

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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On Writ of Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable John C. Few, Circuit Court Judge

JAN 27 2012

S.C. Supreme Court

THE STATE,

Petitioner,

vs.

JONATHAN KARON HILL,

Respondent.

APPENDIX (Part 1 of 2)

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APPEAL FROM GREENVILLE COUNTY

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THE STATE,

RESPONDENT,

V.

JONATHAN K. HILL,

APPELLANT.

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-vs-	)	2002-GS-23-2738
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JONATHAN HILL, A/K/A,	)	2002-GS-23-1807
JONATHAN GREEN,	)	2002-GS-23-1808
	)	FEBRUARY 3, 2003
Defendant.	)	GREENVILLE, SOUTH CAROLINA

(VOLUME I)

B E F O R E:

HONORABLE JOHN C. FEW, JUDGE; and a jury

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Michael R. Watts
Circuit Court Reporter

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1 (Proceedings February 3, 2003)

2 MR. MOYER: May it please the court, before we
3 draw the jury, the State would make a motion to
4 amend the indictments. There should be five
5 indictments before you. Two for armed robbery, two
6 for conspiracy, and one for resisting arrest.

7 Two of the indictments have been named Jonathan
8 Green. One would armed robbery, one of the
9 conspiracies. The other had the name Jonathan Hill.
10 That is due to the fact that the defendant gave
11 conflicting names and was actually arrested under
12 different names.

13 So, Your Honor, we would make a motion to amend
14 all the indictments to read the name Jonathan Karon
15 Hill, a/k/a Jonathan Green.

16 THE COURT: Mr. Farnsworth?

17 MR. FARNSWORTH: Your Honor, he tells me -- I
18 just have talked to him about that. He tells me
19 that he had his name changed to Green and he has a
20 social security card with that name on it.

21 He has also gone by Jonathan Hill, that being
22 your father -- his mother's maiden name. And his
23 father's name, of course, is green. So that's a --

24 THE COURT: So Jonathan Green is the correct
25 name?

1 THE DEFENDANT: Yes, sir.

2 MR. FARNSWORTH: Yes, sir.

3 THE COURT: Motion to amend the -- that's what
4 you wanted?

5 MR. MOYER: It was my indication that it was
6 the other way around. I mean, he signed some
7 documents -- the majority of his documents he signed
8 Jonathan Hill, but --

9 THE COURT: Your motion then is to amend the
10 indictments to show Jonathan Hill, a/k/a Jonathan
11 Green, right?

12 MR. MOYER: Yes, sir.

13 THE COURT: And is there any objection to that
14 motion?

15 MR. FARNSWORTH: No, Your Honor.

16 THE COURT: Granted.

17 All right. I understand we have a Jackson
18 v. Denno hearing that we need to conduct?

19 MR. MOYER: Yes.

20 THE COURT: Do y'all want to do that before or
21 after we strike the jury?

22 MR. MOYER: Well, Your Honor --

23 THE COURT: How long is that going to take?

24 MR. MOYER: It would be -- we have three
25 witnesses to call, Your Honor, for that.

1 MR. FARNSWORTH: Your Honor, we would have no
2 objection if you want to go ahead and pick a jury,
3 instead of keeping them waiting, if that's the only --
4 we are the only court that's going to be juries in,
5 I think, this week.

6 THE COURT: Yes. All right. We will go ahead
7 and strike the jury. It may make a few minutes to
8 get started on that, and then we will do the Jackson
9 v. Denno hearing.

10 So anything else we are going to have to take
11 up beforehand?

12 MR. FARNSWORTH: Your Honor, at this time I
13 have two short motions.

14 Number one, it's my understanding that Mr.
15 Moyer intends to try my client for two armed
16 robberies. One that happened at the Hampton Inn
17 sometime after midnight on it would have been
18 February 1st, 2001, and one that supposedly happened
19 at around nine -- 8:30 or nine o'clock, 9:30,
20 somewhere in that area at the La Quinta Inn. Your
21 Honor, we would move that these two cases, that is,
22 the two armed robbery cases, be separated as far as
23 the trial. It's our position that the defendant has
24 a right to be tried on each separate offense at
25 separate weeks of court. And to do otherwise, Your

1 Honor, we feel it would highly prejudice the rights
2 of the defendant.

3 THE COURT: Is there anything in particular
4 about these armed robberies that -- or the alleged
5 armed robberies that would bring about this
6 prejudice?

7 MR. FARNSWORTH: No, sir, not as far as the
8 they -- just the fact that he's being tried for two
9 at the same time would be our position. That would
10 prejudice the case.

11 THE COURT: Okay. I deny the motion.

12 MR. FARNSWORTH: I have one other motion, Your
13 Honor.

14 I would move to sequester the State's witnesses
15 during the trial of the case, except for the chief
16 officer and the officer that's about to testify.

17 Actually Your Honor, the testimony that the
18 officers are going to be giving, they were officers
19 involved in three statements taken - two verbal --
20 one verbal and two written statements taken by my
21 client. The rest of the officers I understand would
22 be testifying as to a chase, which ultimately led to
23 the defendants getting out of their car and running
24 into the woods and later being apprehended.

25 And also, Your Honor, with respect to the two

1 co-defendants, who I understand are going to be
2 testifying, I ask that they be kept separate and
3 sequestered and not be allowed to discuss their
4 testimony with the other witness before they
5 testify.

6 MR. MOYER: May it please the court?

7 THE COURT: Uh-huh.

8 MR. MOYER: Regarding the co-defendants --
9 well, they are both incarcerated now, so I don't
10 think it's going to be any danger of them being in
11 the courtroom. And as far as how they are housed
12 together, I think that would be a matter for the
13 detention officers or our sheriff's office to
14 determine.

15 Regarding sequestering all the witnesses, we
16 would argue that -- we would oppose that motion.
17 The only case that I'm aware of is -- as far as the
18 defendant being able to show some type of
19 overwhelming need for sequestering the witnesses, I
20 believe there is some reason to believe that some
21 witnesses would be intimidated by others who may
22 testify and feel an obligation to change testimony.
23 And I think absent some showing of that, we would
24 argue there is no need to sequester the witnesses.

25 THE COURT: All right, I'll let you know my

1 ruling on that in a few minutes.

2 Anything else?

3 MR. FARNSWORTH: No, Your Honor.

4 THE COURT: Any particular voir dire?

5 MR. MOYER: None from the State.

6 MR. FARNSWORTH: No, Your Honor.

7 THE COURT: Do you have any witnesses to add to
8 this list?

9 MR. FARNSWORTH: Your Honor, at this time I
10 would just would have the defendant as a potential
11 witness.

12 (Whereupon, the jury panel was brought into the
13 courtroom)

14 THE COURT: Ladies and gentlemen, we are now
15 ready to begin the trial in the case of the State of
16 South Carolina versus Jonathan Karon Hill, also
17 known as Jonathan Green.

18 Mr. Hill has been charged in five indictments
19 that we will have before us today, and I will read
20 to you those indictments now.

21 Indictment Number 2002-GS-23-2738, it is
22 alleged that Jonathan Karon Hill, also known as
23 Jonathan Green, did, in Greenville County, on or
24 about the 31st day of January, 2002, while armed
25 with a deadly weapon, to-wit: A handgun, take by

1 means of force or intimidation goods or monies
2 described as U.S. currency belonging to La Quinta
3 Inn from Marvin Somarriba, this in violation of
4 Section 16-11-330 of the South Carolina Code of
5 Laws.

6 In Indictment Number 2002-GS-23-2737, it is
7 alleged that Jonathan Karon Hill, also known as
8 Jonathan Green, did, in Greenville County, or on
9 about the 31st day of January, 2002, willfully and
10 unlawfully combine with Melvin Warren and/or Damian
11 Taylor for the purpose of accomplishing an unlawful
12 object or an lawful object by unlawful means,
13 to-wit: Armed robbery. This all in violation of
14 the Section 16-17-410 of the South Carolina Code of
15 Laws.

16 And in Indictment Number 2002-GS-23-1808, also
17 an indictment for armed robbery, it is alleged that
18 Jonathan Green -- I'm sorry, that Jonathan Karon
19 Hill, also known as Jonathan Green, did, in
20 Greenville County, on or about the 1st day of
21 February, 2002, while armed with a deadly weapon,
22 to-wit: A handgun, take by means of force or
23 intimidation goods or monies described as U.S.
24 currency belonging to Hampton Inn from Ragnar Borei,
25 this in violation of Section 16-11-330 of the South

1 Carolina Code of Laws, as amended.

2 And in Indictment Number 2002-GS-23-1870 for
3 conspiracy, it is alleged that Jonathan Karon Hill,
4 also known as also Jonathan Green, did in Greenville
5 County, on or about the 1st day of February, 2002,
6 willfully and unlawfully combine with Melvin Leon
7 Warren and Damian Taylor for the purpose of
8 accomplishing an unlawful object or a lawful object
9 by unlawful means, to-wit: Armed robbery. This in
10 violation of Section 16-17-410 of the South Carolina
11 Code of Laws.

12 And finally, in Indictment Number
13 2002-GS-23-2590, it is alleged that Jonathan Karon
14 Hill, also known as Jonathan Green, did, in
15 Greenville County, on or about the 1st day of
16 February, 2002, knowingly, willfully and unlawfully
17 oppose or resist an arrest being made by W.A.
18 Kennedy and Officer Lewis with the Mauldin police
19 department, whom he knew or reasonably should have
20 known was a law enforcement officer, this in
21 violation of Section 16-9-320(a) of the South
22 Carolina Code of Laws.

23 Now, ladies and gentlemen, in just a few
24 minutes I'll talk to you in more detail about these
25 indictments, but let me tell you now that these

1 indictments are not in any sense evidence of the
2 allegations that they contain. They are simply the
3 formal documents that contain the allegations that
4 have been made against this defendant, and they
5 serve as the vehicles to process these cases and
6 bring them into this court for trial.

7 The defendant has pled not guilty to each of
8 these five indictments. And that plea casts the
9 burden on the State of proving the defendant guilty
10 beyond a reasonable doubt.

11 Now, ladies and gentlemen, I am about to ask
12 you a series of questions, sort of like the
13 questions that I asked you downstairs a few minutes
14 ago, only these questions will relate more directly
15 to this case.

16 And just as I told you downstairs that it was
17 very important to listen carefully and to give me
18 any information that I ask for, it is also now very
19 important that you listen carefully to the questions
20 that I ask. If you have any information that you
21 think might be responsive to a question that I ask
22 you, then you must give me that information, even if
23 it's information that you have already given me
24 downstairs.

25 And if you have any reason why you don't want

1 to stand up and give your information out loud in
2 front of the rest of the jury, then you can come
3 down front and speak with me privately and also
4 speak with the lawyers.

5 If you have any information that you -- if you
6 know something about this case or if you know some
7 of the people who might -- who are going to be
8 involved in this case and if you think that giving
9 your information out loud in front of the rest of
10 the jury panel might expose the rest of the jury to
11 information that they should not be exposed to, then
12 in that event, you must come down front and give me
13 the information privately.

14 Please swear the jury.

15 I'll do it.

16 Somebody centuries ago wrote out all these
17 oaths that are supposed to be used in court and they
18 are all Greek and Latin and nobody can understand
19 what say, so I'm going to swear you in.

20 Please stand and raise your right hands. The
21 proper answer to this question would be I will or I
22 do.

23 Ladies and gentlemen, do you swear that the
24 information that you give as the testimony that you
25 are about to give as in response to the questions

1 that I will ask you will be the truth, the whole
2 truth, and nothing but the truth, so help you God?

3 JURY PANEL: (Collectively said I do)

4 THE COURT: All right. Thank you.

5 Mr. Moyer, would you please stand and introduce
6 yourself and anyone who will be assisting you in
7 trying this case to the jury.

8 MR. MOYER: Thank you, Your Honor.

9 My name is Mark Moyer. This is Martha Lynch.
10 She is an investigator with our office who will be
11 sitting up here with me to assist me. Thank you.

12 THE COURT: Is there any member of the jury
13 panel who is related by blood or by marriage to Mr.
14 Moyer, or to Ms. Lynch, or who knows Mr. Moyer or
15 Ms. Lynch in any way? If so, please stand.

16 (no response)

17 THE COURT: Mr. Moyer and Ms. Lynch work for
18 Mr. Robert Ariail, who is the solicitor of this
19 circuit. He has a staff of lawyers and nonlawyers
20 both here in Greenville County and also in Pickens
21 County whose job it is to prosecute cases,
22 criminal cases, in this circuit.

23 Is there any member of the jury panel who is
24 related by blood or marriage to Mr. Ariail, or who
25 knows him in any way, or are you related to or do

1 you know anyone who works for him? If so, please
2 stand.

3 Tell me your name, sir.

4 JUROR NUMBER 212: Charles Munson.

5 THE COURT: Mr. Munson?

6 JUROR NUMBER 212: Yes, sir.

7 THE COURT: All right, sir. Who are you
8 related to?

9 JUROR NUMBER 212: Judy Munson.

10 THE COURT: All right. Is she your daughter?

11 JUROR NUMBER 212: Yes.

12 THE CLERK: 212.

13 THE COURT: Would the fact that you are related
14 to Ms. Munson, who is a prosecutor in the
15 solicitor's office here in Greenville, would that
16 interfere in any way with either your willingness or
17 your ability to give both the State and the
18 defendant a fair and impartial trial in this case?

19 JUROR NUMBER 212: No, it would not.

20 THE COURT: Thank you, Mr. Munson.

21 Is Ms. Munson going to have or has she had any
22 direct involvement in this case, Mr. Moyer?

23 MR. MOYER: Not with me. None that I'm aware
24 of.

25 THE COURT: All right. Well, I would like for

1 you to check with her during a break and confirm
2 that, please.

3 MR. MOYER: Yes, sir.

4 THE COURT: Sir?

5 MR. MOYER: Yes, sir.

6 THE COURT: Mr. Farnsworth, would you please
7 stand and introduce yourself and your client to the
8 jury.

9 MR. FARNSWORTH: Yes, sir, Your Honor, thank
10 you.

11 My name is Dan Farnsworth. I practice law here
12 in Greenville and have for the last several years.
13 My client, Jonathan Hill, I represent him. He lives
14 in Greenville. He's about 23 years old.

15 THE COURT: Mr. Hill, would you stand up and
16 let the jury get a good look at you, please.

17 Thank you, sir.

18 Is there any member of the jury panel who is
19 related by blood or marriage to Mr. Farnsworth, or
20 to Mr. Hill, or who knows either of these gentlemen
21 in any way? If so, please stand.

22 Tell me your name, ma'am.

23 JUROR NUMBER 17: Malinda Barksdale. I know
24 Mr. Farnsworth. I'm working at the country club he
25 goes to.

1 THE COURT: And would the fact that you know
2 Mr. Farnsworth from working at the country club
3 interfere in any way with either your willingness or
4 your ability to give both the State and the
5 defendant a fair and impartial trial?

6 JUROR NUMBER 17: No, sir.

7 THE COURT: Thank you, ma'am.

8 All right, ladies and gentlemen, I'm going to
9 read you a right long list of potential witnesses in
10 this case. I'm going to ask you if you know or are
11 related to any of the witnesses whose names I call.
12 If you hear a name and think that perhaps you know
13 this person, but you are not sure, then tell us
14 that. We will get you some more information about
15 that witness so that you can determine if that's the
16 person that you know.

17 And if the witnesses whose names I call are in
18 the courtroom, I would like for you to please stand
19 and face the jury.

20 Marvin Rafael Somarriba. And, sir, did I
21 pronounce your name correctly?

22 MR. SOMARRIBA: Yes, you did.

23 THE COURT: Ragnar Borei. Did I pronounce that
24 correctly, sir?

25 MR. BOREI: No, Borei.

1 THE COURT: Sorry. I apologize, Mr. Borei.
2 Lieutenant R. Bobo, Simpsonville police
3 department.

4 Your first name is, sir?

5 OFFICER BOBO: Ralph.

6 THE COURT: Ralph. Thank you, sir.

7 B. Rushing, Simpsonville police department.
8 Your first name?

9 OFFICER RUSHING: Brent.

10 THE COURT: Brent.

11 Thank you.

12 D. Kennedy, Simpsonville police department.

13 Your first name name.

14 OFFICER KENNEDY: Diane.

15 THE COURT: W.A. Kennedy, Mauldin police
16 department.

17 OFFICER KENNEDY: William.

18 THE COURT: William.

19 W.L. Lewis Mauldin police department.

20 OFFICER LEWIS: Brian.

21 THE COURT: Brian.

22 Thank you.

23 C.S. Cromartie, Greenville County sheriff's
24 office.

25 OFFICER CROMARTIE: Cheryl.

1 THE COURT: Cheryl. Thank you, ma'am.

2 M. Atwell.

3 OFFICER ATWELL: Mike.

4 THE COURT: Mike. Sheriff's department.

5 S. Calhoun, Greenville County sheriff's office.

6 What is his first name?

7 MR. MOYER: Shawn.

8 THE COURT: Shawn.

9 M.L. Harris, Greenville County sheriff's
10 office.

11 MR. MOYER: Actually it's H.L.. That's Hal
12 Harris.

13 THE COURT: H.L.. I'm sorry, Hal Harris.

14 Mike Moore, Greenville county sheriff's office.

15 Doug Kelly, Greenville County sheriff's office.

16 Wes Smith, Greenville County sheriff's office.

17 Thank you, detective.

18 Rob Smith, Greenville County sheriff's office.

19 Thank you, sir.

20 B.F. Alexander, Greenville County sheriff's
21 office.

22 OFFICER ALEXANDER: First name is Bob.

23 THE COURT: Bob. Thank you, sir.

24 M. Clapp, Greenville County forensic division.

25 MR. CLAPP: That's Marty.

1 THE COURT: Marty Clapp.

2 C.B. Bryan, Greenville County forensics
3 division.

4 MR. MOYER: Chris Bryan.

5 THE COURT: W.T. Campbell, Greenville County
6 forensics division.

7 MR. MOYER: Wayne Campbell.

8 THE COURT: Bill Cromer, Greenville County --
9 is that fire department, or is that forensics
10 department?

11 MR. MOYER: Forensics officer also.

12 THE COURT: Bill Cromer.

13 Darlene Lee.

14 Melvin Warren.

15 And Damian Taylor.

16 Is there any member of the jury panel who is
17 related by blood or marriage to any of the witnesses
18 whose names I just called, or do you know any of
19 these witnesses in any way? If so, please stand.

20 (no response)

21 THE COURT: Any member of the jury panel who
22 thinks that they might know someone whose name I
23 called and would like to hear more information about
24 that person? If so, please stand..

25 (no response)

1 THE COURT: Is there any member of the jury
2 panel who was a member of the Greenville County
3 Grand Jury which presented the indictments in this
4 case -- in these cases? If so, please stand.

5 (No response).

6 THE COURT: Is there any member of the jury
7 panel who has any particular interest in the outcome
8 of this case? If so, please stand.

9 (no response).

10 THE COURT: Is there any member of the jury
11 panel who has formed or expressed any opinion as to
12 the guilt or innocent of this defendant? If so,
13 please stand.

14 (no response)

15 THE COURT: Is there any member of the jury
16 panel who has any bias or prejudice either towards
17 or against the State or the defendant in connection
18 with this case? If so, please stand.

19 (no response).

20 THE COURT: Is there any member of the jury
21 panel who knows of any reason why you could not give
22 both the State and the defendant a fair and
23 impartial trial in this case? If so, please stand.

24 (no response).

25 THE COURT: Ms. Thompson, Demetrius Thompson,

1 could you come down front, please?

2 Let me see the lawyers.

3 (The following was an on-the-record discussion
4 bench conference)

5 THE COURT: You can stand right there.

6 All right. Ms. Thompson, you told me
7 downstairs that you had some issue that you wanted
8 to bring up when you got up here.

9 JUROR NUMBER 283: No, I was -- I said really
10 basically I didn't want to be on no jury. I didn't
11 really want to be on no jury. I was trying to give
12 you a reason why.

13 THE COURT: What was the reason.

14 JUROR NUMBER 283: Because y'all sentenced my
15 brother to years in jail and he didn't like that.
16 That's the only -- I figured I would have to do
17 something.

18 THE COURT: Well, would the fact -- all right.
19 You don't feel like the justice system --

20 JUROR NUMBER 283: Yes.

21 THE COURT: Would the fact that you have a
22 brother who is serving time right now, is that
23 right?

24 JUROR NUMBER 283: Yes.

25 THE COURT: And you are dissatisfied with that

1 an you don't like the justice system. Would that
2 interfere in any way with your willingness or your
3 ability --

4 JUROR NUMBER 283: No, that's --

5 THE COURT: Let me finish my question, please.
6 Would that interfere in any way with your
7 willingness or your ability to both the State and
8 the defendant to be a fair and impartial juror in
9 this case?

10 JUROR NUMBER 283: That's why I didn't stand up
11 because I didn't think it was a problem with that
12 case. But, I mean, that's how I feel when I was
13 telling you downstairs.

14 THE COURT: I appreciate that very much.

15 Any additional voir dire?

16 MR. FARNSWORTH: I don't think you asked them
17 or inquired of them if they know or related to
18 anybody in law enforcement.

19 THE COURT: Anything else?

20 MR. MOYER: No.

21 (Whereupon, the bench conference was concluded)

22 THE COURT: Is there any member of the jury
23 panel or any member of your immediate family who is
24 now or who has ever been an employee of any law
25 enforcement agency or police department, whether

1 that be federal, state, city, county, or military?
2 If so, please stand.

3 Anyone who has ever been involved in law
4 enforcement or who has a family member who has ever
5 been involved in law enforcement? If so, please
6 stand.

7 Yes, ma'am. Your name, please?

8 JUROR NUMBER 292: Garnet Vicars.

9 THE COURT: Ms. Vicars?

10 JUROR NUMBER 292: Vicars.

11 THE COURT: Vicars.

12 JUROR NUMBER 292: My son was with Greenville
13 County department of corrections.

14 THE COURT: Is he now?

15 JUROR NUMBER 292: No. The fire department.

16 THE COURT: He is with the fire department now?

17 JUROR NUMBER 292: Yes.

18 THE COURT: All right. Thank you, Ms. Vicars.
19 Your name, ma'am.

20 JUROR NUMBER 171: Tamara Leopard. My stepdad
21 was a sheriff's officer with San Diego police
22 department in California before him and my mom met
23 met.

24 THE COURT: All right. Thank you Ms. Leopard.
25 Ma'am?

1 JUROR NUMBER 168: Linda Leggett. My husband
2 was in the military approximately six years back.

3 THE COURT: Was he involved in the military
4 police, or just in the military?

5 JUROR NUMBER 168: No, just military.

6 THE COURT: Thank you, ma'am.

7 JUROR NUMBER 317: Daniel Messer. My cousin
8 work with is currently employed by the Greenville
9 city police.

10 THE COURT: Thank you, sir.

11 MR. FARNSWORTH: Your Honor, what was his name?
12 I didn't hear it.

13 THE COURT: Daniel Messer.

14 MR. FARNSWORTH: Thank you.

15 THE COURT: Ma'am.

16 JUROR NUMBER 232: Oh, my uncle Danny McKewen.
17 I believe he's with Greenville County.

18 THE COURT: Tell me your name, please.

19 JUROR NUMBER 232: Donna Pyeatt.

20 THE COURT: All right. Your uncle is Danny
21 McKewen?

22 JUROR NUMBER 232: Yes, but he's no longer with
23 them.

24 THE COURT: Sir?

25 JUROR NUMBER 32: I have a cousin who is with

1 the Raleigh police department, and I have a cousin
2 that's currently in the Austin, Texas police
3 department.

4 THE COURT: And your name is?

5 JUROR NUMBER 32: William Boney.

6 THE COURT: Mr. Boney.

7 Anyone else?

8 (no response)

9 THE COURT: All right. For those of you who
10 answered that question, would the fact that you have
11 family members who have been involved in law
12 enforcement, would that interfere in any way with
13 either your willingness or your ability to give both
14 the State and the defendant a fair and impartial
15 trial in this case?

16 Ms. Vicars, ma'am?

17 JUROR NUMBER 292: No.

18 THE COURT: You will need to speak up.

19 JUROR NUMBER 292: It would not.

20 THE COURT: It would not.

21 Ms. Leopard?

22 JUROR NUMBER 171: No.

23 THE COURT: Ms. Leggett?

24 JUROR NUMBER 168: It would not affect me.

25 THE COURT: Mr. Messer?

1 JUROR NUMBER 317: No, it wouldn't.

2 THE COURT: No, sir, he said.

3 Ms. Pyeatt?

4 JUROR NUMBER 232: No, sir.

5 THE COURT: And Mr. Boney?

6 JUROR NUMBER 32: No, it wouldn't.

7 THE COURT: Thank you.

8 Any additional voir dire from the State?

9 MR. MOYER: No, sir, Your Honor.

10 THE COURT: From the defense?

11 MR. FARNSWORTH: No, Your Honor.

12 THE COURT: All right. Y'all ready to strike?

13 MR. MOYER: Yes, sir.

14 MR. FARNSWORTH: Yes, sir.

15 THE COURT: Now ladies and gentlemen, the way
16 this works is your names have been randomly
17 selected. They will be randomly called.

18 When your name is called, please walk up front
19 and stand in the middle of the courtroom here in
20 front of this podium. The lawyer for the State will
21 then either excuse you and ask you to be sent back
22 to the seat or present you to the defense.

23 If you are presented, the defense will then
24 either excuse you and ask you to be taken back to
25 your seat or seat you in the jury box.

1 And when we have enough jurors to proceed, we
2 will proceed.

3 THE CLERK: Juror number 202, Walter
4 S. Millwood.

5 JUROR NUMBER 202: It's not going to be my week
6 to buy a lottery ticket. This is the second time.

7 THE COURT: Turn around and face the lawyers.

8 THE CLERK: What says the State?

9 MR. MOYER: Please present Mr. Millwood.

10 THE CLERK: What says the defense?

11 MR. FARNSWORTH: Please excuse Mr. Millwood.

12 THE CLERK: You are excused from this case.

13 Juror number 46, Judith L. Buckley.

14 What says the State?

15 MR. MOYER: Please present Ms. Buckley.

16 THE CLERK: What says the defense?

17 MR. FARNSWORTH: Please swear this juror.

18 THE CLERK: Please have a seat in the jury box.

19 Juror number 263, Janice K. Slough.

20 What says the State?

21 MR. MOYER: Please present Ms. Slough.

22 THE CLERK: What says the defense?

23 MR. FARNSWORTH: Please swear this juror.

24 THE CLERK: Please have a seat in the jury box.

25 Juror number 316, Simorey Cardona Munoz.

1 What says the State?

2 MR. MOYER: Please present Mrs. Munoz.

3 THE CLERK: What says the defense?

4 MR. FARNSWORTH: Swear the juror, please.

5 THE CLERK: Please have seat in the jury box.

6 Juror number 283, Demetrius Thompson.

7 What says the State?

8 MR. MOYER: Please excuse the juror in this

9 case.

10 THE CLERK: You are excused from this case.

11 Juror number 165, Philip E. Kuykendall.

12 What says the State?

13 MR. MOYER: Please present Mr. Kuykendall.

14 THE CLERK: What says the defense?

15 MR. FARNSWORTH: Please excuse the juror from

16 this case, please.

17 THE CLERK: You are excused from this case.

18 Juror number 129, Tammy C. Henderson.

19 What says the State?

20 MR. MOYER: Please excuse juror in this case.

21 THE CLERK: You are excused from this case.

22 Juror number 108, Kathryn A. Goodwin.

23 What says the State?

24 MR. MOYER: Please present Mrs. Goodwin.

25 THE CLERK: What says the defense?

1 MR. FARNSWORTH: Please swear the juror.

2 THE CLERK: Please have a seat in the jury box.

3 Juror number 20, Jean S. Bell.

4 What says the State?

5 MR. MOYER: Please present Ms. Bell.

6 THE CLERK: What says the defense?

7 MR. FARNSWORTH: Please swear the juror.

8 THE CLERK: Please have a seat in the jury box.

9 Juror Number 212, Charles G. Munson.

10 What says the State?

11 MR. MOYER: Please present Mr. Munson.

12 THE CLERK: What says the defense?

13 MR. FARNSWORTH: Please excuse Mr. Munson from
14 this trial.

15 THE CLERK: You are excused from this case.

16 Juror number 149, Sharon R. Jordan.

17 What says the State?

18 MR. MOYER: Please present Ms. Jordan.

19 THE CLERK: What says the defense?

20 MR. FARNSWORTH: Please swear the juror.

21 THE CLERK: Please have a seat in the jury box.

22 Juror number 55, Edward M. Carnes.

23 MR. FARNSWORTH: What was that number again?

24 I'm sorry.

25 THE CLERK: 55.

1 What says the State?

2 MR. MOYER: Please present Mr. Carnes.

3 THE CLERK: What says the defense?

4 MR. FARNSWORTH: Please swear the juror.

5 THE CLERK: Please have a seat in the jury box.

6 Juror number 17, Malinda G. Barksdale.

7 What says the State?

8 MR. MOYER: Please excuse the juror on this
9 case.

10 THE CLERK: You are excused from this case.

11 Juror number 311, Roy C. Woods.

12 What says the State?

13 MR. MOYER: Please excuse the juror from this
14 case.

15 THE CLERK: You are excused from this case.

16 Juror number 239, Rodger B. Rhinerson.

17 What says the State?

18 MR. MOYER: Please present Mr. Rhinerson.

19 THE CLERK: What says the defense?

20 MR. FARNSWORTH: Please excuse the juror from
21 this case.

22 THE CLERK: You are excused from this case.

23 Juror number 192, Linda G. McCarter.

24 What says the State?

25 MR. MOYER: Please present Mrs. McCarter.

1 THE CLERK: What says the defense?
2 MR. FARNSWORTH: Please swear the juror.
3 THE CLERK: Just have a seat in the jury box.
4 Juror number 222, Elaine J. Payne.
5 What says the State?
6 MR. MOYER: Please present Mrs. Payne.
7 THE CLERK: What says the defense?
8 MR. FARNSWORTH: Please swear the juror.
9 THE CLERK: Please have a seat in the jury box.
10 Juror number 257, Darrell G. Sanders.
11 What says the State?
12 MR. MOYER: Please excuse the juror on this
13 case.
14 THE CLERK: You are excused from this case.
15 Juror number 49, Rosemary P. Butler.
16 What says the State?
17 MR. MOYER: Please present Ms. Butler.
18 THE CLERK: What says the defense?
19 MR. FARNSWORTH: Please excuse this juror.
20 THE CLERK: You are excused from this case.
21 Juror number 280, Scott L. Thibodeaux.
22 What says the State?
23 MR. MOYER: Please present Mr. Thibodeaux.
24 THE CLERK: What says the defense?
25 MR. FARNSWORTH: Please swear the juror.

1 THE CLERK: Have a seat in the jury box.
2 Juror number 166, Gwendolyn A. Latson.
3 What says the State?
4 MR. MOYER: Please present Mrs. Latson..
5 THE CLERK: What says the defense?
6 MR. FARNSWORTH: Please swear the juror.
7 THE CLERK: Please have a seat in the jury box.
8 Juror number 232, Donna K. Pyeatt..
9 What says the State?
10 MR. MOYER: Please present Mrs. Pyeatt..
11 THE CLERK: What says the defense?
12 MR. FARNSWORTH: Please excuse this juror.
13 THE CLERK: You are excused from this case.
14 Juror number 177, Rebecca A. Lovelace.
15 What says the State?
16 MR. MOYER: Please present Mrs. Lovelace.
17 THE CLERK: What says the defense?
18 MR. FARNSWORTH: Please swear the juror.
19 THE CLERK: Please have a seat in the jury box.
20 Juror number 171, Tamara A. Leopard.
21 THE COURT: 1 and 2.
22 THE CLERK: What says the State?
23 MR. MOYER: Please present Mrs. Leopard.
24 THE CLERK: What says the defense?
25 MR. FARNSWORTH: Please excuse the juror in

1 this case.

2 THE CLERK: You are excused from this case.

3 Juror number 292, Garnet B. Vicars.

4 What says the State?

5 MR. MOYER: Please present Ms. Vicars.

6 THE CLERK: What says the defense?

7 MR. FARNSWORTH: Swear the juror.

8 THE CLERK: Please have a seat in the jury box.

9 Juror number 95, Teresa A. Franklin.

10 What says the State?

11 MR. MOYER: Please present Mrs. Franklin.

12 THE CLERK: What says the defense?

13 MR. FARNSWORTH: Swear the juror, please.

14 THE CLERK: Please have a seat in the jury box.

15 THE COURT: Any objection to the composition or
16 manner of selection of this jury?

17 MR. MOYER: Not from the State.

18 MR. FARNSWORTH: No, Your Honor.

19 THE COURT: Do you have an estimate?

20 MR. MOYER: For the hearing?

21 THE COURT: An hour?

22 MR. MOYER: At least 30 minutes to 45 minutes.

23 THE COURT: All right. Do you think that's
24 reasonable?

25 MR. FARNSWORTH: That sounds about right, Your

1 Honor.

2 THE COURT: All right. I'm going to ask both
3 groups of you to be back here at two o'clock. Mr.
4 Jenkins is going to take you back and show you your
5 jury room in just a minute, those of you who were
6 selected to serve on this jury, and I'm going to ask
7 you to be back in that jury room at two o'clock.

8 Now, ladies and gentlemen, I'm going to talk to
9 you in much more detail when you get back, but let
10 me tell you a few things now before you leave. You
11 may not discuss this case, period. You may not
12 discuss the allegations that I read to you from the
13 indictment. You cannot discuss the lawyers, the
14 witnesses, the nature of allegations, nothing. Just
15 don't talk about this case, period. I will talk to
16 you in more detail about that later.

17 That's pretty much the important stuff for
18 right now, so you have a nice lunch. Be back in
19 your jury room at two o'clock. We will see you
20 then.

21 Those of you who were not selected to serve,
22 I'm going to ask you to come back and be in the jury
23 assembly room at two o'clock, and we will either
24 proceed to strike a jury or you will be dismissed
25 for the day. So be back downstairs at two o'clock.

1 (The following takes place outside the presence
2 of the jury panel)

3 THE COURT: We will be back at 1:15 for the
4 hearing. All right. See you then.

5 (Proceedings recessed)

6 (Proceedings reconvened)

7 THE COURT: Yes, sir.

8 MR. MOYER: This is for the Jackson v. Denno
9 hearing, Your Honor.

10 I would first start off by calling Officer
11 William Kennedy.

12 Officer William Kennedy, having been first duly
13 sworn, testified as follows:

14 THE CLERK: Please state your name for the
15 record.

16 THE WITNESS: William Kennedy.

17 DIRECT, EXAMINATION BY MR. MOYER:

18 Q And you work for the Mauldin police department?

19 A That's correct.

20 Q How long have you worked for the Mauldin police
21 department?

22 A Approximately three and a half years.

23 Q And you were working for the Mauldin police
24 department back about a year ago, January the 31st
25 and February the 1st of 2002?

1 A That's correct.

2 Q Did you have occasion to talk to the defendant
3 Jonathan Hill in this particular case?

4 A Yes, I did.

5 Q And when was it that it spoke to him?

6 A It would be on the 1st of February, and
7 probably be around 3:15 in the morning, right around
8 in there.

9 Q And where was it that you spoke to him?

10 A First it was in the upstairs of the Greenville
11 County sheriff's office at the law enforcement
12 center.

13 Q So he was in custody at that time?

14 A That's correct.

15 Q Now, was he handcuffed at that time?

16 A Yes, sir, he was.

17 Q And what -- did you meet him in one of the
18 detective's offices, or where was it that you met
19 him there?

20 A No, sir, he was out in the hallway with one
21 deputy with him watching him until I got there.

22 Q So there was one other person in your presence
23 then when you spoke to him?

24 A That's correct.

25 Q Now, before actually asking him the questions

1 that you did, did you advise him of his rights?

2 A I did.

3 Q And what was the -- did you have a form with
4 you, or did you have a card that you read him the
5 rights?

6 A No, sir, I read it verbatim off of a card that
7 I carry.

8 Q And do you have that card with you today?

9 A Yes, sir, I do.

10 Q Would you read those rights that you read to
11 the defendant on that night?

12 A Yes, I will.

13 It states that you have the right to remain
14 silent.

15 Anything you say can and will be used against
16 you in a court of law.

17 You have the right to talk to an attorney and
18 to have him or her present with you while you are
19 being questioned.

20 If you cannot afford to hire an attorney, one
21 will be appointed to represent you before any
22 questioning, if you wish.

23 You can decide at any time to exercise these
24 rights and not answer any questions or make any
25 statements.

1 Do you understand each of these rights that I
2 have explained to you? Having these rights in mind,
3 do you wish to talk to us now?

4 Q So you went over each one of those rights with
5 him that morning?

6 A That's correct.

7 Q Did you make sure he understood those rights?

8 A That's correct. When I asked him do you
9 understand each of these rights as I have explained
10 them to you, he stated yes.

11 Q So in your opinion did he understand the rights
12 as you read them?

13 A Yes, sir.

14 Q And to the best you could tell, was he in a
15 sound state of mind?

16 A Yes, sir, he seemed to be to me.

17 Q Was he denied any comforts that he may have --
18 as far as bathroom facilities, or water, or --

19 A Not to my knowledge, sir.

20 Q And did the defendant indicate to you that he
21 understood his rights then?

22 A Yes, he did.

23 Q Did you make any threats or did you make any
24 promises to him in order to induce him to talk to
25 you?

1 A No, sir, I didn't.

2 Q Was there any intimidation used by you or
3 anyone else there?

4 A No, sir.

5 Q Did he waive his rights voluntarily?

6 A Yes, sir, he agreed to speak with me.

7 Q So he did indicate to you that he would answer
8 the questions that you posed?

9 A That's correct.

10 Q After that did you give the defendant -- or did
11 the defendant give you any information as to whether
12 or not he was in that vehicle that you had conducted
13 a stop on just a couple hours earlier?

14 A Yes, he did.

15 Q Did he say where he had been sitting in that
16 vehicle?

17 A He stated he had been the rear seat passenger.

18 Q And did he tell you his name?

19 A Yes, sir, he did.

20 Q And what did he tell you his name was?

21 A At that time he told me it was Jonathan Green.

22 Q And did he later tell you a different name?

23 A Sir, the fingerprint roll came back that his
24 name was Jonathan Hill. And he told me, when I
25 served a subsequent warrant on him, that the

1 situation was Hill was a family name. He was going
2 under Green, but he was formerly under the name of
3 Hill.

4 Q When was that that you had that conversation?

5 A It was on the 5th of February.

6 Q And that's --

7 A I don't recall what time.

8 Q And that was when you served some arrest
9 warrants on him?

10 A That's correct. That's when I was informed of
11 the 10-card roll coming back with the different
12 name, and I did go to the law enforcement center and
13 served another warrant on him, or a ticket on him.

14 Q Thank you.

15 MR. MOYER: I have no further questions for
16 this witness.

17 CROSS EXAMINATION BY MR. FARNSWORTH:

18 Q Officer Kennedy, sir, did you say this was
19 about 3:15 a.m.?

20 A Yes, sir, he was taken into custody
21 approximately 2:41 in the morning.

22 Q All right.

23 A And I responded to the law enforcement center
24 from our department after I was informed he was in
25 custody, so I'm guessing probably about 3:15.

1 Q And this was shortly after he and two other
2 co-defendants had been arrested, is that correct?

3 A That's correct, sir.

4 Q And what was your purpose in going to the law
5 enforcement center?

6 A I was the original officer trying to make the
7 traffic stop. My purpose was to get his
8 information, sign a warrant against all three for
9 resisting arrest, and I was waiting until I could
10 get his information before I signed all the
11 warrants.

12 Q Explain to the court what you mean by get his
13 information.

14 A His name, date of birth, things that I would
15 need to put on a warrant.

16 Q But nothing about the case?

17 A Sir, I also wanted to find out any information
18 I could just about my traffic stop.

19 Q During your duties as an officer, do you most
20 usually take statements from defendants after they
21 are arrested?

22 A Sometimes I do, yes, sir.

23 Q Did you say that you took it out in the hallway
24 of the law enforcement center?

25 A Yes, sir, it was just a verbal statement.

1 Q Do you always take them out in the hall?

2 A I take them just about anyplace, sir.

3 Q Why wouldn't you have taken him inside an
4 office and sat down and explained his rights to him,
5 instead of talking to him while he was standing up
6 handcuffed out in the hall?

7 A I didn't feel that any change of scenery was
8 necessary.

9 Q Did you smell any alcohol on him?

10 A Not that I recall, no, sir.

11 Q Did he appear to act like someone who had been
12 using marijuana?

13 A Not that I recall, sir.

14 Q All right. And you said that you read him your
15 rights card, is that correct?

16 A That's correct.

17 Q And you knew basically what he was being
18 charged with, didn't you?

19 A That's correct, sir.

20 Q And you knew that armed robbery is one of our --
21 probably one of the most serious charges that you
22 can be charged with, other than murder?

23 A This is correct, sir.

24 Q And it never occurred to you to read -- to get
25 him to sign a -- to explain his rights to him and

1 get him to sign a waiver of rights form?

2 A No, sir, I was informed that the investigators
3 from the other department were going to take care of
4 any investigation, as far as the robbery.

5 I was concerned with the resisting arrest
6 charge and the traffic stop.

7 Q Okay. So the only questions that you are
8 telling us that you asked him was something to the
9 effect were you in the car and where were you
10 seated?

11 A Yes, sir, I asked him where he was in the car
12 and where he was seated.

13 And -- let me double check. I asked him why he
14 ran from me, and he stated he was scared, or why he
15 ran on foot. That was the only other thing I did
16 inquire about.

17 Q And did you either write this out or get him to
18 write it out, these three questions that you asked
19 him, and get him to read it and sign it?

20 A No, sir, I did not.

21 Q So you just made notes, is that what did you?

22 A That's correct.

23 Q And so you didn't go any further and ask him
24 was he involved in an armed robbery, did you?

25 A Not that I recall, sir.

1 Q So all you wanted to know was where he was
2 sitting in the car, if he was in it?

3 A That's correct.

4 Q And if he ran from you?

5 A That's correct, sir.

6 Q And where was the -- you said there was an
7 another officer present. Where was that officer?

8 A That officer was sitting in the hallway. The
9 defendant was sitting in a chair in the hallway.

10 Q Uh-huh.

11 A I believe that officer was sitting. He may
12 have been standing, but he was in the hallway with
13 us, and I cannot recall whether or not he was there
14 the entire time. He did release him to me and at
15 some point he left, but I don't remember when.

16 MR. FARNSWORTH: That's all I have, Your Honor.

17 MR. MOYER: I have nothing further from this
18 witness.

19 THE COURT: Thank you for coming, sir. You can
20 step down.

21 THE WITNESS: Thank you, Your Honor.

22 MR. MOYER: Call Lieutenant Ralph Bobo.

23 OFFICER RALPH BOBO, having been first duly
24 sworn, testified as follows:

25 THE CLERK: Please state your name for the

1 record.

2 THE WITNESS: Ralph Bobo.

3 DIRECT EXAMINATION BY MR. MOYER:

4 Q And you are employed with the Simpsonville
5 police department?

6 A Yes, sir.

7 Q You are a lieutenant there?

8 A Yes, sir.

9 Q How long have you worked with the Simpsonville
10 police department?

11 A I have been with Simpsonville ten years.

12 Q And you were involved in this case that we have
13 been talking about here today against Jonathan Hill?

14 A Yes, sir.

15 Q The night of the robbery, the night of the --
16 at the location that which the individuals were
17 arrested, did you respond to that scene?

18 A I did.

19 Q And about what time was it that you responded
20 to that scene?

21 A Approximately 1:30 to 1:45. I had met with the
22 officers at the motel concerning the robbery. While
23 we were there, we received information that Mauldin
24 had been involved in a car chase with a suspect
25 vehicle and they were out on foot with the sheriff's

1 department trying to apprehend the suspects, so
2 myself and the shift supervisor, that double shift,
3 did go to the scene.

4 Q And you saw this Mauldin officer who just
5 testified --

6 A Yes, sir.

7 Q -- there as well.

8 Now, do you have the address for that location
9 was?

10 A I can just tell you, on Fork Shoals Road.
11 Right at the intersection of Fork Shoals Road and
12 Whitehorse Road extension.

13 Q Is that a rural area?

14 A Yes, sir, it's in the county.

15 Q And it's out -- it's not a heavily residential
16 area?

17 A No, it's somewhat behind Donaldson Center near
18 Augusta Road.

19 Q Were you present when this defendant, Jonathan
20 Hill, a/k/a Jonathan Green, was arrested?

21 A I was in that area, yes, sir.

22 Q Did you speak to him that night?

23 A I did.

24 Q And did this take place right out there?

25 A It was in the field in the back of my patrol

1 car, sir.

2 Q So do you have a rough idea about what time it
3 was?

4 A 2:15, 2:30, something like that, sir. I'm not
5 exactly sure what time it was.

6 Q So you had been there a little while before he
7 was caught?

8 A Yes, sir.

9 Q Now, when you spoke to him there, did you
10 advise him of his rights that night?

11 A Yes, sir, I advised him of his rights orally
12 and the officer who had him in the car said that he
13 had been orally mirandized as well.

14 Q So an officer told you that that officer had
15 already mirandized him?

16 A Yes.

17 Q But you did so as well?

18 A Yes, sir.

19 Q How did you do so?

20 A By memory.

21 Q By memory?

22 A Yes, sir.

23 Q And just use your memory then and tell us what
24 were those rights that you informed him of.

25 A Before we ask you any questions, you must

1 understand your rights.

2 You have the right to remain silent.

3 Anything you say can and will be used against
4 you in a court of law.

5 You have the right to talk to a lawyer for
6 advice before we ask you any questions.

7 You can have him with you during questioning.

8 You have no money to pay a lawyer's fee, the
9 court will appoint one to represent you without
10 costs, if you wish.

11 If you decide to answer questions now without a
12 lawyer present, you still have the right to stop
13 answering at any time.

14 You also have the right to stop answering at
15 any time until you talk to a lawyer.

16 Q And you went over each one of those rights with
17 him?

18 A Yes, sir.

19 Q And did you do so in such a way to make sure
20 that he understood those rights?

21 A Yes, sir, I did.

22 Q Now, where did this take place? Get more
23 specific. I know that you were out in this field
24 but --

25 A I want to say the patrol car was parked on

1 Whitehorse Road extension, but I cannot swear to
2 that. But it was in the -- there were about 50 cars
3 out there that night. And exactly where the car was
4 sitting at that night I couldn't tell you. I'm not
5 really familiar with the area.

6 Q But it was one of the patrol cars?

7 A Yes.

8 Q Was it a Greenville County patrol car?

9 A Yes, sir, it was.

10 Q Was there any other officers around while you
11 were talking to him?

12 A May have been, sir, but knowing who they were,
13 I do not know. It was dark and a lot of people were
14 moving around and trying to apprehend these folks.

15 Q Now, in your opinion did the defendant
16 understand his rights?

17 A He did.

18 Q Was he in a coherent state of mind, as best you
19 could tell?

20 A Yes, sir.

21 Q Did he indicate to you that he understood those
22 rights?

23 A Yes, sir.

24 Q And did you make any threats or promises to him
25 out there at the scene?

1 A No, sir, I did not.

2 Q Was there any intimidation used by you or
3 anyone else?

4 A No, sir.

5 Q So he waived his rights voluntarily?

6 A He didn't talk to me.

7 Q So at that point he didn't talk to you.

8 However, during that conversation did you ask him
9 his name?

10 A Yes, sir, I did.

11 Q And what was the name that he gave you?

12 A The first thing he said was his first name was
13 Jonathan, and then he stammered around and finally
14 said Jonathan Green.

15 Q Now, did you have a later occasion to talk to
16 the defendant?

17 Now, first of all, what was the date of that?

18 A That was February 1st, the night of the
19 robbery.

20 Q Now, did you have a later occasion to speak to
21 him?

22 A Yes, I did.

23 Q And what was the date of that?

24 A February the 5th.

25 Q And where was it that you spoke to him on that

1 occasion?

2 A At the Simpsonville police department.

3 Q How did he get to the Simpsonville police
4 department?

5 A We had an officer bring him to the department
6 from the county detention center.

7 Q And where in the Simpsonville police
8 department, more specifically, did you talk to him?

9 A We was in Investigator Jeff Thomas' office.

10 Q Is that an office that y'all used regularly?

11 A Yes, sir, it's Officer Thomas' assigned office,
12 and we just -- because we used his office in the
13 close proximity to the jail cell being downstairs on
14 one floor, we just used his office that day for the
15 interview.

16 Q Because it's a comfortable room then?

17 A Yes, sir.

18 Q And was he seated?

19 A Yes, sir.

20 Q In a comfortable chair?

21 A Better than what I'm sitting in now.

22 Q And was he denied any comforts that he may have
23 requested or that you thought he may have needed?

24 A No, sir.

25 Q And did you advise him of his rights again?

1 A Yes, we did.

2 Q And did you do so using a form this time?

3 A Yes, sir, this form here.

4 Q Did you bring that with you?

5 A I did.

6 MR. MOYER: All right. Let's mark that.

7 (Waiver of Rights Form marked as State's
8 Exhibit No. 1 for identification)

9 BY MR. MOYER:

10 Q I'll hand you State's Exhibit No. 1. Is this
11 the original form?

12 A Yes, sir, it is the original.

13 Q And so does that form have the rights that you
14 informed him of listed out in that form?

15 A Yes, sir, it does.

16 Q And did you go over one of those rights with
17 him?

18 A Officer Jeff Thomas and I did both did, sir.

19 Q And you were present for that?

20 A Yes, sir.

21 Q And again read off those rights.

22 A Before we ask you any question you must
23 understand your rights.

24 You have a right to remain silent.

25 Anything that you say can be used against you

1 in court.

2 You have the right to talk to a lawyer for
3 advice before we ask you any question and have him
4 with you during questioning.

5 If you have no money to pay a lawyer's fee, the
6 court will appoint one to represent you without
7 costs, if you wish.

8 If you decide to answer questions now without a
9 lawyer present, you would still have the right to
10 stop answering at any time.

11 You also have the right to stop answering at
12 any time until you talk to a lawyer.

13 And then it has a waiver of rights below that.
14 Do you want me to read that?

15 Q Yes.

16 A Waiver of rights. I have read the statement of
17 my rights. I understand what my rights are. I'm
18 willing to make a statement and answer questions. I
19 do not want a lawyer at this time. I understand and
20 know what I'm doing. No promises or threats have
21 been made to me and no pressure or coercion of any
22 kind has been used against me.

23 Q Now, just to make it clear, you are reading
24 from State's Exhibit No. 1?

25 A That's correct.

1 Q Now, do you recognize that form?

2 A Yes, sir.

3 Q And how do you recognize it?

4 A Because it has his signature, has my signature,
5 the date and time on it, and it's a form that we
6 normally use every day in questioning someone.

7 Q So that was the form that was used to waive the
8 rights for this defendant Jonathan Hill?

9 A Yes, sir.

10 Q What time did this take place?

11 A It Started at 11:11 a.m..

12 Q You didn't mark the ending time?

13 A 11:15 a.m..

14 Q Now, so you went over each one of those rights?

15 A Yes, sir.

16 Q Did he make any marks on it to indicate that he
17 understood the rights?

18 A He put his initials at the end of each sentence
19 that was read to him, sir.

20 Q You saw him do that?

21 A Yes, sir. He was also asked to read a sentence
22 in that to make sure he could read the written word,
23 and he did that as well.

24 Q So from all indications he could read?

25 A Yes, sir.

1 Q From all indications, in your opinion, did he
2 understand those rights that you went over with him?

3 A Yes, sir, he did.

4 Q And to the best you could tell, was in a sound
5 state of mind?

6 A Yes, sir.

7 Q And what name did he use to sign that form?

8 A Jonathan Hill.

9 Q Did you make any threats or did you make any
10 promises in order to get him to sign that form and
11 give a statement?

12 A No, sir, I did not.

13 Q Was there any intimidation used by you or any
14 members of your department?

15 A No, sir.

16 Q Was his waiver of rights voluntary?

17 A Yes, sir.

18 Q Did he indicate to you whether he wished to
19 give a statement?

20 A Yes, sir, he did.

21 MR. MOYER: Now, at this time I would move to
22 have State's Exhibit No. 1 moved into evidence for
23 purposes of this hearing.

24 MR. FARNSWORTH: No objection.

25 THE COURT: Okay.

1 MR. MOYER: In case the court wants to see it.

2 BY MR. MOYER:

3 Q All right. So did defendant Jonathan Hill then
4 give you a statement?

5 A Yes, sir, he did.

6 Q Did you have that statement put in writing?

7 A Yes, sir, we typed it.

8 Q And did you bring that with you today?

9 A I have the original here, sir.

10 (Typed Statement of Jonathan Hill marked as
11 State's Exhibit No. 2 for identification)

12 BY MR. MOYER:

13 Q I'm going to hand you what's marked as State's
14 Exhibit No. 2. Do you recognize what I have just
15 handed you?

16 A Yes, sir, I do.

17 Q What is it?

18 A It's a statement form that the Simpsonville
19 police department uses.

20 Q And is it a particular form?

21 A It is what we call our written statement form,
22 and Mr. Hill -- this is a statement given to by Mr.
23 Hill.

24 Q And how do you recognize it as such?

25 A His name is typed in the first underlined

1 portion of the form. His address at home, his age,
2 and how far he went through school, and whether he
3 can or cannot read or write that's been indicated,
4 sir.

5 Q And how far did he go in school?

6 A 12th grade, sir.

7 Q And did he indicate to you that he could read
8 and write, as you have already told us?

9 A Yes, sir.

10 Q Did you type that statement?

11 A Officer Jeff Thomas did, sir.

12 Q And was it typed accurately as the defendant
13 told what had happened?

14 A Yes, sir, he did.

15 Q Was it read back to the defendant?

16 A Yes, sir, it was read back to him and also a
17 copy given to him before signing it, sir.

18 Q And did the defendant indicate to you, after
19 that statement was typed and read to him, that that
20 was his statement?

21 A Yes, sir.

22 Q And did he make any marks on that form to
23 indicate so?

24 A He signed it. He signed two lines. One says
25 that the statement above is true and correct to the

1 best I can recall. He signed a second line
2 indicated he had received a copy of the statement.

3 MR. MOYER: Now, at this time for purposes of
4 this hearing I would move State's Exhibit No. 2 into
5 evidence.

6 MR. FARNSWORTH: No objection.

7 THE COURT: Admitted.

8 BY MR. MOYER:

9 Q All right. Would you please publish that
10 statement for the court.

11 A Read it?

12 Q Read the statement, yes, sir.

13 A State of South Carolina, County of Greenville,
14 City of Simpsonville. Incident number 05/1044.
15 Date February 5, 2002.

16 "I, Jonathan Green Hill, do hereby freely and
17 voluntarily give this statement to Investigator
18 J. Thomas who has identified himself to me to be a
19 police officer, City of Simpsonville, Simpsonville,
20 South Carolina. I have been advised that I do not
21 have to make this or any statement, and that what I
22 say can be used against me in a court of law. I
23 have been advised that I have the right to counsel
24 with an attorney of my choice. And that if I'm
25 financially unable to obtain an attorney or the

1 court will appoint an attorney to represent me. I
2 have not been threatened or promised any reward to
3 make this statement.

4 "I am 23 years old and reside at 25 Fleetwood
5 Drive, Lot 104-H, Greenville, S.C., 29605.

6 "I have a 12th grade education and I can read
7 and write.

