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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Greenville County

James R. Barber, III, Circuit Court Judge

CARDELLE WASHINGTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002251

APPENDIX

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

State of South Carolina,)

Plaintiff,)

-VS-)

Cardelle Tyrine Washington aka)

Cordelle Tyrone Washington)

Defendant.)

COURT OF GENERAL SESSIONS

Case No(s) : 08-GS-23-01671

TRANSCRIPT OF RECORD

December 7-8, 2010
Greenville, South Carolina

B E F O R E :

HONORABLE C. VICTOR PYLE, JR., Judge.

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

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(No exhibits offered.)

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P R O C E E D I N G S

1
2 (WHEREUPON, the proceeding begins on the 7th day
3 of December, 2010 at approximately 9:52 a.m.)

4 (WHEREUPON, State's Exhibits 1 through 31 are
5 marked for identification purposes.)

6 MS. PRICE: Your Honor, the State and Mr.
7 Chambers have stipulated to the chain of
8 custody ---

9 THE COURT: Good.

10 MS. PRICE: --- relating to some latent
11 prints in this matter. We signed a stipulation.
12 We want to know if we can make that part of the
13 record.

14 THE COURT: Right. Thank you.

15 MS. PRICE: Your Honor, also the State has a
16 witness that is a victim in this case who has
17 some anxiety issues. If we could just have the
18 courtroom cleared out to have the minimum amount
19 of people in it when that individual is
20 testifying ---

21 THE COURT: All right.

22 MS. PRICE: --- I think that would go a long
23 way towards helping him.

24 THE COURT: Let me know when that happens.

25 MS. PRICE: Yes, sir.

1 **THE COURT:** All right. I'm going to give
2 the stipulation to the Court Reporter. You can
3 read it at the appropriate time whenever you want
4 to do it.

5 **(WHEREUPON, State's Exhibit 32 is marked for**
6 **identification purposes and admitted into the record.)**

7 **THE COURT:** How long you think it's going to
8 take to do this case?

9 **MS. PRICE:** Your Honor, probably about a day
10 exactly.

11 **(WHEREUPON, the jury panel enters at approximately**
12 **9:56 a.m.)**

13 **THE COURT:** Ladies and Gentlemen, if I can
14 have your attention, at this time, we're going to
15 select a jury in the case of the State against
16 Cardelle Tyrine Washington also known as Cordelle
17 Tyrone Washington. Mr. Washington is indicted
18 for Burglary second degree, Armed Robbery and
19 Possession of a Weapon during the Commission of a
20 Violent Crime and Kidnaping.

21 Mr. Washington, would you stand up for a
22 moment and turn around and face the jury panel
23 for me please, sir. Thank you. You can be
24 seated.

25 The first indictment alleges that on or about

Jury Qualification

9

1 April 25, 2006, he willfully and unlawfully
2 entered Burger King located at 332 South
3 Pleasantburg Drive while being armed with a
4 deadly weapon, committed a burglary. The next
5 indictment alleges on that same date while armed
6 with a deadly weapon, he committed robbery by
7 taking goods, money, from the person of Gladys
8 Harrison and/or Douglas Ashmore who were
9 employees of Burger King. Count 2 of that
10 indictment alleges that, uh, on that same date,
11 while in the Burger King, he displayed a deadly
12 weapon during the commission of armed robbery.
13 The third indictment alleges on that same date,
14 he unlawfully seized, abducted, confined, carried
15 away Gladys Harrison and/or Douglas Ashmore.

16 Now, potential witnesses will be Tim Conroy
17 and C.M. Blair, both with the Greenville City
18 Police Department, Carol Sims with the State
19 Transport Police, Douglas Ashmore, Gladys
20 Harrison, Andrew White, Quentin Sullivan and
21 Chris Gary with the Department of Public Safety.
22 I will inquire at this time if any member of the
23 jury panel is related by blood or marriage or
24 connected by employment to the Defendant or to
25 any potential witnesses in this case or are you

1 sensible or aware of any bias or any prejudice
2 with respect to the Defendant, to the State or to
3 the subject matter of the -- or the allegations
4 in this case or do you know any reason why you
5 could not give, uh, this Defendant and the State
6 a fair and impartial trial based on the law and
7 the evidence to be presented? If so, would you
8 please stand and give me your name. (No
9 response.)

10 Do I have any member of the panel who has
11 been the victim of a violent crime? If so,
12 please stand and give me your name. (No
13 response.)

14 Do I have any member of the panel that has
15 any connection -- yes, ma'am.

16 **THE JUROR:** My home was burglarized Monday
17 of last week.

18 **THE COURT:** All right. Would that fact in
19 any way interfere with your ability to be a fair
20 and impartial juror on this case?

21 **THE JUROR:** I don't know. I'm upset and I'm
22 angry.

23 **THE COURT:** All right. And your name
24 please, ma'am? Your name?

25 **THE JUROR:** Jennifer Hendrix.

1 **THE COURT:** Ms. Hendrix, thank you for
2 telling me that. I would not put you on this
3 jury. Thank you. Just be seated. Thank you.

4 Now, do I have any member of the panel that
5 has any connection, family, business, social or
6 otherwise with Bob Ariail, the Solicitor, or any
7 member of his staff or with law enforcement,
8 whether that be federal, state, county or
9 municipal? If so, would you please stand and
10 give me your name.

11 Your name, sir?

12 **THE JUROR:** Uh, Dennis Jones.

13 **THE COURT:** All right. Yes, sir.

14 **THE JUROR:** I retired from the Department of
15 Corrections.

16 **THE COURT:** Would that in any way interfere
17 with your ability to be a fair and impartial
18 juror on this case?

19 **THE JUROR:** No.

20 **THE COURT:** Thank you, sir.

21 Randy Chambers represents the Defendant. Do
22 I have any clients now or formally of Mr.
23 Chambers? If so, please stand and give me your
24 name. (No response.)

25 All right. Strikes are five for the State,

1 ten for the defense. Ladies and Gentlemen, when
2 your name is called, I'll ask that you come
3 forward to the podium up front, turn around and
4 face counsel and await further instructions.
5 Thank you.

6 **THE CLERK:** 169, Teresa Poore. Step up here
7 please. Turn around and face the attorneys.

8 What says the State?

9 **MS. PRICE:** Please seat the juror.

10 **THE CLERK:** What says the Defendant?

11 **MR. CHAMBERS:** Swear Ms. Poore please.

12 **THE CLERK:** You may have a seat in the jurors'
13 box over here.

14 Number 87, Rose Williams.

15 What says the State?

16 **MS. PRICE:** Please excuse Ms. Williams from
17 the trial of this case.

18 **THE CLERK:** You are excused from this case.

19 146, Ebony Middleton.

20 What says the State?

21 **MS. PRICE:** Please seat Mr. Middleton.

22 **THE CLERK:** I'm sorry.

23 **THE COURT:** Wait, wait.

24 **THE CLERK:** What says the Defendant?

25 **MR. CHAMBERS:** Swear Mr. Middleton please.

1 **THE CLERK:** You may have a seat in the jurors'
2 box.

3 149, Adam Mills.

4 What says the State?

5 **MS. PRICE:** Please seat the juror.

6 **THE CLERK:** What says the Defendant?

7 **MR. CHAMBERS:** Excuse Mr. Mills from this
8 case please.

9 **THE CLERK:** You are excused from this case.

10 251, Malcolm Wright.

11 What says the State?

12 **MS. PRICE:** Please seat Mr. Wright.

13 **THE CLERK:** What says the Defendant?

14 **MR. CHAMBERS:** Swear Mr. Wright please.

15 **THE CLERK:** You may have a seat in the jurors'
16 box.

17 Number 11, Onie Barton.

18 What says the State?

19 **MS. PRICE:** Please seat Ms. Barton.

20 **THE CLERK:** What says the Defendant?

21 **MR. CHAMBERS:** Swear Ms. Barton please.

22 **THE CLERK:** You may have a seat in the jurors'
23 box.

24 Number 3, Valerie Adams.

25 **MS. PRICE:** Please seat Ms. Adams.

1 THE CLERK: What says the Defendant?

2 MR. CHAMBERS: Excuse Ms. Adams from this
3 case please.

4 THE CLERK: You are excused from this case.

5 Number 1, Hisham Abdelfattah.

6 What says the State?

7 MS. PRICE: Please excuse Mr. Abdelfattah.

8 THE CLERK: You are excused from this case.

9 Number 15, Marilyn Berrios.

10 What says the State?

11 MS. PRICE: Please seat Ms. Berrios. Thank
12 you.

13 THE CLERK: What says the Defendant?

14 MR. CHAMBERS: Swear Ms. Berrios please.

15 THE CLERK: You may have a seat in the jurors'
16 box.

17 Number 233, Justin Toole.

18 What says the State?

19 MS. PRICE: Please seat the juror.

20 THE CLERK: What says the Defendant?

21 MR. CHAMBERS: Excuse Mr. Toole from this
22 case please.

23 THE CLERK: You are excused from this case.

24 257, Robert Hague.

25 What says the State?

Jury Selection

15

1 MS. PRICE: Please seat the juror.
2 THE CLERK: What says the Defendant?
3 MR. CHAMBERS: Swear Mr. Hague please.
4 THE CLERK: You may have a seat in the jurors'
5 box.
6 115, Dennis Jones.
7 What says the State?
8 MS. PRICE: Please seat Mr. Jones.
9 THE CLERK: What says the Defendant?
10 MR. CHAMBERS: Excuse Mr. Jones from this
11 case please.
12 THE CLERK: You are excused from this case.
13 Number 57, Richard DeArman.
14 What says the State?
15 MS. PRICE: Please seat the juror.
16 THE CLERK: What says the Defendant?
17 MR. CHAMBERS: Excuse Mr. DeArman from this
18 case please.
19 THE CLERK: You are excused from this case.
20 112, John Jarrad.
21 What says the State?
22 MS. PRICE: Please excuse the juror.
23 THE CLERK: You are excused from this case.
24 139, Ruth McAninch.
25 What says the State?

1 MS. PRICE: Please present the juror.
2 THE CLERK: What says the Defendant?
3 MR. CHAMBERS: Swear Ms. McAninch please.
4 THE CLERK: You may have a seat in the jurors'
5 box.
6 191, Monica Ruby.
7 What says the State?
8 MS. PRICE: Please seat the juror.
9 THE CLERK: What says the Defendant?
10 MR. CHAMBERS: Swear Ms. Ruby please.
11 THE CLERK: You may have a seat in the jurors'
12 box.
13 Number 32, Michael Campbell.
14 What says the State?
15 MS. PRICE: Please present the juror.
16 THE CLERK: What says the Defendant?
17 MR. CHAMBERS: Excuse Mr. Campbell from this
18 case please.
19 THE CLERK: You are excused from this case.
20 117, Nicky Jones.
21 What says the State?
22 MS. PRICE: Please present the juror.
23 THE CLERK: What says the Defendant?
24 MR. CHAMBERS: Swear Mr. Jones please.
25 THE CLERK: You may have a seat in the jurors'

Jury Selection

17

1 box.

2 THE COURT: Mr. Jones, take that first seat
3 and serve as foreman on this case for me please,
4 sir.

5 THE CLERK: 155, Wendy Morris.

6 What says the State?

7 MS. PRICE: Please present the juror.

8 THE CLERK: What says the Defendant?

9 MR. CHAMBERS: Swear Ms. Morris please.

10 THE CLERK: You may have a seat in the jurors'
11 box.

12 105, Kenneth Hodges.

13 What says the State?

14 MS. PRICE: Please present the juror.

15 THE CLERK: What says the Defendant?

16 MR. CHAMBERS: Excuse Mr. Hodges from this
17 case.

18 THE CLERK: You are excused from this case.

19 Number 206, Cassandra Smith.

20 What says the State?

21 MS. PRICE: Please present the juror.

22 THE CLERK: What says the Defendant?

23 MR. CHAMBERS: Excuse Ms. Smith from this
24 case.

25 THE CLERK: You are excused from this case.

1 Number 214, Carol Staggs.
2 What says the State?
3 **MS. PRICE:** Please present the juror.
4 **THE CLERK:** What says the Defendant?
5 **MR. CHAMBERS:** Excuse Ms. Staggs from this
6 case.
7 **THE CLERK:** You are excused from this case.
8 That's nine.
9 Number 35, Nancy Carter.
10 What says the State?
11 **MS. PRICE:** Please present the juror.
12 **THE CLERK:** What says the Defendant?
13 **MR. CHAMBERS:** Swear Ms. Carter please.
14 **THE CLERK:** You may have a seat in the jurors'
15 box.
16 208, James Smith.
17 What says the State?
18 **MS. PRICE:** Please present the juror.
19 **THE CLERK:** What says the Defendant?
20 **MR. CHAMBERS:** Excuse Mr. Smith in this
21 case.
22 **THE CLERK:** You are excused from this case.
23 Number 47, Joseph Cowan, the third.
24 What says the State?
25 **MS. PRICE:** Please present the juror.

1 THE CLERK: What says --

2 MR. CHAMBERS: Swear Mr. Cowan please.

3 THE CLERK: You may have a seat in the jurors'
4 box.

5 THE COURT: Give me one alternate. One for
6 the State, two for the defense.

7 THE CLERK: 158, Millie Murphy.

8 What says the State?

9 MS. PRICE: Please seat the juror.

10 THE CLERK: What says the Defendant?

11 MR. CHAMBERS: Swear Ms. Murphy please.

12 THE CLERK: You may have a seat in the jurors'
13 box.

14 THE COURT: Swear the jury please.

15 THE CLERK: Ladies and Gentlemen, please rise
16 for the oath in this case. You shall well and
17 true -- raise you right hand. You shall well and
18 truly try the case 2008-GS-1671, Cardelle Tyrine
19 Washington aka Cordelle Tyrone Washington -- he's
20 indicted for Armed Robbery and Possession of a
21 Weapon during the Commission of a Violent Crime.
22 20 -- 2008-GS-1672, Burglary second degree
23 violent. 2008-GS-1673, he's indicted with
24 Kidnaping, two counts -- and a true verdict
25 render according to the laws and the evidence so

1 help you God. I will?

2 (WHEREUPON, each juror responds.)

3 THE COURT: Ladies and Gentlemen, I'll give
4 you a short recess before we start this case.

5 While on recess, do not talk about it. Okay?

6 Take the jury out please.

7 (WHEREUPON, the jury exits at approximately
8 10:16 a.m.)

9 THE COURT: And for the balance of the
10 panel, I can excuse you for the rest of today. I
11 need you to call in after 6 p.m. today. So call
12 in after 6:00. Thank you. You're excused.

13 (WHEREUPON, the jury exits at approximately
14 10:17 a.m.)

15 THE COURT: All right. Anything before we
16 start?

17 MR. CHAMBERS: Not from the defense, Your
18 Honor.

19 MS. PRICE: Nothing from the State.

20 THE COURT: All right. We'll take a very
21 short recess.

22 MS. PRICE: Thank you, Your Honor.

23 (WHEREUPON, a short recess is taken at
24 approximately 10:17 a.m.)

25 (WHEREUPON, the Court resumes at approximately

Remarks

21

1 10:23 a.m.)

2 **THE COURT:** All right. You want to make
3 brief opening statements to the jury.

4 All right. Bring them on.

5 (WHEREUPON, the jury enters at approximately

6 10:25 a.m.)

7 **THE COURT:** Ladies and Gentlemen, before we
8 start, I need to read to you an order by the
9 Chief Justice of our Supreme Court, Jean Toal,
10 concerning your service as a juror on this case.
11 So if you would, please give me your attention.
12 The use of personal communication devices has
13 continued to increase drastically. Accordingly,
14 I find it necessary to supplement my order of
15 August 25, 2000 related to the use of pagers,
16 cell phones and other personal communication
17 devices in courtrooms to include the following
18 direction to the court. The court shall instruct
19 jurors selected to serve on the jury that until
20 their jury service is concluded, they shall not,
21 A, discuss the case with others, including other
22 jurors except as otherwise authorized by the
23 court, B, read or listen to any news reports
24 about the case, C, use a computer, cellular phone
25 or other electronic device with communication.

1 capabilities while in attendance at trial or
2 during deliberations.

3 These devices may be used during lunch
4 breaks, but may not be used to obtain or disclose
5 information prohibited in Subsection D below.
6 Subsection D reads use a computer, cellular phone
7 or other electronic device with communication
8 capabilities or any other method to obtain or
9 disclose information about the case when they are
10 not in court. Information about the case
11 includes but is not limited to the following:
12 information about a party, witness, attorney or
13 court officer, news accounts of the case,
14 information collected through juror research on
15 any topics raised or testimony offered by any
16 witness, information collected through juror
17 research on any other topic the juror might think
18 would be helpful in deciding the case. Notice of
19 the contents of this order shall be given to
20 jurors.

21 All right. Brief opening statements,
22 Solicitor?

23 MS. PRICE: Thank you, Your Honor. May it
24 please the Court.

25 Mr. Chambers.

1 Ladies and Gentlemen of the jury, my name is
2 Lauren Price. I'm a prosecutor with the 13th
3 Circuit Solicitor's office here in Greenville
4 County. It's my job to prosecute folks who have
5 been charged with violating the laws of our
6 state. Seated with me today is my co-counsel,
7 Mr. Lucas Marchant, as well as Detective Tim
8 Conroy with the Greenville Police Department.

9 I want to thank you too for being here today.
10 I know you all have lives outside of this
11 courtroom. I appreciate you taking time out of
12 those lives to assist us with this case today.
13 It's an important case. It's important to the
14 State. It's important to this Defendant. I hope
15 you find it's important to you today as well. I
16 would like to very briefly go over three things
17 with you this morning before we get started.
18 First, what this case is about. Second, what
19 we're required to and what we intend to prove.
20 Finally, how we intend to prove it.

21 Ladies and Gentlemen, this Defendant,
22 Cordelle Washington is charged with Armed
23 Robbery, with Burglary in the second degree, with
24 two counts of Kidnaping, with Possession of a
25 Weapon during the Commission of a Violent Crime.

1 Now, you're going to hear us say those things a
2 few times throughout the trial. The judge is
3 also going to tell you later in the trial that as
4 the State, it's up to us to prove all these
5 charges to you beyond a reasonable doubt.

6 Now, what's a reasonable doubt? Reasonable
7 is simply a doubt that would cause a reasonable
8 or prudent person to hesitate to act. It doesn't
9 mean beyond all doubt. It simply means that you
10 are firmly convinced.

11 Today, you're going to hear that Cordelle
12 Washington on April 25th, 2006 along with two co-
13 Defendants, Andrew White and Quentin Sullivan
14 broke into the Burger King on Pleasantburg Drive
15 in Greenville County while wielding deadly
16 weapons. You are going to hear that they forced
17 one of the employees to the ground and held him
18 there and that they tried to contain another
19 employee but she escaped. You're going to hear
20 that that night, they took money from the Burger
21 King and then fled the scene.

22 We're going to prove all of this to you today
23 through the testimony of law enforcement
24 officials, through the testimony of the victims,
25 as well as through the testimony of the two co-

1 Defendants in this case, Andrew White and Quentin
2 Sullivan. I would submit to you that the
3 presentation -- after the presentation of all the
4 testimony as well as some physical evidence that
5 you will not hesitate to act to find this
6 Defendant guilty of Armed Robbery, Burglary in
7 the second degree, Possession of a Weapon during
8 the Commission of a Violent Crime and two counts
9 of Kidnaping and you will bring back the verdict
10 that justice demands, which is guilty. Thank you
11 for your time and for your attention this
12 morning.

13 THE COURT: Mr. Chambers.

14 MR. CHAMBERS: Please the Court, Your Honor.
15 Solicitor.

16 Ladies and Gentlemen, he was introduced to
17 you earlier, this is Cordelle Washington. He is
18 seated over here with me. You are going to hear
19 him referred to a lot as the Defendant. Never
20 have really liked that term. That would indicate
21 to you that he has to defend himself, that there
22 is some duty on his part. What he is, as we used
23 to call them back when I started my legal career
24 with the Navy, is the accused. He is accused of
25 all those terrible crimes that you just heard the

1 Solicitor recite to you.

2 Let me tell you up front, these crimes
3 occurred. It was a terrible thing for the
4 victims involved and it was a terrible thing that
5 they had to go through that. There's no question
6 that a crime occurred back on April the 25th, way
7 back in 2006 at the Burger King on South
8 Pleasantburg. It's relatively close -- if you
9 are familiar with that area over there -- to
10 Greenville Tech. It's just a couple of blocks
11 over from Greenville Tech. If you are coming
12 from Tech, that Burger King would be on the left
13 side of the road close to where Tanner's Big
14 Orange and some other things over there are.

15 With that said, Cordelle Washington wasn't
16 involved in that crime. There is no evidence to
17 convince anybody beyond a reasonable doubt that
18 he did in fact. You are going to get to listen
19 to the evidence that the Solicitor is going to
20 present to you. You are going to get to make a
21 determination as to whether or not he was
22 involved. There's no question Quentin Sullivan
23 was involved. There's no question that Mr. White
24 was involved. You are going to hear from them, I
25 presume, if the Solicitor chooses to put them up.

1 You are going to get to judge any statements that
2 they gave.

3 Now, one thing to bear in mind as we go
4 through this, and we will see as their case
5 unfolds, the burden of proof rests entirely with
6 these folks seated over here at this table. But
7 I don't believe you are going to see that there's
8 any forensic evidence at all that will put Mr.
9 Washington at the scene of this crime. What I
10 mean by forensic evidence is, was there any
11 fingerprints. We know that fingerprints were
12 taken. Were any of his fingerprints taken?
13 There were, I believe, foot impression prints
14 taken. I believe we're going to hear that
15 there's absolutely no forensic evidence at all
16 that matches up to Mr. Washington in this case.
17 We'll wait to see what they present. I believe
18 that is going to be the case as they present
19 their case.

20 Really, what it's going to come down to,
21 folks, are the statements of these alleged co-
22 Defendants. And one of the things that I've
23 always heard is, you know, the devil is in the
24 details, and you try to determine. It's easy if
25 people are not telling the truth to get the big

1 things right, but it's the details that they tend
2 to not get right when they are not telling the
3 truth. That's one thing for you to bear in mind
4 as you go through this. All right.

5 Now, the Solicitor alluded a little bit to
6 the burden of proof in this case. She's told you
7 she's got to prove beyond a reasonable doubt all
8 the elements of these offenses. I'm not going to
9 bother you with the elements of the offenses.
10 Those offenses -- the fact of the matter is there
11 is no proof that would convince anybody beyond a
12 reasonable doubt that Mr. Washington is guilty.

13 When you consider reasonable doubt, think
14 about the scale. It starts out perfectly
15 balanced. Now, there are different courts in
16 which people can appear and you have different
17 burdens of proof. There are significant reasons
18 for that. If this were a -- the Court of Common
19 Pleas, which most people refer to as civil court,
20 then the burden of -- these folks over here would
21 be called the Plaintiffs then, instead of the
22 prosecutor. It would be by a preponderance of
23 the evidence. The mere weight of the evidence.
24 The only thing that is at stake in a civil case,
25 the only thing at stake in a civil case is money.

1 The Plaintiff merely has to move that scale just
2 a little bit. That's preponderance of the
3 evidence.

4 There are some forms that you find yourself
5 in like some family court matters that require
6 what's called evidence -- proof by clear and
7 convincing evidence. Conclusive proof.
8 Something that you really feel confident about in
9 making your decision. The highest standard of
10 proof is reserved for criminal cases like this
11 one when someone is accused of something very
12 serious and when their liberties are at stake.
13 That is beyond a reasonable doubt. That is where
14 you want to move that scale almost all the way.

15 The Solicitor told you, she said, you know,
16 they don't have to prove it beyond a shadow of a
17 doubt. That's absolutely true. There are some
18 people that I could probably make believe that
19 the sun is not going to come up tomorrow. While
20 it is possible that the sun is not going to come
21 up tomorrow, in all probability, it will. That
22 is not a reasonable doubt. But it is -- you have
23 to be convinced beyond the kind of doubt that
24 would cause a reasonable person to hesitate to
25 act. You have to be firmly convinced.

1 I always think those sound a little bit
2 innocuous in and of itself. The way to look at
3 it is, if you had to bet something that really
4 matters, would you do it? Would you feel that
5 confident about the decision? I had a friend
6 relate to me the other day this notion of
7 reasonable doubt in talking about football. I
8 don't know if any of you are football fans or
9 not. In the last few years, we had this advent
10 of instant replay where the officials could
11 actually go back and look at the call and decide
12 whether it was the proper call or not. So you
13 have a call on the field. Then the officials go
14 back and look at it. They won't reverse that
15 decision unless they find that there was
16 irrefutable evidence that the call was wrong.

17 Ladies and Gentlemen, as we sit here today,
18 the call on the field is that Mr. Washington is
19 not guilty. They have to present irrefutable
20 evidence that he is guilty. I think it would be
21 fair to say that somebody who's charged with
22 serious crimes and facing a deprivation of
23 liberty, that's much more serious than a football
24 game. So let's hold them to their burden of
25 proof in this case.

1 Now, we were supposed to try this case
2 yesterday. I was out sick. I'm not 100 percent
3 today. So if I seem like I'm dragging or
4 anything, it doesn't have anything to do with the
5 case. Just bear that in mind as we go through
6 this.

7 I can tell you that Mr. Washington
8 appreciates the fact that you are here. He's
9 looking forward to hearing what kind of case that
10 they have against him. He's looking forward to
11 you hearing the case and making a decision in
12 this case. We're going to get another
13 opportunity to talk to you at the end of this
14 case. We don't believe they're going to be able
15 to prove their case. We're going to be asking
16 for a verdict of not guilty. But thank you for
17 your time and attention.

18 **THE COURT:** Okay. Solicitor.

19 **MS. PRICE:** Thank you, Your Honor. The
20 State would call Officer Gerald Sims.

21 **THE CLERK:** Officer Sims, if you'll step up
22 here please, place your left hand on the Bible
23 and raise your right hand.

24 **GERALD SIMS**

25 having first been sworn, testifies as follows:

1 **THE CLERK:** Thank you. You may be seated.

2 State your full name for the record please.

3 **THE WITNESS:** Gerald I. Sims, Jr.

4 **THE CLERK:** Thank you.

5 **DIRECT EXAMINATION**

6 **BY MS. PRICE:**

7 **Q** Good morning, Officer Sims.

8 **A** Good morning, ma'am.

9 **Q** By whom are you employed?

10 **A** South Carolina State Transport Police.

11 **Q** What's your official title with them?

12 **A** It's officer.

13 **Q** And how long have you worked with the State
14 Transport Police?

15 **A** Since February of 2010.

16 **Q** What sort of duties and responsibilities are
17 involved in that position?

18 **A** Charged by the State and Federal Motor
19 Carriers Association to enforce federal and state law
20 when it comes to commercial motor vehicles.

21 **Q** And were you working for the State Transport
22 Police on April 25th, 2006?

23 **A** No, ma'am.

24 **Q** Who were you working for at that time?

25 **A** I was employed by the Greenville City Police

1 Department.

2 Q And were you patrolling that day?

3 A I was.

4 Q Where were you patrolling?

5 A Within the city limits of Greenville.

6 Q Did you respond to a call that has led you to
7 come to court today to testify?

8 A Yes, ma'am. I did.

9 Q Where did you respond?

10 A To South Pleasantburg Drive, the Burger King
11 restaurant.

12 Q Okay. Do you know what city that's located?

13 A Yes, ma'am. That's within the city limits of
14 Greenville.

15 Q And within what county?

16 A Greenville county.

17 Q And what was the nature of that call?

18 A It was an armed robbery in progress.

19 Q And were you by yourself when you responded
20 to the property that day?

21 A I was not.

22 Q Who was with you?

23 A I was accompanied by my training officer, Chi
24 Blair.

25 Q And what's a training officer?

1 A A training officer is a veteran officer who
2 is charged with the responsibility of ensuring that
3 new officers can carry out their daily job as a law
4 enforcement officer.

5 Q Were you the new officer at that time?

6 A I was.

7 Q So you were in training at that time?

8 A Yes, ma'am.

9 Q And approximately what time did you receive a
10 call to respond to the Burger King?

11 A Approximately 23:13 or 11:13 p.m.

12 Q And what time did you arrive at the property?

13 A A few minutes later.

14 Q Can you describe to the jury your approach to
15 the property?

16 A Yes, ma'am. This is as you are looking at it
17 from Pleasantburg Drive. We approached from the right
18 side of the building, between the Tanner's Orange
19 restaurant and the Burger King restaurant, approached
20 from the right side to the front door, at which point
21 in time, we stopped there.

22 Q So on the right side of the building, there
23 is another business and that is what?

24 A Uh, Tanner's restaurant, also known as the
25 Big Orange.

1 Q Okay. And, uh, you walked up to the
2 building. What did you see?

3 A Immediately upon approach of the front area
4 of the restaurant, a broken out glass pane on the
5 bottom of the left door as you look at it from
6 Pleasantburg Drive.

7 Q What did you do next?

8 A We made our entrance and contact with our
9 first victim.

10 Q Who was the victim?

11 A It was a Mr. Coby Ashmore, later identified
12 as Douglas Ashmore.

13 Q Okay. And what did you do after you
14 identified Mr. Ashmore?

15 A We attempted to speak with him.

16 Q How did they appear when you were speaking
17 with him?

18 A Mr. Ashmore was, uh, frantic. He was
19 stuttering, heavy breathing. He was looking around,
20 unable to concentrate on us.

21 Q Okay. Uh, did you identify another victim?

22 A Yes, ma'am. It was Gladys Harrison.

23 Q Were either Mr. Harrison -- Ms. Harrison or
24 Mr. Ashmore both able to generally relate to you what
25 happened that night?

1 A Yes, ma'am. They were.

2 Q Did you determine what, if any, items had
3 been taken from the Burger King?

4 A Yes, ma'am. It was an unknown amount of
5 currency or money.

6 Q Okay. Uh, after speaking with both the
7 victims, what did you do?

8 A After speaking with them initially, then we
9 started filling out statement forms on paper.

10 Q And did you call anyone else to the scene?

11 A Forensics were notified, ma'am.

12 Q Okay. Do you know if any video footage was
13 recovered?

14 A Uh, during the course of our investigation,
15 we did find that they did have a camera system but it
16 was inoperative.

17 Q It was inoperable?

18 A Yes, ma'am.

19 Q So there was no video footage recovered to
20 your knowledge?

21 A Not to my knowledge.

22 Q All right. So the night of this incident,
23 April 25th. 2006, did you or anyone else know the
24 identity of suspects in this case?

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

1 Q After that night, did you continue to
2 investigate the matter?

3 A No, ma'am.

4 Q Was there someone else that was put in charge
5 of investigating the matter?

6 A Upon completion of our portion of the
7 investigation, it is then turned in to our sergeant to
8 be forwarded up to the detective division.

9 Q Do you know who was assigned to the case?

10 A I do not.

11 Q After handing over the investigation to your
12 sergeant and then it being given to a detective, did
13 you have any further involvement in this investigation
14 until coming to court today to testify?

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

16 Q One moment. (Pause.) Nothing further.
17 Please answer any questions Mr. Chambers may have for
18 you.

19 A Yes, ma'am.

20 THE COURT: Mr. Chambers.

21 CROSS-EXAMINATION

22 BY MR. CHAMBERS:

23 Q Did, uh, either of the victims give you a
24 description of the people that were involved?

25 A They did render a description, yes, sir.

1 Q Okay. And, uh, I believe it was Mr. Ashmore
2 -- do you have your report in front of you?

3 A I do not.

4 Q Let me ask you if you recall that he
5 indicated that one of the assailants had dark skin,
6 brown eyes, short black hair, approximately five foot
7 seven inches tall holding a metal pipe. Do you recall
8 that?

9 A Unfortunately, I would not be able to
10 specifically say that at this time.

11 Q Okay. Let me show you this.

12 MR. CHAMBERS: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MR. CHAMBERS:

15 Q Is this the report that you prepared?

16 A Yes, sir.

17 Q Okay. If you could, just go down to the part
18 that talks about the descriptions that were given by
19 Mr. Ashmore. Just read those.

20 A On the report, it does say that he was
21 described as dark skin, brown eyes, short hair --
22 excuse me. Short black hair. Approximately five foot
23 seven inches tall and about 170.

24 Q Okay. And what about the other two people
25 that he gives descriptions for? He said that person

1 was holding a metal pipe, correct?

2 A Yes, in the sentence prior to that.

3 Q And what about the -- did he give the
4 description of another individual?

5 A Yes, it does.

6 Q Read that description please.

7 A Fair skinned black male, brown eyes, about
8 five foot six with a medium build.

9 Q Okay. Does it say anything about weapon or
10 anything?

11 A No.

12 Q Anything about any kind of clothes he was
13 wearing?

14 A In this one, it says the five-foot-six-inch
15 man was wearing an orange windbreaker jacket.

16 Q Okay.

17 A And the five-foot-seven-inch person was
18 wearing a gray sweater.

19 Q So the shortest person was wearing an orange
20 windbreaker, correct?

21 A According to what they told us.

22 Q Okay. And those were really the only
23 eyewitnesses on the scene, correct? Those were really
24 the only eyewitnesses on the scene, correct, the
25 employees that were there?

1 A To my knowledge.

2 Q Okay. Thank you. That's all the questions I
3 have for you, officer.

4 THE COURT: Thank you. You can step down.

5 THE WITNESS: Yes, sir.

6 MS. PRICE: Your Honor, I'm sorry. I have
7 some redirect if you don't mind.

8 THE COURT: Oh, I'm sorry. Come back
9 around.

10 MS. PRICE: I have just one question.

11 THE COURT: All right.

12 REDIRECT EXAMINATION

13 BY MS. PRICE:

14 Q I apologize, Officer Sims. Now, what's in
15 your report, that's just what you are writing down at
16 the time?

17 A Yes, ma'am.

18 Q So you are on the scene gathering various
19 information from various folks, just transcribing as
20 you are there?

21 A Yes, ma'am.

22 Q And you wrote your report after, based on
23 notes that you took at the time?

24 A Yes, ma'am.

25 Q Okay. Is your report ever, uh, -- okay. So

1 it's just your impressions that you are getting from
2 folks on the scene at that evening?

