

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County

Maite Murphy, Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

WALTER J. GREENE, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000151

APPENDIX

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1 HAD A VERY BRIEF OPPORTUNITY TO SEE HIM IN
2 QUESTIONABLE LIGHT, AND YET, THAT'S A FACTOR IN
3 POTENTIALLY MAKING A FALSE, OR AN UNRELIABLE
4 IDENTIFICATION.

5 SHE FOUND OUT THE NEXT DAY THAT HER GUN WAS
6 MISSING, AND THERE WAS MONEY MISSING. SHE DOESN'T
7 HAVE ANY IDEA WHO TOOK THAT MONEY. THE TESTIMONY FROM
8 THE STAND WAS THAT AFTER SHE FLED, WE KNOW AT LEAST
9 ONE CIVILIAN WENT BACK WHO WAS ABLE TO GO AND GET THE
10 CHILD, AND OFFICERS WENT AND CLEARED THE BUILDING TO
11 MAKE SURE NOBODY WAS STILL IN THERE. AFTER THAT THE
12 FRONT DOOR WAS OPEN, THE BACK DOOR WAS BUSTED, ANYBODY
13 COULD HAVE GONE IN THERE AND TAKEN WHATEVER. BUT WE
14 HAVE NO EVIDENCE WHATSOEVER THAT MR. GREENE TOOK
15 ANYTHING.

16 ALSO, SHE, I WOULD REMIND THAT SHE WAS ABLE
17 TO GIVE A DESCRIPTION OF THE GUN. SHE WAS ABLE TO
18 TELL THEM THAT BASICALLY IT WAS A SMALL CALIBER, SMALL
19 HAND GUN. AGAIN, I WOULD REMIND YOU THAT YOU'VE HEARD
20 TESTIMONY ABOUT WEAPON FOCUS, ABOUT HOW AT LEAST PART
21 OF THE ATTENTION THAT SHE WAS PAYING AT THAT TIME TO
22 BE ABLE TO TELL THEM THE DESCRIPTION OF THAT GUN WAS
23 BECAUSE SHE WAS FOCUSED ON THAT GUN AND NOT ON WHOEVER
24 THIS GUY WAS, HIS FACE.

25 SHE ALSO TOLD THE POLICE OFFICES THAT SHE

1 BELIEVED THAT THE MAN LEFT ON FOOT ON A FOOT PATH
2 GOING TOWARD THE RAILROAD TRACKS. WHEN SHE WAS
3 QUESTIONED ABOUT IT ON THE STAND, HOWEVER, SHE SAID
4 SHE ASSUMED THAT THAT'S HOW THE PERSON WOULD HAVE
5 LEFT. LADIES AND GENTLEMEN, THAT'S AN EXAMPLE OF ONE
6 OF THE PROBLEMS IN THIS CASE, THERE'S JUST TOO MANY
7 ASSUMPTIONS. WHEN ASKED ABOUT THAT, GOING TO THE FOOT
8 PATH SHE DIDN'T SEE ANYBODY ACTUALLY DO THAT, SHE
9 ASSUMED, AND THAT'S, AS I SAID, PART OF THE PROBLEM
10 WITH THIS CASE.

11 WE'LL MOVE ON TO FINALLY, IN HER WRITTEN
12 TESTIMONY, IN HER -- EXCUSE ME, IN HER VERBAL
13 STATEMENT SHE SAYS GREEN SHIRT. HOWEVER, WHEN SHE
14 WRITES HER WRITTEN STATEMENT IT CHANGES TO A DARK
15 SHIRT, NOT A GREEN SHIRT. AGAIN, NOT A HUGE
16 DISCREPANCY, AND I'M NOT TRYING TO TELL YOU IT IS, BUT
17 LITTLE THINGS ADD UP. IT SHOWS HOW MEMORY CAN CHANGE,
18 AND HOW EVEN THOUGH YOU'RE TRYING YOUR BEST, SOMETIMES
19 YOUR MEMORY IS NOT RELIABLE.

20 OFFICER WARRINGTON, AGAIN, TESTIFIED THAT
21 WHEN HE GOT FLAGGED DOWN BY THE CAR THAT CONTAINED
22 LEBO AND MS. WRIGHT, THERE WAS NO CHILD IN THE CAR.
23 THAT CONTRADICTS THE OTHER TESTIMONY OF MS. WRIGHT.
24 AGAIN, OFFICER WARRINGTON NOTED THAT THE DESCRIPTION
25 WAS BLUE SHORTS, NOT BLUE JEANS, AS WE NOW, AS WE

1 FINALLY GOT TO HER DESCRIPTION. AGAIN, HE NOTED FIVE,
2 EIGHT OR FIVE, NINE, NOT FIVE FOUR.

3 THE TESTIMONY OF LEBO, SHE SAT ON THE STAND
4 AND SHE WAS VERY HELPFUL THAT NIGHT, BUT SHE TESTIFIED
5 THAT SHE KNEW MS. WRIGHT FROM THE NEIGHBORHOOD, THAT
6 SHE WAS A FRIEND, AND SAID THEY WERE CLOSE. MS. WRIGHT
7 TESTIFIED THAT SHE KNEW OF LEBO, THAT THEY WERE NOT
8 FRIENDS, THAT SHE WAS JUST SOMEBODY IN THE
9 NEIGHBORHOOD THAT SHE HAD BEEN INTRODUCED TO. WHICH
10 IS IT?

11 LEBO SAYS THAT SHE SAW, SUPPOSEDLY SAW
12 WALTER GREENE EARLIER. NOW, I WOULD REMIND YOU, THE
13 TESTIMONY THAT YOU HEARD WAS THAT LEBO HAD NOT SEEN
14 MR. GREENE SINCE THEY WERE IN MIDDLE SCHOOL. WHEN
15 THEY WERE IN MIDDLE SCHOOL THEY WERE NOT EVEN IN THE
16 SAME GRADE. WHEN I ASKED HER IF THEY TOOK ANY CLASSES
17 TOGETHER SHE DIDN'T THINK THEY TOOK ANY CLASSES
18 TOGETHER. OKAY? SHE HASN'T, SHE TESTIFIED THAT SHE
19 HAS NOT SEEN HIM IN THE TIME SINCE, SO THAT WOULD HAVE
20 BEEN NINE YEARS AGO. I SUBMIT TO YOU, LADIES AND
21 GENTLEMEN, TO RECOGNIZE SOMEBODY WHO CHANGED FROM
22 THIRTEEN YEARS OF AGE TO TWENTY-TWO YEARS OF AGE, AND
23 NOT SEEING THEM IN THE MEANTIME, AND ESPECIALLY A
24 MALE, A MALE CHANGES MORE FACIALLY AND GROWS UP MORE,
25 I THINK SOMETIMES, THAN WOMEN WHO LOOK MORE LIKE

1 THEY'RE GOING TO LOOK AT THIRTEEN THAN A GUY DOES.
2 ANYWAY, I WOULD SUBMIT TO YOU THAT SHE HADN'T SEEN
3 THIS GUY, SHE SAID SHE HAD NOT SEEN HIM AT ALL IN THE
4 INTERIM UNTIL SUPPOSEDLY HE'S HANGING AROUND THE STORE
5 AT SOME POINT DURING THAT DAY. SHE CAN'T REMEMBER
6 WHEN, SHE CAN'T REMEMBER, SHE JUST KNOWS EARLIER, SHE
7 DOESN'T KNOW WHEN. SHE DOESN'T KNOW MR. GREEN'S LAST
8 NAME, SHE DOESN'T SPEAK TO HIM WHEN HE IS SUPPOSED TO
9 BE THERE. AS A MATTER OF FACT, HER TESTIMONY WAS, SHE
10 DOESN'T EVEN KNOW WHEN HE LEFT BECAUSE SHE WAS INSIDE
11 AND HE WAS ON THE OUTSIDE. YET, THIS IS THE PERSON
12 WHO MAKES THE CRITICAL LINK IN TRYING TO FIND OUT WHO
13 DID THIS. SHE'S THE ONE THAT TELLS THE POLICE
14 OFFICERS AND MS. WRIGHT, OH, IT SOUNDS LIKE WALTER
15 GREENE, SOUNDS LIKE. REMEMBER, LADIES AND GENTLEMEN,
16 SHE DIDN'T SEE ANYTHING, SHE DIDN'T SEE WHAT -- SHE
17 WAS NOT THERE, SHE DID NOT SEE WHAT ACTUALLY OCCURRED.
18 SHE PULLS THIS NAME, WALTER, WHO SHE CAN'T EVEN PUT A
19 LAST NAME TO, THAT SHE HASN'T SEEN IN THAT MANY YEARS,
20 AND THAT'S THE LINK, THAT'S WHERE THIS NIGHTMARE FOR
21 MR. GREENE STARTS.

22 SHE TESTIFIED THAT AFTER SHE PICKED UP MS.
23 WRIGHT THAT THEY WENT, SHE TOOK HER TO THE HOUSE
24 BECAUSE MS. WRIGHT WAS WORRIED ABOUT THE BABY.
25 SOMEONE WENT IN AND BROUGHT THE BABY OUT, AND SHE WAS

1 TOLD TO TAKE THE BABY TO THE DAD'S HOUSE. IT'S NOT
2 CONSISTENT WITH THE OTHER TESTIMONY, LADIES AND
3 GENTLEMEN. YOU REMEMBER IT AS, YOU REMEMBER IT, I
4 BELIEVE WHEN YOU THINK BACK ON IT, YOU WILL SEE THAT
5 WAS NOT CONSISTENT.

6 SHE ALSO SAID THAT SUPPOSEDLY MR. GREENE WAS
7 WITH A PERSON NAME DONTAE MORGAN. WHERE IS DONTAE
8 MORGAN? NOBODY EVER SPEAKS TO HIM, NOBODY EVERY TRIES
9 TO FIND OUT WHO HE IS, NOBODY EVER TRIES TO FIND OUT
10 IF HE WAS THERE. WHAT DID HE LOOK LIKE?

11 THE, AGAIN, THE DESCRIPTION SOUNDED LIKE
12 WALTER, WITH NO FIRST HAND KNOWLEDGE, SHE DIDN'T SPEAK
13 TO HIM, SHE DIDN'T KNOW WHEN HE LEFT, SHE WAS INSIDE.

14 OFFICER SCOTT WAS BASICALLY THERE TO CONFIRM
15 THE WOUND AND TO TESTIFY ABOUT THE FRAGMENT IN THE
16 SHIRT. SHE WAS NOT A WITNESS TO THE EVENT, NOR WAS
17 TIFFANY HALL, THAT WAS THE EMS PERSON. BUT THEY BOTH
18 TOLD YOU THEY STAYED ON THE SCENE UNTIL THE BABY CAME
19 BACK. AGAIN, NOT CONSISTENT WITH THE OTHER TESTIMONY
20 IN THIS CASE.

21 DETECTIVE ROMANSTINE SAID THAT HE WAS TOLD
22 THAT A PERSON KNOCKED ON MS. WRIGHT'S DOOR, SHE WAS
23 ORDERED TO GIVE IT UP AFTER THE VICTIM HAD OPENED THE
24 DOOR, AND THEN IT WAS AT THAT POINT THAT A SHOT WAS
25 FIRED. AND HE TOLD YOU THAT'S WHY HE BEGAN HIS

1 PROCESSING OF THE SCENE AT THE FRONT DOOR. HE
2 CONFIRMED THAT THE SCREEN AND THE FRONT DOOR WERE
3 OPEN, HE CONFIRMED THE LIGHTS AND HE SAT THERE AND
4 TOLD YOU WHAT HE HAD DONE WHEN HE WENT TO PROCESS THE
5 SCENE. HE ALSO TOLD YOU HE DID NOT FIND A GUN IN THE
6 HOUSE OR ON THE PORCH, THAT AT THAT POINT -- WELL,
7 ACTUALLY, HE NEVER TALKED TO MS. WRIGHT BECAUSE HE
8 DIDN'T KNOW ANYTHING WAS MISSING, SO HE DIDN'T KNOW TO
9 PROCESS ANYTHING ELSE. HAD HE KNOWN THAT THERE HAD
10 BEEN MONEY MISSING PERHAPS HE WOULD HAVE DUSTED FOR
11 PRINTS ON THE DRESSER DRAWER OR SOMEWHERE IN THE
12 BEDROOM OR SOMEWHERE. BUT HE DID SAY THAT HE DID NOT
13 FIND EVIDENCE OF A SECOND SHOT THE WAY THAT MS. WRIGHT
14 SAID IT HAPPENED.

15 THE NEXT WITNESS WAS BOBBY RIVERS, DETECTIVE
16 RIVERS. HE'S AN OFFICER, BEEN ON THE FORCE FOR
17 TWENTY-ONE YEARS WITH PUBLIC SAFETY, A CRIME SCENE
18 INVESTIGATOR. HE WAS THE ONE, AS YOU REMEMBER, THAT
19 DID THE LINEUP. THE, HIS TESTIMONY WAS THAT BASICALLY
20 HE COULDN'T -- I ASKED HIM POINT BLANK ABOUT THE TEAR
21 DROP TATTOO AND HE KEPT SAYING THAT AS FAR AS HE SAW
22 IT WAS MAYBE A SMUDGE. HE HAD THE LINEUP GENERATED, HE
23 HAD MS. WRIGHT LOOK AT THE LINEUP, FOLLOWED PROCEDURE,
24 THE, I WOULD SUBMIT TO YOU, HOWEVER, WHEN YOU GET A
25 CHANCE TO GO BACK AND HAVE THE DOCUMENTS AND THE

1 EVIDENCE IN YOUR POSSESSION, TAKE A REALLY GOOD LOOK
2 AT THIS LINEUP. REGARDLESS OF WHAT YOU MAY OR MAY NOT
3 THINK IS ON MR. GREENE'S FACE, IF YOU WILL LOOK AT
4 THAT LINEUP WE WOULD SUBMIT THAT NONE OF THE OTHER
5 FIVE PEOPLE HAVE ANY KIND OF MARK AT ALL WHERE MS.
6 WRIGHT INDICATED THE PERPETRATOR WOULD HAVE HAD IT. I
7 WOULD SUBMIT TO YOU THAT THAT'S A BIASED LINEUP,
8 LADIES AND GENTLEMEN. IT WAS ALMOST CHALLENGING MS.
9 WRIGHT TO PICK MR. GREENE OUT. HE, LET'S SEE, HE,
10 THIS IS BACK TO DETECTIVE RIVERS, HE TESTIFIED THAT HE
11 HAD NEVER SEEN A TEAR DROP TATTOO BEFORE. PERHAPS HE
12 HASN'T, I JUST FIND IT DIFFICULT TO BELIEVE WITH HIS
13 LENGTHY EXPOSURE IN LAW ENFORCEMENT. HOWEVER, HE DID
14 CONFIRM ON THE INCIDENT REPORT THAT THE INITIAL
15 DESCRIPTION OF THE PERSON WHO DID THIS WAS FIVE FOOT
16 NINE INCHES. HE WAS ACTUALLY THE OFFICER THAT WENT AND
17 GOT THE ARREST WARRANT. THE ARREST WARRANT, AS HE
18 TESTIFIED HERE, HAD THE HEIGHT AT FIVE, SIX. AND WE
19 ARE ALL OVER THE PLACE, LADIES AND GENTLEMEN, ON THIS
20 HEIGHT ISSUE. WE'VE GOT THE PERSON WHO DID IT AT
21 FIVE, FOUR, FIVE, SIX AND FIVE, NINE. WE'RE NOT OFF A
22 HALF AN INCH OR SO HERE, WE'RE ALL OVER THE PLACE.

23 YOU WERE ALSO TOLD THAT THERE WAS MONEY
24 TAKEN AND A GUN TAKEN. WE DON'T KNOW WHO TOOK THEM.
25 WE KNOW THEY'RE MISSING. WE HAD THE PERSON WHO WAS

1 NICE ENOUGH OR BRAVE ENOUGH TO GO BACK TO THAT HOUSE
2 AND GET THE CHILD, I BELIEVE HIS NAME WAS GREG.
3 NOBODY TALKED TO HIM, NOBODY FROM LAW ENFORCEMENT
4 SOUGHT HIM OUT AND ASKED HIM ANY QUESTIONS. COULD HE
5 NOT HAVE GIVEN INFORMATION ABOUT WHAT THE ROOM LOOKED
6 LIKE, HAD IT BEEN RANSACKED, YOU KNOW, DID IT APPEAR
7 THAT ANYTHING HAD BEEN TAKEN AT THAT TIME? WE DON'T
8 KNOW.

9 NOW, WE GET TO THE DEFENSE WITNESSES.
10 YOU'VE HEARD TESTIMONY FROM DONITA ROSS THAT SHE FLAT
11 OUT SAID, I CAN'T GIVE HIM AN ALIBI FOR TWO:THIRTY IN
12 THE MORNING, BUT I CAN TELL YOU WHAT HAPPENED THE DAY
13 BEFORE. SHE WAS WITH HIM, SHE DROPPED HER CHILDREN
14 OFF, HE WATCHED THE CHILDREN AT HIS MOTHER'S
15 BOYFRIEND'S PLACE WHILE SHE WAS MOVING. SHE CAME
16 BACK, THEY HUNG OUT FOR A WHILE, SHE WENT HOME, SHE
17 TALKED TO HIM ON THE PHONE LATER THAT NIGHT. SHE WAS
18 HERE TO ESTABLISH THAT HE WAS, INDEED, DROPPED OFF AT
19 HIS MAMA'S BOYFRIEND'S HOUSE THE DAY BEFORE THIS
20 HAPPENED.

21 THEN YOU HEARD TESTIMONY FROM DEBORAH
22 MILLER, HIS MOM, THAT HE STAYED THERE ON THE TWENTY-
23 THIRD, THAT HE SLEPT AT THAT HOUSE ON THE NIGHT OF THE
24 TWENTY-THIRD. YOU WILL BE ABLE TO SEE IN THE PICTURES
25 THAT THIS PARTICULAR RESIDENCE, THE DOORS ARE DEAD

1 BOLT LOCKED, AND THEY'RE THE KIND OF DEAD BOLT LOCKS
2 THAT YOU NEED A KEY WHETHER YOU'RE ON THE INSIDE OR
3 THE OUTSIDE, YOU CAN'T JUST FLIP A SWITCH. YOU HEARD
4 TESTIMONY FROM MS. MILLER THAT SHE DOES NOT HAVE A
5 KEY, THAT HER SON DOES NOT HAVE A KEY, THAT ONLY ALI
6 HAS A KEY. AND THAT BRINGS US TO MR. WELLS.

7 HE TESTIFIED TO YOU THAT MR. GREENE STAYED
8 THERE FRIDAY, SATURDAY AND SUNDAY. HE KNEW THAT
9 BECAUSE HE WAS TAKING HIM TO WORK FOR THOSE COUPLE OF
10 DAYS. HIS TESTIMONY WAS THAT THERE WAS NO DOUBT IN
11 HIS MIND THAT HE STAYED THERE ON THE TWENTY-THIRD,
12 THAT HE CAME, HE KNOCKED ON THE DOOR, HE ASKED TO BE
13 LET IN, THE MOM SAID, PLEASE LET HIM, AND SO HE DID.
14 YOU HEARD TESTIMONY FROM MR. WELLS THAT HE LIVES IN A
15 BAD NEIGHBORHOOD. THAT'S THE REASON FOR THE DEAD BOLT
16 LOCKS. IT'S A CRIME RIDDEN NEIGHBORHOOD AND HE'S
17 BEING SAFE RATHER THAN SORRY.

18 LADIES AND GENTLEMEN, SOMETIMES TRUTH IS
19 STRANGER THAN FICTION. I SUBMIT TO YOU THAT HAVING
20 PEOPLE LOCKED IN A HOME WITHOUT A KEY TO GET OUT IS
21 PROBABLY A FIRE HAZARD, AND IT'S NOT SOMETHING THAT I
22 WOULD NECESSARILY RECOMMEND, BUT THAT IS THE WAY HE
23 RUNS THAT HOUSEHOLD. HE KNOWS WHO COMES IN, HE KNOWS
24 WHO LEAVES, AND IT'S UP TO HIM, IT IS HIS RESIDENCE.
25 AGAIN, HE TOLD YOU HE HAD THE ONLY KEY, THAT MR.

1 GREENE COULD NOT HAVE LEFT WITHOUT HIM KNOWING. HE
2 KEPT THE KEY ON HIM, THE WINDOWS WERE ALL CLOSED, WERE
3 NOT ACCESSIBLE. HE ALSO TOLD YOU, YOU KNOW, HE'S NO
4 RELATION TO MR. GREENE, HE HAD NO REASON TO LIE, HE'S
5 A RELIGIOUS MAN. HE TOLD YOU HE GOES AND PRAYS, OR
6 HAD BEEN GOING, THAT WAS ONE OF THE THINGS HE WAS
7 DOING BEFORE HE WENT BACK TO TAKE MR. GREENE TO WORK.
8 SO, I SUBMIT TO YOU THAT THERE IS TESTIMONY THAT MR.
9 GREENE WAS NOT ONLY THERE BUT THAT HE COULD NOT HAVE
10 LEFT WITHOUT SOMEBODY IN THAT HOUSE KNOWING.

11 THEN WE HAD DR. ALLEY.- HE TESTIFIED AS THE
12 EXPERT WITNESS. HE TESTIFIED TO YOU THAT HE WOULD NOT
13 SLANT THE EVIDENCE REGARDLESS OF WHO PAID HIM, THAT
14 HE'S THERE TO SPEAK ABOUT THE TRUTH OF WHAT HIS
15 INTELLECTUAL INTERESTS ARE AND WHAT HE TEACHES, AND
16 THAT'S NOT GOING TO CHANGE NO MATTER WHO ENDS UP
17 PAYING HIM. HE'S NOT A HIRED GUN. HE TOLD YOU,
18 THOUGH, THAT YOU NEED AT LEAST TEN TO FIFTEEN SECONDS
19 FOR A REALLY GOOD IDENTIFICATION. IN THIS CASE, BY
20 THE WITNESS'S OWN TESTIMONY, WE'VE GOT FOUR TO FIVE
21 SECONDS. THAT RECOLLECTION WOULD NOT IMPROVE OVER
22 TIME. AGAIN, WE'RE GETTING MORE THINGS ADDED, WITH
23 THE, NOW HE'S FIVE, FOUR INSTEAD OF FIVE, NINE. NOW
24 HE'S GOT A BIG NOSE, WHEN THAT WAS NEVER MENTIONED
25 BEFORE. HE TOLD YOU THAT STRESS CAN HAVE AN EFFECT,

1 BUT THAT GENERALLY IS A BAD EFFECT, IT DOESN'T MAKE
2 YOUR MEMORY BETTER, OR IT CAN MAKE YOUR MEMORY NOT
3 BETTER. HE TOLD YOU A LITTLE BIT ABOUT WEAPON FOCUS,
4 THAT, IN OTHER WORDS, ANYTIME YOU'RE IN A SITUATION,
5 OR HOPEFULLY NOT IN A SITUATION, BUT IF SOMEBODY
6 PRESENTS A WEAPON YOU'RE NATURALLY GOING TO HAVE SOME
7 OF THE FOCUS LOOKING AT THAT WEAPON, AND THAT'S TAKING
8 TIME AWAY FROM YOU BEING ABLE TO ACTUALLY LOOK AT THE
9 FEATURES OF THE PERSON WHO POSSESSES THAT WEAPON.

10 THERE WAS ALSO TESTIMONY THAT, AGAIN, ABOUT
11 THE LIGHTING CONDITIONS. WE WOULD AGREE THERE WAS
12 SOME LIGHT, BUT THE LIGHT WASN'T GREAT, LADIES AND
13 GENTLEMEN, IT'S TWO:THIRTY IN THE MORNING, WE'VE GOT A
14 YARD LIGHT THAT'S A WAYS AWAY, AND WE'VE GOT A KITCHEN
15 LIGHT THAT'S KIND OF COMING OVER ONE SIDE OVER HIS
16 SHOULDER, NOT THE MOST OPTICAL CONDITIONS, ESPECIALLY
17 FOR A FOUR TO FIVE SECOND LOOK.

18 HIS TESTIMONY WAS -- HE WAS ASKED, WOULD IT
19 BE MORE OF, IF SOMEBODY HAD A FACIAL SCAR, FOR
20 INSTANCE, WOULDN'T THAT MAKE IT MORE LIKELY THAT A
21 PERSON WOULD BE IDENTIFIABLE? THE DOCTOR SAID, MAY OR
22 MAY NOT, DEPENDS ON HOW CLEAR AND RECOGNIZABLE THAT
23 MARK WAS. DETECTIVE RIVERS WASN'T CLEAR AND
24 RECOGNIZABLE TO HIM.

25 HE TOLD YOU THAT, GOING AGAINST CONVENTIONAL

1 WISDOM, THAT CONFIDENCE IS NOT NECESSARILY AN
2 INDICATOR OF RELIABILITY, THAT SOMEBODY COULD BE
3 ABSOLUTELY A HUNDRED PER CENT CONFIDENT IN WHAT
4 THEY'RE SAYING BUT THEY COULD BE MISTAKEN.

5 AGAIN, THE AMOUNT OF DETAIL THAT A PERSON
6 GIVES IN GIVING A DESCRIPTION IS NOT NECESSARILY A
7 RELIABLE GUIDE OF HOW GOOD THAT MEMORY IS. AND I
8 REMIND YOU AGAIN THAT FAMILIARITY IS ALSO A HUGE
9 FACTOR IN THAT, WHEN YOU KNOW SOMEBODY OR YOU'VE BEEN
10 IN CONTACT WITH SOMEBODY AT OTHER TIMES YOU'RE MORE
11 LIKELY TO REMEMBER THAN SOMEBODY THAT YOU'VE NEVER
12 BEFORE SEEN IN YOUR LIFE, AS WAS THE CASE WITH MS.
13 WRIGHT.

14 I WILL REMIND THAT THE DOCTOR SAID, ALL IT
15 TAKES IS ONE FACTOR GOING THE WRONG WAY. HERE WE HAVE
16 FOUR TO FIVE SECONDS VERSUS TEN TO FIFTEEN. AGAIN THE
17 ID CAN BE POSITIVE BUT IT CAN BE MISTAKEN. HE WAS
18 ASKED BY THE SOLICITOR, WERE THE GENERAL DESCRIPTION
19 OF A SUBJECT IN THE LINEUP CONSISTENT, AND HE ADMITTED
20 THAT GENERALLY THEY WERE, BUT HE ALSO TOLD YOU HE HAD
21 QUALMS ABOUT THE DESCRIPTION.

22 AGAIN, GOING BACK TO THE FACTORS THAT MR.
23 SORENSON HAS ALREADY TALKED ABOUT, THE ABILITY TO VIEW
24 WHOEVER IT WAS THAT DID THIS HORRIBLE THING TO HER,
25 WE'RE TALKING SECONDS AT BEST, IN QUESTIONABLE LIGHT,

1 WITH PART OF THE TIME HER ATTENTION FOCUSED ON THE
2 WEAPON AND NOT HIS FACE. THE DOCTOR IS HERE NOT TO
3 EVALUATE THE INDIVIDUAL IDENTIFICATION. HE'S NOT HERE
4 TO SAY WHETHER MS. WRIGHT IS RIGHT OR WRONG, BUT HE'S
5 HERE TO LET YOU KNOW AND LET YOU BALANCE THE FACTORS
6 THAT MIGHT MAKE OR MIGHT GIVE YOU PAUSE IN CONSIDERING
7 HER TESTIMONY. OKAY?

