

VOLUME II OF II

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JARRET GRADDICK,

APPELLANT

APPELLATE CASE NO. 2013-002665

AMENDED RECORD ON APPEAL

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1 there has been any direct evidence, at all,
2 as to a preplan or acting in concert. We have
3 mere presence, at the most. I think that --
4 I don't have the case law but I think that it
5 must rise above mere presence to get to the
6 jury.

7 My client, from the facts presented, may
8 be guilty of another crime but I don't
9 believe that it rises to armed robbery in
10 this case even when looking at it in the
11 light most favorable to the State.
12 Therefore, I would make a Motion for a
13 directed verdict on those basis.

14 While standing, I will renew the
15 objection that I made -- I am not going to go
16 back into the details ---

17 THE COURT: About the juror?

18 JIM SMILEY: Yes, sir. That's all that
19 I have.

20 THE COURT: And the Court continues --
21 the alternate, I think is proper under the
22 law as we have it and I am not concerned.

23 Without the testimony of Mr. Mazyck, we
24 probably have enough. But Mr. Mazyck's
25 testimony is quite interesting, because he

1 provided additional circumstantial evidence
2 from which the jury could infer.

3 Let me state that I found it extremely
4 unusual. His presence there was to shop,
5 allegedly. Then he was sitting there and he
6 said that he was scooted down in the seat. I
7 think that this was after the visit to
8 McDonald's. The visit to McDonald's is
9 something that I find extremely interesting.
10 As I recall Mr. Mazyck, the conversation, and
11 you can correct me, but I thought that he
12 attributed it to what was going on -- the
13 texting by Kevin Smalls about what the plans
14 were for the evening. Something about
15 getting some alcohol and that's why they went
16 to the store, to get something for the
17 evening. That's interesting because if you
18 take his testimony, he went and ordered
19 something from McDonald's at the insistence
20 of Mr. Smalls, who was willing to buy him
21 something at McDonald's, yet when he came to
22 ask for the money he said, 'I don't have any
23 money.' Well, how in the world do you plan
24 on buying any alcohol for a party? Without
25 money? So clearly there is an abundance of

1 evidence that logically connects as being
2 there for something other than what is
3 suggested of just taking somebody for a ride.
4 We really don't know what it is at this
5 stage..

6 Given that, given the testimony of the
7 witness who called in -- the citizen -- which
8 was amazing, which is a credit to herself
9 and, I think, a statement of society of being
10 observant, of erring on the side of caution,
11 not reaching any conclusions but looking at
12 something and saying, 'this appears be out of
13 the norm, I want to give this information.'
14 Lo and behold, not only was her intuition
15 correct but she was absolutely correct.
16 Because we found, if the jury chooses to so
17 conclude -- we ended up finding the cash box
18 that supposedly came from the store in the
19 location that, surprisingly, was attributed
20 to the location of all four persons in the
21 car. We find the money, which had the unique
22 bill, in the car; which certainly would lead
23 the jury to believe that the four people were
24 there.

25 Now, I agree that they've got to prove

1 and I will charge it but from the standpoint
2 of this, the court's perspective, -- I deny
3 the Motion.

4 JIM SMILEY: Thank you, Your Honor.

5 THE COURT: Thank you so much. All
6 right. Do you intend to offer witness?

7 ANDREW GRIMES: Yes, sir.

8 THE COURT: Are those witnesses
9 present?

10 ANDREW GRIMES: Yes, sir.

11 THE COURT: And after that, does -- at
12 this point, you're not held to it, but does
13 Mr. Coakley intend to offer any additional
14 witnesses?

15 WILLIAM RUNYON: Not at the point.

16 THE COURT: That's fine. You're not
17 held to that. I understand that. That would
18 be an assessment based on all the testimony
19 and I understand that.

20 WILLIAM RUNYON: Yes, sir, based on the
21 time, if we were, it wouldn't be before the
22 first thing in the morning.

23 THE COURT: I don't know. I might want
24 to go late and complete all the evidentiary
25 portion. We'll see.

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Case No. 1:1-GS-10-2074 - Testimony of Melvin White
Jury Trial of December 2 through 6, 2013
Before The Honorable R. Markley Dennis

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1 MR. KOWELSKI: Beg the Court's
2 indulgence, (sidebar with Mr. Grimes). No,
3 no further questions, Your Honor.

4 THE COURT: Thank you. You may come
5 down, sir.

6 (WITNESS STEPS DOWN)

7 THE COURT: Any additional witnesses?

8 ANDREW GRIMES: No, sir, but we need
9 to take up a matter of law.

10 THE COURT: All right, ladies and
11 gentlemen. I am going to let you go to your
12 jury room.

13 Do not begin your deliberations, don't
14 discuss the case. We will be with you very
15 quickly.

16 (JURY OUT @ 4:25 P.M.)

17 THE COURT: All right. Have you talked
18 with your clients as to whether they wish to
19 testify or not testify?

20 ANDREW GRIMES: We would ask for at
21 least five minutes to talk with him, because
22 he ---

23 THE COURT: Okay. Y'all talk because
24 we're now -- we're playing with the jury's
25 time. Y'all could have made this decision a

1 long time before today, so y'all talk very
2 quickly.

3 ANDREW GRIMES: Thank you, Your Honor.
4 We will be at-ease for about five minutes.
5 You can talk to him outside, if you want to.

6 (DEFENDANT COAKLEY PRESENT)

7 (DEFENDANT SMALLS PRESENT)

8 THE COURT: Let me go ahead and deal
9 with Mr. Runyon's client then. Have you
10 discussed with your client his right to
11 testify?

12 WILLIAM RUNYON: Yes, Your Honor, and
13 Mr. Coakley has indicated that he wishes to
14 available himself of his Constitutional right
15 not to testify.

16 THE COURT: Absolutely. Mr. Coakley,
17 -- and you can stand or remain seated. Your
18 pleasure.

19 You have had the opportunity to talk to
20 your lawyer about your right to testify or
21 not to testify, sir?

22 DEFENDANT COAKLEY: Yes, sir.

23 THE COURT: Okay. And you've had time
24 to reflect on his advice and discussion
25 concerning that issue?

1 DEFENDANT COAKLEY: Yes, sir.

2 THE COURT: And you've made a decision
3 for yourself that you want to exercise that
4 right not to testify?

5 DEFENDANT COAKLEY: Yes, sir.

6 THE COURT: You've already heard me
7 throughout this trial explain that they are
8 not to look to you to prove or disprove
9 anything. I will further instruct them that
10 they can't even consider that in the jury's
11 deliberations. Do you understand that?

12 DEFENDANT COAKLEY: Yes, sir.

13 THE COURT: But it is your right to
14 testify, if you want to. You understand that
15 as well?

16 DEFENDANT COAKLEY: Yes, sir.

17 THE COURT: Considering it all, it is
18 your decision to stand by your right and
19 enforce your right not to testify; is that
20 correct, sir?

21 DEFENDANT COAKLEY: Yes, sir.

22 THE COURT: Are you under the influence
23 of any alcohol or any type of medication here
24 today, sir?

25 DEFENDANT COAKLEY: No, sir.

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1 THE COURT: Are you comfortable with
2 your decision?

3 DEFENDANT COAKLEY: Yes, sir.

4 THE COURT: Any complaints about the
5 way that your lawyer has advised you
6 concerning this issue?

7 DEFENDANT COAKLEY: No, sir.

8 THE COURT: If at any point between now
9 and when I ask Mr. Runyon, as you heard Mr.
10 Grimes, 'does Mr. Coakley wish to present any
11 additional testimony', or any additional
12 witnesses or the jury's consideration, if you
13 should change your mind, let me know and then
14 I will excuse the jury and we would revisit
15 that. If not, I will assume that you stand
16 by your decision. Okay?

17 DEFENDANT COAKLEY: Yes, sir.

18 THE COURT: Is that fair, sir?

19 DEFENDANT COAKLEY: Yes, sir.

20 THE COURT: Thank you, sir. I find
21 that Mr. Coakley certainly has had the
22 benefit of very competent counsel. He's had
23 an opportunity to talk with him about his
24 right to testify or not to testify. It's
25 very obvious by his responses and his body

1 language, with emphases on his responses,
2 that he has made a conscious decision for
3 himself not to testify. That is his
4 absolutely right. I find that he makes the
5 decision freely, voluntarily, knowingly and
6 intelligently. Thank you so much.

7 Mr. Smiley, have you talked with your
8 client?

9 JIM SMILEY: I have, Your Honor. After
10 discussing it with Mr. Smalls, he has elected
11 not to testify.

12 THE COURT: Mr. Smalls -- and you can
13 remain seated, sir, if you wish to. You've
14 discussed with your lawyer your right to
15 testify or to not testify, sir?

16 DEFENDANT SMALLS: Yes, sir.

17 THE COURT: And you've had time to
18 reflect on his advice and those discussions?

19 DEFENDANT SMALLS: Yes, sir.

20 THE COURT: After reflection and upon
21 reflection, it is your decision not to
22 testify, sir?

23 DEFENDANT SMALLS: Yes, sir.

24 THE COURT: And as you just heard me
25 explain to Mr. Coakley, you understand that

1 that is your right and I've reinforced that,
2 I think at least twice already, and will
3 charge the jury that they cannot consider
4 that against you. Do you understand?

5 DEFENDANT SMALLS: Yes, sir.

6 THE COURT: But notwithstanding your
7 right to not testify, you have the right to
8 testify or offer testimony if you want to.
9 Do you understand that?

10 DEFENDANT SMALLS: Yes, sir.

11 THE COURT: And that's not what you
12 wish to do?

13 DEFENDANT SMALLS: No, sir.

14 THE COURT: Are you under the influence
15 of any alcohol or medication here today?

16 DEFENDANT SMALLS: I am not.

17 THE COURT: Are you comfortable with
18 your decision not to testify?

19 DEFENDANT SMALLS: Yes, sir.

20 THE COURT: Thank you so much, Mr.
21 Smalls. I find that Mr. Smalls has certainly
22 had the benefit of very competent counsel.
23 He's indicated that he has had an opportunity
24 to reflect on his decision and I find by his
25 response that he has made a conscious

1 decision for himself not to testify, to
2 exercise his Constitution right to not
3 testify. I find that to be a decision that
4 he makes freely, voluntarily, knowingly and
5 intelligently.

6 Mr. Smalls, just as I indicated to Mr.
7 Coakley, I will do the same thing at the same
8 time, in the same order. If between now and
9 when I ask Mr. Smiley if you wish to present
10 any further witnesses for the jury's
11 consideration, -- until that point, if you
12 should change your mind, let me know. We
13 would excuse the jury and revisit this issue.
14 But if I don't hear from you, I will assume
15 that you stand by your decision. Okay?

16 DEFENDANT SMALLS: Yes, sir. Okay.

17 THE COURT: Thank you, sir. Okay.

18 (MR. GRIMES RETURNS TO JURY ROOM)

19 ANDREW GRIMES: Thank you, Your Honor.

20 (DEFENDANT GRADDICK PRESENT)

21 THE COURT: Very well. Let the record
22 reflect that Mr. Graddick is present. You've
23 had sufficient opportunity to talk with
24 Mr. Graddick about his decision to testify or
25 not to testify?

1 ANDREW GRIMES: Yes, sir.

2 THE COURT: Has he made a decision?

3 ANDREW GRIMES: Yes, sir.

4 THE COURT: What is that decision?

5 ANDREW GRIMES: He will exercise his
6 right to remain silent.

7 THE COURT: All right. Mr. Graddick,
8 good afternoon.

9 DEFENDANT GRADDICK: Good afternoon.

10 THE COURT: You've had the opportunity
11 to discuss this matter further with your
12 lawyers, is that correct?

13 DEFENDANT GRADDICK: Yes, sir.

14 THE COURT: And they've explained to
15 you your rights, that you have the right to
16 testify or not to testify?

17 DEFENDANT GRADDICK: Yes, sir.

18 THE COURT: And you've already heard me
19 explain to the jury, at least twice, that you
20 don't have to prove or disprove anything at
21 all. They can't look to you or expect you to
22 do so. You do understand that it is your
23 right to testify if you want to, do you
24 understand that?

25 DEFENDANT GRADDICK: Yes, sir.

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1 THE COURT: After considering, after ---
2 and you've had time to reflect and consider
3 what their advice and discussions have been.
4 Is that correct?

5 DEFENDANT GRADDICK: Yes, sir.

6 THE COURT: And you have made the
7 decision for yourself not to testify?

8 DEFENDANT GRADDICK: Yes, sir.

9 THE COURT: And your lawyers have
10 explained that I will instruct the jury that
11 they cannot use that against it, and that if
12 they do then -- I add that it would violate
13 their oath. Do you understand?

14 DEFENDANT GRADDICK: Yes, sir.

15 THE COURT: Are you under the influence
16 of any alcohol or any medication here today,
17 sir?

18 DEFENDANT GRADDICK: No, sir.

19 THE COURT: Are you comfortable with
20 your decision?

21 DEFENDANT GRADDICK: Yes, sir.

22 THE COURT: I find that Mr. Graddick
23 was had the benefit of competent counsel in
24 this matter and that he has indicated that he
25 is satisfied with the manner in which they

1 have advised him. I find that he is
2 satisfied -- I find that he has made a
3 conscious decision for himself to exercise
4 his Constitutional rights. I find that his
5 decision is one that he makes freely,
6 voluntarily, knowingly and intelligently.

7 Again, you are not under the influence of
8 any type medication or drugs?

9 DEFENDANT GRADDICK: No, sir.

10 THE COURT: If at any point between now
11 and I bring this jury in and ask your lawyer
12 if there are any further witnesses, and he's
13 going to say 'no, Mr. Graddick rests.' If
14 up that point you should change your mind,
15 let me know. We'll send the jury back out
16 and have additional conversation.

17 If I don't hear from you, I assume that
18 you will stand by your decision. Okay?

19 DEFENDANT GRADDICK: Yes sir.

20 THE COURT: Thank you so much, Mr.
21 Graddick. Let's bring in our jury, please.

22 (JURY IN @ 4:53 P.M.)

23 THE COURT: Ladies and gentlemen, thank
24 you very much. We are ready to continue now.
25 Mr. Grimes, does Mr. Graddick wish to present

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1 be able to talk to them, because we will
2 conclude this tomorrow -- most probably.

3 Have a good evening. I'd ask you to be
4 in your jury room, please, at 9:30. Thank
5 you so much.

6 (JURY OUT @ 5:02 P.M.)

7 THE COURT: Any Motions from the State?

8 SOLICITOR SHEALY: No, sir.

9 THE COURT: Mr. Grimes?

10 ANDREW GRIMES: Yes, sir. Thank you,
11 Your Honor, may it please the Court.

12 THE COURT: Yes, sir.

13 ANDREW GRIMES: We would renew our
14 Motion on the -- also that the State has not
15 proven that Jarret was one of the robbers.
16 Thank you.

17 THE COURT: Thank you. Based on my --
18 I think that my recitation and ruling on it,
19 even considering the additional evidence,
20 there are obviously some inconsistencies that
21 could lead the jury to conclude that the
22 State has not met its burden of proof, not-
23 withstanding his alibi. So clearly, in that
24 situation, I would respectfully your request.
25 Mr. Runyon?

1 WILLIAM RUNYON: Your Honor, I would
2 renew the Motions previously made for a
3 directed verdict and I would fervently renew
4 the Motion for a mistrial, as previously
5 made, for the reasons stated previously on
6 the record.

7 THE COURT: Thank you, sir. I
8 appreciate that and I think that we have
9 certainly articulated our various positions
10 with respect to both sides of that. I deny
11 your Motions. Thank you, sir.

12 Yes, Mr. Smiley?

13 JIM SMILEY: Just for the record, Your
14 Honor, I renew my Motions.

15 THE COURT: I agree that there are some
16 issues that would -- and I will certainly
17 charge the hand of one is the hand of all.
18 Certainly that applies to all the defendants.
19 So the jury will have that instruction. I
20 appreciate that, but I respectfully deny
21 that.

22 Any other requests to charge?

23 WILLIAM RUNYON: Your Honor, just since
24 the court -- in directing you comments to Mr.
25 Smiley, will the Court be charging mere

1 presence?

2 THE COURT: I will charge mere
3 presence. I think that it is appropriate.

4 WILLIAM RUNYON: Thank you.

5 THE COURT: I think that it is
6 incorporated in my hand of one is the hand of
7 all. It says that it has to be more than
8 merely being present at the scene of a crime.
9 So I -- yes. I think that will cover what
10 you would like to have said.

11 WILLIAM RUNYON: I will take it
12 whatever way that you would like to do it.
13 Thank you.

14 THE COURT: Yes, sir. Thank you, sir.
15 Any other specific requests to charge?

16 JIM SMILEY: I don't know what to call
17 the charge, but I ---

18 THE COURT: Well, if you want to think
19 about it overnight.

20 JIM SMILEY: I'm going to tell you what
21 I am asking for, though I don't know exactly
22 how to put it. I think that the jury could
23 find that my client was guilty of conduct
24 other than armed robbery because of the
25 events after. I am trying to think of the

1 right terms ---

2 THE COURT: You can argue that they
3 could find him guilty of something else.
4 That is not going to be submitted.

5 JIM SMILEY: I'm just trying to ---

6 THE COURT: I would love to charge that
7 but we -- I think that we'd have to change
8 the Constitution for me to do that. I'd be
9 charging on the facts, telling them what they
10 should do if they don't find that the State
11 has met its burden of proof.

12 I will be telling them -- not that they
13 can find him guilty of another. But I will
14 tell them that if the State fails on its
15 burden of proof, they've got to return a
16 verdict of not guilty.

17 JIM SMILEY: Yes, sir, thank you. If
18 you don't ask, you don't get it.

19 THE COURT: I understand. If you want
20 to give me a charge that this state has
21 recognized given our -- you know, the Federal
22 judges have a great opportunity to give some,
23 I think, clarity to some of these legal
24 principles, because they can charge on the
25 facts. They can bring it to a case-specific

1 charge.

2 Ours is -- I think that we've gone a lot
3 better than we did when I first started
4 practicing, to be candid with you. Maybe I'm
5 being -- not mine, per se, but we still have
6 that Constitutional restrictions about
7 charging on the facts.

8 JIM SMILEY: I will do some --

9 THE COURT: Look at it and see.

10 JIM SMILEY: Yes, sir. I'd be happy to
11 receive but -- I understand what you're
12 asking for.

13 JIM SMILEY: Yes, sir.

14 SOLICITOR SHEALY: Your Honor, could we
15 possibly get a copy of your hand of one is
16 the hand of all charge, because I may want to
17 incorporate some of the language in my
18 closing?

19 THE COURT: I will send it to you.

20 SOLICITOR SHEALY: Thank you.

21 THE COURT: I will send it to
22 everybody. Okay?

23 SOLICITOR SHEALY: Yes, sir. Thank you.

24 JIM SMILEY: There is another issue that
25 I think that we could go ahead and deal with

1 before in the morning, and that is the order
2 of closings.

3 THE COURT: Well, I'm going to follow
4 the same order. You can make a Motion that
5 you want to be the last speaker.

6 JIM SMILEY: Yes, sir. Mr. Smalls ---

7 THE COURT: But ---

8 JIM SMILEY: --- has not presented any
9 evidence..

10 THE COURT: No, he hasn't.

11 JIM SMILEY: Mr. Smalls, if he was being
12 tried alone, would be afforded the last
13 argument in this case. It's because a co-
14 defendant in this case, Mr. Graddick,
15 presented evidence -- now is Mr. Smalls being
16 denied the opportunity for last close.

17 As I understand the case law, it says
18 that -- paraphrasing -- it is not a
19 substantial right that he is losing. I would
20 argue that it's been a long practice in South
21 Carolina and a very important consideration
22 that every defense lawyer and his defendant
23 may, when they decide to put up evidence or
24 not to put up evidence, can ---

25 THE COURT: I understand.

1 JIM SMILEY: --- have the last argument.
2 In this case, because of the multiple
3 defendants and one has presented evidence,
4 that is -- I respectfully understand what the
5 court has decided, but that Mr. Smalls would
6 be denied that right. Therefore, I think
7 that it keeps him from getting a fair and
8 impartial trial as if he were being tried
9 alone.

10 Therefore, I would make a Motion to be
11 allowed to make the last argument. I
12 understand the current status of the rulings
13 of the Court, but I just would like to make
14 that Motion because I do believe that my
15 client is substantially -- affects my
16 client's Constitutional rights, Your Honor.