8 "Statement. I have known Julio and Duke for
9 about a month or month and a half. They stay with
10 different people at Fleetwood. They have been
11 showing me they have a lot of money because they
12 have liquor, drugs and other things. They flash
13 these things at Fleetwood. I know they have been
14 jacking (robbing people) or places. I have heard
15 they have robbed the Motel 6 where Duke's girlfriend
16 works there. Duke had a .380 pistol. Julio and
17 Duke said it was stolen. They have tried to get me
18 to ride with them before. About nine p.m. Julio and
19 Duke came to my girlfriend's house. They wanted me
20 to go ride with them. They said if I wanted to go
21 to work to work with them. We had been drinking
22 Paul Masson and making marijuana. We went to the La
23 Quinta Inn and Duke went to some white boys and
24 bought a beer. They let them in the side door.
25 Both Julio and Duke robbed the motel and we left and

1 went to a mall. I think it was Haywood Mall. Duke
2 attempted to use a credit card that was taken and it
3 did not work. We left in a white car. I thought we
4 were going home. We drove to Simpsonville and
5 stopped at the gas station. I think it was a BP
6 station. I used the restroom in back of the
7 station. A male clerk who was working there gave me
8 the key. Duke was driving the car, which is a small
9 Ford Escort four-door car. We parked in a white
10 motel near the Hampton Inn. Duke and Julio got out
11 of the car and went around a gate and went into the
12 Hampton Inn. They later came back and Duke said
13 that he had went back and got him. This meaning
14 Duke had went back behind the counter and robbed the
15 clerk. Duke had the billfold which was taken from
16 the clerk at the Hampton Inn. Julio was driving
17 away. Then the police got behind us. He pulled
18 over stopped briefly. Then he pulled onto the road
19 again. We later went off the road and I was later
20 arrested by the police. I am sorry that these
21 places were robbed.

22 "I have read the statement of my rights of one
23 pages and it's true and correct to the best I
24 recall."

25 Signed Jonathan Karon Hill. I received a copy

1 of this statement Jonathan Karon Hill, witnessed by
2 Jeff Thomas, G.R. Bobo, and Wesley Smith, notary
3 public for S.C.. My commission expires 3-19-2006.

4 Q Thank you.

5 MR. MOYER: I have no further questions of this
6 witness.

7 MR. FARNSWORTH: Just a couple of questions,
8 Officer Bobo.

9 CROSS EXAMINATION BY MR. FARNSWORTH:

10 Q Sir, after this incident occurred in which the
11 three people were arrested, Mr. Hill being one of
12 them, you had him brought to the Simpsonville police
13 department, is that correct?

14 A Later that morning, yes, sir. I had a warrant
15 served on him.

16 Q And is this when you gave him the verbal
17 warning or the verbal rights?

18 A No, sir, we gave him the verbal rights on the
19 scene.

20 Q Okay.

21 A Before he was transported to the Simpsonville
22 police department.

23 Q That's what I meant. Right after that you gave
24 him his rights there verbally?

25 A Yes.

1 Q And at that point did you smell any alcohol on
2 him?

3 A I can't say that I smelled alcohol on him. I
4 know he said --

5 Q He told you --

6 A -- later he was drinking, but I do not recall
7 at the time on the scene, sir.

8 Q And he also told you that he had been smoking
9 marijuana?

10 A That's what he said in his statement three days
11 later, yes, sir.

12 Q And right after he was arrested, what did he
13 look like? I mean --

14 A He did have a disheveled look. He had been
15 running from the police officer on the scene and --

16 Q Clothes were wet?

17 A He had been sweating, yes, sir. He had been
18 going through the woods at night. No flashlight.

19 Q Went through a creek too, hadn't he?

20 A I can't recall the creek, sir.

21 Q But his clothes were all messed up?

22 A Yes, sir.

23 Q Now, going to the interview you had with him at
24 Simpsonville police department, which I believe you
25 said was on February the 5th, 2000, how was that

1 meeting with you and Mr. Hill initiated? Did you
2 initiate it, or did he?

3 A We had him transported to the police department
4 sir, yes, sir.

5 Q So you -- he got there and you took him in an
6 office, is that correct?

7 A Yes, sir, we did.

8 Q And how small or large was this office that you
9 took him in?

10 A I think it's around 12 X 12, sir.

11 Q And who else was in there besides you?

12 A Myself, Investigator Thomas and Mr. Hill, to
13 start with.

14 Q You said to start with. Who else -- did
15 Investigator Thomas leave the room?

16 A No, sir, later that afternoon during the
17 interview Wes Smith from the sheriff's department
18 came by, because we learned through our interview
19 with Mr. Hill they had robbed another motel.

20 Q And you said the waiver started at -- the
21 explanation of his rights started at 11:11 and ended
22 at 11:15?

23 A That's correct.

24 Q Then you began the statement, is that correct?

25 A We began talking to him, sir.

1 Q All right. So is what you do is you talk to
2 the person to find out what they have to say, that
3 answers all your questions, and then type the
4 statement up?

5 A Yes, sir.

6 Q And then have him read it, is that correct?

7 A Yes, sir.

8 Q And that's what did you in this case?

9 A Yes, sir.

10 Q And was there any -- at any time was there any
11 indication that Mr. Hill did not understand anything
12 in the statement after he read it?

13 A No, sir.

14 Q Were there any promises or threats made to him
15 for giving this statement?

16 A No, sir.

17 Q Nothing in the way of quote, unquote, we will
18 help you if you give this statement?

19 A No, sir, we told him that if -- we feel his --
20 it's his best interest to cooperate with us, that he
21 was caught kind of red-handed, so to speak, with the
22 possession of the clerk who was robbed and on the
23 person on someone he was traveling with. And if his --
24 if he cooperated with us, we would pass that onto
25 the solicitor's office. He did give a statement and

1 we did do that, sir.

2 MR. FARNSWORTH: That's all I have.

3 MR. MOYER: I have nothing further of this
4 witness.

5 THE COURT: Thank you, sir.

6 OFFICER WES SMITH, having been first duly
7 sworn, testified as follows:

8 THE CLERK: State your name for the record.

9 THE WITNESS: Wesley Smith.

10 DIRECT EXAMINATION BY MR. MOYER:

11 Q And you work with the Greenville County
12 sheriff's office?

13 A I do.

14 Q How long have you worked with the sheriff's
15 office?

16 A Twenty and a half years.

17 Q And you are a detective right now?

18 A Yes, assigned to the violent crimes unit.

19 Q How long a detective with the violent crimes
20 unit?

21 A I have been assigned to the violent crimes unit
22 for almost two years now.

23 Q You have been a detective for how long?

24 A Fifteen years altogether.

25 Q All right. Now, did you speak to the defendant

1 in this case, Jonathan Hill?

2 A I did.

3 Q Regarding taking a statement from him?

4 A Yes, sir.

5 Q And what was the date that you did that?

6 A February 5th, 2002.

7 Q Where did that take place?

8 A In the Simpsonville police department.

9 Q So you were called by --

10 A I was contacted by Lieutenant Bobo and told
11 that Mr. Hill, who was a suspect in the robberies,
12 was at the Simpsonville police department and had
13 confessed to the Hampton Inn robbery and also the
14 robbery at our La Quinta Inn.

15 Q And where was it that you met with the
16 defendant?

17 A In Detective Jeff Thomas's office at the
18 Simpsonville police department.

19 Q And were there other individuals present
20 besides you and the defendant?

21 A Detective Thomas was there for a time, and then
22 Lieutenant Bobo was there, in and out most of
23 throughout the entire interview.

24 Q And what was the time that you met with him?

25 A I got to Simpsonville about two o'clock, and

1 Detective Bobo and Thomas were finishing their
2 interview with him at that point, and then they said
3 once they got through typing their statement, that I
4 could begin with mine.

5 I went to my car to get a statement form. And
6 didn't have one. I asked to borrow their computer
7 in their office to type the statement on their
8 computer.

9 Q Did you also advise him of his rights?

10 A I did.

11 Q Did you do so using a form?

12 A Yes.

13 Q You brought that form with you today?

14 A Yes, I gave it to you.

15 (Waiver of Rights Form marked as State's
16 Exhibit No. 3 for identification)

17 (Typed Statement marked as State's Exhibit No.
18 4 for identification)

19 BY MR. MOYER:

20 Q Let me hand you State's Exhibit No. 3. Do you
21 recognize that what I have just handed you?

22 A Yes, this is the original waiver form that Mr.
23 Hill signed.

24 Q And you were present when he signed it?

25 A Yes, I was.

1 Q Who else signed it.

2 A Lieutenant Bobo.

3 Q And did you sign it as well?

4 A Yes.

5 Q And the defendant?

6 A That's right.

7 Q All right. Now, did you mark the time as to
8 when you filled out that form?

9 A Yes, I began talking to him about the form at
10 twenty-five after two, and we completed it and he
11 signed it at 2:30. About five minutes.

12 Q Signed the Waiver of Rights Form?

13 A That's right.

14 Q It took about five minutes to go through that
15 form?

16 A Well, I just didn't go through the form. I
17 asked him some questions about his education and his
18 personal information and I wrote all that at the top
19 of the form.

20 Q All right.

21 A Then I advised him of his rights.

22 Q And what education -- what notes regarding his
23 education did you write?

24 A He indicated that he went through the 12th
25 grade at Wesqualic High School.

1 Q Did he indicate to you that he could read and
2 write?

3 A Yes, he did.

4 Q Now, did he seem to appear to you to be in an
5 alert and a sober state of mind?

6 A Oh, yeah, he was very sober and alert. He was
7 quite concerned about what was going to happen to
8 him.

9 Q So he was seated there in the office?

10 A Yes.

11 Q Now, so that is the form that you used to
12 inform the defendant of his rights?

13 A That's correct.

14 MR. MOYER: At this time I would move to have
15 State's Exhibit No. 3 moved into evidence for
16 purposes of this hearing.

17 MR. FARNSWORTH: Without objection.

18 THE COURT: Admitted.

19 BY MR. MOYER:

20 Q Would you please read those rights that you
21 advised the defendant of?

22 A I wrote my case number at the top. It was case
23 number 24331. The 02 is for the year. The date and
24 the time.

25 "Before we ask you any questions, you must

1 understand your rights.

2 "You have the right to remain silent.

3 "Anything that you say can be used against you
4 in court.

5 "You have the right to talk to a lawyer for
6 advice before we ask you any questions and to have
7 him with you during questioning.

8 "If you have no money to pay a lawyer's fee,
9 the court will appoint one to represent you without
10 costs, if you wish.

11 "If you decide to answer questions now without
12 a lawyer present, you will still have the right to
13 stop answering at any time.

14 "You also have the right to stop answering at
15 any time until you talk to a lawyer."

16 "Waiver of rights. I have read this statement
17 of my rights and I understand what my rights are and
18 I'm willing to make a statement and answer
19 questions. I do not want a lawyer at this time and
20 I understand and know what I'm doing. No promises
21 or threats have been made to me and no pressure or
22 coercion of any kind has been used against me."

23 Jonathan Hill signed it. I signed it.

24 Lieutenant Bobo signed it. And the time was 1430,
25 or 2:30 p.m..

1 Q Did he make any marks on that form to indicate
2 that --

3 A He did.

4 Q But you went over each one?

5 A Each one of those rights.

6 Q Did he indicate to you that he understood those
7 rights?

8 A Yes, he did.

9 Q In your opinion, did he understand them?

10 A Absolutely.

11 Q What name did he use to sign that form?

12 A Jonathan Hill.

13 Q And did you use any threats -- make any threats
14 or promises in order to induce him to give a
15 statement and talk to you?

16 A No. As a matter of fact, I had to repeatedly
17 tell him that the statement that he was going to
18 give could be used against you and possibly could
19 result in charges being filed against you.

20 Q And was there any intimidation used by you or
21 anyone else present?

22 A No.

23 Q And was his waiver of rights voluntary, in your
24 opinion?

25 A Yes.

1 Q And did the defendant indicate to you whether
2 he wished to give a statement?

3 A Yes, he said he wanted to get it all out in the
4 open and get it dealt with.

5 Q And did he give you a statement then?

6 A He did.

7 Q And was the statement put in writing?

8 A Yes. I used Detective Thomas' computer to type
9 it.

10 Q And you used the Simpsonville form?

11 A Right. Their form was set up in the program
12 called Microsoft Works. I could go back and edit
13 out the Simpsonville and change it to read
14 Greenville County, where it needed to be changed.

15 Q Let me hand you State's Exhibit No. 4. Do you
16 recognize that?

17 A Yes, this is the original statement that he
18 signed.

19 Q And how do you recognize that?

20 A Well, it has my handwriting and the case number
21 and the date up at the top. It's got Mr. Hill's
22 signature at the bottom in two places. It's got my
23 personal signature as a witness, and the signature
24 of Lieutenant Bobo as a notary public. And also Mr.
25 Hill also initialed it in three different places to

1 indicate that he read it.

2 Q And what was the date that that was given?

3 A February 5th.

4 MR. MOYER: At this time I move to have State's
5 Exhibit No. 4 moved into evidence for purposes of
6 this hearing.

7 MR. FARNSWORTH: Without objection.

8 THE COURT: Admitted.

9 BY MR. MOYER:

10 Q All right. So you told us that you typed that
11 statement?

12 A Yes.

13 Q And was the defendant in a position there
14 seated near you where he could see your computer
15 screen?

16 A Yes. As I began to take this statement from
17 him, I asked him to pull up to the corner of the
18 desk, and I turned the laptop computer where he
19 could see the screen. And as we typed it along, I
20 would stop periodically and go over what was typed
21 in the form, and then continue on. So he read it as
22 I typed it. He could see the screen as I typed it.
23 And then --

24 Q I'm sorry.

25 A And then we printed out a copy and gave him the

1 copy to read before he signed it.

2 Q And did he indicate -- did you type it
3 accurately as he told you what -- as he spoke it to
4 you?

5 A Yes.

6 Q And you read it back to him?

7 A Yes.

8 Q And he read it himself as well?

9 A Yes.

10 Q Did he indicate to you that it was his
11 statement?

12 A Yes.

13 Q All right. Please publish that statement to
14 the court then.

15 A State of South Carolina. County of Greenville.
16 Incident number 1-02-24331. The date is February
17 5th, 2002.

18 "I, Jonathan Karon Hill, do hereby freely and
19 voluntarily give this statement to Investigator Wes
20 Smith, who has identified himself to me to be a
21 deputy sheriff of the Greenville County sheriff's
22 office, Greenville, South Carolina. I have been
23 advised that I do not have to make this or any other
24 statement and that what I say can be used against me
25 in a court of law. I have been advised that I have

1 the right to counsel with an attorney of my choice,
2 that if I'm not financially able to obtain an
3 attorney, the court will appoint an attorney to
4 represent me. I have not been threatened or
5 promised any reward to make this statement.

6 "I'm 23 years old and I reside at 25 Fleetwood
7 Drive, Apartment 104-H. I have a 12th grade
8 education and I can read and write."

9 "Statement. My social security number is
10 153-72-9404. My date of birth is 6-30-78, and I
11 also go by the name of Jonathan Green. I was born
12 in Orange, New Jersey. I moved here from New Jersey
13 and I have lived here for two years. I am not
14 married but I have two kids. I am in jail on the
15 Greenville County detention center for an armed
16 robbery at the Hampton Inn in Simpsonville. Today
17 Detective Bobo came and got me and brought me to the
18 police department for an interview. I have decided
19 that I wanted to clear all this up and get
20 everything in the open. I told Bobo about how I was
21 involved in the robbery at the Hampton Inn and who I
22 was with. I also told him about a robbery at the La
23 Quinta Inn on 85. He called Investigator Smith.
24 I'm telling this of my own free will and I know what
25 I'm doing. Investigator Smith has told me that he

1 can't promise me anything and has told me that I
2 could face charges for what I say. I still want to
3 tell what happened. I live at Fleetwood Manor with
4 my girlfriend. I know some guys at Fleetwood I call
5 Duke and Julio. Duke and Julio are involved with
6 some other people who are going around catching
7 likcs on people. Catching licks means robbing
8 people or stealing something. Anything to come up
9 with money quick. Lately Duke and Julio have been
10 robbing motels and that's who was with when the
11 Hampton Inn got robbed. Before we went to the
12 Hampton Inn we went to the La Quinta Inn. It was
13 about eight o'clock at night on last Thursday night,
14 the same night I got arrested. I was sitting in the
15 back seat of the car we were in. It was a white
16 Ford Escort. Duke got out of the car and he walked
17 up on a group of white guys in the parking lot.
18 Duke walked back to the car and said let me get a
19 dollar so he could buy a beer from one of the white
20 guys. He walked back over and one of the white
21 dudes opened the back door, like on the end of the
22 hallway, and let them in. Duke went in with the
23 white guys and came back a few minutes later and got
24 Julio and they went back into the motel. Duke and
25 Julio were in there not even five minutes and they

1 came running to the car. I didn't see no money or
2 gun but they had a wallet. Duke said we got to go
3 to the mall, we got to go to the mall. We went over
4 to Haywood Mall. We went to a store upstairs. It
5 was a clothing store. Duke tried to buy a hooded
6 sweatshirt with a credit card out of the wallet, but
7 it was declined. Then we went over to a jewelry
8 stand and Duke tried to buy something there. I
9 walked off and Julio came over there by me. I was
10 saying that they were getting greedy and stop being
11 greedy. Duke couldn't buy anything at the jewelry
12 store. We left the mall and went down 385 to
13 Simpsonville and after driving for a few minutes we
14 stopped at the gas station. We left the gas station
15 and I kept saying stop being greedy and let's go
16 home. They went to the Hampton Inn in Simpsonville
17 and hit it and we ran. The police caught us after a
18 chase and I have been in detention since. This
19 group, that is hitting things is mainly Duke and
20 Julio and whoever they could get to go with them.
21 They have talked about a lick at a Motel 6 right of
22 Augusta Road. I think it's Duke's girlfriend who
23 works there, and I heard them say it was an easy
24 lick and his girl let them come in there and do it.
25 I have looked at the pictures of Duke and Julio who

1 was arrested with. Julio's name is Damian Taylor.
2 Duke's real name is Melvin Warren."

3 "I have read the above statement of
4 one pages and it is true and correct as to the best
5 that I can recall."

6 He initialed it J.H.. I signed it as a
7 witness, and he signed the signature line. He
8 signed under the line that said I have received a
9 copy of this statement. And Lieutenant Bobo was a
10 notary public that swore to the statement.

11 MR. MOYER: I have no further questions, Your
12 Honor.

13 MR. FARNSWORTH: Just a couple of questions.
14 CROSS EXAMINATION BY MR. FARNSWORTH:

15 Q Do you know whether or not any one of the
16 co-defendants had given a statement prior to you
17 taking this statement from him?

18 A They had not given a statement prior to me
19 taking that statement, but I was contacted on the
20 phone by Investigator Kelly at the law enforcement
21 center, who had Melvin Warren out. Melvin Warren
22 had called him from detention and said that he had
23 heard that Jonathan Hill was down at Simpsonville
24 giving a statement and he decided he wanted to give
25 a statement too.

1 Q But before you ended that conversation, you
2 didn't find out any of the information that that
3 defendant was giving to Officer Kelly?

4 A No, sir.

5 Q And you knew of no other statements that had
6 been made?

7 A No, sir.

8 Q Did you type this as you were asking him the
9 questions, or had you gone over it with him then?

10 A No, sir, I never -- I never go over it. I
11 always turn the computer -- since we have got them,
12 I turn them where the defendants can see the
13 computer and I type it as we go.

14 Q So you ask the question and type the question
15 out, then answer and then type an answer out?

16 A Get the answer and we type it, yes, sir.

17 Q And no threats or promises were made?

18 A No, sir.

19 Q And he appeared to be in what kind of shape, as
20 far as --

21 A He was very alert. He was anxious about what
22 was going to happen to him.

23 Q Thank you.

24 THE COURT: Thank you.

25 MR. MOYER: I have no more questions, Your

1 Honor.

2 THE COURT: You can be seated.

3 MR. FARNSWORTH: Your Honor, we have nothing
4 further.

5 THE COURT: What is the precise substance of
6 the very first statement that Officer Kennedy
7 testified to?

8 MR. MOYER: Essentially he got information from
9 the defendant that he was in the vehicle that was
10 involved in the accident, that he was seated in the
11 back seat, and gave his name as Jonathan Green.
12 Potentially those three items of information.

13 MR. FARNSWORTH: Your Honor, I believe he
14 additionally said that Mr. Hill ran from the scene,
15 is what I had in my notes.

16 MR. MOYER: That's true, that he said that he
17 asked him why he ran from the scene and he said that
18 he was scared. That was --

19 THE COURT: So there are three -- there are
20 three statements - two written statements marked as
21 State's Exhibits 2 and 4 and the oral statement or
22 unwritten statement that is -- that you just
23 described?

24 MR. MOYER: As well as -- I wouldn't really
25 call it a statement, but Investigator Bobo speaking

1 to the defendant on the scene and defendant
2 identifying himself as Jonathan Green, but
3 essentially that would be it.

4 THE COURT: As to each of those statements, I
5 find that the defendant did make the statement; that
6 before he made the statements, he had been read his
7 Constitutional Rights; that he understood those
8 rights; and that he made the statements voluntarily.

9 All right. Anything further?

10 MR. FARNSWORTH: No, Your Honor.

11 MR. MOYER: The only thing I would like to add,
12 Your Honor, I guess in the way of the defendant's
13 motion in limine is that at this point, as I stated,
14 I do not feel that the State would be putting those
15 statements into evidence. And that if we do not,
16 that they -- the defense not be allowed to bring
17 those up, either in their opening statement or by
18 way of questioning the officers, if we do not.

19 THE COURT: Any response?

20 MR. FARNSWORTH: Your Honor, if they don't plan
21 to use the statements at all, I assume then that you
22 would prohibit them from using them if he decides to
23 testify to impeach him with?

24 THE COURT: I doubt I would do that, but I
25 would listen to any argument that you wanted to make

1 in favor of that.

2 MR. FARNSWORTH: Okay.

3 THE COURT: Well, I'm not going to rule in
4 limine to prohibit the defendant from introducing
5 those statements, but I think Mr. Farnsworth is well
6 aware of the evidentiary hurdles he would have to
7 cross in order to get them in, and I trust he won't
8 just blurt it out, that he will give me a chance to
9 rule before he tries to introduce those.

10 MR. MOYER: Thank you.

11 MR. FARNSWORTH: Thank you, Your Honor.

12 THE COURT: We will take a short break and we
13 will be back within about five minutes to get
14 started with the jury.

15 I don't see anything unusual about the
16 situation with regard to the witnesses and their
17 having overheard -- each overheard the statements
18 and been present and to watch the same events.
19 That's a circumstance that's present in almost every
20 case, and I don't see anything that would warrant
21 sequestering the witnesses. So unless there is some
22 further explanation of why I should sequester the
23 witnesses, I would deny the motion to sequester the
24 witnesses.

25 (Proceedings recessed)

1 (Proceedings reconvened)

2 THE COURT: The jury has already sent me a
3 written note saying they want to know whether or not
4 they can take notes. Any response?

5 MR. MOYER: I believe there's case law that
6 says that jurors are allowed to take notes. I think
7 an instruction that -- perhaps at the end.

8 THE COURT: Anything particular about this case
9 that causes you to either support that or oppose
10 that, Mr. Moyer?

11 MR. MOYER: No.

12 THE COURT: Okay.

13 MR. FARNSWORTH: Your Honor, I would just leave
14 it to Your Honor's discretion. We have no feeling
15 either way.

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

17 (The following takes place in the presence of
18 the jury panel)

19 THE COURT: Swear the jury, please.

20 (Whereupon, the jury panel was sworn)

21 THE COURT: Ladies and gentlemen, good
22 afternoon. We are now ready to begin the trial in
23 the case of the State versus Jonathan Karon Hill,
24 also known as Jonathan Green.

25 You have heard me read to you the indictment

1 numbers and the indictments. You have also heard
2 the clerk just now read to you the indictment
3 numbers and the crimes charged in those indictments.
4 I will explain to you the elements of each of those
5 crimes later on in the course of this trial.

6 You must understand, as I told you before, that
7 the indictments in these cases are simply the formal
8 documents that charge the defendant. They contain
9 the allegations against the defendant and they serve
10 as the vehicles by which these cases are processed
11 and brought into court for trial.

12 The defendant has pled not guilty to each of
13 these indictments. And that burden casts -- that
14 plea casts the burden on the State to prove the
15 defendant guilty beyond a reasonable doubt. It will
16 be your duty, ladies and gentlemen, to decide
17 whether or not the State has met its burden of
18 proof.

19 And ladies and gentlemen, it is a very
20 important rule of law in our country that each
21 defendant in a criminal trial, no matter what the
22 seriousness of the charge against him may be, will
23 always be presumed to be innocent of that crime,
24 unless, and until, his guilt has been proven by
25 evidence satisfying you of that guilt beyond a

1 reasonable doubt.

2 Now, ladies and gentlemen, this case, like
3 every other case, will be broken down basically into
4 five phases, and I'm going to go over those with you
5 for just a few minutes.

6 The first phase we call the opening statements.
7 And in the opening statements the lawyers will stand
8 before you and explain to you what this case is
9 about, what the issues are in this case, what the
10 evidence will be that will relate to those issues.

11 And after the opening statements have been
12 given to you, we will enter the second phase, which
13 is the evidentiary phase, and witnesses will be
14 called here to this witness box. You will hear
15 their testimony. You may see other exhibits that
16 may be introduced into evidence during the course of
17 this trial, and that evidence will ultimately become
18 the basis on which you will decide whether or not
19 the State has met its burden of proving the
20 defendant guilty beyond a reasonable doubt.

21 The third phase is what we call closing
22 arguments, when the lawyers will stand before you
23 again and this time they will argue to you as to
24 which version of the facts you should accept as
25 true. They will argue to you as to whether or not

1 the State has met its burden of proving the
2 defendant guilty beyond a reasonable doubt.

3 And the fourth phase is when I will explain to
4 you the law that is applicable to this case.

5 And five phase you will go back into the jury
6 room and you will deliberate.

7 Now, there are several things that you must do
8 and not do during the course of this trial, and I'm
9 going to talk to you a little bit about that now. I
10 have already told you that you may not discuss this
11 case in any manner until I have given you permission
12 to do so during the fifth phase of the trial. So
13 please do not discuss anything about this case.
14 Now, that's true while you are here in the
15 courthouse. That's also true when you go home
16 tonight. If someone in your family asks you what
17 you are doing at the courthouse, you can tell them
18 that you are on a jury, you are involved in a trial,
19 but you cannot discuss it until it's over. And then
20 after the case is over, if you choose to discuss it,
21 you may, but you don't have to.

22 Another thing that I would like for you to not
23 do is not to begin to make up your mind about this
24 case, not to begin to make up your mind as to
25 whether or not the State's has met its burden of

1 proving the defendant guilty beyond a reasonable
2 doubt, until you have been through all five of the
3 phases that I have just went over, including most
4 importantly the fifth phase, when you will have an
5 opportunity to hear each other discuss their views
6 of the facts in the case. Only then will you be in
7 the right position to make up your mind as to
8 whether or not the State has met its burden of proof
9 in this case.

10 Now, as members of the jury, ladies and
11 gentlemen, you all are the exclusive judges of the
12 facts in this case. And our state Constitution and
13 Code of Laws provides that I may play no role
14 whatsoever in the decision as to what are the facts
15 in this case. That is exclusively your job. So if
16 during the course of this trial you see me do
17 anything or hear me say anything that might lead you
18 to believe that I have an opinion about the facts,
19 then please disregard that, because I am not
20 permitted to have an opinion about the facts and I
21 will not have an opinion about the facts. That is
22 your job.

23 On the other hand, I am the exclusive judge of
24 the law in the case. And if you have some idea as
25 to what the law is or what the law should be, then

1 under the oath that you have just taken as jurors,
2 you are obligated to set your notion of the law
3 aside and to accept and apply the law precisely as I
4 will state it to you.

5 One other role that I play in this trial is to
6 decide upon the admissibility of evidence. And
7 during the course of the trial I am sure that you
8 will see the lawyers making objections. That's the
9 way our evidentiary system works. When one lawyer
10 feels that a piece of evidence has been offered that
11 does not comply with the Rules of Evidence, it's
12 that lawyer's obligation, not only to his client,
13 but also to the court system, to make an objection.
14 And then it becomes my job to decide whether or not
15 the evidence that is objected to is admissible.

16 If you overrule the objection, that means I
17 believe the evidence is admissible and I will allow
18 it in for you to consider.

19 If I sustain an objection, that means I believe
20 the evidence is not admissible and I will not allow
21 it in for you to consider.

22 Now, most of the time I will be able to do that
23 as I sit here. You will hear one of the lawyers say
24 objection, and you will see me say either sustained
25 or overruled. Sometimes it's necessary for me to

1 get the lawyers to come up to the bench so that I
2 can discuss it briefly with them before I rule, and
3 sometimes it's necessary for me to send you back
4 into the jury room so that we can have an open
5 discussion of the question of evidence before I
6 rule. Particularly with documents and other
7 physical evidence, you may hear the lawyers say that
8 they have no objection. And that does not mean that
9 the lawyer concedes that the evidence is true. It
10 simply means the lawyer concedes the evidence is
11 admissible. And then it becomes your job to
12 determine whether or not the evidence is true.

13 And ladies and gentlemen, some of the things
14 that you may wish to consider as you determine
15 whether or not to believe --

16 I'm sorry, some of the things that you may wish
17 to consider as you evaluate the facts and evidence
18 in this case is the credibility of the witnesses who
19 will testify. And in evaluating the credibility of
20 the witnesses, you may consider some of the
21 following, or all of the following, and other
22 factors:

23 The manner and appearance of the witness who
24 testifies. Is he or she straightforward or hesitant
25 in answering questions.

1 Is the testimony of a witness consistent or
2 inconsistent.

3 How does the witness come to know the facts
4 that he or she is testifying to, and what is that
5 witness' ability to know those facts.

6 Is there some reason that a witness would want
7 to give testimony that might help or hurt one side
8 or the other; in other words, is that witness biased
9 for or against one side or the other.

10 Is the testimony of a witness strengthened or
11 weakened by other testimony in evidence.

12 As members of the jury, you are entitled to
13 believe as much or as little of each witness'
14 testimony as you think is appropriate to do. You
15 may believe the testimony of a single witness
16 against that of many, or you may do just the
17 opposite. You do not determine the truth in this
18 case and you do not determine whether or not the
19 State has met its burden of proof in this case
20 simply by counting the number of witnesses.

21 You are not required to accept testimony as
22 true, even if it is uncontradicted.

23 All right. You may proceed.

24 MR. MOYER: Thank you, Your Honor. May it
25 please the Court.

1 Ladies and gentlemen, my name is Mark Moyer. I
2 have already been introduced. I'm an assistant
3 solicitor here in the 13th Circuit, which is
4 Greenville and Pickens County. It is my job to
5 prosecute cases in which people have been charged
6 with criminal violations. And that's what we are
7 doing here today, as you all know.

8 You are going to hear about in this case two
9 Greenvillians who about one year ago, exactly, were
10 in remarkably similar situations. Both of these men
11 though long time residents here in Greenville are
12 immigrants - one from Nicaragua and the other from
13 Sweden. Both of these men worked in hotels, worked
14 in rather prominent hotels, in busy areas of
15 Greenville, in chain hotels that are popular with
16 business travelers and vacationers - the Hampton Inn
17 and La Quinta Inn.

18 Both of these men on the night of January the
19 31st of 2001, were working alone, as like seemingly
20 every other night, quietly, late at night, and that
21 is until the stillness, until the quietness of that
22 night was shattered by a moment of terror. And what
23 happened, ladies and gentlemen, is that each of
24 those men had a gun pushed into his face and was
25 robbed.

1 You are going to hear from a number of
2 witnesses today and into tomorrow, I'm sure. This
3 case will certainly go into tomorrow. And you heard
4 the witness list, and I can assure you that it
5 sounded rather lengthy, but many of those witnesses
6 I feel quite sure we won't need to call, but it's
7 still going to be a number of witnesses that you are
8 going to hear from throughout this trial, and they
9 are going to testify to you about the facts of that
10 night.

11 Ladies and gentlemen, you are going to learn
12 from the evidence. The evidence is going to show
13 you that the first incident occurred at La Quinta
14 Inn where Mr. Marvin Somarriba, who you saw stand up
15 here just a minutes ago when the witnesses were
16 announced, was working there. About eight o'clock
17 in the evening at the counter, working as a clerk,
18 when all of the sudden, without notice, two men,
19 masked, dark clothing, came bursting into that
20 hotel, one of whom had a gun and stuck in Mr. Marvin
21 Somarriba's face and robbed him.

22 You are going to hear then about four hours
23 later a very similar situation occurred at the
24 Hampton Inn, the Hampton Inn down in the
25 Simpsonville jurisdiction, in Greenville County.

1 Ladies and gentlemen, you are going to hear
2 that something very similar happened about 12:30.
3 Actually we are now into February the 1st. About
4 12:30 in the morning Mr. Ragnar Borei was working
5 there alone, when, again, two men, ski masks, dark
6 clothing, burst in upon him, stick a gun in his face
7 and robbed him.

8 The evidence is going to show, ladies and
9 gentlemen, that just a few minutes later a car chase
10 ensued, started by an alert Mauldin police
11 department officer, a car chase that resulted in a
12 high speed chase throughout some roads of Greenville
13 County, speeds up to 75 to 80 miles an hour, that
14 resulted in that car attempting to make a turn that
15 it was not able to make, spinning off onto the side
16 of the road, when the three occupants of that car
17 got out and ran into the woods. And over the
18 ensuing period of time, aided by scores of police
19 officers, dogs, helicopters, those three individuals
20 were caught and found with ski masks and property
21 from these robberies. The evidence is going to show
22 that, along with other evidence.

23 Ladies and gentlemen, just like I told you the
24 facts in this case are going to be fairly
25 straightforward, you are going to find that the law

1 in this case is fairly straightforward too. Let me
2 just take a couple of minutes to talk to you about a
3 couple of elements of that law.

4 You heard the defendant is charged with two --
5 three different crimes. Two counts of armed
6 robbery, one for each of those two hotels; two
7 counts of conspiracy, each corresponding with those
8 two robberies at the hotels; and a resisting arrest
9 from what resulted when that car spun out into that
10 field. You might be wondering what is an armed
11 robbery. And as you listen to the evidence, ladies
12 and gentlemen, I would ask you to consider what the
13 basic definition of an armed robbery is, which is a
14 pretty self-explanatory charge, but essentially an
15 armed robbery has to have two elements. Well, it
16 has to have the robbery. A robbery is the taking of
17 property from a person's presence by force or
18 intimidation. So it's a type of stealing. It's a
19 type of theft, a type of larceny. If my wallet were
20 to be left on this table and I walked away and
21 someone came up and took it, it would be larceny.
22 This wallet were up for sale in some department
23 store and it was stolen, it would be shoplifting.
24 If it's taken from someone's presence by fear or
25 intimidation is robbery.

1 What makes it armed robbery? Well, the person
2 who does the robbery has to be armed with some type
3 of deadly weapon. Any instrument that can cause
4 death or serious bodily injury.

5 The defendant is also charged with conspiracy.
6 What is a conspiracy? Again, it's pretty
7 self-explanatory, but it's an agreement between two
8 or more persons to engage in some unlawful act with
9 an intent that that unlawful act is carried out.
10 And a couple of interesting points about that law
11 is, first of all, that crime is committed when the
12 agreement is made. The actual crime that they are
13 intending to commit doesn't have to be carried out.
14 Now, of course, it generally is or you don't know
15 about the agreement, but it doesn't have to be. The
16 crime for conspiracy is the agreement.

17 In addition to that, the agreement does not
18 have to be some formal pact, some verbalized, fully
19 verbalized agreement between two people. Under the
20 law just a tacit mutual understanding that we are
21 going to do this act together is enough to make a
22 conspiracy.

23 And finally you are going to -- another element
24 of the law that's going to come into play today is
25 something referred to as accomplice liability.

1 Ladies and gentlemen, what that essentially boils
2 down to is that when people, two or more people, are
3 working together to commit something, to do some
4 criminal enterprise, what each person does
5 unlawfully is imputed to the others. To put that
6 another way, the act of one is the act of all; where
7 the hand of one is the hand of all.

8 To take an example of a burglary. Let's say
9 three people were working together to break into
10 some building and steal jewelry out of it. One
11 person stands out on the street as a watch, watching
12 up and down making sure no one comes. Another
13 person has a crowbar and pries open the door. The
14 third person goes in that building and actually
15 steals the property. Well, in that situation all
16 three are guilty of burglary. All three have been
17 working together, considering the acts of each are
18 imputed to each. And that's something that also is
19 going to come into play in this trial as well.

20 Ladies and gentlemen, again, I expect this case
21 to move quickly. In the meantime what I ask you to
22 do is sit back with an open mind and to listen, as
23 His Honor has already told you, to all the evidence.
24 It's all going to be important. I ask you to use
25 your common sense to your discernment the weigh the

1 testimony and evidence that you will hear, and at
2 the end of this case you are going to meet and you
3 are going to decide and you are going to discuss
4 this case for the very first time, and you are going
5 to come up with a verdict that is just. Thank you
6 very much.

7 MR. FARNSWORTH: If it please the Court.

8 THE COURT: Yes, sir.

9 MR. FARNSWORTH: Ladies and gentlemen of the
10 jury, again I'll introduce myself. I'm Dan
11 Farnsworth and I represent Mr. Hill, who is seated
12 over here with me at the defense table. As I told
13 you -- well, he is 24 now, but he was 23 years old
14 when he was arrested on this charge. He has two
15 children, lives in Greenville County, and has
16 worked.

17 Now, I'm just going to be brief with you, as
18 Mr. Moyer was. What we are saying to you now and
19 what he just said are not evidence in this case
20 anyway. It's just opening remarks to tell you a
21 little bit about the law and about the case. But,
22 in any event, my client -- Judge Few read the
23 indictments to you. You have five indictments - two
24 armed robberies, two conspiracy to commit armed
25 robbery, and one resisting arrest. And to those

1 charges my client has pled not guilty and asked that
2 you, the jury, a cross-section of his peers decide
3 his guilt or innocence in this case.

4 Now, you notice we were -- as they called each
5 of your names out to come up in front and be a
6 prospective juror, a lot of us were huddling and
7 looking and whispering to each other, and actually
8 all we were doing was going -- using the card that
9 you sent back in with your occupation and this type
10 of thing. So I hope you didn't think it was
11 anything that we were talking about you. In any
12 event, we used that. And when we did, we are
13 careful and we tried to get what we think is the
14 best and fairest jury we can get. And you have
15 taken an oath as jurors, and that is that you will
16 try this case based only on the law and the evidence
17 in this case.

18 Now, in every criminal case, and I'm going to
19 repeat myself, and I'm going to be brief. Judge Few
20 will tell you about it, but every accused in a
21 criminal case is presumed to be innocent. And
22 that's a very important and cardinal rule of
23 criminal law. In fact, it may be the most
24 important. And what it means is from the moment a
25 person is arrested, that presumption starts with the

1 accused. And it remains with that accused in each
2 and every stage of the prosecution, and even until
3 you get in the jury room and decide whether or not
4 the State has proved guilt beyond a reasonable
5 doubt. In other words, that burden is that strong
6 and it stays with that accused that long. In other
7 words, he's innocent, unless, and until, you are
8 satisfied beyond a reasonable doubt that the State
9 has proven his guilt. So keep that in mind that
10 that is a very, very important rule of law.

11 Now, a lot of people probably asked you, or I'm
12 even going to ask by respect of people that are
13 going to be on juries what do you need to bring to
14 be a juror? Well, you really don't need to bring
15 anything but your common sense and just your
16 lifelong experiences that you have every day. So
17 those are the only two things that you need. You
18 don't need any expertise in any area, but there is
19 one thing that you don't need to bring, and that's
20 what Judge Few touched on briefly. You don't need
21 to bring any preconceived ideas of what the law is
22 in this case, or what it should be. You will hear
23 all the testimony in the case. And then after all
24 the testimony is in, that's when Judge Few will
25 charge you the law that applies to this case. What

1 you do, you decide the facts and then you take that
2 law and you try to write a verdict based on that law
3 and evidence. So it sounds complicated, but it's
4 really very simple. And so we ask you to listen
5 closely. You have already told us that you don't
6 know any of these parties involved. You don't know
7 any of the people, so you have taken your oath. You
8 got no friends to reward or enemies to punish, so
9 just listen to the whole case before you make up
10 your mind, and we have every confidence that you
11 will bring back a fair verdict. Thank you.

12 THE COURT: Ladies and gentlemen, it was
13 brought to my attention before you all came in here
14 that somebody apparently has asked about whether or
15 not they could take notes. I am willing to allow
16 you to take notes, if you want to. I don't know
17 that there is going to be a whole lot of detailed
18 data that you are going to have to record notes for
19 to be able to remember. But if you choose to take
20 notes, let me make sure that you understand these
21 notes are for your purpose -- your individual
22 purposes only. If you are a juror who chooses to
23 take notes, you may not share those notes with other
24 members of the jury. When it comes time for
25 deliberations, you are not to indicate that you put

1 some special reliance on the fact that you made a
2 note about a particular fact or a particular piece
3 of testimony. Different people remember things in
4 different ways. If you took notes about something
5 and then y'all get back around to discussing that
6 and if you were to say well, I know it's true
7 because I took a note about it, then that little
8 piece of information may assume an unnatural
9 prominence in your deliberations. Some people
10 remember things without taking notes. So if you are
11 going to take notes, it's for you only to refresh
12 your recollection about what the testimony was.
13 It's not to be used by any other members of the
14 jury.

15 And during the course of this trial you will
16 see me working on this computer, which doesn't
17 strike me as all that unusual of a thing, but I have
18 found that if ever I don't tell a jury that I am
19 actually working on the computer instead of playing,
20 the jury will inevitably begin a discussion about
21 what kind of games I might be playing up here. So I
22 want you to understand that I am working. I have to
23 prepare myself to give you the law during the fourth
24 phase of the trial and to do so in a concise and
25 correct fashion, and there are other things that

1 relate to the law that I'll be working on during the
2 course of this trial. So I'll try not to let it be
3 a distraction to you, but understand that I'm
4 listening to the same testimony that you are, just
5 as carefully as you will be.

6 All right, Mr. Moyer, call your first witness.

7 MR. MOYER: Thank you, Your Honor.

8 May it please the court, the State would call
9 Marvin Somarriba.

10 MARVIN SOMARRIBA, having been first duly sworn,
11 testified as follows:

12 THE CLERK: Please state your name for the
13 record.

14 THE WITNESS: Marvin Somarriba.

15 DIRECT EXAMINATION BY MR. MOYER:

16 Q Would you spell that for the court reporter,
17 please?

18 A Yes. Marvin, M-a-r-v-i-n. Somarriba,
19 S-o-m-a-r-r-i-b-a.

20 Q Thank you. And how old are you, Mr. Somarriba?

21 A 34.

22 Q You live here in Greenville?

23 A Yes, sir.

24 Q You are from Nicaragua originally?

25 A Yes.

- 1 Q When did you move to this country?
- 2 A 11 years ago.
- 3 Q And where do you work right now?
- 4 A La Quinta Inn.
- 5 Q And where is that located?
- 6 A Off of Woodruff Road. 31 Old Country Road.
- 7 Q And that's here in Greenville County?
- 8 A Yes, sir.
- 9 Q How long have you worked there?
- 10 A A year and three days.
- 11 Q So you started in early January of 2002?
- 12 A Yes, sir.
- 13 Q So not too long before this incident occurred?
- 14 A Yes, sir.
- 15 Q How long have you worked for hotels?
- 16 A About three years.
- 17 Q So you worked for some other hotels before
- 18 that?
- 19 A That's correct.
- 20 Q Make sure -- I know that you are a little
- 21 nervous sitting up there, but make sure you speak
- 22 into the microphone so the jury can hear you.
- 23 What is your position with that hotel?
- 24 A Front desk clerk.
- 25 Q I'm sorry?

1 A Front desk clerk.

2 Q And what are your responsibilities there?

3 A To check in guests in the hotel and provide
4 good customer service and check the hotel as well.

5 Q Let me take you back about year ago to January
6 31st of 2002, when this happened. Were you working
7 that night?

8 A Yes.

9 Q You were working at La Quinta Inn?

10 A That's correct.

11 Q And what shift were you working?

12 A Second shift.

13 Q Have you always worked the second shift?

14 A Yes.

15 Q You started second shift when you started
16 working there?

17 A That's correct.

18 Q How many other people were working that night?

19 A It was only me.

20 Q So there were no cleaning personnel or security
21 personnel?

22 A No.

23 Q Now, do you remember what time this incident
24 happened?

25 A It was about 7:50 p.m..

1 Q 7:50 p.m.?

2 A Yes.

3 Q How are you able to remember that time?

4 A Because after it happened, I looked at the
5 clock that was right at the computer.

6 Q And you are able to still remember that to this
7 day?

8 A Yes.

9 Q Now, you have already told us that no one else
10 was working there, but were there any other guests
11 in the hotel lobby when this happened?

12 A No, there was no guests in the lobby.

13 Q And what were you doing when this happened?

14 A I was sitting on the office chair looking at
15 the computer, and that's how it started. I saw the
16 two guys coming from one of the back doors in the
17 lobby.

18 Q We will get to that in a second. So you were
19 just doing some hotel business there on the
20 computer?

21 A Exactly, yes.

22 Q And what made you realize that something was
23 going on? What did you first see?

24 A I heard the noise at the door and I heard the
25 two guys running, so by the time I actually looked

1 very close. I had these two guys in front of me and
2 one of them pointing a semiautomatic gun towards my
3 head.

4 Q How close did that gun get to your head?

5 A I would say about -- about two feet.

6 Q Now, were you behind the counter?

7 A I was, yes.

8 Q Were these men on the other side of the
9 counter?

10 A Yes.

11 Q Did they ever come any closer to you?

12 A Yes, they did. After taking the money, as I
13 said, go ahead and take it, as I have been
14 instructed by the hotel to not, you know, try to
15 fire anything. So they came around the counter and
16 one of them opened up the counter and the other one
17 put a gun on my left side of my head.

18 Q So the gun got even closer to you?

19 A Yes, actually they even pushed it towards my
20 head.

21 Q So it touched your head?

22 A Yes.

23 Q What did this gun look like?

24 A It was a silver gun. Like I said, a
25 semiautomatic.

1 Q Do you know much about guns?

2 A No, not really. Just seen pictures.

3 Q I mean, do you know what kind of caliber or
4 anything like that it was?

5 A No, sir.

6 Q But it was a handgun?

7 A Yes.

8 Q Let me take you back to when you said when you
9 first saw these men. How close were they to you
10 when you first saw them? Farther away than I am to
11 you now?

12 A No, they were closer.

13 Yes, they were -- like I said two feet from me.
14 when -- you know, they came -- they came running and
15 then the next thing was they pointed a gun towards
16 my head.

17 Q Now, what did you notice about their -- could
18 you see their faces?

19 A Excuse me?

20 Q Let me give you a cup of water.

21 A Appreciate it.

22 Yes, they had dark clothes. They had ski
23 masks, darker ski masks. I was just able to see by
24 the ski masks, the holes that their ski mask has,
25 what color their skin, which was dark skin.

1 Q You could see around the ski mask then?

2 A Yes, and the dark eyes also.

3 Q Did these men say anything to you?

4 A Yes, they say "motherfucker, give me the
5 fuckin' money or I'm going to kill you."

6 Q And I asked you to use those exact words in
7 court, didn't I, the exact words?

8 A I'm saying the truth.

9 Q Now, how were they saying it? In a very calm
10 tone of voice?

11 A Yes, in a very demanding voice, threatening.

12 Q Could you see if the other individual was
13 holding any type of gun as well?

14 A That I do not remember.

15 Q Now, how were they able to get around the
16 counter to get back there with you?

17 A They just walked around.

18 Q Is there a door?

19 A No.

20 Q So when they came around the counter, what did
21 the person with the gun do?

22 A They told me not to move, and put the gun on my
23 head, like I said. And he also demanded my own
24 money. The money -- my money. And so when I pulled
25 my wallet. So I took my money and he saw my credit

1 cards, so he also asked me for my credit cards,
2 which I give to him.

3 Q And this was the man with the gun doing this?

4 A The one with the gun, yes.

5 Q Did you give him the whole wallet?

6 A No, I -- I was able to hold my wallet in my
7 hand while I was trying to give him the money.

8 Q And how much money did you have in your wallet?

9 A About \$30.00.

10 Q And you gave that to him?

11 A Yes.

12 Q And how many credit cards did you give him?

13 A Two.

14 Q What kind of credit cards were they?

15 A Two Visa cards.

16 Q Now, while this person with -- the man with the
17 gun was dealing with you, what was the other
18 individual doing?

19 A He was in the process of opening the drawer,
20 and then he took the drawer out and then started
21 taking all the money out of the drawer.

22 Q How close were you to the drawer while this was
23 taking place?

24 A I would say within about three feet, maybe.

25 Q Did they -- after he got all the money out of

1 that cash drawer, what did they do?

2 A They left running and told me after they were
3 on the other side of the desk not to follow them.
4 They threatened me. They said don't try to follow
5 us.

6 Q Did they make any other threats?

7 A Not that I remember.

8 Q Now, that cash drawer that they opened, is that
9 normally kept locked or unlocked?

10 A Unlocked.

11 Q Do you have -- how much money is generally kept
12 in that cash drawer?

13 A Anywhere from 75 up to \$500.00.

14 Q Do you have any idea how much money was in that
15 drawer that night?

16 A About 120, something about like that.

17 Q Is it normal -- do you generally have a lot of
18 cash on hand there at the hotel?

19 A Not -- not generally.

20 Q Are the transactions that are made there, are
21 they usually cash transactions or credit card?

22 A Credit cards.

23 Q Now, after they left, did you --

24 Let me ask you this first. When that man came
25 around the counter and put the gun against your

1 head, how did you feel?

2 A I was very scared. I thought I was going to be
3 killed at that point.

4 Q After they left, did you call the police?

5 A I actually called the manager and the manager
6 instructed me to -- well, we both decided to call
7 the police.

8 Q Did the manager -- was the manager close by?

9 A He was -- he used to live in the hotel. He was
10 not on duty. He was just there and in one of the
11 rooms, so I called him and that's how he got there.

12 Q And then after that you all called the police?

13 A Yes.

14 Q And the police officers arrived?

15 A Yes.

16 Q And did you tell the police officers what had
17 just happened to you?

18 A Yes.

19 Q All right. Now, getting back to these two
20 individuals, let me ask you couple more questions
21 about that.

22 What color clothes were they wearing?

23 A Dark clothes.

24 Q What about the masks?

25 A Dark masks.

1 Q Were they normal? What kind of masks were
2 they?

3 A Ski masks.

4 Q Was there anything unusual about these ski
5 masks, or were they pretty ordinary ski masks, as
6 far as you know?

7 A I think -- I don't remember any details about
8 the masks. I mean, those were the masks that I seen
9 before, which are ski masks.

10 Q With the eye holes?

11 A Eye holes and the mouth.

12 Q Let me ask you a few more questions about these
13 two persons. We have been calling them men, but you
14 could tell they were males?

15 A Yes.

16 Q Could you tell the race of these men?

17 A From a hundred percent they were black because
18 of the accent on their voices.

19 Q And you could see some of the skin around?

20 A Yes.

21 Q Do you remember anything about their pants,
22 what kind of pants that they were wearing?

23 A I remember one had a kind of baggy pants. The
24 other one, I think the pants were not that baggy.
25 Were probably more normal.

1 Q Do you remember if either one was wearing
2 anything on his hands?

3 A Yes, one of them had -- the one that took the
4 money had gloves, black gloves.

5 Q And one that took the money from you, or from
6 the cash register?

7 A From the cash register.

8 Q Now, were these men roughly the same height or
9 was one taller than the other?

10 A Yes, one was taller than the other.

11 Q Which one was taller?

12 A The one that took the money from the hotel.

13 Q Not the one with the gun? The other one?

14 A Not the one with the gun. The other one.

15 Q The one with the gun was shorter than the
16 other?

17 A That's correct.

18 Q Now, during this whole -- how tall are you?

19 A A little bit over 5'10".

20 Q That's how tall who is?

21 A I'm sorry?

22 Q Actually, I asked you first how tall you were?

23 A Yes, about a little bit over 5'10".

24 Q 5'10". You are 5'10"?

25 A Yes.

1 Q Were these men taller or shorter than you?

2 A One was shorter than me, I think about 5'8".

3 The other one about my same height, maybe a little
4 bit taller. Couldn't really tell. I was sitting on
5 the chair.

6 Q That was my next question. Did you stay seated
7 in your chair the whole time?

8 A Yes.

9 Q And is it a chair about as tall as that one
10 that you are on now?

11 A Yes, about that.

12 Q So while this was going on, both men were above
13 you?

14 A Yes. One was in front of me and the other one
15 was on my side, holding the gun on my head.

16 MR. MOYER: One moment, please.

17 (off the record)

18 (back on the record)

19 MR. MOYER: Please answer any questions that
20 the defense may have.

21 CROSS EXAMINATION BY MR. FARNSWORTH:

22 Q Sir, just a few questions.

23 You said one of them was at taller, about your
24 size, which would be about 5'10", is that right, or
25 a taller than that?

1 A Yes, sir.

2 Q And the other one was 5'8", about 5'8"?

3 A Yes.

4 Q And that person that was 5'8", what was his
5 body build? Was it thin, stocky, or --

6 A It was stocky.

7 Q Stocky, okay.

8 And did you notice the build on the taller
9 person?

10 A Pretty slim.

11 Q Slim. Yeah.

12 And which one had the baggy pants on? The
13 taller one?

14 A No, the short one.

15 Q And so the taller one had on the more normal
16 fitting pants?

17 A Yes.

18 Q And they both had on ski masks, and you said
19 that the ski masks were black, or dark? Which did
20 you say?

21 A I'm pretty sure they was black.

22 Q Black. Okay.

23 And, sir, do you remember what color the shirts
24 they had on were?

25 A There were black clothes.

1 Q Black?

2 A Yes.

3 Q Both of them had on black?

4 A Yes, sir.

5 Q All right, sir. Now, I believe you said that

6 you thought that there was about \$120.00 cash in the

7 cash register, is that correct?

8 A Yes, sir.

9 Q And they took all that?.

10 A Yes, sir.

11 Q And in addition you had \$30.00 in your pocket

12 or on your person and they took also?

13 A Yes, sir.

14 Q And plus they took two of your credit cards?

15 A Yes.

16 Q And were any other things taken out of the cash

17 register, like checks, or this type thing?

18 A Not that I remember.

19 Q But neither one of them had a red or a beige

20 shirt, is that correct?

21 A I remember they were long sleeve shirts.

22 Q And they were dark.

23 A And they were dark, yes.

24 Q All right, sir. Let me ask you. You said two

25 of your credit cards were taken. Sometime later on

1 that night or the next day did you find out that one
2 or both of these cards were -- that someone had
3 attempted to use one or both of your credit cards?

4 A Actually that same night I called the companies
5 to have them cancelled. I noticed that they were
6 not going to work.

7 Q So you don't know whether or not somebody tried
8 to use them or not?

9 A One of the companies told me that they had
10 tried to use one of them. The other one was never
11 given that information.