8 SO, IN CONCLUSION, WHAT DO WE HAVE? WE HAVE
9 TESTIMONY ON THE RECORD THAT MR. GREENE WAS ON BRISTOL
10 STREET. WE HAVE NO PHYSICAL EVIDENCE LINKING MR.
11 GREENE TO THE INCIDENT ON ALETHA STREET. WE HAVE
12 SUPPOSEDLY AN IDENTIFICATION FROM A PERSON WHO LAST
13 SAW MR. GREENE NINE YEARS AGO, HAS HAD NO CONTACT
14 SINCE, AND WHO JUST THOUGHT MAYBE IT SOUNDED LIKE
15 WALTER. SHE WAS THE LINK THAT GOT US HERE. THE
16 VICTIM, BY HER OWN ADMISSION, DOES NOT KNOW MR.
17 GREENE, SAW HIM FOR A FEW SECONDS. AGAIN, I WOULD
18 REMIND YOU ABOUT THE PROBLEMS WITH EYE WITNESS
19 IDENTIFICATION. THE SOLICITOR, I'M SURE IS GOING TO
20 TALK ABOUT HOW DETAILED THE DESCRIPTION WAS, BUT I ASK
21 YOU TO THINK A LITTLE BIT MORE ABOUT THAT DESCRIPTION.
22 HOW MANY PEOPLE DO YOU KNOW THAT COULD FIT THE
23 DESCRIPTION OF BLACK MALE, DARK SKINNED, FIVE, NINE,
24 SHORT TWISTS, AND MAYBE A MARK ON HIS CHEEK? THAT,
25 WHILE IT SOUNDS LIKE A LOT OF WORDS AND A LOT OF

1 DESCRIPTION, THERE ARE MANY, MANY PEOPLE WHO WOULD BE
2 ABLE TO FIT THAT DESCRIPTION. AND AGAIN, I WOULD
3 REMIND YOU, AS FAR AS HEIGHT GOES, WE WERE ALL OVER
4 THE PLACE WITH THE TESTIMONY, LADIES AND GENTLEMEN.
5 IT'S JUST NOT CONSISTENT.

6 MS. WRIGHT WENT THROUGH A VERY FRIGHTENING
7 EXPERIENCE. SHE HAS A REASON TO WANT THE PERSON THAT
8 DID THIS TO HER TO BE CAUGHT AND PUNISHED. BUT I WOULD
9 SUBMIT TO YOU THAT MR. GREENE, SITTING AT THAT TABLE,
10 IS NOT THE MAN WHO CAME TO HER DOOR IN THE EARLY
11 MORNING HOURS ON APRIL TWENTY-FOURTH. WE KNOW WHERE
12 MR. GREENE WAS, HE WAS NOT THERE. THE REASON THE
13 BURDEN OF PROOF IS ON THE STATE IS TO PROTECT PEOPLE
14 FROM BEING CONVICTED WRONGFULLY. IT'S TO MAKE THAT
15 BARRIER HIGH SO THAT YOU HAVE TO BE FIRMLY CONVINCED,
16 NOT THAT IT COULD HAVE HAPPENED, NOT THAT MAYBE IT
17 HAPPENED, BUT FIRMLY CONVINCED THAT MR. GREENE WAS THE
18 ONE WHO WENT TO HER RESIDENCE ON THAT MORNING. I WOULD
19 SAY, WE KNOW WHERE MR. GREENE WAS, HE WAS ON BRISTOL
20 STREET LOCKED IN A RESIDENCE THERE. HE DID NOT HAVE A
21 KEY TO GET OUT OF, TRYING TO GET SOME SLEEP BEFORE HE
22 WENT TO WORK THE NEXT MORNING, AFTER HAVING WATCHED
23 HIS KIDS EARLIER THAT DAY. HE WAS NOT ON ALETHA
24 STREET. UNLESS YOU ARE FIRMLY CONVINCED THAT HE DID
25 COMMIT THESE ACTS, THEN YOU HAVE A DUTY TO RETURN A

1 VERDICT OF NOT GUILTY. I SUBMIT THAT THERE'S MORE
2 THAN REASONABLE DOUBT WHEN YOU LOOK AT ALL THE
3 EVIDENCE. I'M ASKING YOU TO END MR. GREENE'S
4 NIGHTMARE, THIS FALSE ALLEGATION, THIS MISTAKEN
5 IDENTIFICATION, AND SPEAK THE TRUTH BY COMING BACK
6 WITH A VERDICT OF NOT GUILTY.

7 THANK YOU.

8 THE COURT: THANK YOU, MS. HINDS.

9 MR. SORENSON.

10 SOLICITOR SORENSON: THANK YOU, YOUR HONOR.

11 FINAL CLOSING ARGUMENT BY SOLICITOR SORENSON

12 THE EARLY MORNING HOURS, SATURDAY, APRIL
13 TWENTY-FOURTH, TWO THOUSAND TEN, FIVE AND A HALF
14 MONTHS AGO, I SUBMIT TO YOU, IS A TIME THAT THAT YOUNG
15 LADY IS NEVER GOING TO FORGET, NEVER GOING TO FORGET.
16 WHEN SHE CLOSSES HER EYES SHE'S GOING TO SEE THE FACE
17 OF THAT MAN WHO WAS AT HER DOOR POINTING THAT GUN AT
18 HER, FIRING AT HER, CHASING HER OUT OF HER HOUSE,
19 MAKING HER HAVE TO MAKE A DECISION BETWEEN WHETHER SHE
20 WAS GOING TO TRY TO FLEE OR GRAB HER OWN CHILD AND
21 RISK SOMETHING TO THE TWO OF THEM. I SUBMIT TO YOU,
22 THAT'S SOMETHING SHE'S NEVER GOING TO FORGET. I SUBMIT
23 TO YOU, LATOYA WRIGHT IS NEVER GOING TO FORGET THAT
24 FACE, SHE'S NEVER GOING TO FORGET THAT FACE. AND YOU
25 CAN TAKE ALL THE CRAZY EXPERIMENTS, YOU TALK ABOUT

1 PEOPLE RUNNING OUT ON BASKETBALL COURTS IN GORILLA
2 SUITS, YOU CAN TALK ABOUT CLASS ROOMS, PEOPLE RUNNING
3 IN AND STEALING PURSES FROM DESKS IN CLASS ROOMS, YOU
4 CAN TALK ABOUT CASHIERS, ASKING CASHIERS ABOUT
5 CUSTOMERS A COUPLE OF HOURS LATER. BUT NONE OF THOSE
6 EXPERIMENTS ARE GOING TO REPLICATE WHAT SHE WENT
7 THROUGH. NONE OF THOSE EXPERIMENTS ARE GOING TO
8 REPLICATION WHAT TWENTY-SIX YEAR OLD LATOYA WRIGHT
9 WENT THROUGH FIVE AND A HALF MONTHS AGO.

10 I'M GOING TO TALK TO YOU A FEW MINUTES ABOUT
11 HER. SHE'S TWENTY-SIX YEARS OLD, A SINGLE MOM, LIVING
12 ALONE, RAISING A ONE YEAR OLD CHILD, A HIGH SCHOOL
13 GRADUATE, GOING BACK TO COLLEGE, DOING ALL OF THE
14 THINGS YOU'D WANT HER TO DO, ALL THE THINGS YOU WOULD
15 WANT HER TO DO. AND YOU KNOW, I TOLD YOU WHEN I FIRST
16 GO UP HERE BEFORE YOU THIRTY MINUTES AGO I TOLD YOU
17 THERE'S NO DOUBT ABOUT WHAT HAPPENED. NO DOUBT ABOUT
18 THE FACT THAT HER HOME WAS BURGLARIZED, NO DOUBT ABOUT
19 THAT THE FACT AT THE VERY LEAST SOMEBODY ATTEMPTED TO
20 ROB HER. NO DOUBT ABOUT THE FACT THAT SHE WAS
21 ASSAULTED AND SHOT. NOW, LISTENING TO MS. HINDS,
22 THOUGH, SUDDENLY I DON'T KNOW, BECAUSE NOW SUDDENLY
23 IT'S ALL HER FAULT. YOU KNOW, IT'S HER FAULT FOR
24 ANSWERING THE DOOR. IT'S HER FAULT FOR NOT SHOOTING
25 THE GUY, I GUESS. SHE'S LYING TO YOU ABOUT THIS,

1 SHE'S MAKING THIS UP. YOU KNOW, I STARTED OFF
2 THINKING THAT THERE WAS NO DOUBT THAT ALL OF THIS HAD
3 OCCURRED, AND THOUGHT THAT WAS KIND OF WHAT WE WERE
4 GOING TO HEAR FROM MS. HINDS, BUT APPARENTLY, THAT
5 WASN'T THE CASE. WELL, I SUBMIT TO YOU, LADIES AND
6 GENTLEMEN, WHEN YOU LOOK AT ALL THE EVIDENCE, YOU LOOK
7 AT HER CREDIBILITY, HER DEMEANOR ON THAT WITNESS
8 STAND, HOW FORTHRIGHT SHE WAS WITH YOU, AND I'M GOING
9 TO TALK ABOUT THE CONSISTENCIES AND CORROBORATION
10 WHILE WE'RE TALKING ABOUT SOME OF THE OTHER WITNESSES.
11 AND LASTLY, I MEAN, WHAT REASON DOES SHE HAVE, WHAT
12 MOTIVE DOES SHE HAVE TO COME IN HERE AND LIE? WHAT
13 MOTIVE DOES SHE HAVE TO HAVE THE WRONG PERSON PUNISHED
14 FOR WHAT HAPPENED TO HER? I SUBMIT TO YOU NONE, NONE.

15 I WANT TO TALK A LITTLE BIT, I MEAN, I'M
16 TRYING NOT TO KIND OF REHASH TOO MUCH OF IT, BUT I
17 STILL FEEL LIKE I NEED TO TALK ABOUT WHAT HAPPENED
18 THAT NIGHT. OKAY? SHE GOT HOME AT TWO O'CLOCK OR SO
19 IN THE MORNING, HAD BEEN VISITING HER CHILD'S FATHER.
20 SHE GETS HOME, GETS IN THE HOUSE, PUTS HER CHILD TO
21 BED, WAS GETTING READY TO GET THINGS READY FOR THE
22 NEXT MORNING. WITHIN TEN MINUTES OR SO SHE HEARS THAT
23 KNOCK AT THE DOOR. OKAY? AND I SUBMIT TO YOU AT THAT
24 POINT IN TIME WE KNOW THAT HER, YOU KNOW, HER
25 AWARENESS IS HEIGHTENED BY THE FACT THAT SHE GOES AND

1 GETS A GUN BEFORE SHE GOES TO ANSWER THE DOOR. AND
2 OBVIOUSLY, I'M SURE THAT'S A DECISION SHE WISHES SHE
3 COULD TAKE BACK, THAT SHE HAD NEVER OPENED THAT DOOR.
4 OF COURSE, WE DON'T KNOW WHAT WOULD HAVE HAPPENED
5 THEN. BUT NEEDLESS TO SAY, SHE OPENED THAT DOOR.
6 REMEMBER WHAT SHE TOLD YOU SHE SAW? SHE'S THREE FEET
7 AWAY FROM THE PERSON, THREE FEET AWAY FROM THE PERSON.
8 THIS IS IMPORTANT AND IT'S KIND OF THE REASON WHY THIS
9 PICTURE IS IMPORTANT. WHEN SHE OPENS THE DOOR INSIDE,
10 THE HARD DOOR, THE WOODEN DOOR OPENS TO THE RIGHT.
11 OKAY? THE KITCHEN IS OFF TO HER LEFT. THAT'S A LIGHT
12 SHINING IN THE KITCHEN. SO, THAT LIGHT IS NO OVER MS.
13 WRIGHT, IT'S KIND OF OFF TO HER LEFT SIDE, SHINING OUT
14 ONTO THE DOORWAY. SHE'S THREE FEET AWAY FROM A GUY,
15 DOESN'T KNOW WHO HE IS, STARING AT HIM, TRYING TO
16 FIGURE OUT, WHO IS THIS GUY KNOCKING ON MY DOOR AT TWO
17 SOMETHING IN THE MORNING? OKAY? THAT LIGHT IS
18 SHINING NOW ON THAT MAN'S, THIS SIDE OF HIS FACE, I
19 SUBMIT TO YOU, RIGHT WHERE THAT TEAR DROP TATTOO IS
20 THAT SHE GETS TO SEE. ALRIGHT, SHE LOOKS AT HIM FROM
21 FOUR TO FIVE SECONDS TRYING TO FIGURE OUT WHO HE IS,
22 WHEN AT THAT POINT IN TIME I ASSUMED HE GETS UP THE
23 NERVE, I DON'T KNOW, TO FOLLOW THROUGH ON WHAT HE'S
24 COME TO DO. HE DIDN'T HAVE THE GUN OUT INITIALLY
25 BECAUSE IF SHE LOOKS OUT OF A WINDOW, YOU KNOW, IF SHE

1 PEEPS OUT THE WINDOW AND HE'S STANDING ON HER PORCH
2 WITH A GUN IT AIN'T NO WAY THAT DOOR'S GETTING OPENED.
3 IT AIN'T NO WAY IT'S GETTING OPENED. OF COURSE, IF
4 HE'S JUST STANDING THERE,-- YOU KNOW, HE HAD TO HAVE
5 WATCHED HER COME IN, HAD TO HAVE WATCHED HER COME IN.
6 WHY ELSE WOULD YOU GO UP AND KNOCK ON SOMEBODY'S DOOR
7 AT THAT HOUR, YOU KNOW, WITHIN, YOU KNOW, TEN MINUTES
8 AT THE MOST OF WHEN SHE CAME IN, OTHER THAN THE FACT
9 THAT HE SAW HER AND KNEW THAT SHE WAS HOME, AND KNEW
10 IT WAS JUST HER AND A SMALL CHILD IN THERE? HE PULLS
11 OUT THE GUN AND PUTS THE GUN IN HER FACE. AT THAT
12 POINT TIME I HAVE NO DOUBT THAT ATTENTION DREW OVER TO
13 THAT GUN BECAUSE SHE WAS ABLE TO DESCRIBE THE GUN
14 ALSO, A SMALL SILVER GUN. SHE ULTIMATELY MAKES A
15 DECISION TO ATTEMPT TO TAKE OFF RUNNING, AND HE FIRES.
16 THANKFULLY, IT HITS HER AT AN ANGLE LIKE THIS, AS
17 OPPOSED TO STRAIGHT ON, GRAZES HER ABDOMEN AND HER
18 BREAST AREA. SHE THEN RUNS DOWN THE HALLWAY, RUNS
19 DOWN THE HALLWAY TO THE BACK DOOR, TO THE BACK DOOR.
20 AND IT'S SOMEHOW HER FAULT BECAUSE SHE DIDN'T MAKE A
21 DECISION TO FIRE BACK AT THAT POINT IN TIME. YOU KNOW,
22 WHAT THAT SHOWS, LADIES AND GENTLEMEN, IS, I KNOW
23 PEOPLE TALK ABOUT IT, YOU KNOW, EVERYBODY OUT THERE
24 SHOULD BE ARMED WITH A GUN FOR THEIR OWN SAFETY, BUT
25 SOMETIMES IT'S MORE DANGEROUS TO PUT A GUN IN A

1 PERSON'S HANDS IF THEY'RE NOT PREPARED TO USE IT AND
2 DON'T KNOW HOW TO USE IT. BUT SHE GETS TO THE BACK
3 DOOR AND IS FACED WITH A DECISION RIGHT THEN THAT I
4 CAN'T IMAGINE A YOUNG MOTHER, HOW TRAUMATIZING,
5 ESPECIALLY LOOKING BACK ON IT, BECAUSE IT ALL HAPPENED
6 VERY FAST, BUT LOOKING BACK ON IT, AND BEING FACED
7 WITH THAT DECISION WHEN SHE GOT DOWN THAT HALLWAY AND
8 SAW THIS GUY HAD COME INTO HER HOME BEHIND HER WITH A
9 GUN, SHE'S BLEEDING, SHE KNOWS SHE'S BEEN SHOT, AND
10 SHE'S GOT TO MAKE A DECISION AT THAT POINT IN TIME, DO
11 I TRY TO GRAB MY CHILD AND POSSIBLY PUT MY CHILD IN
12 HARM'S WAY ALSO, OR DO I TRY TO GET OUT OF HERE AND
13 HOPE MAYBE HE COMES AFTER ME, OR LEAVES MY CHILD ALONE
14 SO I CAN GO GET HELP. AND SHE MAKES THAT DECISION.
15 AND THAT SHOWS HOW DESPERATE SHE WAS BY THE FACT THAT
16 SHE HAD TO FORCE THE BACK DOOR OPEN, ACTUALLY TOOK THE
17 CHAIN, YANKED THE CHAIN OUT OF THE DOOR TO GET OUT OF
18 THAT HOUSE. SHE FLEES, RUNS DOWN THE ROAD, RUNS DOWN
19 THE ROAD TO THE LITTLE CORNER STORE DOWN HERE WHERE
20 SHE KNEW SHE HAD SEEN SOME PEOPLE WHEN SHE PULLED IN
21 BECAUSE SHE HAD TO GO BY THERE WHEN SHE CAME HOME, SHE
22 DROVE BY THERE. AND SHE MEETS LEBO, MS. FRAZIER.
23 OTHER PEOPLE, BUT SHE'S THE PERSON THAT SHE KNEW.
24 OKAY?

25 I WANT TO TALK KIND OF TWO SEPARATE -- ABOUT

1 LEBO IN KIND OF TWO SEPARATE PORTIONS. OKAY?
2 INITIALLY, KIND OF THE INITIAL DEALING WITH HER. WHAT
3 DID LEBO TELL US INITIALLY WHEN MS. WRIGHT CAME,
4 LATOYA CAME RUNNING UP? SHE WAS HYSTERICAL. SHE'S
5 BLEEDING, HOLDING HER STOMACH AREA. SHE'S TELLING
6 THEM SHE THOUGHT SHE HAD BEEN SHOT, AND THAT HER BABY
7 WAS STILL IN THE HOUSE, HYSTERICAL. CAN YOU IMAGINE,
8 CAN YOU IMAGINE HOW SHE WAS ACTING AT THAT TIME? THEY
9 GET IN THE CAR, THEY GO BACK UP THERE, SOMEBODY GOES
10 IN AND GETS THE BABY, THANKFULLY NOT HURT, COMES BACK
11 OUT. THEY ARE THEN IN THE PROCESS -- NINE ONE ONE HAS
12 BEEN CALLED ALREADY, SHE'S BLEEDING, SHE KNOWS SHE'S
13 BEEN SHOT. THEY'RE GETTING READY TO TAKE HER TO THE
14 HOSPITAL WHEN PUBLIC SAFETY COMES PULLING UP, OFFICER
15 WARRINGTON. SHE GETS OUT, OFFICER WARRINGTON DEALS
16 WITH HER. ALRIGHT, AND THIS IS WHAT I DON'T QUITE
17 UNDERSTAND WHAT THIS BIG DISCREPANCY MS. HINDS WAS
18 TALKING ABOUT. OKAY? WHAT I REMEMBER, AND IF YOU
19 REMEMBER SOMETHING DIFFERENTLY, PLEASE TAKE YOUR
20 MEMORY. OFFICER WARRINGTON, WHEN HE WAS ASKED,
21 COULDN'T REMEMBER WHO ELSE WAS IN THE CAR, COULDN'T
22 REMEMBER. OKAY? AT THAT POINT IN TIME HIS ATTENTION,
23 LAW ENFORCEMENT'S ATTENTION, ULTIMATELY, EMS'S
24 ATTENTION IS ON HER, IS ON LATOYA WRIGHT. OKAY? WHAT
25 DOES LEBO TELL YOU SHE DID AT THAT POINT IN TIME? SHE

1 TOOK THE BABY TO, TOOK HER TO HER FATHER'S HOUSE.
2 OKAY? DURING THAT POINT IN TIME LATOYA IS STILL BEING
3 TREATED. YOU KNOW, THEY'VE GOT HER, MAKING SURE, I
4 MEAN, SHE DOESN'T NEED TO GET TO THE HOSPITAL
5 IMMEDIATELY, I MEAN, SO THEY HAD TO CLEAR THE SCENE,
6 YOU HEARD, SO EMS COULD COME ON THE SCENE. SHE HAD TO
7 BE TREATED, YOU KNOW, THEY HAD THAT FEMALE OFFICER TO
8 GET THERE, FOUND THE BULLET FRAGMENT WRAPPED UP IN HER
9 CLOTHES, BANDAGED HER UP, REALIZED IT WASN'T A
10 PENETRATING WOUND BUT MORE OF A GRAZING WOUND, AND AT
11 THAT POINT IN TIME WHAT DOES EMS TELL YOU? WHAT DOES
12 MS. HALL TELL YOU, THE PARAMEDIC? YOU KNOW, THE
13 REASON WHY SHE THEN HAD TO DELAY, WAITING TO LEAVE
14 WAS, THEY WERE WAITING FOR THE BABY TO COME BACK. AND
15 LEBO BRINGS THE CHILD BACK. THE BABY IS RUN OVER TO
16 THE AMBULANCE TO BE CHECKED OUT, AND THAT'S WHEN SHE
17 TELLS YOU SHE IS HEARING THE DESCRIPTION BEING GIVEN,
18 BECAUSE THEY'RE STILL TALKING WHILE THE TIME IS GOING
19 ON, THEY'RE TAKING ADVANTAGE OF THAT TIME WHILE
20 THEY'RE WAITING NOW, AS OPPOSED TO HER BEING
21 TRANSPORTED TO THE HOSPITAL, TO BE GETTING THAT
22 DESCRIPTION, BECAUSE SHE'S CALMED DOWN A LITTLE BIT
23 NOW. YOU KNOW, SHE REALIZES SHE DOESN'T HAVE A LIFE
24 THREATENING INJURY, HER CHILD IS SAFE. SO, THEY ARE
25 NOW GETTING THE DESCRIPTION FROM HER, AND THAT'S WHEN

1. LEBO HAS COME BACK UP AND HAS HEARD THAT DESCRIPTION.
2. OKAY? BUT THEY SOMEHOW WANT YOU TO BELIEVE, AND KIND
3. OF BACK UP A LITTLE BIT, OKAY, THAT WHEN SHE FIRST
4. ENCOUNTERED HER, SHE'S HYSTERICAL, SHE'S BEEN SHOT,
5. HER CHILD IS STILL OFF IN A HOME WHERE THE GUNMAN IS,
6. THAT THAT'S WHEN I GUESS LEBO SOMEHOW IS SUGGESTING TO
7. HER? I MEAN, THAT MAKES NO SENSE, MAKES NO SENSE
8. WHATSOEVER. WHAT MAKES SENSE IS THE FACT THAT WHEN
9. SHE FINALLY HEARS HER GIVING THE DESCRIPTION, IT'S
10. LATER ON AFTER SHE HAD COME BACK, COME BACK OUT THERE.

11. ALRIGHT, LET'S TALK ABOUT THE DESCRIPTION
12. SHE GIVES TO THE OFFICERS. BLACK MALE, DARK
13. COMPLEXION, NINETEEN TO TWENTY-TWO YEARS OLD, -- WHAT
14. ELSE HAVE WE GOT HERE? SHORT TWISTS IN HIS HAIR, TEAR
15. DROP TATTOO UNDER HIS RIGHT EYE, GREEN SHIRT, BLUE
16. JEANS, AND A JACKET, ABOUT A HUNDRED AND SIXTY POUNDS,
17. ABOUT A HUNDRED AND SIXTY POUNDS. AND THEN THE
18. HEIGHT, AND I WANT TO TALK TO YOU A LITTLE BIT ABOUT
19. THIS HEIGHT DISCREPANCY. THE OFFICER TESTIFIED THAT
20. SHE TOLD HIM HE WAS FIVE FOOT NINE. SHE GOT ON THAT
21. STAND AND TOLD YOU HE WAS FIVE FOOT FOUR. OKAY? DO
22. YOU THINK IT'S REASONABLE THAT THE OFFICER COULD HAVE
23. MISUNDERSTOOD HER THAT NIGHT WHEN SHE'S SAYING THAT?
24. BUT, AND THE REASON WHY THAT MAKES SENSE, LADIES AND
25. GENTLEMEN, THERE'S TWO REASONS WHY. THREE DAYS LATER

1 SHE COMES IN, THE MORNING THAT SHE IDENTIFIES HIM IN
2 THE PHOTO LINEUP, ON THE TWENTY-SEVENTH, AND SHE GIVES
3 A WRITTEN STATEMENT TO DETECTIVE RIVERS AT THAT POINT
4 IN TIME. AND SHE'S DESCRIBING WHAT HAPPENED, AND WHAT
5 IS HER DESCRIPTION, IF YOU REMEMBER WHEN I ASKED HIM?
6 IT'S A SHORT GUY, A SHORT GUY AT MY DOOR. OKAY? NOT
7 A FIVE FOOT NINE GUY, A SHORT GUY. AND IF WE'RE TO
8 BELIEVE AS THEY WANT, THAT SHE'S SUDDENLY CHANGING HER
9 STORY I GUESS TO MAKE IT FIT HIM MORE, I DON'T KNOW,
10 BUT WE KNOW HE'S FIVE FOOT SIX. OKAY? WHEN HE GETS
11 BOOKED IN, WHEN HE GETS ARRESTED ON THE TWENTY-
12 SEVENTH, HE'S FIVE FOOT SIX. AND YOU HAD AN
13 OPPORTUNITY TO SEE HIM STAND UP BEFORE YOU. HE'S FIVE
14 FOOT SIX. ALRIGHT. IF SHE'S GOING TO SUDDENLY CHANGE
15 HER STORY TO MATCH HIM, WHY IS HE FIVE FOOT FOUR? WHY
16 ISN'T HE FIVE FOOT SIX? I SUBMIT TO YOU, SHE'S
17 TELLING THE TRUTH, HE'S A SHORT GUY. YOU KNOW, SHE
18 DIDN'T HAVE, AS MS. HINDS SAID, I MEAN, SHE DIDN'T
19 HAVE A MEASURING STICK OUT THERE. SHE DIDN'T ASK THE
20 GUY TO STAND STILL, HOLD ON, LET ME MEASURE YOU, YOU
21 KNOW, STAND UP AGAINST THE WALL OVER HERE SO I CAN
22 MAKE A MARK SO I CAN COME BACK AND MEASURE YOU.
23 ALRIGHT. AND THE FACT OF THE MATTER IS, IT'S OFF BY A
24 COUPLE OF INCHES EITHER WAY. OKAY? YOU KNOW JUST
25 FROM COMMON SENSE TRYING TO JUDGE SOMEBODY'S HEIGHT,

1 I MEAN, UNLESS THEY'RE THE SAME HEIGHT AS YOU AND
2 YOU'RE LOOKING EYE TO EYE WITH THEM, I MEAN, IT'S A
3 PRETTY DIFFICULT THING TO DO, A PRETTY DIFFICULT THING
4 TO DO. BUT HER DESCRIPTION OF HIM AS BEING A SHORT
5 GUY, I SUBMIT TO YOU, THAT'S THE ACCURATE DESCRIPTION,
6 THAT'S FIVE FOOT FOUR.

