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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

D. Craig Brown, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

v.

TYRONE DARIUS ELLISON,

APPELLANT

APPELLATE CASE NO. 2014-002337

RECORD ON APPEAL

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1 or not the employees were there. So, I mean, he -- the
2 information that he had was a summary of some information
3 that somebody else gave him.

4 He also testified that he knew that there were times
5 when, whether or not somebody was working on a day and
6 whether it would show up on some kind of log, there are two
7 ways that that information could get put into their logs.

8 One way is from the information that they receive from
9 the company that took care of the swipes. The swipes
10 meaning, I guess, the employees have some kind of magnet card
11 or something, and they run it through a machine when they
12 come in and out.

13 And the other way is sometimes a manager, he recognizes
14 that the managers sometimes come in there, make adjustments
15 to that for whatever reason. Maybe it's for reasons to keep
16 them under 40 hours, maybe it's for reasons to keep
17 somebody -- some of the employees on a part-time rate.

18 Mr. Powers testified that if you look at his sheets, if
19 a manager had removed somebody from his list, he wouldn't be
20 able to tell. He wouldn't be able to tell by looking at that
21 sheet whether a manager removed somebody's name from that
22 list.

23 He said there is a way to do it. It's possibly to run
24 an audit report, do some kind of paper trail, electronic
25 paper trail to go back through there to see what happened,

1 but he testified that he didn't look at it that day.

2 So when Mr. Ellison went in and when Ms. Candy went in
3 on that April 1st, Ms. Green, conscious of either overtime
4 hours, conscious of 40 hours a week, conscious of whatever,
5 they weren't on the books that day.

6 Now, I'm sure we're going to hear a lot of evidence
7 about the car, the green Honda, green Honda Civic. My
8 client's mother bought him that car March 23rd, 2013. The
9 car was delivered that day. You heard from the man who sold
10 her the car. The car was delivered that day. I guess she
11 was going to try and help her son out, get him some
12 transportation back and forth.

13 And I think you'll probably see some more pictures of
14 the car. It's maybe not the car that a 24-year-old guy wants
15 to drive around in, a kind of beat-up paint job. My client
16 had his eye on another car. He was looking on Craigslist.
17 He had his eye on another car he wanted to buy. It was a
18 black SHO Taurus, you know, a bigger car, maybe a faster car.

19 So his mother gives him this car. He got rid of it. He
20 got rid of it that day. There's no question that he sold the
21 car to Terrance Bryant. What's interesting is
22 Terrance Bryant testified that Tyrone called him about 11:00
23 that morning, and it's Terrance Bryant who's initiating this
24 telephone call to my client.

25 And during the course of the telephone -- no, excuse me,

1 my client called. I misspoke. My client called
2 Terrance Bryant that day about 11:00. But what's interesting
3 is during the course of that conversation, it was Terrance
4 Bryant that brought up the subject that he was looking for a
5 car.

6 It's not my client, you know, trying to call some
7 people, trying to sell this car to him for some -- I mean, it
8 just came up. Terrance Bryant said he was looking for a car.
9 Mr. Ellison's got a car that he doesn't really want and maybe
10 he wants to make a little bit more money so he can buy the
11 Taurus that he was looking for, that SHO Taurus.

12 So, sure, he's going to sell it. I mean, he knew
13 Mr. Bryant. They were longtime friends. They knew each
14 other for a long time, so he got it to him. He sold it to
15 him.

16 You heard Terrance Bryant and Ms. Youmans testify that
17 the money for the car that they bought from Tyrone came from
18 the checks that they received from the Denmark Tech. I guess
19 it's student aid money. So they both testified that they got
20 checks around mid March and then they got checks around the
21 1st of April. They both testified that they used the checks
22 from the 1st of April to pay for this car.

23 I'm sure by the time that police are talking to
24 Terrance Bryant about the car, when he came in contact with
25 it, that it might have been somehow involved in a bank

1 robbery, Terrance Bryant, with a conviction for strong-arm
2 robbery, already probably didn't want any contact with the
3 car, but he certainly -- maybe that helped him remember that
4 the car was -- that they -- he bought the car on April 1st as
5 opposed to sometime earlier or later in the month of March.
6 I don't know.

7 I do know that the stories of the -- I do know that the
8 transaction, the transfer of the title of the car to one
9 person to the other was kind of sloppy. The car -- I think
10 there's testimony the car never got registered.

11 I'm sure it's a fact that the car was bought in North
12 Carolina. Mr. Bryant's trying to flip it quickly, so he just
13 thinks maybe he can sign over the title to -- that he can
14 just sign over the title to Mr. Bryant, but I guess you heard
15 testimony from somebody at the DMV that first it would have
16 to get titled -- Mr. Ellison first had to get the car titled
17 in his name before he could give it to Mr. Bryant.

18 But you heard testimony from two people that live with
19 Tyrone Ellison. You heard from Annette McKinney; you heard
20 from her husband that they didn't see the car after the 23rd,
21 the 23rd of March. The first time they knew that Tyrone had
22 sold the car was when they saw him being driven back to the
23 house by his girlfriend. And they both testified that was a
24 couple days later.

25 The car was -- showed up at their house on March 23rd, a

1 Saturday. This might have been Sunday or Monday when they
2 saw Tyrone being chauffeured around by somebody else, and
3 they knew that the car was no longer -- that he no longer had
4 the car.

5 You heard Dennis McKinney testify to that same thing.
6 He's Tyrone's stepfather. I think he said he was a police
7 officer with DOD, Department of Defense. He worked on the
8 base. He -- again, he says that the first time he knew that
9 Tyrone didn't have the car is when he saw his girlfriend
10 driving him a few days -- a couple days later, and he never
11 saw the car after March 23rd. Tyrone's living at the house
12 at the time, but he doesn't have the car after March 23rd.

13 Now, I'm sure you're going to hear a lot about the
14 testimony of Annette McKinney. I'm expecting the State to
15 talk a lot about the fact that when she was interviewed by
16 police officers, she said that she was 75 percent, ultimately
17 she said that maybe she's 75 percent sure that the picture,
18 the person in the photograph was her son.

19 Now, there's two things about that I want you to
20 consider. You heard her testify that when the police
21 officers come to the house, she's been alerted that there has
22 been an automobile accident, a lot of blood. Her son was
23 involved in the accident. She doesn't know where her son is.

24 Mothers, I think, are going -- the first thing that
25 they're going to be worried about is, "Where's my son?"

1 Where's my son? Where's my son?"

2 They never told them -- during the course of this
3 interview with them, never told them where her son was. They
4 just kept wanting her to answer questions, wanting her to
5 say, "Is this your son in the picture? Is this your son in
6 the picture?"

7 So she said, "Yeah, I guess. I'm 75 percent sure."

8 I think mothers, when they see their children in a
9 costume, they're never 75 percent sure. A mother is going to
10 be 100 percent sure that it's their son, I mean that it's
11 their child underneath that costume. I mean, if they see any
12 portion of the face, they're going to know it's their child.

13 A mother who's saying that she's 75 percent that's her
14 child is really not sure at all. I mean, mothers, they're
15 going to know it's their child.

16 And again, I think Annette McKinney was just going to
17 say what she had to say in order to get more information to
18 find out where her son was, if he was -- how badly he was
19 injured in this accident and what hospital he was in.

20 Now, this robbery, this robbery was brash. I mean, the
21 robber was in and out of the bank in about 73 seconds. And
22 when you consider the gaps in the State's proof and the
23 gap -- I think the biggest gap in the State's proof is the
24 fact that the person emerging from the woods that got into
25 the Civic didn't have on the two biggest items of this

1 disguise, didn't have on the hoodie, didn't have on the
2 jacket. There's no explanation where the hoodie and the
3 jacket is.

4 When you consider the fact that there are no
5 fingerprints left by my client in the bank and the fact that
6 he may have had a glove in his hand at some time, it still
7 meant that every time he pressed down on a surface, every
8 time he reached down to pick up the gun, every time he
9 grabbed the handle of the door, you'll see him pushing on the
10 door, every time he did that, that glove was so much
11 protecting his hand, every surface of his hand, not even to
12 leave a partial fingerprint.

13 I think when you consider the fact that after
14 March 23rd, he didn't have the Civic anymore. Somebody else
15 was driving him around. Eventually he got a Ford Taurus.

16 When you consider the fact that Mrs. Green was counting
17 on my client to unload the trucks every Monday, excuse me,
18 the first of every month. That was Tyrone's job. Regardless
19 of whether or not he was on the schedule, he went in to
20 unload the truck. She was counting on him to do it. The
21 truck was unloaded that day.

22 When you consider the fact that there's a witness here
23 who testified that she was with him that day. Now, granted
24 Ms. Candida has got a record, just like Terrance Bryant has a
25 record. You have to decide what's believable and whether or

1 not Ms. Candida's going to -- with her record, whether or not
2 she -- I mean, she knows that if she gives testimony before
3 you all today after she's put her hand on the Bible and sworn
4 that that testimony was going to be the truth, she knows that
5 if that testimony's not true that she's subjected to perjury.

6 She may have as good a reason -- she may have the best
7 reason to make sure she's not giving inaccurate testimony,
8 because she doesn't like -- she doesn't need any more
9 trouble. She's had her troubles in the past. She's trying
10 to put those behind her.

11 When you ask yourself to consider that my client has an
12 alibi, I mean, I'm sure he'd rather have a much better alibi.
13 I'm sure that three months, when he's trying to explain
14 what's going on three months later, I'm sure he much rather
15 would have been playing softball with his parish priest, but
16 he wasn't.

17 He was with somebody, Burger King employee. He was
18 doing the job that he was supposed to be doing. There's
19 probably not a great paper trail showing that he was at the
20 Burger King that day, but that's where he was. That's what
21 Ms. Candida said.

22 You just have to ask yourself, when you look at my
23 client, do you think he's the man who pulled off this
24 robbery, whether it makes sense that he was that guy that
25 would run in there, jump over the counter, screaming at the.

1 employees, know that those bank tellers, there's a second
2 drawer to be looking at, knowing that there's money in more
3 than one drawer for each teller, whether that makes sense
4 that that's Mr. Ellison or whether it makes more sense that
5 Mr. Ellison was the guy unloading the Burger King truck that
6 Monday, April 1st.