12 Q And do you have any idea of when it was
13 supposed to have been used? That night or the next
14 day?

15 A It was that same night.

16 Q And do you know where it was supposed to be
17 used?

18 A Where?

19 Q Yes, sir.

20 A No.

21 Q Thank you very much.

22 A You are welcome.

23 MR. MOYER: Nothing further of this witness.

24 THE COURT: You can step down.

25 OFFICER CHERYL CROMARTIE, having been first

1 duly sworn, testified as follows:

2 THE CLERK: Please state your name for the
3 record.

4 THE WITNESS: Cheryl Cromartie.

5 DIRECT EXAMINATION BY MR. MOYER:

6 Q Okay, ma'am. You work for the Greenville
7 County sheriff's office?

8 A Yes.

9 Q How long have you worked for the sheriff's
10 office?

11 A Ten years.

12 Q Is that the extent of your law enforcement
13 experience?

14 A Yes.

15 Q What department are you in?

16 A I'm currently in CID.

17 Q That's investigations, right?

18 A Yes, sir.

19 Q Dealing with what type of crimes?

20 A I work with family violence unit, so I
21 investigate child abuse.

22 Q Now, last year at this time were you -- you
23 were a uniformed officer?

24 A Yes, sir.

25 Q And what did you do as a uniformed officer?

1 A I basically responded to routine calls on
2 criminal domestic calls, robbery calls, burglary
3 calls. Just a rolling deputy.

4 Q Whatever kind calls were made, you responded to
5 that?

6 A Yes.

7 Q Let me take you back to January 31st of
8 2002. You were working on that day?

9 A Yes.

10 Q Did you receive a call that evening?

11 A Yes.

12 Q About what time was it that you received a
13 call?

14 A I am not for certain time that I was actually
15 dispatched to a call, but my arrival time on the
16 scene was exactly 8:28.

17 Q Now, did you have a long ways to go to get
18 there?

19 A Yes.

20 Q Where were you when you received the call?

21 A If I can recall, I was on Wade Hampton
22 Boulevard when I received the call.

23 Q Now, you were -- all you officers are assigned
24 to a different unit, right, or a different section
25 of the county?

1 A Yes.

2 Q And so this section that La Quinta Inn is in,
3 is that a rather large section?

4 A It's a large section.

5 Q Now, what was the nature of the call that you
6 were called out on?

7 A I was -- the dispatcher was advised that there
8 was a possible robbery that took place at La Quinta
9 Inn.

10 Q And what was the location of that?

11 A The location is 31 Old Country Road in
12 Greenville County.

13 Q That's in Greenville County?

14 A Yes.

15 Q Now, upon arrival did you meet with anybody?

16 A Yes.

17 Q Who did you meet with?

18 A Mr. Somarriba.

19 Q The gentleman who just testified a minute ago?

20 A Yes.

21 Q And where was it that you met with him?

22 A Mr. Somarriba actually met me at my car. I was
23 just about to exit my vehicle.

24 Q And what was his emotional condition?

25 A He appeared to be very upset. He appeared

1 nervous and he appeared to be scared.

2 Q And did you speak to him about what happened?

3 A Yes.

4 Q Is that the first thing you do in a situation
5 like this, a call like this?

6 A Yes.

7 Q Now, did you take this information -- what did
8 you do with this information that you received from
9 him?

10 A Well, after taking all the information that I
11 received from him, I wrote it down on what we call
12 an incident report form.

13 Q And did you relay that information on to anyone
14 else that night?

15 A Well, after writing everything on the incident
16 report form, I turned it in to my supervisor.

17 Q Was this made aware to other officers in the
18 area?

19 A Yes. After receiving the information from Mr.
20 Somarriba, I contacted my supervisor just to let him
21 know what actually happened to him and to give him a
22 brief description of the suspects.

23 Q And you didn't have much of a description, did
24 you?

25 A No.

1 Q You didn't have any facial description?

2 A No.

3 Q You didn't have a vehicle description?

4 A No.

5 Q So, as far as the officers who were out in this
6 area looking, did they have much -- did they have a
7 vehicle description to look for at that point?

8 A No, sir.

9 Q All right. Did you have any further
10 involvement in this case after you took that report?

11 A No, sir.

12 Q Thank you. Please answer any questions that
13 the defense may have.

14 MR. FARNSWORTH: I have no questions of this
15 witness.

16 THE COURT: Thank you for coming, officer.

17 MR. MOYER: Mr. Ragnar Borei.

18 RAGNAR BOREI, having been first duly sworn,
19 testified as follows:

20 THE CLERK: Please state your name for the
21 record.

22 THE WITNESS: Ragnar Borei.

23 DIRECT EXAMINATION BY MR. MOYER:

24 Q All right, Mr. Borei, please spell your full
25 name for the court reporter.

1 A First name is R-a-g-n-a-r. Last name is
2 B-o-r-e-i.
3 Q And you go by Ron?
4 A Yes, sir, that's my nickname.
5 Q Now, you are from Sweden?
6 A Yes, sir, born and raised.
7 Q When was it that you moved to this country?
8 A 1953.
9 Q So how old were you?
10 A I was 13, sir.
11 Q And you came here because your father was a
12 teacher, isn't that correct?
13 A Yes, sir.
14 Q Now, where did he teach?
15 A He taught zoology at the University of
16 Pennysylvania.
17 Q So you lived up in that area for --
18 A Yes, sir.
19 Q -- part of your life?
20 A Married a girl from Greenville.
21 Q I'm sorry?
22 A I married a girl from Greenville.
23 Q When was that?
24 A That was in 1969, sir.
25 Q And you have been living here since?

1 A Yes.

2 Q And you also spent some time in the military?

3 A Yes, sir.

4 Q And what branch of the military.

5 A Navy, sir.

6 Q How long did you spend in the military?

7 A I was in for four years, sir.

8 Q How old are you?

9 A I'm 57, sir.

10 Q Now, were you working back -- or where were you
11 working back about a year ago, January, 2002?

12 A I was working for the Hampton Inn in
13 Simpsonville on 3934 Grandview Drive.

14 Q How long had you been working there at that
15 time?

16 A At that time I was three and a half years.

17 Q And what were your responsibilities? What did
18 you do?

19 A I was a night auditor and also the maintenance
20 man. My duties at that time was to do the night
21 audit. I did all the computer data work. And I
22 also checked in people and checked out people, and
23 assisted people with anything that they needed.

24 Q Well, let me take you us to the night of
25 January the 31st of 2002, the night this happened.

1 You were working that night?

2 A Yes, sir.

3 Q And you were at the Hampton Inn?

4 A Yes, sir.

5 Q What shift were you working?

6 A Third.

7 Q And what hours is that?

8 A That's eleven to seven, sir.

9 Q Was that your normal shift?

10 A That's my shift was there the whole time I
11 worked there.

12 Q Was anyone else working with you?

13 A No, sir.

14 Q There were no cleaning personnel, no security
15 guards?

16 A No. No, sir.

17 Q Sir, what do you do during the nighttime hours?
18 I imagine once it gets pretty late, you don't have
19 that many customers?

20 A No, sir, you don't have any guests at all
21 checking in at that time.

22 The duties include, like I said, doing data
23 processing work. We both do all the close-out work
24 for all the paperwork during the day.

25 My duties also included setting up breakfast,

1 getting everything ready for breakfast, and then
2 later on in the morning actually putting out the
3 breakfast items.

4 Q Do you remember what time it was that this
5 ordeal happened?

6 A The exact time I don't recall from memory. It
7 was after midnight, though, sir.

8 Q So it was actually February the 1st then?

9 A Yes, sir.

10 Q Now, were there any guests in the lobby when
11 this occurred?

12 A No, sir, not at that time of night.

13 Q And what were you doing when this actually
14 happened?

15 A Well, I had just gone out to the lobby where we
16 do the breakfast setup. And as I always did between
17 11:30 and 12:30, I sat up the breakfast area, and
18 that means putting out all the utensils and the
19 cereals and things like this that are nonperishable
20 that you can put it out in advance. Then I had just
21 returned back from doing that going back to the back
22 office when the incident occurred.

23 Q So then you were going into the back office
24 when this occurred?

25 A Yes, sir, I was returning to the back office

1 when the incident occurred.

2 Q Now, I assume that has a door?

3 A Yes, sir.

4 Q Was the door open?

5 A Well, it opened when I went in, and then I
6 heard a noise upon, you know getting past the door
7 that didn't sound normal and I turned. It was at
8 that time that I placed a gun to my face.

9 Q So you heard a noise?

10 A Yes.

11 Q You turned?

12 A Yes.

13 Q And what exactly did you see?

14 A I saw a silver barrel stuck to my nose.

15 Q When you say stuck to your nose --

16 A Yes.

17 Q -- how close was it?

18 A Stuck to my nose.

19 Q Touching your nose?

20 A Yes, sir.

21 Q That was the first thing that you saw?

22 A Yes, sir.

23 Q What did you see after that? Did you see any
24 people?

25 A Yes, sir. You know, the initial shock of the

1 pistol to my face, I saw the that there was a person
2 behind it. And person behind it, I don't recall the
3 exact words were basically he said give me your
4 money, I want all the money.

5 Q Describe what this pistol looked like.

6 A It was silver. The barrel was similar to a
7 .45. Having shot a .45 in the service, I was
8 familiar with what the barrel looked like, you know,
9 but it was a silver -- a silver plated pistol that
10 appeared to be a .45 to me.

11 Q Now, to those of us who don't know a whole lot
12 about guns, is that a revolver?

13 A No, sir, that's a clip. It's a clip fed type
14 pistol, which would mean that it can shoot many
15 rounds in a row.

16 Q Semiautomatic?

17 A Yes.

18 Q Now, you saw that, did you see anyone else in
19 addition to the man?

20 A Yes, sir, after -- after the initial, you know,
21 confrontation with the pistol, I was able to back
22 off a little bit and then I observed there was
23 another gentleman with the person that had the
24 pistol. He was crouched over slightly behind the
25 person that had the pistol and he was holding onto

1 his ski mask by the bottom around the chin area.

2 Q You mentioned ski mask?

3 A Yes.

4 Q So tell me about the ski mask. What did they
5 look like?

6 A They looked like just your average normal ski
7 mask that you wear out when you are, you know, out
8 in the cold. I have one that's a tan colored one
9 and these were dark colored, either dark blue or
10 black, you know. At the time I didn't observe the
11 exact color.

12 Q Did you have any chance to run?

13 A Oh, no, sir. No, sir. I was in a confined
14 area, basically, because once you get past that
15 door, it's a small little hallway that goes behind
16 the counter.

17 Q You didn't even consider trying to run?

18 A No, sir.

19 Q So how did you feel?

20 A Scared.

21 Q Now, so you could not see these men's faces, is
22 that correct?

23 A Yes, sir.

24 Q Do you remember what color clothing they were
25 wearing?

1 A Like I say, it was dark clothing. It was
2 either black or navy blue -- you know, dark navy
3 blue. I can't say exactly what color, because I
4 didn't observe that closely.

5 Q In addition I'm talking about the other
6 clothing that they had.

7 A The whole outfit was dark colored, yes, sir.

8 Q Did you spend a great deal of attention looking
9 at their clothing?

10 A As much as I could with in between everything
11 happening.

12 Q Could you see any skin?

13 A Yes, sir, inside the eyelids and around the
14 lips you could notice this they were dark skinned.
15 Both parties.

16 Q And we have already talked about them as males.
17 Could you tell the gender then?

18 A Well, the gender appeared to male, A, from
19 their demeanor, and B, from the way they talked. It
20 sounded like males.

21 Q And were you able to make a determination as to
22 the race of these two men?

23 A Due to the coloration of the skin, I assumed
24 that they were blacks.

25 Q Now, what did they -- what was said to you then

1 when that gun was thrust into your face?

2 A Well, the exact words again I can't remember,
3 but basically I was told that they wanted the money
4 and told to get the money out of the drawer.

5 Q What did you say to him?

6 A And I said yes, sir.

7 Q You used that word.

8 A Yes, sir, I remember distinctly, because, you
9 know, when you were scared and you are scared for
10 your life, you I'll guarantee you that you are
11 respect comes out a whole lot quicker than you would
12 any other time.

13 Q Is there a cash drawer behind that counter?

14 A Yes, sir.

15 Q And where was it located?

16 A It's located about four, four and a half feet
17 from the doorway that I came in at underneath the
18 counter.

19 Q Is it kept locked?

20 A Yes, sir. There is a key.

21 Q Was it locked then?

22 A Yes, sir.

23 Q Did you give them the key?

24 A Yes, sir.

25 Q Did you open that drawer?

1 A Yes, sir, he told me to, and I opened it.

2 Q And what happened when you opened the drawer?

3 A Then the man with the gun reached and the
4 pulled on the drawer. The drawer actually fell down
5 onto the floor and the money spilled out onto the
6 floor. There was loose change and rolled change, as
7 well as bills, and things like that in there.

8 Q And what -- was it all picked up then?

9 A I don't recall whether he or the person behind
10 him actually picked the money up. The bills were
11 picked up, but the rest of the money was left
12 scattered on the floor.

13 Q What happened after they picked the money up
14 off the floor?

15 A The guy with the gun told me to lie down on the
16 floor, face down, and I complied with what he told
17 me to do. And about that time the guy behind him
18 told him to get his wallet. The guy with the gun
19 said give me your wallet, and I reached in my pocket --
20 just reached behind me and I pulled it out of my
21 pocket and handed him my whole wallet.

22 Q And how did you feel at this point?

23 A You can't do anything but feel violated
24 because, you know, all your rights are gone. The
25 biggest thing I was worried about was thinking about

1 people getting shot when they're laying down on the
2 floor. I was scared, very scared.

3 Q What did you do after you gave him the wallet?

4 A After I gave him the wallet, he told me to
5 count to ten before I moved from the floor.

6 Q Did you count to ten?

7 A I counted to 50. I wasn't moving because I was
8 too scared.

9 Q Could you hear what was going on while you were
10 doing this?

11 A I did not hear which direction they went, and I
12 would have been able to hear if they had gone out
13 the front door, because they are electronic and when
14 they open, it's a loud noise.

15 Q So could I assume that there were other doors
16 around?

17 A Yes, sir. They had to have gone out the back
18 down the carpeted area.

19 Q All right. Now, did you -- what did you do
20 after you counted to 50?

21 A Sir?

22 Q What did you do after you counted to 50?

23 A I went to call the police and I -- I had the
24 number for the Simpsonville police there and I
25 dialed it and apparently I dialed the wrong number

1 and I got a resident. I told them that I had been
2 robbed, and they said what do you mean? I told them
3 who I was and they said this isn't the police
4 department. I said I'm sorry, and then I dialed the
5 right number and I got the police department.

6 Q Did the police arrive pretty quickly?

7 A Yes, sir.

8 Q And you told the officer what had happened to
9 you?

10 A Yes, sir.

11 Q Now, do you have any -- do you know exactly how
12 much money had been in that cash drawer?

13 A Since -- you know, since the robbery and
14 counting and everything, there was about \$178.00 of
15 money in the drawer.

16 Q How much money is normally kept in that
17 cabinet?

18 A No more than \$200.00, sir.

19 Q In general --

20 A The hotel is a business hotel primarily, and
21 it's set up for either credit cards or for direct
22 bills to companies in the area.

23 Q Now, your wallet, what was in your wallet?

24 A Identifications, some credit cards and \$15.00.

25 Q What kind of identification?

1 A Well, my social security card, pictures of my
2 family, driver's license. Like I said, I gave him
3 credit cards. Blue Cross Blue Shield card. A
4 dental plan card.

5 Q Now, did you ever see that wallet again?

6 A Yes, sir, it was returned to me that morning --
7 the following morning, sir.

8 Q Do you remember what time it was that it was
9 returned to you?

10 A No, sir, I don't know the exact time, no, sir.

11 Q Who returned it to you?

12 A The police department returned it to me and
13 then I signed -- I signed the paper that I got it
14 back, and then everything was there, other than my
15 money.

16 Q The Simpsonville police department officer?

17 A You know, I don't remember.

18 Q But it was a police officer?

19 A Yes, sir.

20 Q It was your wallet that had been taken from
21 you?

22 A Yes, sir.

23 (Photograph marked as State's Exhibit No. 5 for
24 identification)

25 (Photograph marked as State's Exhibit No. 6 for

1 identification)

2 BY MR. MOYER:

3 Q Let me hand you State's Exhibit No. 6 and ask
4 you just take a look at that. Do you recognize what
5 is depicted in that photograph?

6 A Yes, sir, that's my driver's license sticking
7 out of the corner of the wallet.

8 Now, the picture makes the wallet look red, but
9 it's actually more of a tan -- it was more of a tan
10 wallet at the time, but that's my driver's license
11 right there.

12 Q Do you recognize that as your wallet?

13 A Other than the fact that it looks a little bit,
14 you know, reddish, yes, sir, it looks exactly like
15 my wallet.

16 Q That's the way it looked last year about this
17 time?

18 A Yes.

19 Q When it was returned to you?

20 A Yes.

21 MR. MOYER: Your Honor, I would move to have
22 State's Exhibit No. 6 moved into evidence.

23 MR. FARNSWORTH: No objection as to
24 identification. I don't think a foundation has been
25 laid as to who took the picture, when was it taken.

1 MR. MOYER: Your Honor, as far as further
2 relevancy, that would be established through later
3 witnesses.

4 THE COURT: I think that the foundation is
5 there, so I admit it.

6 BY MR. MOYER:

7 Q Just for the benefit of the jury, I'm going to
8 place on the overhead State's Exhibit No. 6.

9 All right. Once again, let me just ask you now
10 again for the benefit of the jury, would you tell
11 the jury what is depicted there in State's Exhibit
12 No. 6?

13 A Yes, sir, that's my driver's license sticking
14 out of the left pocket of my wallet. And, again,
15 like I say, because of the coloration of the way the
16 pictures comes out it looks a little bit more
17 reddish than my wallet was, which was a tan wallet.
18 Other than that it looks just like my wallet.

19 Q I'm handing you now State's Exhibit No. 5.
20 Would you take a look at that photograph?

21 A Yes, sir. That's my driver's license in full
22 view sitting on top of the wallet.

23 Q And do you recognize that as the way your
24 driver's license looked on January -- or February
25 the 1st of 2002?

1 A Yes, sir, still does.

2 Q Is it accurate?

3 A Yes, sir.

4 Q You still have it?

5 A Yes, sir. Not a good picture, but it's there.

6 MR. MOYER: At this time I move to have State's
7 Exhibit No. 5 moved into evidence.

8 MR. FARNSWORTH: No objection.

9 THE COURT: Admitted.

10 BY MR. MOYER:

11 Q Once again for the benefit of the jury, would
12 you tell the jury what's depicted on State's Exhibit
13 No. 5?

14 A That's a picture of my driver's license sitting
15 on top of my wallet.

16 Q And that's the way that your driver's license
17 looked when you handed it to that man with the gun?

18 A Yes, sir.

19 Q On February 1st?

20 A Yes, sir.

21 Q 2002. And the way that it looked when you
22 received it back?

23 A Yes, sir.

24 Q Please answer any questions that the defense
25 may have.

1 BY MR. FARNSWORTH: Just a few questions, sir.

2 CROSS EXAMINATION MR. FARNSWORTH:

3 Q You said the clothing was dark?

4 A Yes, sir.

5 Q It was either dark blue or black, is that
6 correct?

7 A Yes, sir.

8 Q All right, sir. And the ski masks was also
9 black, both?

10 A Yes, sir. The whole outfit was approximately
11 the same color.

12 Q Okay. In addition to your wallet, and the
13 \$15.00, and your driver's license, and I believe you
14 said a Social Security card --

15 A Yes, sir.

16 Q -- was anything else in your wallet?

17 A Yes, sir, there was several credit cards and
18 they were returned to me. Like I said, I received
19 everything back except for the money.

20 Q Do you remember about when you received these
21 back?

22 A Yes, I do. It was early the next morning.
23 That morning, that same day, but in the morning a
24 lot later.

25 Q That was one of the members of law enforcement

1 that brought it to you?

2 A Yes, sir.

3 Q So we are talking about \$178.00, I think you
4 said, was in the cash drawer and they got \$15.00
5 from you?

6 A Yes, sir.

7 Q And your wallet?

8 A Yes, sir.

9 Q Would you describe how tall these two
10 individuals were?

11 A They were both shorter than I am. I'm 6'4".
12 The gentleman with the gun was probably, you know,
13 five or six inches shorter than me. And the
14 gentleman behind him, I can't tell you exactly his
15 height, because he was crouched over. He never did --
16 the whole time that I saw him, I never saw him
17 standing up fully. So to give you a height for him
18 to be almost impossible.

19 Q Well, did he appear to be a shorter than the
20 other individual?

21 A Yes, sir, he appeared shorter and he appeared
22 sort of, you know --

23 Q Stocky?

24 A -- heavysset, you know, but his head was mostly
25 at the time level of the first guy's you know,

1 abdomen.

2 Q Okay.

3 A So there was no way to really tell how tall he
4 was.

5 Q But the other individual appeared to be taller
6 and trimmer?

7 A Yes, sir. Yes, sir.

8 Q Thank you very much.

9 A Yes, sir.

10 THE COURT: You can step down, sir.

11 MR. MOYER: The State would call Officer
12 Rushing to the stand.

13 OFFICER BRENT RUSHING, having been first duly
14 sworn, testified as follows:

15 THE CLERK: Please state your full name for the
16 record.

17 THE WITNESS: Brent Rushing.

18 DIRECT EXAMINATION BY MR. MOYER:

19 Q Where do you work, sir?

20 A The Simpsonville police department.

21 Q How long have you been in law enforcement?

22 A Law enforcement, almost ten years.

23 Q How long have you been with Simpsonville?

24 A Four and a half years.

25 Q Who were you with before you went ot

1 Simpsonville?

2 A Travelers Rest police department for a year.

3 Q What is your position here with the

4 Simpsonville police department?

5 A Canine officer.

6 Q And so what was your position last year at this
7 time on January the 31st?

8 A Patrolman.

9 Q What do you do -- what did you do as a
10 patrolman?

11 A Answered various calls from, you know, domestic
12 problems, to robberies, to also enforce traffic
13 laws.

14 Q Now, were you working -- let me take you back
15 to the night of January 31st, February the 1st of
16 2002. You were working that night?

17 A Yes, sir.

18 Q And did you receive a call?

19 A Yes, sir.

20 Q About what time was it that you received a
21 call?

22 A About 12:30 that night.

23 Q So that would be what date then?

24 A It was going into -- it was February 1st.

25 Q 12:30, talking about in the morning, 12:30

1 a.m.?

2 A The actual dispatch call, I'm sorry, was about
3 12:34 in the morning, yes.

4 Q And what was the nature of the call?

5 A A robbery that just took place at the Hampton
6 Inn.

7 Q All right. What location at the Hampton Inn?

8 A 3934 Grandview Drive.

9 Q That's in the city limits of Simpsonville?

10 A Yes, sir.

11 Q Within y'all's jurisdiction then?

12 A Yes, sir.

13 Q Now, how long did it take you to get there?

14 A Probably less than -- less than a minute,
15 because I was one block away from there on Fairview
16 Road.

17 Q You were very close?

18 A Yes, sir.

19 Q How long a distance do you think that you
20 traveled to arrive there at that location?

21 A Less than half a mile. Not even if that long.

22 Q So it was within the same minute or so by the
23 time that you arrived there?

24 A It was same time they got me arriving when I
25 called out.

1 Q Now, did you meet with anyone when you arrived?
2 A Yes, sir, I met with the clerk of the Hampton
3 Inn.
4 Q This gentleman who just testified?
5 A Mr. Borei, yes, sir.
6 Q And where was it that you met with him?
7 A In the breezeway at the Hampton Inn.
8 Q And what was --
9 A He actually met me as I was coming out exiting
10 my vehicle.
11 Q What was his emotional condition?
12 A Emotionally at the time he was scared, nervous,
13 talking real fast.
14 Q And did you speak to him about what had
15 happened?
16 A Yes, sir, I asked him first if he needed EMS
17 for anything, if he was physically hurt.
18 Q And did he?
19 A He said he didn't EMS, he wasn't hurt.
20 Q And did you get an overview as to what had
21 happened to him?
22 A Yes, sir.
23 Q And what did you do with that information that
24 you received from him?
25 A I relayed it to my shift supervisor and

1 dispatch.

2 Q Did you have much of a description to go on at
3 this time?

4 A No, sir, basically just two gentlemen wearing
5 ski masks walked in, showed a gun and left in an
6 unknown vehicle.

7 Q Now, did you have any other descriptions, like
8 clothing type, or gender, sex, race?

9 A Two males wearing dark clothes, and that's all,
10 and he told me a little bit about the gun also.
11 Gave a very good description of the gun.

12 Q Now, were you the one who returned the wallet
13 to Mr. Borei later on that day?

14 A No, sir.

15 Q Did someone else within y'all's department?

16 A Yes, sir.

17 Q All right. Please answer any questions that
18 the defense may have.

19 MR. FARNSWORTH: No questions, Your Honor.

20 THE COURT: You may step down, sir.

21 Why don't we take a short break. Please go
22 back into the jury room and we will have you back
23 out here in just a few minutes.

24 (The following takes place outside the presence
25 of the jury panel)

1 THE COURT: All right.

2 (Proceedings recessed)

3 (Proceedings reconvened)

4 THE COURT: Are y'all ready for the jury?

5 MR. MOYER: Yes, sir.

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

7 (The following takes place in the presence of
8 the jury panel)

9 THE COURT: Call your next witness.

10 MR. MOYER: The State would call William
11 Kennedy.

12 OFFICER WILLIAM KENNEDY, having been first duly
13 sworn, testified as follows:

14 THE CLERK: Please state your name for the
15 record.

16 THE WITNESS: William Kennedy.

17 DIRECT EXAMINATION BY MR. MOYER:

18 Q And where do you work, sir?

19 A I work with the Mauldin police department.

20 Q How long have you been with the Mauldin police
21 department?

22 A I have been there approximately three and a
23 half years.

24 Q And how long have you been in law enforcement?

25 A Going on eight years now.

1 Q Where else did you work?

2 A I started in Kansas with two small police
3 departments. I was with the Spartanburg County
4 sheriff's office for approximately three years.
5 Then Mauldin.

6 Q What is your position with Mauldin?

7 A I currently am a uniformed patrol sergeant.

8 Q And what are your duties as a uniformed patrol
9 sergeant?

10 A I supervise the road patrol officers. I also
11 am subject to answering any calls that come out. If
12 we are short, I'll answer a call, just like a normal
13 patrol officer would.

14 Q Now, were you a sergeant about this time last
15 year when this incident occurred?

16 A Yes, sir, I was.

17 Q So you were working the early morning hours of
18 February the 1st of 2002?

19 A That's correct.

20 Q What area were you working?

21 A I patrol the whole city. At that time, this
22 time in question, I was near the U.S. 276, Highway
23 417 area.

24 Q And what were you doing at that time?

25 A I was on normal patrol.

1 Q Were you listening to any other -- listening in
2 on any other police scanners other than Mauldin's?

3 A Yes, sir, I was listening into the Simpsonville
4 police department on my scanner in my patrol car.

5 Q And did you hear the call go out about the
6 robbery?

7 A Yes, I did.

8 Q About approximately what time was it when you
9 heard that call?

10 A That was probably about 12:30 in the morning.

11 Q All right. Now, as a result of hearing that
12 call where did you go?

13 A I went to U.S. 276 about four-tenths of a mile
14 east of 417 -- or I should say I was on 276, and
15 just made sure to get in that area, and I was
16 heading towards Simpsonville.

17 Q Were you still in Mauldin limits?

18 A No. Excuse me, that is correct.

19 Q Now, that road, U.S. 276, that starts out up in --
20 at or at least goes through Simpsonville?

21 A It stops off where it branches off I-385 Right
22 before Mauldin. 276 branches off of 385 and comes
23 straight through Mauldin. It becomes our main
24 street and goes through to Greenville.

25 Q Now, was the traffic heavy at that time of

1 night?

2 A No, it was extremely light. I was before this
3 about the only car on that stretch of the roadway.

4 Q Is that pretty typical for that time of night
5 in that area?

6 A Yeah, usually around that area.

7 Q Well, after you heard that call and started
8 over to that area that you just described, did any
9 vehicles come by that caught your attention?

10 A Yes, sir, a white Ford Escort was coming in the
11 direction from Simpsonville towards the Mauldin area
12 on U.S. 276 and it did catch my attention.

13 Q And what about it that caught your attention?

14 A The vehicle was traveling with its high beams
15 on and it was also traveling at 66 miles an hour in
16 a 55 miles an hour zone. That was confirmed
17 visually and mechanically with my radar.

18 Q Now, what did you do when you saw this car
19 speed by you?

20 A When the car passed by me, I was in moving
21 radar mode, so I was going the other direction. I
22 turned around in the median and caught up to the
23 vehicle.

24 Q You caught up to the vehicle?

25 A That's correct.

1 Q Did you activate your blue lights?

2 A Right at about Owens Lane I activated my blue
3 lights.

4 Q Did the car stop right away?

5 A No, sir, it continued.

6 Q And did you come up on any red lights?

7 A Yes, sir, we passed Owens, which was green, and
8 we approached Butler Road. The light there was red.
9 The vehicle did not appear to be fleeing from me at
10 this time. It was going the posted speed limit in
11 that area, or probably a little lower. Maybe around
12 35 miles an hour. It pulled into the far left-hand
13 turn lane to turn left onto West Butler Road and I
14 was still behind it with my blue lights activated.

15 Q And where did it go when it got onto West
16 Butler Road?

17 A I didn't get out of my patrol car because
18 usually people will go from the turn lane and find
19 somewhere safe to pull over, for obvious reasons.
20 So I waited the light turned green. The green arrow
21 came on. The vehicle did turn left onto West Butler
22 Road. It went down to Watley Circle. It turned
23 left onto Watley, which is a road that goes between --
24 I'm sorry, Carey. It turned left on Carey, because
25 it's a road between K-Mart and Bi-Lo. It turned

1 left into that road and then it turned right into
2 the Bi-Lo parking lot, the Bi-Lo in Mauldin.

3 Q And what happened when the car got into the
4 Bi-Lo parking lot?

5 A It slowed down to probably about ten miles an
6 hour. I could see the people inside the vehicle.
7 They were rummaging around the whole time that I was
8 behind them. From about right before Butler Road
9 and then onto Butler Road I could see them glancing,
10 you know, doing the over the shoulder look at me and
11 they were rummaging around in the car, but the car
12 just continued on about five to ten miles an hour in
13 the parking lot.

14 Q Now, did you get very close to that car?

15 A At times I was probably within a car length
16 behind them.

17 Q And did you have your lights on high beam or
18 any -- did you have enough light to be able to see
19 into the car?

20 A I could see into the car somewhat. Being very
21 dark outside it was hard, but I did have my high
22 beams on.

23 Q And from the light of that and the close
24 proximity you got to that car, were you able to get
25 a look at the occupants?

1 A Yes, sir, I could see the occupants. They
2 appeared to be black males, from my perspective.

3 Q And how many occupants?

4 A I could tell there were three. I could see
5 that the driver and the rear seat passenger were
6 black males. I could see somebody in the front
7 passenger seat, but he was blocked by the person in
8 the back seat, so I couldn't tell for sure, but I
9 thought it was another black male.

10 Q Now, did you get a good look at the driver of
11 that vehicle?

12 A No, sir, at that point I did not get a good
13 look at the driver, just because of the perspective
14 that I had.

15 Q Now, later on about the chase that we are going
16 to talk about for just minute, were you able to get
17 a good look at the driver?

18 A I got a look at the driver when he exited the
19 vehicle.

20 Q And was it a good enough look to later identify
21 the driver?

22 A Yes, sir, it was.

23 Q Now, did you notice anything about any clothing
24 being worn by any of the individuals?

25 A The only thing I saw from the vehicle or during

1 the stop was that the person in the back seat
2 appeared to have a red shirt on.

3 Q And that was the only items of clothing that
4 you noticed?

5 A That was the only item of clothing that I
6 noticed. I originally, and I believe I even called
7 it over the radio, I thought that the person in the
8 back seat had a -- I called it a toboggan, kind of
9 like one of those knit hats on, but I also later saw
10 him and he had a very -- a large amount of hair, but
11 at the time I thought it was a toboggan when I was
12 initially trying to stop the car.

13 Q Okay. So at this point you are not sure
14 whether it was or not?

15 A I couldn't tell you. I only had the brief
16 glimpses inside the vehicle at the time, but that's
17 what I called it out on the radio as.

18 Q Now, after y'all slowed down to a slow speed in
19 the Bi-Lo parking lot, did the car come to a stop?

20 A No, it never did come to a complete stop.

21 Q What did it do?

22 A It slowed -- excuse me again, it slowed down.
23 Then it turned right into the driveway that leads
24 back to West Butler Road, and without stopping it
25 accelerated very fast and made a left-hand turn onto

1 West Butler Road. In fact, at that time Officer
2 Lewis had arrived right at that exit and they nearly
3 struck his vehicle as they were exiting the Bi-Lo.

4 Q And did you continue to follow the car?

5 A Yes, sir, at that time I notified dispatch that
6 the vehicle was not stopping, that we were in a
7 pursuit. I told dispatch we were going down West
8 Butler Road towards Ashmore Bridge Road, or that
9 direction. And I also notified them to contact the
10 county and the highway patrol for any assistance
11 that they could possibly give us.

12 Q About what speeds were you going?

13 A Right in there we got between 70 and 80 miles
14 an hour on West Butler Road. Going pretty quick.

15 Q Did you use your siren at any time?

16 A Yes, sir, initially when I tried to stop them
17 on West Butler before they turned into the Bi-Lo I
18 bumped my siren. We have the ability to just sound
19 it for a very period of time, kind of as a -- we
20 like to think of it as a wake-up to the driver to
21 help them realize we are there. After they turned
22 back onto West Butler, it was obvious they weren't
23 stopping. I turned the siren on fully activated.

24 Q And how fast did the speeds of this chase get
25 up to?

1 A They got up -- the fastest was probably about
2 85 miles an hour, maybe 90, but probably they ranged
3 between 70 and 80 for the most part.

4 Q Did Officer Lewis have his siren on as well?

5 A Yes, sir, he did.

6 Q Did you notice anything -- during this chase
7 did you notice anything going on inside the vehicle?

8 A Right at the beginning, as I stated, it looked
9 like they were rummaging around in the vehicle.
10 Once the pursuit began, I backed off to a safe
11 distance and I couldn't see inside the car, once I
12 did that. If they had made any sudden maneuvers, I
13 wanted to have time to react to it myself.

14 Q All right. Where did the chase end up?

15 A We took a left on Conestee Lake Road. We made
16 a right on Fork Shoals Road and then the vehicle
17 attempted to make a left onto Whitehorse Road
18 extension. They didn't make the turn and they slid
19 off into a -- it's a dirt area. They narrowly
20 missed a fire extinguisher -- a fire hydrant and
21 they also narrowly missed, I believe, some sort of
22 fencing. They went right between the two and came
23 to a stop there. A post, but it was something
24 similar to fence material.

25 Q When the car came to a stop there, what did

1 y'all -- what did you do?

2 A The suspects jumped out of the vehicle and
3 started running into the woods. I pulled my car
4 into a safer parking spot, instead of running over
5 the fire hydrant, and got out of my vehicle to
6 pursue them.

7 Officer Lewis did the same. He parked in a
8 slightly different area and he jumped out to try to
9 apprehend them.

10 Q Did you call out any commands to them?

11 A As I'm running, I yelled out stop, police. I
12 yelled out that I was going to call the dogs out.

13 Q Did they stop and submit to your arrest?

14 A No, sir, all three of them ran into the woods.

15 Q Now, describe that area where you said it was
16 some woods there. Is it a pretty heavily wooded
17 area?

18 A I'm not very familiar with the area personally.
19 In fact, during the chase I had Officer Lewis what
20 we call the chase, because he knew the roads better
21 than me.

22 It is a wooded area. There is a creek in that
23 area. I believe there is some old buildings in that
24 area. The very front part where they stopped I
25 believe had just been bulldozed, a small portion of

1 that, but the rest of it was wooded area.

2 And as soon as they got into the wood line, as
3 soon as Officer Lewis and I ran up to the woods, we
4 held back for obvious safety reasons. We wanted to
5 wait and until we could have more units there for
6 backup because of the situation.

7 Q And did you call for backup units?

8 A I had called during the chase. I also -- when
9 they bailed out, I notified dispatch where we were
10 and told them to have any available county units and
11 highway patrol units come up and assist us with a
12 perimeter, which they did. Amazingly quickly we had
13 units coming out from everywhere.

14 Q So a lot of units were out there?

15 A That's correct. We had a very tight perimeter
16 set up within a matter of minutes.

17 Q What do you mean by a perimeter?

18 A Whenever we are looking for somebody that's run
19 from us, we attempt to establish a perimeter, an
20 area that they can't go across. Or at least if they
21 try to cross it, we see them. That way we keep them
22 confined to one area. We can do something, such as
23 calling call a K-9 unit, asking the county to assist
24 us in that way, or having the helicopter come out,
25 or something like that. But if we can keep them

1 contained, it's much easier to find them.

2 Q How long did it take all these other officers
3 to arrive there?

4 A I believe the first county unit arrived when I
5 was coming back to my vehicle. I was walking back.
6 It might have been a minute after I had jumped out
7 of my vehicle when I saw the first county unit get
8 there. Several others followed that unit and the
9 highway patrol units also arrived asking me where to
10 go, what positions to take out there.

11 Q Now, did you stay there at the scene during the
12 entire search for these suspects?

13 A I stayed at the scene for a long period of
14 time. I left sometime after the second suspect was
15 apprehended, and I came back to the police
16 department to start preparing all my paperwork.

17 Q And where did you stay? Where did you position
18 yourself while you were there?

19 A Except for the period of time when I ran
20 towards the woods, I stayed right near the suspect
21 vehicle. I did leave that area to go identify the
22 two suspects, but at that time the county units had
23 arrived and there was somebody to secure that
24 vehicle. I didn't want to leave the vehicle
25 unattended for possible evidence that might be in

1 it.

2 Q So that vehicle was secured either by you or
3 county units?

4 A That's correct. When I got done identifying
5 the suspects, I came back down to my vehicle and I
6 stayed in that general area pretty much the whole
7 time that I was there.

8 Q Did you make sure that no one disturbed with
9 the vehicle?

10 A That's correct. The only time that I got close
11 to it was to do a cursory look for any kind of
12 weapon that would be out in plain view, which is
13 pretty much from the distance maybe here to the jury
14 box and looking inside the vehicle. I knew that we
15 were going to have K-9 units come out and I don't
16 want to disturb the scent of the suspects from the
17 vehicle.

18 The only other people that got close to that
19 before forensics arrived to look for evidence were
20 the K-9 units to have their dogs track.

21 Q So you were there when the dogs came out to
22 track the vehicle?

23 A That's correct, I was there when the K-9 units
24 arrived on the scene.

25 Q And were you also there when the Simpsonville

1 police officers came up to the vehicle?

2 A Yes, sir, I had just finished identifying the
3 suspect. Suspects both -- I believe I had
4 identified both of them when Investigator Bobo
5 arrived on the scene, he and the Simpsonville
6 supervisor.

7 Q So you were there when they came up on the car?

8 A That's correct.

9 Q Now, what kind of car was it?

10 A A white Ford Escort.

11 (Photograph marked as State's Exhibit No. 7 for
12 identification)

13 (Photograph marked as State's Exhibit No. 8 for
14 identification)

15 (Photograph marked as State's Exhibit No. 9 for
16 identification)

17 BY MR. MOYER:

18 Q Let me hand you State's Exhibit No. 7. Would
19 you take a look at that photograph? Do you
20 recognize what is depicted in that photograph?

21 A I do.

22 Q What is depicted?

23 A This is the suspect vehicle.

24 Q The Ford Escort you have just been talking
25 about?

1 A Yes.

2 Q The one that you chased?

3 A Yes, sir.

4 Q Is that the way it looked on the early morning
5 hours of February the 1st of 2002, after it came to
6 a stop there?

7 A It is.

8 Q I notice there is a door open in that
9 photograph. Is that correct?

10 A That's correct.

11 Q So when the individuals got out of the car to
12 run, did they close the doors behind them?

13 A I remember the front doors open. I don't
14 remember the rear open.

15 Q You don't remember, or it was?

16 A I don't recall them closing any of the doors,
17 but I remember when I came back to the vehicle the
18 two front doors were open. I can't remember if the
19 rear ones were closed or if they just fell shut.

20 MR. MOYER: At this time I move to have State's
21 Exhibit No. 7 moved into evidence.

22 MR. FARNSWORTH: No objection, Your Honor.

23 THE COURT: It's admitted.

24 BY MR. MOYER:

25 Q All right. Now, for the benefit of the jury,

1 would you please explain what it is that is depicted
2 in State's Exhibit No. 7?

3 A Yes, sir, that is the suspect vehicle, the
4 white Ford Escort.

5 Q Okay.

6 A And that's the location that it stopped in.

7 Q And State's Exhibit No. 8, do you recognize
8 what is depicted in that photograph?

9 A Yes, sir. This is the same vehicle from a
10 different angle.

11 Q Let's actually go back to State Exhibit No. 7.

12 A Yes, sir.

13 Q Once again, what is depicted in State's Exhibit
14 No. 7 is?

15 A That's the suspect vehicle that I pursued, the
16 white Ford Escort.

17 Q Is that the way it looked after it came to a
18 stop in that field that you were describing to us?

19 A Yes, sir.

20 Q Now, State's Exhibit No. 8, do you recognize
21 what is in that photograph?

22 A Yes, sir, this is the suspect vehicle again
23 from a different angle.

24 Q And is that the way it looked on September the --
25 I'm sorry, on February the 1st of 2002, the early

1 morning hours?

2 A Yes, it is.

3 MR. MOYER: At this time move to have State's
4 Exhibit No. 8 into evidence.

5 MR. FARNSWORTH: No objection.

6 THE COURT: It's admitted.

7 BY MR. MOYER:

8 Q All right. For the jury's benefit again, just
9 tell the jury what it is that we are looking at.

10 A Yes, sir, that's the suspect vehicle, the white
11 Ford Escort from another angle.

12 (Photograph marked as State's Exhibit No. 10
13 for identification).

14 BY MR. MOYER:

15 Q Please take a look at State's Exhibit No. 10.
16 Do you recognize what is shown in that photograph?

17 A Yes, sir, it's the same vehicle from a third
18 angle.

19 Q And that's the way it looked? That picture
20 accurately represents the way it looked on February
21 1st, 2002?

22 A That's correct.

23 Q And is that the other side of the car than the
24 angle that was just shown in those other two
25 exhibits?

1 A It is.

2 Q How many doors are shown open on that side?

3 A Both of the doors are open on this side.

4 Q Front and rear?

5 A That's correct.

6 MR. MOYER: Your Honor, at this time I move
7 State's Exhibit No. 10 into evidence.

8 MR. FARNSWORTH: Without objection.

9 THE COURT: It's admitted.

10 BY MR. MOYER:

11 Q Once again, that would be the driver's side of
12 that vehicle?

13 A That's correct, sir.

14 Q And, finally, just take a look at State's
15 Exhibit No. 9. Do you recognize what is shown in
16 that rather dark photograph?

17 A Yes, sir, this is a picture that is taken from
18 approximately -- it would be Fork Shoals Road right
19 at the intersection, showing the location of where
20 the suspect vehicle ended up when they bailed out of
21 it.

22 Q Does that accurately represent the way it
23 looked out there that night?

24 A That's correct.

25 MR. MOYER: At this time I move to have State's

1 Exhibit No. 9 into evidence.

2 MR. FARNSWORTH: Without objection, Your Honor.

3 THE COURT: It's admitted.

4 BY MR. MOYER:

5 Q So this is -- let me point you this -- hand you
6 this laser pointer.

7 A Yes, sir.

8 Q Lay it right there.

9 Can you point out to the jury on State's
10 Exhibit No. 9 where the white Ford Escort is?

11 A Yes, sir, it is right there.

12 Q Now, can we see -- on that picture can we see
13 the area through which this vehicle traveled before
14 coming to a rest at that spot?

15 A Yes, sir, you can see the pole that I mentioned
16 that I thought was similar to a fence pole and the
17 fire hydrant. The vehicle went right between those
18 up into the dirt quite a ways off the road.

19 Q Okay.

20 A And this area right here is the roadway where I
21 actually parked my patrol car to jump out and run
22 after them.

23 Q And which road is that?

24 A That's Whitehorse Road extension.

25 Q And Fork Shoals Road, the road that the car had

1 been on, where would that be?

2 A That would be right here.

3 Q So were you present for all -- for the arrest
4 of all three of the individuals?

5 A No, sir, I was present for the arrest of two of
6 the individuals.

7 Q And which two individuals?

8 A Mr. Warren and Mr. Taylor. Mr. Taylor was
9 arrested first. Mr. Warren was arrested second, and
10 that was at approximately -- by my dispatcher's time
11 055 hours and 059 hours.

12 Q Which one -- by using military time?

13 A 12:55 a.m.. 12:59. It was approximately five
14 minutes apart.

15 Q And which of the individuals was arrested at
16 12:55 a.m.?

17 A That would be Mr. Taylor.

18 Q All right. And who was arrested at 12:59 a.m.?

19 A That was Mr. Warren. Melvin Warren.

20 Q And did you make any notations in your report
21 as to when the defendant, the third person was
22 apprehended?

23 A Yes, sir, I did.

24 Q When was that?

25 A That was at 0241, or 2:41 in the morning.

1 Q So about how long -- how much time had elapsed
2 from when you actually -- when the car had slid off
3 the road to when the first individual, Damian
4 Taylor, was arrested? What was your estimate?

5 A Estimate from when I turned around on the car
6 to when they actually arrested the first person
7 would be about 25 minutes, right in there.

8 Q I'm talking about actually from when the car
9 actually had its accident.

10 A I can only guess. I know the time when I
11 initiated the stop. It probably was about two
12 minutes after that that they slid off the road. So
13 probably 23 minutes, right around in there.

14 Q Now, were you able to identify the driver of
15 this vehicle?

16 A Yes, sir, I was.

17 Q And who did you identify as the driver of that
18 Ford Escort?

19 A It was Mr. Taylor.

20 Q Damian Taylor?

21 A Yes, sir.

22 Q The first person who was apprehended?

23 A That's correct.

24 MR. MOYER: Please answer any questions that
25 the defendant may have.

1 CROSS EXAMINATION BY MR. FARNSWORTH:

2 Q All right. You said that the person that
3 seated was in the back seat on the right side had on
4 a red shirt, is that correct? Is that what you
5 said?

6 A That's correct, sir, red shirt.

7 Q You could see that from how close that you were
8 during the time that you were following him, is that
9 right?

10 A Yes, sir. It was as I was trying to make the
11 traffic stop, when I was probably within a car
12 length or two behind.

13 Q And you were there only during the period of
14 time I believe you said that Mr. Warren and Mr.
15 Taylor were arrested?

16 A That's correct, I left sometime after the
17 second suspect was arrested.

18 Q And you said Mr. Taylor was the driver?

19 A Yes, sir.

20 Q And Mr. Warren was seated where?

21 A Mr. Warren was seated in the front seat, front
22 passenger's seat.

23 Q So the two that were arrested first were both
24 in the front seat of the car?

25 A That's correct.

1 Q And the person in the back seat had a red shirt
2 on?

3 A That's correct, sir.

4 Q And isn't it true that the two people in the
5 front seat had either dark blue or black clothes on?

6 A They had dark clothing on. I don't recall the
7 exact color.

8 MR. FARNSWORTH: That's all I have. Thank you.

9 THE COURT: You can step down.

10 MR. MOYER: Thank you.

11 The State would call Officer Lewis to the
12 stand.

13 OFFICER BRIAN LEWIS, having been first duly
14 sworn, testified as follows:

15 THE CLERK: Please state your name for the
16 record.

17 THE WITNESS: Brian Lewis.

18 DIRECT EXAMINATION BY MR. MOYER:

19 Q And where do you work, sir?

20 A The Mauldin police department.

21 Q How long have you worked for the Mauldin police
22 department?

23 A This March will be two years.

24 Q And before that you worked for Perry
25 Correctional Institution?

1 A Yes, sir, for four years.

2 Q And what's your position with the Mauldin
3 police department?

4 A Patrolman.

5 Q And you do basically what these other patrol
6 officers, uniformed officers we have heard about,
7 the same functions, correct?

8 A Yes, sir.

9 Q So were you working the early morning hours of
10 February the 1st, 2002?

11 A Yes, sir, I was.

12 Q Did you participate in this chase that we have
13 been talking about here today?

14 A Yes, sir, I did.

15 Q And how was it that you found out about that?

16 A It was broadcast over the radio that
17 Simpsonville just had an armed robbery. Also
18 Sergeant Kennedy had his personal scanner in the
19 vehicle and he did come over and say that they just
20 had an armed robbery in Simpsonville at one of their
21 hotels, and just to be out looking for any
22 suspicious activity. Approximately three minutes
23 later Sergeant Kennedy called out over the radio
24 that he initiated -- was attempting to initiate a
25 traffic stop on a white Ford Escort. At that time I

1 was on 276 inward bound into the town of Mauldin,
2 passing Jenkins Road. He came over the radio and
3 announced that he was approaching the intersection.
4 The vehicle was still moving at a slow speed,
5 stopped for the red light at Butler. At that time I
6 was still heading towards where he was. At that
7 time he stated the vehicle turned and was headed
8 towards Carey Street. Turned into Carey Street, and
9 he announced that he was in the Bi-Lo parking lot at
10 that time with the vehicle and still not -- was
11 still not stopping for him. At that time I
12 approached Butler, the main intersection, turned
13 right and was heading towards him to help him.

14 Q Did you find the two vehicles?

15 A Yes, sir, they were coming out of the Bi-Lo
16 exit/entrance onto West Butler Road.

17 Q And which car was ahead of the other?

18 A The white Escort.

19 Q And how close were you to these vehicles?

20 A As they were coming out to come towards West
21 Butler and I was on West Butler, we were probably
22 approximately 20 feet away from each other.

23 Q Could you see into the white vehicle?

24 A Yes, I could.

25 Q What did you notice, if anything, about what

1 was going on inside that car?

2 A I noticed that the front seat passenger was all
3 dressed in black. Appeared to be a black male. He
4 was rummaging through and looking at me. The back
5 seat passenger seemed to be on the back seat on his
6 knees hunched over and looking out the back window,
7 looking out the side window, and then they proceeded
8 on to Butler Road.

9 Q So then at that point did you participate in
10 the chase?

11 A Yes, sir, I did.

12 Q The entire chase?

13 A Yes, sir, I did.

14 Q And did you see the accident?

15 A Yes, sir.

16 Q What happened -- what did you do when you saw
17 the car go off the road?

18 A I turned my vehicle and stopped it before --
19 basically right where they went in, between the fire
20 hydrant and the post. I stopped my vehicle at that
21 time, got out and started yelling commands at them
22 as they were exiting the vehicle and going into the
23 wooded area and kept chasing them.

24 Q Did you call out any commands?

25 A Yeah, I was screaming at them to get down on

1 the ground.

2 Q Did they do so?

3 A No, sir, they kept running.

4 Q How close were you to them?

5 A 25 yards, maybe.

6 Q Did you follow them?

7 A For about ten yards into the woods. Then
8 myself and Sergeant Kennedy backed out, due to them
9 saying that there was a possible gun used in the
10 robbery, until other units got there.

11 Q Now, did you have a camera in your car?

12 A Yes, I did.

13 Q A video camera?

14 A Yes, I did.

15 Q Did you turn it on?

16 A Yes, I did.

17 Q At what point did you turn it on?

18 A I believe -- my camera activates and turns on
19 as soon as I turn my blue lights on.

20 When I was approaching the intersection of 276
21 and West Butler, I turned my blue lights on, because
22 he said they still weren't stopping, and at that
23 time my camera activated.

24 Q Do you have it on the entire time then?

25 A Yes, sir, I did.

1 Q Did you save that tape?

2 A Yes, I did.

3 Q Have you watched it since?

4 A I think I watched it -- we watched it right
5 after we got back to the police department and were
6 doing our paperwork, and I think I watched it
7 another -- a day or two later we watched it again.

8 Q And did you make a copy of that tape?

9 A Yes, sir, I did.

10 Q You brought it here to court?

11 A Yes, sir, I did.

12 Q And have you recently looked at that copy of
13 the tape?

14 A Yes, sir, I have.

15 Q When was that?

16 A On the 31st with yourself, Mr. Moyer.

17 Q You have the original with you as well?

18 A Yes, sir, I do.

19 Q Does that copy, is that an accurate
20 representation?

21 First of all, is it an accurate copy of that?

22 A Yes, sir.

23 Q And is the tape itself an accurate
24 representation of that incident, of that car chase?

25 A Yes, sir, it is.

1 Q You didn't change the tape in any way?

2 A No, sir.

3 Q You brought it here with you?

4 A Yes, sir.

5 (Video Tape marked as State's Exhibit No. 11
6 for identification)

7 BY MR. MOYER:

8 Q Let me hand that you State's Exhibit No. 11.
9 Is that the video tape?

10 A Yes, it is.

11 MR. MOYER: Your Honor, at this time I would
12 move to have State's Exhibit No. 11 moved into
13 evidence and publish it to the jury.

14 MR. FARNSWORTH: Without objection.

15 THE COURT: It's admitted.

16 BY MR. MOYER:

17 Q All right. Let me ask you, if you would -- I
18 think they showed you how to use this camera.

19 A Yes, sir.

20 Q This television down here.

21 (witness off the witness stand)

22 MR. FARNSWORTH: Can my client watch it too?

23 THE COURT: Yeah.

24 (Whereupon, State's Exhibit No. 11 was played
25 to the jury panel)

1 BY MR. MOYER:

2 Q Is what we are watching now?

3 A No, it's a couple minutes before. This is it
4 right here.

5 Q Is this the beginning of it?

6 A Yes, sir.

7 Q Tell the jury when you see that --

8 A I'm approaching that entrance. Like I say,
9 it's at the Bi-Lo, and less than three seconds I
10 could see the vehicle coming out at this time. I
11 was approaching it at this time. The vehicle
12 started coming out. I started going into the
13 entrance. They came out. I got behind them.
14 Sergeant Kennedy was still coming out of the Bi-Lo,
15 and at this time I started pursuing the vehicle.
16 Calling out what I seen. Put my spotlight on them
17 and noticed there was three black males in there. A
18 male in the back had a red shirt on and two in the
19 front had dark clothing.

20 Q That's the vehicle right there, the Ford
21 Escort?

22 A Yes, sir. We were going down West Butler at
23 this time headed towards Greenville County. Leaving
24 the city limits of Mauldin and about another half
25 mile.

1 Q Does the other patrol car, is that Officer
2 Kennedy?

3 A Yes.

4 At this time we were leaving the city limits of
5 Mauldin. We were getting ready to enter -- we are
6 entering Greenville County, turning left onto
7 Conestee Lake Road.

8 Now in the town of Conestee. Still on Conestee
9 Lake Road and the vehicle still has not stopped. We
10 are approximately doing 80 to 90 miles an hour at
11 this time.

12 Q The lights you see out there in the distance?

13 A Yeah, they are the back rear lights.

14 We are on still on Conestee Lake Road getting
15 ready to turn on the frontage road, Fork Shoals
16 Road. At this time we slowed down quite a bit
17 because I advised Officer Kennedy I knew the area
18 and the road gets real winding and it turns. We
19 slowed down because if there was any vehicles coming
20 or anything.

21 About right there Sergeant Kennedy advised me
22 that they turned left on Old Whitehorse Road
23 extension and we turned. The subjects crashed, jump
24 out of their vehicle and started running into the
25 woods. And myself and Sergeant Kennedy get out,

1 started yelling commands and chased them into the
2 wood, and they continued to run in the woods.