7 THE SECOND THING I WANT TO TALK TO YOU ABOUT
8 LEBO NOW, ABOUT LEBO. ALRIGHT, SHE HEARS THIS
9 DESCRIPTION OUT THERE, AND SHE ULTIMATELY TELLS THEM,
10 YOU KNOW, LAW ENFORCEMENT GETS THE NAME, WALTER.
11 THAT'S WHAT SHE REMEMBERS THAT NIGHT, THE NAME,
12 WALTER. IT'S SOMEBODY SHE WENT TO SCHOOL WITH EIGHT
13 YEARS AGO, NOT NINE YEARS AGO, BUT EIGHT YEARS AGO,
14 TWO THOUSAND ONE-TWO THOUSAND TWO SCHOOL YEAR, THAT
15 SHE WENT TO MIDDLE SCHOOL WITH. OKAY? YOU'VE GOT TO
16 BELIEVE ONE OF TWO THINGS, ACTUALLY, ONE OF THREE
17 THINGS, EITHER SHE'S TELLING THE TRUTH, SHE TELLING
18 THE TRUTH, SHE SAW WALTER GREENE OUT THERE A SHORT
19 TIME BEFORE THIS, THE PERSON THAT SHE WENT TO MIDDLE
20 SCHOOL WITH THAT MATCHED THE DESCRIPTION PERFECTLY OF
21 WHO DID IT, OF WHO DID IT, THAT SHE WAS ABLE TO THEN
22 IDENTIFY. OKAY? OR ONE OF TWO OTHER THINGS, EITHER
23 LEBO'S LYING, SHE'S LYING, YOU KNOW, SOMEHOW SHE
24 DECIDED, ALRIGHT, SOMEHOW SHE DECIDED, YOU KNOW, I'M
25 HANGING OUT HERE, YOU KNOW, IT'S THIS GUY I WENT TO

1 MIDDLE SCHOOL WITH, I HAVEN'T SEEN HIM IN EIGHT YEARS,
2 I HAVEN'T SEEN HIM IN EIGHT YEARS, YOU KNOW, THE GIRL
3 THAT I KNOW, I'M FRIENDS WITH FROM THE NEIGHBORHOOD
4 JUST GOT HER HOME BROKEN INTO AND GOT SHOT, LET'S
5 BLAME WALTER, LET'S BLAME WALTER. NEVER MIND THE FACT
6 THAT I HAVEN'T SEEN HIM IN EIGHT YEARS, HAD NO EARTHLY
7 IDEA WHAT HE MIGHT LOOK LIKE NOW, I GUESS. OKAY? AND
8 THAT HE COULD BE, YOU KNOW, TWO HUNDRED AND FIFTY
9 POUNDS, YOU KNOW. HE COULD HAVE NO HAIR, HE COULD
10 HAVE, YOU KNOW, DRED LOCKS DOWN TO, YOU KNOW, HIS
11 WAIST. NEVER MIND ALL THAT. SO, EITHER SHE'S LYING,
12 AND I SUBMIT TO YOU MAKES NO SENSE, I MEAN, THAT MAKES
13 ABSOLUTELY NO SENSE WHATSOEVER, OR IT IS JUST THE MOST
14 UNBELIEVABLE, CRAZY COINCIDENCE THAT YOU COULD EVER
15 IMAGINE, THAT SHE SAW WALTER GREENE OUT THERE, THE GUY
16 SHE WENT TO MIDDLE SCHOOL WITH SOMETIME THAT EVENING,
17 EVEN THOUGH THAT CONTRADICTS, YOU KNOW, THE ALIBI HE
18 PUT UP, BUT YOU KNOW, MAYBE THEY'RE SOMEHOW MISTAKEN
19 ABOUT WHERE HE WAS THAT WHOLE TIME, AND MAYBE HE DID
20 GO BY THE STORE OVER THERE, AND SHE SAW HIM. AND THE
21 BIGGEST COINCIDENCE IN THE WORLD HAPPENED, A COUPLE OF
22 HOURS LATER, AN HOUR LATER OR SO, MS. WRIGHT GETS HER
23 HOME BROKEN INTO, GETS ROBBED, GETS SHOT BY A GUY WHO
24 JUST HAPPENS TO BE THE SAME HEIGHT AS HIM, THE SAME
25 WEIGHT AS HIM, THE SAME COMPLEXION AS HIM, THE SAME

1 HAIR STYLE AS HIM, THE SAME CLOTHING AS HIM, THE SAME
2 AGE AS HIM, WITH A TATTOO IN THE SAME PLACE. BECAUSE
3 ALL OF THAT DESCRIPTION IS GIVEN TO THE POLICE WITHIN,
4 YOU KNOW, TEN, FIFTEEN MINUTES OF THIS INCIDENT
5 HAPPENING. NOT ONLY THAT, IT JUST SO HAPPENS THAT
6 HE'S GOT THE MOST INCREDIBLY BAD LUCK THAT THAT
7 HAPPENS, YOU KNOW, A SHORT TIME AFTERWARDS, BUT THEN
8 HE JUST HAPPENS, HE JUST HAPPENS TO BE, YOU KNOW,
9 HANGING OUT LESS THAN A MILE AWAY. SO, YOU'VE GOT TWO
10 TWINS RUNNING AROUND OUT HERE LESS THAN A MILE AWAY.
11 I SUBMIT TO YOU, DOES THAT MAKE ANY SENSE, DOES THAT
12 APPEAL TO YOUR COMMON SENSE? I SUBMIT TO YOU, IT
13 DOESN'T. THE ONLY SCENARIO THAT MAKES SENSE IS THE
14 FIRST ONE, THAT SHE SAW HIM OUT THERE. IT MAKES SENSE
15 THAT SHE WOULDN'T HAVE REMEMBER HIS LAST NAME, I MEAN,
16 SHE HADN'T SEEN THE GUY IN EIGHT YEARS. SHE
17 RECOGNIZED HIM, SHE RECOGNIZED HIM, RECOGNIZED HOW HE
18 LOOKED THAT NIGHT OUT THERE, THE HAIR, THE PHYSICAL
19 BUILD, THE SIZE, THE CLOTHING, THE TATTOO. AND WHEN
20 SHE HEARD LATOYA WRIGHT TELLING THE POLICE THE
21 DESCRIPTION OF THE MAN THAT DID THIS TO HER, THAT'S
22 WALTER WHO I JUST SAW OUT HERE A LITTLE WHILE AGO. I
23 SUBMIT TO YOU, THAT MAKES SENSE. THAT MAKES SENSE.

24 ALRIGHT, DETECTIVE RIVERS, ALRIGHT -- LET ME
25 GO BACK A LITTLE BIT, REAL BRIEFLY, ONE OTHER ISSUE.

1 MS. HINDS TOUCHED ON DETECTIVE ROMANSTINE,
2 THE INVESTIGATOR THAT WENT OUT TO THE HOUSE THAT NIGHT
3 AND KIND OF LOOKED AROUND FOR ANY EVIDENCE. ALRIGHT.
4 OBVIOUSLY, YOU KNOW, THE PROBLEM THERE BECAME THE FACT
5 THAT HE DIDN'T GET A CHANCE TO TALK TO HER, REALLY NOT
6 NECESSARILY THAT NIGHT, BUT AFTER THE FACT. HE GETS
7 OUT THERE THAT NIGHT. I MEAN, ALL THEY KNOW IS THAT
8 SHE HAS, YOU KNOW, BEEN SHOT AND FLED HER RESIDENCE,
9 AND YOU KNOW, I GUESS, LAW ENFORCEMENT ASSUMED THAT
10 THE PERSON FOLLOWED HER OUT OF THE RESIDENCE. SO, HE
11 DIDN'T KNOW WHERE TO START DUSTING, I MEAN, SHORT OF
12 THROWING FINGERPRINT POWER THROUGHOUT HER ENTIRE
13 TRAILER, I MEAN, HE DOESN'T KNOW WHERE TO START
14 LOOKING FOR FINGERPRINTS. OKAY? BUT HE FINDS A SHELL
15 CASING, HE FINDS A SHELL CASING AND FINDS EVIDENCE OF
16 A BULLET FRAGMENT, BECAUSE I SUBMIT TO YOU, THAT
17 BULLET THAT STRUCK HER, IT HAD TO HAVE STRUCK THE GUN
18 SHE WAS HOLDING, YOU KNOW, IT HAD TO HAVE HIT
19 SOMETHING SOLID TO HAVE FRAGMENTED LIKE THAT, LITTLE
20 TINY PIECE OF THE BULLET, THAT IS WHAT GRAZES HER. I
21 MEAN, THERE ARE TWO OTHER PIECES THAT YOU'VE GOT THAT
22 ARE FOUND ON THE FLOOR IN THERE. OKAY? I SUBMIT TO
23 YOU, THE ONE THING HE DOESN'T KNOW TO DO THAT NIGHT
24 EITHER IS TO START LOOKING AROUND OUT HERE FOR THE
25 OTHER POSSIBLE SHELL CASING. SO, WHAT DO WE KNOW

1 ABOUT SHELL CASINGS? THEY'RE EJECTED OUT OF THE GUN,
2 THEY'RE LIGHT, THEY'RE GOING TO BOUNCE AROUND, COULD
3 BE KICKED AROUND. RIGHT? SO, IF HE FIRES ONCE
4 STANDING IN THE DOORWAY THAT SHELL CASING VERY EASILY
5 COULD HAVE GONE FLYING OFF OF THAT PORCH SOMEWHERE.
6 UNFORTUNATELY, HE DOESN'T LOOK FOR IT. BUT HE HAS
7 ANOTHER SHELL CASING FOUND ULTIMATELY IN THE KITCHEN
8 WHERE I SUBMIT TO YOU, IF HE'S STANDING IN THE LIVING
9 ROOM SHOOTING DOWN THE HALLWAY, OR SHOOTING -- I MEAN,
10 ALL SHE KNOWS IS HE FIRED A SHOT. HE MAY HAVE SHOT, I
11 MEAN, SHOT, FIRED BACK OUT OF THE DOOR JUST TRYING TO
12 SCARE HER TO MAKE SURE SHE KEEPS ON GOING OUT OF THE
13 HOUSE AT THAT POINT IN TIME. I MEAN, WHO KNOWS? BUT
14 WE HAVE A SHELL CASING IN THERE. AND MS. HINDS, YOU
15 KNOW, ASKED HIM THE QUESTION, IS THERE ANY PHYSICAL
16 EVIDENCE HERE CONNECTING THIS CRIME TO WALTER GREENE?
17 AND THERE ISN'T, YOU KNOW, THERE'S NO PHYSICAL
18 EVIDENCE CONNECTING A CRIME TO ANYBODY, BUT WE KNOW IT
19 HAPPENED. WE KNOW HER HOME WAS BROKEN INTO, WE KNOW
20 SHE WAS ASSAULTED, WE KNOW SOMEBODY TRIED TO ROB HER.

21 THE NEXT WITNESS, DETECTIVE RIVERS. WHEN HE
22 FINDS OUT HE GETS ASSIGNED THE CASE WHEN HE COMES IN
23 MONDAY MORNING, SEPTEMBER THE TWENTY-SIXTH. HE TALKS
24 WITH MS. WRIGHT. AT THAT POINT IN TIME SHE HAS NOT
25 FOUND OUT FROM TALKING TO LEOBO THE PERSON'S LAST NAME

1 THAT LEBO WAS TALKING ABOUT. AND KEEP IN MIND, JUST
2 BECAUSE SHE SUDDENLY KNOWS THE NAME, WALTER GREENE,
3 ISN'T GOING TO MAKE IT ANYMORE LIKELY SHE PICKS OUT
4 PHOTOGRAPH NUMBER THREE, BECAUSE SHE STILL DOESN'T
5 KNOW WHO HE IS, IT'S STILL NOT SOMEBODY SHE KNEW
6 BEFOREHAND. OKAY? BUT SHE TESTIFIED SHE HAD NEVER
7 SEEN A PICTURE, I MEAN, NOBODY TOLD HER WHO TO PICK
8 OUT OF THIS LINEUP. OKAY? BUT SHE'S BROUGHT IN AND
9 SHOWN -- AND YOU'RE GOING TO HAVE THIS BACK IN THE
10 JURY ROOM, AND I ASK YOU PLEASE TO TAKE A GOOD LOOK AT
11 IT. OKAY? AND I SUBMIT TO YOU, I MEAN, THESE SIX
12 INDIVIDUALS THAT LOOK VERY SIMILAR, HOW THEY SHOW IN
13 THE LINEUP. OBVIOUSLY, YOU DON'T WANT YOUR TARGET
14 PERSON IN THE LINEUP NOT LOOKING LIKE THE OTHER FIVE
15 PEOPLE AT ALL. BUT YOU HEARD NOT ONLY MS. WRIGHT'S
16 TESTIMONY BUT ALSO SERGEANT RIVERS' TESTIMONY THAT
17 WHEN SHE LOOKED AT THIS SIX PHOTOGRAPHIC LINEUP HE
18 DIDN'T SUGGEST TO HER WHO TO PICK OUT, HE DIDN'T TELL
19 HER SHE HAD TO PICK SOMEBODY OUT, BUT SHE WENT
20 IMMEDIATELY TO NUMBER THREE, IMMEDIATELY. NO DOUBT IN
21 HER MIND THAT THAT'S THE PERSON THAT WAS IN HER HOME
22 THREE NIGHTS EARLIER, THERE WAS NO DOUBT IN HER MIND.
23 THEN YOU HEARD FROM DETECTIVE RIVERS HOW LATER ON THAT
24 DAY, SERGEANT RIVERS SAID, LATER ON THAT DAY MR.
25 GREENE WAS ARRESTED.

1 LET'S KIND OF LOOK BACK NOW AT THE YOUNG MAN
2 THAT WAS ARRESTED THREE DAYS AFTER THIS INCIDENT
3 HAPPENED. YOU HAVE MS. WRIGHT'S DESCRIPTION, WE TALKED
4 ABOUT IT, A BLACK MALE, NINETEEN TO TWENTY-TWO YEARS
5 OLD, HEIGHT, FIVE FOOT FOUR, SHORT, OR FIVE FOOT NINE,
6 A HUNDRED SIXTY POUNDS, DARK COMPLEXION, SHORT TWISTS
7 IN HIS HAIR, A TEAR DROP TATTOO UNDER HIS RIGHT EYE, A
8 GREEN SHIRT, BLUE SHORTS OR JEANS, A JACKET. AND THEN
9 MR. GREENE, THE MAN NOW WHO'S BEEN ARRESTED THREE DAYS
10 LATER, THREE DAYS LATER, BLACK MALE, TWENTY-TWO YEARS
11 OF AGE, FIVE FOOT SIX, A HUNDRED FIFTY-SIX POUNDS,
12 DARK COMPLEXION, SHORT TWISTS IN HIS HAIR, AND A TEAR
13 DROP, I MEAN, LITERALLY A BIRTH MARK OR A TATTOO OR
14 WHATEVER IT IS, I MEAN, YOU HAD A CHANCE TO SEE IT, I
15 MEAN, IT'S CLEAR AS DAY ON HIS CHEEK UNDER HIS RIGHT
16 EYE, CLEAR AS DAY. AND OBVIOUSLY, THE CLOTHING, I
17 MEAN, HE'S NOT WEARING THE SAME CLOTHES THREE DAYS,
18 FOUR DAYS LATER. BUT YOU THEN AGAIN, CAN SEE MORE
19 CLEARLY.

20 ALRIGHT, AND THAT BRINGS US TO THE NEXT
21 PERSON, AND I'M PRETTY CLOSE TO BEING DONE HERE --
22 THAT BRINGS US TO DR. ALLEY. DR. ALLEY, I THOUGH HE
23 WAS NICE ENOUGH GUY. HE DRIVES ALL THE WAY DOWN HERE
24 FROM CLEMSON, MAKING A HUNDRED AND EIGHTY DOLLARS AN
25 HOUR, YOU KNOW, HE SAID HE'S PROBABLY GOING TO BILL

1 BETWEEN TWELVE AND FIFTEEN HOURS. THAT MEANS HE'S
2 GOING TO MAKE ABOUT TWENTY-FIVE HUNDRED DOLLARS,
3 TWENTY-FIVE HUNDRED DOLLARS. NOT TOO BAD FOR SOMEBODY
4 WHO HAS NO EARTHLY IDEA WHO WALTER GREENE WAS, WHO ANY
5 OF US WERE THREE WEEKS AGO. TWENTY-FIVE HUNDRED
6 DOLLARS TO COME DOWN HERE. AND WHAT BASICALLY DID I
7 UNDERSTAND HIM TO TELL US? YOU KNOW, THE GIST I GOT
8 OUT OF IT IS, YOU KNOW, THAT PEOPLE CAN BE MISTAKEN
9 WHEN IDENTIFYING SOMEBODY. WOW. FOR TWENTY-FIVE
10 HUNDRED DOLLARS WE LEARNED THAT PEOPLE CAN BE MISTAKEN
11 WHEN THEY IDENTIFY SOMEBODY. YOU'VE GOT TO LOOK AT A
12 WHOLE LOT OF FACTORS TO MAKE THAT DETERMINATION. YOU
13 KNOW, I THINK THAT'S JUST COMMON SENSE, JUST COMMON
14 SENSE. OBVIOUSLY, IF SOMEBODY ID'S SOMEBODY AND THE
15 PERSON HAD THEIR FACE COVERED, I MEAN, YEAH, IT'S
16 PRETTY LIKELY THAT THEY COULD BE MISTAKEN. BUT LET'S
17 TALK ABOUT AND GO THROUGH THESE FACTORS, THESE
18 FACTORS. ALRIGHT. HE TALKED ABOUT WHAT'S THE PERSON'S
19 DEGREE OF ATTENTION, HOW AWARE ARE THEY? HOW AWARE
20 ARE THEY? I SUBMIT TO YOU, HOW WE KNOW HOW AWARE
21 LATOYA WAS THAT NIGHT, WE KNOW THAT HER SENSES WERE
22 HEIGHTENED BY THE FACT THAT SHE FELT THE NEED TO GO
23 GET A GUN OUT OF HER KITCHEN DRAWER BEFORE SHE WENT
24 AND OPENED THE DOOR. WE KNOW FROM HER TESTIMONY THAT
25 SPENT FOUR TO FIVE SECONDS STARING AT THIS PERSON,

1 STARING AT THIS PERSON TRYING TO FIGURE OUT WHO HE
2 WAS, TRYING TO FIGURE OUT WHO HE WAS. THE HOUR OF THE
3 NIGHT, I MEAN, YOU KNOW, I SUBMIT TO YOU, SHE WAS VERY
4 AWARE. YOU KNOW, HE TRIES TO COUNTER THAT WITH, WELL,
5 HOW STRESSFUL THE SITUATION WAS. I SUBMIT TO YOU, IT
6 HADN'T GOTTEN STRESSFUL UNTIL THE GUY PULLS OUT THE
7 GUN. THE FIRST FOUR TO FIVE SECONDS WHEN SHE STANDS
8 THERE STARING AT THAT PERSON'S FACE, I SUBMIT TO YOU,
9 HER SENSES WERE HEIGHTENED, WERE HEIGHTENED. HE SAID,
10 YOU LOOK AT HOW OLD THE PERSON IS. WELL, I MEAN,
11 OBVIOUSLY, I MEAN, SHE'S NOT, SHE'S NOT A CHILD, SHE
12 AN ADULT. WHAT SIGNS OF IMPAIRMENT? I TOLD YOU SHE
13 WAS WEARING HER CONTACTS, HAD NO PROBLEM SEEING,
14 HADN'T BEEN DRINKING, YET AGAIN, ALL FACTORS THAT
15 WOULD MAKE AN ID, ACCORDING TO DR. ALLEY, MORE
16 RELIABLE, MORE RELIABLE. AND WHAT WAS HER OPPORTUNITY
17 TO OBSERVE, WHAT'S THE LIGHTING LIKE, WHAT'S THE
18 LIGHTING LIKE? YOU KNOW, MS. HINDS KEPT SAYING, WELL,
19 WE CAN SEE THAT THERE WAS LIGHTING OUT. I SUBMIT TO
20 YOU, THE BRIGHT BULB IN THAT KITCHEN THAT IS SHINING,
21 I MEAN, FROM THERE TO THERE, OR RIGHT ON THE MAN
22 STANDING IN HER DOORWAY, STANDING ON THE DOORWAY, YOU
23 KNOW, DISREGARD THE LIGHT OUTSIDE, I ADMIT THAT'S A
24 STREET LIGHT THAT'S OUT IN HER YARD BEHIND HIM. THAT
25 LIGHT IS SHINING RIGHT ON THE, ON THE RIGHT HALF AT

1 THE VERY LEAST, OF HIS FACE, I SUBMIT TO YOU, RIGHT
2 WHERE SHE WAS ABLE TO IDENTIFY THAT TEAR DROP TATTOO.
3 THAT SHOWS HOW GOOD THE LIGHTING WAS. WHAT PROXIMITY
4 DID THEY HAVE, WHAT PROXIMITY DID THEY HAVE?
5 OBVIOUSLY, YOU KNOW, IF SHE'S VIEWING THIS PERSON ALL
6 THE WAY ACROSS THE HALLWAY, I MEAN, YEAH, OF COURSE,
7 THAT'S GOING TO MAKE IT A LOT HARDER FOR YOU TO LATER
8 IDENTIFY THE PERSON IF YOU'RE SEEING THEM THIRTY,
9 FORTY, FIFTY, SIXTY FEET AWAY, AS OPPOSED TO THREE
10 FEET AWAY, STARING RIGHT IN THE PERSON'S FACE.

11 WHAT KIND OF OBSTRUCTIONS WERE THERE? SHE'S
12 NOT LOOKING THROUGH A DIRTY WINDOW, AND SHE'S NOT
13 LOOKING THROUGH A WINDOW WITH SOME SHRUBBERY IN FRONT
14 TO FIT. SHE'S NOT LOOKING AT A PERSON WITH, YOU KNOW,
15 A BANDANA PULLED UP OVER THE BOTTOM HALF OF THEIR
16 FACE. SHE'S NOT LOOKING AT A PERSON WITH A BASEBALL
17 CAP PULLED DOWN OVER HIS EYES. SHE'S NOT LOOKING AT
18 SOMEBODY WITH BIG OLD SUNGLASSES ON. NO OBSTRUCTIONS
19 WHATSOEVER, THREE FEET AWAY, WITHOUT ANYTHING
20 OBSTRUCTING HER VIEW.

21 YOU KNOW, THEY TALKED, THEY MADE A BIG DEAL
22 ABOUT THE, YOU KNOW, THE PRESENCE OF A WEAPON, YOU
23 KNOW, THE FACT THAT THAT WILL, CAN MAKE AN
24 IDENTIFICATION LESS RELIABLE, IF A WEAPON IS INVOLVED.
25 AND YET AGAIN, WHEN I ASKED DR. ALLEY, WELL, WHAT

1 EFFECT WOULD IT HAVE IF A PERSON HAD A CHANCE TO VIEW
2 THE PERSON FOR FOUR OR FIVE SECONDS BEFORE THE GUN WAS
3 INTRODUCED INTO THE SCENARIO? THAT WOULD MAKE IT MORE
4 RELIABLE THAN IF THE GUN WAS JUST THERE FROM THE GET
5 GO. AND HE KNOWS SHE HAD AN OPPORTUNITY FROM THE
6 DESCRIPTION SHE GAVE, YET AGAIN, TO SEE HIM AND GET A
7 GOOD LOOK AT HIM.

8 ALRIGHT, DISTINCTIVE CHARACTERISTICS,
9 DISTINCTIVE CHARACTERISTICS. ALRIGHT, I MEAN, YOU
10 HAVE A TATTOO, A FACIAL SCAR, YOU HAVE CRAZY HAIR,
11 IT'S GOING TO MAKE YOU MORE DISTINCTIVE AND EASIER TO
12 IDENTIFY, EASIER TO IDENTIFY. AND YET AGAIN, Y'ALL
13 HAVE HAD A CHANCE TO SEE HIM, HAD A CHANCE TO SEE HIM
14 SITTING THIS FAR AWAY. AND I SUBMIT TO YOU, WE TALKED
15 ABOUT DISTANCES, YOU HAD A CHANCE TO SEE HIM UP CLOSE,
16 HAD A CHANCE TO SEE HIM ACROSS THE COURTROOM. THAT'S
17 PRETTY DISTINCTIVE, PRETTY DISTINCTIVE.

18 HE TALKED A LITTLE BIT ABOUT CROSS-RACIAL
19 VERSUS INTRA-RACIAL IDENTIFICATION, THAT IT'S EASIER
20 FOR PEOPLE OF THE SAME RACE TO IDENTIFY EACH OTHER
21 THAN PEOPLE DIFFERENT RACES. THE AFRICAN-AMERICAN,
22 CAUCASIAN, ASIAN, AND THIS CASE OBVIOUSLY HAD THE SAME
23 RACE TO MAKE THE IDENTIFICATION MORE RELIABLE THAN IF
24 IT WAS CROSS-RACIAL.

25 THE LAST ONE I WANT TO TALK ABOUT AS FAR AS

1 THE, YOU KNOW, SOME OF THE FACTORS HE TALKED ABOUT IS
2 FAMILIARITY -- I BUTCHER THAT WORD, HOW FAMILIAR YOU
3 ARE WITH THE PERSON. OBVIOUSLY, THIS IS A CASE WHERE
4 LATOYA HAD NEVER SEEN THIS PERSON BEFORE, HAD NEVER
5 SEEN THIS PERSON BEFORE. I MEAN, THAT'S NOT GOING TO
6 ADD ANYTHING TO HER FOR THE RELIABILITY OF HER
7 IDENTIFICATION. BUT WHO WOULDN'T? IT'S GOING TO ADD
8 TO THE IDENTIFICATION MADE BY LEBO. OKAY? THE FACT
9 THAT SHE HAS SEEN HIM BEFORE, WENT TO SCHOOL WITH HIM
10 FOR A YEAR, KNEW WHO HE WAS. AND YOU KNOW, IT'S NOT
11 LIKE SHE'S MAKING THAT UP. AND WE HAVE THE RECORDS
12 RIGHT HERE TO PROVE THAT THEY WERE IN SCHOOL TOGETHER.