7 I think when you consider all those facts, I think
8 you'll return a verdict of not guilty on both counts. Thank
9 you. For your time.

10 THE COURT: Mr. Sorenson.

11 MR. SORENSON: Thank you, may it please the Court, Your
12 Honor.

13 I agree with Mr. Falk on a few things. There's no doubt
14 the morning of April 1st, 2013, the SunTrust Bank on
15 Dorchester Road, Quinn Rustin, Roberta Bass were robbed at
16 gunpoint with this gun. No doubt about it. I agree with
17 Mr. Falk that the only real issue, ladies and gentlemen, that
18 you all have to decide back in your jury room is whether this
19 man in that bank holding that gun on Ms. Rustin and Ms. Bass
20 is this man, that man (indicating), Tyrone Ellison.

21 It's very simple, ladies and gentlemen. That's really
22 the only question before you when you get back into your jury
23 room. So that's what I want to take the next few minutes and
24 talk about. I'm going to kind of focus kind of my arguments
25 to you in four different categories.

1 I want to talk to you first about the video and the
2 stills. I want to briefly kind of go through that with you
3 real quick, then I want to look at the items that were
4 recovered in the woods near the bank, then I want to talk to
5 you about the vehicle, and then lastly about some of the
6 witnesses that they put on the stand.

7 I realize you all had an opportunity to watch this, but
8 it probably went kind of quick when we were playing it with
9 the witnesses, and I want to be able to go back through.

10 Your Honor, may I lift the televisions up? Thank you.

11 I want to kind of go back through, but there's kind of a
12 few things, ladies and gentlemen, to kind of talk to you
13 about before I go through with you the several different
14 camera angles that I submit to you ultimately this video and
15 the stills prove.

16 I mean, obviously they prove without any doubt that the
17 bank was robbed that morning. No question about that. But
18 the other things that I'm going to kind of point out to you
19 as we go through it, Mr. Falk makes a big deal about there
20 are no fingerprints belonging to Tyrone Ellison.

21 You're going to have an opportunity to go through this
22 and ultimately see that the person that robbed the bank that
23 morning never touched anything where they would leave a
24 fingerprint, got something in his hands when he opens the
25 door to come in, comes across and jumps over the counter.

1 And you're going to see where he's got something
2 consistent with a white latex glove wrapped around, wrapped
3 around the handle of the gun that he's holding. You're going
4 to see in his other hand how he has -- and it's never
5 recovered, but a black -- it almost looks like a bank pouch,
6 a little money pouch if you were going to make a deposit, if
7 you worked at a business or something, in his other hand.

8 And you're going to see how this individual, when he
9 hops the counter, he's got both of those items in his hand,
10 how when he's behind the counter, dealing with Ms. Rustin and
11 Ms. Bass, he's got that thing open having them -- having
12 Ms. Rustin put the money in there.

13 He never touches anything back behind the counter, and
14 how ultimately then he hops over using the chair to go back
15 over and ends up dropping an item on the floor. There's no
16 video. You can't see what that is. I submit to you it may
17 have been the gun based on what the witnesses said they
18 heard -- heard fall at that point in time.

19 But Mr. Falk's making a big deal that he should have
20 been leaving fingerprints when he's bending down to pick up
21 the gun off the floor. I mean, where is the -- I mean, on
22 the floor? I mean, maybe he left a fingerprint on the floor,
23 but, I'm sorry, that's not typically, when you're processing
24 a crime scene, where you're going to start dusting the floor
25 of the bank for fingerprints.

1 But then you're going to see ultimately when he comes
2 back to that door and goes out, you can clearly see what is
3 that white latex glove in his hand, that he is using that as
4 a barrier, pulling on repeatedly, almost yanking those doors
5 off the hinges trying to get out, pulling instead of pushing.

6 And you're going to see, and I'll submit to you you'll
7 see on the video, the witnesses were mistaken about this.
8 It's not the glove. I think the glove may have fallen also,
9 but it was his visor and the gun that fall. And you'll see
10 that when he reaches down and picks up the gun, tries to pick
11 up the visor and kicks it, reaches out and grabs it, and then
12 he's out the bank. And the door is open at this point in
13 time, so he's not -- yet again, not touching it anywhere.

14 I want to start with right as he's coming in. As you
15 see, he's got right there what appears to be -- I'll back it
16 up -- black item in his hand, in his left hand as he reaches
17 out and opens up that -- opens up the thing. He walks in.
18 We'll go over to Teller Station 3, and you're going to see
19 him running across the lobby.

20 As he comes up, you're going to see right there as he
21 goes to vault over, and I'm going to show you another camera
22 angle that shows his other hand, but in his right hand, he's
23 got that gun. You can see the silver part of the slide of
24 the gun and something white wrapped around it, which I submit
25 to you is that latex glove. So that hand is not -- he

1 doesn't have a finger to touch to leave a fingerprint.

2 All right. Then we go to Teller Station 2, back up a
3 couple steps here. You'll see him coming over. As he comes
4 to come over, right there. And what's important about this,
5 okay, because, yet again, you see he's got a black item,
6 which I submit to you when you see him back behind the teller
7 station, is that black bank pouch.

8 But what else do you see in that picture on his left
9 wrist? It's a bracelet. And I don't want to talk a whole
10 lot about Ms. McKinney right now, but, you know, I asked her.
11 I mean, ladies and gentlemen, you have got your own eyes, 12
12 collective sets of eyes right there. That's not part of that
13 person's skin that you're seeing. It's a gold bracelet.

14 And what did we ultimately learn through the stipulation
15 that we entered into? That the defendant, Tyrone Ellison,
16 has in the past worn a gold bracelet on his left wrist. Gold
17 bracelet on his left wrist.

18 Now we jump over to the teller observation. I'm going
19 to let this just play out, but the main thing about this is
20 to see that you don't at any point in time see him touch
21 anything back there. So where are we supposed to be finding
22 fingerprints of Tyrone Ellison's? He jumps down.

23 Now, the whole time, and something else to keep in mind,
24 and you had an opportunity to see Ms. Rustin and Ms. Bass
25 testify. I mean, they're not -- I mean, they're both fairly

1 petite women. He's basically about their size. Yet again,
2 the same physical build as Tyrone Ellison.

3 He comes back over, he still has items in both of his
4 hands. He's reached down and uses that hand to kind of brace
5 himself, drops something, but he's holding that gun as he
6 goes over.

7 And I'm going to go through, this is the front exit,
8 screen by screen. He comes into view. Those are the still
9 photos that you have.

10 I submit to you, ladies and gentlemen, if that's not
11 that man right there, then I'm sorry for wasting you all's
12 time. I'm sorry for wasting this week of your life.

13 And the last couple things, I want to come back to the
14 front door. And yet again, watch his right hand as he comes
15 up to the door. I submit he's put the gun back in his --
16 back in his hoodie where it was when he initially came in.
17 Watch him in his right hand. I mean, he's got the -- he's
18 got the glove there. There's the visor goes down, drops
19 either the gun or the -- the gun or the -- and out he goes.

20 Back it up real quick, because I know that went pretty
21 fast there. See, he drops something in the middle of the --
22 kind of right inside the door there. It's either -- it might
23 be the gun. I think it's the gun, but it could conceivably
24 be, because it looks like he still has the glove in his right
25 hand, and then the visor is on the floor. He ultimately

1 bends down, picks that up, kicks the visor, picks it up.

2 I mean, yet again, Mr. Falk is saying we didn't get any
3 fingerprints. Where are they supposed to be getting
4 fingerprints from when he drops those items and he's reaching
5 down and picking them up? I mean, he's not putting his hand
6 on the door.

7 Then the last thing, just kind of dealing with the video
8 that you -- I submit just kind of corroborates the witness's
9 testimony would be kind of the bank -- the back of the bank
10 showing that's Club Course Road or Drive where witnesses
11 described seeing the individual run.

12 And there you see him taking off down the road. And
13 ultimately you lose sight of him kind of right as he gets
14 past Steel City Pizza. And I submit to you shortly after
15 that, he cuts over into the woods.

16 70-some-odd seconds, I would agree with Mr. Falk, that's
17 about how long I submit to you Tyrone Ellison was in that
18 bank. I submit to you completely, 100 percent, not
19 75 percent, I submit to you it's 100 percent consistent with
20 the defendant, Tyrone Ellison. Consistent in his facial
21 features, from what you see. Consistent with the same little
22 pencil thin mustache that's on his driver's license photo
23 three months after the incident. He's still got it
24 sitting -- sitting in court today. Consistent with his
25 jawline. Consistent with his nose, his mouth.

1 Even consistent when you see, looking at State's Exhibit
2 No. 28, as he's walking out. You know, obviously, everybody,
3 when they have their mouth just kind of, you know, not
4 smiling, they're not doing anything, you know, a lot of
5 people, you don't see their teeth at all. Other people you
6 do. He's walking out, you see his front teeth. Just like
7 you see his front teeth in his driver's license photo. It's
8 the same mouth. Same mustache, same jawline.

9 That brings us to kind of, you know, it's 100 percent
10 consistent with -- except for everything but the disguise,
11 okay? So that's going to bring us to the items that are in
12 the woods, all right?

13 I submit to you there's no doubt that gun, this visor,
14 you see the emblem in the pictures, this wig, that these were
15 involved in that bank robbery, okay? So let's talk about
16 briefly about those items, all right?

17 The wig and the visor, they are processed on June the
18 5th of 2013, almost a month before North Charleston Police
19 Department, anybody has any idea who Tyrone Ellison is. A
20 month before, okay? Processed by Ms. Betty Butler, all
21 right?

22 Ultimately we get his DNA, Tyrone Ellison's DNA, off of
23 those swabs off of these items. One in 2.2 quintillion. And
24 I'm not -- I went to law school because I didn't like math,
25 but that's 17 zeros. 2.2 and then 17 zeros. I submit to you

1 there is no doubt, no doubt at some point in time,
2 Tyrone Ellison had this women's wig on and sometime had this
3 visor on. No doubt.

4 All right. What else did they find? State's Exhibit
5 No. 15 is a latex glove; and it was tested. I'm going to
6 talk to you about that, but it's -- I mean, it hasn't even
7 been opened. That just shows -- the reason why I didn't open
8 this, I wanted to basically be able to show Dr. Bennett
9 didn't touch this. Didn't want to do anything with this, all
10 right?