17 THE COURT: I understand.

18 WILLIAM RUNYON: And, Your Honor,
19 Defendant Coakley would join in that same
20 Motion, Judge, because we're in the same
21 position.

22 THE COURT: Yeah.

23 WILLIAM RUNYON: We've presented no
24 evidence. Uh, -- if the Court would rule
25 that we are entitled to the last argument, I

1 would be more than happy to flip a coin with
2 Mr. Smiley.

3 THE COURT: I appreciate it. We can
4 deal with that. The problem is that we've
5 got to get around -- I mean you've got to get
6 around. I keep dropping back on the other
7 side of this bench here sometimes.

8 Notwithstanding -- and I think that I
9 even said it on the record, so they'll review
10 it, they can look at it. I hear you. I
11 understand. But whether I agree with it or
12 not is not important, because as I told that
13 jury on Monday, I took an oath to follow and
14 apply the law. The Court revisited this
15 issues as -- and it may have been even since
16 then, but certainly in the *State v. Smith*
17 case, an authority I previously cited, in
18 2010. It references *State v. Crowe*, a 1982
19 case which cites the controlling case of
20 *State v. Huckee*, which is an 1985 or 1887
21 case, something that has been around.
22 Somebody can say that it needs to be
23 revisited, that it is old/archaic. Or
24 another way of looking at it is that it is
25 tried and true. It's worked in the past, has

1 passed all the tests of time and therefore it
2 is good law. So I'll let those up the street
3 deal with that -- "up the street" being up I-
4 26, in Columbia.

5 WILLIAM RUNYON: Judge, can I just
6 vouch for the record -- not arguing with the
7 court's ruling, but I'd like to vouch for the
8 record and point out that if my -- if we are
9 separately indicted in this case and ---

10 THE COURT: Listen, ---

11 WILLIAM RUNYON: The only reason I am
12 doing this is for the record, Judge. I think
13 that if the Solicitor can indict co-
14 conspirators in a joint indictment, that we
15 would be -- that that would be applicable.
16 But I think for the record ---

17 THE COURT: These cases talk about the
18 independent cases, that you have to prove it.
19 But it is still -- it acknowledges that, but
20 says that it doesn't matter. So you can --
21 you don't have to state it on the record.
22 It's there. There are three separate
23 indictments. I think that I said it, I think
24 that you have a substantial right. I think
25 that it is a strategy. They' recognized that

1 but the Court has consistently said 'sorry',
2 'tough', basically 'such it up', 'go on',
3 'too bad.'

4 WILLIAM RUNYON: All right. I
5 understand.

6 THE COURT: You know, to me it is a
7 first cousin to -- I was reading in some of
8 the convictions. The one that has always
9 bothered me and still does, about you can't
10 agree -- that you can't, as you can in a DUI
11 say that we agree we have a prior DUI and you
12 can't put that in evidence. Not so with a
13 burg. If you have a Burg 1st, you have prior
14 burglaries, you don't get to put it in
15 notwithstanding that you'd stipulate to it
16 that it's a Burg 1st. I think that's kind of
17 interesting. But it's tried and true and
18 it's still the law. I imagine that it will
19 still be the law for the next twenty years.

20 WILLIAM RUNYON: Just putting that on
21 the record, Judge.

22 THE COURT: Thank you, sir. All
23 right. All right, I will send you that
24 charge tonight at some point so that you all
25 will have it. See you in the morning by

State of South Carolina v Jarret Graddick
Case No. 11-GS-10-2074 - Examination of Defendants
Jury Trial of December 2 through 6, 2013
Before The Honorable R. Markley Dennis

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1 9:15.. Anything before we recess?

2 SOLICITOR SHEALY: No, Your Honor.

3 ANDREW GRIMES: No, sir.

4 WILLIAM RUNYON: Thank you, Judge.

5 JIM SMILEY: Nothing.

6 THE COURT: We will be in recess until
7 in the morning.

8 (COURT IN RECESS)

9 (TRANSCRIPT CONTINUED NEXT PAGE)

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DECEMBER 6, 2013

9:30 A.M.

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25

(DEFENDANT GRADDICK PRESENT)

1 (DEFENDANT COAKLEY PRESENT)

2 (DEFENDANT SMALLS PRESENT)

3 (OFF RECORD BENCH CONFERENCE)

4 THE COURT: Good morning, gentlemen.

5 Mr. Runyon, you just asked about mere
6 presence. The charge says that mere presence
7 is more than just simply being present when a
8 charge is committed. Do you want more than
9 that?

10 WILLIAM RUNYON: No, Judge, that was my
11 question.

12 THE COURT: Any responses that -- there
13 are two. Everybody -- of course, I will
14 charge the alibi charge. I have another
15 paragraph as part of mine, but the paragraph
16 that you requested is also a part of mine.

17 The first one, I don't have any problem
18 with the logic of that charge and it goes to
19 what I said earlier. It's a Federal charge.
20 The problem that we have is that I think that
21 it is a borderline charge on the facts. I
22 think that it is covered when I tell them

23 that you consider what a person had to
24 gain out of it, in general. I think that you
25 can argue that. I mean, I don't have any

1 problem with that. But I'm not inclined to
2 charge it.

3 So, in conclusion, after my charge, if
4 you want that specific charge, just hand it
5 up and I will make it a court's exhibit and
6 the record will be protected.

7 ANDREW GRIMES: Thank you, Your Honor.
8 For the record -- and every time that I've
9 asked for this charge, I've gotten the same
10 response. But where it has like the charge,
11 it's really Judge McDonald ---

12 THE COURT: Right, but there was a
13 distinction in that case. She said that
14 there was a specific deal that had been
15 struck. To be honest with you, she had
16 concerns about charging it then, too.

17 ANDREW GRIMES: That's what I under-
18 stand. It was a sort of unique situation.

19 JIM SMILEY: It just dawned on me that I
20 haven't asked, but do you have a part of your
21 charge that each defendant is to be
22 considered separately?

23 THE COURT: Yes, and there are three
24 verdict forms, one for each. That's not a
25 charge but I will -- I think you will argue

1 and I will certainly explain that they have
2 to analyze the evidence as to each person.
3 Yes.

4 JIM SMILEY: Thank you.

5 THE COURT: All right. We have all the
6 jurors. Is the State ready to proceed?

7 SOLICITOR SHEALY: Yes, Your Honor.
8 Thank you.

9 THE COURT: Let the record reflect that
10 the defendants are present. Are the
11 defendants ready to proceed?

12 ANDREW GRIMES: Yes, Your Honor.

13 WILLIAM RUNYON: Yes, sir.

14 JIM SMILEY: Yes, sir.

15 THE COURT: Let's bring in our jury.

16 (JURY IN @ 9:36 A.M.)

17 THE COURT: Good morning, ladies
18 and gentlemen. I trust that you had a good
19 evening. We are now ready to continue.

20 Let me state before we start, as I
21 indicated on Monday, I believe so strongly in
22 this system -- I am not asking for any reward
23 or anything back from this, it's just that
24 you deserve it. You're a classic example of
25 why I believe so strongly in the system.

1 You're punctual, you've paid close attention
2 throughout the trial. You're exactly what I
3 believe that a jury is all about. I just
4 thank you for that on behalf of the parties
5 and the whole process. It has been a
6 pleasure to serve with each one of you.

7 You're almost there. It's close. There
8 still remains two very important parts of
9 this process: closing arguments where the
10 attorneys will have their change to speak
11 with you and suggest reasonable inferences
12 that you may draw from the evidence. I am
13 sure that when you begin the process of
14 analyzing the evidence that you will find
15 their remarks extremely beneficial to you.

16 While important, their remarks are not to
17 be considered evidence. The evidence comes
18 from the testimony of the witnesses, as we
19 know.

20 Following the closing arguments, I will
21 then give you instruction on the law. That's
22 another part that -- we put them all together
23 and we develop, by combination we get a
24 result which is -- which speaks the truth in
25 this controversy.

1 Please remember that while the law, of
2 course, is important that my remarks likewise
3 should never be considered evidence.

4 Give your attention now to the attorneys
5 as they give their closing remarks.

6 Solicitor? Do you want to waive on the
7 opening on ---

8 SOLICITOR SHEALY: I'll waive.

9 THE COURT: Okay. Mr. Grimes?

10 ANDREW GRIMES: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 ANDREW GRIMES: Good morning. Do you
13 remember back on Tuesday afternoon, in my
14 opening statement that I basically said that
15 this case is about, 'where was Jarret about
16 6:30 on September 15th, 2010?'

17 The answer to that question is -- listen
18 to his grandmother, Ms. Graddick. As you
19 heard her testify, she saw this car pull up,
20 a red car. She said that it was about 6:34.
21 The boys called to Jarret, Jarret ran over
22 there and got in with his buddies. "Don't
23 get in that car." But Jarret didn't listen
24 to her. If he had, we would know with a
25 hundred percent certainty where he was. But

1 we know that he was there at her house with
2 her, helping out in the yard, and with Mr.
3 White.

4 There is no one that anyone will be able
5 to come in here, such as Brian Mazyck, who
6 probably should be at a fourth table, and
7 make up a story about Jarret running through
8 some cuts and all this stuff. Or somebody
9 like Kevin Smalls coming in and saying,
10 "Yeah, I dropped him off, picked him up."

11 We would have known for sure if he had
12 listened to his grandmother. But he was a
13 young man. As young men tend to do, they
14 have other things on their mind. On his mind
15 was girls. You heard a lot of talk about
16 texting girls, going out to Trident, talk
17 about girls getting some crabs, liquor,
18 meeting with girls that night.

19 Anyone who is a parent knows that kids,
20 young men, teenagers, they are liable to
21 sneak out the windows to go meet girls.

22 We heard Mr. Smiley, in his opening
23 statement, go through the role of everybody
24 in here, what their jobs are and everything.
25 The job of the police is to investigate the

1 crime. If they get a report of a crime, they
2 go out and they find a video, talk to
3 witnesses. Listen to what the witnesses
4 said.

5 Now, Detective Simmons was busy and he
6 can delegate. He can say, 'Sergeant Wills,
7 you go do this.' 'Sergeant Smith, you do
8 this.' 'Officer so-and-so, you do this.'

9 We heard that Sergeant Wills talked to
10 Jarret after he was arrested. Jarret told
11 him that he wasn't in the car at 6:30, that
12 they picked him up at his home.

13 Well, how hard is it to drive from the
14 Mount Pleasant police station down 17 to
15 , walk into the driveway,
16 'Hello, Ms. Graddick. Do you have a few
17 minutes of your time? We have a few
18 questions about where Jarret was.' Ten or
19 fifteen minutes.

20 How hard would it be for him to make a
21 phone call, dial the number, 'Hello, Ms.
22 Graddick' -- ten or fifteen seconds?

23 And he's too busy to do that himself, how
24 hard is it to send someone else down there?

25 The reason that I make a big deal about

1 that is because it is important to have full
2 investigations. You want to be fair, have an
3 accurate and complete investigation. We've
4 all seen stories of people being in prison
5 ten, twenty, thirty years, who have been
6 cleared.

7 Everything isn't always what it first
8 appears to be. Something may look suspicious
9 and -- no doubt, Jarret looked suspicious.
10 He was sitting in the car shortly after a
11 robbery, there was a gun, money, shirts. If
12 I sued the police for wrongful arrest, I'd
13 probably get sanctioned and disbarred to
14 bring such a silly suit.

15 But when you try to deprive someone of
16 their liberty on an armed robbery charge, you
17 better do all your work and not make
18 assumptions, just assume that someone is
19 guilty.

20 The last people who spoke to Ms. Graddick
21 are you. As Judge Dennis noted, you have
22 been on time, we've seen you take notes,
23 you've been listening, watching. These are
24 all things that you will consider when you
25 determine a witness' credibility.

1 If for some reason, you missed something,
2 Miss Deborah (court reporter) can play it
3 back or answer that question. Sometimes we
4 will get a question about 'can we get a
5 transcript of the testimony', and that's not
6 possible at this point. It takes time to
7 type it and everything but we do have and
8 audiotape where you can listen, we can play
9 it back.

10 Speaking of credibility, I want to talk a
11 little bit about the witness' credibility.
12 In this case we have a whole stack of
13 evidence over here. You didn't hear much
14 objection about all of this (indicating
15 exhibits). Like I said in my opening, we are
16 not arguing about what happened. We're
17 arguing over who did it.

18 There's only been three witnesses who
19 have testified to direct knowledge of where
20 Jarret was around 6:30 on September 15th,
21 2010. One is Brian Mazyck, Ms. Graddick and
22 Mr. White. Compare Ms. Graddick with Brian
23 Mazyck, who is looking at jail time. Ms.
24 Graddick may be concerned about Jarret going
25 to jail. They may have equal concerns there.

1 Then, there may be the argument about who
2 came forward. Brian Mazyck was caught dead-
3 to-rights. His only way out was to make a
4 deal. So obviously you can't totally believe
5 his version.

6 You heard Judge Dennis at the beginning
7 of the trial say that we don't have to come
8 forward with any evidence. It's the police's
9 job to investigate.

10 Ms. Graddick was seventy-two at the time,
11 I doubt that she was walking down to the
12 police station but it wouldn't have been that
13 hard for them to have come out and talked to
14 her.

15 Who was forthright? For example, I asked
16 him what Bezel meant, and he had no idea. I
17 don't know if anyone ever had a nickname that
18 didn't have a story behind, a meaning, some-
19 thing to it. Maybe it meant embezzle, he was
20 embezzling Ms. Shealy, trying to get all
21 these deals -- get the armed robbery
22 dismissed, got a criminal sexual conduct
23 dismissed. He's probably trying to get this
24 one dismissed.

25 And who was contradicted by other

1 witnesses. The only witness who contradicts
2 what Ms. Graddick says was Mr. Pants-on-Fire.

3 There was no reason for Mr. Davis to take
4 sides in this case. He said that there were
5 four people in that car, both times. He got
6 a good view, talked about gloves, masks,
7 shirts. He seemed fine to me.

8 Then we have Ms. Lyons. She was very
9 specific about what Kevin Smalls was doing.
10 Well, I disagree with some of her -- while I
11 might be judging her myself, relying on a lot
12 of assumptions, she obviously was right. She
13 was so sure that the persons outside,
14 standing by a car, Brian Mazyck, was so sure
15 that he was involved in that.

16 Then they talk about what testimony was
17 corroborated. Ms. Graddick talks about that
18 Melvin was there. Melvin came in and
19 testified.

20 Brian Mazyck said that he was at his
21 brother's house, then they went to
22 McDonald's. There was a video there but we
23 never saw that video.

24 We heard the manager of Walmart testify
25 that there are thirty-six outside cameras.

1 there. We saw three angles. If they have
2 been there from 5:30 to 6:30, they would have
3 shown up more than three times.

4 And he was a convicted fellow. Mr.
5 Graddick didn't have a record. Obviously his
6 charges are being dismissed. He's looking
7 for a deal.

8 Now, also talking about credibility,
9 someone will make mistakes. Mr. Davis, I
10 think made a mistake. He said that he saw
11 the car between ten and twelve. If I got up
12 here and argued that the whole case was wrong
13 because he said ten to twelve, that would
14 have been what you call unreasonable doubt
15 and I would be laughed out of the courtroom
16 or the jury room. It was almost three years
17 ago and he thinks that it was between ten and
18 twelve but all the facts that he talked about
19 were consistent with everyone else.

20 Like Mr. White, when we asked him what
21 day it was, he said that it was September
22 18th. Obviously it wasn't September 18th. But
23 obviously there wasn't a red-and-black car
24 that picked him up on September 18th either.
25 He described the events, just like Mr. Davis.

1 if someone makes a big deal out of the fact
2 that he said September 18th, 'well, he must be
3 lying', then why wouldn't that same rationale
4 apply to Mr. Davis?

5 I also want to talk a little bit about
6 memory. It's out -- how can you be sure that
7 Ms. Graddick and Mr. White are correct about
8 the time? It's been a long time ago. She's
9 older, has some health problems. But
10 sometimes maybe something stands out that
11 you're going to remember. Her grandson gets
12 arrested, how hard is that to remember.
13 Remember, it was only a few hours at that
14 point. For example, 6:34 and he was arrested.
15 -- if she got a call by, say, 9:30, that's
16 only three or four hours. That's why I asked
17 a lot of questions about her background, to
18 show that she knows her history and I wanted
19 you to get to know her a little bit more. I
20 know that my grandmother has all her memory,
21 she would recognize me. She talked about her
22 career, her husband, his jobs. She might not
23 know all of Jarret's friends but when you're
24 seventy-two, you're probably not going to
25 hang out around her -- not when you're out

1 looking for girls. She wouldn't know all of
2 his friends. Again, it's been three or three
3 and a half years and people change. You can
4 see how they were dressed that day.
5 Sometimes you may see people that you know
6 but they are dressed differently and you
7 might not recognize them.

8 Talking about stuff that remains in your
9 memory, there are events that stand out. Who
10 in here know what we were doing on September
11 11th, 2010. Who knows what we were doing on
12 September 11th, 2001. Some things you
13 remember.

14 Now I want to talk a little bit about the
15 DNA and the car stop. You heard that this is
16 a high risk car stop. You heard that the
17 officer decided to bring them out one at a
18 time.

19 If someone had just gotten in that car
20 and the next thing they knew they were being
21 pulled over, guns are pointed at them, it's
22 easy to say how you should act but it hard to
23 say how you actually would act under the
24 stress of that event. If you look at some of
25 the pictures, I think that there is a speaker

1 box in the trunk of that car. That speaker
2 box might deflect a bullet and that might be
3 way they got down there. Or maybe it was
4 because you're trying to sit, as you're
5 supposed to.

6 You heard testimony that he's taking the
7 gun and pointing it at Mr. Smalls, that he
8 tried to jump in that front seat and drive
9 off. But when the police surrounded them and
10 he couldn't do anything, he didn't want to
11 get shot, so he picks the gun up and throws
12 it away. I mean, if the police out there had
13 seen a gun near somebody, who knows what
14 would have happened.

15 As to the clothes, I think that Mr. Meen
16 testified that there is no way to tell whose
17 DNA got on there, how it got on there, when
18 it got on there, stuff like that.

19 Officer Zeitner, he testified that he
20 didn't see anyone trying to change clothes.
21 It was only Ms. Alfaro who testified to that.
22 You can watch the video yourself -- I think
23 at most you see the shoes. You can't really
24 see anybody taking their shirt off. I don't
25 believe the video shows that. Obviously the

1 clothes that Jarret was wearing when they got
2 out of the car do not match the description
3 of the people who did the robbery. No one
4 from the store -- nobody ever ID's any of
5 these shirts as being the shirts that the
6 robbers wore before.

7 I want to talk a little bit about
8 circumstantial evidence. The reason that we
9 want to talk about that is because we only
10 had three witnesses who had direct knowledge.
11 I believe Judge Dennis is going to advise you
12 on the law on circumstantial evidence and
13 direct evidence.

14 Circumstantial evidence is treated as
15 direct evidence but it is a little different.
16 I hate to read but I want to make sure that I
17 get this right, "To the extent that the State
18 relies on circumstantial evidence, all
19 circumstances must be consistent with each
20 other and when taken together point
21 conclusively to the guilt of the accused
22 beyond a reasonable doubt. If these
23 circumstances merely portray the defendant's
24 behavior as suspicious, the proof has
25 failed." There is more language there but

1 that is sort of it in a nutshell.

2 As I said in the beginning, obviously
3 Jarret's circumstances are suspicious. I
4 would be insulting your intelligence if I
5 said otherwise. But do all of the
6 circumstances taken together point
7 conclusively to his guilt. By "all", that
8 includes Mr. Pants-on-Fire. How do you
9 reconcile his testimony with the other
10 testimony in the case and say that he is not
11 involved? I haven't quite figured that out
12 yet. I'm sure that Ms. Shealy will give you
13 her explanation.

14 But there might be another explanation
15 that could easily explain what happened here.
16 I ask that you consider that, that you can't
17 rule it out. It could have happened that Mr.
18 Smalls, Brian Mazyck were at the Walmart
19 around 5:30, that Brian Mazyck realizes that
20 he doesn't have any money for girls, crabs,
21 liquor. He knows how the Cricket store
22 works, he's paid bills there before. He
23 knows where they keep the money at. He is
24 the only one among all the ones there that
25 has been identified as a customer of someone

1 who has been in the store.