13 AND THE LAST THING WITH HIM I WANT TO TALK
14 ABOUT IS, YOU KNOW, THEY TALKED ABOUT HOW MUCH TIME
15 PASSED, HOW MUCH TIME PASSED. FROM THE TIME THE
16 VIEWING WAS DONE UNTIL THE LINEUP WAS SHOWN, THIS WAS
17 THREE DAYS, NOT A SIGNIFICANTLY LONG PERIOD OF TIME.
18 OKAY. BUT HIS CONCERN WAS THAT, YOU KNOW, THEY MAY
19 HAVE HAD, YOU KNOW, OTHER THINGS KIND OF SUGGESTED
20 THAT WOULD POSSIBLY CONTAMINATE THE IDENTIFICATION. I
21 SUBMIT TO YOU THERE WAS NO EVIDENCE OF THAT HAPPENING
22 IN THIS CASE. AND THEY'VE TRIED TO MAKE IT, TRIED TO
23 MANUFACTURE AND MAKE IT THERE, BUT I SUBMIT TO YOU,
24 IT'S NOT. NO EVIDENCE OF ANYBODY SUGGESTING TO LATOYA
25 THAT THE PERSON HAD A TEAR DROP SHAPED TATTOO OR BIRTH

1 MARK ON HIS CHEEK. NOBODY SUGGESTING, NO EVIDENCE OF
2 ANYBODY SUGGESTED TO HER, YOU KNOW, WHAT STYLE OF HAIR
3 THE PERSON HAD, WHAT CLOTHING HE HAD ON, ANYTHING OF
4 THAT NATURE. THERE'S NO EVIDENCE OF THAT. THEY'RE
5 TRYING TO SHOW BOTH, WELL, SHE HAD A CHANCE TO TALK OR
6 BE IN THE CAR WITH LEBO PRIOR TO TALKING TO THE
7 POLICE, SO SOMEHOW THAT CREATES CONTAMINATION. WELL,
8 I SUBMIT TO YOU, THERE'S NO EVIDENCE, NO EVIDENCE THAT
9 THAT HAPPENED, THAT IN ANY WAY DID SHE INFLUENCE WHO
10 SHE ULTIMATELY PICKED OUT OF A LINEUP THREE DAYS
11 LATER. SHE DIDN'T SHOW HER A PICTURE AND SAY, YOU
12 KNOW, I'LL TRY TO GET THIS WALTER GREENE GUY. WHEN YO
13 LOOK AT THOSE FACTORS THAT DR. ALLEY TALKED ABOUT, I
14 SUBMIT TO YOU, THEY END UP A HUNDRED PER CENT
15 CORROBORATING HER IDENTIFICATION. WHEN YOU LOOK AT
16 ALL THOSE FACTS, THEY ALL CORROBORATE, SUBSTANTIATE
17 HER IDENTIFYING HIM THREE DAYS LATER, AND HER
18 IDENTIFYING HIM YESTERDAY MORNING.

19 THE LAST THING I WANT TO TALK TO YOU ABOUT,
20 THE, MS. ROSS, MS. MILLER AND MR. WELLS, THE OTHER
21 THREE WITNESSES THE DEFENSE CALLED. LADIES AND
22 GENTLEMEN, IF YOU FIND THAT TESTIMONY CREDIBLE, IF YOU
23 FIND IT CREDIBLE THAT THAT TWENTY-TWO YEAR OLD MAN
24 BACK ON APRIL TWENTY-THIRD, THE NIGHT OF APRIL TWENTY-
25 THIRD OF TWO THOUSAND TEN, WENT OVER THIS HOUSE AT

1 MIDNIGHT, OR WHATEVER TIME, AND I'M GOING TO TALK TO
2 YOU ABOUT THAT, THE DISCREPANCIES THERE, BUT AT SOME
3 POINT IN TIME WENT OVER TO THAT HOUSE THAT NIGHT AND
4 VOLUNTARILY LET HIMSELF BE LOCKED IN THAT HOUSE WITH
5 NO WAY OUT, IF YOU FIND THAT CREDIBLE, LADIES AND
6 GENTLEMEN, FIND HIM NOT GUILTY, FIND HIM NOT GUILTY. I
7 SUBMIT TO YOU, THAT DOESN'T APPEAL TO ANY OUNCE OF
8 COMMON SENSE OUT THERE, THAT STORY THAT YOU HEARD FROM
9 THE THREE OF THEM YESTERDAY MORNING, AT LEAST FROM TWO
10 OF THEM.

11 LET'S TALK ABOUT THOSE REAL BRIEFLY, MS.
12 ROSS, THE FIRST YOUNG LADY THAT TESTIFIED. YOU KNOW,
13 AND KEEP IN MIND, YOU KNOW, WHEN WITNESSES TESTIFY,
14 WHETHER THEY'RE CALLED BY THE STATE OR BY THE DEFENSE,
15 THEY'RE SUBJECT TO THE SAME SCRUTINY, YOU STILL HAVE
16 TO JUDGE THEIR CREDIBILITY JUST LIKE YOU JUDGE ANY
17 OTHER WITNESS'S CREDIBILITY. OKAY? ASK, I MEAN, YOU
18 KNOW, DO THEY HAVE SOME BIAS, SOMETHING, DO THEY HAVE
19 SOMETHING TO GAIN, SOME STAKE IN THE OUTCOME, SOME
20 MOTIVE NOT TO BE COMPLETELY FORTHRIGHT WITH YOU? AND
21 THAT'S HER CHILD'S FATHER SITTING OVER THERE. DOES SHE
22 HAVE SOME REASON NOT TO MAYBE BE TOTALLY FORTHRIGHT
23 WITH YOU? BUT WITH HER IT'S NOT REALLY, BECAUSE YOU
24 KNOW, SHE DOESN'T SAY THAT HE, SHE DOESN'T KNOW WHERE
25 HE IS AT TWO O'CLOCK IN THE MORNING. BUT WHAT DOES

1 SHE TELL US? AND I MEAN, I'M HOPING I'M REMEMBERING
2 THIS RIGHT, BUT WHAT I REMEMBER HER WAS THAT THEY HAD
3 HAD SOME FALLING OUT EARLIER IN THE WEEK AND HE HAD
4 GONE TO STAY WITH HIS MOM, GONE TO STAY WITH HIS MOM,
5 AND SHE WAS IN THE PROCESS THEN, BECAUSE SHE WAS GOING
6 TO HAVE TO MOVE OUT OF THE HOME THAT THEY WERE STAYING
7 IN, I DON'T KNOW IF IT WAS A TRAILER OR A HOUSE OR AN
8 APARTMENT OR WHATEVER, THAT THEY WERE GOING TO HAVE TO
9 MOVE OUT. AND THAT'S FRIDAY, THE TWENTY-THIRD, THAT
10 FRIDAY, THE TWENTY-THIRD, SHE DROPS HER TWO CHILDREN
11 OFF WITH HIM DURING THE DAY OVER AT HIS MOM'S HOUSE,
12 WHICH WE NOW KNOW IS LOCATED DOWN HERE, LESS THAN A
13 MILE AWAY FROM WHERE THE INCIDENT OCCURRED, RIGHT DOWN
14 THE RAILROAD TRACKS. OKAY? DROPS THEM OFF, AND SHE
15 TELLS US THAT SHE COMES BACK BY, THAT SHE COMES BACK
16 BY, I WANT TO SAY SHE SAID SEVEN:FORTY-FIVE, AND THAT
17 THEY SAT OUT ON THE PORCH AND TALKED UNTIL NINE
18 O'CLOCK, AND THEN SHE LEFT, AND SHE CALLS HIM ON THE
19 PHONE, HE CALLS HER, I DON'T KNOW WHICH ONE, I'M NOT
20 SURE SHE SAID, AND THEY TALKED ON THE PHONE FROM TEN
21 O'CLOCK UNTIL ELEVEN O'CLOCK, AND SHE KNOWS, SHE'S
22 POSITIVE THAT HE WAS AT HIS MOTHER'S HOUSE, BECAUSE HE
23 HEARD THE MOM IN THE BACKGROUND. OKAY? AND THAT HE
24 THEN SAID HE WAS GOING TO BED. SO, OBVIOUSLY, THE
25 IMPLICATION THEY'RE HOPING TO GET OUT OF THAT IS THAT,

1 YOU KNOW, HE WAS AT MOM'S HOUSE, YOU KNOW, SHE LEFT
2 HIM THERE AT NINE O'CLOCK, TALKS TO HIM AT TEN TO
3 ELEVEN, AND HE'S THERE, AND HE SAYS HE'S GOING TO BED,
4 SO OBVIOUSLY, HE DOESN'T COME OUT, AND COULDN'T HAVE
5 COMMITTED THIS. OKAY? THE PROBLEM IS, YOU SEE, THAT
6 CONTRADICTS, IS NOT SUPPORTED OR CORROBORATED BY THE
7 OTHER TWO WITNESSES THEY THEN CALL. OKAY? THEY PUT
8 UP HIS MOTHER, PUT UP HER FRIEND, CLOSE FRIEND. AND
9 WHAT DO THEY BOTH SAY? YOU KNOW, THAT HE HAD BEEN
10 THERE EARLIER, BUT THE LAST WE HAD SEEN HIM IT WAS
11 DAYLIGHT OUT, IT WAS DAYLIGHT OUT. WELL, THAT'S
12 DEFINITELY NOT NINE O'CLOCK, TEN O'CLOCK OR ELEVEN
13 O'CLOCK IN APRIL. OKAY? AND THEN WE DON'T HEAR FROM
14 HIM AGAIN UNTIL HE'S KNOCKING ON THE DOOR AT MIDNIGHT,
15 AT MIDNIGHT. AD WE LET HIM IN. YOU KNOW, MR. WELLS
16 GETS PERMISSION FROM MOM -- IT DOESN'T MAKE ANY SENSE,
17 HE'S GOT TO GET PERMISSION TO LET HER SON IN, BUT YET,
18 AT THE SAME TIME, HE'S THE RULER OF THE HOUSE,-- AND
19 HE THEN SPENDS THE NIGHT. OKAY? SO, THEY DON'T SEE
20 HIM, THEY'RE SAYING THEY DON'T SEE HIM UNTIL MIDNIGHT.
21 WELL, THAT TOTALLY CONTRADICTS WHAT MS. ROSS IS
22 TESTIFYING ABOUT. I SUBMIT TO YOU, WHAT THAT DOES IS
23 CALLS INTO QUESTION, I MEAN, THEIR TIMES, AND THE
24 NIGHT, AND ALL OF THAT, WHETHER THEY'RE SPEAKING ABOUT
25 THE SAME NIGHT, THEY'RE SPEAKING ABOUT THE SAME DAY,

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1 THE SAME TIME, WE DON'T KNOW, WE DON'T KNOW. OKAY? IF
2 SHE SAYS THAT, MS. MILLER, THAT SHE KNOWS THE DATE AND
3 THE TIME BECAUSE SHE LOOKED AT HER VCR AND THE
4 CALENDAR NEXT TO THE VCR. AND DOES THAT MAKE ANY
5 SENSE TO YOU, LADIES AND GENTLEMEN? I MEAN, IF
6 SOMEBODY COMES OVER TO VISIT AND THEY KNOCK ON THE
7 DOOR YOU LET HIM IN, I MEAN, SHE LOOKS AT, I MEAN, A
8 VCR TO SEE WHAT TIME IT IS, AND THE CALENDAR, JUST TO
9 DOUBLE CHECK THE DATE, YOU KNOW, JUST IN CASE, YOU
10 KNOW, FOUR DAYS LATER THAT PERSON GETS CHARGED WITH A
11 CRIME I KNOW THAT HE WAS HERE BECAUSE I LOOKED AT MY
12 CALENDAR. DOES THAT APPEAL TO YOUR COMMON SENSE, OR
13 IS THAT A MOTHER, YOU KNOW, STRETCHING THINGS, TRYING
14 TO PROTECT HER SON, TRYING TO PROTECT HER SON?

15 YOU KNOW, THIS WHOLE THING WITH THE DOORS,
16 LADIES AND GENTLEMEN, I MEAN, DOES THAT -- AND YOU
17 KNOW, MAYBE IT'S DIFFERENT WORLD, I DON'T KNOW, BUT I
18 MEAN, SHE'S LIVED THERE FOR A TWO AND A HALF YEARS, I
19 MEAN, YOU KNOW, SHE COULD HAVE LIVED OVER IN OUR
20 DETENTION CENTER AND HAD MORE FREEDOM THAN SHE
21 APPARENTLY HAS HAD IN THIS HOME THE LAST TWO AND A
22 HALF YEARS. I SUBMIT TO YOU, THAT'S CRAZY. DOES THAT
23 MAKE ANY SENSE, OR HAS THAT BEEN GRASPING AT STRAWS?
24 BECAUSE THE PROBLEM IS, YOU KNOW, AND I HAVE NO DOUBT,
25 I HAVE NO DOUBT HE WAS OVER AT THAT HOUSE SOMETIME,

1 PROBABLY THAT EVENING. YOU KNOW, MS. ROSS IS PROBABLY
2 TELLING THE TRUTH ABOUT THAT. BUT YOU KNOW, THEIR
3 PROBLEM IS, IS THAT, YEAH, WE KNOW HE'S HERE, YOU
4 KNOW, I'LL SAY WE PUT HIM HERE IN THE EVENING HOURS.
5 WELL, THE PROBLEM IS, IS HOW CAN YOU BE SURE THAT HE
6 WAS THERE AT TWO O'CLOCK IN THE MORNING, YOU KNOW. IF
7 WE'RE SLEEPING HOW DO WE KNOW? SO, YOU START GRASPING
8 AND START, YOU KNOW, MAKE IT SO THERE'S NO WAY HE
9 COULD POSSIBLY HAVE GOTTEN OUT OF THE HOUSE. I SUBMIT
10 TO YOU, IT DOESN'T MAKE SENSE.

11 IT'S ULTIMATELY THAT PROXIMITY. NOW, LESS
12 THAN A MILE AWAY, I SUBMIT TO YOU, IT ENDS UP BEING
13 TURNED INTO JUST BEING MORE EVIDENCE OF HIS GUILT, YOU
14 KNOW. SO, NOT ONLY DO WE HAVE MS. WRIGHT IDENTIFYING
15 HIM, HIM MATCHING HER DESCRIPTION TO A T, DO WE HAVE
16 LEBO, SOMEBODY THAT KNOWS HIM, PUTTING HIM IN THE AREA
17 A SHORT TIME BEFORE HAND, BUT LO AND BEHOLD, HIS OWN
18 WITNESSES PUT HIM LESS THAN A MILE DOWN THE TRAIN
19 TRACKS FROM WHERE THIS INCIDENT OCCURRED.

20 AND AS I TOLD YOU WHEN I HAD A CHANCE TO GET
21 UP BEFORE A LITTLE WHILE AGO, YOU'RE GOING TO HAVE AN
22 OPPORTUNITY IN A SHORT WHILE TO GO BACK INTO YOUR JURY
23 ROOM AND TO DELIBERATE. ALL WE ASK OF YOU, LADIES AND
24 GENTLEMEN, IS THAT YOU RETURN A VERDICT THAT SPEAKS
25 THE TRUTH, SPEAKS THE TRUTH. I TOLD YOU, I MEAN,

1 YOU'VE HAD TO SIT HERE QUIETLY, HAVEN'T HAD A CHANCE
2 TO ASK QUESTIONS, HAVEN'T HAD A CHANCE TO SAY
3 ANYTHING. IN A REAL SHORT WHILE YOU'RE GOING TO HAVE
4 A CHANCE TO HAVE THE LOUDEST VOICE, THE LOUDEST VOICE
5 IN THIS COURTROOM. I SUBMIT TO YOU, LADIES AND
6 GENTLEMEN, THE ONLY TRUTHFUL VERDICT IN THIS CASE, THE
7 ONLY TRUTHFUL VERDICT IS ONE THAT HOLDS WALTER GREENE
8 ACCOUNTABLE FOR HIS ACTIONS, RESPONSIBLE FOR HIS
9 ACTIONS, ACCOUNTABLE AND RESPONSIBLE FOR WHAT HE DID
10 TO THAT YOUNG LADY, AND THAT'S A VERDICT OF GUILTY,
11 GUILTY OF BURGLARY IN THE FIRST DEGREE, GUILTY OF
12 ARMED ROBBERY, AND GUILTY OF MALICIOUS SHOOTING HER AS
13 SHE FLED FROM HER OWN HOME.

14 THANK YOU.

15 THE COURT: THANK YOU, MR. SORENSON.

16 ALRIGHT, LADIES AND GENTLEMEN, IT'S NOW MY
17 DUTY TO CHARGE YOU ON THE LAW, BUT WE'VE BEEN SITTING
18 HERE FOR AN HOUR AND A HALF, I FIGURED Y'ALL MIGHT
19 WANT TO STRETCH YOUR LEGS AND GO BACK INTO THE JURY
20 ROOM FOR JUST A MINUTE, SO, I'M GOING TO ALLOW Y'ALL
21 TO GO BACK IN THE JURY ROOM FOR ABOUT FIVE MINUTES,
22 STRETCH YOUR LEGS, AND THEN COME BACK HERE AND I'LL
23 CHARGE YOU WITH THE LAW. OKAY? REMEMBER, WE STILL
24 HAVEN'T HEARD EVERYTHING IN THIS CASE. OKAY? YOU
25 CANNOT BEGIN DISCUSSING THIS CASE YET. YOU CANNOT

1 BEGIN DISCUSSING THIS UNTIL AFTER I'VE CHARGED YOU ON
2 THE LAW AND THEN TOLD YOU YOU CAN BEGIN YOUR
3 DELIBERATIONS. OKAY? SO, I'M GOING TO GIVE Y'ALL
4 FIVE MINUTES. GO BACK THERE, STRETCH YOUR LEGS A
5 LITTLE BIT, AND COME BACK OUT HERE, AND I'M GOING TO
6 CHARGE YOU ON THE LAW. THANK YOU VERY MUCH.

7 (Whereupon, the jury retires
8 to the jury room.)

9 (Recess)

10 THE COURT: IS THE STATE READY?

11 SOLICITOR SORENSON: YES, SIR.

12 THE COURT: IS THE DEFENSE READY?

13 MS. HINDS: YES, SIR.

14 THE COURT: OKAY, YOU CAN BRING THEM ON OUT.

15 (Whereupon, the jury enters
16 the courtroom and the following
17 takes place in the presence
18 of the jury.)

19 THE COURT: I HOPE Y'ALL APPRECIATED THAT
20 SHORT BREAK AS MUCH AS I DID.

21 CHARGE BY THE COURT

22 IT'S NOW MY DUTY TO CHARGE YOU ON THE LAW OF
23 THIS CASE. AS I TOLD YOU AT THE VERY FIRST OF THIS
24 CASE, MR. GREENE HAS BEEN INDICTED IN THREE SEPARATE
25 OFFENSES, THESE THREE INDICTMENTS. ONE IS FOR

1 BURGLARY IN THE FIRST DEGREE, ONE IS FOR ASSAULT AND
2 BATTERY WITH INTENT TO KILL, AND THE OTHER IS FOR
3 ARMED ROBBERY.

4 NOW, AS I TOLD YOU WHEN WE STARTED THIS
5 CASE, THE FACT THAT HE WAS ARRESTED, CHARGED AND
6 INDICTED IS NOT EVIDENCE IN THIS CASE, AND YOU CANNOT
7 CONSIDER IT AS EVIDENCE OF HIS GUILT. OKAY? NOR DOES
8 IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT.
9 THESE INDICTMENTS ARE SIMPLY THE FORMAL DOCUMENTS THAT
10 BRING THESE CHARGES TO COURT. OKAY?

11 NOW, EACH INDICTMENT CHARGES A SEPARATE AND
12 DISTINCT OFFENSE, AND YOU MUST DECIDE EACH INDICTMENT
13 SEPARATELY ON THE EVIDENCE AND LAW APPLICABLE TO IT,
14 UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER
15 INDICTMENT. THE DEFENDANT MAY BE CONVICTED OR
16 ACQUITTED ON ANY OR ALL OF THE OFFENSES CHARGED. YOU
17 WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR
18 NOT GUILTY ON EACH ONE OF THESE INDICTMENTS. AND AT
19 THE END OF MY CHARGE ON THE LAW I'M GOING TO COME DOWN
20 TO THE JURY BOX, MR. FOREMAN, AND I'M GOING TO GO OVER
21 THIS FORM WITH YOU. OKAY?

22 NOW, THE DEFENDANT HAS PLED NOT GUILTY TO
23 THESE INDICTMENTS, AND THAT PLEA PUTS THE BURDEN ON
24 THE STATE TO PROVE THE DEFENDANT GUILTY BEYOND A
25 REASONABLE DOUBT. A PERSON CHARGED WITH COMMITTING A

1 CRIME IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE
2 HIMSELF INNOCENT. I CHARGE YOU THAT IT IS AN IMPORTANT
3 RULE OF LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO
4 MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL
5 ALWAYS BE PRESUMED INNOCENT OF THE CRIME FOR WHICH THE
6 INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY
7 EVIDENCE SATISFYING YOU, THE JURY, OF THAT GUILT
8 BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF
9 INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR
10 DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT
11 THROUGHOUT THE TRIAL, UNTIL YOU REACH A VERDICT OF
12 GUILTY BASED ON EVIDENCE SATISFYING YOU OF THE
13 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. THE
14 PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
15 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE
16 DEFENDANT AND IT REMAINS WITH THE DEFENDANT UNTIL IT
17 HAS BEEN STRIPPED FROM HIM BY EVIDENCE SATISFYING YOU
18 OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
19 THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL
20 THEORY, AND IT IS NOT JUST A LEGAL PHRASE, IT IS A
21 REAL AND SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS
22 ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE
23 EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE
24 DOUBT.

25 NOW, WHAT IS REASONABLE DOUBT? REASONABLE

1 DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A
2 REASONABLE PERSON TO HESITATE TO ACT. THE STATE HAS
3 THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
4 REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS
5 JURORS IN CIVIL CASES WHERE YOU WERE TOLD THAT IT IS
6 ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY
7 TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR
8 PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES THE
9 STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT
10 MUST BE BEYOND A REASONABLE DOUBT. PROOF BEYOND A
11 REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
12 CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY
13 FEW THINGS IN THIS WORLD THAT WE KNOW OF WITH ABSOLUTE
14 CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT
15 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.
16 IF, BASED ON YOUR CONSIDERATIONS OF THE EVIDENCE, YOU
17 ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF
18 THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY.
19 ON THE OTHER HAND, IF YOU THINK THERE IS A REAL
20 POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST
21 GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND
22 HIM NOT GUILTY.

23 DURING THE TRIAL YOU AND I HAVE CERTAIN
24 DUTIES TO PERFORM. AS THE TRIAL JUDGE IT IS MY
25 RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE.

1 YOU ARE TO CONSIDER THE TESTIMONY WHICH HAS BEEN
2 PRESENTED FROM THE WITNESS STAND AND ANY EXHIBITS
3 WHICH HAVE BEEN MADE A PART OF THE RECORD. AND YOU
4 REMEMBER, THEY HAVE BEEN REFERRED TO DURING THE TRIAL.
5 I HAD THE DUTY TO CHARGE YOU WITH THE LAW IN THIS
6 CASE. AS THE PRESIDING JUDGE I AM THE SOLE JUDGE OF
7 THE LAW IN THIS CASE, AND IT IS YOUR DUTY AS JURORS TO
8 ACCEPT AND APPLY THE LAW AS I STATE IT TO YOU. IF YOU
9 ALREADY HAVE AN IDEA AS TO WHAT YOU THINK THE LAW IS,
10 OR WHAT YOU THINK THE LAW OUGHT TO BE AND IT DOES NOT
11 AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST
12 ABANDON THAT IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE
13 LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

14 IN EVERY CASE THE JURY IS THE SOLE AND
15 EXCLUSIVE JUDGE OF THE FACTS. A TRIAL JUDGE CANNOT
16 INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO
17 A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU ARE
18 THE SOLE JUDGES OF THE FACTS IN THIS CASE YOU ARE NOT
19 TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF
20 THIS TRIAL IN RULING ON THE ADMISSIBILITY OF EVIDENCE
21 OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THESE
22 INSTRUCTIONS TO YOU THAT I HAVE AN OPINION ABOUT THE
23 FACTS IN THE CASE. THE LAW DOES NOT ALLOW ME TO HAVE
24 AN OPINION ABOUT THE FACTS AND I DO NOT HAVE ONE.
25 THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO

1 DETERMINE. AS JURORS IT IS YOUR DUTY TO DETERMINE THE
2 EFFECT, VALUE, WEIGHT AND TRUTH OF THE EVIDENCE
3 PRESENTED DURING THIS TRIAL.

4 THERE ARE TWO TYPES OF EVIDENCE WHICH ARE
5 GENERALLY PRESENTED DURING A TRIAL, DIRECT EVIDENCE
6 AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE
7 TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL
8 KNOWLEDGE OF A FACT, SUCH AS AN EYE WITNESS. IT IS
9 EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT
10 TO BE PROVED. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A
11 CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE
12 EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY
13 ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT
14 MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON
15 INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR
16 OBSERVATION. THE LAW MAKES ABSOLUTELY NO DISTINCTION
17 BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER
18 DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER
19 DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
20 EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH
21 ALL OF THE EVIDENCE IN THIS CASE. AFTER WEIGHING ALL
22 OF THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT
23 OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST
24 FIND THE DEFENDANT NOT GUILTY.

25 NECESSARILY, YOU MUST DETERMINE THE

1 CREDIBILITY OF THE WITNESSES WHO HAVE TESTIFIED.
2 CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES
3 YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE
4 EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF
5 ITS TRUTH. IN DETERMINING THE BELIEVABILITY OF
6 WITNESSES WHO HAVE TESTIFIED IN THIS CASE YOU MAY
7 BELIEVE ONE WITNESS OVER SEVERAL WITNESSES, OR SEVERAL
8 WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF
9 THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING
10 PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY
11 BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR
12 REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY.
13 YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO
14 YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN
15 THIS CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND
16 MANNER OF A WITNESS WHILE THE WITNESS WAS ON THE
17 STAND.

18 THE RULES OF EVIDENCE ORDINARILY DO NOT
19 PERMIT WITNESSES TO TESTIFY TO OPINIONS AND
20 CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS FOR
21 WITNESSES WE CALL EXPERT WITNESSES. A WITNESS WHO BY
22 EDUCATION AND EXPERIENCE HAS BECOME AN EXPERT IN SOME
23 ART, SCIENCE, PROFESSION OR CALLING MAY STATE AN
24 OPINION AS TO RELEVANT AND MATERIAL MATTER IN WHICH
25 THE WITNESS CLAIMS TO BE AN EXPERT, AND MAY ALSO STATE

1 THE REASONS FOR THE OPINION. YOU SHOULD CONSIDER ANY
2 EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND
3 LIKE ANY OTHER EVIDENCE GIVE IT THE WEIGHT YOU THINK
4 IT DESERVES. IF YOU DECIDE THE OPINION OF AN EXPERT
5 WITNESS IS NOT BASED ON SUFFICIENT EDUCATION AND
6 EXPERIENCE, OR IF YOU CONCLUDE THAT THE REASONS GIVEN
7 IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE
8 OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY
9 DISREGARD THE OPINION ENTIRELY. AN EXPERT WITNESS'S
10 TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT
11 OF ANY OTHER WITNESS SIMPLY BECAUSE THE WITNESS IS AN
12 EXPERT. FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN
13 EXPERT'S OPINION EVEN THOUGH IT IS NOT CONTRADICTED.