3 A Okay. Thank you.

4 (Whereupon, the videotape was concluded)

5 (Witness back on the witness stand)

6 BY MR. MOYER:

7 Q All right. Now, did all three of the
8 individuals from that car get out and run?

9 A Yes, sir, they did.

10 Q Did any of them hesitate?

11 A No, sir.

12 Q Now, did you stay there at the scene during the
13 search in the woods?

14 A Yes, sir, I did.

15 Q Did you stay the whole time?

16 A Yes, sir.

17 Q And how did you participate?

18 A After they had jumped out and ran in the woods,
19 myself and Sergeant Kennedy chased them into the
20 woods a little ways. We backed out. We waited for
21 more people to -- more law enforcement agencies to
22 show up to assist us with that. At that time I
23 could hear somebody running towards the roadway,
24 which would be Old Whitehorse Road extension in the
25 woods. At that time I ran towards the road, ran up

1 the road approximately 150 yards, with somebody in
2 the woods running alongside me. I could not see who
3 it was or anything at that time. At that time they
4 started to come out towards the wood. At that time
5 I pursued them into the woods, chased them for
6 approximately 20 minutes in the woods up and down a
7 ravine and through the woods. At that time there
8 was county units arriving. Highway patrol units, I
9 could hear them out there yelling and stuff like
10 that. At that time the subject ran for an open
11 field but by a barn. Chased him out there and
12 started yelling commands for him to get down on the
13 ground, police, stop. I ran across the road. I was
14 joined by several deputies and a highway patrolman.
15 Chased him for approximately another 100, 150 yards
16 and apprehended him, and he turned out to be the
17 driver.

18 Q And what was his name?

19 A Damian Taylor, I believe.

20 Q Now, what did you do -- what was this
21 individual's state of dress?

22 A At that time when we originally got him back
23 out to an area where we could see, it wasn't
24 populated by lot of trees and everything, he had on
25 a pair of black baggy pants and no shirt at that

1 time.

2 Q Did you handle -- did you participate in the
3 arrest of either of the other subjects?

4 A No, sir, I was -- I was still there.

5 Approximately several minutes later they called me
6 and asked me -- that they apprehended another one of
7 the subjects from the vehicle, and asked me if I
8 could -- if I'd come up and take a look at him and
9 see if I could I.D. him. I went up to where he was
10 in back of a county car. I looked at him and
11 identified him as the right front seat passenger.

12 Q That was the second person who was apprehended?

13 A Yes, sir, it was.

14 Q And how long a period after the first one was
15 that?

16 A I know it was at least two hours. I was before
17 the -- between the first and second?

18 Q Between first and second?

19 A Oh, probably five, ten minutes, if that.

20 Q And then were you still there when the third
21 person was arrested?

22 A Yes, sir, I was. I wasn't involved in it
23 directly. I was still with the suspect car waiting
24 for a tow truck to come to get it out of the field.

25 Q And did you see that person, the third person

1 who was arrested?

2 A No, I did not.

3 Q But was it -- was it a good bit of time later?

4 A Yes, sir, it was.

5 Q And I know you didn't mark it down, but --

6 Let me ask you this. Did you handle the
7 details for the towing of the car?

8 A Yes, sir, I did.

9 Q And who was called out to tow the car?

10 A Kellett's off of North Main Street in Mauldin.

11 Q And were you present when that car was hooked
12 up and towed off?

13 A Yes, sir, I was.

14 Q And about what time was it that that took
15 place?

16 A If I could look at my notes.

17 Q Okay. Would that refresh your memory?

18 A Yes.

19 Q Did you make notation in there?

20 A Yes, sir. It was maybe 3:30 when the vehicle
21 was towed out.

22 Q And where is Kellett's garage?

23 A Off of Main Street in Mauldin between Jenkins
24 and Knollwood.

25 Q Please answer any questions that the defense

1 may have.

2 CROSS EXAMINATION BY MR. FARNSWORTH:

3 Q Officer Lewis, you said that you were present
4 when the first suspect was arrested, and that was
5 Damian Taylor, is that correct?

6 A Yes, sir.

7 Q And you said when he was arrested he had on
8 dark blue or black pants, but no shirt?

9 A Yes, sir.

10 Q This is the same individual that you had
11 identified earlier in your testimony as the person
12 that was driving the car, and at that time he had a
13 dark blue or black shirt on, is that correct?

14 A Yes, sir.

15 Q And he second person arrested that you were
16 involved in identifying was the person in the right
17 front passenger's side?

18 A Yes, sir.

19 Q And that person also had on black pants or dark
20 blue and dark blue or black shirt, is that correct?

21 A I didn't see what kind of pants he was wearing.
22 The first time I seen him when we were chasing the
23 vehicle, I seen from the waist up.

24 Q I thought you had identified --

25 A Oh, I did at the vehicle. He was sitting in

1 the back seat of a Greenville County car and I
2 walked up to the window. I didn't really look.

3 Q Now, you are saying you are not sure what pants
4 he had on?

5 A No, but I know he had on a dark black or blue
6 shirt.

7 MR. FARNSWORTH: Thank you, sir.

8 MR. MOYER: Nothing else of this witness.

9 THE COURT: You can step down, sir.

10 MR. MOYER: Call Hal Harris.

11 OFFICER HAROLD HARRIS, having been first duly
12 sworn, testified as follows:

13 THE CLERK: Please state your name for the
14 record.

15 THE WITNESS: Harold Lee Harris.

16 DIRECT EXAMINATION BY MR. MOYER:

17 Q Where do you work, sir?

18 A Greenville County sheriff's office.

19 Q How long have you been with the sheriff's
20 office?

21 A About four and a half years.

22 Q How long have you been in law enforcement?

23 About same amount of time?

24 A Four and a half years, yes, sir.

25 Q What unit are you in?

1 A Right now I'm assigned to the vice narcotics
2 unit.

3 Q What unit were you in this time last year when
4 this incident occurred?

5 A Uniformed patrol.

6 Q Now, were you working the early morning hours
7 of February 1st, 2002?

8 A I was actually working a side job, yes, sir.

9 Q Were you called out to this area that we have
10 been talking about today?

11 A Technically called, no, sir. When we work side
12 jobs or part-time jobs to earn extra income, it's
13 policy that if something arises and we are nearby or
14 we can assist, that we will go to the area and do
15 so, and I did so that night.

16 Q Were you nearby then?

17 A No, sir. Actually I was at 291 and East North
18 Street.

19 Q So that would have took you how long to get
20 over there?

21 A Ten minutes. About ten minutes. Ten, fifteen.

22 Q This area we are talking about is in -- it's
23 here in the county, correct?

24 A That's correct.

25 Q Down near the Donaldson Center?

1 A That's correct.

2 Q So you responded to that location. And what
3 was the address that was listed as that location?

4 A I believe it was --

5 Q Intersection to what roads?

6 A I believe it was Fork Shoals and Whitehorse
7 extension. Fork Shoals and Whitehorse extension, I
8 believe, sir.

9 Q Have you taken a look at an aerial map of that
10 location?

11 A I did, sir.

12 Q Did you spend a little bit of time looking over
13 that?

14 A Yes, sir.

15 (Aerial Photograph marked as State's Exhibit
16 No. 12 for identification)

17 BY MR. MOYER:

18 Q Let me show you State's Exhibit No. 12. Is
19 this the aerial map that you were shown?

20 A Yes, sir.

21 Q Is that an accurate representation of the
22 general layout of that area?

23 A Yes, sir, it is.

24 Q Okay.

25 MR. MOYER: Your Honor, at this time I move

1 State's Exhibit No. 12 into evidence.

2 MR. FARNSWORTH: Without objection.

3 THE COURT: It's admitted.

4 BY MR. MOYER:

5 Q I would ask you to step down, Officer Harris.

6 A Yes, sir.

7 (witness off the witness stand)

8 BY MR. MOYER:

9 Q Can you point out on that map the location of
10 which that car actually had the accident?

11 A My understanding is the car was here, sir.

12 Q And that's the intersection of which road?

13 A Whitehorse Road extension and Fork Shoals.

14 Q This has a laser pointer on it right there.

15 A Okay.

16 Q And where was it that you responded?

17 A I was here.

18 Q On what road is that?

19 A Old Folk Shoals Road.

20 Q Now, is that -- where was the perimeter set up,
21 this perimeter that we have been talking about?

22 A My understanding the perimeter had set up along
23 the area of Fork Shoals Road, Whitehorse Road
24 extension and Old Fork Shoals Road.

25 Q So that's basically a self-contained triangle

1 of that area?

2 A Yes, sir.

3 Q So what made you decide to the stop there, that
4 area on Fork Shoals Road?

5 A I was one of the later units to get there, so I
6 was what we call filling in the gaps. What that is
7 is when we set up a perimeter, we try to get people
8 that are line of sight of each other. What that
9 means is if there was a car here, depending on hills
10 or knolls, what we would do is try to set up so that
11 I could see the parole car in front of me and one
12 behind me.

13 Q And what did you do when you sat up right
14 there?

15 A I was set up along this area. My blue lights
16 were cut on, along with my high beams, and then I
17 was using my spotlight to look in this open field
18 area and to keep a watch on the perimeter of the
19 wood line.

20 Q Did you see the arrest of the first person?
21 Well, were you made aware of that arrest?

22 A Yes, I was.

23 Q And how was it that you were made aware of
24 that?

25 A While watching this area I saw the first

1 suspect that was arrested come out of the wood line.
2 I wasn't aware of this road's name. Like I said, I
3 didn't have the opportunity to ride around. When I
4 come in, I came straight to this point and stopped,
5 but I knew Sergeant Kellett was on whatever the
6 unknown road name. I called out that I was -- that
7 there was a black male, or what appeared to be a
8 black male running towards Sergeant Kellett. I
9 ended up tripping and falling. There is about a
10 three foot drop off the incline here off Whitehorse
11 extension and where I fell. I got there shortly
12 after the apprehension in the creek where the first
13 suspect was apprehended.

14 Q So he was apprehended by the time you got over
15 there then?

16 A Yes, sir, in the process of the handcuffs being
17 placed on him.

18 Q Okay. Where did you go then?

19 A I assisted Deputy Calhoun with walking the
20 suspect out. He was taken to a vehicle that was in
21 the area of Whitehorse Road extension, Old Fork
22 Shoals Road, and I moved directly back to my vehicle
23 and begin watching the perimeter again.

24 Q And did you participate in the arrest of any of
25 the other two subjects?

1 A The second suspect, again, I was standing --
2 the second suspect I saw come up out of the wood
3 line and I kind of walked in the shadows and
4 arrested him at gunpoint.

5 Q Now, was he -- was he running when you saw him,
6 or what was he doing?

7 A He was fast walking, slight running. He was --
8 it appeared that he was trying to walk in the
9 shadows and just kind of sneak across this road.

10 Q Now, which person was this?

11 A Warren.

12 Q Melvin Warren?

13 A I believe so, yes, sir.

14 Q Now, when you arrested him, did you conduct a
15 search of him, of this defendant?

16 (Witness back on the witness stand)

17 A Yes, sir, I did.

18 BY MR. MOYER:

19 Q Did you find anything on him?

20 A Yes, sir, I did.

21 Q What did you find on him?

22 A I'm going to refer to my notes due to the
23 actual locations.

24 I advised him of his Miranda Rights. He stated
25 that he understood. I removed from his pocket some

1 black ski mask from his front left pocket.

2 In the right rear -- in the right pocket.

3 Excuse me, right pocket, not rear. Right pocket was
4 located a tissue, a silver in color watch, a tan
5 lighter, black stocking headwear, a pack of Newport
6 cigarettes, two one dollar bills, two five dollar
7 bills, one sack of jewelry, a one dollar coin, four
8 pennies and one nickel.

9 In the right rear pocket was a cloth billfold,
10 green in color, with a suspect's ID, Warren.

11 In the left rear pocket was a tan leather
12 billfold with a South Carolina driver's license
13 belonging to, first name spelled R-a-n-g-a-r,
14 H-a-n-s is how they the other name is spelled.
15 Middle initial G, last name spelling B-o-r-e-i.

16 Q What did you do with the defendant after that?

17 A Also in the billfold was, along with other
18 assorted credit cards belonging to the Hans subject.

19 Q What did you do with this defendant Melvin
20 Warren after you took those items from the pockets?

21 A I advised Lieutenant Eldridge I placed the
22 suspect in back of my car and waited for a highway
23 patrol unit to relieve me. Once the highway parole
24 unit relieved me, I moved down to this area where
25 now Lieutenant Eldridge with Sergeant Kellett was

1 before and waited for EMS to respond to look at the
2 suspect.

3 Q And was any medical attention needed?

4 A No, sir, but due to the cold weather and the
5 running, that was done just for precautionary than
6 anything.

7 Q Now, were the items that you found on this
8 Melvin Warren, were they photographed?

9 A Yes, sir, they were. They were laid out on the
10 hood of my patrol car and photographed.

11 (Photograph marked as State's Exhibit No. 13
12 for identification)

13 (Photograph marked as State's Exhibit No. 14
14 for identification)

15 BY MR. MOYER:

16 Q Let me show you in just a moment State's
17 Exhibits No. 13 and 14.

18 MR. FARNSWORTH: Without objection, Your Honor.

19 MR. MOYER: All right. I move into evidence
20 then State's Exhibit 13 and 14.

21 THE COURT: They are admitted.

22 BY MR. MOYER:

23 Q Let's me show you, first of all, State's
24 Exhibit No. 13, and I'm going to hand you back the
25 laser pointer. And you have already talked about

1 the items that you seized, but what is depicted in
2 State's Exhibit No. 13? Are they the items that you
3 took off of Melvin Warren?

4 A That's correct. All the items, except this
5 one, which is my digital camera and these plastic
6 bags, which were used to place the items in.

7 Q And can you point out the ski mask that you
8 mentioned?

9 A That's black stocking ski mask there, sir.

10 Q That you took out of his front pocket?

11 A I removed from the front left pocket, correct.

12 Q Now, you mentioned a wallet with an
13 identification of Ragnar Borei?

14 A That's correct. That would -- that would be
15 that, sir.

16 Q Let me show you State's Exhibit No. 6. Can you
17 identify what that is?

18 A That is Mr. Ragnar Borei.

19 Q Borei?

20 A Borei. That's his wallet, including his South
21 Carolina driver's license as I found it that night.

22 Q Is that just a close-up picture of it there on
23 the hood of your car?

24 A That's correct. The license was pulled out so
25 you could identify it by the name in the picture.

1 Q And an even closer shot of State's Exhibit No.
2 5, is that --

3 A The same driver's license there again.

4 Q And that's the driver's license that you found
5 in that wallet that was on Melvin Warren?

6 A Yes, sir.

7 Q Let me show you now State's Exhibit No. 14.
8 And what is the depicted in State's Exhibit No. 14?

9 A That's the black stocking headwear referred to
10 in my report.

11 Mr. Warren's cloth billfold with his South
12 Carolina ID.

13 Mr. Borei --

14 Q Borei.

15 A Borei, that's his driver's license inside of
16 his wallet.

17 The black stocking ski mask.

18 You will have to forgive me. I can't see all
19 of it. I believe a silver in color watch that was
20 also in his pocket.

21 A pack of Newport cigarettes.

22 That appears to be some type of U.S. currency,
23 bill, and I can't identify those two, but the
24 plastic bags there again were mine.

25 Q They were yours?

1 A That's correct.

2 Q Is that what you were going to put these items
3 in?

4 A Yes, sir.

5 Q Now, after these items were photographed there,
6 did you continue to keep them in your custody?

7 A No, sir, I did not.

8 Q Did you take them back to the law enforcement
9 center with you?

10 A No, sir, they were turned over to -- along with
11 the completed property and evidence sheet from our
12 agency to Simpsonville.

13 Q To a Simpsonville police department officer?

14 A Yes, sir.

15 Q And that's because -- what was the reason for
16 that?

17 A Due to the armed robbery pertaining to that
18 individual's items and property had occurred in
19 their jurisdiction.

20 Q Do you remember Lieutenant Bobo being out there
21 on the scene?

22 A Sure do, sir.

23 Q And it was in his presence that these items
24 were turned over?

25 A Yes, sir.

1 Q All right. Please answer any questions that
2 the defense may have.

3 MR. FARNSWORTH: No questions from this
4 witness.

5 THE COURT: You are free to go.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Let me speak with y'all for just
8 one second before we go on.

9 (off-the-record bench conference)

10 THE COURT: All right, ladies and gentlemen, we
11 are going to break for the day here. The next
12 witness, if he were to come in today, would go well
13 beyond five o'clock.

14 Let me remind you of my instructions not to the
15 discuss this case with anyone, nor to begin to make
16 up your mind about this case until you have been
17 through the whole trial.

18 Let me tell you also, as I tell every juror,
19 every jury in every case, please be careful not to
20 allow yourself to become exposed to any media
21 coverage that there may be about this case. I
22 hadn't seen anybody in the courtroom today that I
23 recognize from the media, so I don't know that there
24 will or won't be any coverage. But if you could try
25 to get somebody to look through the paper for you in

1 the morning just to make sure there is nothing in
2 there that relates to this case. And if you
3 absolutely have to watch the local news tonight,
4 keep the remote control handy so you can switch the
5 channel, if something comes on about this case, but
6 I don't expect that there will be anything.

7 Have a nice night. Please be back in the jury
8 room before nine o'clock in the morning and we hope
9 to get started as close to nine as we can. See you
10 then.

11 (The following takes place outside the presence
12 of the jury panel)

13 THE COURT: Anything else?

14 MR. FARNSWORTH: No, Your Honor.

15 MR. MOYER: Nothing.

16 THE COURT: All right. We will see y'all in
17 the morning.

18 (Whereupon, the proceedings were adjourned to
19 February 4, 2003, at nine o'clock a.m.)
20
21
22
23
24
25

STATE OF SOUTH CAROLINA))
COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

THE STATE) TRANSCRIPT OF RECORD
) 2002-GS-23-2590
-vs-) 2002-GS-23-2738
) 2002-GS-23-2737
JONATHAN HILL, A/K/A,) 2002-GS-23-1807
JONATHAN GREEN,) 2002-GS-23-1808
) FEBRUARY 4, 2003
Defendant.) GREENVILLE, SOUTH CAROLINA

(VOLUME II)

B E F O R E:

HONORABLE JOHN C. FEW, JUDGE; and a jury

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

L. MARK MOYER, ASSISTANT SOLICITOR
Attorney for the State.

DAN FARNSWORTH, ESQUIRE
Attorney for the Defendant.

Michael R. Watts
Circuit Court Reporter

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1 (Proceedings, February 4, 2003)

2 THE COURT: Y'all ready?

3 MR. MOYER: Yes, sir.

4 MR. FARNSWORTH: Yes.

5 THE COURT: Bring in the jury.

6 (The following takes place in the presence of
7 the jury panel).

8 THE COURT: Good morning.

9 All right, sir.

10 MR. MOYER: May it please the Court, the State
11 would call Officer Robert Smith to the stand.

12 OFFICER ROBERT SMITH, having been first duly
13 sworn, testified as follows:

14 THE CLERK: State your name for the record.

15 THE WITNESS: Robert Smith.

16 DIRECT EXAMINATION BY MR. MOYER:

17 Q Where do you work, sir?

18 A Greenville County sheriff's office.

19 Q How long have you been in law enforcement?

20 A Eleven years.

21 Q And has the majority of that been with the
22 sheriff's office?

23 A All of it has.

24 Q And what is your position with the sheriff's
25 office now?

1 A I'm a deputy sheriff. I'm assigned to the
2 directive parole unit as K-9 handler.

3 Q Tell us a little bit about what a K-9 handler
4 does.

5 A First of all, my main job is just like any
6 other deputy in uniform patrol. We answer calls. I
7 have a secondary function of handling the K-9. We
8 assist the collection of evidence, tracking
9 suspects, providing protection for deputies out on
10 the road.

11 Q And what type of -- how often -- how frequently
12 is it that you end up using the dogs?

13 A Every night I work in some function or another.

14 Q What different functions do you use the dogs?

15 A A canine is trained to detect the odor of
16 narcotics. We use in the search for drugs.

17 He's trained to apprehend subjects who have run
18 from us that warrants that apprehension.

19 He's trained to track, or what we call scout,
20 look for people who are hiding from us.

21 He's trained to do handler protection. Which
22 just basically means if someone is being aggressive
23 toward a deputy, he will protect a deputy.

24 Q And do you use the dogs --

25 First of all, what is your dog's name?

1 A It's canine Armor.

2 Q How long have you had Armor?

3 A I have had him for about a year and a half.

4 Q Does your dog -- all these different functions
5 that you just talked to us about, is your dog
6 proficient in all those functions?

7 A Yes, sir. He has national certifications
8 through two different groups and he also had his
9 initial training.

10 Q Well, let's talk about yours first. Did you go
11 through training as a K-9 officer?

12 A I did.

13 Q What sort of certifications or training did you
14 have to undergo?

15 A Initially I went to a seven week course at
16 Lowndes County sheriff's office. They offer a
17 training center for canine handlers. It's seven
18 weeks long and it teaches all different aspects of
19 handling the dogs.

20 Q Did you go -- do you have any followup
21 training?

22 A Yes, sir, the training of a canine is an
23 ongoing thing. We do it -- every week I train
24 between four and eight hours.

25 Once a month I have training that is particular

1 to tracking and scouting, which lasts between eight
2 or nine hours.

3 In addition to that we attend seminars and
4 various training groups. It's very training
5 intensive. It's the most training I have had in my
6 law enforcement career.

7 Q So you have been trained -- every week you have
8 to undergo some training?

9 A Yes, sir. Since I had Armor, I have probably
10 trained between five and six hundred hours with just
11 him and I.

12 Q What types of different functions do you say
13 your dog is proficient in for police work? What
14 function? Is it about equally for all those
15 functions, or did some of those functions you use
16 more?

17 A Just generally the unit I'm assigned to, I find
18 myself using Armor the majority of the time for
19 either handler protection of myself or the other
20 officers, and for searching for narcotics in
21 vehicles. I assist with search warrants, that type
22 of thing.

23 Q Now, you told us a little bit about -- a lot
24 about your training for this. What about your dog?
25 Tell us what type of training has your dog Armor

1 gotten?

2 A Armor was imported from Europe. His training
3 started the breeder in Europe. He was brought to a
4 place in Florida called Gatorland Kennels, which is
5 outside of Daytona, in a small town called Bunnell,
6 Florida. They continues his training, where he was
7 purchased by the Lowndes County training center.
8 They continued his training at the Lowndes County
9 training center. Once he's proficient at the
10 majority of the tasks, then they bring me there, or
11 the handler there and they train the handler in his
12 responsibilities and obligations to the dog and how
13 to properly handle the dog.

14 Q And so the dog's method of tracking, say a
15 person, how would it do that?

16 A Unlike a bloodhound, for instance, is pretty
17 much going to track you as you step. They do this
18 by smelling the odors, skin cells, the detergent
19 from your clothing, the fibers from your clothing,
20 your perspiration, the adrenalin from your body.
21 All that leaves a scent or a trail that's invisible.
22 A dog's sense of smell is far greater than ours,
23 hundreds of times greater. They follow those things
24 through the woods.

25 Now, what I started to say about the

1 bloodhounds, they are pretty much going to track you
2 where you are foot for foot for foot.

3 Armor has been trained a little bit
4 differently. Because of his patrol training, in his
5 mind he wants to get to the end. He wants to get to
6 the apprehension part, so he eliminates some of that
7 need to track foot for foot for foot. He may cut
8 corners because he's smelling the odor and he knows
9 that if he cuts this corner, he's going to get to
10 the apprehension or the end of the trail quicker.

11 So where a bloodhound or a dog similar to a
12 bloodhound is going to track pretty much foot for
13 foot, Armor is going to eliminate some areas and
14 take you more directly to the source of the odor
15 that he's trying to follow.

16 Q And so is your dog -- did Armor have the power
17 to discriminate between human scents and other
18 scents?

19 A The dogs are trained -- Armor is trained --
20 there is different ways to train dogs. Armor is
21 trained in what they call praise and a reward.
22 There is no motivation for him to follow anything
23 other than what his mission is initially, and you do
24 that by setting it up at the beginning. You will
25 get head turns where the dog will look and pay

1 attention to something else, but there is no
2 motivation there for him to follow what has
3 distracted him. He takes a second or two, walk in a
4 circle and come back, and come back and get back on
5 the track that he's looking for.

6 Q How about between animal scent? Would that
7 interfere with his mission?

8 A It's again the same. There is -- it will cause
9 a distraction in the tracking, but it's not
10 something that he's going to follow. And after
11 training hundreds of hours with him, you can
12 determine when he is pulling and on a track as
13 opposed to something that's distracting. And it's
14 natural for -- any animal is going to be distracted
15 by things.

16 Q So, you can tell that difference?

17 A Absolutely.

18 Q Have you found Armor to be reliable?

19 A Absolutely.

20 Q Based both on your training and your real world
21 experience using the dog?

22 A One hundred percent.

23 Q Let me take you now to the early morning hours
24 of February the 1st of 2002. Were you working on
25 that date?

1 A I was.

2 Q And did you get a call out to this area that we
3 have been talking about for the past day?

4 A I did.

5 Q What was your reason for being called out?

6 A Lieutenant Eldridge radioed my supervisor,
7 Sergeant Kellett, and requested the presence of the
8 K-9 units. There was two of us working that
9 evening, due to the fact that a suspected armed
10 robbery vehicle had been chased in our jurisdiction.
11 The suspects had bailed out of the car and were
12 hiding in the woods.

13 Q And did you bring your dog Armor with you?

14 A I did.

15 Q Approximately what time was it that you
16 arrived?

17 A About 12:40.

18 Q In the morning?

19 A A.m..

20 Q On February the 1st?

21 A Yes.

22 Q So you got there pretty quickly then?

23 A We weren't too far away. As a matter of fact,
24 both the county and -- the other one is named John
25 Gardner and his K-9. We were to an obedience

1 training not more than a few miles from this scene.
2 It just so happened that we were together and
3 relatively close.

4 Q Now, State's Exhibit No. -- I believe it's 12
5 that's behind you here --

6 A Yes, sir.

7 Q -- a map. Is that the area that you responded
8 to?

9 A It is.

10 Q I'm going to hand you this device. It has a
11 laser pointer on that.

12 A Okay.

13 Q And again would you just point out to the jury
14 where it was that you found the vehicle?

15 A I came down Whitehorse Road, which is over on
16 this side of the map, and then up Whitehorse Road
17 extension. About in this area I started seeing that
18 there was a perimeter. You could see the blue
19 lights and officers out along the road. I was
20 directed down to this intersection right here.
21 There was --

22 Q Let me interrupt for one minute to make sure
23 all the jurors can see this.

24 A Okay.

25 A I can stand up, if it will help.

1 (witness off the witness stand)

2 A I drove down this Whitehorse Road extension.
3 There is a freshly graded area right here. I was
4 met by Lieutenant Eldridge. There was several
5 Mauldin police officers and several county deputies.
6 There was a white Ford Escort. Several doors were
7 open on the car. This was where I was briefed on
8 the situation.

9 Q Let me ask you to have a seat again.

10 (witness back on the witness stand)

11 BY MR. MOYER:

12 Q Now, were there other officers there on the
13 scene when you arrived?

14 A There was numerous officers on the scene, both
15 from the county and from the City of Mauldin.

16 Q And where were those officers?

17 A One of my first responsibilities is determine
18 any of the weak spots in the areas of the perimeter.
19 The officer that I saw coming in -- there is a house
20 and some wooden structures, some thin trees along in
21 here. There was a number of officers in this area.
22 There were officers further up the road. I could
23 see the blue lights. There was a great number of
24 officers also along Whitehorse Road extension here.
25 When I got down to the graded area of the

1 intersection of Fork Shoals and Whitehorse
2 extention, you could see blue lights along this road
3 up here.

4 Q So was that entire triangle area sealed off
5 then?

6 A Yes, sir.

7 Q That is what we are talking about is a
8 perimeter?

9 A That would be the perimeter, right. That idea
10 is to contain the person that you are looking for
11 and to give an area that increases your chances of
12 apprehending.

13 Q You way there were several different
14 jurisdictions there as well?

15 A Yes, sir.

16 Q Now, in addition to the officers and you and
17 the other officer and the dog, was there any other
18 special equipment there being used?

19 A Lieutenant Eldridge advised me that our county
20 helicopter was on its way to the scene.

21 Q Did you end up seeing the helicopter?

22 A I did.

23 Q And did that end up being -- was it used,
24 actually?

25 A Yes, sir. When we use any tracking animal, be

1 it the bloodhounds the county has or our dogs, we
2 communicate directly with the pilot and his crew
3 member. They have equipment on the helicopter that
4 assists us.

5 Q Now, before you began, were you given a rundown
6 from the officers who were present what had happened
7 and what you were to be looking for?

8 A Briefly, yes, sir.

9 Q And before starting your actual training, do
10 you undertake any type of warning to the individuals
11 that you would be tracking?

12 A Yes, sir, any time we use the canines, both the
13 dogs that we used on this particular evening are
14 trained to apprehend people, which means they bite
15 people. And one of the first things we want to do
16 is we holler out a yell or a warning that we are
17 getting ready to enter a given area and we offer the
18 subjects an opportunity to surrender. We warn them
19 that if they are found and they are not going to
20 surrender, there is a chance that they may be bit or
21 apprehended by the dog. That's an ongoing thing.
22 We do that periodically the whole time that we are
23 in there.

24 Q And that triangular area that's set off by that
25 perimeter that you described for us, how big an area --

1 do you have an estimate of how much territory that
2 is?

3 A That's several hundred acres you are looking
4 at. Probably close to a mile up the road here.
5 Three-quarters of a mile this thing here. And maybe
6 a half a mile wide.

7 Q What is the first thing that you did then
8 before starting to track?

9 A Deputy Gardner and I determined after speaking
10 with Lieutenant Eldridge that the weakest area of
11 our perimeter was along Fork Shoals right here. The
12 reason I'm saying that it's weak is if somebody was
13 to come up to the edge of the woods here, they would
14 only have to cross two lanes of road until they were
15 into another area of the woods. So if someone was
16 going to escape, that would be the most -- that
17 would be to their advantage to go on this side right
18 here.

19 The other thing is there is a large creek that
20 winds all through this area.

21 Up toward this area here is a large culvert
22 that a human could easily walk through that runs
23 under Fork Shoals Road. Having worked this area
24 before, I knew that that culvert was there.

25 Deputy Gardner and I initially wanted to clear

1 the edge of the road with the dogs. At this point
2 we are not tracking somebody, but we are sending the
3 dog along the edge of the brush and the debris along
4 the road to see if they detect the odor of somebody
5 hiding right close to the edge of a road there.

6 Q Did you find anyone in that area?

7 A As a matter of fact, as we started, Deputy
8 Gardner walked directly along the road. I attempted
9 to go just inside the wood line. That was so thick
10 with brush, I was a lot farther behind Gardner.

11 Q Did you spend any time with the dogs around the
12 car, your dog?

13 A Well, what had happened was while we were right
14 there, we heard commotion, some radio traffic that
15 one of the subjects had crossed the road here, they
16 were in the process of apprehending him in a creek
17 or an area shortly off the road about this area. At
18 this point I determined that because of the brush I
19 was so thick, I was falling way behind Deputy
20 Gardner. He continued to clear this area and I
21 returned to the patrol car and requested two units
22 for backup.

23 Q And who were those units?

24 A Deputy Gardner and Deputy Atwell were providing
25 me backup. The reason for that is I have got a dog

1 in one hand and a flashlight in another. I need
2 somebody on either side of me for protection. An
3 extra set of eyes.

4 Q Well, then did you continue into the area?

5 A Right. Went back to the graded area where the
6 car was, took the canine up to the vehicle, let him
7 walk around and into the vehicle. It gives him a
8 starting point. It's a -- technically they call it
9 a pre-scent. It gives the dog an area to collect
10 the odor that you are wanting him to follow. So he
11 would step up into the open doors. I believe that
12 both doors on the driver's side were open and the
13 passenger's front door was open.

14 At this point you cast the dog. What I mean by
15 that is you just run your hand out and you tell her --
16 you give the canine the command to seek, which is
17 his command to go look for whatever odor that you
18 had just put him in.

19 Q Did you start off then?

20 A We did.

21 Q And where did you start? Where did you --
22 where did you go?

23 A The graded area here, about twenty -- there was
24 a number of downed trees at the edge of where they
25 had graded. It looks like they had just knocked the

1 trees down and piled them up.

2 Armor took me directly from the car into a path
3 and that took me over these downed trees. It's a
4 pretty wide area of downed trees. About twenty feet
5 into the downed trees the dog began trying to go
6 down under them, rather than walk on top of them. I
7 held his lead tight and shined the flashlight in the
8 area and there was a black Rebox tennis shoe that
9 appeared to have not been there very long. It was
10 not covered with any dust, debris, mud, or anything
11 that would lead me to believe that it had been there
12 for awhile.

13 Q Was that collected?

14 A I pointed it out to Deputy Atwell, who
15 collected it.

16 Q All right. After that was collected where did
17 you go?

18 A We continued tracking or scouting up in through
19 this area here. The picture is deceiving. This is
20 not a flat area. It's almost like a bowl. This
21 area right here is very steep. This is more -- very
22 steep right in this corner here, and this is gently
23 uphill.

24 Anyhow, we continued tracking and scouting up
25 through the woods into an area somewhere right

1 around in here. Near a creek I located a white
2 T-shirt that was stained with appeared to be blood,
3 and it again appeared to have not been there very
4 long. It was not covered with any debris, dust, or
5 mud, or any limbs, or leaves, that kind of thing.

6 Q Your dog led you to that?

7 A Yes, sir.

8 Q Was collected as well?

9 A It was.

10 Q And by whom?

11 A Deputy Atwell.

12 Q And then where did you go from there?

13 A It was sometime in the center here about this
14 time that I heard Deputy Harris, I heard his radio
15 traffic that he had a subject coming out of the
16 woods, somewhere over in here. You could hear their
17 yells for him to show him his hands, that type of
18 thing, so I knew that they were apprehending someone
19 in this area. We stopped our track at this point
20 right here and waited for them to apprehend this
21 subject.

22 It was at that point I radioed to Lieutenant
23 Eldridge and let him know about the shoe we had
24 found and T-shirt we had found to try to confirm
25 that these items were from -- in fact from the

1 suspects, and they were.

2 At this point we continued our track, which led
3 us in an area from the center of this triangle over
4 this direction. It's the same direction that both
5 subjects who had already been apprehended apparently
6 traveled. Due to the -- and I say that because of
7 where they were apprehended.

8 On a hillside in this area I located a black
9 New York Yankee's ball cap. Again, it was not
10 covered with debris. It appeared that it had not
11 been there very long.

12 The dog continued to track out to the area,
13 this field. There are some small trees that you
14 can't see in this photograph. It's somewhat open
15 sporadically. We let the canine to rest for a
16 minute. We determined what action that we were
17 going to take.

18 It's important to note that when we were back
19 in this area here, this is along this creek bed, the
20 canine did show great interest in a section of the
21 creek that we had crossed. And what I say by that
22 he was distracted toward, several times, in a manner
23 that led me to believe that there potentially was,
24 or had been, someone in or near the creek. However,
25 when I cast him, he did continue to track and that's

1 when we located the ball cap.

2 At this point I took the canine and I wanted to
3 clear. After you do something like that and you
4 know that you have tracked someone out of an area,
5 you would go into what we call completely scout.
6 And what you are doing there is looking strictly for
7 somebody who is hiding. The dog would go to the
8 strongest odor. He is still remembering the odor
9 that was initially given to him. That's his
10 motivation to keep going.

11 At this point, knowing that we had tracked from
12 here out into an area that at least two had
13 surrendered or had been apprehended, you take this
14 area and you cut it up in boxes, and you would walk
15 in a manner like this, looking for the dog back up
16 on the odor that he initially started from.

17 We did that from here, on this steep hill in
18 this area -- for a considerable amount of time in
19 this area. And, again, the only time I got any
20 indication the dog was interested in anything was
21 toward the bottom of the hill, again wanting to go
22 into this creek area.

23 We had been doing this for now probably an
24 hour. The dog was getting pretty exhausted. I took
25 him -- this is a church. And we cleared this

1 hillside, we went to the church and I allowed the
2 canine to rest for awhile. I carry water with me
3 for him. I let him get some water. We probably sat
4 there for a good ten to fifteen minutes to allow the
5 canine to rest.

6 After we let him rest, we broke up this area
7 here, which runs behind this building. We did the
8 same thing. Again, the only indications I got were
9 back toward the center of this area near the creek.

10 Got to this end after doing this and coming
11 back, a quadrant -- an area right in here and began
12 doing same thing, back and forth. Again the canine
13 pulling toward an area in the center of this creek.

14 This side of the creek that we were on was so
15 thick with briars that the dog couldn't even get
16 through it. As Deputy Atwell, Rinehart and I walked
17 after doing this, again getting a focal point that
18 we really needed to search good in here, walked the
19 dog around the briars, this side of the creek, did
20 the same thing here. This is about the point that
21 our flashlights started failing. We were down to
22 one flashlight we had been in the woods for so long.
23 They gave me their flashlight. And here the
24 helicopter at this point had started making sure
25 there was nothing behind us or on the perimeter

1 going to escape.

2 At about an hour and fifty minutes into
3 tracking Armor pulled real hard, showed strong signs
4 of an alert. What I mean by an alert is his
5 training again comes back at the end of tracking or
6 end of trailing he's going to apprehend somebody.
7 So his demeanor becomes protective. His neck gets
8 real strong, his ears are forward, digging hard,
9 barking, like he's going to go capture someone. In
10 this area right here that's exactly what he did. He
11 pulled me very strongly and aggressively to an area
12 of a creek bed.

13 Q Did you go over to that creek bed then?

14 A I did. Armor went to the edge of the creek bed
15 and was barking strongly. At this point I was
16 ninety percent sure that what we had was a positive
17 alert on a subject hiding. I advised Deputy Atwell
18 and Deputy Rinehart with hand motions that I thought
19 I had something in the creek bed. I collected the
20 lead on -- the lead that the dog is on is fifteen or
21 twenty feet long. I pulled him in and then I went
22 to the edge of the creek bed with Armor and looked
23 over the edge of it.

24 Q And what did you see down over the edge?

25 A It had about a six foot drop-off. And it

1 appeared that the creek bed had washed off into the
2 earth away from the creek itself. So there was
3 almost like a cave or a washout under where I was
4 standing. As I looked down, I could see the edge of
5 maybe an area this wide of a red T-shirt and white
6 band of underwear. This person that was in there
7 was back toward the creek faced toward the earth or
8 the washout and curled up hiding in it like this.

9 Q What did you do when you saw that person then?

10 A Gave him a warning to surrender, that we knew
11 he was there, with the canine. The canine is
12 barking. Armor is letting him know that he's at the
13 top of this thing. I ordered him to stand up, to
14 show me his hands, that type of thing.

15 Q And did the person come out?

16 A He slowly rose from this washout, slowly put
17 his hand in the air, asked me not to let the dog
18 bite him.

19 Q Did your dog hurt this person?

20 A Absolutely not.

21 Q Okay.

22 A I backed the canine up several feet and ordered
23 the gentleman to stand up and climb out of the creek
24 bed toward the light that I had on.

25 Q Did you have to call in extra light then to get

1 out of the woods?

2 A We got him into custody, into handcuffs. At
3 this point we were -- our flashlights were useless.
4 And it's so thick in there with briars, tree limbs
5 and that type of thing, we requested that the
6 helicopter fly over us with their light to light a
7 path for us to get back out of the woods.

8 Q And is that how you got out of the woods then?

9 A We did. We walked him from this area where we
10 apprehended him in the creek, around and up through
11 this old barn. There is a driveway here where
12 uniformed officers were waiting on us.

13 Q Now, this person that you apprehended and
14 arrested there in the creek, is that person here in
15 the courtroom?

16 A He is.

17 Q Would you identify him for the jury?

18 A It's this gentleman sitting with Mr.
19 Farnsworth.

20 Q The defendant?

21 A Yes, sir.

22 Q Did you take -- was a photograph taken of the
23 defendant that night?

24 A It was.

25 (Photograph marked as State's Exhibit No. 15)

1 for identification)

2 MR. FARNSWORTH: Without objection.

3 MR. MOYER: State's Exhibit No. 15, Your Honor,
4 we would move -- put into -- place into evidence. I
5 believe it's without objection.

6 THE COURT: It's admitted.

7 BY MR. MOYER:

8 Q Take a look at State's Exhibit No. 15. Is that
9 the defendant whom you arrested that night?

10 A It is.

11 Q And is that the way he looked that night out
12 there at the scene?

13 A Yes, sir.

14 Q I'm going to show you on the overhead State's
15 Exhibit No. 15, just for the benefit of the jury.
16 Could you tell the jury what is depicted in State's
17 Exhibit No. 15?

18 A That's the young man that I apprehended in the
19 creek bed.

20 Q This defendant? The defendant in this case?

21 A Yes, sir.

22 Q Now, it's a little hard to tell from that
23 photograph, but what I'm pointing to here, is that --
24 did he have anything on his clothes or were his
25 clothes in any state of disarray?

1 A His body, clothing, hair, face, was covered
2 with clay or mud from the creek, perspiration. He
3 was wet. You could see the wetness, the dampness in
4 his pants.

5 Q Down here?

6 A At the knees and the waist. His clothing was
7 dirty. It appeared to have come from the creek bed.

8 Q And so you turned the defendant over then to
9 some other officers?

10 A Yes, sir, we escorted him out of the woods and
11 turned him over to waiting patrol units.

12 Q And did you see a pat-down search of his
13 pockets when that occurred?

14 A Yes, sir. He was turned over to deputy --
15 Master Deputy Mike Moore, who had the subject down
16 prior to placing him in the patrol car to determine --
17 there were so many agencies there, I don't think
18 they knew exactly who was going to take him away
19 from the scene, so we wanted to secure him in a
20 patrol car until that determination was made.

21 Q What, if anything, did you see being taken from
22 his pockets?

23 A There were -- the one thing I remember
24 distinctly. There was a wad of unfolded loose cash,
25 paper money, that Deputy Moore removed from his

1 pocket. It was folded in no particular order. It
2 appeared that it had just been wadded up.

3 Q It was placed back in his pockets at that time?

4 A It was returned to his pocket at that time.

5 Q So was it in a wallet or was it in any -- was
6 it in a wallet there?

7 A No, it was loose.

8 Q All right. Now, the items of clothing that
9 Deputy Atwell collected, did you get a look at them
10 out there at the scene?

11 A I did.

12 Q Would you be able to identify them, if you saw
13 them now?

14 A I believe so.

15 (Bag of Clothes marked as State's Exhibit No.
16 16 for identification)

17 BY MR. MOYER:

18 Q I'm going to hand you State's Exhibit No. 16.
19 Would you just take a look through that bag and tell
20 me if you recognize what is depicted inside that
21 bag, State's Exhibit 16?

22 A It appears to be the items that I found while
23 trailing this evening.

24 Q And it was collected by Deputy Atwell?

25 A It was.

1 Q And brought here to court not by you, but by
2 another officer with the sheriff's office?

3 A It was.

4 MR. MOYER: Your Honor, at this time I would
5 move to enter State's Exhibit 16 into evidence.

6 MR. FARNSWORTH: No objection, Your Honor.

7 THE COURT: They are admitted.

8 BY MR. MOYER:

9 Q Please answer any questions that defense may
10 have.

11 MR. FARNSWORTH: Officer, just one or two
12 questions.

13 CROSS EXAMINATION BY MR. FARNSWORTH:

14 Q You said that you saw the officer pat him down,
15 is that correct?

16 A I did.

17 Q And the only thing that you saw taken from his
18 pockets or his person were some cash, is that
19 correct?

20 A I don't believe it was taken from him. I just --
21 I was standing back with the canine maybe ten feet
22 or better from him and observed the pat-down. I
23 distinctly remember a lot of paper money. There may
24 have been a few other nondescript things, but I
25 don't recall exactly.

1 Q Well, if it was some important, you would have
2 remembered it?

3 A Excuse me?

4 Q If it had been something important taken from
5 him, you would have remembered it?

6 A Right, I don't remember anything being -- the
7 purpose at that point was just to make sure he had
8 no means of escape and no weapons in his possession.

9 Q There wasn't a ski mask taken from him, or
10 anything?

11 A I don't recall a ski mask, no, sir.

12 MR. FARNSWORTH: That's all I have.

13 MR. MOYER: I have nothing further of this
14 witness.

15 THE COURT: You may step down, sir.

16 MR. MOYER: Thank you.

17 MR. MOYER: Mike Atwell.

18 OFFICER MIKE ATWELL, having been first duly
19 sworn, testified as follows:

20 THE CLERK: Please state your name for the
21 record.

22 THE WITNESS: Mike Atwell.

23 DIRECT EXAMINATION BY MR. MOYER:

24 Q And do you work for the Greenville County
25 sheriff's office?

1 A Yes, sir.

2 Q How long have you worked there?

3 A I have been here for two years, sir.

4 Q And what is your position with the sheriff's
5 office?

6 A I'm a uniform road deputy with uniform patrol.

7 Q Now, were you working this crime scene that we
8 have been hearing about for the past couple of days
9 out there at the Whitehorse Road extension and Fork
10 Shoals Road?

11 A Yes.

12 Q You got a call out to that area then?

13 A Yes.

14 Q And what were you directed to do upon arrival
15 there?

16 A Initially one of our dispatchers alerted us
17 that Mauldin was in a vehicle pursuit. We ended
18 around that intersection by Whitehorse Road
19 extension and Fork Shoals. I initially responded
20 there to help set up a perimeter with other
21 deputies.

22 Q And did you participate in the apprehension of
23 any of the three individuals?

24 A Yes, sir, I did.

25 Q How many?

1 A Two, sir.

2 Q And who was the first one that you arrested?

3 A The first one was Damian Taylor.

4 Q And where was it that you arrested him?

5 A Sir?

6 Q I'll hand you the laser pointer.

7 A Okay. When I responded, I initially parked my
8 patrol vehicle on Whitehorse Road extension. I got
9 out of my vehicle, directly to the perimeter,
10 somewhere around this area right here, at which
11 point I heard a deputy screaming at the subject. I
12 then observed Mr. Taylor went across Whitehorse Road
13 extension towards the wood line across the street.
14 I then gave chase, along with several other
15 deputies.

16 Once in the wood line here, at one point Mr.
17 Taylor actually stooped down. We lost sight of him
18 shortly. Then he started running again. We
19 eventually caught up with him at a creek bed around
20 this area. He actually jumped down in the creek
21 bed. Several other deputies ran around the creek
22 bed. I jumped in behind Mr. Taylor, pursued him in
23 the creek, at which point I caught up with him and
24 was able to wrestle him to the ground in the creek
25 bed, and shortly after able to get handcuffs on him

1 and apprehend him.

2 Q And then what did you do with him?

3 A At that point some other deputies assisted him
4 and myself to actually get back out of the wood line
5 to a waiting patrol car on Whitehorse Road
6 extension.

7 Q Then after that did you help Officer Rob Smith
8 with the dog?

9 A Yes, sir, after I cleared the wood line right
10 here, I was actually told by a supervisor to meet
11 with Deputy Smith around the area where the car was
12 in reference to assisting him with a trail with the
13 canine.

14 Q And you collected these items of evidence as we
15 just -- that have been put into evidence as State's
16 Exhibit No. 16?

17 A Yes, sir.

18 Q And what items were they?

19 A One was -- it was a shoe, a white T-shirt, and
20 a New York Yankees baseball cap.

21 MR. MOYER: I have nothing further for this
22 witness.

23 MR. FARNSWORTH: No questions.

24 THE COURT: You can step down.

25 THE WITNESS: Yes, sir.

1 MR. MOYER: Call Damian Taylor.

2 DAMIAN TAYLOR, having been first duly sworn,
3 testified as follows:

4 THE CLERK: Please state your name for the
5 record.

6 THE WITNESS: Damian Dominique Taylor.

7 DIRECT EXAMINATION BY MR. MOYER:

8 Q Mr. Taylor, make sure that you speak into that
9 microphone so everybody can hear you.

10 A Yes.

11 Q Now, how old are you, sir?

12 A 24 years old.

13 Q Say again.

14 A 24 years old.

15 Q That sounds better.

16 You grew up here in Greenville?

17 A Yes, sir.

18 Q And your parents -- you still have family here
19 in the Greenville area?

20 A Yes, sir.

21 Q Your mom and dad live here?

22 A Yes, sir.

23 Q All right. In fact, you went to work for your
24 dad before you got looked up, right?

25 A Yes, sir.

- 1 Q What line of -- what did you do with him?
- 2 A Janitorial, cleaning offices.
- 3 Q He has a service for that?
- 4 A Yes.
- 5 Q How far did you go in school?
- 6 A 11th grade.
- 7 Q Where did you go to school?
- 8 A Southside High School.
- 9 Q And have you furthered your education since?
- 10 A GED, sir.
- 11 Q You got your GED?
- 12 A Yes, sir.
- 13 Q Now, you are serving time right now at the
- 14 Department of Corrections, isn't that right?
- 15 A (shaking head yes)
- 16 Q That's for three armed robbery convictions?
- 17 A Yes, sir.
- 18 Q That was for the two that we -- the two in this
- 19 case?
- 20 A Yes, sir.
- 21 Q The La Quinta Inn and the Hampton Inn and one
- 22 other one?
- 23 A Yes, sir.
- 24 Q And also for conspiracy with each of those?
- 25 A Yes, sir.

1 Q And you also were arrested for failure to stop?

2 A Yes, sir.

3 Q I mean convicted of failure to stop associated
4 with this incident?

5 A Yes, sir.

6 Q And in addition to that you have some other
7 convictions too, right?

8 A Yes, sir.

9 Q You have three counts of resisting arrest with
10 assault from an incident a few years ago and also
11 another failure to stop?

12 A Yes, sir.

13 Q All right. Now, let me ask you, did you -- you
14 also, in addition to that, you have a pending
15 attempted armed robbery charge, don't you?

16 A Yes, sir.

17 Q And you have been offered -- you had some --
18 you and your attorney have discussed your offers and
19 have been a deal, hasn't there?

20 A Yes, sir.

21 Q And that's in exchange for your cooperation in
22 this case that you would not receive any additional
23 time added to the sentence that you are serving now --

24 A Yes, sir.

25 Q -- for your cooperation. Is that what you

1 understand the deal to be?

2 A Yes, sir.

3 Q All right. Let me ask you about some people
4 involved in this case. Do you know Melvin Warren?

5 A Yes, sir, I do.

6 Q About how long have you known him?

7 A About two years.

8 Q Did you know him by any nickname?

9 A Duke.

10 Q Do you know this defendant seated over here,
11 Jonathan Hill?

12 A Yes, sir.

13 Q How long had you known him prior to these
14 robberies last year?

15 A Maybe three months.

16 Q Did you know him by a nickname?

17 A Yes, sir.

18 Q What was that?

19 A T.C..

20 Q And where were you living at this time last
21 year?

22 A I was staying with my mother, but I was
23 actually living in Fleetwood Manor.

24 Q Is that where you got to meet these guys?

25 A Yes, sir.

1 Q Let me take you back to January 31st of 2002.
2 Were you a participant in those robberies that
3 night?

4 A Yes, sir.

5 Q And who was involved in those with you?

6 A T.C. and Duke.

7 Q T.C., being this defendant Jonathan Hill?

8 A Yes, sir.

9 Q Now, did y'all have a vehicle?

10 A Yes, sir.

11 Q What kind of vehicle did you have?

12 A Ford Escort.

13 Q All right. Where did you -- who got this
14 vehicle?

15 A I did, sir.

16 Q And was it yours?

17 A No, sir.

18 Q You borrowed it from somebody?

19 A Yes, sir.

20 Q A friend of yours?

21 A Yes, sir.

22 Q Would you recognize that vehicle if you saw a
23 picture of it?

24 A Yes, sir.

25 Q I'll show you State's Exhibit No. 7. Is that a

1 picture of the car that you were driving that night?

2 A Yes, sir.

3 Q All right. I'll show you one other picture to
4 be sure, from another angle. Is that the car that
5 you were driving that night?

6 A Yes, sir, that same car.

7 Q Who drove the car?

8 A I did, sir.

9 Q Did you drive it the entire evening?

10 A Yes, sir.

11 Q And where did y'all leave from?

12 A Fleetwood Manor, sir.

13 Q And what was your intention when you left out
14 that night from Fleetwood?

15 A Intention was going to a drug area and stealing
16 off a drug dealer, sir.

17 Q Now, did y'all discuss this amongst yourselves?

18 A No. Me and Duke did, and later discussed it
19 with T.C..

20 Q So he knew what y'all were doing?

21 A (shaking head yes)

22 Q Was he in agreement with participation --

23 THE COURT: You have to answer out loud, sir.

24 A Yes, sir.

25 BY MR. MOYER:

1 Q He was in agreement with participating with
2 this?

3 A Yes, sir.

4 Q Well, did y'all go to a drug area?

5 A Yes, sir.

6 Q Did you find anyone?

7 A No, sir.

8 Q All right. Now, did y'all have -- was there
9 any weapons with you?

10 A Yes, sir.

11 Q What kind?

12 A A handgun. I really don't remember what kind.

13 Q And do you know where that came from?

14 A Yes, sir. I had it.

15 Q And did you have it the whole night?

16 A No, sir.

17 Q What did you do with it?

18 A I gave it to one of the two. I really don't
19 remember which one.

20 Q Now, do you know which of the other two -- the
21 other two being Melvin and Jonathan?

22 A Yes, sir.

23 Q Do you know which one of them had the handgun
24 the rest of the evening?

25 A No, sir.

1 Q Did you ever see it again that night after you
2 gave it to them?

3 A No, sir.

4 Q All right. Well, after finding no one at these
5 drug areas, where did y'all go?

6 A We proceeded to a motel, the La Quinta Inn.

7 Q What was the reason for going over to the La
8 Quinta Inn?

9 A To -- to rob the place, get some money.

10 Q And were all three of you in -- all three of
11 you aware of that?

12 A Yes, sir.

13 Q Did all three talk about it?

14 A No, sir, not -- not actually discussed it, but
15 it was understood by each one of us what was going
16 to go on.

17 Q All right. Well, again, you were driving?

18 A Yes, sir.

19 Q And where did you park the vehicle at the La
20 Quinta Inn?

21 A It was -- it was in a parking lot. I would say
22 on the side of the hotel. It was a restaurant or
23 something. I really don't remember in between.
24 Maybe a Waffle House or something.

25 Q Okay.

1 A And it was in between there and the hotel.

2 Q And who did the robbery? Who went in to do the
3 robbery?

4 A Melvin and T.C. got out of the car. I stayed
5 in the car, sir. That's all I know, as far as that.

6 Q Now, as far as -- I think it's been clear to
7 you, but just to make it absolutely clear, this
8 person that you are referring to as T.C. --

9 A Yes.

10 Q -- during your conversation, is that this
11 defendant Jonathan Hill?

12 A Yes, sir.

13 Q Did they have anything to conceal their faces?

14 A Yes, sir, a ski mask.

15 Q Do you remember what color they were?

16 A Black.

17 Q Do you where they came from?

18 A No, sir.

19 Q Do you recall if they had anything for their
20 hands?

21 A Yes, sir, I think -- I think they had gloves.

22 Q Now, when they went in, how long were they
23 gone?

24 A I would say maybe three or four minutes.

25 Q And when they came back to the car, where did

1 y'all go?

