honor.

5 MR. JOHNSON: Thank you, Your Honor.

6 THE COURT: Let's bring the jury.

7 (Jury enters courtroom at 4:52 p.m.)

8 THE COURT: All right. The jury's back.

9 Mr. Foreman?

10 THE FOREPERSON OF THE JURY: Yes, sir.

11 THE COURT: How's the jury doing?

12 THE FOREPERSON OF THE JURY: Pretty good. Pretty
13 good.

14 THE COURT: Good. All right. Ladies and gentlemen,
15 you've heard the State's case. It's now the defense's
16 turn.

17 For the defense?

18 MS. RIVERS: Nothing for the defense, Judge. We rest.

19 THE COURT: All right. Mr. Johnson?

20 MR. JOHNSON: Your Honor, as relates to my client, Mr.
21 Kevin Brown, the defense rests.

22 THE COURT: Mr. Harte?

23 MR. HARTE: Your Honor, as relates to Jamaal Riley,
24 the defense rests.

25 THE COURT: All right. And, ladies and gentlemen, the

1 defense has rested. That means that you have heard all of
2 the testimony in this case. You have received all of the
3 evidence in this case and we have come to the end of this
4 day.

5 We will reconvene tomorrow morning. We need you back
6 tomorrow morning at ten o'clock, ten a.m., at which time
7 you will hear closing arguments by the lawyers. Then I
8 will instruct you as to the law that you are to apply to
9 this case. Then you will deliberate and let us know your
10 verdict.

11 So, thank you very much for hanging in there with us
12 all day today. We're going to break camp today and start
13 back tomorrow morning.

14 I need y'all here tomorrow morning, at what time?

15 THE JURY (COLLECTIVELY): Ten o'clock.

16 THE COURT: Ten o'clock. All right. We'll see you
17 then.

18 THE FOREPERSON OF THE JURY: All right.

19 (Jury exits courtroom at 4:55 p.m.)

20 THE COURT: All right. Well, how about requested
21 charges?

22 MS. RINGLER: Your Honor, I believe the State
23 submitted ours already or submitted mine already.

24 MR. HARTE: Your Honor, I do have a motion prior to
25 that.

CHARGE CONFERENCE

1 THE COURT: All right. A motion, yes, sir?

2 MR. HARTE: Yes, sir. In order to protect the record,
3 I would renew my motion for a directed verdict after the
4 submission of the case, after the defense has rested based
5 on the same grounds that we had previously stated.

6 THE COURT: All right. Mr. Johnson?

7 MR. JOHNSON: Your Honor, I would also like to make my
8 motion for directed verdict based on the close of case.
9 Also, Your Honor, I had not done it before but just for
10 the record I would like to adopt all objections made by
11 co-counsel for the co-Defendants as well.

12 THE COURT: All right. I think you made most of them.

13 MR. JOHNSON: Just in case, Your Honor, I forgot one.

14 THE COURT: Ms. Rivers?

15 MS. RIVERS: Judge, as well, I'd like to renew the
16 motion for directed verdict, and I'll adopt Mr. Johnson's
17 objections and Mr. Harte's objections.

18 THE COURT: Very well. They're so adopted.

19 And the ruling stands. This case is one for the jury
20 to decide, not for me, for the jury.

21 Now with regard to these proposed jury charges, did
22 you submit them to opposing counsel as well?

23 MS. RINGLER: Yes, Your Honor. We had a little
24 scanner issue, but I believe everybody got a copy
25 eventually.

CHARGE CONFERENCE

1 MR. JOHNSON: No, this is the first time I've seen
2 them.

3 MS. RINGLER: I think we submitted them by e-mail.

4 THE COURT: Well, let's see. She has a reasonable
5 doubt charge; firmly convinced, which is a standard charge
6 request; multiple defendants, you write a separate verdict
7 for each Defendant; multiple charges, you're to decide
8 each charge separately; hand of one request; charge for
9 finding what constitutes armed robbery; proposed charge
10 for conspiracy; and a proposed charge for kidnapping and
11 possession of a weapon during a violent crime.

12 All of those are fairly standard unless I missed
13 something. Mr. Harte?

14 MR. HARTE: Your Honor, the only thing that I would
15 ask the Court to consider is that, I believe I'm familiar
16 with what your normal charge is with regards to reasonable
17 doubt. I think this is a portion of that charge but does
18 not fully cover it. And I would ask Your Honor to make it
19 your normal full charge with regards to reasonable doubt.

20 I do not have any objection to any of the other
21 charges other than to request that where you have a
22 standard charge with regards to a particular, particular
23 issue that you not duplicate charges but charge your
24 normal charge or charge this one, whichever you prefer,
25 but that they not be duplicated.

CHARGE CONFERENCE

1 THE COURT: Typically I, on a subject such as this
2 with these requests, I don't think anything stands out as
3 being different. So I would typically give my standard
4 charge on all of these.

5 And beyond a reasonable doubt. We talked about
6 firmly convinced. And then secondly, hesitate to act.
7 Reasonable doubt is a doubt that makes one hesitate to
8 act. I use a combination of the two reasonable doubt
9 charges; hesitate to act and firmly convinced.

10 MR. HARTE: And I would have no objection to that,
11 Your Honor.

12 THE COURT: The only other thing that I don't readily
13 see that may apply would be identification.

14 Let's see.

15 You must be firmly convinced as to the identification
16 of the Defendant as the person who commits the crime
17 before you can find him guilty of committing the crime.

18 MR. HARTE: Yes, sir.

19 THE COURT: The co-Defendant did not have a criminal
20 record, so I don't even have a prior record.

21 MR. HARTE: I believe the testimony was that he had a
22 shoplifting conviction.

23 THE COURT: Is that your recollection?

24 MS. RINGLER: Yes, Your Honor.

25 THE COURT: So I have a prior record charge. We'll

CHARGE CONFERENCE

1 give that one, too.

2 MS. RINGLER: Yes, Your Honor.

3 THE COURT: All right. Anything else we need to talk
4 about today?

5 MR. HARTE: Would it be possible for Your Honor, for
6 us to present a requested charge on a, testimony of a
7 co-defendant?

8 THE COURT: What would you want me to tell them?

9 MR. HARTE: Well, I'd like to look at some law first.
10 I thought there was going to be more evidence on top of
11 what the co-defendant testified to, but I believe there is
12 some charge or some law with regards to the suspect nature
13 of co-defendant testimony.

14 And I'd like to see if that's appropriate in this
15 case.

16 THE COURT: Okay. If you can find it and e-mail it to
17 me tonight, we can have time to look at it and deal with
18 it, but certainly before the jury gets whatever law they
19 should get, I'm open to --

20 MR. HARTE: Thank you.

21 THE COURT: -- receiving anything they should get.

22 MR. HARTE: Thank you.

23 THE COURT: All right. I told the jury at ten. And
24 we need to be here at 9:30 to be ready for the jury when
25 they get here at ten to discuss anything that may come in

1 overnight or any last-minute questions, issues or
2 concerns.

3 So the Defendants would need to be here by 9:15 again,
4 so that you all can have access to them right before we
5 start as well.

6 You're through with the panel now; aren't you?

7 MS. RINGLER: Yes, Your Honor.

8 THE COURT: The remaining jurors. We can cut the rest
9 of them loose. Well, all right. We'll reconvene in the
10 morning.

11 MS. RINGLER: Thank you, Your Honor.

12 MS. RIVERS: Thank you, Judge.

13 END OF DAY'S PROCEEDINGS: 5:02 P.M.

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CHARGE CONFERENCE

1 ON THURSDAY, SEPTEMBER 6, 2012 AT 9:40 A.M.:

2 MS. RINGLER: Your Honor, do you want to go ahead and
3 finish up that Laron Neal?

4 THE COURT: Let's finish up talking about this case.

5 MS. RINGLER: Okay.

6 THE COURT: Madam Clerk?

7 (Off-the-record discussion.)

8 THE COURT: With regard to this case, any other
9 requested charges by anyone?

10 MS. RINGLER: None from the State, Your Honor.

11 MR. HARTE: Your Honor, we need to bring the
12 Defendants in.

13 THE COURT: Yes, sir. Well, they don't have to be.

14 MR. HARTE: All right.

15 THE COURT: Talking about requested charges.

16 MR. HARTE: Your Honor, I didn't have any additional
17 requests. I had followed up on that other issue with
18 regards to co-defendants, so I withdraw my request on
19 that.

20 But yesterday you indicated you were going to charge
21 eyewitness testimony. And I assume that that was the
22 testimony of -- credibility of the witness.

23 THE COURT: I'm referring to identification, of course
24 not so much eyewitness testimony as just identification of
25 the Defendants as the persons who committed the crime.

1 MR. HARTE: I would request a charge on credibility of
2 the witnesses, bias, prejudice, demeanor on the witness
3 stand. I believe there's a standard charge for that.

4 THE COURT: Yes, sir.

5 MR. HARTE: I would request that.

6 THE COURT: All right. Yes, ma'am?

7 MS. RIVERS: I'm sorry, Mr. Harte. I wasn't sure you
8 were still considering the jury charge or if you're ready
9 to take up other matters.

10 THE COURT: I'm going to charge identification
11 identity, identification testimony. What else do you
12 have?

13 MS. RIVERS: Your Honor, the Court had brought up the
14 lingering issue of the mug shot, the pictures and the
15 submission to the jury regarding those exhibits.

16 THE COURT: Yes.

17 MS. RIVERS: If you'd like to take that up now or
18 after closing arguments.

19 THE COURT: At this time is good.

20 MS. RIVERS: Okay. I did look at State versus
21 Trayler, a 2004 case involving a lineup that was found to
22 be -- a photographic lineup that was found to be improper
23 although the Court did not reverse on those grounds.

24 And in Trayler there is a cautionary paragraph -- I
25 have a copy of it, Judge, if you'd like.

1 THE COURT: I have it as well.

2 MS. RIVERS: All right. -- about the use of mug
3 shots. We did discuss earlier that these were mug shots
4 although redacted. And it has the test --

5 THE COURT: We discussed it. We're not necessarily in
6 agreement with what constitutes a mug shot.

7 MS. RIVERS: Yes, sir. I'm just going by the State's
8 proposition that these were redacted mug shots.

9 I understand that, the argument there though, Your
10 Honor.

11 The test was that the State have a demonstrable reason
12 for presenting these photos, and that the Court be careful
13 in allowing such photos. The second part of the test is
14 redaction of the photos such that they do not appear as
15 your standard jail mug shot.

16 Although the State's done the redaction portion, I'm
17 not convinced that they have a demonstrable reason for
18 presenting the photos into the jury room although they've
19 been let in as exhibits.

20 THE COURT: All right. Madam Solicitor?

21 MS. RINGLER: Your Honor, I think that as the Court
22 noted earlier that the Defendants' appearance has changed
23 from when the incident occurred to now. Detective Sutton
24 testified as to when those photos were taken and they were
25 taken closer to the time of the incident. Their hair

1 styles are clearly different today.

2 Also I think yesterday the point was made that the
3 jury's going to be able to compare the video to the
4 Defendants and that was why the State was not allowed to
5 present the testimony from Ms. O'Berry. And so in order
6 to do that, they would need those photos back during
7 deliberations in order to compare those to the video.

8 And so we think that there is a valid reason. The
9 appearances have changed, and that they are necessary for
10 the jury to compare to the video, for the individual whose
11 mask has slid down or was pulled down during the course of
12 the robbery.

13 So I feel that they do serve a purpose. They will aid
14 the jury in their deliberation. And that was the basis
15 for State admitting the photos.

16 THE COURT: All right. Anything else on this point?

17 MS. RIVERS: Your Honor, we've been over it a good
18 bit. I think you understand my arguments on this matter.
19 I think the State had --

20 THE COURT: So the answer is no, there's nothing
21 else?

22 MS. RIVERS: The State had other witnesses testifying
23 as to the description of people and that the photographs
24 would not be necessary for that purpose alone.

25 THE COURT: Well, the photographs were entered some

1 time or taken some time following the robbery, maybe weeks
2 or so later, I guess. No witness was asked whether or not
3 this, these photos are as the Defendants appeared on the
4 night of the robbery.

5 And they were not compared to anything through the
6 testimony. They're just photographs in evidence.

7 The jury can't compare them with anything on the
8 video. They have nothing to compare them to based on the
9 lack of testimony regarding the photos, other than putting
10 the photos into evidence.

11 The solicitor's initial argument was that I want them
12 in evidence so that the jury can have the photographs to
13 look at during deliberations.

14 As I mentioned after the photos were admitted, that
15 unless there's some other connection, some other basis
16 established to use these pictures other than just so the
17 jury can look at them during deliberations, I've
18 reconsidered and revisited the issue and the State never
19 addressed the issue again.

20 So there's no, there's nothing probative in the
21 photographs because there's nothing for the jury to
22 compare them to. You can't compare them to the video.
23 That's -- unless they want to possibly look at one
24 Defendant's eyes from a mask falling down for a split
25 second to -- I guess that might be a sliver of a possible

1 benefit for that one photo to be in, but I don't know
2 that. That would be Mr. Johnson's guy.

3 Based on the most recent argument of the State, the
4 jury might be able to look at Mr. Brown's photo and say, I
5 can tell that that's him based on the eyes in the photo
6 and the eyes on the video.

7 What do you say about that, Mr. Johnson?

8 MR. JOHNSON: Your Honor, the victim -- my client in
9 particular, the State did not make the definitive
10 statement even when they entered the photographs into
11 evidence that the photographs are here to compare.

12 They didn't use the photographs at all. They just
13 said this is part of the State's evidence and admitted
14 it. And they didn't even have any testimony on the
15 photographs or anything during the trial itself.

16 To anticipate what the jury might do, I don't believe
17 that that's -- that was not brought up by the State as
18 well as I don't think it should be the Court's position to
19 try to anticipate as to what the jury may think or not
20 think.

21 As far as evidence that we have, there's not been any
22 indications that no photograph would be used for any of
23 that.

24 THE COURT: And --

25 MR. JOHNSON: And as well as, there haven't been any

1 mention into evidence anything about my client's eyes or
2 my client's hair. There was no evidence about that. They
3 just said, we think it's him.

4 THE COURT: All right.

5 MR. JOHNSON: As well, Your Honor, they didn't even
6 have the main witness compare the photograph to the
7 video. There was no use of the photographs at all.

8 THE COURT: I agree that it constitutes speculation on
9 that point. The witness, the officer, who the State
10 intended knew the Defendant to look at it, look at -- I
11 think it would have been incumbent upon the State to have
12 that officer concerning that issue. First of all, to make
13 the testimony admissible, and then second, to make the
14 photographs relevant to anything in this case.

15 Yes, ma'am, Madam Solicitor?

16 MS. RINGLER: My response to that for me to ask about
17 that, to ask some question relating to the jury being able
18 to compare the booking photo to the still shot or the
19 video itself would be argument. I'm not sure how that
20 would be a proper question to ask.

21 And I feel like the defense is trying to have their
22 cake and eat it, too. I wasn't allowed to introduce
23 Ms. O'Berry's testimony and the argument for that was,
24 well the jury can compare the video to the Defendants.

25 And when I provide a photo that's from near the time

1 of the armed robbery, the jury can do just that; that they
2 can compare the video to the still shots or to the video
3 itself, then that's not allowed either.

4 And so I'm, I'm just trying to give the jury an
5 opportunity. There is a shot where the Defendant's mask
6 comes down. And I provided all the photos so that they
7 would have the opportunity to view all of them and compare
8 and see and allow them to consider that. And I intended
9 to argue that, that, you know, in comparing those photos
10 because I feel that that is argument, that you can compare
11 it on the video.

12 So I just sort of feel like we've tried to comply and
13 at the same time the defense is making one argument and
14 also makes a completely opposite argument.

15 THE COURT: The witness could have been examined on
16 all those different issues and the testimony most likely
17 been admitted had a proper foundation been established.
18 But now there's a question of relevance of any of this
19 including the photos as well.

20 I'm going to exclude the photographs. The testimony
21 of the witness was excluded. The identification testimony
22 of the witness was excluded, and that excluded the
23 photographs as well because there are no other connections
24 made with the, to the photographs in the evidence.

25 All right. What else we got?

1 (Thereupon, State's Exhibit Nos. 59, 60, 61 & 62, were
2 excluded from evidence by the Court.)

3 MS. RIVERS: Nothing further.

4 MR. JOHNSON: Your Honor, I have nothing further.

5 MR. HARTE: Just for purposes of my being prepared for
6 argument. Did I understand correctly that you are going
7 to charge on credibility of the witness and that sort of
8 thing?

9 THE COURT: Yes.

10 MR. HARTE: Okay. Thank you.

11 THE COURT: And defense presented no witnesses, no
12 evidence, so the State goes first, defense goes last.

13 How many jurors do we have?

14 THE OFFICER: They're all here, Judge.

15 MR. HARTE: Could we have a break, a bathroom moment?

16 THE COURT: Yeah. We'll get all the Defendants in and
17 then we'll start in five minutes.

18 (Thereafter, a break was taken. The trial resumed at
19 10:06 a.m.:)

20 THE COURT: We need the Defendants.

21 (Defendants enter the courtroom.)

22 THE COURT: Bring us a jury.

23 (Jury enters courtroom at 10:07 a.m.)

24 THE COURT: You may be seated. Good morning.

25 THE JURY (COLLECTIVELY): Good morning.

CLOSING ARGUMENTS BY THE STATE

1 THE COURT: Mr. Foreman, members of the jury. You've
2 heard all of the evidence. It's now time for closing
3 arguments. If you'll listen to the lawyers' closing
4 arguments.

5 Ms. Rivers?

6 MS. RIVERS: Judge, we didn't present any evidence in
7 the case.

8 THE COURT: All right. From the State?

9 MS. RINGLER: Thank you, Your Honor. Good morning.

10 THE JURY (COLLECTIVELY): Good morning.

11 MS. RINGLER: Four men, together, committed an armed
12 robbery in the early morning hours of July 21st, 2011.

13 And you heard from one of those men yesterday,
14 Jermaine Priester. After Jermaine -- when Jermaine was
15 testifying the defense got an opportunity to ask him some
16 questions. And there was a lot of talk about some prior
17 statements, a lot of nit-picking, a lot of name calling.

18 But saying liar, liar, pants on fire doesn't make it
19 true. Just calling somebody a liar doesn't make them a
20 liar. So let's take a minute to step back and really look
21 at what was said yesterday.

22 Let's talk about Jermaine and his testimony and the
23 testimony of the other witnesses we heard about yesterday,
24 too.

25 Now, the defense has called Jermaine a liar but why

CLOSING ARGUMENTS BY THE STATE

1 would he lie? What motivation does he have? He took the
2 stand yesterday and he admitted to committing an armed
3 robbery, a serious offense. And he admitted that his
4 charges are pending.

5 Now by taking the stand and testifying and telling
6 what happened, does he hope that might be taken into
7 account later on? That by admitting what he did,
8 confessing, telling you what happened, that that might
9 mean a little bit of leniency for him down the line by
10 accepting responsibility? Probably. But that doesn't
11 make it not true. That doesn't mean that when he says "I
12 committed an armed robbery and those are the three men
13 that helped me," that that's not the truth.

14 And if he's going to lie, why wouldn't he stick with
15 the original lie that he told law enforcement? "I didn't
16 do it." "I don't know nothing." But instead he stopped
17 lying. He confessed. He told the truth. He admitted
18 what he did. He told law enforcement what happened and he
19 told you what happened yesterday, under oath, in that
20 stand.

21 Now yesterday when Jermaine was talking about what
22 happened, he told you that Jamaal Riley at the time of the
23 robbery was a friend of his. He said that Kadeem Workman
24 and him had been hanging out. And he said that he met
25 Kevin Brown about the time of the robbery.

CLOSING ARGUMENTS BY THE STATE

1 Now if Jermaine Priester is going to commit an armed
2 robbery, isn't he going to do it with the guys he knows?
3 And he pointed out his friend in this courtroom
4 yesterday. He pointed to Jamaal Riley and said, "This is
5 one of the men that helped me commit this armed robbery."

6 And we also heard some testimony from some other
7 witnesses that corroborate what Jermaine said. Now
8 Jermaine told us that on Wednesday night he was at his
9 grandmother's house. And it was at that time that Kadeem
10 and Jamaal came over to his grandmother's house. They
11 talk a little bit. They talk about hitting a lick,
12 committing a crime, trying to get some money.

13 It was at that point that they walk over to Juicy's
14 house, Kevin Brown. And they know that Kevin Brown's got
15 a gun. And so they're going to get a gun from Kevin
16 Brown. Jermaine has his BB gun. They talked to Kevin
17 Brown and he's -- they fill him in on what's going on..
18 They give him the rundown.

19 So at that point they have Kevin Brown involved. It's
20 Jamaal Riley. It's Kadeem Workman. It's Jermaine
21 Priester. They have a BB gun, and they also have a
22 revolver.

23 At that point they leave Kevin Brown's house and they
24 go to the Texaco. But they see that there's just too many
25 people there. So they decide to go from there to Jim

CLOSING ARGUMENTS BY THE STATE

1 Bo's.

2 And when they first get to Jim Bo's, they stand by
3 that white van. And we hear from Corey Creech that when
4 he was in the area of Jim Bo's that night, and he knows
5 it's the night of the armed robbery, that he sees four men
6 standing by that white van.

7 Well, that's exactly where Jermaine said that they
8 were standing. And Detective Sutton saw fresh foot
9 prints, fresh tracks around the area of the van. And he
10 saw multiple shoes to indicate there were multiple people
11 around that van recently. And this all corroborates what
12 Jermaine's told us.

13 After that they walk on down towards Jim Bo's. And as
14 they're walking Jermaine says they see somebody who seems
15 like he recognizes them, who acts like he knows them.

16 And you heard from Rodney Jenkins. And Rodney said,
17 the night of the armed robbery I was walking in my mom's
18 work, walking to go meet her there at the nursing home,
19 and as I was walking by Jim Bo's I saw four men and I
20 recognized two of those men.

21 He recognized Kadeem Workman, and he recognized Kevin
22 Brown. And then there were two other men. And he said he
23 saw a gun in the hands of Kevin Brown and he saw a gun in
24 the hands of Kadeem Workman. That corroborates what
25 Jermaine has told us.

CLOSING ARGUMENTS BY THE STATE

1 At that point they go down to the Lakeside Grille.
2 And they go up and stand on that porch, that kind of
3 rooftop porch over the Lakeside Grille. And Jermaine
4 talks about how they take all the caps off the lights so
5 it will be dark up there so nobody will see them up on
6 that porch.