14 I INSTRUCT YOU AND EMPHASIZE THAT THE FACT
15 THAT THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO
16 BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS
17 AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT
18 OR INNOCENCE OF THE DEFENDANT. IT MUST NOT BE
19 CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. THE
20 DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN
21 SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE
22 CONSIDERED BY YOU IN YOUR DELIBERATIONS. I REPEAT,
23 UNDER YOUR OATH YOU ARE TO DRAW NO CONCLUSIONS
24 WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS
25 CASE DID NOT TESTIFY. THE FACT THAT THE DEFENDANT DID

1 NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY
2 ROOM. THE BURDEN OF PROOF, AS I HAVE TOLD YOU, IS ON
3 THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS
4 INNOCENCE, THE BURDEN OF PROOF REMAINS ON THE STATE TO
5 PROVE GUILT BEYOND A REASONABLE DOUBT.

6 AN ISSUE IN THIS CASE IS THE IDENTIFICATION
7 OF THE DEFENDANT AS THE PERSON WHO COMMITTED THE CRIME
8 CHARGED. THE STATE HAS THE BURDEN OF PROVING IDENTITY
9 BEYOND A REASONABLE DOUBT. YOU MUST BE SATISFIED
10 BEYOND A REASONABLE DOUBT OF THE ACCURACY OF THE
11 IDENTIFICATION OF THE DEFENDANT BEFORE YOU MAY CONVICT
12 THE DEFENDANT. IDENTIFICATION TESTIMONY IS AN
13 EXPRESSION OF BELIEF OR IMPRESSION BY A WITNESS. YOU
14 MUST DETERMINE THE ACCURACY OF THE IDENTIFICATION OF
15 THE DEFENDANT. YOU MUST CONSIDER THE BELIEVABILITY OF
16 EACH IDENTIFICATION WITNESS IN THE SAME WAY AS ANY
17 OTHER WITNESS. YOU MAY CONSIDER WHETHER THE WITNESS
18 HAD AN ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER AT
19 THE TIME OF THE OFFENSE. THIS WOULD BE AFFECTED BY
20 THINGS LIKE HOW LONG OR SHORT A TIME WAS AVAILABLE,
21 HOW FAR OR CLOSE THE WITNESS WAS, THE LIGHTING
22 CONDITIONS, AND WHETHER THE WITNESS HAD THE CHANCE TO
23 SEE OR KNOW THE PERSON IN THE PAST. ONCE AGAIN I
24 INSTRUCT YOU, THE BURDEN OF PROOF ON THE STATE EXTENDS
25 TO EVERY ELEMENT OF THE CRIME CHARGED AND THIS

1 SPECIFICALLY INCLUDES THE BURDEN OF PROVING BEYOND A
2 REASONABLE DOUBT THE IDENTITY OF THE DEFENDANT. IF
3 AFTER EXAMINING THE TESTIMONY YOU HAVE A REASONABLE
4 DOUBT AS TO THE ACCURACY OF THE IDENTIFICATION YOU
5 MUST FIND THE DEFENDANT NOT GUILTY.

6 NOW, ONE OF THE INDICTMENTS CHARGES THE
7 DEFENDANT WITH FIRST DEGREE BURGLARY. THE STATE MUST
8 FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE
9 DEFENDANT ENTERED A DWELLING WITHOUT CONSENT. A
10 DWELLING IS ANY BUILDING OR PORTION OF A BUILDING IN
11 WHICH A PERSON ORDINARILY SLEEPS. A BUILDING
12 CONSTRUCTED AS A DWELLING THAT HAS NEVER BEEN OCCUPIED
13 CANNOT BE CONSIDERED A DWELLING FOR PURPOSES OF
14 BURGLARY, BUT A BUILDING IS A DWELLING, EVEN IF THE
15 RESIDENTS ARE TEMPORARILY ABSENT FROM THE BUILDING.
16 IN ORDER TO PROVE THAT THE DEFENDANT ENTERED THE
17 DWELLING THE STATE DOES NOT HAVE TO SHOW THAT THE
18 DEFENDANT'S ENTIRE BODY ENTERED THE DWELLING, THE
19 SMALLEST ENTRY IS SUFFICIENT. IT MAY BE ANY PART OF
20 THE BODY SUCH AS A HAND OR A FOOT OR EVEN AN
21 INSTRUMENT SUCH AS A HOOK OR OTHER INSTRUMENT. IN
22 ADDITION, THE STATE DOES NOT HAVE TO PROVE THAT FORCE
23 WAS USED TO GAIN ENTRY. IF A PERSON ENTERS A BUILDING
24 BY USING DECEPTION, ARTIFICE, TRICK, OR
25 MISREPRESENTATION TO GET CONSENT TO ENTER, THIS IS AN

1 ENTRY WITHOUT CONSENT.

2 NEXT, THE STATE MUST PROVE BEYOND A
3 REASONABLE DOUBT THAT THE DEFENDANT INTENDED TO COMMIT
4 A CRIME, EITHER A FELONY OR A MISDEMEANOR, AT THE TIME
5 OF THE ENTRY. THE MERE ENTRY INTO A BUILDING WITHOUT
6 CONSENT IS NOT BURGLARY. IF THE INTENT TO COMMIT A
7 CRIME IS FORMED AFTER THE ENTRY IT IS NOT BURGLARY.
8 ON THE OTHER HAND, IF THE DEFENDANT INTENDED TO COMMIT
9 A CRIME AT THE TIME OF THE ENTRY IT IS BURGLARY, EVEN
10 IF THE INTENT WAS ABANDONED AFTER THE ENTRY. IT DOES
11 NOT MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED.
12 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
13 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
14 NATURALLY AND REASONABLY INFER INTENT.

15 FINALLY, THE STATE MUST PROVE BEYOND A
16 REASONABLE DOUBT THAT WHEN ENTERING OR WHILE IN THE
17 DWELLING, OR WHEN FLEEING, THE DEFENDANT WAS ARMED
18 WITH A DEADLY WEAPON OR EXPLOSIVE. A DEADLY WEAPON IS
19 ANY ARTICLE, INSTRUMENT OR SUBSTANCE WHICH IS LIKELY
20 TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN
21 INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON
22 THE FACTS AND CIRCUMSTANCES OF EACH CASE. THE
23 FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH MAY BE
24 DEADLY WEAPONS: A SHOT GUN, A RIFLE, A DAGGER, A
25 KNIFE, A SLING SHOT, METAL KNUCKLES, A RAZOR,

1 GASOLINE, A FIRE BOMB OR A MOLOTOV COCKTAIL, AND
2 LIGHTER FLUID. A GUN MAY BE A DEADLY WEAPON EVEN IF
3 IT IS NOT OPERATING.

4 NOW, THE STATE MUST PROVE BEYOND A
5 REASONABLE DOUBT THAT WHEN ENTERING, WHILE IN THE
6 DWELLING, OR WHEN FLEEING THE DEFENDANT CAUSED
7 PHYSICAL INJURY TO ANYONE NOT PARTICIPATING IN THE
8 CRIME, OR WHEN ENTERING, WHILE IN THE DWELLING, OR
9 WHEN FLEEING THE DEFENDANT DISPLAYED WHAT WAS OR
10 APPEARED TO BE A KNIFE, RIFLE, SHOT GUN, MACHINE GUN,
11 OR OTHER FIREARM, OR THAT THE DEFENDANT ENTERED OR
12 REMAINED IN THE DWELLING IN THE NIGHT TIME. NIGHT
13 TIME IS THE PERIOD BETWEEN SUNSET AND SUNRISE DURING
14 WHICH THERE IS NOT ENOUGH DAYLIGHT TO RECOGNIZE A
15 PERSON'S FACE EXCEPT BY ARTIFICIAL LIGHT OR MOONLIGHT.

16 ADDITIONALLY THE DEFENDANT HAS BEEN INDICTED
17 AND CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO
18 KILL. IN ORDER TO PROVE ASSAULT AND BATTERY WITH
19 INTENT TO KILL THE STATE MUST PROVE BEYOND A
20 REASONABLE DOUBT THAT THE DEFENDANT COMMITTED AN
21 UNLAWFUL ACT OF VIOLENT NATURE TO THE PERSON OF
22 ANOTHER WITH MALICE AFORETHOUGHT.

23 AN ASSAULT OCCURS WHEN A PERSON UNLAWFULLY
24 ATTEMPTS OR OFFERS TO COMMIT A VIOLENT INJURY UPON
25 ANOTHER PERSON AND HAD THE PRESENT ABILITY TO COMPLETE

1 THE ATTEMPTED INJURY. AN ASSAULT IS THE INTENTIONAL
2 CREATION OF A REASONABLE FEAR OF IMMEDIATE BODILY
3 HARM. IT IS NOT NECESSARY THAT THE ATTEMPTED INJURY
4 OR HARM ACTUALLY TAKE PLACE. FOR EXAMPLE, IF I WALK
5 UP TO YOU AND WHEN WE ARE WITHIN ARM'S REACH I DRAW
6 BACK TO HIT YOU, THAT IS AN ASSAULT.

7 A BATTERY IS THE UNLAWFUL TOUCHING OF
8 ANOTHER PERSON BY A PERSON WHO HAS COMMITTED THE
9 ASSAULT. AN UNLAWFUL TOUCHING CAN BE CAUSED BY A PART
10 OF THE ACCUSED'S BODY OR BY ANY OBJECT THE ACCUSED
11 PUTS IN MOTION. A BATTERY IS THE COMPLETION OF THE
12 ASSAULT BY USING OR APPLYING FORCE TO ANOTHER PERSON,
13 HOWEVER SLIGHT, IN A RUDE, ANGRY OR RESENTFUL MANNER
14 WITHOUT LEGAL JUSTIFICATION FOR DOING SO. USING MY
15 EARLIER EXAMPLE, IF I CARRIED THROUGH WITH THE ASSAULT
16 BY HITTING YOU, THEN THAT IS A BATTERY.

17 MALICE IS HATRED, ILL WILL, OR HOSTILITY
18 TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF
19 A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH
20 THE INTENT TO INFLECT AN INJURY OR UNDER CIRCUMSTANCE
21 THAT THE LAW WILL INFER AN EVIL INTENT. MALICE
22 AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR
23 ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT
24 MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST
25 BEFORE AND AT THE TIME THE ACT IS COMMITTED.

1 THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS
2 EVIL INTENT AND THE ACT.

3 MALICE AFORETHOUGHT MAY BE EXPRESSED OR
4 INFERRED. THESE TERMS, EXPRESSED AND INFERRED, DO NOT
5 MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER
6 IN WHICH MALICE MAY BE SHOWN TO EXIST, THAT IS EITHER
7 BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND
8 CIRCUMSTANCES WHICH ARE PROVED. EXPRESSED MALICE IS
9 SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED
10 OR ILL WILL FOR ANOTHER, OR WHEN THE PERSON PREPARED
11 BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED.
12 FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER
13 ACT OF PREPARATION GOING TO SHOW THAT THE DEED WAS
14 WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

15 MALICE MAY BE INFERRED FROM CONDUCT SHOWING
16 A TOTAL DISREGARD FOR HUMAN LIFE. INFERRED MALICE MAY
17 ALSO ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON.
18 I HAVE ALREADY DESCRIBED TO YOU WHAT A DEADLY WEAPON
19 IS. IT IS ANY ARTICLE OR INSTRUMENT OR SUBSTANCE
20 WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM.
21 WHETHER THE INSTRUMENT HAS BEEN USED AS A DEADLY
22 WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH
23 CASE. AND I'M NOT GOING TO GO OVER THOSE EXAMPLES,
24 I'VE ALREADY GONE OVER THEM WITH YOU ONE TIME BEFORE.
25 IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT

1 SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR
2 SATISFACTION THIS INFERENCE WOULD SIMPLY BE AN
3 EVIDENTIARY FACT TO BE CONSIDERED BY YOU ALONG WITH
4 THE OTHER EVIDENCE IN THIS CASE, AND YOU MAY GIVE IT
5 THE WEIGHT YOU DECIDE IT SHOULD RECEIVE.

6 A SPECIFIC INTENT TO KILL IS NOT AN ELEMENT
7 OF ASSAULT AND BATTERY WITH INTENT TO KILL, BUT THERE
8 MUST BE A GENERAL INTENT TO COMMIT SERIOUS BODILY
9 INJURY. INTENT MEANS INTENDING THE RESULT WHICH
10 ACTUALLY OCCURS, NOT ACCIDENTALLY OR INVOLUNTARILY.
11 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
12 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
13 NATURALLY AND REASONABLY INFER INTENT. EVIDENCE OF
14 THE CHARACTER OF THE ASSAULT, THE CHARACTER OF THE
15 INSTRUMENT USED, THE MANNER IN WHICH IT WAS USED, THE
16 PURPOSE TO BE ACCOMPLISHED, AND THE RESULTING WOUNDS
17 AND INJURIES MAY BE CONSIDERED IN DETERMINING THE
18 INTENT WITH WHICH THE ASSAULT WAS COMMITTED. INTENT
19 MAY BE INFERRED WHEN IT IS DEMONSTRATED THAT THE
20 DEFENDANT VOLUNTARILY AND WILLFULLY COMMITS AN ACT THE
21 NATURAL TENDENCY OF WHICH IS TO DESTROY ANOTHER'S
22 LIFE.

23 THE DEFENDANT IS ALSO CHARGED WITH ARMED
24 ROBBERY. IN ORDER TO PROVE THIS OFFENSE THE STATE
25 MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE

1 DEFENDANT TOOK PERSONAL PROPERTY FROM THE PERSON OR
2 PRESENCE OF ANOTHER PERSON. PROPERTY IS IN THE
3 PRESENCE OF A PERSON IF IT IS WITHIN THE PERSON'S
4 REACH, INSPECTION, OBSERVATION OR CONTROL SO THAT THE
5 PERSON COULD, IF NOT OVERCOME WITH VIOLENCE OR
6 PREVENTED BY FEAR, KEEP POSSESSION OF THE PROPERTY.

7 THE STATE MUST ALSO PROVE BEYOND A
8 REASONABLE DOUBT THAT THE DEFENDANT CARRIED THE
9 PROPERTY AWAY INTENDING TO PERMANENTLY DEPRIVE THE
10 OWNER OF THE PROPERTY AND TO KEEP THE PROPERTY FOR THE
11 DEFENDANT'S OWN USE. THE SLIGHTEST REMOVAL OF THE
12 PROPERTY OR THE COMPLETE POSSESSION OF THE PROPERTY,
13 EVEN FOR AN INSTANT, BY THE DEFENDANT, IS SUFFICIENT
14 TO SHOW A TAKING AND CARRYING AWAY OF THE PROPERTY.
15 THE TAKING AND CARRYING AWAY OF THE PROPERTY MUST HAVE
16 BEEN DONE WITH VIOLENCE OR BY PUTTING THE OWNER OF THE
17 PROPERTY IN FEAR OF VIOLENCE.

18 FINALLY, THE STATE MUST PROVE BEYOND A
19 REASONABLE DOUBT THAT THE DEFENDANT WAS ARMED WITH A
20 DEADLY WEAPON DURING THE ROBBERY. I'VE ALREADY
21 DESCRIBED TO YOU WHAT A DEADLY WEAPON IS, I'VE GIVEN
22 YOU THE DEFINITION, AND I'VE PREVIOUSLY GIVEN YOU THE
23 EXAMPLES OF THAT SO I'M NOT GOING TO REPEAT THAT.

24 NOW, AN ATTEMPT IS AN EFFORT TO ACCOMPLISH A
25 CRIME WHICH DOES NOT SUCCEED. AN ATTEMPT INCLUDES A

1 SPECIFIC INTENT TO DO A PARTICULAR CRIMINAL ACT ALONG
2 WITH AN ACT FALLING SHORT OF THE ACT INTENDED. THE
3 STATE MUST SHOW MORE THAN MERE PREPARATION AND INTENT.
4 THERE MUST BE SOME OVERT ACT COMMITTED IN THE EFFORT
5 TO COMMIT THE CRIME.

6 INTENT MEANS INTENDING THE RESULT WHICH
7 ACTUALLY OCCURS, NOT ACCIDENTALLY OR INVOLUNTARILY.
8 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
9 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
10 NATURALLY AND REASONABLY INFER INTENT.

11 NOW, THE DEFENDANT HAS RAISED THE DEFENSE OF
12 ALIBI. IN ORDER TO ESTABLISH AN ALIBI IT MUST BE SHOWN
13 THAT THE DEFENDANT WAS AT ANOTHER SPECIFIED PLACE AT
14 THE TIME THE CRIME WAS COMMITTED, AND THAT IT WAS
15 THEREFORE IMPOSSIBLE FOR THE DEFENDANT TO HAVE BEEN AT
16 THE SCENE OF THE CRIME. MERE DENIAL OF PRESENCE AT
17 THE SCENE OF A CRIME DOES NOT CONSTITUTE AN ALIBI.
18 THERE IS NO BURDEN ON THE DEFENDANT TO PROVE AN ALIBI,
19 THE BURDEN IS ON THE STATE TO PROVE BEYOND A
20 REASONABLE DOUBT THAT THE DEFENDANT WAS ACTUALLY
21 PRESENT AT THE SCENE OF THE CRIME, ACTUALLY
22 PARTICIPATED IN IT, AND WAS NOT SOMEWHERE ELSE. IN
23 OTHER WORDS, THE STATE HAS THE BURDEN OF DISPROVING
24 THE DEFENDANT'S ALIBI WITNESS.

25 I HAVE DECLARED THE LAW TO YOU THROUGH THESE

1 INSTRUCTIONS TO HELP GUIDE YOU TO A JUST AND LAWFUL
2 VERDICT. WHETHER SOME OF THESE INSTRUCTIONS WILL
3 APPLY WILL DEPEND ON WHAT YOU FIND TO BE THE FACTS.
4 THE FACT THAT I HAVE INSTRUCTED YOU ON VARIOUS
5 SUBJECTS IN THIS CASE MUST NOT BE TAKEN AS INDICATING
6 AN OPINION OF THIS COURT AS TO WHAT YOU SHOULD FIND TO
7 BE THE FACTS OR AS TO WHICH PARTY IS ENTITLED TO YOUR
8 VERDICT.

9 YOUR VERDICT MUST REPRESENT THE CONSIDERED
10 JUDGEMENT OF EACH ONE OF YOU. IN ORDER TO RETURN A
11 VERDICT IT IS NECESSARY THAT EACH ONE OF YOU JURORS
12 AGREE ON THAT VERDICT. YOUR VERDICT MUST BE UNANIMOUS,
13 ALL TWELVE OF YOU MUST AGREE ON THE VERDICT. YOUR
14 VERDICT CANNOT BE BASED ON SYMPATHY, PASSION,
15 PREJUDICE, EMOTION OR ANY OTHER CONSIDERATION THAT IS
16 NOT IN EVIDENCE IN THIS CASE. REMEMBER, AT ALL TIMES
17 Y'ALL ARE NOT PARTISANS FAVORING ONE PARTY OVER
18 ANOTHER, YOU ARE THE JUDGES OF THE FACTS, AND YOUR
19 SOLE INTEREST IS TO SEEK THE TRUTH FROM THE EVIDENCE
20 IN THIS CASE.

21 ALRIGHT, WHAT I HAVE HERE IS A VERDICT FORM.
22 AND MR. FOREMAN, I'M GOING TO GO OVER THIS VERDICT
23 FORM WITH YOU. I'M NOT GOING TO GIVE IT TO YOU NOW
24 BUT I'M GOING OVER IT WITH YOU. NOW, THIS IS THE
25 VERDICT FORM. SOME OF Y'ALL CAN SEE THIS AS WELL.

1 THE VERDICT FORM GIVES YOU DIRECTIONS AS TO WHAT
2 YOU'RE SUPPOSED TO DO. YOU KNOW, ONE OF YOUR JOBS IS
3 TO PRESIDE OVER THE DELIBERATIONS. WHEN I TELL YOU TO
4 BEGIN DELIBERATIONS YOU HAVE TO PRESIDE OVER, AND MAKE
5 SURE EVERYBODY HAS THEIR SAY. OKAY?

6 YOUR DUTY IS ALSO TO FILL OUT THIS FORM
7 BASED ON WHAT YOU, THE JURY, DECIDE. OKAY? THE
8 DIRECTIONS ARE, CIRCLE THE APPROPRIATE VERDICT BEFORE,
9 AND FOLLOW THE ACCOMPANYING INSTRUCTIONS CAREFULLY.
10 NOW, WE COULD PUT THIS IN ANY ORDER, SO THE ORDER
11 DOESN'T MATTER. BUT THE FIRST QUESTION IS, WE, THE
12 JURY UNANIMOUSLY FIND THE DEFENDANT AS TO THE CHARGE
13 OF BURGLARY IN THE FIRST DEGREE, -- AND YOU WILL EITHER
14 CIRCLE GUILTY OR NOT GUILTY. THE NEXT CHARGE IS, WE,
15 THE JURY, UNANIMOUSLY FIND THE DEFENDANT, AS TO THE
16 CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL, --
17 EITHER GUILTY OR NOT GUILTY. THE FINAL ONE IS, WE,
18 THE JURY, UNANIMOUSLY FIND THE DEFENDANT, AS TO THE
19 CHARGE OF ARMED ROBBERY, -- AND YOU CAN EITHER FIND
20 HIM GUILTY OF ARMED ROBBERY, GUILTY OF ATTEMPTED ARMED
21 ROBBERY, OR NOT GUILTY. OKAY? THEN YOU WILL TURN
22 OVER THE PAGE HERE, AND MR. FOREMAN, YOU'RE GOING TO
23 SIGN RIGHT THERE AND DATE IT TODAY. AND THEN YOU'LL
24 NOTIFY THE BAILIFF THAT Y'ALL HAVE REACHED A DECISION.

25 NOW, I TOLD Y'ALL THAT AFTER YOU HAVE HEARD

1 THE ENTIRE CASE, AFTER YOU HAVE HEARD THE CLOSING
2 ARGUMENTS OF THE LAWYERS AND AFTER YOU HAVE HEARD MY
3 CHARGE, I'M GOING TO LET Y'ALL GO BACK TO YOUR JURY
4 ROOM FOR A MINUTE. THE REASON YOU'RE GOING BACK TO
5 THE JURY ROOM IS SO I CAN GO OVER WITH THE LAWYERS AND
6 MAKE SURE THAT I DIDN'T MAKE ANY MISTAKES IN THE
7 CHARGES, I DIDN'T LEAVE SOMETHING OUT WHEN I WAS GOING
8 OVER THEM, THAT EVERYTHING WAS DONE PROPERLY. THERE
9 MAY BE SOMETHING, I MAY HAVE TO CALL YOU BACK HERE AND
10 RE-INSTRUCT YOU ON SOMETHING. IF I DON'T HAVE TO CALL
11 YOU BACK OUT HERE TO RE-INSTRUCT YOU, WHAT WILL HAPPEN
12 IS, THE EXHIBITS AND THIS VERDICT FORM WILL BE BROUGHT
13 BACK TO THE JURY ROOM FOR YOU. AT THAT TIME WE WILL
14 TELL YOU TO BEGIN DELIBERATIONS, AND UNTIL YOU GET THE
15 MESSAGE TO BEGIN DELIBERATIONS YOU CANNOT BEGIN
16 TALKING ABOUT THIS CASE. OKAY?

17 NOW, I'M GOING TO EXCUSE Y'ALL TO GO BACK
18 INTO THE JURY ROOM FOR JUST A SECOND, AND I'LL GO OVER
19 SOME MATTERS WITH THE LAWYERS AND THEN I'LL LET YOU
20 KNOW WHETHER YOU CAN BEGIN YOUR DELIBERATIONS. OKAY,
21 THANK Y'ALL VERY MUCH.

22 (Whereupon, the jury retires
23 to the jury room and the following
24 takes place out of the
25 presence of the jury.)

1 THE COURT: THANK YOU, MA'AM. ALRIGHT,
2 ANYTHING FROM THE STATE REGARDING MY CHARGES?

3 SOLICITOR SORENSON: NO, SIR.

4 THE COURT: OKAY. ANYTHING FROM THE DEFENSE
5 REGARDING MY CHARGES?

6 MS. HINDS: NO, SIR.

7 THE COURT: ALRIGHT, IF Y'ALL WOULD COME UP
8 AND MAKE SURE WE'VE GOT ALL THE EXHIBITS STRAIGHT,
9 THEN I WILL SEND THE EXHIBITS BACK THERE ALONG WITH
10 THE VERDICT FORM. AND Y'ALL HAD A CHANCE TO LOOK OVER
11 THE VERDICT FORM? WE'RE OKAY WITH IT?

12 SOLICITOR SORENSON: YES, SIR.

13 MS. HIND: YES, SIR.

14 THE COURT: OKAY. SINCE, NO REASON TO KEEP
15 THE ALTERNATES I WAS GOING TO BRING THEM BACK OUT HERE
16 AND LET THEM SO. IS THAT ALRIGHT WITH YOU?

17 MS. HINDS: YES, SIR.

18 THE COURT: MA'AM?

19 COURT REPORTER: ARE YOU GOING TO LET THEM
20 EAT?

21 THE COURT: THAT WILL BE FINE.

22 SOLICITOR SORENSON: LET THEM EAT AND THEN
23 BRING THEM OUT AND LET THEM GO?

24 THE COURT: WELL, I WAS GOING TO GO AHEAD
25 AND LET THEM BEGIN DELIBERATIONS AND STOP.

1 SOLICITOR SORENSON: OH, YES, THAT'S FINE.

2 THE COURT: SO, I'LL NEED TO -- GO AHEAD AND
3 BRING THEM ON OUT, AND I'LL TELL THEM THEY CAN WAIT
4 ON THEIR MEAL, OR YOU CAN TELL THEM THAT. OKAY. BUT
5 GO AHEAD AND BRING THE ALTERNATES ON OUT. OKAY?

6 (Whereupon, the alternate jurors
7 enter the courtroom.)

8 THE COURT: ALRIGHT, LADIES, I'VE GOT TO
9 TELL Y'ALL, I APPRECIATE Y'ALL'S ATTENTION, YOU KNOW,
10 BUT SINCE WE MADE IT THROUGH THE TRIAL AND EVERYBODY
11 IS STILL HERE, Y'ALL DON'T HAVE TO MAKE THE
12 DETERMINATION. OKAY? NOW, I KNOW Y'ALL HAVE PROBABLY
13 ALREADY PLACED AN ORDER FOR A MEAL, SO IF Y'ALL WANT
14 TO WAIT Y'ALL CAN WAIT AND GET THAT, BUT AS SOON AS
15 Y'ALL GET THAT Y'ALL ARE EXCUSED. I WANT TO THANK
16 Y'ALL FOR BEING WILLING TO SERVE, AND THANK YOU FOR
17 YOUR ATTENTION DURING THE WHOLE TRIAL. THE NICE THING
18 ABOUT THE JURY AND YOU AS ALTERNATES WERE, Y'ALL ALL
19 WERE PAYING ATTENTION AND I APPRECIATE THAT. AND I
20 APPRECIATE YOUR WILLINGNESS TO SERVE, AND NOW YOU
21 DON'T HAVE TO WORRY ABOUT SERVING FOR THREE YEARS NOW.
22 IS THAT ALRIGHT? OKAY. ANYWAY, THANK Y'ALL VERY
23 MUCH, I APPRECIATE IT.