11 And that latex glove, that latex glove that just happens
12 to be consistent with the latex gloves that you can get
13 working at Burger King, the same type of latex gloves that
14 Tyrone Ellison had in his vehicle three months later, all
15 right? Let's talk about this latex glove.

16 You heard Investigator Kubicsko say when she first
17 collected it, and obviously in hindsight, I'm sure that -- to
18 be honest with you, in hindsight, I wish she had just sent
19 the entire glove initially to SLED along with the visor and
20 the wig.

21 But needless to say, when she collected it, you know,
22 she made the assumption that, you know, the person, the bank
23 robber, most times when a glove is involved in a crime, the
24 person is wearing the glove.

25 What did she testify to you that she did initially?

1 Swabbed it for DNA in the inside palm and up in the
2 fingertips, figuring that's where, if a person was wearing
3 the glove, they would be sweating and leaving skin cells.
4 That gets sent out to SLED and comes back negative. There's
5 no -- none of his DNA. I think there was maybe a minor
6 partial print there, but it did not match Tyrone Ellison.

7 But what do we know? And obviously when we start
8 looking at the glove, it's not being worn like a glove. It
9 is being used as a barrier, so he's not leaving fingerprints
10 on the gun, which is why we don't find his fingerprints. We
11 don't find his DNA. We basically find nobody's fingerprints,
12 nobody's DNA on the gun.

13 So it gets sent back out there for them to process now
14 the outside of the glove, what would be in contact with his
15 skin if he was holding onto that gun and using it to open the
16 door in the bank.

17 And what are the results when that's done? The same as
18 with the hat and the visor: He's the major contributor, 1 in
19 2.2 quintillion. No doubt about it, he was holding onto this
20 glove. It came in contact with his skin at some point in
21 time.

22 And as I said, that's the same reason why we don't find,
23 you know, if this was a grand conspiracy to get
24 Tyrone Ellison, wouldn't you think when they sent the glove
25 and the gun back up to SLED they would have said, "Oh, yes,

1 we found his DNA on the gun also."

2 If this was some grand conspiracy that SLED and the
3 North Charleston Police Department had somehow hatched this
4 grand conspiracy, first of all, they had to have hatched it
5 prior to even knowing who he was, because, as I said, these
6 items were collected the morning of the bank robbery. The
7 visor and the wig are swabbed and tested out at SLED a month
8 before he's even identified as a suspect.

9 Yet we're somehow supposed to believe this is some grand
10 conspiracy that not only involves one officer but has got to
11 involve, you know, crime scene with North Charleston,
12 investigator with North Charleston and the State Law
13 Enforcement Division, but somehow they are going to
14 jeopardize their careers to pin a bank robbery on him. Does
15 that appeal to your common sense?

16 Now, one witness of the defense's I do want to just
17 briefly talk about here as opposed to kind of at the end is
18 Dr. Bennett. What does Dr. Bennett ultimately tell us, I
19 mean, in the grand scheme of things, everything that he
20 testified about?

21 He told us that SLED did a very thorough job. He
22 couldn't find anything improper in any of the paperwork, any
23 of the testing they did. They were cooperative with him.
24 They answered whatever questions he had, provided their
25 entire case file to him. And that ultimately, at the end of

1 the day, there's nothing he could find that they did wrong.

2 He was allowed access to whatever piece of evidence that
3 we have that he wanted. He was given -- the only two he
4 chose to do anything with were these (indicating). He was
5 given the glove.

6 Additionally, he had access to whatever other evidence
7 North Charleston Police Department had, including the initial
8 swabs of these two items, the wig and the visor, that
9 Detective Kubicsko took that are still sitting in the North
10 Charleston evidence room. He didn't want them, because the
11 fact of the matter is he's not going to be useful as a
12 witness for them.

13 If he finds DNA, it's going to be Tyrone Ellison's. You
14 know, the best case for him is to not find anything. I
15 submit to you that's why the subsequent test he did is
16 something looking for DNA embedded in the wig, embedded in
17 the visor. I mean, even from his own testimony, he didn't
18 expect to find the bank robber's DNA there.

19 These items, I submit to you, are not -- a women's wig
20 and a women's visor -- being worn by, I submit to you,
21 Tyrone Ellison but being worn by a suspect as a disguise.
22 That suspect's DNA is not going to be embedded in these
23 items. Yet again, that's some additional testing he did
24 basically just to kind of make it look like he did something
25 and that the State did something improper.

1 The fact of the matter, what it boils down to, about all
2 he can say is that Betty Butler, the evidence technician who
3 works for SLED for I think she said 18 years, that she did
4 too thorough of a job. He can't come in and say she did
5 anything improper. He can't say that she tampered with
6 evidence, destroyed evidence. All he can come in here and
7 say is that she was too thorough in her job.

8 I've been doing this for 19 years, and I can honestly
9 say that's the first time I've ever had a defense counsel and
10 an expert criticize law enforcement for doing too thorough of
11 a job, but that's what it boils down to.

12 I submit to you, in the grand scheme of things, all he
13 really does is vouch for the results of SLED. They did
14 nothing improper. They followed their protocol. There was
15 nothing abnormal he could find in any of the paperwork that
16 was submitted.

17 Let's turn to the getaway vehicle. I submit to you back
18 on the morning of April 1st, Tyrone Ellison thought he had
19 the perfect getaway. He robbed this bank, ran down the road,
20 cut through the woods, got rid of the visor, the wig, the
21 gun, the glove, pops out in an apartment complex where his
22 getaway vehicle is waiting for him.

23 If somebody sees that vehicle with the two of them
24 sitting in there, no long hair, nobody's going to think twice
25 about stopping that vehicle.

1 Mr. Falk made a big deal about the hoodie and all.
2 Mr. Lewis testified that when he saw the guy, remember, he --
3 and he was, I think, wrong about something he said.
4 David Lewis got in his vehicle and drove down into the
5 apartment complex. He wasn't on foot and then went back to
6 get his vehicle.

7 He pulls in, sees a vehicle that he thought looked out
8 of place in there, turns around, and at that point in time
9 sees an individual that he said looked like the person that
10 he had seen run into the woods, just without the -- without
11 the wig and the hat and the hoodie.

12 Has he got that stuff balled up in his arm? Because
13 he's -- remember, he's just running out of the woods and
14 hopping in the passenger seat of the vehicle. If he's
15 holding it, yet again, changing how he looks, he thought he
16 had the perfect getaway. Unfortunately, David Lewis ruined
17 that and kind of set into motion the events that had to
18 follow with regard to that vehicle.

19 The way we know that vehicle was involved in the
20 robbery, the way we know that vehicle was involved in the
21 robbery is because of what it does when Mr. Lewis gets behind
22 it, runs a red light, reaches speeds of almost 100 miles an
23 hour, weaving in and out of traffic, to the point where he's
24 got to pull back and basically stop trying to follow it.

25 That's not just some vehicle that happens to be coming,

1 you know, wrong place, wrong time, pulling out of an
2 apartment complex while the real robber had taken off further
3 into the woods. A vehicle that I submit to you its getaway
4 path it's taking, you heard Mr. Lewis testify is going back
5 towards Wescott Plantation, where he lived, I submit to you
6 the same place where he lived.

7 But he didn't count on having somebody getting --
8 following that vehicle, obviously getting a description, an
9 old Honda, four-door Accord, green Honda four-door Accord and
10 a partial license tag. I'm going to get to that in a second.
11 South Carolina 153 or 193 is the first three, okay?

12 And notwithstanding what Annette McKinney tells you on
13 this witness stand. I submit to you there's no doubt, no
14 doubt that Tyrone Ellison, on the morning of April 1st of
15 2013, had a green, four-door, older Honda Civic in his
16 possession, in his possession.

17 I want to briefly kind of just sum all this up just to
18 make sure there's not any question about it. And we know
19 there's no doubt that on March 23rd, I think everybody's in
20 agreement, Tyrone Ellison bought a Honda Civic and that it
21 was green, just from all the testimony from everybody, 2000
22 Honda Civic. Yet again, matching the description of the
23 getaway vehicle, okay?

24 No doubt about it that that went on his insurance, his
25 GEICO insurance effective the following day, March the 24th.

1 Now, if you would believe them, he doesn't even have the
2 vehicle anymore and it's insured.

3 No doubt about it that his prior vehicle that he had
4 insured with GEICO was a Hyundai Elantra with the license tag
5 153 3FX, consistent with the license tag that David Lewis
6 described on the vehicle and that that license tag was not
7 turned into the Department of Motor Vehicles until April the
8 13th of 2013, almost two weeks after our robbery. No doubt
9 about it that he cancels -- that GEICO insurance is not
10 canceled until April the 10th of 2013, all right.

11 Now, Ms. McKinney wants you to believe that the reason
12 it didn't get canceled until then was because they thought
13 that it was still maybe in their -- because the registration
14 hadn't been -- hadn't been transferred.

15 Keep in mind, according to her testimony, he basically
16 didn't possess this vehicle at all. He got it and turned
17 around and sold it the same day, so I don't know why they're
18 insuring it to start with. But her explanation, you heard
19 the GEICO representative said that, no, I mean, if you sell a
20 vehicle, the minute you call us and tell us you don't have
21 insurance on it because you sold it, it's canceled.

22 I submit to you that's what's done on April the 10th,
23 because the registration, all that stuff, still has never to
24 this day been registered in his name. I ask you, does that
25 make any sense?

1 And then we know that ultimately on April 16th that he
2 registered a Ford Taurus, a 1996 Ford Taurus. And this is
3 supposedly the vehicle, you know -- the vehicle that's so
4 much better than the vehicle that his mother bought him, that
5 he had to turn around and sell that the same day to buy a
6 1996 Ford Taurus. Does that appeal to your common sense?

7 Let's talk about Terrance Bryant, who I submit to you
8 proves -- is another piece in this puzzle, all right?

9 Terrance Bryant came in and testified that he's known the
10 defendant for 12 years or so, friends with the defendant,
11 friends with the defendant's family. He has family members
12 that are friends with them.