7 And that corroborates what Detective Sutton saw. When
8 he went up there, just about all the caps had been taken
9 off the lights, and he saw that some of them had been
10 thrown into the lake. And he also took some photos that
11 we saw. When you're up on that roof, you've got a good
12 vantage point of Jim Bo's convenience store. And that was
13 where these men stood and they waited. They waited until
14 the coast was clear so that they could commit this armed
15 robbery:

16 And also we heard about some footprints there, too,
17 some fresh tracks that were consistent with the ones that
18 were back at the van. Again, that corroborates Jermaine's
19 story. Jermaine's telling us what happened; that they
20 were at the van and then they go to the Lakeside Grille.
21 Similar tracks in both places. Both places, fresh tracks.

22 From the Lakeside Grille, they wait there a couple of
23 hours. And then once the coast is clear they decide to go
24 ahead and commit the armed robbery. So the four men head
25 down to Jim Bo's. Jamaal Riley stays outside of Jim Bo's

CLOSING ARGUMENTS BY THE STATE

1 because he's supposed to be the lookout. And then the
2 three men go inside.

3 And when Jermaine tells us what happens in that
4 convenience store, it echoes what the victim has told us;
5 that Jermaine stays back by the door, that Kevin Brown's
6 got the revolver. So he's got the gun on the victim. And
7 then Kadeem hops over the counter and he's back behind the
8 register.

9 Now Jermaine puts himself in that store. He puts
10 himself taking part in the armed robbery with a BB gun in
11 his hand. And we've got Kevin Brown with a revolver
12 pointed at the victim. And the victim distinctly
13 remembers looking at that revolver and seeing bullets in
14 that revolver. She had a loaded revolver six inches from
15 her head. She very clearly remembers that.

16 And then once Kadeem Workman is behind the counter
17 he's not able to get the register open and so he says
18 something. At that point Kevin Brown tells the clerk to
19 go open the register and so she does. She opens the
20 register and that's when Kadeem takes the money from the
21 register and he takes the deposit bag from underneath the
22 register. He also takes some cigarettes. And Jermaine,
23 he admits that he took some cigars.

24 At that point they leave the quickie mart, leave the
25 store. And they go back to . And on the

CLOSING ARGUMENTS BY THE STATE

1 way back, up in front is Jermaine and Kadeem. And
2 Jermaine sees them kind of passing the money back and
3 forth. He's a little further back with Kevin Brown. And
4 when they get to , when they get to
5 Cleo's house, that's when the money's divvied up. And
6 Jermaine talks about how not everybody got an equal
7 amount. The amounts were a little uneven.

8 And all of this is corroborated by other witnesses
9 that you heard from. And these other witnesses, Rodney
10 Jenkins and Corey Creech, all three of those defense
11 attorneys had the opportunity to question them yesterday
12 and their credibility was not called into question. They
13 don't have a dog in this fight. They were just in the
14 area of Jim Bo's at the night of the robbery. And so they
15 took that stand and testified to what they saw.

16 And Corey Creech said when he saw those four men
17 around the van he thought it was suspicious, so much so
18 that after he heard sirens later on that night, he went
19 and told police what he saw. So that was significant to
20 him seeing those men around that van.

21 Now because of the conduct of these four men, all four
22 of them have been charged with armed robbery. And armed
23 robbery involves a robbery. So a taking. And we know
24 that something was stolen that night. We know that they
25 took money, over about, a little over a \$1,000. They took

CLOSING ARGUMENTS BY THE STATE

1 cigarettes and they took cigars from that convenience
2 store.

3 So there was definitely a taking.

4 And these men were armed. We know that they had a
5 loaded revolver six inches from this victim's head. So an
6 armed robbery definitely occurred.

7 And we also -- they've also been charged with
8 kidnapping. And that's because when these arm men entered
9 that store the victim, the clerk, was not free to leave.
10 She was trapped inside that store. She was confined. She
11 was not free to leave. She was kidnapped under our
12 definition.

13 They've also been charged with conspiracy. And that
14 was because there was an agreement here. There was a
15 plan. The plan started when they were at Jermaine's
16 house, at Jermaine's grandmother's house, and then it
17 continued and developed during the night.

18 When they go to Kevin Brown, they fill him in. And
19 then the plan sort of switches from Texaco, once they
20 realize that that's too busy, to Jim Bo's. And then they
21 wait until the coast is clear and then they commit the
22 armed robbery.

23 So there's a definite plan here, a definite agreement
24 between these four men.

25 And they all received proceeds from the robbery. They

CLOSING ARGUMENTS BY THE STATE

1 all get their share of the money, even if the shares
2 aren't equal.

3 And they've also been charged with possession of a
4 weapon during a violent crime because there was clearly a
5 weapon in this case. Clearly a revolver was used in this
6 armed robbery. And violent crime -- armed robbery and
7 kidnapping are both considered violent crimes in this
8 State.

9 Now in a little while after you hear arguments from
10 all three attorneys, you're going to hear instructions
11 from the Judge. And he's going to talk to you a little
12 bit about the hand of one is the hand of all.

13 Now in this case there was a BB gun and one revolver,
14 one real gun. And each man had a little different role.
15 So one guy was a lookout. One guy was standing by the
16 door. One guy had a gun on the clerk. And one guy's the
17 one that took the money. But all together, all together
18 they committed armed robbery. So the hand of one is the
19 hand of all. They're all guilty of armed robbery. Same
20 with the other offenses.

21 Now common sense and your life experience are two of
22 your strongest tools that you'll get to use back in that
23 deliberation room when you consider all the testimony that
24 you've heard. And in your life experience, isn't it true
25 that the simplest explanation is usually the right one?

CLOSING ARGUMENTS BY THE DEFENSE/RIVERS

1 Despite what the defense may claim, this is a simple
2 case. This is a case where a man takes the stand,
3 testifies, says, I committed an armed robbery and these
4 are the three men that committed it. Simple. He pointed
5 to the three men. Says, these are the guys that did it.
6 This is what we did. There's nothing more going on here.
7 It's a simple case.

8 In a little while you're going to have a choice to
9 make. And the State is confident that you'll choose the
10 correct one and do what justice dictates and truth demands
11 and find these men guilty. Thank you.

12 MS. RIVERS: If it please the Court. Good morning.

13 THE JURY (COLLECTIVELY): Good morning.

14 MS. RIVERS: We have heard a lot of evidence.

15 And you remember at the beginning of the case I talked
16 to you about the role of the jury. One of those roles is
17 you are the trier of fact. You look at everybody, all the
18 evidence presented and you decide what this case is about;
19 whether there was a crime committed at all; what the crime
20 was; and who did it.

21 Now there are a lot of witnesses the State presented
22 before Jermaine Priester. And I want to talk a little bit
23 about what we do know. What I believe we know from those
24 witnesses.

25 Ms. Corell was robbed. There's no doubt about that.

CLOSING ARGUMENTS BY THE DEFENSE/RIVERS

1 We all saw the video. She had a terrifying experience.
2 Someone put a gun in her face. And she was the most
3 honest woman I know. She said, that's what I saw, that
4 gun. And I believe her.

5 So, you know, that's all we can take from her, is: I
6 was robbed; I was scared; this was a bad thing.

7 The next person that was called was Corey Creech, I
8 believe. I might get people out of order. I'm sorry.
9 But Corey says, you know, about ten or 11 o'clock at night
10 I'm driving down the road in my neighborhood to Jim Bo's
11 and I see four to five guys, three to five guys, something
12 along that nature, cross the road. And I go back and get
13 gas later and I tell the police I saw these people.

14 But, you know, that's not the part of his testimony
15 that strikes out at me. The part of his testimony that I
16 was surprised at was, "I can't remember if those people
17 were black, white, orange or purple." All we know is that
18 three to five guys crossed the street. And he says it
19 must have been around ten or 11 o'clock at night.

20 When we look at the video and listen to Ms. Corell's
21 testimony, she got robbed at one o'clock in the morning,
22 sometime between one and 1:30 something like that is my
23 guess, give or take a couple minutes on those videotape
24 things.

25 So Rodney Jenkins says, hey, I ran into my cousin. He

CLOSING ARGUMENTS BY THE DEFENSE/RIVERS

1 and I don't get along a whole lot but I ran into him. And
2 I know it was near 11 o'clock because that's when I walked
3 to the nursing home to go get my mama. I was across town
4 and I get a ride out to the country by my mama and she
5 leaves around 11 o'clock and I had just missed her that
6 night.

7 So he sees his cousin, my client, Mr. Workman,
8 Roosevelt, at 11 o'clock at night around Jim Bo's.
9 There's a lot of people see people around 11 o'clock at
10 night around Jim Bo's. There's not much testimony about
11 one o'clock in the morning around Jim Bo's. And that's
12 two hours difference there.

13 Kadarian Creech comes in and all he knows is about
14 after the fact he was gambling, and a co-Defendant said he
15 needed some money after the fact.

16 And then we have Detective Sutton and Investigator
17 O'Berry and Officer Woodruff, and they are trying to do
18 their job figuring out what happened that night to protect
19 Ms. Corell.

20 But what they showed us was some shoe prints and some
21 stuff about the lights at the Lakeside Grille. There's no
22 fingerprints. There's no DNA. There's no match of shoe
23 prints to anybody's shoes. The officer took some shoes of
24 one of the co-Defendants. They weren't brought in here.
25 There's no physical evidence to match that stuff up to

CLOSING ARGUMENTS BY THE DEFENSE/RIVERS

1 anybody at all.

2 This whole case rests on the shoulders of Jermaine
3 Priester. And the role of the jury is you look at the
4 evidence and you decide what happened.

5 Now we talked in the beginning about that cloak of
6 innocence around each Defendant when they come in this
7 courtroom. And that cloak is heavy. And it means when
8 you look at my client, you see an innocent man.

9 You're the only ones who can remove that. And to
10 remove it you must find him guilty beyond a reasonable
11 doubt. He does not have to come in here and present one
12 bit of evidence. That's the burden on this table
13 (indicating).

14 In our system for someone to be convicted of a crime
15 you have to prove it. You can't just say it to make it
16 so. The only one who's saying my client committed a crime
17 is Jermaine Priester.

18 Now when Jermaine was testifying, the Judge called me
19 down a little bit for getting a little excited. And he
20 was right to do that. But I tell you, there's one thing
21 that gets me is when I think somebody's wiggling. I don't
22 get to make that determination. You get to make that
23 determination. But I don't see how Jermaine Priester
24 could say what he said.

25 Now how did he come up with being so honest? He

CLOSING ARGUMENTS BY THE DEFENSE/JOHNSON

1 finally admitted there were three interviews. He didn't
2 remember three, he only remembered two. But after he
3 talked to the investigators three different times, after
4 he was in jail looking at these charges himself, after he
5 had an attorney sitting behind him working on his case,
6 that's when he decided how it happened.

7 Does that mean he really knew how it happened? Or
8 does that mean that he figured out a way out of his
9 charges? And that the State handed him a way out?

10 That's what you 12 have to decide. I've got my
11 opinion. And I know that my client is wearing that cloak
12 of innocence. If you have any reasonable doubt, any
13 hesitation, any idea that the State has not met their
14 burden, I submit you have to say not guilty.

15 Thank you.

16 MR. JOHNSON: Thank you, Your Honor. If it please the
17 Court.

18 Good morning.

19 THE JURY (COLLECTIVELY): Good morning.

20 MR. JOHNSON: Thank you for being here today. And
21 thank you for being here for the last couple of days.

22 The State would like to say that this is a simple
23 case. This is not a simple case. It should not be
24 simple. You have individuals who (verbatim) lives are
25 placed in your hands. You have a victim who was robbed,

CLOSING ARGUMENTS BY THE DEFENSE/JOHNSON

1 as she should -- the people that committed this robbery
2 should be held accountable. You have to decide whether my
3 client as well as the other individuals are the people
4 responsible for it.

5 That ain't simple. That shouldn't be simple. If it
6 was that simple, we wouldn't need a jury.

7 Your job is to take an oath to uphold the law, the law
8 of your community. You are the people that decide how
9 your community act (verbatim), how your community responds
10 to crime.

11 But that has to be fair. It requires you to take your
12 time, and look at it and be fair. Just because the State
13 set (verbatim) somebody in front of you and tell
14 (verbatim) you they're guilty, that doesn't make it so.

15 The Judge will tell you that the State has the burden
16 of proof. Not my client. My client doesn't have to prove
17 his self innocent. The State has to prove him guilty.

18 Now if they don't do their job, that's not my fault.
19 That's not your fault. But if they don't do their job, my
20 client has to be found innocent.

21 You are not allowed to speculate. You're not allowed
22 to anticipate. You're allowed to look at the evidence and
23 decide whether beyond a reasonable doubt that my client is
24 guilty as charged.

25 Now people will ask you: What is reasonable doubt?

CLOSING ARGUMENTS BY THE DEFENSE/JOHNSON

1 There's just different terminologies, different
2 definitions for it. I would suggest to you that
3 reasonable doubt is very simply this: Reasonable doubt is
4 doubt that a reasonable person would have after looking at
5 the evidence. If you look at the evidence and thoroughly
6 look at all the evidence, and after looking at it you have
7 doubt, you being a reasonable person, that's reasonable
8 doubt.

9 As a result, you're required by law, the law which you
10 have taken an oath to uphold, to find my client innocent.
11 I submit to you that the State has not given you any
12 reason, any reason whatsoever to have anything but some
13 doubt as to the guilt of my client.

14 It's not my fault that they didn't do their job. You
15 have officers that went in to the scene and stated he
16 looked at a video, and he determines that everybody had
17 gloves on so he doesn't even take fingerprints.

18 But if you look at the video as I have, you would see
19 on the video that one individual had one -- had a hand
20 with one glove (verbatim) that didn't have a glove on it.
21 He didn't take the time to look.

22 It's not my client's fault. It's not your fault. He
23 didn't do his job. They presented you evidence of, I
24 don't know, 54 pieces of evidence, all of which had
25 nothing to do with the crime. They showed you tennis

CLOSING ARGUMENTS BY THE DEFENSE/JOHNSON

1 shoes' print. Where are the tennis shoes?

2 The State (verbatim) like to point out that their main
3 witness, he has a BB gun. Where is the BB gun? If he's
4 such a good witness, he could have took (verbatim) and
5 presented the BB gun. No evidence of that.

6 Where's the gun? No evidence of that.

7 Where is the money? No evidence of that.

8 Their main witness said that he looked at the video
9 four times, then he comes and tells his story. He
10 tells -- he's arrested. He meets with his mother, tells
11 his mother, Mom, I had nothing to do with it. I don't
12 know nothing about that. They're asking me about another
13 charge I had where they have DNA on me. And I'm worried
14 about that.

15 They meet with him again. He tells them, I don't know
16 nothing. That's when he gets arrested. But remember what
17 he says? He was already in jail for something else. He's
18 not a substantial citizen, a pillar of the community.
19 He's a crook. He's a thug. What do thugs do? Whatever
20 they can to survive. If that means lying on someone,
21 they'll do that. He has every reason to lie. If you
22 believe that he's just trying to help the community all of
23 a sudden, then that's your choice.

24 I submit to you that he's not. He tells you in his
25 own statement he was not before. But he's going to walk

CLOSING ARGUMENTS BY THE DEFENSE/JOHNSON

1 around with a BB gun. He tells you in his statement that
2 he's afraid of my client and that's why he would
3 participate in a robbery.

4 He's trying to save his self. The State made a deal
5 with the devil. And like my father told me many years
6 ago, when you lay down with the devil you wake up with
7 that same devil. They were committed to that person to
8 get everybody else. So once they had him and he told them
9 a story that they could connect, they closed the case.
10 They didn't do no more work. That's why they had no
11 evidence to give you.

12 I told you in the beginning the State had no
13 evidence. They presented no evidence. Even the victim
14 who said that the gun was in her face, held by this man
15 that she looked at, could not identify my client as being
16 that person.

17 But the State wants you to look at a video on a screen
18 where you can barely see anything and make a determination
19 that that's my client just because they say so.

20 That is not how you -- that, I submit to you, that
21 that is not possible. I've looked at that video myself
22 hoping I could see somebody else. I can't determine who
23 that is. To me, that's reasonable doubt.

24 They have presented, I think, seven or eight witnesses
25 to you. They have presented police officers that stated

CLOSING ARGUMENTS BY THE DEFENSE/JOHNSON

1 that they had no evidence that my client or any of the
2 other clients were guilty. They presented two lay
3 witnesses as we call them, which were Ms -- which was
4 Mr. Jenkins and the other individual, all of which says
5 that they had no knowledge of my client or any other ones
6 actually committing this murder -- I mean, excuse me,
7 committing this armed robbery.

8 They were seen at around 11 o'clock supposedly outside
9 where they were standing by the white van. The robbery
10 did not occur until 1:58 that night. That's three hours.
11 Three hours later there's a robbery.

12 You have Mr. Priester who sat here. He stated kind of
13 proudly that he has some disagreements with the
14 individuals at the table. Remember how he bragged about
15 he supposedly had a relationship with one of the
16 co-defendants' girlfriend, and that the girlfriend had a
17 relationship -- or the co-Defendant had a relationship
18 with his girlfriend? They had some run-ins before.

19 He had every reason to lie on them and he seemed to
20 get some enjoyment out of it. He wasn't afraid. When he
21 sat there yesterday, he was not afraid. He was not trying
22 to help anybody but himself.

23 All I ask you to do is to look at the evidence. Take
24 your time. There is no rush on this. Take your time.
25 Look at the evidence. Remember the oath that you took.

CLOSING ARGUMENTS BY THE DEFENSE/HARTE

1 It's always harder to do the right thing because sometimes
2 the right thing isn't what everybody think (verbatim) you
3 should do.

4 But remember, reasonable doubt, beyond a reasonable
5 doubt, if you go back in that jury room and you look at
6 this evidence, I submit to you that you cannot walk out
7 that jury room without anything else but reasonable doubt
8 on your mind. And as a result, you should find my client
9 innocent.

10 Thank you.

11 MR. HARTE: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. HARTE: Counsel, Solicitor, Mr. Foreman, ladies
14 and gentlemen of the jury. Good morning.

15 THE JURY (COLLECTIVELY): Good morning.

16 MR. HARTE: I'm going to try not to repeat what other
17 counsel have said. I would ask that you keep it in mind
18 when you deliberate that I probably agree with about
19 99.999 percent of what they just told you.

20 When you look at the witnesses in this case -- as it
21 applies. And I'm going to try to focus my argument as
22 applies to my client, Jamaal Riley. When you look at the
23 witnesses in this case, nobody says anything about Jamaal
24 Riley until you get to Jermaine Priester.

25 And make no mistake about it, Jermaine Priester is the

CLOSING ARGUMENTS BY THE DEFENSE/HARTE

1 sole basis of the State's case, the State's case in this
2 matter.

3 Now, I believe His Honor will tell you there are
4 certain things you can look at when you're trying to
5 determine the credibility or believability of a witness.
6 And you're the sole judges of that. The Judge can't even
7 intimate how he feels about the credibility or the
8 believability of the witnesses or in this case Jermaine
9 Priester.

10 One of the things you look at is: How did they behave
11 on the witness stand? What was their demeanor in this
12 case? Was Jermaine Priester a forthright and serious
13 witness? Did he answer the questions seriously? Or did
14 he at times get a smirk on his face and give a smart
15 answer? Did he say: Yeah, thanks for reminding me about
16 that?

17 Serious witnesses who are telling the truth don't act
18 like that. Serious witnesses who are telling the truth
19 don't have multiple stories that they've told before.

20 One of the things that we talked about at the
21 beginning of this trial, do you look for statements that
22 have been made by this witness that are consistent with
23 what he's saying now? Or is he giving multiple
24 inconsistent statements?

25 Does a witness who is telling the truth have a reason

CLOSING ARGUMENTS BY THE DEFENSE/HARTE

1 to lie? No. Does Jermaine Priester have a reason to
2 lie? Yes. Counsel already talked about that, and I'm
3 going to talk about it again.

4 One thing that Jermaine Priester did in this case
5 which is a classic liar's thing, when he was confronted by
6 what was said in those interviews, by what he was told in
7 those interviews, I can help, you're not the least --
8 you're the least one we're looking for. If you'll tell me
9 who did it with you, then you're a hundred percent. The
10 others are all making deals. They're trying to blame
11 you.

12 He knew that if he said no, no, that didn't happen,
13 that wasn't said to me. I didn't say that or he didn't
14 say that. The first thing I'd have done is put that video
15 of that interview, and he'd have been contradicted.

16 So what does he do? He does the liar's things. I
17 don't remember. I don't remember. I don't remember. Do
18 you really think he doesn't remember what was said in
19 those interviews? Of course he remembers.

20 The issue in this case is not whether Jermaine
21 Priester was involved in that armed robbery. The issue in
22 this case, is there a reason to doubt when he says that
23 this man was involved in that armed robbery? From my
24 standpoint, it's the only client I represent.

25 Let's talk about the scenario how Jermaine Priester

CLOSING ARGUMENTS BY THE DEFENSE/HARTE

1 came to give his truthful statement. The first interview,
2 he's called in. He tells his mother he didn't do it.
3 That interview, if you remember correctly, he admitted
4 lasts about 45 minutes.

5 The second interview, I believe it was a couple weeks
6 or sometime, maybe not that far, later. He's brought in.
7 If you remember correctly, he admitted that the
8 investigator who was questioning him repeatedly told him
9 that they had DNA in an unrelated case.

10 Now during that 43-minute interview he still
11 maintained that he had nothing to do with Jim Bo's
12 robbery.

13 Then he stewed on it for five months. From September
14 1st to January 24, 2012, he stewed on it. And what's he
15 thinking? They got me on this other case. They've
16 actually got something that I can't get out of, because
17 they got DNA.

18 And remember he says, "I know how to play the game."
19 So how's he going to help himself? What reason does he
20 have to lie? To help himself in that other case, because
21 they've got him on that one.

22 Only then, only then does he come forward and say, oh,
23 I want to tell the truth now. I want to be honest. No.
24 He doesn't want to tell the truth. He wants to help
25 himself. It's ironic that the one thing we don't have in

JUDGE'S CHARGE TO THE JURY

1 Jim Bo's robbery, which is physical evidence, is the one
2 thing that caused Jermaine Priester to lie. And that's
3 the physical evidence in the other case.

4 Make no mistake about it, ladies and gentlemen, in
5 order for you to convict Jamaal Riley with these crimes
6 you have to say, I believe Jermaine Priester beyond a
7 reasonable doubt.

8 And I submit to you that you should not be able to say
9 that.

10 THE COURT: Mr. Foreman and members of the jury.
11 You've heard the testimony, the evidence and the arguments
12 of the State and the Defendants. I will now explain to
13 you the law that applies to this case.

14 Under the Constitution and Laws of South Carolina, you
15 are the finders of the facts in this case. I do not have
16 the right to pass upon the facts or even to express any
17 opinion that I might have as to them because this is a
18 matter solely for you, the jury, to determine. As jurors
19 then, it is your duty to determine the effect, the value,
20 the weight and the truth of the evidence presented during
21 this trial.