24 OKAY. THAT'S ALL OF IT? OKAY. THE
25 INDICTMENTS WILL GO BACK THERE.

1 (Whereupon, the jury begins
2 deliberations at 12:55 p.m.)

3 (Recess)

4 THE COURT: MR. SORENSON, AND MS. HINDS,
5 I'VE BEEN TOLD THAT THE JURY HAS REACHED A VERDICT.
6 OKAY? IS THE STATE READY?

7 SOLICITOR SORENSON: YES, SIR.

8 THE COURT: IS THE DEFENSE READY?

9 MS. HINDS: YES, SIR.

10 THE COURT: OKAY. YOU CAN BRING THE JURY ON
11 OUT.

12 WHILE WE'RE WAITING FOR THE JURY TO COME OUT
13 LET ME REMIND YOU THAT WE'RE GOING TO HAVE A VERDICT
14 IN THIS CASE. I DO NOT WANT ANY OUTBURSTS FROM ANYONE,
15 REGARDLESS OF WHAT THE VERDICT IS. OKAY.

16 (Whereupon, the jury returns
17 with verdicts at 2:33 p.m.)

18 THE COURT: MR. FOREMAN, HAS THE JURY
19 REACHED A VERDICT?

20 JURY FOREMAN: YES, SIR, THEY HAVE.

21 THE COURT: IS THAT VERDICT UNANIMOUS?

22 JUROR FOREMAN: YES, SIR.

23 THE COURT: OKAY, IF YOU'D GIVE THE BAILIFF
24 THE VERDICT FORM.

25 (Whereupon, the Court examines

1 the verdicts.)

2 THE COURT: ALRIGHT, MARION, WOULD YOU MIND
3 PUBLISHING THE VERDICT?

4 VERDICT OF THE JURY

5 CLERK: I CALL THE COURT'S ATTENTION TO
6 INDICTMENTS 2010-GS-38-1024, 1025, AND 1026, THE STATE
7 OF SOUTH CAROLINA VERSUS WALTER JAMES GREENE. WE, THE
8 JURY, UNANIMOUSLY FIND THE DEFENDANT AS TO THE CHARGE
9 OF BURGLARY IN THE FIRST DEGREE, GUILTY.

10 WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT
11 AS TO THE CHARGE OF ASSAULT AND BATTERY WITH INTENT TO
12 KILL, GUILTY.

13 WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT
14 AS TO THE CHARGE OF ATTEMPTED ARMED ROBBERY, GUILTY.

15 THE COURT: ALRIGHT.

16 CLERK: SIGNED THIS DAY BY FOREMAN OF THE
17 JURY, TEN/SEVEN/TWO THOUSAND TEN.

18 THE COURT: THANK YOU, MARION.

19 ANYTHING FROM THE DEFENSE BEFORE I RELEASE
20 THE JURY?

21 MS. HINDS: I WOULD ASK THAT THE JURY BE
22 POLLED, SIR.

23 THE COURT: OKAY. WOULD YOU MIND POLLING
24 THE JURY?

25 CLERK: WINIFRED GADDIS, IS THIS YOUR VERDICT

1 AND IS IT STILL YOUR VERDICT?

2 JUROR GADDIS: YES.

3 CLERK: DEON CAIN, IS THIS YOUR VERDICT AND
4 IS IT STILL YOUR VERDICT?

5 JUROR CAIN: YES.

6 CLERK: BERNARD PHELPS, IS THIS YOUR VERDICT
7 AND IS IT STILL YOUR VERDICT?

8 JUROR PHELPS: YES.

9 CLERK: RAYMOND ROBINSON, IS THIS YOUR
10 VERDICT AND IS IT STILL YOUR VERDICT?

11 JUROR ROBINSON: YES.

12 CLERK: MICHAEL CANNON, IS THIS YOUR VERDICT
13 AND IS IT STILL YOUR VERDICT?

14 JUROR CANNON: YES.

15 CLERK: JOE ANN BROWN, IS THIS YOUR VERDICT
16 AND IS IT STILL YOUR VERDICT?

17 JUROR BROWN: YES.

18 CLERK: HELEN THROWER, IS THIS YOUR VERDICT
19 AND IS IT STILL YOUR VERDICT?

20 JUROR THROWER: YES.

21 CLERK: DERRELL BROWN, IS THIS YOUR VERDICT
22 AND IS IT STILL YOUR VERDICT?

23 JUROR BROWN: YES.

24 CLERK: THOMAS HOUSER, IS THIS YOUR VERDICT
25 AND IS IT STILL YOUR VERDICT?

1 JUROR HOUSER: YES.

2 CLERK: JOHN KENNEDY, IS THIS YOUR VERDICT
3 AND IS IT STILL YOUR VERDICT?

4 JUROR KENNEDY: YES.

5 CLERK: BARBARA CARSON, IS THIS YOUR VERDICT
6 AND IS IT STILL YOUR VERDICT?

7 JUROR CARSON: YES.

8 CLERK: CHARLOTTE SMOAK, IS THIS YOUR
9 VERDICT AND IS IT STILL YOUR VERDICT?

10 JUROR SMOAK: YES.

11 THE COURT: ANYTHING FURTHER FROM THE
12 DEFENSE?

13 MS. HINDS: NO, SIR.

14 THE COURT: OKAY. ALRIGHT, LADIES AND
15 GENTLEMEN, I APPRECIATE YOUR SERVICE TO THE STATE.
16 I'VE GOT TO TELL YOU, AND I MENTIONED DURING THE TRIAL
17 THAT Y'ALL HAD DONE A VERY GOOD JOB OF PAYING
18 ATTENTION AND BEING ATTENTIVE DURING ALL OF THE
19 TESTIMONY AND LIKE THAT. I CERTAINLY APPRECIATE IT,
20 THE STATE APPRECIATES IT. IT'S ONE OF THE DUTIES, OR
21 THE HIGHEST DUTIES THAT A CITIZEN CAN DO IS SERVE ON A
22 JURY. NOW, YOUR REWARD FOR SERVING ON A JURY IS A
23 HUGE AMOUNT OF MONEY FROM THE COUNTY WHICH IS ABOUT,
24 WHAT, FIFTEEN DOLLARS OR TWELVE DOLLARS? BUT YOU ARE
25 EXCUSED, AND THANK YOU FOR YOUR SERVICE.

1 (Whereupon, the jury leaves
2 the jury box.)

3 THE COURT: MR. SORENSON, ARE YOU READY?

4 SOLICITOR SORENSON: IF I COULD HAVE, IT'S
5 GOING TO TAKE ME A COUPLE OF MINUTES TO FILL OUT
6 SENTENCING SHEETS.

7 THE COURT: I DON'T MIND IF Y'ALL WANT TO
8 TAKE A FEW MINUTES. AND I CAN HANDLE A COUPLE OF OTHER
9 MATTERS, OR DO Y'ALL -- OKAY. OKAY. ALRIGHT.

10 (Recess)

11 THE COURT: ARE Y'ALL READY?

12 SOLICITOR SORENSON: YES, SIR.

13 THE COURT: THANK YOU, SIR.

14 YES, MA'AM, I'M SORRY.

15 MS. HINDS: OBVIOUSLY, I'D LIKE TO RENEW ALL
16 MY PRIOR MOTIONS AND OBJECTIONS FOR THE RECORD.

17 THE COURT: YES, MA'AM.

18 MS. HINDS: I ALSO MOVE FOR A NEW TRIAL, OR
19 IN THE ALTERNATIVE, A JUDGEMENT NOTWITHSTANDING THE
20 VERDICT.

21 THE COURT: OKAY. JUST QUICKLY, IF YOU'D
22 GIVE ME THE BASIS FOR YOUR NEW TRIAL MOTION.

23 MS. HINDS: JUST THE RECORD.

24 THE COURT: OKAY. WELL, WITH REGARD TO THE
25 MOTIONS THAT WE'VE ALREADY RULED ON, I'M GOING TO

1 PRESERVE ALL OF YOUR OBJECTIONS TO MY RULINGS ON THE
2 RECORD. OKAY? TO MAKE SURE THAT ALL OF THOSE EARLIER
3 MOTIONS THAT YOU MADE, WHATEVER, WE WON'T GO THROUGH
4 THEM ALL, BUT WE'VE LISTED THEM AND THEY'RE ALL
5 PRESERVED ON THE RECORD. OKAY?

6 MS. HINDS: THANK YOU.

7 THE COURT: REGARDING YOUR MOTION FOR A NEW
8 TRIAL, I'M GOING TO DENY THAT MOTION FOR A NEW TRIAL.

9 MS. HINDS: THANK YOU.

10 THE COURT: AND FOR THE JUDGEMENT NOT
11 WITHSTANDING THE VERDICT. OKAY.

12 MS. HINDS: THANK YOU.

13 THE COURT: THANK YOU, MA'AM.

14 ALRIGHT, MR. GREENE, THE SENTENCING SHEET
15 INDICATES THAT YOU ARE TWENTY-TWO YEARS OLD, IS THAT
16 CORRECT?

17 DEFENDANT GREENE: YES, SIR.

18 THE COURT: OKAY. ALRIGHT, MR. SORENSON,
19 WHAT DO YOU KNOW ABOUT HIS PRIOR RECORD OR ANYTHING
20 LIKE THAT?

21 SOLICITOR SORENSON: MAY IT PLEASE THE
22 COURT, YOUR HONOR.

23 THE COURT: YES, SIR.

24 SOLICITOR SORENSON: MR. GREENE'S PRIOR
25 RECORD, HE'S GOT, IN TWO THOUSAND FIVE, A CONVICTION

1 FOR ATTEMPTED ROBBERY IN WHICH HE RECEIVED AN ACTIVE
2 YOA SENTENCE ON. ADDITIONALLY, YOUR HONOR, HE HAS, IT
3 LOOKS LIKE HE'S BEEN REVOKED A COUPLE OF TIMES ON THAT
4 YOA SENTENCE ALSO. ADDITIONALLY, HE HAS A CRIMINAL
5 DOMESTIC VIOLENCE, FIRST CONVICTION, FROM NOVEMBER OF
6 TWO THOUSAND NINE ON HIS PRIOR RECORD.

7 THE COURT: ALRIGHT, SIR. THE MAXIMUM
8 SENTENCE ON THE BURGLARY IS?

9 SOLICITOR SORENSON: IT WOULD BE LIFE, YOUR
10 HONOR, IT WOULD BE FIFTEEN YEARS TO LIFE.

11 THE COURT: FIFTEEN TO LIFE. AND THE ABWIK
12 IS?

13 SOLICITOR SORENSON: THAT WOULD BE TWENTY.

14 MS. HINDS: TWENTY.

15 THE COURT: AND THE ATTEMPTED ARMED ROBBERY
16 IS ALSO?

17 SOLICITOR SORENSON: TWENTY ALSO, YES, SIR.

18 THE COURT: ALRIGHT. MS. HINDS.

19 MS. HINDS: YOUR HONOR, HE IS TWENTY-TWO
20 YEARS OLD, HE IS SINGLE, AND AS YOU'VE HEARD DURING
21 THE TRIAL HE HAS TWO CHILDREN. NINTH GRADE EDUCATION,
22 HE HAD BEEN WORKING AT THE COUNTRY INN AND SUITES
23 PRIOR TO HIS INCARCERATION. HE'S HAD VARIOUS MEMBERS
24 OF HIS FAMILY IN THE AUDIENCE THROUGHOUT THE WEEK,
25 GRANDMOTHER, MOTHER, UNCLES, EXTENDED FAMILY, AND

1 THEY'VE ALL BEEN HERE TO SUPPORT HIM. HE HAS BEEN
2 INCARCERATED SINCE APRIL TWENTY-SEVENTH OF TWO
3 THOUSAND AND TEN, WE WOULD OBVIOUSLY ASK FOR CREDIT
4 FOR THAT TIME. WE WOULD JUST ASK FOR THE COURT'S
5 MERCY.

6 THE COURT: APRIL TWENTY-SEVENTH?

7 MS. HINDS: YES, SIR.

8 THE COURT: YOU SAID APRIL TWENTY-SEVENTH?

9 MS. HINDS: APRIL TWENTY-SEVENTH, TWO
10 THOUSAND TEN.

11 SENTENCE OF THE COURT

12 MR. GREENE, THE SENTENCE OF THIS COURT ON
13 THE ATTEMPTED ARMED ROBBERY AND THE ASSAULT AND
14 BATTERY WITH INTENT TO KILL IS, YOU ARE COMMITTED TO
15 THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF
16 TWENTY YEARS.

17 ON THE BURGLARY, ONE, CHARGE, THE SENTENCE
18 OF THIS COURT IS, YOU ARE COMMITTED TO THE STATE
19 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF TWENTY-FIVE
20 YEARS.

21 THESE SENTENCES ARE CONCURRENT. I WILL GIVE
22 YOU CREDIT FOR TIME SERVED SINCE APRIL TWENTY-SEVENTH,
23 TWO THOUSAND TEN.

24 MS. HINDS: THANK YOU, YOUR HONOR.

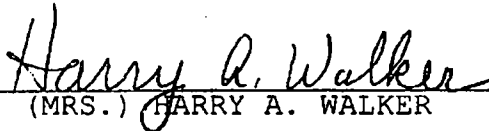
25 THE COURT: OKAY. THANK YOU, MA'AM.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE FIFTH-SEVENTH DAYS OF OCTOBER, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: DECEMBER 8, 2010


(MRS.) HARRY A. WALKER

COUNTY: ORANGEBURG DATE: OCTOBER 4, 2010
 Case No.: 2010-GS-038-1024, 1025, 1026
VOIR DIRE (PAGE 1 OF 2)

Judge: EDGAR W. DICKSON

Pl./State: STATE OF SOUTH CAROLINA State/Pl's.Atty: DONALD SORENSON

Defendant: WALTER JAMES GREENE, JR. Defense Atty: PEGGY HINDS
MARK WISE

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Race	Sex	Strikes:		Accept
				Pl.	Def.	
142	ROGER NEWELL	W	M		X	
59	WINIFRED GADDIS	B	F			X
173	KATINA SUMPTER MOORE	B	F	X		
23	DEON CAIN	W	M			X
147	BERNARD PHELPS	B	M			X
156	RAYMOND ROBINSON	B	M			X
26	MICHAEL CANNON	B	M			X
21	JOE ANN BROWN	B	F			X
180	HELEN THROWER	B	F			X
19	DERRELL BROWN	B	M			X
85	THOMAS HOUSER	B	M			X
2	ALDEN ASHER	B	M	X		
53	LAKENIA ELLISON	B	F	X		
55	JAMES EVANS	B	M	X		
104	JOHN KENNEDY	W	M			X
11	LINDA BLANKS	B	F		X	

COUNTY: ORANGEBURG DATE: OCTOBER 4, 2010
 Case No.: 2010-GS-038-1024, 1025, 1026
VOIR DIRE

Judge: EDGAR W. DICKSON

Pl./State: State/Pl's Atty:
STATE OF SOUTH CAROLINA DONALD SORENSON

Defendant: Defense Atty:
WALTER JAMES GREENE, JR. PEGGY HINDS
MARK WISE

Court Reporter: (Mrs.) Harry A. Walker

Juror				Strikes:		
No.	Name	Race	Sex	Pl.	Def.	Accept
119	TIFFANY MARTIN	B	F	X		
27	BARBARA CARSON	B	F			X
167	CHARLOTTE SMOAK	B	F			X
ALTERNATE NO. 1						
100	MINNIE JOHNSON	B	F			X
ALTERNATE NO. 2						
47	SALENA DAVIS	B	F	X		
69	EUGENIA GRAYTON-JAMES	B	F		X	
50	HOLLI DINGMAN-HOWE	W	F			X

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WALTER JAMES GREENE,

APPELLANT

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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<u>Simmons v. United States</u> , 390 U.S. 377 (1968)	7
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<u>State v. Turner</u> , 373 S.C. 121, 644 S.E.2d 693 (2007)	7

STATEMENT OF ISSUE ON APPEAL

Did the trial court judge err when he did not suppress the in-court identification of Greene by the accuser when the photo line-up was unduly suggestive because Greene has a facial blemish (a “teardrop tattoo”), and the other suspects in the array did not have a similar facial feature?

STATEMENT OF THE CASE

Walter James Greene, Jr. was indicted by the Orangeburg County grand jury of burglary, 1st degree, assault and battery with intent to kill, and armed robbery during its August, 2010 term. He was tried before the Honorable Edgar W. Dickson and a jury on October 5, 2010. He was represented by Peggy Hinds and Mark Wise, Esquires. He was convicted of attempted armed robbery and the other two charges, and sentenced to 20 years for attempted armed robbery and assault and battery with intent to kill, and 25 years for burglary, 1st degree.

This appeal timely follows.

ARGUMENT

The trial court judge erred when he did not suppress the in-court identification of Greene by the accuser when the photo line-up was unduly suggestive because Greene has a facial blemish (a “teardrop tattoo”), and the other suspects in the array did not have a similar facial feature.

Greene was convicted of events alleged to have occurred on April 24, 2010. On that date, the victim, a 27-year-old single mother of a one-year-old daughter, returned to her trailer, with her daughter, at 2:00 am after visiting with her child's father. A few minutes later, she heard a knock on the door, and concerned that the hour was late, retrieved her gun. She opened the door and within a few moments the assailant pulled a gun on her. At some point, she was shot, and the bullet grazed her breast and abdomen. She then ran down the hall of her trailer and exited through the back door. She ran down the street to a local convenience store where earlier she saw a group of people standing outside. R. 144- 195.

Seeking help from these people, she informed these bystanders that she had been shot and that her child was still in the trailer. A gentleman from the convenience store retrieved her child from the trailer and brought her back to the store. Around this time, law enforcement arrived and the victim proceeded to provide them a description of her assailant. A woman by the name of Phylicia Frazier (“Lebo”) overheard her description and stated that she believed the victim’s assailant was a former classmate of hers, named “Walter.” She testified at trial that she had seen Walter at the convenience store earlier that evening. R. 219- 239. The State introduced the testimony of the school coordinator of Calhoun County public schools to confirm that Greene attended school with Frazier. R. 275- 279.

The victim called law enforcement the day after these events and informed them that she believed her assailant's name was Walter Greene. Based on this information, law enforcement then contacted the South Carolina Law Enforcement Division (SLED) and they compiled a photographic lineup. This lineup was then presented to the victim and she identified Greene from the lineup. He was subsequently arrested and held to account for these crimes.

Prior to the start of the trial, defense counsel argued to suppress the identification on the basis that it was conducted in a suggestive manner and that the reliability of the identification was questionable. Counsel specifically argued that Greene was the only person in the lineup with a tear drop tattoo on his face. R. 7, l. 20- 9, l. 2. At the conclusion of the Neil v. Biggers hearing¹, which included the testimony of Dr. Thomas R. Alley, who was qualified as an expert in the area of human memory perception and eyewitness testimony, the trial court judge denied counsel's motion. R. 116, l. 6- 118, l. 3. When the State sought to elicit the victim's testimony regarding the identification, defense counsel renewed the objection. R. 175, l. 20-23.

The trial court judge erred by not granting defense counsel's motion to suppress the in-court identification because the photographic lineup was unduly suggestive and conducive to irreparable mistaken identification because Greene was the only suspect in the photo array with such a pronounced facial feature.

A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification. State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004). An in-court

identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. *Id.* The United States Supreme Court has developed a two-pronged inquiry to determine the admissibility of an out-of-court identification. See Neil v. Biggers, *supra*; Simmons v. United States, 390 U.S. 377 (1968). The court must ascertain whether the identification process was unduly suggestive. Even assuming an identification procedure is suggestive, it need not be excluded so long as, under all the circumstances, the identification was reliable notwithstanding the suggestiveness. *Traylor, supra*. Reliability is the linchpin of admissibility. Manson v. Braithwaite, 432 U.S. 98 (1977). The inquiry must focus upon whether, under the totality of the circumstances, there was a substantial likelihood of irreparable misidentification. *Id.* The following factors are to be considered in evaluating the totality of the circumstances to determine the likelihood of a misidentification: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. *Id.* See State v. Turner, 373 S.C. 121, 644 S.E.2d 693 (2007).

The trial court judge erred by not suppressing the identification because Greene was the only suspect in the photo array who had a facial blemish that resembled a tear drop tattoo. R. 71, ll. 3-19. The existence of this facial blemish was so important to the State that they motioned to have the trial court have Greene paraded before the jury so they could observe this distinctive facial feature. R. 297, ll. 9-25. As Dr. Alley testified, there is a

¹ 409 U.S. 188 (1972).

tendency on the part of witnesses to pick out a suspect that most resembles the perpetrator when law enforcement uses a "six pack" line up, like the one used in this case:

Q: A better practice would be to just, to not say, it might or might be in the lineup?

A: Well, that's actually widely recommended, and I think most police departments, including Orangeburg from what I saw, give a nice statement that the person may or may not be in the lineup. Whether that's effective or not is questionable, but it can't hurt. To get around that some people recommend that you show one by one so that instead of having somebody compare all the photos and picking the one that most resembles their memory, they will only pick somebody if there is a clear match between their memory for what the person looks like and the person in the photograph.

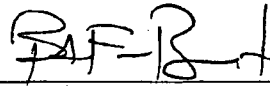
R. 86, l. 17- 87, l. 7.

The other factors also militate in favor of suppressing the identification in this case. The victim was assaulted at 2:00 am and it was dark outside. By her own admission, she only viewed her assailant for 4-5 seconds, R. 156, l.4; she has no previous relationship with her assailant. R. 149, ll. 17-22. Considering the totality of the circumstances, the trial court judge should have suppressed the identification in this case. His failure to do so rendered Greene's trial unfair, and he was denied his right to due process. There being no other witnesses to the events of this night, the prejudice to Greene was overwhelming. The state did not offer any additional evidence connecting Green to this crime other than the witness's identification of Greene, and Lebo's identifying him as being present at the store earlier that evening. Respectfully, he asks this Court to reverse his convictions.

CONCLUSION

For the preceding reason, Greene respectfully asks this Court to reverse his convictions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'EAF-Best', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of December, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

A handwritten signature in black ink, appearing to read 'EAF-Best', written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WALTER JAMES GREENE,

APPELLANT

CERTIFICATE OF SERVICE

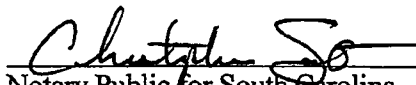
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of December, 2011.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of December, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 16, 2021 .

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Orangeburg County
 Honorable Edgar Dickson, Circuit Court Judge

THE STATE,

Respondent,

vs.

WALTER JAMES GREENE,

Appellant.

FINAL BRIEF OF RESPONDENT

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<u>State v. Brown</u> , 356 S.C. 496, 589 S.E.2d 781 (Ct. App. 2003)	6
<u>State v. Schumpert</u> , 312 S.C. 502, 435 S.E.2d 859 (1993)	5
<u>State v. Traylor</u> , 360 S.C. 74, 600 S.E.2d 523 (2004)	6

STATEMENT OF ISSUE ON APPEAL

The defendant says that the photo line-up was unduly suggestive since others in the photo array did not have his facial blemish, a teardrop tattoo. The defendant asks whether the court erred in admitting the in-court identification.

STATEMENT OF THE CASE

The Orangeburg County Grand Jury charged the defendant with first degree burglary (2010-GS-38-1024), assault and battery with intent to kill (2010-GS-38-1025), and armed robbery (2010-GS-38-1026). The defendant and his counsel came to trial on October 5, 2010 before the Honorable Edgar W. Dickson, Judge, and a jury. The jury found the defendant guilty of first degree burglary, assault and battery with intent to kill, and attempted armed robbery. The court sentenced the defendant concurrently to imprisonment for twenty five years on first degree burglary and twenty years on assault and battery with intent to kill and attempted armed robbery. The defendant served opposing counsel a timely notice of appeal.

ARGUMENT

The court exercised sound discretion allowing the victim's in-court identification.

In camera the defendant said the lineup was suggestive, and its reliability was questionable. The defendant thought the out of court identification would be the foundation for an in court identification and asked to suppress an in court identification. (ROA. p. 7, line 15 - p. 8, line 5). The defense thought the defendant was the only person among the six with a tear drop [tattoo]. The court reviewed the lineup, with the defendant in picture No. 3, and noted that the tear drop "actually looks like just a blemish...." Defense counsel offered that the defendant was the only person with a dark mark in that location. (ROA. p. 8, line 13 - p. 11, line 5).

In camera the victim said that on April 24 she visited the father of their one year old daughter and returned home with their child after 2:00 AM. She heard a knock, answered the door after arming herself and saw the defendant. Her view of the defendant's face was not obstructed, and she had light from a yard light and her kitchen. Her attention went "[d]irectly at his face" since she was trying to see if she recognized him. She did not recognize him but had a clear view of his face. He was dark skinned, about five feet four inches tall and weighed about 160 pounds. He wore twist dreads, a tear drop tattoo on his right eye, and appeared to be between 19 and 23 years old. (ROA. pp. 14-20). The defendant pulled a small silver gun, demanded her property, and fired two shots while she fled. One shot struck her on the right abdomen and breast. Although bleeding, she reached a store and got help. (ROA. pp. 21-23; p. 33). She described her assailant to the police and included his attire: green shirt, blue jeans, and black jacket. A young woman (Lebo) in the store heard the victim's description and thought it described

Walter [defendant] who had just left after hanging out in the store all day. (ROA. pp. 24-25). Lebo knew him from school and, later, gave the victim his last name. On the morning of April 27 the victim examined State's Exhibit No. 1 and recognized picture No. 3 to be the man who had come to her door. She was entirely positive of her identification based upon her recognizing the face. She expressly denied that her identification was because of the marking on the cheek. She also made an entirely positive courtroom identification. (ROA. pp. 26-30).

In camera Officer River testified that the incident report had the name "Walter" and subsequently the victim gave him the full name of "Walter Greene." The defendant was dark complected and matched the general description. SLED prepared a photographic array, and the officer thought the characteristics of the persons were similar. One photograph contained something similar to the mark on the defendant's cheek, and the officer affirmed that all of the photographs showed different skin and bright and dark spots on their faces. On April 27 he showed the lineup to the victim and told her to take her time and to look for her assailant. He did not tell her that a Walter Greene was in the array, and he did not tell her who to pick. She picked the defendant (Walter Greene, No. 3) as soon as the officer handed her the array, and there was no doubt. (ROA. pp. 56-60; pp. 63-65; pp. 70-71).

Professor Thomas Alley testified about memory in camera. Eyewitness memory and recognition are not as reliable as one would hope. A witness is not usually able to tell that memory has been contaminated, and once contaminated, memory cannot be renewed. (ROA. pp. 74-85). Some people say that photos should be shown separately to avoid a subject comparing and picking the one that most resembles their memory. (ROA. pp. 86-

87). A facial scar or tattoos make it easier to identify a person. (ROA. pp. 101-102).

The professor thought that a lineup should have some variation. He had examined a good copy of the lineup, and affirmed that it was reasonable. (ROA. pp. 105-107; p. 112).