3 A Yes, ma'am.

4 MS. PRICE: No further questions.

5 THE COURT: Thank you. Step down.

6 MR. CHAMBERS: Just briefly, Your Honor.

7 THE COURT: Okay.

8 **RECROSS-EXAMINATION**

9 BY MR. CHAMBERS:

10 Q That description is not your impression, is
11 it? Is it fair to say that that description is the
12 description that's given to you by the eyewitness at
13 the scene?

14 A According to statements, yes, sir.

15 Q Thank you.

16 THE COURT: Step down. This witness is
17 excused?

18 MS. PRICE: Yes, Your Honor.

19 MR. CHAMBERS: No objection, Your Honor.

20 MS. PRICE: Your Honor, at this time, the
21 State would call Corporal C.M. Blair of the
22 Greenville Police Department.

23 THE CLERK: Corporal Blair, if you'll step up
24 here please.

25 THE WITNESS: Yes, ma'am.

1 **THE CLERK:** Place your left hand on the Bible,
2 raise your right hand.

3 **C.M. BLAIR**
4 having first been sworn, testifies as follows:

5 **THE CLERK:** Thank you. You may be seated.
6 State your full name for the record please.

7 **THE WITNESS:** Chiman Blair.

8 **DIRECT EXAMINATION**

9 **BY MS. PRICE:**

10 **Q** Thank you, Corporal Blair. By whom are you
11 employed?

12 **A** Greenville City Police Department.

13 **Q** And how long have you worked for them?

14 **A** Since August of 2002.

15 **Q** What sort of duties and responsibilities are
16 involved in your current position?

17 **A** I'm a corporal with the K-9 division. I
18 handle a dog.

19 **Q** And during April 25th of 2006, was that your
20 position?

21 **A** No, ma'am. I'm was an FTO at the time, Field
22 Training Officer.

23 **Q** Training officer, and what does a training
24 officer do?

25 **A** We observe the, uh, trainees coming in, their

1 daily responsibilities, grade them and make sure they
2 can handle our responsibilities as officers.

3 Q Where were you patrolling on April 25th,
4 2006?

5 A We would have been patrolling anywhere within
6 the city limits.

7 Q And did you respond to a call that day that
8 led you to court today to come and testify?

9 A Yes, ma'am. We did.

10 Q What was the nature of that call?

11 A It was an armed robbery in progress at the
12 Burger King on South Pleasantburg.

13 Q And were you by yourself when you responded
14 to the Burger King?

15 A No. Officer Sims at the time was, uh,
16 driving my vehicle. He was my trainee.

17 Q So as supervising officer, you were observing
18 and monitoring what Officer Sims was doing?

19 A Yes, ma'am.

20 Q Approximately what time did you receive the
21 call to respond to the property?

22 A That call came out at approximately 11:13
23 p.m. We arrived on the scene several minutes after
24 that.

25 Q And can you describe what you recall about

1 the approach to the property?

2 A Yeah, we arrived and parked in between the
3 Burger King and the Tanner's Big Orange. We received
4 information that the vehicle had fled from the
5 Tanner's Orange, Big Orange parking lot. We came in
6 from that side. Officer Sims pulled up. Did a good
7 job of getting the car there without being seen. We
8 parked there, exited the vehicle and made our approach
9 to the building.

10 Q What did you observe as you approached the
11 building?

12 A As we came around front, we could see the
13 panel and the lower left side of the door had been
14 shattered. Glass was on the inside of the restaurant
15 and Mr. Ashmore, I believe, was standing inside.

16 Q Did you go inside the Burger King?

17 A We did. We made entry inside, made contact
18 with Mr. Ashmore as Officer Sims stated earlier.
19 Started talking to him. Tried to get him to calm down
20 initially. We could see that the floor had been
21 recently mopped. There were some foot impressions
22 leading from the doorway towards the counter to the
23 right side if you are looking inside the restaurant.
24 We kept ourselves to the left not to contaminate any
25 of that evidence.

1 Q Okay. Did you, at any point in time, go
2 further into the Burger King to see anything that had
3 gone on inside?

4 A The furthest I made it into the Burger King
5 was the counter where you could look down the hallway
6 at that point. Mr. Ashmore had pretty well gotten
7 himself somewhat calm where you could actually speak
8 with Officer Sims at that point. There was no longer
9 any threat there. I removed myself and stood back to
10 observe.

11 Q Okay. And what did you do next?

12 A We secured the location as we always do. The
13 other individuals were brought up. The second
14 witness, she was brought from across the street by
15 another officer. We called forensics and removed
16 everyone from the restaurant, once again, to preserve
17 as much as we could. Statements were taken outside by
18 Officer Sims at the time.

19 Q Did you determine based on speaking with the
20 victims what, if anything, had been taken from the
21 Burger King that night?

22 A It was brought to my attention that there was
23 some monies taken from the office. I believe Ms.
24 Harrison was counting the tills for the evening, but
25 we could never determine exactly how much.

1 Q Okay. And did you determine if there were
2 any additional witnesses present when Mr. -- aside Mr.
3 Ashmore and Ms. Harrison?

4 A There was a female that was on scene. She
5 was very uncooperative at the time. She left without
6 giving name, information or anything else.

7 Q Do you know if she was present when the armed
8 robbery occurred?

9 A That, I do not.

10 Q After speaking with the victims and calling
11 forensics, do you have any further involvement in this
12 investigation?

13 A No, ma'am.

14 Q Do you know at that night if anyone knew the
15 identity of the suspects in this incident?

16 A I do not.

17 Q Did you review and sign off on the report
18 written by Officer Sims?

19 A Absolutely.

20 Q But you did not, yourself, interview either
21 of the victims?

22 A No, ma'am.

23 Q Okay. After handing over the investigation,
24 did you have any further involvement in this case?

25 A No, ma'am.

1 Q Nothing further from the State. Please
2 answer any questions that Mr. Chambers may have for
3 you.

4 A Yes, ma'am.

5 THE COURT: Mr. Chambers.

6 CROSS-EXAMINATION

7 BY MR. CHAMBERS:

8 Q The uncooperative female, who was she, do you
9 know?

10 A I have no idea. As I said before, we were
11 calming Mr. Ashmore. Officer Sims was getting
12 information from him. Ms. Harrison was brought across
13 the road. She had fled. She had been brought back by
14 another officer. This other lady was there.

15 Q Did she indicate that she was there when the
16 robbery occurred?

17 A That I don't know.

18 Q How is it that she was uncooperative?

19 A Usually, when we come up and you've got a
20 scene of that nature, we want to secure the scene,
21 which means we're going to secure people, vehicles,
22 anything that's there. She wasn't giving a name. She
23 wasn't giving a statement. But she was erratic.
24 Everybody was in shock, understandably so. She was
25 unable to give anybody any information. At the point,

1 Officer Sims was handling statements from individuals
2 and she just disappeared.

3 Q So you didn't allow her to leave. She just
4 disappeared on you?

5 A She did just disappeared, yes, sir. I mean,
6 she wasn't told to leave by any means, but it's a
7 pretty hectic situation sometimes. She just left.

8 Q You would have wanted to keep her there
9 probably to get whatever information, try to get her
10 to cooperate and so forth?

11 A Oh, absolutely.

12 Q Okay. Thank you.

13 A Uh-huh.

14 THE COURT: Step down.

15 MS. PRICE: Your Honor, may this witness be
16 excused?

17 MR. CHAMBERS: No objection, Your Honor.

18 THE COURT: Without objection.

19 MS. PRICE: Thank you, Your Honor. At this
20 time, the State would call Ms. Gladys Harrison.

21 THE CLERK: Ms. Harrison, step up here please.
22 Place your left hand on the Bible and raise your
23 right hand.

24 GLADYS HARRISON

25 having first been sworn, testifies as follows:

1 THE CLERK: Thank you. You may be seated.
2 State your full name for the record please.

3 THE WITNESS: Gladys M. Harrison.

4 THE CLERK: Thank you.

5 DIRECT EXAMINATION

6 BY MS. PRICE:

7 Q Good morning, Ms. Harrison.

8 A Good morning.

9 Q I know this isn't a polite question, but how
10 old are you?

11 A 34.

12 Q And how long have you lived in Greenville?

13 A 34 years.

14 Q Your whole life. Uh, where are you working
15 currently?

16 A Burger King.

17 Q Where is that Burger King?

18 A South Pleasantburg.

19 Q And were you working at that Burger King on
20 April 25th, 2006?

21 A Yes, ma'am.

22 Q Did something happen to you that evening on
23 April 25th, 2006?

24 A Yes, ma'am. Uh, when I was counting down the
25 till, our store was robbed.

1 Q Okay. What were you doing -- let's go back
2 to right before the store was robbed. What were you
3 doing before the store was robbed?

4 A I was in the office counting down the cash
5 register.

6 Q Okay.

7 A Well, getting ready to count down the cash
8 register.

9 Q And what time of day or night was this?

10 A I'm not sure, but I know it was after 11 p.m.

11 Q And why do you know it was after 11 p.m.?

12 A Because we closed at 11 p.m.

13 Q How many registers had been open earlier that
14 you were counting? You said tills, what's a till?

15 A Tills is the cash registers that you keep the
16 money in.

17 Q How many tills did you have?

18 A At the time, I was counting three. Getting
19 ready to count three. We have a total of six.

20 Q A total of six and three from --

21 A Three would be in the safe and three would be
22 in the -- we had three cash registers.

23 Q Three from your shift?

24 A Yes.

25 Q Do you know approximately how much would have

1 been in each till from your shift?

2 A I'm not sure how much.

3 Q Do you know how much money you usually take
4 in during your shift?

5 A We usually take in, on busy nights, 800 or
6 more, slow nights 600 or more.

7 Q Okay. So at a minimum, 600?

8 A Correct.

9 Q Was anyone at the Burger King with you while
10 you were counting down these tills?

11 A Yes. Douglas Ashmore.

12 Q Douglas Ashmore. Does he have any nicknames?

13 A Coby.

14 Q And while we're at it, do you have any
15 nicknames?

16 A Just Michelle.

17 Q Michelle?

18 A Yes.

19 Q Approximately -- well, was it light outside
20 while this was going on?

21 A No.

22 Q What happened -- you're sitting in the
23 office, you are counting. What happened? What did
24 you observe?

25 A I heard a loud crash and I didn't turn around

1 immediately because I thought Coby dropped some
2 dishes. When I did turn around, I seen the expression
3 on his face that somebody was in the building. So I
4 was getting ready to shut the office door, but I
5 changed my mind. As I opened the door back up, one of
6 the gentlemen was in front of me with a gun and asked
7 where the money was at. I pointed at the money. He
8 went towards the money. I ran towards the front door.

9 Q I'm going to slow it down a little bit.

10 A Okay.

11 Q So you heard glass. You turned and made eye
12 contact with Coby. You said you got up to close the
13 door?

14 A Yes, I seen the expression on his face. I
15 kind of like -- I seen two guys run towards him and
16 another one was coming. I was kind of shutting the
17 door, the office door, and I changed my mind. I
18 didn't want to be locked in a box. So --

19 Q You said someone came towards you and they
20 had a weapon?

21 A A gun, yes, ma'am.

22 Q Did you see if the other two folks that were
23 in the Burger King had any weapons with them?

24 A I didn't see if they had any, no, ma'am.

25 Q So someone comes after you. Do you remember

1 what this person with the gun was wearing?

2 A I don't remember. I do know they had their
3 face covered, but I don't remember what they was
4 wearing.

5 Q It's been a while.

6 A Yes.

7 Q Do you recall if they said anything to you?
8 I think you mentioned that briefly.

9 A Yes, they was like -- excuse my language.
10 They asked me, bitch, where the money at. I pointed
11 at the money. He went towards the money.

12 Q You said then you ran?

13 A Yes, ma'am. I ran towards the front door.

14 Q How did you get past the person that had a
15 gun?

16 A When they went towards the money, I went
17 towards the front door.

18 Q Did you make it to the front door?

19 A I made it to the front door and they grabbed
20 me by the back of my shirt.

21 Q Someone grabbed you by the back of your
22 shirt?

23 A Yes, ma'am.

24 Q What happened next?

25 A We got in like a little scuffle. He tore my

1 shirt. When he tore my shirt, I came out of it and
2 ran across the street.

3 Q So that person that chased you, do you recall
4 if they had anything?

5 A They had a pipe, a metal pole or something in
6 their hand, yes, ma'am.

7 Q Did they strike you with it at any point in
8 time?

9 A Yes, ma'am.

10 Q They did. Uh, so you got in a scuffle. You
11 had to actually physically come out of your shirt?

12 A Yes, ma'am.

13 Q And then you ran. Where did you run?

14 A Across the street. It's a laundromat. I ran
15 to the laundromat. I didn't get directly into the
16 laundromat. It was a car turned around. I got in the
17 car with her. When the police arrived, we went back
18 across the street. She was asking if I wanted to go
19 to the Pumpers and call the police, but they got there
20 pretty quick.

21 Q Is the Pumpers nearby?

22 A Yes, it's right down the street.

23 Q And who called the police? Did you call the
24 police?

25 A No, ma'am. Coby called the police. The

1 police was there. They got there right before I went
2 back into the building.

3 Q Did -- was any money taken from you, off of
4 you?

5 A No, ma'am.

6 Q You know if they took anything from the
7 Burger King?

8 A Just money that I know of.

9 Q When you returned to the Burger King, was the
10 office the way you left it?

11 A No, ma'am.

12 Q What did it appear to --

13 A It was -- it was change everywhere. The cash
14 drawers were flipped over and emptied out.

15 Q You got back to the scene, do you know what
16 happened to this other woman that had given you a
17 ride?

18 A No, ma'am. I haven't seen her -- well, I've
19 seen her like -- she came through drive-thru a couple
20 of times after that. But I haven't seen her in a long
21 time. I never knew her name.

22 Q Okay. Did you give a statement to police
23 that night?

24 A Yes, ma'am.

25 Q Okay. Just one moment. Ms. Harrison, I'm

1 going to ask you to look in here and see if you know
2 what's in here. Do you recognize this item?

3 A A Burger King shirt.

4 Q Okay.

5 A One of the manger shirts.

6 Q And how do you recognize it?

7 A Uh, the color of it and the way -- the solid
8 color and the way it's made.

9 Q Okay.

10 MS. PRICE: Your Honor, at this time, the
11 State would move to have exhibit 1 moved into
12 evidence.

13 THE COURT: Any objection?

14 MR. CHAMBERS: No objection.

15 THE COURT: Without objection.

16 (WHEREUPON, State's Exhibit 1 is admitted into the
17 record.)

18 BY MS. PRICE:

19 Q Now, Ms. Harrison, what is this on the front
20 of the shirt?

21 A My name tag.

22 Q Okay. And, uh, is this the shirt that you
23 had on that evening?

24 A Yes, ma'am.

25 Q And you said that you were pulled out of the

1 shirt, is that right?

2 A When we were scuffling, when he tore it, I
3 kind of made my way out of it.

4 Q Slipped out the back of it after it tore?

5 A Yes, ma'am.

6 Q Okay. Ms. Harrison, I'm going to ask you to
7 speak up just a little bit.

8 A Okay.

9 Q It's hard to speak in here. I have trouble
10 myself. But I'm showing you what's been marked
11 State's Exhibit 2 and 3. Do you recognize these
12 items?

13 A Uh, look like it could be parts of the shirt.

14 Q Okay.

15 A Yes, ma'am. It's the little pin we have to
16 wear to advertise.

17 MS. PRICE: Your Honor, at this time, the
18 State would move to have --

19 THE COURT: Any objection?

20 MR. CHAMBERS: No objection.

21 MS. PRICE: Thank you, Your Honor.

22 (WHEREUPON, State's Exhibits 2 and 3 are admitted
23 into the record.)

24 BY MS. PRICE:

25 Q So this is what you were saying is a pin?

1 A Yes, ma'am.

2 Q And were you required to wear these?

3 A Yes, ma'am. We were advertising the
4 sandwiches at the time.

5 Q At the time this incident occurred?

6 A Yes.

7 Q And this?

8 A Part of the shirt.

9 Q Piece of the shirt. Ms. Harrison, I'm going
10 to show you what's been marked as State's Exhibits 4
11 through 18. Just flip through these and see if you
12 recognize these items. Then we're going to talk about
13 them in just a second. But without telling me what
14 they are, just flip through them briefly and let me
15 know if you recognize them.

16 A (Reviewing.) Yes, ma'am. I do.

17 Q And what are those?

18 A The store, the glass where it had been broken
19 in and the cash registers where they had been dumped
20 out on the floor.

21 Q All right.

22 Your Honor, at this time, the State would to
23 move to have --

24 Well, do these pictures appear to be altered
25 in any way or changed?

1 A No, ma'am.

2 Q Okay. And does this accurately depict the
3 Burger King on the night that the robbery occurred?

4 A Yes, ma'am.

5 MS. PRICE: Your Honor, at this time, the
6 State would move to have exhibits 4 through 18 --

7 THE COURT: Any objection?

8 MR. CHAMBERS: No objection.

9 THE COURT: Without objection.

10 MS. PRICE: Thank you, Your Honor.

11 (WHEREUPON, State's Exhibits 4 through 18 are
12 admitted into the record.)

13 BY MS. PRICE:

14 Q Ms. Harrison, if you would, just step down
15 with me for a minute. I'm going to go through these
16 one at a time. And again, I'm going to ask you to
17 speak up.

18 A Okay.

19 Q We're looking at State's Exhibit 4. Just
20 come around here. What are we looking at Ms.
21 Harrison?

22 A This is where the glass had been broken for
23 them to get in the store.

24 THE COURT: Speak up please, ma'am. I can't
25 hear you. I know the Court --

1 **THE WITNESS:** Oh, that's where the glass was
2 broken for them to enter the store.

3 **BY MS. PRICE:**

4 **Q** You know what side of the door was broken?
5 Can you tell from looking at the picture?

6 **A** Yes, ma'am. The bottom left.

7 **Q** So right here?

8 **A** Yes.

9 **THE COURT:** Solicitor, can you trade places
10 with her so she'll be ---

11 **MS. PRICE:** Absolutely.

12 **THE COURT:** --- facing the jury and the
13 Court Reporter?

14 **MS. PRICE:** Yes.

15 **BY MS. PRICE:**

16 **Q** All right. Ms. Harrison, what are we looking
17 at here?

18 **A** That's, uh, -- well, I see a part of my shirt
19 right there on the ground.

20 **Q** Okay. Right here. That's State's Exhibit
21 number 3?

22 **A** Yes.

23 **Q** Okay. And is this where they came in?

24 **A** Yes, that's where they entered the store.

25 **Q** When you left the store, did you go out

1 through that hole or did you ---

2 A No.

3 Q --- push open the door?

4 A Yeah, I pushed open.

5 Q You were in a hurry?

6 A Yes.

7 Q Looking at State's Exhibit 6, what are we
8 looking at here?

9 A This, uh, that's the sign where the glass to
10 enter the store.

11 Q And this is an additional photograph of what
12 we've been talking about already?

13 A Yes.

14 Q Okay. State's Exhibit 7. What are we
15 looking at?

16 A Another side of the door where it had been
17 broken.

18 Q Do you know --

19 A I see -- I was just going to point out this.

20 Q The police car back there?

21 A Yes.

22 Q This was taken after this occurred?

23 A Yes.

24 Q Okay. Do you know what that is hanging
25 outside of the door?

1 A It's a part of one of the pictures that we
2 had hanging on the door, like the one on the door.

3 Q Like this one?

4 A Yes.

5 Q This is just one that had been hanging on
6 this side of the door?

7 A Yes.

8 Q Again, State's Exhibit 6.

9 A Same picture of things hanging out of the
10 door, one of our pictures we advertised. The glass is
11 shattered.

12 Q Okay. Exhibit 8. What are we looking at?

13 A Okay. That's the entrance. The other side
14 after they broke the glass. Glass is shattered right
15 there on that side. Another part of the picture where
16 they entered the store.

17 Q Right there?

18 A Yes, ma'am.

19 Q State's Exhibit 9. What do we see here?

20 A Okay. That's like first, the machine and
21 more glass.

22 Q Glass. Okay. Is this the door they came in?

23 A Yes, that's the door they came in.

24 Q Can you point to it for me?

25 A (Pointing.)

1 Q So they came in this way?

2 A Yes.

3 Q Okay. State's Exhibit 10, what are we
4 looking at?

5 A That's the other side of the front counter
6 where the employees work. This is the window to the
7 office.

8 Q Back here?

9 A Yes.

10 Q And where was Coby when the folks came in
11 that you said came in that night?

12 A He was in the kitchen which would be behind
13 this wall.

14 Q Behind that wall?

15 A Yes.

16 Q Are there any openings there that he could
17 have observed?

18 A It's a small opening right here.

19 Q Okay. State's Exhibit 11.

20 A Okay. That's the door to the office.

21 Q Right here?

22 A Yes. This is where they first entered.

23 Q How did they get to you?

24 A Uh, I assume they came around the corner
25 right there. There's a door right there they could

1 come in.

2 Q Okay.

3 A And I had the office door open.

4 Q So they came through this area and came
5 straight there?

6 A Yes, well, one of them did.

7 Q One of them did. Okay. State's Exhibit 12.
8 What is this?

9 A That's part of the kitchen leading directly
10 to the back door.

11 Q Where is the back door?

12 A That's the back door.

13 Q Is there an opening somewhere, uh, off to one
14 side or the other that leads to the kitchen?

15 A Well, that side. This has another side.

16 Q Okay. State's Exhibit 13.

17 A Uh, that's showing where the glass, plastic
18 glass had been broken on the door to reenter the
19 office. Once the door closes, it locks.

20 Q Okay. So this is the office door?

21 A Yes.

22 Q And once the office door closes, it locks?

23 A Yes, you have to have a key to get in.

24 Q You have to have a key to get in. And the
25 glass on the door had been shattered?

1 A Yes.

2 Q The glass had been shattered. Could someone
3 reach in?

4 A Yes, they could reach in and open the door
5 from the inside.

6 Q Okay. State's Exhibit 14, what are we
7 seeing?

8 A Those are cash drawers that had been emptied
9 out and change thrown everywhere.

10 THE COURT: Solicitor, we can't hear her.
11 She needs to speak up.

12 BY MS. PRICE:

13 Q The Court Reporter is taking everything down,
14 so speak up as much as you can.

15 A Okay.

16 Q I know it's hard.

17 A The cash drawers had been thrown everywhere
18 and emptied out. That's the safe door that's open.

19 Q Can you point to it for me?

20 A Right there.

21 Q So this is the safe door?

22 A Yes.

23 Q And this is the safe?

24 A Yes.

25 Q Okay. Where are the tills that you were

1 talking about that you had been counting out earlier
2 in the evening?

3 A Well, this is three of them sitting right
4 here on the desk.

5 Q Right here?

6 A Yes.

7 Q Do you see tills that would have been in the
8 safe? You talked about three tills that should have
9 been in the safe.

10 A The three tills that should have been in the
11 safe are the ones on the floor.

12 Q And there's change and some other things?

13 A Yes.

14 Q Was that there when you left the office?

15 A No, ma'am. Not in that condition.

16 Q State's Exhibit 15. What are we looking at?

17 A Uh, that's another -- that's another side of
18 the office. More change. A chair. That little box
19 right there is like where we kept extra uniforms and
20 stuff like that.

21 Q And these tills would have never been on the
22 floor?

23 A Never been on the floor.

24 Q 16, what is this? Similar?

25 A Yeah. Uh, the same picture. Tills, the cash

1 drawers been thrown around and emptied out.

2 Q State's Exhibit 17.

3 A Those are the drawers that I was getting
4 ready to count down and my paperwork sitting on top.
5 The drawer that's sitting on top of the other drawer,
6 I think that's the only drawer that wasn't touched.

7 Q This drawer was not touched?

8 A The one that's on the bottom.

9 Q Oh, underneath?

10 A Uh-huh.

11 Q Okay. And was there any cash in this drawer
12 when you were counting down?

13 A Yes, ma'am. There was cash.

14 Q Do you see cash in there now?

15 A No, ma'am. Just change.

16 Q But when you left the office, there was cash
17 in those drawers?

18 A Yes, ma'am.

19 Q State's Exhibit 18.

20 A That's the safe where we kept all the cash
21 drawers and the change containers.

22 Q Where would the cash drawers had been in the
23 safe?

24 A Sitting at the bottom right here.

25 Q Okay. So they should have been?

1 A Yes, ma'am.

2 Q Did you have the safe open when you were
3 counting down?

4 A Yes.

5 Q You did. So they wouldn't have had to get in
6 the safe any other way?

7 A No.

8 Q It was already opened?

9 A It was already open.

10 Q Okay. If you would just take a seat one more
11 time.

12 A (Returns to witness stand.)

13 Q Ms. Harrison, now I think you refer to them,
14 these folks that came in, as men. How do you know
15 that they were men?

16 A Uh, just by the body frame and the height.
17 Like that. And the one that came to the office, he
18 spoke, so I know he was a man.

19 Q Okay. So his voice? His voice?

20 A Yes, his voice.

21 Q Thank you, Ms. Harrison. Please answer any
22 questions that Mr. Chambers has for you.

23 A Okay.

24 THE COURT: Mr. Chambers.

25 CROSS-EXAMINATION

1 BY MR. CHAMBERS:

2 Q Ms. Harrison, the door that we saw so many
3 pictures of, that door is on one of the sides of the
4 building, correct?

5 A It was in the front of the building.

6 Q The very front of the building?

7 A Yes.

8 Q Okay. . Facing Pleasantburg?

9 A Yes.

10 Q And where that Burger King is located, where
11 is the Tanner's Big Orange in proximity to that?

12 A Uh, on the left side.

13 Q So if you were facing the Burger King, then
14 Tanner's is on the left side, correct?

15 A If you facing the Burger King, Tanner's on
16 the right side.

17 Q Okay. Tanner's on the right side?

18 A Yes.

19 Q Okay. So facing the Burger King, Tanner's on
20 the right side? Uh, do you know if, at that time, is
21 there a Honey Baked Ham place over there somewhere?

22 A Yes, it was.

23 Q Where is it located?

24 A It was right down the street from the Burger
25 King. Like, leaving out of the parking lot, you would

1 turn to your right.

2 Q So if you were leaving the Burger King, you
3 would go to the right?

4 A Yes.

5 Q So in other words, if you were facing the
6 Burger King, then the Honey Baked Ham would be to your
7 left?

8 A Yes.

9 Q How far down the street was it?

10 A A couple of buildings, I think.

11 Q It was in, like, a little, uh, strip mall?

12 A Like a little plaza, yes, sir.

13 Q Okay. And when you left, you said you ended
14 up going down to Pumpers?

15 A No, I didn't go to Pumpers. When I ran -- I
16 ran across the street to the Pumpers laundromat. The
17 lady that picked me up asked if I wanted to go to
18 Pumpers to call the police.

19 Q Oh, okay.

20 A I told her no because Coby was still in the
21 store.

22 Q Other than being able to tell that there were
23 three people and that they were men, you don't have
24 any idea who was robbing Burger King, did you?

25 A I didn't see.

1 Q Thank you very much.

2 MS. PRICE: Your Honor, brief redirect.

3 THE COURT: All right.

4 REDIRECT EXAMINATION

5 BY MS. PRICE:

6 Q When you saw -- you mentioned briefly you saw
7 the men running to -- out of the building?

8 A Yes, they ran out the back side of the
9 building into Tanner's parking lot. One moment later,
10 I seen a car shooting out of the parking lot and went
11 up Pleasantburg.

12 Q What type of car?

13 A I'm not sure what type it was, but I do know
14 it was a four-door, dark colored.

15 Q Did you see these men that you saw run out
16 the back of the Burger King get in a car?

17 A I didn't see them get in a car. I just
18 assumed that they got in that car. As soon as they
19 disappeared behind the building, the car went shooting
20 out the parking lot.

21 Q The parking lot of the Tanner's?

22 A Yes.

23 Q Okay. Thank you, Ms. Harrison.

24 THE COURT: Thank you. Step down.

25 MS. PRICE: Your Honor, may this witness be

1 excused?

2 **THE COURT:** Any objection?

3 **MR. CHAMBERS:** No, Your Honor.

4 **THE COURT:** Thank you.

5 **MS. PRICE:** Your Honor, the State would like
6 to call Mr. Douglas Ashmore, the witness that we
7 spoke of briefly earlier.

8 **THE COURT:** Okay. Take the jury out just a
9 minute please.

10 (WHEREUPON, the jury exits at approximately
11 11:24 a.m.)

12 **THE COURT:** All right. Tell me what the
13 problem is now, Solicitor.

14 **MS. PRICE:** Your Honor, it's no problem.
15 It's just that Mr. Ashmore has some anxiety
16 issues. He would be more comfortable if we had
17 the minimum amount of folks in the courtroom
18 while he's testifying. He's also had some recent
19 tragedies in his family as of last week that has
20 contributed to his anxiety.

21 **THE COURT:** All right. I'll ask those that
22 are in the courtroom to excuse themselves while
23 this witness testifies.

24 All right. Bring the jury in.

25 (WHEREUPON, the jury enters at approximately

1 11:30 a.m.)

2 THE COURT: Okay. Solicitor, you may
3 proceed.

4 MS. PRICE: Thank you, Your Honor. May it
5 please the Court. The State calls Douglas
6 Ashmore to the stand.

7 THE CLERK: Mr. Ashmore, please place your
8 left hand on the Bible and raise your right hand.

9 DOUGLAS ASHMORE
10 having first been sworn, testifies as follows:

11 THE CLERK: Thank you. You may be seated.
12 State your full name for the record please.

13 THE WITNESS: Douglas Coby Ashmore.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MS. PRICE:

17 Q Good morning, Mr. Ashmore.

18 A Good morning.

19 Q How are you?

20 A Alright.

21 Q I'm going to ask you the same question I
22 asked Ms. Harrison. How old are you?

23 A 26.

24 Q How long have you lived in Greenville?

25 A All my life.

1 Q And where are you working today?

2 A I'm currently not working.

3 Q Why is that?

4 A Medical condition.

5 Q Were you working in April of 2006?

6 A Yes, I was.

7 Q Where were you working at that time?

8 A At the Burger King on South Pleasantburg.

9 Q Okay. On April 25th, 2006, did something
10 happen to you when you were closing that night?

11 A Yes, we were robbed.

12 Q What were you doing before you were robbed?

13 A Cleaning and getting ready to close.

14 Q And I'm going to ask you to speak up for the
15 jury. It's hard to hear in here. Big room. So you
16 were doing what?

17 A We were cleaning, preparing to close.

18 Q Cleaning, preparing. What were you doing
19 specifically?

20 A Uh, I think I was wiping the fry station
21 down.

22 Q Okay. Was anyone at the Burger King with
23 you?

24 A Yes, Ms. Harrison.

25 Q Okay. Did she have a nickname?

1 A Yeah. Chelle.

2 Q Chelle. And approximately what time of day
3 was this when you were closing?

4 A I'm not for sure the time, but I know it was
5 at night because we were preparing to close. It was
6 after 11:00.

7 Q Okay. And you're cleaning up. You're
8 cleaning the fry station. Tell me what happened.

9 A I hear the glass shattered. So I kind of
10 peeked around and see the bottom of the door busted
11 out and, like, three guys coming in.

12 Q Okay. Three guys. And you say guys, how do
13 you know they were guys?

14 A Just by their body build and their voices.

15 Q Where do they come in?

16 A Through the bottom of the front door.

17 Q You remember what side?

18 A Not really.

19 Q Uh, and as they came in, where do they go?

20 A They came to the back of the kitchen area.

21 Uh, and I recall one of them going into the office
22 with Chelle. The other two kind of controlled me.

23 Q Okay.

24 A One in between the office and where I was
25 standing, the other one behind me.

1 Q And do you recall that they were holding
2 anything, carrying anything?

3 A I don't remember. It's been so long ago.
4 With my medical condition, I have a bad memory.

5 Q Did -- you recall what they were wearing?

6 A Just one of them stood out. He had a bright
7 orange pullover on.

8 Q Okay. You say you were having trouble with
9 your memory, would it help for you to look at your
10 statement?

11 A Yeah, it probably would.

12 Q Read over this briefly, then we'll talk about
13 -- let me know when you are done reading through it.

14 A Yes.

15 THE COURT: Okay.

16 BY MS. PRICE:

17 Q After reading that, do you remember what they
18 had on?

19 A One of them had on the orange. One guy had
20 on the gray. The other one, a dark color.

21 Q Okay. And do you remember now if they were
22 holding anything when they came in?

23 A Like, one of them, I'm not for sure which one
24 just by memory, but one of them did have a gun and
25 another one had a stick or a pipe or something.

1 Q Now, you said that one of those men came
2 towards you?

3 A Uh-huh.

4 Q What happened between you and he?

5 A One of them was kind of in between the office
6 and where I was standing. The other guy was behind
7 me. They were kind of controlling me. I recall, uh,
8 one particular guy that was in front of me. The other
9 guy kind of controlled me to keep me still or
10 whatever. He kind of nudged me and kind of pushed me
11 on the ground. I tried to get a good look at him, but
12 when I kind of lifted my head up, the one that was by
13 me put his foot on my back, you know, so I wouldn't
14 move.

15 Q Uh, did you hear them say anything? Did they
16 say anything to you?

17 A Yeah. I remember one of them saying put them
18 in the freezer. I refused. He just told the guy to
19 make me get down. And, uh, I remember him yelling to
20 the guy that was in the office to get the money. I
21 could hear like a lot of change, like he was dumping
22 the change in like the pocket on the pullover. You
23 could hear the change dropping.

24 Q A pullover?

25 A The fleece pullover. You know, like a

1 sweater.

2 Q Okay. You said you got down.

3 A Uh-huh.

4 Q You mean held down?

5 A Yeah, he just had his foot on my back.

6 Q All right.

7 A Was kind of holding me down, yeah.

8 Q So you couldn't get up?

9 A Huh-uh.

10 Q Did you see what was happening with Chelle?

11 A I remember she ran out the door and one guy
12 ran behind her with the pipe or stick or whatever in
13 his hand.

14 Q Did you see what happened to her after she
15 ran out the door?

16 A No.

17 Q Uh, did they take any money from you?

18 A No.

19 Q Do you know if they took anything from the
20 Burger King?

21 A From my understanding, they did.

22 Q Okay. Do you know what they took?

23 A No.

24 Q Okay. Uh, what happened next? You heard the
25 chain. You saw her run out the door. What happened

1 next?