22 You are also the judges, the sole judges of the
23 credibility, that is, the believability of the witnesses
24 who have testified and of the evidence which has been
25 presented during this trial.

JUDGE'S CHARGE TO THE JURY

1 In passing upon credibility, you may take into
2 consideration many things, such as the demeanor or manner
3 of testifying, whether the witness had a reason to be
4 biased or prejudiced, or whether a witness's testimony was
5 contradicted on the one hand or supported and corroborated
6 on the other hand.

7 All of these things you will consider, bearing in mind
8 that you should give the Defendants the benefit of any
9 reasonable doubt.

10 It becomes your duty as jurors to analyze and to
11 evaluate the evidence and determine that evidence which
12 convinces you of its truth.

13 Now a person who has a past criminal record is
14 competent to testify during a trial. A past record does
15 not affect the ability of that witness to testify. The
16 past record may only be considered by you, if at all, in
17 determining the witness's believability.

18 Remember, you are the sole judges of the facts in the
19 case and of the believability of any and all of the
20 witnesses.

21 As the Trial Judge, it is my responsibility to preside
22 over the trial of this case and to rule upon the
23 admissibility of the evidence offered during the trial.
24 You are to consider only the testimony which has been
25 presented from this witness stand, together with any

JUDGE'S CHARGE TO THE JURY

1 the law that each Defendant in a criminal trial, no matter
2 what the seriousness of the charge may be, will always be
3 presumed to be not guilty of the crime for which the
4 indictment was issued unless guilt has been proven by
5 evidence satisfying you of that guilt beyond a reasonable
6 doubt.

7 The presumption of innocence does not end when you
8 begin your deliberations but it accompanies each Defendant
9 throughout the trial until you reach a verdict of guilt
10 based on evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 The presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the Defendant
14 which remains with the Defendant until it has been
15 stripped from the Defendant by evidence satisfying you of
16 the Defendant's guilt beyond a reasonable doubt.

17 Now the presumption of innocence is not a mere legal
18 theory. It's not just a legal phrase. It is a
19 substantial right to which every Defendant is entitled
20 unless you, the jury, are satisfied from the evidence of
21 the Defendant's guilt beyond a reasonable doubt.

22 The State must prove each Defendant guilty beyond a
23 reasonable doubt. So what is a reasonable doubt in the
24 law? A reasonable doubt is a doubt which makes an honest,
25 sincere juror in search of the truth to hesitate to act.

JUDGE'S CHARGE TO THE JURY

1 exhibits which have been made a part of the record. I
2 have the additional duty to charge you the law applicable
3 to this case.

4 As the Presiding Judge, I am the sole judge of the law
5 of this case. It is your duty as jurors to accept as
6 correct and apply the law as I now state it to you and
7 then reach your verdict.

8 And, finally, I charge you in this regard that you
9 should not be concerned with what you think the law ought
10 to be but rather what I charge you the law is.

11 Now the fact that the Defendants were arrested,
12 charged, and indicted is not evidence in this case and
13 cannot be considered by you as evidence of guilt in this
14 case nor does it create any presumption or inference of
15 guilt.

16 These indictments are simply the formal written
17 instruments which contains the charges made against the
18 Defendants. An indictment is the formal document by which
19 a case is brought into court.

20 Each Defendant has pled not guilty to the charges in
21 each indictment and that plea places the burden on the
22 State to prove each Defendant guilty.

23 A person charged with committing a criminal offense in
24 South Carolina is never required to prove himself
25 innocent. I charge you that it is an important rule of

JUDGE'S CHARGE TO THE JURY

1 Proof beyond a reasonable doubt must therefore be
2 proof of such a convincing character that a reasonable
3 person would not hesitate to rely and act upon it in the
4 most important of his or her own affairs.

5 Proof beyond a reasonable doubt can also be described
6 as proof that leaves you firmly convinced of each
7 Defendant's guilt. Now, there are very few things in this
8 world that we know with absolute certainty. And in
9 criminal cases the law does not require proof that
10 overcomes every possible doubt. If based on your
11 consideration of the evidence, you are firmly convinced
12 that a Defendant is guilty, then you must find him
13 guilty.

14 If, on the other hand, you think that there's a real
15 possibility that he is not guilty, you must then give him
16 the benefit of the doubt and find him not guilty.

17 I instruct you and emphasize that the fact that the
18 Defendants did not testify is not a factor to be
19 considered by you in any way in your deliberations, and in
20 your consideration on the question of the guilt or the
21 innocence of the Defendants. It must not be considered by
22 you in any manner whatsoever. Each Defendant has the
23 constitutional right to remain silent, and the assertion
24 of this right must not be considered by you in your
25 deliberations.

JUDGE'S CHARGE TO THE JURY

1 I repeat, under your oath you're to draw no conclusion
2 whatsoever from the fact that the Defendants in this case
3 did not testify. The fact that each Defendant did not
4 testify should not even be discussed in the jury room.

5 The burden of proof, as I have stated to you, is on
6 the State. The Defendants are not required to prove their
7 innocence. The burden of proof remains on the State to
8 prove guilt beyond a reasonable doubt.

9 The Defendants are charged with armed robbery. In
10 order to prove this offense, the State must first prove
11 beyond a reasonable doubt that the Defendants took
12 personal property from the person or presence of another
13 person.

14 Property is in the presence of a person if it is
15 within the person's reach, inspection, observation or
16 control so that the person could, if not overcome with
17 violence or prevented by fear, keep possession of the
18 property.

19 The State must also prove beyond a reasonable doubt
20 that the Defendants carried away the property, intending
21 to permanently deprive the owner of the property, and to
22 keep the property for the Defendants' own use.

23 The slightest removal of the property or the complete
24 possession of the property even for an instance by the
25 Defendants is sufficient to show a taking, a carrying away

JUDGE'S CHARGE TO THE JURY

1 of the property.

2 The taking and carrying away of the property must have
3 been done with violence or by putting the owner of the
4 property in fear of violence.

5 Finally, the State must prove beyond a reasonable
6 doubt that the Defendants were armed with a deadly weapon
7 during the robbery. A deadly weapon is any article,
8 instrument or substance which is likely to cause death or
9 great bodily injury. Whether an instrument has been used
10 as a deadly weapon depends upon the facts and
11 circumstances of each case.

12 The Defendants are charged with kidnapping. The State
13 must prove beyond a reasonable doubt that the Defendants
14 knowingly and unlawfully seized, confined, kidnapped or
15 carried away another person without authority of law.

16 To do a thing unlawfully is to do it willfully against
17 the law.

18 Knowingly means with knowledge, consciously not
19 accidentally.

20 Seize means to take hold of suddenly or forcibly.

21 Confine means to limit, restrict or enclose within
22 bounds, imprison or shut or keep in.

23 Kidnap is to remove a person against his or her will
24 by unlawful force or by fraud.

25 Carry away means to remove.

JUDGE'S CHARGE TO THE JURY

1 The State does not have to prove that a Defendant did
2 all of these things. Instead if you find beyond a
3 reasonable doubt that a Defendant did any of these things,
4 you may find a Defendant guilty of kidnapping.

5 Something done without authority of law is something
6 which the law does not sanction, permit, allow, condone or
7 provide justification for.

8 Kidnapping does not have to be for any personal or
9 monetary gain, for any illegal purpose but may be for any
10 reason whatsoever.

11 The Defendants are charged with conspiracy. The State
12 must prove beyond a reasonable doubt that a Defendant
13 combined with one or more persons for the purpose of
14 committing an unlawful act or committing a lawful act by
15 unlawful means.

16 There must be a mutual understanding, agreement or
17 common intention and plan. Mere passive knowledge of or
18 consent to the criminal conduct of another is not enough
19 to make a person a conspirator. There must be guilty
20 knowledge and participation.

21 Similarly, the mere fact that a Defendant may have
22 associated with another person or met with another person
23 and discussed common aims and interests does not
24 necessarily establish proof of the existence of a
25 conspiracy or that a Defendant was involved in a

JUDGE'S CHARGE TO THE JURY

1 conspiracy.

2 On the other hand, it is not necessary that the
3 agreement be a formal one, that it be in writing, that the
4 persons hold a meeting and expressly state the terms of
5 the common plan, or that the agreement be stated in words
6 between them. The agreement of a criminal conspiracy may
7 come into being through an implied mutual understanding.
8 The willful, intentional and knowing adoption by two or
9 more of a common plan is sufficient.

10 No overt acts need to be shown to establish a
11 conspiracy. A conspiracy may be shown by circumstantial
12 evidence and the conduct of the parties.

13 In order to convict a Defendant of conspiracy the
14 State must prove beyond a reasonable doubt not only that
15 the Defendant knew of the unlawful conduct, that the
16 Defendant agreed to combine with the other persons for the
17 purpose of accomplishing the unlawful conduct.

18 The Defendants are charged with possession of a weapon
19 during the commission of a violent crime. The State must
20 prove beyond a reasonable doubt that the Defendants were
21 in possession of a firearm or visibly displayed what
22 appeared to be a firearm during the commission of a
23 violent crime. A firearm means any weapon which is
24 designed to or may be readily converted to expel a
25 projectile.

JUDGE'S CHARGE TO THE JURY

1 In order to find a Defendant guilty of possession of a
2 weapon during the commission of a violent crime, you must
3 first find the Defendant guilty of committing a violent
4 crime. Armed robbery and kidnapping are violent crimes.

5 The State must prove beyond a reasonable doubt that
6 the weapon further advanced or helped in the commission of
7 the crime.

8 I charge you that there are three Defendants, each of
9 whom are charged with armed robbery, kidnapping,
10 conspiracy, and possession of a weapon during the
11 commission of a violent crime. You must decide each case
12 separately on the evidence and the law applicable to it,
13 uninfluenced by your decision as to any other Defendant or
14 indictment.

15 The fact that you may find a Defendant guilty or not
16 guilty on a specific charge should not control your
17 verdict as to any other Defendant. Where more than one
18 person is charged with a crime, if the evidence warrants
19 it, you may convict any or all, or you may acquit any or
20 all. It will depend upon your view of the testimony and
21 the evidence.

22 You must take each Defendant and charge and consider
23 the evidence as to that Defendant and my instructions on
24 the law. You will then write a separate verdict of guilty
25 or not guilty for each Defendant on each charge.

JUDGE'S CHARGE TO THE JURY

1 Now if a crime is committed by two or more people who
2 are acting together in committing the crime, the act of
3 one is the act of all. A person who joins with another or
4 others to commit an unlawful act is criminally responsible
5 for everything done by the other person which happens as a
6 probable or natural consequence of the acts done in
7 carrying out a common plan and purpose.

8 For example, two people can be guilty of killing
9 another person when only one of the two had a gun, there
10 is only one bullet, and only one of the two fired the shot
11 that caused the death.

12 If two or more people are together, acting together,
13 assisting each other in committing the offense, the act of
14 one is the act of all, or as it is sometimes said, the
15 hand of one is the hand of all.

16 Prior knowledge that a crime is going to be committed
17 without more is not sufficient to make a person guilty of
18 that crime. Mere knowledge that another person is going
19 to commit a crime, even if the Defendant is present when
20 the crime is committed, is not sufficient to convict a
21 Defendant as a principal. Guilt as a principal is shown
22 by actual or constructive presence at the scene as a
23 result of a prior arrangement; therefore, a finding of a
24 prior arranged plan or a common scheme is necessary for a
25 finding of guilt as a principal.

JUDGE'S CHARGE TO THE JURY

1 The State must prove beyond a reasonable doubt by
2 competent evidence the theory of the hand of one is the
3 hand of all.

4 A principal in a crime is one who is either
5 actually -- either actually commits the crime or who is
6 present aiding, abetting or assisting in committing the
7 crime.

8 When a person does an act in the presence of and with
9 the assistance of another, the act is done by both. Where
10 two or more acting with a common plan or intent are
11 present at the commission of a crime, it does not matter
12 who actually commits the crime. All are guilty. The hand
13 of one is the hand of all.

14 Present at the commission of a crime means to be
15 sufficiently near to aid and abet and assist in the
16 commission of a crime. However, mere presence at the
17 scene of a crime is not sufficient to convict one as a
18 principal under the theory of aiding and abetting.

19 Intent is also a necessary element, but there must
20 have been a common design or intent to commit the crime
21 and the crime must have been committed pursuant thereto
22 with the person aiding and abetting by some overt act.

23 Intent means intending the result which actually
24 occurs, not accidentally or involuntarily. Intent may be
25 shown by acts and conduct of a Defendant or other

JUDGE'S CHARGE TO THE JURY

1 circumstances which you may naturally and reasonably infer
2 intent.

3 The State must prove these elements beyond a
4 reasonable doubt.

5 Now, an issue in this case is the identification of
6 the Defendant or Defendants as the person or persons who
7 committed the crimes charged.

8 The State has the burden of proving identity beyond a
9 reasonable doubt. You must be satisfied beyond a
10 reasonable doubt of the accuracy of the identification
11 before you may convict a Defendant.

12 Identification testimony is an expression of belief or
13 impression by a witness. You must determine the accuracy
14 of the identification of the Defendant. You must consider
15 the believability of each identification witness in the
16 same way as any other witness.

17 You may consider whether the witness had an adequate
18 opportunity to observe the offender at the time of the
19 offense and this will be affected by how long or how short
20 a time was available, how far or how close the witness
21 was, the lighting conditions, whether the witness had a
22 chance to see or know the person in the past.

23 Once again, I instruct you, the burden is on the
24 State. The burden on the State extends to every element
25 of the crime charged and this specifically includes the

JUDGE'S CHARGE TO THE JURY

1 burden of proving beyond a reasonable doubt the identity
2 of the Defendant or Defendants as the person or persons
3 who committed the crimes.

4 If after examining the testimony you have a reasonable
5 doubt as to the accuracy of the identification, you must
6 find the Defendant or Defendants not guilty.

7 I am required to charge you the law as I have done
8 through these instructions now being given to help guide
9 you to a just and lawful verdict. Whether some of these
10 instructions will apply will depend upon what you find to
11 be the facts.

12 The fact that I have instructed you on various
13 subjects on this case must not be taken as indicating an
14 opinion of this Court as to what you should find to be the
15 facts or what your verdict should be.

16 There are a number of possible verdicts which you may
17 find in this case for each Defendant. As to each charge,
18 your verdict should be guilty or not guilty. There is no
19 significance whatsoever in the order in which I state
20 these possible verdicts. It's simply that one must be
21 stated first.

22 Now, ladies and gentlemen, your verdict must be a
23 unanimous one as to each charge. Mr. Foreman, when the
24 jury agrees on a verdict, you will indicate it on the
25 indictment. And you'll have these indictments. You'll

JUDGE'S CHARGE TO THE JURY

1 indicate on the indictment by writing under the word
2 verdict, guilty or not guilty, as to the particular charge
3 in the indictment, sign and then date it, the indictment.

4 Once that is done you'll knock on jury room door,
5 inform the bailiffs that you've reached a verdict and at
6 that time we'll receive you back in the courtroom. In
7 conclusion, you've been selected by both the State and the
8 Defendants to be fair and impartial jurors.

9 It is your duty then in your joint deliberations to
10 determine the truth in this case, giving each Defendant
11 the benefit of every reasonable doubt on each and every
12 issue, and from the facts which you determine to be true,
13 you take and apply the law which I have just given you,
14 and thus arrive at a verdict which speaks the truth of
15 this case.

16 I've told you the standards you have to apply to the
17 charges of armed robbery, kidnapping, conspiracy, and
18 possession of a weapon during the commission of a violent
19 crime.

20 I will give you a copy of these instructions in
21 written form. During your deliberations you may refer to
22 the instructions to guide your decision making. You must
23 consider the instructions as a whole and not follow some
24 and ignore others.

25 You've heard the evidence and now you have heard the

1 law.

2 Whatever your verdict as to each charge, Mr. Foreman,
3 as I indicated, you will state it, indicate it on the
4 indictment and date and sign it.

5 Remember again that although the Foreman is the only
6 juror who writes the verdict, it is not his alone. The
7 verdict has to be unanimous. And, Mr. Foreman, you're not
8 authorized to write the verdict until all of you have
9 agreed as to what the verdict should be as to each
10 indictment.

11 Ladies and gentlemen, now I'm going to send you to the
12 jury room but do not begin to discuss the case until you
13 have received a copy of this jury charge, the indictments
14 and the exhibits. Once you have received these things,
15 that will be your signal to begin your deliberations.

16 Once you begin your deliberations, you will deliberate
17 until you have reached a verdict at which time you'll
18 knock on the door and advise the bailiff and we'll bring
19 you out and receive the verdict.

20 I ask that all jurors now go to the jury room except
21 for the alternates who were selected. If you all will
22 stay in the courtroom while the others go to the jury
23 room.

24 (Jury exits courtroom at 11:11 a.m.)

25 THE COURT: Are there any additions or exceptions to

1 the charge?

2 MS. RINGLER: Nothing from the State, Your Honor.

3 MS. RIVERS: No, sir, Your Honor.

4 MR. JOHNSON: No, sir, Your Honor.

5 MR. HARTE: No, Your Honor.

6 THE COURT: All right. If you all will review the
7 exhibits and we will let them have it.

8 I'll speak to you all in just a moment.

9 (Attorneys reviewing exhibits.)

10 THE COURT: As to our alternates. We picked 14 jurors
11 so that we'll have you -- have to have at least 12 and
12 quite often during the course of the trial something might
13 happen to one of the jurors. And if you don't have enough
14 then we have to do the whole trial, start all over again.

15 But the jurors made it through this time, so we could
16 not use you all to participate in the deliberations.

17 But certainly I want to thank you for participating
18 and being ready to deliberate. But you are now through
19 with your jury service and you are free to go.

20 You're free to stay if you'd like to but you're off
21 jury duty. I would simply ask that if you stay that you
22 do not inform anyone as to what you think the verdict
23 should be until the jury has announced their verdict.

24 Anything else for them, Madam Clerk?

25 THE CLERK: No, sir. Your checks will probably be

1 sent out in the mail tomorrow. And we'll send you a
2 notice as well saying that you've been here for three
3 days.

4 THE COURT: All right. Thank you very much.

5 THE JUROR: I left my jacket in there.

6 THE COURT: The bailiff will be able to retrieve that
7 for you. A bailiff will be able to retrieve that for you.
8 We will then be at ease in this case waiting for the
9 jury. And we'll take two or three minutes and then we'll
10 press on with some of the other pending matters that we
11 have.

12 MS. RIVERS: Thank you, Your Honor.

13 (Thereafter, Court stood at ease at 11:16 a.m. At
14 11:37 a.m., the trial resumed:)

15 THE COURT: We got a note from the jury: Can we see
16 Exhibits 59, 60, 61, 62?

17 What says the State?

18 MS. RINGLER: My understanding, Your Honor, is that
19 that was admitted but then withdrawn, so...

20 THE COURT: All right. What says the defense?

21 MS. RIVERS: That's correct. The pictures we've
22 argued about earlier, Judge, that were excluded; same
23 arguments.

24 THE COURT: If you'll bring the Defendants, please.
25 (Defendants enter courtroom.)

1 THE COURT: If you'd have the jury come in, please.

2 (Jury enters courtroom at 11:38 a.m.)

3 THE COURT: Ladies and gentlemen. You sent a question
4 saying: Can we see Pictures 59, 61, (verbatim) and 62.
5 Those exhibits were -- have been withdrawn in the case.
6 They're not part of the record in this case.

7 You have received the testimony and you've received
8 all of the exhibits there are. There is no more testimony
9 and there are no more exhibits.

10 So, please return to the jury room.

11 (Jury exits courtroom at 11:39 a.m.)

12 THE COURT: Any additions or exceptions?

13 MS. RINGLER: Nothing from the State, Your Honor.

14 MS. RIVERS: No, sir.

15 MR. JOHNSON: I have nothing, Your Honor.

16 MR. HARTE: No, Your Honor.

17 THE COURT: All right.

18 (Thereupon, the note from the jury was marked as
19 Court's Exhibit No. 1, and was received into evidence.)

20 THE COURT: The Defendants will go back up and we will
21 take up with other matters.

22 (Thereafter, other matters were heard by the Court.)

23 * * *

24 (The trial resumed at 3:41 p.m.:)

25 THE COURT: We need the Defendants for this note.

1 (Defendants enter courtroom.)

2 THE COURT: The note from the jury says that: If we
3 find a Defendant guilty on one charge, do we have to find
4 them guilty on all charges or can we decide for each
5 individual and each charge?

6 What says the State?

7 MS. RINGLER: Your Honor, I would just -- my
8 suggestion would be to recharge them with the multiple
9 charge -- multiple-Defendant charges or to answer -- I'm
10 sorry.

11 Can you repeat the question again? I think it would
12 be a yes then. The answer would be yes.

13 THE COURT: If we find a Defendant guilty on one
14 charge, do we have to find them guilty on all charges or
15 can we decide for each individual and each charge?

16 MS. RINGLER: Either recharge or an answer of no to
17 the first one and the second one would be, you may.

18 THE COURT: All right. What says the defense?

19 MS. RIVERS: Judge, my only thinking about whether a
20 complete recharge is necessary on the joint-charge issues
21 in this trial, to avoid any possible confusion as we were
22 sitting here, which one do you say yes to and which one do
23 you say no to? And how does it work?

24 MR. JOHNSON: And, Your Honor, I would suggest saying
25 that it would just be a complete recharge on the joint-

1 charges jury instruction as you read to them.

2 MS. RINGLER: If that's your question, Your Honor, is
3 just for charge, it would just be the charges pertaining
4 to multiple charges, that each one should be considered
5 separately. I think that would be the only charge then
6 that would cover that.

7 THE COURT: All right. Anything else? Anyone else?

8 MR. HARTE: Well, I disagree with what the Solicitor
9 just said. I think it's asking about each individual
10 charge and each individual Defendant.

11 I thought your earlier charge was quite clear on that
12 issue. And they've actually got a copy of it back there.
13 So I'm somewhat confused as to why they would ask that
14 question.

15 THE COURT: All right.

16 MR. HARTE: I'd defer to your discretion as to how
17 best to answer.

18 THE COURT: All right. Let's bring the jury.

19 (Jury enters courtroom at 3:46 p.m.)

20 THE COURT: Very good. Mr. Foreman, and members of
21 the jury. You sent out a question that asks: If we find
22 a Defendant guilty on one charge, do we have to find them
23 guilty on all charges or can we decide for each individual
24 and each charge?

25 As to the first part of the question: If we find a

1 Defendant guilty on one charge, do we have to find them
2 guilty on all charges? The answer to that question is:
3 No.

4 The second question: Can we decide for each
5 individual and each charge? The answer is: Yes.

6 If you refer to the, just the very last line of the
7 charge I gave you regarding multiple defendants and
8 multiple charges, it says that: You will write a separate
9 verdict of guilty or not guilty for each Defendant on each
10 charge.