13 So first of all, I mean, what possible motive does he
14 have to lie about this? Okay? He doesn't look anything like
15 the person on the -- on the video. If he's trying to look
16 out for his buddy, he's going to go along with what he's got
17 to say, but he's not. He's telling you the truth. And he's
18 got documentation to back that up. To back that up.

19 Remember what they told us, both he and his girlfriend,
20 Ms. Youmans, their daughter's birthday was on March the 29th,
21 so they have a day to relate this to, okay? That they didn't
22 have the vehicle at that time, that Tyrone Ellison knew that
23 he was looking for a vehicle, and that he gets a call on the
24 morning of April 1st, 2013 at 11:00, 11:00.

25 I wonder what he was doing at 11:00 on April 1st? Bank

1 robbery's at 10:30. 30 minutes later, he knows that he's
2 being chased, has been chased. Somebody may have gotten that
3 tag. There's a description. That vehicle needs to get out
4 of the low country.

5 He didn't register it in his name. It doesn't even have
6 a correct license plate on it. It's got a license plate from
7 a prior vehicle. We can get that up to Orangeburg County, up
8 to Norway, I'm home free.

9 He makes a call, meets Terrance Bryant later on that
10 afternoon, sells him that vehicle for 900 bucks, gets a ride
11 back with two people in a white van.

12 Ms. McKinney, I submit to you, the one thing I think
13 she's probably right about is, yes, she saw -- she saw her
14 son and found out for the first time on a Monday, on a
15 Monday -- now, she says it's March the 25th, and I'm going to
16 talk about that in a second.

17 It was on a Monday that she saw him get dropped off and
18 say that he had sold the car to Terrance Bryant. Yes, it was
19 a Monday, it was Monday, April the 1st, and he rolls back in
20 without that vehicle, thinking he's home free at that point
21 in time.

22 But how else do we know? How else do we know? As I
23 told you, they tried to go register the vehicle the end of
24 that week, on April the 5th, and have the documentation to
25 show where Ms. Youmans had to pay off some reinstatement fees

1 on her license to be able to attempt to do it.

2 And then I submit to you, just to kind of further the
3 cover-up that they were trying to put on you, the defendant
4 and his family, then they try to get him to sign this with
5 the wrong date on it, and he doesn't.

6 Now, yet again, if there's nothing fishy going on, I
7 mean, and this is accurate, why wouldn't Terrance Bryant have
8 just signed this as the buyer and gone and registered the
9 vehicle? I submit to you what kind of shows you that he knew
10 something fishy was going on was the fact that he still had
11 all this stuff months and months later to give to law
12 enforcement.

13 At that point in time, he's gotten rid of the vehicle.
14 It's not working. He sold it for scrap, basically took a
15 loss on the vehicle, but he's kept all this paperwork. And I
16 submit to you that's because he knew something was going on.
17 They were trying to pull something over on him.

18 That kind of goes with the text message that I asked
19 Ms. McKinney if she admitted to being -- to sending to
20 Mr. Bryant where basically they're trying to get him to give
21 the vehicle back to Moses, the guy that basically had
22 delivered the vehicle initially to Mr. Ellison. You know,
23 "He don't know nothing about Tyrone in jail, so just give him
24 the paperwork and take the money. LOL. His name is Moses."

25 Yet again, trying to, you know, if that vehicle now

1 disappears back up to -- back up to Hemingway or Lake City or
2 wherever it was, I believe it was Lake City, I mean, it's no
3 connection to the low country, no connection to
4 Tyrone Ellison, no connection to any friends of
5 Tyrone Ellison, it's never been registered.

6 So it ultimately boils down, ladies and gentlemen, I
7 submit to you what we have proven was that he received a
8 Honda Civic on March the 23rd, got the windows tinted, I
9 talked to you about that with Ms. McKinney, then turned
10 around and sold that car nine days later without having
11 another vehicle on April the 1st. Does that make sense?

12 Or does what makes sense, ladies and gentlemen, on the
13 morning of April the 1st, he used that as his getaway from
14 this bank robbery and things went wrong. They were followed
15 by a witness and had to get rid of that vehicle.

16 Because what she says actually makes even --
17 Ms. McKinney makes even less sense. You know, listening to
18 her testimony is he turned around -- I mean, got to be the
19 most ungrateful child in the world. You buy him a vehicle,
20 and it's her testimony that he promptly turns around and
21 sells it the following day or that day.

22 Does that make any sense when he doesn't -- you know,
23 the whole idea was getting him a vehicle to drive him back
24 and forth to work, and he doesn't have another vehicle. Oh,
25 yes, he had his eye on one, but we know he didn't buy this,

1 you know, '96 Ford Taurus until April the 16th.

2 Let's talk about Ms. McKinney. The gist of her
3 testimony, I think, kind of came down, her direct testimony,
4 when Mr. Falk had her up there, there's two things, that he
5 got the car on March the 23rd, got rid of it within a day or
6 two, and that she saw him getting dropped off saying that he
7 had sold it to Terrance Bryant on March the 25th, Monday,
8 March the 25th. That's the one thing. I'm going to talk
9 about that.

10 And then the other one was that he had \$20,000 in an
11 account, in an account. If you notice, Mr. Falk didn't say a
12 word about that. Didn't say a word about that. \$20,000 in
13 that account. Why is that relevant? Why would he even have
14 asked her about that up on the witness stand?

15 The reason he asked her about it is so that he could get
16 up before you in his closing argument and say, "Why would
17 Tyrone Ellison rob a bank? He had \$20,000 in the bank. Why
18 on earth would that young man rob a bank?" He didn't get up
19 here and tell you that because he can't. He can't after we
20 found out about her cross-examination. Kind of popped that
21 balloon.

22 Remember back what she finally, and yet again, this goes
23 to kind of the credibility of the witnesses, you know, how
24 hesitant, forthright, they're trying to dodge a question.
25 Ultimately she admitted. It took a little while to get

1 there, but ultimately we got to the point where she admitted
2 having multiple telephone conversations with both her son and
3 another inmates at the Dorchester County Detention Center
4 with her son where she told him, "There's \$20,000 in your
5 savings account that I had put there that you didn't know I
6 had put in there or not. I put it there last year in March,
7 money you didn't have access to. They don't know if you had
8 access to it or not. That was your own money. They don't
9 know if that was your money or not. I put that money in your
10 account to get it from my account. My name ain't on that
11 account at USA Bank. All they know is you got \$20,000 in
12 your account."

13 I mean, that is offensive that she was attempting to do
14 that to get over on you all. Offensive.

15 Then later on that same day, talking to another inmate
16 on the phone, tells him that "He also had \$20,000 in his
17 savings account that he didn't know about because it was just
18 money that I had transferred in there, you know, so I didn't
19 have it in a noninterest bearing account, so I just moved it
20 there. God works in mysterious ways. Last year I just
21 happened to put that money in his account. It was only in
22 his name, but he didn't know about it."

23 It's offensive. I submit to you that's what she tried
24 to get that lawyer, and I'm not blaming him at all, because I
25 give him credit for the fact that he didn't get up here and

1 argue that to you after finding out on cross-examination what
2 she had said in the past.

3 The Civic, and I've touched a little bit about this, but
4 let me just kind of -- you know, I submit to you the evidence
5 shows that he got rid of that car on April 1st, and I submit
6 to you her cross-examination corroborates that.

7 On July 2nd of 2013, when law enforcement's talking to
8 her, telling her her son is in an accident, "We're trying to
9 find him," and start talking to her about his prior vehicle,
10 she tells them at that point in time that she didn't know the
11 dates, didn't know when he got the vehicle, didn't know when
12 he sold it, maybe had been a few weeks but that she had
13 gotten the windows tinted. And shortly after, he said he
14 sold it to Terrance Bryant when she saw him getting dropped
15 off on April the 1st of 2013.

16 Now we're supposed to believe that this Honda Civic, not
17 only did they buy, they tinted the windows, then he's turning
18 around and selling it basically for a loss nine days later
19 and there's nothing hinky about that?

20 You know, that's her son. Go back to kind of
21 credibility issues I talked about earlier. There's some
22 stake in this outcome. Does she have some bias or prejudice?
23 Is her testimony corroborated, her direct testimony
24 corroborated by anything or is it basically struck down by
25 her own words, her own prior inconsistent statements to law

1 enforcement, her own son and to another inmate at the jail.

2 I'm not even going to -- I mean, you obviously have seen
3 the pictures. . I mean, she -- you know, it's hard to believe
4 she could get up there in good conscience and look at you all
5 and tell you that that picture, that bank robbery picture
6 does not look anything like her son, but that's ultimately
7 your decision.

8 The last thing I want to talk about -- and I'm just
9 about done. I appreciate your patience -- is the alibi. You
10 know, the one thing we do know is that -- from those
11 witnesses or from Ms. Green, the manager, that he would have
12 had access back in April to latex gloves, to latex gloves at
13 Burger King.

14 The fact of the matter, when you look at this alibi, and
15 I submit to you there's absolutely no credible evidence that
16 Tyrone Ellison was working at Burger King the morning of
17 April 1st of 2013. If you look at the first witness they
18 called, the manager, Ms. Green. And again, remember when I
19 talked to you about judging credibility, your opportunity to
20 observe, her testimony was she never worked on Mondays, so
21 there's no way she can get in here and tell you that
22 Tyrone Ellison worked on the morning of Monday,
23 April 1st, 2013, because she wasn't there.

24 He could have worked every other Monday. That doesn't
25 matter. It doesn't matter if he worked March 25th,

1 March 18th, March 11th. It doesn't matter if he worked
2 April 8th, April 15th. That doesn't matter. What matters is
3 where he was on the morning of April 1st, and she cannot get
4 on that witness stand and tell you that he did because she
5 wasn't there.

6 So let's look at the other witness they called,
7 Ms. Candida Payne, all right? You know, on direct -- direct
8 examination, Mr. Falk asked her if she had been in any
9 trouble before. Yes, shoplifting. It's a little more than a
10 shoplifting. It's actually six shopliftings. That's in the
11 last ten years: Financial transaction card fraud, defrauding
12 a restaurant and then giving false statement to obtain some
13 sort of a license.