2 He discussed the situation with Kevin.

3 They leave. Meet Keenan. Then they get a

4 fourth person, maybe it's a friend of Keenan,

5 maybe it is Brian Mazyck's brother, a friend

6 of Brian Mazyck. We don't know who it is.

7 Then they go back to , drop

8 off Keenan and this fourth person. They go

9 do the robbery, come back, they pick them up.

10 The fourth person, maybe he gets freaked out

11 because he knows that Mr. Blain was sort of

12 following them. He said, 'I'm going to cut

13 my losses and just run through these woods.'

14 There's a lot of woods out there.

15 Mr. Davis never saw anyone get in the car

16 but you can assume that they did. Then they

17 go back to their original plan: crabs,

18 girls, liquor. They roll by Jarret's house,

19 pick him up, come back out, head where they

20 are going, they get stopped. Arrested.

21 Maybe you will say, 'Mr. Grimes, you're

22 just trying to trick us with this fourth

23 person. You're trying to muddy the waters,

24 play games with us.' Well, we know from the

25 DNA reports that there is this unidentified

1 contributor to the shirts, gloves, and we
2 don't know those people are. Mr. Meeh said,
3 'Well, I didn't run them through CODIS'
4 thought he didn't say exactly why. Said that
5 it wasn't like a homeowner in a burglary
6 could say 'that shirt yours, not mine.' I am
7 not sure if I understand that difference. We
8 know that the shirt there was involved, it's
9 evidentiary. That's why they were testing
10 it, took the swabs. It can't be that hard to
11 take a swab and run it through CODIS just to
12 check it out. Do a fair, accurate and
13 complete investigation.

14 I want to thank you for your time, your
15 considerations. We probably won't see each
16 other again. I hope you have a good holiday
17 season, a good Christmas. The last thing
18 that I would ask is that you help Jarret, his
19 mother and his family, to have a safe and
20 wonderful Christmas by giving them one of the
21 best presents that you could, finding him
22 innocent. Thank you.

23 THE COURT: Mr. Runyon.

24 WILLIAM RUNYON: Ladies and gentlemen
25 of the jury, in my experience in all these

1 case, it's the little things that kind of
2 bring everything together. What struck me
3 when I first got in this case, a long time
4 ago, was --- while back in my family we had
5 horses. We had them for twenty-one years and
6 it took me twenty-one years to figure out
7 that something that ate while I slept was not
8 an investment. But the simple fact of the
9 matter is that you, uh, got kind of messy
10 walking around barnyards, horse stalls, have
11 you.

12 That reminded me of Detective DeCamp.
13 Remember Detective DeCamp? He was the young
14 police officer who arrived on the scene, who
15 was just a few minutes ago. Later on, after
16 securing the scene, what have you, he
17 actually walked through the field, what have
18 you. Remember, I asked him -- I said, 'That
19 messed up your uniform, didn't it?' 'No, it
20 didn't really mess my uniform', he said
21 nothing snagged or anything like that. Said
22 'but it did mess up my shoes, my shoes got
23 all muddy.'

24 Brian Mazyck identified State's Exhibit
25 62 as my client's shoes. They haven't been

1 in any barnyards and they haven't been in any
2 muddy fields, haven't been in any muddy
3 woods. It's that simple.

4 It's little details like that that -- the
5 State just throws these things up against the
6 wall, they throw it up against the wall to
7 see what sticks.

8 They picked up Mr. Graddick later.
9 Keenan was in the car. Keenan Coakley was in
10 that car and there's no question about that.
11 The question is when he got in that car.
12 That's the question. What did the State
13 prove to you, unless they tell you that the
14 State's witness totally is lying, was Mr.
15 Davis -- remember Mr. Davis? He's the --
16 this guy who worked hard his life, lives
17 there in Mount Pleasant, has got a child.
18 The child was playing out in the yard. It's
19 totally believable. He's out there -- and I
20 believe that he was two or three years old,
21 so he was going to be out there with the
22 child, watching the child because he didn't
23 want the child to be out in the street.

24 This car comes down the street. Two guys
25 get out, went in the woods. Then the car

1 leaves. That is his testimony. That is the
2 theory of the State's case, by the way. That
3 is what Ms. Shealy told you that she was
4 going to prove to you, that the car came down
5 the street once and then it came back again
6 later. Then the car comes later and two guys
7 got in the car.

8 Q. Mr. Davis, did you see any Coakleys
9 go in the woods that day?

10 A. No, sir.

11 Q. Did you see any Coakleys come out of
12 the woods that day?

13 A. No, sir.

14 Well, Mr. Davis was asked by Ms. Shealy,

15 Q. There are a lot of Coakleys out in
16 Mount Pleasant, aren't there?

17 A. Sure are.

18 I get up and I say,

19 Q. Mr. Davis, do you know Keenan
20 Coakley?

21 A. Sure do.

22 Q. Did you see him go in the woods that
23 day?

24 A. Sure didn't.

25 Q. Did you see him come out of the

1 woods that day?

2 A. No, sir.

3 Which means that at some point in time,
4 after that car left , Keenan
5 Coakley got in the car.

6 And what do we find out about Mr. Smalls?
7 Mr. Smalls is always giving people rides and
8 Mr. Smalls knows Keenan Coakley. And Keenan
9 Coakley -- and all these people know each
10 other. Keenan Coakley was in the car.

11 By the way, the only person who said that
12 Keenan Coakley grabbed the gun was -- the DNA
13 test guy didn't say it, but we'll talk about
14 touch DNA in just a minute -- was Brian
15 Mazyck.

16 And Mr. Mazyck is the fellow that I know
17 you want to have your back. I've sure you've
18 reached that conclusion. If you're applying
19 for a loan, you want Mr. Mazyck saying -- you
20 can go the bank and rely on Mr. Mazyck.

21 Mr. Mazyck said the car only went down
22 the road one time. Okay. Either Brian
23 Mazyck is wrong or Mr. Davis is wrong.

24 And Brian Mazyck said, 'Oh, yeah, I could
25 see that money in the back.' Remember that?

1 And it's the little things, the little
2 things, the little things. *I can see the*
3 *money in the back.'*

4 Well, there is a picture of the money in
5 the back. Remember that? Those pictures?
6 You remember that. The console was open in
7 the back, the money was spilling out.
8 Anybody sitting in the back seat would see
9 it. Wouldn't they? They must have guilty
10 knowledge. Those people sitting in the back
11 seat must know what's going on.

12 Once again, it's the little things. The
13 little things.

14 The State and the defense agreed not to
15 call a witness. That agreement was that the
16 officer started the inventory search of the
17 car, that he opens the console of the car and
18 the money spills out. No one sitting in that
19 back seat could have seen the money the way
20 that Brian Mazyek said. It just didn't
21 happen that way. The little things. Little
22 things.

23 I think that there was a song about
24 little things mean a lot. Maybe I am dating
25 myself, but there is a little song about

1 that:

2 Now, the fact of the matter is that the
3 Court is going to tell you -- and if I say
4 anything about what the law is and it should
5 be different than what the judge tells you,
6 which would be inadvertent on my part, then
7 take what the judge tells you. I assure that
8 it would be totally inadvertent on my part.

9 The Court is going to tell you that
10 merely being present at the scene of a car
11 (sic) -- merely being present at the scene of
12 a crime, at that car, doesn't make you guilty
13 of the crime. The circumstances must all
14 come together to say that Keenan Coakley was
15 one of those people that ran up to that
16 store, ran back through the field, ran back
17 through the muddy woods -- with clean shoes
18 (displaying shoes).

19 I guarantee you that if there was a trace
20 of mud from Keenan Coakley that could be
21 related to those woods, -- you heard the
22 expert from SLED, -- they would have been
23 able to identify it.

24 The other thing is, and remember this.
25 They took them out of the car with a routine

1 police procedure. They took them out of the
2 car and put them in a different patrol car
3 and we didn't hear any police officer saying,
4 'Well, Keenan Coakley was in my car and, boy,
5 there was all a bunch of mud down in the
6 floorboard.' None of that. Keenan Coakley
7 didn't run through no woods.

8 Mr. Grimes told you that circumstances
9 have got to come together and point
10 conclusively to the question of guilt.

11 Now, there's no way that Keenan Coakley
12 can prove that he wasn't in that car that
13 day, because he was. You know, Brian Mazyck
14 told you about Mr. Smalls gives rides to
15 everybody, picks them up, drops them off;
16 that that is the way that he does things.

17 There is absolutely no evidence that Mr.
18 Coakley was one of that got in that car on

19 There just isn't. As a
20 matter of fact, there's affirmative evidence,
21 unless they don't want you to believe Mr.
22 Davis, there is no evidence that he got in
23 the car on . . . If he didn't
24 get in the car on . . . then he
25 wasn't one of the robbers. It's just that

1 simple.

2 Now, there is a hundred and some-odd
3 exhibits in this case, a hundred and some-odd
4 exhibits. Let's boil it down a little bit.

5 Was Mr. Coakley in the car? Sure.

6 Remember the discussion about DNA? The
7 gentleman from SLED and the lady who appeared
8 by Skype, they talked about how you've got to
9 be careful when you're doing touch DNA.

10 Because -- you know, as a practical matter,
11 maybe my DNA is on those shoes right now
12 because I picked them up. I didn't wear them
13 but I picked them up. If they were to swab
14 them now -- because it's real easy to get DNA
15 on things. If you get in the car -- and I
16 still don't understand this whole thing about
17 these clothes that were in the car, but these
18 people were wearing clothes. Mr. Coakley was
19 wearing clothes when they got out of the car
20 and they didn't bring any clothes in here to
21 say 'oh, these pants are muddy', none of
22 that.

23 Now, little things.

24 If Ms. Lyons had been big on the Pig,
25 maybe there wouldn't have been a phone call.

1 But she went to Walmart for groceries and she
2 made the phone call, which led ultimately to
3 the traffic stop. But at no time -- and by
4 the way, what did Mr. Blain of the phone
5 store tell you? He said, 'You know, it's not
6 a secret how we do the money in our store.
7 Anybody who is a customer of our store knows
8 how the money is done.'

9 Q. Was Kennan Coakley one of your
10 customers?

11 A. No.

12 Q. Mr. Mazyck, have you ever been in
13 that store?

14 A. No, I don't think so. Oh, maybe I
15 paid my brother's bill once or twice.

16 Brian Mazyck is at the center of this
17 situation and he's got every reason to want
18 you to believe that Mr. Coakley was involved
19 in this versus maybe one of his friends that
20 he talked into it.

21 Now, Brian Mazyck -- as a matter of fact,
22 Mr. Mazyck tells you that he didn't do
23 anything. He's as pure as the wind-driven
24 snow as it would relate to anything involved
25 in this crime. He didn't go to the liquor

1 store, he didn't buy crabs, he didn't have
2 any money. I mean, he couldn't even buy
3 something at McDonald's. Mr. Smalls didn't
4 have any money to give him anything either.
5 Maybe he was confused because he's on insulin
6 and he was wacky. As he said, sometime he
7 gets confused when his insulin is low and his
8 sugar is high. But the simple fact of the
9 matter is that it is the little things.

10 Another little thing -- remember the
11 picture, the list of evidence about cell
12 phones? Brian Mazyck said, 'Oh, Mr.
13 Coakley's cell phone was in the back seat.'
14 Mr. Mazyck was testing back and forth to
15 somebody. He said that Mr. Smalls was
16 testing back and forth to somebody, some
17 girls. If there was any evidence that Mr.
18 Coakley had been in touch with Mr. Mazyck or
19 Mr. Smalls that afternoon, this fine lady
20 (indicating Solicitor) would have brought in
21 here and put a witness on the stand and said,
22 'You tell us about those cell phones.' There
23 are all records. There was no connection.

24 Now, DNA means that Mr. Coakley was -- to
25 the extent that he was around, some of the

1 things may have had his DNA on them.

2 Remember, there is what they call touch DNA.

3 That's because we all -- you know, you take a

4 shower in the morning, shave and what have

5 you, you think you're all clean but after we

6 heard the SLED expert it's more that we're

7 all walking around kinda of just shedding

8 this "cloud" of DNA as we walk down the hall.

9 That's what it sounds like. And I guess to a

10 certain extent -- and he said that some

11 people do, some people don't.

12 But the simple fact is that he was in the

13 car. He's probably been in the car before.

14 He knew Mr. Smalls, ridden with him before.

15 You can go in and you can say, 'Well,

16 it's Friday. Let's go home. Let's just go

17 ahead and -- here's the indictment on Keenan

18 Coakley, let's go ahead and vote.'

19 But the Court is going to tell you what

20 you've got to do. You've got to decide

21 whether the State has proven its case beyond

22 a reasonable doubt. You know, that's the

23 toughest part of this whole thing. That's

24 the toughest part because you want to believe

25 the State's case, you want to believe

1 everything that the State has said. You want
2 to believe that the State is right, that
3 there are people in here that should be found
4 guilty.

5 But in order to do that, the little
6 things -- the little things have to all add
7 up. That's what a circumstantial evidence
8 case is all about.

9 What struck me at the beginning of this
10 case was the mud on the shoes of Officer
11 DeCamp. It just didn't -- it wasn't there,
12 associated with Mr. Coakley. For years I
13 heard, 'take the boots off if you're coming
14 in the house.' Take your boots off, on the
15 farm. I've heard that more times than I can
16 shake a stick at.

17 Or, 'You've got mud in the back of my
18 car.' But the police didn't have to vacuum
19 out the back of the car that Mr. Coakley rode
20 in. His shoes are right there. Any shoes
21 that he had that day, they would have been
22 able to take them from him and prove that he
23 went through the muddy field. They're not
24 here. Which means that if Mr. Davis says
25 that he didn't get in the car, he didn't go

1 in the woods, he didn't come out of the
2 woods, that he got in the car later. It was
3 a short period of time, but he got in the car
4 later. That's why I am going to ask you to
5 find Mr. Coakley not guilty. Not because it
6 is some specious thing but because the little
7 things are not there. He didn't have muddy
8 shoes, those shoes aren't muddy. The shoes
9 that he was wearing when he got out of the car
10 weren't muddy, because they would have
11 brought them in here, too.

12 I want to thank you for your attention.
13 It's been a long case and it's been trying on
14 you. If there is anything that I've said or
15 done during the course of this trial, that
16 has offended you or made you mad, by all
17 means I apologize for it. In forty-six years
18 of practicing law, I don't believe that I've
19 had a jury or juror that has held anything
20 against a litigant that I've represented
21 because of something that I've said or done.
22 If I have said or done something that has
23 made you upset or mad during this trial -
24 - well, if I have really made you mad, after
25 this whole thing is over with, regardless of

1 your decision is, call my office and give me
2 down the road for it. That's what this is
3 all about. They call it practicing law,
4 because we never get it right. That's kind
5 of humorous except doctors practice medicine
6 and -- I told my doctor that and he didn't
7 appreciate that, because he thinks he gets it
8 right all the time. I think he does. But I
9 thank you for the attention that you have
10 given this matter, allowing us this time. I
11 want to thank you on behalf of Mr. Coakley
12 and I ask that you find Mr. Coakley not
13 guilty.

14 THE COURT: Mr. Smiley?

15 JIM SMILEY: Good morning. I certainly
16 had a sleepless night last night. I stand in
17 front of you with twenty years of practice,
18 terrified. I've represented Kevin Smalls to
19 the best of my ability but I'm scared that I
20 am not doing a good enough job to portray my
21 client. It's easy to represent a guilty
22 person. It's hard to represent an innocent
23 person.

24 In this case it's been my pleasure to
25 represent Kevin. What I asked you from the

1 very start, during my closing, I ask you
2 again before I start my closing. While this
3 case has three codefendants in the room, each
4 defendant is to have a separate trial.

5 Mr. Graddick, Mr. Coakley, y'all have to
6 make the decision whether they robbed that
7 store.

8 Mr. Smalls, we know that he did not rob
9 that store but you have to make the decision
10 whether he was part of a preplan, acted in
11 concert with the others. We base that on the
12 evidence that we have.

13 Y'all have a really tough job. There are
14 certain things that you are sit back there
15 and say, 'We know this. We know this.' This
16 is where the problem comes, they are going to
17 ask you, and they have to, to assume, to
18 guess -- and that, by its very definition, is
19 not beyond a reasonable doubt. When you say,
20 'you know what, this may be what happened.'
21 That's reasonable doubt right there, when you
22 say "may be." If you sit there and you
23 hesitate about what went on, that's
24 reasonable doubt.

25 I am going to try to stick to the few

1 things that we know. We know that two black
2 men with masks came in -- well, we are not
3 sure that we know that they were black men.
4 We heard some testimony about that but -- we
5 know that two men came in. Miss Lynn said
6 that they broke through the field, through
7 those trees -- and you can see those trees.
8 While they say that this field has changed,
9 you can look at the overhead photograph and
10 you've be able to see the wood line, the tree
11 in the field. Two men broke out of the
12 field, towards the door of the phone store.

13 Miss Lynn and Mr. Blain exit the store,
14 and I would have probably done the same
15 thing, yelling 'robbery, robbery, call 911.'

16 We know from Ms. Lyons and we know from
17 Brian Mazyck that Kevin was there.

18 Now, we know that.

19 But I -- and I can't use "but", but -- I
20 don't understand how Kevin was -- was part of
21 this preplan that he was the get-away driver,
22 or the lookout, or both? So I am going to
23 break it down and look at each one.

24 It doesn't make sense that he was a
25 lookout, if that was his role, because the

1 cell phones that supposedly belonged to
2 Keenan and Jarret were on the backseat. So
3 if he was the lookout, he had no way to
4 communicate. And if he was supposedly the
5 lookout, would he have been right in front of
6 the store, standing out there?

7 You'd have to think that he was part of
8 The Apple Dumpling Gang to sit right there.
9 I keep using that. Don Knox and Tim Conway
10 are funny and they were dufusces. But I hope
11 you don't think Kevin is so stupid that he
12 would go where there is thirty-six camera
13 watching him. I mean, every time I pull into
14 a Walmart, I see cameras everywhere. So if
15 you're the, quote, unquote, "lookout", I
16 guess that you're communicating by --
17 yelling? I don't know. But they weren't
18 communicating by cell phones. We would have
19 heard about that. If they had cell phone
20 records, they would have brought them in here
21 to show you.

22 So I hope that you will agree that in
23 trying to make their case the hand of one is
24 the hand of all that they certainly haven't
25 proved that Kevin Smalls was a lookout. It

1 just doesn't make sense.

2 Now, as the get-away driver? That makes
3 even less sense. Kevin Smalls to act as the
4 get-away driver in this case -- I mean, a
5 get-away driver wouldn't have parked in the
6 Walmart parking lot. A get-away driver would
7 have been parked back on that back road,

8 or somewhere else so the guys
9 could jump in the car. They weren't going to
10 jump in the car in the Walmart parking lot.
11 It just doesn't make sense.

12 Or if you were the get-away driver, if
13 they want to tell you that he was going to
14 pick up somebody on -- why
15 would he go over and sit in front of the
16 place robbed where he'd be seen by everybody
17 and then drive around to this -- it's not an
18 easy place to get to. As you've already
19 heard, they had to make U-turns and
20 everything else to get there. That just
21 doesn't make sense.

22 I ask that you use common sense.

23 Now, Ms. Lyons hunch that that car was
24 involved, that was right. The way that she
25 came to her hunch, I don't agree with. But

1 she told you what she did, and I appreciate
2 that. She said that Kevin Smalls -- even
3 though she never identified him. Who knows
4 that was even Kevin, but -- she identified a
5 man standing outside the car, leaning on it,
6 in front of that area that is part of Walmart
7 in the general vicinity of the Cricket store,
8 the liquor store.

9 She said that he was standing there. I
10 tried to pin her down about 'why did you pick
11 this guy?' I'd ask her before about that,
12 about how she was. She said that she was
13 nervous, that she was looking around. I
14 asked her what it was about Kevin that showed
15 that he was nervous and looking around. I
16 don't think that shows -- well, I hope that
17 you don't think that that "evidence" is
18 beyond reasonable doubt, that somehow he was
19 part of the preplan, that he was somehow
20 acting in concert.