2 A I remember, uh, as they were leaving out,
3 they were getting ready to run out the front. I
4 thought about Chelle might still be out there. So I
5 just -- I kind of just told them to go out the back
6 door. You know, to try to keep them away from Ms.
7 Harrison.

8 Q So you sent them out the back door?

9 A Yes.

10 Q What happened after they left?

11 A Uh, I remember, uh, -- I remember grabbing
12 the phone, but I really don't remember calling the
13 police or not. I do remember grabbing the phone and
14 kind of looking out for Chelle. By that time, the
15 police were pulling up. They got there kind of fast.

16 Q When Chelle came back, do you remember what
17 she looked like?

18 A Yeah. She ain't have a shirt on, so I gave
19 her my shirt.

20 Q Okay. Just one moment. (Pause.)

21 Mr. Ashmore, when the officers arrived, do
22 you recall giving them a statement?

23 A Not really.

24 Q Okay. Do you know if you told them what you
25 saw that night?

1 A Well, from my statement here, yes.

2 Q Do you recall if you told them what the folks
3 who had been there looked like?

4 A Yes, they had, like, bandanas and masks on,
5 but you could see, like, their eyes and the skin
6 around their face.

7 Q Did you talk about their heights, weights?

8 A Yes.

9 Q Do you recall now what those were?

10 A I don't recall, but at the time that I did
11 give my statement, it was fresh in my memory.

12 Q Okay. And you said that they had on masks?

13 A Yeah, bandanas wrapped around their face.

14 Q Okay. Do you remember if they had anything
15 else on?

16 A I don't remember.

17 Q Anything specific? No. But you did say
18 someone had an orange jacket?

19 A Yes.

20 Q Also a dark blue shirt?

21 A Uh-huh.

22 Q And maybe a gray is what you said?

23 A Yes.

24 Q Mr. Ashmore, one second. (Pause.)

25 I'm showing you what has been previously

1 admitted as State's Exhibits 4 through 12.

2 A Uh-huh.

3 Q Do you recognize these photos?

4 A Yes, I do.

5 Q Okay. And what are they?

6 A Pictures of the Burger King and where they
7 came in at.

8 Q Okay. Now, I'm going to ask you, if you are
9 comfortable, to step down with me and go through the
10 pictures and tell me where you were while various
11 things happened as we look at them, okay?

12 A All right.

13 Q Okay. Step down with me.

14 THE COURT: Trade places with him,
15 Solicitor.

16 MS. PRICE: Yes, sir.

17 BY MS. PRICE:

18 Q And again, speak up, so they can hear you,
19 the jury can hear you. Okay. State's Exhibit 4, now
20 what are we seeing and what happened?

21 A That's the front entrance of the Burger King
22 and here's where the glass was busted.

23 Q Okay. State's Exhibit 5.

24 A That's, uh, another photo of where the glass
25 was busted and the guys came through.

1 Q Do you know what these objects that you can
2 see at the bottom of the screen?

3 A This?

4 Q Uh-huh. Do you know what that is?

5 A Piece of the (inaudible).

6 Q Okay. Do you know what this white object is
7 that hanging through the window?

8 A That's like one of these posters here.

9 THE COURT: Solicitor, is it necessary for
10 us to go through all these pictures again?

11 MS. PRICE: Your Honor, I'm only going to go
12 through a few more and, yes, I want to go through
13 them so that he can give us some context as to
14 where he was standing and what he saw.

15 THE COURT: All right.

16 MS. PRICE: But it will be very brief, much
17 more brief than the first witness.

18 THE COURT: All right.

19 BY MS. PRICE:

20 Q State's Exhibit 6, is this the same thing as
21 we just saw moments ago?

22 A Yes.

23 Q Now, you said that they came in, how did they
24 come in?

25 A They crawled through this way.

1 Q Crawled through. And you saw them crawl
2 through?

3 A Uh-huh.

4 Q State's Exhibit 7, the same thing?

5 A Same thing.

6 Q Okay. State's Exhibit 8. You said there was
7 a poster. Is that the same poster?

8 A That's the same poster.

9 Q Okay. Down here at the bottom of the screen?

10 A Yes.

11 Q Okay. State's Exhibit 9.

12 A That's like the lobby.

13 Q Okay.

14 A That's the opposite side where they came in.

15 Q Right here is where they came through?

16 A Yeah.

17 Q Did you see them come across the floor?

18 A Yes.

19 Q Okay. State's Exhibit 10.

20 A That's just like behind the counter where the
21 cashiers are.

22 Q Okay.

23 A Behind this area is our kitchen.

24 Q So where were you standing?

25 A Behind this.

1 Q Is there a place where you can see through to
2 where the door was?

3 A Yes, on this side here.

4 Q Uh-huh.

5 A Like an opening and then the office at the
6 end.

7 Q So you were standing on what end when you saw
8 them come through?

9 A I was standing over here.

10 Q And the office is directly across from where
11 you were standing?

12 A Uh-huh.

13 Q So then you looked at Chelle when they came
14 in the door?

15 A Yes.

16 Q Okay. Where is the office?

17 A That's the office door. I was behind this
18 area.

19 Q Again, that's State's Exhibit 11. Finally,
20 State's Exhibit 12.

21 A I walked around this area here.

22 Q Uh-huh. And, uh, I see an exit sign at the
23 back?

24 A Yeah.

25 Q This is the way that you sent them?

1 A Uh-huh.

2 Q Okay. What is this at the top of the
3 photograph? Do you know what that is?

4 A (Inaudible.)

5 Q Okay. Do you know who's working at the time?

6 A Chelle.

7 Q All right. Mr. Ashmore, you can take stand
8 again. Thank you. Please answer any questions that
9 Mr. Chambers may have for you at this time.

10 CROSS-EXAMINATION

11 BY MR. CHAMBERS:

12 Q Mr. Ashmore, you said there were three
13 individuals that came into the store that day?

14 A Yes, sir.

15 Q Or that evening, I should say. You said one
16 of them had what you felt was either a stick or a
17 pipe?

18 A Yes, sir.

19 Q You said one of them had a gun?

20 A Yes, sir.

21 Q Did the other person have any kind of weapon
22 in their possession that you recall?

23 A Not that I recall.

24 Q So you only saw two people that had any kind
25 of weapon at all?

1 A Yes, sir.

2 Q And one of the people that had a gun was
3 standing over you, is that correct?

4 A I don't remember.

5 Q Okay. Do you remem -- the person that was
6 standing over you with their foot in your back, do you
7 recall what that person was wearing?

8 A No, I don't remember.

9 Q Uh, you still have your statement up there in
10 front of you?

11 A Yes, sir.

12 Q Go down just a few lines and see if you see
13 where it says, uh, he said -- you said I'm down. And
14 the guy in the jacket told me to get down. I told him
15 I'm down. That was the guy in the blue jacket that
16 told you to get down?

17 A Yes, sir.

18 Q The guy in the blue jacket then was the one
19 that was standing over you with the foot in your back?

20 A Yes, sir.

21 Q And a little bit further down there in your
22 statement, you can look and tell me if that's true,
23 you said the guy that was standing over you started
24 clicking the gun.

25 A Yes, sir.

1 Q So the guy standing over you in the blue
2 jacket was the one that had the gun, is that correct?

3 A If it says it in my statement.

4 Q That's the statement you gave that night.

5 A Yes, sir.

6 Q So that would have been your recollection of
7 what happened, correct?

8 A Yes, sir..

9 Q And were you able to get a good look at that
10 gun?

11 A No, sir.

12 Q Do you remember anything about it?

13 A Not that I remember.

14 Q You said he was clicking it. What do you
15 mean by that?

16 A I just heard it click.

17 Q Okay. Like he was pulling the hammer back on
18 it or something?

19 A No, it wasn't that loud of a click.

20 Q Okay. Do you remember from looking at it if
21 it was more of a revolver type or more of a
22 semiautomatic type pistol?

23 A I don't remember.

24 Q You don't remember at all? Okay. That guy
25 that was standing over you, he was the one that had

1 the gun that you saw?

2 A Yes, sir.

3 Q All right. That's all the questions I have
4 for you.

5 THE COURT: Thank you. Step down.

6 MS. PRICE: Uh, Your Honor, I have redirect.
7 I'm sorry.

8 THE COURT: All right.

9 REDIRECT EXAMINATION

10 BY MS. PRICE:

11 Q Uh, why do you think that the person standing
12 above you had a gun?

13 A Could you ask that --

14 Q Huh?

15 A Could you say that again?

16 Q Sure. Why do you believe that the person
17 that was standing above you had a gun?

18 A They -- with the intent to rob Burger King.

19 Q Did you see that person above you with a gun?

20 A Uh, --

21 Q You said you felt something in your back ---

22 A Yeah.

23 Q --- but did you see a gun?

24 A No.

25 Q You did not see that person standing above

1 you with a gun?

2 A I really -- I don't remember.

3 Q Okay. That's -- okay. And you said somebody
4 was in a orange jacket.

5 A Yes.

6 Q Do you remember where that person was
7 standing?

8 A In front of me and like in between me and my
9 office in the area I was at.

10 Q Do you remember if they had anything in their
11 hands?

12 A Not that I remember.

13 Q You don't remember? Okay. Nothing further.
14 Thank you, Mr. Ashmore.

15 THE COURT: Step down.

16 MS. PRICE: Your Honor, may this --

17 MR. CHAMBERS: Just very quickly.

18 THE COURT: All right.

19 **RECROSS-EXAMINATION**

20 **BY MR. CHAMBERS:**

21 Q Mr. Ashmore, I just want to be clear that you
22 did say that the man standing above you started
23 clicking his gun in your statement.

24 A Yes, sir. In my statement, that's what it
25 says.

1 Q Thank you.

2 THE COURT: Step down.

3 MS. PRICE: May this witness be excused,
4 Your Honor.

5 THE COURT: Any objection?

6 MR. CHAMBERS: No objection, Your Honor.

7 MS. PRICE: Thank you, Your Honor.

8 THE COURT: Okay.

9 MS. PRICE: Your Honor, at this time, the
10 State would call Andrew White.

11 THE CLERK: Mr. White, step up here to the
12 Bible please. Place your left hand on the Bible
13 and raise your right hand.

14 ANDREW WHITE

15 having first been sworn, testifies as follows:

16 THE CLERK: Thank you. You may be seated.
17 State your full name for the record please.

18 THE WITNESS: Andrew Latroy White.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MS. PRICE:

22 Q Good morning, Mr. White.

23 A Good morning.

24 Q How are you?

25 A I'm alright. How about yourself?

1 Q Alright. How old are you, Mr. White?

2 A I'm 25.

3 Q And where are you from?

4 A I'm originally from Anderson, South Carolina,
5 but I was living in Greenville for a while.

6 Q Okay. How long did you live in Greenville?

7 A Uh, about three or four years.

8 Q Where did you live in Greenville when you
9 were here?

10 A I lived a few places, but my final residence
11 was Elmwood.

12 Q Okay. You remember anything more specific?
13 Elmwood?

14 A 12 Elmwood, Lot 1.

15 Q Do you have any children?

16 A Yes, ma'am. I do.

17 Q How old are they?

18 A I have a son. He is five.

19 Q I see you are in a prison uniform. Where are
20 you currently incarcerated?

21 A McCormick.

22 Q Is that with the Department of Corrections?

23 A Yes, ma'am.

24 Q We're going to talk about why you are there
25 in a few minutes. But first, let's talk about what

1 you did prior to being incarcerated. What did you do
2 for a living?

3 A I worked in a fence place as a welder.

4 Q And I'm going to ask you to speak up a little
5 bit too.

6 A All right.

7 Q Did you do anything before working as a fence
8 welder?

9 A Just jobs here and there, restaurants and
10 stuff like that.

11 Q Did you ever work at Burger King?

12 A Yes, ma'am.

13 Q Where was that?

14 A The one on Faris.

15 Q Faris Road?

16 A (Nods head.)

17 Q Do you know a person by the name of Cordelle
18 Washington?

19 A Yes, ma'am. I do.

20 Q How do you know him?

21 A We met through a mutual friend, probably in
22 '04.

23 Q And prior to April 25th, 2006, how long had
24 you known him at that time?

25 A Probably a year or two.

1 Q Do you know a person by the name of Quentin
2 Sullivan?

3 A Yes, ma'am.

4 Q How do you know him?

5 A We lived on the same street and our sisters
6 used to play together.

7 Q You ever work together?

8 A Yes, ma'am.

9 Q Where did you work together?

10 A At the Burger King on Faris Road.

11 Q And prior to the incident date of April 25th,
12 2006, how long have you known Quentin Sullivan?

13 A About two and a half, three years.

14 Q You ever got in any big fights with Quentin
15 or Cordelle Washington?

16 A No, ma'am.

17 Q Never took your girlfriend?

18 A No, ma'am.

19 Q Never had no reason to be angry with him?

20 A No, ma'am.

21 Q Always friends. Okay. Do you go by any
22 other names other than Andrew?

23 A Drew.

24 Q Okay. Do you know if, uh, Mr. Sullivan,
25 Quentin Sullivan or Mr. Washington go by any other

1 names other than those?

2 A Quentin goes by Q, Cordelle goes by K.

3 Q Now, let's talk about why you are in the
4 Department of Corrections. Why are you in the
5 Department of Corrections?

6 A I was arrested and pleaded to Armed Robbery.

7 Q Okay. Just one Armed Robbery?

8 A I pleaded to five and one has been deferred.

9 Q Did you plead to all of them?

10 A Yes, ma'am.

11 Q And do you have a deferred sentence on one of
12 them?

13 A Uh-huh.

14 Q At the time you pled guilty to those charges,
15 you ever met with me to discuss this case?

16 A No, ma'am.

17 Q Have we met?

18 A No, ma'am.

19 Q Okay. Uh, at the time of your guilty plea,
20 did someone from my office, someone from the State or
21 anyone else promise you anything in exchange for your
22 guilty plea?

23 A No, ma'am.

24 Q At the time you were arrested, did you give a
25 statement to the police and cooperate with them?

1 A Yes, ma'am.

2 Q Since you pled guilty and was sentenced, have
3 you met with me prior to today to talk about what
4 happened on April 25th, 2006?

5 A Yes, ma'am.

6 Q And when you met with me, that was after you
7 already entered a plea?

8 A Yes, ma'am.

9 Q Did I promise you anything in exchange for
10 speaking with us today about what happened on April
11 25th, 2006?

12 A No, ma'am.

13 Q Did Detective Conroy or Lucas Marchant
14 promise you anything in exchange for talking to us
15 today about what happened that date?

16 A No, ma'am.

17 Q Did I tell you I could help you out with your
18 deferred sentence?

19 A No, ma'am.

20 Q Do you know who has the power to sentence you
21 on your deferred sentence?

22 A The judge that sentenced me originally.

23 Q Okay. Now, looking back to April 25th, 2006,
24 could you tell the jury what you remember about that
25 night?

1 A Uh, --

2 Q Let's start with who was with you. Who was
3 with you that night?

4 A Me, Quentin Sullivan and Cordelle Washington.

5 Q Okay. And what were you doing?

6 A Riding around, smoking, drinking, just doing
7 what young guys do, I guess.

8 Q What vehicle were you driving?

9 A I was driving my 1990 metallic gray Buick
10 Century.

11 Q And it was yours, your car?

12 A Yes, ma'am.

13 Q Uh, what was the plan that night? Was there
14 a plan? You were just driving around?

15 A Yes, ma'am.

16 Q And what happened that night?

17 A We were just riding around and happened to
18 see a Burger King. It was kind of deserted. It
19 wasn't about one or two people working. We decided to
20 get some quick cash.

21 Q Okay. Why did you need some quick cash? You
22 have a reason?

23 A Not really.

24 Q So what Burger King was it?

25 A The Burger King on South Pleasantburg Road.

1 Q Uh, why did you pick a Burger King?

2 A Uh, because me and Quentin had worked at a
3 Burger King and knew the layout and how everything was
4 set up.

5 Q Were the Burger Kings all laid out the same
6 way at that time?

7 A Yes, ma'am.

8 Q When you worked at the Burger King, did you
9 work day shift, night shift?

10 A I worked day shift.

11 Q Did you ever work night shift?

12 A Uh-huh. Yes, ma'am.

13 Q Did Quentin?

14 A Yes, ma'am.

15 Q Did you know what time they closed?

16 A Yes, ma'am.

17 Q Would you have known what time they were
18 cashing out the registers?

19 A Yes, ma'am.

20 Q So you said the Burger King is on South
21 Pleasantburg, can you tell us where did you park your
22 car when you got to the Burger King?

23 A We parked at the parking lot next door.

24 Q Okay. On what side? Do you remember what
25 side?

1 A On the right side.

2 Q And who was driving when you got there?

3 A I was.

4 Q Okay. And you parked to the right hand side
5 of the Burger King. What did you do next?

6 A We got out and the place that was beside it
7 had like a patio or whatever where people could eat.
8 It was dark. We went toward the back of the parking
9 lot and crossed the parking lot towards the back where
10 nobody was seen and came up to the right side of the
11 Burger King toward the back.

12 Q Okay. And how did you get in the Burger
13 King?

14 A Through the front door.

15 Q Did you walk through the front door?

16 A No.

17 Q Okay. How did you get through the front
18 door?

19 A I busted out the bottom pane of the front
20 door.

21 Q How did you bust it out?

22 A With a concrete block.

23 Q Now, you say concrete block. Was it like a
24 squared off block that had even corners?

25 A It wasn't even corners. It was kind of like

1 rounded off slightly.

2 Q So just sort of like a piece of cement?

3 A Yeah.

4 Q Okay. Now, you broke through -- you broke
5 the window.

6 A Uh-huh.

7 Q Were Cordelle and Quentin with you when you
8 broke the window?

9 A Yes, ma'am.

10 Q Did they know you were going to break the
11 window?

12 A Yes, ma'am.

13 Q Did you go inside the Burger King?

14 A Yes, ma'am.

15 Q In what order did you go in the Burger King?

16 A Cordelle went in first. I went in second.
17 Quentin came in last.

18 Q Were you carrying anything when you went in
19 the Burger King?

20 A Yes, ma'am.

21 Q What were you carrying?

22 A I had a silver and black BB gun.

23 Q Okay. Do you know if Quentin or if, uh,
24 Cordelle were carrying anything when they entered the
25 Burger King?

1 A Cordelle had a black BB gun and Quentin had a
2 steel pipe.

3 Q Okay. Uh, Okay. So you entered carrying
4 these weapons. What happened next?

5 A Cordelle jumped the counter and subdued the
6 employee in the front. Me and Quentin went around
7 through the back door. When we went in the back door,
8 I went toward the kitchen area and subdued the other
9 employee. Quentin went up toward the front of the
10 store.

11 Q Okay. So just to be very clear, you went --
12 you went in and went to -- you are familiar with the
13 Burger King?

14 A To the right.

15 Q And then did you go an office area, to a cook
16 station?

17 A I went to the back toward the cook station.

18 Q Okay. And you said you subdued an employee
19 there. What did he look like?

20 A He was kind of a tall, stocky black guy.

21 Q Okay. And you said that Cordelle went and
22 subdued another employee.

23 A Uh-huh.

24 Q You know what that employee looks like?

25 A She was a black lady.

1 Q And where was he when he was subduing her?

2 A Right behind the counter. Right behind the
3 counter.

4 Q Okay. Uh, and where was Quentin Sullivan?

5 A He was behind me until we went into the
6 kitchen and he went up toward the front.

7 Q So he came back with you and then went back
8 towards the front?

9 A Uh-huh.

10 Q Okay. Uh, so what happened next?

11 A A few minutes passed. I assumed they went --
12 they was getting the money or whatever and went in the
13 office. A few minutes passed and I heard something
14 break. I went to look around. Quentin, Cordelle and
15 the lady, they were struggling. Cordelle and Quentin
16 was arguing. The lady tried to run. Quentin tried to
17 grab her and tore her shirt. I seen her running
18 towards the front of the door to go out the front
19 door. That's when I went back toward the back --
20 toward the back exit.

21 Q Now. You said you saw this happen. Were you
22 still -- were you holding down this other individual?

23 A I had the gun on him, but I backed up enough
24 to where I could see around the corner and see the
25 office.

1 Q Okay. Uh, but you had pointed the gun at
2 him?

3 A Yes, ma'am.

4 Q Uh, so you backed up. Did you, uh, -- then
5 you left you said?

6 A Uh-huh.

7 Q How did you get out?

8 A I left through the employee exit, the exit in
9 the back, in the kitchen.

10 Q Okay. Did Cordelle and Quentin stay? Did
11 they leave?

12 A They left pretty quickly right behind me.

13 Q Okay. Uh, you know -- you said you heard
14 something break. You know what you heard break?

15 A It was the glass to the office. The window
16 in the office door.

17 Q Do you know how it broke?

18 A I believe Quentin broke it.

19 Q Okay. Do you know with what?

20 A A steel pipe.

21 Q Okay. Uh, you ran back out to the car, you
22 said and Cordelle and Quentin were with you. Who
23 drove?

24 A Cordelle drove.

25 Q Okay. Why did he drive?

1 A Because he happened to get to the car first.

2 Q Okay. You left the building first, but he
3 got to the car first?

4 A Uh-huh.

5 Q Why is that?

6 A Cause he's faster than me.

7 Q Oh, okay. Who had the keys?

8 A I had the keys.

9 Q Okay.

10 A When we went out, I popped the trunk and
11 threw him the keys. And when I popped the trunk, I
12 had a towel in the back. I kind of threw the towel
13 out so it cover up the license plate so nobody could
14 see the license plate when we left.

15 Q So covered the license plate. Where were you
16 sitting in the car?

17 A Directly behind the driver.

18 Q Okay. What were you doing in the back seat?

19 A Counting money.

20 Q Was the money there when you -- who gave you
21 that money?

22 A Cordelle.

23 Q Okay. So you got in the car and Cordelle
24 handed you money?

25 A Yes, ma'am.

1 Q And you started to count it?

2 A Yes, ma'am.

3 Q Where did Quentin sit?

4 A In the passenger seat.

5 Q And what did you do at that time?

6 A We left. I was counting money. And we went
7 on home.

8 Q Left how?

9 A We drove.

10 Q How did you get from where you said you
11 parked at?

12 A Oh, uh, through the front parking lot.

13 Q So you drove out of the building, out of the
14 parking lot that was next to the Burger King?

15 A Uh-huh.

16 Q Okay. Uh, were any of you -- you said you
17 were drinking and smoking while this was going on?

18 A Yeah.

19 Q Okay. Do you know how much money? You said
20 you counted the money. Do you know about how much
21 money you got from the Burger King that night?

22 A Between like 15-1800, I believe.

23 Q Between \$15-1800. Uh, did you keep all of
24 it?

25 A No, ma'am.

1 Q Did you share it?

2 A We split it.

3 Q We being who?

4 A Me, Cordelle and Quentin.

5 Q Okay. Did you split it evenly?

6 A Yes, ma'am.

7 Q Why would you split it evenly?

8 A I mean because we were all there.

9 Q Okay. Do you remember what each of you was
10 wearing that night?

11 A Not in particular. I know I was -- I know we
12 were all wearing jeans and t-shirts and either hoodies
13 or jackets, but not descriptively.

14 Q Okay. Uh, do you know if there was an orange
15 jacket?

16 A No, ma'am.

17 Q No. Okay. Did any of you ever own an orange
18 jacket?

19 A Uh-huh.

20 Q Which one of you?

21 A Who owned it? I don't know. It was kind of
22 a group jacket. Any different night we go out to the
23 club or something, it might match one of our outfits
24 or something.

25 Q Okay. What happened to that orange jacket?

1 A It had got burnt.

2 Q How did it get burned?

3 A Somebody destroyed it.

4 Q Uh, why was it destroyed?

5 A Uh, because -- how can I put this? Because
6 there was some things going on and -- it was some
7 things going on and we didn't need no -- any type of
8 police attention so it was probably best to get rid of
9 it.

10 Q Okay. When you entered the Burger King that
11 night, did you have anything on your hands?

12 A Gloves.

13 Q Did Cordelle or Quentin?

14 A Yes, ma'am.

15 Q So you all had gloves on?

16 A Yes, ma'am.

17 Q You know what type of gloves you had on that
18 night?

19 A I had on like a creme colored construction
20 gloves.

21 Q Okay. Do you know what type of glove Quentin
22 had that night?

23 A I'm pretty sure he had on black and white
24 baseball gloves.

25 Q Okay. What about Cordelle? Do you recall?

1 A I'm pretty sure he had on some creme and,
2 like, blue gardener gloves. Something similar to
3 that.

4 Q Okay. You gave a statement to law
5 enforcement right after you were arrested. In that
6 statement, you refer to Cordelle and Quentin as your
7 brother or your cousin, but are y'all related?

8 A No, ma'am.

9 Q Why were you referring to --

10 A That's street slang, I guess.

11 Q Okay. Uh, now, you said you had a gun and
12 that Cordelle had a gun?

13 A Yes, ma'am.

14 Q What type of guns were they?

15 A BB guns.

16 Q Okay. Did you do anything to make sure that
17 people would think they were real guns?

18 A Uh, we wrapped bandanas or something like
19 that around the handle so you wouldn't be able to see
20 where the CO2 cartridges went in.

21 Q So that it would give the impression that you
22 have real guns.

23 A Uh-huh.

24 Q Where did you get those guns, do you
25 remember?

1 A I got one from my little brother and cousin
2 or something like that.

3 Q At some point in time, you were arrested.

4 A Uh-huh.

5 Q When you were arrested, did you give a
6 statement to law enforcement?

7 A Yes, ma'am.

8 Q Okay. Were you telling them the truth that
9 day that you gave them that statement?

10 A Yes, ma'am.

11 Q Are you telling us the truth today?

12 A Yes, ma'am.

13 Q Okay. Okay. I'm showing you what's been
14 previously admitted as State's Exhibit 4. Do you
15 recognize this?

16 A Yes, ma'am.

17 Q What are we looking at?

18 A That is the front door and the front portion
19 of the Burger King on South Pleasantburg.

20 Q Uh, can you point and show the jury where you
21 entered? Sorry.

22 A Right there where the glass is broken.

23 Q Okay. And showing you what's been marked
24 previously as State's Exhibit 12, you recognize this?

25 A Uh-huh. That's the kitchen area, sink area

1 and the back door.

2 Q Okay. Is that the door that you left?

3 A Yes, ma'am.

4 Q And State's Exhibit 13.

5 A That's the office. That's the doors to the
6 office and where the windows broke.

7 Q Again, who broke the window?

8 A Quentin.

9 Q Okay. Do you know if he broke the window to
10 get inside the office?

11 A No.

12 Q You just don't know?

13 A Huh-uh.

14 Q Without taking these out of this bag, but
15 just looking at them, not showing them to the jury, do
16 you recognize these items?

17 A Yes, ma'am.

18 Q Okay. How do you recognize them?

19 A They were either taken out of the trunk of my
20 car or out of my house.

21 Q Okay. And what are they?

22 A They are gloves.

23 MS. PRICE: Okay. Your Honor, at this time,
24 we would move for State's Exhibits 19 through

25 21 --

1 THE COURT: Any objection?

2 MR. CHAMBERS: No objection, Your Honor.

3 MS. PRICE: Okay.

4 (WHEREUPON, State's Exhibits 19, 20 and 21 were
5 admitted into the record.)

6 BY MS. PRICE:

7 Q Okay. Do you know if these are the gloves
8 you were wearing at the time the robbery took place?

9 A No, ma'am.

10 Q You don't know?

11 A No, I wasn't wearing these.

12 Q You were not wearing them. And you said you
13 were wearing a different type of gloves?

14 A Yes, ma'am.

15 Q What type of gloves?

16 A Construction gloves, like a leather
17 construction glove. Creme color.

18 Q Okay. And, uh, do you know if Quentin or
19 Cordelle were wearing any of these gloves the night
20 the robbery occurred?

21 A Like I said, I'm pretty sure Quentin was
22 wearing baseball gloves. Cordelle was wearing
23 creamish-color gardener gloves.

24 Q Something like this?

25 A (Nods head.)

1 Q And something like this for Quentin?

2 A Yes, ma'am.

3 Q Okay. Are you sure that these are the
4 gloves?

5 A Yes, ma'am.

6 Q Okay. Again, just looking in this bag, but
7 not, uh, telling you what they are -- showing them to
8 the jury, I'm showing you what's been marked State's
9 Exhibits 22 and 23. Do you recognize these items?

10 A Yes, ma'am.

11 Q Okay. Can you see both the items? You can
12 move it if you need to.

13 A Yes, ma'am.

14 Q Do you recognize the items?

15 A Yes, ma'am.

16 Q How do you recognize them?

17 A The jacket, I believe I might have been
18 wearing the jacket that night. It was a makeshift
19 mask to go around someone's face.

20 MS. PRICE: Okay. Your Honor, at this time,
21 the State would ask to move --

22 THE COURT: Any objection?

23 MR. CHAMBERS: No objection.

24 THE COURT: Without objection.

25 MS. PRICE: Thank you, Your Honor.

1 (WHEREUPON, State's Exhibits 22 and 23 were
2 admitted into the record.)

3 BY MS. PRICE:

4 Q Okay. So now that this has been admitted and
5 the jury can see, you think you were wearing this the
6 night that this robbery that we are speaking of today
7 occurred?

8 A I know it wore it previously. I'm pretty
9 sure I was wearing it that night.

10 Q Okay. And you said this is a mask?

11 A Uh-huh.

12 Q And this was found where?

13 A Probably in my house or my car.

14 Q Okay. And makeshift mask. You said you made
15 this out of what?

16 A Out of t-shirt.

17 Q How would you wear it? You would put it over
18 your face and tie it ---

19 A And tie it.

20 Q --- with this thing on the bottom?

21 A Yes, ma'am.

22 Q Okay. All right. You know if you were
23 wearing this the night that the robbery occurred?

24 A No, ma'am.

25 Q You don't know?

1 A I know I wasn't wearing that.

2 Q You know if Cordelle was?

3 A No, ma'am.

4 Q Or Quentin?

5 A No, ma'am.

6 Q You don't know?

7 A No.

8 Q Okay. Did you ever wear anything or would
9 you have had anything else on your faces?

10 A Either bandanas or sleeves to a t-shirt.

11 Q Like this?

12 A Yeah.

13 Q Okay. I'm showing you what's been marked
14 State's Exhibit 24. You recognize this item?

15 A Yes, ma'am.

16 Q How do you recognize it?

17 A It's the -- a -- the steel pipe. And, uh, --

18 MS. PRICE: Okay. Your Honor, at this time,
19 we would ask it be moved into evidence.

20 THE COURT: Any objection?

21 MR. CHAMBERS: No objection, Your Honor.

22 (WHEREUPON, State's Exhibit 24 is admitted into
23 the record.)

24 BY MS. PRICE:

25 Q Steel pipe?

- 1 A Yes, ma'am.
- 2 Q Okay. Where would this item have come from?
- 3 A Uh, probably the inside of my car.
- 4 Q Inside your car?
- 5 A Inside my car.
- 6 Q Okay. What would a pipe like this normally
- 7 be used for? You know?
- 8 A Uh, it's used to tighten the flaps on a
- 9 flatbed truck.
- 10 Q Okay. Would you have done that?
- 11 A Yes, ma'am.
- 12 Q Used this pipe for that?
- 13 A Yes, ma'am.
- 14 Q What other purpose would you have had for
- 15 this pipe?
- 16 A Uh, probably breaking things.
- 17 Q Did anyone that was with you the night of the
- 18 robbery have this pipe?
- 19 A Yes, ma'am.
- 20 Q Who had the pipe?
- 21 A Quentin.
- 22 Q Quentin had this pipe the night of the
- 23 robbery?
- 24 A Yes, ma'am.
- 25 Q Okay.

1 THE COURT: She's got to mark it.

2 MS. PRICE: I believe we've already
3 premarked everything, Your Honor.

4 THE COURT: Okay. Okay.

5 BY MS. PRICE:

6 Q Showing you what's been marked State's
7 Exhibit 26. Do you recognize this item?

8 A Yes, ma'am.

9 Q Okay. How do you recognize it?

10 A It's one of the BB guns we had and used in
11 the robbery that night.

12 Q Okay.

13 MS. PRICE: Your Honor, at this time, the
14 State would move to have this Exhibit --

15 THE COURT: Any objection?

16 MR. CHAMBERS: No objection, Your Honor.

17 (WHEREUPON, State's Exhibit 26 is admitted into
18 the record.)

19 BY MS. PRICE:

20 Q And so you would have had this with you the
21 night of the robbery? What is this?

22 A That's one of the CO2 cartridge.

23 Q Okay. Who had this the night of the robbery?

24 A Cordelle.

25 Q Cordelle had this gun the night of the

1 robbery?

2 A Yeah.

3 Q And a CO2 cartridge, does it usually go in
4 the back?

5 A In the side, yeah.

6 Q Would they have been loaded that night? Do
7 you recall?

8 A No, ma'am.

9 Q They would not have been?

10 A No, ma'am.

11 Q Okay. And you said that you would wrap a
12 bandana around the side here to cover this area up?

13 A Yes, ma'am.

14 Q So it would appear to be a real weapon?

15 A Yes, ma'am.

16 Q And again, Cordelle is the one who had this
17 the night of the robbery that we're speaking about
18 today?

19 A Yes, ma'am.

20 Q Okay. Okay. I'm showing you what's been
21 marked State's Exhibit 25. Do you recognize this
22 item?

23 A Yes, ma'am.

24 Q Okay. How do you recognize it?

25 A That was one of the BB guns we used in the

1 robbery.

2 MS. PRICE: Okay. Your Honor, at this time,
3 the State would move to have State's Exhibit 25--

4 THE COURT: Any objection?

5 MR. CHAMBERS: No objection.

6 (WHEREUPON, State's Exhibit 25 is admitted into
7 the record.)

8 BY MS. PRICE:

9 Q And again, you would what, have a bandana
10 wrapped around or some other piece of clothe wrapped
11 around so that no one could see this opening?