The court made findings and ruled. The lineup was not unduly suggestive and, further, the identification was reliable based upon the victim's ample opportunity to view the subject in very close proximity, her heightened awareness due to the time, her matching description, her identification of the defendant's picture without hesitation days after the encounter from what the court found was a "very good lineup" including the tear drop tattoo that the court found to appear as a "blemish." The ruling applied to the in court identification. (ROA. pp. 116-118; p. 294, lines 13-17).

At trial the victim testified, without objection, that Mr. Greene had knocked on her door and, in part, put a gun in her face. (ROA. pp. 148-154). The defendant did object to the introduction of the photo array, and the court noted it [on the ground] from yesterday. (ROA. pp. 175-176, line 3). The victim identified the defendant in the courtroom without objection. (ROA. p. 176, line 12 - p. 177).

First it is difficult to understand how an identification issue is preserved for appellate review when the victim - without objection - identified her assailant by name. A ruling on the admissibility of evidence during a hearing out of the presence of the jury is not a final ruling. "Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review." State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993).

Next, assume for argument that the appellate issue - the court erroneously admitted the in-court identification [although the defendant did not timely object to the

in-court identification] since it was purportedly tainted by an unduly suggestive photo array in that others in the array wanted a facial blemish, a teardrop tattoo. Here, the defendant's self-serving factual contention is contradicted by the record: The victim said that she made her identification based upon the face rather than because of the marking. The officer observed another photograph with something similar to the mark on the defendant's cheek, and all of the photographs showed faces with different skin and bright and dark spots. The defendant's own authoritative witness noted that a lineup should have some variation and affirmed that it was reasonable. The court's finding that the array was not unduly suggestive is well supported by the record, and there was no possible error. Finally, the court's examination of the factors enumerated in Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972) is well supported by the record and demonstrates the want of any substantial likelihood of misidentification. State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004). "Generally, the decision to admit an eyewitness identification is in the trial judge's discretion and will not be disturbed on appeal absent an abuse of discretion, or the commission of prejudicial legal error." State v. Brown, 356 S.C. 496, 589 S.E.2d 781 (Ct. App. 2003).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

BY: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 1, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Orangeburg County
Honorable Edgar Dickson, Circuit Court Judge

THE STATE,

Respondent,

vs.

WALTER JAMES GREENE,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

By: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 1, 2011

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Orangeburg County
Honorable Edgar Dickson, Circuit Court Judge

THE STATE,

Respondent,

vs.

WALTER JAMES GREENE,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Elizabeth A. Franklin-Best, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 1st day of December, 2011.

Harold M. Coombs, Jr.
HAROLD M. COOMBS, JR.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

RECEIVED

DEC 01 2011

SC Court of Appeals

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Walter James Greene, Jr.,

Appellant.

Appeal From Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2012-UP-507
Submitted May 1, 2012 – Filed September 5, 2012

AFFIRMED

Appellant Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior
Assistant Deputy Attorney General Salley W. Elliott,
and Senior Assistant Attorney General Harold M.

Coombs, Jr., all of Columbia; and Solicitor David M. Pascoe, Jr., of Summerville, for Respondent.

PER CURIAM: Walter James Greene, Jr. appeals his convictions of first-degree burglary, assault and battery with intent to kill, and attempted armed robbery, arguing the trial court erred in denying his motion to suppress the victim's in-court identification of him because the out-of-court identification was unduly suggestive and not reliable under the totality of the circumstances. Because Greene's photograph did not stand out in such a way as to render the lineup unduly suggestive, we affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Singleton, 395 S.C. 6, 13, 716 S.E.2d 332, 335 (Ct. App. 2011) ("The admission of evidence is within the sound discretion of the [trial] court. Accordingly, a [trial] court's decision to allow the in-court identification of an accused will not be reversed absent an abuse of discretion or prejudicial legal error." (citation and quotation marks omitted)); State v. Turner, 373 S.C. 121, 127, 644 S.E.2d 693, 696 (2007) ("An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification."); id. (stating the determination of the admissibility of an out-of-court identification is subject to a two-prong inquiry: (1) whether the identification process was unduly suggestive, and (2) whether, under a totality of the circumstances, a substantial likelihood of irreparable misidentification existed).

AFFIRMED.

FEW, C.J., HUFF and SHORT, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 21, 2012

RECEIVED

The Honorable Winnifa Brown-Clark
PO Box 9000
Orangeburg SC 29115-9000

SEP 21 2012

SCOURTS
APPELLATE DIVISION

REMITTITUR

Re: The State v. Greene, Walter James
Lower Court Case No. 2010GS3801026, 2010GS3801025, 2010GS3801024
Appellate Case No. 2010-174886

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Harold M. Coombs, Jr.
Elizabeth Anne Franklin-Best

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Orangeburg)WALTER JAMES GREEN JR. #313126)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEFFILED FOR RECORD
WALTER J. GREEN JR.
CLERK OF COURT
ORANGEBURG, SC
2013 SEP 13 AM 11:32

AM

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: LEE C-1 J @ 990 WISACRIM Hwy
Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Orangeburg County
GENERAL SESSIONS Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-38-1024
 - (b) 2010-GS-38-1025

RECEIVED

SEP 25 2013

Referred to: Harrigan/dm

Answered: _____

- (c) 2010-GS-38-1026
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October - 7- ~~2010~~ 2010-Burglary 1st 25 years
- (b) October - 7-2010-ASSAULT & BATT WITH intent to kill 20 years
- (c) October - 7-2010-Attempted Armed Robbery 20 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty / _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEAL
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 11, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE Attachment A
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? 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 "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Peggy Hinds and Marquis P.O. Box 11120 Orangeburg, S.C. 29116

ii. Elizabeth A. Franklin - Best P.O. Box 11589 Columbia, S.C. 29211-1589

iii. Dayne C. Phillips P.O. Box 11589 Columbia, S.C. 29211-1589

(b) the proceedings at which each such attorney represented you:

i. Peggy Hinds and Marquis - Trial Attorney
Elizabeth A. Franklin - Best Appellate Attorney
 ii. Dayne Phillips Appellate Attorney

iii.

19. State clearly the relief you seek in filing this application:

FOR A TIME REDUCTION

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)

VERIFICATION

County of LEE)

I, WALTER CREECH JR #313126, 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.

Walter C. Creech Jr #313126

SWORN to and subscribed before me this _____ day of _____.

Notary Public (L.S.)

My Commission Expires: _____

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, WALTER GREENE JR #313126, 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.

Walter Greene Jr #313126
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____.

Notary Public

My Commission Expires: _____

Attachment

A

WALTER GREENE 621

31
FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC

2013 SEP 13 AM 11:32

Do to these facts I am filling under
INEFFECTIVE ASSISTANCE OF COUNSEL IT MAY
BE MORE BUT I'M NOT TO FAMILIAR WITH MY
LAWS. MY REASONS THAT I FEEL MY LAWYERS
BOTH TRIAL AND APPEAL ARE INEFFECTIVE ARE.
ONE I WAS ASSIGN TO PEGGY HINDS. WHEN
I GOT MOST OF THE WAY MR. MARLY WISE
CAME IN AND I NEVER UNDERSTAND WHY. BUT
HE WAS SUPPOSE TO HELP BUT IT JUST CONFUSED
ME SO IT EFFECT THE OUT COME OF MY TRIAL.

THE SAME WITH MY APPELLATE ATTORNEY. I
WAS ISSUSE MS ELIZABETH A. FRANKLIN-BEST
FOR MY APPELLATE ATTORNEY. SO WITHOUT
INFORMING ME THAT SHE WOULDN'T BE NO LONGER
HANDLING MY CASE, JUST SO HAPPEN I GOT
MY FAMILY AND I CALL AND WAS TOLD THAT
SHE LEFT ON IS NOT HANDLING MY CASE.

THE LAST THING I GOT FROM HER WAS THE
CASES THAT SHE FILLED BASIS ON WHAT SHE
THOUGHT WOULD HELP ME SO I THEN ASK
WHO'S ~~now~~ HANDLING MY CASE AND I WAS
TOLD MR. DAYME PHILLIPS. I THEN ASK HIM
SO WHAT ARE YOU GOING TO REVIEW MY
CASE AND GIVE HIS INSIGHT CONTAINING
TO MY CASE AND HE SAID NO HE'S GOING WITH

What she, Ms. Franklin had already applied. So this is why they were ineffective and in other ways I was hindered to a fair trial and that affected the outcome of my trial and appeal. I suppose that my trial attorney object other issues and ask other questions but was told that my case was based on identification. For instance the height was given the night was 5'9, my booking report says that I'm 5'6. Once seen in trial the victim said 5'4. ~~and~~ another issue it was a Dante Morgan who was said to be seen with me who was never questioned and a Ernest Lee who would have played a major role in my case. In my case Ms. Wright said she don't know (Lebo) Ms. Frazier she know of he. (Lebo) stated they were friends. Also I was charged with armed robbery but in trial it was dropped to attempt armed robbery. It was time when the victim and (Lebo) Ms. Frazier lied and my lawyer never object. These are most

of my reason why my lawyers where
 ineffective, and it affect the outcome
 of my trial and appeal. If possible
 I would like to be granted
 request of a time reduction.

2013 SEP 13 AM 11:32
 FILED FOR RECORD
 CLERK
 CLERK OF COURT
 ORANGEBURG, SC

THANKS

WALTER GREENE JR

#313126

I hope u receive this,
 this time I've BEEN sending
 this and NEVER receive any
 info on this and I only
 had a year to submit
 this.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Walter J. Greene, Jr., #313126,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2013-CP-38-01060

RETURN

Respondent, making its Return to the application for post-conviction relief filed September 13, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the August 2010 term of the Orangeburg County Grand Jury for Burglary in the First Degree (2010-GS-38-1024), Assault and Battery with Intent to Kill (2010-GS-38-1025), and Armed Robbery (2010-GS-38-1026). Applicant was represented by Margaret Hinds and Mark Wise of the Orangeburg County Public Defenders Office. On October 5, 2010, Applicant proceeded to a jury trial before the Honorable Edgar W. Dickson, where he was convicted as indicted of Burglary in the First Degree and Assault and Battery with Intent to Kill and of the lesser included offense of Attempted Armed Robbery. Judge Dickson sentenced Applicant to twenty-five years imprisonment for Burglary in the First Degree, twenty years imprisonment for Assault and Battery with Intent to Kill, and to twenty years for Attempted Armed Robbery, with all sentences to be served concurrently.

A Notice of Appeal was filed and an appeal was perfected on Applicant's behalf. Following briefing, the South Carolina Court of Appeals affirmed his convictions and sentences by unpublished opinion. State v. Walter J. Greene Jr. 2012-UP-507 (Ct. App. filed September 5, 2012). The Remittitur was sent on September 21, 2012.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, and trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current application, the Applicant alleges that he is being held in custody unlawfully based on claims of ineffective assistance of counsel. In an attachment to his application, Applicant cites various instances where he alleges his trial counsel failed to effectively communicate with him. Any claims not specifically enumerated in the application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Jan 3, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2013-CP-38-01060
WALTER JAMES GREENE, JR., #313126	)	
	)	
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:

Jonathan Waller, Esquire
The Law Office of Jonathan Waller, LLC
1720 Main Street
Suite 104
Columbia, South Carolina 29201

DATED this 3rd day of January, 2014.


Kelly Oppenheimer, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF ORANGEBURG 2013-CP-38-01060
3

4 WALTER J. GREENE) TRANSCRIPT OF RECORD
5 VS.)
6) MAY 21, 2015
7 STATE OF SOUTH CAROLINA) ST. GEORGE, SC

8
9 B E F O R E:
10 THE HONORABLE MAITÉ MURPHY

11 A P P E A R A N C E S:
12 JONATHAN D. WALLER, ESQUIRE
13 Attorney for the Applicant
14 J. CLAYTON MITCHELL, ESQUIRE
15 Attorney for the State of South Carolina

16 Ruth L. Mott, RPR, CRR
17 Certified Court Reporter
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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
WALTER GREENE				
MR. WALLER	4		12	
MR. MITCHELL		10		
MARK WISE				
MR. WALLER	13			
MR. MITCHELL		15		
MARGARET ELIZABETH HINDS				
MR. WALLER	18			
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E X H I B I T S

NO.	DESCRIPTION	ID	EVD
	(NONE MARKED)		

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1 MR. MITCHELL: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. MITCHELL: This is Walter Greene versus the State of
4 South Carolina, 2013-CP-38-01060. Mr. Greene was indicted in
5 August of 2010 for first degree burglary, assault and battery
6 with intent to kill and armed robbery. He was represented by
7 Ms. Margaret Hinds and Mr. Mark Wise. He proceeded to trial
8 on October 5th of, 2010 before Judge Dickson, where he was
9 convicted as indicted on the first degree burglary, the
10 ABWIK, and the lesser included of attempted armed robbery.
11 He was sentenced to 25 years on the burglary, 20 years on the
12 ABWIK, and 20 years for the attempted armed robbery, all to
13 be served concurrently. Mr. Greene filed this application
14 September 13, 2013, where he's alleged allegations of
15 ineffective assistance of counsel. Mr. Greene is present
16 here today and represented by Mr. Jonathan Waller, and I'd
17 ask that he articulate the grounds that we're going forward
18 on today.

19 THE COURT: Mr. Waller.

20 MR. WALLER: Thank you, Your Honor. Your Honor, Mr.
21 Greene has raised an allegation of ineffective assistance of
22 counsel. Specifically, there was an identification made that
23 we feel was not properly preserved for appellate review
24 during the trial; and, additionally, some comments made by
25 the assistant solicitor during the closing arguments which

1 were not objected to.

2 THE COURT: Okay.

3 MR. WALLER: I would call Walter Greene.

4 THE COURT: All right, Mr. Greene, if you'd please come
5 to the witness stand.

6 WALTER GREENE,

7 being first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. WALLER:

9 Q. Good afternoon, Mr. Greene, how are you today?

10 A. I'm doing fine.

11 Q. Mr. Greene, how old are you?

12 A. 27.

13 Q. And where are you from?

14 A. Orangeburg, South Carolina.

15 Q. When you were arrested originally on -- from this
16 incident, what were you arrested for?

17 A. Assault and battery with intent to kill, first degree
18 burglary and armed robbery.

19 Q. Okay. And were you able to make bond, or did you stay
20 locked up?

21 A. I stayed locked up.

22 Q. And who was your attorney on these charges?

23 A. Ms. Hinds and Mr. Wise.

24 Q. Who did you have first?

25 A. Ms. Hinds.

1 Q. How long after you were arrested did Ms. Hinds come to
2 be your lawyer?

3 A. Maybe within like two weeks period of time they sent me
4 some type paperwork saying that I would be issued a public
5 defender.

6 Q. Okay. And that was my next question, so she was
7 appointed to you?

8 A. Right.

9 Q. Okay. When you and Ms. Hinds met, what did you all
10 discuss?

11 A. Basically, we discussed, like she told me, know what I'm
12 saying, whether or not I'm going to go further through with
13 my trial and that she wanted to get -- really get the basics
14 of what's going on in my side of the case.

15 Q. Okay. So she got some information from you as to what
16 you were saying happened?

17 A. Correct.

18 Q. Did you all discuss the charges, all three charges?

19 A. We spoke about them, and as far as, like, I think the
20 terms of how long the charges carry or something like that.

21 Q. Okay. Did you all discuss the evidence that the State
22 had that they were going to try to use against you?

23 A. Not that I remember.

24 Q. Okay. Did you all discuss the identification made by a
25 couple different people?

1 A. Yes, yes.

2 Q. Did you all discuss the identification made by the
3 victim in this case?

4 A. We spoke on it, but it wasn't too much; we did though,
5 yes.

6 Q. Okay. How about the identification made by someone with
7 the name of Leebo?

8 A. Yes.

9 Q. Okay. Did you all discuss hiring an expert in
10 eyewitness identification?

11 A. Later on they did.

12 Q. Did that ultimately happen?

13 A. Yes.

14 Q. Did you meet with that expert, or how did that work?

15 A. No, I never -- I never spoke to him. I didn't see him
16 until the day of the trial, like first, when you begin the
17 trial phases and they bring you in like the first day, that's
18 when I found out that he was going to be representing or
19 attending the trial.

20 Q. Okay. You mentioned Mr. Wise earlier. When did Mr.
21 Wise begin to work on your case?

22 A. The late part like almost close to the end.

23 Q. Do you recall why he was brought in on your case?

24 A. No. I was told that he was partially new but he would,
25 you know what I'm saying, like some kind of like -- be

1 assisting, like some type of help or something like that.

2 Q. Did you and Ms. Hinds discuss the procedures that would
3 take place when you went to trial?

4 A. The procedures, what do you mean?

5 Q. Like how the trial would go.

6 A. Oh, no.

7 Q. Once the trial began, were you and Ms. Hinds or you and
8 Mr. Wise able to communicate with each other?

9 A. Yes.

10 Q. Did you have a pen and paper or anything like that you
11 could take notes?

12 A. No.

13 Q. But during breaks and stuff you were able to talk to
14 either one of them?

15 A. Right.

16 Q. Okay. I want to ask you a little bit about the
17 individual whose nickname was Leebo. Now, she wasn't an
18 actual witness to the alleged crime, was she?

19 A. No.

20 Q. And she testified at trial; is that right?

21 A. Correct.

22 Q. She testified that she knew you from school; is that
23 right?

24 A. Correct.

25 Q. Now, did she testify that she knew you from high school?

1 A. No, middle school.

2 Q. Now, when -- how old -- how far had you gone in school
3 when this incident took place?

4 A. I was -- I was out of school.

5 Q. Okay. What was the gap in time from when she said she
6 remembered you from school until this incident took place?

7 A. Had to have been a few years, a couple years since then.

8 Q. Okay. When you say a couple, what do you mean, five?

9 A. Maybe more than that if not.

10 Q. Okay. Did you and Ms. Hinds or you and Mr. Wise discuss
11 that length of time?

12 A. No, not that I could remember.

13 Q. Okay.

14 A. No.

15 Q. Were you ever concerned with that?

16 A. Yes.

17 Q. Did you express your concerns to Ms. Hinds or Mr. Wise?

18 A. I spoke to them about it but they was -- kept telling me
19 the main issue was identification.

20 Q. Identification of -- by who?

21 A. Just period all around identification was the biggest
22 concern in the case.

23 Q. Did you feel you all were prepared when you went to
24 trial?

25 A. Like not really, but I went through it because, I mean,

1 I really didn't -- I just thought that's what goes on with a
2 trial.

3 Q. Okay. Now, what do you think that you all weren't
4 prepared for?

5 A. Like as far as when -- I feel like it was a lot of
6 different things that I felt like would have been effective
7 if they would have applied them to the trial, like they had
8 certain things, like with the heights and that, when it was
9 first given, they had said it was listed that I was 5, 9, and
10 then my booking report said I was 5, 6, and then at trial,
11 once the victim seen me, she said I was 5, 4. They did a
12 procedure where they made me go stand up in front the jury or
13 whatnot, but the Judge made everybody went out but he took --
14 they was talking, my lawyers came and spoke, Ms. Hinds came
15 and spoke to the Judge, and I don't know what he said; but
16 she came and spoke to the Judge, and they tried to speak to
17 me and there was an agreement like I will come stand up in
18 front the jury, and it's supposed to evidence who's the
19 actual one, to see what the -- I guess what the victim saw
20 that night; and, two, for the height differential or however
21 that went and...

22 Q. Okay. Getting back to what you said about your height
23 for just a second, were there some discrepancies in what the
24 victim and what law enforcement said about your height?

25 A. Yes.

1 Q. Okay. Do you think that that could have been presented
2 differently to the jury?

3 A. Yes, I did.

4 Q. Okay. Anything else that you think that your attorneys
5 did not do that they should have done?

6 A. It was like, when they came down to my mother and them,
7 because they was my alibis and whatnot, when they came down
8 to the closing argument, I felt like she could have been --
9 been more or saying more or being more -- because I feel like
10 when you closing out your argument, that's like the main
11 thing everybody listen to, and the solicitor got up and spoke
12 like the last three hours, and I felt like, you know what I'm
13 saying, there's certain -- if she would apply a certain type
14 of way, then it would have affected the way that -- the
15 outcome of my trial.

16 Q. Okay. Is there anything else, Mr. Greene?

17 A. That's it right now.

18 MR. WALLER: I don't have any further questions. Please
19 answer any questions Mr. Mitchell might have.

20 CROSS-EXAMINATION BY MR. MITCHELL:

21 Q. Good afternoon, Mr. Greene.

22 A. Good afternoon.

23 Q. So you were represented by Ms. Hinds; is that right?

24 A. Correct.

25 Q. And then Mr. Wise got involved as you got closer to

1 trial, is that --

2 A. Correct.

3 Q. -- a fair statement?

4 Now, you talked about how they kept saying the issue was
5 identification, and there was an identification expert that
6 testified, correct?

7 A. Correct.

8 Q. Is that how you understood your defense to be, that it
9 was a miss -- you were mis-ID'ed?

10 A. Correct.

11 Q. Okay. And part of doing that, it was -- your height was
12 in question because the victim gave various heights in her
13 testimony at the trial and then in her statements.

14 A. Correct.

15 Q. It ranged from 5, 4 to 5, 9, right?

16 A. Correct.

17 Q. And that was argued to the jury in closing by your
18 attorney; is that correct?

19 A. Yes.

20 Q. Okay. Now, your issue on direct appeal, do you recall
21 that it was the victim's identification?

22 A. Could you repeat that again?

23 Q. I'm sorry. At your direct appeal the issue on appeal
24 was whether the victim's identification was proper; is that
25 correct?

1 A. I'm not sure if I can recalculate that far back, but it
2 was something like that because they did, based on
3 identification, everything was based on identification, same
4 thing for trial.

5 MR. MITCHELL: No further questions. Thank you.

6 THE WITNESS: All right.

7 THE COURT: Anything further?

8 MR. WALLER: Just briefly.

9 REDIRECT EXAMINATION BY MR. WALLER:

10 Q. Mr. Greene, we've talked a lot about identification.
11 This individual Leebo that identified you, where had she seen
12 you or said to have seen you earlier that day?

13 A. To some kind of corner store, she said she seen me at a
14 corner store.

15 Q. Do you recall whether her -- whether she testified that
16 you were by yourself or with another person?

17 A. She said that I was with someone named Dante Morgan.

18 Q. Do you recall if Dante Morgan was ever interviewed?

19 A. No, he wasn't. I don't even know who he is, but he
20 never been nowhere near trial.

21 Q. Did you and your attorneys ever discuss that Dante
22 Morgan was never interviewed or was never called as a
23 witness?

24 A. No.

25 MR. WALLER: No further questions.

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

2 Any other witnesses?

3 MR. WALLER: Call Mark Wise.

4 MARK WISE,

5 being first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. WALLER:

7 Q. Good afternoon, Mr. Wise, how are you today?

8 A. I am well, thank you.

9 Q. Mr. Wise, what was your, I guess, role in representing
10 Mr. Greene?

11 A. The policy in our office has been to, when a case is
12 getting ready to go to trial, have two attorneys to work on
13 it kind of to help with the trial and any work that needs to
14 be done during or right before the trial.

15 Q. Okay. About how long do you recall, or if you recall,
16 did you assist on Mr. Greene's case?

17 A. I don't remember when I first became involved in it.

18 Q. Is it safe to say identification was a very big issue in
19 this trial?

20 A. Yes.

21 Q. Actually you all hired an expert in eyewitness
22 testimony, eyewitness identification; is that right?

23 A. Yes.

24 Q. One issue that came up with identification was that Mr.
25 Greene had a tattoo or a birthmark on his face under one of

1 his eyes; is that correct?

2 A. That's correct.

3 Q. If you could, explain a little bit about your objection
4 to Mr. Greene having to present to the jury.

5 A. You mean the objection from the two of us?

6 Q. Yes, sir.

7 A. I honestly don't remember our conversation about it.

8 Q. Okay. You objected at trial to him, to him having to
9 present himself to the jury.

10 A. Well, when you say we, I assume you mean Ms. Hinds and

11 I. Ms. Hinds actually did the trial.

12 Q. Correct. Do you have a copy of the transcript?

13 A. I do, one moment.

14 Q. Okay.

15 A. Okay.

16 Q. If you could turn to page 334.

17 A. Yes, yes.

18 Q. You actually make the argument against Mr. Greene having
19 to present himself to the jury; is that correct?

20 A. I did. I did.

21 Q. Mr. Greene was picked out of a lineup by the victim in
22 this case; is that right?

23 A. I believe so, yes.

24 Q. And is it your recollection that there were multiple
25 issues with that lineup, or at least that you all had, one

1 being the -- the tattoo or birthmark on his face, the other
2 being the five factors of eyewitness identification; is that
3 your recollection?

4 A. Honestly, I don't remember my arguments. I didn't
5 realize I made that argument until you just called it to my
6 attention. I'm looking at it now. If you want to give me a
7 minute, I'll read it again.

8 Q. Sure, that would be great.

9 A. Yes, I do remember this, yes.

10 Q. Okay.

11 A. Yes.

12 Q. And at this point the victim, Mrs. -- Ms. Wright, I
13 believe, had already made an in-court identification; is that
14 right?

15 A. I believe so.

16 MR. WALLER: I have no further questions. Thank you.

17 THE COURT: Mr. Mitchell.

18 CROSS-EXAMINATION BY MR. MITCHELL:

19 Q. Good afternoon, Mr. Wise.

20 A. Good afternoon.

21 Q. Can you give us a brief rundown of your background and
22 employment, or where you work, excuse me?

23 A. I'm with the Orangeburg Public Defender's Office.

24 Q. Okay. And that's how you became involved in this case?

25 A. Yes.

1 Q. How long have you been practicing law now?

2 A. I was admitted to practice in 1983 in New York, but I
3 have not practiced consistently between 1983 and today.

4 Q. Moving to this ID issue, the part where you argued on
5 334, your argument was basically that it was cumulative since
6 he had already been -- since the victim had already pointed
7 him out in Court and had described the tattoo or blemish on
8 his face; is that right?

9 A. I argued that it was cumulative, but I also argued that
10 there was, I thought, a basic fairness issue about having him
11 basically perform in front of the jury, walk back and forth
12 and turn around in front of the jury. I just -- I just
13 didn't think that was fair, appropriate, necessary.

14 Q. And I think you referred to it as parading around like a
15 show animal almost.

16 A. Yes, yes.

17 Q. Now, there's testimony here, this is coming from the
18 investigating officer, is that right, is this when that was
19 requested?

20 A. When it was requested that he --

21 Q. Get up.

22 A. -- exhibit himself to the jury?

23 Q. Yes, sir.

24 A. I think the solicitor wanted him to do that. May I have
25 one moment?

1 Q. Yes, sure.

2 A. It looks like Mr. Sorenson indicated that he wanted Mr.
3 Greene to stand in front of the jury so they could look at
4 his face.