11 Does that answer your question?

12 THE FOREPERSON OF THE JURY: Yes, sir.

13 THE COURT: All right. Thank you. Please return to
14 the jury room.

15 (Jury exits courtroom and resumes deliberations at
16 3:48 p.m.)

17 THE COURT: Any additions or exceptions?

18 MS. RINGLER: Nothing from the State, Your Honor.

19 MS. RIVERS: No, sir.

20 MR. JOHNSON: I have nothing, Your Honor.

21 MR. HARTE: Your Honor, I appreciate your answer. I
22 think that was the appropriate --

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

24 (Thereupon, the note from the jury was marked as
25 Court's Exhibit No. 2, and was received into evidence.)

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1 (Thereafter, other matters were heard by the Court.)

2 * * * *

3 (At 5:20 p.m., the trial resumed as follows:)

4 THE COURT: I understand we have a verdict. Bring in
5 the Defendants.

6 (Defendants enter courtroom.)

7 THE COURT: All right. You may bring the jury.

8 And ladies and gentlemen, we must have order in court
9 at all times. There is to be no outburst as a result of
10 the jury returning its verdict.

11 (Jury enters courtroom at 5:21 p.m.)

12 THE COURT: Ladies and gentlemen. Mr. Foreman, if you
13 will remain standing. Mr. Foreman, can I -- have you
14 reached a verdict?

15 THE FOREPERSON OF THE JURY: Yes, sir.

16 THE COURT: Is it unanimous?

17 THE FOREPERSON OF THE JURY: Yes, sir.

18 THE COURT: All right. If you'll pass it on up for us
19 and you may be seated.

20 THE FOREPERSON OF THE JURY: (Complies.)

21 THE COURT: The Defendants will rise.

22 (Defendants and their counsel stand.)

23 THE COURT: Madam Clerk, you may publish the verdicts
24 in the order that they are -- as you're looking at them.

25 Flip them over one by one or read them from the back,

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1 that's fine.

2 THE CLERK: In the matter of the State versus Kevin
3 Christopher Brown, indictment for armed robbery,
4 Indictment 2012-GS-02-00027, the jury finds the Defendant
5 is guilty.

6 In the matter of the State of South Carolina versus
7 Kevin Christopher Brown, Docket Number 2012-GS-02-00028
8 for the indictment of kidnapping, the verdict is guilty.

9 In the State versus Kevin Christopher Brown, Docket
10 Number 2012-GS-06-00029, for the indictment of conspiracy,
11 the verdict is guilty.

12 In the matter of the State versus Kevin Christopher
13 Brown, Indictment Number 2012-GS-06-00030, for the
14 indictment of possession of a weapon during a violent
15 crime, the verdict is guilty.

16 In the matter of the State versus Jamaal Terrell
17 Riley, Docket Number 2012-GS-06-00069, an indictment for
18 armed robbery, the verdict is guilty.

19 In matter of the State versus Jamaal Terrell Riley,
20 Docket Number 2012-GS-06-00071, the indictment of
21 kidnapping, the verdict is guilty.

22 In the matter of the State of South Carolina versus
23 Jamaal Terrell Riley, Docket Number 2012-GS-06-00070, an
24 indictment for conspiracy, the verdict is guilty.

25 In the matter of the State of South Carolina versus

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1 Jamaal Terrell Riley, Docket Number 2012-GS-06-00068, an
2 indictment for possession of a weapon during a violent
3 crime, the verdict is not guilty.

4 In the matter of the State of South Carolina versus
5 Roosevelt Kadeem Workman, Docket Number 2012-GS-06-00049,
6 the indictment for armed robbery, the verdict is guilty.

7 In the matter of the State of South Carolina versus
8 Roosevelt Kadeem Workman, Docket Number 2012-GS-06-00052,
9 an indictment for kidnapping, the verdict is guilty.

10 In the matter of 2012-GS-06-00051, the State versus
11 Roosevelt Kadeem Workman, an indictment for conspiracy,
12 the verdict is guilty.

13 In the State of South Carolina versus Roosevelt Kadeem
14 Workman, Docket Number 2012-GS-06-00050, for the
15 indictment for possession of a weapon during a violent
16 crime, the verdict is not guilty.

17 THE COURT: All right. Mr. Foreman and members of the
18 jury, if this is your verdict, please let it be known by
19 raising your right hands.

20 THE JURY (COLLECTIVELY): (Complies.)

21 THE COURT: All right. Thank you very much. Any
22 additional polling requested by the defense?

23 MR. HARTE: Yes, Your Honor.

24 THE COURT: All right. Madam Clerk, if you will poll
25 the jurors individually.

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1 THE CLERK: Yes, sir. Can I borrow this back?
2 THE COURT: You all may be seated.
3 THE CLERK: Michelle Debruhl, was that your verdict?
4 THE JUROR: Yes.
5 THE CLERK: Is it still your verdict?
6 THE JUROR: Yes.
7 THE CLERK: Jarvis Dunbar, was that your verdict?
8 THE JUROR: Yes.
9 THE CLERK: Is it still your verdict?
10 THE JUROR: Yes.
11 THE CLERK: David Lott, was that your verdict?
12 THE JUROR: Yes.
13 THE CLERK: Is it still your verdict?
14 THE JUROR: Yes.
15 THE CLERK: Janet Redingburg, was that your verdict?
16 THE JUROR: Yes.
17 THE CLERK: Is that still your verdict?
18 THE JUROR: Yes.
19 THE COURT: Ned Rivers?
20 THE JUROR: Yes, ma'am.
21 THE CLERK: Was that your verdict?
22 THE JUROR: Yes, ma'am.
23 THE CLERK: Is it still your verdict?
24 THE JUROR: Yes, ma'am.
25 THE CLERK: Carolyn Scott, was that your verdict?

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1 THE JUROR: Yes, ma'am.
2 THE CLERK: Is it still your verdict?
3 THE JUROR: Yes, ma'am.
4 THE CLERK: Jamie Simmons, was that your verdict?
5 THE JUROR: Yes, ma'am.
6 THE CLERK: Is it still your verdict?
7 THE JUROR: Yes, ma'am.
8 THE CLERK: George Taylor.
9 THE JUROR: Yes, ma'am.
10 THE CLERK: Was that your verdict?
11 THE JUROR: Yes, ma'am.
12 THE CLERK: Is it still your verdict?
13 THE JUROR: Yes, ma'am, it is.
14 THE CLERK: Tonya Thomas, was that your verdict?
15 THE JUROR: Yes.
16 THE CLERK: Is it still your verdict?
17 THE JUROR: Yes.
18 THE CLERK: Leslie Williamson, was that your verdict?
19 THE JUROR: Yes, ma'am.
20 THE CLERK: Is it still your verdict?
21 THE JUROR: Yes, ma'am.
22 THE CLERK: Marty Williamson,
23 THE JUROR: Yes, ma'am.
24 THE CLERK: Was that your verdict?
25 THE JUROR: Yes, sir.

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1 THE CLERK: Was it still your verdict?

2 THE JUROR: Yes, ma'am.

3 THE COURT: All right. The jury has been polled. The
4 verdict is the unanimous verdict of each and every juror.
5 The Defendants stand convicted of the indictments of which
6 they have been found guilty of; that being all indictments
7 in the case except for a not-guilty verdict of Mr. Workman
8 and Mr. Riley involving possession of a weapon during a
9 violent crime. The Defendants are guilty on each and
10 every other indictment.

11 Any post-trial motions?

12 MS. RINGLER: None from the State, Your Honor.

13 MR. HARTE: Your Honor, the defense moves for a
14 judgment notwithstanding the verdict of the jury and
15 therefore for a new trial.

16 MR. JOHNSON: I concur with that, Your Honor.

17 MS. RIVERS: I do, Your Honor.

18 THE COURT: Any response by the State?

19 MS. RINGLER: Your Honor, I feel we've addressed all
20 the issues after a directed verdict and I believe that
21 that ruling still holds on.

22 THE COURT: All right. The issues presented in this
23 case were issues for the jury to determine, the issue of
24 the credibility of witnesses, believability of the
25 evidence presented.

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1 The jury has deliberated long and hard for a period of
2 about six hours ago, six hours. Approximately six hours
3 and have unanimously decided the Defendants are guilty.

4 The evidence is -- the verdicts are supported by the
5 evidence and I respectfully deny the motions for a new
6 trial or any other post-trial motion.

7 Ladies and gentlemen, you didn't ask for this, you
8 were drafted. You were summoned to appear and you've
9 responded to the call to serve.

10 There is no other -- few other higher callings than to
11 be called, to be put in a position of serving on jury
12 duty. Many people take it lightly. I'm certain that
13 after you all have undergone the experience that you all
14 have undergone in serving in this case that you will be
15 ready to debate anyone who tries to tell you that it's an
16 easy job.

17 It's a difficult job. It's an honorable thing to do.
18 It calls for a lot of soul searching, a lot of
19 deliberations, and a lot of consultations with your fellow
20 man. You all have stepped up to the plate.

21 Mr. Foreman and members of the jury, you responded and
22 decided this case. And I want to thank you for your
23 services on behalf of your fellow citizens here in
24 Barnwell County and the people of this State and this
25 country.

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1 Where you have found a person guilty or persons
2 guilty, then it becomes my duty to impose a sentence. You
3 all don't have any role in that process, but I invite my
4 juries to stay for the sentencing process if they would
5 like to stay. And we're going to move into that process
6 at this time.

7 Madam Solicitor, anything further that you'd like to
8 present on behalf of the State?

9 MS. RINGLER: Just the criminal record. And we don't
10 have the sentencing sheets ready at this time, Your
11 Honor. So I would just need a moment to get that
12 together.

13 THE COURT: We can deal with all of that.

14 PROBATION OFFICER: Your Honor, each Defendant is on
15 probation and one is on YOA parole.

16 THE COURT: Each Defendant is on probation and one is
17 on YOA parole?

18 PROBATION OFFICER: That's right, Your Honor.

19 THE COURT: Madam Solicitor, while you are doing
20 wherever you're going, I'll hear anything that the victim
21 might want to say in the meanwhile.

22 MS. RINGLER: Thank you, Your Honor. We're printing
23 out sentencing sheets.

24 THE COURT: Yes, ma'am. Ms. Corell, you've been here
25 throughout the process. You're the victim in this case.

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1 You've endured a lot. I'll be happy to hear anything that
2 you would like to say.

3 THE VICTIM/MS. CORELL: I'm fine, Your Honor. I don't
4 need to say anything.

5 THE COURT: Thank you very much.

6 THE VICTIM/MS. CORELL: Thank you.

7 THE COURT: Anything else on behalf of the Sheriff's
8 Department? Law enforcement?

9 THE OFFICER: No, sir.

10 MR. HARTE: Do you want us to come forward, Your
11 Honor?

12 THE COURT: Yes, sir. As we wait for the solicitor to
13 do whatever she's doing, I will hear from the department
14 regarding any additional matters.

15 PROBATION OFFICER: Thank you, Your Honor. The only
16 matter we had were these charges that were pending which
17 is a violation based upon the disposition of this
18 proceeding.

19 THE COURT: And I don't know anything about any of
20 that, so start from the beginning and tell me that.

21 PROBATION OFFICER: Yes, sir, Your Honor.

22 Your Honor, for Jamaal Riley, Mr. Riley was placed on
23 probation on indictment GS -- 11-GS-03-12, possession of a
24 firearm by a convicted felon.

25 He was placed under probation by Judge Buckner in

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1 Allendale County on May the 12th, 2011, sentenced to five
2 years suspended upon the service of time served and two
3 years probation.

4 He was unemployed during the time of his probationary
5 period until being arrested. His financial obligations
6 were as follows: He had a \$20 drug test fee to be paid at
7 \$20 a month with an arrears of \$20 and a balance of \$20.

8 The regular supervision fee of \$1,200 to be paid at
9 \$50 a month. No payment was made. He was in arrearage of
10 \$650 with a balance of \$1,200.

11 He had a Court-ordered fine of \$628.90 to be paid at
12 \$30 per month. Total amount paid was zero dollars. He's
13 currently in the arrearage of \$390 with a balance of
14 \$628.90.

15 While being placed on probation, Mr. Riley had one
16 violation, previous violation which occurred on May 6,
17 2011, where he tested positive for marijuana. At that
18 time a 1182 or notice of referral was given for any
19 positive or future drug tests.

20 The violation that we're here today for is by
21 violating conditions four, six and ten under
22 11-GS-03-00012, by the Allendale County Court of General
23 Sessions on May 12th, 2011, subject failed to follow the
24 advice of his agent, that being that there was probable
25 cause believed the Defendant committed the offense of

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1 armed robbery based upon the Warrant M-565468, armed
2 robbery.

3 That on 7-22-11, one Jamaal Riley did take with the
4 intent to deprive monies from the Morris Quick and Easy
5 while armed with a firearm, a deadly weapon. This taking
6 place at the Morris Quick and Easy on 10077 Marlboro
7 Avenue, located within the limits of Barnwell, South
8 Carolina, the act being in violation of South Carolina
9 Code of Laws as amended. Such actions constitute a
10 willful violation of the subject's original probation
11 order.

12 The agent's recommendation at that time was a
13 revocation and termination of the balance of probation.
14 The justification for that, Mr. Riley is a clear and
15 present threat to the community. His actions is a clear
16 demonstration of his unwillingness to comply with the
17 terms and conditions of his probation and for those
18 reasons a revocation is not only justified but also
19 requested.

20 In the matter of Mr. Kevin Brown. Mr. Brown was
21 placed on probation under Indictment 09-GS-06-00239 for
22 the offense of burglary second degree. He was placed on
23 probation by the Honorable Doyet Early and sentenced to
24 probation on July 8th, 2009, sentenced to four years
25 suspended to three years probation.

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1 At the time he was -- he is unemployed. His financial
2 obligations were as follows: He has a regular supervision
3 fee of \$8,200 to be paid at \$50 a month. He's paid a
4 total of \$1,200, last payment being made on July 21st,
5 2011 with a total arrearage currently of \$550 and a
6 balance of \$600.

7 He has a court-ordered fine of \$648.90, and to be paid
8 at \$20 a month. He has paid a total of \$417, last payment
9 made on April 20th, 2011. He's currently in arrears of
10 \$140 with a balance of \$231.90.

11 While being placed on probation -- I'm sorry. He also
12 has a Day Corp restitution account of \$600 to be paid at
13 \$21 a month. He's paid a total of \$500. Last payment
14 being made on July 21st, 2011. He's currently in arrears
15 of \$100 with a balance of \$100.

16 Mr. Brown had two prior violations. First on April
17 11, 2011, the subject failed to maintain his supervision
18 fees in that he was seven payments in arrears. At that
19 time our office we did an 1182 and restructured his court
20 fines and fees.

21 Also on January 14th, 2010, on the violation on
22 December 11, 2009, Kevin Brown was arrested for refusing
23 to leave after request. Offender was arrested by the
24 Barnwell City Police Office after refusing to leave the
25 Disability Board and by failing to follow the advice and

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1 instructions of his agent.

2 At the time an 1182 was issued giving zero tolerance
3 to any further violations or any arrest. If the Defendant
4 failed to conform or got any new violations he could go to
5 general sessions for probation violation.

6 The present violations are as follows: By violating
7 conditions four, six, seven, nine and 10 as ordered in
8 Case 09-GS-06-00239 before the Honorable Judge Early the
9 Third, at the July 2009 term of General Sessions Court in
10 Barnwell, South Carolina.

11 Subject failed to follow the advice and instructions
12 of his agent, being the subject was in possession of a
13 weapon and committed several violent crimes and was
14 arrested on the following charges:

15 Warrant M-565493, possession of a weapon during a
16 violent crime. That on July 21st, 2011, Kevin Brown did
17 possess a firearm during the commission of an armed
18 robbery. This crime taking place at Jim Bo's Mini Mart
19 Number 9, 1000 Dunbarton Boulevard which is located within
20 the City limits of Barnwell, South Carolina. This act
21 being a violation of the South Carolina Code of Laws as
22 amended.

23 Warrant M-565457, armed robbery, that on July 21st,
24 2011, one Kevin Brown did while acting in concert with
25 others intend to deprive and take money from Jim Bo's Mini

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1 Mart Number Nine while armed with a firearm or a deadly
2 weapon. This crime taking place at Jim Bo's Mini Mart
3 number Nine which is located at 1000 Dunbarton Boulevard
4 which is located within of the City limits of Barnwell,
5 South Carolina. This act is a violation of South Carolina
6 Code of Laws as amended.

7 Warrant M-565459, assault and battery, Kevin Brown did
8 commit the crime of assault and battery first and that
9 Kevin Brown, age 22 years, did grab an 11-year-old child
10 by the neck and choke him. This act occurred on May 28,
11 2011, within the City limits of Barnwell, South Carolina,
12 and violates South Carolina code of Laws as amended.

13 Warrant M-565463, armed robbery, that on July 26,
14 2011, one Kevin Brown did while acting in concert with
15 others with the intent to deprive and take money from
16 Bi-Rite while armed with a firearm, a deadly weapon. This
17 crime taking place at the Bi-Rite which is located at 9056
18 Patterson Street located in the City limits of Barnwell,
19 South Carolina. This act was a violation of South
20 Carolina Code of Laws as amended.

21 Warrant M-565471, possession of a weapon during a
22 violent crime, that on July 26, 2011, one Kevin Brown did
23 possess a firearm during the commission of an armed
24 robbery. This crime taking place at the Bi-Rite on 9056
25 Patterson Street which is located within the City limits

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1 of South Carolina (sic), this act being a violation of
2 South Carolina Code of Laws as amended.

3 Warrant M-565470 and M-565492, criminal conspiracy.
4 That on July 26 and July 21st, one Kevin Brown did with
5 another person unlawfully plan and scheme to accomplish
6 the crime of armed robbery. This crime taking place at
7 the Bi-Rite on 9056 Patterson Street and Jim Bo's Mini
8 Mart Number 9 on 1000 Dunbarton Boulevard, both which are
9 located within the City limits of Barnwell, South
10 Carolina. These acts being in violation of the South
11 Carolina Code of Laws as amended.

12 Warrant M-565469 and M-565477 kidnapping, that on July
13 21st, 2011, and July 26, 2011, one Kevin Brown did
14 unlawfully seize and confine Daniel West and Dora
15 (verbatim) Corell without authority of law and by failing
16 to follow the advice, instructions of his agent, that he
17 is currently in arrears of \$50 of his supervision fees and
18 in arrears of \$25 of his Court-ordered fine, such actions
19 constitute a willful violation of the probationer's
20 agreement as ordered.

21 At this time, the agent is requesting a revocation, to
22 convert all fines and fees into a civil judgment and
23 terminate the balance of probation. Justification: Kevin
24 Brown has demonstrated that he is not a candidate for
25 probation. His violent actions is a clear indication that

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1 he is a threat to members of the community in Barnwell
2 County and a revocation is being requested.

3 Finally, Mr. Roosevelt Workman. It's a YOA case, Your
4 Honor. And being that he's on a Y, we'll do a separate
5 citation to address his YOA parole.

6 THE COURT: All right. And were these warrants served
7 on them?

8 PROBATION OFFICER: Yes, sir, Your Honor. The
9 probation warrants were served on each of the individuals
10 while incarcerated at the Barnwell County Detention
11 Center.

12 THE COURT: And, Mr. Harte and Mr. Johnson, you
13 represent them on the violations as well?

14 MR. HARTE: I do, Your Honor.

15 MR. JOHNSON: I do, Your Honor.

16 THE COURT: Madam Solicitor, I asked the victim
17 whether she wanted to say something, she did not. We'll
18 hear anything else the State might have.

19 MS. RINGLER: Just with regards to the Defendants'
20 prior record, Your Honor.

21 For Roosevelt Kadeem Workman, we have 2010, two
22 convictions for burglary third out of 2010, and that's
23 what they're on YOA for, YOA parole for now -- that's what
24 he's on YOA parole for now.

25 So two burglary thirds for him.

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1 And then for Christopher Brown, we have a 2009
2 burglary second, a non-violent conviction. I believe
3 that's what he's on probation for now.

4 And then with regard to Jamaal Riley, we have a 2009
5 grand larceny \$1,000 to \$5,000, and also a common-law or
6 strong-arm robbery for 2009. He also has 2011 possession
7 of a stolen weapon which he is on probation for now.

8 PROBATION OFFICER: Excuse me, Your Honor.

9 THE COURT: Yes, sir.

10 PROBATION OFFICER: For Mr. Riley as well as
11 Mr. Brown, I also need to do an in-court citation for the
12 conviction.

13 THE COURT: All right.

14 PROBATION OFFICER: Mr. Brown, Mr. Riley, by violating
15 condition six and ten of your probation agreement as to
16 cause number 2011-GS-03-2012 and cause number 2009-GS-
17 06-00239 by getting a new offense in Barnwell County on
18 September 6, 2012, you're in clear violation.

19 Thank you, Your Honor.

20 THE COURT: All right.

21 MS. RINGLER: And then, I guess, there are pending
22 charges right now that are still pending.

23 Jamaal Riley has an additional armed robbery,
24 conspiracy, kidnapping, possession of a violent weapon
25 (verbatim) and conspiracy charge from a separate armed

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1 robbery, Your Honor. He also has a breaking into motor
2 vehicle still pending.

3 With regard to Kevin Brown, he also has a separate set
4 of armed robbery charges from a separate armed robbery. I
5 think we had said before there are about a series of four
6 armed robberies in a close amount of time with sort of a
7 different makeup of groups of individuals. So that there
8 all still pending armed robberies.

9 Kadeem, Roosevelt -- excuse me. Roosevelt Kadeem
10 Workman actually has two other armed robberies that are
11 still pending other than this one.

12 THE COURT: And the other guy, the other Defendant,
13 Riley? Pending?

14 MS. RINGLER: His are still pending. He had -- I'm
15 sorry.

16 Riley has just one other armed robbery and a breaking
17 into motor vehicle still pending. Jermaine Priester, the
18 witness that we heard from, he talked about the other
19 armed robbery he has pending as well.

20 THE COURT: All right. Ms. Rivers?

21 MS. RIVERS: Judge, Mr. Workman's 21 years old. He's
22 completed his GED. He had hopes of going to college in
23 some form. He had gotten into a school actually in
24 Texas.

25 Despite his prior acts, I think he's come to point in

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1 life where he was trying to look to a different type of
2 fight. You will hear from everything presented into the
3 court, and I don't know that there's too much more I can
4 say about it other than we ask the Court to take into
5 account the age of these -- my client, and his ambitions.