12 A Yes, ma'am.

13 Q Is that what you were saying?

14 A Yes, ma'am.

15 Q And you would cover it up so that it would
16 appear to be a real weapon?

17 A Yes, ma'am.

18 Q Who had this gun the night of the robbery?

19 A Me.

20 Q You had this?

21 A Yes, ma'am.

22 Q You recall where this gun was found?

23 A Uh, either in the car or the house.

24 Q Your house or car?

25 A Car, yes, ma'am.

1 Q Do you see the man that assisted you in
2 robbing the Burger King on Pleasantburg Road on April
3 25th, 2006 in the courtroom here today?

4 A Yes, ma'am.

5 Q Could you please point him out and say what
6 he's wearing and show him to the jury? And speak up
7 when you do it please.

8 A Uh, blue collared shirt and white t-shirt.

9 Q Okay. And who is that individual?

10 A That's Cordelle.

11 Q Uh, --

12 A Cordelle Washington.

13 Q Cordelle Washington?

14 A Yes, ma'am.

15 Q Okay. Thank you. No further questions.

16 Please answer any questions that Mr. Chambers has for
17 you.

18 THE COURT: All right, Mr. Chambers.

19 CROSS-EXAMINATION

20 BY MR. CHAMBERS:

21 Q All right. Mr. White, now the Solicitor went
22 over some of this with you. I think she was
23 anticipating I might get into it. But when you gave
24 your statement, when you gave this statement back on
25 May 8th, 2006, is that correct?

1 A Yes, sir.

2 Q At that point, you spoke to Detective Conroy.
3 Do you recall that's who you talked to?

4 A Yes, sir.

5 Q All right. He's the police officer that's
6 seated over here at the prosecutor's table?

7 A Uh-huh.

8 Q All right. And you did indicate that Quentin
9 Sullivan was your brother and Cordelle Washington was
10 your cousin, right?

11 A Uh-huh.

12 Q And that's not true. You are not related to
13 any one of them, are you?

14 A No.

15 Q And you are saying today that that's just
16 kind of street talk. On the street, you refer to
17 somebody as your brother or your cousin. It's sort of
18 ranking order, I guess, is that right?

19 A Something like that.

20 Q But the truth of the matter is you're not kin
21 to either one of them, right?

22 A No.

23 Q All right. And she asked you about her
24 girlfriend, you did have a girl that you had a baby by
25 whose name is Amanda Fuller, is that correct?

1 A That's incorrect. Say it again.

2 Q Amanda Fuller?

3 A That's incorrect.

4 Q Amanda Farr, I'm sorry. Amanda Farr.

5 A That's not my baby's -- that's not my child's
6 mother.

7 Q Okay. Well, I didn't ask you if that was
8 your child's mother. I said girlfriend. You did have
9 a baby by some girl?

10 A Yeah.

11 Q And it wasn't Amanda Farr. Who was it?

12 A No.

13 Q Who -- what was your --

14 THE COURT: What's the relevance of that,
15 Mr. Chambers?

16 MR. CHAMBERS: It goes into his bias, Your
17 Honor, against my client.

18 THE COURT: Go ahead.

19 THE WITNESS: Uh, Amanda Boggs.

20 BY MR. CHAMBERS:

21 Q Okay. Amanda Boggs. And you had had some
22 arguments with Cordelle about the time that he was
23 spending with Amanda, hadn't you?

24 A No.

25 Q You had been upset with him over her, hadn't

1 you?

2 A No.

3 Q Well, you knew who I was talking about when I
4 started talking about the girl and you said your
5 baby's mama.

6 A You got -- you got it -- you got both -- you
7 ain't know who you talking about really.

8 Q Okay. And, uh, the time that Detective
9 Conroy came and talked with you, they had a pretty
10 good case against you.

11 A Once I gave my statements, yeah.

12 Q Yeah. And they indicated to you that, uh,
13 they knew who was involved and they told you who they
14 thought was involved.

15 A No.

16 Q And they told you that you could help
17 yourself by giving a statement and, if you didn't,
18 they already had enough evidence to convict you, isn't
19 that right?

20 A No.

21 Q The truth of the matter is all this evidence
22 over here that relates to this crime is all found
23 essentially in your possession, correct? Every bit of
24 it.

25 A Yeah.

1 Q So the only one that they would be able to
2 tie to this thing at all, unless you did something to
3 help yourself, was going to be you, isn't that right?

4 A No.

5 Q All the evidence points to you, doesn't it?

6 A Not necessarily. My house.

7 Q Okay. So they knew -- they found stuff in
8 your house, correct?

9 A Uh-huh.

10 Q They found stuff in your car, correct?

11 A Uh-huh.

12 Q And that's the car that you said Cordelle had
13 been riding in?

14 A Uh-huh.

15 Q And that's the house you said Cordelle had
16 been in before?

17 A Uh-huh.

18 Q And that's where they found all that stuff?

19 A Uh-huh.

20 Q And you said when you went to commit this
21 robbery, you all were just out riding around, correct?

22 A Yes.

23 Q And that you were driving?

24 A Uh-huh.

25 Q You are sure about the fact that you were

1 driving?

2 A Yeah, I was driving.

3 Q And you said -- when the Solicitor asked you
4 a little bit earlier, you said you parked in the
5 parking lot next to where the Burger King was,
6 correct?

7 A Uh-huh.

8 Q If you are standing on Pleasantburg facing
9 the Burger King, what side were you on?

10 A On the right side.

11 Q So if you are facing the Burger King, you are
12 parked on the right side?

13 A Uh-huh.

14 Q You remember telling Detective Conroy that
15 you parked your car behind the Honey Baked Ham?

16 A Uh-huh.

17 Q Is that in fact where you parked your car?

18 A Uh, I thought that's what the name of the
19 place was next door.

20 Q Okay. And, uh, you said that when y'all went
21 back out, you said today that somebody else drove the
22 car away. Who did you say drove?

23 A Cordelle.

24 Q All right. But when you gave your statement,
25 you indicated that you didn't know who was driving the

1 car, it was either you or Cordelle?

2 A Uh-huh.

3 Q But today, you are sure it was Cordelle?

4 A Uh-huh.

5 Q And you said that you had actually gotten
6 \$15-1800 and you split it three ways?

7 A Uh-huh.

8 Q All right. And the blue hoodie, you were
9 wearing that?

10 A Uh-huh.

11 Q You believe you were wearing that?

12 A I believe so. I believe so.

13 Q And you said you burned up the orange hoodie
14 or the orange jacket, correct?

15 A I said it was burned. I didn't say I
16 destroyed it.

17 Q Okay. That's all the questions I have for
18 you. Thank you.

19 MS. PRICE: Your Honor, brief redirect.

20 REDIRECT EXAMINATION

21 BY MS. PRICE:

22 Q Who was living with you at the home where
23 these items were found?

24 A Uh, me and my brother all the time and
25 Cordelle off and on.

1 Q Off and on. Did Quentin Sullivan stay there
2 occasionally?

3 A I mean, his name was on the lease.

4 Q His name was on the lease? So all three of
5 you spent time at that home ---

6 A Yes, ma'am.

7 Q --- where these items were found? Okay. I
8 know the defense attorney got confused. Uh, but this
9 Amanda person is not the mother of your child?

10 A The one he's talking about, no.

11 Q Did you and Mr. Washington ever have an
12 argument about a girlfriend or female?

13 A No.

14 Q And you are -- when you pulled up to the
15 restaurant, you parked on the right-hand side ---

16 A Uh-huh.

17 Q --- of the building?

18 A Uh-huh.

19 Q And you are originally, you said earlier,
20 from Anderson?

21 A Uh-huh.

22 Q So are you -- were you, at that time, very
23 familiar with the names of businesses in Greenville?

24 A No, ma'am.

25 Q And again, I know we went through some of

1 this, but you haven't been promised anything in
2 exchange for your testimony today?

3 A No, ma'am.

4 Q You were never promised anything in exchange
5 for giving a statement by the officers?

6 A No, ma'am.

7 Q Okay.

8 MS. PRICE: Uh, Your Honor, uh, -- uh, Your
9 Honor, the defense -- I have no further questions
10 for this witness.

11 THE COURT: Thank you.

12 MS. PRICE: But I do have a matter to take
13 up with the Court.

14 THE COURT: Step down.

15 MS. PRICE: Your Honor, actually, he'll need
16 to identify these should you choose to allow them
17 to come in.

18 THE COURT: All right.

19 MS. PRICE: Mr. Chambers brought up that --
20 he implied that the statement given by this
21 Defendant -- this co-Defendant was inconsistent
22 with what he is testifying to today. I believe
23 that allows me to bring in his waiver of rights
24 and his statement that he gave at that time under
25 801(d)(1)(b) of the rules.

1 THE COURT: Statement of who?

2 MS. PRICE: The statement of this co-
3 Defendant.

4 THE COURT: All right. Go ahead.

5 MR. CHAMBERS: Your Honor, if she wants to
6 move the statement in, I don't have any problem
7 with it.

8 THE COURT: All right.

9 MS. PRICE: Your Honor, then we would like
10 to have these admitted as 27 and 28.

11 THE COURT: All right. Without objection.

12 MS. PRICE: Thank you, Your Honor.

13 Thank you, Mr. White.

14 (WHEREUPON, State's Exhibits 27 and 28 are
15 admitted into the record.)

16 THE COURT: All right. Step down.

17 MS. PRICE: Your Honor, at this time, the
18 State would call Quentin Sullivan to the stand.

19 THE CLERK: Mr. Sullivan, if you'd step over
20 here to the Bible please. Place your left hand
21 on the Bible and raise your right hand.

22 QUENTIN SULLIVAN

23 having first been sworn, testifies as follows:

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

25 State your full name for the record.

1 **THE WITNESS:** Uh, Quentin Marquise Sullivan.

2 **DIRECT EXAMINATION**

3 **BY MS. PRICE:**

4 **Q** Good morning, Mr. Sullivan. How are you?

5 **A** I'm good.

6 **Q** Okay. Uh, I want to start with some things I
7 think we can agree on. How old are you?

8 **A** 23.

9 **Q** Okay. Where are you from?

10 **A** Greenville.

11 **Q** How long did you live in Greenville before
12 you -- I see you are in a prison jumpsuit. You're
13 obviously incarcerated -- before you were
14 incarcerated?

15 **A** 19 years.

16 **Q** Okay. Uh, we're going to talk about why you
17 are in the Department of Corrections in a minute. But
18 were you incarcerated on April 25th of 2006?

19 **A** No, I wasn't.

20 **Q** You were a free man at that time?

21 **A** Yeah.

22 **Q** What was your occupation prior to being
23 incarcerated?

24 **A** I was a machine operator at Watermark
25 Perceptions.

1 Q Okay. Did you ever work at a Burger King?

2 A Yes.

3 Q You remember where that Burger King was?

4 A No, ma'am. I really don't.

5 Q But within Greenville?

6 A Yeah, it was in Greenville.

7 Q Do you know somebody by the name Cordelle
8 Washington?

9 A I heard of the name.

10 Q You heard of him?

11 A Yeah.

12 Q But you don't know him?

13 A No, I don't know him like that.

14 Q Okay. Do you know somebody by the name
15 Andrew White?

16 A Yes, I do.

17 Q How do you know him?

18 A He's my co-Defendant.

19 Q Co-Defendant?

20 A Yeah.

21 Q Okay. Did you ever work with him?

22 A Yeah, he worked at a Burger King.

23 Q He worked at a Burger King too?

24 A Yeah.

25 Q All right. How long had you known him before

1 April 25th, 2006?

2 A I will say a little over a year.

3 Q Okay. Uh, why are you in the Department of
4 Corrections?

5 A Cause I broke the law.

6 Q Okay. You remember what laws you broke?

7 A Yes, I do.

8 Q Would you like to tell me what they are?

9 A Uh, armed robbery, uh, let me see, kidnaping,
10 burglary and possession of a weapon.

11 Q Okay. Do you remember giving a statement to
12 Tim Conroy on May 8th, 2006 around 4:15 p.m.

13 A No, I don't.

14 Q You don't?

15 A No.

16 Q Well, let me show it to you. (Pause.)

17 Is this your initials?

18 A Those look like my initials.

19 Q They do?

20 A Yeah.

21 Q Look like your initials that you wrote?

22 A I can't say they are mine but they look like
23 mine.

24 Q They look like them?

25 A Yeah.

1 Q Okay. Is this your signature?

2 A It looks like my signature, but I don't.
3 remember that.

4 Q Okay. Well, do you remember meeting with
5 Detective Conroy on that date?

6 A No, ma'am.

7 Q You don't?

8 A Huh-uh.

9 Q Why wouldn't you remember such a thing?

10 A At the time, I had a bad memory due to
11 intoxication and drug use.

12 Q You were intoxicated?

13 A And drug use.

14 Q Okay. We know you were there on the 8th of
15 May and you were there again on the 11th of May. Did
16 they let you go any time between those two dates?

17 A No.

18 Q So you were intoxicated for what, at least
19 four days?

20 A Yeah, I had withdrawals.

21 Q Uh-huh.

22 A Yeah.

23 Q All right. Do you remember meeting with him
24 again on May 11th, 2006?

25 A No, I don't.

1 Q You don't. Okay. So you don't recall
2 signing your name to this statement and ratifying the
3 statement that you gave him four days prior?

4 A I can't say I do.

5 Q Okay.

6 MS. PRICE: Your Honor, at this time, we'd
7 like for this witness to be declared hostile.

8 THE COURT: He's hostile.

9 MS. PRICE: Thank you, Your Honor.

10 BY MS. PRICE:

11 Q Uh, so you had been in jail for at least four
12 days on May 11th and you weren't sober? You weren't
13 sober after four days, you said you were having
14 withdrawals?

15 A Yes.

16 Q Okay. What had you been taking that caused
17 you to be messed up for four days?

18 A Uh, cocaine, uh, crack.

19 Q Uh-huh.

20 A Uh, alcohol and, uh, marijuana.

21 Q Okay. Didn't you tell Detective Conroy on
22 May 8th, 2006 that you committed the armed robbery at
23 the Burger King on Pleasantburg Drive with Cordelle
24 Washington and Andrew White?

25 A Naw, I don't --

1 Q Okay. Didn't you tell Detective Conroy that
2 you drove there and parked behind the Tanner's
3 restaurant, which is right next to the Burger King?

4 A No, I don't remember that.

5 Q You don't remember that.

6 A No.

7 Q And isn't it true that you told them that you
8 broke out the front window with rocks and that
9 Cordelle went in first, then you, then Andrew into the
10 Burger King?

11 A No.

12 Q You don't remember that?

13 A No.

14 Q And did you make a statement that Cordelle
15 had a gun and that you shared a metal pipe with
16 Andrew?

17 A No.

18 Q You never gave a statement that said you had
19 a gun and that Cordelle had a gun?

20 A I can't say I remember I did.

21 Q Okay. Did you tell Detective Conroy that you
22 ran over to a lady and told her to give you money and
23 that you and Andrew forced a male worker at the Burger
24 King onto the floor?

25 A No.

1 Q No?

2 A Huh-uh.

3 Q Okay. Did you tell him that Cordelle pointed
4 the gun at the woman and told her to open the safe,
5 but she ran across the road?

6 A No, I don't remember none of that.

7 Q Okay. Did you tell Detective Conroy that you
8 took the rock that you used to break the window with
9 back with you after you left the scene of the crime?

10 A No.

11 Q Okay. Did you state that Cordelle was
12 wearing an orange jacket and that you and Andrew were
13 both wearing dark clothes and all three of you, that
14 night, had your faces covered?

15 A I don't remember that, no.

16 Q You don't remember that?

17 A No.

18 Q Did you commit the armed robbery at Burger
19 King on Pleasantburg Drive with Cordelle Washington
20 and Andrew White?

21 A No.

22 Q Isn't it true that you lived with Andrew
23 White at some point?

24 A No, his name ain't on my lease.

25 Q Oh, your name wasn't on the lease of the home

1 that he stayed in?

2 A No, he stayed with his mother. I don't stay
3 with him.

4 Q I see. Okay. You broke in to the Burger
5 King on Pleasantburg Drive, held victims at gunpoint
6 and had a metal pipe and demanded cash, took the cash
7 and left on April 25th, 2006, didn't you?

8 A No.

9 Q No? Are you on drugs today?

10 A Uh, no, I ain't on nothing today.

11 MS. PRICE: Okay. Your Honor, at this time,
12 the State would move to admit the statements and
13 waiver of rights that were given by this witness
14 to Detective Conroy under Rule 613(b) as a prior
15 inconsistent statement.

16 MR. CHAMBERS: I would object to that, Your
17 Honor. She asked him about it. He answered.
18 There's no foundation for that statement to be
19 admitted. She hasn't even bothered to put the
20 police officer up there to talk about -- to bring
21 -- to give the statement or anything about it.

22 MS. PRICE: Your Honor, we can certainly put
23 the officer up later if Your Honor feels that's
24 appropriate. But under 613(b), uh, the witness
25 has been advised of the substance of his

1 statement, the time and place that it was made,
2 the person to whom it was made and he was given
3 the opportunity to explain or deny his statement,
4 and it's a prior inconsistent statement and I
5 believe it's admissible.

6 THE COURT: It's admissible.

7 MS. PRICE: Thank you, Your Honor. No
8 further questions.

9 (WHEREUPON, State's Exhibits 29, 30 and 31 are
10 admitted into the record.)

11 THE COURT: All right. Mr. Chambers?

12 MR. CHAMBERS: No questions for this
13 witness, Your Honor.

14 THE COURT: Thank you. Step down.

15 THE WITNESS: All right.

16 MS. PRICE: Your Honor, may we take a short
17 recess?

18 THE COURT: Take the jury out.

19 (WHEREUPON, the jury exits at approximately
20 12:37 p.m.)

21 THE COURT: All right. What you need?

22 MS. PRICE: Your Honor, the two witnesses we
23 have left, we're trying to get something up here
24 from the LEC and don't anticipate that their
25 testimony is going to take too long a time. Now

1 might be a good time to take a lunch break.

2 THE COURT: Okay. Bring them back.

3 (WHEREUPON, the jury enters at approximately
4 12:42 p.m.)

5 THE COURT: Ladies and Gentlemen, at this
6 time, we will recess for lunch. We'll pick back
7 up at two o'clock. During the lunch recess, you
8 can not talk about this case among yourselves or
9 with anyone else. If anybody contacts you and
10 tries to talk to you about the case, get their
11 names and addresses and report that to me.
12 Please recall the other admonitions I read to you
13 from the order of the Chief Justice.

14 I ask that you keep your badges on during the
15 recess so that everyone involved with this case
16 will know that you are a juror and it would be
17 highly improper for them to talk about this case
18 in your presence. Please keep your badges on
19 during the lunch recess. I'll ask that you be
20 back in your jury room at 2 p.m., 2 p.m. Thank
21 you.

22 (WHEREUPON, the jury exits at approximately
23 12:43 p.m.)

24 THE COURT: All right.

25 (WHEREUPON, a lunch recess is taken at

1 approximately 12:44 p.m.)

2 (WHEREUPON, the Court resumes at approximately
3 2:04 p.m.)

4 THE COURT: All right. You ready to go,
5 Solicitor?

6 MS. PRICE: Yes, Your Honor. Thank you.

7 THE COURT: Hold on. Wait just a minute.

8 Uh, Mr. Lucas, you are wanting me to
9 reconsider the sentence?

10 MR. MARCHANT: Judge, I haven't seen Mr.
11 Harbin. Is that what you are referring to?

12 THE COURT: Yeah.

13 MR. MARCHANT: I just haven't seen him since
14 the lunch break. Is he out in the hallway?

15 THE BAILIFF: There's nobody out there.

16 THE COURT: All right. Well, let's go ahead
17 and get started. We'll do it on the break.

18 Bring the jury in.

19 (WHEREUPON, the jury enters at approximately
20 2:06 p.m.)

21 THE COURT: All right. Solicitor, you may
22 proceed.

23 MS. PRICE: Thank you, Your Honor. The
24 State calls Detective Tim Conroy to the stand.

25 THE CLERK: Place your left hand on the Bible

1 please. Raise your right hand.

2 TIM CONROY

3 having first been sworn, testifies as follows:

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

5 State your full name for the record.

6 THE WITNESS: Timothy Michael Conroy.

7 DIRECT EXAMINATION

8 BY MS. PRICE:

9 Q Detective Conroy, where do you work?

10 A The Greenville Police Department.

11 Q And how long have you been in law

12 enforcement?

13 A Uh, a little over 13 years.

14 Q What sort of duties are involved in being a

15 detective.

16 A Just investigating -- my duties are
17 investigating any violent crime that occurs within the
18 city.

19 Q Were you serving in the capacity of detective
20 on April 25th, 2006?

21 A I was.

22 Q Uh, at that time, uh, how would
23 investigations come to you for further review?

24 A Uniform officers would take the report.
25 After it's signed off by a uniform sergeant, it would

1 passed up to the detective division and it would be
2 assigned to each individual detective.

3 Q So random assignment?

4 A It is.

5 Q Did an investigation begin involving this
6 Defendant, Cordelle Washington, that's led you to come
7 to court to testify today?

8 A Yes.

9 Q How did you become involved?

10 A When the report came to my desk, I read over
11 the report. Went out to the Burger King to see if I
12 could gain any more information from them.

13 Q Do you remember when you received this case?

14 A Uh, it should have been the next day, on the
15 26th.

16 Q Okay. Do you know what day of the week that
17 would have been?

18 A I think it was a Wednesday.

19 Q Who did the initial responding to the
20 incident?

21 A Officer Blair and Sims.

22 Q Did you review the report and the information
23 that they had turned in?

24 A Yes, I did.

25 Q And at the time you received the case, were

1 any suspects identified at that point?

2 A Not at that point, no, ma'am.

3 Q Uh, did you have any suspect descriptions?

4 Did you know what you were looking for?

5 A I did have suspect descriptions.

6 Q Okay. What were you looking for, if you
7 recall?

8 A Three males. Their heights were 5'6 to 5'11,
9 I believe, or 5'9.

10 Q Okay. Are you aware of whether the forensics
11 responded to that incident?

12 A They did respond, yes, ma'am.

13 Q And when did they respond?

14 A They responded that night, the night of the
15 incident.

16 Q Uh, was any possible evidence collected in
17 the case that you, as the lead officer, became aware
18 of?

19 A They did get some foot impressions and some
20 latents on the scene.

21 Q Was any physical evidence collected the night
22 of the incident?

23 A Some clothing and photographs documented on
24 the scene.

25 Q Was there any video recovered of this

1 incident?

2 A No, ma'am.

3 Q Why was that?

4 A The video was not operable at that time.

5 Q What did you do, once you received the case,
6 to try to determine who committed these robberies?

7 A I spoke with several different agencies and
8 see if they had any intel.

9 Q Through that process, did you identify
10 suspects in the case?

11 A Yes, I did.

12 Q Who were those suspects?

13 A Andrew White and Cordelle Sullivan -- I'm
14 sorry -- Quentin Sullivan and Cordelle Washington.

15 Q Okay. Were those men charged and arrested?

16 A They were.

17 Q Uh, do you have any information about this
18 Defendant's height?

19 A Uh, he was 5'5 when he was arrested.

20 Q 5'5 when he was arrested?

21 A That's correct.

22 Q Uh, how were the suspects identified
23 generally?

24 A Uh, I spoke with the County. They stated Mr.
25 White knew some information about this case. So I

1 spoke with him, Andrew White, the co-Defendant.

2 Q Okay. Uh, did you get a statement from each
3 of the co-Defendants in this case?

4 A Not Mr. Washington, but Andrew White and
5 Quentin Sullivan, I did.

6 Q Okay. When did you speak to Andrew White?

7 A On May 8th of 2006.

8 Q Was he cooperative ---

9 A Yes, sir.

10 Q --- to your investigation?

11 A Yes, he was.

12 Q Did you make him any deals or promise him
13 anything in exchange to get a statement that day?

14 A No, ma'am.

15 Q Do you have any question as to whether Andrew
16 White understood his entire interview with you that
17 day?

18 A He understood very clearly.

19 Q Uh, did you speak to Quentin Sullivan?

20 A I did.

21 Q And was he cooperative at that time with your
22 investigation?

23 A Yes, ma'am, he was.

24 Q Did you make any deal with him or promise him
25 anything in exchange for him giving you a statement?

1 A No, ma'am.

2 Q Do you have any question as to whether
3 Quentin Sullivan understood his rights the day that he
4 received them?

5 A No question at all.

6 Q Okay. Did you advise him of his rights?

7 A I did.

8 Q Where did this interview with Quentin take
9 place?

10 A In my office.

11 Q Was he denied any comforts?

12 A No, ma'am.

13 Q Okay. Was he in handcuffs?

14 A He may have been handcuffed to a chair.

15 Q Uh, you didn't threaten or intimidate him in
16 any way?

17 A No, ma'am.

18 Q Coerce him in any way, try to get a
19 statement?

20 A No, ma'am.

21 Q Was his statement freely and voluntarily
22 given?

23 A Yes, it was.

24 Q Did he indicate to you that he fully
25 understood his rights?

1 A Yes, he did.

2 Q Did he appear to be intoxicated, impaired in
3 any way?

4 A No, ma'am.

5 Q He didn't appear to be drugged out on any
6 kind of liquor or anything like that?

7 A No.

8 Q Okay. Uh, did you -- so you took a statement
9 from him that day?

10 A That is correct.

11 Q Did you in fact meet with him a second time?

12 A I did.

13 Q Okay. Why did you meet with him a second
14 time?

15 A The first time we met, he read over his
16 statement, he initialed his statement and it was an
17 oversight for him to sign his statement. I went back
18 on the 11th and brought him back to my office and
19 asked him to review his statement. He gave a second
20 statement.

21 Q So the first statement, had he initialed the
22 first statement?

23 A He did.

24 Q He had just not put his signature on the
25 first statement?

1 A That is correct.

2 Q And so several days later, you came back and
3 got his signature?

4 A Yes, ma'am.

5 Q And the second time, did he at that time
6 appear to be intoxicated?

7 A No, ma'am.

8 Q Did he appear to understand his rights?

9 A He did.

10 Q And he agreed to everything he had given in
11 his statement several days prior?

12 A Yes, ma'am.

13 MS. PRICE: Your Honor, State's Exhibits 29,
14 30 and 31 are already in evidence, but we would
15 ask for permission to publish Mr. Sullivan's
16 statement, Exhibit number 30, at this time to the
17 jury.

18 THE COURT: All right.

19 BY MS. PRICE:

20 Q Detective Conroy, could you just read out Mr.
21 Sullivan's first and second statements ---

22 A Okay.

23 Q --- to the jury.

24 A This one was taken on 5/8/2006. It says I
25 have given Detective Conroy permission to type my

1 statement and my words. I was advised of my rights
2 and I am willing to make -- willing to talk to him
3 about the robbery at Burger King on Pleasantburg
4 Drive --

5 THE COURT: Get a little closer to the mic.

6 BY MS. PRICE:

7 Q Yeah, speak up a little bit, Detective.

8 A I was advised of my rights and I'm willing to
9 talk to him about the robbery at Burger King on
10 Pleasantburg Drive I committed with my brother, Andrew
11 White and Cordelle Washington. Some time last month,
12 my brothers came to me and asked if I would help them
13 rob Burger King on Pleasantburg Drive. They had
14 already watched the place and knew when they would
15 close and how many people would be inside.

16 I drove my brother's car, which is a 1990
17 Buick Century. I parked behind the Orange place
18 restaurant, Tanner's. we walked over there. On the
19 way, we each picked up a rock. We all broke the glass
20 out of the front door and Cordelle went in first, then
21 me, and Andrew was last.

22 We all ran to the lady and told her to give
23 us the money. Cordelle had a gun. Andrew had a metal
24 pipe that he gave to me. We shared it. After we got
25 the girl, Cordelle stayed with her and Andrew and I

1 went in the back to the other guy worker. Just got
2 down on the floor. Cordelle pointed a BB gun at her
3 and told her to open the safe. That is when we went
4 back -- went into the back.

5 After she opened the safe, I went up and saw
6 her running across the road. I told Andrew and
7 Cordelle that we need to leave because I saw her run
8 to some dude. When we got to the car, I saw the dude
9 following us. I thought he got our license plate. We
10 took the rocks with us that we broke the window with.

11 Cordelle was wearing an orange jacket.
12 Andrew and I were wearing dark clothes. We all had
13 our faces covered.

14 Q Detective Conroy, can you just read briefly
15 what you had him sign when you went back?

16 A Yes, on 5/11/2006, I typed, uh, -- the
17 statement I gave to Detective Conroy on 5/8/2006, I
18 meant to sign it but I did not because we started
19 talking about something else. That statement was
20 initialed by me, but not signed. He signed this
21 statement.

22 Q Okay. Thank you, Detective Conroy. Please
23 answer any questions that Mr. Chambers has for you.

24 THE COURT: Mr. Chambers.

25 CROSS-EXAMINATION

1 BY MR. CHAMBERS:

2 Q You are a detective with the Greenville
3 Police Department?

4 A Yes, sir.

5 Q How long have you been a detective with the
6 Greenville Police Department?

7 A I was -- I been in violent crimes for about
8 six years now.

9 Q What did you do prior to that?

10 A I worked in narcotics for five years and on
11 the road.

12 Q And so, this is more or less a promotion when
13 you go from being on the road and being a detective
14 and working violent crimes, correct?

15 A I wouldn't say a promotion, just a transfer.

16 Q Okay. Uh, there's a very specific thing that
17 you do. You are a detective. We are all somewhat
18 familiar with what detectives do. You kind of take a
19 case after the initial response and you start putting
20 clues together and things and trying to figure out who
21 did it, right?

22 A Yes, sir.

23 Q And you received specialized training in
24 order to do that, correct?

25 A Uh, yes, sir.

1 Q Would it be fair to say that one of the
2 primary things that you as a detective do is you try
3 to get incriminating statements from, uh, suspects,
4 correct?

5 A Yes, sir.

6 Q I mean, that's an easy question. You hope
7 when you talk to somebody that they tell you frankly
8 that they admit what it is that you think they did,
9 correct?

10 A That is correct.

11 Q And, uh, you received training in how to go
12 about that in some of the best ways to get people to
13 give you information, correct?

14 A I have been to interview schools, yes, sir.

15 Q Okay. And the Solicitor asked you if you had
16 threatened, coerced or done any of those things. You
17 said you hadn't done any of that when you took
18 statements from Mr. White and Mr. Sullivan, correct?

19 A That's correct.

20 Q But there are things that you are allowed to
21 do that are permissible under the rules, correct?

22 A Uh, --

23 Q Let me give you an example. You are allowed
24 to misrepresent facts when you are asking questions of
25 a suspect, aren't you?

1 A Yes, sir.

2 Q In other words, you are allowed to say we've
3 got you dead to rights. We've got this evidence and
4 that evidence and you may not have that evidence at
5 all, correct?

6 A That is correct.

7 Q And you are allowed to say we already talked
8 to this one fellow over here and he's told us all
9 about you. So if you want to help yourself out, you
10 need to let us know what happened. You need to give
11 us your version of what happened.

12 A I would never promise to help someone out.

13 Q You can say if he wants to help himself out.

14 A I can't promise to help -- if he gives a
15 statement, I can't promise that that would help him.

16 Q In other words, encourage him to give his
17 version of what happened.

18 A Uh, to a degree, yes, sir.

19 Q Okay. In this particular case, Mr. White was
20 the first person you got to, right?

21 A That is correct.

22 Q And that is because you had gotten a call
23 from somebody, I believe you said County, which would
24 be the sheriff's office?

25 A Yes, sir.

1 Q So you were able to go talk to him at that
2 point?

3 A That is correct.

4 Q And he is also the person from whom all of
5 this evidence was discovered, correct?

6 A Not from him, but his residence and vehicle.

7 Q Well, either from his car or his residence,
8 correct?

9 A Correct.

10 Q All right. And you -- being the lead
11 investigator, I'm sure you are familiar with every
12 aspect of the case, correct?

13 A The majority, yes, sir.

14 Q So you know obviously that forensics
15 responded and they took fingerprints?

16 A Yes, sir.

17 Q And you know if -- that was at the Burger
18 King itself?

19 A Yes, sir.

20 Q And there were no fingerprints belonging to
21 Cordelle Washington that was found at that Burger
22 King, correct?

23 A That is correct.

24 Q Do you know or did you direct forensics to
25 get, uh, fingerprints from inside the car or from the

1 residence?

2 A I was not on the scene at the search of
3 those. I'm not familiar with what went on --

4 Q You were the lead investigator. Why weren't
5 you on the scene?

6 A Uh, --

7 MS. PRICE: Your Honor, may we approach?

8 THE COURT: Yes.

9 (WHEREUPON, a bench conference is held at
10 approximately 2:16 p.m.)

11 (WHEREUPON, the bench conference concludes at
12 approximately 2:16 p.m.)

13 BY MR. CHAMBERS:

14 Q Let me just ask you this way, to your
15 knowledge, were any fingerprints belonging to Cordelle
16 Washington ever found at that residence or in that
17 car?

18 A I don't know if they were. If it was
19 processed for prints, I don't know if they were
20 recovered.

21 Q Okay. But you are not aware of any?

22 A No, sir. I'm not aware of any.

23 Q If you were aware of any, you would have
24 brought them to this court?

25 A Not necessarily.

1 Q Okay. Are you aware that there were footwear
2 impressions that were taken from the scene of the
3 crime?

4 A Yes, sir.

5 Q Did those footwear impressions match anything
6 that you found with Cordelle Washington?

7 A Not to my knowledge.

8 Q Do you know of any physical evidence that
9 linked Cordelle Washington to this crime?

10 A No, sir.

11 Q Really, the evidence that you have are those
12 two statements?

13 A That's correct.

14 Q That's it?

15 A An eyewitness account, yes, sir.

16 Q Well, again, those two statements?

17 A That's correct.

18 Q And that's it. Okay. That's all the
19 questions I have.

20 THE COURT: Any redirect?

21 MS. PRICE: One moment, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. PRICE:

24 Q Detective Conroy, was the city police
25 department involved in the search of this home where

1 Andrew White was staying and where Quentin Sullivan
2 was on a lease or was it another law enforcement
3 agency?

4 A Another law enforcement agency.

5 Q Okay. Uh, was that a law enforcement agency
6 within Greenville County?

7 A It was.

8 Q But it was not your law enforcement agency
9 that was related to this search?

10 A That's correct.

11 Q So you would not have had any relationship
12 with that search?

13 A That's correct.

14 MS. PRICE: No further questions.

15 THE COURT: Thank you. Step down.

16 MR. CHAMBERS: Just real brief.

17 **RECROSS-EXAMINATION**

18 **BY MR. CHAMBERS:**

19 Q Were you able to confirm that Quentin
20 Sullivan was on the lease with Andrew White?

21 A No, sir. I did not look into that.

22 Q So when the Solicitor says that, you don't
23 know that to be true?

24 A That's correct. I don't know if he was on
25 the lease or not.

1 MR. CHAMBERS: Thank you.

2 THE COURT: Step down.

3 MS. PRICE: Your Honor, at this time, the
4 State would call fingerprint expert witness,
5 Christopher Gary, to the stand.