21 And I did ask Brian Mazyck -- and you all
22 are going to have to decide what to do with
23 Brian. But I asked him:

24 Q. When that robbery was going on, did
25 you think that it was Jarret and Keenan?

1 A. No.

2 Q. The two guys that you had been with
3 earlier that day?

4 A. No.

5 You decide whether there was a preplan
6 that included Kevin or not in this case.

7 Now, Mr. Davis. Mr. Davis, he had no dog
8 in this fight. He saw a red car come down
9 the road. That's important, that it went to
10 the end of the road. Jamie Coakley, who
11 Brian says he knew, lived down at that end of
12 the road. It's been established that Jamie
13 knew these fellows, that Kevin went down to
14 that end where his house was and that he
15 dropped two guys off. That would make sense.
16 Then he left.

17 Now, when I first got this case, in
18 looking at it, Mr. Davis said that he saw
19 white gloves. That worried me a little bit.
20 If my guy dropped two guys off at Jamie's
21 house and they've got white gloves on,
22 something -- it's something that you've got
23 to think about. And I didn't get it until
24 Mr. Davis testified. Those guys got out but
25 they didn't go in the woods back there, they

1 out and then they walked up the road -- and I
2 tried to help you with the distance there,
3 but -- they walked up three houses, towards
4 Mr. Davis' house, and went into the cut
5 across from his house. That's when he saw
6 the white gloves. I will submit to you that
7 made sense, because when they got out of the
8 car that's when they prepared for the
9 robbery. That's when Mr. Davis saw them.

10 Now, if I'd been Mr. Davis, I would have
11 been thinking that something was up right
12 then. But -- okay. And I certainly am not
13 casting any aspersions on Mr. Davis, please
14 understand that.

15 This cut -- it makes it sound like this
16 cut is a paved highway through to the
17 Walmart. It's woods. If you've been in that
18 area, you may be familiar with it. It's a
19 pretty good bit to get through there -- down
20 the road, through the field, into the trees,
21 across the highway and into the phone store.
22 That is a pretty good ways, it's not like
23 it's right next to it. I think that's pretty
24 important in Kevin's mind as this was going
25 on.

1 Mr. Davis got the time wrong and while
2 that's -- as time goes, memories fade and
3 change. That doesn't mean that anybody is
4 not telling the truth. But as you replay
5 things in your mind, as you're telling it, it
6 grows. I think that's what it shows, that it
7 grows.

8 Then Mr. Davis said that the red car came
9 down, went to the end of the road, and
10 dropped two people off. Four people in the
11 car when it went down, two in the car when it
12 came back.

13 Then when it came back down the road, the
14 second time, third time he's seen it as it
15 went in and out, it went to the end of the
16 road, turned around, it came up and it
17 stopped after the fellows walked out of the
18 woods by his house, where that cut was.

19 What does that show? It shows that Kevin
20 picked up the fellows. That's all that it
21 shows.

22 Now, I'm trying to stick to the things
23 that we know.

24 We've got the Walmart video, and we could
25 start with that first video that has the

1 strip on the side -- starting about 6:28.

2 Thank you. They showed you the car as it was
3 leaving the Walmart area. This is all in
4 evidence, you're going to have it. Starting
5 the video at 6:28, -- if you don't mind.
6 (Video playing), -- that's fine. Thank you.

7 Now, if you'll watch, in about five
8 seconds -- if I've got my times right --
9 there it is, 6:28:29, there he is pulling in.
10 Now, I want you to watch the speed because
11 there was a big deal made about how it was
12 flying out, like that was some evidence of
13 guilt.

14 (Video playing), first of all we see them
15 pulling in. At 6:35:30, just a little
16 before. Then five minutes later, (video
17 playing), you see him coming out. So they
18 were in that area for about five minutes.

19 Then if you would go to the center camera
20 of the Walmart -- and I do appreciate Ms.
21 Shealy's help. The State doesn't have to
22 assist me in trying to get all that done, but
23 it's very nice that they are cooperative and
24 we appreciate their help. I'm not any good
25 with computers. If I had to do this

1 technology, we'd be at this all day.

2 At 6:35 -- if you want to just let it run
3 from there, (video playing), you can see some
4 people moving around. I just want it to run
5 for a minute.

6 Actually, could you back it up about two
7 more minutes -- (video playing). Right there
8 is good. Thank you. We'll just watch from
9 here, (video playing). See this gentleman
10 (indicating), watch him. He doesn't have
11 anything to do with this case but I just want
12 you to watch for a minute, (video playing).
13 See what time it is. I'm guessing the
14 robbery is going on. What is he doing? He's
15 looking around. He's trying to see what is
16 going on.

17 See the young lady, she's looking.

18 Everybody's looking.

19 Does he look suspicious? He's just
20 standing there, looking around, trying to see
21 what's -- now he's going towards it. All
22 right.

23 Keep letting it run, please, (video
24 playing).

25 I asked about the timing of the video,

1 was it real time. The gentleman told me that
2 it was but I think that you can tell that it
3 is a little choppy. I don't think that we're
4 getting all the frames on this, but y'all can
5 make that decision.

6 I kept looking for Ms. Lyons to come out
7 of the store, or for Kevin to come out of the
8 store. Unfortunately, while they've got
9 thirty-eight or thirty-six video cameras, we
10 don't have that angle.

11 (Video playing), there goes his car. You
12 can see the other cars moving around. You,
13 as the judges of the facts, can decide
14 whether it is peeling out, going fast.

15 I asked her about the screeching tires
16 because, you know, that concerned me too.
17 She never saw it. I will tell you that I've
18 gone over those bricks in front of the
19 Walmart, turned onto those bricks and my
20 tires have screeched before. But I'll let
21 y'all decide on that.

22 But I think what is important is that
23 back at 6:36, 6:37, (video playing), see that
24 car going out? You can see it's speed.
25 There you can see that car and you see its

1 speed.

2 Now, if you're the get-away driver, I
3 asked these questions -- if you're the get-
4 away driver, first of all there are a lot
5 quicker ways to get out of the Walmart
6 parking lot. When you first look at it, you
7 think 'what is he doing.' But the security
8 fellow told you that is a normal way that
9 people go out.

10 But if you're leaving so fast -- and it
11 took him over a minute and ten seconds to
12 where you see him. That's driving time. You
13 first see him at 6:35:30 and he is pulling
14 out and taking a right at 6:36:40.

15 Now, let's talk about the police stop.

16 I'm just trying to tell you what I see
17 and trying to show you the facts that are
18 reasonable doubt. I'm trying to stick to
19 things that we know.

20 The car stop on Kevin's car. The first
21 thing, he doesn't try to flee. All right.
22 If you're an armed robbery, part of an armed
23 robbery, we see it every day that people try
24 to evade the police. He didn't try to do
25 that.

1 When he was told to put his hands up, you
2 see them go up immediately. Now, armed
3 robbers, they try to get away.

4 I found that very interesting and I think
5 that it shows you the difference in the
6 defendants. Coakley tries to get over the
7 seat into the driver's seat. The two of
8 them in the back, the car is bouncing, things
9 are moving. Y'all got to see the car and
10 there was stuff everywhere at that point and
11 they yelling, "Go! Go! Go!" Kevin ain't
12 going anywhere. He stops, puts his hands up
13 immediately.

14 As they're saying "Go, go, go", he
15 doesn't know it but Brian Mazyck see that he
16 has a gun stuck in his back, the back of his
17 seat. He's not part of any plan.

18 Fortunately, Kevin's kindness of his lack
19 of being assertive, by being the guy who
20 worked hard and had a car, was getting him
21 sucked into an armed robbery.

22 Kevin Smalls dropped off his "friends" at
23 Jamie Coakley's house, then he ran to Walmart
24 to do some errands, return a movie. He
25 dropped off the movie at the Redbox, got back

1 in his car.

2 He saw a robbery, watched it. He got out
3 of there. That woman they were locking eyes
4 with, was giving him the eye, jumping in her
5 car, closing the door, -- I bet that he did
6 get out of there. I probably would have
7 gotten out of there, too, with an armed
8 robbery going on, some woman looking at me,
9 then getting in her car and getting on the
10 phone. 'Let's get out of here.'

11 Now, I guess that I do have to talk to
12 you about Brian. Brian Mazyck says that they
13 were in that parking lot a minimum, if you
14 take the shortest period of time, forty
15 minutes -- and I'm being generous here, 6:00
16 o'clock to 6:35. There are thirty-six
17 cameras.

18 The other thing that makes no sense is
19 this McDonald's thing. First of all, you've
20 got to understand that Kevin has been driving
21 people around. He works for his money. He
22 went and got Brian, paid his brother for
23 dogs. Then Brian goes into McDonald's,
24 orders food and then turns to my guy and
25 says, 'Give me some money.'

1 Kevin supposedly doesn't have any money,
2 but according to Brian what is going on with
3 him in the parking lot over there is that he
4 was going to buy liquor. With what?
5 According to Brian, he doesn't have any
6 money. It doesn't make sense.

7 So we really have to drop back to not
8 filling in holes, but we really have to drop
9 back to what y'all know beyond a reasonable
10 doubt. When you sit back there, please, I
11 beg of you, to deal with these individuals
12 separately. They are separately indicted.

13 Kevin Smalls did not participate in a
14 robbery, he was not of a part knowingly -- he
15 might have been a part of a plan, according
16 to the other two fellows, by being someone
17 who was kind enough to drop people off and
18 pick them up, for gas money or whatever. He
19 is getting pounded for it. He didn't choose
20 to be with these fellows.

21 Kevin Smalls is innocent. He is not just
22 not guilty, but innocent.

23 The State must prove that he was a part
24 of a preplan, that he acted in concert. Now,
25 Brian said that when the fellows got out of

1 the woods and got in the car that he knew
2 that something was up. I'm sure Kevin did,
3 too. But at that point you're stuck. That
4 is not part of a preplan, that's not part of
5 the crime. It might be accessory-after-the-
6 fact but it certainly is not armed robbery,
7 doesn't show that he was part of the plan.
8 They've got to show that he was acting in
9 concert, that he assisted those two gentlemen
10 knowingly in committing an armed robbery.
11 The evidence does not, does not come close.

12 I'm been doing this for about twenty
13 years, not nearly as long as the esteemed Mr.
14 Runyon. To get up here and to try to convey
15 to you all the things that I want you to
16 know, it's hard. It's really hard for me.
17 Your stomach is in knots because you want
18 truth done in this courtroom.

19 If you think these guys need to be
20 convicted when you look at the evidence.

21 But when it comes to Kevin Smalls, he is
22 not guilty. I beg that you give him a fair
23 and open trial, to stick with what you
24 know, not to make assumptions.

25 Y'all have been a wonderful jury. It's

1 been a pleasure to present you this case.

2 Please. He's not guilty.

3 THE COURT: Thank you, Mr. Smiley. Ms.
4 Shealy?

5 SOLICITOR SHEALY: May it please the
6 Court?

7 THE COURT: Yes, ma'am.

8 SOLICITOR SHEALY: Good morning. Let's
9 start with

10 Joseph Davis, who has been living over
11 there for forty years, knows his cut-
12 throughs. He saw an unfamiliar car. He saw
13 it go to the end of the road, not to Jamie
14 Coakleys' but to the fence that is tucked
15 away in the back, at the end of that road.

16 He sees two people get out. They are
17 dressed in dark clothing and white gloves.
18 They aren't going to Jamie Coakley's.

19 He sees that vehicle leave.

20 Let's go to the Cricket store. I didn't
21 realize until she testified that she's just
22 come out of high school, working at the phone
23 store with Mr. Blain. She looks out that
24 door and see two guys dressed in dark
25 clothing, with sunglasses on, faces covered,

1 come barreling into her store. What does she
2 do? She says, "Jim!"

3 What does Mr. Blain tell you? He tells
4 you that he saw one of them with a gun.

5 You couldn't see the bottom of their
6 faces. And he tells you something else, they
7 were tall, they weren't chunky they weren't
8 overweight, they had an athletic build.

9 What did they do? They did the right
10 thing. They got the heck out of there and
11 they start yelling, 'We've been robbed. Call
12 911.'

13 They seek shelter. They try the Sprint
14 store, it's closed. They try the next place,
15 it's unoccupied. They retreat into Jersey
16 Mike's.

17 The moment that Harlee Lynn gets into
18 Jersey Mike's, she gets on that phone that
19 someone else has already begun calling 911
20 and tells them what she saw.

21 Now, what does Mr. Blain do? He gets in
22 his vehicle and tries to go follow them.

23 What had been going on in the parking lot
24 at that time. Well, let's look at what Brian
25 Mazyck tells us. He told you about earlier.

1 when they went to the Walmart. Then they
2 went over to the McDonald's, he orders food
3 and then Mr. Smalls tells him 'I don't have
4 any money.'

5 Well, what does he tell you about when he
6 gets in that car initially when Kevin Smalls
7 goes to pick him up at his brother's? He
8 tells you that things were weird in there.
9 He saw Keenan Coakley's, Southfork-whatever
10 the emblem is, shirt in the backseat.

11 Mr. Runyon has missed the point on
12 something. What else did Brian Mazyck tell
13 you? He told you that Keenan Coakley's new
14 shoes were in the car. Where were Keenan
15 Coakley and Jarret Graddick, he asked. What
16 does Kevin Smalls tell him, 'Oh, they're
17 getting ready.'

18 When you get back into the jury room,
19 look at State's Exhibit 35, a photograph.
20 It's the backseat of the car where the gun
21 was ultimately found, where Keenan Coakley
22 was sitting, there's a pair of shoes. Those
23 are the shoes that he took off after the
24 incident. They're not the shiny new ones
25 that Brian Mazyck told you were in the car.

1 Mr. Runyon has gotten up here and he has
2 said, 'Oh, Detective DeCamp said that it was
3 muddy, muddy, muddy, muddy.' I believe what
4 Detective DeCamp said was, 'I had some dirt
5 on my shoes.

6 Those (indicating State's Exhibit 35) are
7 the shoes that were used for the robbery.

8 Brian Mazyck also thought that it was
9 weird that their cell phones were in the car.
10 After Keenan Coakley does not buy Brian
11 Mazyck the meal that he ordered at the
12 McDonald's, they first go and park by a
13 truck. Remember?

14 Then they move the car. They move the
15 car not near the liquor store that Kevin
16 Smalls is talking about buying liquor,
17 getting crabs, meeting up with girls,
18 watching movies. Ladies and gentlemen, Brian
19 Mazyck told you that that made him
20 suspicious. 'If you don't have money to buy
21 my lunch at McDonald's, he's thinking, 'well,
22 how are we doing to get crabs? How are we
23 going to get liquor? Why are we going to the
24 mall and how are we going to watch a movie?'

25 So can't you just picture it? red-and-

1 black car driving up, positioning itself so
2 that in that rearview mirror that Kevin
3 Smalls can watch what is going down in the
4 Cricket store. He's got the seat back just a
5 little bit so that he can watch what is going
6 on.

7 And then what does Jessica Lyons tell us?
8 These men -- these gentlemen, the attorneys,
9 are trying to suggest to you that Jessica
10 Lyons was looking at Kevin Smalls because he
11 was black. She told you that was ridiculous.
12 What drew him to her attention was not the
13 color of his skin but was his behavior. He
14 was outside the car at that point. He's
15 looking at the Cricket, he's looking around,
16 he's nervous. He's looking at the Cricket,
17 he's looking around, he's nervous. That's
18 what he did to draw her attention.

19 And isn't it interesting that she was
20 spot on?

21 The get-away man? Look at him. She
22 thought enough of his odd behavior that when
23 she calls 911, she tells them. And she takes
24 time out of her day to look at the license
25 tag, to help police. Aren't we glad that she

1 did?

2 People were yelling as they were running,
3 "Call 911!" It's interesting -- just as the
4 Walmart video, -- what is interesting about
5 the path that Kevin Smalls took out of the
6 parking lot is this. When he makes that turn
7 out of the Walmart parking lot, in front of
8 where the stores are, when you get to that
9 intersection before you turn right in front
10 of Walmart, what's to your left? The field.
11 You can see people running.

12 What does he do? He gets right back on
13 Why? Why in the world
14 would he go back up to at
15 that time except to pick up his buddies.
16 Jarret Graddick and Keenan Coakley were going
17 to have money for a good night tonight.
18 There was absolutely no other reason for him
19 to go down at that point but
20 to pick up his friends. No other reason.

21 And Jessica Lyons told you that when she
22 hears that car going out, when she sees the
23 car going out, that she hears spinning tires,
24 tires squealing.

25 Now, Mr. Davis tells us that while he is

1 still out on the road, the one that he is
2 familiar with, that this time, unlike the
3 first time, when that red-and-black car turns
4 down that it is not going at
5 a normal pace, that he is going fast. He is
6 looking for them, 'Where is Keenan Coakley,
7 where is Jarret Graddick.' The way that
8 Joseph Davis described it was that he saw
9 them coming out of the woods, and all of a
10 sudden they were gone. They got in the car.

11 What does Brian Mazyck tell you -- oh,
12 what is most important about what Joseph
13 Davis tells you is that Kevin Smalls, before
14 Joseph Davis sees them coming out of the
15 woods, Kevin Smalls stops right in the area
16 where they would typically come out. Brian
17 Mazyck tells you, no, that he stopped and
18 backed up when they started waving us down.

19 When that car leaves with the two guys
20 that had just robbed the Cricket store,
21 robbed it at gunpoint, it flies out of there.
22 It makes a U-turn on Porchers Bluff to head
23 back down Highway 17 South.

24 Now, what does Brian Mazyck tells us
25 happens in the car when they get in there?

1 One gets in with a gun. He can't tell you
2 which one that it was. He doesn't remember.
3 But one of them gets in with a gun.

4 They had those masks on their face.
5 Well, let's think about it, get the image,
6 (demonstrating with shirt over lower part of
7 face). The knot goes on the back of the
8 head. This part is covering the nose and the
9 mouth. Picture the image of that.

10 Sunglasses. Sunglasses found in the car.

11 They've got their eyes covered, they've
12 got their mouths covered, they've got their
13 noses covered. Joseph Davis can't say that
14 Keenan Coakley went into those woods or that
15 he came out. He couldn't see him. Eyes
16 covered, mouths covered, nose covered.

17 So Brian Mazyck tells us what is being
18 said in the car. Keenan Coakley, 'Let's go
19 up Clement Ferry Road.' The testimony that
20 you have heard is that if you turn right on
21 40, it leads out to Clement's Ferry Road.
22 What does it lead away from? It leads away
23 from Highway 17 that all the Mount Pleasant
24 police officers patrol. Keenan Coakley is,
25 like 'Let's get out of here, let's do down

1 Clement's Ferry Road. He is ready to flee.

2 What else does Brian Mazyck tell us?

3 They are changing their clothes. They are
4 taking off their clothes in the backseat.

5 What else are they doing? They are
6 stuffing their money in the car seat, in the
7 divider, the seat divider. They are stuffing
8 it in there at that point.

9 What else does he see? He sees a gun.

10 Let's talk about that gun for a second.

11 Ladies and gentlemen, this (displaying gun)
12 isn't a play gun, this isn't a BB gun, this
13 is a Glock. This is the Glock that Jarret
14 Graddick, Keenan Coakley and Kevin Smalls
15 thought would do the job.

16 And, what else? It wasn't an unloaded
17 Glock. It was loaded. These guys, they
18 weren't playing.

19 Brian Mazyck sees the gun in the back
20 seat. Now, you will remember when Officer
21 Zeitner that he is getting the information
22 about the robbery and that when he does so he
23 sees the red-and-black car, that he gets the
24 tag information and that he follows
25 immediately behind them.

1 Let me talk to you a second about Brian
2 Mazyck. They want to make a deal about the
3 fact that he had two charges that have been
4 dismissed previously by me. We got the lady
5 to come upstairs from the Clerk's office to
6 tell you when those items -- when those
7 charges were dismissed. One was dismissed in
8 September of 2011, one was dismissed in
9 October of 2011. And Brian Mazyck told you
10 that the first time that he comes in and
11 signs the agreement was a year later. Just
12 about a year later.

13 What else did Brian Mazyck tell you? He
14 told you -- he told us, and they didn't have
15 to elicit this from him. When I saw that
16 guy running out of the store, I recognized
17 him. He was the guy from the Boost store.
18 They want you to believe that he went in and
19 robbed it.

20 What else do we know about Brian Mazyck?
21 That evening after those police officers got
22 them out of the car -- and isn't it
23 interesting that they took them out in order
24 of danger? They took the driver first.