14 And that's who we're supposed to believe that
15 Tyrone Ellison was working that morning. And, you know, she
16 comes in, and it's real easy to look back, you know, a year
17 later when you're giving this affidavit to the defense
18 counsel. You know, you're not going to law enforcement and
19 telling them, "Oh, there's no way he could have done this
20 bank robbery. I was with him. He was working," but when you
21 give an affidavit to the defense counsel to sit and look at,
22 well, what's -- you know, what could be unique about
23 April the 1st? It's April Fool's Day. Put that in the
24 affidavit. That's how I know that he had to have been there.

25 I would give her a little more credit if she had come in.

1 and, you know, told about some elaborate April Fool's joke
2 that Tyrone Ellison played on everybody at the Burger King,
3 but there are no specifics to that. It's just, "It was April
4 Fool's Day. That's how, I know he was working there."

5 But how do we know that she doesn't actually remember
6 that day? You know, she gives this affidavit, as I said,
7 almost a year later, in March of 2014, okay, saying that,
8 "Oh, yes, he had to. He was working there. No doubt about
9 it, because it was April Fool's Day, and he gave me a ride
10 home. He gave me a ride home in his black Ford Taurus."

11 Well, the problem with that, ladies and gentlemen, is
12 that black Ford Taurus wasn't registered to Tyrone Ellison,
13 and according to his mother's statement, even, didn't get
14 that black Ford Taurus until April 16th. That's when it was
15 registered with the Department of Motor Vehicles. That's
16 when it was put on his GEICO insurance, the middle of April.
17 Shows right there that she does not know what she's talking
18 about. I submit to you no credible evidence.

19 The Burger King records, and I'm not going to go through
20 all of them. You have them. If you want to hunt through
21 them, you're welcome to. If you'll take my word for it, they
22 show that Tyrone Ellison was not clocked in, did not clock in
23 on April 1st.

24 They do show that Ms. Payne, his alibi witness, did work
25 that morning, did work that morning, and that there are two

1 other young men that worked that morning from 6 a.m. to
2 11 a.m. when this truck would have come in, a
3 Christopher Coburn and a Tyrone Bailey.

4 Yet according to the initial witness, Ms. Green -- he's
5 the only young man that worked at that Burger King basically
6 was kind of the gist I got out of it.

7 Ladies and gentlemen, I want to kind of conclude now,
8 and I'm sorry if I've been a little longwinded. As I said
9 when I first started and got up here at the beginning of the
10 closing arguments, I want to thank you. And I don't actually
11 want to thank you for your time, because I know that you
12 really didn't have a choice in the matter and that you were
13 told when to be here.

14 Unfortunately, when myself and Mr. Falk picked the 12 of
15 you to be fair and impartial jurors in this case, you really
16 didn't have a choice in the matter. You had to be back
17 whenever His Honor told you to be here, but what I want to
18 thank you for is not your time but your attention, because
19 I've paid attention to you this week, and you've been
20 attentive to the lawyers, to the witnesses and attentive to
21 myself and Mr. Falk in closing arguments. And it's that
22 attention that I'm sure you're going to continue to give in a
23 few minutes when you get back to your jury room and you
24 finally can begin deliberating.

25 Ladies and gentlemen, at this point in time, the

1 puzzle's put together. All the pieces are together, and I
2 submit to you and respectfully ask you on behalf of the State
3 of South Carolina, the people of Dorchester County, when you
4 go back and look at that puzzle, all those pieces put
5 together, I submit to you there's only one verdict, one
6 truthful, one just verdict in this case. That's a verdict
7 that answers that question I asked you at the beginning: Is
8 this Tyrone Ellison?

9 I submit to you it's a verdict that holds that man right
10 there guilty, holds him responsible, holds him accountable
11 for what he put those two young women through the morning of
12 April 1st of 2013. Thank you.

13 THE COURT: All right. Ladies and gentlemen, what I am
14 going to do at this time, before I give you the charge on the
15 law, I'm going to give you a brief break. Please step to the
16 jury room. Do not discuss the case. I'll get you back out
17 here in just a minute. I'll give you the charge on the law
18 and I will give it to you to deliberate. Please step to the
19 jury room.

20 (The jury retires to the jury room at 11:44 a.m.)

21 THE COURT: Stand down for just a minute.

22 (Recess held.)

23 THE COURT: All right. Anything from the State before
24 we bring the jury back out?

25 MR. SORENSON: No, Your Honor.

1 THE COURT: Defense counsel?

2 MR.: FALK: No, Your Honor.

3 THE COURT: Bring me the jury, please.

4 While you all are sitting there, why don't the lawyers
5 come up here and look at the items of evidence and make sure
6 that's in order, so once I finish my charge, everything can
7 go on back and they're not sitting there for five minutes,
8 ten minutes, wondering whether or not they can begin
9 deliberating.

10 All right. When I start my charge, I want the door
11 locked. Nobody can come in and out of here once I start my
12 charge on the law. I don't want the jury distracted in any
13 way. So if you need to leave or if you so desire to leave,
14 now is your time to do so.

15 (Brief pause.)

16 THE COURT: Bring me the jury.

17 (The jury enters the courtroom at 11:58 a.m.)

18 THE COURT: All right. Ladies and gentlemen,
19 Mr. Foreman, it is now my duty as the trial judge under the
20 constitution of this State to charge and instruct you on the
21 law applicable to this case. It is your duty as jurors to
22 accept and apply the law as I will now state it to you.

23 Furthermore, it is your exclusive duty to decide all the
24 issues of fact in this case and to determine the effect,
25 value, weight and truth of the evidence. Both the State and

1 the defendant have a right to expect that you will carefully
2 consider and evaluate the evidence and apply the law of this
3 case to it so that in the end, both the State of South
4 Carolina and the defendant will receive a fair and impartial
5 trial.

6 I want you to understand that when I use the word
7 "defendant," I refer to Mr. Tyrone Darius Ellison. The
8 charges alleged in the indictment, ladies and gentlemen, are
9 Count 1 being armed robbery, and 2, entering a bank or
10 depository or building and loan association with intent to
11 steal.

12 To these charges the defendant has entered a plea of not
13 guilty. This plea of not guilty places the burden of proof
14 on the State to prove the guilt of the defendant to you, the
15 jury, beyond a reasonable doubt.

16 I remind you that the fact that the defendant was
17 arrested, charged and indicted in this case is not evidence
18 in this case and cannot be considered by you as evidence of
19 guilt in this case, nor does it create any presumption or
20 inference of guilt. The indictment is simply the formal
21 written instrument which contains the charges made against
22 the defendant. It is the formal document by which this case
23 is brought into this Court.

24 And as I mentioned above, the indictment in this case
25 alleges two separate and distinct offenses against the

1 defendant. You must decide each charge separately on the
2 evidence and the law applicable to it, uninfluenced by your
3 decision as to any other charge. The defendant may be
4 convicted or acquitted on any or all of the offenses charged.

5 As stated previously, you will be asked to write a
6 separate verdict of guilty or not guilty for each charge
7 alleged in the indictment. It is vital to understand that
8 the defendant, ladies and gentlemen, is presumed under the
9 law to be innocent of these charges. The defendant has no
10 obligation to prove his innocence.

11 It is a fundamental rule of our law that a defendant,
12 irrespective of the seriousness of the charges against him,
13 is always presumed innocent of the crimes for which he is
14 charged unless and until his guilt has been proven by
15 evidence that satisfies you, the jury, beyond a reasonable
16 doubt.

17 Now, the presumption of innocence is not a mere legal
18 theory or a legal phrase. The presumption of innocence is
19 very important, and you need to understand that this
20 presumption accompanies the defendant from the time of his
21 arrest and appearance in this Court and continues with the
22 defendant even after you retire to the jury room to
23 deliberate.

24 In other words, the defendant receives the benefit of
25 the presumption of innocence until the very end of this

1 trial, when you, the jury, will deliberate upon the evidence
2 and decide whether the State has proven his guilt beyond a
3 reasonable doubt.

4 Now, what is a reasonable doubt in the law? A
5 reasonable doubt is the kind of doubt that would cause a
6 reasonable person to hesitate to act. Proof beyond a
7 reasonable doubt is proof that leaves you firmly convinced of
8 the defendant's guilt.

9 Now, there are very few things in this world that we
10 know, ladies and gentlemen, with absolute certainty, so even
11 in criminal cases, the law does not require proof that
12 overcomes every possible doubt.

13 However, if, based on your consideration of the
14 evidence, you are firmly convinced that the defendant is
15 guilty of the crime charged, you must find him guilty. If,
16 on the other hand, you think there is a real possibility that
17 he is not guilty, you must give him the benefit of the doubt
18 and find him not guilty.

19 Jurors, please understand that reasonable doubt may
20 arise from evidence which has been presented in the case or
21 from the lack of evidence in the case. It is your
22 responsibility to determine whether or not reasonable doubt
23 exists as to the guilt of this defendant.

24 I charge you that the defendant is entitled to every
25 reasonable doubt arising in the whole case. If upon any

1 issues of fact essential to conviction and a verdict of
2 guilty you have a reasonable doubt as to how that issue
3 should be resolved, it would be your duty to resolve that
4 reasonable doubt in favor of the defendant.

5 Now, during this trial you and I have had separate
6 duties to perform. As the trial judge, it is my
7 responsibility to preside over this trial, and I also have
8 the duty to rule upon the admissibility of the evidence
9 offered during the process of this trial.

10 In that regard, you are to consider only the competent
11 evidence before you and you are to disregard from your mind
12 any testimony ordered stricken from the record of this case
13 during the progress of this trial if there was any, and you
14 are to consider only the testimony which has been presented
15 from this witness stand together with any exhibits admitted
16 into the record of this case and any stipulations of counsel
17 made into the record.

18 Furthermore, I have the additional duty to charge you on
19 the applicable law of this case and, in that regard, I am the
20 sole judge of the law of this case. It is your duty to
21 accept and apply the law as I state it to you.

22 If you have any preconceived ideas as to what the law is
23 or what the law ought to be and it does not agree with what I
24 tell you the law is, you are obligated under your oath to
25 abandon these preconceptions because you are sworn to accept

1 the law precisely as I state it to you.