2 A We rode around for awhile and then we went to
3 Simpsonville and went to a hotel in Simpsonville.

4 Q Did you go to any -- you said that you were
5 riding around?

6 A Yes, sir.

7 Q Did you stop anyplace?

8 A Yes, sir, we went to the Haywood Mall, sir.

9 Q Did you ever get any money from that robbery?

10 A No, sir.

11 Q Were you supposed to?

12 A Yes, sir.

13 Q Well, what was the plan? You were going to
14 split it up later?

15 A Yes, sir.

16 Q How long did you stay at the mall?

17 A I guess I would say maybe 30 minutes, 45
18 minutes.

19 Q Did you buy anything?

20 A No, sir.

21 Q Did you see either one of -- either Melvin
22 Warren or Jonathan Hill with anything from the
23 robbery there?

24 A No, sir. Melvin had -- I think what it was --
25 be a credit card, but that's why we went to the

1 mall. He was attempting to buy stuff out of the
2 store, a couple of stores in the mall, but never got
3 anything.

4 Q So he was never -- he wasn't successful in
5 getting anything there?

6 A No, sir.

7 Q What did you do after the mall?

8 A We left the mall and that's when we went to
9 Simpsonville.

10 Q Where did you go in Simpsonville?

11 A We went to the Hampton Inn, sir.

12 Q And what was the reason for going to Hampton
13 Inn?

14 A To rob the place and get some money.

15 Q How did you come upon that Hampton Inn? I
16 mean, was that -- was that -- did you have that
17 particular place in mind when you went down there?

18 A No, sir, actually just when we went to
19 Simpsonville, ran into it, actually saw the motel,
20 so we just went to the first one we saw. That was
21 how we came up on that.

22 Q All right. Did you -- were you still driving
23 then?

24 A Yes, sir.

25 Q And where did you park your car?

1 A It was -- I guess it would be another
2 restaurant or something and a wooden fence
3 separating that from the hotel, and I parked on the
4 opposite side of the wooden fence.

5 Q And who went in?

6 A Melvin and T.C..

7 Q Did they have masks again?

8 A Yes, sir.

9 Q How long were they gone?

10 A Maybe three or four minutes, five minutes.

11 Q All right. When they got back, where did y'all
12 go?

13 A We left and we got on the highway going back
14 towards Mauldin to go to Greenville and got -- a
15 police did a U-turn.

16 Q And when the police officer did a U-turn, what --
17 did you stop right away?

18 A No, sir.

19 Q Where did you go?

20 A Through a red light. And right as I got
21 through the red light, he hit the blue lights, so I
22 was going to a shopping center and I stopped. Then
23 after I stopped, I seen another officer coming, so I
24 tried to get away in the car. The car ran off the
25 road. We all jumped out of the car.

1 Q You ended up running off the road?

2 A Yes, sir.

3 Q So you ran from the police then?

4 A Yes, sir.

5 Q Well, where was -- are you familiar with that
6 area where you ran through?

7 A Yes, sir.

8 Q Had you ever been in those woods in there
9 before?

10 A No, sir.

11 Q All right. Well, when you -- how many of y'all
12 ran into the woods?

13 A All of us. Three.

14 Q Did y'all stay together in there or did you
15 split up?

16 A Split up, sir.

17 Q All right. What did you do regarding your
18 clothes?

19 Let me ask you this. What kind of shirt did
20 you on?

21 A I had on a white T-shirt.

22 Q Did you leave it on?

23 A No, sir, I took mine off.

24 Q The obvious reason?

25 A Yes, sir.

1 Q Easier to see?

2 A Yes, sir.

3 Q Did you get caught pretty quickly?

4 A No, sir, not quickly, but I did get caught
5 maybe two hours later.

6 Q It seemed like two hours to you, did it?

7 A No.

8 Q Where did you get caught?

9 A Across the road in another -- another set of
10 woods. I tried to run across the road.

11 Q Do you remember what road that you ran across?

12 A I think it's Whitehorse extension.

13 Q And you got caught -- you jumped -- how did you
14 get caught?

15 A I thought it was a ditch. It was actually a
16 creek and I tried to jump across and fell in the
17 creek.

18 Q While you were in the woods, did you ever see
19 the other two, Melvin Warren or --

20 A No, sir.

21 Q When you got caught, were any of the other two
22 caught?

23 A Yes, sir, I was caught, and then I guess maybe
24 15 minutes later Melvin was caught, and I guess
25 about 40 minutes after that they caught T.C..

1 Q So you were still out there when everybody was
2 getting caught?

3 A Yeah, I was in the police car.

4 Q All right. If you would answer any questions
5 that the defense may have.

6 MR. FARNSWORTH: If it please the court.

7 THE COURT: Yes, sir.

8 MR. FARNSWORTH: Just one second, Your Honor.

9 (off the record)

10 (Back on the record)

11 CROSS EXAMINATION BY MR. FARNSWORTH:

12 Q Mr. Taylor, in addition to the three armed
13 robberies, the two conspiracies, one resisting
14 arrest and a failure to stop, you also have some
15 more record other than that, don't you?

16 A Yes, sir.

17 Q In fact, you have another failure to stop that
18 you were convicted of, is that correct?

19 A Yes, sir.

20 Q And, sir, you also have three counts of
21 assaulting police officers while resisting arrest,
22 isn't that true?

23 A Yes, sir.

24 Q And you pled guilty to those charges?

25 A Yes, sir.

1 Q And that was back in -- that was sometime --
2 that happened prior to these cases that you are here
3 about today?

4 A Yes, sir, it happened --

5 Q A couple years before?

6 A Yes, sir.

7 Q Now, your agreement with the State is that if
8 you cooperate and testify truthfully, that the other
9 attempted armed robbery charge that you have against
10 you, that you won't get any more additional time, is
11 that correct?

12 A Yes, sir.

13 Q Do you know how much more time that you could
14 get on that?

15 A No, sir. I know the charge carries zero to 20.

16 Q And you are already doing 15?

17 A Yes, sir.

18 Q But don't you also know that if you don't
19 cooperate and testify truthfully, that you can get a
20 sentence consecutive to the sentence that you are
21 getting? So you are looking at a lot more time if
22 you don't tell the truth here today, aren't you?

23 A Yes.

24 Q So you are looking at 15, as much as, I
25 believe, 30 more, isn't that correct?

1 A (no response)

2 Q I'm not -- you don't need to ask the solicitor.
3 You look at me.

4 A Oh, I'm not looking at the -- the charge
5 carries zero to 20, sir.

6 Q Are you sure the charge carries zero to 20?

7 A Yes, sir. I have been to the law library
8 plenty of times.

9 Q Are you sure it doesn't carry zero to 30?

10 A No, sir.

11 Q But you say it carries 20, right?

12 A Yes, sir.

13 Q In any event, you can get 20 more years, and
14 that wouldn't even start until you have done your
15 15, do you understand that?

16 A Yes, sir.

17 Q That's a lot of time, isn't it?

18 A Yes, sir.

19 Q Let me bring your attention first to this
20 robbery at the La Quinta Inn. You just testified
21 that you went, and I believe the three of you -- and
22 you had only known my client for a couple of months,
23 is that correct?

24 A Yes, sir.

25 Q How long had you known Melvin Warren?

- 1 A Around two years, sir.
- 2 Q And, in fact, it was you and Melvin Warren that
3 did this third robbery that you pled guilty to
4 before this night in question, wasn't it?
- 5 A Yes, sir.
- 6 Q And you also had an attempted armed robbery
7 with Melvin, didn't you?
- 8 A Yes, sir.
- 9 Q And so actually this night in question you and
10 Melvin had talked about doing some more robberies,
11 right?
- 12 A Yes, sir.
- 13 Q In fact, you hadn't talked to him about doing
14 any robberies, had you?
- 15 A Yes, sir, when we got in the car we did, sir.
- 16 Q Well, let me -- when you got in the car, you
17 told him that you were going to do some robberies?
- 18 A Yes, sir.
- 19 Q Let me ask you a question. Did you give a --
20 did you give a statement to the police, to Officer
21 Jeff Thompson, on February the 4th of that year?
- 22 A Yes, sir.
- 23 Q And in that statement you told -- everything
24 that you told was the truth, is that correct?
- 25 A (shaking head yes)

1 Q Is that correct?

2 A Yes, sir.

3 Q I'm going to give you a copy of this statement.
4 Is that the statement that you gave with your
5 signature down at the bottom there?

6 A Yes, sir.

7 Q And isn't it true in your statement that you
8 told the police that "Duke and I needed some money
9 and made plans to go down to Simpsonville to either
10 the Microtel or one of them other motels and that we
11 had asked T.C. to come along, but at first we did
12 not tell T.C. what we were doing. He just thought
13 we were riding around."

14 A Yes, sir.

15 Q Isn't that what you told the police?

16 A Yes, sir.

17 Q Well, I thought a minute ago you said that you
18 told him then right when he got in the car?

19 A Yes, sir, that's correct. We told him when we
20 got in the car when we went to go pick him up is
21 when we told him. We never told him before while we
22 was going to pick him up until we actually picked
23 him up.

24 Q Okay. So when he got in that car, according to
25 your statement, you told the police that he thought

1 that you were just going to ride around. Isn't that
2 what you said in your statement?

3 A Yes, sir, until we discussed --

4 Q It's in your statement, right?

5 A Yes, sir. Yes, sir.

6 Q So he didn't know anything about the robberies
7 that you were going to do, did he?

8 A After we got in the car we discussed it, sir.

9 Q After you got in the car?

10 A Yes, sir.

11 Q All right. Now, as to the La Quinta Inn, and I
12 think that happened about 7:50 p.m. that night, is
13 that correct?

14 A I really don't know what time, sir.

15 Q Well, it was earlier in the night, wasn't it?

16 A Yes, sir.

17 Q And I believe that you said -- you testified a
18 minute ago that you stayed in the car and that
19 Melvin and Jonathan went in, is that correct?

20 A Yes, sir.

21 Q And you are absolutely sure about that, that
22 you didn't go in and that Jonathan stayed in the
23 car?

24 A Yes, sir, positive.

25 Q You are absolutely positive?

- 1 A Yes.
- 2 Q Do you remember what you had on that night --
- 3 A Yes, sir.
- 4 Q -- during these robberies?
- 5 A Yes, sir.
- 6 Q What is that?
- 7 A A white T-shirt.
- 8 Q You had on a white T-shirt?
- 9 A Yes.
- 10 Q You never had on a dark blue or black T-shirt?
- 11 A I had a white T-shirt on. And earlier that day
- 12 I had a football jersey on over my white T-shirt.
- 13 Q What color was that?
- 14 A White and blue.
- 15 Q So you are saying that you never had on a dark
- 16 blue or black shirt anytime during either one of
- 17 these robberies?
- 18 A No, sir.
- 19 Q And not when you were in the car being chased
- 20 by the police?
- 21 A No, sir.
- 22 Q Okay. You are sure about that?
- 23 A Yes, sir.
- 24 Q All right. Now, after the La Quinta Inn
- 25 robbery, I think you said that you went to the --

1 y'all went to the Haywood Mall, is that correct?

2 A Yes, sir.

3 Q And while you were there, Melvin had some
4 credit cards that he had taken from the clerk at the
5 La Quinta Inn, didn't he?

6 A Yes, sir.

7 Q And, in fact, he tried to use at least one of
8 those credit cards to buy some clothing and some
9 jewelry at different places, didn't he?

10 A Yes, sir.

11 Q And the card wouldn't go through, would it?

12 A No, sir.

13 Q All right. You left there, and what did you
14 do? Did you ride around some more before you went
15 to the Hampton Inn?

16 A Yes, sir.

17 Q And you went to -- you went straight to the
18 Hampton Inn from the mall?

19 A We rode around for awhile. Then we -- there
20 was -- the next destination we went to Simpsonville
21 to the Hampton Inn, sir.

22 Q And at the Hampton Inn you testified that you
23 again stayed in the car, is that right?

24 A Yes, sir.

25 Q And you said that Jonathan and Melvin Warren

1 went in, is that correct?

2 A Yes, sir.

3 Q All right. And how long was it before you left
4 there?

5 A After they got out of the car and went into the
6 hotel, maybe three or four minutes, five minutes at
7 the most they came back to the car and we left.

8 Q And then later on you were chased, is that
9 right?

10 A Yes, sir.

11 Q And you are absolutely sure that you didn't go
12 in either one of these motels?

13 A Positive, sir.

14 Q But you knew what they were going to do?

15 A Yes, sir.

16 MR. FARNSWORTH: That's all I have.

17 MR. MOYER: Nothing further from this witness.

18 THE COURT: Thank you. You may step down.

19 MR. MOYER: Lieutenant Bobo.

20 OFFICER RALPH BOBO, having been first duly
21 sworn, testified as follows:

22 THE CLERK: Please state your name for the
23 record.

24 THE WITNESS: Ralph Bobo.

25

1 DIRECT EXAMINATION BY MR. MOYER:

2 Q And where do you work, sir?

3 A The Simpsonville police department.

4 Q How long have you been in the law enforcement?

5 A 17 years.

6 Q And has it all been with Simpsonville?

7 A No, sir.

8 Q Where else have you been in law enforcement?

9 A I was a jailer with the sheriff's department in
10 Laurens. I then went to work for the Woodruff
11 police department. Then I went back to the Laurens
12 County sheriff's department, where I served as a
13 road supervisor. And then for the past 10 years I
14 have been with the Simpsonville police department.

15 Q And how long have you been lieutenant there at
16 Simpsonville?

17 A For the past three years.

18 Q What are your responsibilities?

19 A I am the supervisor of the Community Support
20 Services Division, which encompasses investigation
21 division, school resource officers, community
22 patrol, animal patrol and victim's advocate.

23 Q Now, did you go out into the location of this
24 area we have been talking about on this State's
25 Exhibit No. 12 behind you?

1 A Yes, sir, I did.

2 Q February 1st, 2002.

3 By the time that you got out there, was one of
4 these suspects arrested?

5 A Yes, sir.

6 Q And who was -- who would have been arrested at
7 that point?

8 A Mr. Taylor and Mr. Warren were in custody when
9 I arrived.

10 Q Did you stay throughout the pendency of that
11 search until the third person was arrested?

12 A Yes, sir, I did.

13 Q And who was that third person who was arrested?

14 A The defendant, Mr. Hill.

15 Q And did he give you a different name that
16 night?

17 A Yes, sir, he gave the name of Jonathan Green.
18 Well, first he just said Jonathan, and then later
19 Jonathan Green.

20 Q Now, did you take a look at the vehicle?

21 A Yes, sir.

22 Q This Ford Escort that we have been talking
23 about?

24 A Yes, sir.

25 Q Was there a deputy standing over it when you

1 went over to the vehicle?

2 A Yes, sir, there were.

3 Q Did you have a camera with you?

4 A Yes, sir.

5 Q Did you take some photographs?

6 A I did.

7 Q If fact, a couple of these photographs we've
8 been using today and you actually took yourself?

9 A Yes, sir, most of them.

10 Q Let me hand you --

11 Before you took those photographs, did you
12 disturb or go through the car in any way?

13 A I never touched the car, sir, or searched
14 anything of the car because it was going to be part
15 of a search warrant for later usage.

16 Q So when you took the photographs, you did not
17 move anything or change anything from the way it
18 was?

19 A No, sir, I did not.

20 Q Did you notice the doors being open? Were they
21 open when you saw it?

22 A Yes, sir, I left it the same way.

23 (Photograph marked as State's Exhibit No. 17
24 for identification)

25 BY MR. MOYER:

1 Q Let me hand you State's Exhibit No. 17. Do you
2 recognize what is depicted in that photograph?

3 A Yes, sir, I do.

4 Q And what is depicted in that photograph?

5 A A white shirt with a dark color coat being
6 under it inside the vehicle.

7 Q Inside the vehicle, are you talking about the
8 Ford Escort?

9 A Yes, sir.

10 Q And does that accurately depict the way those
11 items looked that night?

12 A Yes, sir.

13 Q And what part of the vehicle is being shown in
14 that photograph?

15 A That's the right driver's side rear door, sir.

16 Q And it was open?

17 A Yes, sir.

18 Q So did you take the photograph into the open
19 door there then?

20 A Yes, sir.

21 MR. FARNSWORTH: Without objection.

22 MR. MOYER: The State would move to have
23 State's Exhibit No. 17 moved into evidence.

24 THE COURT: It's admitted.

25 BY MR. MOYER:

1 Q For the benefit of the jury would you just take
2 a look at the overhead up here? And, once again,
3 tell the jury what is shown here on State's Exhibit
4 No. 17.

5 A That's the driver's side rear door. You see a
6 black coat like.

7 Q Let me hand this laser pointer, that button
8 right there.

9 A All right sir. A black coat there and a white
10 type shirt over the top of it in the rear seat.

11 Q All right. Were you made aware of any property
12 that had been found on Melvin Warren or on the other
13 suspects?

14 A Yes, sir, Deputy Hal Harris had Mr. Warren in
15 the back of his patrol car. I met with Hal. He did
16 produce some identification on the suspect he had in
17 the car, as well as the billfold from the night
18 clerk at the Hampton Inn.

19 Q You are saying my clerk, because it's your
20 jurisdiction?

21 A Yes, sir.

22 Q Your case?

23 A Yes, sir.

24 Q Did you, in fact, take photographs of those
25 items?

- 1 A Yes, sir, I did.
- 2 Q On Deputy Harris' car?
- 3 A Yes.
- 4 Q You were here yesterday when we showed those
- 5 photographs to Deputy Harris?
- 6 A Yes.
- 7 Q Did you actually collect any of that property?
- 8 A Yes, sir, we collected it from Deputy Harris
- 9 that night.
- 10 Q Did you collect the ski masks?
- 11 A Yes.
- 12 Q What did you end up doing with that ski mask?
- 13 A It's in that box behind you.
- 14 Q Well, where did you take it after you --
- 15 A We put it in evidence at the Simpsonville
- 16 police department, sir.
- 17 Q Was it kept there until the pendency of this
- 18 case today here?
- 19 A Yes, sir.
- 20 Q Did you bring it here to court today?
- 21 A Yes.
- 22 (Stocking Cap marked as State's Exhibit No. 18
- 23 for identification)
- 24 BY MR. MOYER:
- 25 Q Let me hand you State's Exhibit No. 18. Can

1 you identify what that is?

2 A It's the ski mask I took a picture of that
3 night on Deputy Harris' car.

4 MR. MOYER: Your Honor, I would move State's
5 Exhibit No. 18 be moved into evidence.

6 MR. FARNSWORTH: No objection.

7 THE COURT: It's admitted.

8 BY MR. MOYER:

9 Q I think you held it up. Just hold it again so
10 the jury can take a look at it.

11 What color is that ski mask?

12 A Black.

13 Q How many holes are in it?

14 A It's got two holes for eyes, one for a mouth, I
15 guess.

16 Q Did you also take possession of the wallet --

17 A Yes, sir.

18 Q -- belonging to Mr. Borei?

19 A Yes, sir, I did.

20 Q And what ended up happening to that wallet?

21 A We returned it to Mr. Borei that morning.

22 What happened sometimes when people have been a
23 victim of a crime, they have their identity stolen
24 and have to go back and get new identity made and
25 new credit cards, that type of thing. And we

1 decided we would go ahead and take pictures of it
2 now and return it to save him that trouble.

3 Q But the wallet that you returned to him is the
4 wallet and identification that's shown in those
5 pictures?

6 A Yes, sir, it is.

7 Q All right. Please answer any questions that
8 the defense may have.

9 CROSS EXAMINATION BY MR. FARNSWORTH:

10 Q Sir, this ski mask was the mask that was taken
11 from Melvin Warren, is that correct?

12 A Yes, sir.

13 Q In fact, officer, I believe there was another
14 item that was identified as some kind of hat. Let
15 us look at State's Exhibit No. 13 and ask you what
16 would that be right there? Was that not identified
17 also as a mask or a hat of some?

18 A That was a glove, sir.

19 Q Is that a glove?

20 A I think so, sir.

21 Q And the wallet that you testified to was also
22 taken from Melvin Warren?

23 A Yes, sir, that's correct.

24 MR. FARNSWORTH: That's all I have.

25 THE COURT: Thank you.

1 MR. MOYER: Actually, Your Honor, I just have a
2 couple of questions in redirect.

3 THE COURT: All right.

4 REDIRECT EXAMINATION BY MR. MOYER:

5 Q Now, the item that was just pointed out to you
6 by the defense attorney you said you believed is a
7 glove. Are you sure of that?

8 A I would to go back through the inventory list
9 to look at that again. I don't have that with me
10 right now.

11 Q But the only items that you took were the items
12 that Deputy Hal Harris gave you?

13 A Yes, sir.

14 Q You said the item that he would have said he
15 collected would be the items that he gave you?

16 A That's correct.

17 MR. MOYER: I have nothing further.

18 MR. FARNSWORTH: Nothing.

19 THE COURT: Thank you.

20 MR. MOYER: The State would call Bobby
21 Alexander.

22 OFFICER BOBBY ALEXANDER, having been first duly
23 sworn, testified as follows:

24 THE CLERK: Please state your name for the
25 record.

1 THE WITNESS: Bobby Alexander.

2 DIRECT EXAMINATION BY MR. MOYER:

3 Q You work for the Greenville County sheriff's
4 office?

5 A I do.

6 Q How long have you worked for the sheriff's
7 office?

8 A I have been with Greenville County for 26
9 years.

10 Q And what do you do with the county?

11 A I work in our criminal investigation divisions,
12 currently assigned to our violent crimes unit in the
13 CID.

14 Q And you were detective last year?

15 A I was.

16 Q This time, January 31st, 2002?

17 A That's correct.

18 Q Did you have occasion to seize any evidence in
19 this case?

20 A Yes, sir, I did.

21 Q And where did that take place?

22 A That took place at Kellett's Wrecker Service in
23 Mauldin, in a storage garage.

24 Q You had the search warrant with you?

25 A That is correct.

1 Q What was that for?

2 A For the search of a white Ford Escort.

3 Q And did you find that vehicle there?

4 A Yes, sir, I did. It was inside of a storage
5 area at Kellett's Wrecker Service in Mauldin.

6 Q Did you, in fact, have an ID officer with you
7 to take photographs?

8 A That is correct, sir.

9 Q And did you verify that it was the same vehicle
10 that had been taken into possession by the county a
11 couple nights before?

12 A Yes, sir, I did.

13 (Photograph marked as State's Exhibit No. 19
14 for identification)

15 BY MR. MOYER:

16 Q Let me hand you State's Exhibit No. 19. Do you
17 recognize what is depicted in that photograph?

18 A Yes, sir, that is the vehicle that was at
19 Kellett's Wrecker Service in Mauldin, in the storage
20 garage.

21 Q Okay.

22 A And the one I served a search warrant on.

23 Q And does it accurately represent the way the
24 vehicle looked that day there at Kellett's garage?

25 A Yes, sir, it does.

1 Q And once again -- I think I asked you, but what
2 was the date that you went over there?

3 A Sir, without -- I think it was either the 5th
4 or the 7th of February.

5 Q Would it -- did you take some notes?

6 A Yes, sir, I did a supplement that I would have
7 given back to the case or assigned to the case.

8 Q Did you mark the date on that?

9 A The inventory sheet and so forth, yes, sir.

10 Q Would it refresh your memory if you had a
11 chance to look back at the report?

12 A Yes, sir.

13 Q Is that your report that I just handed you?

14 A Yes, sir, it is. This is a supplement that I
15 completed. It has my initials and name at the
16 bottom. And, as indicated, I served the search
17 warrant on February the 7th of 2002, at 602 North
18 Main Street in Mauldin.

19 Q And what day of the week was that? Does it
20 say?

21 A It was a Thursday.

22 Q Did you seize any property from that vehicle?

23 A Yes, sir, I did.

24 Q What did you take?

25 A There was several items in the back seat of the

1 car. There was a black leather coat. A light
2 colored gray fleece sweat shirt. A football jersey
3 with the numbers on it, and a black ski mask -- or a
4 dark colored ski mask.

5 Q And where were they in the car?

6 A They were in the back seat of the Ford Escort.

7 Q What did you do with those items after you
8 seized them?

9 A They were photographed by the forensics officer
10 and then taken directly by me to our property and
11 evidence for storage.

12 (Photograph marked as State's Exhibit No. 20
13 for identification)

14 (Photograph marked as State's Exhibit NO. 21
15 for identification)

16 BY MR. MOYER:

17 Q Let me show you State's Exhibit No. 20. Do you
18 recognize was is in that photograph?

19 A Yes, sir, that is a black hooded jacket held by
20 myself and photographed by the forensics officer.

21 Q And that was found where?

22 A In the back seat of the Ford Escort.

23 Q And that accurately depicts the way it appeared
24 to you on February the 7th, 2002?

25 A That is correct, sir.

1 Q And let me hand you State's Exhibit No. 21. Do
2 you recognize what is depicted in that photograph?

3 A Yes, sir, this is a dark colored ski mask also
4 being held by me and photographed by the forensics
5 officer.

6 Q And that was located where?

7 A In the back seat of the Ford Escort.

8 Q And does that accurately represent the way it
9 appeared on February the 7th, 2002?

10 A That is correct, sir.

11 MR. MOYER: At this time, Your Honor, I move to
12 have State's Exhibit No. 19, 20 and 21 introduced
13 into evidence.

14 MR. FARNSWORTH: No objection.

15 THE COURT: They are admitted.

16 BY MR. MOYER:

17 Q Let's start with Exhibit No. 19.

18 Detective, would you indicate to the jury what
19 is depicted in State's Exhibit No. 19?

20 A That is a white Ford Escort that was at
21 Kellett's Wrecker Service in Mauldin inside of a
22 storage area.

23 Q Is that the vehicle that you searched?

24 A It is, yes, sir.

25 Q And the vehicle that you seized these items

1 from?

2 A That's correct, sir.

3 Q Let me show you State's Exhibit No. 20, and
4 please tell the jury what is depicted in that
5 photograph.

6 A That is a black hooded leather jacket being
7 held by me and photographed by the forensics
8 officer.

9 Q And that was found again where?

10 A In the back seat of the Ford Escort, sir.

11 Q And, finally, State's Exhibit No. 21?

12 A That is a black hooded ski mask or a dark
13 colored hooded ski mask that was being held by me
14 and photographed by the forensics officer.

15 Q Thank you. In addition to photographing those
16 items, did you take them into your custody?

17 A I did, sir.

18 Q And what did you do with them?

19 A They were transported by me to the Greenville
20 County sheriff's office in our property and evidence
21 section.

22 Q And that's a secure area there?

23 A It is, yes, sir.

24 Q Where evidence is saved?

25 A Yes, sir, it is. It's in a locked area

1 controlled by the sheriff's office.

2 Q Can just anybody walk up and get property out
3 of the property and evidence room?

4 A No, sir, they cannot. It has to be signed in
5 and out. It's placed in our storage and you do have
6 to sign it in and out.

7 Q And do you put it in under a case number?

8 A Yes, sir, I did.

9 Q Is every single case that y'all handle given a
10 separate and distinct case number?

11 A Yes, sir, every case that we work is assigned
12 an individual case number for the identification of
13 that case, the type case, and that identifies that
14 case and that case alone.

15 Q Now, did you bring those items with you here to
16 court today?

17 A I did, sir. This were signed out by me and
18 transported by me to the court.

19 Q Signed out from property and evidence?

20 A Property and evidence, that's correct, sir.

21 (Leather Jacket marked as State's Exhibit No.
22 22 for identification)

23 BY MR. MOYER:

24 Q Let me hand you State's Exhibit No. 22. Do you
25 recognize what I have just handed you?

1 A Yes, sir, this is the black leather hooded
2 jacket that I found in the back seat of the Ford
3 Escort, sir.

4 MR. MOYER: Your Honor, I move to have State's
5 Exhibit No. 22 into evidence.

6 MR. FARNSWORTH: No objection.

7 THE COURT: It's admitted.

8 (Stocking Cap marked as State's Exhibit No. 23
9 for identification)

10 BY MR. MOYER:

11 Q Let me hand you State's Exhibit No. 23. Do you
12 recognize what I just handed you?

13 A Yes, sir, this is the black ski mask that was
14 located in the back seat of the Ford Escort.

15 Q And that's what you brought here to court
16 today?

17 A That's correct, sir.

18 MR. MOYER: Your Honor, I would move to have
19 State's Exhibit No. 23 admitted into evidence.

20 MR. FARNSWORTH: No objection.

21 THE COURT: It's admitted.

22 BY MR. MOYER:

23 Q Please answer any questions that the defense
24 has.

25

1 CROSS EXAMINATION BY MR. FARNSWORTH:

2 Q Officer, I believe some other items had been
3 taken out of the car at the scene, is that correct?

4 A That I do not know, sir. I did not respond to
5 the scene.

6 Q Now, this is the mask that you just identified
7 as having been taken out of the back seat?

8 A That is correct, sir.

9 Q And this is State's Exhibit No. 21 is a
10 photograph of it, is that correct?

11 A That is correct, sir.

12 Q And does that not appear gray to you rather
13 than black?

14 A In the lighting it does appear gray, yes, sir.

15 Q Well, I mean, there is no question about that's
16 gray, is that not correct?

17 A The light, just like the wallet, appeared red
18 in the other photograph. The lighting makes that
19 appear gray.

20 Q Isn't this color here and this color this man,
21 aren't they just completely opposite?

22 A Well, you got to take into consideration the
23 forensics officer is using a flash on his camera and
24 it could change the --

25 Q So then this is not an accurate depiction of

1 what --

2 A That is the mask being held by me --

3 Q Okay.

4 A -- as it's photographed.

5 Q You are sure that of?

6 A Yes, sir.

7 Q There is no question, though, that appears to
8 be gray, doesn't it?

9 A That is the mask that I took.

10 Q That appears to be gray, is that not right?

11 A In the photograph, yes, sir.

12 Q And actually that was your involvement in the
13 case?

14 A That was all my involvement.

15 Q Thank you very much.

16 MR. MOYER: Nothing else for this witness, Your
17 Honor.

18 THE COURT: Let's take a short break.

19 (Proceedings recessed)

20 (Proceedings reconvened)

21 THE COURT: Bring them in.

22 (The following takes place in the presence of
23 the jury panel)

24 THE COURT: Mr. Moyer.

25 MR. MOYER: Thank you, Your Honor.

1 May it please the court, we call Darlene Lee.

2 DARLENE LEE, having been first duly sworn,
3 testified as follows:

4 THE CLERK: Please state your name for the
5 record.

6 THE WITNESS: Darlene Lee.

7 DIRECT EXAMINATION BY MR. MOYER:

8 Q Okay, ma'am, where are you employed?

9 A Department of Public Safety.

10 Q And is that associated with the Greenville
11 County detention center?

12 A Detention center, EMS and forensics and
13 records.

14 Q What is your position there?

15 A Administrative support specialist.

16 Q What are your duties?

17 A I do -- maintain detention records.

18 Q Did you bring any records with you today on
19 this defendant Jonathan Hill?

20 A Yes, sir.

21 Q Would you hand that to me, please?

22 (Detention Records marked as State's Exhibit
23 No. 24 for identification)

24 BY MR. MOYER:

25 Q Let me hand you State's Exhibit No. 24. Is

1 that the record that you brought?

2 A Yes, sir, it is.

3 Q Is that an exact copy of that record?

4 A Yes, sir.

5 Q What is the record?

6 A It's what they call a property sheet.

7 Q And what is the purpose? What is the property
8 sheet? What is the purpose of it?

9 A The property sheet lists the items that the
10 person comes into detention center with.

11 Q And I assume it's just to make sure that --
12 just for y'all's --

13 A To identify what property is his and what is
14 not and when he gets released he will get it.

15 Q Now, are those records made for everyone who is
16 booked into the detention center?

17 A Yes, sir.

18 Q And are those records kept in the ordinary
19 course of regularly conducted business there at the
20 detention center?

21 A Yes, they are.

22 Q Is it a regular practice for those records to
23 be made and to be preserved?

24 A Yes, sir.

25 Q And do you have an access to these records as

1 part of regular function of your job?

2 A Yes, sir, I do.

3 MR. MOYER: Your Honor, at this time I would
4 move to have State's Exhibit No. 24 moved into
5 evidence.

6 MR. FARNSWORTH: No objection.

7 THE COURT: It's admitted.

8 BY MR. MOYER:

9 Q All right. Looking at that record, when was
10 the defendant Jonathan Hill booked into the
11 detention center?

12 A The date on here is February the 1st, 2002.

13 Q What name was he booked in under?

14 A He was booked under a John Doe.

15 Q And what's the reason for that?

16 A Somebody had a question about his identity.

17 Q Now, is there a place for the inmate to sign on
18 that record?

19 A Yes, sir, there is.

20 Q And did this defendant do so?

21 A Yes, he did.

22 Q Under what name?

23 A He signed it Jonathan Green.

24 Q Now, regarding the property, did the defendant
25 come in with any cash?

1 A Yes, sir, it's also noted on the property
2 sheet.

3 Q And how much cash did he come in with?

4 A \$143.00.

5 MR. MOYER: No further questions. Thank you.

6 MR. FARNSWORTH: No questions.

7 MR. MOYER: Melvin Warren.

8 MELVIN WARREN, having been first duly sworn,
9 testified as follows:

10 THE CLERK: Please state your name for the
11 record.

12 THE WITNESS: Melvin Warren.

13 DIRECT EXAMINATION BY MR. MOYER:

14 Q Mr. Warren, if you look over here, make sure --
15 like they have been telling everybody to speak into
16 the microphone so everybody can hear you.

17 You have already stated your name. How old are
18 you?

19 A 26.

20 Q Did you grow up here in Greenville?

21 A Uh-huh.

22 Q You need to say yes or no.

23 A Yes.

24 Q How far did you go in high school?

25 A 11th grade.

1 Q Where did you go to high school?

2 A Greenville High.

3 Q Right now you are serving time at the
4 Department of Corrections, obviously, right?

5 A Right.

6 Q And you are serving time for three armed
7 robberies?

8 A Right.

9 Q These two from this particular night and one
10 other one?

11 A Right.

12 Q Is that a yes?

13 A Yes.

14 Q And you also have conspiracies associated with
15 each of the robberies?

16 A Yeah.

17 Q And in addition to that you have been convicted
18 of some other crimes as well, isn't that true?

19 A Yeah.

20 Q Receiving stolen goods?

21 A Uh-huh, yeah.

22 Q And a forgery?

23 A Yes.

24 Q Petty larceny?

25 A Yeah.

- 1 Q And a failure to return rental property?
- 2 A Yeah.
- 3 Q And also some fraudulent checks?
- 4 A Yeah.
- 5 Q Is all that true?
- 6 A That's true.
- 7 Q And you also have a pending attempted armed
- 8 robbery charge, is that true?
- 9 A Yeah.
- 10 Q And so it hasn't been disposed of, correct?
- 11 A Right.
- 12 Q Now, you also were promised any cooperation in
- 13 this case and in another case that you would not
- 14 receive any more time related to that other robbery,
- 15 isn't that true?
- 16 A That's true.
- 17 Q Now, do you know this defendant Jonathan Hill?
- 18 A Yes, I do.
- 19 Q How long a period of time did you know him?
- 20 A About two months.
- 21 Q Two months back before these robberies
- 22 happened?
- 23 A Uh-huh.
- 24 Q Did you know him by any nicknames?
- 25 A Uh-huh. Yeah.

- 1 Q What?
- 2 A T.
- 3 Q I need you to lean up just a little closer to
- 4 that microphone, if you would.
- 5 A T.
- 6 Q T?
- 7 A Yeah.
- 8 Q Did you know Damian Taylor?
- 9 A Yeah.
- 10 Q And did you know him for a longer period of
- 11 time?
- 12 A Yeah, about a year.
- 13 Q And did you know him by any nickname?
- 14 A I called him Red.
- 15 Q Where were you living at the time?
- 16 A Fleetwood.
- 17 Q Is that where you met up with these guys?
- 18 A Uh-huh, yeah.
- 19 Q Let me take you back a year ago to January 31st
- 20 of 2001.
- 21 Were you a participant in these two robberies
- 22 at the La Quinta Inn and Hampton Inn?
- 23 A Yes.
- 24 Q Who was involved in those robberies with you?
- 25 A Damian and Jonathan.

- 1 Q Damian Taylor and Jonathan Hill?
- 2 A Right.
- 3 Q And where did you meet up with them that day?
- 4 A Out at Fleetwood.
- 5 Q Whose car did y'all go out in?
- 6 A Somebody Damian knew.
- 7 Q What kind of car was it?
- 8 A A white Escort.
- 9 Q Take a look here at State's Exhibit No. 7. Is
- 10 that the car that y'all were out in that night?
- 11 A That's it.
- 12 Q Who drove that car?
- 13 A Damian.
- 14 Q Did he drive it the whole night?
- 15 A Yeah.
- 16 Q Did y'all talk about what you were going to do
- 17 before you went out that night?
- 18 A Yeah.
- 19 Q And what were y'all planning on doing when you
- 20 went out that night?
- 21 A Well, we was going to go rob a hotel.
- 22 Q All right. All three of you?
- 23 A Uh-huh.
- 24 Q Were y'all in agreement on that?
- 25 A Yeah.

1 Q All right. Where did you go first?
2 A We went to La Quinta Inn first.
3 Q Where is that?
4 A It's on Woodruff Road.
5 Q And who went in?
6 A I did.
7 Q Did anyone go in with you?
8 A Jonathan.
9 Q Jonathan hill?
10 A Uh-huh.
11 Q Did anyone stay out in the car?
12 A Damian.
13 Q Did you do anything before y'all went in to
14 make sure that there were no witnesses around inside
15 the hotel?
16 A Yeah, I looked inside to see if there was just
17 a clerk by himself.
18 Q And is that the case? Is that the way it was?
19 A Right.
20 Q What did you do after you saw that there was no
21 clerks inside?
22 A That's when I went back outside and told the
23 rest of them about it.
24 Q And what did Jonathan do after you told him
25 about that?

- 1 A Well, after that, that's when we both went in.
- 2 Q Did y'all do anything to conceal your identity?
- 3 A Yeah.
- 4 Q What did you do?
- 5 A Used ski masks.
- 6 Q I'll show you State's Exhibit No. 23. Does
- 7 that look like kind of the ski mask that you had?
- 8 A Yeah.
- 9 Q The same as State's Exhibit No. 18?
- 10 A Yeah.
- 11 Q Was this the same ski mask that -- you got
- 12 caught later on that night, didn't you?
- 13 A Right.
- 14 Q Did you have a ski mask on you then?
- 15 A Yeah.
- 16 Q Is that the same ski mask that you used in the
- 17 robbery?
- 18 A Yeah.
- 19 Q Whose ask mask was it?
- 20 A One of them was mine.
- 21 Q What about the other one?
- 22 A I don't know whose that was.
- 23 Q Who had it with them, though?
- 24 A Jonathan.
- 25 Q What color clothes were you wearing?

- 1 A Wearing blue jeans and a white T-shirt.
- 2 Q And did you put anything else on when you went
3 in to go do the robbery?
- 4 A Wore a black coat.
- 5 Q Black coat.
- 6 What about Jonathan Hill, did he put anything
7 on?
- 8 A Yeah, he wore a black coat also.
- 9 Q Did anyone have gloves?
- 10 A Uh-huh.
- 11 Q Who is -- is that a yes?
- 12 A Yeah, Jonathan had gloves on.
- 13 Q How tall are you?
- 14 A About 5'7".
- 15 Q Is Jonathan Hill taller or shorter than you?
- 16 A He's taller.
- 17 Q About how much taller?
- 18 A I would say about three inches.
- 19 Q Did y'all have a gun with you?
- 20 A Yeah.
- 21 Q Did you know where it came from?
- 22 A Yeah.
- 23 Q What kind of -- do you know what kind of gun it
24 was?
- 25 A It was a .380.

1 Q Who carried the gun?

2 A I did.

3 Q Did you carry it inside the La Quinta Inn?

4 A Yeah.

5 Q How did you get in?

6 A Through the back door.

7 Q Where did you go when you went in the hotel?

8 A We went to the clerk.

9 Q And what was the clerk doing?

10 A Just sitting there.

11 Q What do you remember about -- he was sitting

12 there?

13 A Uh-huh.

14 Q Was he near the counter?

15 A Yeah, he was sitting behind the desk.

16 Q Do you remember anything about what he looked

17 like?

18 A White guy, probably mid-thirties.

19 Q And what did you do when you walked up to him?

20 A I went up to him and I asked for the money.

21 Q What did you do with the pistol?

22 A I pointed -- I had it pointed at him.

23 Q And what did Jonathan Hill do?

24 A He was getting the money.

25 Q From where?

- 1 A From the register.
- 2 Q And you saw him get the money from the
- 3 register?
- 4 A Yeah.
- 5 Q Did he get it all?
- 6 A I think so, yeah.
- 7 Q All right. Now, did you take anything from the
- 8 clerk?
- 9 A He handed over his credit cards -- or his
- 10 wallet, actually, but he was getting the credit
- 11 cards out.
- 12 Q Did you keep his wallet?
- 13 A No.
- 14 Q What did you take?
- 15 A I just took the credit cards.
- 16 Q All right. Now, after that, after y'all robbed
- 17 him, where did you go?
- 18 A Went to the mall.
- 19 Q Who drove you over to the mall?
- 20 A Damian.
- 21 Q So was he waiting out in the parking lot after
- 22 the robbery?
- 23 A Yeah.
- 24 Q Did you spend a long time at the mall?
- 25 A Yeah.

- 1 Q After you were at the mall, where did y'all go?
- 2 A Simpsonville.
- 3 Q And where did you go in Simpsonville?
- 4 A The Hampton Inn.
- 5 Q What was the reason for going to the Hampton
- 6 Inn?
- 7 A We was going to rob the motel.
- 8 Q And were y'all in agreement on doing that when
- 9 you went over there?
- 10 A Yeah.
- 11 Q And again who was driving?
- 12 A Damian.
- 13 Q Do you know where this Hampton Inn was?
- 14 A Huh?
- 15 Q Where was this Hampton Inn?
- 16 A It's in Simpsonville.
- 17 Q Are you familiar with that area?
- 18 A No.
- 19 Q All right. Who went into the Hampton Inn?
- 20 A I did.
- 21 Q Did anyone go in with you?
- 22 A Yeah, Jonathan went in with me.
- 23 Q Jonathan Hill went in with you again?
- 24 A Yeah.
- 25 Q Damian Taylor stayed out in the car again?

- 1 A Yeah.
- 2 Q Did you do anything again to make sure there
3 were no witnesses around?
- 4 A Yeah.
- 5 Q What did you do?
- 6 A I looked -- I looked in and made sure that the
7 clerk was in there by himself.
- 8 Q And when there were no witnesses, did y'all go
9 in?
- 10 A Yeah.
- 11 Q Did you wear the skis mask again?
- 12 A Yeah.
- 13 Q Did you wear the coats again?
- 14 A Yeah.
- 15 Q Were gloves used again?
- 16 A Yeah.
- 17 Q And who had the gloves?
- 18 A Jonathan.
- 19 Q Did you carry the pistol again?
- 20 A Yeah.
- 21 Q And did you find the clerk inside the hotel
22 there?
- 23 A Yeah, he was in there inside.
- 24 Q Do you remember what he looked like?
- 25 A An older white guy.

1 Q And what did you tell the man to do?
2 A I asked for the money.
3 Q And what did you do with the gun?
4 A I had pointed it at him.
5 Q And did he give you the money?
6 A Yeah.
7 Q Who did he give the money to?
8 A Well, he was giving it to me.
9 Q And what was -- what was Jonathan Hill doing
10 during this?
11 A He was -- he was getting the money then.
12 Q What money was he getting?
13 A Out of the drawer.
14 Q What, the cash drawer?
15 A Uh-huh.
16 Q Did you get any of that money?
17 A No.
18 Q Did you get anything from the clerk, from the
19 victim?
20 A He gave his wallet.
21 Q And did you take his wallet?
22 A Yeah.
23 Q After the robbery you went back out to the car
24 then?
25 A Uh-huh.

- 1 Q And who drove?
- 2 A Damian.
- 3 Q And where did you sit?
- 4 A I was in front seat.
- 5 Q Where did Jonathan Hill sit?
- 6 A He was in the back seat.
- 7 Q Where did y'all head off to?
- 8 A We was going towards Greenville and the police
- 9 got behind us.
- 10 Q Did you split up any of the money in the car?
- 11 A No.
- 12 Q When were you going to do that?
- 13 A When we got back to my place.
- 14 Q And what happened after the police officer got
- 15 behind y'all?
- 16 A Well, it started turning into a car chase.
- 17 Q And what ended up in the chase? How did the
- 18 chase end up?
- 19 A Spun out.
- 20 Q What happened after the car spun out?
- 21 A Jumped out and ran.
- 22 Q Did all three of you jump out and run?
- 23 A Yeah.
- 24 Q Did you stay together or split up?
- 25 A Split up.

1 Q What happened to the gun?

2 A I had the gun and then it came -- it fell out
3 during the run.

4 Q And you said that you had a coat as well. What
5 happened to it?

6 A I took it off.

7 Q Where did you take it off?

8 A In the woods.

9 Q All right. Did you ever see that coat again?

10 A No.

11 Q Now, are you familiar with -- you said Jonathan
12 Hill had a coat as well?

13 A Yeah.

14 Q I'm going to ask you to take a look at this
15 coat, State's Exhibit No. 22. Does that look
16 familiar to you?

17 A Yeah.

18 Q What does it look like to you?

19 A It looks like a coat.

20 Q Is it a coat that you saw that night of the
21 robbery?

22 A Yeah.

23 Q And what was used for that coat?

24 A What was used? What?

25 Q Who used that coat?

1 A Oh, Jonathan had that one on.

2 Q All right. Now, after you ditched your coat
3 out in the woods, did you end up getting caught?

4 A Yeah.

5 Q And did you have any property on you in your
6 pockets that were taken?

7 A Yeah, I had the wallet and the ski mask on me.

8 Q You still had the wallet that you took from the
9 victim?

10 A Yeah.

11 Q Where was that?

12 A My pocket.

13 Q How about the ski mask?

14 A It was in my pocket.

15 Q Please answer any questions that the defense
16 has for you the.

17 CROSS EXAMINATION BY MR. FARNSWORTH:

18 Q Okay, Mr. Warren, let's go first to the La
19 Quinta Inn robbery.

20 Your testimony was that you and Mr. Hill,
21 Jonathan Hill, went in in that robbery, is that
22 correct.

23 A That's right.

24 Q And that Damian Taylor stayed out in the car?

25 A That's right.

1 Q You are absolutely sure about that?

2 A Yeah.

3 Q Now, what about the Hampton Inn? Your
4 testimony was that you and Jonathan Hill went in and
5 Damian Taylor stayed in the car, and you are
6 absolutely sure about that?

7 A Yeah.

8 Q Absolutely sure?

9 A Yeah.

10 Q Do you remember giving a statement to the
11 police on February the 5th?

12 A Yeah.

13 Q Do you remember giving one also on February the
14 4th --

15 A Yeah.

16 Q -- concerning the Hampton Inn?

17 A Yeah.

18 Q And is that your statement that you gave about
19 the Hampton Inn? Is that your signature down there?

20 A Yeah.

21 Q Isn't it true in that statement you said, when
22 you told the police and they took your statement,
23 that you stayed in the car and that Damian and
24 Jonathan went in?

25 A Yeah.

- 1 Q Isn't that what you told them?
- 2 A Yeah.
- 3 Q And now you are telling us today something
- 4 completely opposite, that you went in?
- 5 A Yeah.
- 6 Q So which is it?
- 7 A Well, when I --
- 8 Q You swore to this under oath, didn't you?
- 9 A No, not really under oath.
- 10 Q Did you say that you read it and you told the
- 11 truth?
- 12 A Yeah.
- 13 Q So it wasn't the truth? You told them a lie,
- 14 didn't you?
- 15 A Yeah.
- 16 Q The same thing. On the next day you gave a
- 17 statement to the police there in Simpsonville. Is
- 18 that the statement that you gave?
- 19 A Yeah.
- 20 Q All right. Did you tell them that you went in
- 21 then? Did you tell them in this statement that you
- 22 went in?
- 23 A No.
- 24 Q You told them that you stayed in the car,
- 25 didn't you?

- 1 A Yeah.
- 2 Q Which -- were you telling the truth then or
- 3 lying?
- 4 A I wasn't telling the truth then.
- 5 Q Why were you lying?
- 6 A Because it was --
- 7 Q You wanted to protect yourself, didn't you?
- 8 Isn't that right?
- 9 A (no response)
- 10 Q And you would have told them anything to get
- 11 out of this robbery, wouldn't you?
- 12 A Probably.
- 13 Q Tell the truth.
- 14 A Yeah.
- 15 Q Just like you are doing today.
- 16 A No.
- 17 Q You will say anything it takes to get you out
- 18 of having to do that other 20 years, isn't that
- 19 right?
- 20 A No, I wouldn't say anything, no.
- 21 Q Do you understand your agreement with the
- 22 solicitor is that if you testify truthfully --
- 23 A Yeah.
- 24 Q -- you won't get any more time?
- 25 A Sure.

1 Q Do you know what happens to you if you don't
2 tell the truth?

3 A Yeah.

4 Q You can get 20 more years, can't you?

5 A Right.

6 Q And you lied up here just now, hadn't you?

7 A No.

8 Q Well, you lied either then in that statement or
9 you are lying now. Which is it?

10 A Lied on the statement.

11 Q You lied on the statement?

12 A Uh-huh.

13 Q So you lied to start with, and you continued
14 lying.

15 And in that statement there that you gave --
16 what's that smile on your face about?

17 A Well, it's very interesting.

18 Q All right. In that statement you gave right
19 there --

20 A Uh-huh.

21 Q -- take a look at it --

22 A Uh-huh.

23 Q -- you didn't say anything to the police back
24 on February the 5th that you took those credit cards
25 and went to the mall, did you, and tried to use

1 them, did you?

2 A Say again now?

3 Q You did not tell the police in this statement
4 that you gave on February the 5th that you went out
5 to the Haywood Mall and tried to use the credit
6 cards taken from the clerk at the La Quinta Inn and
7 tried to use them buy clothes and jewelry, did you?

8 A That was said because it was said upon me, so I
9 agreed to it.

10 Q Did you tell the police --

11 A I agreed to it, but it was said to me.

12 Q Did you tell the police in this statement that
13 you had done that?

14 A Well, yeah.

15 Q Where is it? Read the statement to the jury
16 and tell me where it is that you told them that.

17 A "On January 31st --

18 Q You don't have to read the whole statement,
19 unless you want to, but just show me where that you
20 told them that you went to the mall and you used
21 those credit cards.

22 A (no response)

23 Q It's not in there, is it, Mr. Warren?

24 A It's not in there, no.

25 Q It's not in there.

1 So right after you were arrested on this thing,
2 you would have told anybody anything to help
3 yourself, wouldn't you?

4 A Yeah.

5 Q Because you lied all through this and you are
6 lying today?

7 A No, I'm not lying today.

8 Q You have already gotten your 15 year sentence,
9 so you got to do that.

10 A Yeah.

11 Q So all you can lose is if you tell the truth,
12 you may not get any more time, but if you caught in
13 a lie, like you just been, you can get 20 more
14 years. Do you know that?

15 A Yeah.

16 Q And you and Damian Taylor had known each other
17 for two or three years?

18 A About a year.

19 Q And y'all had been doing these robberies
20 together, hadn't you?

21 A No.

22 Q You pled guilty to them, hadn't you?

23 A One.

24 Q You done three of them and you got attempted
25 one that -- it depends on what you do here today?

1 A Say what not?

2 Q You got an attempted armed robbery and you pled
3 guilty to three of them, so you and he did all
4 those, didn't you?

5 A Yeah.

6 Q Together?

7 A Yeah.

8 Q Okay. Mr. Warren, the solicitor asked you
9 about your record and it's an extensive record. You
10 go back to what, in the late nineties, isn't that
11 right?

12 A Say what?

13 Q Your record goes back to the late 1990's, isn't
14 that correct, or the early 1990's, in 1994, isn't
15 that correct?

16 A Yeah.

17 Q Where you pled guilty to receiving and having
18 possession of stolen goods.

19 You got a forgery in 1998, you were convicted
20 of.

21 You have got another forgery that you were
22 convicted of when you went to court on these armed
23 robberies that you pled guilty to.

24 You have got several, as many as eight or nine
25 fraudulent check convictions, isn't that correct?

1 A Yes.

2 Q And you had two fraudulent check convictions in
3 addition to these that were -- one was over \$500.00
4 and one was over a thousand, isn't that correct?

5 A Yeah.

6 Q And also you have had a forgery -- two
7 forgeries. One that was less than five thousand and
8 the other was less than five thousand. You were
9 convicted of every one of those things, is that
10 correct?

11 A Yeah.

12 MR. FARNSWORTH: That's all I have.

13 MR. MOYER: Nothing further, Your Honor.

14 THE COURT: You may step down.

15 MR. MOYER: Could I have one moment?

16 (off the record)

17 (back on the record)

18 MR. MOYER: Your Honor, at this time the State
19 rests.

20 THE COURT: Ladies and gentlemen, I would have
21 some matters of law that I need to take up, so I'm
22 going to ask you to go back in the jury room.

23 (The following takes place outside the presence
24 of the jury panel).

25 THE COURT: All right, Mr. Farnsworth, you say

1 that you need to -- you want to speak with your
2 client now, or do you need -- do you want to make a
3 motion now?

4 MR. FARNSWORTH: Yeah, I'll make -- Your Honor,
5 just for the record I would move for a directed
6 verdict on the insufficiency of the evidence, for
7 the record.

8 THE COURT: I think the evidence is sufficient
9 to support the guilty verdict on all of the alleged
10 charges, so I will deny the motion for a directed
11 verdict.

12 We will be in recess for a few minutes in order
13 to give you a chance to talk to your client about
14 the any defense that you want to put on and whether
15 or not he wishes to testify.

16 MR. FARNSWORTH: Okay.

17 THE COURT: All right.

18 (Proceedings recessed)

19 (Proceedings reconvened).

20 THE COURT: All right, Mr. Farnsworth.

21 MR. FARNSWORTH: Your Honor, if it please the
22 court, I would like the court, other than myself, I
23 want to explain his rights regarding testimony to
24 him and put it on the record, Your Honor, and if he
25 has any questions.

1 THE COURT: Stand up Mr. Hill.

2 JONATHAN HILL, having been first duly sworn,
3 testified as follows:

4 THE COURT: Do you want to talk to me?

5 MR. FARNSWORTH: Yes, sir, I will, and then if
6 you have anything additional.

7 THE COURT: Go ahead.

8 MR. FARNSWORTH: Your Honor, let me say during
9 this break and a few times before this break we have
10 talked about his rights to testify and not to
11 testify. In that connection, I explained to him
12 that he had an absolute right to testify in his own
13 behalf and that if he had any convictions that would
14 be impeachable under our rules, they could be used
15 against him. I think he understands that.

16 Additionally, I advised him of his absolute
17 right not to testify, and that if he chose not to
18 testify, that the Court would instruct the jury that
19 they could not consider the fact that he didn't
20 testify in any manner whatsoever during their
21 deliberations.

22 Your Honor, I have discussed both of these -
23 the right and the right not to testify with him. I
24 am convinced that he understands all his rights in
25 that connection and he's advised me that he does

1 want to testify.

2 THE COURT: All right. Let me -- there is one
3 thing that I just want to clarify about what Mr.
4 Farnsworth said. It probably doesn't make a whole
5 lot of difference if your decision is to testify,
6 but if you have prior convictions against you, that
7 does not automatically mean that they will be used
8 against you. That means that they could be. The
9 State could attempt to use those against you to
10 attack your credibility. And then it would be my
11 decision under the rules of evidence as to whether
12 or not to allow those convictions into evidence. So
13 it's not necessarily a given that they will be used
14 against you. With your age, I don't even know what
15 the convictions are with you, but you are only,
16 what, 24?