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

8 CHRISTOPHER GARY

9 having first been sworn, testifies as follows:

10 THE CLERK: Thank you. You may be seated.
11 State your full name for the record please.

12 THE WITNESS: Christopher Adam Gary. The
13 spelling of the last name is G-A-R-Y.

14 DIRECT EXAMINATION

15 BY MS. PRICE:

16 Q Thank you, Mr. Gary. Where are you employed?

17 A I'm employed by the Greenville County
18 Department of Public Safety in the forensic division.

19 Q And how long have you been employed by
20 Greenville County?

21 A I've been employed by Greenville County full-
22 time for a year and a half. But prior to that, I had
23 the opportunity to work in an internship capacity for
24 over three years. During that time, I learned the
25 foundation of the organization, as well as how to --

1 the foundation for fingerprint evidence and so forth.
2 And prior to that, I actually had the opportunity to
3 work in the North Charleston Police Department as an
4 intern while I was at school. I also learned the
5 foundation of fingerprint evidence there as well.

6 Q Okay. What is your official title now and
7 how long have you been in that capacity?

8 A I'm a latent print examiner. I've held that
9 title the entire year and a half that I've been there
10 full-time.

11 Q Okay. What are your official duties as a
12 latent print examiner?

13 A I receive latent fingerprint evidence as well
14 as latent impression evidence from the crime scene
15 section. I compare, analyze and issue reports based
16 on my findings.

17 Q Okay. Could you go over your formal
18 education with the jury?

19 A Yes, I have a Bachelor's degree in Biology
20 from the College of Charleston as well as a minor in
21 crime, law and society from the same institution.

22 Q You have any specialized training as it
23 relates to fingerprint analysis or impression
24 evidence?

25 A Yes. In 2009, I actually had the opportunity

1 to go to a school that was sponsored by the National
2 Institute of Justice. It was held in Largo, Florida
3 at the National Forensic Science Technology Center.
4 It was over 400 of -- 400 hours of training that
5 lasted over 10 weeks at that institution where we
6 learned the fundamentals of the science as well as how
7 to compare fingerprints and issue the reports based on
8 those findings. I also had the opportunity to go to,
9 uh, Marshall University at a FBI, Federal Bureau of
10 Investigations school that was held at Marshall
11 University that dealt with impression evidence where
12 we learned how to compare and analyze that type of
13 evidence.

14 Q Okay. And are you a member of any
15 organizations related to the field of forensics?

16 A Yes, I'm a member of the South Carolina
17 division of the International Association for
18 Identification, which is an international forum of
19 forensic practitioners that get together and are able
20 to share information as well as participate in
21 training programs.

22 Q And do you hold any certifications in the
23 field of forensics?

24 A While it's not required, the International
25 Association for Identification, the international

1 forum that I was just speaking of, they actually offer
2 a number of certificates in the forensic field. I
3 actually just participated in the -- participated and
4 successfully passed the latent print examiner
5 certificate that is sponsored by the International
6 Association for Identification.

7 Q What does it take to become certified?

8 A To become certified, you have to have a slew
9 of background in the science. You have to have a
10 bachelor's degree, as well as two years minimum
11 experience actually participating in latent print
12 examinations. You have to have 80 hours of formal
13 training that is recognized by the II board. You also
14 have to be a practicing practitioner at which point
15 you apply and take a certification test, which is an
16 eight-hour test. It's in three parts. The first part
17 being general knowledge about the science, certain
18 history questions and developmental questions. You
19 also have questions about pattern recognition which is
20 how you classify fingerprints. You also have a
21 practical exam where you have to compare and analyze
22 15 latent fingerprints.

23 Q Do you receive ongoing training in the area
24 of fingerprint analysis and impression evidence?

25 A Yes, I'm annually tested by a third party

1 organization on latent print evidence as well as
2 latent impression evidence.

3 Q Approximately how many fingerprint
4 comparisons do you do annually?

5 A Tens of thousands.

6 Q And have you ever been qualified as an expert
7 witness for a trial?

8 A This is actually my first opportunity to
9 testify at a trial.

10 Q Why is that?

11 A I prepared for several other trials, but
12 those case have just not come up yet.

13 Q Okay.

14 MS. PRICE: Your Honor, at this time, the
15 state would move that Mr. Gary be declared an
16 expert in fingerprint examination and
17 identification.

18 THE COURT: Any voir dire?

19 MR. CHAMBERS: No, Your Honor, and we would
20 stipulate.

21 THE COURT: He's qualified. Proceed.

22 BY MS. PRICE:

23 Q Uh, what type of equipment do you use in the
24 comparison of fingerprints and how is it used?

25 A It's nothing fancy like you see on

1 television. I actually use a handheld magnifying
2 glass and desktop magnifier that is especially made
3 for examining latent fingerprints.

4 Q What is the latent print?

5 A A latent fingerprint -- the word latent just
6 means hidden. A latent fingerprint is just a
7 fingerprint that is left behind at a crime scene. On
8 the surface of your hands, you have raised ridges that
9 form a unique pattern. It acts as a stamp, kind of
10 like the rubber stamps we had as kids. That wasn't so
11 far -- far ago for me. The ink is the oils and daily
12 sweat make up -- maybe if you ate a bag of potato
13 chips, that acts as the ink for that stamp. So when
14 your hand comes in contact with an object, it leaves
15 behind that same unique pattern on the object, but it
16 normally can't be seen with the naked eye. It has to
17 be processed by either a physical means or a chemical
18 means in order to make it visible so that you can see
19 it.

20 Q Okay. Is there a difference between a latent
21 print and a known print?

22 A A latent print and a known print -- a known
23 print is something that you know. You know the person
24 that is donating it. It's normally accomplished by
25 using a thin layer of black printer's ink. You apply

1 it to a white background card. At which point, you
2 get all of their identifying information such as their
3 name, Social Security number, birthdate, gender, race,
4 so that we can associate that person with those prints
5 on the card.

6 Q How are fingerprints compared and identified
7 or how do you compare latent prints with known prints?

8 A To compare latent prints with a known print,
9 you start off by analyzing your latent print, the
10 hidden print that we found at the crime scene. You
11 look at it through your overall general pattern type,
12 the way the ridges flow, and you compare it with your
13 known print, the ones that were donated by the person
14 that we took using the black printer's ink.

15 We do that by looking at the general pattern
16 type and then comparing it to the known. Once we find
17 a finger -- say we find a finger that has that same
18 general pattern type, we get more specific. We look
19 at the unique factors of the fingerprint. We look at
20 the -- like I was talking about, those raised ridges.
21 Those ridges actually end and divide. We look and see
22 if the prints were made by that known source or if
23 they were not made by the known source.

24 Q Could two people have the same prints?

25 A No, it is absolutely impossible for two

1 people to share the same fingerprints. Even twins
2 share the same DNA. Identical twins share the same
3 DNA, but no two people share the same fingerprints.
4 They are unique before you are born until after you
5 die.

6 MS. PRICE: Your Honor, at this time, the
7 defense counsel and the State have agreed to the
8 chain of custody in this case and would like to
9 read the stipulation agreement.

10 THE COURT: All right. You want to publish
11 -- go ahead and publish it..

12 MS. PRICE: Okay. Publish it into the
13 record. Your Honor, the stipulation reads that
14 the State through Assistant Solicitor Lauren
15 Davis Price and the Defendant through his
16 attorney, Randy Chambers, hereby agrees and
17 stipulates to the chain of custody testimony
18 concerning the following pieces of evidence: 10
19 latent lifts developed by former forensic
20 investigator Christine Robertson on April 25th,
21 2006 and properly submitted to the property and
22 evidence section of the forensic division located
23 at Greenville County Department of Public Safety
24 and are the same prints that were subsequently
25 compared by IAI certified latent print examiner

1 and forensic investigator Christopher A. Gary.

2 BY MS. PRICE:

3 Q Did you have an occasion to examine latent
4 prints in this case before you?

5 A Yes, I did.

6 Q Uh, and how many latent lifts were provided
7 to you in this case?

8 A There were 10 latent lifts that were provided
9 to me.

10 Q Were you asked to compare that latent
11 impression evidence?

12 A Yes, I was.

13 Q And what types of impressions were made?

14 A There were -- of the 10 lifts, there were
15 four fabric impressions that were left at the scene.

16 Q Okay. And what other types of lifts were
17 taken?

18 A There were three comparable fingerprints as
19 well as three, what we call not comparable. They were
20 not of value of compare to anyone. They were
21 basically not usable.

22 Q And from what locations were these 10 lifts
23 taken?

24 A Of the 10 lifts, there was one print from the
25 office door window exterior on a portion of glass

1 still in the bottom of the window frame. There were
2 two latent lifts from the front door. The interior
3 side of door, shattered lower pane of glass just above
4 the crossbar. There were two latent lifts from the
5 bottom of the cash register till on desk still on top
6 of safe drawer. There were two from the bottom of the
7 cash register till that was on the floor of the office
8 that was partially beneath a garbage can. And there
9 were three latent lifts that were lifted from a
10 Cartoon Network sign on the floor that was just inside
11 of the door on the floor.

12 Q So five total locations?

13 A Yes, ma'am.

14 Q Okay. From what locations were the
15 comparable latents lifted?

16 A The comparable latents were lifted from the
17 office door, the window exterior on portion of glass
18 as well as one from the bottom of the cash register
19 till and one from the front door.

20 Q Were you provided with any suspect
21 information so you could obtain known prints to
22 compare these too?

23 A Yes, I was.

24 Q Who were those suspects?

25 A There was a Cordelle Sullivan, Quentin

1 Sullivan, a Zachary Cureton, Andrew White, as well as,
2 a Cordelle Washington.

3 Q Did you have an opportunity to compare those
4 known prints of the suspects to the comparable latents
5 that were captured?

6 A Yes, I did.

7 Q Were you able to match any of the latent
8 lifts to any of the suspects?

9 A No, I was not.

10 Q Did you have an opportunity to compare known
11 fingerprints of the victims in this case to the
12 comparable latents that were captured?

13 A Yes, I did.

14 Q Who were those victims?

15 A A Douglas Ashmore, as well as, a Gladys
16 Harrison.

17 Q Were you able to match any of the latent
18 lifts to any of the victims?

19 A No, ma'am. I was not.

20 Q Okay. Can you tell us what AFIS is?

21 A Yes, AFIS is a computer tool that we use to
22 search large databases of fingerprints. AFIS stands
23 for Automated Fingerprint Identification System. It's
24 just a tool we use to search large databases very
25 quickly.

1 Q Were you able to run these comparable prints
2 through AFIS?

3 A Unfortunately, I was not able to run these
4 prints through AFIS.

5 Q Why not?

6 A AFIS is limited. It can only search -- like
7 I was talking about on the raised portion of your
8 skin, it can only search those ending ridges, how they
9 end, how they divide. Whereas, a human examiner can
10 actually take into effect the full latent print. We
11 can look at the overall ridge flow. We can look at
12 where those ridges end and divide, as well as on top
13 of those ridges, there are pores. We can actually
14 take that into account, as well as the general pattern
15 type. Whereas AFIS is limited to only one aspect of
16 the latent print, a trained examiner can focus on all
17 of the aspects of the latent print.

18 Q And of the 10 latent lifts, you said that
19 four were fabric impressions?

20 A Yes, I did.

21 Q What's a fabric impression?

22 A A fabric impression is just an impression
23 that was left by any type of fabric, whether it be
24 jeans, a shirt, gloves or mittens.

25 Q Why would fabric leave an impression?

1 A Fabric can leave an impression because it's
2 manufactures into a distinct pattern. When that
3 pattern, say, the sweat and oils of daily life or if
4 you have any other contaminants on your hand or even
5 maybe a chemical that was used in the process of
6 making that fabric, when it's left on an item, it
7 leaves that same pattern type or same pattern that's
8 from the fabric.

9 Q Can you tell by looking at the fabric
10 impressions that you have what may have left them?

11 A Yes, the fabric impressions that were lifted
12 in this case appear to be that of gloves as in the
13 shape of a human hand.

14 Q Do you know what type of gloves?

15 A No, I do not.

16 Q And from what locations were the fabric
17 impressions lifted?

18 A The fabric impressions were left from the
19 Cartoon Network sign that was on the floor just inside
20 the front door as well as the front door itself.

21 Q And did you have an opportunity to compare
22 the fabric impressions to any fabric items?

23 A Yes, ma'am. I did.

24 Q What were those items?

25 A Those items were item Jm1. It was a clothe

1 white work glove. Item JM1 again, it was a clothe
2 white work glove. Item JM1, it was a Franklin brand
3 baseball glove.

4 Q Are these the items that you compared the
5 fabric impressions to?

6 A May I?

7 Q Yes, absolutely.

8 A Yes, they are.

9 Q Were you able to match any of the fabric
10 impressions to any of these gloves?

11 A No, I was not.

12 Q Is it possible for a person to touch
13 something and to not leave a latent print behind?

14 A Yes, it's very possible. There are several
15 conditions that actually go into leaving a latent
16 print. It's the condition of the object that's being
17 touched, the condition of the skin and environmental
18 conditions, such as, if a person -- some people sweat
19 very much and some people don't hardly sweat at all.
20 That plays a key role in if a latent print is going to
21 be left or not. The condition of the skin, maybe that
22 surface has recently been cleaned.

23 For example, my supervisor, Captain Jackie
24 Kellett, she's been doing this all her life, but she
25 has trouble leaving a latent fingerprint even on a

1 controlled surface when she's trying to put it onto a
2 piece of clean glass which is the best possible
3 condition for putting a latent print. Even she has
4 trouble putting a latent print sometimes.

5 Q And would it be possible that a person could
6 touch a suitable surface and leave a latent print but
7 that print be damaged or destroyed?

8 A Yes. Such cases, maybe if the surface was
9 cleaned or a common area, such as a front door that's
10 constantly touched and moved in and out, fingerprints
11 on top of other fingerprints would destroy
12 fingerprints. There are a gambit of factors that go
13 into the condition of latent fingerprints and how long
14 they last or if they are even left at all.

15 Q Okay. Mr. Gary, when did your involvement
16 with this case end?

17 A I believe it ended on November the 29th when
18 I finished my analysis and examination.

19 Q And you came to testify to court today?

20 A Yes, ma'am.

21 Q And you had no further involvement in the
22 case?

23 A No, ma'am.

24 Q No further questions. Please answer any
25 questions Mr. Chambers has for you.

1 **THE COURT:** Mr. Chambers.

2 **MR. CHAMBERS:** No questions, Your Honor.

3 **THE COURT:** Thank you. You can step down.

4 **MS. PRICE:** Your Honor, at this time, the
5 State would just readmit every -- all the
6 evidence marked 1 through 32 into evidence and
7 the State rests.

8 **THE COURT:** All right. Take the jury out
9 please.

10 (WHEREUPON, the jury exits at approximately
11 2:36 p.m.)

12 **THE COURT:** All right. Any motions?

13 **MR. CHAMBERS:** Motion for a directed verdict
14 on all counts, Your Honor.

15 **THE COURT:** I'll deny your motions. All
16 right. You have any testimony?

17 **MR. CHAMBERS:** No, Your Honor. For the
18 record, I have discussed it thoroughly with my
19 client and Mr. Washington informs me that he does
20 not want to testify. He understands his rights
21 and he does not intend to testify.

22 **THE COURT:** All right. Put him under oath
23 for me please.

24 (WHEREUPON, the Defendant is duly sworn.)

25 **THE CLERK:** Thank you.

1 **THE COURT:** You can be seated. Mr.
2 Washington, we have reached the point in your
3 trial where you will make a decision of whether
4 you will or will not testify or otherwise present
5 evidence, okay? You understand that?

6 **MR. WASHINGTON:** Yes, sir.

7 **THE COURT:** Now, I'll tell you that you have
8 a perfect right not to take the stand or
9 otherwise present testimony. The reason for that
10 is that's your constitutional right. The burden
11 remains on the State to prove you guilty beyond a
12 reasonable doubt. You understand those rights?

13 **MR. WASHINGTON:** Yes, sir.

14 **THE COURT:** Now, at the same time, you've
15 got a perfect right to take the stand and tell
16 the jury your side of the story. You understand
17 that?

18 **MR. WASHINGTON:** Yes, sir.

19 **THE COURT:** If you take the stand and
20 testify, then you'll become like any other
21 witness in the case. You are subject to cross-
22 examination by the Solicitor. I don't know
23 whether you have any prior criminal record for
24 which you can be impeached, but if you do, the
25 Solicitor could do that. You understand that?

1 MR. WASHINGTON: Yes, sir.

2 THE COURT: Now, are you satisfied with the
3 services of your lawyer?

4 MR. WASHINGTON: Yes, sir.

5 THE COURT: You have any complaint to make
6 against him?

7 MR. WASHINGTON: No, sir.

8 THE COURT: Has he put any, uh, -- tried to
9 talk you into taking the stand or not take the
10 stand?

11 MR. WASHINGTON: No, sir.

12 THE COURT: Uh, your decision is yours
13 alone?

14 MR. WASHINGTON: No, sir.

15 THE COURT: Are you under the influence of
16 any alcohol, drug or any other substance right at
17 this moment?

18 MR. WASHINGTON: No, sir.

19 THE COURT: You are sober and you know what
20 you're doing?

21 MR. WASHINGTON: Yes, sir.

22 THE COURT: And you made a decision in this
23 case not to testify, is that correct?

24 MR. WASHINGTON: Yes, sir.

25 THE COURT: Okay. All right. Then you will

1 have final argument.

2 MR. CHAMBERS: Thank you, Your Honor.

3 THE COURT: All right.

4 (WHEREUPON, a short recess is taken at
5 approximately 2:39 p.m.)

6 (WHEREUPON, the Court resumes at approximately
7 2:42 p.m.)

8 MS. PRICE: Your Honor, there's evidence in
9 this case, obviously, that BB guns were used. Do
10 you have anything in your charge -- do you intend
11 to charge that a BB gun is a deadly weapon?

12 THE COURT: Say what now?

13 MS. PRICE: The BB guns that were used in
14 this case.

15 THE COURT: Yeah.

16 MS. PRICE: Do you intend to charge that a
17 BB gun is a deadly weapon?

18 THE COURT: Yes, I'll cover that.

19 MS. PRICE: Thank you, Your Honor.

20 (WHEREUPON, the jury enters at approximately
21 2:43 p.m.)

22 THE COURT: Ladies and Gentlemen of the
23 jury, in the trial of a criminal case, a
24 Defendant has no burden whatsoever. A Defendant
25 does not have to take the stand and testify or

1 present evidence in the case. That's because
2 that's his or her constitutional right. The
3 burden is always on the State to prove a
4 Defendant guilty beyond a reasonable doubt. I
5 will charge you more fully on this right during
6 the course of my charge.

7 The Defendant in this case has exercised his
8 constitutional right not to take the stand and
9 testify or otherwise present evidence.
10 Therefore, the testimony in this case is
11 complete. What we have remaining is the final
12 arguments by the attorneys and then my charge on
13 the law.

14 All right. Solicitor, you may proceed.

15 MS. PRICE: Thank you, Your Honor. May it
16 please the Court.

17 Mr. Chambers.

18 Ladies and Gentlemen of the jury, you have
19 heard from me now several times this morning.
20 It's almost decision time. But before the case
21 is placed in your hands, I want to go over some
22 of the testimony that you've heard today as well
23 as go over some of the law. I hope you forgive
24 me if I refer to some notes, but it's too
25 important for me not to remember what I want to

1 tell you today.

2 This trial will ultimately hinge on the law.
3 Let's go back to the beginning and talk about the
4 law. As you already know and I told you multiple
5 times, the Defendant is charged with armed
6 robbery, burglary in the second degree, two
7 counts of kidnaping and possession of a weapon
8 during the commission of a violent crime. You've
9 heard already and I'll say it again, we must
10 prove every element of those crimes and show you
11 that we've proven those elements beyond a
12 reasonable doubt. After I'm done arguing and Mr.
13 Chambers is done arguing, the judge is going to
14 instruct you on the law and tell you what law you
15 are supposed to use to decide whether or not this
16 Defendant is guilty. If anything I say or
17 anything Mr. Chambers says is different from what
18 the judge tells you, you have to go with what the
19 judge tells you every time.

20 Now, after I'm done and the judge speaks to
21 you, one of the things I believe he's going to
22 tell you is that in South Carolina, if a crime is
23 committed by two or more people acting together,
24 then the act of one of those people is the act of
25 all of those people. This is commonly referred

1 to as the hand of one being the hand of all. The
2 judge is going to charge you on this law, so
3 listen carefully.

4 Essentially, what it means is that anything
5 that Andrew White or that Quentin Sullivan did,
6 you can hold Cordelle Washington responsible for
7 and vice versa. If they were on trial, you could
8 hold them responsible for anything you thought
9 that he did. . If there had been a fourth person
10 at the scene that day that was driving the car to
11 get away, you could hold that person in the car
12 responsible for everything that happened that day
13 as well. Just because one of them did it,
14 doesn't mean that it's only on that one person.
15 It's on all the people who were at the scene.

16 Now, I want to go through the elements of
17 each of these crimes the Defendant is charged
18 with and talk about how we've proven those crimes
19 to you today, starting with the Armed Robbery.
20 Uh, before I can explain Armed Robbery to you, I
21 have to explain to you what larceny is. Larceny
22 is the taking and carrying away of another
23 person's property with the intent to deprive them
24 of possession. When a larceny is accomplished by
25 force, threats or intimidation or with a deadly

1 weapon or with what the victim reasonably
2 believes to be a deadly weapon, then it becomes
3 an armed robbery.

4 Today, you heard from Gladys Harrison and
5 from Andrew White that money was taken from the
6 Burger King. You can review Quentin's statement.
7 It's in evidence. His statement also says that
8 along with Andrew White, he and this Defendant
9 robbed the Burger King. They drove off with the
10 money. Andrew told you he counted it in the back
11 seat of their getaway car. Michelle told you.
12 Gladys Harrison told you and, excuse my language,
13 that one of the Defendants approached her,
14 pointed one of these weapons in her face and said
15 "Bitch, where's the money?" That's force and
16 that's intimidation. A gun in your face and
17 those words, that's force, that's intimidation.

18 Money was missing from the tills she was
19 counting and from the safe when she returned to
20 the office. Now, armed robbery can be
21 accomplished when a deadly weapon is used -- you
22 just heard me say that -- or when what a victim
23 believes to be a deadly weapon can be used. Both
24 Gladys Harrison and Douglas Ashmore said the
25 Defendant had guns today on the stand. They

1 believed these were real guns. Andrew White told
2 you that the Defendant and he wrapped the bottoms
3 of these BB guns so that the bottoms couldn't be
4 seen. They covered this open area with bandanas
5 so that anyone who had this gun would believe it
6 was a real weapon.

7 Do they appear real to you? Ask yourself.
8 You're going to have these in evidence. You can
9 look at them. You can touch them. You can touch
10 anything that's in front of you today. You're
11 going to have this. If you had this pointed at
12 your face, does it appear real?

13 I would submit to you that this pipe is also
14 a deadly weapon. Someone takes a swing at you
15 with this, is it going to do some damage? Feel
16 it. Hold it. Think about it. I would submit to
17 you that this is also a deadly weapon. Looking at
18 everything that is before you, the elements of an
19 armed robbery for the state of South Carolina
20 have been met.

21 Now, looking at Possession of a Weapon during
22 the Commission of a Violent Crime, this occurs
23 that a Defendant who is in possession of a
24 firearm or what visibly appears to be a firearm
25 to the victim during the commission of a violent

1 crime. We just went over this with the Armed
2 Robbery. It's the same thing. It can either be
3 an actual deadly weapon or what appears to the
4 victim to be a deadly weapon at the time.

5 In South Carolina, certain crimes are
6 designated violent crimes. Armed Robbery is one
7 of them. If you find that the Defendant
8 committed an armed robbery as we just discussed,
9 then at a minimum, you've already found that the
10 Defendant had what visibly appeared to be a
11 deadly weapon or firearm during the armed
12 robbery. So the Defendant would also be guilty
13 of Possession of a Weapon during the Commission
14 of a Violent Crime. It's that simple.

15 Now, let's look at the elements of second
16 degree burglary together. Burglary happens when
17 someone enters a building without consent and
18 with the intent to commit a crime therein and,
19 either when entering the building while in the
20 building or in immediate flight from the
21 building, that person or another person
22 committing the crime is armed with a deadly
23 weapon or explosive or causes physical injury to
24 any person or displays what is or what appears to
25 be a knife, pistol, revolver or other firearm.

1 All the testimony you've heard today is
2 consistent with saying that this happened after
3 11 p.m. when the store was closed. Andrew White
4 told you that they were closed. They saw a few
5 people who were in there. They scoped out the
6 Burger King and planned to commit a robbery.
7 They took a rock and broke out the bottom glass
8 pane of the front door.

9 When they entered, they intended to commit
10 robbery. It doesn't matter who broke the pane.
11 Again, the hand of one of these Defendant is the
12 hand of all. They entered and intended to commit
13 the crime. They displayed what appeared to be
14 firearms. That's it. It's that simple. All of
15 the elements of a burglary in the second degree
16 in South Carolina have been met.

17 Now, finally, the Defendant is charged with
18 two counts of kidnaping. One for each of the
19 victims. One for Douglas Ashmore. One for
20 Gladys Harrison. When you see what is referred
21 to as a kidnaping on TV or in the movies, it's
22 usually someone grabbing a child and throwing him
23 in the back of the van and duck taping them and
24 holding them for ransom. That's not what the law
25 says a kidnaping is in the state of South

1 Carolina.

2 In South Carolina, a person is guilty of
3 kidnaping if they unlawfully seize, confine,
4 inveigle, decoy, kidnap, abduct or carry away any
5 other person by any means whatsoever without the
6 authority of law. A person doesn't have to do
7 all of these things to be guilty of kidnaping. A
8 person only has to be guilty of one of these
9 things to be guilty of kidnaping.

10 So what does seize mean? Well, seize means
11 to take hold of suddenly or forcibly. You heard
12 from Andrew White that he took hold of and forced
13 this stocky black employee on the ground. We
14 know him as Douglas Ashmore. He testified to
15 that. That's seizing. Again, hand of one is the
16 hand of all. He seized -- Andrew White seized
17 Douglas Ashmore. The hand of one, hand of all.
18 If you believe this Defendant was there, this
19 Defendant committed that kidnaping.

20 What does confine mean? Confine means to
21 limit, to restrict or to close within bounds,
22 imprison or shut in. I would submit to you that
23 the evidence shows that Cordelle Washington
24 pointed a gun at Gladys Harrison to keep her
25 confined in the Burger King. Was he successful?

1 No. The evidence shows that she escaped and
2 Quentin Sullivan chased her, seized her and tried
3 to confine her to the point that he ripped the
4 very shirt off of her back. That's also in
5 evidence. You can see it here. It will be back
6 in the jury deliberation room with you. That's
7 seizing. The evidence of kidnaping is there. The
8 elements of kidnaping in South Carolina for both
9 of these victims has been met.

10 Now, folks, people who commit armed robberies
11 are caught and convicted through the co-
12 Defendants that turn them in. It's easy to leave
13 behind no trace of being at a crime scene, no
14 hard physical evidence. That's exactly what the
15 Defendant and co-Defendants did. They had masks
16 on and they wore gloves. There were no
17 fingerprints that matched and no DNA.

18 You heard from Chris Gary just a few moments
19 ago. There were fabric impressions around the
20 point of entry. Attempts were made by law
21 enforcement to match those impressions to the
22 evidence that has been recovered. There's at
23 least one other piece of fabric out there that we
24 haven't been able to compare the impressions too.
25 You heard Andrew White say that the gloves he

1 wore that night aren't here today. We don't have
2 an orange jacket either. There was other fabric
3 evidence that legally was there that we don't
4 have today. Andrew White said that that jacket
5 was burned up. We've compared everything that we
6 had to compare. Law enforcement did everything
7 in their power.

8 In every case, we'd love to have a bloody
9 palm print or a gun that could match or a video.
10 We don't have a video because the video equipment
11 wasn't working that night. That's how it would
12 be on TV, some miraculous breakthrough, but this
13 isn't TV. If this was TV, I would look like
14 Gwynneth Paltrow. Okay. This is real life, this
15 is what we have.

16 You can't get fingerprints when robbers wear
17 gloves, and you can't swipe DNA from the air.
18 You can't get clear identifications when
19 Defendants wear masks. So how are people who
20 commit crimes like this brought to justice? They
21 are brought to justice by the people they commit
22 the crimes with. It takes an accountant from
23 Enron to get the cheating executives. And it
24 takes small time drug uses to bring down big time
25 drug dealers. It takes Sandy "the Bull" Gravano

1 to bring down John Gotti. Today, it takes Andrew
2 White and it takes Quentin Sullivan to take down
3 Cordelle Washington.

4 Now, why should you believe Andrew White and
5 why should you believe Quentin Sullivan's
6 statement? Well, look at the consistency with
7 Andrew's testimony today and his prior statement
8 and look at Quentin's statement. He said
9 everything he said today four years ago. A long
10 time ago. Before there was any talk about
11 testifying in court. Before there was any talk
12 about him entering a guilty plea. He told you
13 he's serving time for armed robbery. Quentin
14 told you he's serving time for armed robbery,
15 burglary, kidnaping, possession of a weapon.
16 That's what this Defendant is charged with today.

17 There is a third person. Why would they make
18 up that it was Cordelle Washington? What
19 possible motivation did they have? Every witness
20 who was at the scene that day says it was a third
21 person. No other names have been mentioned other
22 than the name of this Defendant. Why would
23 Andrew White and Quentin Sullivan say that
24 Cordelle Washington was with him if it was really
25 someone else?

1 Again, we know there was a third person from
2 the testimony. Why would they both separately
3 and totally unaware of each other give statements
4 that Cordelle Washington was there? Why would
5 they let whoever this third person was get away?
6 How much would you have to hate someone to frame
7 them for an armed robbery?

8 These guys were friends. They had been
9 hanging out. They had known each other for years
10 at that point. We heard nothing today about
11 disagreements or arguments between any of them.
12 There's also consistency here with other
13 evidence. The story that Andrew White told you
14 today matches up to this story of Douglas
15 Ashmore. It matches up to the story of Gladys
16 Harrison. They also say that Andrew White said
17 they wore gloves.

18 Fabric impressions looked like they belonged
19 to gloves. You heard that from Mr. Gary moments
20 ago. They were found at the point of entry where
21 the glass was shattered on the door. That's
22 consistent.

23 The testimony was today that one of the
24 Defendant was 5'6, of medium build and was
25 wearing an orange jacket and he was the shortest

Closing Argument by Ms. Price

1 one. You heard Sims say that that's the
2 statement Douglas Ashmore gave him that night
3 that this occurred. This Defendant is 5 foot 5.
4 You heard that today from Detective Conroy.
5 Quentin's statement says that this Defendant was
6 in an orange jacket. Look at all the evidence
7 fits together. They all point to this Defendant.

8 Now, also look at the consistency that Andrew
9 White had with Quentin Sullivan. You heard his
10 statement. Detective Conroy read it into
11 evidence. You can look at it again. I urge you
12 to. I urge you to read their statements when you
13 are back deliberating moments from now. Quentin
14 Sullivan had no way of knowing what Andrew White
15 was going to say that day. Andrew White had no
16 way of knowing what Quentin Sullivan was going to
17 say.

18 Now, they briefly gave their statements to
19 Detective Conroy. You heard they were not
20 threatened or coerced in any way or promised
21 anything. When they gave their statements,
22 perhaps they hoped that their cooperation would
23 help, that Detective Conroy would at some point
24 go to bat for them or talk to a Solicitor or to a
25 judge about leniency. How would lying have

1 helped them? How would lying help them? If they
2 got caught in a lie, they wouldn't be gaining
3 anything. And they haven't been promised
4 anything. So they were telling the truth in the
5 statements that they gave that day. This
6 Defendant was with them that night. He did
7 everything they say that he did.

8 Ladies and Gentlemen, we didn't pick Andrew
9 White or Quentin Sullivan as witnesses in this
10 case. The Defendant did. He picked them because
11 they are his friends and they are his co-
12 conspirators. I would love to have a rabbi or a
13 pastor or a bank president or a school teacher to
14 stand up in front of you and testify in a case
15 like this, but I don't. I want you to consider
16 who has a dog in this fight. Andrew Washington
17 [sic] doesn't have a dog in the fight. He can't
18 gain anything for testifying today. Why would he
19 lie? Why would he continue to tell a story, if it
20 were a story, four years later? He has nothing
21 to gain.

22 Now, everyone should be culpable for their
23 own actions. Mr. White has accepted
24 responsibility for his actions. Even Mr.
25 Sullivan has accepted responsibility for his

1 actions. Today, it's up to you to hold Cordelle
2 Washington accountable for his actions. Today is
3 Cordelle Washington's day in court, no one
4 else's. It's time to hold him accountable for
5 what he's done.

6 Now, the defense is going to get up here in a
7 minute and try to distract you from what you
8 know. I don't get up here a second time. This
9 is the last time you will hear from me. I don't
10 know what he's going to say. But I think he's
11 going to try to distract you from the evidence
12 that's in front of you. I would just ask that
13 you keep your eye on what's before you.

14 We've gone through every element of each
15 crime that this Defendant is charged with and
16 shown you how the elements have been met. You
17 have all of this evidence before you. Go through
18 it. What do you believe? Employ your common
19 sense.

20 Briefly, let's go over reasonable doubt one
21 last time, and know that the judge will go over
22 with you -- go over reasonable doubt with you
23 again in a moment. But reasonable doubt does not
24 mean beyond all doubt. It means beyond the point
25 where it causes a person to hesitate to act.