6 I'm sure he's a little shocked right now and upset.
7 And these are obviously very serious charges for which you
8 have --

9 THE COURT: Is there anyone else related to him who is
10 here who might want to say something?

11 MS. RIVERS: Your Honor, his father is here. Right
12 there. Mr. Workman spent a great deal of time in foster
13 care homes and at the boys' home. So he was not always
14 living with his father, but he is here on the third row.
15 I don't know if he wants to speak or not.

16 THE FATHER: I don't have anything.

17 THE COURT: Mr. Workman, anything you'd like to say?

18 THE DEFENDANT WORKMAN: No, sir, Your Honor.

19 THE COURT: All right. Mr. Johnson?

20 MR. JOHNSON: Thank you, Your Honor. Your Honor, as I
21 stated once before, my client's 23 years old. He
22 completed his GED. He lived here in this area his whole
23 life.

24 At the time he was arrested he was not regularly
25 employed but he was keeping up on his payments to the

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1 probation. The probation violation occurred after he was
2 arrested. He has not violated probation or not been
3 detained by -- he had two prior minor violations which was
4 corrected without having to go to court on. So he had
5 been in probation before, was following all requirements
6 of probation.

7 Your Honor, as relate to my client he has -- he's been
8 fully cooperative with me since I was retained to
9 represent him. He's always been mild mannered, meek.
10 He's never caused any problems with me or anything of that
11 nature.

12 I offer these things only as mitigation in this case,
13 Your Honor. He's been found guilty of armed robbery and I
14 know the Court has some leeway as far as sentencing goes.
15 I ask you to consider in mitigation that actually the
16 incident, that it was not as armed robbery goes a violent
17 type of incident. The victim was not struck or harmed in
18 any way except for the fright of the gun and those type
19 things that I'm aware of.

20 But I ask you to consider those things as far as
21 sentencing goes. Prior to this, he had very little,
22 minimum past record. He had the one violation second
23 degree burglary which was a non-violent burglary charge.

24 He had very little contact with the police or anything
25 of that nature. So I ask you to consider those things.

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1 His mother here, Ms. Sue Williams, is here. She's
2 sitting in the pew along with his sister. And I'm not
3 sure if she would like to address the Court or not.

4 THE COURT: All right.

5 MR. JOHNSON: But he has a supportive family, Your
6 Honor. I understand the Court has a sentence of at least
7 a minimum of ten years in this matter, up and to beyond
8 that. We ask you to consider his age, consider the
9 circumstances in your sentence and consider that as
10 mitigation in setting your sentence.

11 THE COURT: All right. Mr. Brown?

12 THE DEFENDANT BROWN: No, Your Honor. I have nothing
13 to say.

14 THE COURT: Mr. Harte?

15 MR. HARTE: Your Honor, Jamaal is 19 years old. When
16 he was arrested on this charge he was attending Allendale
17 High School. He was playing football for the Allendale
18 High School team. His coach was trying to work with him
19 to see if they could get him a scholarship to play college
20 football. Of course, all of that went down the tubes when
21 this happened.

22 He's a lifelong resident of this area, not Allendale
23 County, but of this area. He has family here with him
24 today. His mother is present. And, I'm sorry, I don't
25 remember your relationship.

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1 UNIDENTIFIED SPEAKER: I'm his uncle.

2 MR. HARTE: And auntie and grandfather and several
3 people. Your Honor, I'll finish and then I'll see if they
4 want to say anything. Your Honor.

5 THE COURT: So, they're all -- Riley and Brown are
6 what relation?

7 MR. HARTE: Cousins.

8 MR. JOHNSON: Cousins.

9 MR. HARTE: Your Honor, obviously you have a
10 tremendous variance in what you can do with regards to
11 Jamaal. You have the power and authority to basically put
12 him in prison for most if not all of his adult life with
13 his charge that he's been convicted of.

14 I would ask Your Honor not to do that, to take into
15 consideration, given a period of time that he could come
16 out and be a productive citizen for the State of South
17 Carolina.

18 I will tell Your Honor that he has vehemently
19 professed to me his innocence. We were offered a fairly
20 substantial plea negotiation and it required that he
21 cooperate and his response to me was, "I don't know what
22 to tell them because I wasn't involved."

23 Obviously the jury believed Mr. Jermaine Priester and
24 decided to convict him. And I'd never argue with the
25 jury's verdict. I would just ask Your Honor to take into

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1 consideration all the factors that I've talked about and
2 perhaps if anybody would like to say anything.

3 UNIDENTIFIED SPEAKER: I'm his uncle and --

4 MR. HARTE: State your name for the record.

5 MR. MARCUS RILEY: Oh. May it please the Court. My
6 name is Marcus T. Riley. I'm a resident of Alexandria,
7 Virginia, and actually from Fairfax, South Carolina. I
8 had --

9 THE COURT: Stand in the gap so I can see you a little
10 bit better.

11 MR. MARCUS RILEY: I had Jamaal a couple years ago up
12 in Virginia with me. And they wouldn't allow me to get
13 him in school because Virginia has -- in public schools
14 you have to pay a tuition of \$20,000. So he had to come
15 back here to go to school.

16 That's my nephew. I've been knowing him a while and
17 it was lot of times where, I remember one instance where
18 he was in court speaking with the Judge and the officers
19 were charging him with something on the outside. And they
20 saying he was on the outside but he was actually in court
21 and so they still charged him with some of those crimes
22 when he was in court.

23 And I'm not saying that things don't happen. But we,
24 in life we all need a chance. And sometimes we make the
25 wrong, wrong choices in life. But I believe every man in

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1 life deserves a fair shake.

2 THE COURT: Where do you think he went astray?

3 MR. MARCUS RILEY: Excuse me?

4 THE COURT: Where do you think he went astray?

5 MR. MARCUS RILEY: I think he went astray when, that's
6 when he came to Virginia. What happened, my brother took
7 a job overseas. And he had to go to work, and at that
8 time he was not doing well in school.

9 So I asked, I say, well, send him up here with me
10 and -- up here to Virginia. And I tried for a while to
11 get him in school but I couldn't pay the \$20,000 tuition.
12 And I had to bring him back home and we got him down to
13 Allendale with my sister. Allendale-Fairfax and he went
14 to school down there and he was actually doing real good.
15 And I believe he got caught up with the wrong crowd, maybe
16 some, I mean, you know, probably following, and --

17 THE COURT: Well, it's kind of tough when the wrong
18 crowd is your cousin.

19 MR. MARCUS RILEY: Yeah, I understand that. I'm not
20 making no excuses for no one but things do happen. And I
21 ask, ask that you do your job and give these brothers a
22 chance. Thanks.

23 THE COURT: All right. Thank you.

24 MR. HARTE: Your Honor, I will tell you that Jamaal's
25 father is serving in the Armed Forces. He is stationed in

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1 probation. What do you say about that?

2 MR. HARTE: Your Honor, I didn't say that. I said
3 that he hasn't violated the charges that he hasn't been
4 tried on. He's obviously violated the probation as a
5 result of his conviction.

6 THE COURT: I heard you perfectly clear.

7 MR. HARTE: Oh, I'm sorry. Okay.

8 THE COURT: He has not violated any terms and
9 conditions of probation, except being convicted of armed
10 robbery and multiple other charges.

11 THE PROBATION OFFICER: The only other prior violation
12 of Mr. Riley had was a positive drug test, marijuana. And
13 at that time we did an in-office violation and we had him
14 to report weekly, had him do a random alcohol and drug
15 test up for a month and a half where he did test negative
16 from that point.

17 So beyond that, that's the only violation, Your Honor.

18 PROBATION OFFICER HUGHES: If I may, Your Honor.

19 THE COURT: Yes, sir.

20 PROBATION OFFICER HUGHES: Due to the nature of these
21 offenses, our policy, probation is to do a warrant for
22 community -- because of the community safety issue.
23 Probable cause doesn't mean they've been convicted yet but
24 it's done, we do it for the safety of the community. The
25 courtroom citation is done after the conviction.

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1 THE COURT: If he was served, he was served a
2 warrant?

3 PROBATION OFFICER HUGHES: Yes, sir; probable cause
4 warrant.

5 THE COURT: A probable cause warrant?

6 PROBATION OFFICER HUGHES: Yes, sir.

7 THE COURT: Mr. Brown, are you guilty or not guilty of
8 willfully violating the terms and conditions of your
9 probation?

10 THE DEFENDANT BROWN: Not guilty.

11 THE COURT: He says he's not guilty of violating any
12 probation condition as well, other than being convicted of
13 these crimes. Mr. Brown. What do you have on him?

14 PROBATION OFFICER: The only other violation we have
15 for Mr. Brown, he was arrested in, I think, July for being
16 at a location after being told to leave. He was arrested
17 for that, but again, that was an in-court -- we did an
18 1182 which is an in-office citation as well as disposition
19 of that citation.

20 THE COURT: All right. Anything else on Mr. Brown?

21 PROBATION OFFICER HUGHES: No, sir.

22 THE COURT: It's kind of hard to make a willful
23 violation of probation. Is it pretty hard to willfully
24 violate probation?

25 PROBATION OFFICER HUGHES: Not really, Your Honor.

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1 THE COURT: Well, I think you mentioned regarding the
2 fees and reporting. He reported?

3 THE PROBATION OFFICER: Initially he did report as
4 instructed, Your Honor. The only incident we have with
5 fees was Mr. Brown got behind.

6 Yes, he was on probation. He was fired from the
7 Disability Board which is where the arrest came from.
8 Before that time he was making his payments. He got
9 behind at that time. We staffed the case and restructured
10 his fines as fees.

11 As indicated in my 1106, he paid all his accounts up
12 to the point of his arrest. At the time of the arrest the
13 amounts he was behind \$450 on his supervision fees, \$25 on
14 the court fines or the arrearages. At the present time --

15 THE COURT: How much time is he facing on the burglary
16 second degree?

17 PROBATION OFFICER HUGHES: Four years, Your Honor.

18 THE COURT: The assault on the child, is that still
19 pending.

20 PROBATION OFFICER HUGHES: Yes, sir. To my knowledge.
21 yes, sir.

22 THE COURT: All right. Anything on that,
23 Mr. Johnson?

24 MR. JOHNSON: Your Honor, as he stated that he had paid
25 all his fines up to date. At the time he was arrested he

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1 was not in violation as far as he was told.

2 The assault on the child, Your Honor, we think that is
3 something that is kind of a mistake and it has not been
4 cleared up yet. But, he has not been found guilty of
5 those charges.

6 I was told by the previous prosecutor, Your Honor,
7 that the other charge, the other burglary charge of my
8 client, they charged a number of individuals. They were
9 not aware of who was actually involved in that particular
10 robbery but the prior prosecutor, Kip McAlister, indicated
11 to me that they had some evidence at that time that my
12 client was not involved in the second charge.

13 THE COURT: All right. Anything else on that for
14 Mr. Brown?

15 PROBATION OFFICER: No, Your Honor.

16 THE COURT: Ms. Rivers, anything else?

17 MS. RIVERS: No, sir.

18 THE COURT: Madam Solicitor, is there anything else
19 you want to say based on the nature of this matter or
20 anything else in relation to these Defendants?

21 MS. RINGLER: Just, Your Honor, I think the serious
22 nature of the offense speaks for itself. You've heard all
23 the evidence and you're aware of their prior records.
24 You've also heard, I think, some very tough testimony
25 coming from the victim about what she went through and

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1 obviously this is an important case to our office and to
2 law enforcement.

3 THE COURT: All right. THE SENTENCE OF THE COURT, MR.
4 BROWN, IS THAT FOR ARMED ROBBERY THAT YOU BE COMMITTED TO
5 THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 15
6 YEARS.

7 KIDNAPPING CHARGE, THE SENTENCE IS 10 YEARS.

8 CONSPIRACY, THE SENTENCE IS FIVE YEARS.

9 POSSESSION OF A WEAPON DURING THE COMMISSION OF A
10 VIOLENT CRIME IS FIVE YEARS AND RECEIVE CREDIT FOR THE
11 TIME THAT YOU'VE ALREADY SERVED.

12 How much time is that?

13 MR. JOHNSON: July of -- what date was it?

14 THE DEFENDANT BROWN: 27.

15 MR. JOHNSON: July 27th.

16 THE OFFICER: 407 days.

17 MR. JOHNSON: 407 days, Your Honor.

18 THE COURT: Mr. Workman, for armed robbery --

19 MR. JOHNSON: Your Honor, before you go on, was that
20 consecutive or concurrent?

21 THE COURT: ALL SENTENCES ARE CONCURRENT UNLESS THE
22 COURT SAYS CONSECUTIVE.

23 MR. JOHNSON: And also, Your Honor, as relate to my
24 client on the kidnapping charge, I think I need to put on
25 the record it was not sexually related so he would not be

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1 put on the sexual registry?

2 THE COURT: Put on the sentencing sheet it's not
3 related to a sexual offense.

4 MR. JOHNSON: Thank you, Your Honor.

5 THE COURT: MR. WORKMAN, FOR ARMED ROBBERY THE
6 SENTENCE OF THE COURT, THAT YOU BE COMMITTED TO THE STATE
7 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 13 YEARS FOR
8 ARMED ROBBERY.

9 KIDNAPPING, THE SENTENCE IS TEN YEARS.

10 CRIMINAL CONSPIRACY, THE SENTENCE IS FIVE YEARS.

11 MR. RILEY, FOR ARMED ROBBERY, THE SENTENCE IS THAT YOU
12 BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
13 PERIOD OF TEN YEARS.

14 CRIMINAL CONSPIRACY, (VERBATIM) TEN YEARS.

15 THE OTHER SENTENCE -- ON CRIMINAL CONSPIRACY, FIVE
16 YEARS.

17 AS RELATE TO THE PROBATION VIOLATIONS, ALL THE
18 PROBATIONS OF MR. RILEY AND MR. BROWN ARE REVOKED IN FULL,
19 CIVIL JUDGMENTS FOR ANY MONEYS DUE AND CREDIT FOR TIME
20 SERVED FROM THE TIME OF THE SERVICE OF THE WARRANT.

21 THE YOA MATTER WILL BE HANDLED BY THE YOA PAROLE
22 BOARD.

23 MR. JOHNSON: That's correct.

24 THE COURT: Anything else?

25 MR. HARTE: Your Honor, with regards to Mr. Riley, I'm

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1 told that he has 398 days credit.

2 THE COURT: THREE HUNDRED NINETY-EIGHT DAYS CREDIT FOR
3 MR. RILEY.

4 MR. HARTE: And I would request the same notation on
5 the kidnapping indictment with regards to non-sexual in
6 nature.

7 And, I'm sorry, Your Honor, I wasn't exactly sure what
8 the sentence was. Was it ten years for armed robbery, ten
9 years for kidnapping, and five years for conspiracy; is
10 that correct?

11 THE COURT: I'm taking into consideration his age and
12 the likelihood that he was subject to the influences of
13 his cousin and maybe Mr. Workman, whomever else might have
14 adversely affected him.

15 And also the fact that he is younger than the others
16 and perhaps at some point will decide that this is not the
17 way his life should be going.

18 MR. HARTE: I just wasn't sure as to the breakdown.
19 Thank you.

20 THE COURT: And hopefully he recognizes the break that
21 he's getting on the sentences by getting a minimum
22 sentence.

23 MS. RIVERS: Your Honor, if I may. I understand that
24 Mr. Workman has had the same amount of time as Mr. Brown
25 in the detention center which I believe is 407 days.

1 THE COURT: HE'LL (WORKMAN) BE GIVEN CREDIT FOR THE
2 TIME THAT HE HAS SERVED AS WELL AS THE INDICATION THAT
3 IT'S NOT A SEXUALLY-RELATED KIDNAPPING.

4 MS. RIVERS: Thank you.

5 MR. HARTE: Thank you, Your Honor.

6 THE COURT: Anything else? All right. Good luck to
7 you all.

8 MR. JOHNSON: Thank you, Your Honor.

9 THE COURT: Madam Solicitor, with regard to these
10 other pending robberies, et cetera, do they have --
11 they're just --

12 MS. RINGLER: We've not made a decision on what we're
13 going to do with those charges at this point in time, Your
14 Honor.

15 THE COURT: All right. Ladies and gentlemen, I want
16 to thank you for your services. At least it didn't take
17 too much of your time, but it was a very important matter
18 as you all well know, particularly considering the string
19 of robberies that occurred in this area.

20 And law enforcement needed to address it as well as
21 the victim's desire to have some relief. It's unfortunate
22 that these kids decide to do what they do sometimes but
23 maybe something will hit them at some point and turn them
24 in the right direction.

25 Well, thank you all very much for your services. And

1 I'll greet you all as you leave.

2 Mr. Foreman, I want to speak with you just for a
3 moment. I usually debrief the Foreperson.

4 You've been told throughout the process that you're
5 not to discuss the matter. Now that you're off jury duty
6 you can discuss it with whomever you wish but no one
7 should bother you or harass you based on your jury
8 service. If any of that should occur, send word of that
9 to me through the clerk, Ms. McElveen, and we'll tend to
10 them.

11 Thank you very much. And we will be in recess
12 otherwise until tomorrow morning.

13 END OF CASE: 6:10 P.M.

14 ***

15
16 CERTIFICATE OF REPORTER

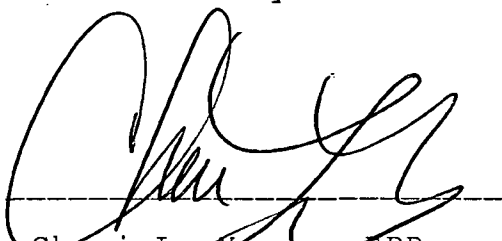
17
18 STATE OF SOUTH CAROLINA)

19 COUNTY OF AIKEN)
20

21 I, Cheri L. Young, Registered Professional Reporter
22 and Official Court Reporter for the State of South
23 Carolina, Second Circuit-At Large, do hereby certify that
24 the foregoing is a true, accurate and complete transcript
25 of record of the proceedings had and evidence introduced

1 in the hearing of the captioned case, relative to appeal,
2 in the Court of General Sessions for Barnwell County, on
3 the 4th, 5th and 6th days of September, 2012.

4 I do further certify that I am neither of kin,
5 counsel, nor interest to any party hereto. I have
6 hereunder set my hand this 21st day of November, 2012.

7
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11 Cheri L. Young, RPR
12 Official Court Reporter
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN BROWN,

APPELLANT

APPELLATE CASE NO. 2012-212946

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**Cases**

State v. Anthony, 817 S.W.2d 299, 305 (Tenn. 1991) 6

State v. East, 353 S.C. 634, 578 S.E. 2d 748 (Ct. App. 2003)..... 5

State v. Hall, 280 S.C. 74, 310 S.E.2d 429 (1983)..... 5

Other Authorities

39 A.L.R. 5th 283 6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant a directed verdict to the charge of kidnapping when it was merely incidental to the offense of armed robbery?

STATEMENT OF THE CASE

Appellant was tried with two co-defendants before the Honorable Clifton Newman in Barnwell County on September 4 – 6, 2012, for the charges of armed robbery, kidnapping, conspiracy, and possession of a weapon. Appellant was found guilty on all charges. Respective sentences of fifteen (15) years, ten (10) years, five (5) years, and five (5) years were imposed. Charlie J. Johnson, Jr., Esquire, was trial counsel. Susanna M. Ringler, Esquire, was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charge of kidnapping because it was merely incidental to the offense of armed robbery.

Donna Corell, a clerk at Jimbo's Mini Mart in Barnwell, testified about an armed robbery that occurred at the store on July 21, 2011. While she was restocking, she heard a chime on the door. She looked up and a gun was pointed at her face. She was told not to look at the man holding the gun and not to look at the other people. She needed to keep her eyes down and do what she was told. There were three men who came into the store. Their faces were covered. One man was standing in front of the door. The other one was standing right in front of Ms. Corell, and the third man was already behind the cash register trying to open it. He couldn't open it and he instructed her to go back behind the counter and open the register for him. (Tr. p. 111, line 1 – p. 112, line 18). After she helped with the register, she was told to get out of the way. (Tr. p. 113, lines 10 – 12).

After the State rested, defense counsel moved for a directed verdict to the charge of kidnapping because the State did not present any evidence to support the charge of kidnapping. (Tr. p. 246, lines 3 – 6). There was much discussion on the kidnapping charge and the trial judge wanted to know if every armed robbery was also always a kidnapping. (Tr. p. 148, line 24 – p. 258, line 10). The trial court ultimately denied the motion and relied on State v. East, 353 S.C. 634, 578 S.E. 2d 748 (Ct. App. 2003) and State v. Hall, 280 S.C. 74, 310 S.E.2d 429 (1983). (Tr. p. 258, line 11 – p. 261, line 8). The court wrote in State v. East:

The issue of whether the act of confinement can constitute the separate offense of kidnapping when it is incidental to the commission of another crime was raised in State v. Hall, 280 S.C. 74, 310 S.E.2d 429 (1983). In Hall, the victim was

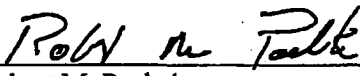
abducted by knifepoint as she placed a call from a phone booth near a clubhouse of an apartment complex. The perpetrator forced the victim to walk to an adjacent pool area where he sexually assaulted her and forced her to walk to different locations around the pool. At each location, the victim was assaulted. On appeal from his convictions for assault and battery of a high and aggravated nature, first degree criminal sexual conduct, and kidnapping, Hall argued the trial judge erred in failing to charge the jury that in order to establish kidnapping, the State must prove the confining and carrying away of the victim was more than incident to the commission of another crime. The South Carolina Supreme Court disagreed, holding that Hall's restraint of the victim constituted kidnapping within the meaning of S.C. Code Ann § 16-3-910 (1976) "regardless of the fact that the purpose of this seizure was to facilitate the commission of a sexual battery." 280 S.C. at 78, 310 S.E.2d at 431.

The court went on to note that in other jurisdictions, the majority view is to the contrary and "kidnapping statutes do not apply to unlawful confinements on movements incidental to the commission of other felonies." Quoting, State v. Anthony, 817 S.W.2d 299, 305 (Tenn. 1991). It appears that 28 states agree that the mere seizure or detention of a victim with any accompanying movement is not sufficient to constitute the separate crime of kidnapping. "Seizure or detention for purpose of committing rape, robbery, or other offense as constituting separate crime of kidnapping." 39 A.L.R. 5th 283.

CONCLUSION

This State should adopt the majority view that not all instances of confinement or movement constitute a kidnapping and a directed verdict to that charge in appellant's case should be granted.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of January, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County
Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN BROWN,

APPELLANT

APPELLATE CASE NO. 2012-212946

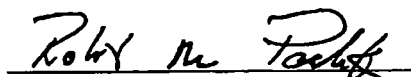
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kevin Brown states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on September 6, 2012, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Kevin Brown.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of January, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN BROWN,

APPELLANT

APPELLATE CASE NO. 2012-212946

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Hearing Transcript (September 4 – 6, 2012)

I certify that this designation contains no matter which is irrelevant to this appeal.