2 In this trial, ladies and gentlemen, you are the sole
3 and exclusive judge of the facts and I am the judge of the
4 law. Do not infer that I have any opinion about the facts in
5 this case from anything I have said during the course of this
6 trial in ruling upon the admissibility of evidence or
7 otherwise or from anything that I say during the course of
8 this charge to you.

9 In this regard, the law simply does not permit me to
10 have an opinion about the facts. As jurors it is your duty
11 and your duty alone to determine the effect, value, weight
12 and truth of the evidence presented during the course of this
13 trial.

14 Now, in determining what the facts in this case are, you
15 must judge the credibility, which simply means the
16 believability, of the witnesses and the value of weight to be
17 given to their testimony. You alone must decide the force,
18 effect and truth of the testimony.

19 Now, in making this decision there are many things that
20 you may and should take into consideration: Such as the
21 appearance and manner of the witness on the witness stand, a
22 characteristic often referred to as the demeanor of the
23 witness; was the witness forthright or hesitant; was the
24 witness's testimony consistent or did it contain
25 discrepancies; what was the ability of the witness to know

1 the facts about which he or she testified; did the witness
2 have a cause or reason to be biased and prejudiced in favor
3 of the testimony he or she gave; was the testimony of the
4 witness corroborated or made stronger by other testimony and
5 evidence or was it made weaker or impeached by such other
6 testimony and evidence.

7 As jurors, please understand you have the right to
8 believe a small portion of a witness's testimony and discard
9 the larger portion or vice versa. You may believe all of a
10 witness's testimony or none. You may believe the testimony
11 of a single witness against that of many witnesses or the
12 other way around.

13 In exercising your mental processes and attempting to
14 decide the truth, the law simply requires that you exercise
15 your good judgment, your common sense, your sense of logic
16 and reason and your experiences in life. You then apply
17 these attributes to the evidence and apply the law as I state
18 it to you and thus arrive at a verdict.

19 Now, there are two types of evidence which are generally
20 presented during a trial: Direct evidence and circumstantial
21 evidence. Direct evidence directly proves the existence of a
22 fact and does not require deduction. Circumstantial evidence
23 is proof of a chain of facts and circumstances indicating the
24 existence of a fact.

25 Crimes may be proven by circumstantial evidence. The

1 law makes no distinction between the weight or value to be
2 given to either direct or circumstantial evidence; however,
3 to the extent the State relies on circumstantial evidence,
4 all of the circumstances must be consistent with each other
5 and, when taken together, point conclusively to the guilt of
6 the accused beyond a reasonable doubt.

7 If these circumstances merely portray the defendant's
8 behavior as suspicious, the proof has failed. The State has
9 the burden of proving the defendant guilty beyond a
10 reasonable doubt. This burden rests with the State
11 regardless of whether the State relies on direct evidence,
12 circumstantial evidence or some combination of the two.

13 There's been evidence presented during the course of
14 this trial, ladies and gentlemen, that witnesses have made
15 prior statements which are not consistent with the witness's
16 present testimony. You may use this evidence to decide
17 whether to believe the witness. You may also use evidence of
18 the earlier contradictory statements to determine the truth
19 of those statements. It is up to you to decide whether to
20 believe the earlier statements or the testimony given at
21 trial.

22 If a witness is shown to have knowingly testified
23 untruthfully concerning any material matter, you may consider
24 this in determining whether to trust the witness's testimony
25 as to other matters. You may reject all testimony of that

1 witness or give all or part of the testimony the weight you
2 think it deserves.

3 You have also heard testimony from individuals who had a
4 past criminal record. A person who has a past criminal
5 record is competent to testify during a trial. A past record
6 does not affect the ability of that witness to testify. The
7 past record may only be considered by you, if at all, in
8 determining the witness's believability.

9 Remember, you are the sole judge of the facts in this
10 case and of the believability of any and all of the
11 witnesses.

12 In this case you also heard the testimony of someone who
13 was qualified as an expert. The rules of evidence ordinarily
14 do not permit witnesses to testify to opinions or
15 conclusions. An exception to this rule exists for witnesses
16 we call expert witnesses. A witness who by education and
17 experience has become an expert in some art, science,
18 profession or calling may state an opinion as to a relevant
19 and material matter in which the witness claims to be an
20 expert and may also state the reasons for the opinion.

21 You should consider any expert opinion received in
22 evidence in this case and, like any other evidence, give it
23 the weight that you think it deserves. If you decide that
24 the opinion of an expert witness is not based on sufficient
25 education and experience or if you conclude that the reasons

1 given in support of the opinion are not sound or that the
2 opinion is outweighed by other evidence, you may disregard
3 the opinion entirely.

4 Furthermore, an expert witness's testimony is to be
5 given no greater weight than that of other witnesses simply
6 because the witness is an expert. Further, you are not
7 required to accept an expert's opinion even though it is not
8 contradicted.

9 Now, I instruct you, ladies and gentlemen, and I
10 emphasize that the fact that the defendant did not testify is
11 not a factor to be considered by you in any way in your
12 deliberations and in your consideration on the question of
13 the guilt or innocence of the defendant. It must not be
14 considered by you in any manner whatsoever. A defendant has
15 the constitutional right to remain silent and the assertion
16 of this right must not be considered by you in your
17 deliberations.

18 I repeat, under your oath, you are to draw no conclusion
19 whatsoever from the fact that the defendant in this case did
20 not testify. The fact that this defendant did not testify
21 should not even be discussed in the jury room.

22 The burden of proof, as I have stated to you, is on the
23 State. The defendant is not required to prove his innocence.
24 The burden of proof remains on the State to prove guilt
25 beyond a reasonable doubt.

1 Now, the defendant, ladies and gentlemen, has raised the
2 defense of alibi. Now, in order to establish an alibi, it
3 must be shown that the defendant was at another specified
4 place at the time the crime was committed and that it was,
5 therefore, impossible for the defendant to have been at the
6 scene of the crime. Mere denial of presence at the scene of
7 a crime does not constitute an alibi.

8 There is no burden on the defendant to prove an alibi.
9 The burden is on the State to prove beyond a reasonable doubt
10 that the defendant was actually present at the scene of the
11 crime, actually participated in it and was not somewhere
12 else. In other words, the State has the burden of disproving
13 the defendant's alibi defense.

14 Now, in order to establish criminal liability, criminal
15 intent is required. For example, the mental state required
16 to be proven by the State for a particular crime might be
17 purpose, intent, knowledge, recklessness or criminal
18 negligence.

19 Criminal intent must be proven by the State beyond a
20 reasonable doubt. Criminal intent is always a matter that
21 must be determined by the jury from the circumstances
22 surrounding the situation. There is no way to prove intent
23 to a mathematical certainty.

24 There is no way that medical science can dissect a
25 person's brain and determine what the person had in mind, so

1 the law says that criminal intent may be inferred from the
2 circumstances shown to have existed. This is how you make a
3 determination of whether or not the element requiring intent
4 was present.

5 It is not necessary to establish intent by direct and
6 positive evidence, but intent may be established by inference
7 in the same way as any other fact, by taking into
8 consideration the acts of the parties and all the facts and
9 circumstances of the case.

10 Criminal intent is a mental state, a conscious
11 wrongdoing. It is up to you to determine what the defendant
12 intended to do based on the circumstances shown to have
13 existed. Criminal intent can arise from action or a failure
14 to act. It may arise from negligence, recklessness or an
15 indifference to duty or to consequences that is considered by
16 the law to be the equivalent of criminal intent.

17 Now, the defendant, ladies and gentlemen, is charged
18 with armed robbery. In order to prove this offense, the
19 State must first prove beyond a reasonable doubt that the
20 defendant took personal property from the person or presence
21 of another person.

22 Property is in the presence of a person if it is within
23 the person's reach, inspection, observation or control so
24 that the person could, if not overcome with violence or
25 prevented by fear, keep possession of the property.

1 The State must also prove beyond a reasonable doubt that
2 the defendant carried the property away, intending to
3 permanently deprive the owner of the property and to keep the
4 property for the defendant's own use. The slightest removal
5 of the property or the complete possession of the property,
6 even for an instant by the defendant, is sufficient to show a
7 taking and carrying away of the property. The taking and
8 carrying away of the property must have been done with
9 violence or by putting the owner of the property in fear of
10 violence.

11 Finally, the State must prove beyond a reasonable doubt
12 that the defendant was either armed with a deadly weapon
13 during the robbery or that he alleged, either by action or
14 words, that he was armed while if using a representation of a
15 deadly weapon or any object which a person present during the
16 commission of the robbery reasonably believed to be a deadly
17 weapon.

18 A deadly weapon is any article, instrument or substance
19 which is likely to cause death or great bodily harm. Whether
20 an instrument has been used as a deadly weapon depends on the
21 facts and circumstances of each case. The following are
22 examples of instruments which may be deadly weapons: A
23 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, metal
24 knuckles, a razor, gasoline, a firebomb or Molotov cocktail
25 and lighter fluid. A gun may be a deadly weapon even if it

1 is not operating.

2 The defendant is also, ladies and gentlemen, charged
3 with entering a bank depository or building and loan
4 association with the intent to steal. In order to prove this
5 offense, the State must prove beyond a reasonable doubt that
6 the defendant unlawfully entered a building or part of a
7 building occupied as a bank, depository or building and loan
8 association with the intent to steal money or securities for
9 money either by force, intimidation or threats.

10 Now, ladies and gentlemen, I am now drawing near the end
11 of my charge, and I want you to clearly understand that you
12 are not partisans or advocates for the State of South
13 Carolina or the defendant. It is your duties by your joint
14 deliberations to determine the truth in this case, giving to
15 the defendant the benefit of every reasonable doubt on each
16 and every issue. Then to the facts which you determine to be
17 true, you should take and apply the law which has been given
18 to you by this Court and thus arrive at a verdict which
19 speaks the truth in this case.

20 In fact, the word "verdict," which has a Latin
21 derivative, means a true saying. Thus when you have
22 accomplished these responsibilities, you will have satisfied
23 your oath as jurors and you will have discharged your duty to
24 this Court.

25 Now, once you retire to the jury room, the bailiff will

1 give the verdict form to the foreman. When you, the jury,
2 arrive at a verdict as to the offenses charged in this case,
3 the foreman will select the verdict as to the charge on the
4 verdict form.