17 MR. FARNSWORTH: Your Honor, the solicitor and
18 I discussed these. I don't think they would be
19 impeachable.

20 MR. MOYER: We agree that they are not -- his
21 record of conviction are not impeachable.

22 THE COURT: All right. Mr. Hill, please stand.
23 Do you understand everything that Mr. Farnsworth has
24 just told you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Or has just talked about having
2 told you? You understood all your discussions with
3 him concerning your right to testify and your right
4 not to testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that your right
7 not to testify comes from the Fifth Amendment to the
8 United States Constitution, which says that no
9 person shall be compelled in a criminal case to be a
10 witness against himself?

11 THE DEFENDANT: Yes.

12 THE COURT: And this means that you cannot be
13 required to testify.

14 You are the person who must decide whether or
15 not you want to testify.

16 This decision as to whether or not to testify
17 is a personal decision to you, and no one can make
18 that decision except you.

19 You have the right to consult with your lawyer
20 before you make that decision. You can consult with
21 family members, as I have seen you doing here in the
22 courtroom just a few minutes ago, but ultimately it
23 must be your decision.

24 If you elect to testify, as your lawyer has
25 said you have elected to do, then you must

1 understand you become like any other witness and you
2 are subject to cross-examination from the solicitor
3 on any subject that might be relevant to this case.
4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you choose not to testify, then
7 I will give the jury an instruction, as your lawyer
8 says, that you have the absolute Constitutional
9 Right to remain silent and that your decision not to
10 testify cannot and must not be used against you,
11 that they are not even allowed to discuss your
12 decision about whether or not to testify when they
13 go back to deliberate. They cannot even talk about
14 it. That's what I would tell the jury, if you
15 decide not to testify.

16 Now, are you satisfied that you understand your
17 right to remain silent, your right against
18 self-incrimination, and your right not to testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any questions that you
21 want to ask me or your lawyer concerning those
22 rights at this time?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right, sir. Have you had
25 enough time to make up your mind as to whether or

1 not you wish to testify?

2 THE DEFENDANT: So so.

3 THE COURT: Well, I mean, really you have known
4 about this now for a year.

5 THE DEFENDANT: Oh.

6 THE COURT: Right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I mean, you know that ultimately
9 you were going to have to make the decision as to
10 whether or not you were going to testify, right?

11 THE DEFENDANT: Well, I feel I did. I was
12 going to testify regardless.

13 THE COURT: You did. Well, do you understand
14 now that you don't have to testify?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And how long has it that you have
17 known that you did not have to testify?

18 THE DEFENDANT: That I did not.

19 THE COURT: Yeah.

20 THE DEFENDANT: I mean, when my lawyer just had
21 spoke to me.

22 THE COURT: But he had talked to you before
23 about that, though, before today, right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So you have known for at least days --

1 THE DEFENDANT: Yes.

2 THE COURT: -- that you had the right to remain
3 silent and that you didn't have to testify?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Now, I'm not trying to box
6 you in, but have you had enough time to make up your
7 mind as to whether or not you wish to testify?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you sure about that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. And has anybody put any
12 pressure on you to testify or anything like that?

13 THE DEFENDANT: No, sir.

14 THE COURT: This is totally your decision?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And have you made the decision?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And what's the decision?

19 THE DEFENDANT: To testify.

20 THE COURT: You are going to testify?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Are you ready, Mr.
23 Farnsworth?

24 MR. FARNSWORTH: Yes, sir.

25 THE COURT: Is the State ready?

1 MR. MOYER: Yes, sir.

2 THE COURT: Okay. Bring the jury in.

3 (The following takes place in the presence of
4 the jury panel)

5 THE COURT: Mr. Farnsworth?

6 MR. FARNSWORTH: May it please the court, Your
7 Honor, the defense would call the accused Jonathan
8 Hill.

9 JONATHAN GREEN, having been first duly sworn,
10 testified as follows:

11 THE CLERK: Please state your name for the
12 record.

13 THE WITNESS: Jonathan K. Green.

14 DIRECT EXAMINATION BY MR. FARNSWORTH:

15 Q Mr. Green, let's clear this name thing up right
16 here initially. You said your name was Jonathan
17 Green just then and you have also used Jonathan
18 Hill.

19 A Yes.

20 Q Tell the jury why this has happened.

21 A Well, my back I think in '98, when my mother --
22 you know, when your mother and father is not
23 married, we carried my mother's maiden name, Hill.

24 Q Okay,

25 A We got it all changed over to Green to my

1 father's last name.

2 Q And that was in 1998?

3 A '98.

4 Q But you have gone by both names?

5 A Yes, sir. In 1999, I went by Hill, but ever
6 since then I went by Green. They marked me as
7 Jonathan Hill. My birth certificate was changed.
8 My Social Security card was changed. I worked at
9 Greenville News under Jonathan Green.

10 Q All right. Now, you are what, 24 years old?

11 A Yes, sir.

12 Q And obviously you would have been 23 when you
13 were arrested on these charges?

14 A Yes, sir.

15 Q And tell us about your where you were living.

16 A I was living down in Fleetwood Manor.

17 Q And whom were you living with?

18 A With my girlfriend.

19 Q And who else?

20 A It was just me and my girlfriend.

21 Q All right. And this is prior to you being
22 arrested. What was your most recent employment
23 before you got arrested?

24 A Green & Green Construction.

25 Q What did you do with them?

1 A Sorts of apprentice. Sometimes I labor.

2 Sometimes I might get in the middle of the line,

3 look like training for brick mason.

4 Q And about how long did you work for them on and
5 off?

6 A On and off, since I was 15.

7 Q And that was one of your uncles that own that
8 company?

9 A Yes, sir.

10 Q And you said you lived with your girlfriend,
11 but did you and your girlfriend have any children?

12 A No, not me. My girlfriend.

13 Q You do have children, though?

14 A Yes, sir.

15 Q And how old are they?

16 A Four years old.

17 Q And where do they live?

18 A They stay in New Jersey.

19 Q They are in New Jersey?

20 A Yes.

21 Q I was going to get to that. Is that where you
22 are originally from and that's where your parents
23 live now?

24 A Yes, sir.

25 Q And how long has it been since you have been in

1. Greenville?

2 A I have been in Greenville for off and on since
3 like I was 16 off and on, but I -- when I got
4 stabilized, it was about two years or three years
5 now.

6 Q And the reason for coming to Greenville was --

7 A Work.

8 Q -- work for your uncle?

9 A Yes, sir.

10 Q Now, I'm going to take you back to around
11 January the 31st of this past year, 2001, and ask
12 you at that time did you know Melvin Warren and
13 Damian Taylor?

14 A January the 31st, yes, I did.

15 Q That was the night -- well, the night before
16 you were arrested. The same night --

17 A Yes, sir.

18 Q -- but you were arrested after twelve o'clock
19 on the next day?

20 A Yes, sir.

21 Q And you said that you did know them?

22 A Yes, sir.

23 Q How long had you known Melvin Warren?

24 A I knew him through Damian Taylor, you know.

25 Q So how long would you have known him?

1 A About a month and a half. I got to know him
2 Christmas eve.

3 Q And how long had you known Damian Taylor?

4 A About a little before that.

5 Q And you knew Damian Taylor better than you knew
6 Mr. Warren?

7 A Yes, sir. Yes, sir, because I met them through
8 the owner of the car. He was from New Jersey and I
9 was from New Jersey, and I met Damian Taylor through
10 him.

11 Q Now, calling your attention to sometime in the
12 late afternoon or early evening of January 31st, did
13 you have an occasion to see or get together with
14 Damian and -- Damian Taylor and Melvin Warren?

15 A Did I happen to get --

16 Q Did you happen to get together with them?

17 A Yes, sir.

18 Q Where did you -- when did you first run into
19 them that day?

20 A Well, down in the back where I stayed at,
21 everybody be out there, you know, in the Fleetwood.
22 They stay back in the back. Be outside.

23 Q So Damian Taylor was already there where you
24 were?

25 A Yeah, all of them was out there, but they had

1. left and came back.

2. Q Came back. What happened when they came back?

3. A They asked me do I want to go ride with them.
4. Earlier that day me and the owner of the car was at
5. the laundromat and Damian Taylor and we made plans
6. then. We had got these flyers about some little
7. party, so we had a meeting to just go check it out
8. and had made plans.

9. Q So they asked you if you wanted to go ride
10. around?

11. A Yes, sir.

12. Q At that point in time what did you tell them?

13. A I mean, I went with them.

14. Q You told them yes, that you would go with them
15. and you did go?

16. A Yes.

17. Q Before you told them that, was anything said by
18. either one of them or you about going to rob motels?

19. A No, sir.

20. Q Did you hear them say anything about that?

21. A No, sir.

22. Q And did you agree in any manner whatsoever to
23. go with them to rob motels?

24. A No, sir.

25. Q All right. Tell me what happened when you left

1 the area that you referring to that y'all were at
2 and you came back?

3 A We left out Fleetwood. Then we went back to
4 get some more marijuana.

5 Q Okay.

6 A And --

7 Q You had marijuana?

8 A Yes, sir.

9 Q Who was using marijuana?

10 A We all were smoking it.

11 Q Were you doing anything else besides that?

12 A Well, we were drinking. Drinking alcohol. We
13 had got a gallon of Paul Masson. It was everybody.
14 It wasn't just --

15 Q Everybody?

16 A Everybody in the back.

17 Q So you had been drinking some and you had some
18 marijuana?

19 A Yes, sir.

20 Q And what -- I mean, you knew what was going on
21 and you knew where you were and all that?

22 A Yes, sir.

23 Q I mean you weren't intoxicated by it?

24 A No, sir.

25 Q Go ahead.

1 A Okay. So when we -- when we -- we went back
2 and got that, so we went out riding. Went past this
3 327 and the industry. We was just checking out to
4 go see some girl. Supposed to be going out there to
5 ride to see some girls. We were just riding around.
6 I don't even know the roads in there and I was just
7 riding. So that's when they went -- they parked by
8 some hotel. And that's when he went -- they was
9 about four white guys out there and about two
10 females. They was out there they had a cooler they
11 were drinking.

12 Q Let me ask you this. Who was driving at this
13 time?

14 A Well, at that time it was Damian Taylor, Julio,
15 who we call Julio.

16 Q Where was Melvin Warren?

17 A He was in the driver -- I mean the passenger's
18 seat.

19 Q You were in the back?

20 A Yes, sir.

21 Q Go ahead.

22 A Okay. So a dude got out. He was talking to
23 them, so I assume that he knows him, but he was
24 talking to them. So he came back to the car and
25 asked for a dollar because he says he was going to

1 buy a beer from one of them. So when he came back
2 to the car, Julio gave him a dollar. So then he was
3 out there with them. He walked in with them.

4 Q Where is that out there?

5 A Out there at the hotel.

6 Q In the parking area?

7 A Yes, sir. He walked out with them. Walked in
8 with them. When he -- he came back and waved.
9 Julio -- well, Damian Taylor, I know him by Julio,
10 and waved him in. So when they -- they went in
11 there. Not even about five minutes they came back
12 out. Like I told -- they came back out and Duke had
13 a credit card. That's when he said we are going to
14 the mall. So they went up the road and they were
15 going to Haywood Mall. Duke went to some little
16 clothing store and tried to charge up some clothes.
17 He tried to charge it. Then that rejected him, so
18 he went to one of them little outside jewelry
19 things. Then that rejected him. That's when I told
20 him -- I walked off. And Julio came over by me and
21 I told him I don't want nothing to do with no credit
22 card.

23 Q Let's go back.

24 You said that Damian Taylor and Melvin Warren
25 went into the hotel?

1 A Yes, sir.

2 Q And you stayed in the car?

3 A Yes, sir.

4 Q And what did you say when they got back out?

5 A Melvin Warren had some credit card.

6 Q Who had it?

7 A Melvin Warren.

8 Q And then y'all left there and went to the

9 Haywood Mall?

10 A Yes.

11 Q Who was driving?

12 A At that time it was -- Julio was still driving.

13 Damian Taylor was still driving at that time.

14 Q All right. So at the mall after y'all left
15 there, where did you go?

16 A Well, they was riding. That's when I told them
17 to -- I said I'm ready to go home because my girl
18 was at home. So we were riding down -- at first I
19 thought it was 385.

20 You see, now Duke, when he came out of the
21 mall, Duke was driving at this time. But when we
22 came out of the mall, we was going -- I thought it
23 was 385, but at the time I found out it was 85,
24 riding down 85, so I'm thinking we was going home.
25 So, you know, when you go to live in Fleetwood and

1 you are on 85, you get off the Mauldin Augusta Road
2 exit. So they went past my exit, so that's when I
3 said -- I said where we going? Duke said I got to
4 run up here right quick and holler at somebody.
5 Damian Taylor said that. Julio, he said he got to
6 holler at somebody. So that's when they stopped at
7 the BP. So beings that Julio was the one speaking
8 up, that's when I asked Duke when Julio went in the
9 store, he went to go pay for the gas.

10 Q Julio is Damian Taylor?

11 A Damian Taylor. He went to go pay for some gas
12 and buy some more beer. That's when I asked Duke.
13 He said well, Julio has got to holler at somebody.
14 So I went to ask the clerk for to use the bathroom.
15 He said the bathroom was around. That's how I
16 remember the BP. He said it was around the back.
17 He gave me the key and I went to use the bathroom.
18 So at this time Julio got in the seat, you know, and
19 he was -- he was driving at the time. So they went
20 on. They were riding and riding, so they parked. I
21 don't know where it was. I mean, I just remember
22 the wooden fence. It was a wooden fence. They
23 parked on this side. So they say they would be
24 back. And I actually -- you see, Duke -- Julio had
25 bought some beer. And I was sitting there. I was

1 thinking about an open container, so I was actually
2 drinking my beer fast so I don't catch no open
3 container. So they went around the fence. So I'm
4 sitting there. I'm waiting on them and they come
5 back. That's when they got in the car. They got on
6 the main road and they say we were speeding. I
7 didn't even know.

8 Q Let's stop you there.

9 All right. When they went in and went around
10 that fence you are talking about?

11 A Yes, sir.

12 Q The fence was in a parking lot, is that right?

13 A Yes, sir, it was like a picket fence.

14 Q All right. How large was the fence? How high
15 was the fence?

16 A Oh, it's high. It's about 6'5", or something
17 like that. It was a picket fence.

18 Q So after they went around the fence, you
19 couldn't see them anymore?

20 A No, you couldn't see them.

21 Q When they got out of the car, did you see any
22 kind of weapon at all?

23 A No, sir.

24 Q And how long were they gone?

25 A Not even -- about five minutes, four minutes,

1 up in that area. They weren't gone long.

2 Q But you stayed in the car the entire time they
3 were gone?

4 A Yes, sir.

5 Q How about -- going back to the -- I meant to
6 ask you then. Going back to -- when y'all went to
7 the La Quinta Inn, you said that you stayed in the
8 car when they went in there, is that correct?

9 A In --

10 Q La Quinta Inn.

11 A Yes, sir.

12 Q And did you see them, either one of them, with
13 a gun or any kind of weapon --

14 A No, sir.

15 Q -- when they went in there?

16 A No ski masks, none of that.

17 Q You didn't see any of that?

18 A No, sir.

19 Q Go ahead. I didn't mean to interrupt you, but
20 I wanted to clear that up. Go ahead and tell us.

21 You said that y'all left the area there where
22 the fence was, Anthony, and then you started out on
23 the highway?

24 A Oh, yes, sir. So we was on the highway. So
25 they were riding down the highway. So that's when --

1 I mean, we weren't -- I didn't even notice it. We
2 were just riding. So they police car turned around,
3 and so that's when Julio was like, well -- Damian
4 Taylor, he's like -- he said "oh, man, the police is
5 behind us, the police behind us." So he said "man
6 what to do? I got warrants. I don't got no
7 license." So that's when Damian -- Melvin Warren, I
8 called him Duke. That's when Duke was like just --
9 he said "just stop. And when the police get, that's
10 when you go, when they get out." So Julio, he was
11 just moseying along. He made it like, well, my man,
12 like the detective said yesterday, he made a little
13 left in a little parking lot about to stop, but he
14 just kept on the road. That's when I seen another
15 car. That's when he shot and we was riding and he
16 just went on. He was running from them. So we were
17 riding down -- I don't know the name of the roads or
18 anything. I just remember when we crashed. That's
19 when we all jumped out and fled into the woods.

20 Q Do you remember -- you said that you were in
21 the back seat at that time?

22 A Yes, sir.

23 Q And do you remember how many police cars were
24 behind you right before they finally stopped?

25 A No, I mean, one was behind us. That's the one

1 that turned around, and he didn't turn his blue
2 lights on when he turned around. He just followed
3 behind us at first, until I seen -- that's when he
4 made that left in that little bottle and he seen
5 another police car, and that's when he just --

6 Q That's when they had the lights on then?

7 A That's when he went on with the chase.

8 Q Had their blue lights on and you could see?

9 A Yes, sir.

10 Q And were you occasionally -- and in order to
11 see them, you were looking out the back window, is
12 that right?

13 A Yes, sir.

14 Q And at some point there at the end of the chase
15 I think Damian Taylor went off the road and --

16 A Yes.

17 Q -- wrecked the car, correct?

18 A He crashed the car. That's when we all fled.

19 Q Tell us what did you then.

20 A Okay. We ran -- we all ran into the woods and
21 that's when Damian Taylor, Julio, it be like come
22 on, but I just broke off from them. You know, like
23 I say, I broke off from them. So we all was in the
24 woods. That's all I remember. I just remember when
25 the flashlights was over my head. The only reason I

1 didn't come out, I heard when they apprehended them
2 because they were trying to get away. I didn't even
3 try to get away. I just sat in the woods. It was
4 dark and I didn't want no misunderstanding. I just
5 sat in there until they came and got me. I wasn't
6 going to come out in the woods or nothing.

7 Q All right. Why did you -- why did you run to
8 start with?

9 A I mean they was in a car chase. That was my
10 first instinct. When they jumped out and ran, I
11 jumped out and ran. That was my first instinct was
12 to run. I can't deny that.

13 Q During that car chase was there anything that
14 you could have done, other than jump out of the car?

15 A No, sir.

16 Q Could you have done anything?

17 A Besides smoking marijuana.

18 Q Sir?

19 A Besides smoking marijuana.

20 Q That's not what I asked you. I asked you is
21 there anything that you could have done other than
22 jump out of the car during that chase to get the
23 driver to stop?

24 A No. No, sir.

25 Q And this is the car that y'all were in?

1 A Yes, sir.

2 Q Did you notice when you jumped out of the car
3 were there any clothes in the back seat?

4 A I know they was throwing -- everything was
5 thrown into the back seat and it was a car seat back
6 there too.

7 Q And is this -- they said that they found this
8 in the car. Is this your jacket?

9 A That is -- that is Melvin Warren's jacket.

10 Q Melvin, how do you know that?

11 A Because I know he wears it around. It was --
12 it's wintertime.

13 Q And State's Exhibit 15, is that you there?

14 A Yes, sir.

15 Q Is that you with the red shirt on?

16 A Yes, sir.

17 Q Is that what you had on --

18 A Yes, sir.

19 Q -- when you got with them that night?

20 A Yes, sir.

21 Q Is that what you had on when they arrested you?

22 A Yes, sir.

23 Q Do you remember what Melvin and Damian had on,
24 as far as shirt color?

25 A Well, the shirts, I'm not really -- really --

1 I'm not really -- it can't really click what shirts
2 they had on.

3 Q After y'all got out of the car, you didn't see
4 them anymore?

5 A No, no, I didn't see them. All I remember, we
6 all was running in the woods. And that's -- I
7 remember the sneaker coming off. I remember when
8 Duke's sneaker fell off when he clipped up. That's
9 the last time that I had seen him.

10 Q Even though you knew or thought that you were
11 going to be riding around and even know you didn't
12 agree to participate in either one of these
13 robberies, you knew these two had done some
14 robberies, or heard that?

15 A Yeah, I done heard about it, you know. In
16 Fleetwood is little. You hear about all kinds of
17 stuff. You hear is who is sleeping with who, who
18 did that, who is selling this, who did that.

19 Q All right. Answer any questions that Mr. Moyer
20 would have for you.

21 CROSS EXAMINATION BY MR. MOYER:

22 Q All right then. So you said that when you were
23 hiding there in those woods, that you didn't try to
24 get away? Is that what you the just said?

25 A No, I'm talking about when I was hiding in the

1 woods, I just -- I stopped completely in the woods.
2 I wasn't trying to run out.

3 Q In that creek that you were hiding in?

4 A Yeah, I was in a -- I don't know even know
5 nothing about the area. I didn't know if that was a
6 creek or not. It was just -- I know it was dirt and
7 a little bit of water. That's what it was. I was
8 just sitting down there. I just froze up.

9 Q You were hiding in there, weren't you?

10 A Yeah, I froze up.

11 Q You were hiding, right?

12 A Yes, sir.

13 Q From the police right?

14 A I was sitting there.

15 Q So when you say you weren't trying to get away,
16 you weren't exactly trying to make yourself found by
17 the police, were you?

18 A No, sir.

19 Q You were hiding from them?

20 A Scared.

21 Q And you said the reason was because that was
22 your first instinct to run?

23 A That was my first instinct. I mean, when --
24 I'm talking about when they crashed. My first
25 instinct when they jumped out, I jumped out. That

1 was my first instinct.

2 Q So you run every time you see a police officer?

3 A Like if we -- like in Jersey, if I'm -- if I'm
4 out there with people and they run, I'm running. I
5 mean, that's my first instinct. I'm not going to
6 lie about that, was to run.

7 Q I didn't ask you about New Jersey. You lived
8 here for, what, three years now?

9 A Yes, sir.

10 Q So you are saying every time you see a police
11 officer you run?

12 A No, we was in a car chase.

13 Q It's just when you have committed a crime,
14 right?

15 A No, sir.

16 Q Isn't that why you were running?

17 A Running from the police is committing a crime.

18 Q Isn't that why you wanted to hide in -- you
19 weren't driving that car, were you?

20 A No, sir.

21 Q So you hadn't committed a crime --

22 A But still I would have --

23 Q -- according to your testimony?

24 A If I -- if I would have been staying there, I
25 would have went to jail, regardless if I was driving

1 or not.

2 Q Had you been driving the car?

3 A No, sir.

4 Q What did you do?

5 A Riding with these guys, getting in a police
6 chase.

7 Q Riding with guys who --

8 A Got in a police chase.

9 Q One of whom happens to be speeding?

10 A Yes.

11 Q So you are saying because of that you ran off
12 and hid for two hours down a six foot ravine in a
13 creek?

14 A I don't know if it was six foot, but that's why
15 I ran, though.

16 Q All right.

17 A I didn't even know it was that closed in, as
18 you said. I didn't even know it was like that.

19 Q All right. How much had you been drinking?

20 A I mean -- I mean, I don't really know about how
21 much I had been drinking.

22 Q You said -- I'm sorry, I didn't mean to cut you
23 off.

24 A I mean, I don't know how much I had been
25 drinking.

1 Q You said that you had a gallon of that --

2 A No, the whole bag. Everybody said -- it wasn't
3 just us three. It was everybody was out there.
4 They was all drinking.

5 Q You didn't take that with you?

6 A No, we didn't have that with us.

7 Q I thought you said you had that with you in the
8 car?

9 A No, we never -- we ain't never had it in the
10 car.

11 Q You didn't have any of the marijuana in the
12 car?

13 A We had marijuana. We done smoking blunts.

14 Q Well, what happened to them?

15 A Smoked?

16 Q I mean, you ended up smoking them all. There
17 wasn't any marijuana in the car.

18 A No, sir.

19 Q What did y'all use it up earlier that night?

20 A Yeah. I mean, yes, sir, we just riding and
21 smoking.

22 Q And so how much did you smoke?

23 A I don't really know, you know. We buy blunts.

24 Q How many blunts?

25 A We done about two or three blunts.

1 Q Now, that was wintertime, wasn't it?
2 A Yes, sir.
3 Q This is about this time last year, it was cold
4 out?
5 A Yes, it was -- we was inside the car, but it
6 was cool out.
7 Q I mean, so --
8 A It wasn't freezing. It was cool.
9 Q But it was cold?
10 A Yes, sir.
11 Q Right?
12 A Yes.
13 Q And this shirt that you had on here is a
14 T-shirt, isn't it?
15 A Yes, sir, and I had a beige shirt on under
16 that.
17 Q A short-sleeved T-shirt?
18 A Yes, sir.
19 Q So there is more than the -- I mean, y'all
20 weren't just sharing that one coat, were you?
21 A No, that's my jacket inside there, inside that
22 gray bag. That gray jacket right there, that's
23 mine, the Old Navy. My girl had bought that for me.
24 Q That gray jacket was yours?
25 A Yes, sir. That's my gray -- that's my gray

1 jacket right there. My girl had bought it for
2 Christmas for me.

3 Q And that wouldn't work very well for a robbery,
4 would it, and that's why you had to wear Melvin
5 Dukes coat when y'all went in there to do the
6 robbery?

7 A I mean, I didn't do no robbery, though.

8 Q Alright. So let's go back. You have already
9 told us that you met up with those guys earlier that
10 evening. About what time was it?

11 A I mean, that was about a year ago, man. I
12 don't really know what time and all that.

13 Q Okay. But you met up with them that evening
14 there at Fleetwood?

15 A Yes, sir.

16 Q Right?

17 A Yes, sir.

18 Q And you got in the car with them?

19 A Yes, sir.

20 Q And they had a gun with them, didn't they?

21 A I don't know, sir.

22 Q Didn't you put that in your statement? Didn't
23 you say that?

24 A No, sir, and I remember that when I say they
25 had a -- that's why they put the period. At first

1 they didn't put the period right there.

2 Q So you knew about that?

3 A Because the incident what happened with Julio
4 and a dude they called Hercules.

5 Q About Duke having a .380 pistol?

6 A Yeah, they had one.

7 Q You knew they had one?

8 A Not at that point in time. They had a gun
9 because I remember when Julio got into it with a
10 dude named Hercules that lived out at Fleetwood. He
11 was about to pull it out on him.

12 Q When you got together with him then, when they
13 first came up and met up with you, you didn't know
14 that they were going to go out and do any robberies?

15 A No, sir.

16 Q You didn't know that at all, but you got
17 together with them?

18 A Yes, sir.

19 Q And once you got together, they told you that
20 they were going to do a robbery?

21 A No, sir.

22 Q And you knew that they had done robberies,
23 hadn't you?

24 A I knew that they do things like that.

25 Q And when they told you about that, you got

1 happy about that, didn't you?

2 A No, sir.

3 Q Because you knew -- didn't they tell you that
4 two people is just not enough to do a robbery, you
5 need three?

6 A No, sir.

7 Q You need one person to stay out there in the
8 car and then you need two to go out in and do the
9 robbery. Didn't they tell you that?

10 A No, sir.

11 Q Didn't they tell you they need one person to
12 hold the gun, hold the person at bay while the other
13 person actually steals the money?

14 A No, sir.

15 Q Weren't you happy about that so you could get
16 involved and get some of the money?

17 A No, sir. Well, that's not money, sir. I can
18 work on my own and get it. I mean, when I work, I
19 get paid at least eleven dollars an hour, sir.

20 Q So you were working at that time?

21 A Straight cash. I mean off and on. You know,
22 wintertime work gets slow. My girl worked. She
23 worked too.

24 Q You weren't working at that time?

25 A I mean, it depends. We work off and on days.

1 Some days we work. Some days we don't.

2 Q You weren't working regularly then at that
3 time?

4 A No, not regularly, but, you know, we weren't
5 really paying too much rent. Down at Fleetwood we
6 paid \$80.00 a month. And my girl, she worked, and I
7 got my support from my family. If I need some
8 money, I called my uncles, or I call my father, or
9 she would call her father or her mother. Her mother
10 worked at the BMW. You know, they help us out. And
11 her grandmother, she's a retired pastor.

12 Q So you had a lot of people that you had to get
13 money from?

14 A I mean, they would help us. I'm just saying we
15 could get help if we need help.

16 Q And you needed help and at this time work was
17 kind of slow?

18 A Did I need help?

19 Q You needed a lot of help from people to get
20 money?

21 A No, I didn't need. I said if I needed help, I
22 got a lot of people I could call.

23 Q I mean, that marijuana is expensive, isn't it?

24 A No, not really.

25 Q It's not?

1 A No, sir. They say cocaine is a rich man's
2 drug, and I don't mess with no cocaine. You -- you
3 can get weed for five dollars.

4 Q Five dollars for how much?

5 A You can get at least a blunt, two blunts.

6 Q So you got together with them. Y'all went out
7 in the car and then you went over to La Quinta Inn,
8 right?

9 A Yes, sir. I didn't know the name of the hotel
10 until they done told me. When I went to the
11 investigator -- they were like naming the hotel. I
12 didn't even know the other one was Hampton Inn.

13 Q And according to your own statement, you knew
14 that they did a robbery there with them, didn't you?

15 A I knew what?

16 Q That they did a -- what you are saying is you
17 knew they did a robbery when they went in there,
18 didn't you?

19 A No, I'm going by what -- when I was in there
20 getting investigated.

21 Q So you are telling me they didn't tell you that
22 night it was a robbery?

23 A Who, Duke and Julio?

24 Q They never told you it was going to be a
25 robbery? Is that what you are telling me?

1 A No, they never told me that they were going to
2 rob nothing.

3 Q The whole night?

4 A They never told me.

5 Q So by the time you got to that intersection,
6 that car wreck, you didn't even know there was a
7 robbery?

8 A No, sir. No, sir.

9 Q You are saying the only thing --

10 A When I got hit on the -- well, now I know about
11 the testimony --

12 Q We are talking about back then.

13 A Yeah, I'm talking about -- I'm talking about
14 GCSO, Greenville sheriff's office, when I was
15 sitting there, they were about to let me go. They
16 said we don't have nothing on you.

17 Q You are not answering my question. I'm asking
18 you what you knew.

19 A Oh, I mean, there was just a car chase. I knew
20 about the car chase.

21 Q That's the only thing that you knew that
22 happened that was going on --

23 A Yes, sir.

24 Q -- are you telling me?

25 A Yes, sir.

1 Q All right. Now, so you are saying to me that
2 you never saw any ski masks in the car?

3 A No, sir.

4 Q You never saw multiple black jackets?

5 A I remember the black jacket, but I don't
6 remember multiple black jackets.

7 Q I mean, what was Melvin Warren wearing?

8 A I don't know.

9 Q At the beginning it was cold out.

10 A Like I say, that was Melvin Warren's jacket
11 right there.

12 Q What was he wearing when he ran out of the car?

13 A I don't know.

14 Q Another black jacket, right?

15 A I don't know. I mean, they -- he said he
16 dropped the black jacket off in the woods, but if
17 the dog picked up on all the other clothes, I would
18 have figured he would have picked up on the black
19 jacket.

20 Q Well, you went to La Quinta Inn with them, and
21 you are telling us that you saw them go in the --

22 A Yeah, they went in the hotel.

23 Q And they came back out in about five minutes.

24 A Yes, sir.

25 Q And they had a wallet?

1 A No, I said a credit card.
2 Q Credit cards?
3 A Yes. Duke had a credit card.
4 Q Duke had credit cards?
5 A Yes, sir.
6 Q When they came back out.
7 And then y'all went to the mall?
8 A Uh-huh.
9 Q And he tried to use these credit cards that
10 didn't belong to him.
11 A Uh-huh.
12 Q And then y'all went back to another hotel?
13 A No, we got on the highway going down 85.
14 That's when I thought we was going home.
15 Q All right.
16 A We got on the highway going down 85 and that's
17 when they passed Augusta Road, Mauldin Road exit,
18 when I knew they were going somewhere else.
19 Q But you ended up at another hotel, didn't you?
20 A Yes, sir.
21 Q And so you are telling us it didn't seem just a
22 little bit suspicious?
23 A I mean, I wasn't even thinking about that.
24 When he stopped and got more beer, they went --
25 that's when he went to the hotel. But really it

1 wasn't even a hotel he was at. I don't even know
2 where it was. It was a fence. He parked on this
3 side of the fence and they walked around.

4 Q Around to the hotel?

5 A Well now, yes, sir.

6 Q And so at 12:30 at night?

7 A Yes, sir. That was why I told them to take me
8 home, because I knew my girl was there waiting for
9 me.

10 Q And so you are saying that didn't seem
11 suspicious to you either?

12 And then y'all leave there and you get in this
13 chase?

14 A Yes, sir.

15 Q Now, first your instinct is to run into that
16 woods?

17 A Yeah, when they ran, my first instinct was to
18 run.

19 Q Let me ask you a couple of questions here about
20 this name situation.

21 A Yes, sir.

22 Q Now, what is your -- what was your real name a
23 year ago, January 31st, 2002?

24 A Jonathan Green.

25 Q That was your name on your birth certificate?

- 1 A Yes, sir.
- 2 Q What was it -- do you have a driver's license?
- 3 A I had a driver's license.
- 4 Q Was that the name on your driver's license?
- 5 A Yes, sir.
- 6 Q And that's the name that you signed -- you told
- 7 the police?
- 8 A In Augusta, Georgia my driver's license was
- 9 Jonathan Green.
- 10 Q And there was some question the officers had
- 11 about your name, wasn't there?
- 12 A Yes, sir, they -- they didn't know. Even when
- 13 Kennedy, when he came and picked me up for that
- 14 warrant, he even -- he even made it -- he talked to
- 15 the judge, he's like well, he was cooperative.
- 16 Q That's not what I asked you. I asked you about
- 17 there was some questions about your name?
- 18 A Yes, sir.
- 19 Q And no one was quite sure what your name really
- 20 was?
- 21 A I was sure what my name is.
- 22 Q The officers weren't, right?
- 23 A Yes, sir, I told them Jonathan Green.
- 24 Q You could tell, though, they were --
- 25 A Jonathan K. Green. Jonathan Karon Green.

1 Q And a couple days later you started -- you
2 signed a couple documents and --

3 A Jonathan Hill.

4 Q You signed as Jonathan Hill, did you?

5 A Yes, sir.

6 Q That was a couple days later?

7 A Yes, sir.

8 Q After they told you that?

9 A After they took me to red pod because they had
10 me booked in there as John Doe. And you see, I
11 still got on this tag. They had me in there Hill,
12 so I had to use the name that they was giving me,
13 but I was giving some Jonathan Hill, a/k/a Jonathan
14 Green. All of my people has done started sending me
15 letters, but they had to cross out Green and put
16 Hill up there, and they had me in there booked as
17 Jonathan Hill.

18 Q But before they told you that, you never told
19 them that you also go by Jonathan Hill?

20 A I mean, I didn't go by Jonathan Hill for like
21 three years. I mean, when I worked at Greenville
22 News, you could look at all my documents as Jonathan
23 Green.

24 Q When did you get your name changed?

25 A I told you about like '98, '99.

1 Q All right. So you go by both names?

2 A Yes, sir, I changed my name so my son could get
3 my last name, because he couldn't get my last name.

4 Q The bottom line is you never told the officers
5 that you went by both names, did you?

6 A Because I don't go by both names. That was
7 back in the past I had Jonathan Hill.

8 Q Right.

9 A But my name -- I just figured because my Social
10 Security card was Jonathan Green. And I went to try
11 to get me a Social Security card here but they
12 needed two forms of -- two forms of identification,
13 and I only have my birth certificate and I didn't
14 have my license. That's why I never have received
15 my Social Security card here.

16 Q The bottom line is, just like you were trying
17 to conceal yourself in the woods, you were trying to
18 conceal yourself from those officers too?

19 A No, my name is Jonathan Green.

20 Q Isn't that true?

21 A Well, now, I even went to court and they asked
22 me how did I plead. They was going to give me time
23 served on it. I told them not guilty, and they said
24 all I had to do is give my lawyer the facts of my
25 birth certificate over there and they would -- they

1 would knock it off.. That's what they told me I had.
2 They said all I had to do was get him the facts of
3 my Social Security -- my own birth certificate over
4 to their office and they would go ahead and drop
5 that charge.

6 Q And you never did, did you?

7 A I guess not.

8 Q All right.

9 A He has a copy of my birth certificate.

10 MR. MOYER: Nothing further.

11 MR. FARNSWORTH: Just one question.

12 REDIRECT EXAMINATION BY MR. FARNSWORTH:

13 Q All right. You have explained to the jury
14 about the name Green and Hill, is that right?

15 A Yes, sir.

16 Q You went by both over a period of time?

17 A Yes, sir.

18 Q All right. Did you ever deny to anybody that
19 you were in that car that was being chased?

20 A No, sir.

21 Q Did you ever deny to anybody that you ran in
22 the woods --

23 A No, sir.

24 Q -- and hid?

25 A No, sir.

1 MR. FARNSWORTH: No further questions.

2 MR. MOYER: Nothing further.

3 THE COURT: You can step down.

4 MR. FARNSWORTH: That's the case for the
5 defense, Your Honor.

6 THE COURT: Anything in reply?

7 MR. MOYER: No, sir, Your Honor.

8 THE COURT: All right. Ladies and gentlemen,
9 we will take a short break and we will come back in
10 just a few minutes for closing arguments and the
11 jury charge and hopefully by the time we finish with
12 that, your lunch would be here.

13 (The following takes place outside the presence
14 of the jury panel)

15 THE COURT: Any special requests for charge?

16 MR. MOYER: I don't believe I can think of any,
17 Your Honor.

18 MR. FARNSWORTH: Your Honor, I would -- as we
19 have talked with you earlier, I would ask that mere
20 presence at the scene of the crime is insufficient
21 without more to convict.

22 Also in addition to that, the fact of mere
23 knowledge, in particular in this case, that a crime
24 is being committed without more, such as aiding,
25 abetting, or encouraging would be insufficient by

1 itself to convict either. I would ask that those
2 two things be charged.

3 THE COURT: All right.

4 (Proceedings recessed)

5 (Proceedings reconvened)

6 THE COURT: All right. Are y'all ready for the
7 jury?

8 MR. MOYER: Yes, sir.

9 THE COURT: Bring them in.

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

12 THE COURT: Mr. Farnsworth.

13 MR. FARNSWORTH: If it please the court, Your
14 Honor.

15 Members of the jury, again, thank you for your
16 service on this case. A lot of times we get up here
17 and we start a case late. It could be sometimes
18 finished in a day, but this one ended up, you know,
19 going into two days. I know that there are other
20 places, like home or work, that you would rather be,
21 but we appreciate your services. It's a right that
22 we have given to us. We appreciate it.

23 Now, ladies and gentlemen, we were up here --
24 well, Mr. Moyer and I were in here all day
25 yesterday. You, ladies and gentlemen, were here a

1 good bit after lunch, three, four hours, and you
2 heard testimony yesterday. And if you will
3 remember, the main thing that -- there is no
4 question that there was a robbery at these two
5 motels. I feel -- I'm sure everybody sympathizes
6 with these victims. Nobody wants to have to go
7 through that. That's a scary experience, but there
8 is no question those two robberies happened. No
9 question about it, but there is something else that
10 based on the testimony yesterday, that there is no
11 question about, and that is that Melvin Warren was
12 identified by two officers -- at least two officers -
13 Officer Kennedy with Mauldin and Officer Lewis with
14 Mauldin - who you remember were behind them chasing
15 them. They were -- I think Lewis was in -- Lewis
16 was in the first car and Kennedy was in the second.
17 They chased them, had the blue lights on, and their
18 description of the people in the car was the two
19 people in the front he could see for little bit
20 while he was behind them, but particularly when they
21 got out of the car and ran. Had two -- two of them
22 had on dark blue or black shirts. No question about
23 it. That was in both of their testimony.

24 The other testimony was that my client, Mr.
25 Jonathan Hill, had on the red shirt - the same one

1 he had on when they saw him get out of the car, the
2 same one he had on when they were behind him, and he
3 had on when he was arrested.

4 There is no question also, but because the two
5 clerks that were robbed told us that people came in
6 there, the two people, had on dark blue or black
7 shirts. If you will remember their testimony. Both
8 of them testified under oath to that.

9 So that leaves us with this conclusion. That
10 as far as going in to either one of those places to
11 rob, my client did not go in, because he had a red
12 shirt. If they would have seen a red shirt, they
13 would have testified to that. And these officers
14 testified to that. I didn't call these officers to
15 testify. They testified for the State about those
16 clothing. And I think there is no question about
17 that. It can't be contradicted as to what they
18 testified to yesterday.

19 All right. Start with that proposition.
20 That's what we learned yesterday, in addition to the
21 fact that the robberies were done and this type of
22 thing, that the chase happened and this type of
23 thing.

24 All right. My client, you know, he testified
25 that he's known these boys a short period of time.

1 He had heard that they robbed people. In any event,
2 he got with them early on - six, seven o'clock - on
3 the night of January 31st, and he went with them.
4 Now, he says that he rode with them. He knew that
5 they had robbed places, but he didn't know that they
6 were robbing those places; that he never saw a gun;
7 that they both went in -- Mr. Taylor went in, Mr.
8 Warren went in on both of those robberies; and that
9 he never agreed -- and one of the charges -- two of
10 the charges are conspiracy. You have to have an
11 agreement. You have to agree to do something. That
12 there was never any agreement that he was going to
13 rob these place with them. In fact, if you remember
14 I had to remind Damian Taylor that he had told the
15 police in his statement, which he gave the day after
16 this thing occurred, that Jonathan Hill didn't know
17 we were going to rob. He thought we were just going
18 to ride around. He ways he told him later on, but
19 initially, you will remember that, that was his
20 story that he gave the police right after this
21 happened.

22 Today Damian Taylor came in here and Melvin
23 Warren came in here and testified. Both of these
24 individuals have pled guilty to three armed
25 robberies, two in addition to the one that wasn't

1 involved with these two that we are in trial about,
2 plus there is another attempted armed robbery that
3 they are holding over their heads. And that means
4 if you will come in here and testify truthfully,
5 that we won't give you anymore time. If you don't,
6 you can get up to 20 years more after that 15 year
7 sentence then. It won't even start until then. And
8 I don't even think there is anything to talk about
9 as to whether or not Melvin Warren told the truth.
10 He says he went in both of these robberies, that he
11 had the gun. But when the day after this happened
12 and the statement I showed him that he got him, he
13 said no, he stayed in the car on both of those. He
14 didn't go in on either one of them, but Jonathan
15 Hill and Damian Taylor went in. And the fact he
16 didn't even tell the police about trying to use
17 those credit cards out at the mall that he took from
18 the gentleman there in the white shirt from La
19 Quinta Inn. In other words, he was doing everything
20 that he could there at the start to keep himself out
21 of that. And he's obviously lying to you, ladies
22 and gentlemen. There was no question about it. And
23 after I asked him about how much time he could get
24 and he understood that, I said you would do about
25 anything not to do that extra 20 years.

1 And in addition to that, the statement that he
2 lied in and the lying that he's done in court here
3 today, he's got a history of things involving lying
4 or cheating or stealing, which is all of that same
5 thing. He's got a bunch of fraudulent checks,
6 forgeries, receiving stolen goods, all those things
7 on his record before he even got to the big leagues
8 up here on these armed robberies. So there is no
9 reason in the world that you should believe anything
10 that he says. I mean, he's proved himself to you by
11 testifying in court today that he would lie to help
12 himself, and that's what he did. He's lied from the
13 date he got arrested. He's lying to you today. I
14 mean, you can't say that you stayed in the car the
15 day after this thing happened and you talk to the
16 police and later on after you have been given this
17 deal and come in here and say no, I wasn't in the
18 car, I went in on both of them with Jonathan Hill.
19 Well, that's just not what he told the police to
20 start with. And that was when it was most fresh in
21 his mind. I'm telling you he's up here, he's trying
22 to look out for himself. He's trying to save
23 himself 20 years in the penitentiary, in addition to
24 the 15 he's doing. He's led a life of crime.
25 That's all he's done. That's all he knows.

1 So we talked briefly and Judge Few talked
2 briefly and he will tell you again about you, ladies
3 and gentlemen, are the sole judges of the
4 credibility or believability of the witnesses. In
5 other words, you can believe whether a witness is
6 lying or not. You can believe all their testimony,
7 parts of it, anything that you want, but you decide
8 whether he's a liar or not. And I submit to you
9 that he lied up here on this witness stand to help
10 himself today. He changed his story completely
11 around from back a today after this thing happened.
12 So you say well, why would he now say that he went
13 in with the gun and he didn't stay in the car and
14 then went in the other with the gun? He's already
15 got his deal, and he thinks this is going to sound
16 better for him now to say look, I have already got
17 my 15 years, I can't get anymore on that, so I'm
18 going to say I went in. That's not going to hurt
19 me. So he just made a complete liar out of himself
20 and it's just as obvious as it can be and I feel
21 sure that you, ladies and gentlemen, heard it and
22 seen it.

23 Now, my client did testify that he got with
24 these boys, they went out, that Damian Taylor and
25 Melvin Warren went in both of these motels. He says

1 he never saw a gun. He did see some credit cards.
2 They went to the mall after that first robbery. No
3 question. The only way we know for sure that -- and
4 he was trying to lie about his credit card too, but
5 he didn't tell the police about those credit cards
6 that he used at that mall. I had to show him in the --
7 show him that they were used. And the reason we
8 know that is because the clerk there called to
9 report his card stolen and they told him somebody
10 tried to use it. That's the only way we would have
11 known that. Otherwise we wouldn't, because they
12 wouldn't take it and it was rejected. But my client
13 was with them. And if you believe his testimony, he
14 did not go in there. He stayed in the car. And,
15 again, going back to that thing that Damian Taylor
16 testified to under oath, he thought we were just
17 going to ride around, and that's important. I mean,
18 that's a State's witness saying that about my
19 client's involvement when he first got in that car.

20 Now, you say well, did he know after they
21 started getting into the two robberies or should he
22 have known? Judge Few is going to charge you the
23 law. And, again, if you will remember, you are not
24 to decide this case until you have heard the law
25 that he applies, that he charges. And you take that

1 and apply it to the facts. Now, you can decide the
2 facts up from them because you are the fact finders.
3 You are the judges of the facts, but you cannot
4 decide this case unless and until you hear what
5 Judge Few tells you the law is.

6 And basically he's going to charge what armed
7 robbery is. Mr. Moyer will tell you what that is.
8 Conspiracy, that's an agreement to do the robberies.
9 And he's going to charge you -- I anticipate he's
10 going to charge you that possibly because my client,
11 even if he did stay in the car, possibly the hand of
12 one is the hand of all. But in addition to that
13 he's going to charge you that my client -- that mere
14 presence is at the scene is not enough to convict in
15 and by itself. And even the mere knowledge that
16 these crimes are being committed is not enough to
17 convict him without more. By more I mean aiding,
18 abetting, or encouraging the other two. And that
19 means acting as a -- or going in and casing the
20 place; being the getaway driver, things like that,
21 which there was never any testimony he did any of
22 that. The testimony was that, according to him, he
23 stayed in the car. But this is a situation where
24 you have got -- you have got two people coming in
25 here with just terrible criminal records and that's

1 the State's main case.

2 Now, we never have denied -- and if you will --
3 you can tell by my reaction to the testimony
4 yesterday about the case, we are not -- we have
5 never tried to suggest to you, ladies and gentlemen,
6 that we weren't in that car. Never have we done
7 that. In fact, even on the chase, and you heard his
8 explanation. When I asked him -- they didn't ask
9 him. I asked him. I said why did you run? He said
10 well, it was my instinct. I just -- I ran. And he
11 admitted it. I don't know what else he could have
12 done during that car chase. He wasn't driving.
13 And, you know, I don't know if any of you have ever
14 been in a car with somebody that you thought was
15 going too fast or something like that, or whatever,
16 maybe had something to drink or something, I have
17 heard that, and you tell them to stop and they don't
18 stop, what do you do? I mean, they drive the car.
19 You can't control what the driver of the car does.
20 So he was in that car. There is no question about
21 that. But that doesn't mean that he was actively
22 involved in those two robberies. The only way that
23 the evidence says that he is is what these two
24 criminals, these two liars, have told you. That's
25 the only real evidence that they have that he's

1 involved in either one of these robberies. I think
2 the evidence is -- you can infer from the evidence
3 as well is that he was involved as that he wasn't.
4 If you believe his testimony, he sat down in the car
5 the whole time, and I haven't heard any evidence to
6 indicate otherwise, except from two liars.

7 Then there is the issue at the end of the case.
8 If you remember, neither one of the other two guys
9 that testified, neither one of them got any of the
10 money. Well, that's -- again, that's self help.
11 You know, that's to protect themselves, make
12 themselves look good, I didn't get any money. And,
13 you know, if I say this, like they told the police,
14 well, I look better, like I wasn't involved, I
15 stayed in the car. That's what everybody wants to
16 do. Well, there was \$143.00 in his pocket. Okay.
17 And neither one of them now, if you will remember
18 their testimony, got anything out of these two
19 robberies except those credit cards. And if I'm
20 wrong, y'all correct me. One of the robberies I
21 think the first place was he thought there was about
22 \$120.00 in there, and they took either \$15.00 or 30
23 from his wallet. Okay. That's a hundred and, say,
24 forty or fifty right there.

25 The other robbery he said he usually kept

1 about, you know, more than that in there, but I
2 think like 180 was taken, or something like that.
3 So, in other words, the amount taken would have been
4 much more total than my client had in his pocket.
5 And, you know, it's not against the law to have
6 \$143.00 in your pocket. In fact, you can carry
7 around, you know, a thousand dollars if you want to.
8 That's not against the law. And I think there is a --
9 that is an explanation for the money in his pocket.
10 He made that money, or had that money that somebody
11 gave it to him, but if neither one of them had the
12 money, which they testified to, where is the rest of
13 it? Where is the rest of it? I mean, you know,
14 that is more than -- three times worth more than
15 \$143.00. But, anyway, that's another thing that the
16 State called that witness for. She testified for
17 three or four minutes, and I didn't ask her any
18 questions. You know, they wanted to make you think
19 that this was connected to the robberies. But we
20 felt -- but there is doubt of that, because the
21 other two guys testified that they didn't get
22 anything. It just doesn't ring right.

23 All right. I'm going to say a few more things
24 and then I'm going to sit down.

25 Yesterday I can't -- just in my opening

1 statement, which is not evidence in the case, and
2 this is not evidence now, what I tell you it's, but
3 I have this opportunity to talk to you. When I sit
4 down Mr. Moyer gets to talk to you. That's just the
5 way our system works. I go first and he follows, so
6 he has an opportunity to hear me and I can add some
7 things normally that he wouldn't if he had to go
8 first. Anyhow, there is -- I can't overemphasize
9 the fact that I told you about the presumption of
10 innocence yesterday. Right now that presumption is
11 still in existence, and will be until you have heard
12 the law and you go back in that jury room, and you
13 have got to be satisfied beyond a reasonable doubt
14 that the State has proved my client's guilt to each
15 and every allegation in those indictments beyond a
16 reasonable doubt.

17 If you have any doubt whatsoever, any doubt
18 whatsoever, if you have any substantial doubt,
19 reasonable doubt, you have got to find him not
20 guilty. You have no choice.

21 And, again, if you find beyond a reasonable
22 doubt, you have got an obligation to find him guilty
23 too. But I suggest to you that if you find my
24 client guilty based on testimony of these two thugs,
25 they are liars, they are more or less career

1 criminals. One of them is for sure. I mean, that's
2 all it is. When you get down to it, that's what it
3 is. The star witnesses who have already gotten
4 their 15 years and they don't want to get another
5 20, that's what it amounts to. And he's lied and he
6 admitted he lied. He said yes, I will do anything,
7 and he will. So, they are just -- you know, you
8 can't be the driver a year ago and then a year later
9 you know you weren't driving, you went in with the
10 gun. I mean, that just doesn't fly. That's a lie.
11 Just doesn't make sense. Anyway, apparently that's
12 the way he remembered it, or whatever, but this is a
13 very, very serious case. Very serious, and you have
14 an awesome responsibility in this case and I'm not
15 going to suggest otherwise, but all I ask you to do
16 is when you take the law, go back there and talk
17 about the facts. Take the law and apply it to your
18 facts and reach a verdict.

19 You know, you have taken an oath to, you know,
20 try this case based only the law and the evidence,
21 and I'm sure Mr. Moyer feels the same way. We have
22 every confidence that you are going to do the right
23 thing, whatever it is, and do what you the think is
24 the right thing, and nobody is going to criticize
25 you. Nobody is going to be mad at you, or anything

1 like that, but think about this case. There is a
2 lot of reasonable doubt in this case. Thank you.

3 MR. MOYER: If it please the court..

4 Ladies and gentlemen, I won't be real long. I
5 want to just make some points to you. Let me make
6 some comments in response a little bit about what we
7 just heard, go over some of the evidence in this
8 case.

9 You know, you may remember something from
10 during the testimony early on in this case, the
11 third witness, Mr. Borei. A little difficulty
12 pronouncing his name, but I believe that was the way
13 that he pronounced it. Mr. Borei said something
14 when he was on the stand. He said, you know, when
15 someone sticks a gun in your face, you get very
16 polite. You do what they say, because if you don't,
17 you are dead.

18 And, ladies and gentlemen, this case is about
19 money for sure. There was no doubt about it. Money
20 was stolen. It's about greed. It's about some
21 people who needed some quick bucks. Not a whole
22 lot. Not a whole lot of money, but what they did to
23 these two people, but it's about all those things.
24 But what it's really about, ladies and gentlemen,
25 it's about terror. It's about the terror that was

1 inflicted on those two people. The money, I can
2 assure you Hampton Inn and La Quinta Inn is going to
3 go fine without their couple hundred dollars that
4 were lost that night. What the real tragedy is
5 here, what the case is really about is those few
6 minutes of terror when that pistol was pressed up
7 against Marvin Somarriba's head; when that other
8 pistol was pressed up against the middle of the face
9 of Mr. Ron Borei. It's about that terror, and
10 that's what going to linger in the memories. That's
11 what's going to linger on in this case. Not that
12 it's \$200.00 that was stolen.

13 What this case is about, ladies and gentlemen,
14 it's about three people who inflicted that terror.
15 Yes, there was one gun, but ladies and gentlemen,
16 there were three hands around that gun. There were
17 three hands around that gun. It took three people
18 to pull this job off. It took one to drive. For a
19 crime like this you need a car. You need a way to
20 get away quickly. You know what, if two people are
21 going to go in and rob La Quinta Inn on Woodruff
22 Road, where the police are going to be there pretty
23 quickly, you are not just going to want to go walk
24 out on the street and start walking down Woodruff
25 Road to get away. There is going to be people out

1 there looking for two individuals in dark clothes
2 who match that description. There is going to be
3 police coming to that area. You need a gun -- I
4 mean, you need a car. You need a car to get away
5 with. You need somebody to be a getaway driver.
6 You need somebody to be in that car ready to speed
7 off at a moments notice if something goes wrong for
8 those guys. If they come running out quickly to get
9 out of here, you need a getaway driver. You need
10 someone sitting in this car as a lookout. What if
11 the police come up unexpectedly? You drive over to
12 that door so we can get out of here real quickly.
13 What if some other people start coming up? You need
14 someone out there watching.

15 You need in that car, what was in this car, a
16 whole bunch of other clothes. You are going to be
17 driving around, the police are going to be out
18 looking for a couple of individuals in dark
19 clothing. Well, you know what we need? We need
20 some light clothing, don't we? We need a red
21 T-shirt. We need white T-shirts, gray jackets, so
22 we can get back in that car, we need something else
23 to put on. You are not going to have that if you
24 just walking around to do a robbery like that. You
25 need someone out in that car. You need that car.