1 There are very few things in this life that we
2 know with certainty. This just means that you.
3 are firmly convinced.

4 Now, you have to take the facts and the
5 evidence that are out here today and you have to
6 act. All of these facts add up to proof beyond a
7 reasonable doubt that this Defendant, Cordelle
8 Washington, is guilty of Armed Robbery, two
9 counts of Kidnaping, of Burglary in the second
10 degree and of Possession of a Weapon during the
11 Commission of a Violent Crime. Act without
12 hesitation. Bring back the verdict that justice
13 demands and find him guilty today. Thank you.

14 **THE COURT:** Okay.

15 **MR. CHAMBERS:** Please the Court.

16 Solicitor.

17 Ladies and Gentlemen, I want to agree with
18 the Solicitor on one thing. This is not TV.
19 This is not TV. This is very serious. This is
20 real life. This is Mr. Washington sitting over
21 there facing convictions of some very serious
22 crimes and facing a deprivation of his liberties.
23 It doesn't get much more serious than that. That
24 is why the Solicitor has such a high standard,
25 such a high burden of proof in this case.

1 One thing that I do disagree with her about,
2 I disagree with her a lot, that is, I'm going to
3 stand up here and try to distract you from the
4 evidence. I want you to focus like a laser beam
5 on the evidence in this case. I want you to
6 focus on the lack of evidence in this case.
7 There's a lot of stuff that they put into
8 evidence here. There's a lot of stuff that you
9 can go through, okay?

10 You've got all these pictures that were taken
11 at the scene. Guess what? None of those
12 pictures, nothing in those pictures points to
13 Cordelle Washington as having been involved in
14 this terrible crime. It was a terrible crime.
15 There is absolutely no question that Ms. Harrison
16 and Mr. Ashmore was terrified. They had every
17 right to be terrified. Somebody came in there
18 and robbed them. That would scare anybody. But
19 there is no evidence that puts Mr. Washington as
20 being involved in this case other than these
21 statements that you heard. We're going to talk
22 some about those in a minute.

23 Let's just dispense with this early. The
24 investigating officer, lead detective told you
25 this. You heard this from everybody involved.

1 There is no physical evidence of any kind that
2 links Mr. Washington to these crimes. The
3 Solicitor has done everything she can to indicate
4 to you that it doesn't mean anything. You know,
5 it's not TV, it's not TV, it's not TV. How many
6 times have we heard that?

7 But folks, to have been involved in
8 everything they say he was involved in, going
9 inside that store to being at the house that
10 Quentin Sullivan and Andrew White shared with one
11 another supposedly to being in this car that he
12 rode in and drove in and all this evidence that
13 was found, either at the home of Andrew White or
14 in that car, some fingerprint, some fiber
15 evidence, some something that would link him to
16 this crime would have been found by somebody.
17 That's not movies or TV or anything else. That's
18 just common sense. Just absolute common sense.

19 So get to their case. These statements that
20 were taken by Detective Conroy, one thing that we
21 know is it all started with Andrew White or Drew
22 as he said he is identified. They got on him
23 first because they got a call from the sheriff's
24 office. We know from Conroy's testimony that the
25 sheriff's office had already found a whole bunch

1 of evidence that linked Drew White to the crime
2 that was committed at this Burger King over on
3 South Pleasantburg.

4 A hoodie that matched the description of the
5 person who was in there, who, if you will
6 remember, had one of these BB guns and had Mr.
7 Ashmore down on the ground with his foot to his
8 back and holding this gun and Mr. Ashmore said
9 clicking it. The pipe that was described. We've
10 got masks. We've got gloves. They had Mr. White
11 dead to rights. There's absolutely no question
12 about that they had him nailed.

13 Now, you know, we're led to believe that just
14 out of the goodness of his heart he decided that
15 he was going to give this statement where he
16 implicates not only himself, but all these other
17 people including Cordelle Washington. We have no
18 idea what the detective said to him. We can look
19 at the statements. They are both in evidence.

20 We know that with Mr. White's, when you look
21 at it, there apparently wasn't anybody else
22 present but the detective. He's the only one who
23 signs as a witness. As easy as it might have
24 been to have tape recorded this or video or
25 audio, they didn't do that. If they did, they

1 certainly didn't bring it forward so we can see
2 exactly how that conversation went. We could sit
3 here and watch it. Wouldn't that have been
4 helpful? Wouldn't that have been nice for you as
5 jurors to be able to see how this was conducted,
6 see what the detective said to him?

7 Easiest thing in the world in this day and
8 age is videotape something or audiotape it. I
9 mean, there's countless -- you want to talk about
10 TV. There's countless numbers of shows on TV
11 that are nothing but videos. They videotape --
12 police videotape everything that happens from
13 their cruisers, yet we have nothing of how this
14 was conducted.

15 We don't know what the detective said to him.
16 We don't know whether the detective -- he told
17 you. They are trained to get statements from
18 people. They are trained to get them to talk to
19 them and they are allowed to mislead. He could
20 have said we have this evidence or that evidence
21 or we've already talked to Cordelle Washington.
22 We know he was involved. He came clean. He told
23 us -- or Cordelle Washington, I mean, and he told
24 us everything there was to know about you, Mr.
25 White. At that point, who knows what Andrew

1 White would say.

2 The other thing we know about Andrew White is
3 he didn't like Cordelle Washington very much. He
4 tried to deny that. But remember this, I brought
5 up this thing about his baby's mother. I got the
6 name wrong. My fault. I kind of stumbled at the
7 name. He immediately knew what I was talking
8 about. I believe the first thing I said was her
9 name was Annette -- and I don't even remember
10 what name I said, but it wasn't Boggs. That's
11 what we eventually got to. He finally said
12 that's who it was. But as soon as I mentioned
13 it, he knew what I was talking about. Then he
14 tried to say it was no big deal, there's nothing
15 to it. Clearly, it was a big deal. Clearly, it
16 was something to it. He knew exactly what I was
17 talking about when it came up.

18 They say what incentive would Mr. White have
19 to lie on Cordelle Washington. You know, he got
20 caught. Yes, he's already been sentenced on some
21 things, but he has a deferred sentence out there.
22 They brought that up. They talked about it. He
23 said well, it doesn't matter. But it is out
24 there, folks. He's still facing sentencing. You
25 don't think he's trying to help himself? You

1 don't think he's been trying to help himself all
2 along?

3 Then you've got the statement of Quentin
4 Sullivan. All right. That's really very
5 interesting. Mr. Sullivan came in here today.
6 Keep in mind he's already been sentenced. He
7 doesn't have anything to gain or to lose at all
8 at this point. His testimony was I don't even
9 know Cordelle Washington, not really. I don't
10 remember anything about being involved in this
11 crime and I certainly don't remember anything
12 about Cordelle Washington. They say, well, you
13 gave this statement. I don't remember giving
14 that statement. I was high on cocaine, on crack.
15 I was drinking. I don't remember anything about
16 it.

17 So then they put the statement in evidence so
18 that you could look at it. They want you to
19 believe that he's telling the truth back then,
20 somehow trying not to cooperate today. What
21 would be the incentive for that? Well, perhaps
22 because the statement wasn't true to begin with.
23 He knew. Or maybe he just really doesn't
24 remember. But the truth of the matter is that
25 once he got into court and had to sit here under

1 oath and talk about what happened, he didn't go
2 along with it. He didn't go along with it.

3 This is kind of the -- this is really where
4 the rubber hits the road right up here. This is
5 where you have to face the person that's being
6 accused. This is where you have to swear to tell
7 the truth. This is where you are subject to
8 cross-examination. A lot of people wither in
9 that situation with good reason. But when called
10 up to report this story, he didn't do it.

11 There's something also kind of strange about
12 this when you look at it. He was brought in on
13 May the 8th, the same day that they questioned
14 Mr. White, so presumably, they've got them both
15 down there as they are talking to them. Maybe
16 not in the same room. They got them both there.
17 The Solicitor indicated they had no way of
18 knowing, blah, blah, blah what each other was
19 saying. Well, they did have one thing in common,
20 that was, the person that asked them the
21 questions was the same detective who provided
22 whatever information he had or wanted them to
23 have when he was asking questions which, of
24 course, we don't know anything about. We don't
25 have any videotape or audiotape or anything else.

1 We don't know what he asked them, how he asked
2 them. All we know is he got them to sign a
3 waiver of rights and then he took the statement
4 which he wrote out for them himself.

5 What's funny about Quentin's though is it
6 initially wasn't signed. After going through all
7 of this, it wasn't signed. Then they bring him
8 back three days later and that's when he says, oh
9 yeah, we just got all busy talking to each and
10 stuff and we forgot to sign it. Now, that may
11 seem like a little thing. But these are all
12 things that you have to call into question.

13 Ladies and Gentlemen, you are the jury in
14 this case. You are the finders of fact. Your
15 job is to hold them to their burden. You have to
16 be skeptical in this case. That's what you're
17 called upon to do. Now, the Solicitor, it seemed
18 to me, was trying to minimize the burden a little
19 bit. Well, you don't have to be proven guilty
20 beyond a reasonable doubt. Just be firmly
21 convinced, blah, blah, blah. It is an important
22 and substantial burden.

23 We already talked about if this were civil
24 case, then it would just be by preponderance of
25 the evidence. In some motion hearings, Family

1 Court, that type of thing, it is by a substantial
2 amount of evidence, clear and convincing
3 evidence. But in a case like this, it is beyond
4 a reasonable doubt. Firmly convinced. Would you
5 bet something that's important to you? Do you
6 believe in it that much? That's what we're
7 talking about in this case.

8 I told you when you consider all this, the
9 Devil is in the details. The Devil is in the
10 details. You want to look at the details. Now,
11 when you get people to get together or somebody's
12 trying to get people together to support a story
13 or set of facts, it's easy to get the big things
14 right. Okay. Burger King on South Pleasantburg,
15 three people, those types of things. But when
16 you start to look at all the little details,
17 that's where you find your consistency or your
18 inconsistency. This whole case rests on these
19 statements. This whole case rests on these
20 statements.

21 So you have to, if you are going to live up
22 to the oath that you took. All of you, when this
23 thing started said that you would well and truly
24 try this case. What that really means in a
25 criminal case is holding them to their burden.

1 Okay? So look at the facts and look at all the
2 little details in this case. When you look at
3 these statements, even if we assume that both of
4 these were just completely, freely and
5 voluntarily given, there are so many
6 inconsistencies in these statements and you could
7 go back there and look at them.

8 Mr. White said that he was driving the car.
9 He was driving. He was certain. And they pulled
10 up and stopped behind the Honey Baked Ham. I
11 brought that up somewhere in cross-examination.
12 I guess the Solicitor thought a little bit about
13 it. She threw out there when she was talking to
14 him. She was trying to cover that. She knew I
15 would hit it. She knew it was an important
16 point. She said, you are from Anderson, aren't
17 you? You don't really know all the businesses
18 and stuff over here. He was living over here,
19 been living over here for a while. He very
20 specifically said the Honey Baked Ham. Some of
21 you may be familiar with that area. That Honey
22 Baked Ham is in a strip shopping center. It's
23 over there -- I don't want to call it a shopping
24 center. It's like four or five businesses.

25 It is, as you heard from, uh, -- let me make

1 sure I get the name right -- Ms. Harrison, it's a
2 couple of buildings down from where the Burger
3 King is. Okay. He was very specific. They
4 stopped. That's where they stopped the car,
5 okay, and that he was driving. He's the one who
6 says that Mr. White said he had this BB gun and
7 he claims that Cordelle had this BB gun. That's
8 important. Nobody else mentions there being a
9 second gun. We only have two eyewitnesses and
10 that are the two victims in this case.

11 Ms. Harrison testified that there were three
12 individuals, that one of them had a gun and one
13 of them had either a stick or a pipe. This could
14 be what she was talking about. It actually looks
15 like something used to lift weights that had been
16 cut off. I don't know. But it certainly doesn't
17 look like a stick. Only one person with a gun.
18 Okay.

19 Then you heard from Mr. Ashmore who said the
20 same thing. One of them had a stick or a gun.
21 One of them had a stick or a pipe and one of them
22 had a gun. Nobody else mentioned that there was
23 a second person with a gun. We know -- we know
24 that one of the people that was wearing a blue
25 hoodie, something like the one that they found in

1 Mr. White's car, was standing over Mr. Ashmore
2 with a gun. So why would Mr. White bring up a
3 second gun? Perhaps because he knew that they
4 had found two BB guns in his car. I don't know,
5 but that is an inconsistency.

6 If you look at this statement that Sullivan
7 was supposed to give, he says he was driving the
8 car. He was driving the car. He say that they
9 parked at Tanner's Big Orange. Those are real
10 inconsistencies. Look at those. He says only
11 one person had a gun. He didn't mention anything
12 about there being a second person with a gun. He
13 said that he broke out, he, being Quentin
14 Sullivan, said that he broke out the door with
15 the concrete block. Actually, I think Mr. White
16 said that. It gets confusing because they are
17 all over the place with this stuff. But you can
18 look at those statements and you can recollect
19 what they had to say when they were on the
20 witness stand.

21 Now, we've heard a lot about the orange
22 jacket that was supposed to have been Cordelle
23 Washington's. Mr. White even admitted that it
24 wasn't Cordelle Washington's. That it was
25 something that he might have worn at some point.

1 It had been destroyed. He was just kind of
2 cryptic about how that happened. I'm not sure
3 why, given the fact that he wanted to be so
4 forthcoming about everything else. He was very
5 cryptic when it came to that.

6 Now, folks, one thing that just kind of
7 jumped out at me there at the end, I didn't
8 really see it coming and the Solicitor said to
9 you, she said it had to be three people. We know
10 there were three people. Why would they make it
11 Cordelle Washington?

12 Then they put the fingerprint guy up. I'm
13 not hardly bothered with the fingerprint guy. We
14 know -- everybody's already testified there
15 weren't any fingerprints. But in the end --
16 well, they did. He mentioned -- and I don't know
17 if you caught it or not -- that they checked
18 prints for four suspects. Four suspects. Four.
19 One of them was named Cordelle Sullivan. Until
20 he mentioned that name, I had never heard of
21 Cordelle Sullivan in here today. Had not heard
22 any testimony about that. There's a fourth
23 person that we didn't hear anything about except
24 from the fingerprint guy. So there's your fourth
25 -- there's another guy that, for whatever reason,

1 we hadn't heard anything about until we have
2 heard his fingerprints had been tested.

3 That is something to think about. That's
4 something to raise -- just like, as you look
5 through this, remember none of these guys called
6 each by their names. They all had nicknames.
7 They had Quentin they said was called Q. Andrew
8 was called Drew. But these people that they are
9 supposed to be so close to as you read through
10 these, they are referring to each other by just
11 their proper names. Proper names.

12 So, that's all the evidence in this case,
13 folks. That's really what you got to make your
14 decision on. I'm going to try to sum up just a
15 little bit and then I'm going to sit down. This
16 is always the hard part. I tell every jury this.
17 Any of these solicitors that tried any cases with
18 me is probably going to get tired of me saying
19 this. This is the hardest part. Now, I have to
20 go over there and realize the thing that I didn't
21 point out, the things that I didn't say. It's
22 important. I am an advocate for Mr. Watson.
23 This is his day in court. He doesn't get another
24 bite at this.

25 They have not lived up to their burden of

1 proof in this case. They have brought in two
2 statements that arrived with inconsistencies and
3 with things that don't match up with any
4 corroborating evidence in this case. They are
5 stuck with that. They are right. They don't get
6 to choose their witnesses in the case. But they
7 are stuck with what their witnesses have to say.

8 In this particular case, one of their
9 witnesses wouldn't even come in here today and
10 corroborate what he was supposed to have said
11 back closer to when this happened in 2006. Again,
12 if you want to look at the difference of why that
13 might be is Mr. White has something to gain. He
14 has that deferred sentence hanging over his head,
15 but Mr. Sullivan does not. Mr. White doesn't
16 particularly like Cordelle Washington because of
17 whatever his trouble is between him and his
18 baby's mama or girlfriend or whatever she was,
19 which he tried to say it wasn't big deal, wasn't
20 anything to it, but he knew exactly what I was
21 talking about although I got the name wrong. It
22 seemed like a big deal at the time. Nothing like
23 that, of course, with Mr. Sullivan.

24 Then you've got all these inconsistencies
25 that just don't match up. You've got all -- just

1 a complete lack of physical evidence that links
2 Cordelle Washington to this crime that had
3 occurred. Then you have this name that's just
4 kind of thrown out there by accident, of a fourth
5 suspect that we never heard anything about in
6 this case. Those were all important.

7 On the one hand, it would be easy for you to
8 go back there and say the guy said he did it.
9 They pretty much have everything consistent with
10 each other, let's just find him guilty. You
11 know, they wouldn't be doing their job and they
12 wouldn't be holding them to their standard of
13 proof in this case. So I am going to now trust,
14 because I know that you folks take your burden of
15 proof very seriously, I know you have listened
16 attentively, I know that you are going to go
17 through this evidence.

18 If you have any doubts, if you get back there
19 and you say, well, the Solicitor said this and
20 defense counsel said this or whatever, this young
21 lady right over here has been taking down
22 everything that's been said. So if you have any
23 questions about the testimony, if you want it
24 cleared up, we can get it cleared up for you.
25 It's all been taken down on the record.

1 It's getting late in the day, but, folks, you
2 know, you got to take your time on something like
3 this. You owe it to Mr. Washington in this case.
4 He is the one on trial. He is the one that's
5 accused. Consider all this carefully and hold
6 them to their burden of proof, no matter how much
7 time it takes. You have to be firmly convinced.
8 You have to feel like if there was something that
9 mattered to me riding on this, that I feel
10 comfortable with their decision. You have to
11 consider everything that we talked about in this
12 case.

13 We really appreciate you being here. We look
14 forward to your decision on this case. Folks,
15 the correct verdict in this case is a verdict of
16 not guilty based on the lack of evidence in this
17 case. Thank you very much.

18 **THE COURT:** All right. No one in or out of
19 the courtroom while I charge. So if anyone needs
20 to leave, now is the time to do it. (Pause.)

21 Now, Mr. Foreman, Ladies and Gentlemen of the
22 jury, the Defendant in this case is first
23 indicted for burglary in the second degree. This
24 is a statutory offense, and Section 16-11-312 of
25 our Code of Laws reads, in part, as follows: a

1 person is guilty of Burglary in the second degree
2 if a person enters a building without consent and
3 with the intent to commit a crime therein and the
4 entering or remaining occurs in the nighttime.

5 So what the State must prove with respect to this
6 charge is that this Defendant entered the Burger
7 King in the nighttime without consent of the
8 owners and with the intent to commit a crime once
9 inside. "Enter without consent" means to enter
10 without the consent of the person in lawful
11 possession or by using deception, artifice, trick
12 or misrepresentation to gain consent to enter.

13 The Defendant is next indicted for Armed
14 Robbery. In order for you to understand this, I
15 will first define for you the crime of larceny.
16 "Larceny", Ladies and Gentlemen, is defined as
17 the taking and carrying away by any person of the
18 property or things personal with the intent to
19 permanently deprive that owner of his or her
20 property and with the intent to commit it to
21 one's own use.

22 Now, "robbery", is the felonious -- that is,
23 the unlawful taking -- of money, goods or
24 personal property from the person or another or
25 in his or her presence and by using violence or

1 putting that person in fear. Now, robbery
2 includes all the elements of larceny that I just
3 defined for you but the aggravating circumstances
4 necessary to constitute robbery as distinguished
5 from larceny is, first of all, the taking must
6 not only be without consent, but it must also be
7 accomplished by violence or by putting that
8 person in fear.

9 Next, the property must be taken from
10 another. But if it is taken in his or her on
11 presence, it is taken constructively from that
12 person. In other words, for the purpose of
13 robbery, a thing is in the presence of a person
14 if it be within his or her reach, inspection,
15 observation or control so that he or she could
16 retain possession of it if not overcome by
17 violence or by being put -- prevented by fear.

18 Now, "armed robbery", Ladies and Gentlemen,
19 is robbery as I have defined that to you while
20 being armed with a deadly weapon. Now, Section
21 16-11-330 of our Code of Laws reads, as follows:
22 any person convicted for the crime of robbery
23 while armed with a pistol, dirk, slingshot, metal
24 knuckles, razor or other deadly weapon or while
25 alleging either by action or words he was armed

1 while using a representation of a deadly weapon
2 or any other object which a person present during
3 the commission of the robbery reasonably believed
4 to be a deadly weapon.

5 The Defendant is next indicted for possessing
6 a firearm during the commission of a violent
7 crime. This, too, is a statutory offense. In
8 Section 16-23-490 of our Code of Laws provides in
9 part as follows: if a person is in possession of
10 a firearm or visibly displays what appears to be
11 a firearm, uh, during the commission of a violent
12 crime and is convicted of committing or
13 attempting to commit a violent crime as defined
14 in Section 16-1-60, he must be imprisoned. So
15 before this Defendant can be convicted of this
16 crime, he must first have been found guilty by
17 you, the jury, of armed robbery as I have defined
18 that to you. The State must prove beyond a
19 reasonable doubt that this Defendant was in
20 possession of, or what appeared to be, a firearm,
21 as I defined that to you, during the commission
22 of the crime of armed robbery.

23 The Defendant is lastly indicted for
24 kidnaping. This, too, is a statutory offense.
25 Section 16-3-910 of our Code of Laws provides, in

1 part, as follows: whoever shall unlawfully seize,
2 confine, inveigle, decoy, kidnap, abduct or carry
3 away any other person by any means whatsoever
4 without authority of law shall be guilty of a
5 felony. Kidnaping, Ladies and Gentlemen, is the
6 taking or carrying away by a person from one
7 place to another by unlawful force or by fraud
8 and against that person's will.

9 Now, there are several elements of this
10 offense, each of which the State must prove.
11 First of all, there must be an intent to violate
12 the law and, in this case, to kidnap. "Intent"
13 means an aim, a purpose or a goal. Stated
14 differently, it's the state of a person's mind
15 which directs his action in violating the law.
16 Next, there must be a taking or a carrying away
17 of a person from one place to another. In this
18 connection, the place from which or to which the
19 person is removed is not material. Any removal
20 of a person after he or she is under control of
21 the taker, with the requisite intent to kidnap,
22 is sufficient because it is the fact of removal
23 and not the distance that constitutes kidnaping.

24 Next, force must be involved. This does not
25 necessarily mean actual physical force, injuring

1 the person, but can result from the threatened
2 use of force by placing that person in fear of
3 his or her life or sustaining serious bodily
4 harm. Lastly, there must be an absence of
5 consent by the person allegedly kidnaped. That
6 is, the taking or carrying away must be against
7 the will of the person allegedly kidnaped. If
8 the person taken, who is capable in law of
9 consenting, goes voluntarily and without
10 objection, there could be no kidnaping.

11 Ladies and Gentlemen, a principal in a crime
12 is one who either perpetrates that crime or, who
13 being present, aids, abets, and assists in its
14 commission. One does an act in the presence of
15 and with the assistance of another. The act is
16 done by both or by all. Where two or more,
17 acting with a common design or intent are present
18 at the commission of a crime, it matters not by
19 whose immediate agency it is committed, for all
20 are guilty. Intent, however, is a necessary
21 element, for there must have been a common design
22 or intent to commit the crime and the crime must
23 have committed pursuant thereto with the person
24 aiding and abetting by some overt act. Presence
25 at the commission of a crime needs to be

1 sufficiently near so as to be able to aid and
2 abet and assist in its commission.

3 Ladies and Gentlemen, our law does not compel
4 a Defendant of a criminal case to take the
5 witness stand and testify and no presumption of
6 guilt may be raised and no inference of any kind
7 may be drawn from this Defendant's decision not
8 to testify. Our law never imposes upon a
9 Defendant in a criminal case the burden or duty
10 of calling any witnesses or producing any
11 evidence or testifying. Therefore, the decision
12 of this Defendant not to take the stand and
13 testify in his behalf can not be taken or,
14 however, discussed or considered against him in
15 any manner whatsoever.

16 Now, Ladies and Gentlemen, I am the judge of
17 the law in this case. You are the judges of the
18 facts. The Constitution of our state does not
19 allow me to charge you on the facts of this case
20 or to discuss the facts with you or, in any way
21 or manner, let you know what my personal
22 feelings, if any, are about this case. That's
23 because you and you alone are the judges of the
24 facts. Therefore, if, during the course of this
25 trial or if during the course of my charge, you

1 have a feeling or you have been left with the
2 impression that I have a personal feeling about
3 this case one way or another, then you disregard
4 that feeling or that impression.

5 Now, it's your duty and your duty alone to
6 weigh the testimony and the evidence presented in
7 this case and to pass upon the credibility and
8 the believability of the witnesses you heard
9 testify. In this connection, you have a right to
10 believe all that a witness told you or you could
11 disbelieve all a witness told you. You can
12 believe part of what a witness told you and
13 disbelieve part of what a witness told you. You
14 can believe one witness against several or you
15 can believe several as against one. You also
16 have the right to take into consideration any
17 bias or prejudice or interest you feel a witness
18 in the case might have.

19 Now, as the judge of the law in this case, I
20 am required to charge the law that applies to the
21 facts. It's not a question of what you feel the
22 law might be or what it should be. It is not
23 necessarily what the lawyers may have told you it
24 is because, under your oath, you are required to
25 take the law as I give it to you, apply that law

1 to the facts as you determine those facts to be
2 and to write your verdict accordingly.

3 In this case, as in all criminal cases, this
4 Defendant comes into this courtroom presumed to
5 be innocent. This presumption continues and
6 carries through the entire trial until and unless
7 it is removed by evidence that satisfies you of
8 his guilt beyond a reasonable doubt. The burden
9 is on the State in this case to prove this
10 Defendant guilty and to prove each and every
11 element of the offenses with which he is charged
12 beyond a reasonable doubt.

13 Now, some of you may have in the past served
14 as jurors in civil cases and, if so, you were
15 most likely told that it was only required to
16 prove a fact was more likely true than not true.
17 But in criminal cases, the State's proof must be
18 more powerful. As I told you, it must be beyond
19 a reasonable doubt.

20 Now, proof beyond a reasonable doubt is proof
21 that leaves you firmly convinced that this
22 Defendant is guilty as charged. There are very
23 few things in this world that we know with
24 absolute certainty. In criminal cases, our law
25 does not require proof that overcomes every

1 possible doubt. If, based on your consideration
2 of the testimony and evidence in this case, you
3 are firmly convinced that this Defendant is
4 guilty, then you must find him guilty. If, on
5 the other hand, you think there is a real
6 possibility that he's not guilty, then you must
7 give him the benefit of that doubt and find him
8 not guilty.

9 Ladies and Gentlemen, under the oath you took
10 in this case, you swore to try this case based
11 only and solely on the testimony and evidence
12 presented in this courtroom. I tell you that it
13 is your duty to lay aside all outside, uh,
14 opinions, bias, prejudice or sympathy you may
15 have in reaching your verdict.

16 The word "verdict", Ladies and Gentlemen, is
17 taken from the Latin word "veredicto". It means
18 to speak the truth. You have no enemies to
19 reward or punish in this case or friends to
20 reward. I charge you to abide by your oath and
21 return a verdict that speaks the truth.

22 You will have in the jury room with you the
23 three indictments in this case. These
24 indictments do not constitute evidence. They
25 simply set forth the allegations by the state.

Jury Charge

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1 These indictments are the legal documents that
2 bring this case into the courtroom and presents
3 it to you for your determination.

4 Now, Ladies and Gentlemen, with respect to
5 the indictment for burglary second degree, there
6 are only one of two possible verdicts, guilty or
7 not guilty. With respect to the other
8 indictments, the two possible verdicts, guilty or
9 not guilty. And whatever those verdicts are,
10 Ladies and Gentlemen, they must be unanimous,
11 that is, all 12 of you must agree.

12 Mr. Foreman, you will find a place on the
13 back of the indictment where it says verdict. On
14 the burglary, you would write out guilty or not
15 guilty and sign where it says foreperson. On each
16 of the other two cases, there is a Count 1 and
17 Count 2. Armed Robbery. And then Count 2 is
18 Possession of a Weapon during the Commission of a
19 Violent Crime. I put Count 1, Count 2 on the
20 back of the verdict. The jury is asked to reach
21 a verdict, guilty and not guilty on each count.
22 And the same with respect to the indictment for
23 kidnaping. He allegedly kidnaped two people.
24 Count 1 and Count 2, the jury must find a verdict
25 on each of those two counts. Okay.

1 Now, at this time, I'm required to go over my
2 charge with the lawyers. I need you to go back
3 into your jury room. Don't begin deliberating
4 until I send word in to do so. Thank you.

5 (WHEREUPON, the jury exits at approximately
6 3:42 p.m.)

7 **THE COURT:** All right. Anything further
8 from the State?

9 **MS. PRICE:** Uh, yes. Unfortunately, Your
10 Honor, with regards to the charge, uh, we only
11 instructed the jury as to the nighttime hour
12 element of the burglary, not to the aggravator of
13 having a deadly weapon or what appeared to be a
14 deadly weapon.

15 **THE COURT:** I don't think that applies. The
16 statute for burglary is deadly weapon. I don't
17 think it -- there's no language about the
18 appearance of one so I'm not going to change the
19 charge on that.

20 **MS. PRICE:** Okay. Your Honor, I don't
21 believe that any language is given as to someone
22 entering with a deadly weapon. It was simply
23 nighttime hours.

24 **THE COURT:** That's all I'm going to charge,
25 Solicitor. Okay.

1 MS. PRICE: Okay.

2 THE COURT: All right. Anything else, Mr.
3 Chambers?

4 MR. CHAMBERS: No, Your Honor.

5 THE COURT: Okay. Tell them to begin
6 deliberating. Tell them we will bring in the
7 exhibits to them as soon as we get them together.
8 Bring my alternate.

9 (WHEREUPON, the alternate juror enters at
10 approximately 3:44 p.m.)

11 THE COURT: Ms. Murphy, since our 12 jurors
12 have made it through this case, this will
13 conclude your service on this one.

14 Uh, Shirley, can she call in after 6:00?

15 THE CLERK: Yes. Yes. Thank you.

16 THE COURT: Call in after 6:00. They'll let
17 you know when you can come back. Thank you very
18 much.

19 THE JUROR: Thank you.

20 (WHEREUPON, the alternate juror exits at
21 approximately 3:44 p.m.)

22 (WHEREUPON, jury deliberation begins at
23 approximately 3:45 p.m.)

24 (WHEREUPON, the Court resumes at approximately
25 5:01 p.m.)

1 **THE COURT:** I'm going to let them know that
2 if they are not going to reach a verdict very
3 shortly, I'm going to let them go home and come
4 back in the morning.

5 Ask them if they are going to reach a verdict
6 in the next five or ten minutes.

7 **(WHEREUPON, the bailiff exits the courtroom at**
8 **approximately 5:02 p.m.)**

9 **(WHEREUPON, the bailiff enters the courtroom and**
10 **approaches the bench at approximately 5:03 p.m.)**

11 **THE COURT:** Okay. Bring them on in.

12 **(WHEREUPON, the jury enters at approximately**
13 **5:04 p.m.)**

14 **THE COURT:** Ladies and Gentlemen, at this
15 time, we are going to recess for the evening.
16 We'll pick back up tomorrow morning at nine
17 o'clock. When you leave, please remember do not
18 talk about this case among yourselves or with
19 anyone else. If anybody contacts you and tries
20 to talk to you about the case, get their names
21 and addresses and report that to me. Please keep
22 your badges on. Have them on when you come back
23 in the morning. Please remember the other
24 admonitions I've read to you from the order of
25 the Chief Justice.

1 Mr. Foreman, if you are all back before nine
2 o'clock in the morning, you can start back with
3 your deliberations.

4 **THE JUROR:** Yes, sir.

5 **THE COURT:** Just don't start until all 12 of
6 you are back together, okay?

7 **THE JUROR:** Yes, sir.

8 **THE COURT:** Be here promptly at 9:00 and
9 pick back up. Thank you. See you in the
10 morning.

11 (WHEREUPON, the jury exits at approximately
12 5:05 p.m.)

13 **THE COURT:** All right. See you in the
14 morning.

15 **MS. PRICE:** Thank you, Judge.

16 (WHEREUPON, the Court recesses for the day at
17 approximately 5:06 p.m.)

1 P R O C E E D I N G S

2 (WHEREUPON, the proceeding begins on the 8th day
3 of December, 2010 at approximately 9:10 a.m.)

4 (WHEREUPON, jury deliberation resumes at
5 approximately 9:10 a.m.)

6 (WHEREUPON, the Court resumes at approximately
7 9:37 a.m.)

8 THE COURT: All right. Bring this jury in.

9 (WHEREUPON, the jury enters at approximately
10 9:41 a.m.)

11 THE COURT: All right. Mr. Foreman, you've
12 asked to hear the testimony of, uh, Mr. White and
13 Mr. Sullivan replayed. I can do that on the
14 backup recording by the Court Reporter. Then you
15 want me to redefine second degree Burglary and
16 Kidnaping. Is that correct?

17 THE JUROR: Yes, sir.

18 THE COURT: All right, sir. We'll play back
19 the testimony for you first. Okay. All right.

20 (WHEREUPON, the entire testimony of Andrew White
21 is played back at approximately 9:43 a.m.)

22 (WHEREUPON, the entire testimony of Quentin
23 Sullivan is played back at approximately 10:17 a.m.)

24 (WHEREUPON, played back testimony concludes at
25 approximately 10:26 a.m.)

1 **THE COURT:** All right. Ladies and
2 Gentlemen, I'll recharge you the definitions of
3 Burglary and Kidnaping. First of all, burglary
4 in the second degree and Section 16-11-312 of our
5 Code provides, in part, as follows: a person is
6 guilty of burglary in the second degree if the
7 person enters a building without consent and with
8 the intent to commit a crime therein and either
9 when affecting entry or while in the building or
10 in immediate flight therefrom, he and another
11 participant in the crime uses or threatens the
12 use of a dangerous instrument, displays what is
13 or appears to be a knife, pistol, revolver,
14 rifle, shotgun, machine gun or other firearm or
15 the entering or remaining occurs in the
16 nighttime. That is the definition of burglary in
17 the second degree.