25 ANDREW GRIMES: Objection.

1 THE COURT: Sustained.

2 SOLICITOR SHEALY: They take the driver
3 first.

4 ANDREW GRIMES: Objection.

5 THE COURT: Sustained. That's an
6 unreasonable inference.

7 SOLICITOR SHEALY: They indicated to
8 you that because of what had been going on in
9 the car that they decided to take them out
10 individually.

11 Who did they take out first? Kevin
12 Smalls, the driver.

13 Because of the behavior in the back seat,
14 they take the passengers in the back seat out
15 next. Remember, that Jarret Graddick is
16 behind Mr. Smalls and Coakley is behind Mr.
17 Mazyck.

18 And who comes out last? Who do the
19 police chose to take out last? Brian Mazyck.

20 And what does he tell the police
21 immediately? "I had nothing to do with
22 this." They take him down to the police
23 station to get a statement from him. They
24 believe enough of what he said to take him
25 back down to . . . to help them

1 look for stuff.

2 The next day, when Tyrone Simmons goes to
3 pick him up from the jail, he lets them know
4 what Keenan Coakley and Jarret Graddick had
5 asked him to do for them. He asked them to
6 lie, gave him stories to tell. He told them
7 that, 'I am not doing it, I'm not doing it.'

8 So Jarret Graddick that evening, on
9 September 15th, learned from Brian Mazyck, 'I
10 am not lying for you.' Remember how he
11 wanted him to lie about the park? Remember
12 how Mr. Graddick told you that there was a
13 park right at the corner of and

14 Brian said, 'I am not lying for
15 you.'

16 Now, let's talk about the times involved
17 in this case. Well, actually before we do
18 that, let's look at the report. I'm sorry.
19 Let's look at the report -- (pause it for
20 just a second). If we could get the lights
21 dimmed a little bit, I think that we could
22 see it better.

23 As you're looking at this, remember what
24 Officer Zeitner was telling you, that heads
25 were disappearing in the back, there was a

1 lot of bending over, hands not in the air
2 when they were asked to put their hands in
3 the air. And remember as you're looking what
4 Brian Mazyck told you. They were changing
5 clothes and that at one point that Coakley
6 tried to get into the front seat and put his
7 foot on the gas pedal, still trying to flee.
8 Still trying to flee. He tried to flee with
9 an officer behind them, tried to flee when
10 all these officers are approaching the scene.

11 As you also look at the recording, look
12 at the intersection itself. There is
13 testimony about how traffic is. Look as this
14 is happening at all the cars turning onto 40.
15 So you can get an idea of what the traffic
16 was like on Highway 17 at 6:30 on a Wednesday
17 night, -- (video playing).

18 Look at the heads going down, (video
19 playing).

20 'Do you have any guns?', Zeitner asks,
21 (video playing).

22 Notice the undershirt, (video playing).

23 No belt, (video playing).

24 Ladies and gentlemen, what was signify-
25 cant about the fact that they had undershirts

1 on is because the overshirts that they had on
2 were found by the police in the car inside-
3 out. They'd just taken off of their heads.

4 What was tucked in this one was the
5 plastic glove.

6 That's why they had their undershirts on.
7 They were doing exactly what Brian Mazyck
8 said that they were doing. They were taking
9 off their clothes.

10 And Mr. Graddick? Jarret Graddick, who
11 couldn't keep his pants up when he was
12 getting out the car. He didn't have on a
13 belt. It was with the shirt that he took
14 off. He didn't have a belt.

15 Let's look at the times involved. The
16 times are crucial here, (video playing):

17 6:35, Dispatch called out that we've
18 had an armed robbery at Oakland Plantation,
19 South Morgans Point Road.

20 6:35:29, we see Smalls on the move.

21 6:35:59, in front of Walmart.

22 6:36:40, going around, heading
23 towards

24 Officer DeCamp got there by 6:37.

25 Officer Zeitner stopped that vehicle at

1 6:41.

2 We're talking about six minutes. Six
3 minutes between the dispatch of the robbery
4 -- and, remember that 911 was called
5 immediately as they got into Jersey Mike's.

6 At 6:35 the robbery happens and then six
7 minutes later Officer Zeitner stops the car
8 with Kevin Smalls, Jarret Graddick, Keenan
9 Coakley and Brian Mazyck. Stopped.

10 Let's think about Ms. Graddick's
11 testimony for a minute. What she tells us is
12 that she was certain that Jarret was at her
13 house at 6:34.

14 At 6:34, Kevin Smalls was over in the
15 parking lot. He could not be both in the
16 Walmart parking lot and down 17, down

17 down. Kevin Smalls can't
18 be two places at one time. Does any of that
19 makes sense?

20 Does it even make sense that Kevin Smalls
21 had Jarret Graddick and Keenan Coakley in
22 that vehicle? Had that Glock? Had all the
23 money, including the bill that Mr. Blain told
24 the police about? That they had the clothes?
25 The gloves?

1 That he was traveling down 17 where
2 Brickyard Plantation is and
3 Hamlin Road, be entering a neighborhood and
4 pick up Jarret Graddick? Then travel right
5 back down 17, towards the armed robbery?

6 Then make a U-turn?

7 Then go back to 17 and 41?

8 It didn't happen. It didn't happen.

9 Six minutes was enough time for Mr.
10 Smalls to get in that vehicle, get the heck
11 out of there, get down , get
12 those guys in his car and then get stopped.

13 Mr. Grimes was asking, 'Well, why didn't
14 Tyrone Simmons go talk to Ms. Graddick?'
15 Well, if you were Ms. Graddick and you knew
16 that your grandson had been arrested but that
17 you saw him at 6:34, wouldn't you go down
18 there? Wouldn't you get somebody to drive
19 you down there? Wouldn't you be pounding on
20 somebody's desk, 'It couldn't have been my
21 grandson.'

22 Let's talk about the DNA. And I'll tell
23 you, y'all were patient while I was trying to
24 get that evidence in. That is the worse part
25 for a jury, having to sit through that. But

1 It is important because we have items of
2 evidence that we needed to have in.

3 The gun trigger and the guard, Officer
4 Haupt told us how he swabbed it. Whose DNA
5 is on the trigger and the guard? Jarret
6 Graddick's. A match. One in ninety-six
7 thousand (1 in 96,000). Jarret Graddick,
8 trigger, gun.

9 The plastic glove underneath the driver's
10 seat, Keenan Coakley could not be excluded.

11 Now, keep in mind as we are going through
12 this that there are no matches for Kevin
13 Smalls and there are no matches to Brian
14 Mazyck.

15 A plastic glove from the back of the
16 front passenger seat, there's a photograph of
17 it, one of the gloves from there, Graddick
18 cannot be excluded.

19 Next glove, Graddick cannot be excluded;
20 this time, one in seventy-six thousand (1 in
21 76,000).

22 Another glove, Keenan Coakley cannot be
23 excluded.

24 Jarret Graddick.

25 Keenan Coakley.

1 Jarret Graddick.

2 Another glove in that area, Coakley, a
3 match, one in two hundred and forty
4 quadrillion. Keenan Coakley had that glove.

5 There's another plastic gloves on which
6 Jarret Graddick cannot be excluded. There is
7 just no exclusive result.

8 And Coakley, one in two hundred eighty (1
9 in 280) cannot be excluded.

10 One of these knotted t-shirts, the
11 makeshift masks, the kind that some kids use
12 when they're playing cops-and-robbers when
13 they are young, one of them Keenan Coakley
14 cannot be excluded.

15 The other one Jarret Graddick matched,
16 one in one hundred ninety quadrillion. He
17 wore this mask. He shielded himself. He
18 tried to protect his identity when he walked
19 into a place where Mr. Blain and that young
20 girl were working, with a loaded gun.

21 Black shirt, that was inside out. Inside
22 out. He was hot from adrenalin rush, he was
23 taking his clothes off. Match. One in four
24 point four quintillion.

25 Blue shirt, which is inside the black

1 shirt. Cannot be excluded. One in one
2 hundred sixty thousand.

3 The pants with the belt that at least
4 kept these up -- so that there was no chance
5 of them falling as he was running through
6 that field, one in twelve, Graddick.

7 The plastic gloves found inside of those
8 shirts, Graddick couldn't be excluded.

9 And another glove that was found inside
10 the shirt, Graddick couldn't be excluded.

11 The DNA slams them. It slams all three
12 because it shows you that these two men went
13 into that store and robbed it, wearing gloves
14 to protect themselves from leaving
15 fingerprints, wearing masks to protect their
16 identity, carrying a loaded gun.

17 Carrying a loaded gun in a store where
18 there is a super Walmart, at 6:30 at night.
19 Can you imagine the patrons there?

20 They thought of all kinds of ways to
21 protect themselves. A loaded Glock. That
22 wasn't just to protect themselves. That was
23 to make someone give them -- give them the
24 money so that they could have a big night.

25 Each of my colleagues have thanked you

1 for your service. I certainly thank you, as
2 well. I know that's been a week that took
3 you away from your families, it took you away
4 from fun, it took you away from work. And I
5 appreciate it, and I thank you.

6 But there are some other people that I
7 would like to thank, though. I'd like to
8 thank Jim Blain and Harlee Lynn for being as
9 observant as they were when such a traumatic
10 thing happened to them. That young girl, to
11 see them rushing in there. Mr. Blain told
12 you, 'I couldn't even dial 911.' They did a
13 remarkable job in making observations in a
14 very, very panicky situation.

15 I would also like to especially thank
16 Jessica Lyons because she, her instincts were
17 right. Her instincts were exactly right.
18 And but for her, they may never have been
19 arrested. They may have hit Clement's Ferry
20 Road, had those crabs, wine and dined those
21 girls and left everybody else behind. Left
22 Jim Blain and Harlee Lynn to deal with it.

23 I am thankful that Walmart had the
24 security cameras that they did, because it
25 shows us the time. It shows us the critical

1 time that Kevin Smalls left the Walmart
2 parking lot. It shows us his path. It
3 corroborates what Ms. Lyons said, it
4 corroborates what Brian Mazyck said.

5 One of those attorneys asked why would
6 they be driving around Walmart with all those
7 cameras, why didn't he just wait on Sam
8 Edwards Road. He just wanted to know when to
9 go back and get them. Kevin Smalls knew that
10 he wasn't going to get away with staying
11 parked on . But if you adjust
12 that seat, you adjust that mirror, you know
13 when the heck to get out of there.

14 I would like to thank Joseph Davis
15 because he was observant that day as well.
16 He told you both times coming down Sam
17 Edwards Road. He even knew where they had
18 thrown an item and helped Debi Alfaro find it
19 and helped Investigator Haupt retrieve it.
20 But he did.

21 Now, you're not to worry about
22 punishment. You're here to worry about
23 responsibility. What the judge will instruct
24 you is the law of hand of one is the hand of
25 all.

1 That's going to be difficult (screen) for
2 y'all to see there. Y'all listen to the
3 judge and he will instruct you. What it
4 essentially means is that even though we
5 don't know which of these two guys had the
6 loaded Glock, and even though Kevin Smalls
7 doesn't go into the store, when you combine
8 it -- when you get three people to commit an
9 armed robbery, one, two, three (indicating
10 defendants) are guilty.

11 The hand of one is if the crime was
12 committed by two or more people who are
13 acting together to commit a crime. The act
14 of one is the act of all. A person who joins
15 with another to accomplish an illegal purpose
16 is criminally responsible for everything done
17 by the other person which occurs as a natural
18 consequence of the act done in carrying out
19 the common plan and purpose. If two or more
20 people are together, acting together,
21 assisting each other in committing the
22 offense, the act of one is the act of hand.
23 Or as it is sometimes said, the hand of one
24 is the hand of all.

25 A principal in a crime is either one who

1 actually commits the crime or who is present
2 aiding, abetting or assisting in committing
3 the crime. When a person does an act in the
4 presence of and with the assistance of
5 another, the act of one is the act of the
6 other.

7 Where two or more are acting with a
8 common plan or intent, are present at the
9 commission of a crime, it doesn't matter who
10 actually commits the crime. This is
11 important. Present at the commission of a
12 crime means to be sufficiently near to aid
13 and abet and assist in the commission of the
14 crime. Kevin Smalls, right outside
15 Graddick and Coakley, in the Cricket.

16 Ladies and gentlemen, one of the
17 attorneys used the language "caught dead to
18 right", these guys were caught dead to right.

19 One of them said, I believe that it was
20 Mr. Grimes, would you give Jarret Graddick
21 and his family a Christmas present by finding
22 him not guilty. That's not your role. It's
23 not your role to give presents. Your job is
24 to decide the issues in this case, the facts
25 in this case and whether we have met our

1 burden.

2 Ladies and gentlemen, what the State asks
3 is that you return a verdict of guilty of
4 armed robbery as to Jarret Graddick, Keenan
5 Coakley and Kevin Smalls.

6 Jim Blain and Harlee Lynn, the didn't
7 deserve what happened. These guys don't
8 deserve to get away with it.

9 THE COURT: Ladies and gentlemen, at
10 this point I will let you take a break. I'll
11 let you retire to your jury room for about
12 ten minutes.

13 Do not begin your deliberations, however.
14 It would still be inappropriate to discuss
15 this case among yourselves. Thank you.

16 (JURY OUT @ 11:35 A.M.)

17 THE COURT: Anything from the State
18 before recessing?

19 SOLICITOR SHEALY: No, Your Honor.

20 THE COURT: Anything from any of the
21 defendants before recessing?

22 WILLIAM RUNYON: No, Your Honor.

23 ANDREW GRIMES: No, sir.

24 JIM SMILEY: (Negative gesture).

25 THE COURT: Very well. We will be at

1 ease for about ten minutes.

2 COURT REPORTER: Counsel, please check
3 your exhibits during this recess.

4 (COUNSEL APPROVAL OF EXHIBITS)

5 WILLIAM RUNYON: Your Honor, I noticed
6 when they were packing the evidence on the
7 cart, I noticed that the Clerk, the Honorable
8 Clerk, was providing a box of rubber gloves
9 for the jury to maybe use in handling the --
10 and I just am not sure that unless they ask
11 for those to handle things with, whether or
12 not those should be provided, since rubber
13 gloves are so prominent in this case. And
14 it's a semi-objection, Judge, and I just
15 don't think unless they ask for them you
16 should just automatically give them to them.

17 THE COURT: Thank you, sir.

18 MR. RUNYON: Yes, sir. And that's said
19 for whatever it is worth, Your Honor.

20 THE COURT: Thank you. Anything else?

21 MR. RUNYON: No.

22 THE COURT: Thank you. Then let's bring
23 in our jury.

24 (JURY IN @ 11:50 A.M.)

25 THE BAILIFF: All the jurors are

1 seated, Judge.

2 THE COURT: Thank you very much, Mr.
3 Pryor (bailiff). And thank you, ladies and
4 gentlemen. We've now reached the final
5 portion and you're almost ready to begin the
6 process of resolving this case. Now it
7 becomes my responsibility to give you the
8 law, as I indicated to you that I would give
9 to, that you, of course, promised to accept
10 and apply fairly and impartially to those
11 facts that you will determine when you are
12 instructed to retire and evaluate the
13 evidence.

14 And you will evaluate each piece of
15 evidence and decide what you find to be
16 credible and believable. And in so doing,
17 you will determine the truth of the evidence
18 in that both the State, Mr. Graddick, Mr.
19 Coakley and Mr. Smalls, the attorneys expect
20 that you will perform that consistent with
21 your oath and I'm confident that you will.

22 And once you've done that, the parties to
23 this dispute will have obtained a fair and
24 impartial determination. And that's what
25 everyone expects.

1 As you have heard me use from time to
2 time the term "defendants", as I've mentioned
3 to you when I basically identified this case,
4 defendants is a term used to designate the
5 party against whom some claim is made. As we
6 have here where the State has claimed that
7 these individuals, each individual, committed
8 the crime of armed robbery. So if you hear
9 the term of defendants, that is another way
10 of referring to them collectively.

11 But it's important also to realize that
12 there are three separate indictments, three
13 separate defendants and three separate
14 determinations that you will have to make.
15 And each party is entitled to a fair and
16 impartial determination based on your
17 assessment of the evidence.

18 Each defendant was brought into this
19 Court by virtue of the documents, that I
20 showed you when I started -- they're called
21 indictments. They will not accompany you to
22 the jury room. They're not evidence. They
23 merely contain the accusations against the
24 defendant.

25 Each defendant has entered a plea of not

1 guilty to the indictment pertaining to him,
2 which places then upon the State the burden
3 of proving his guilt. Because as I mentioned
4 to you, persons accused of criminal offenses
5 are never required to prove or disprove or
6 explain anything at all. And they certainly
7 are not required to prove their innocence.

8 In fact, persons in this state and in
9 this country who are accused of committing
10 criminal offenses are presumed to be
11 innocent. And those aren't just words.
12 That's a mental process that each of you has
13 to maintain. Because you see, that
14 presumption of innocence is so strong it's
15 sufficient for a verdict of not guilty unless
16 you, collectively upon your evaluation, have
17 been satisfied beyond a reasonable doubt of
18 each element of the crime alleged against
19 that particular defendant. And only then may
20 you remove that presumption of innocence from
21 your mind. So that's what it is.

22 And each of you, under your oath, must
23 actively presume that each of these
24 defendants are innocent and can only change
25 that when and if you are persuaded beyond a

1 reasonable doubt of his guilt.

2 As I mentioned also to you, persons
3 accused are not required to prove or disprove
4 anything. They don't have to present any
5 testimony. They do not have to testify.
6 That, in fact, if a person accused of an
7 offense does not testify, that can never be
8 considered against that particular person. A
9 defendant has a Constitutional right to
10 remain silent and the assertion of that right
11 cannot and must not be considered against
12 them. Therefore, and in this case and under
13 your oath, you are to reach no inference and
14 to draw no conclusion whatsoever from the
15 fact that each defendant did not testify in
16 this case.

17 The failure of the defendant to testify
18 should not even be discussed in your jury
19 room. If it is, you will have violated your
20 oath.

21 No, you will look to the party that has
22 the burden of proof and that's the State.
23 And the State has to prove each defendant's
24 guilt beyond a reasonable doubt. And the
25 failure of the defendant to testify is not a

1 factor to be considered in that regard.

2 What is a reasonable doubt? A reasonable
3 doubt is a doubt that would make an honest,
4 sincere, conscientious juror, who's searching
5 for the truth in the case to hesitate to act
6 or to take some action. Proof beyond a
7 reasonable doubt is proof that leaves you
8 firmly convinced of a defendant's guilt.

9 Now, there are very few things in this
10 world and in this life that we know with
11 absolutely certainty. And in criminal
12 disputes such as this, the law does not
13 require proof that overcomes every possible
14 doubt. If, based upon your consideration of
15 the evidence, you're firmly convinced that
16 that defendant is guilty of the crime
17 charged, then you must return a verdict of
18 guilty.

19 If, on the other hand, you think there is
20 a real possibility that he's not guilty, then
21 you must give him the benefit of that doubt
22 and return a verdict of not guilty.

23 A reasonable doubt, ladies and gentlemen,
24 may arise from the evidence which is in the
25 case or from the lack or absence of evidence

1 in the case. And it's up to you to determine
2 whether or not a reasonable doubt exist as to
3 the guilt of any of these defendants. I
4 charge you that the defendant is entitled to
5 every reasonable doubt arising in the whole
6 case. That means simply this -- if, upon any
7 issue of fact, which would be essential for
8 your returning a verdict of guilty against
9 that defendant, you should have a reasonable
10 doubt as to how that particular issue should
11 be resolved, I would instruct you that it
12 would be your duty to resolve that reasonable
13 doubt in that defendant's favor.

14 Now, the evidence which you are to
15 consider consists of the testimony of the
16 witnesses and the exhibits that were
17 introduced through their testimony and
18 nothing else.

19 During the trial you noticed we excused
20 you on several occasions to take up matters
21 of the law. And I mentioned to you at that
22 time, that that was very proper. That's the
23 way that that's handled. I take up matters
24 of law out of your presence, just as you take
25 up matters of facts out of our presence.

1 That'll be done in your jury room and we will
2 not be party to that and will not hear that.
3 Because why? Because you're the sole judge
4 of those facts and it's my responsibility to
5 be the sole judge of the law.