January 28th, 2013



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County
Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN BROWN,

APPELLANT

APPELLATE CASE NO. 2012-212946

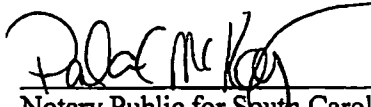
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Kevin Brown, #352266 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 28th day of January, 2013.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of January, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Kevin Brown, Appellant.

Appellate Case No. 2012-212946

Appeal From Barnwell County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2014-UP-037
Submitted December 1, 2013 – Filed January 29, 2014

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

FILED FOR REPLY
2014 FEB 27 AM 10:12
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1880
FAX: (803) 734-1838
www.sccourts.org

February 24, 2014

The Honorable Rhonda Dale McElveen
PO Box 723
Barnwell SC 29812-0723

REMITTITUR

Re: The State v. Kevin Brown

M565 457, 477, 492, 493

Lower Court Case No. 2012GS0600027, 2012GS0600028,
2012GS0600029, 2012GS0600030
Appellate Case No. 2012-212946

FILED FOR RECORD
2014 FEB 27 AM 10:11
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Salley W. Elliott, Esquire
Robert M. Pachak, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Barnwell)Kevin Brown 352266)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2014-CP-06-139

APPLICATION FOR
POST-CONVICTION REVIEWRENEA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

2014 APR -4 PM 3:19

FILED FOR RECORD

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber correctional Institution
2. Name and location of Court which imposed sentence Barnwell General Sessions
3. Name(s) of co-defendant(s) (if any) Roosevelt Workman, JAMAAH Riley
Jermaine Priester
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a)	Indictment #	2012-GS-06-027	} Clerk's correction on indictment numbers.
(b)		2012-GS-06-028	
		2012-GS-06-029	
		2012-GS-06-030	

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September, 6 15 yrs
- (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?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The State of South Carolina in the Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 29, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2014-CP-037
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of counsel
- (b) Ineffective of Appellate Counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (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. _____

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) _____
 (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? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Charlie J Johnson Jr 1928 Branwell St Columbia SC 2920
Robert Pachak - Sc. Appellate Defense 1330 Lady St, Suite 401 Columbia SC 29201
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial
Direct Appeal
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
County of _____)

VERIFICATION

FILED FOR RECORD
2014 APR -4 PM 3:19
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

I, Kevin Brown, 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.

Kevin Brown

SWORN to and subscribed before me this 18th
day of March, 2014.

Lucretia Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Kevin Brown, 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.

Kevin Brown

Applicant

SWORN or affirmed to and subscribed before me this
18th day of March, 2014.

Leudrean Bryant
Notary Public

My Commission Expires: May 26, 2020

ISSUE 1: Counsel failed to contact Alibi witnesses

Eye informed trial counsel that eye had Alibi witness, He failed to investigate my Alibi witnesses my witnesses would OF testified of my whereabouts showing co-def was lying. By counsel not investigating my Alibi witnesses and having and presenting my witnesses deprived me EFFECTIVE assistance of counsel. Alibi witness would have testified that the Nite of the crime Eye was home if Jury would have had a chance to hear her testimony there's a Reasonable Probability that the outcome would have been different.

ISSUE 2: Counsel was ineffective for not requesting a mistrial

At trial the state elicited prejudicial testimony the witness testified as to what he heard pg 153 this testimonial demanded a mistrial, counsel failed to request a mistrial, this testimony was highly prejudicial and had counsel requested a mistrial the outcome would have been different.

ISSUE 3: Counsel gave petitioner erroneous advice.
At trial the Judge ask petitioner did he want a mistrial counsel whispered in petitioner ear stating

(Say No, we got a good Jury and a good Judge, you don't want a mistrial)
This advice was erroneous the courts ruled in Burton that witness could only say what the co-defendant said about his self not about another co-defendant, being that this was a joint trial the witnesses testimony was highly prejudicial and by counsel tell petitioner to Refuse a mistrial was erroneous, had counsel not erroneously advised petitioner to Refuse a mistrial there's a Reasonable Probability the outcome would have been Different.

Issue 4: Appellate counsel was ineffective for not raising that Brenda O'Berry
test 382 granted a mistrial

Brenda O'Berry gave damaging testimony as Identification Evidence this evidence
was inadmissible and highly prejudicial pg. 181-184 the Judge ruled that this
testimony was inadmissible pg. 193 L11-19 trial court Sustained Counsel's
objection but the testimony was already presented to the Jury, trial
court was to give a curative instruction to the Jury to disregard that testimony,
but did not. If appellate counsel had of raised this issue on direct there's a
reasonable probability that the outcome would have been different.

Issue 5: Trial counsel was ineffective for not motion for a mistrial
after Brenda O'Berry gave damaging and highly prejudicial testimony
counsel was to motion for a mistrial because the Jury had
already been tainted even though counsel did object and objection
was sustained the Judge did not give a curative instruction
to alleviate the taint of the jury thus a mistrial was demanded.
If counsel had of requested a mistrial the outcome would have
been different.

FILED FOR RECORD
2014 APR - 4 PM 3:19
RHONDA D. McELVEEN
CLERK OF COURT
DANIELLE COUNTY, S.C.

Issue 6: Trial counsel did not effectively impeach state's star witness
counsel didn't effectively impeach state's star witness, counsel should
of petition the court to reveal he deal when co-def witness counsel should
he had not been promised a lesser sentence for his testimony, counsel should of showed
the jury the interrogation video to show co-def was lying and told the police
multiple times he know nothing, if counsel had of did this there's a reasonable
probability that the outcome would have been different (also should of brought
up the fact that he got shot and interviewed witnesses to find out that he
got shot while he was trying to rob someone.)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Kevin Brown, #352266,	)	2014-CP-06-139
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 4, 2014, 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 Barnwell County Clerk of Court. The Applicant was true bill indicted at the January 2012 term of the Barnwell County Grand Jury for Armed Robbery (2012-GS-06-00027); Kidnapping (2012-GS-06-00028); Conspiracy (2012-GS-06-00029); Possession of a Weapon During a Violent Crime (2012-GS-06-00030). Charlie Johnson, Jr., Esquire represented Applicant. Applicant proceeded to a jury trial before the Honorable Clifton Newman. Applicant was found guilty and Judge Newman sentenced Applicant to fifteen year term of imprisonment for Armed Robbery, ten year term of imprisonment for Kidnapping, five year term of imprisonment for Criminal Conspiracy, and five year term of imprisonment for Possession of a Weapon During Violent Crime. All sentences were to run concurrently.

A timely Notice of Appeal was filed and an Anders¹ brief was submitted on Applicant's behalf. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Kevin

¹ Anders v. California, 386 U.S. 738 (1967).

Brown, Op. No. 2014-UP-037 (Ct. App. filed January 29, 2014). The Remittitur was issued on February 24, 2014.

Attached herewith and incorporated herein are the records of the Barnwell County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failing to make a motion for a mistrial after Brenda O'Berry gave damaging and highly prejudicial testimony...counsel was to motion for a mistrial.
 - b. Counsel did not effectively impeach state witnesses regarding his deal with the State.
 - c. Counsel failed to contact Alibi Witnesses
 - d. Counsel gave erroneous advice when the Court asked if he wanted a mistrial.
2. Ineffective Assistance of Appellate Counsel
 - a. "Appellate counsel was ineffective for not raising that Brenda O'Berry testimony granted a mistrial."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not

conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

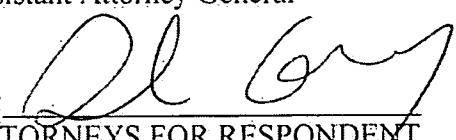
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

August 22, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF BARNWELL)

IN THE COURT OF COMMON PLEAS

2014-CP-06-139

KEVIN BROWN, #352266,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

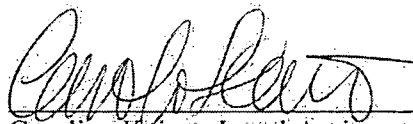
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 22nd day of August, 2014.


 Caroline Kaiser, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF BARNWELL

CIRCUIT COURT

2014-CP-02-00139

3
4 KEVIN BROWN,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Monday, May 18, 2015

11 Aiken, South Carolina

12
13 BEFORE:

14 THE HONORABLE TANYA A. GEE

15
16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Lance S. Boozer, Esq.

19
20 Counsel on Behalf of the Respondent, State of SC:
Daniel F. Gourley, II, Esq.

21
22
23 Cheri L. Young, RPR
Circuit Court Reporter
24 P O Box 5232
Aiken, SC 29803-5232
25

EXAMINATION INDEX

KEVIN BROWN

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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON MONDAY, MAY 18, 2015 AT 2:34 P.M.:

2 THE COURT: Mr. Gourley.

3 MR. GOURLEY: Yes, Your Honor.

4 This is Kevin Brown versus the State of South
5 Carolina. Docket Number 2014-CP-06-139.

6 He's presently confined in the South Carolina
7 Department of Corrections pursuant to orders of commitment
8 of the Barnwell County Clerk of Court. He was true bill
9 indicted at the January 2012 term of the Barnwell County
10 Grand Jury for armed robbery, kidnapping, conspiracy, and
11 possession of a weapon during a violent crime.

12 Mr. Johnson represented him.

13 He proceeded to a jury trial before the Honorable
14 Clifton Newman. He was found guilty and Judge Newman
15 sentenced him to a 15-year term of imprisonment for armed
16 robbery, a 10-year term of imprisonment for kidnapping,
17 and a five-year term of imprisonment for criminal
18 conspiracy, and a five-year term of imprisonment for
19 possession of a weapon during a violent crime. Those
20 sentences were to run concurrently.

21 He filed a timely notice of appeal. An Anders
22 brief was submitted. The South Carolina Court of Appeals
23 dismissed the Applicant's appeal, and the remittitur was
24 issued on February 24, 2014.

25 He subsequently filed a timely application for

KEVIN BROWN - DIRECT BY BOOZER

1 post-conviction relief on April 4, 2014, alleging that he
2 was being held in custody unlawfully based off of
3 ineffective assistance of counsel for failing to make a
4 motion for a mistrial after Brenda O'Berry's testimony,
5 failing to effectively impeach a State's witness, failing
6 to contact an alibi witness, giving erroneous advice
7 regarding a mistrial, and then ineffective assistance of
8 appellate counsel for not raising a mistrial issue.

9 The State filed its return on August 22nd, 2014.
10 And he's represented in this matter by Mr. Boozer.

11 THE COURT: All right. Mr. Boozer?

12 MR. BOOZER: Thank you, Your Honor.

13 Your Honor, if it pleases the Court, we would go
14 ahead and call Mr. Brown to the stand.

15 THE COURT: All right. Mr. Brown, please be sworn
16 in by the clerk.

17 KEVIN BROWN, having been duly sworn, was examined
18 and testified as follows:

19 THE CLERK: Please have a seat in the witness box
20 and state your full name for the Court.

21 THE APPLICANT: All right.

22 DIRECT EXAMINATION

23 BY MR. BOOZER:

24 Q. Mr. Brown, how are you?

25 A. I'm doing fine, sir.

KEVIN BROWN - DIRECT BY BOOZER

1 Q. Good. Okay. Do you know why we're here today?

2 A. Yes, sir.

3 Q. And why is that? What have you filed to get you
4 here today in court?

5 A. Well, my counsel being ineffective for not
6 requesting for a mistrial.

7 Q. Okay. You filed what's called an application for
8 post-conviction relief, right?

9 A. Uh-huh. Yes, sir.

10 Q. And just for Madam Court Reporter, just speak up so
11 that -- she's got to type everything down that you're
12 saying. So just make sure that you speak loudly and
13 clearly. Okay?

14 A. Yes, sir.

15 Q. So, you've been convicted of at trial, you've got
16 15 years for armed robbery that's concurrent with a
17 10-year sentence for kidnapping?

18 A. Yes.

19 Q. Five years for conspiracy and five years for
20 possession of a firearm, correct?

21 A. Yes.

22 Q. And the only thing -- you're asking the Court to
23 grant you post-conviction relief with regard to your
24 charges; is that right?

25 A. Yes, sir.

KEVIN BROWN - DIRECT BY BOOZER

1 Q. And you understand that if this Court -- and the
2 only thing that this Court can do today is grant you a new
3 trial and/or a belated direct appeal for your appellate
4 issues from your trial. The Court can't cut your time or
5 reduce your sentence or anything like that. You
6 understand that, right?

7 A. Yes, sir.

8 Q. And you understand that your original charges will
9 come back and any time that you've gotten, that's going to
10 basically be, for lack of a better word, belated. You can
11 face the maximum penalties again that you went to trial
12 for.

13 A. Yes, sir.

14 Q. And knowing that risk that you could go back and
15 potentially get more time, do you still want to move
16 forward with your PCR application?

17 A. Yes, sir.

18 Q. Okay. And you and I have discussed that at length,
19 have we not?

20 A. Yes, sir.

21 Q. Okay. Now, I'm going to go through and just, if I
22 could, Your Honor, just outline his allegations and then
23 we'll go through them one by one.

24 THE COURT: Please. Thank you.

25 MR. BOOZER: Thank you, Your Honor.

KEVIN BROWN - DIRECT BY BOOZER

1 Q. First who represented you at trial?

2 A. Charlie Jay Johnson.

3 Q. Was he appointed or retained?

4 A. He was appointed.

5 Q. Now you filed an application for PCR. And let me
6 just go through and make sure what your allegations are
7 today.

8 A. Uh-huh. Yes, sir.

9 Q. You've got ineffective assistance of counsel?

10 A. Uh-huh. Yes, sir.

11 Q. Okay. And you've got a sub allegation of that is
12 counsel failed to move for a mistrial during the testimony
13 of a witness.

14 A. Yes, sir.

15 Q. That's one of your allegations?

16 A. Yes.

17 Q. And you also have an allegation that counsel failed
18 to impeach a witness with their pleading?

19 A. Yes.

20 Q. You've also got failure to contact alibi witnesses
21 but it's my understanding that you're withdrawing that
22 one?

23 A. Yes. I want to withdraw that one.

24 Q. Okay. And you understand that you can't ever bring
25 that one up again?

KEVIN BROWN - DIRECT BY BOOZER

- 1 A. Yes, sir.
- 2 Q. Okay. You've also got counsel gave you erroneous
3 advice regarding mistrial?
- 4 A. Yes.
- 5 Q. And then you've got ineffective assistance of
6 appellate counsel?
- 7 A. Yes.
- 8 Q. And just in short, those are your allegations?
- 9 A. I want to withdraw the public {sic} counsel, too.
- 10 Q. You want to withdraw the appellate counsel claim as
11 well?
- 12 A. Yes.
- 13 Q. And, again, knowing that you can't raise that claim
14 ever again if you withdraw it today?
- 15 A. Okay.
- 16 Q. But you understand that?
- 17 A. Yes, sir.
- 18 Q. Okay. So let's talk a little bit about your case.
- 19 A. Uh-huh.
- 20 Q. You've alleged that your lawyer -- and you had a
21 trial in this case; is that right?
- 22 A. Yes.
- 23 Q. Okay. And you had some co-defendants?
- 24 A. Had some co-defendants.
- 25 Q. Okay. And who were your co-defendants?

KEVIN BROWN - DIRECT BY BOOZER

1 A. Well my co-defendants was Jamaal Riley, Kadeem
2 Workman and --

3 Q. Okay. Those were your two --

4 A. -- Jermaine Priester who testified against me.

5 Q. So Mr. Priester, he didn't go to trial with you, he
6 testified at your trial --

7 A. Yes, sir.

8 Q. -- as a witness? Okay. So you got a claim that
9 your lawyer failed to impeach a witness with a plea deal.
10 Which witness was that?

11 A. Jermaine Priester.

12 Q. Okay. And was he originally one of your
13 co-defendants?

14 A. Yes, sir.

15 Q. Did he testify against you at trial?

16 A. Yes.

17 Q. And just for the Court's information, looking at
18 Jermaine Priester's cross-examination by Mr. Johnson,
19 begins on page 225, Your Honor.

20 THE COURT: Okay. Thank you.

21 BY MR. BOOZER:

22 Q. Now you recall your lawyer was able to cross-
23 examine Mr. Priester --

24 A. Yes.

25 Q. -- when he testified; is that right?

KEVIN BROWN - DIRECT BY BOOZER

1 A. Yes.

2 Q. Now on page 231 of the record, your lawyer asked a
3 few questions of Mr. Priester. And if we're looking at
4 page 231 beginning at line 19 --

5 A. Yes.

6 Q. -- he asked you: The police during that interview
7 told you that they had some evidence against you on
8 another case, correct. And Mr. Priester testified: Yes,
9 they did.

10 Then you have your lawyer following up: And they
11 told you if you cooperate that it would get better for
12 you. And he testified: No, they didn't.

13 Do you recall any other testimony about or any
14 other questions your lawyer asked of Mr. Priester to see
15 if he was being given any sort of deal in exchange for his
16 testimony?

17 A. Well, they asked him how many statements he had
18 wrote and how many DVDs he had. He had three DVDs of
19 telling different stories. First he said he had nothing
20 to do with the armed robbery. And then when he got to the
21 county had started saying this, that and the third. He
22 had one DVD with his mother and father, then one DVD with
23 Joshua Koger, then another DVD by himself.

24 Q. So what is it that you're saying your lawyer should
25 -- do you think your lawyer should have cross-examined him

KEVIN BROWN - DIRECT BY BOOZER

1 more on his inconsistent statements?

2 A. Yes. He should have showed the jury the DVDs and
3 the plea deal that he had.

4 Q. Well, let me ask you this: Do you know whether
5 there was any plea deal? And you may not know this.

6 A. Uh-huh.

7 Q. Do you know if there was plea deal in effect at
8 that time?

9 A. Well, Mr. Johnson had a plea deal in front of him
10 saying -- telling Jermaine Priester, Well, the plea deal
11 right here. It was a piece of paper right there. I seen
12 it. But I didn't grab it, nothing like that, but I seen
13 the plea deal. He said it was a plea. Mr. Johnson had a
14 plea deal in front of his hand and they offered him
15 something for his testimony.

16 Q. You're saying that there was plea deal that
17 Mr. Johnson, your lawyer, had a copy of?

18 A. Yes.

19 Q. Did you ever see it?

20 A. I seen it from, from, from where he sitting --
21 where Mr. Johnson sitting at I seen it. And I ain't -- I
22 couldn't really read it but Mr. Johnson had took the
23 paper; so.

24 Q. Well, let me ask you this: Do you know what sort
25 of sentence he got or whether he ended up pleading guilty

KEVIN BROWN - DIRECT BY BOOZER

1 to any charges associated with this case?

2 A. Well, far as I know is -- I don't know who he went
3 in front of but he had got time served. I guess he pled
4 to something or just get time served.

5 Q. Okay. Now, you've also alleged that your lawyer
6 gave you some erroneous advice regarding requesting a
7 mistrial.

8 A. Uh-huh.

9 Q. Let's talk a little bit about that. There was some
10 testimony at your trial -- and for the Court's information
11 I'm looking at the testimony of a witness named Kadarian
12 Creech beginning on page 146 of the record on appeal.

13 THE COURT: Say that page number again.

14 MR. BOOZER: Yes, ma'am. It's 146.

15 THE COURT: 146. Okay. Thank you.

16 BY MR. BOOZER:

17 Q. And, Mr. Brown, who was Kadarian Creech?

18 A. Well he was the one of the witness that testified,
19 got on the stand and testified. He was saying one of my
20 co-defendants, Jamaal Riley, was talking on the phone
21 saying about me jumping over the counter.

22 Q. Okay. And specifically let me ask you this: Did
23 you have a nickname?

24 A. Juicy.

25 Q. Is that -- that's what everybody calls you?

KEVIN BROWN - DIRECT BY BOOZER

1 A. That's what everybody was calling me.

2 Q. Okay. Are you known -- where are you from?

3 A. Barnwell.

4 Q. That's a pretty small town, right?

5 A. Yeah.

6 Q. What's everybody know you by in Barnwell?

7 A. Kevin. KD. I had different nicknames, but.

8 Q. How about Juicy?

9 A. That was one of the nicknames.

10 Q. So people call you Juicy also. So looking at page

11 146 of the trial transcript and beginning on line seven.

12 And this is during direct examination by the State.

13 A. Uh-huh.

14 Q. The State asked the witness: Do you remember being

15 with Jamaal when he was on the phone at some point. And

16 Jamaal was somebody else, right?

17 A. Yeah, Jamaal.

18 Q. An answer that Mr. Creech gave was: Yes, ma'am,

19 yes. And the next question was: And do you remember him

20 talking to someone, you know, saying how he, how he, you

21 know, how he, you know, that Juicy jumped over a counter.

22 And who's that referring to? Who's Juicy referring to?

23 A. Me. Kevin Brown.

24 Q. And now, the State they had actually already called

25 you Juicy --

KEVIN BROWN - DIRECT BY BOOZER

1 A. Yeah.

2 Q. -- in the opening statement, correct?

3 A. Rodney Jenkins especially pointed out me being

4 labeled as Juicy. That's page 130 line four through 10.

5 Q. Okay. And also for direction since this is a

6 pretty big trial transcript --

7 A. Yes.

8 Q. -- on page 101, the State also refers to him in

9 opening as Juicy.

10 THE COURT: Okay. Thank you.

11 BY MR. BOOZER:

12 Q. All right. Now, your lawyer actually raised an

13 objection to this testimony where you've kind of got some

14 hearsay and what's called a Brewton issue where you're

15 identified as Juicy jumping over the counter. Your lawyer

16 objected, right?

17 A. He objected to it.

18 Q. Okay. And what happened after he objected? Did

19 the Court give you an option of almost requesting a

20 mistrial?

21 A. Yes. The judge asked me did I want a mistrial

22 because the judge say the witness gave an improper

23 statement. It was hearsay. The Court ruled it a virgin

24 issue {sic}.

25 Q. Okay. And for the Court's information this is on

KEVIN BROWN - DIRECT BY BOOZER

1 page 156. And what's happening on page 156 and the page
2 prior to, this is where the Court is basically asking you
3 if you wanted him -- and it was Judge Newman, right, the
4 trial judge?

5 A. Judge Newman.

6 Q. Judge Newman is asking you if you wanted him to
7 consider granting a mistrial and eventually you say no --

8 A. No.

9 Q. -- you don't want a mistrial. Why did you make
10 that decision?

11 A. Well, my lawyer gave me advice. My lawyer gave me
12 advice of not making that decision. He tell me, said, No
13 because we got a good jury and a good judge, you don't
14 want a mistrial.