5 If the State has failed to prove the guilt of the
6 defendant beyond a reasonable doubt, your verdict will be not
7 guilty. Likewise, if the State has proven the guilt of the
8 defendant beyond a reasonable doubt, your verdict will be
9 guilty.

10 Now, once a decision has been made, the foreman will
11 check whichever choices the verdict of the jury is as to each
12 charge. The verdict that you render in this case, ladies and
13 gentlemen, must be, must be the verdict of each and every
14 juror. It must be your unanimous verdict. All 12 of you
15 must agree on the verdict which you authorize the foreman to
16 write for the jury.

17 Now, ladies and gentlemen, I want you to further
18 understand that the order in which the choices of verdict
19 appear on the verdict form are not suggestive of any verdict
20 on the part of this Court. The verdict in this case is to be
21 determined by you, the jury, not the Court.

22 Furthermore, please understand that even though I will
23 give the verdict form to the foreman, it is not his verdict
24 alone. It is the verdict of all 12 of you, and I emphasize
25 again, it must be unanimous.

1 Now, I'm also going to give you a copy of these
2 instructions in written form. During your deliberations, you
3 may refer to the instructions to guide your decision-making.
4 You must consider the instructions as a whole and not follow
5 some and ignore others.

6 Mr. Foreman, please return these instructions to the
7 Court at the time that the jury's verdict is rendered.

8 What I am now going to do is ask you to retire to the
9 jury room, but do not begin your deliberations until you're
10 instructed to do so. The law, the law requires that I now
11 consult with the attorneys to make sure that I have not left
12 anything out of the these instructions.

13 Now, after I have spoken with the attorneys, the bailiff
14 will bring in a copy of these instructions along with the
15 items of evidence and instruct you to begin your
16 deliberations.

17 Now, during your deliberations, if you have any
18 questions, there will be pen and paper or pencil and paper in
19 the jury room. Mr. Foreman, it will be your added
20 responsibility, if the jury has any questions, to reduce such
21 question to writing, sign and date it, get it to the bailiff,
22 knock on the door, let the bailiff know you have a question,
23 give it to her. They will get it to me and I will respond
24 however the Court deems appropriate.

25 Furthermore, once you all have reached a verdict, again,

1 as to each charge, two questions. First question being as to
2 the charge of armed robbery. We, the jury, unanimously find
3 the defendant, Tyrone Ellison, guilty or not guilty, whatever
4 the jury's decision. You authorize the foreman to write for
5 the jury, which must be unanimous.

6 Then you move to Question 2, as to the charge of
7 entering a bank, depository or building and loan association
8 with the intent to steal, we, the jury, unanimously find the
9 defendant, Tyrone Ellison, either guilty or not guilty.

10 Once you answer both questions, Mr. Foreman, sign and
11 date the verdict form, knock on the door, let the bailiff
12 know that you all have reached a verdict and we will get you
13 back into the courtroom as quickly as possible.

14 Now, at this time I'm going to ask you to step to the
15 jury room, but do not, do not begin your deliberations until
16 you're instructed to do so. We'll let you know here in just
17 a minute.

18 (The jury retires to the jury room at 12:23 p.m.)

19 THE COURT: All right. Any exception, objection to the
20 charge by the State?

21 MR. SORENSON: No, Your Honor.

22 THE COURT: Defense counsel?

23 MR. FALK: Renew my former objection.

24 THE COURT: So noted for the record. Court's rulings,
25 however, remain the same, but they are so noted for the

1 record, okay?

2 All right. Each of you all went through the jury charge
3 as well as the verdict form. Didn't you see the verdict
4 form, Mr. Falk?

5 MR. FALK: Yes, Your Honor.

6 THE COURT: Mr. Sorenson?

7 MR. SORENSON: Yes, sir.

8 THE COURT: All right. If the bailiff can get these and
9 the items of evidence, which have already been reviewed by
10 each of the attorneys, placed into a box. Bailiff will take
11 that box, along with my instructions and the verdict form,
12 back to the jury, give it to them, tell them they can begin
13 their deliberations. All right. We'll stand at ease.

14 (Verdict form and evidence delivered to jury with
15 instruction to begin deliberating at 12:24 p.m.)

16 (Recess held.)

17 THE COURT: It's my understanding we have a verdict in
18 the case. Anything from the State before I bring the jury
19 out?

20 MR. SORENSON: No, Your Honor.

21 THE COURT: Defense counsel?

22 MR. FALK: No, Your Honor.

23 THE COURT: All right. I will remind everybody in this
24 courtroom, whatever the verdict may be, keep your emotions in
25 check. Your failure to do so could result in you being held

1 in contempt of court and being sentenced to a period of
2 incarceration. If you do not believe that you can hold your
3 emotions in check, regardless of what the verdict is, now is
4 your time to leave the courtroom.

5 All right. Bring me the jury, please.

6 (The jury enters the courtroom at 1:02 p.m.)

7 THE COURT: Madam Clerk.

8 Ladies and gentlemen of the jury, have you all reached a
9 verdict?

10 THE FOREPERSON: Yes, sir.

11 THE COURT: Could you hand the verdict to the clerk of
12 court, please.

13 All right. The verdict appears to be in order.

14 Madam Clerk, you may publish the verdict.

15 CLERK OF COURT: In the matter of the State of South
16 Carolina versus Tyrone Ellison, Indictment
17 Nos. 2014-GS-18-0325 and 2013-GS-18-1271, as to the charge of
18 armed robbery, we, the jury, unanimously find the defendant,
19 Tyrone Ellison, guilty.

20 As to the charge of entering a bank depository or
21 building and loan association with the intent to steal, we,
22 the jury, unanimously find the defendant, Tyrone Ellison,
23 guilty. Signed and dated by foreperson, October 24th, 2014.

24 THE COURT: All right. Mr. Falk, anything from the
25 defense counsel before I release the jury?

1 MR. FALK: Your Honor, we'd ask if we could poll the
2 jury to make sure the verdict was unanimous.

3 THE COURT: Madam Clerk, if you'd poll the jury, first
4 by stating the juror number, asking them whether or not this
5 is their verdict and whether or not it is still their
6 verdict. I think all of you should know your juror number.
7 If not, it's on your -- I've been told it's on your badge.

8 CLERK OF COURT: Juror No. 130, please stand.

9 THE COURT: Juror No. 130, would you please stand.

10 CLERK OF COURT: Was this your verdict in the jury room?

11 JUROR NO. 130: Yes, it was.

12 CLERK OF COURT: Is this still your verdict?

13 JUROR NO. 130: Yes.

14 CLERK OF COURT: Juror No. 75, was this your verdict in
15 the jury room?

16 JUROR NO. 75: Yes.

17 CLERK OF COURT: Is this still your verdict?

18 JUROR NO. 75: Yes.

19 CLERK OF COURT: Juror No. 24, was this your verdict in
20 the jury room?

21 JUROR NO. 24: Yes, it was.

22 CLERK OF COURT: And is this still your verdict?

23 JUROR NO. 24: It is.

24 CLERK OF COURT: Thank you.

25 Juror No. 125, was this your verdict in the jury room?

1 JUROR NO. 125: Yes.

2 CLERK OF COURT: Is it still your verdict?

3 JUROR NO. 125: Yes.

4 CLERK OF COURT: Juror No. 123, was this your verdict in
5 the jury room?

6 JUROR NO. 123: Yes, ma'am.

7 CLERK OF COURT: Is it still your verdict?

8 JUROR NO. 123: Yes, ma'am.

9 CLERK OF COURT: Juror No. 33, was this your verdict in
10 the jury room?

11 JUROR NO. 33: Yes, ma'am.

12 CLERK OF COURT: Is it still your verdict?

13 JUROR NO. 33: Yes, ma'am.

14 CLERK OF COURT: Juror No. 109, was this your verdict in
15 the jury room?

16 JUROR NO. 109: Yes, ma'am.

17 CLERK OF COURT: And is it still your verdict?

18 JUROR NO. 109: Yes, ma'am.

19 CLERK OF COURT: Juror No. 112, was this your verdict in
20 the jury room?

21 JUROR NO. 112: Yes, it was.

22 CLERK OF COURT: Is it still your verdict?

23 JUROR NO. 112: Yes, it is.

24 CLERK OF COURT: Juror No. 14, was this your verdict in
25 the jury room?

1 JUROR NO. 14: Yes, ma'am.

2 CLERK OF COURT: Is this still your verdict?

3 JUROR NO. 14: Yes, ma'am.

4 CLERK OF COURT: Juror No. 121, was this your verdict in
5 the jury room?

6 JUROR NO. 121: Yes, ma'am.

7 CLERK OF COURT: Is this still your verdict?

8 JUROR NO. 121: Yes, ma'am.

9 CLERK OF COURT: Juror No. 23, was this your verdict in
10 the jury room?

11 JUROR NO. 23: Yes, ma'am.

12 CLERK OF COURT: Is this still your verdict?

13 JUROR NO. 23: It is.

14 CLERK OF COURT: Juror No. 77, was this your verdict in
15 the jury room?

16 JUROR NO. 77: Yes.

17 CLERK OF COURT: Is this still your verdict?

18 JUROR NO. 77: Yes, ma'am.

19 CLERK OF COURT: Thank you.

20 THE COURT: Anything further at this time?

21 MR. FALK: Nothing further, Your Honor.

22 THE COURT: Ladies and gentlemen, you all have fulfilled
23 your responsibility as jurors this week. I want to thank you
24 for your service this week. It's not very often that you're
25 called to serve as jurors, but I appreciate your service to

1 this state, to this county and to this country.

2 Jury service -- and I tell jurors this quite often, jury
3 service is the only remaining service really that we have in
4 this country anymore. It's not a situation wherein you get
5 drafted into the military and have to go away for a couple
6 years like individuals in the past have had to do. I hope
7 that if you're summoned to jury duty again that you will
8 serve. I hope you all had a good experience up here this
9 week.

10 I've told you throughout the trial of this case not to
11 discuss it, not to discuss it with anyone. Now that a
12 verdict has been rendered in this case, you may discuss the
13 case; however, you are not -- nobody can make you discuss the
14 case, okay? If anybody approaches you to discuss this case
15 and you -- and you convey to them that you do not want to
16 discuss it and they will not leave you alone, you let the
17 clerk's office know here, the sheriff's office know and it
18 will be taken care of, okay?