6 I would also instruct you that the fact
7 that an attorney made an objection, that
8 should never be considered whatsoever in your
9 deliberations. You shouldn't consider that
10 against the attorney. Likewise, my ruling
11 should not be considered. And, in fact,
12 probably -- oddly enough, one of the rulings
13 that can be made really demonstrates probably
14 as clearly as I can state it, how we work
15 together in resolving this dispute. You
16 heard and will recall there were generally
17 two rulings to objections, sustained or
18 overruled. Now, if I overruled it, you heard
19 the answer to the question. And certainly
20 you should consider that and evaluate that.

21 If I sustained the objection, then you
22 did not hear the answer to the question and
23 you shouldn't consider that whatsoever.
24 Frankly, if I overruled it, it's at that
25 moment, that's exactly how we work together.

1 I said as a matter of law, typically it's a
2 rule of evidence, that I was going to permit
3 the answer. But then it's given to you. You
4 have to decide whether you believe it or not.
5 And if so, how strongly do you believe it.
6 The fact that I overruled it and allowed it,
7 that shouldn't be considered. If you put any
8 weight on that and therefore say, 'well,
9 therefore, I must believe this', then you've
10 let me invade your providence. That is not
11 the purpose. You decide the truth and you
12 decide how strongly you believe that
13 particular testimony.

14 Now, during this trial if it appears to
15 you by anything that I've said or done, that
16 I'm indicating or suggesting to you that I'm
17 here to resolve a factual issue, please
18 remember again you're to disregard that in
19 its entirety.

20 Also, the remarks of the attorneys, as
21 I've told you throughout, that they're very
22 important. They're Officers of this Court
23 and have an extremely important
24 responsibility. They have duties to present
25 the evidence, present arguments that will

1 assist us. You certainly have given them
2 your attention and I appreciate that. And
3 you certainly are expected to consider their
4 arguments when you begin the process of
5 evaluating this case, but I will remind you
6 that their remarks are not evidence.

7 If in their discussions they stated what
8 a witnesses said or didn't say, and that
9 differs from your collective recollection,
10 you're instructed to disregard those remarks
11 of the attorneys. Why? Because you're the
12 sole judge of the facts. You decide what a
13 witness said.

14 And I would remind you, each have been
15 taking notes and I thank you for that, I
16 thank you for your attentiveness. Those are
17 your notes, of course, and if we have a
18 difference that can't be resolved among
19 yourselves, Ms. Garrison (court reporter) can
20 replay any particular testimony that you may
21 need. So just remember that. But your
22 collective determination is what controls in
23 what a witness said or didn't say. Also, if
24 any attorney in their arguments gave you a
25 statement of what the law is and it differs

1 from what I tell you the law is, you're
2 instructed to disregard that attorney's
3 statement because it's my responsibility.
4 And for the purposes of this proceeding
5 today, I'm the sole judge of the law in this
6 case.

7 Now, evidence in a case such as this,
8 there are two types of evidence, which you
9 generally consider. Quite frequently, they
10 consist of both types. Sometimes one more
11 than the other, but it really doesn't matter
12 because it's customary to use both types of
13 evidence.

14 One would be direct evidence. And direct
15 evidence is typically testimony regarding a
16 sensory perception. I saw something, I heard
17 something, I felt something or the like. And
18 if you are firmly convinced as to the
19 truthfulness of that testimony, then it would
20 establish that particular fact and
21 circumstance.

22 The other would be circumstantial
23 evidence. And that, unlike direct evidence,
24 is when a person testifies of a number of
25 facts. And if you're firmly convinced as to

1 the reliability and the truthfulness of each
2 of those facts and you link them, then either
3 through deductively, deductive reasoning, you
4 reach another conclusion, you reach another
5 conclusion, that, likewise, if you're firmly
6 convinced of that conclusion, it would
7 establish that particular fact or conclusion.

8 I will tell you that it is quite common
9 to use both and the law makes absolutely no
10 distinction between the value or the weight
11 to be given either to direct or circum-
12 stantial evidence. Nor is there any greater
13 degree of certainty required of circum-
14 stantial evidence and direct evidence.
15 Rather, you should weigh all of the evidence
16 and decide what you find to be credible and
17 believable.

18 I would instruct you in that regard,
19 however, that the mere fact that the
20 circumstances brought out in a case are
21 strongly suspicious of guilt, or that the
22 circumstances are such that a defendant's
23 guilt is probable, that that would not be
24 enough to sustain a conviction. Why?
25 Because the proof offered by the State has to

1 be more than mere suspicion. It has to be
2 more than somebody being probably guilty. It
3 has to be proof that satisfies you or
4 convinces you beyond a reasonable doubt.

5 Now, how do you decide credibility and
6 believability of witnesses? As I told you on
7 Monday, you have been doing this all your
8 life and this is not going to be foreign to
9 you when you begin this process. If you hear
10 something or you read something, you decide
11 every day of your life whether you believe it
12 or not and, if so, how strongly.

13 The tools and the factors that you would
14 have used in your life, I would urge you to
15 use them when you begin this process. I'm
16 going to discuss some of them with you now,
17 but we know that it's a commonsense exercise,
18 simply applying your life's experience, your
19 sense of logic, and then deciding what you
20 believe to be true. Now, some of the factors
21 that you may want to consider would be the
22 demeanor of the witness.

23 How did they appear to you,
24 straightforward or hesitant in answering the
25 questions?

1 Was the testimony of a witness consistent
2 or was it inconsistent?

3 Was it strengthened or weakened by other
4 evidence in the case?

5 How did the witness come to know the
6 facts he or she testified to, and what was
7 the ability of that witness to know those
8 particular facts or circumstances?

9 Is there a reason for a witness to give
10 testimony, which may be helpful or beneficial
11 to one or side or detrimental or damaging to
12 one side. In other words, was the witness
13 biased or prejudiced in any fashion?

14 In determining the credibility and
15 believability of the witnesses, you're given
16 very wide latitude and broad discretion. You
17 have a right to believe many witnesses
18 against one, one witness against many. You
19 have the right to believe all the witnesses'
20 testimony, part of the witnesses' testimony,
21 or none of the witnesses' testimony.

22 Now, of course you don't make these
23 decisions arbitrarily. You have that right
24 and that prerogative because your objective
25 has been, since you took the oath, to

1 determine the truth regardless of the source
2 of the evidence.

3 Now, while you enjoy the very wide
4 latitude and broad discretion when it comes
5 to determining the facts, please remember
6 that you don't enjoy the same with the law.
7 As I stated to you I think when you started,
8 you may hear some principles of law that you
9 believe -- number one, you didn't believe
10 they were that way or that particular manner
11 or, even moreso, that it should be changed.

12 I respect your right to differ with any
13 principle of the law as a duty of this
14 country. But for the purposes of this
15 proceeding today, if you should have any
16 differences or if you believe the law should
17 be different or changed, you must set that
18 aside and take the law and apply the law
19 fairly and impartially.

20 Again, the fact that I give you an
21 instruction on particular issue of the law
22 should not be considered by you in any way to
23 be a suggestion of how you're to resolve the
24 factual issue.

25 You also should consider the charge as a

1 whole and not put any greater inferences or
2 weight on any one aspect of the charge and
3 apply this charge and the law fairly and
4 impartial to the facts as you will determine
5 them.

6 I read to you when I qualified you,
7 they're accused of committing the offense --
8 each defendant is accused of committing the
9 offense of armed robbery. Allegedly, it
10 occurred on September the 15th, 2010 at 3014
11 South Morgan's Point Road in Mount Pleasant.

12 In order to be entitled to a verdict of
13 guilty as to the defendants, any and all of
14 them, the State must prove beyond a reason-
15 able doubt that that particular defendant
16 took personal property from the person or
17 presence of another.

18 Property is in the presence of a person
19 if it's within that person's reach, inspec-
20 tion, observation or control, so that the
21 person could, if not overcome with violence
22 or prevented by fear, keep possession of the
23 property.

24 The State must also prove beyond a
25 reasonable doubt that the defendant carried

1 the property away intending to permanently
2 deprive the owner of the property and to keep
3 the property for the defendant's own use.

4 The slightest removal of the property or the
5 complete possession of the property, even for
6 an instant by the defendant, is sufficient to
7 show a taking and carrying away of the
8 property. Furthermore, the taking and
9 carrying away of the property must have been
10 done with violence or by putting the owner of
11 the property in fear of violence.

12 Finally, the State must prove beyond a
13 reasonable doubt that the defendant was armed
14 with a deadly weapon during the robbery. A
15 deadly weapon is any article, instrument or
16 substance which is likely to cause death or
17 great bodily harm. Whether an instrument has
18 been used as a deadly weapon depends on the
19 facts and circumstances of each case. I
20 would instruct you in that regard that a
21 pistol may be a deadly weapon. Also, ladies
22 and gentlemen, I would charge you in the
23 principle of law known as the hand of one is
24 the hand of all. If a crime is committed by
25 two or more people who are acting together in

1 committing a crime, the act of one is the act
2 of all. A person who joins with another to
3 accomplish an illegal purpose is criminally
4 responsible for everything done by the other
5 person, which occurred as a natural
6 consequence of the acts done in carrying out
7 their common plan or purpose. If two people
8 are acting together, assisting each other in
9 committing the offense, two or more people,
10 the act of one is the act of all. Or as it's
11 sometimes said, the hand of one is the hand
12 of all.

13 Prior knowledge that a crime is going to
14 be committed without more would not be
15 sufficient to make a person guilty of the
16 crime. Mere knowledge that another person is
17 going to commit a crime, even if the
18 defendant is present when the crime is
19 committed, is not sufficient to convict the
20 defendant as a principal. Nor is mere
21 presence at the scene of a crime or mere
22 association with a person who commits a crime,
23 make a defendant an accomplice or an aider or
24 abettor of that person committing the crime.

25 Guilt, as a principle, is shown by actual

1 and constructive presence at the scene as a
2 result of prior arrangement. Therefore, a
3 finding of a prior arranged plan or common
4 scheme is necessary for a finding of guilt --
5 a finding of guilt as a principal. The State
6 must prove beyond a reasonable doubt by
7 competent evidence this theory of the hand of
8 one is the hand of all.

9 A principal in a crime is one who either
10 actually commits the crime or who is present,
11 aiding, abetting, or assisting in committing
12 that crime. When a person does an act in the
13 presence of and with the assistance of
14 another, the act is done by both. Where two
15 or more acting with a common plan or intent
16 are present at the commission of a crime, it
17 does not matter who actually commits the
18 crime itself.

19 Present at the commission of a crime,
20 that term, means to be sufficiently near to
21 aid and abet and assist in the commission of
22 a crime.

23 The burden of proof to prove every
24 element of the crime charged, if you find
25 after reviewing all the evidence that the

1 State has proven the defendant was only
2 present at the scene but was not participat-
3 ing, then you must not find that defendant
4 guilty, of course. It has to be involved in
5 some fashion.

6 Intent is also a necessary element, for
7 there must have been a common design or
8 intent to commit the crime and then the crime
9 must have been committed pursuant thereto.
10 Intent means intending the result which
11 actually occurs, not accidentally or
12 involuntarily. Intent may be shown by the
13 action and conduct of the person and other
14 circumstances from which you may naturally
15 and reasonably infer intent. The State must
16 prove the element of intent beyond a reason-
17 able doubt.

18 I would also instruct you, ladies and
19 gentlemen, that a defendant, Mr. Graddick,
20 has raised a defense of alibi. In order to
21 establish an alibi, it must be shown that
22 that defendant was at another specified place
23 at the time the crime was committed. And
24 that it was, therefore, impossible for the
25 defendant to have been at the scene of the

1 crime.

2 Mere denial of presence at the scene of a
3 crime does not constitute an alibi.

4 Now, there is no burden on that defen-
5 dant, Mr. Graddick, to prove an alibi. The
6 burden is on the State to prove beyond a
7 reasonable doubt that Mr. Graddick was
8 actually present at the scene of the crime
9 and actually participated in it, and was not
10 somewhere else. In other words, the State
11 has the burden of disproving the Defendant's
12 alibi defense.

13 Now, ladies and gentlemen, you took an
14 oath, just -- similar to the oath that I took
15 when we started this process. And basically
16 what you have promised to do is to set aside
17 all human emotion, which is not easy
18 sometimes. Because human emotion has no
19 presence, and really no purpose in performing
20 the act of judging. And that's not always
21 easy for us because we are human. But you
22 have to consciously do that and I'm confident
23 that you will.

24 And you must remember something, you're
25 not advocates for either side. You have no

1 friends to reward nor do you have any enemies
2 to punish. You're here to consciously,
3 conscientiously apply your commonsense, your
4 sense of logic to the case. Perform the task
5 that has been assigned to you, and that's
6 analyzing the evidence, and decide what you
7 believe to be the true facts.

8 Then once you've decided those true
9 facts, you take the law as I gave it to you,
10 apply that fairly and impartially to those
11 facts and report your decision. When you've
12 done that, you will have honored the oath in
13 every respect.

14 To assist you, Mr. Wachter, in recording
15 the verdict, I've prepared three verdict
16 forms. That is necessary because there are
17 three separate cases, as we have discussed.
18 They are similar -- and I'll just explain one
19 -- but there are two choices that appear.
20 You have two options. The order in which
21 they appear absolutely means nothing at all.
22 I had to put them in some order. This one
23 happens to be Mr. Graddick's. And you will
24 note that each one is captioned -- and the
25 caption is simply to facilitate the file. It

1 doesn't have any other significance or
2 purpose, other than that. And the body reads
3 the same. The only difference is you have
4 one for Mr. Coakley and one for Mr. Smalls.
5 And this one just happens to be Mr.
6 Graddick's.

7 It says, (reading): "We, the jury, by
8 unanimous consent," -- what does that mean?

9 It means all twelve of you have to agree.

10 Eleven to one is not sufficient. It has to

11 be twelve to zero. -- "find the Defendant,

12 Jarret Graddick, on the charge of armed

13 robbery." -- the first choice guilty, second

14 choice not guilty.

15 What will you be saying if guilty is your

16 first choice? You'll be saying that you've

17 analyzed the evidence in this case, applied

18 the law, and you believe the State has met

19 its burden of proof as to each of those

20 elements that we've discussed, beyond a

21 reasonable doubt. And, therefore, consistent

22 with my instruction, you're returning a

23 verdict of guilty.

24 Not Guilty; you'll be saying that you've

25 analyzed it and you're not convinced beyond a

1 reasonable doubt of one or more. Because if
2 the State fails on one, then you must return
3 a verdict of not guilty. The State has must
4 prove each element beyond a reasonable doubt.

5 Whichever your choice, you'll note
6 there's a line that proceeds it, if you'll
7 place a check in that and circle it. Then
8 sig where it says "Presiding Juror," sign it.
9 Once you've done that, you will have
10 completed that particular verdict form, and
11 then you'll go to the next and so on until
12 you've completed three verdict forms.

13 I know you're anxious to get to the
14 process of doing what you've taken an oath to
15 do. And I've told you, you're almost there.
16 I need to talk with the attorneys now out of
17 your presence and see if there's any
18 additional instruction that I need to give
19 and I'll have to excuse you, of course, to do
20 that.

21 But if there aren't any additional
22 instructions, then we will deliver the
23 exhibits to you. And when you receive the
24 exhibits, then you may commence your
25 deliberations.

1 Now, once the deliberations start, the
2 only restriction that I place on delibera-
3 tions is if any juror has to leave the table.
4 for any reason, you must stop deliberating
5 until all twelve of you are together.

6 Also, we're going to keep here some of
7 the exhibits. You have photographs. If you
8 want to view the firearm and the cartridges,
9 we will bring you back in and make that
10 available to you to inspect, but we're not
11 going to send those back to you. It's not
12 that we don't trust you, it's just no reason
13 to send that back. You have seen it. You
14 have photographs of it but if you do need to
15 view it further, please feel free to send me
16 a note.

17 Should you want to send me a note, if
18 you'll just write it on one page, we'll make
19 it an exhibit, and we'll respond to that.

20 Also, obviously, the videos, if you need
21 to watch any of the videos that have been
22 played, we'll have to bring you in in order
23 to accomplish that. So just let me know
24 which or all. If you want to watch them all,
25 that's fine.

1 The clothing, as you've noticed during
2 the process, most people have placed on
3 gloves. That's not to say there's anything
4 contaminating there, but it's just a safety
5 precaution -- many of us know that. I will
6 send that clothing if you ask for it. But
7 unless you do, we're not going to send back
8 any of the clothing exhibits. You have
9 photographs of some, but if you want to
10 inspect them, please just let me know and
11 we'll be happy to send them back.

12 Thank you for your attention. I'm going
13 to ask you to retire to your jury room. Do
14 not commence your deliberations until you
15 receive the exhibits. Thank you.

16 (JURY OUT @ 12:20 P.M.)

17 THE COURT: Exceptions or additions from
18 the State?

19 MS. SHEALY: None, Your Honor.

20 THE COURT: Exceptions or additions from
21 Mr. Graddick?

22 MR. GRIMES: Just subject to our request
23 number one, on the ---

24 THE COURT: On the ---

25 MR. GRIMES: Yes sir.

1 THE COURT: We'll make that Court's
2 Exhibit Number 3.

3 (SO ENTERED AS COURT'S EXHIBIT NUMBER 3)

4 THE COURT: And I declined to charge
5 request number one for reasons stated. I
6 think it's covered by my general charge on if
7 somebody had something to gain from that or
8 not, which was covered. But you can
9 scrutinize it. The words that I have
10 problems with is the -- when you really look
11 at this more closely with a witness, I think
12 that it is more a factual problem. But it's
13 noted in the record and you're protected for
14 that. Anything else, other than that, Mr.
15 Grimes?

16 MR. GRIMES: No, sir.

17 THE COURT: Any objection or exceptions
18 from Defendant Coakley?

19 MR. RUNYON: No problems with Defendant
20 Coakley. No additions or exceptions. And
21 just for the record, since I put something on
22 the record before, I don't want to leave
23 dangling participles, I think that the
24 circumstances or the conditions that the
25 Court laid out for the jury insofar as

1 handling the exhibits answers my quasi
2 objection to the rubber gloves.

3 THE COURT: Okay. And for that, -- okay.
4 I don't have any problem, I just feel like
5 it's better because of all of the potential
6 that's there. To be honest with you, I'd
7 already planned to do that. That's just my
8 custom.

9 MR. RUNYON: I just wanted to clarify for
10 the Court that I no longer have an objection.

11 THE COURT: Thank you, sir. Thank you
12 all. Appreciate it. It's always a pleasure
13 to work with you. We will be at ease until
14 we hear from the jury.

15 (JURY IN DELIBERATIONS @ 12:25 P.M.)

16 (NOTIFIED OF JURY QUESTION @ 1:30 P.M.)

17 THE COURT: Let's get the attorneys in
18 here, and the defendants.

19 (DEFENDANT GRADDICK PRESENT)

20 (DEFENDANT COAKLEY PRESENT)

21 (DEFENDANT SMALLS PRESENT)

22 THE COURT: We have received a note
23 from the jury, asking -- and this will be
24 Court's Exhibit 4.

25 (SO ENTERED AS COURT'S EXHIBIT 4)

1 THE COURT: Court's Exhibit 4 says,
2 basically, "What is the definition of the
3 hand of one, the definition of reasonable
4 doubt, definition of intent."

5 I've copied the three portions of my
6 charge that deals with those three issues.
7 I'll give a copy to each one of you. I'll
8 attach it to it.

9 My response is, (reading): "I've attached
10 portions of my charge which you've requested.
11 If additional portions are needed, please let
12 me know." Signed by me. Okay. Y'all can
13 look at it.

14 ANDREW GRIMES: Thank you, Your Honor

15 WILLIAM RUNYON: I take it, Judge, that
16 you're saying that they wanted your charges?

17 THE COURT: That is what they are
18 asking for.

19 WILLIAM RUNYON: I just wanted to
20 clarify that.

21 THE COURT: That is what they are
22 asking. That is what the note says, "the
23 hand of one, definition of reasonable doubt,
24 definition of intent." I interpret that as
25 he wants an explanation of that. I can send

1 back my charge. That's how I explained it to
2 them.

3 WILLIAM RUNYON: Your Honor, we have no
4 objection if this is what you charged them.

5 THE COURT: That's correct.

6 ANDREW GRIMES: On behalf of Defendant
7 Jarret Graddick, we have no objection.

8 SOLICITOR SHEALY: And we have no
9 objection.

10 THE COURT: Okay. If they need
11 additional, that's why I asked. I don't want
12 to preclude them if they want additional
13 portions. I think that Judge Newman has
14 started giving his entire charge. I'm close
15 to that but since they haven't really signed
16 off on it, per se, I wait for them to ask for
17 something. This is a simple way of dealing
18 with it.