15 Q. Okay. What else did he tell you or was that it?

16 A. He ain't really explained to me what a mistrial
17 was, or how I could have a separate trial from them. He
18 didn't explain to me that.

19 Q. Okay. So, at the time -- and I'm not talking about
20 now.

21 A. Uh-huh.

22 Q. But at that time, on that date, during your trial,
23 did you know what a mistrial meant?

24 A. No, sir.

25 Q. Okay. Well, today do you know what a mistrial is?

KEVIN BROWN - DIRECT BY BOOZER

1 A. I know what a mistrial means now.

2 Q. What does it mean?

3 A. Well --

4 Q. What would have happened if he granted a mistrial?

5 A. If he would grant a mistrial the reasonable
6 probability the outcome could have been different. A
7 mistrial I could have got a bond, a better -- because it
8 came in with a plea. Anything could have happened with a
9 mistrial.

10 Q. Or you could have had another trial?

11 A. I could have had another trial by myself, not a
12 joint trial with the others.

13 Q. Okay. So, knowing what you know now, would you
14 have wanted a mistrial?

15 A. Yes.

16 Q. Now also during the course of the trial a witness
17 by the name of Brenda O'Berry testified.

18 A. Uh-huh.

19 Q. Who was Ms. O'Berry?

20 A. Ms. O'Berry, she's an investigator.

21 Q. Okay.

22 And just for the Court's information, Ms. O'Berry's
23 testimony will begin on page 181.

24 THE COURT: Okay.

25 BY MR. BOOZER:

KEVIN BROWN - DIRECT BY BOOZER

1 Q. And you say Ms. O'Berry was an investigator. Did
2 she have any involvement with the case that was brought
3 against you and your co-defendants?

4 A. No. No, sir.

5 Q. Okay. So she was just a police officer who was
6 involved in your case?

7 A. Yes.

8 Q. All right. Now, looking over on page 181 and at
9 lines 16 through 20, the State goes and asks Ms. O'Berry
10 if she had reviewed the surveillance video in this case.
11 There was surveillance video in this case, correct?

12 A. Yes.

13 Q. And asked if she recognized somebody?

14 A. Yes.

15 Q. Okay. Now your lawyer actually objected, right?

16 A. He objected.

17 Q. Okay.

18 A. She --

19 Q. And then, turn it over to page 182 and 183, after
20 he's objected the State then questions Ms. O'Berry about
21 how she knows you --

22 A. Yeah.

23 Q. -- not the other witnesses, right?

24 A. Yes.

25 Q. Okay. How did Ms. O'Berry know you?

KEVIN BROWN - DIRECT BY BOOZER

1 A. Well, she know me from school, having interactions
2 with me in school from -- I went to Barnwell High School
3 and she's been a police there.

4 Q. Okay. So she was, like, a school resource
5 officer?

6 A. Yes.

7 Q. She didn't -- that's how she knew you?

8 A. Yes.

9 Q. All right. And so, the State -- reading the
10 transcript, obviously the State was attempting to get
11 Ms. O'Berry to identify you on the video; is that right?

12 A. Yeah. She -- the State gave her expert witness.
13 She was a expert witness. Me, me and Charlie Johnson knew
14 she would testify, or whether she going on written
15 protocol or nothing like that.

16 Q. Well, let me ask you. Did you know that
17 Ms. O'Berry was going to be testifying?

18 A. No, sir. No, sir.

19 Q. Okay. Now ultimately your lawyer was actually
20 successful in basically keeping her from testifying and
21 affirmatively identifying you on the tape, right?

22 A. Yes.

23 Q. Okay. But by now what she's already done, they've
24 already asked her if she knows you?

25 A. Uh-huh.

KEVIN BROWN - DIRECT BY BOOZER

1 Q. And the State has also gotten her to testify that
2 she's reviewed the video and that she recognizes someone
3 on there.

4 A. Yeah. She -- yes, she did.

5 Q. So is that -- in your mind, was that kind of
6 drawing the conclusion that the jury's already heard that
7 she recognizes you on the videotape even though your
8 lawyer was able to object?

9 A. She testified, like, she said she -- looked like
10 somebody that she knew and the jury knew she was talking
11 about me.

12 Q. Did your lawyer ask for a mistrial at that point?

13 A. No.

14 Q. Did he ever ask for any limiting or curative
15 instruction to be given to the jury?

16 A. No.

17 Q. And let me kind of jump back to your claim on the
18 mistrial with regard to Mr. Creech's testimony. Did your
19 lawyer ask for a curative instruction --

20 A. No.

21 Q. -- or a limiting instruction with regard to that
22 testimony?

23 A. No, sir.

24 Q. Okay. And you've -- you're not going forward with
25 your ineffective assistance of appellate counsel, correct?

KEVIN BROWN - DIRECT BY BOOZER

- 1 A. No.
- 2 Q. All right. Tell me when you first got appointed to
- 3 Mr. Johnson.
- 4 A. Well, I got first appointed to Mr. Johnson, it was,
- 5 like, August of 2011. A month later after I sat in
- 6 county, my people had gave me a paid lawyer and it was
- 7 Mr. Johnson. And he came to see me.
- 8 Q. How many times did you meet with Mr. Johnson prior
- 9 to your trial?
- 10 A. I met with Mr. Johnson, like, three times. He went
- 11 off -- he -- we went to go get a bond. Mr. Early denied
- 12 me on my bond. And we met before trial.
- 13 Q. Okay. How long would your meetings last? You said
- 14 you had three meetings?
- 15 A. I'd say -- well, the first meeting wasn't very
- 16 long. He said he was appointing my lawyer. He told me he
- 17 could have got me three years until he found out what kind
- 18 of charges I was facing.
- 19 Q. Say that one more time. Did he know what charges
- 20 you were facing initially?
- 21 A. I think he ain't knew what charges I was facing.
- 22 He told me I could have got three years, he could get me
- 23 three years but until he found out what charge I was
- 24 facing he ain't never brung that up no more.
- 25 Q. And the reason you think that he told you three

KEVIN BROWN - DIRECT BY BOOZER

1 years was because he wasn't sure what charges you were
2 facing?

3 A. Yes.

4 Q. Okay. Gotcha. What was y'all's trial strategy
5 going forward for your trial?

6 A. Trial strategy?

7 Q. Uh-huh.

8 A. Well, going to trial?

9 Q. Well, what did he tell you? Hey, this is what
10 we're going to do at trial?

11 A. Well, he tell me when I go to trial if I get found
12 guilty, I'll get -- looking at life, 25 to life. And, he
13 say he was going to cross-examine the witnesses. That's
14 what he said. When Ms. Brenda O'Berry testified we ain't
15 knew that. So I think he should have filed for a Edward
16 {sic} notice.

17 Q. Okay. Do you think that he was prepared to try
18 your case?

19 A. He was prepared but the State had some evidence
20 that they brung up to the last minute until we went to
21 trial, and that was Ms. O'Berry testimony.

22 Q. And you want -- it's your position that you want a
23 trial on these charges?

24 A. Yeah, I had want to go to trial.

25 Q. I'm -- okay. But I'm talking about today. You

KEVIN BROWN - CROSS BY GOURLEY

1 still want to go to trial on these charges?

2 A. Yeah, I'll still go to trial on these charges.

3 Q. Okay. Now, we've talked about your issues. You've
4 withdrawn a couple of them.

5 A. Uh-huh.

6 Q. And we've moved forward on the others. Is there
7 anything else regarding your allegations that we haven't
8 covered with the Court today that you want to go over with
9 the Court about?

10 A. No, that's pretty much it. He be ineffective for
11 not filing for a mistrial, not giving curative instruction
12 to a hearsay, and the co-Defendant can say nothing about
13 another co-defendant, only can say about a co-defendant.
14 They ruled in the reverse issue on that. That's the only
15 thing I wanted to say.

16 Q. Okay.

17 Your Honor, I don't have any further questions.

18 THE COURT: Okay. Thank you.

19 MR. GOURLEY: May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. GOURLEY:

23 Q. Mr. Brown, how many times did you meet with
24 Mr. Johnson before your trial? Three times?

25 A. Three times.

KEVIN BROWN - CROSS BY GOURLEY

1 Q. Okay. And during those meetings, did you have the
2 opportunity to review the discovery?

3 A. Yes.

4 Q. Okay. And did y'all talk about any kind of
5 defenses or anything like that?

6 A. Explain that again.

7 Q. Did you all talk about any kind of defenses or
8 anything like that to these charges?

9 A. Defenses. Well, he was just saying who was willing
10 to come testify. And that was -- Jermaine Priester had
11 rolled over and he was going to cross-examine him. And he
12 say if I took it to trial, if I get found guilty I was
13 looking at 25 to life.

14 Q. Okay. And, regarding this mistrial issue with
15 Kadarrian Creech --

16 A. Uh-huh.

17 Q. -- Judge Newman went over with you your right to a
18 mistrial, right?

19 A. Yes.

20 Q. Okay. And he explained to you that you could have
21 these trials, your trial separated from your two
22 co-defendants, right?

23 A. Yes, until another time. Have another trial at
24 another time, another date.

25 Q. Right. Okay. So you were aware of that, correct?

KEVIN BROWN - CROSS BY GOURLEY

1 A. Yes.

2 Q. And you decided to go ahead and go forward with
3 your trial?

4 A. I decided because Mr. Charlie Johnson told me,
5 Don't take a mistrial.

6 Q. But you told Judge Newman at that time that you
7 were prepared to continue on with the trial?

8 A. Yeah. With his advice I said yeah.

9 Q. And then in regards to Brenda O'Berry's testimony,
10 you agree with me that Mr. Johnson objected continuously
11 to any kind of testimony regarding her identification of
12 you, right?

13 A. He objected but she already testified in front of
14 the jury. The jury already heard it.

15 Q. Okay.

16 A. And the judge said she gave an inadmissible
17 statement.

18 Q. Okay.

19 MR. GOURLEY: Beg the Court's indulgence, Your
20 Honor.

21 THE COURT: Sure.

22 BY MR. GOURLEY:

23 Q. Mr. Brown, you also said a failure to impeach a
24 witness. What witness is that?

25 A. Jermaine Priester.

KEVIN BROWN - CROSS BY GOURLEY

1 Q. Jermaine Priester?

2 A. My co-defendant.

3 Q. With a plea deal?

4 A. Yes.

5 Q. And you said that Mr. Johnson had some kind of plea
6 deal sheet?

7 A. Yeah, he had some kind of a plea deal sheet on the
8 table. I couldn't read it but he had it. You know,
9 Mr. Johnson had ahold of it, like this, (indicating), a
10 plea deal right here.

11 Q. Okay. And you were tried with your three
12 co-defendants, right?

13 A. Yes.

14 Q. So all three defense attorneys got a shot at
15 Mr. Priester --

16 A. Yes.

17 Q. -- right, as far as cross-examination goes?

18 A. Yes.

19 Q. You agree with me that actually Mr. Workman's
20 defense attorney, Martha Rivers, cross-examined
21 Mr. Priester on whether or not he had any plea deals,
22 right?

23 A. Yes.

24 Q. Okay. So that information of Mr. Priester saying,
25 No, I don't have any plea deals, was already out before

CHARLIE JAY JOHNSON JR - DIRECT BY GOURLEY

1 Mr. Johnson even had an opportunity to cross-examine him?

2 A. Well, he had a plea deal. He lied. Said he didn't
3 have a plea deal.

4 Q. Okay. So you're saying Mr. Johnson should have
5 taken that sheet up and said, Well, what's this --

6 A. Yeah.

7 Q. -- is what you're alleging?

8 A. Yeah.

9 MR. GOURLEY: Okay. Fair enough.

10 Thank you, Your Honor. No further questions.

11 THE COURT: Thank you. Anything further,
12 Mr. Boozer?

13 MR. BOOZER: No redirect, Your Honor.

14 THE COURT: All right, sir. You may step down.

15 THE APPLICANT: Okay.

16 THE COURT: Mr. Gourley?

17 MR. GOURLEY: Yes, Your Honor. We call Mr. Johnson
18 to the stand.

19 CHARLIE JAY JOHNSON, JR., having been duly sworn,
20 was examined and testified as follows:

21 THE CLERK: Please have a seat in the witness box
22 and state your full name for the Court.

23 THE WITNESS: Okay. My name is Charlie Jay
24 Johnson, Jr.

25

CHARLIE JAY JOHNSON JR - DIRECT BY GOURLEY

DIRECT EXAMINATION

BY MR. GOURLEY:

Q. All right. Mr. Johnson, how long have you been practicing law?

A. Nineteen years.

Q. And were you retained in this case or appointed?

A. To be honest with you, I don't remember.

Q. Okay. Do you recall how many times that you met with Mr. Brown?

A. At least the three times that he mentioned if not more.

Q. And did you have the opportunity to file Rule Five and Brady motions?

A. Yes. We went over all discovery and everything that I had.

Q. Mr. Brown has alleged a failure to impeach Mr. Jermaine Priester with a plea deal. You were here for his testimony. He's alleged that there was some kind of plea offer made that you had in your possession.

Are you aware of anything like that?

A. I'm not aware of me having a plea deal or some type of offer given to me by the solicitor's office.

Q. Okay.

A. As has been said before, it was two other counsel involved in this case.

CHARLIE JAY JOHNSON JR - DIRECT BY GOURLEY

1 Q. Yes, sir.

2 A. They all cross-examined him before me. If I
3 remember right, I think I was the last counsel to cross-
4 examine.

5 There was no evidence that I was aware of of there
6 being a written plea deal. In most cases most solicitors
7 would tell witnesses, it was kind of as they call it a
8 wink and a nod; that if you help us out then we'll see
9 what we can do later.

10 Q. Okay.

11 A. But I had no written plea deal. I'm not sure what
12 sheet he was talking about, but it wasn't a plea deal
13 related to that, that witness.

14 Q. Okay. Mr. Brown has also alleged a failure to
15 request a mistrial or curative instruction related to
16 Brenda O'Berry or Investigator O'Berry's testimony
17 regarding the State's attempting to get her to identify
18 Mr. Brown in a video.

19 Can you kind of elaborate on your thought process
20 on that?

21 A. Well, I think if you look at the transcript, I
22 objected almost to every question that was asked of her
23 and I won my objections. At the end of that she really
24 wasn't able to get anything in. And I think I kind of
25 made the solicitor's office look a little silly in trying

CHARLIE JAY JOHNSON JR - DIRECT BY GOURLEY

1 to get that information in.

2 Finally just kind of rested and let it go. I
3 thought about a curative instruction but my belief was
4 that if I called -- asked for a curative instruction it
5 would call more attention to it than what I thought it
6 had, already had. So it was my belief that -- not to
7 request one.

8 Q. You're saying it was your belief, but you would
9 agree with me it's trial strategy not to request a
10 curative instruction at that point in time?

11 A. Right. I felt that she really didn't get anything
12 out, that it just showed that they was just trying to get
13 whatever they could in to get it on my client.

14 Q. Right.

15 A. If I asked for a curative instruction, the judge
16 would have said something about it before and I did not
17 want the jury to really think about it anymore.

18 Q. Okay. And then in regards to the testimony of
19 Mr. Creech, obviously Judge Newman offered or was
20 preparing to offer a mistrial. Can you kind of discuss a
21 little bit about that, your thought process?

22 A. Well, I met with my client. I told him that we had
23 an uphill battle because one of the co-defendants was
24 testifying against us, and because of the other evidence
25 against us. I told him that at that time I thought we had

CHARLIE JAY JOHNSON JR - DIRECT BY GOURLEY

1 a good trial judge as far as Judge Newman, as well as
2 looking at the jury and the jury pool. I felt that we had
3 a good jury --

4 Q. Right.

5 A. -- that would probably be the closest we could get
6 to a jury of his peers. I told him that it was his call,
7 but my opinion to him would be to go forward with trial.
8 But I told him that I would leave it up to him as well as
9 I asked Judge Newman to question him to make sure that we
10 had it on the record that it was his own decision to go
11 forward.

12 But I told him I would do whatever he wanted me to
13 do.

14 Q. And did you have the opportunity to explain what a
15 mistrial was and what was going to take place further down
16 the line, hypothetically?

17 A. I told him that if we have a mistrial that it --
18 they would try him again, that it's possible that they
19 could make some plea offer at a further date.

20 But, that I did not know exactly what would happen
21 but that the case would not go forward. And I think if
22 you check the record, Judge Newman also informed him of
23 that.

24 So I believe he was aware. If he misunderstood, I
25 was not aware of it.

CHARLIE JAY JOHNSON JR - CROSS BY BOOZER

1 Q. You got my next question. Did he ever question you
2 or lead you to believe that he was unaware of his
3 potential rights in regard to a mistrial?

4 A. No. If he had, I would have done everything I
5 could to correct it, I mean, because I'm a defense
6 attorney. It doesn't pay me for my clients to be
7 convicted sitting in jail.

8 Q. Certainly.

9 A. I tried my best to explain to him. I tried my best
10 to do the best I could for him and I think he knows that.
11 If I made some mistakes, I have no problem with being held
12 responsible for it, but I did what I thought was best at
13 that time. And in time, looking back at it, I wouldn't do
14 anything different.

15 MR. GOURLEY: Thank you, Mr. Johnson. I have no
16 other questions.

17 THE COURT: All right. Mr. Boozer?

18 CROSS-EXAMINATION

19 BY MR. BOOZER:

20 Q. How are you doing, Mr. Johnson?

21 A. Doing good.

22 Q. Good. Thank you.

23 Going towards Mr. Brown's allegation about the
24 Brewton issue coming in with someone referring to him as
25 Juicy, do you recall that?

CHARLIE JAY JOHNSON JR - CROSS BY BOOZER

1 A. I recall that.

2 Q. Okay. Would it be safe to say that the only other
3 evidence linking Mr. Brown to this case was the testimony
4 of a co-defendant, Mr. Priester?

5 A. As I remember that was some -- that was the
6 strongest evidence, correct.

7 Q. Okay. So now we've got a statement coming in from
8 another witness that is linking him and he's already been
9 referred to as Juicy in the opening. Did you -- wouldn't
10 you think that that's pretty damaging to him?

11 A. Oh, it was. That's why I objected to it.

12 Q. But did you think it was so -- at that point the
13 cat's out of the bag. It's already been said and there's
14 nothing that could be done, right --

15 A. Correct.

16 Q. -- to make it jury unhear that? They've already
17 heard it.

18 So if you're saying that that was damaging to him,
19 do you think at that point it probably would have been
20 best to request a mistrial and start with a new, with a
21 fresh jury down the road?

22 A. No, I didn't believe at that time.

23 Q. Why, why wouldn't you believe that?

24 A. Well, because it was -- just the thing about Juicy,
25 I won my objection and actually there was -- it stayed

CHARLIE JAY JOHNSON JR - CROSS BY BOOZER

1 out. The solicitor's testimony about Juicy in the
2 beginning, that came in but as the other witnesses, if I
3 remember the transcript correctly, it was never
4 mentioned. I think I was able to keep it out.

5 Q. So you don't think that -- Kadarian Creech was able
6 to say, Juicy jumped over the counter. You don't think
7 the jury heard that?

8 A. I think that the -- I can't remember. It's been a
9 while back. But I believe that I won my objection because
10 I objected to it, and I was given the opportunity for a
11 mistrial.

12 But as I told my client, in looking at everything I
13 believed that at some point if we came back for another
14 trial that the solicitor's office would be in a better
15 position to present a better case and it was my opinion
16 that he should go forward.

17 Q. And certainly not to be argumentative about it --

18 A. Uh-huh.

19 Q. -- but just to make the record. On page 146 of the
20 record on appeal, this following exchange occurred:

21 Question -- this is page 146 line 10 question. Question:

22 And do you remember your -- what he said on the phone.

23 Answer: I remember him talking to someone, you know,

24 saying how he, you know, he heard that Juicy jumped over a
25 counter and -- line 14. Mr. Johnson: Your Honor.

CHARLIE JAY JOHNSON JR - CROSS BY BOOZER

1 Objection, Your Honor. And the Court asks what's the
2 basis for the objection.

3 So at this point that's before the jury?

4 A. Right. Then if that's the record then, yes, then
5 the jury did hear the word Juicy.

6 Q. So, hearing that -- the jury has heard that. Does
7 that change your opinion now on that now -- the jury has
8 now heard that he's been identified by a second person.
9 Does that change your opinion on whether you should have
10 asked for a mistrial?

11 A. Well, I did ask for a mistrial.

12 Q. Excuse me. Or advise your client to get a
13 mistrial?

14 A. No. As I said, I advised -- I advised my client
15 that he had an option to request to take a mistrial or to
16 go forward. I told him in looking at the whole case in
17 totality that I did not feel that he would have gotten a
18 better judge or a better jury with another trial.

19 And -- but I told my client that it was up to him.
20 If he wanted to go forward, we would go forward if he
21 wanted a trial. But as my client's counsel, I advised him
22 that I -- my advice would be to go forward with the trial.

23 And that's what I advised him, but I told him it
24 was totally up to him.

25 Q. And if -- Court's indulgence, Your Honor.

CHARLIE JAY JOHNSON JR - CROSS BY BOOZER

1 THE COURT: Uh-huh.

2 (Pause.)

3 BY MR. BOOZER:

4 Q. Do you know how long the conversation would have
5 lasted between you and your client, about?

6 A. It wouldn't have been that long.

7 Q. Okay. And your testimony is, earlier is that you
8 advised him that -- well, let me ask you this. If you
9 answered it, I'm sorry. I may not have been paying the
10 best of attention.

11 But, what was it you advised him regarding what a
12 mistrial was and what could happen?

13 A. I advised him that a mistrial would mean that we
14 would have another trial.

15 Q. Okay. Did you advise him that it would be another
16 trial with another jury and possibly without these
17 co-defendants?

18 A. I advised him that, that what would happen if there
19 was a mistrial, that they would have another trial. I
20 don't remember the specific words that I put it, but a
21 mistrial. I would've advised him that it would be another
22 trial, that it would be a different jury and possibly a
23 different judge.

24 Q. Do you recall if he was asking you any questions
25 about a mistrial as y'all were having that conversation?

CHARLIE JAY JOHNSON JR - CROSS BY BOOZER

1 A. He did not seem confused about my explanation to
2 him.

3 Q. Now, regarding requesting this is sort of limiting
4 instruction, curative instruction with regard to Juicy,
5 was there any reason you didn't do that?

6 A. Well, as I said, I didn't want to call any more
7 attention to the word Juicy than have already been
8 called. If I remember right, and no other attorney,
9 defense attorney for the other defendants requested it as
10 well.

11 Q. All right. Now also we've heard testimony that
12 there was a woman who was a police officer or who worked
13 for the police department, the sheriff's department named
14 Brenda O'Berry. Do you recall her testifying, just
15 generally?