5 Q. To identify the distinguishing mark on his face; is that
6 right?

7 A. Right. That's what he references on page 333.

8 Q. Would that also have given them an opportunity to
9 observe his height?

10 A. Yes.

11 Q. Since there was some discrepancy in that.

12 A. Yes.

13 Q. In making this objection you had hoped that it would be
14 preserved for appellate review --

15 A. Yes.

16 Q. -- is that right?

17 A. Yes.

18 Q. Did you have any -- did you and Ms. Hinds discuss the
19 benefits of having an identification expert testify at the
20 trial, or would that have just been Ms. Hinds' decision
21 before or --

22 A. I'm sure we would have talked about it.

23 Q. Okay. What was the purpose of having the eyewitness
24 expert come in and testify?

25 A. Well, you know, this case was really about that

1 identification. It was a situation that happened very quick,
2 it was at night, there was a gun involved; kind of a lot of
3 those issues that create problems in identification were at
4 play in this case.

5 Q. So that expert kind of went through like the different
6 factors that could affect someone's ability to identify
7 someone; is that a fair statement?

8 A. Probably. I don't remember all of his testimony.

9 MR. MITCHELL: Okay. All right. No further questions.
10 Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: Any further questions?

13 MR. WALLER: No redirect, Your Honor.

14 THE COURT: You may step down, Mr. Wise. Thank you.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Any other witnesses?

17 MR. WALLER: I would call Margaret Hinds.

18 MARGARET ELIZABETH HINDS,
19 being first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. WALLER:

21 Q. Good afternoon, Ms. Hinds.

22 A. Good afternoon.

23 Q. Ms. Hinds, if you could, can you take me through how you
24 originally came to represent Mr. Greene?

25 A. I was appointed to Mr. Greene on April 29, 2010; met

1 with him for the first time on May 13, 2010, trying to get a
2 bond.

3 Q. Okay. And at that meeting or on one of your initial
4 meetings would you have gone over the elements and potential
5 penalties of the crimes he was charged with?

6 A. On the May 13th meeting probably not. That would have
7 been focused on the information that I needed in order to
8 argue that bond should be set. However, I met with him then
9 the next day, May 14, 2010, and at that point that would have
10 been the lengthier interview where I would have gotten his
11 information and explained to him what he was charged with,
12 what it carried, any collateral consequences, those kinds of
13 things.

14 Q. When did you receive discovery in this case if you know?

15 A. June 9, 2010.

16 Q. And you would have gone over that discovery with him?

17 A. I did. I went over that with him on June 30th, 2010.

18 Q. Okay. During your meetings with Mr. Greene did you all
19 formulate any potential defenses to these charges?

20 A. Yes. He had an alibi defense.

21 Q. Did you all present that at trial?

22 A. Yes.

23 Q. Is it safe to say that identification was the main
24 factor in this trial?

25 A. It was the issue.

1 Q. It was mentioned earlier that he was identified with
2 another individual at a kind of a corner store, an individual
3 named Dante Morgan.

4 A. That's correct.

5 Q. Was there any discussion about why Dante Morgan
6 wasn't contacted?

7 A. I had an investigator actually looking for him. I
8 couldn't find him. And I'm assuming that probably the
9 solicitor's office had the same problem or at least they
10 didn't try to contact him that I know of.

11 Q. What were you and Mr. Greene's discussions like
12 concerning hiring an eyewitness expert?

13 A. Well, because the identification was the main problem in
14 this case, I didn't see how we could go forward without
15 getting an identification expert. All the factors were there
16 in terms of how quickly it all went down, poor lighting, all
17 those kinds of things, so I felt like we needed somebody to
18 hopefully educate a jury about how somebody can be mistaken.

19 Q. Okay. Did you also feel that there were some
20 suggestiveness to the victim from outside sources?

21 A. Absolutely. I immediately felt without even -- before I
22 even talked to the client, when I read the discovery, it
23 seemed to me that it was likely that for whatever reason the
24 -- Leebo, the witness, certainly had interactions with the
25 victim in the case that -- where she could have been planting

1 information, either knowingly or unknowingly, that would have
2 led to her to identify Mr. Greene.

3 Q. Is it safe to say that your motion to suppress the
4 lineup of the victim was twofold, one on the reliability
5 factors, the other on him having a tattoo or birthmark on his
6 face?

7 A. Absolutely.

8 Q. If I could direct your attention -- do you have your
9 transcript?

10 A. I do.

11 Q. If I could direct your attention to page 220.

12 A. Yes, sir.

13 Q. I thought it was 220. Yes, ma'am, beginning on line 20
14 of page 220 and continuing just onto the next page, you have
15 previously objected to the out-of-court identification being
16 admitted. It was admitted over objection. What was the
17 trial strategy behind not objecting to the in-court
18 identification?

19 A. I honestly can't tell you at this point in time. I
20 don't -- I don't remember whether I missed it or I just
21 didn't want to bring any more attention to the
22 identification.

23 Q. If I could now get you to turn all the way to the end,
24 page 519, lines 1 through 7, I guess specifically beginning
25 on line 4, what was the trial strategy behind not objecting

1 to the solicitor's comments there?

2 A. Again, not to call attention because in closing I'm
3 arguing that it's not him.

4 Q. Okay. To the best of your recollection had there been
5 any testimony of Mr. Greene watching the victim arrive home?

6 A. Not to my recollection.

7 MR. WALLER: Okay. Beg the Court's indulgence, please.

8 No further questions. Thank you.

9 CROSS-EXAMINATION BY MR. MITCHELL:

10 Q. Good afternoon, Ms. Hinds.

11 A. Good afternoon.

12 Q. Can you give a brief rundown of your background for the
13 record, please?

14 A. Deputy Public Defender in Orangeburg County. I've been
15 at that -- working in that same office for the last 18 years.

16 Q. Okay. Now, you were lead counsel for Mr. Greene; is
17 that correct?

18 A. I was.

19 Q. You met with him multiple times in preparation for this
20 trial?

21 A. I met with him ten times.

22 Q. Ten times, okay. In those meetings were you able to
23 formulate a trial strategy, a defense to these charges?

24 A. From the beginning it was going to be trying to knock
25 out the identification and hopefully establish the alibi.

1 Q. Okay. And the alibi was what you ultimately presented
2 at trial; is that correct?

3 A. Correct.

4 Q. It was his mother and his girlfriend testifying?

5 A. His mother and his mother's boyfriend.

6 Q. Mother's boyfriend. Excuse me.

7 And what did their testimony consist of?

8 A. Basically that -- it was a little bit bizarre but
9 basically that he was at home with them. The boyfriend and
10 the momma lived together. They lived in a bad part of
11 Orangeburg. He had dead bolts on the doors, and when the
12 boyfriend would go to bed at night, he would lock the dead
13 bolts, and they were the kind that required a key, not the
14 ones that you can just flip the latch.

15 Q. The lock on both sides, right?

16 A. Yes. His testimony was that Mr. Greene was in there,
17 was in the house when he went to bed, that he's the only one
18 that had a key and nobody could have come in or left,
19 therefore, even though he obviously went to sleep and
20 couldn't say he saw him the whole night through, that he
21 knows he had to have stayed there?

22 Q. So essentially he was locked in the house for that night
23 and that he was not able to be around when this incident
24 occurred?

25 A. Correct.

1 Q. Getting to the incident, let's see, can you give us a
2 little brief rundown of the facts of how the victim and
3 Leebo -- how Ms. Leebo becomes involved in this case?

4 A. To the best of my recollection, the incident takes place
5 at the house. The victim had left her small child in the
6 house. She was running to get help. Runs in, sees some
7 people down at the corner store, and I think that's where she
8 first meets up with Leebo, starts telling what's going on,
9 and somebody help me, we've got to go back and get the child.

10 Q. And you were skeptical of Ms. -- of this Leebo from the
11 beginning; is that correct?

12 A. Absolutely.

13 Q. And why is that specifically?

14 A. For a number of reasons. It just -- the way the
15 discovery read, it just seemed like she had planted ideas,
16 and the fact that she would remember somebody who wasn't even
17 a friend, just somebody that attended the same school, not
18 even in the same grade, from not -- nine years after the
19 fact, it just didn't seem plausible to me.

20 Q. So she was kind of standing there as the victim was
21 giving her statement, and then she said something along the
22 lines of, that sounds like Walter?

23 A. That's correct.

24 Q. Okay.

25 A. And that's how it started.

1 Q. So in hearing all of that you decided to hire an expert
2 in identification?

3 A. That's right, Dr. Alley, A-L-L-E-Y.

4 Q. And that was to, like you said, educate the jury to the
5 fact that eyewitness identifications can be inaccurate
6 sometimes?

7 A. Correct. Obviously he wasn't there the night this
8 happened, so he wasn't a fact witness; but I think juries can
9 sometimes place too much credibility in somebody saying, I
10 was there, that's the person who did it, when they could very
11 well be mistaken.

12 Q. So she was there to point out other factors that could
13 have affected her jump to this -- to identifying Mr. Greene,
14 is that right?

15 A. Correct.

16 Q. And that would have consisted of like the lighting, the
17 gun, the focus would have been on the gun and not on his
18 face?

19 A. Correct.

20 Q. Mr. Greene talked about height discrepancies.

21 A. I believe I argued that in my closing, and it was, he's
22 absolutely right, it went from 5, 4 to 5, 6 to 5, 9 and
23 everyplace in between.

24 Q. It was kind of all over the place and you wanted to
25 point that out to the jury?

1 A. Correct.

2 Q. Mr. Greene testified that he was not -- that you did not
3 advise him of the procedures of trial, how things would go.

4 Is it your normal practice to do so?

5 A. Generally, right before trial, in terms of the -- closer
6 to trial. I wouldn't say necessarily right at the trial, but
7 the last time I met with him would have been on October 4th.
8 We went over everything again, including what happens at a
9 trial, procedures, that kind of thing, went over again that,
10 if things did not go his way he would, if he wanted to
11 appeal, to let me know, all of those things.

12 Q. And the case was appealed; is that right?

13 A. Correct.

14 Q. Do you know what the issue was on appeal?

15 A. I believe it was ID also.

16 Q. The victim's ID?

17 A. Correct.

18 Q. It would be Ms. Wright, correct?

19 And that passage that was pointed out, page 220, that
20 was when the victim was testifying, correct?

21 A. Correct.

22 Q. So if that was the issue ruled upon, that would have
23 been preserved at that point.

24 A. Yes, sir.

25 Q. And that passage in the solicitor's closing that was

1 pointed out, did you find that objectionable?

2 A. Again, I honestly can't tell you whether I missed it or
3 I just didn't want to call attention to it. I'm not going to
4 tell you I remember.

5 Q. What do you mean by not calling attention to it?

6 A. Again, unless something -- by calling an objection on
7 something and making it more glaring and putting the
8 spotlight on it sometimes does more harm than good I've
9 found.

10 MR. MITCHELL: No further questions. Thank you, Ms.
11 Hinds.

12 THE COURT: Anything further?

13 MR. WALLER: No further questions, Your Honor.

14 THE COURT: You may step down, Ms. Hinds.

15 THE WITNESS: Thank you.

16 THE COURT: Any other witnesses?

17 MR. WALLER: No further witnesses.

18 MR. MITCHELL: State has no witnesses, Your Honor.

19 THE COURT: Again I'll take the matter under advisement
20 and notify you of a ruling.

21 MR. WALLER: Thank you, Your Honor.

22 MR. MITCHELL: Thank you, Your Honor.

23 --- END OF TRANSCRIPT OF RECORD ---

24

25

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF ORANGEBURG
4

5 I, the undersigned Ruth L. Mott, Certified Court
6 Reporter for the State of South Carolina, do hereby certify
7 that the foregoing is a true, accurate and complete
8 transcript of record of all the proceedings had and evidence
9 introduced in the matter of the above-captioned case,
10 relative to appeal, in the 1st Judicial Circuit Court for
11 Orangeburg County, South Carolina, on the 21st of May, 2015.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 April 4, 2016

16

17 *Ruth L. Mott*

18 Certified Court Reporter

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Walter J. Greene, Jr., #313126,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

FILED 2013-CP-38-01060
-8 P.D. 11

CLERK OF COURT
ORANGEBURG COUNTY

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 13, 2013. Respondent filed a Return on January 6, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller was appointed by the Orangeburg Clerk of Court. An evidentiary hearing was held on May 21, 2015, at the Dorchester County Courthouse. Applicant was represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's trial counsel Margaret E. Hinds, Esquire, and Mark Wise, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, appellate records, the PCR application, the Return, and the transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the August 2010 term of the Orangeburg County Grand Jury for Burglary in the First Degree (2010-GS-38-1024), Assault and Battery with Intent to Kill (2010-GS-38-1025), and Armed Robbery (2010-GS-38-1026). Applicant was represented by Counsel Hinds and Counsel

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Winnifred Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Wise. On October 5, 2010, Applicant proceeded to a jury trial before the Honorable Edgar W. Dickson, where he was convicted as indicted of Burglary in the First Degree, Assault and Battery with Intent to Kill and of the lesser included offense of Attempted Armed Robbery. Judge Dickson sentenced Applicant to twenty-five (25) years' imprisonment for Burglary in the First Degree, twenty (20) years' imprisonment for Assault and Battery with Intent to Kill, and to twenty (20) years' for Attempted Armed Robbery, with the sentences to be served concurrently.

A Notice of Appeal was filed and an appeal was perfected on Applicant's behalf. Following briefing, the South Carolina Court of Appeals affirmed his convictions and sentences by unpublished opinion. State v. Walter J. Greene Jr. 2012-UP-507 (Ct. App. filed September 5, 2012). The Remittitur was sent on September 21, 2012.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of trial counsel in:
 - a. Failing to properly object to the identification made by the victim through a photo lineup.
 - b. Failing to properly object to the State bringing Applicant before the jury to observe his physical characteristics.
 - c. Failing to object during the solicitor's closing argument.

II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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Winniford B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Failure to properly object to the identification made by the victim through a photo lineup

Applicant alleges Counsel were ineffective for failing to properly object to the identifications made by the victim. Applicant argues that if the identifications were properly

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 4/11/11
 [Signature]
 CLERK OF COURT
 ORANGEBURG COUNTY

suppressed, then it is likely that the result of the trial would have been different. Applicant testified that identification^{was not} the big issue in the case. Counsel Wise concurred in this testimony and testified a motion to suppress^{the} ~~to~~ identifications was made. Applicant also argues that Counsel were ineffective in failing to contemporaneously object to the victim's in-court identification. Counsel Hinds credibly testified that she likely did not want to bring attention to it by making an objection.

This Court finds this allegation must be denied. Here, a Neil v. Biggers¹ hearing was held where Counsel Hinds argued that the victim's in-court and out-of-court identifications should be suppressed. Counsel Hinds went through the relevant factors and argued that the identification was not reliable and that the lineup was suggestive because he was the only person with a tear drop tattoo under his eye. Judge Dickson denied the motion to suppress and ruled that the identifications were reliable and that the marking under Applicant's eye seemed to be a blemish, not a tattoo. Furthermore, this was the issue briefed on appeal and ruled upon by the South Carolina Court of Appeals. While the State argued that the issue may not be preserved in its brief, the court of appeals' opinion addresses the merits, so this Court finds that the issue was preserved. Counsel cannot be held to be ineffective when the proper objection was made which preserved the issue for appellate review.

As to Applicant's argument that Counsel did not contemporaneously object to the in-court identification, Applicant cannot show that if such objection was made that it would have been granted. Judge Dickson made it very clear that both identifications would be admissible in the pre-trial suppression hearing. "An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of

¹ Neil v. Biggers, 409 U.S. 188, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972).

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Winniford B. Clark

CLERK OF COURT
ORANGE COUNTY

irreparable misidentification." State v. Tisdale, 338 S.C. 607, 611, 527 S.E.2d 389, 392 (Ct. App. 2000) (citations omitted). Here, the out-of-court identification was ruled reliable. Applicant has failed to meet his burden in proving prejudice. Therefore, this allegation is denied and dismissed ^{MA} with prejudice.

Failure to properly object to the State bringing Applicant before the jury to observe his physical characteristics

Applicant alleges Counsel were ineffective in allowing the State to have Applicant stand before the jury to observe his physical characteristics, specifically his height and facial features. This Court finds that Counsel Wise did object to this issue and properly preserved the argument for appellate review. (Trial Tr. p. 334-38). Counsel Wise argued that this testimony was irrelevant and cumulative to the evidence the State had already admitted. He described it as "parading" Applicant before the jury. Judge Dickson allowed Applicant to be brought before the jury because the issue of identification was so important. He ruled that the jury would be allowed to judge Applicant's height and whether he had a tear drop tattoo or some kind of facial blemish.²

As Judge Dickson noted, the State is allowed to bring a defendant before the jury so they can make a better observation as to his or her physical features. See State v. Hart, 306 S.C. 344, 412 S.E.2d 380, 381 (S.C.1991) ("It is well-settled that the State's exhibition of a defendant's physical characteristics does not implicate the defendant's privilege against self-incrimination because such an exhibition is not testimonial." (citing Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L.Ed.2d 908 (1966))). This Court finds that Counsel was in no way ineffective in presenting his argument to the court. Applicant has also failed to prove any resulting prejudice. This allegation is denied and dismissed with prejudice. ^{MA}

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CLERK OF COURT

² The defense challenged the victim's statement that Applicant was five feet four inches tall. The defense also challenged the victim's statement that the suspect had a tear drop tattoo under his eye.

Failure to object during the solicitor's closing argument

Finally, Applicant alleges Counsel ^{WVC} ~~was~~ ineffective for failing to object during the solicitor's closing arguments. The specific remarks are as follows:

He didn't have a gun out initially because if she looks out of a window, you know, if she peeps out the window and he's standing on her porch with a gun it ain't no way that door's getting opened. It ain't no way it's getting opened. Of course, if he's just standing there – You know, he had to have watched her come in, had to have watched her come in. Why else would you up and knock on somebody's door.

(Trial Tr. p. 518, line 24 – p. 519, line 6).

[responding investigator] finds a shell casing, he finds a shell casing and finds evidence of a bullet fragment, because I submit to you, that bullet that struck her, it had to have struck the gun she was holding, you know, it had to have hit something solid to have fragmented like that, little tiny pieces of the bullet, that is what grazes her.

(Trial Tr. p. 528, lines 15-20).

And then Mr. Greene, the man now who's been arrested three days later, three days later, black male, twenty-two years of age, five foot six, a hundred fifty-six pounds, dark complexion, short twists in his hair, and a tear drop, I mean literally a birth mark or tattoo or whatever it is, I mean, you had a chance to see it, I mean it's clear as day on his cheek under his right eye, clear as day.

(Trial Tr. p. 531, lines 8-16).

This Court finds this allegation without merit. Unquestionably, the solicitor was permitted to comment on the evidence adduced during trial and the inferences to be drawn from it. See State v. Pitts, 256 S.C. 420, 428, 182 S.E.2d 738, 742 (1971) ("The solicitor had a perfect right to state his version of the testimony and to comment on the weight that should be given to such."). This Court finds Applicant has failed to meet his burden in proving Counsel ^{WVC} ~~was~~ ineffective in failing to object to the solicitor's comments. In the first challenged comment, the solicitor is arguing his version of events. He drew the inference that Applicant observed the

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CLERK OF COURT
ORANGE COUNTY

victim entering her residence before committing the crimes. This Court finds this is not objectionable.

As to the second challenged comment, the solicitor concludes that the bullet struck a gun the victim was holding. The solicitor was merely arguing his case and the facts as he saw them from the evidence. This passage is not objectionable because it is an inference that can be reasonably drawn from the evidence.

In the third challenged remark, the solicitor mentions that the mark or blemish under Applicant's eye is a tear drop. He is then quick to say "or whatever it is." This Court finds this was not objectionable because the solicitor was just repeating what the victim said in her initial statement. That evidence is clearly before the jury. The solicitor was also quick to note that the accuracy of that description would be left up to them as the fact finders.

Applicant has also failed to show ^{that he} ~~how if~~ an objection ^{if he} ~~was made~~ to any of the challenged comments, ^{could not} ~~that it would~~ have been sustained or that the result of the trial would have been different. Applicant cannot prove any resulting prejudice from the alleged deficiencies. This allegation is denied and dismissed with prejudice.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing

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W. B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 2 day of Dec, 2015.

Dec. 2, South Carolina

Maité Murphy
MAITÉ MURPHY
Presiding Judge

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.
ATTEST: TRUE COPY

Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

FILED FOR RECORD
WINNIFRED B. CLARK
CLERK OF COURT
AUG 11 P 12:22

DOCKET NO. 2010GS38-1024

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

August 9, 2010 TERM

THE STATE
vs.

Walter James Greene Jr.

Indictment for

BURGLARY - FIRST DEGREE

SC Code: 16-11-311

WITNESSES

Bobby Rivers

Orangeburg Police Department

10-00965

ARREST WARRANT NUMBER
J697221

Arrested: April 27, 2010

ACTED FOR GRAND JURY
Walter James Greene Jr.
Date: AUG 11 2010

Foreperson of Grand Jury
Date: August 11, 2010

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

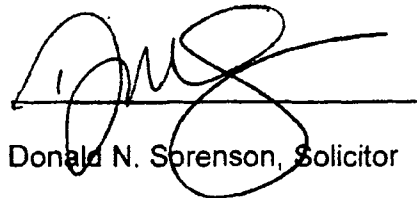
INDICTMENT
2010GS38-1024

At a Court of General Sessions, convened on August 11, 2010 the Grand Jurors of Orangeburg County present upon their oath:

BURGLARY - FIRST DEGREE

That in Orangeburg County, South Carolina, on or about April 24, 2010, the Defendant, Walter James Greene Jr., did willfully and unlawfully enter the dwelling of Latoya Wright, without consent and with the intent to commit a crime therein and the defendant was armed with a deadly weapon and/or caused physical injury to a non-participant in the crime and/or the entering occurred in the nighttime. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

OrangeburgINDICTMENT/CASE#: 2010-GS-38-1024VS
Walter James Greene, Jr.A/W#: J 697221AKA: _____
Race: B Sex: M Age: 22Date of Offense: 4-24-10

DOB: _____ SS#: _____

S.C. Code §: 16-11-311Address: _____
City, State, Zip: _____CDR Code #: 0079DL# _____ SID# _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Burglary 1st DegreeIn violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor 9512 SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 4/27/10☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
§44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Conditional Discharge. §44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel.
§47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge [Signature]Judge Code: 2153Sentence Date October 7, 2010Clerk of Court/Deputy Clerk Marion L. Edgemond
Court Reporter: Harry Out Walker

WITNESSES

Bobby Rivers

Orangeburg Police Department

10-00965

ARREST WARRANT NUMBER

J697223

Arrested: April 27, 2010

ACTIONABLE JURY

Walter James Greene Jr.

Date AUG 11 2010

Foreperson of Grand Jury

Date: August 11, 2010

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010GS38-1025

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

August 9, 2010 TERM

THE STATE
vs.

Walter James Greene Jr.

Indictment for

ASSAULT AND BATTERY WITH INTENT
TO KILL

SC Code: 16-3-620

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

G.G.C. PLS. AND G.S.

Wingy B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA
TO FOR RECORD
WINGY B. CLARK
CLERK OF COURT
AUG 11 P 12:22

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

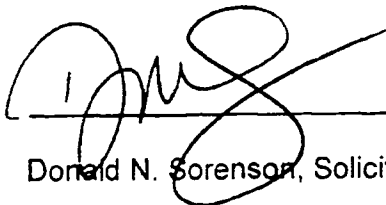
INDICTMENT
2010GS38-1025

At a Court of General Sessions, convened on August 11, 2010 the Grand Jurors of Orangeburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That in Orangeburg County, South Carolina, on or about April 24, 2010, the Defendant, Walter James Greene Jr., with malice aforethought, did commit an assault and battery upon the victim, Latoya Wright by means of shooting at the victim with a handgun. This offense in violation of Section 16-3-620 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

OrangeburgINDICTMENT/CASE#: 2010-GS-38-1025Walter James Greene, Jr.A/W#: J697223Race: R Sex: M Age: 22Date of Offense: 4-24-10DOB: SS#:S.C. Code §: 16-3-620

Address:

CDR Code #: 0014

City, State, Zip:

SENTENCE SHEET

DL# SID#*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐☒ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Assault + Battery w/ Intent to KillIn violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0014☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

Solicitor 9512 SC Bar # 9512 Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 4/27/10☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp. Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐*Fine: \$ Random Drug/Alcohol Testing ☐§14-1-206 (Assessments 107.5%) \$

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00pmts. of \$ Beginning §14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \$ Paid to Public Defender Fund§56-5-2995 (DUI Assessment) \$12 \$ Other: §56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.00§44-53-450(C) (Conditional Discharge) \$350 \$ 3% to County (if paid in installments) \$ 3.30TOTAL \$ 133.90Presiding Judge EdgemonJudge Code: 2153Sentence Date October 7, 2010Clerk of Court/Deputy Clerk Marion L. EdgemonCourt Reporter: Nancy D. Walker

WITNESSES

Bobby Rivers

Orangeburg Police Department

10-00965

ARREST WARRANT NUMBER
J697226

Arrested: April 27, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: August 11, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS38-1026

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

August 9, 2010 TERM

THE STATE
vs.

Walter James Greene Jr.

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Winnifred B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA
FILED FOR RECORD
WINNIFRED B. CLARK
CLERK OF COURT
AUG 11 P 12:22

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

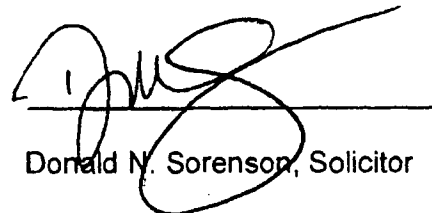
INDICTMENT
2010GS38-1026

At a Court of General Sessions, convened on August 11, 2010 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about April 24, 2010, in Orangeburg County, the defendant, Walter James Greene Jr. did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Latoya Wright, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a gun. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

Orangeburg

VS.

Walter James Greene, Jr.

INDICTMENT/CASE#: 2010-GS-38-1026

A/W#: J697226

Date of Offense: 4-24-10

S.C. Code §: 16-11-330(A)

CDR Code #: 0139

SENTENCE SHEET

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO:

In violation of §

16-11-330(A)

of the S.C.

Code of Laws, bearing

CDR Code #

0026

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☐ As indicted,☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def's initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE (the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of

20

days/months/years or

☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

-

; provided that upon the service of

-

days/months/years and or payment

of \$ -; plus costs and assessments as applicable; the balance is suspended with probation for

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 4/27/10☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ - plus 20% fee: \$ - days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. -

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ - Beginning

\$ - Paid to Public Defender Fund

Other: -

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation

Presiding Judge

Judge Code:

Sentence Date

2153

October 7, 2010

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

§14-1-211 (A)(2)(DUI Surcharge)

\$100

§56-5-2995 (DUI Assessment)

\$12

§56-1-286 (DUI Breath Test)

\$25

Proviso 47.9 (Public Def/Prob)

\$500

§14-1-212 (Law Enforce. Funding)

\$25

§14-1-213 (Drug Court Surcharge)

\$150

§50-21-114 (BUI Breath Test Fee)

\$50

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

Proviso 90.5 (SCCA Surcharge)

\$5

§44-53-450(C) (Conditional Discharge)

\$350

3% to County (if paid in installments)

\$ -

TOTAL

\$

Clerk of Court/Deputy Clerk

Court Reporter:

Maurice Edgemond

Harry Dax Walker