1 In addition you need a gun. You need someone
2 who is going to walk up to that clerk, hopefully
3 just one person. Or what if there is more than one
4 person? You need someone who can control those
5 people, who can make sure that there is no hero
6 stuff that goes on, to make sure that no one runs
7 away, someone who can devote his full attention on
8 the people or person who is about to be robbed.

9 And then finally, ladies and gentlemen, you
10 need the person who was going to do the actual
11 robbery, who is going to clean up, who is going to
12 wear the gloves so he doesn't leave any
13 fingerprints, who is going to be free because the
14 gun man is covering the person that's being robbed,
15 is going to be free to pick up the loot. That's
16 exactly what we have here. It took three people to
17 pull this job off.

18 And I mentioned to you, and you have heard
19 several times now about a facet of the law that's
20 going to be applicable in this case, and that is the
21 act of one is the act of all; or another way of
22 putting it, is the hand of one is the hand of all.
23 You don't have to sit around and figure out well,
24 who was at the car, who held the gun, who grabbed
25 the money, who did what. If you are working

1 together to commit some criminal enterprise, you are
2 all guilty. All three of those people were driving
3 the getaway car. All three of those people walked
4 in with ski masks. All three of those people had
5 dark clothing on. All three of those people were
6 holding the gun against the victims faces. All
7 three of those people took the money. They are
8 working together.

9 And now justice demands, ladies and gentlemen,
10 that you find this third person, this defendant,
11 guilty for these crimes.

12 Very briefly, does the defendant's story make
13 any sense? The idea that he just happened to be
14 with these two individuals, who he knew were
15 robbers, who he knows had the gun, drive -- and
16 supposed to go to a party, and they are driving
17 around for four and a half hours, not going to any
18 party, going out, getting some weed, getting some
19 beer, drinking a gallon of wine, going to an inn,
20 coming out, going to the mall with stolen credit
21 cards, going back to another inn, does that make a
22 whole lot of sense? Does it make a whole lot of
23 sense for two people who decide well, how are we --
24 let's two, we are going to go out and commit some
25 robberies, why don't we just take a third person

1 along with us, whom we know nothing about, just to
2 ride along with us? Does that make sense, to bring
3 a witness along for the crime? Y'all are allowed to
4 use your common sense in this case. In fact, you
5 are supposed to use your common sense. Ask yourself
6 does that make any sense?

7 And does it make any sense that when that car
8 spun out there in that dirt area of the corner
9 intersection of Whitehorse Road extension and Fork
10 Shoals Road that somebody, who according his own
11 testimony, knew nothing going on wrong that entire
12 night? But what does he do? He doesn't just run
13 off a little ways. He ran into those woods while
14 three different jurisdictions -- four - Greenville
15 County sheriff's office, Simpsonville police
16 department, Mauldin police department, South
17 Carolina Highway Patrol - blocking off that whole
18 intersection. Helicopter out there. Two dogs. All
19 right. That's after he's in the woods. While all
20 that's going on.

21 Okay, the car spins out. According to his
22 testimony he doesn't know why. He doesn't know why
23 the guy is fleeing. He doesn't know anything has
24 gone wrong. All right, so you spin out and you are
25 going to get out and run? You are shaken up because

1 you have just had a high speed chase, you are shaken
2 up because your car is turning off the road, and you
3 are going to go run in the woods for two -- for over
4 two hours? I think it was close to two and a half
5 hours, hiding out in the creek for hours after the
6 other two were caught; duck down underneath a bank,
7 under a -- in a deep gully hiding there? And not
8 just until the police get close, but until the
9 police are actually right over the top of him with a
10 flashlight pointing down at him and saying all
11 right, time to come out. Does that make sense for
12 someone who has that story? Ladies and gentlemen, I
13 contend that it does not.

14 I think the evidence was clear in this case.
15 First of all, even if he was the person who stayed
16 out in the car and he had -- and he was the lookout
17 person, and he's as guilty as the others, but I
18 think the evidence is clear to you that he was the
19 person who went into those two motels and took the
20 money. We know he's in that car again. Defense
21 contends he's not disputing that. We know he's in
22 the car. If you want to look at that video again,
23 at the very beginning of it you can see that red
24 shirt in the back of that car. We know he was in
25 the car. We know he was rummaging around in the

1 car. We know that dog, after a couple of hours,
2 found him finally from tracking from that car. So,
3 yes, we know he was in that car.

4 Again, we know he was in that back seat. What
5 does that tell us? Again, that tells us that he was
6 in the hotel. It makes sense for you to -- a
7 getaway driver is called that for a reason. He's
8 not going to go sit in the back seat. The getaway
9 driver is going at the wheel ready to take off.
10 When he come running out and jump in the car, one
11 jumps in front, one jumps in the back seat. You are
12 getting out of there.

13 Just like Mr. Marvin Somarriba testified to
14 you, the man with the gun said very clearly was
15 short shorter than he. Mr. Somarriba is I think he
16 said 5'9", 5'10". The man with the gun is shorter.
17 You heard Melvin Warren testify he's about 5'7".
18 Marvin Somarriba said the person who took the money
19 was taller, around his height. It's hard for him to
20 tell because he was seated, but around his height.
21 And we know the defendant is about three inches
22 taller. He's the one that took that money.

23 What else was that in back seat where the
24 defendant got out and ran? That jacket and the ski
25 mask. We know one ski mask was found on Melvin

1 Warren. He took his with him. He still had the
2 wallet with him. That was back there where the
3 defendant was. We know the defendant was rummaging
4 around. The officers said when they got behind this
5 car to attempt to pull it over, what were the
6 defendants doing, including the defendant in the
7 back seat of the car? Rummaging around, looking
8 back. What does that indicate? We need to hide
9 stuff. Who knows what they were ditching out the
10 windows and who knows where the rest of that money
11 is? Probably out there. Somewhere in this triangle
12 that's apparently being developed into a housing
13 division -- housing subdivision now we heard, where
14 that gun is, where that other jacket is, where that
15 other coat is that Melvin Warren ditched. They are
16 running through that. The gun fell out. The money
17 fell out. Some of the money. They could have spent
18 some of the rest of the money, but what we do know
19 is this defendant had \$142.00 cash, without a
20 wallet, without any identification on him. Is that
21 just a coincidence? Well, ladies and gentlemen,
22 y'all decide that. \$143.00.

23 And I have to get back to this one more time
24 the fact of him in getting out and running. Why do
25 you do that? You don't do that if you have done

1 nothing wrong. You don't get out and run and hide
2 from the police if you have done nothing wrong. You
3 do that if you have been caught red-handed minutes
4 after a robbery fleeing the robbery and you don't
5 want to get caught.

6 Ladies and gentlemen, we could stop right
7 there. We could stop right there and I would argue
8 to you that's enough evidence to find this defendant
9 guilty. All three of them caught red-handed minutes
10 after a robbery.

11 In addition to that we heard an awful lot about
12 that -- this next point just a few minutes ago about
13 these co-defendants who testified. Corroborated all
14 that we have just heard. Let me make just a couple
15 statements about that. Can you give any credence to
16 what they have to say? Can you? Let me ask you to
17 think about a couple of points. You could have one
18 response and say oh, those are bad guys, they
19 committed crimes, they have done armed robberies,
20 they have done other things in the past, I'm just
21 not going to believe them, I'm just not going to
22 believe anything that they say. That could be one
23 response that the defense would ask for you to have.

24 Or you could take another response. Another
25 response could be, and I would argue to you, the

1 responsible one is to say let's think through what
2 they said. Let's think through the circumstances of
3 what they said. Of course they are hoping for some
4 help. Of course. Y'all know this in the real world
5 this the way it works. How do you catch the
6 executives at Enron doing all those white collar
7 crimes? Well, it's a bunch of other white collar
8 guys, the pocket protectors and accountants, right?
9 How do you catch a Mafia boss? Well, with Sammy
10 "The Bull" Gravano. How do you catch a drug dealer?
11 Well, you have other drug dealers who are a little
12 farther down the chain go out and get wired up and
13 go out and catch the one farther up the chain and
14 they come in and testify. Ladies and gentlemen,
15 it's the same thing here. I mean, who do you expect
16 for them to have to come in and testify as
17 co-defendants in an armed robbery case? Of course
18 you are going to have people like that.

19 And, ladies and gentlemen, another point is,
20 you know, we didn't choose these witnesses, nor did
21 the defendant did. They are his friends. They are
22 his confidants. They are his co-conspirators. All
23 right. And they came in here and testified to you
24 today, and as the defense kept pointing out, they
25 have a pretty high stake in telling the truth,

1 right? That's what they are thinking. They are
2 thinking they want to help themselves. Well, why
3 get caught in a lie? I don't think I'm helping
4 myself. So consider that too.

5 Consider the fact that when they came in here,
6 they didn't try to get around, they didn't try to
7 any more to try to distance themselves from this.
8 They didn't tell -- in fact, told you that he had
9 the gun initially and gave it to those two. And
10 Melvin Warren admitted to you that he walked in
11 there with a gun, that he was the one with the gun
12 when they did those two robberies. And, of course,
13 when they were caught Melvin Warren said oh, yeah, I
14 sat in the car and other two went in. That's what
15 everybody said. That's what Damian Taylor says,
16 right? You get caught and uh-oh, well, just better
17 to say enough to try to help ourselves, but I don't
18 want to get in too much trouble, so okay, I sat out
19 in the car and other two went in. Damian Taylor
20 said I sat out in the car and the other two went in.
21 Melvin Warren said I sit in the car and the other
22 two went in, right? That's what they all said right
23 after it happened. It turned out Damian Taylor, I'm
24 not sure his story changed at all. He was the
25 driver. He admitted it. The defendant admitted it.

1 Melvin Warren told you the officers said he
2 identified him. So I'm not sure his story changed
3 at all, that he was the one who was the driver that
4 night and stayed out in the car.

5 I would argue to you, ladies and gentlemen,
6 that you can put credence to what those two men say.
7 Eve if you don't want to, ladies and gentlemen, you
8 don't have to, because the rest of the evidence in
9 this case implicates this defendant. It implicates
10 him as being caught red-handed in the act moments
11 after the crime, fleeing the crime scene, a wad of
12 money in his pocket right after the robbery.

13 Ladies and gentlemen, in conclusion, this is a
14 case about three people acting as one to inflict
15 terror in the lives of two members of our community.
16 The evidence, I would argue to you, is overwhelming
17 to find him guilty of resisting arrest out there in
18 the woods as the police officers were trying to
19 apprehend him; of committing the armed robbery of La
20 Quinta Inn; of conspiring with Melvin Warren and
21 Damian Taylor to commit the armed robbery of La
22 Quinta Inn; of armed robbery of the Hampton Inn a
23 few hours later; and of conspiring with Melvin
24 Warren and Damian Taylor to commit the armed robbery
25 of Hampton Inn, and I ask that you return a verdict

1 that speaks the truth that reflects that. Thank you
2 very much.

3 (Whereupon, at 12:05 p.m., the Court charged
4 the jury panel)

5 THE COURT: Ladies and gentlemen, now that you
6 have heard all the evidence and the arguments of the
7 lawyers, it becomes my responsibility to explain to
8 you the law that is applicable to this case.

9 As I told you in the beginning, under our
10 Constitution and Code of Laws only the jury can make
11 the findings of fact in this case. I am not
12 permitted to indicate to you how I might feel about
13 the facts, and if there is anything that I have done
14 during the course of this trial or said during the
15 course of this trial that might lead you to believe
16 that I have an opinion about the facts, then you
17 must disregard that. Only the jury can make that
18 decision. This jury must independently weigh the
19 evidence that has been presented in this trial and
20 render a verdict based solely on that evidence and
21 in light of the law as I now give it to you.

22 Now, in my opening remarks to you I discussed
23 your evaluation of the credibility of witnesses and
24 some of the things that you might wish to consider
25 as you made that evaluation. Those remarks and

1 those considerations are a part of my charge to you
2 on the law, but you have also heard evidence of a
3 criminal record of one or more witnesses who have
4 testified here in this trial. A past criminal
5 record does not affect the ability of that witness
6 to testify. The past record may be considered by
7 you, if at all, in determining the witness'
8 believability or that witness' credibility.

9 The same Constitution and Code of Laws that
10 make you the exclusive judges of the fact makes me
11 the exclusive judge of the law. And if you have
12 some idea as to what the law is or what the law
13 should be and if that differs from what I now tell
14 you the law is, then you are obligated under the
15 oath that you have taken as jurors to set your
16 notion of the law aside and to accept and apply the
17 lay precisely as I now state it to you.

18 The fact that the defendant was arrested and
19 charged and indicted in this case is not evidence
20 and cannot be considered by you in any way as
21 evidence of guilt in this case, nor does it create
22 any presumption or inference of guilt. The
23 indictment is simply the formal written instrument
24 that contains the charge or charges made against a
25 defendant and it serves as the formal document by

1 which this case is processed and brought into this
2 court for trial.

3 The defendant has pled not guilty to each of
4 these indictments, and that plea casts the burden on
5 the State to prove the defendant guilty beyond a
6 reasonable doubt. A person charged with committing
7 a criminal offense in South Carolina is never
8 required to prove themselves innocent.

9 Ladies and gentlemen, it is an important rule
10 of law in this country that the defendant in a
11 criminal trial will always be presumed to be
12 innocent of the crime for which he has been charged,
13 unless and until his guilt has been proven by
14 evidence satisfying you of that guilt beyond a
15 reasonable doubt.

16 Now, this presumption of innocence is not
17 merely legal theory. It's not just a legal phrase.
18 It is a substantial Constitutional Right to which
19 all of us and each defendant is entitled. This
20 presumption of innocence accompanies the defendant
21 from the time he is charged, throughout the trial,
22 and into the jury room, until you reach a verdict of
23 guilt based on evidence satisfying you of that guilt
24 beyond a reasonable doubt.

25 A reasonable doubt is a doubt which makes an

1 honest, sincere, conscientious juror in search of
2 the truth in the case to hesitate to act. Proof
3 beyond a reasonable doubt must therefore be proof of
4 such a convincing character that a reasonable person
5 would not hesitate to rely on it and act on it in
6 the most important of his or her own affairs.

7 Proof beyond a reasonable doubt can also be
8 described as proof that leaves you firmly convinced
9 of the defendant's guilt.

10 Now, there are very few things in this world
11 that we know with absolute certainty, and in
12 criminal cases the law does not require proof that
13 overcomes every possible doubt.

14 If, based on your consideration of the
15 evidence, you are firmly convinced that the
16 defendant is guilty of the crime charged, then you
17 must find him guilty.

18 If, on the other hand, you think that there is
19 a real possibility that he is not guilty, then you
20 must give him the benefit of the doubt and find him
21 not guilty.

22 The defendant is charged in this case with two
23 counts of armed robbery. In order to convict the
24 defendant of armed robbery, the State must prove
25 five essential elements, each beyond a reasonable

1 doubt. And I'm going to go over those elements with
2 you one by one, and then I'm going to go back and
3 talk about a couple of them individually.

4 First, the State must prove that the defendant
5 took and carried away the personal property from the
6 person or presence of another person.

7 Second, the State must prove that the defendant
8 did so without that person's consent.

9 Third, the State must prove that the defendant
10 did so with violence or by putting the owner of the
11 property in fear of violence.

12 Fourth, the State must prove that the defendant
13 did this with the intent to permanently deprive the
14 owner of the property and to convert the property to
15 the defendant's own use.

16 And fifth, the State must prove that the
17 defendant or someone engaged in the robbery with him
18 was armed with a deadly weapon at some point during
19 the robbery.

20 Now, regarding the first element, which is that
21 the State must prove that the defendant took and
22 carried away the personal property from the person
23 or presence of another person. Regarding that
24 element, the slightest removal of the property or
25 the complete possession of the property, even for an

1 instant by the defendant, is sufficient to show a
2 taking and carrying away of the property.

3 Also regarding the first element, property is
4 in the presence of a person if it is within the
5 person's reach, inspection, observation or control,
6 so that the person could, if not overcome with
7 violence or prevented by fear, retain possession of
8 the property.

9 Now, regarding the fifth element, a deadly
10 weapon is any article, instrument, or substance
11 which is likely to cause death or great bodily harm.
12 Whether an instrument has been used as a deadly
13 weapon depends upon the facts and circumstances of
14 each case.

15 Those are the five elements of armed robbery.

16 Now, if a crime is committed by two or more
17 people who are acting together in committing a
18 crime, the act of one can be the act of all.

19 A person who joins with another to accomplish
20 an illegal purpose is criminally responsible for
21 everything done by the other person which occurs as
22 a natural consequence of the acts done in carrying
23 out the common plan and purpose. Under these
24 circumstances the hand of one is the hand of all.

25 And when I say under these circumstances, I

1 don't mean the circumstances in this trial. I mean
2 the circumstances that I just gave you in the
3 charge. You have to decide if the circumstances
4 support the hand of one is the hand of all.

5 Prior knowledge that a crime is going to be
6 committed, without more, is not sufficient to make a
7 person guilty of that crime. Mere knowledge that
8 another person is going to commit a crime, even if
9 the defendant is present when the crime is
10 committed, is not sufficient to convict the
11 defendant under this doctrine of the hand of one is
12 the hand of all. Guilt under this doctrine is shown
13 was actual or constructive presence at the scene as
14 a result of a prior arrangement.

15 And present at the commission of a crime means
16 to be sufficiently near to aid and abet and assist
17 in the commission of the crime.

18 However, mere presence at the scene of the
19 crime is not sufficient to convict one as a
20 principal on the theory of aiding, mere presence at
21 the scene of a crime is not sufficient to convict
22 one as a principal on the theory of aiding and
23 abetting.

24 Intent is also a necessary element, for there
25 must have been a common design or intent to commit

1 the crime and the crime must have been committed
2 pursuant thereto with the person aiding and abetting
3 by some overt act.

4 Intent means intending the result which
5 actually occurs, not accidentally or involuntarily.

6 Intent may be shown by acts and conduct of the
7 defendant and other circumstances from which you may
8 naturally and reasonably infer intent.

9 The defendant is also charged with two counts
10 of criminal conspiracy.

11 A criminal conspiracy is an agreement or
12 combination between two, or more, persons for the
13 purpose of committing an unlawful act.

14 In order to convict the defendant of this
15 crime, the State must prove three essential
16 elements, each beyond a reasonable doubt.

17 First, the State must prove that the defendant
18 entered into a mutual understanding, agreement, or
19 common intention and plan with another person.

20 Second, the State must prove that the defendant
21 did this intentionally.

22 And third, the State must prove that the
23 purpose of that understanding, agreement, common
24 intention or plan was to commit an unlawful act.

25 With regard to the first and second elements of

1 criminal conspiracy, mere passive knowledge of or
2 consent to the criminal conduct of another is not
3 enough to make a person a conspirator.

4 On the other hand, it is not necessary that the
5 agreement be a formal agreement. It is not
6 necessary that it be in writing, that the persons
7 hold a meeting and expressly state the terms of the
8 common plan. It is not necessary that the agreement
9 be stated in words between them. The agreement of a
10 criminal conspiracy may come into being through an
11 implied mutual understanding. A conspiracy may be
12 shown by circumstantial evidence and the conduct of
13 the parties. It is not necessary that the State
14 prove that any action was taken in furtherance of
15 the conspiracy.

16 Now, finally, the defendant is charged with
17 resisting arrest.

18 In order to prove the defendant guilty of
19 resisting arrest, the State must prove two elements,
20 each beyond a reasonable doubt.

21 First, the State must prove that the defendant
22 knowingly and willfully opposed or resisted a lawful
23 arrest.

24 And second, the State must prove that the
25 arrest was being made by a person the defendant knew

1 or reasonably should have known was a law
2 enforcement officer.

3 With regard to the first element of resisting
4 arrest, knowing obviously means with knowledge,
5 consciously done.

6 Willfully means done intentionally and not done
7 by accident.

8 Even peaceful, nonviolent, indirect obstruction
9 of an arrest is considered resisting arrest.

10 If the means used are sufficient to prevent the
11 officer from making an arrest, the defendant is
12 guilty of resisting arrest.

13 Now, ladies and gentlemen, first of all, I know
14 that's a lot to remember. I generally try to stop
15 about two-thirds of the way through the charge when
16 the jury is just about to lose hope in their ever
17 being able to remember that and tell them that you
18 will have a copy of what I just read to you in the
19 jury room with you, so that if you have any
20 questions you may refer back to the charge. You
21 must consider this charge as a whole, however, and
22 you may not consider any one part of the charge as
23 the entire charge. You must consider the charge as
24 a whole.

25 Now, ladies and gentlemen, your verdict in this

1 case must be unanimous. All twelve of you must
2 agree before you can write a verdict.

3 Now, in just a few minutes I'm going to send
4 you back into the jury room, but I'm going to ask
5 you not to begin your deliberations, because I may
6 have some matters of law to take up with the
7 lawyers.

8 While you are waiting on me, I would like for
9 you to select a foreperson to serve the jury. The
10 job of the foreperson is to preside over the
11 deliberations in the jury room and, when necessary,
12 to make any written communication with the court.
13 And from this point forward your communication with
14 the court must be in writing. If you have any kind
15 of question or any kind of statement, put it in
16 writing, give it to the bailiff and he or she will
17 give it to me.

18 Other than what I have just said, the job of
19 the foreperson is no different from that of any
20 other member of the jury. The foreperson's vote
21 counts no more than that of any other member of the
22 jury. If you have any trouble or reluctance in
23 selecting a foreperson, please just let me know and
24 I will appoint one.

25 Now, you will have with you in the jury room

1 the indictments in this case. Now, ladies and
2 gentlemen, these actually are five separate cases.
3 They are five several indictments. You must reach
4 five separate verdicts. It will be the job of the
5 foreperson, after the jury has reached a unanimous
6 verdict, to write the verdict on the indictment.
7 And if you look in the lower left-hand corner of the
8 back of the indictment, you will see the word
9 verdict. And below that word are four blank lines.
10 On one of those blank lines the foreperson would
11 write the verdict, sign below where it says
12 foreperson of petit jury, date it. And when the
13 jury has reached a verdict in all five cases, please
14 notify the bailiff and we will get you back out here
15 into the court room to receive the verdict.

16 Now, you will recognize on the indictment that
17 I have put in some handwriting. There was a motion
18 made at the beginning of the trial to amend the
19 indictment to read that the defendant is Jonathan
20 Karon Hill, also known as Jonathan Green. And so I
21 have written in blue to reflect that amendment to
22 the indictment.

23 Ms. Vicars and Ms. Franklin, would you two
24 please remain in your seats. The rest of you please
25 go to the jury room, but do not begin your

1 deliberations. Notify the bailiff as soon as you
2 have selected a foreperson.

3 (Whereupon, the jury panel retired to the jury
4 room)

5 THE COURT: Mr. Jones, would you take these two
6 jurors out into the hall, but not into the jury
7 room. If they have any belongings in the jury room,
8 please get them out for them and I'll be right back
9 with y'all.

10 (Whereupon, the alternate jurors were taken out
11 of the courtroom)

12 THE COURT: Any exception?

13 MR. MOYER: None from the State.

14 MR. FARNSWORTH: None from the defense.

15 THE COURT: I would like for y'all to collect
16 what you can agree to be the correct set of exhibits
17 that have been introduced into evidence. And when
18 you have agreed upon what are the correct exhibits,
19 then we will put that on the record. We will send
20 that and the indictments and the charge back.

21 Here is the charge. I can tell you that, as I
22 never do, I did not read it verbatim, but it
23 essentially tracks what I said, but I would like for
24 you to review it to make sure that there is nothing
25 in there that is incorrect and that you might object

1 to, so I can send it back to the jury.

2 (off the record)

3 (back on the record)

4 THE COURT: The foreperson is Scott Thibodeaux.

5 And Mr. Farnsworth and Mr. Moyer, I understand
6 that y'all have agreed as to what the correct set of
7 exhibits is?

8 MR. FARNSWORTH: That's correct, Your Honor.

9 THE COURT: And y'all have reviewed charge?

10 MR. FARNSWORTH: I have.

11 THE COURT: Sir?

12 MR. FARNSWORTH: I have.

13 THE COURT: And it's correct?

14 MR. FARNSWORTH: Yes.

15 THE COURT: All right. Send it all back. Tell
16 them that they can begin their deliberations.

17 (Whereupon, at 3:13 p.m. the jury panel was
18 instructed to begin deliberations)

19 (Whereupon, at 3:14 p.m., proceedings recessed,
20 pending the verdict of the jury panel)

21 (Whereupon, proceedings were reconvened)

22 THE COURT: All right. I got a note from the
23 jury and the note says number one, need
24 identification of gray item mask in State Exhibit
25 No. 14. And then there is a little star that says

1 located in bottom right hand corner of photo.

2 Then number two need confirmation of height for
3 Damian Taylor, Jonathan Hill, parenthesis Green, and
4 Melvin Warren.

5 Signed by Scott Thibodeaux, and then there is
6 number three added. It says need -- or I'm sorry,
7 it says more coffee and water.

8 So does anybody have any suggestions about how
9 I can answer the first two? I think I can handle
10 the third one.

11 MR. MOYER: May I see the photograph? Did they
12 send the photograph back.

13 THE COURT: Can you go get that?

14 THE BAILIFF: Yes, sir.

15 MR. FARNSWORTH: I don't remember what --

16 THE COURT: But all we are going to be to able
17 to tell them is they have got to -- they have got to
18 do their job based on the evidence that's already in
19 the record.

20 MR. MOYER: Unless they -- the only thing I was
21 wondering if I could remember whether or not it was --
22 if that evidence was even elicited. They can be
23 told they can go back and hear that at the point,
24 but if they --

25 MR. FARNSWORTH: We just don't know until we

1 see the picture.

2 THE COURT: Go get State Exhibit 14, please.
3 Then tell the jury not to deliberate while you have
4 that exhibit out of the jury room.

5 THE COURT: All right.

6 (off the record)

7 (back on the record).

8 THE COURT: Come up and look at it.

9 (off the record)

10 (back on the record)

11 THE COURT: The agreement I think that we can't
12 specifically answer the two questions that have been
13 asked, that they must be told that they must make
14 their decision based on the testimony and evidence
15 that is already in the record, correct?

16 MR. FARNSWORTH: Correct

17 MR. MOYER: Correct.

18 THE COURT: Now, does anyone want to me to say
19 anything more than that?

20 MR. MOYER: I would ask that you add that if
21 they need any further clarification, their only
22 recourse would be to ask to hear testimony that
23 related to those two particular questions that they
24 have, and I believe I recall the witnesses who --

25 THE COURT: Well, if without actually

1 witnessing it live when somebody is pointing at the
2 different items in this photograph, how is that
3 going to help them?

4 MR. MOYER: Well, I think it will -- I think it
5 could help them, in that the testimony by officers
6 would testify about what he took from that
7 defendant, each item, what he did with them. He put
8 them on the car. Then he photographed them and then --
9 even though it wouldn't specify what he is talking
10 to, it would at least say on the record what he was
11 seeing in that photograph. So it would not be
12 perhaps definitive, but you think it would be
13 helpful to the jury and by process of elimination
14 could pretty easily come up with what that item was.

15 THE COURT: Mr. Farnsworth.

16 MR. FARNSWORTH: Your Honor, I'm going to --
17 what you first suggested, that tell them just say
18 what they can go by on what the testimony was what
19 they heard, but if you want to do the other, if they
20 want to hear testimony, it's in the court's
21 discretion to allow them to do that.

22 THE COURT: I wrote we cannot specifically
23 answer these questions. You must make your decision
24 based upon the testimony and evidence already in the
25 record. If you have any testimony that you want

1 replayed, we can do that, if you identify it for us.

2 All right.

3 MR. MOYER: Yes, sir.

4 MR. FARNSWORTH: That's okay.

5 THE COURT: Mark that as a court's exhibit
6 number and send it back with these two pictures.

7 (Jury Note marked as Court's Exhibit No. 1 for
8 identification)

9 (Whereupon, proceedings were recessed, pending
10 the verdict of the jury panel)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: Mark that as Court Exhibit No. 2.

13 (Jury Note marked as Court's Exhibit No. 2 for
14 identification).

15 THE COURT: This is State versus Hill.

16 The jury has asked a question. Request
17 testimony of the clerk at La Quinta Inn. Signed by
18 the foreman.

19 My response is we will break for the night in a
20 few minutes and we will play that testimony for you
21 first thing in the morning. I will bring you in
22 shortly. Signed by me.

23 So we are now breaking in that case and that
24 jury will be asked to come back tomorrow morning.
25 In fact, go ahead and bring them in here.

1 (Whereupon, the jury panel returned to open
2 court)

3 THE COURT: Ladies and gentlemen, we are going
4 to break for the day. I understand that you have
5 asked to have the testimony of the clerk from the La
6 Quinta Inn played back to you. That's going to take
7 about thirty minutes. And so -- unless you all feel
8 like you were on the verge of a verdict, which I'm
9 assuming that you are not, since you have asked to
10 have this testimony replayed. I'm going to break
11 now and ask you to be back in your jury room
12 tomorrow morning before nine o'clock. We are going
13 to do our very best to begin replaying that
14 testimony precisely at nine. I have -- if we don't
15 begin right at nine, it's going to be nobody's fault
16 but mine, unless one of you is late, because I have
17 something that I have to do in the morning and it's
18 going to make it real close for me to be here at
19 nine, but I'm going to be pushing hard to be here
20 right at nine, or before, so we will get started
21 then. So have a good night.

22 Remember my instructions not to discuss this
23 case with anyone, and from this point forward you
24 may not discuss the case, even among yourselves as
25 you leave, or tonight. Tomorrow morning after you

1 have heard that testimony replayed, you may resume
2 your deliberations, but I will tell you at that time
3 that you can resume. So from this point forward do
4 not discuss this case among yourselves or with
5 anyone else. Have a nice night.

6 (The following takes place outside the presence
7 of the jury panel)

8 THE COURT: We will be in recess in the State
9 versus Hill until in the morning.

10 (Whereupon, proceedings were adjourned to
11 February 5, 2003, at nine o'clock a.m.)
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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

THE STATE	)	TRANSCRIPT OF RECORD
	)	2002-GS-23-2590
-vs-	)	2002-GS-23-2738
	)	2002-GS-23-2737
JONATHAN HILL, A/K/A,	)	2002-GS-23-1807
JONATHAN GREEN,	)	2002-GS-23-1808
	)	FEBRUARY 5, 2003
Defendant.	)	GREENVILLE, SOUTH CAROLINA

(VOLUME III)

B E F O R E:

HONORABLE JOHN C. FEW, JUDGE; and a jury

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

L. MARK MOYER, ASSISTANT SOLICITOR
Attorney for the State.

DAN FARNSWORTH, ESQUIRE
Attorney for the Defendant.

Michael R. Watts
Circuit Court Reporter

APP'X 396

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EXHIBITS

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3	(NO EXHIBITS MARKED ON THIS DATE)		
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1 (Proceedings, February 5, 2003)

2 THE COURT: The jury wants the testimony from
3 the clerk from La Quinta Inn and the court reporter
4 has got that ready to play back.

5 Bring the jury back.

6 (The following takes place in the presence of
7 the jury panel)

8 THE COURT: Good morning.

9 JURY PANEL: Good morning.

10 THE COURT: All right. Ladies and gentlemen,
11 the court reporter is ready to play for you the
12 testimony of the clerk from the La Quinta Inn.
13 That's what you wanted to hear?

14 JURY PANEL: Yes, sir.

15 THE COURT: Play it.

16 (Whereupon, the requested testimony was
17 replayed to the jury panel)

18 THE COURT: All right. Ladies and gentlemen,
19 please return to the jury room. You may resume your
20 deliberations. If you have anything further we can
21 help you with, please let us know.

22 (Whereupon, at 9:25 a.m. the jury panel retired
23 to the jury room to continue deliberations)

24 THE COURT: All right. We will be in recess in
25 this case until we hear from the jury.

1 MR. MOYER: Not from the State, Your Honor.

2 MR. FARNSWORTH: Your Honor, I will be
3 downstairs.

4 THE COURT: We will get you.

5 (Whereupon, proceedings were recessed, awaiting
6 on the verdict of the jury panel)

7 (Whereupon, at 10:30 a.m., proceedings were
8 reconvened)

9 THE COURT: Bring the jury in.

10 Mr. Foreman, has the jury reached a verdict?

11 JURY FOREMAN: The jury has, Your Honor.

12 THE COURT: Pass it to the bailiff, please.

13 All right, you may publish the verdicts.

14 THE CLERK: Your Honor, this is Indictment
15 Number 2002-GS-23-1808, the State versus Jonathan
16 Hill, a/k/a Jonathan Green, indicted for armed
17 robbery, and the verdict is guilty.

18 Indictment Number 2002-GS-23-2738, indicted for
19 armed robbery, the verdict is guilty.

20 Indictment Number 2002-GS-23-1807, indicted for
21 conspiracy, the verdict is guilty.

22 Indictment Number 2002-GS-23-2737, indicted for
23 conspiracy, the verdict is guilty.

24 Indictment Number 2002-GS-23-2590, indicted for
25 resisting arrest, the verdict is guilty.

1 If this is your verdicts, so say you all.

2 JURY PANEL: Yes, sir.

3 THE CLERK: Thank you.

4 THE COURT: All right. Mr. Farnsworth,
5 anything before we move into the sentencing phase?

6 MR. FARNSWORTH: No, Your Honor.

7 I would just renew my prior motions.

8 THE COURT: Your motions are denied.

9 All right. Bring the defendant around.

10 Mr. Foreman, we need for you to sign these
11 verdict forms, the back of the indictment. If those
12 are, in fact, the verdicts of the jury, sign those,
13 please.

14 Mr. Moyer?

15 MR. MOYER: Yes, sir.

16 THE COURT: Any prior record?

17 MR. MOYER: He has two convictions for
18 possession of marijuana.

19 THE COURT: Anything else from the State?

20 MR. MOYER: No, sir Your Honor.

21 THE COURT: Mr. Farnsworth?

22 MR. FARNSWORTH: Thank you, Your Honor.

23 If it please the court, Your Honor, he does
24 have those two. They are simple possession of
25 marijuana cases, but that's all he's ever had on his

1 record.

2 He's 24 years old. He was 23 when this
3 happened. He has two children. He's originally
4 from New Jersey, but as he testified, his family --
5 some uncles have lived down here. His father was
6 originally from here and they have been here all
7 week seated out there.

8 Your Honor, he doesn't have, you know, nearly
9 the record that particularly one of the
10 co-defendants had, who had just a substantial
11 record. And I just, you know --

12 THE COURT: Well, I'm not -- I don't know
13 anything about the co-defendants records, other than
14 what I heard in the trial. I didn't sentence those
15 co-defendants, to my knowledge.

16 MR. FARNSWORTH: Okay. I was just pointing out
17 to you that they do -- that one in particular had a
18 substantial record.

19 THE COURT: Well, that is -- I'm not going to
20 get too deep into comparing sentences. I'm going to
21 sentence him as I think he ought to be sentenced,
22 based on what I have seen and heard.

23 MR. FARNSWORTH: All right, sir.

24 As I say, that's it, the two simple possession
25 of marijuana, so he's never been in the General

1 Sessions Court or any kind of state court, I
2 wouldn't think, from the two charges he's had, which
3 would be misdemeanor charges.

4 THE COURT: All right. I'm going to give you a
5 chance to look over these sentencing sheets, Mr.
6 Farnsworth, and if everything appears to you to be
7 correct, I would like for you to sign it. And if
8 your client would like to look over them and sign,
9 he is welcome to do that.

10 MR. FARNSWORTH: All right.

11 (off the record)

12 (back on the record)

13 THE COURT: Anything else, Mr. Farnsworth?

14 MR. FARNSWORTH: No, Your Honor.

15 THE COURT: Anything that you want to say, Mr.
16 Hill?

17 THE DEFENDANT: Yes, sir. Well, first I want
18 to apologize to my parents for putting them through
19 this.

20 And I want to ask the State of South Carolina
21 and County of Greenville to ask for forgiveness for
22 really to me the only thing I was really guilty of
23 was picking the wrong crowd that I was with, so I
24 didn't want to plead to it because I felt like I
25 didn't want to plead to something that I didn't do,

1 but they found me guilty and that's all I can go
2 with. I would ask you to have mercy and leniency on
3 me. That's just about it. I thank you. Think
4 about my children.

5 THE COURT: Conspiracy carries five?

6 MR. MOYER: Yes, sir.

7 MR. FARNSWORTH: Yes, sir

8 THE COURT: He was arrested when?

9 MR. FARNSWORTH: It would have been February
10 1st of 2002. He's been in jail all that time.

11 THE COURT: All right, Mr. Hill, the sentence
12 on both of the armed robberies is 30 years.

13 The sentence on the two conspiracy charges are
14 five years.

15 The sentence on the resisting arrest is five
16 years.

17 They are all run concurrent and they begin
18 February 1st of 2002. Good luck to you.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Ladies and gentlemen, your services
21 are completed, obviously, in this case. And as I
22 told on you Monday, this would be the only case that
23 you would be involved in, so you are free to go for
24 the week.

25 I'll meet you back in the back to see if any of

1 you have any questions that you would like to ask.

2 (Whereupon, at 10:42 a.m., the jury panel was
3 discharged)

4 (END OF REQUESTED TRANSCRIPT OF RECORD)

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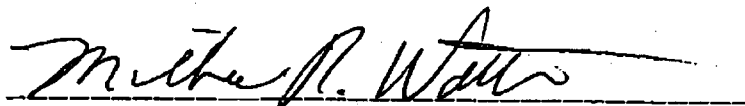
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 3rd, 4th and 5th days of February, 2003.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 5, 2007

A handwritten signature in cursive script, reading "Michael R. Watts", is written over a horizontal line.

Michael R. Watts

Circuit Court Reporter

405

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
RESISTING ARREST

At a Court of General Sessions, convened on APRIL 2, 2002 the

Grand Jurors of Greenville County present upon their oath:

aka Jonathan Green

That JONATHAN KARON HILL *aka* did in Greenville County, on or about the 1st day of February, 2002, knowingly, willfully and unlawfully oppose or resist an arrest being made by W.A. Kennedy and Officer Lewis with Mauldin Police Department, whom he knew or reasonably should have known was a law enforcement officer. This is in violation of §16-9-320(A) of the South Carolina Code of Laws (1976) as amended.

*Amendments by
consent,*

2/3/3

[Signature]

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature] APP'X 407
SOLICITOR

WITNESSES

W.A. KENNEDY *Kiristo*

MAULDIN PD

02/05/02

1/6/02
ARREST WARRANT NUMBER

G 666608

ACTION OF GRAND JURY
TRUE BILL

Joan Holman
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-~~28~~ **2590**
LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

APRIL TERM 2002

THE STATE

vs.

Guilty
JONATHAN KARON HILL

a/k/a

Jonathan Green

Indictment for

1
0326

RESISTING ARREST

VIOLATION § 16-9-320

Certified Copy
Paul B. W. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated *3/2/07*

ENTERED
ACCT

28
APP'X 408

407

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on APRIL 2, 2002 the

Grand Jurors of Greenville County, present upon their oath:

a/k/a Jonathan Green
That JONATHAN KARON HILL did in Greenville County, on or about the 31st day of January, 2002,
willfully and unlawfully combine with Melvin Warren and/or Damian Taylor for the purpose of
accomplishing an unlawful object or a lawful object by unlawful means, to wit: Armed Robbery. This is
in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

*Amendment by,
consent
[Signature] 2/3/3*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature] **APPENDIX 409**
SOLICITOR

WITNESSES

WESLEY SMITH

GCSO

02/07/02

ARREST WARRANT NUMBER

G 653907

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-23-

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

APRIL TERM 2002

THE STATE

vs.

JONATHAN KARON HILL

a/k/a

Jonathan Green

Indictment for

CONSPIRACY

VIOLATION § 16-17-410

Certified Copy
Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 3/6/02

ENTERED
ACCT

APP'X 410

155

409

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on APRIL 2, 2002 the

Grand Jurors of Greenville County present upon their oath:

a/k/a Jonathan Green
That JONATHAN KARON HILL *^* did in Greenville County, on or about the 31st day of January, 2002, while armed with a deadly weapon, to wit: handgun, take by means of force or intimidation, goods or monies described as: U.S. currency belonging to LaQuinta Inn from Marvin Somorriba. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

*Amendment by
consent,
[Signature] 2/3/3*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature] **APPX 411**
SOLICITOR

WITNESSES

WESLEY SMITH

GCSO

02/07/02

ARREST WARRANT NUMBER

G 653906

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-23-

LMM

002738

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

APRIL TERM 2002

THE STATE

vs.

JONATHAN KARON HILL

a/k/a

Jonathan Green

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-330

Certified Copy
Paul B. Wicks
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 3/5/02

APP'X 412

411

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on MARCH 19, 2002 the

Grand Jurors of Greenville County present upon their oath:

Jonathan Karon Hill a/k/a

That JONATHAN GREEN did in Greenville County, on or about the 1st day of February, 2002, willfully and unlawfully combine with Melvin Leon Warren and Damian Taylor for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: Armed Robbery. This is in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

*Amendment by
consent,
[Signature]
2/3/3*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
SOLICITOR

APPX 413

WITNESSES

MICHAEL SNOW *Babola*

SIMPSONVILLE PD

02/05/02

ARREST WARRANT NUMBER
G 829407

ACTION OF GRAND JURY
TRUE BILL

Joan Holmes
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

John R. [Signature]
Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-23-

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MARCH TERM 2002

THE STATE

Guilty vs. *Jonathan Aaron Hill*
a/k/a
JONATHAN GREEN

Indictment for

0049

CONSPIRACY

VIOLATION § 16-17-410

Certified Copy
Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated *3/5/02*

ENTERED
ACCT

APP'X 414

413

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on MARCH 19, 2002 the

Grand Jurors of Greenville County present upon their oath:

Johathan Karon Hill aka

That *J* JONATHAN GREEN did in Greenville County, on or about the 1st day of February, 2002, while armed with a deadly weapon, to wit: handgun, take by means of force or intimidation, goods or monies described as: U.S. currency belonging to Hampton Inn from Ragnar Borei. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

*Amendments by
consent,
2/2/3*

[Signature]

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

APPENDIX 413

[Signature]
SOLICITOR

WITNESSES

M.A. SNOW *Peter/S*

SIMPSONVILLE PD

02/01/02

ARREST WARRANT NUMBER

G 829403

ACTION OF GRAND JURY

TRUE BILL

Joan Holman
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Joan Holman
Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-23-

LMM

C1808

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MARCH TERM 2002

THE STATE

Guilty
Jonathan vs. *Karon Hill*
app
JONATHAN GREEN

Certified Copy
Paul B. Wickham
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated *3/2/07*

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-330

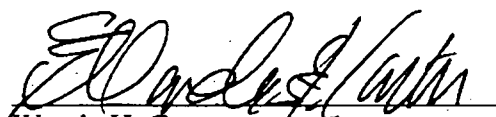
ENTERED
ACCT

APP'X 416

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 19th, 2008



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1343

ATTORNEY FOR APPELLANT.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
John C. Few, Circuit Court Judge

THE STATE,

Appellant,

vs.

JONATHAN K. HILL,

Respondent.

SECOND SUPPLEMENTAL
RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
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2002-GS-23-2737
2002-GS-23-2738
2002-GS-23-2590

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

JONATHAN HILL A/K/A
JONATHAN GREEN,
DEFENDANT.

ORIGINAL

February 20, 2003
Greenville, South Carolina

B E F O R E:

THE HONORABLE JOHN C. FEW, JUDGE.

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

L. MARK MOYER, ESQ.
Assistant Solicitor

DANIEL J. FARNSWORTH, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: Mr. Farnsworth.

MR. FARNSWORTH: May it please the Court, Your Honor?

This is a motion for a new trial in the matter of the State v. Jonathan Hill a/k/a Jonathan Green. Your Honor, this matter was tried on February 2nd -- no, February 3rd, 4th, and 5th of this year. The Defendant was indicted for two counts of armed robbery, two counts of conspiracy, and two counts of -- I mean, one count of resisting arrest.

Your Honor, the jury got this case on the second day of the trial, which would have been February the 4th, and deliberated for roughly four hours. And, at the end of the day around 5:00 or 5:30, they asked to hear testimony replayed to them. And I think Your Honor told them to be back at 9:00 the next morning and that testimony would be played for them. The testimony was, in fact, played for the jury. I think it lasted probably 30 minutes, Your Honor. The jury retired to the jury room. And, within an hour, the verdict was guilty on all indictments.

As I understand it, after the Court told the jury -- thanked them for their service that the jury was taken back to -- or into their jury room, and the Court inquired as to whether or not they had any questions and this type thing about the case. And, as I understand it, subsequently, one or more of the jurors informed the Court

1 that the two statements that Mr. Hill had given to law
2 enforcement were given to them in the jury room. And I
3 assume it was done on the last day, which would have been
4 the 5th of February. And, at that time, I think, Your
5 Honor, the jury was released and you informed Mr. Meglic
6 and I -- I mean, not Meglic, I'm sorry -- Mr. Moyer and I
7 of your conversation with the jury regarding the
8 statements.

9 Your Honor, our position is when extrinsic evidence,
10 which was outside the record, is introduced into -- or is
11 given to the jury in the jury room, the standard for
12 determining if the evidence is prejudicial is when there's
13 a reasonable possibility that the jury's verdict was
14 influenced by the material that improperly came before
15 them, and there's a presumption of prejudice. And the
16 burden is on the State to prove that it's harmless error.

17 Your Honor, in the case before us, it's unlike a lot
18 of cases, I think, where problems arise with the jury with
19 evidence going back there that was not in evidence or a
20 juror -- improper jury contact. Things of this nature are
21 usually brought to the Court's attention before a verdict
22 is reached. And, in that case, of course, the Court would
23 be able to question the jurors individually as to the
24 prejudice that may result and give instructions --
25 curative instructions, if applicable in the case.

1 However, in this case that we're here today on, Your
2 Honor, the information was brought to the Court's
3 attention after the verdict and the jury had been
4 released. So there was no way that the Court could have
5 questioned these jurors to find out what prejudice, if
6 any, had resulted from the improper evidence that they had
7 seen, or to what extent they read it, or what extent it
8 influenced them.

9 Your Honor, our position is that because of this
10 outside evidence being given to the jury that it denied --
11 not only denied the Defendant his Sixth Amendment right,
12 and that is the right to counsel, the right to
13 confrontation, the right to cross-examination, and the
14 right to call witnesses in respect to this -- these two
15 statements that were given to the jury.

16 Your Honor, we, also, take the position that had we
17 known that this information was going to go back to the
18 jury, it may have effected our trial strategy in that
19 knowing it would have gone back there, we might have not
20 had the Defendant testify and would have had the last
21 argument to the jury.

22 Your Honor, the statement -- I know that Mr. Moyer is
23 going to argue that the statement more or less
24 corroborated what the testimony of the Defendant was.
25 But, Your Honor, I think without questioning the jury, as

1 was not done in this case, it's impossible to say whether
2 or not this thing did influence them in any way. But
3 there are two things in this statement, as I recall, that
4 did not -- that was not testified to by the Defendant.
5 And that is in one of the statements, at the end, he said,
6 "I am sorry that these places were robbed," which suggests
7 to me -- or would suggest to me that there was guilt
8 involved on his part. And there's another -- and the
9 other statement he gave said, "I decided that I want to
10 clear up all of this and get everything in the open." And
11 that suggests to me that he's got a guilty conscience as
12 to what his part was.

13 But, Your Honor, we just feel like that there's --
14 you know, all it would have taken would have been one word
15 or one sentence, and these two statements taken together
16 by the jury could have caused them to reach the verdict
17 they did and, thus, prejudice the Defendant. And, for
18 that reason, we'd ask that the verdict be set aside and a
19 new trial granted.

20 THE COURT: Mr. Moyer.

21 MR. MOYER: May it please the Court?

22 I would like to pass up several cases that I'm
23 relying on in my argument to the Court. These are five
24 different cases, Your Honor, four of them South Carolina
25 and one U.S. Supreme Court case.

1 Basically, Your Honor, the crux of my argument is
2 that the Defendant simply has not established prejudice.
3 And I would take a different position that it is the
4 Defendant's obligation in order to prevail that -- to
5 establish prejudice by clear and convincing evidence.

6 Your Honor, I think it's clear that in a situation --
7 in this situation that any harmless error analysis should
8 be applied. This would be a trial error, clearly, as
9 opposed to an instructional defect. I think it is, also,
10 clear, Your Honor, that a determination of whether
11 extraneous material is prejudice and possibly has unduly
12 influenced the jury's verdict is a matter for
13 determination by the trial court, that it is within Your
14 Honor's sound discretion. The ruling will not be
15 disturbed on appeal unless there's an abusive discretion.
16 And, of course, that a mistrial is to be granted --

17 THE COURT: Well, you're talking -- that case -- the
18 case you're referring to now is a mistrial case?

19 MR. MOYER: And I think the analysis should be
20 similar. Some of the cases I passed up to you that look
21 at the issues of external influence on a jury comes into
22 Court by way of a mistrial motion. Others come by way of
23 a motion for a new trial. And the analysis of both,
24 clearly, seem to be the same that the Court has taken. So
25 I would argue it would be the same.

1 And so, again, a mistrial or a new trial should only
2 be granted with great reluctance and only when absolutely
3 necessary. The Defendant must show both error and result
4 in prejudice.

5 Looking at the Aldret case, Your Honor --

6 THE COURT: At what?

7 MR. MOYER: The Aldret, A-L-D-R-E-T. The Court held,
8 in that case, that in matters of jury -- juror misconduct
9 and external influence -- both situations that are looked
10 at in the four cases I passed up to you -- that there is
11 no automatic reversal in those cases, that the Defendant,
12 to prevail, must show prejudice. The burden is on the
13 Defendant to show that prejudice occurred and --

14 THE COURT: Have you come across any cases where the
15 extrinsic evidence, the evidence that was not admitted
16 into the trial was evidence that had Constitutional issues
17 attached to it such as a statement given by the Defendant?

18 MR. MOYER: The four issues that -- in those cases I
19 passed up to you are as follows: One is premature
20 deliberations by a jury. The second would be a religious
21 pamphlet that probed the death penalty message that went
22 back to a jury while they were deliberating in a death
23 penalty case. The third would be an alternate juror had
24 been left in the jury room for about 20 to 30 minutes
25 during deliberations. And the fourth instance would be

1 that a juror made it known that she had read Black's Law
2 Dictionary during multiple day deliberations.

3 Now, I would come back and say, in each of those
4 cases, the Court said -- the Court ruled that the
5 Defendant must show prejudice. And in each of those
6 situations, prejudice was not shown.

7 Now, the fifth case I passed up to Your Honor, the
8 U.S. Supreme Court case on an improperly admitted
9 confession, it is Arizona v. Fulminate. And, in that
10 case, Your Honor, the Supreme Court, although they
11 reversed on -- in this case, the Court did hold that
12 harmless error analysis should be used. And, in that
13 case, that was a flat out confession. The Defendant had
14 made a confession to a jailhouse informant. It was
15 introduced at trial and, clearly, admitted to --

16 THE COURT: Was it a jailhouse informant who, before
17 the statement was made, was working on behalf of law
18 enforcement?

19 MR. MOYER: Well, that's what the Court ruled in a
20 very split decision. But the Court ruled that that
21 informant was an ex-officer and had had contact with the
22 FBI and told them that he was talking to this inmate. So
23 the Court did rule that State action was involved, which
24 is why they --

25 THE COURT: So -- okay.

1 MR. MOYER: But, in that case, again, the Court ruled
2 that harmless error analysis should be used.

3 Now, if we look at the cases before the Court, I
4 think it is clear that if there was error -- let's start
5 off with the proposition that let's assume that these two
6 statements that went back to the jury room were damaging
7 to the Defendant. They were confessions. In our case,
8 using a harmless error analysis, Your Honor, I would argue
9 that there was overwhelming evidence of the Defendant's
10 guilt.

11 So even if you consider these two statements as
12 confessions, I would say that this conviction should hold
13 up. The Defendant was, essentially, caught in the act.
14 He was caught fleeing the crime scene with two
15 co-defendants. They had the property from the armed
16 robbery on them. They had the masks on them. And then
17 the Defendant, as well, fled the scene or showed evasion.
18 And after several hours of searching for the Defendant to
19 be found -- and, finally, Your Honor, both co-defendants
20 testified against the Defendant.

21 So I would argue, in this case, that the evidence of
22 guilt is overwhelming. However, I don't think we even
23 have to get to that step. Because the two statements that
24 went to the jury were not confessions. I would argue they
25 were not damaging to the Defendant. I read over them

1 again carefully for purposes of this hearing. And, if
2 anything, I would argue that they were damaging to the
3 State. They corroborate the Defendant's story. The
4 Defendant took the stand. He testified to everything that
5 was in those statements. And so --

6 THE COURT: Well, the one thing -- there's -- in one
7 of the statements, which Mr. Farnsworth referred to a
8 couple of oblique references to guilt where there -- you
9 have to draw an inference or two to, I think, establish
10 guilt. But there's one thing, in one of the statements,
11 he said, "These two guys had been sporting around
12 Fleetwood for a couple of weeks with a lot of money. And
13 word on the street was that they had robbed these hotels.
14 And they had a -- one of them had a gun that they,
15 supposedly, had gotten from one of the robberies. And
16 they had asked me to ride with them before." And maybe
17 there's one other -- one little passage right in there
18 that is the evidence that, in my analysis of the
19 statements, was not admitted. Everything else I thought
20 was pretty much testified to at trial.

21 He even -- in his trial testimony, he even referred
22 to the fact that he had given a statement, although he
23 didn't go into the content of it.

24 MR. MOYER: Well, as I recall his testimony, Your
25 Honor, I recall him even testifying not word for word, of

1 course, to what Your Honor just referred to. But he
2 testified that he knew these people had been doing
3 robberies. He testified that he knew they had a gun. I
4 think I recall him testifying about seeing them flashing
5 money.

6 So even if we assume -- I mean, that still does not
7 establish guilt saying, I know these people were robbers,
8 that they'd asked me to rob in the past. Again, I think
9 that could be seen as damaging to the State. It shows --
10 if the jury were to believe that testimony, it showed that
11 he had refused their advances to have him participate in
12 the past.

13 And in this situation, his defense, as I would argue
14 it, was that he was there and simply did not know on this
15 occasion that they were committing robberies. And it
16 doesn't matter if he knew they did it in the past. The
17 issue is whether he was in some way actively helping,
18 aiding, or abetting in this situation.

19 And, Your Honor, I would just argue that any error
20 here would be harmless, that there's been no evidence of
21 prejudice shown by the Defense.

22 THE COURT: All right. Let me ask one question and
23 then I'm going to take the case under advisement.

24 To Mr. Moyer, what if the argument were made that had
25 the State introduced these statements either in its

1 case-in-chief or on cross-examination that the Defendant
2 might have testified as to facts and circumstances that
3 would bear upon the jury's obligation to find, as it must
4 under State v. Davis and State v. Adams, that the
5 Defendant made the statement, that he had been read his
6 Miranda rights, that he had waived his Miranda rights, and
7 that he made the statement voluntarily?

8 In other words, how do I -- if the statements had
9 been admitted and if there had been raised a sufficient
10 question on those points that I just listed, then I would
11 have been required under State v. Davis and State v. Adams
12 to charge the jury that before they could consider those
13 statements for any purpose, they must answer those four
14 questions, yes. They must say -- and they must answer
15 them beyond a reasonable doubt. I had already answered
16 those questions in the Jackson v. Denno hearing. I
17 already ruled that he made the statement, that he had been
18 read his rights, that he had waived his rights, and that
19 he made the statement voluntarily.