19 JIM SMILEY: No objection.

20 THE COURT: Okay, you can take this
21 back to the jury.

22 (COURT'S EXHIBIT 4 TO JURY @ 1:51 P.M.)

23 THE COURT: All right, we'll be at-ease
24 until we hear from the jury.

25 (NOTIFIED OF JURY QUESTION @ 2:08 P.M.)

1 THE COURT: Thank you. We will be at-
2 ease.

3 (JURY IN DELIBERATIONS)

4 (NOTIFIED OF VERDICT @ 3:20)

5 THE COURT: Let me see the attorneys.

6 (OFF RECORD BENCH CONFERENCE)

7 (DEFENDANT GRADDICK PRESENT)

8 (DEFENDANT COAKLEY PRESENT)

9 (DEFENDANT SMALLS PRESENT)

10 THE COURT: This will be ---

11 COURT REPORTER: Court's Exhibit 6.

12 (SO ENTERED AS COURT'S EXHIBIT 6)

13 THE COURT: We just discussed off the
14 record what has been marked as Court's
15 Exhibit 6. The jury has advised that they
16 have reached a verdict on two cases. We
17 discussed whether or not to go ahead and
18 receive the two. They are unanimous
19 decisions.

20 Mr. Grimes, Mr. Graddick would request
21 that the jury continue to deliberate on the
22 third case before receiving any verdict; is
23 that correct?

24 ANDREW GRIMES: Yes, sir.

25 THE COURT: And the basis for that

1 request is, what?

2 ANDREW GRIMES: Your Honor, I believe
3 that he is entitled to a full and complete
4 consideration of the facts. Some of my
5 argument involved Mr. Smalls and as they
6 continue to discuss Mr. Smalls, they may
7 reconsider their decision.

8 THE COURT: What decision? They've
9 already reached a verdict as to Mr. Graddick.

10 ANDREW GRIMES: They were tried
11 together and the verdicts should be announced
12 together, Your Honor.

13 THE COURT: Thank you, sir. I don't
14 think that there is any logical reason not to
15 receive the verdicts. At least the Court
16 can't think of any right now.

17 The jury has decided two cases. I need
18 to find out first of all if it is a decision
19 by the jury. We need, first of all, to have
20 that resolved. Then the Court may tell them
21 to retire and continue their deliberations as
22 to the third defendant or we may just simply
23 — there doesn't seem any reason, to me, to
24 not go ahead and resolve those.

25 Of course, I don't know what the verdicts

1 are. If the verdict is guilty, we can go
2 ahead and take care of that defendant, those
3 defendants. If it is not guilty, then they
4 don't have to sit in this court any longer.
5 If it is a guilty verdict, we can resolve
6 that while they continue to deliberate in the
7 other.

8 From a judicial standpoint, it seems to
9 be expedient for everybody here. We don't
10 need to sit around and wait when we have a
11 way to resolve it.

12 As I've stated on numerous occasions, as
13 has Mr. Smiley and each of you, they are
14 three separate cases. So we're not talking
15 about a package deal here. They are
16 individual cases. I've so instructed that
17 there are three armed robbery trials.
18 They've advised that they have resolved two
19 of the three cases.

20 So noting your objection, the Court is
21 still going to receive the verdict.

22 ANDREW GRIMES: Thank you.

23 THE COURT: Bring in the jury panel.

24 While the jury is coming, let me tell you
25 that I appreciate the courtesies extended by

1 verdict on two of the cases.

2 ANDREW GRIMES: Thank you, Your Honor.

3 THE COURT: Yes, sir. Before I answer
4 that question.

5 ANDREW GRIMES: Yes, sir.

6 THE COURT: Let the record reflect that
7 the defendants are present, Mr. Graddick, Mr.
8 Coakley and Mr. Smalls.

9 COURT REPORTER: Marking that jury note
10 as Court's Exhibit 6.

11 THE COURT: Yes. Thank you. And they
12 say that they want to see all videos of the
13 Walmart. I am not sure what that is, but
14 I'll ask about that, too. Bring in the
15 jury.

16 (SO ENTERED AS COURT'S EXHIBIT 6)

17 COURT REPORTER: And Court's Exhibit
18 Number 7.

19 (SO ENTERED AS COURT'S EXHIBIT 7)

20 (JURY IN @ 3:32 P.M.)

21 THE COURT: Thank you, ladies and
22 gentlemen. I have your notes, which we have
23 marked as Court's Exhibits 6 and 7.

24 In Court's Exhibit 6, you indicated that
25 you have reached a decision in two of the

1 three cases. Is that correct, sir?

2 FOREMAN: That is correct, Your
3 Honor.

4 THE COURT: All right. Then Exhibit 7,
5 your note, requests the replaying of the
6 testimony of Mr. Davis, Joseph Davis, and all
7 of the videos. Do you want the arrest video
8 and the Walmart videos or ---

9 FOREMAN: Just the Walmart videos,
10 the one at 6:28 through the last one, which
11 was ---

12 THE COURT: I think that there were
13 three cameras.

14 FOREMAN: Four.

15 THE COURT: Four cameras. Okay.
16 That has nothing to do with your decision?
17 That has to do with you resolving the third
18 case?

19 FOREMAN: Yes, sir. Both of those.

20 THE COURT: Do you have the verdict
21 forms that you have decided on.

22 FOREMAN: Yes, sir.

23 THE COURT: Very well. If you will
24 pass the verdict forms to Mr. Pryor
25 (bailiff). We will be in the process of

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1 resolving that -- and we'll get the videos
2 cued up for your review.

3 BAILIFF: (Tenders forms to Judge
4 Dennis).

5 THE COURT: (Upon review), the verdict
6 forms have been properly completed. If you
7 would, please publish the verdicts.

8 I would ask the defendants Mr. Coakley
9 and Mr. Graddick to please rise.

10 DEFENDANT GRADDICK: (Complies)

11 DEFENDANT COAKLEY: (Complies)

12 CLERK: Case Number 2011-GS-10-02078,
13 the State of South Carolina versus Keenan
14 Coakley, "We, the jury, by unanimous consent
15 find the Defendant, Keenan Coakley, on the
16 charge of armed robbery, Guilty." Signed by
17 David Watcher, December 6th, 2013.

18 Case Number 2011-GS-10-02074, State of
19 South Carolina versus Jarret Graddick, "We,
20 the jury, by unanimous consent find the
21 Defendant, Jarret Graddick, on the charge of
22 armed robbery, Guilty." Signed David
23 Watcher, dated December 6th, 2013.

24 Mr. Foreman, ladies and gentlemen of the
25 jury, if these are your verdicts, please

1 raise your right hand -- (unanimous response
2 by jurors raising rights hands). Let the
3 record reflect that all jurors have raised
4 their hand.

5 THE COURT: Thank you very much.

6 Anything further from the jury on the
7 issues of the verdicts, from the State?

8 SOLICITOR SHEALY: No, Your Honor.

9 THE COURT: From the defendants?

10 ANDREW GRIMES: On behalf of Defendant
11 Graddick, we would request that the jury be
12 polled.

13 THE COURT: Very well. Ladies and
14 gentlemen, then we will -- go ahead and poll
15 them as to each verdict.

16 I assume you join in that --

17 WILLIAM RUNYON: We would make that
18 same request, Your Honor.

19 THE COURT: Very well. What is going
20 to happen -- is it all right with each of you
21 that we simply lump them into, 'has the court
22 published your verdicts' in the plural rather
23 than do it separately on each case? May we
24 just simply say, 'is this your verdicts' on
25 both?

1 ANDREW GRIMES: Yes, sir.

2 WILLIAM RUNYON: I -- yes, Your Honor.

3 THE COURT: What is going to happen is
4 that polling the jury simply states that --
5 you have already technically done that by
6 raising your right hand. But there is a
7 process that's been around as long as I have
8 been practicing law, and long before. The
9 Clerk is going to call your name and ask
10 whether that was your verdict. When you
11 respond, please understand that you will be
12 responding in each case. If it is not your
13 verdict in both cases, you can say that it is
14 'my verdict' in one but not the other. Okay.
15 If it is your verdict, simple say yes.

16 Then he will ask, 'Is it still your
17 verdict(s)?' Then you'll respond
18 accordingly.

19 If you would please assist us.

20 CLERK: Yes, sir. Starting with the
21 foreman, Juror Number 273, David Wachter.

22 JUROR NUMBER 273: Yes, it is my verdict.

23 CLERK: Sir, is this your verdict?

24 Juror number 273: Yes, sir.

25 CLERK: Sir, are these still your

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1 verdicts.

2 JUROR NUMBER 273: Yes. Yes, sir.

3 CLERK: Juror Number 118, are these
4 your verdicts?

5 JUROR NUMBER 118: Yes.

6 CLERK: Are they still your verdicts?

7 JUROR NUMBER 118: Yes.

8 CLERK: Thank you, ma'am. Juror
9 Number 255, are these your verdicts?

10 JUROR NUMBER 255: Yes.

11 CLERK: Are these still your verdicts?

12 JUROR NUMBER 255: Yes.

13 CLERK: Juror Number 176, are these
14 your verdicts?

15 JUROR NUMBER 176: Yes.

16 CLERK: Are these still your verdicts?

17 JUROR NUMBER 176: Yes.

18 CLERK: Juror Number 58, are these your
19 verdicts?

20 JUROR NUMBER 58: Yes.

21 CLERK: Are these still your verdicts?

22 JUROR NUMBER 58: Yes.

23 CLERK: Juror Number 108, are these
24 your verdicts?

25 JUROR NUMBER 108: Yes.

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1 CLERK: Are these still your verdicts?

2 JUROR NUMBER 108: Yes.

3 CLERK: Thank you, sir. Juror Number
4 26, are these your verdicts?

5 JUROR NUMBER 26: Yes.

6 THE COURT: Are these still your
7 verdicts?

8 JUROR NUMBER 26: Yes.

9 CLERK: Juror Number 148, are these
10 your verdicts?

11 JUROR NUMBER 148: Yes.

12 CLERK: Are these still your verdicts?

13 JUROR NUMBER 148: Yes.

14 CLERK: Juror Number 221, are these
15 your verdicts?

16 JUROR NUMBER 221: Yes.

17 CLERK: Are these still your verdicts?

18 JUROR NUMBER 221: Yes.

19 CLERK: Juror Number 22, are these your
20 verdicts?

21 JUROR NUMBER 221: Yes.

22 CLERK: Are these still your verdicts?

23 JUROR NUMBER 222: Yes.

24 CLERK: Juror Number 98, are these your
25 verdicts?

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1 JUROR NUMBER 98: Yes.

2 CLERK: Are these still your verdicts?

3 JUROR NUMBER 98: Yes.

4 CLERK: Thank you, ma'am. Juror Number
5 152, are these your verdicts?

6 JUROR NUMBER 152: Yes.

7 CLERK: Are these still your verdicts?

8 JUROR NUMBER 152: Yes.

9 CLERK: Your Honor, the jury has been
10 polled and the verdicts stand.

11 THE COURT: Yes, the jury has been
12 polled and the verdict does stand. Thank you
13 very much. Anything further from the jury
14 before I return them to their jury room to
15 resume their deliberations?

16 ANDREW GRIMES: Not on behalf of
17 Defendant Graddick.

18 WILLIAM RUNYON: Not on behalf of
19 Defendant Coakley, Your Honor.

20 THE COURT: Any other requests, Mr.
21 Smiley, at this point?

22 JIM SMILEY: No, sir.

23 THE COURT: Thank you very much, ladies
24 and gentlemen.

25 COURT REPORTER: Testimony of Joseph.

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1 JIM SMILEY: Just ---

2 RECROSS EXAMINATION

3 BY MR. SMILEY:

4 Q. So when the police got there and
5 talked to you, they asked you first did you
6 see a red-and-black car out there?

7 A. Yes, sir.

8 THE COURT: We have the videos cued up.

9 (WALMART VIDEOS REPLAYED BEFORE JURY)

10 THE COURT: Thank you. If you would
11 return to your jury room and resume your
12 deliberations, we will be in the process of
13 getting those things for you. Thank you very
14 much.

15 (JURY OUT @ 3:43 P.M.)

16 THE COURT: With respect to the
17 verdict, anything further from the State?
18 Any Motions?

19 SOLICITOR SHEALY: No, Your Honor.

20 THE COURT: Any Motions from Defendant
21 Graddick?

22 ANDREW GRIMES: We just renew our
23 Motion for a directed verdict.

24 THE COURT: Very well, I believe that
25 the court has responded to all the issues.

1 Certainly the evidence supports the verdict
2 and I would deny the Motion.

3 WILLIAM RUNYON: On behalf of Defendant
4 Coakley, Your Honor, we would renew our
5 Motion for a directed verdict and move for a
6 mistrial -- excuse me, move for a new trial.
7 We also renew our Motions for a mistrial as
8 we previously stated on the record.

9 THE COURT: Thank you, sir. Those
10 Motions are noted and preserved. The Court
11 again, as to Mr. Coakley, finds the evidence
12 adequate to support the verdict and would
13 respectfully deny your Motions, for a new
14 trial and for a mistrial.

15 All right. Are we ready for sentencing
16 or do you want to wait? Whatever your
17 pleasure.

18 SOLICITOR SHEALY: We are ready to go
19 forward with sentencing.

20 THE COURT: Do you have sentencing
21 sheets?

22 SOLICITOR SHEALY: I do.

23 THE COURT: Okay. Anything further
24 from the State?

25 SOLICITOR SHEALY: Your Honor, regard-

1 ing Jarret Graddick, he does have a 2006
2 conviction for criminal conspiracy.

3 Keenan Coakley does not have an adult
4 record. He does, however, have a juvenile
5 record for simple assault and battery, a drug
6 possession, assault and battery by a student
7 upon a school employee, malicious injury to a
8 treehouse -- "tree, house" -- and a
9 disturbing schools.

10 THE COURT: All right. Be glad to hear
11 from us -- we will do it in the order that we
12 have been doing it.

13 ANDREW GRIMES: Thank you, Your Honor.
14 I spoke with Mr. Runyon and that's the first
15 time I've ever seen a judge come down and
16 shake hands with the clients. We appreciate
17 that. It's been a little while since I've
18 tried a case in front of you, so I don't know
19 if that is new or ---

20 THE COURT: I've been trying to do that
21 my entire career -- at least once I started
22 doing it. I'm sure security doesn't
23 necessarily always like for me to do that.
24 But -- by the same token, I respect that.
25 But it's something that I try to do because I

1 -- we are all human beings, God created it.
2 I do that out of the same respect that I'd
3 have for anybody else. They're entitled to
4 the same respect as anybody else, as far as I
5 am concerned.

6 ANDREW GRIMES: And I told Jarret
7 about what Your Honor said, that you would
8 give us a fair trial, that if we do lose,
9 then we would get fair sentence. That's all
10 that we're seeking in this case is a fair
11 sentence.

12 Jarret now is twenty-six years old. I
13 think that he was close to turning twenty-
14 three at the time of this offense.

15 He has been in jail eight hundred and
16 ninety-one (891) days.

17 THE COURT: Okay.

18 ANDREW GRIMES: He bonded out November
19 16th, 2013. He was out for the holidays with
20 his family. Quite frankly, there have been
21 no issues. I have a lot of respect for
22 Jarret coming to court, being a man, for
23 showing up, facing the jury and showing the
24 charges. I think that speaks highly of him.

25 He was born and raised in Mount Pleasant.

1 He has a daughter that is a year and a half
2 one out in the lobby.

3 He's worked on and off as an electrician
4 with his father since he's been fifteen.

5 His mother and father have an autistic
6 child and Jarret helps out with him. They
7 have a close relationship.

8 Jarret also helps his grandmother. You
9 saw her testify. Obviously the jury did not
10 believe her on her sequence of the times.
11 But there is no doubt that he was, that he
12 visited with her. That was confirmed when we
13 talked with her before trial. We were a
14 little bit concerned about her health. I
15 asked him, 'are you sure that your grand-
16 mother can go through this, do you want her
17 to do this.' If she can't go through this, I
18 didn't want to call her. His grandmother was
19 quite adamant, she said 'I'll be there to
20 testify.' I met with her several time.
21 She's always said that right about 6:30 these
22 other kids picked him up.

23 You know, me and Jarret have kind of an
24 odd relationship. I read the arrest warrants
25 and stuff and said, 'there's not much that I

1 can do for you here, other than to talk with
2 Ms. Shealy. You know, I contacted her and
3 -- there wasn't much that we could do.

4 As we prepared for trial, he seemed to
5 pick up on a lot of the points. We had a lot
6 of jokes. He knew some about my medical
7 issue and he would ask about that. A lot of
8 clients don't do that. He's a very caring
9 person.

10 When I talked to him, I think Wednesday
11 night -- or, excuse me, Tuesday night, trying
12 to see what would cause him -- you know, he
13 seems so friendly, outgoing, so smart, to be
14 turning through stores robbing stuff. I just
15 can't picture that. He's young, maybe he was
16 caught up with the wrong influences but
17 everyone was close to the same age. I don't
18 know if it was the adrenalin, the high or
19 something. I am just at a complete loss.
20 It's as if there are two Jarrets.

21 To me, if he was sentenced to maybe
22 around fifteen years, I'm certain that he'd
23 learn his lesson, would come out as a mature
24 Jarret. More like his father.

25 His mother, I think quite frankly, may

1 have let him get away with too much stuff.
2 His father is more of a disciplinarian. When
3 I talked to him briefly, you know, he talked
4 about some stuff. He's kind of at a loss to
5 explain what happened, how this happened.

6 One of the deputies that has been here,
7 Ms. Pryor, has been very supportive. She's
8 e-mailed me a lot in the case, has called,
9 helped with the three-ways at the jail, to
10 coordinate some stuff. She obviously cares
11 about him.

12 I think that his mother would like to
13 briefly address the Court.

14 THE COURT: I'll be happy to hear from
15 her. I just need you to give me your full
16 name for the record.

17 BRIDGETT GRADDICK: I just --
18 (emotional).

19 THE COURT: Ma'am?

20 BRIDGETT GRADDICK: I -- that's my
21 son. He's always -- he's a kind-like person.
22 He'd do anything in the community and he was
23 in church. All the time, everybody in the
24 community loves Jarret and he takes time to
25 do things -- he takes out the trash, he

1. cleans the yard, he -- (emotional). I love
2. my son -- (emotional) -- he's my son.

3. COURT REPORTER: And her name?

4. ANDREW GRIMES: Bridgett Graddick.

5. THE COURT: Thank you. I don't believe
6. that Ms. Pryor wishes to address the Court.
7. Thank you.

8. THE COURT: Thank you, Mr. Grimes.
9. Anything from the State concerning Mr.
10. Graddick?

11. SOLICITOR SHEALY: Nothing further,
12. Your Honor. Thank you.

13. THE COURT: Mr. Runyon?

14. WILLIAM RUNYON: Your Honor, you've
15. heard that the Coakleys ----

16. THE COURT: I'm sorry. There is one
17. thing that I need to ask about Mr. Graddick.
18. What happened with the criminal conspiracy?
19. Did he get time served? Probation?

20. ANDREW GRIMES: I believe that it was
21. probation, Your Honor.

22. THE COURT: How long was he on proba-
23. tion?

24. DEFENDANT GRADDICK: Two years.

25. ANDREW GRIMES: Two years.

1 THE COURT: And he successfully
2 completed that?

3 DEFENDANT GRADDICK: Yes, sir.

4 THE COURT: So that would have put it
5 to 2008, when you finished probation?

6 DEFENDANT GRADDICK: Yes, sir.

7 THE COURT: Excuse me, Mr. Runyon.
8 I'm sorry.

9 WILLIAM RUNYON: No problem. Your
10 Honor, has heard even during the jury
11 selection where Mr. Coakley is from. He's
12 from Mount Pleasant. He lives on
13 . The Coakleys are an extensive family
14 in the Mount Pleasant area. He went so
15 school in Mount Pleasant, Judge.

16 His mother and father are in the
17 courtroom today and his pastor is here with
18 him. Judge, he's got an older brother who
19 has been very attentive to this case. He
20 lives and works out of state.