18 Now, "enter without consent" means to enter
19 without the consent of the person in lawful
20 possession of the building or by using deception,
21 orifice, trick or misrepresentation to gain
22 consent to enter. Now, there must have been an
23 intent to commit a crime once in the building.
24 But the intended crime need not be actually
25 committed or accomplished. "Intent" means a

1 purpose, an aim or design. It means the state of
2 a person's mind which directs his actions towards
3 a specific act.

4 Kidnaping is a statutory offense. Section
5 16-3-910 provides in part whoever shall
6 unlawfully seize, confine, inveigle, decoy,
7 kidnap, abduct or carry away any other person by
8 any means whatsoever without authority of law
9 shall be guilty of a felony. Kidnaping is the
10 taking and carrying away of a person from one
11 place to another by unlawful force or by fraud or
12 against that person's will.

13 The elements necessary to constitute
14 kidnaping, first of all, there must be an intent
15 to violate the law, in this case, to kidnap or to
16 commit such an armed robbery. "Intent" means an
17 aim, a purpose or a goal. Stated differently, it
18 is the state of a person's mind which directs his
19 action in violating the law.

20 Next, there must be a taking or carrying away
21 of a person from one place to another. In this
22 connection, the place from which the person is
23 removed is not material. Any removal of a person
24 after he or she is under control of the taker
25 with the requisite intent to kidnap would be

1 sufficient. That's because it is the fact of
2 removal and not the distance which constitutes
3 kidnaping.

4 Next, force must be involved. This does not
5 necessarily mean actual physical force hindering
6 the person, but can result from the threatened
7 use of force by placing the person in fear of his
8 life or sustaining serious bodily harm. Lastly,
9 there must be an absence of consent by the person
10 allegedly kidnaped. With that, I'll ask that you
11 retire to your jury room and continue with your
12 deliberations. Thank you.

13 (WHEREUPON, the jury exits at approximately
14 10:32 a.m.)

15 THE COURT: All right.

16 (WHEREUPON, jury deliberation resumes at
17 approximately 10:33 a.m.)

18 (WHEREUPON, Court's Exhibit 1 is marked for
19 identification purposes.)

20 (WHEREUPON, the Court resumes at approximately
21 11:36 a.m.)

22 THE COURT: Okay. Bring our jury please.

23 (WHEREUPON, the jury enters at approximately
24 11:37 a.m.)

25 THE COURT: Mr. Foreman, if you've reached a

1 verdict, would you hand it to the bailiff please
2 sir.

3 (WHEREUPON, the verdict forms are passed up.)

4 THE CLERK: Your Honor, this is case number
5 2008-GS-1673, the State versus Cardelle Tyrine
6 Washington. He's indicted for two counts of
7 Kidnaping. The verdict is Count 1, guilty.
8 Count 2, guilty. 2008-GS-1671, he's indicted
9 with Armed Robbery and Possession of a Weapon
10 during the Commission of a Violent Crime. Count
11 1, guilty. Count 2, guilty. 2008-GS-1672, he's
12 indicted with Burglary second degree violent.
13 The verdict is guilty. All indictments are
14 signed Nicky Jones, the defend -- the foreperson.
15 This is your verdict so say you all?

16 (WHEREUPON, each juror responds.)

17 THE CLERK: Thank you.

18 THE COURT: Anything further from the jury,
19 Counsel?

20 MS. PRICE: Nothing further from the State,
21 Your Honor.

22 MR. CHAMBERS: No, Your Honor.

23 THE COURT: Thank you, Ladies and Gentlemen,
24 for your service on this case. I can give you
25 the rest of today off but we probably going to

1 need you back tomorrow. What I need you to do is
2 call in the number that was given to you on
3 Monday. Call in after 6 p.m. tonight, after
4 6:00. Thank you so much. You are free to go.

5 (WHEREUPON, the jury exits at approximately
6 11:39 a.m.)

7 **THE COURT:** Any motions, Mr. Chambers?

8 **MR. CHAMBERS:** Your Honor, uh, just for the
9 record, I would make a motion to, uh, for a
10 verdict not -- for a judgement not withstanding
11 the verdict and also a motion for a new trial.

12 **THE COURT:** And I would have to deny those
13 motions.

14 Now, you exercised your constitutional right
15 not to testify during your trial. At this time,
16 you have a perfect right to address the court
17 concerning sentence. Is there anything you'd
18 like to say concerning sentence at this time?

19 **MR. WASHINGTON:** At the moment right now,
20 ain't nothing coming to mind.

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

22 **MR. MARCHANT:** Judge, if I could give you a
23 little history of how we are where we are and
24 explain some things that came up in the trial
25 with some sentences on the other Defendants, I

1 think that would give you some foundation or
2 provide an accurate sentence in this case. Mr.
3 Washington, along with Mr. White and Mr. Sullivan
4 were charged in seven different armed robberies
5 here in Greenville County. Two with the city,
6 five with the sheriff's office. At the time Mr.
7 White was arrested, you heard that he cooperated
8 with law enforcement, gave an account of his
9 involvement as well Mr. Washington's involvement
10 and Mr. Sullivan's involvement in those various
11 robberies.

12 When Mr. Sullivan pled, he pled before Mr.
13 White. The recommendation on Mr. Sullivan was
14 that he be sentenced to 25 years. Judge Miller
15 accepted that recommendation. Mr. White pled the
16 following day. The recommendation for Mr. White
17 was 20 years. At the time of the plea for Mr.
18 Sullivan, the victim's from the Carolina's Fresh
19 Fish Market on Anderson Road, that incident, were
20 not present in Mr. Sullivan's plea. They were
21 present in Mr. White's plea. At that time, Judge
22 Miller deferred the sentence on Mr. White because
23 he was unsure at the time if Mr. White should
24 receive, I guess, the same benefit or receive the
25 benefit of the 20-year recommendation versus the

1 25-year recommendation. Judge Miller took that
2 upon himself to defer that sentence. That was
3 not a request of the State nor of the defense.

4 So Mr. White's serving 20. Mr. Sullivan's
5 serving 25. They were all charged from the same
6 top to bottom. Mr. Washington, following these
7 incidents in Greenville County, was then arrested
8 in Anderson County and charged with Armed Robbery
9 for which he pled guilty to back on June the 19th
10 of 2007. He received a 10-year sentence on that
11 sentence. The recommendation that our office
12 made at the time to Mr. Washington prior to going
13 to trial was a 25-year concurrent sentence. All
14 of the charges here in Greenville to run
15 concurrent with the one in Anderson. He did not
16 accept that offer. We are here today. We would
17 ask that you to sentence Mr. Washington
18 accordingly. I don't believe Investigator Conroy
19 has anything to add.

20 Ms. Price?

21 **MS. PRICE:** We just would go with what Mr.
22 Marchant has related to the Court.

23 **THE COURT:** So other than what you told me,
24 does he have a prior record? If so, what is it?

25 **MR. MARCHANT:** He has the Armed Robbery

1 from Anderson that I believe occurred after all
2 the ones in Greenville. 2005, Simple A&B, 2005,
3 Failure to Comply, Uninsured Motor Vehicle, Hit
4 and Run and a CDV which all looks like they were
5 magistrate level offenses. I would have to go
6 back and check. I don't believe that Mr.
7 Sullivan or Mr. White had any other convictions
8 other than the ones surrounding these incidents.

9 **THE COURT:** All right. Anything further?

10 **MR. CHAMBERS:** Just briefly, Your Honor. He
11 did in fact plead guilty to those charges over in
12 Anderson. They did occur after these were
13 alleged to have occurred. He doesn't have a
14 significant prior record. Everything that the
15 Solicitor said as far as the plea negotiations is
16 accurate.

17 I can say that my client would have
18 entertained a plea to something that would not
19 have given him additional time. But we weren't
20 able to work that out. Under the circumstances,
21 I would ask that the Court consider not punishing
22 him, certainly, any more harshly than Mr.
23 Sullivan was.

24 My client did, of course, exercise his
25 constitutional right to speak and also to go to

1 trial but would ask if the court, Your Honor, not
2 necessarily hold that against him. We did go to
3 trial on one set of charges and got a "not
4 guilty" verdict. Then we face these charges.
5 It's not a lot you could say at this point, but
6 he doesn't have a significant prior record.

7 **THE COURT:** Thank you. (Pause.)

8 All right. Mr. Washington, on the indictment
9 for Armed Robbery, the sentence of the court is
10 you be committed to the Department of Corrections
11 for a period of 30 years. Five years on the
12 Possession of a Weapon during the Commission of a
13 Violent Crime. On each of the two Kidnaping
14 counts, 30 years. On the Burglary second degree,
15 15 years. The sentences will run concurrent.

16 **MR. CHAMBERS:** Thank you, Your Honor.

17 **MR. MARCHANT:** Thank you, Your Honor.

18 **MS. PRICE:** Thank you, Your Honor.

19 (WHEREUPON, the proceeding concludes at
20 approximately 11:49 a.m.)
21
22
23
24
25

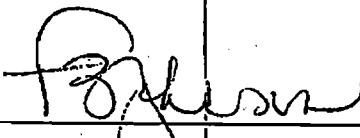
CERTIFICATE

232

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of General
8 Sessions for Greenville, South Carolina, on the 12th
9 day of February, 2011.

10 I do further certify that I am neither of kin,
11 counsel nor interest to any party hereto.

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Teresa B. Johnson
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)CADELLA T. WASHINGTON)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-23-

APPLICATION FOR

POST-CONVICTION RELIEF

S.C. Code Ann. § 17-27-20

S.C. Code Ann. § 17-27-45 (A)

INSTRUCTIONS TO READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention PERRY C. I.
2. Name and location of Court which imposed sentence GENERAL SESSIONS
GREENVILLE, SOUTH CAROLINA
3. Name(s) of co-defendant(s) (if any) ANDREW WHITE, QUENTIN
SULLIVAN
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-23-001671 (ARM ROBBERY + POSS. OF A WEAPON
DURING A VIOLENT CRIME)

- (b) 2008-GS-23-001672 (BURGLARY 2ND B VIOLENT)
- (c) 2008-GS-23-001673 (KIDNAPPING (x2))
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Dec 8, 2010 (30 years CONCURRENT) Dec 8, 2010 (5 YEARS CONCURRENT)
- (b) DEC 8, 2010 (15 YEARS CONCURRENT)
- (c) DEC 8, 2010 (30 YEARS CONCURRENT) DEC 8, 2010 (30 YEARS CONCURRENT)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence? YES
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. DISMISSED
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. FEBRUARY 20, 2013
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (c) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE ATTACHED SHEETS
- (b) SEE ATTACHED SHEETS
- (c) SEE ATTACHED SHEETS

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

10 (a): Applicant was denied the right to effective assistance of counsel - guaranteed by the 5, 6, and 14 Amendments to the United States Constitution and by Article 1, §§ 3, 11, 12, and 14 of the South Carolina Constitution

11 (a): Supporting facts: Trial counsel's performance was unreasonable and prejudicial. Counsel's acts and omissions included, but are not limited to the following:

- 1.) Counsel fail to raise Double Jeopardy claim at applicant trial. Before the jury was sworn.
- 2.) Counsel fail to object to prosecution's improper line of direct examination of state witness Douglas Ashmore was highly improper and far more prejudicial to the applicant.
- 3.) Counsel fail to motion for a direct verdict on Arm Robbery Indictment #2008-GS-1671 do to insufficiency of the Indictment language.
- 4.) Counsel fail to motion for a direct verdict on Count 1 Kidnapping of Gladys Harrison Indictment #2008-GS-1673 do to insufficiency of evidence.

- 5.) Counsel fail to object to the prosecution improper comments in closing argument regarding other unrelated cases.
- 6.) Counsel fail to object to the prosecution improper comment in closing argument for falsely stating applicant called Andrew White and Quentin Sullivan as witness.
- 7.) Counsel fail to object to the prosecution improper vouching for two state witness's Andrew White and Quentin Sullivan written statements.
- 8.) Counsel fail to object to the prosecution questioning of Andrew White that no one from her office, or from the state, or anyone else promised anything in exchange for his guilty plea.

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) N/A
 (c) N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? YES YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. RAUDALL L. CHAMBERS
201 E. NORTH ST GREENVILLE, SC 29601
 ii. BREEN R. STEVENS: DIVISION OF APPELLATE
DEFENSE P.O. BOX 11589 Columbia, SC 29211-1589
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. MR. CHAMBERS DURING TRIAL AND SENTENCING
 ii. MR. STEVENS DURING DIRECT APPEAL
 iii. _____

19. State clearly the relief you seek in filing this application:

VACATE SENTENCE

20. Are you now under sentence from any other court that you have not challenged?

YES

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, Cardelle T. Washington, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Cardelle T. Washington

SWORN to and subscribed before me this 2nd day of July, 2013.

Nancy C. Murchant (L.S.)
Notary Public

My Commission Expires: 1-23-2013

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Carlette T. Washington, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Carlette T. Washington
Applicant

SWORN or affirmed to and subscribed before me this

2nd day of July, 2013.

Nancy M. Murchant
Notary Public

My Commission Expires: 1.23.2023

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-23-4177

COUNTY OF GREENVILLE)

Cardelle Tyrone Washington,¹)
S.C.D.C. No. 290074,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)**RETURN**

In response to the post-conviction relief application filed August 2, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2010 term of General Sessions for armed robbery (2008-GS-23-1671, count 1), possession of a weapon during commission of a violent crime (2008-GS-23-1671, count 2), second-degree burglary (2008-GS-23-1672), and two counts of kidnapping (2008-GS-23-1673, counts 1 and 2). Randall L. Chambers, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On December 8, 2010, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of thirty

¹ The South Carolina Department of Corrections lists the Applicant's name as Cordell Tyrone Washington.

years for armed robbery, five years for possession of a weapon during commission of a violent crime, fifteen years for second-degree burglary, and thirty years for each count of kidnapping.

A notice of appeal was filed at the South Carolina Court of Appeals. Breen R. Stevens, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders² brief. The Court of Appeals dismissed the appeal. State v. Washington, Op. No. 2013-UP-079 (S.C. Ct. App. filed February 20, 2013). The Remittitur was sent on March 15, 2013.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to raise double jeopardy claim before the jury was sworn.
 - b. Failed to object to State's direct examination of Douglas Ashmore.
 - c. Failed to move for directed verdict on indictment 2008-GS-23-1671 due to the insufficiency of the indictment language.
 - d. Failed to move for directed verdict on indictment 2008-GS-23-1673 (Gladys Harrison charge) due to insufficiency of the evidence.
 - e. Failed to object to State's improper comments in closing argument regarding unrelated events.
 - f. Failed to object to the State's improper comment in closing argument "for falsely stating applicant called Andrew White and Quentin Sullivan as witness."
 - g. Failed to object to State's improper vouching for Andrew White and Quentin Sullivan.
 - h. Failed to object to State's questioning Andrew White and saying

² Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

"that no one from her office, or from the state, or anyone else promised anything in exchange for his guilty plea."

In a pro se "Motion to Amend" filed September 6, 2013, the Applicant made the following additional allegations:

1. Ineffective assistance of trial counsel:
 - a. "Counsel erred in asking for a judgment notwithstanding the verdict (JNOV) in a criminal trial."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney

performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

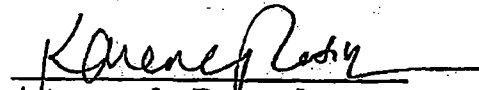
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

April 8, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2013-CP-23-4177

CARDELLE TYRONE WASHINGTON, 290074)

Applicant,)

vs.)

AFFIDAVIT OF SERVICE BY MAIL

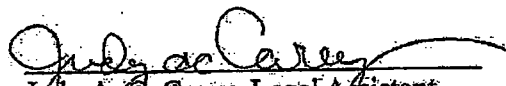
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Cordell Tyrone Washington, 290074
 Perry Correctional Institution
 430 Oaklawn Road
 Pelzer SC 29669

DATED this 8th day of April, 2014.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CARDELLE WASHINGTON,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2013-CP-23-04177

AUGUST 28, 2014

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE JAMES R. BARBER, III, JUDGE

APPEARANCES:

MILLS ARIAIL, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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PLAINTIFF'S EXHIBITS

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STATE'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1

AUGUST 28, 2014

2

(WHEREUPON, court convened with all parties

3

present and the following proceedings were had.)

4

THE COURT: All right. We ready to go?

5

MS. RATIGAN: Yes, Your Honor. May it please

6

the court. This is the case of Cardelle Washington

7

versus the State of South Carolina. Docket number is

8

2013-CP-23-4177. Mr. Washington was indicted for armed

9

robbery, possession of a weapon during the commission

10

of a violent crime, second degree burglary and two

11

counts of kidnaping. He was represented on these

12

charges by Mr. Chambers. The case was brought to trial

13

in December of 2010 before Judge Pyle. He was found

14

guilty of the charges as indicted.

15

On December 8th of 2010, Judge Pyle sentenced him

16

to concurrent terms of thirty years for armed robbery,

17

five years for the weapons charge, fifteen years for

18

the second degree burglary and thirty years on each of

19

the kidnaping counts. These again were to be

20

concurrent.

21

The case was appealed. The Court of Appeals

22

dismissed the Anders brief in this case in February of

23

2013. This application was timely filed and the State

24

is ready to proceed.

25

THE COURT: All right. Mr. Ariail.

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1 MR. ARIAIL: Thank you, Your Honor. We'll
2 call Mr. Washington to the stand.

3 THE CLERK: Mr. Washington, please place your
4 left hand on the bible and raise your right hand.

5 You do solemnly swear or affirm that the testimony
6 you're about to give in this case will be the truth,
7 the whole truth and nothing but the truth, so help you
8 God?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Thank you. Please state your
11 full name for the record.

12 THE WITNESS: Cardelle Tyrone Washington.

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

14 **CARDELLE TYRONE WASHINGTON,**

15 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

16 **DIRECT EXAMINATION**

17 **BY MR. ARIAIL:**

18 Q. Mr. Washington, hey, how you doing today?

19 A. Fine. You, sir?

20 Q. Good. We discussed your case and you sent me
21 numerous documents in regards to the issues you've got
22 and your PCR. I want to go through them and try to
23 take them one by one. First and foremost, you were
24 represented by Mr. Chambers; is that correct?

25 A. Yes, sir.

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1 Q. Was he appointed as your public defender?

2 A. Yes, sir.

3 Q. Okay. When you were -- I guess, these charges, I
4 want to make sure the Judge has the return and the
5 information in regards to it. There was the armed
6 robbery charge, possession of a weapon during a violent
7 crime, second degree burglary, two counts of kidnaping.
8 Those are the charges you faced; correct?

9 A. Yes, sir.

10 THE COURT: Mr. Ariail, I do not have a copy
11 of the return.

12 MR. ARIAIL: Okay.

13 THE COURT: I've read the application.

14 MR. ARIAIL: Would you like a copy of the
15 return, Your Honor?

16 THE COURT: Well, do you have a copy?

17 MS. RATIGAN: I can give you a copy out of my
18 file.

19 THE CLERK: I'll give him the copy out of our
20 file.

21 MS. RATIGAN: Okay.

22 THE COURT: Is there something in the return
23 that's different from the normal return that the State
24 filed?

25 MR. ARIAIL: No. I just was going to bring

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1 in the application and wanted to reference it because
2 he's got a lot of the issues raised as part of it ---

3 THE COURT: I've read his application.

4 MR. ARIAIL: We'll go through it. This is
5 fine, Your Honor.

6 THE COURT: Thank you.

7 Q. When you were arrested on these charges, how
8 long, I guess, after you were arrested did you meet
9 with Mr. Chambers?

10 A. I'm not exactly sure of the exact time, but if I
11 could give an estimate, I would say about 2009, at the
12 end of 2009, maybe 2010, at the beginning. I want to
13 say about in there.

14 Q. What I'm asking is, when you were arrested -- do
15 you remember when you were arrested on those charges?

16 A. Yes, sir.

17 Q. What was the date of that?

18 A. 11/15/07.

19 Q. 11/15/07. Okay. So from 11/15/07, you're saying
20 to the end of 2009, you didn't -- I mean, that's the
21 first time you met with Mr. Chambers. Is that correct?

22 A. That's what I'm remembering. I'm not exactly
23 sure. I could be wrong. That's what I'm remembering.

24 Q. Okay. Let's go back through it. When you were
25 arrested, did you post bond on this?

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1 A. No.

2 Q. So you stayed in jail the entire time?

3 A. I was already incarcerated up under another
4 sentence and I was arrested at SCDC.

5 Q. Okay. So when these charges came up, they served
6 you the warrants down there?

7 A. Yes.

8 Q. Okay. So then how long -- did you have another
9 -- any other representation before Mr. Chambers?

10 A. No, sir.

11 Q. Okay. So from 2000 -- whenever you got the
12 arrest warrant in 2007, till the end of 2009, you're
13 saying no communication with Mr. Chambers?

14 A. No, sir.

15 Q. Okay. Did you have a preliminary hearing on
16 these matters?

17 A. Yes. No, sir. No, sir. No, sir, I did not.

18 Q. Okay. Do you remember receiving any discovery on
19 these charges and when you got it?

20 A. No, sir.

21 Q. Okay. So tell me from your -- when you were
22 served with the warrants where were you; at SCDC at
23 that time?

24 A. Yes, Perry Corrections.

25 Q. Okay. So you were at Perry. From 2007 to 2009,

- 1 Mr. Chambers didn't come down, no one from the Public
2 Defender's Office came down to meet with you?
- 3 A. No, sir.
- 4 Q. Okay. Did you have any telephone conferences,
5 any communication with anybody about these charges?
- 6 A. No, sir.
- 7 Q. Okay. So in 2009, that's the first time you
8 talked with Mr. Chambers, I guess, the end of that
9 year?
- 10 A. That's what I'm remembering.
- 11 Q. Where do you remember meeting him?
- 12 A. I remember meeting him here at the courthouse my
13 first time, from what I remember.
- 14 Q. Okay. So the first time you came up, what
15 happened at that date when you met with him? Where did
16 you meet; downstairs?
- 17 A. Yes, sir.
- 18 Q. Okay. Now, when you met with him, what did y'all
19 discuss?
- 20 A. Some other charges kind of related to these on
21 another case.
- 22 Q. Okay. Now, I want to make sure that Judge Barber
23 understands this. Is that you were represented by him
24 on another armed robbery that was, I guess, separate
25 charges; not a part of this? Is that correct?

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1 A. Yes.

2 Q. So that involved a different location; is that
3 right?

4 A. Yes.

5 Q. And what was the location in that one?

6 A. No, I mean, the same location. Still in the
7 courthouse, just down in a room.

8 Q. What I'm asking is, the set of charges that you
9 discussed with him that first time, those dealt with an
10 armed robbery at a location, and what was the name of
11 that location?

12 A. In a meeting room at the courthouse.

13 Q. No. What was the ---

14 THE COURT: Where did the alleged armed
15 robbery take place?

16 A. Oh, 4 Mills Avenue. Mills Avenue.

17 Q. Okay. So it was separate and apart from the
18 Burger King robbery that you went to trial for?

19 A. Yes, sir.

20 Q. Okay. Now, you discussed with him those charges.
21 Did he represent you on those?

22 A. Yes, sir.

23 Q. And I think you were -- you went to trial on
24 those, too; correct?

25 A. Yes, sir.

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- 1 Q. And you were acquitted for that; right?
- 2 A. Yes, sir.
- 3 Q. Okay. So then you had -- I guess he picked up
- 4 your representation for the Burger King charges, too;
- 5 correct?
- 6 A. Yes, sir.
- 7 Q. When did you discuss the first time with him
- 8 about the Burger King charges?
- 9 A. The day of the, the day of the court. The day of
- 10 -- December 7th, 2010.
- 11 Q. Okay. So December 7th, 2010, that was a day
- 12 before -- I guess the same day you began trial in this
- 13 matter?
- 14 A. Same day.
- 15 Q. But you don't remember talking to him about it
- 16 before that?
- 17 A. No, sir.
- 18 Q. Never had any meetings?
- 19 A. No, sir.
- 20 Q. Were you ever housed at the law enforcement
- 21 center here?
- 22 A. Yes, sir.
- 23 Q. How long were you there?
- 24 A. I arrived there December the 6th, the day before
- 25 the trial.

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1 Q. Okay. So never had any conversation with him
2 down there?

3 A. No, sir.

4 Q. Did you ever receive any information in the mail
5 about those charges from him?

6 A. No, sir.

7 Q. Did you ever get any discovery from him about
8 these charges?

9 A. No, sir.

10 Q. So when you got here on December -- talked with
11 him on December 7th, what did y'all discuss?

12 A. I came up, he came in, the trial started.

13 Q. Say that again?

14 A. I came up, he came in and the trial started.

15 Q. Okay. So y'all never had a conversation before
16 about anything?

17 A. No, sir.

18 Q. So the first time you met him is when you walked
19 through one of these doors inside the courtroom and
20 started trying the case?

21 A. Yes, sir.

22 Q. Okay. Did you ever meet with anybody in his
23 office, an investigator; anybody about this?

24 A. No, sir.

25 Q. Okay. So what was your reaction when you walked

1 through a door and you're being tried for a case you
2 haven't even talked to your defense attorney about?

3 A. Shocked.

4 Q. Did you make a motion or request, hey, I'm not
5 going forward with this. I want a continuance because
6 I've never talked to him.

7 A. No, sir. From my understanding, I didn't want to
8 be rude or disrespectful and just yell out in the
9 courtroom and paint a more negative picture of me than
10 what was already going on.

11 Q. I understand that. I'm just trying to figure out
12 an approach for the Judge. You're saying you and him
13 hadn't discussed any discovery, hadn't talked about the
14 case, hadn't gotten elements of the case ---

15 A. No, sir.

16 Q. --- or the charges? And you're looking at
17 potentially thirty years, which you got on this, and
18 you don't make a -- you don't tell the Judge, hold on,
19 stop a second, let me talk to my attorney? I'm just
20 trying to figure out why you didn't do that?

21 A. I just didn't want to be rude or negative, sir.
22 That's the only thing I can say.

23 Q. Okay. So after you -- so you go forward, you
24 pick a jury and you try this case. Did you have any
25 discussions with Mr. Chambers during the trial as to,

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1 hey, you know, here are things you need to concentrate
2 on, here are potential witnesses you need to call,
3 here's an alibi I had? Any of that?

4 A. The only time I said something to Mr. Chambers
5 was when -- regarding the name of a female, when I had
6 told him of me and Mr. White had a slight disagreement
7 about this female. And that was it.

8 Q. Mr. White was one of the Co-Defendants; right?

9 A. Yes, sir.

10 Q. Now, so you go forward. Were there any witnesses
11 you asked him to call?

12 A. There was one in particular I wanted him to call,
13 but I never had a chance to call or let him know to
14 call.

15 Q. Did you tell him that?

16 A. At the end of February 11th, 2010 -- at the end
17 of the February 11th, 2010 trial, at the end of that
18 trial, sir, yes, I did.

19 Q. Okay. So at the end of the first trial, you told
20 him there was a witness for the second armed robbery at
21 Burger King?

22 A. Yes, sir.

23 Q. Who was that witness?

24 A. A Teresa Merritt. She was the witness in that
25 trial who testified that the alleged suspects was two

1 white males and one black male. I told Mr. Chambers at
2 the end of that trial, should I have to go receive
3 another trial for another armed robbery, to call her
4 back on my behalf, because they're saying all the armed
5 robberies was connected due to the same alleged
6 suspects.

7 Q. Okay. I want -- this is a key piece right here.
8 The other armed robbery that you had been charged with
9 and Mr. Chambers represented you on, did those occur on
10 the same night, same time?

11 A. Around the same time frame, same criminal
12 episode. Like they're saying all these robberies
13 happened in this certain area and the suspects is the
14 ones -- suspects committed all these robberies.

15 Q. Okay. Let's go through it. Are they on the same
16 date?

17 A. No, sir.

18 Q. Okay. What were the dates for the alleged -- I
19 guess the one on Fort Mill or Mill -- where did you say
20 it happened?

21 A. I'm not exactly sure of the exact date. It's in
22 my file over there.

23 Q. Okay. Well, just -- maybe you can help me with
24 this. Was it two days apart? Was it a week apart?
25 Was it a month apart?

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1 A. Could have been days, maybe a week apart.

2 Q. Okay. You're saying that Ms. Merritt, in that
3 trial, said that it was two white males and a black
4 male that did the robbery of the Hardee's?

5 A. Did the robbery of the Hardee's; yes, sir.

6 Q. Excuse me. And that is related to the Burger
7 King robbery?

8 A. Yes, sir.

9 Q. Okay. And he knew about that and you asked him
10 to bring that up in the second trial, I guess?

11 A. Yes, sir. At the end of that trial before I
12 left, yes, sir, I did.

13 Q. Okay. The trial with Burger King, I thought one
14 of the witnesses -- I think there were two eyewitnesses
15 that said there were three black males; correct?

16 A. Yes, sir.

17 Q. Okay. So I guess what I'm trying to figure out
18 is how does two white males and a black male robbing a
19 place relate to three black males robbing a Burger
20 King?

21 A. It relates because the names -- or the alleged
22 Co-Defendants, they originally wrote and gave
23 statements is the same ones in that trial that said I
24 committed that crime with them, allegedly.

25 Q. Okay. Expand on that a little bit. Who are you

- 1 talking about? You're talking about Quinton Sullivan
2 and ---
3 A. Andrew White.
4 Q. Andrew White. They're the same ones that wrote
5 statements in the previous armed robbery?
6 A. Yes, sir.
7 Q. And what's -- I mean ---
8 A. They allegedly gave statements saying that when
9 they committed the armed robbery at the Hardee's, that
10 I was their third participant in that trial -- I mean,
11 in that crime with them.
12 Q. Okay.
13 A. All right. And this armed robbery, the same two
14 alleged Co-Defendants giving alleged statements saying
15 that I was the third participant with them in that same
16 description and all that.
17 Q. All right. Did you ever have a discussion with
18 Mr. Chambers about whether or not you wanted to bring
19 that, you know, past armed robbery up and how it
20 potentially could affect you in front of a jury or any
21 strategy decisions he made in regards to that?
22 A. No, sir, there was no discussion of that. But
23 just me stating to him I would like to have Teresa
24 Merritt to be called back on my behalf.
25 Q. Okay. Now, and I want to -- you've got a list of

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1 issues, one which I know you've been discussing with
2 me. You say that it's double jeopardy in this case for
3 them to try you on this armed robbery currently with
4 Burger King?

5 A. Yes, sir.

6 Q. How are you saying that these two are -- that
7 there's double jeopardy in this case?

8 A. The same evidence pretty much, was two alleged
9 Co-Defendants and their statements or their testimony.

10 Q. Okay. But there are two separate events;
11 correct?

12 A. There are two separate events.

13 Q. Okay. Now, did you ever discuss double jeopardy
14 or any issues with Mr. Chambers?

15 A. No, sir.

16 Q. Okay. Now, I want to go through it. You've got
17 some prejudicial statements you say were made during
18 the closing argument by Ms. Price?

19 A. Yes, sir.

20 Q. As far as -- well, first let me go back. I'll
21 come back to that. Did you ever receive a plea offer
22 in this matter?

23 A. No, sir.

24 Q. Okay. So you're saying you didn't receive any
25 type of documentation from Mr. Chambers or the Public

1 Defender's Office about a plea offer?

2 A. No, sir.

3 Q. Do you know if you ever were offered anything?

4 Did the solicitor ever say anything in court or during
5 any of your hearings?

6 A. No, sir.

7 Q. Okay. Now, Ms. Price, who was the solicitor, you
8 said she made certain statements during her closing
9 argument that were prejudicial to you?

10 A. Yes, sir.

11 Q. One of which you say is that she was -- in
12 reference that you called Andrew White and Quinton
13 Sullivan as witnesses in your case?

14 A. Yes, sir.

15 Q. How are you saying that is prejudicial to you?

16 A. By basically she's saying to the jury, I expected
17 Andrew White and Quinton Sullivan to come and testify
18 on my behalf, to lie for me, so that I would avoid any
19 more time in SCDC.

20 Q. All right. I've read the transcript and I don't
21 know if she said she called them on behalf, but she
22 said, I think, that they -- you brought them into play
23 by doing an armed robbery with them. Is there any -- I
24 mean, you specifically cite, transcript 223, lines 1
25 through 17 -- excuse me. It was 188, lines 8 through

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1 12?

2 A. Yes, sir.

3 Q. Did she say anything anywhere else or say, you
4 know, any reference to you specifically calling them or
5 just those lines right there?

6 A. She never specified in those exact words, but to
7 my recollection of -- from what I read, it was the
8 paragraph before that where she was talking about how
9 could lying help them if they were, in fact, telling a
10 lie on me. It's in page transcript 187.

11 Q. Okay.

12 A. And it goes off into transcript page 188, lines 8
13 through 12. And also in there she stated that they
14 were my friends and my co-conspirators.

15 Q. Okay. And I've read through -- one of the issues
16 you have is also that he has failed -- Mr. Chambers
17 failed to object to where, I guess, they have not been
18 promised or given anything, Mr. Sullivan and Mr. White,
19 for their testimony?

20 A. Yes.

21 Q. I've read through it. I know he cross-examined
22 them in regards to what they had been -- where they
23 were with the charges, and I think they both had pled
24 guilty. One had been sentenced at the time and the
25 other hadn't been sentenced.

1 A. To correct that, sir, it was failure to object to
2 the question of Andrew White, not Quinton Sullivan.

3 Q. Okay.

4 A. And saying that no one from her office or from
5 the state or anywhere else promised him anything in
6 exchange for his guilty plea. And that was, see
7 transcript page -- see transcript, page 94. That's
8 when that question occurred on that page. But later on
9 in the trial, see transcript page 228 and 229, Mr.
10 Marchant made her indicate there that was, in fact, a
11 recommendation of a twenty year sentence for Mr. White
12 allowed to plea, versus the twenty-five that Mr.
13 Sullivan had for his guilty plea.

14 Q. Okay. I want to go through this. The burglary
15 second charge in this case, and Judge Pyle, I think,
16 initially charged and left out a provision in the
17 charge for possessing a weapon -- deadly weapon during
18 a crime.

19 A. As far as that, that's not in there. I would
20 like a motion to amend that to my PCR, if I may.

21 Q. You're making that -- that's one of your grounds
22 I think you've pled?

23 A. Yes. But it's not in the PCR. I would like to
24 amend -- do a motion to amend on that.

25 Q. I mean, you've got an exhibit we're going to

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1 attach, too, to this?