20 And so, clearly, if you had offered the statement --
21 and I don't -- by saying that, I don't mean to imply that
22 you should have. But if you had chosen to, I would have
23 admitted it, no doubt. But then if there had been a
24 legitimate issue raised as to whether or not any of those
25 answers to those four questions might be no, then I would

1 have been required to charge the jury that the jury must
2 find beyond a reasonable doubt that the answer to each one
3 of those questions is yes before they could consider the
4 statements for any purpose.

5 Based on the testimony that was -- that's in the --
6 based on the testimony we heard, frankly, I don't think
7 there's a legitimate issue as to whether or not any of
8 those questions could be no. But I don't know what
9 difference it would have made in his testimony.

10 Mr. Farnsworth might have, specifically, asked him, Now,
11 what are the circumstances that led up to you making that
12 statement? And, for all we know, maybe -- you know, maybe
13 he was going to testify that some officer beat him up or
14 something to make him give the statement. I don't know.
15 And I don't know that we can -- perhaps, we can get into
16 asking -- perhaps, we can ask that question of him now.
17 And maybe we could have a hearing on it now. I don't
18 know.

19 But that's the point -- that's one of the points that
20 troubles me is because this -- these two statements have
21 Constitutional implications, they're not like ordinary
22 pieces of evidence. We did some research and we found
23 some cases that, basically, say what y'all said, that
24 there's got to be sort of a harmless error analysis. But
25 none of those cases involved evidence with these types of

1 Constitutional implications. And, certainly, they didn't
2 involve evidence that, if admitted, could possibly have
3 led to a different jury charge and a different finding of
4 fact that the jury must make before they could consider
5 the statements. That's one question that I -- that's the
6 main legal point that I have.

7 And then the other question that I have is more of a
8 sort of 13th-juror type analysis. In a civil case, the
9 Judge, clearly, has the authority to grant a new trial
10 just because he thinks a new trial ought to be granted.
11 He doesn't have to give a reason, just do it. And I don't
12 know if that -- there's some law that says you can't do
13 that in a criminal case, that there's got to be some legal
14 reason. And the law is very clear that you can't grant a
15 new trial in a criminal case based on the sufficiency of
16 the evidence.

17 So that's one thing that Mr. Farnsworth might want to
18 think a little bit about is exactly what is my authority
19 for granting a new trial if I don't -- if I am not going
20 to grant it on the legal questions. What is my authority
21 to grant a new trial on a -- in a 13th-juror type
22 situation?

23 Well, I'll going to take the question under
24 advisement. I'm going to read these cases and do some
25 research.

1 Mr. Hill, I assure you that I'm going to work hard to
2 make sure that I make the right ruling in this case, and
3 that your rights will be carefully considered here.

4 DEFENDANT HILL: Yes, sir.

5 MR. FARNSWORTH: Thank you, Your Honor.

6 THE COURT: Thank you.

7 *****END OF TRANSCRIPT OF RECORD*****
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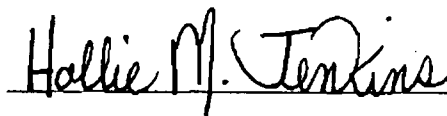
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 20th day of February, 2003.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 22, 2010

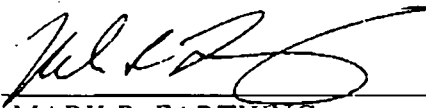


Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appcal contains all material proposed to be included by any of the parties and not any other material.

By: 
MARK R. FARTHING
Assistant Attorney General

Office of Attorney General
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ATTORNEYS FOR APPELLANT

March 8, 2010
9 mlf

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
John C. Few, Circuit Court Judge

THE STATE,

Appellant,

vs.

JONATHAN K. HILL,

Respondent.

PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the within the Second Supplemental Record on Appeal on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 9th day of March, 2010.

9 MRF


ELLEN DUBOIS
Legal Assistant

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APP'X 438

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN K. HILL,

APPELLANT

SUPPLEMENTAL
RECORD ON APPEAL

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Attorneys for Respondent

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1 THE COURT: All right. Teresa, you got the
2 caption?

3 COURT REPORTER: I don't.

4 MR. MOYER: You want me to read it into the
5 record, Your Honor?

6 THE COURT: Uh-huh (affirmative response).

7 MR. MOYER: This is the case of the State of
8 South Carolina versus Jonathan K. Hill AKA Jonathan Green,
9 Indictment 2002-GS-23-2737, Conspiracy; 1808, Armed
10 Robbery; 1807 for Conspiracy; 2738 for Armed Robbery and
11 2590 for Resisting Arrest.

12 THE COURT: All right. This is a motion for a new
13 trial filed by the Defendant. I think the record at other
14 hearings will adequately reflect what the underlying facts
15 are. Don't you, Mr. Farnsworth?

16 MR. FARNSWORTH: Yes, Your Honor.

17 THE COURT: Just to state them briefly. After the
18 jury reached a verdict in this case of guilt and after I
19 had sentenced the Defendant to 30 years, I went back into
20 the jury and spoke with a couple of the jurors. And the
21 foreman of the jury made a comment to me about having
22 reviewed the Defendant's statements. I realized that the
23 Defendant's statements were not in evidence and had never
24 been put in evidence and so I inquired with the bailiff and
25 was shown the exhibits that had been sent back into the

1 jury room. Those exhibits did include the Defendant's two
2 statements that he had made. In fact, it also included the
3 two waiver of rights forms that had been introduced I think
4 as State's Exhibit 1, State's Exhibit 2, State's Exhibit 3
5 and State's Exhibit 4 had gone back into the jury room.
6 Apparently what happened is the jury went out on an
7 afternoon, maybe a Tuesday afternoon. They deliberated for
8 about three hours and had a, wanted to rehear some
9 testimony right at 5 o'clock. As I recall, with
10 everybody's consent, we allowed the jury to go home that
11 night and come back in the morning. They heard the
12 testimony in the morning. They went back in the jury room
13 and deliberated further. After a while, they reached a
14 verdict. Apparently what happened is the State's Exhibits
15 that I just referred to got mixed in with the evidence that
16 had been admitted and was submitted back into the jury room
17 not the first day when they deliberated but on the second
18 morning. When the foreman pointed that out to me, I of
19 course brought it to the attention of Mr. Farnsworth and
20 Mr. Moyer. Mr. Farnsworth then made a motion for a new
21 trial which I took under advisement. Mr. Moyer had
22 provided me with some cases. We of course found some cases
23 on our own. We've already had a chance to argue the
24 motion, I think, haven't we?

1 MR. FARNSWORTH: Yes, Your Honor, we've
2 argued it.

3 THE COURT: And I have decided that I'm going to
4 deny the motion for a new trial and here are the reasons.
5 My initial concern had been that because this is a
6 constitutional issue, the voluntariness of the Defendant's
7 statement that it was one that would not support a harmless
8 error analysis and require an automatic new trial. After
9 reviewing the, some of the cases specifically Arizona
10 versus Fulminante, 499 US 279 and many of the cases that
11 are cited in that case specifically Clemmons versus
12 Mississippi 494 US 738 and Saterwhite versus Texas 486 249
13 and others, I am of the opinion that the way in which I
14 should look at this question is to determine whether or not
15 the admission of the, whether or not the fact of the
16 Defendant's statements and the other exhibits went back to
17 the jury contributed to the verdict of guilt. Now, that
18 obviously with the jury not here would have to be done
19 objectively. Of course, I held a hearing under Jackson v.
20 Deno at the beginning of this trial. And I ruled by the
21 preponderance of the evidence that the statements had been
22 made, that the statements had been made after he had been
23 given his Miranda warnings, that he understood his Miranda
24 warnings and that he waived his Miranda warnings
25 voluntarily. And I ruled at the beginning of trial that I

1 would admit those statements into evidence. It was during
2 the course of the trial that the State made a strategic
3 decision not to put those statements in. Mr. Hill
4 testified in the case. And that's very important because
5 his testimony essentially tracks what's in the statement.
6 There's really not significant in the statement that wasn't
7 in his testimony. If I'm looking at this thing objectively
8 from the standpoint of a harmless error analysis, it is my
9 opinion that the admission of those statements did not
10 contribute to the jury's finding of guilt. Now, I will say
11 that during the course of the discussion, well, it really
12 wasn't a discussion but during the course of the comment
13 that was made to me by the foreman, there was something
14 said along the lines of that was important to us or I can't
15 remember exactly what it was but it was an indication that
16 they definitely had considered it and they definitely
17 thought that it was important evidence. But looking at the
18 thing objectively without getting that jury back in here, I
19 think it was very clear that the two statements that were
20 admitted and waiver of rights form did not contribute to
21 the finding of guilt. It is undoubted, there is absolutely
22 no doubt that if the State had offered the statements into
23 evidence that I would have allowed them in. The only thing
24 that would have been different during the course of this
25 trial if the statements had been offered in instead of

1 accidentally put in is that I would have charged the jury
2 that they must find beyond a reasonable doubt the answers
3 to the four questions that I just went over are yes. Now,
4 the one possibility that I thought of is that if the
5 statements had been entered into evidence that Mr. Hill's
6 testimony regarding the getting of those statements could
7 had been different, there's been no evidence of what the
8 testimony would have been. I suppose if Mr. Farnsworth
9 wants to still offer that, I will give him the chance. If
10 you in talking to Mr. Hill, if you think that there is
11 some difference in the testimony that you would like to
12 offer, then I would hear it. But, uh, I can't imagine that
13 there would be anything different. You just let me know if
14 you want to do that.

15 MR. FARNSWORTH: Okay.

16 THE COURT: Now, do either of you think that there
17 is anything that I, uh, have not addressed that I need to
18 address?

19 MR. MOYER: I don't see anything, Your Honor.
20 I do not, no.

21 MR. FARNSWORTH: No, sir.

22 THE COURT: Of course, the State is the party that
23 bears the burden of proving that the error was harmless.
24 And essentially, what I have done is I have made that
25 analysis based on the evidence that was in the record at

1 the trial. And it's my conclusion that using the evidence
2 that was in the record at the time of trial, the State has
3 carried or met its burden of proof. And I find that the
4 error of those statements going back to the jury was in
5 fact harmless and I deny the motion for a new trial.
6 Anything further?

7 **MR. FARNSWORTH:** Well, let me just say this
8 for the record, my understanding, Your Honor, was that you
9 -- the conference you had with Mr. Moyer and I several
10 weeks back, I can't remember exactly how long it was that
11 you were granting the motion.

12 **THE COURT:** Right.

13 **MR. FARNSWORTH:** That was the purpose for
14 bringing Mr. Hill up here to Greenville today. Mr.
15 Moyer, I assume he thought the same way because he brought
16 him up a day ahead so I could go talk to him to see if he
17 would plea guilty.

18 **THE COURT:** Right.

19 **MR. FARNSWORTH:** This is the first I've heard
20 that now you are not going to grant it.

21 **THE COURT:** Let me explain that for the record.
22 As I said at the beginning of this, I was initially
23 concerned that because this question, this issue of the
24 admission of the Defendant's statements involved
25 constitutional issues that it would not be a question that

1 would support a harmless error analysis. The cases that I
2 read initially, none of those cases were cases where, there
3 were a number of cases where evidence had been in the jury
4 room and considered by the jury and the courts engaged in a
5 harmless error analysis. But not a single one of those
6 cases was a piece of evidence that had constitutional
7 implications. I had not seen the Fulminante case until
8 today. I went back and read that case and it's different.
9 The case is different. It is not a case where evidence was
10 admitted or I should say it's not a case where the jury
11 considered evidence that was not admitted. That's probably
12 why I didn't see the case and that's probably why I didn't
13 pay any attention to it when you first handed it to me
14 because it was not a case where evidence was admitted sort
15 of accidentally as we have here. But it is a case where
16 the Supreme Court makes it clear that when evidence is
17 admitted in a state court trial in violation of the
18 Defendant's federal constitutional rights that the state
19 court should engage in a harmless error analysis. And I
20 think that's the key point from that case that requires me
21 to engage in a harmless error analysis. And I will say
22 that I was very concerned about not granting the new trial.
23 I thought about this case a lot since the time of trial. I
24 was determined to grant a new trial. When I saw that, I
25 said well, my duty under the law is engage in a harmless

1 error analysis. And having done that on an objective
2 level, I believe that it was harmless error. If I caught
3 you off guard in any way, I will keep the record open. You
4 can talk to Mr. Hill, any evidence that you want to offer,
5 I think you've got the right to do that and I will give it
6 to you.

7 MR. FARNSWORTH: Again, my whole purpose in
8 coming with him today is I thought we were going to --

9 THE COURT: Right.

10 MR. FARNSWORTH: That was as of a couple of
11 hours ago maybe.

12 THE COURT: It was about two hours ago. What
13 happened, we had a little conference back in my office.
14 You and Mr. Moyer and I and I said there are no cases
15 where there was a piece of evidence entered that had
16 constitutional implications. And Mr. Moyer said did you
17 look at that one case and I handed him that stack of cases.
18 And he pulled out the Fulminante case and handed it to me.
19 And I gave it to my law clerk and he read it. And he
20 showed me what he saw in it. I went back in there and read
21 it again myself or read it myself. And I was wrong.

22 MR. FARNSWORTH: I don't have any problem
23 with you being wrong. My problem is my client's brought
24 down here. I've been talking to him for two days and told
25 him in fact before yesterday that a new trial was being

1 granted but did he want to plea guilty. I told him what he
2 could possibly get. Your Honor knows that because we
3 discussed that. All of a sudden, we're bought out here. I
4 didn't know you changed your mind. I don't want my client
5 to feel like I told him bull.

6 THE COURT: You are right. That's true. I had
7 indicated to Mr. Farnsworth and Mr. Moyer probably about
8 three or four weeks ago when Mr. Farnsworth was up here
9 for other criminal matters. I said I'm planning on
10 granting a new trial. Why don't you get Jonathan Hill up
11 here and let's see if he wants to plea guilty and go from
12 there. I think we even talked about what kind of sentence
13 I would accept.

14 MR. FARNSWORTH: We did.

15 THE COURT: But I never ruled that. I did
16 indicate that I would rule that. I didn't mean to catch
17 you off guard and I didn't mean to catch you off guard and
18 I certainly didn't mean to put you in a difficult spot.

19 MR. FARNSWORTH: Just so you clear it up with
20 him.

21 THE COURT: You understand what happened?

22 MR. FARNSWORTH: I didn't mislead him.

23 THE COURT: No.

24 MR. FARNSWORTH: I'm not saying you did
25 anything wrong. I'm just saying that's the first I heard

1 of it. I'm sure that's the first he heard of it. And I
2 just want something on the record that will say that and I
3 appreciate it.

4 THE COURT: All right.

5 END OF PROCEEDING
6

G653906

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

)
) IN THE COURT OF GENERAL SESSIONS
) THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

vs.

JONATHAN K. HILL,

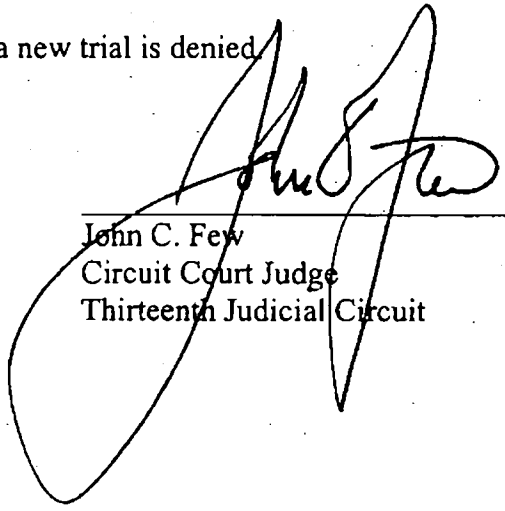
Defendant.

2002-GS-23-02738

ORDER

For the reason stated beginning on page three of the attached transcript from the June 11, 2003 hearing, the motion for a new trial is denied.

IT IS SO ORDERED.



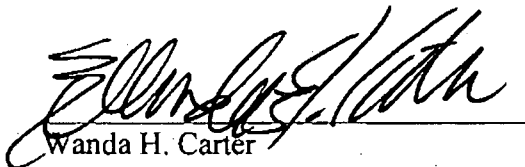
John C. Few
Circuit Court Judge
Thirteenth Judicial Circuit

February 9, 2007

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 12, 2009



Wanda H. Carter
Deputy Chief Appellate Defender

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN K. HILL,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in failing to grant appellant's pretrial motion to sequester the witnesses at trial.

STATEMENT OF THE CASE

Appellant Jonathan Hill, aka Jonathan Green, was convicted of resisting arrest, two counts of conspiracy and two counts of armed robbery during the February, 2003 term of the Greenville County General Sessions Court before the Honorable John C. Few, Judge. Appellant received an aggregate thirty-year sentence. Appellant appealed. This brief follows.

ARGUMENT

The lower court erred in failing to grant appellant's pretrial motion to sequester the witnesses at trial.

The state alleged that Melvin Warren, Damian Taylor and appellant robbed Marvin Somarriba at the LaQuinta Inn and Raquar Borei at the Hampton Inn on January 31, 2002, and February 1, 2002, respectfully. Somarriba and Borei testified that two men wearing ski masks and all black (and one carried a gun) robbed them. R. p. 104, line 10 – p. 113, line 18; R. p. 124, line 23 – p. 136, line 7. The men were caught when their car crashed out of control and they fled, but the police who gave chase apprehended them.

Damian Taylor testified that on the night in question, he, Melvin Warren and appellant went to the LaQuinta Inn and that appellant and Warren went in and got the money, and then they went to the Hampton Inn and did the same. Taylor stated he was driving and stayed in the car. R. p. 234, line 6 - p. 248, l. 3. Melvin Warren testified that they were all in agreement to commit the robbery of the hotels and that Taylor stayed in the car while he and appellant went into the hotels. Warren stated that he carried the pistol both times. R. p. 279, line 13 - p. 294, l. 13.

Appellant testified that he had only known Warren and Taylor a month and a half before the events occurred and that on the night in question they asked him to ride out with them. Appellant stated that he agreed to ride out not knowing that the two had planned to rob motels and that Warren and Taylor went in the hotels while he sat in the car and that he never saw masks or a weapon on that night. R. p. 310, line 9 – p. 325, line 23.

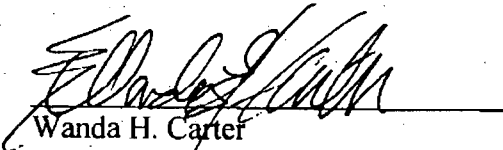
Prior to trial, defense counsel moved to have the witnesses sequestered in part because of “the two co-defendants, who I understand are going to be testifying.” R. p. 8, line 12 – p. 9, line 5. The court denied the motion to sequester because he did not “see anything unusual about the situation with regard to the witnesses and their being overheard” . . . [and] “that’s present in almost every case.” R. p. 84, lines 12 – 24.

As a rule, a motion to sequester witnesses is addressed to the sound discretion of the trial judge and his ruling will not be disturbed unless his discretion has been abused. State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981). Here, there was a swearing contest between appellant, who denied participation, and his two co-defendants, who stated appellant was culpable. Thus credibility was key. Therefore, based on the nature of the testimony, the witnesses should have been sequestered at trial. The lower court erred in failing to grant appellant’s pretrial motion to sequester the witnesses at trial in violation of appellant’s right to a fair trial guaranteed under the fourteenth amendment to the United States Constitution and article 1 § 3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and his case remanded to the Greenville County General Sessions Court for a new trial.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

April 7, 2008

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN K. HILL,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jonathan K. Hill states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge John C. Few, which was held on 2-5-03 & 2-9-07, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Jonathan K. Hill.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

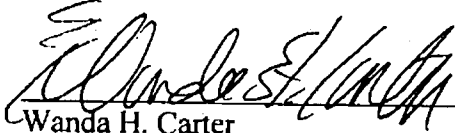
ATTORNEY FOR APPELLANT

April 7, 2008

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

April 7, 2008

A handwritten signature in dark ink, appearing to read "Wanda H. Carter", is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

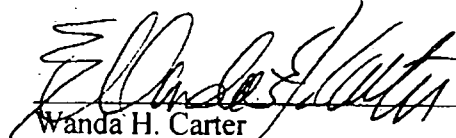
V.

JONATHAN K. HILL,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201; and the Final Anders Brief and Record on Appeal have been served upon Jonathan K. Hill, #290606 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of April, 2008.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of April, 2008.


Melinda Whim (L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2008

APP'X 463

*Andrus SE
file*

State of South Carolina
In The Court of Appeals

Appeal from Greenville County
John C. Few, Circuit Court Judge

MAY 21 2008

Trial Case Nos. 2002-GS-23-1807-08; 2737-38; 2590;

Jonathan K. Hill, #290606,)
Appellant,)
)
)
)
)
)
The State,)
)
)
)
)
)
Respondent.)

45 Day Pro Se Brief of Appellant

Submitted, This 19 Day of May.

Respectfully Submitted,



Jonathan K. Hill, #290606
B.R.C.I., Murray 224
4460 Broad River Road
Columbia, S.C. 29210

APP'X 464

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Court's, Law Key 10

Constitutional Issues:

S.C. Const. Art. 1, § 11

S.C. Const. Art. 1, § 21

U.S. Const. Amend. Five

U.S. Const. Amend. Six

U.S. Const. Amend. Fourteen

Statement of Issues on Appeal:

Issue A: Did the trial Court admit into evidence an oral and a written statement in violation of Miranda?

Issue B: Did the trial Court have subject matter jurisdiction to enter a conviction and impose a sentence under the Hand of One, Hand of All?

Issue C: Was there a constructive amendment to indictments 2002-GS-23-1808 and 2738?

Issue D: Was there a constitutional and statutory violation of South Carolina Code Ann. § 16-3-240?

Issue E: Was United States Code of Laws, Title 18, § 201 (c) (2) violated?

Issue F: Was perjury committed at trial with its use known by the Solicitor?

Issue G: Did the trial Court error in denying defense's Directed Verdict Motion?

Issue H: Was the trial Court's reasonable doubt instruction erroneous?

Issue I: Did the Trial Court error in denying defense's Post-Trial Motion For a new Trial?

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Statement of The Case :

The appellant was indicted by the Greenville County Grand Jury for two (2) counts of criminal conspiracy (2002-GS-23-1807, 2002-GS-23-2737); two (2) counts of armed robbery (2002-GS-23-1808, 2002-GS-23-2738), and one (1) count of resisting arrest (2002-GS-23-2590). Appellant was represented by Daniel J. Farnsworth, Esquire. The State was represented by Solicitor L. Mark Moyer.

The case was called to trial on February 3-5, 2003, before the Honorable John C. Few and a jury. On February 5, 2003, the jury found appellant guilty as charged. Judge Few sentenced appellant to concurrent terms of confinement as follows; five (5) years for each of the conspiracy counts, thirty (30) years for each of the armed robbery counts, and (1) one year for resisting arrest. No Appeal was taken.

Appellant filed for Post-Conviction Relief, dated October 29, 2004; in which he alleged counsel as ineffective for counsel's failure to file a timely Notice of Appeal. (2004-CP-23-7282); See: (App.pp. 422-428). On April 7, 2005 an Evidentiary Hearing was convened at the Greenville County Courthouse before the Honorable Larry R. Patterson. Appellant was present and represented by Susannah Ross, Esq. and the State was represented by Karen C. Ratigan, Esquire. Judge Patterson issued a Written Order of Dismissal on May 9, 2005, filed on May 18, 2005, in which he found the PCR to be premature at that time, because a Motion for new trial had been filed after appellant's conviction and

Statement of the Case: Continued:

sentence; which was at that time, still pending a ruling by Judge Few pursuant to Rule 29, SCRCF. See: (App.pp. 426-428).

Judge Few issued an Order denying the Motion For New Trial on February 9, 2007 and filed on March 15, 2007. Counsel for the Appellant received the Order on March 16, 2007; and timely filed the Notice of Appeal on March 28, 2007.

Before the New Trial Motion was ruled upon by Judge Few, A Johnson Petition in regard to Judge Patterson's Order of Dismissal was filed on January 13, 2006, by Wanda H. Carter, Esquire of the Columbia Appellate Defense Office. The South Carolina Supreme Court denied the Petitioner by Order issued on February 14, 2007.

The Columbia Office of Appellate Defense perfected the Appeal in this case, in contention before this Honorable Court.

This 45 Day Pro Se Brief of Appellant now follows.

Issue A: Argument:

Issue A: Did the trial Court admit into evidence an oral and a written statement in violation of Miranda?

Factual Basis: The Oral Statement:

A Jackson v. Denno hearing was held in regard to three (3) statements by the defendant in this case. This "Issue" is a challenge in regard to the Court's ruling in regard to two (2) of those three (3) statements; one oral statement and the "first" written statement.

At the in-camera hearing, Officer William Kennedy testified as now revealed. "He spoke with the defendant upstairs at the Greenville County Sheriffs Office around 3:15 in the morning, the defendant was in custody, handcuffed and watched by another officer." (App.p. 38, lines 2-21). The officer stated, "I verbally advised him of Miranda rights. The Defendant indicated he would answer questions. The Defendant then gave an oral statement, "That he had been in the rear passenger seat of the crime vehicle on the night of the robberies." (App.pp. 38, line 25-p. 39, line 7; p. 41, lines 7-17; p. 42, lines 4-5; p. 43, lines 23-25). "No waiver of rights form was signed in regard to this alleged oral statement." (App.pp. 44, line 24-p. 45, lines 6 and 17-22).

Factual Basis: The "First" Written Statement:

In-camera; Officer Ralph Bobo's testimony reveals the following. "The waiver of rights started at 11:11 a.m. and ended at 11:15 a.m." (App.pp. 56, lines 7-13). The point here is that it is extremely unusual for it to take only "four (4)

Issue A: Continued:

minutes" for an officer to explain Miranda rights to a defendant and have a waiver of rights form signed in that short time frame. Further, that statement was self-incriminating; "We went to the La Quinta Inn; both Julio and Duke robbed the motel and we left. Duke had a .380 pistol." (App.pp. 60, line 9-p. 62, line 25).

The most crucial point in regard to this "first" written statement is the fact that officer Bobo plainly admits, "We told the defendant if he cooperated with us, we would pass that onto the Solicitor's Office and we did do that." (App.p. 66, line 17-p. 67, line 1).

Law Analysis:

The real names of Julio and Duke are Damian Taylor and Melvin Warren; the two (2) co-defendants in this case.

Both; the oral statement and the first written statement were self-incriminating because they placed the defendant at the scene of the robberies, and one robber in possession of a weapon at that point and time.

The "second" written statement was just as vitally incriminating. See: (App.p. 76, line 13-p. 80, line 10). At the end of the in-camera hearing, the trial Court ruled all three (3) statements were voluntarily made and would be allowed into evidence. (App.p. 83, lines 4-8).

The Solicitor Moyer stated, "We would not put those statements into evidence." (App.p. 83, lines 13-15). "That very statement is of vital importance to both "Issue A" and "Issue I" in this case,

Issue A: Continued:

and those "Issues" are incorporated with one another in that regard; for this Court's full grasp of that importance."

First; we must note, that the prosecution may not use statements obtained as a result of the custodial interrogation or the voluntary statement of a defendant unless the defendant was advised of and voluntarily waived his Miranda rights by the officers. There was no written waiver of rights in regard to the oral statement. The "first" written statement was gained by the indication that if the defendant cooperated with police it would be passed onto the Solicitor's office. Further; although, the Solicitor stated "those statements would not be put into evidence, all three (3) statements turned up in the jury room during the "second" day of deliberations and they were considered by the jury in reaching their verdict as discussed in "Issue I" of this Brief. See: Dickerson v. U.S., 530 U.S. 428 (2000). U.S. Const. Amend. Fourteen.

Further, even if a statement is made "voluntarily" it may still violate a defendant's Fifth Amendment rights to self-incrimination. See: Taylor v. Alabama, 457 U.S. 687, 102 S.Ct. 2664 (1982), and its progeny. There could be no affirmative showing that the oral statement of the "first" written statement was either "voluntary" or taken in compliance with the requirements of Miranda. "The State's own evidence in that regard fails to show an implicit recognition that Miranda had been complied with." For these reasons, the trial Court's failure to suppress the

Issue A: Continued:

oral statement and "first" written statement was the commission of legal error that resulted in prejudice to the appellant at trial, as clearly shown by "Issues A and I" of this Brief. Edwards v. Arizona, 384 U.S. 436, 86 S.Ct. 1601 (1966); State v. Evans, 354 S.C. 579, 582 S.E.2d 407 (2003); State v. Anderson, 357 S.C. 514, 593 S.E.2d 280 (S.C.App. 2004); and See: Brown v. Illinois, supra. at 602, 95 S.Ct. at 2261; Dunaway v. N.Y., supra. at 217, 99 S.Ct. at 2259. U.S. Const. Amends. Five and Six.

These statements were not admissible where the State failed to demonstrate by a preponderance of the evidence that the appellant voluntarily waived his Miranda rights. State v. Reed, 332 S.C. 35, 42, 503 S.E.2d 747, 750 (1998); State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977); State v. Santiago, 370 S.C. 153, 634 S.E.2d 23 (Ct.App. 2006).

The Appellant is entitled to a reversal.

Issue B: Argument:

Issue B: Did the trial Court have subject matter jurisdiction to enter a conviction and impose a sentence under the Hand of One, Hand of All?

Factual Basis:

Solicitor Moyer in opening argument stated, "two men, masked, dark clothing burst into the hotel and robbed Mr. Marvin Somarriba." (App.p. 94, lines 16-21). "Two men, ski masks, dark clothing burst into the hotel and robbed Mr. Ragnar Borei." (App.p. 95, lines 3-7). We must note that the Solicitor has indicated "two" robbers, not "three".

The Solicitor then stated, "those three (3) individuals were caught and found with ski masks and property from these robberies." (App.p. 95, lines 17-22). However; the record reflects that the only person caught with ski masks and property from the robberies was co-defendant Melvin Warren. (App.pp. 191, lines 1-23; p. 192, lines 1-15; p. 194, lines 7-15). See: Also, (App.p. 261, lines 11-18). The Solicitor argued "the hand of one, hand of all, and accomplice liability, and conspiracy to the jury in opening argument." (App.p. 97, line 5-p. 98, line 19).

Prejudice:

Both victims of the hotel robberies testified, "that they were robbed at gun point by 'two' black males in ski masks and dark clothing; not 'three' black males, and they could not describe any facial features." See: testimony of Marvin Somarriba on (App.pp. 107-116), and Ragnar Borei on (App.pp.

Issue B: Continued:

129-143). There was no accurate description of height, weight, or facial features. (App.p. 147, lines 2-11).

Officers testified, "The person in the back passenger seat had a red shirt." The two front seat individuals had on dark clothing." See: (App.pp. 154, line 23-p. 155, line 12; p. 170, lines 2-6; p. 170, line 18-p. 171, line 7; p. 174, lines 2-3; p. 178, lines 16-19; p. 181, line 16-p. 182, line 11, p. 184, line 15-p. 185, line 6; p. 224; lines 2-8; p. 225, lines 13-21). The co-defendant, Damian Taylor alleged at trial that the appellant and co-defendant Melvin Warren committed both robberies." (App.pp. 242, lines 2-21; p. 244, line 15-p. 245, line 8).

Co-defendant, Melvin Warren alleged at trial "that he and the appellant committed the robberies while Damian Taylor stayed in the car." (App.pp. 284, line 7-p. 290, line 20). However, in his statement, "he alleged he stayed in the car, while the appellant and Taylor Committed the robberies." (App.pp. 294, line 18-p. 297, line 20).

Both co-defendants had deals with the Solicitor in exchange for their testimonies against the appellant. (App.pp. 236, line 13-p. 237, line 2; p. 281, lines 6-16).

The appellant maintained his innocence throughout and at the sentencing phase. (App.pp. 314, line 23-p. 315, line 24; p. 401, line 20-p. 402, line 4). See: (App.p. 305, lines 2-25).

Law Analysis:

In this particular case the evidence presented at trial pointed

Issue B: Continued:

equally to both guilt and innocence. See: Evans-Smith v. Taylor, 19 F.3d 899, 906 (4thCir. 1994). In essence; it cannot be said that the State's use of the Hand of One, Hand of All theory at trial was harmless beyond a reasonable doubt.

It further; cannot be said that the trial Court's lack of subject matter jurisdiction to enter a conviction or impose sentence under a Hand of One, Hand of All theory, not alleged in the armed robbery indictments against the appellant was not prejudicial to the appellant. See: (Indictments, App.pp. 429-432).

Our South Carolina Supreme Court has held more than once, that to lawfully convict an accused under the Hands of One, Hands of All theory, the accused must first be charged with conspiracy within the indictment; not a seperate and different indictment. U.S. Const. Amend. Five, S.C. Const. Art. 1, § 11, S.C. Code, § 16-17-410 (1985). State v. Leonard, 385 S.E.2d at 270; State v. Martin, Op.No. 25093, Adv.Sh.No. 12; State v. Kelsey, 502 S.E.2d 63 (1998); State v. Austin, 229 S.C. 133, 355 S.E.2d 270 (1987); State v. Woomer, 276 S.C. 258, 277 S.E.2d 696 (1981).

The acts of a Court with respect to a matter as to which it has no jurisdiction are void. Court's, Law Key 10. Brown v. State, 540 S.E.2d 846 (2001); Carter v. State, 495 S.E.2d 733 (1998); State v. Funderburk, 259 S.C. at 261, 191 S.E.2d at 522 (1972).

The convictions and sentences for armed robbery should be vacated; or at the least, reversed.

Issue C: Argument:

Issue C: Was there a constructive amendment to indictments
2002-GS-23-1808 and 2738?

Factual Basis:

See: (Indictments, App.pp. 429-432).

The Solicitor during opening arguments stated, "those three (3) individuals were caught and found with ski masks and property from those robberies." (App.p. 95, lines 17-22). "The only person caught with any ski masks or property from those robberies was the co-defendant, Melvin Warren." (App.pp. 191, lines 1-23; p. 192, lines 1-15; p. 194, lines 7-15; p. 261, lines 11-18; p. 287, lines 1-4; p. 287, lines 19-22; p. 290, lines 19-20; p. 291, lines 1-4; with specific reference to, App.pp. 288, lines 12-15; p. 291, lines 18-22; 294, lines 5-14).

The Solicitor then argued the "Hand of One, Hand of All theory to the jury." (App.pp. 97, line 5-p. 98, line 19).

During final summation; the Solicitor again, argued the Hand of One, Hand of All theory to the jury. (App.pp. 361, lines 21-25; p. 362, line 13-p. 365, line 11; p. 367, line 14-p. 368, line 12; p. 368, line 23-p. 374, line 2).

The trial Court instructed the jury under the Hand of One, Hand of All theory. (App.pp. 378, lines 16-19; p. 379, line 16-p. 382, line 15).

The jury found the appellant guilty on all counts under that theory of law. (App.pp. 398, line 10-p. 399, line 2).

Issue C: Continued:

Law Analysis:

See: (App.pp. 429-432). The indictments in question fail to allege any Hand of One, Hand of All language; but instead, allege the appellant as a lone principle and robber, armed with a weapon at that point and time. First, the co-defendant Melvin Warren admitted that "he had the weapon in his possession during both robberies." (App.pp. 287, lines 1-4; p. 287, lines 19-22; p. 290, lines 19-20; p. 291, lines 1-4).

Our South Carolina Supreme Court has held that to lawfully convict a person under the Hands of One, Hands of All theory, the accused must first be charged with conspiracy within the indictment. See: S.C. Code Ann., § 16-17-410 (1985).

The appellant here was denied a fair trial, because he was denied any chance of acquittal by the jury as a lone principle; and the jury was allowed to find him guilty as a participating principle of three (3) when conspiracy was not alleged within the indictments for armed robbery.

The constructive amendment by the Solicitor's opening argument, final summation, and the trial Court's jury instruction under a Hands of One, Hands of All theory broadened the armed robbery indictments and changed the nature of the offenses from one Statutory provision to another Statutory provision prohibited by the Fifth Amendment.

Even if an amendment such as this does not change the punishment level, it changes the nature of the offense originally charged. Such amendments require a reversal even without a showing

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Issue C: Continued: - Issue C: Continued:

of prejudice." See: U.S. v. Fogel, 901 F.2d 23 (4thCir. 1990); U.S. v. Randall, 171 F.3d 195, 210 (4thCir. 1999); U.S. v. Dawson, 423 U.S. at 855, 104 S.Ct. at 96; Stirone v. U.S., 361 U.S. 212, 217-19 (1960). Also, See: State v. Lynch, 344 S.C. at 639, 545 S.E.2d at 514 (2001); Weinhauer v. State, 334 S.C. 327, 513 S.E.2d 840 (1999); State v. Guthrie, 572 S.E.2d 309 (S.C. App. 2002).

The armed robbery convictions and sentences should be vacated; or at the least, reversed.

Issue D: Argument:

Issue D: Was there a constitutional and statutory violation
of South Carolina Code Ann. § 16-3-240?

Factual Basis:

See:)Indictments, App.pp. 429, 432). The Appellant now makes a Constitutional challenge under the Fifth Amendment as to the convictions and sentences based upon these indictments.

The Grand Jury Clause of the Fifth Amendment limits any possible basis for a conviction or imposition of sentence, to those contained in the original indictment, and it may not be amended, except by resubmission to the Grand Jury. Any Amendment that broadens the scope of an indictment is per se reversible error, since such an amendment; as in this case, usurps the constitutionally guaranteed role of the Grand Jury. In this particular case, a reversal is required; as the error is indeed not harmless, but plain. U.S. Const. Amends. Five and Six.

The Appellant further challenges the convictions and sentence based upon the armed robbery indictments under the Due Process Clause of the Fourteenth Amendment; as he contends the indictments are invalid to sustain a conviction and sentence under a Hand of One, Hand of All theory not alleged within the indictments in question. See: State v. Smalls, 364 S.C. 343, 613 S.E.2d 754 (2005).

The Appellant further basis the same principle of law, as to the Hands of One, Hands of All theory under S.C. Code Ann., § 16-17-410 (1985), which has not been changed or amended to the Legislative Intent of the Section, so indicated by its

Issue D: Continued:

language. The cardinal rule of Statutory construction is to ascertain and effectuate the legislative intent, which should be ascertained primarily from the plain language of the Statute. Statutes 241 (1); State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct.App. 2002).

The Appellant's final Statutory challenge is based upon the fact that he received a thirty (30) year sentence as compared to "both" co-defendant's sentences of fifteen (15) years. See: (App.pp. 236, line 13-p. 237, line 2; p. 281, lines 7-16).

Appellant contends that his sentence should not have been any greater than that of the "two" co-defendants under the language of S.C. Code Ann., § 16-3-240 and 16-17-410, as a principle; as all are equal and should be punished equally in that accordance. U.S. Const. Amends. Five, Six and Fourteen.

The Appellant is entitled to an acquittal, a vacation, or other relief as this Honorable Court deems as appropriate.

Issue E: Argument:

Issue E: Was United States Code of Laws, Title 18, § 201 (c) violated?

Factual Basis:

At the time of trial in this particular case; both co-defendant's had deals with the Solicitor's office in exchange for their testimonies against the appellant; which the Solicitor Mr. Moyer plainly admitted to on the record. (App.pp. 236, line 13-p. 237, line 2; p. 281, lines 7-16). Both; Damian Taylor and Melvin Warren had prior criminal convictions for various crimes of moral turpitude, dishonesty, and others. Both; were serving sentences for three (3) armed robberies; the two (2) appellant was facing trial upon, and another that they had committed together; "Taylor and Warren". Both; had a pending attempted armed robbery they committed together. See: (App.pp. 235, line 13-p. 236, line 12; p. 248, line 12-p. 250, line 18; p. 250, line 25-p. 251, line 12; p. 280, lines 2-p. 281, line 6, p. 301, line 8-p. 302, line 11). The co-defendant, Melvin Warren was caught with ski masks, property from the robberies; admitted he had possession of the weapon in both robberies, and that he did take items of both victims of those robberies. (App.pp. 261, lines 11-18; p. 262, line 7-p. 263, line 21; p. 264, lines 10-23; p. 287, lines 1-4; p. 287, lines 19-22; p. 288, lines 12-15; p. 290, lines 19-20; p. 291, lines 1-4; p. 291, lines 18-22; p. 294, lines 5-14). Both; Taylor and Warren had given prior inconsistent statements to police. (App.pp. 251, line 19-p. 253, line 10; p. 294, line 18-p. 295,

Issue E: Continued:

line 25; p. 296, line 1-p. 301, line 7).

The Appellant had no prior impeachable convictions. (App.p. 305, lines 2-25). Appellant maintained his innocence; both, at trial and the sentencing phase. (App.pp. 314, line 23-p. 315, line 24; p. 401, line 20-p. 402, line 4). Defense's final summation indicates the prejudicial effect upon the appellant quite well. (App.pp. 350, line 22-p. 353, line 22; p. 359, line 21-p. 360, line 11).

Section 201 (c) (2), Title 18, United States Code of Law prohibits prosecutors and State's prosecutor from giving, offering, or promising anything of value, or leniency in sentencing offense levels in exchange for testimony against an accused. Such actions deny a fundamentally fair trial. U.S. Const. Amend. Six.

Here; the leniency in sentencing is completely obvious; as to the co-defendants. See: U.S. v. Singleton, 144 F.3d 1343 (1998); U.S. v. Lowery, WL 493818 (1998); U.S. v. Mayo, No. 97CR=127 (1998); U.S. v. Fraguera, WL 560352 (1998).

In both Lowery and Mayo, the Court's held that such testimony of a witness promised something in exchange should be excluded, as the witness was precluded from testifying at the defendant's trial.

Here; during the course of trial, the State solicitor admitted he used that testimony against the defendant at trial. As in, Fraguera, new trials were granted in Lowery and Mayo, and that same application of law and fairness should be applied in this particular case. The Rule applies to State Court's, as well as Federal Court's. These type cases must be decided on a

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Issue E: Continued:

case by case basis, to assure fundamentally fairness in all criminal trials. U.S. Const. Amend. Six. Here; the appellant is entitled to the same application of law, fairness, and justice; and he is entitled to reversal for a new trial.

Furthermore; in regard to the two co-defendant's prior inconsistent statements, two other vital questions come into play as principles of South Carolina Law. First, whether Rule 613 (b), SCRE was violated in this instant case? See: State Blalock, 357 S.C. 74, 591 S.E.2d 632 (S.C.App. 2003). Second, whether Rule 801 (d) (1) (b), SCRE was violated by the Solicitor to bolster the State's case at trail? See: State v. Foster, 354 S.C. 614, 582 S.E.2d 426 (2003).

Appellant is entitled to a reversal.

Issue F: Argument:

Issue F: Was perjury committed at trial with its use known
by the Solicitor?

Factual Basis:

At trial; co-defendant, Damian Taylor testified, "We all was in agreement with the participation of robbing a drug dealer and we discussed it." (App.p. 239, lines 13-24). "Not a motel, but a drug dealer." He stated, "that the appellant was in agreement to robbing the La Quinta Inn, but it was never discussed or talked about between them." (App.p. 241, lines 6-16). "If it was never discussed between them; then, how did the appellant know about any alleged robbery plan or be in any agreement to such a plan? Mr. Taylor alleged that," the appellant and Melvin Warren committed the motel robberies." (App.pp. 242, lines 2-21; p. 244, line 15-p. 245, line 8). "Mr. Taylor's statement to Officer Thompson indicated no plan, discussion, agreement to any robberies or any participation of any motel robbery." (App.pp. 251, line 19-p. 253, line 10). Mr. Taylor stated, "he had on a white t-shirt the night of the robberies." (App.pp. 246, lines 19-23; p. 254, lines 2-23). We know that is false testimony; as well as perjury; and if we can see and know that fact, then so could Solicitor Moyer. How? Because, every officer involved testified; "the two individuals in the front car seat had on dark clothing." Those two individuals were Mr. Taylor and Mr. Warren. Taylor was the driver. (App.pp 154-155; 170-171; 174; 178; 181-182; 184-185; 224-225).

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Issue F: Continued:

Mr. Taylor gave false evidence and testimony in his sworn statement; or either, his trial testimony; and he committed perjury. What is even worse, is that the Solicitor was well aware of that very fact.

The co-defendant, Melvin Warren testified, "that he and the appellant committed the motel robberies, while Mr. Taylor remained in the crime vehicle." (App.pp. 284-286; 288-292). "Mr. Warren, when captured had in his possession ski masks and property from the motel robberies." (App.pp. 261-263; 287; 290-291; "with emphasis added" to App.pp. 288; 291-294).

Mr. Warren in his sworn statement, "alleged that he remained in the crime vehicle, while Mr. Taylor and the appellant committed the motel robberies." (App.pp. 294-297). See: Also, (App.pp.297-301).

Both; Mr. Taylor and Mr. Warren had been convicted of the La Quinta Inn and Hampton Inn robberies; as well as one other robbery they had committed together." (App.pp. 235-236; 248-249; 280-281; 301-302).

Both; Mr. Taylor and Mr. Warren had a pending attempted armed robbery offense they had also committed together." (App.pp. 250-251).

Perhaps; the most vital fact is that the Solicitor not only, was well aware of the false testimony and perjury by those two State witnesses; but the Solicitor not only condoned it; but enter into a deal with both witnesses in exchange for it, so he could obtain an easy conviction of the appellant at trial. (App.pp. 236-237; 249-250; 281).

Issue F: Continued:

Law Analysis:

Due Process of the Fifth and Fourteenth Amendments strickly forbid such actions; as the ones in this case, by Solicitor Moyer. Such actions are violations of both State and Federal Due Process in the untolerated context of prosecutorial misconduct. Donnelly v. DeChristoforo, 416 U.S. 637 (1974); Berger v. United States, 295 U.S. 78 (1935). In essence, the State Court need not look beyond this "Brief" to be aware of the federal claim involved. Baldwin v. Reese, 541 U.S. 27, 32 (2004).

Evidence such as this cannot constitutionally stand and should be reversed, because if one single juror was affected by it, then the verdict is as unfair, as if all jurors were; because the accused is denied a fair trial proceeding. U.S. v. Hawkins, 76 F.3d 545 (4thCir. 1996); U.S. v. Agurs, 427 U.S. 97, 96 S.Ct. 2392 (1976); State v. Bryant, 354 S.C. 390, 581 S.E.2d 157 (2003).

When a person is deprived of life or liberty by an unfair trial proceeding, that conviction should be reversed. Mesareosh U.S., 352 U.S. 1, 77 S.Ct. 1 (1956); Cline, supra. 144 F.3d 294 (4thCir. 1998).

The Appellant is entitled to a reversal.

Issue G: Argument:

Issue G: Did the trial Court error in denying defense's Directed Verdict Motion?

Factual Basis:

Both victim's of the motel robberies; Mr. Marvin Somarriba and Ragnor Borei testified, "they were robbed by two black males at gun point, wearing ski masks and dark clothing." (App.pp. 107-116; 129-143). There was no accurate description of height, weight, or facial features. (App.p. 147, lines 2-11).

All police officers involved testified, "The two front seat individuals had on dark clothing." (App.pp. 154-155; 170-171; 174; 178; 181-182; 184-185; 224-225).

The co-defendant, Damian Taylor alleged at trial, "that the appellant and co-defendant Melvin Warren committed both robberies. (App.pp. 242-245). He alleged, "there was a discussion in regard to the La Quinta Inn robbery with the Appellant. (App.p. 241). Mr. Taylor's sworn statement to Officer Jeff Thompson indicates the exact opposite of his trial testimony. (App.pp. 251-253).

The record reveals that Melvin Warren was caught with the ski masks and property from both robberies. (App.pp. 261-263; 264; 287-288; 290-291; 294).

The co-defendant, Melvin Warren alleged at trial that, "he and the appellant committed both robberies while Damian Taylor stayed in the car." (App.pp. 284-290). His sworn statement to officers indicate that he stayed in the car, while the appellant

Issue G: Continued:

and Taylor committed the robberies." (App.pp. 294-297). Both; Taylor and Warren gave sworn and inconsistent statements to officers, and inconsistent to their testimony at trial. Both; Taylor and Warren had prior criminal convictions with long criminal history. (App.pp. 235-236; 280-281; 301-302). Both; Taylor and Warren were serving sentences for both the motel robberies appellant faced at trial, as well as another armed robbery they had committed together (App.pp. 248-249; 250-251). Both; Taylor and Warren when captured by police officers were wearing at least one article of dark clothing and the appellant was wearing a red shirt just as indicated by the officers testimonies at trial. Both; Taylor and Warren at the time of trial had a deal with the Solicitor in regard to a pending attempted armed robbery they had committed together in exchange for their trial testimonies against the appellant. (App.pp. 236-237; 281).

At the close of the State's case, defense moved for Directed Verdict based upon the insufficiency of the evidence presented. The Court denied the motion. (App.p. 303).

Law Analysis:

This case was tried under a Hand of One, Hand of All theory which the State did not prove by the preponderance of the evidence presented; under the scenario of the facts, and circumstances surrounding those facts. The evidence is certainly not overwhelming, as to the Appellant's alleged participation in the crimes charged. That fact is clear cut from the two (2) jury notes involved in this case. See: (App.pp. 387-388; 391-392; 397, 398-399).

Issue G: Continued:

There is no logical, reasonable, or supportable hypothesis of guilt arising from the doctrine of chances that the facts charged are likely, to be true. State v. Barroso, 328 S.C. 268, 493 S.E.2d 854 (1997); State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004).

Mere "suspicion" implies only a belief or opinion as to guilt based upon facts and circumstances which do not amount to proof. "Suspicion"; however strong, is not enough to sustain a conviction, or to survive a direct verdict motion. Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005), Id. at 188-189, 85.

The circumstantial evidence that appellant aided and abetted or conspired to commit any robbery does not rise to the level of being "substantial"; but instead, raises only a "mere suspicion". It is "speculative" to assume he conspired in any plan to commit a robbery. State v. McCollum, Mem.Op.No. 2001-MO-005 (S.C.T. 2001); Cf., State v. Shafer, 340 S.C. 291, 531 S.E.2d 907 (2000), cert. granted, 2000 WL 1057649 (2000).

Appellant is entitled to an acquittal or a reversal.

Issue H: Argument:

Issue H: Was the trial Court's reasonable doubt instruction erroneous?

Factual Basis:

See: (App.pp. 376, line 16-p. 377, line 21).

During the Court's reasonable doubt instruction; the Court stated, "A reasonable doubt is a doubt which makes an honest, sincere, conscientious juror in search of the truth in the case to hesitate to act." (App.pp. 376, line 25-p. 377, line 6).

Law Analysis:

The trial Court's instruction was not an accurate statement of law in regard to reasonable doubt. S.C. Const. Art. 1, § 21.

A trial Court's instruction cannot lessen the State's burden of proof under Due Process of law; as the instruction did here. See: Todd v. State, 355 S.C. 396, 585 S.E.2d 305 (2003); State v. Kirkpatrick, 320 S.C. 38, 462 S.E.2d 884 (S.C.App. 1995); State v. Patrick, 345 S.E.2d 481 (1986). U.S. Const. Amend. Fourteen. Nor; can a trial Court's instruction shifted the burden of proof from the State to the defendant; as it did in this case. Francis v. Franklin, 471 U.S. 307, 105 S.Ct. 1965 (1985).

The proper "reasonable doubt" instruction was set forth and outline in State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991), Id. at 417 at 409 S.E.2d at 375. The Manning charge was not at all followed by the trial Court in this instant case.

Neither trial Court's, nor counsel's should attempt to define "reasonable doubt" for the jury; because if or when

Issue H: Continued:

jury exposures to unconstitutional instructions improperly influences only one juror, the verdict is as unfair, as if all were. Here; there is a substantial likelihood that the jury applied Court's instruction in an unconstitutional manner allowing a verdict based upon mere speculation and conjecture, not fact.

Such an instruction is not held amenable to a harmless error analysis and must be invalidated as a conviction. Sullivan v. Louisiana, 113 S.Ct. 2078 (1993). U.S. Const. Amend. Six.

The Appellant is entitled to a reversal.

Issue I: Argument:

Issue I: Did the trial Court error in denying defense's Post-Trial Motion For a new Trial?

Factual Basis:

At the in-camera hearing in regard to the appellant's three (3) statements, the Solicitor stated, "We would not put those statements into evidence." (App.p. 83, lines 13-15). One statement was oral and two (2) were written.

However, a Post-Trial Motion For New Trial was made because those two (2) written statements were discovered in the jury room on the second day of deliberations. See: Post-Trial Motion Tr.pp. 1-10, dated June 11, 2003; and Order of Dismissal, dated February 9, 2007).

During the Post-Trial Motion Hearing, the judge stated that from the first instance he had considered granting a new trial and then changed his mind after reviewing a case given to him by Solicitor Moyer. A juror had brought the fact of the statements in the jury room to the judge's attention after a guilty verdict had been found by the jury on all offenses charged. The trial judge remembered only a brief comment by a juror as to the statements being a good part of the consideration during deliberations in reaching a verdict. The jurors were not further questioned in regard to those statements at trial or the post-trial motion hearing. No one seemed to know how those statements arrived into the jury room that second morning of trial deliberations; "if they were not all ready there."

Issue I: Continued:

The jury members were not ask the questions, "When did you notice the statements, what day of deliberations?" "How much consideration was given to them in reaching you verdict?"

Here, we do not know if there arrival into the jury room was accidental or intentional; as the judge only considered it as accidental.

Here, we do not know how much consideration they were given by the jury in reaching a verdict. The new Trial should have been granted.

Law Analysis:

When a person is deprived of life or liberty by an unfair trial proceeding, that conviction should be reversed as a matter of pure law and justice. U.S. v. Agurs, 427 U.S. 97, 96 S.Ct. 2392 (1976); Mesareosh v. U.S., 352 U.S. 1, 77 S.Ct. 1 (1956); Cline, supra. 144 F.3d 294 (4thCir. 1998). U.S. Const. Amend. Five.

A reversal is warranted in this instant case. U.S. v. Hawkins, 76 F.3d 545 (4thCir. 1996); State v. Bryant, 581 S.E.2d 157 (2003). U.S. Const. Amends. Six and Fourteen.

This case is controlled by an error of law. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001).

The Appellant is entitled to a reversal.

Conclusion:

For the reasons and legal principles cited in this 45 Day Brief, the conviction and sentence should be reversed. Appellate Counsel should be instructed to re-brief fully, the Issues herein cited and argued by Appellant.

Wherefore, Appellant does forever pray.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Jonathan K. Hill", is written over a horizontal line.

Jonathan K. Hill, #290606

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APP'X 497

State of South Carolina
In The Court of Appeals

Appeal from Greenville County
John C. Few, Circuit Court Judge

Trial Case Nos 2002-GS-23-1807-08; 2737-38; 2590:

Jonathan K. Hill, #290606,
Appellant,

vs.

The State,
Respondent.

Certificate of Service

I, the Appellant in the above captioned matter do hereby certify under oath and penalty of perjury that I have served copies of this 45 Day Pro Se Brief of Appellant upon the below listed upon this same date.

(1) Mr. Henry D. McMaster
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(2) Mr. Kenneth A. Richstad, Clerk
The S.C. Court of Appeals
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Sworn To Before Me

This 19 Day of May 2008

Eugene Few

Notary Public For South Carolina:

My Commission Expires: _____

My Commission Expires April 4, 2018

Respectfully Submitted,

Jonathan K. Hill

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