16 A. Yes.

17 Q. Were you aware prior to trial that she would be
18 testifying?

19 A. No.

20 Q. Okay. When did you learn that?

21 A. I think I -- well, I learned that during the trial.

22 Q. And did you come to learn it by her being called to
23 the stand or were you made aware of that --

24 A. To be honest with you, I don't remember if it was
25 before she was called to the stand. But it was either

CHARLIE JAY JOHNSON JR - CROSS BY BOOZER

1 right, right before trial started or during the trial.

2 Q. Prior to her testifying did you know why she was
3 going to be testifying?

4 A. No.

5 Q. Okay. And basically you were actually successful
6 in limiting some of her testimony, right?

7 A. Correct.

8 Q. Okay. But as we were discussing on direct
9 examination with the Petitioner, basically the gist of the
10 testimony on page 181 is that the State asked Ms. O'Berry
11 if she had reviewed some surveillance video in this case.
12 And there was a surveillance video in this case?

13 A. Correct.

14 Q. Was it like a Minute Saver or whatnot, a gas
15 station?

16 A. Something like that.

17 Q. Okay. And she was asked if she recognized one and
18 immediately you objected?

19 A. Correct.

20 Q. Okay. So she wasn't able to get out who it was she
21 recognized at that point?

22 A. Correct.

23 Q. But then later on in the testimony, she doesn't
24 identify who she sees on the video but she talks about how
25 she knows Mr. Brown?

CHARLIE JAY JOHNSON JR - CROSS BY BOOZER

1 A. Correct.

2 Q. And you, again, I think you continue your
3 objections. But she's able to say that she knows
4 Mr. Brown by being a resource officer?

5 A. Correct.

6 Q. Do you think that that was drawing -- so the jury
7 could on their own put those pieces together of why she
8 was up there to, well, she's identifying Mr. Brown on
9 there because she knows Mr. Brown although she doesn't
10 really say that?

11 A. Sure.

12 MR. GOURLEY: I'm going to object to speculation.
13 Mr. Johnson can't know what the jury's thinking.

14 THE COURT: Your objection is overruled. Go ahead.

15 THE WITNESS: Yeah, I mean, I could see how that,
16 just getting that in could indicate to the jury who they
17 were trying to get her to say that she recognized. That's
18 why I was objecting.

19 BY MR. BOOZER:

20 Q. And after all the objections that you were raising,
21 did you ever attempt to ask for a mistrial with regard to
22 that testimony?

23 A. Well, all my objections was sustained so I had
24 nothing to ask for a mistrial for.

25 Q. How about along those same lines and along the same

CHARLIE JAY JOHNSON JR - CROSS BY BOOZER

1 lines of the other mistrial, some sort of limiting or
2 curative instruction?

3 A. Once again, I had no reason to request a curative
4 instruction for something that was granted to me as well
5 as I didn't want to call any more attention to it.

6 Q. And you're saying Grant You based on the judge
7 sustaining --

8 A. My objection.

9 Q. -- your objection? But do you think it would be
10 beneficial for the jury to hear from the judge that you're
11 to ignore any of that testimony?

12 A. I mean, in some cases -- I've tried many cases. In
13 some cases it is helpful. In some cases. In other cases
14 it's not helpful. And my belief is it's not helpful
15 because if a judge -- after everything is -- a jury hears
16 so many things during a trial. The jury have to determine
17 what's important and what's not. When they get to the end
18 of a trial after hearing so much convoluted things, that
19 we had three attorneys asking three questions for three
20 defendants over a long period of time.

21 For the judge to get up at the end and he be the
22 last person the jury hears and the judge to say something
23 about my client would call attention to my client and call
24 attention to what he was talking about. I didn't want
25 that.

CHARLIE JAY JOHNSON JR - CROSS BY BOOZER

1 Q. Mr. Johnson, just briefly, you were indicating
2 before with your decision to, I guess, advise Mr. Brown
3 not to take a mistrial or request a mistrial regarding the
4 Juicy testimony, you had indicated that you felt that you
5 had a good judge and a good jury.

6 What other trial strategy -- what strategy did you
7 have other than those thoughts of having a good judge and
8 a good jury?

9 A. The trial strategy in this case was to show that
10 there were not sufficient evidence to convict my client.
11 That's the trial strategy; to show that there was no
12 evidence to prove that he was guilty. But as all
13 strategies, it's just a strategy. You have to deal with
14 the evidence that's given to you.

15 Q. And how about specifically for the mistrial? I
16 understand the whole trial strategy, but just for the
17 mistrial part.

18 A. The mistrial part was as I explained. I did not
19 request and thought that he should go forward with a
20 mistrial because I thought that he had a jury that was,
21 that was -- it was a good mixture of jury members. I
22 thought they had people there that would listen, that
23 would look at the evidence and would give him a fair
24 trial. I could not guarantee that with another jury. I
25 could not guarantee that with a different judge. Not that

CHARLIE JAY JOHNSON JR - REDIRECT BY GOURLEY

1 judges would be unfair, but I knew this judge. I knew
2 Judge Newman. I've tried many cases before Judge Newman.
3 I knew that he would give credence to some of my
4 objections as you can tell from the transcript. I mean, I
5 almost won every objection that I had.

6 Q. Mr. Johnson, looking back. Obviously he was
7 convicted at trial?

8 A. Uh-huh.

9 Q. Do you think that that was -- that he still had the
10 good jury and the judge for that particular case?

11 A. Look, at trial -- I think I've tried maybe over 150
12 cases, trials, going to the jury. I've tried everything
13 from a death penalty to a traffic ticket. I found that
14 over all those years and experience that I've had, you
15 never know what a jury is going to do.

16 MR. BOOZER: Your Honor, I don't have any further
17 questions. Thank you, Mr. Johnson.

18 MR. GOURLEY: Just one very briefly, Your Honor.

19 THE COURT: Sure.

20 REDIRECT EXAMINATION

21 BY MR. GOURLEY:

22 Q. Mr. Johnson, had Mr. Brown requested a mistrial
23 would you have followed his request?

24 A. Of course. As I said, that's why I wanted the
25 judge to question him and put on the record. As I said, I

1 did not want any idea that I was trying to influence him
2 one way or another, but as a trial attorney if my client
3 asks me my opinion, I'm going to give it to him.

4 Q. Yes, sir.

5 A. And, you know, like I said, he's a good guy. I
6 worked with him. He worked with me. I did the best that
7 I could.

8 MR. GOURLEY: All right. No further questions.
9 Thank you, Judge.

10 THE COURT: Okay.

11 MR. GOURLEY: Thank you, Mr. Johnson.

12 THE COURT: Thank you. You may step down.

13 THE WITNESS: Thank you, Your Honor. Your Honor,
14 I'm sorry I was late.

15 THE COURT: No problem. You were just on time.

16 THE WITNESS: Okay.

17 MR. GOURLEY: Judge, may Mr. Johnson be excused?

18 THE COURT: He may be.

19 With regard to Mr. Kevin Brown's PCR application,
20 the order of the Court is that the application is denied.

21 I ask that Mr. Gourley prepare an order within 30
22 days and we'll go through each of the allegations in turn.

23 With regard to his allegation that he received
24 ineffective assistance of counsel because his attorney
25 failed to move for a mistrial regarding Investigator

1 O'Berry's testimony, I find that Mr. Johnson articulated a
2 valid reason for not asking for a curative instruction or
3 seeking a mistrial with regard to her testimony.

4 Mr. Johnson successfully objected to her testimony. She
5 was interrupted throughout.

6 And it was Mr. Johnson's belief that any curative
7 instruction after having won those objections and
8 successfully, as he said, kind of made the State look
9 silly in front of the jury, he did not want to draw
10 additional attention to the words that she was able to get
11 out while he was interrupting her.

12 With regard to the failure to impeach Mr. Priester
13 who was a co-defendant who testified against Mr. Brown, I
14 find that Mr. Johnson did attempt to ask Priester about
15 any deal he was getting for cooperating with the State,
16 that Mr. Priester denied having a deal, and that there was
17 no written plea deal offer that could be used to impeach
18 Mr. Priester with. And so Mr. Johnson gave the type of
19 representation that a reasonable attorney would give to a
20 client by at least attempting to ask about it and having
21 nothing more to do once it was denied.

22 With regard to the alibi claim, that claim was
23 withdrawn by Mr. Brown with the understanding that he
24 would not be able to bring that up again. And also with,
25 he had -- was able to consult with counsel about

1 withdrawing that claim.

2 He also has withdrawn the claims he had with regard
3 to appellate counsel.

4 With regard to the last issue, the mistrial issue
5 of Creech's testimony that Juicy had jumped over the
6 counter, I again find that this was a strategic decision.
7 I find the fact that Mr. Brown was informed of what a
8 mistrial was -- his attorney spoke with him about a
9 mistrial -- and while we don't know the exact words that
10 the attorney told him, we do know the exact words that
11 Judge Newman used which we have recorded in the record and
12 he did explain if this was mistried then the trial would
13 go on against his co-defendants and Mr. Brown would be
14 tried separately at a later date.

15 And it was Mr. Brown's decision not to move forward
16 with a mistrial. He did get the advice of his attorney.
17 And the attorney, again, made a strategic decision that he
18 did believe the jury was a good jury that had been
19 selected, that the judge before whom the trial was heard
20 was a favorable trial judge who would listen carefully to
21 the objections. And as the record demonstrates,
22 Mr. Johnson was very effective in his objections and
23 winning those objections.

24 And so it is for those reasons that the application
25 is denied.

1 MR. BOOZER: Thank you, Your Honor.

2 MR. GOURLEY: Thank you, Your Honor.

3 END OF PROCEEDINGS: 3:24 P.M.

4 ***

5 CERTIFICATE OF REPORTER

6 STATE OF SOUTH CAROLINA)

7 COUNTY OF AIKEN)

8 I, Cheri L. Young, Registered Professional Reporter
9 and Official Court Reporter for the State of South
10 Carolina, Second Circuit-At Large, do hereby certify that
11 the foregoing proceedings were written stenographically by
12 me using computer-aided translation; further, that the
13 foregoing is a true, accurate and complete record, to the
14 best of my skill and ability, of all the proceedings had
15 and evidence introduced in the hearing of the captioned
16 case, relative to appeal, in the Court of Common Pleas for
17 Aiken County, on the 18th day of May, 2015.

18 I do further certify that I am neither of kin,
19 counsel, nor interest to any party hereto.

20 I have hereunder set my hand this 2nd day of October,
21 2015.

22
23 _____
24 Cheri L. Young, RPR
25 Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

Kevin Brown, #352266,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2014-CP-06-139

ORDER OF DISMISSAL

FILED FOR RECORD
2015 JUL -6 PM 2:09
HON. JUDGE J. M. BARNWELL
CLERK OF COURT
OF BARNWELL COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 4, 2014. Respondent filed a return on August 22, 2014. An evidentiary hearing was convened on May 18, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant was true bill indicted at the January 2012 term of the Barnwell County Grand Jury for Armed Robbery (2012-GS-06-00027); Kidnapping (2012-GS-06-00028); Conspiracy (2012-GS-06-00029); and Possession of a Weapon During a Violent Crime (2012-GS-06-00030). Charlie Johnson, Jr., Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Clifton Newman. Applicant was found guilty, and Judge Newman sentenced Applicant to a fifteen-year term of imprisonment for Armed Robbery, ten-year term of imprisonment for Kidnapping, five-year term of imprisonment for Criminal

Conspiracy, and five-year term of imprisonment for Possession of a Weapon During Violent Crime. All sentences were to run concurrently.

A timely Notice of Appeal was filed, and an Anders¹ brief was submitted on Applicant's behalf. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Kevin Brown, Op. No. 2014-UP-037 (Ct. App. filed January 29, 2014). The Remittitur was issued on February 24, 2014.

ALLEGATIONS

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failing to make a motion for a mistrial after Brenda O'Berry gave damaging and highly prejudicial testimony...counsel was to motion for a mistrial.
 - b. Counsel did not effectively impeach state witnesses regarding his deal with the State.
 - c. Counsel failed to contact Alibi Witnesses
 - d. Counsel gave erroneous advice when the Court asked if he wanted a mistrial.
2. Ineffective Assistance of Appellate Counsel
 - a. "Appellate counsel was ineffective for not raising that Brenda O'Berry testimony granted a mistrial."

During the evidentiary hearing, Applicant withdrew the allegations of failure to investigate alibi witnesses and ineffective assistance of appellate counsel.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Charlie Johnson, Esquire (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Aiken County Clerk of Court records, Applicant's

¹ Anders v. California, 386 U.S. 738 (1967).

South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he received ineffective assistance of counsel due to Trial Counsel's failure to move for a mistrial, failure to impeach his co-defendant Jermaine Priester, and giving erroneous advice. Applicant stated that he wanted to withdraw his claim of ineffective assistance of counsel for failing to investigate into his alibi witnesses and his claim of ineffective assistance of appellate counsel.

Applicant stated he hired Trial Counsel in August 2011 and met with Trial Counsel approximately three times before his trial.

According to Applicant, Trial Counsel should have impeached the co-defendant Jermaine Priester about his alleged plea deal. Applicant assumed Priester must have had a plea deal because Priester received a time served sentence. However, Applicant conceded that counsel for his other co-defendant had questioned Priester about a possible plea deal.

Applicant also claimed that Trial Counsel gave erroneous advice when he advised Applicant to turn down the trial judge's offer of a mistrial. The basis for the mistrial was that one of the witnesses, Jamel Riley, said during direct examination that he heard "Juicy" jumped over the counter. Previously, the jury had been informed there "Juicy" was Applicant's street name. Applicant's Counsel objected to Riley's testimony, and the trial court asked if he wanted a mistrial due to Riley's improper statement. Trial Counsel advised Applicant to turn down the mistrial because they had a good jury and judge. Applicant followed this advice.

Applicant stated was also ineffective for failing to request a mistrial after Brenda O'Berry testified. Applicant stated Brenda O'Berry knew Applicant from school, and the State was attempting to use Brenda O'Berry as a way to identify Applicant in the surveillance video.

However, Trial Counsel continuously objected when the State attempted to use Brenda O'Berry as a means of identifying Applicant in the video, and nevertheless, O'Berry never identified Applicant in the video. Applicant claims Trial Counsel should have requested a curative instruction or a mistrial because of the State's questioning.

Following Applicant's testimony, Trial Counsel was called to testify by the State. Trial Counsel stated that he had been practicing law for nineteen years and was retained to represent Applicant. Trial Counsel stated he met with Applicant approximately three times prior to his trial. Trial Counsel stated he filed Brady and Rule 5 motions, and he reviewed the discovery material with Applicant prior to trial.

Trial Counsel admitted that the strongest evidence against Applicant was Priester's testimony, but there was no evidence of a plea deal offered to Priester in exchange for his testimony. Trial Counsel stated he could not cross-examine Priester on something that simply did not exist.

Trial Counsel stated he objected to Jamel Riley testifying that "Juicy" jumped over the counter. Trial Counsel stated he won the objection and successfully kept the information from being repeated in front of the jury. Trial Counsel stated the name "Juicy" was never mentioned again. Trial Counsel stated that he told Applicant it was his choice to either accept a mistrial or proceed with the trial. Trial Counsel advised Applicant that a mistrial simply meant that he would be tried separately at a different point in time. Trial Counsel stated that it was his opinion that they had a good judge and jury, so he advised against a mistrial. Trial Counsel stated that he did not request a curative instruction because he did not want to bring any additional attention to the name "Juicy."

Trial Counsel stated that the State attempted to use Brenda O'Berry as a way to identify Applicant in the surveillance video. Trial Counsel immediately objected and was able to keep that identification out. Trial Counsel stated that he did not request a mistrial because his objection was sustained.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Counsel was not deficient for failing to impeach Jermaine Priester.

Applicant argues that counsel was ineffective for failing to impeach Jermaine Priester about his potential plea deal. I disagree. The transcript reflects that counsel for Applicant's co-defendant asked Priester about any plea deal he had received. Priester denied ever being offered a deal for testifying. (Tr. t. p. 219 lines 13-25). Furthermore, Trial Counsel credibly testified that there was no evidence of any plea deal given to Priester in exchange for his testimony. Accordingly, Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms.

Counsel was not ineffective for failing to request a mistrial regarding Brenda O'Berry's testimony.

Applicant next argues that counsel was ineffective for failing to request a mistrial due to Brenda O'Berry's testimony. I disagree. Trial Counsel continuously objected to the State's attempt to have Brenda O'Berry to identify Applicant in the surveillance video, and these objections were sustained. (Tr t. p. 183 line 11—p. 184 line 19; p. 185 line 3-8; p. 186 line 4—p. 193 line 19). Because O'Berry never identified Applicant to the jury, Trial Counsel had no basis for requesting a mistrial.

Accordingly, Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms.

Trial Counsel was not ineffective for advising Applicant to refuse the grant of a mistrial.

Finally Applicant argues that Trial Counsel was ineffective when he advised Applicant to turn down the trial judge's offer of a mistrial. I disagree. The transcript reveals that the trial court conducted a thorough colloquy regarding Applicant's rights to request a mistrial or severance. (Tr. t. p. 155 line 6—p. 156 line 19). Furthermore, Trial Counsel credibly testified that he advised Applicant that it was Applicant's decision to accept or refuse the mistrial.

Furthermore, Trial Counsel stated that it was their trial strategy to continue with the trial because it was their belief that they had a good judge and jury. Green v. State, 351 S.C. 184, 193, 509 S.E.2d 318, 323 (2012). I find Trial Counsel's testimony was credible and the trial strategy was valid. Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel). Accordingly, Trial Counsel's advice was not deficient.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

[signature to follow]

CONCLUSION

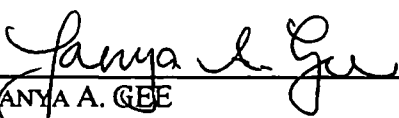
I find that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30th day of June, 2015.


 TANYA A. GEE
 Presiding Judge
 Second Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP0600139

Kevin C. Brown, #352266 vs. South Carolina State of

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Order of Dismissal

Dated at Barnwell, South Carolina, this 30th day of June, 2015.

Court Reporter:

5/1 Tanya A. Gee

PRESIDING JUDGE - Tanya A. Gee

This judgment was entered on the 6th day of July, 2015, and a copy mailed first class this 8th day of July, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

**Kevin C. Brown ,
Lance S. Boozer 807 Gervais Street Suite 203
Columbia, SC 29201**

**Daniel Gourley PO Box 11549 Columbia, SC
29211-1549**

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Constance B. Mansfield

Constance B. Mansfield – Deputy Clerk of Court

Barnwell Police Department

Frank Sutton

Law Enforcement Case #: C11-07-2773

ARREST WARRANT NUMBER

M565457

AKM

DOCKET NO. 2012GS0600027

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

THE STATE
vs.

KEVIN CHRISTOPHER BROWN

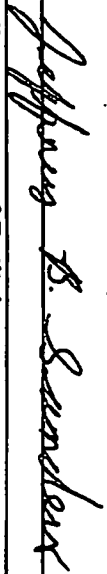
ACTION OF GRAND JURY

True Bill


Foreperson of Grand Jury
Date: January 3, 2012

VERDICT

Civil


Foreperson of Petit Jury
Date: 1-6-2012

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)

INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on January 3, 2012, the Grand Jurors of Barnwell County present upon their oath:

That **KEVIN CHRISTOPER BROWN** did in Barnwell County on or about July 21, 2011, while armed with a deadly weapon, feloniously take from the person or presence of Donna Corell, by means of force or intimidation goods or monies of Jimbo's Mini Mart #9, all in violation of §16-11-330, *Code of Laws of South Carolina*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

 For
J. STROM THURMOND, SOLICITOR

7
4 WITNESSES

Barnwell Police Department

Frank Sutton

Law Enforcement Case #: C11-07-2773

ARREST WARRANT NUMBER

M565477

AKM

DOCKET NO. 2012GS0600028

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

THE STATE

VS.

KEVIN CHRISTOPHER BROWN

ACTION OF GRAND JURY

True Bill

Renee J. Fredlund

Foreperson of Grand Jury

Date: January 3, 2012

VERDICT

GUILTY

Jeffrey K. Sanderford

Foreperson of Petit Jury

Date: *9-6-2012*

CDR #: 0095

Indictment for

KIDNAPPING

§ 16-03-0910

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)

INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on January 3, 2012, the Grand Jurors of Barnwell County present upon their oath:

That **KEVIN CHRISTOPHER BROWN** did in Barnwell County, South Carolina on or about July 21, 2011, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Donna Corell by any means whatsoever without authority of law, and without her consent, in violation of § 16-3-910 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

 For
J. STROM THURMOND, SOLICITOR

2
4 WITNESSES

Bartwell Police Department

Frank Sutton

Law Enforcement Case #: C11-07-2773

AKM

ARREST WARRANT NUMBER

M565492

DOCKET NO. 2012GS0600029

The State of South Carolina

County of Bartwell

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

THE STATE

VS.

KEVIN CHRISTOPHER BROWN

ACTION OF GRAND JURY

True B.11

CDR #: 0049

Indictment for

CONSPIRACY

§ 16-17-0410

Foreperson of Grand Jury
Date: January 3, 2012

VERDICT

Guilty

Deputy R. Sanders

Foreperson of Petit Jury

Date: 9-6-2012

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)

INDICTMENT FOR
CONSPIRACY

§ 16-17-0410

At a Court of General Sessions, convened on January 3, 2012, the Grand Jurors of Barnwell County present upon their oath:

That **KEVIN CHRISTOPHER BROWN** did in Barnwell County, on or about July 21, 2011 unlawfully unite, combine, conspire, confederate, agree and have tacit understanding with each other and/or others for the purpose of committing the crime of **ARMED ROBBERY**, in violation of Section 16-17-410, *Code of Laws of South Carolina* (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

 For
J. STROM THURMOND, SOLICITOR

15
4 WITNESSES

Barnwell Police Department

Frank Sutton

Law Enforcement Case #: C11-07-2773

ARREST WARRANT NUMBER

M565493

AKM

DOCKET NO. 2012GS0600030

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

THE STATE
vs.

KEVIN CHRISTOPHER BROWN

ACTION OF GRAND JURY

True Bill

CDR #: 0549

Indictment for

POSSESSION OF WEAPON DURING A
VIOLENT CRIME

§ 16-23-0490

VERDICT

Guilty

Jeffery B. Saunders

Foreperson of Petit Jury

Date: 9-6-2012

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)

INDICTMENT FOR
POSSESSION OF WEAPON DURING A
VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on January 3, 2012, the Grand Jurors of Barnwell County present upon their oath:

That **KEVIN CHRISTOPHER BROWN** did in Barnwell County on or about July 21, 2011, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to wit: **ARMED ROBBERY**, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

 For
J. STROM THURMOND, SOLICITOR