21 Mr. Coakley has been in custody since
22 July 5, 2011, Judge. We'd ask the court to
23 take that into consideration.

24 Of course, Mr. Coakley -- we heard the
25 verdict. I don't argue with jury verdicts,

1 Judge. I haven't done that since I started
2 practicing and there is no sense to start
3 now. The verdict is the verdict and we have
4 to deal with it.

5 I think as a practical matter, that we've
6 got a young man -- you heard the juvenile
7 record.

8 THE COURT: Yes.

9 WILLIAM RUNYON: And I have to tell you
10 that he did have some problems at school.
11 Most of those items that you heard about were
12 significant but not disturbing situations --
13 like the treehouse situation, things of that
14 sort. He successfully addressed those issues
15 in the juvenile process.

16 We are where we are now, Judge. I'd ask
17 the Court to be as lenient as possible
18 considering the circumstance and, as I asked,
19 to take into consideration that he's been in
20 jail since July 5th.

21 THE COURT: Anything else?

22 WILLIAM RUNYON: Nothing else at this
23 time, Judge..

24 THE COURT: I don't understand it
25 either.

1 WILLIAM RUNYON: Judge, if --

2 THE COURT: Good afternoon, sir. If
3 you would, give me full name, please, sir.

4 JAMES COAKLEY: I'm James Michael
5 Coakley. I am Keenan Coakley's father.

6 THE COURT: Yes, sir.

7 JAMES COAKLEY: This is my baby. I
8 love him to death.

9 THE COURT: I know that you did.

10 JAMES COAKLEY: And I tried to bring
11 him up the best way that I could. But, you
12 know, kids are going to be kids. He's not a
13 bad person, Your Honor.

14 Very seldom do you see -- I am a father,
15 I'm up here. It's not always that you have
16 someone to come and stand behind their kids
17 like this, because most families don't have a
18 mother and a father in the home. Our kids
19 had a mother and father in the home.

20 This is my wife right here.

21 This is our pastor. We are church-going
22 people.

23 I don't believe in foolishness and stuff
24 like that, Your Honor. And I teach my kids
25 not to believe in foolishness. But, you

1 know, things happen and we can't watch our
2 kids twenty-four/seven.

3 THE COURT: No, sir.

4 JAMES COAKLEY: I have to work, I've
5 got to feed them. I'm a State employee, a
6 Citadel coach. I work around a whole lot of
7 kids. I speak to them every morning and
8 foolishness and getting in trouble, bad stuff
9 like that. You know, I see a lot of them
10 jail and stuff like that. But me being a
11 truthful man, and I don't try to put myself
12 on a pedestal but I speak to them and I tell
13 them, you know, 'your father and mother
14 didn't send you to school for four years to
15 get in trouble, man.'

16 It's my heart and my goal to do that at
17 The Citadel.. I've been working there, next
18 year will be twenty-eight years. I've seen a
19 lot of things happen around there.

20 I'm asking you this afternoon, Your
21 Honor, to please show mercy, to lighten his
22 sentence, because he was gone for three years
23 -- he's got a young child and he couldn't
24 even make his birthday last Saturday. He
25 loves him to death. He always asks about his

1 daddy. As a matter of fact, I take him with
2 me, I always keep him with me. I have him on
3 the riding mower with me, cutting grass. He
4 calls he dad. He calls me daddy because he
5 really didn't get to see his dad when he was
6 a baby when Keenan got locked up.

7 I'm asking you, to please, lighten the
8 sentence for him so that he can come home and
9 be with us.

10 His mama, we almost lost her last year.
11 She had toxic shock. I went home to find her
12 in the bathroom unconscious. The only thing
13 that he could do on the phone was to cry for
14 his mama, because he can't be there for his
15 mother.

16 I am asking you for your mercy today.

17 THE COURT: Thank you, sir. I don't
18 know what the answer is, Mr. Coakley. Yes,
19 sir? I'm sorry. Give me your name, please.

20 BURNETT JACQUES: The first name is
21 Burnett, B-u-r-n-e-t-t and the last name is
22 Jacques, J-a-c-q-u-e-s.

23 I been in youth pastoring for many, many
24 years and I've been in youth counseling for
25 many years. I am from the island of Haiti,

1 and I've been here in ministerial school for
2 many years.

3 I've been dealing personally, one-to-one,
4 with Keenan for quite a while. Especially
5 since he's been in jail, I've been visiting
6 with him and talking to him. I've seen quite
7 a lot of improvement in terms of behavior and
8 commitment.

9 It's amazing in these days of modern days
10 -- people are recycling papers, recycling
11 leaves. I believe that there should be a way
12 also where we can recycle our wayward people.

13 It is true that the Bible says that a
14 soul without sin shall truly die. But also I
15 believe in the vow of redemption. Not only
16 should we recycle paper but we should recycle
17 people, redeem them as with this young man.
18 I believe that with proper counseling, proper
19 talk, proper teaching that people -- I've
20 made mistakes myself, but eventually I've
21 been redeemed. So if I have been redeemed
22 and -- and I don't believe that I'm one bit
23 better than those young people, these young
24 men, so I cry for redemption. I believe that
25 -- I don't have any say so in that but I

1 believe that should try for all out young
2 people.

3 THE COURT: Unfortunately, sir, I don't
4 have anything to do with that.

5 BURNETT JACQUES: Yes, sir, but I would
6 say a prayer for your mercy and ask if you
7 can do less, not only towards them where they
8 go away but to try to find a some way that
9 they reduce their sentences and get them back
10 home in the proper environment and teachings
11 and -- so, please, mercy.

12 THE COURT: This is something that --
13 we've all talked about some things, and the
14 things that we all know about -- I'm a
15 parent, too. I'm a grandparent. I thank
16 God every day, I don't think my children are
17 immune from doing exactly what is before me
18 today. We as human beings are capable of
19 making mistakes, and a mistake was made here.

20 There is no question that there are lots
21 of people -- there are people that come in
22 here, and I see a lot of them, that don't
23 even have any family. They've never known
24 their parents. Then I see some that have
25 parents, have a community, have a church

1 community. The Bible talks about that, too:

2 To whom much is given, much is expected.

3 I think that's a fair request.

4 It also talks about the consequences of
5 our sins, our actions and that we have to
6 suffer for that.

7 That's -- redemption, I don't have
8 anything to do with that. There is a judge
9 much greater than me that is going to take
10 care of that one. I don't deal with that.

11 Mine is to try to do, as best I can, to
12 mete out the punishment that I think is
13 appropriate for the actions that were taken.
14 These were serious, serious actions. How
15 they go from what we saw to carrying,
16 literally a canon -- a .45 -- a gun holding a
17 .45 caliber cartridge. Had that gone off in
18 that store? It's just lucky that we aren't
19 talking about a robbery -- an armed robbery
20 with murder. It would have been horrible.

21 The troubling thing about an armed
22 robbery, why it is so serious and why the
23 State takes it so seriously is that those
24 folks didn't know what was going to happen to
25 them. They thought that they were dead. I

1 I can't think of any greater nightmare.

2 I don't know the answer, Reverend. It's
3 a puzzling thing. I ponder it every day that
4 I get up. I open the newspapers, I see
5 another story. On the news this week there
6 was a family, a community where they were
7 going -- talking about going to Columbia to
8 try to change some image, to try to get
9 people to understand that 'we've got to stop
10 doing what's going on.'

11 I don't know where the answer is, I'll
12 confess that. But I do know this, I excused
13 one person. Do you know what his reason was?
14 'I live in this community. I'm sorry, but I
15 already have an opinion based on what we see
16 every day about young people.'

17 That's a sad statement..

18 Is it fair? No, it is not.

19 Is it reality? Yes, it is.

20 Can it be changed? Sure, it can.

21 But you know where it's got to start?
22 With people your age. It's got to start.

23 You're right, we can't be with them
24 twenty-four/seven, we can't walk with them
25 every day.

1 They've got to start making decisions.
2 I've been doing this for twenty years and I
3 have people, all the time, who -- I had a
4 young man, I'll never forget him. He was
5 eighteen years old, he shot a person in the
6 chest with a .40 caliber pistol. I asked
7 him, I said, 'What did you think was going to
8 happen when you pulled that trigger?'

9 He looked at me like, 'What?'

10 I said, 'What did you think was going to
11 happen?'

12 'Well, I didn't think.'

13 You shoot somebody and you don't even
14 think about what is going to happen? That
15 just doesn't make any sense. We've got to
16 start thinking before.

17 I don't know what causes people to go
18 from where he went, to do what was done.

19 The jury has passed on it.

20 But you will have a chance -- and I'm
21 sure that the victims would love to see you
22 in jail for thirty years. I understand their
23 feelings, I really do. You put them
24 through hell that day.

25 I'll take into consideration the lack of

1 record or the type of record that you have.

2 I will also take into consideration the
3 ages.

4 I believe Mr. Graddick, that the firearm
5 was tied to you. I understand that you don't
6 have to say -- but that was the evidence in
7 this case.

8 And you were on probation for two years.

9 You are the older. I am going to hold
10 you accountable.

11 The sentence of the Court in Mr.
12 Graddick's case is twenty (20) years, and he
13 is to be given credit for eight hundred and
14 ninety-one (891) days.

15 The sentence for Mr. Coakley is sixteen
16 (16) years and he is to be given credit for
17 time served since July 5th, 2011.

18 God bless you, good luck to both of you.

19 (DEFENDANT GRADDICK IN CUSTODY)

20 (DEFENDANT COAKLEY IN CUSTODY)

21 THE COURT: Gentleman, we have another
22 note. I think that this is where this case
23 is going to be resolved -- it's what we
24 talked about. Let me see the attorneys.

25 (SO ENTERED AS COURT'S EXHIBIT 7)

1 (OFF RECORD BENCH CONFERENCE)

2 JIM SMILEY: Can I have a minute to talk
3 with him?

4 THE COURT: Certainly.

5 (BRIEF RECESS)

6 (DEFENDANT SMALLS PRESENT)

7 JIM SMILEY: Your Honor, may we --

8 (OFF RECORD BENCH CONFERENCE)

9 JIM SMILEY: We're almost there, Your
10 Honor.

11 THE COURT: That's fine.

12 JIM SMILEY: They are doing the sentenc-
13 ing sheet now.

14 THE COURT: All right. Okay, why don't
15 we do this? I don't need the sentencing
16 sheet to take his guilty plea.

17 JIM SMILEY: No, sir, we can sign it
18 afterwards.

19 SOLICITOR SHEALY: That's fine.

20 THE COURT: Let's do that and then I
21 can go back and deal with the jury.

22 JIM SMILEY: That's fine. Kevin, let's
23 move up here. Do you want to talk to me?

24 THE COURT: Jim, go ahead and talk.
25 There's no rush. I tell you what, why don't

1 I answer this question and tell them that we
2 are in the process of -- let's bring them in
3 so that they don't think that we have
4 forgotten about them.

5 JIM SMILEY: Yes, sir.

6 THE COURT: Bring in the jury.

7 (JURY IN @ 4:17 P.M.)

8 THE COURT: Thank you, ladies and
9 gentlemen. I have what has now been marked
10 as Court's Exhibit 8 (sic). It says, "At
11 what time is someone considered as aiding and
12 abetting in a crime?"

13 There is no specific law that defines
14 that other than what you already have. You
15 have the law that pertains to this case as to
16 what the State has to prove beyond a
17 reasonable doubt to find someone guilty of a
18 crime, being a principle or assisting in that
19 crime. That's a factual determination that
20 is left to the jury. The jury has to make
21 that determination. Of course, that
22 determination has to be made beyond a
23 reasonable doubt, that you conclude that that
24 has been established by the evidence.

25 I would love to answer it but I am not at

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1 liberty to do so under the restrictions that
2 I have. That would cause me to be commenting
3 on the facts of this particular case. I
4 cannot do so. Thank you, sir.

5 Please retire and resume your delibera-
6 tions. Thank you so much.

7 (JURY OUT @ 4:23 P.M.)

8 THE COURT: Exceptions or additions
9 from the State?

10 SOLICITOR SHEALY: No, Your Honor.

11 THE COURT: Exceptions or additions
12 from Mr. Smalls?

13 JIM SMILEY: No, Your Honor.

14 THE COURT: Thank you.

15 (SIDEBAR DEFENDANT SMALLS AND COUNSEL)

16 JIM SMILEY: Your Honor, I need a quick
17 break to run to the restroom and then we are
18 ready.

19 THE COURT: Yes, sir.

20 (BRIEF RECESS)

21 (DEFENDANT SMALLS PRESENT)

22 JIM SMILEY: There's one thing that I

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1 forgot to tell him, (sidebar with
2 Defendant Smalls). I think that he
3 understands his rights, Your Honor.

4 THE COURT: Mr. Smalls, good afternoon,
5 sir.

6 DEFENDANT SMALLS: Good afternoon.

7 THE COURT: I have been handed a
8 sentencing sheet, Mr. Smalls, that bears your
9 signature on Indictment 11-GS-10-2079, which
10 is an indictment charging you with the
11 offense of armed robbery; which we have spent
12 the last four days or so trying. According
13 to this sentencing sheet you're now desirous
14 of pleading guilty to accessory after the
15 fact of a felony A, B, C; is that correct,
16 sir?

17 JIM SMILEY: (Sidebar with Defendant).

18 DEFENDANT SMALLS: Yes, sir.

19 THE COURT: Your lawyer has explained
20 to you the difference between the indicted
21 offense and the offense of accessory after
22 the fact?

23 DEFENDANT SMALLS: Yes, sir.

24 THE COURT: What does that carry?

25 SOLICITOR SHEALY: Zero to fifteen.

1 THE COURT: Do you understand that,
2 sir?

3 DEFENDANT SMALLS: Yes, sir.

4 THE COURT: Do you understand that
5 charge is not a lesser-included offense of
6 armed robbery?

7 DEFENDANT SMALLS: Yes, sir.

8 THE COURT: Your lawyer has explained
9 your right to have that charge of accessory
10 after the fact presented to the grand jury
11 before being asked to answer to that charge.
12 Is that true, sir?

13 DEFENDANT SMALLS: Yes, sir.

14 THE COURT: You have checked this box
15 and initialed it, indicating your desire to
16 waive presenting it to the grand jury and go
17 forward with this plea today; is that true,
18 sir?

19 DEFENDANT SMALLS: Yes, sir.

20 THE COURT: Do you fully understand
21 that right?

22 DEFENDANT SMALLS: I do.

23 THE COURT: Understanding, Mr. Smalls,
24 that I could sentence you up to fifteen years
25 in jail, what is your plea? Guilty or not

1 guilty?

2 DEFENDANT SMALLS: Guilty.

3 THE COURT: Are you totally satisfied
4 with the manner in which your attorney has
5 represented you throughout this matter?

6 DEFENDANT SMALLS: Yes, sir.

7 THE COURT: Have you had sufficient
8 opportunity to talk with him about the
9 consequences of changing your plea?

10 DEFENDANT SMALLS: Yes, sir.

11 THE COURT: And you understand the
12 rights that you're giving up?

13 DEFENDANT SMALLS: Yes, sir.

14 THE COURT: Mr. Smiley, you obviously
15 has demonstrated those rights for the last
16 several days, but you've also discussed with
17 him again your right to exercise those same
18 rights at a trial on this charge?

19 JIM SMILEY: I have, Your Honor.

20 THE COURT: And he fully understands
21 and appreciates what he is doing?

22 JIM SMILEY: He does.

23 THE COURT: Based on your assessment of
24 the evidence, do you concur with his decision
25 to enter a guilty plea?

1 JIM SMILEY: To accessory after the
2 fact; yes, sir.

3 THE COURT: I think that we talked
4 about that.

5 JIM SMILEY: Yes, sir.

6 THE COURT: And it appears to be more
7 of what the factual situation -- obviously
8 the jury has been deliberating for quite a
9 while, so there certainly is -- not to be
10 critical to the State for indicating it as an
11 armed robbery.

12 JIM SMILEY: Yes, sir.

13 THE COURT: Do you understand that,
14 sir?

15 DEFENDANT SMALLS: I do.

16 THE COURT: It would be your right to
17 have a jury trial, your right to confront the
18 witnesses against you on this charge. Do you
19 understand that?

20 DEFENDANT SMALLS: Yes, sir.

21 THE COURT: That means that the
22 witnesses would come forward and testify to
23 basically the same thing that we did today,
24 the only thing is that you'd be charged with
25 being an accessory; which would probably pick

1 up from the time that you left and picked
2 them up and -- and you were stopped, because
3 that's where the majority of the evidence
4 was. There is some before that indirectly is
5 there. Clearly there is evidence of that
6 because there was the money and everything
7 else in the car, the money. Do you
8 understand that?

9 DEFENDANT SMALLS: Yes, sir.

10 THE COURT: But it would be your right
11 to challenge those witnesses again; do you
12 understand that?

13 DEFENDANT SMALLS: I understand.

14 THE COURT: You want to give up those
15 rights?

16 DEFENDANT SMALLS: Yes, sir.

17 THE COURT: You understand that you're
18 giving up the right to remain silent by
19 talking with me?

20 DEFENDANT SMALLS: Yes, sir.

21 THE COURT: It is your decision to give
22 up that right, as well?

23 DEFENDANT SMALLS: Yes, sir.

24 THE COURT: Nobody has threatened you
25 in any way or promised you anything?

1 DEFENDANT SMALLS: No, sir.

2 THE COURT: I think that I know the
3 facts. Is there anything else that you want
4 to tell me, Solicitor?

5 SOLICITOR SHEALY: No, sir, Your Honor.
6 Mr. Smiley and I -- other than this, that
7 when Mr. Smiley and I were talking about the
8 possibility of a plea, he indicated that he
9 would be requesting probation. It's the
10 State's position that due to Mr. Smalls'
11 involvement that probation would not be
12 appropriate to the State.

13 THE COURT: Thank you very much. Does
14 he have a record of any type?

15 SOLICITOR SHEALY: He does, Your Honor.
16 He has seven breaking-and-entering motor
17 vehicle convictions back from 2006. Sorry,
18 just a second -- and one drug charge and a
19 2008 shoplifting.

20 JIM SMILEY: The drug charge was
21 resolved at the same time as the B&E's.

22 SOLICITOR SHEALY: That's correct. I
23 think that it was a suspended Y.

24 JIM SMILEY: Yes. That's correct.

25 THE COURT: A suspended Y, and he did

HAND OF ONE IS HAND OF ALL

If a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person which occurs as a natural consequence of the acts done in carrying out the common plan and purpose. For example, two people can be guilty of killing another person when only one of the two had a gun, there was only one bullet, and only one of the two fired the shot that caused the death. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all or, as it is sometimes said, "the hand of one is the hand of all".

Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal nor does mere presence at the scene of a crime or mere association with a person who commits a crime make a defendant an accomplice or an aider and abettor of the person committing the crime.

Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arranged plan or

common scheme is necessary for a finding of guilt as a principal. The state must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

A principal in a crime is one who either actually commits the crime or who is present aiding, abetting, or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more, acting with a common plan or intent, are present at the commission of a crime, it does not matter who actually commits the crime. Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime.

INTENT

Intent is also a necessary element, for there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending the result which actually occurs; not accidentally or involuntary. Intent may be shown by acts and conduct of the defendant(s) and other circumstances from which you may naturally and reasonably infer intent. The state must prove intent beyond a reasonable doubt.

REASONABLE DOUBT

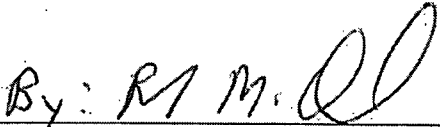
A reasonable doubt is a doubt which makes an honest, sincere, conscientious juror in search of the truth in the case hesitate. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty. Reasonable doubt may arise from evidence which is in the case or from the lack or absence of evidence in the case. It's up to you, ladies and gentlemen to determine whether or not a reasonable doubt exists as to guilt of this defendant. I charge you that the defendant is entitled to every reasonable doubt arising in the whole case. If upon any issue of fact essential to conviction and a verdict of guilty, you have a reasonable doubt as to how that issue should be resolved, it would be your duty to resolve that reasonable doubt in favor of the defendant.



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Amended 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."

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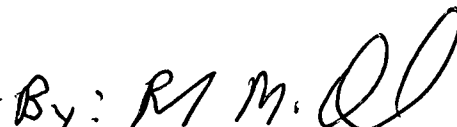
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