19 As I've told you a second ago or a minute ago, you all
20 have fulfilled your responsibility as jurors. Now what will
21 take place is this court will carry out its responsibilities
22 and that is of sentencing. You all are free to stay here for
23 that or you are free to go. You're free to go. It's up to
24 you.

25 I will say this, if you wish, I know that you all have

1 not had lunch yet. Lunch was ordered for you and it was on
2 the way and it is here and you can step in the jury room and
3 eat lunch and then leave, but I will ask that law enforcement
4 make sure that these jurors get out of here when they get
5 ready to go. But if you want to stay, you may do so for
6 sentencing, but if you wish to leave and go out there and eat
7 and/or leave, just go ahead and leave. It's up to you. I'll
8 let you do that at this time if you so desire.

9 Do you have sentencing sheets, Mr. Sorenson?

10 MR. SORENSON: Yes, Your Honor. May I approach?

11 THE COURT: If you'll bring the defendant around for
12 sentencing, please.

13 Mr. Sorenson, I'll be happy to hear from you, sir.

14 MR. SORENSON: Thank you, may it please the Court, Your
15 Honor. First, I guess, as far as victim impact goes,
16 Ms. Rustin and Ms. Bass are both back in the courtroom. I do
17 not believe either one of them wish to address the court; is
18 that correct?

19 And obviously this has had a pretty profound effect on
20 the two of them. Obviously we're only dealing with one bank
21 robbery here today, but as Your Honor has heard a little bit,
22 they were robbed three months later by what the State alleges
23 is this same defendant being involved with two other
24 individuals in a separate bank robbery at that same bank
25 three months later, which led to the car crash that the jury

1 has heard reference to as a car chase that ensued after that
2 bank robbery, but -- and those charges are still pending
3 against Mr. Ellison and will be dealt with at a later date,
4 but both Ms. Rustin and Ms. Bass were both present for that
5 second bank robbery also, Your Honor.

6 We would, as far as sentencing on this case, Your Honor,
7 Mr. Ellison has a prior record. He's got a simple possession
8 of marijuana from 2008, but more relevant from 2007, a 2007
9 conviction. He has a criminal conspiracy and an assault and
10 battery with intent to kill. I do have a copy of that
11 assault and battery with intent to kill, the sentencing sheet
12 and the indictment. Pursuant to South Carolina laws, that is
13 classified as a most serious offense.

14 And subject to that, Your Honor, we did file with clerk
15 of court's office and had served on the defendant back on
16 May the 13th of this year our notice of intention to seek a
17 life without parole sentence should he be convicted of the
18 armed robbery for a second most serious offense pursuant to
19 Section 17-25-45.

20 That was filed in the clerk's office and served on this
21 defendant and his previous lawyer, Mr. Tommy Bolus, on
22 May the 13th of 2013.

23 May I approach.

24 THE COURT: Anything else from the State at this time,
25 Mr. Sorenson?

1 MR. SORENSON: Your Honor, we'd just respectfully ask
2 you under 17-25-45 to sentence him on the armed robbery
3 conviction to life in prison.

4 THE COURT: All right. Mr. Falk, be happy to hear from
5 you, sir. You can come around here with your client.

6 MR. FALK: Your Honor, when Mr. Ellison had the first
7 conviction, he was 18 years old at the time. He was younger
8 than that, obviously, when the offense was committed. He
9 stands before you, he's 25 years old now; therefore, a
10 sentence of life without parole was going to be a 60- or 55-,
11 60-year sentence.

12 I believe the last time that South Carolina Supreme
13 Court has entertained an argument that the two-strike
14 life-without-parole statutes was unconstitutional, as opposed
15 to a separation of powers argument, was in the case of
16 *State v. Standard*, which was heard in 2002. I could -- the
17 cite is 351 S.C. 1999.

18 My comment is is that that case preceded the Supreme
19 Court's decision in Booker of 2005 where they considered
20 whether or not the federal sentencing guidelines took away
21 the court's discretion in sentencing by making the sentencing
22 guidelines mandatory. And as you know in Booker, he gave the
23 sentencing judge -- the guidelines were determined a
24 recommendation but by no means lockstep discretionary.

25 Therefore, we'd ask the Court to consider the -- our

1 constitutional challenge to the LWOP sentencing requirement
2 and ask that the Court find a more suitable punishment in
3 light of his age.

4 THE COURT: What is the State's position on that,
5 Mr. Sorenson?

6 MR. SORENSON: State's position is I think our Supreme
7 Court has upheld the two-strike, three-strike law and, I
8 mean, I think it's pretty clear it's a mandatory life
9 sentence, Your Honor, would be our position.

10 THE COURT: Mr. Ellison, anything you wish to tell me,
11 sir?

12 THE DEFENDANT: No, sir.

13 THE COURT: Anything further from defense counsel?

14 MR. FALK: No, Your Honor.

15 THE COURT: Anything further from the State?

16 MR. SORENSON: No, sir.

17 THE COURT: All right. On Indictment 2013-GS-18-1271,
18 which is the entering the bank or depository with intent to
19 steal, defendant's committed to the State Department of
20 Corrections for a period of 30 years.

21 On Indictment 2014-GS-18-325, on the armed robbery and
22 pursuant to Section 17-25-45, Defendant's hereby sentenced to
23 the Department of Corrections for the balance of his natural
24 life. Those sentences will run concurrent. Thank you.

25 --- END OF TRANSCRIPT OF RECORD ---

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

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 20th through the 20th of
12 October, 2014.

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

16 February 25, 2015

17
18 *Ruth L. Mott*

19 Official Court Reporter
20
21
22
23
24
25

WITNESSES

JASON MONROE

North Charleston Police Department

**ARREST WARRANT NUMBER
2014DOR05**

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

Rachel Hanks

Foreperson of Grand Jury

Date: April 3, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS180325

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

April 7, 2014 TERM

**THE STATE
vs.**

Tyrone Darius Ellison

**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.

2014 APR -3 PM 2:56
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

567

COUNTY OF Dorchester
STATE VS.

INDICTMENT/CASE#: 2014GS180325

Tyrone Darius Ellison

A/W#: 2014DOR05

AKA: _____

Date of Offense: 4/1/2013

Race: BLACK Sex: M Age: 25

S.C. Code § : 16-11-330(A)

DOB: _____ SS#: _____

CDR Code #: 0139

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 TO: Armed Robbery

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Sorenson, Donald N. 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 Life days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____
Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</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</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 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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: _____

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Cheryl Graham
Court Reporter: Brian Davis
SCCA/217 (03/2011)

Presiding Judge: P. [Signature]
Judge Code: 210
Sentence Date: 10-24-14

WITNESSES

JASON MONROE

North Charleston Police Department

2013-010958

ARREST WARRANT NUMBER

2013A1021001431

Arrested: July 3, 2013

ACTION OF GRAND JURY

Amie G. Chambers

Foreperson of Grand Jury

Date: December 5, 2013

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS18-1271

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

December 9, 2013 TERM

THE STATE

vs.

Tyrone Darius Ellison

Indictment for

**ENTERING BANK, DEPOSITORY OR
BLDG AND LOAN ASSOCIATION WITH
INTENT TO STEAL**

SC Code: 16-11-380

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.

FILED - RECORDED
2013 DEC -5 PM 4:10
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

595

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

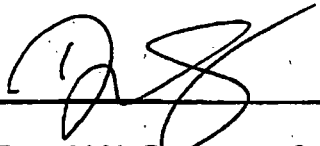
INDICTMENT
2013GS18-1271

At a Court of General Sessions, convened on December 9, 2013 the Grand Jurors of
Dorchester County present upon their oath:

**ENTERING BANK, DEPOSITORY OR BLDG AND LOAN ASSOCIATION WITH
INTENT TO STEAL**

That in Dorchester County, South Carolina, on or about April 1, 2013, the
Defendant, Tyrone Darius Ellison, unlawfully did enter the Sun Trust Bank, a
building or part of a building occupied as a bank, depository, or building and loan
association with the intent to steal money, securities for money, or property,
either by force, intimidation, or threats. This offense in violation of Section 16-11-
380, 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)

COUNTY OF Dorchester)
STATE VS.)

Tyrone Darius Ellison)

AKA: _____)

Race: BLACK Sex: _____)

Address: _____)

City, State, Zip: SUMMERVILLE, SC 294830000)

DL#: _____ SID#: _____)

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Entering Bank, Depository or Bldg and Loan Association with intent to Steal

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS18-1271

A/W#: 2013A1021001431

Date of Offense: 4/1/2013

S.C. Code §: 16-11-380

CDR Code #: 0257

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-380 of the S.C. Code of Laws, bearing CDR Code # 0257

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Sorenson, Donald N.

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 30 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.

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
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§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP _____ days/hours Public Service Employment

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: _____

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge _____

Judge Code: 2100

Sentence Date: 10-29-14

Clerk of Court/ Deputy Clerk _____

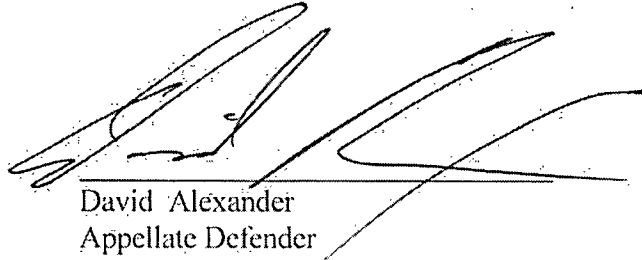
Court Reporter: _____

SCCA/217 (03/2011)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 10th, 2016



David Alexander
Appellate Defender

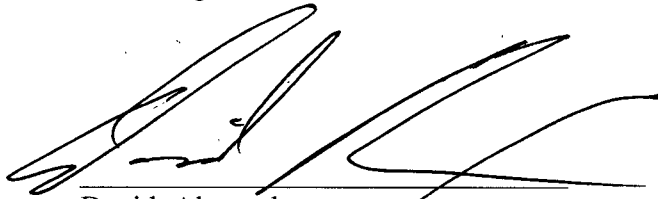
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 10th, 2016



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

FEB 10 2016

SC Court of Appeals