2 A. Yes.

3 Q. And those are the questions. But I want to try
4 to figure out what you're alleging as a result -- he
5 didn't charge it in the beginning and then he recharged
6 the jury and apparently added that in. So in the
7 beginning, I think -- and I'm trying to figure that out
8 -- it was beneficial to you, what you're saying is he
9 left it out, but then when he recharged it, he added
10 another provision in there about a deadly weapon being
11 involved. Is that correct?

12 A. If I can, yeah, I need to amend this before -- on
13 that, sir.

14 Q. Yeah, please.

15 THE COURT: Do y'all have any objection to
16 amending that?

17 MS. RATIGAN: No, Judge.

18 THE COURT: All right.

19 A. Cardelle Washington, Applicant, versus The State
20 of South Carolina, Respondent. Case Number 2013-CP-23-
21 04177, Motion to Amend Pursuant to Rule 15, South
22 Carolina Rules of Civil Procedure (a) through (d). Now
23 comes the applicant, Cardelle Washington, and in a
24 motion to amend pursuant to Rule 15 (a) through (d),
25 South Carolina's Rules of Civil Procedure, to amend the

1 original PCR filed unto the court on August 2nd, 2013.
2 The applicant further asserts that his motion to amend
3 is hereby submitted in accordance with the Article 1
4 and 14 of the South Carolina Constitution. The amended
5 allegations are herein stated and the applicant shows
6 unto the court the following: The applicant asserts
7 his due process rights were violated under the Sixth
8 and Fourteenth Amendment of the United States
9 Constitution, as well as Article 3 and 14 of the South
10 Carolina Constitution. The amended allegation is
11 counsel failed to object to the Judge's recharge of
12 burglary second, transcript page 223, lines 1 through
13 17; also transcript page 218; also transcript page 208
14 and transcript page 213, as well as case, Bailey versus
15 State, 709 S.E.2nd 671. In conclusion, the applicant
16 asserts that his motion to amend pursuant to Rule 15
17 (a) through (d) of the South Carolina Constitution
18 Rules of Civil Procedures is properly filed and
19 submitted unto this honorable court. However, he
20 further asserts that his constitutional right under
21 Article 1 and 14 of the South Carolina Constitution,
22 the herein stated amended application caused the
23 applicant to be deprived of his due process and equal
24 protections right in violation ---

25 THE COURT: Hold on a minute. If we've

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1 agreed to the amended, we don't need to read the
2 amended application. That's already of record.

3 MR. ARIAIL: Yeah. You don't have to read
4 that. It's already been amended.

5 THE COURT: You just need to tell us what
6 your basis for those issues are.

7 THE WITNESS: Okay.

8 Q. Right. And what we're trying to get down to now,
9 and I want to understand, did you have a discussion
10 with or any reason why -- I know Ms. Price, during the
11 -- after the initial charge, asked for it to be
12 recharged and Judge Pyle did not recharge it?

13 A. Yes, sir.

14 Q. So then he -- when the questions comes from the
15 jury, he charges differently than ---

16 A. Yes.

17 Q. --- before?

18 A. Yes, sir.

19 Q. Did you have a discussion with Mr. Chambers in
20 regards to that?

21 THE COURT: Explain that to me again. He
22 charged ---

23 MR. ARIAIL: He added, from my understanding,
24 my review of it, it looks like he adds where it appears
25 to be -- and I'll give you the transcript.

1 THE COURT: Tell me where you are.

2 MR. ARIAIL: 223 on line ---

3 THE WITNESS: 1 through 17.

4 MR. ARIAIL: I think it's actually -- it goes

5 down closer to 12, 223/12, if I'm not mistaken. His

6 initial charge on second degree burglary is 208, 1

7 through 12. And it appears he does not put in the

8 language about the weapon. Displays what appears to be

9 a knife, pistol, revolver, rifle, shotgun, machine gun

10 or other firearm, entering -- the remaining -- occurs

11 in the nighttime. So that was added in.

12 THE COURT: It's y'all's position that that's

13 not the correct charge?

14 MR. ARIAIL: His position is that initially

15 when he charged it ---

16 THE COURT: I understand it wasn't included.

17 At least y'all are alleging it wasn't included

18 initially. But are you alleging it's not a correct

19 charge?

20 MR. ARIAIL: No. I'm not alleging that. I

21 can't. Because that's part of the indictment. From

22 what I've told him, as part of the indictment is ---

23 THE WITNESS: No. No.

24 MR. ARIAIL: He might be alleging something

25 different than I am.

1 THE WITNESS: I'm alleging that the
2 indictment alleges that I allegedly had what appears to
3 be a deadly weapon. During the recharge he alleges
4 different prongs that's in the burglary statute by
5 saying the person, the person whom allegedly -- the two
6 suspects, that one didn't have the weapon and the other
7 person allegedly had the weapon, then I could be found
8 guilty through ---

9 THE COURT: Hand of one, hand of all? Is
10 that right?

11 MR. ARIAIL: That's what the charge was in
12 the beginning, hand of one, hand of all.

13 THE WITNESS: If I can get that paper over
14 there.

15 MR. ARIAIL: Just tell me why you need with
16 the paper.

17 THE WITNESS: The paper that's got the
18 burglary second statute on it. Okay. For burglary
19 second, it has burglary second (a) and burglary second
20 (b), and how he read it or how -- the indictment
21 charged me with burglary second, when a person enters a
22 building -- a person is guilty of burglary second
23 degree if the person enters a building without consent
24 with the intent to commit a crime therein is armed with
25 a deadly weapon or uses what appears to be a deadly

1 weapon and the entering occurred or remaining occurs in
2 the nighttime hours. That's what the indictment reads.
3 But when he reread -- when he recharged the jury, he
4 recharged the jury on burglary second (a) and (b) and
5 all the prongs that's in it, which is a person is
6 guilty of burglary in the second degree if a person
7 enters a building without -- intends to commit a crime
8 therein and while in effecting entry or while in the
9 building or in the immediate flight therefrom, he or
10 another participant in the crime, causes -- not causes
11 -- uses or threatens the use of a deadly instrument or
12 displays what appears to be a pistol, knife, revolver,
13 shotgun, machine gun or firearm and the burglary occurs
14 in the nighttime hours.

15 THE COURT: I still don't understand what
16 he's saying.

17 MR. ARIAIL: And let me ---

18 THE COURT: That seems to -- I mean, I know
19 there's some additional stuff that's not in the
20 indictment, but he seems to have tracked the indictment
21 in his charge.

22 MR. ARIAIL: Yeah. And I think what he's
23 trying to get at, and I think what he's not ...

24 Q. You're saying he charged in this, too, he and
25 another participant, is that what you're saying, was

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Cardelle Washington - Cross Examination by Ms. Ratigan

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1 different, that he shouldn't have charged?

2 A. Yes, sir.

3 Q. Okay. So that's the language you're saying. It
4 had to be you specifically?

5 A. Yes.

6 Q. Okay. And did you understand the hand of one,
7 hand of all aspect?

8 A. Yes. I understand, sir. And he also read that
9 into trial by his self without having to put those
10 prongs in. The jury returned the indictment as they
11 seen fit, which was use of deadly weapon or what
12 appeared to be a deadly weapon, entering or occurred in
13 the nighttime hours.

14 THE COURT: Anything further?

15 MR. ARIAIL: Nothing, Your Honor. Thank you.

16 THE COURT: Anything, Ms. Ratigan

17 MS. RATIGAN: Very briefly, Your Honor.

18 CROSS EXAMINATION

19 BY MS. RATIGAN;

20 Q. So Mr. Chambers also represented you on the
21 Hardee's charges?

22 A. Yes.

23 Q. And you had meetings with him about those
24 charges?

25 A. Yes.

- 1 Q. And while you met with him about these Hardee's
2 charges, did you also talk about these Burger King
3 charge?
4 A. No, ma'am, I did not.
5 Q. You never talked about it at all?
6 A. No, ma'am.
7 Q. You never saw any of the discovery or any
8 evidence on these Burger King charges?
9 A. No, ma'am.
10 Q. You never got a chance to tell Mr. Chambers your
11 version of what happened that day?
12 A. On the Burger King charges; no, ma'am.
13 Q. Okay. And you told him about Teresa Merritt at
14 the end of that first trial?
15 A. Yes, ma'am.
16 Q. And what did he say when you said, Mr. Chambers,
17 I think we need to call Teresa Merritt at the second
18 trial?
19 A. He stated to me that, hold on, let me talk to the
20 prosecution to see what they say and he would get back
21 to me.
22 Q. Okay. And you testified you weren't aware of any
23 kind of prior plea offer?
24 A. Yes, ma'am.
25 Q. All right. But didn't Mr. Marchant mention

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1 during sentencing that there had been a twenty-five
2 year recommendation in this case? Do you remember him
3 saying that?

4 A. No, ma'am.

5 Q. You don't recall that at all?

6 A. No, ma'am. The only time I was offered a twenty-
7 five year sentence is before the first trial, ma'am.

8 Q. So you're saying on these charges you never had
9 any kind of offer?

10 A. No, ma'am.

11 MS. RATIGAN: That's all I have, Your Honor.

12 THE COURT: Anything?

13 MR. ARIAIL: Nothing further, Your Honor.

14 THE COURT: All right. Thank you, sir. You
15 may step down.

16 MR. ARIAIL: That is our case.

17 THE COURT: All right. Anything from the
18 State?

19 MS. RATIGAN: Yes, Your Honor, we'd call Mr.
20 Chambers.

21 THE CLERK: Mr. Chambers, place your left
22 hand on the bible and raise your right hand.

23 You do solemnly swear or affirm that the testimony
24 you're about to give in this case will be the truth,
25 the whole truth and nothing but the truth, so help you

1 God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. Please state your
4 full name for the record.

5 THE WITNESS: My full name is Randall Lee
6 Chambers.

7 RANDALL LEE CHAMBERS,

8 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. RATIGAN:

11 Q. Mr. Chambers, do you recall representing Mr.
12 Washington on these charges related to the Burger King?

13 A. I do.

14 Q. And did you, in fact, represent him on charges
15 related to an armed robbery of a Hardee's?

16 A. I did.

17 Q. And were you appointed on these cases or
18 retained?

19 A. Appointed.

20 Q. Did you file the usual discovery motions?

21 A. I did.

22 Q. And that's related to these Burger King charges?

23 A. It's related to all of his charges.

24 Q. And did you receive, to the best of your

25 knowledge, did you receive full discovery from the

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1 State on these charges?

2 A. I did.

3 Q. Did you ever meet with Mr. Washington
4 specifically for the purpose of discussing these Burger
5 King charges?

6 A. I did.

7 Q. Did you review the discovery related to these
8 charges with him?

9 A. I did.

10 Q. Did you review the charges, the elements and the
11 penalties; things of that nature?

12 A. I went over all that with him.

13 Q. Did he tell you his version of what happened that
14 day?

15 A. Well, I mean, his version was that he was never
16 involved in it. So, yeah, we talked about it.

17 Q. Okay.

18 A. And you know, for what it's worth, from what I
19 could see there wasn't a lot of evidence that he was
20 involved in it other than statements of Co-Defendants.

21 Q. And did you review those Co-Defendant statements
22 with him?

23 A. I did.

24 Q. Now, Mr. Washington testified he was arrested at
25 the end of 2007, but that he did not meet with you for

1 about two years. Does that sound accurate?

2 A. You know, I don't recollect. I will tell you
3 what I recollect from -- because I remember Cardelle,
4 and I remember his cases pretty well. He was
5 incarcerated. He was in the Department of Corrections
6 when I got the case. And I honestly don't remember
7 what he was incarcerated for at the time. And it's
8 always harder to -- you know, to have the contact you
9 need with somebody when they're in the Department of
10 Corrections. I honestly didn't remember, until he said
11 it a few minutes ago, that he was in Perry. That
12 obviously makes it a little bit easier. But typically
13 what I'll do when somebody's in the Department of
14 Corrections is, I don't see them right away, the way
15 that I would if they were over here in the jail. But
16 we will usually set up either a video conference or
17 talk by phone. I think -- I mean, I remember during
18 that period that they were having problems with their
19 video conferencing equipment. But what I do recollect
20 about that case is, as the discovery came in, I had
21 Bernice, who is my secretary there at the Public
22 Defender's Office, send him all of the discovery, which
23 is what I would typically do in a case like that. And
24 I think he had even called and requested it. Because
25 he had numerous conversations with Bernice in our

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1 office, because she's always there. And of course, I
2 don't work in the Public Defender's Office. I have my
3 own office. And I had a couple of phone conversations
4 with him where we went over the discovery and what not.
5 But then he was brought over to court on a couple of
6 different occasions to discuss pleas on all of his
7 outstanding charges. And so we discussed things on
8 those occasions again and there was an offer that the
9 State -- same thing they offered Quinton, if I remember
10 correctly his last name is Taylor, but there was a
11 Quinton that was involved -- Quinton Sullivan; I'm
12 sorry. Quinton Sullivan had been offered twenty-five
13 years. For some reason White got the twenty year
14 offer. But at any rate, he was -- Cardelle was offered
15 the same twenty-five year recommendation, which, you
16 know, he turned down. He told me the first time I
17 talked to him that he wasn't involved and, you know,
18 obviously I don't want somebody to plead guilty to
19 something they didn't do. I would rather they go to
20 trial.

21 Q. Let me make sure. Was it twenty-five for all
22 those charges or just these charges?

23 A. It was twenty-five for everything.

24 Q. Okay. And you had a chance to talk about the
25 pros and cons of that kind of offer with him?

1 A. I did.

2 Q. Did you have meetings with him -- as it got put
3 on the trial docket, did you have an opportunity to
4 have more contact with him about the case?

5 A. My recollection is that -- excuse me -- I mean,
6 we had talked all along. And again, I mean, it wasn't
7 from an evidentiary standpoint a real complicated case
8 anyway. But they brought him over here prior to trial
9 and he and I met a couple of different times in the
10 week leading up to that first trial, the Hardee's
11 trial, and discussed it. And obviously, at that point,
12 we were focusing on the Hardee's case. And we went
13 over it and prepared. And fortunately for us, you
14 know, the jury found him not guilty at the first trial.
15 And then sometime later they tried him on the second
16 trial and I had some more discussions with him by phone
17 and then they brought him -- I don't remember if it was
18 the 6th, but it was a few days before trial, and we met
19 over in the jail prior to trial. And we discussed the
20 case. I mean, other than the fact it was a different
21 location, it involved all the same people, we just --
22 so we had discussions about that and what our strategy
23 would be. You know, I inquired about getting him
24 clothes, which, you know, I supplied clothes to him
25 from the Public Defender's Office. You know, so that's

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1 how we did it. I mean, there wasn't -- in all
2 honestly, I mean, there wasn't a lot -- there weren't a
3 lot of meetings. There weren't a lot -- probably a
4 couple of times by phone and then a couple of times
5 while he was over there at the jail.

6 Q. Did you feel adequately prepared for the trial?

7 A. Oh, absolutely.

8 Q. Okay. Now, Mr. Washington stated there was a
9 witness at that Hardee's trial named Teresa Merritt.

10 Do you recall her?

11 A. I don't remember that name specifically, and I
12 didn't review that. And I don't -- I thought it was a
13 different one, but it could have been Teresa Merritt.
14 But there was a witness. And this was key. I think
15 this is why I think I got the acquittal in the case.
16 Mr. Sullivan, I think to his credit, came to trial and
17 said he didn't remember anything. Because, honestly,
18 my opinion is he didn't want to lie on the record.
19 Because I don't -- I really don't think Cardelle was
20 involved. But Mr. White, the other witness, testified
21 that Cardelle had been involved. All right. Now, they
22 were all masked up and had gloves on. But one of the
23 witnesses said that the person with the gun was a white
24 guy. All right. Well, Mr. White happens to be a very
25 light skinned African-American. Cardelle and Mr.

1 Sullivan were both darker skinned. Nobody would
2 confuse them with being white, but they could have Mr.
3 White. But Mr. White had identified Cardelle as the
4 person with the gun; okay? So it seemed logical to me
5 and apparently to the jury that if the person with the
6 gun was white, it couldn't have been Cardelle, and so
7 you couldn't believe anything else, they acquitted him.
8 Now, there was never any discussions after that about
9 calling anybody involved in the Hardee's robbery as a
10 witness. We never had that discussion. But I can tell
11 you that had we had that discussion, I would have said
12 that would be the worst mistake we could possibly make.
13 First of all, I don't want this jury to know that you
14 were accused with these same two people of being
15 involved in a prior armed robbery. I mean, you might
16 as well go ahead and, you know, go off and serve your
17 prison sentence if that's what you're going to do.

18 MS. RATIGAN: That is all I have, Your Honor.

19 THE COURT: All right. Mr. Ariail.

20 MR. ARIAIL: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. ARIAIL:

23 Q. Now, Ms. White -- excuse me, Ms. Merritt, she was
24 a witness in the first, I guess, Hardee's case;
25 correct?

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1 A. I believe that to be true. I'll take your word
2 for it, that she was involved.

3 Q. Do you remember ever hearing from him that she
4 was going to be a witness or had anything to know about
5 the Burger King case?

6 A. No.

7 Q. Okay. Now, I know there was a witness that they
8 couldn't find in the Burger King case and apparently he
9 was there in the beginning and then left. Do you
10 remember that?

11 A. No. I don't remember that.

12 Q. Okay. You don't ever remember hearing that that
13 was Ms. Merritt or a witness that Mr. Washington knew
14 or anything of that nature?

15 A. No.

16 Q. Okay. Now, you had plenty -- so I guess you met
17 with him numerous times?

18 A. I honestly can't sit here and tell you how many
19 times I met with him. I heard Mr. Farnsworth say
20 earlier he's not really good with paperwork. I've
21 gotten a lot better about it, but I wasn't always good
22 about writing down in the file and stuff every time I
23 talked with somebody. But I can tell you that I met
24 with him enough, and I mean, I was prepared to go
25 forward. I was very comfortable with the level of

1 preparation. And I can tell you that he knew what was
2 going on and he was prepared, as well.

3 Q. Okay. It looks like, as you said, it was
4 straightforward. It was Co-Defendant testimony, no
5 physical evidence. Did he ever tell you anything about
6 an alibi, any other place he was?

7 A. No.

8 Q. Now, this burglary second issue, do you remember
9 or recall having a discussion or, you know, ---

10 A. I just remember the judge reading the statute. I
11 don't remember there being a problem with the charge.
12 Had I believed that there was a problem with the
13 charge, I would have objected. But if I missed
14 something relative to the charge, then, you know, I
15 guess that should be more to his benefit.

16 Q. He appealed this matter, too; correct?

17 A. I think so, yeah. I think I got a notice that he
18 appealed it.

19 Q. Okay. Bear with me one second. So during the --
20 prior to the Hardee's case, y'all had discussed, he had
21 already been indicted -- well, not indicted -- but he
22 had already been arrested for the Burger King charges?

23 A. Yeah. All those things were pending at the same
24 time. And there was an offer on the table that would
25 have taken care of everything that he had.

Cardelle Washington -vs- State of South Carolina (2013-CP-23-04177)
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1 Q. Okay. And that offer, I guess, the one he got,
2 was Mr. Sullivan and Mr. White included -- well, I
3 guess when they pled, were all their charges, along
4 with ---

5 A. Yes.

6 Q. --- the Hardee's ---

7 A. He got the same offer that Sullivan got.

8 Q. Okay.

9 MR. ARIAIL: Your Honor, I have no further
10 questions.

11 THE COURT: All right. Thank you.

12 MS. RATIGAN: Thank you, Your Honor, I have
13 nothing further.

14 THE COURT: Anything else?

15 MS. RATIGAN: No, Your Honor. We would rest.

16 THE COURT: Anything else?

17 MR. ARIAIL: Your Honor, I've got one thing.

18 My client is -- wants to be called back to the stand,
19 but I'm not going to do that. He wants to submit, as
20 part of his evidence, the issues that he had. I think
21 they're a part of his return. I'm just -- he wants to
22 make sure that you have them for your review. And I
23 don't know if there's any objection from the State
24 on that. Most of these have already been included.

25 THE COURT: You can let Ms. Ratigan look at

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1 it. They look like what I reviewed.

2 MS. RATIGAN: Yeah. That's fine.

3 THE COURT: All right.

4 All right. Thank you.

5 (WHEREUPON, Plaintiff Exhibit 1 was marked and
6 admitted into evidence.)

7

8 [END OF REQUESTED TRANSCRIPT OF RECORD]

CERTIFICATE OF REPORTER

1
2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Thirteenth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Greenville County, South Carolina, on the 28th day of
10 August, 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

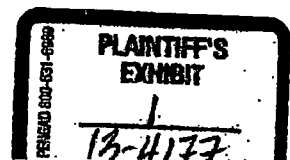
15 January 7, 2015
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Circuit Court Reporter

Ineffective Assistance of Counsel

- 1.) Failed to raise double jeopardy claim before the jury was sworn.
- 2.) Failed to object to state's direct examination of Douglas Ashmore.
Tr 76
- 3.) Failed to move for direct verdict on indictment 2008-GS-23-1671 due to the insufficiency of the indictment language. Tr 9; Tr 24
- 4.) Failed to move for direct verdict on indictment 2008-GS-23-1673 (Gladys Harrison) due to insufficiency of the evidence. Tr 9; Tr 24
- 5.) Failed to object to state's improper comments in closing argument regarding unrelated events (case). Tr 184; Tr 185
- 6.) Failed to object to state's improper comments in closing argument "for fasley stating applicant called Andrew White and Quentin Sullivan as witness". Tr 188; Tr 24; Tr 25
- 7.) Failed to object to state's improper vouching for Andrew and Quentin Sullivan statements. Tr 188; Tr 119; Tr 123; Tr 124
Tr 222
- 8.) Failed to object to state's questioning Andrew White and saying "that no one from her office, or from the state, or anyone else promise anything in exchange for his guilty plea." Tr 94; Tr 228; Tr 229
Smith v. State 754 SE 2nd 900
- 9.) "Counsel erred in asking for a judgment notwithstanding the verdict (JNOV) in a criminal trial." Tr 227
- 10.) Failed to object to Judge recharge on Burglary 2nd. Tr 223; Tr 208
Bailey v. State 709 SE 2nd 671
State v. Jones 536 SE 2nd 396
Tr 218; Tr 222



STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Cardelle Tyrone Washington,¹)
S.C.D.C. No. 290074,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-23-4177**ORDER OF DISMISSAL**FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 OCT 10 PM 3:26

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 2, 2013. The Respondent made its return on April 8, 2014. An evidentiary hearing was held on August 28, 2014 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Randall L. Chambers, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted

¹ The South Carolina Department of Corrections lists the Applicant's name as Cordell Tyrone Washington.

at the November 2010 term of the Greenville County Grand Jury for armed robbery (2008-GS-23-1671, count 1), possession of a weapon during commission of a violent crime (2008-GS-23-1671, count 2), second-degree burglary (2008-GS-23-1672), and two counts of kidnapping (2008-GS-23-1673, counts 1, 2). He was represented by Randall L. Chambers, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On December 8, 2010, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of thirty years for armed robbery, five years for possession of a weapon during commission of a violent crime, fifteen years for second-degree burglary, and thirty years for each count of kidnapping.

A notice of appeal was filed at the South Carolina Court of Appeals. Breen R. Stevens, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders² brief. The Court of Appeals dismissed the appeal. State v. Washington, Op. No. 2013-UP-079 (S.C. Ct. App. filed February 20, 2013). The Remittitur was sent on March 15, 2013.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to raise double jeopardy claim before the jury was sworn.
 - b. Failed to object to State's direct examination of Douglas Ashmore.
 - c. Failed to move for directed verdict on indictment 2008-GS-23-1671 due to the insufficiency of the indictment language.
 - d. Failed to move for directed verdict on indictment 2008-GS-23-1673 (Gladys Harrison charge) due to insufficiency of the evidence.
 - e. Failed to object to State's improper comments in closing argument regarding unrelated events.
 - f. Failed to object to the State's improper comment in closing argument "for falsely stating applicant called Andrew White and

² Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

Quentin Sullivan as witness.”

- g. Failed to object to State’s improper vouching for Andrew White and Quentin Sullivan.
- h. Failed to object to State’s questioning Andrew White and saying “that no one from her office, or from the state, or anyone else promised anything in exchange for his guilty plea.”

In a pro se “Motion to Amend” filed September 6, 2013, the Applicant made the following additional allegations:

- 1. Ineffective assistance of trial counsel:
 - a. “Counsel erred in asking for a judgment notwithstanding the verdict (JNOV) in a criminal trial.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v.

State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated trial counsel represented him on these charges (related to the Burger King robbery) and another set of armed robbery charges. The Applicant stated he was in the South Carolina Department of Corrections when trial counsel was appointed and that they did not discuss these charges. The Applicant stated he and trial counsel only discussed the other set of charges and that he was ultimately found not guilty at a trial on those charges. The Applicant stated he met with trial counsel the day before trial but that he did not see the discovery materials. The Applicant stated he told trial counsel to contact Teresa Merritt because the State's theory was that both sets of armed robberies were committed by the same people and Merritt testified at the first trial that the armed robbery was committed by two white males and one black male. The Applicant stated he never received a plea offer in this case. The Applicant stated trial counsel should have objected during the assistant solicitor's closing argument. The Applicant stated trial counsel should have objected to the trial judge's re-charge for second-degree burglary.

Trial counsel testified he filed discovery motions, received those materials, and his assistant sent a copy of them to the Applicant. Trial counsel testified the Applicant was already in the Department of Corrections when he was appointed. Trial counsel testified the Applicant was brought to court in order to discuss a plea offer and that he was brought to the jail a few days

before the trial. Trial counsel testified he met with the Applicant about these charges and that they had several phone calls about this case. Trial counsel testified he reviewed the discovery materials with the Applicant and informed him of the charges, elements, and penalties. Trial counsel testified the Applicant said he was not involved in this crime. Trial counsel testified he did not recall the Applicant asking him to have Merritt testify at this trial but that this would have been a terrible idea. Trial counsel testified the State made a twenty-five year offer for all pending charges, which the Applicant rejected.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately meet with him to prepare his case for trial. Trial counsel represented the Applicant on two sets of armed robbery charges (the trial of the first set of charges resulted in acquittal). Trial counsel testified they reviewed the charges at issue in this case and discussed the discovery materials (which was sent to the Applicant as he received it). Trial counsel testified they had numerous phone calls and meetings to review the case and that he was prepared for trial. This Court finds trial counsel's testimony is credible. This Court finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds the Applicant has failed to articulate what else trial counsel should have done to investigate or prepare his case for trial. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have called Merritt as a witness. The Applicant stated Merritt testified at his other trial (which resulted in acquittal) that two white males and one black male perpetrated the robbery. The

Applicant stated this testimony would have been helpful, as the State's position was that these robberies were committed by the same group. Trial counsel testified he did not recall discussing this. regardless, trial counsel testified this would have been a terrible idea because then Merritt could be questioned about the other armed robbery. This Court agrees with trial counsel's assessment and finds his testimony is credible. This Court finds the Applicant failed to meet his burden of proving Merritt's testimony would have been helpful – rather than harmful – at his trial. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding the PCR applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not convey a plea offer. Trial counsel testified the State made a twenty-five year offer for all pending charges, but that the Applicant rejected it. This Court finds trial counsel's testimony is credible. This Court notes the assistant solicitor mentioned this offer at trial and the Applicant did not comment or make an objection. (Trial transcript, p.229). This Court finds trial counsel fulfilled his responsibility to convey the plea offer but that the Applicant exercised his right to refuse the offer and proceed to trial. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the plea offer to defendant constituted deficient performance).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected during closing argument. During her closing argument, the assistant solicitor stated, "Ladies and Gentlemen, we didn't pick Andrew White or Quentin Sullivan as witnesses in this case. The Defendant did. He picked them because they are his friends and they are his co-conspirators." (Trial transcript, p.188, lines 8-12). This Court finds there was no meritorious objection to be made to this statement. Counsel's arguments to the jury do not constitute

evidence. See Ex parte Morris, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006) ("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence."). Further, the assistant solicitor is allowed to state her version of the testimony and comment on the weight to be given such testimony. See State v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the trial judge's re-charge to the jury on second-degree burglary. The trial judge's initial jury charge for second-degree burglary did not contain any language about the use of a weapon. (Trial transcript, p.208). At the conclusion of the jury charge, the assistant solicitor noted her exception, stating "we only instructed the jury as to the nighttime hour element of the burglary, not to the aggravator of having a deadly weapon or what appeared to be a deadly weapon." (Trial transcript, p.218). The trial judge ultimately stated "[t]hat's all I'm going to charge, Solicitor." (Trial transcript, p.218). The trial judge later re-charged the jury on second-degree burglary and kidnapping. As to the second-degree burglary charge, the trial judge included language about the use of a dangerous weapon (or that the burglary happened during nighttime hours). (Trial transcript, p.223). Trial counsel was not deficient in failing to object, as the judge is required to charge the current and correct law of South Carolina. See Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004); see also State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) (holding the law to be charged must be determined from the evidence presented at trial).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test -- that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

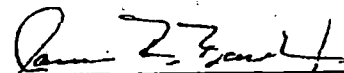
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and

2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24 day of February, 2014.



James R. Barber, III
Presiding Judge
Thirteenth Judicial Circuit

WITNESSES

T. Conroy *Ann 433*

Greenville Police Department

11/15/2007

ARREST WARRANT NUMBER

COUNT I - 1818087 COUNT II - 1818088

ACTION OF GRAND JURY

TRUE BILL

Ann Frederette
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

COUNT ONE: *Guilty*

COUNT TWO: *Guilty*

Nicky T. Gould 12-8-10
Foreperson of Petit Jury Date:

AMENDED INDICTMENT
DOCKET NO. 2008-GS-23-001671
LCM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

12/8/10
November

TERM 2010

Guilty
THE STATE

VS.

CARDELLE TYRINE WASHINGTON

aka

CORDELLE TYRONE WASHINGTON

✓ Amended Indictment for
0139 and 0549

ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490

ENTERED
ACCT. *for*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
 ARMED ROBBERY and POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on
 County present upon their oath:

NOV 23 2010

the Grand Jurors of Greenville

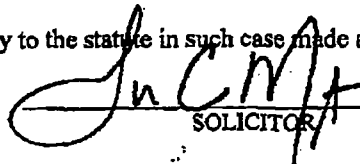
COUNT I - ARMED ROBBERY

That CARDELLE TYRINE WASHINGTON aka CORDELLE TYRONE WASHINGTON did in Greenville County, on or about the 25th day of April 2006, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. currency from the person or presence of Gladys Harrison and/or Douglas Ashmore, employees of Burger King. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That CARDELLE TYRINE WASHINGTON aka CORDELLE TYRONE WASHINGTON did in Greenville County, on or about the 25th day of April 2006, possess or visibly display a pistol during the commission or attempted commission of a violent crime, to wit: ARMED ROBBERY. This is in violation of § 16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

WITNESSES

T. Conroy *Bmm 433*
Greenville Police Department
11/15/2007

ARREST WARRANT NUMBER
1818089

ACTION OF GRAND JURY

TRUE BILL

Ann Soderette

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Nicky T. Jones 12-8-10
Foreperson of Petit Jury Date:

AMENDED INDICTMENT
DOCKET NO. 2008-GS-23-001672
LCM

The State of South Carolina

County of Greenville

12/8/10

COURT OF GENERAL SESSIONS

November TERM 2010

THE STATE

vs.

CARDELLE TYRINE WASHINGTON

aka

CORDELLE TYRONE WASHINGTON

Amended Indictment for

✓
0086

BURGLARY SECOND DEGREE VIOLENT

VIOLATION § 16-11-0312

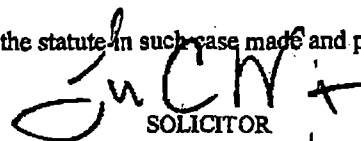
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
BURGLARY SECOND DEGREE VIOLENT

At a Court of General Sessions, convened on **NOV 23 2010** the Grand Jurors of Greenville
County present upon their oath:

That CARDELLE TYRINE WASHINGTON aka CORDELLE TYRONE WASHINGTON did in Greenville
County, on or about the 25th day of April 2006, willfully and unlawfully enter the business belonging to
BURGER KING located at 332 South Pleasantburg Drive, Greenville, South Carolina, without consent and with
the intent to commit a crime therein and armed with a deadly weapon, and/or displayed what was or appeared to
be a deadly weapon, and/or the entering and/or remaining did occur during the nighttime hours. This is in
violation of §16-11-312 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

T. Conroy *Am # 433*
Greenville Police Department
11/15/2007

ARREST WARRANT NUMBER
COUNT I - 1818090 COUNT II - 1818091

ACTION OF GRAND JURY

TRUE BILL

Ann Shaverette

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

COUNT ONE: *Guilty*

COUNT TWO: *Guilty*

Nicky T. Jones
Foreperson of Petit Jury

12-8-10
Date:

AMENDED INDICTMENT
DOCKET NO. 2008-GS-23-001673
LCM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

12/8/10 November TERM 2010

Guilty

THE STATE

vs.

CARDELLE TYRINE WASHINGTON

aka

CORDELLE TYRONE WASHINGTON

Amended Indictment for

KIDNAPPING (x2)

VIOLATION § 16-03-0910

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
 KIDNAPPING (x2)

NOV 23 2010

At a Court of General Sessions, convened on
 County present upon their oath:

the Grand Jurors of Greenville

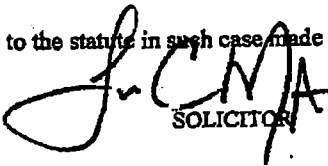
COUNT I

That CARDELLE TYRINE WASHINGTON aka CORDELLE TYRONE WASHINGTON did in Greenville County, on or about the 25th day of April 2006, unlawfully seize, abduct, confine, inveigle, decoy or carry away GLADYS HARRISON, without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

COUNT II

That CARDELLE TYRINE WASHINGTON aka CORDELLE TYRONE WASHINGTON did in Greenville County, on or about the 25th day of April 2006, unlawfully seize, abduct, confine, inveigle, decoy or carry away DOUGLAS ASHMORE, without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR