

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Honorable Perry H. Gravely, Circuit Court Judge

KEEON BUTLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000789

APPENDIX .

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
-vs-) TRANSCRIPT OF RECORD
KEEON BUTLER,) May 19-20, 2014
Defendant.) Charleston, South Carolina

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a jury.

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

Lindsey Byrd, Assistant Solicitor
Kelley Young, Assistant Solicitor
Attorneys for the State

Guy Vitetta, Esquire
Attorney for the Defendant

1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Jeanie Hampton	52	68	69	75
4	Pamela Sanders	71	88	83	--
5	India Grant	84	99	104	107
6	Sarah Gladwell	111	122	--	--
7	Jennifer Wooley	125	--	--	--
8	Nada Kerstein	132	143	--	--
9	Rene Charles	146	151	152	--
10	Bryant Tatman	160	169	--	--
11	Latasha Morton	171	176	--	--
12	Timothy Cromer	180	182	--	--

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1	E X H I B I T S			
2	NUMBER	DESCRIPTION	ID.	EV.
3	State's 1	Footage from Big Lots	60	60
4	State's 2	Photograph	64	64
5	State's 3	Photograph	64	64
6	State's 4	Photograph	64	64
7	State's 5	Photograph	64	64
8	State's 6	Photograph	64	64
9	State's 7	Photograph	64	64
10	State's 8	Photograph	64	64
11	State's 9	Photograph	64	64
12	State's 10	Photograph	64	64
13	State's 11	Photograph	64	64
14	State's 12	Photograph	64	64
15	State's 13	Photograph	64	64
16	State's 14	Photograph	64	64
17	State's 15	Photograph	64	64
18	State's 16	Photograph	64	64
19	State's 17	Photograph	64	64
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21	State's 19	Photograph	64	64
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23	State's 24	Still shot of video	64	64
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1	E X H I B I T S			
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4	State's 29	Photograph	150	150
5	State's 30	Photograph	150	150
6	State's 31	Photograph	150	150
7	State's 32	Photograph	150	150
8	State's 33	Photograph	150	150
9	State's 34	Photograph	150	150
10	State's 35	Photograph	92	92
11	State's 36	Photograph	92	92
12	State's 37	Photograph	92	92
13	State's 38	Photograph	92	92
14	State's 39	Photograph	92	92
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1 (May 19, 2015.)

2 THE COURT: All right.

3 Well, folks, we are getting ready now to draw
4 our jury, and what we're going to do is I'm going to ask
5 you a few more questions now that pertain to just this
6 case, give you a little bit of what we do, why we're
7 doing some of these things, but, basically, what I'm
8 going to be doing now is introducing you to the parties,
9 the lawyers, and telling you a little bit about this case
10 and then asking you some questions, letting you know who
11 the witnesses are, solely for the purpose of determining
12 whether or not you can be a fair and impartial juror.

13 It's possible that you might know somebody,
14 have some peripheral contact to them, but it's only if
15 the knowledge of the case or the persons or the lawyers
16 would affect your ability to be fair and impartial would
17 it disqualify you from being a juror. If you have some
18 response to a question that you are a little bit hesitant
19 to speak out in front of a group, please don't just set.
20 Please feel free to come forward and speak to me in front
21 of the court reporter.

22 Now, this is a criminal case. There's civil
23 court going on, but I'm doing criminal court. Our big,
24 fancy word for criminal court is called General Sessions
25 court, and we are going to be now introducing you to the

1 concept of what the difference is between a criminal case
2 and a civil case.

3 In a civil case, you have parties that are
4 suing each other, and in a criminal case, the State has
5 accused somebody of committing a crime. That's really
6 what it boils down to.

7 Now, in a civil case, the party who brings
8 the lawsuit is known as the plaintiff, the party who gets
9 sued is known as the defendant, and in that case, whoever
10 brings the lawsuit has the burden of proof. In other
11 words, they have to prove what they allege.

12 In a criminal case, the State is the person
13 who initiates the case by accusing a defendant of having
14 committed a crime, and they do that by way of presenting
15 the grand jury with information about the case. A grand
16 jury system -- if you'll remember when I qualified you
17 earlier, I said did anybody serve on the grand jury in
18 the last five years, and the grand jury is simply 18
19 people that get together. They're drawn just out of the
20 same sort of panel and go through the same sort of
21 questions that you do, but they meet, and if at least 12
22 people, after they have reviewed the evidence, determine
23 that there is a possibility that a crime was committed
24 and there's a probability that a person -- a particular
25 person committed a crime, then they will issue an

1 indictment.

2 And all an indictment does is put the person
3 on notice that they have been charged with a crime, what
4 that crime is, and it gives the Court jurisdiction to
5 hear the trial. Indictments are not evidence. They
6 raise no presumption of guilt whatsoever. Again, they
7 solely serve the purpose of giving this Court
8 jurisdiction and letting the person who is charged with
9 the crime know what they're to stand trial for.

10 No one ever has to prove that they are
11 innocent in the United States of a crime. In South
12 Carolina, and in every state in this union, if are you
13 charged with a crime, State has the burden of proving
14 that the person committed the crime beyond a reasonable
15 doubt, and I'll define each of those terms a little bit
16 later as we go on, but an indictment is not evidence. It
17 is just the grand jury has reviewed the evidence and
18 suggested that there was a probability that this crime
19 got committed.

20 So we have today here the State of South
21 Carolina versus Keeon Butler, and Mr. Butler has been
22 indicted for two offenses, and I'm going to read you what
23 the indictments say solely for the purpose of knowing
24 what this case is about, so if anybody knows anything
25 about this case, you can tell us about it. All right?

1 Indictment 2012-GS-10-4586 is for the crime
2 of armed robbery, and it alleges on or about December 16,
3 2011 in Charleston County, at [REDACTED]
4 Boulevard by use of force, threats, or intimidation and
5 while armed with a deadly weapon, to wit a handgun, the
6 defendant, Keeon Dejarvace Butler, did take and carry
7 away goods and/or moneys from the person or immediate
8 presence of Jeanie Hampton and Pamela Sanders with the
9 intent to permanently deprive them of possession thereof
10 in violation of Section 16-11-33(a) of the South Carolina
11 Code of Laws as amended.

12 Mr. Butler pled not guilty to that charge.
13 The second indictment is indictment 2012-GS-10-3824, and
14 this is an indictment for possession of a firearm during
15 the commission of a violent crime, and it alleges in
16 Charleston County, South Carolina, on or about 11 -- or
17 November the 16th, 2011, the defendant, Keeon Dejarvace
18 Butler, did possess a handgun or visibly display what
19 appeared to be a knife during the commission or attempted
20 commission of robbery and violent crime. This is in
21 violation of Section 16-23-490 of the South Carolina Code
22 of Laws as amended, but, again, Mr. Butler pled not
23 guilty to this charge, so it is now the duty of the State
24 to provide him with a jury trial of 12 people, and the
25 State must attempt to prove to those 12 people beyond a

1 reasonable doubt that Mr. Butler committed those crimes.

2 Again, Mr. Butler does not have to prove his
3 innocence. All Mr. Butler is required to do is show up
4 for trial, and he's done that. All right? So, in South
5 Carolina, when we -- when the government, or the State,
6 prosecutes someone, they do that through an office known
7 as the solicitor's office.

8 Solicitors are what we call prosecutors, or
9 the prosecutors in this case are called solicitors. We
10 have 16 judicial circuits in this case, and we live in
11 the Ninth Judicial Circuit. The Ninth Judicial Circuit
12 is comprised of Charleston and Berkeley County, and the
13 solicitor for the Ninth Circuit is Ms. Scarlett Wilson.
14 Ms. Wilson has designated two of her assistant
15 solicitors, Ms. Lindsey Byrd and Ms. Kelley Flynn, as the
16 prosecutors to handle the case for her.

17 I ask that they now stand and face the jury
18 panel. Is there -- Ms. Flynn, you are young now?

19 We're not related, but she got married, and I
20 had her name down wrong. We're not related though, all
21 right? Now, is there any member of the jury panel who is
22 related by blood or marriage or acquainted in any way
23 with either Ms. Scarlett Wilson, the solicitor, or her
24 two assistants who will prosecute the case for her this
25 week, Ms. Byrd and Ms. Young? If so, would you please

1 stand. All right. I find none. You may be seated.

2 Now, Mr. Butler, would you stand and face the
3 jury panel? This is Mr. Butler who is standing there in
4 the blue shirt, and now he's standing with Mr. Vitetta as
5 his lawyer.

6 Is there any member of the jury panel who is
7 related by blood or marriage or acquainted in any way
8 with Mr. Keeon Butler or with his lawyer, Mr. Guy
9 Vitetta, or perhaps you have been represented by
10 Mr. Vitetta or a member of his law firm in the past? If
11 so, would you please stand.

12 Yes, ma'am. Name and number?

13 A PROSPECTIVE JUROR: I'm Debra Stokes. I'm
14 juror 265, and I'm acquainted with Mr. Vitetta from the
15 practice of law.

16 THE COURT: The fact that you know him, would
17 that affect your ability to be a fair and impartial juror
18 either for or against the State or for or against his
19 client?

20 A PROSPECTIVE JUROR: No, sir.

21 THE COURT: All right. You maybe seated.

22 I'm going to call out the names of some
23 witnesses now who might be called during this case. If
24 there is any member of the jury who is related by blood
25 or marriage or acquainted in any way with any of these

1 folks, when I call out the name, would you please stand.

2 First is Bryant Tatman with the Charleston
3 Police Department? I find none. Thomas Bailey,
4 Charleston Police Department? I find none. Ashleigh
5 Dockery, Charleston Police Department? I find none.
6 Rene Charles, Charleston Police Department? I find none.
7 Jennifer Wooley, Charleston Police Department? I find
8 none. Nada Kerstein, Charleston Police Department? I
9 find none. Sarah Gladwell, Charleston Police Department?
10 I find none. Mary Phillips, Charleston Police
11 Department? I find none. Timothy Cromer with Charleston
12 Police Department? I find none. Jeanie Hampton?

13 Yes. Your name and number?

14 A PROSPECTIVE JUROR: Sarah Schultz, 241.

15 THE COURT: Okay. And who do you know?

16 A PROSPECTIVE JUROR: I believe I know Jeanie
17 Hampton. I think she was an employee of --

18 THE COURT: Is Ms. Hampton here?

19 MS. BYRD: Your Honor, I believe she's
20 outside.

21 THE COURT: Okay. How about bring her in
22 real quick, see if you know her.

23 Are you Ms. Jeanie Hampton?

24 MS. HAMPTON: I am.

25 THE COURT: Is this the lady you know?

1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: Okay. You can step back out.

3 Thank you.

4 All right. How do you know her?

5 A PROSPECTIVE JUROR: She was an employee.

6 THE COURT: If she is called as a witness in
7 this case, would that affect your ability to be fair and
8 impartial in this case, either for or against the State
9 or for or against the defense?

10 A PROSPECTIVE JUROR: I don't think so.

11 THE COURT: Okay. Thank you.

12 Your name and number?

13 A PROSPECTIVE JUROR: 175, Sheila Macklee.

14 THE COURT: And who do you know?

15 A PROSPECTIVE JUROR: Jeanie.

16 THE COURT: How do you know her?

17 A PROSPECTIVE JUROR: She was a
18 transcriptionist at the naval hospital.

19 THE COURT: Would that affect your ability to
20 be fair and impartial in this case for or against the
21 State or for or against the defense?

22 A PROSPECTIVE JUROR: No, sir.

23 THE COURT: All right. Thank you. Anyone
24 else?

25 How about Pamela Sanders? Anyone know Ms.

1 Sanders, related to Ms. Sanders in any way? All right.
2 I find none. Andrea Grant? I find none. Natasha
3 Martin? I find none.

4 Any member of the jury panel, either you or
5 an immediate family member or a close, personal friend,
6 work for the Charleston solicitor's office or the Ninth
7 Circuit solicitor's office with Berkeley County? If so,
8 would you please stand. All right.

9 Any member of the jury panel, either you or a
10 member of your family, ever had any criminal charges
11 prosecuted by the Charleston solicitor's office? If so,
12 would you please stand. I find none.

13 MS. BYRD: Your Honor, I apologize. May we
14 approach, please.

15 THE COURT: Yes.

16 (Discussion held at sidebar.)

17 THE COURT: Any member of the jury panel,
18 either you or an immediate family member or a close,
19 personal friend, ever been the victim of a crime -- a
20 violent crime? And that would include armed robbery or
21 ever been -- ever been the victim of a armed robbery,
22 ever been accused or charged with armed robbery, or ever
23 been the victim of a violent crime or been charged with a
24 violent crime? If so, would you please stand.

25 Okay. Now, if you're comfortable standing

1 and telling me what it is, I need your name and juror
2 number and then why you stood up. If you would prefer to
3 come down and talk more privately, you're welcome to do
4 that.

5 Let's start over here with you.

6 A PROSPECTIVE JUROR: My name is John
7 Chrysostom. My number is 53. I've been robbed. One of
8 my good friends was shot.

9 THE COURT: All right. You think that would
10 affect your ability to be fair and impartial in this
11 case, either for or against the State or for or against
12 the defendant?

13 A PROSPECTIVE JUROR: A little bit.

14 THE COURT: You think it would?

15 A PROSPECTIVE JUROR: Yeah.

16 THE COURT: All right. Well, I'll excuse you
17 then from service on this case. Just be seated. You
18 don't have to respond to any further questions, but it
19 would just be easier if you stayed with us for just a few
20 minutes.

21 Yes. Your name and juror number?

22 A PROSPECTIVE JUROR: Paul Setti, number 246.
23 Both my sister and brother-in-law were both robbed at
24 gunpoint.

25 THE COURT: How long ago was that?

1 A PROSPECTIVE JUROR: Last four or five
2 years.

3 THE COURT: Would that affect your ability to
4 be fair and impartial in this case, either for or against
5 the State or for or against the defense?

6 A PROSPECTIVE JUROR: I don't think so.

7 THE COURT: All right. Thank you.

8 Your name and number, please?

9 A PROSPECTIVE JUROR: My name is Eileen
10 Sandlin. My juror number is 238. I also was robbed at
11 gunpoint at an ATM machine. It's been over 20 years ago.
12 I don't think that it will affect my service.

13 THE COURT: Either for or against the State
14 or for or against the defense?

15 A PROSPECTIVE JUROR: I don't think so.

16 THE COURT: All right. Thank you. Anyone
17 else?

18 Any member of the jury panel ever been a
19 witness in a criminal case? If so, please stand. Any
20 member of the jury panel think they would have any
21 problem at all following the law as I instruct you as
22 applies in a case like this? All right. I find none.

23 Any member of the jury panel ever had an
24 unpleasant experience with a law enforcement officer?
25 No? All right.

1 This next question is kind of open-ended, but
2 you'll understand it can encompass a lot of things, some
3 of which I'll mention that you can use as examples, and
4 it's not meant to be all inclusive.

5 What I'm looking for is, does any member have
6 any reason why you don't think you could be a fair and
7 impartial juror in this case? Perhaps you have religious
8 or philosophical reasons why. An example of what we
9 sometimes hear is people cite a Bible verse and say,
10 well, you're not supposed to judge other people, as an
11 example.

12 Sometimes you have people that have
13 philosophical differences with the legal system, and they
14 just say, well, I think the legal system is messed up,
15 and if we -- you know, justice can't be done, no matter
16 what. There are groups out there that people belong to
17 that advocate that if you ever get on a jury, you will
18 have some idea as to how you will already vote; in other
19 words, sometimes you automatically convict or you
20 automatically won't convict, even though the parties have
21 met their various standards of proof.

22 There's a whole multitude of reasons, some of
23 which I have mentioned. Sometimes people have racial,
24 ethical reasons why they don't think they could vote to
25 convict, or they would automatically convict. These

1 could be any kind of reason.

2 I'm not trying to change anybody's mind as to
3 what their beliefs are. That's not my point in asking
4 the question. As far as I'm concerned, this is America.
5 You can pretty much believe anything you want to believe.
6 As long as you're not advocating the violent overthrow of
7 the government or you are wanting to hurt somebody, I
8 personally don't care what you believe in, and I'm not
9 going to try to change it today.

10 What I do need to know, though, is if there
11 is some reason why you couldn't be fair to both the State
12 and to the defendant. Both of these parties to this case
13 are entitled to a fair and impartial trial by 12 fair and
14 impartial jurors who state that they can get up in the
15 jury box, take an oath that they listen to the evidence
16 that is presented in this courtroom, and they will make a
17 decision based on what they hear as evidence during the
18 course of this trial and that they will apply the law
19 that the judge tells them applies even if it's not the
20 law or they disagree with it, but they need to be able to
21 take that oath to say, I will make my decision based not
22 on outside influences, people, or anything like that, but
23 what they hear in this courtroom as evidence and what
24 their belief -- or what I instruct them the law is.

25 That's really all I'm trying to do, so if you

1 have some reason why you don't think you could be fair
2 and impartial, either to the State or to the defendant,
3 then I need you to stand, and you're welcome to come down
4 and talk to me more privately if you want.

5 All right? So if that applies to anyone,
6 would you please stand. Okay. I find none.

7 I've got one other witness name that I need
8 to call out, if are you related by blood or marriage or
9 acquainted in any way with Mr. Jack Scarborough, who is
10 an investigator for the solicitor's office, this
11 gentleman right there. If so, would you please stand.
12 All right. I found none.

13 I think I've covered everything, but is there
14 anything further for the State?

15 MS. BYRD: Nothing from the State, Your
16 Honor.

17 THE COURT: From the defense?

18 MR. VITETTA: No.

19 THE COURT: All right. The way we do this in
20 criminal court is a little different than we do it in
21 civil court. In criminal court, the clerk is going to
22 call out your name. Bring your belongings with you and
23 come through those little doors right there and come
24 stand in front of this podium and turn around and face
25 back towards the back.

1 MR. VITETTA: May I approach? There is one
2 more witness.

3 THE COURT: Uh-huh.

4 (Discussion held at sidebar.)

5 THE COURT: One other witness. Is anybody
6 related by blood or marriage or acquainted in any way
7 with Keith Novak? He used to be an investigator with
8 the public defender's office. If that applies to anyone,
9 would you please stand? Okay. I find none.

10 Okay. So you'll come through, stand in front
11 of the jury panel. The State will have the opportunity
12 to say either seat the juror, present the juror, or
13 excuse the juror. If they say it's okay to present the
14 juror, then you go over to -- the defense will have the
15 same opportunity. If both sides say present or seat the
16 juror, come over to the jury box. You're on the jury.
17 If either of the sides strike you, you go back to your
18 seat. Please bring your belongings with you, because if
19 you get called, you'll just come right up to the jury
20 box.

21 Two alternate. All right? The State gets
22 five strikes, the defense gets ten. Madame Clerk,
23 whenever you're ready.

24 THE CLERK: All right. Ladies and gentlemen:
25 As I call your juror number and your name, again, you're

1 going to proceed to the podium, face the back of the
2 room. Bring with you all your belongings.

3 Juror number 61, Louise Crawford.

4 (The juror, a white female, approaches.)

5 What say you for the State?

6 MS. BYRD: Please present Ms. Crawford.

7 THE CLERK: What say you for the defendant?

8 MR. VITETTA: Please excuse the juror.

9 THE CLERK: You are excused from the trial of
10 this case. You may return to your seat.

11 Juror number 246, Paul Setti.

12 (The juror, a white male, approaches.)

13 What say you for the State?

14 MS. BYRD: Please present Mr. Setti.

15 THE CLERK: What say you for the defendant?

16 MR. VITETTA: Please excuse this juror.

17 THE CLERK: Sir, you have been excused from
18 the trial of this case. You may return to your seat.

19 Juror number 46, Suzette Carrier.

20 (The juror, a white female, approaches.)

21 What say you for the State?

22 MS. BYRD: Please present Ms. Carrier.

23 THE CLERK: What say you for the defendant?

24 MR. VITETTA: Please swear the juror.

25 THE CLERK: You've been selected a juror in

1 the case. You may take a seat in the jury box.

2 Juror 187, Kristin McDuffie.

3 (The juror, a white female, approaches.)

4 What say you for the State?

5 MS. BYRD: Please present Ms. McDuffie.

6 THE CLERK: What say you for the defendant?

7 MR. VITETTA: Please swear the juror.

8 THE CLERK: You've been selected as a juror.

9 You may take a seat in the jury box.

10 Juror number 131, Kathryn Holt.

11 (The juror, a white female, approaches.)

12 What say you for the State?

13 MS. BYRD: Please present Ms. Holt.

14 THE CLERK: What say you for the defendant?

15 MR. VITETTA: Please excuse this juror.

16 THE CLERK: You've been excused as a juror in

17 this case. You may return to your seat.

18 Juror number 146, Nicole Johnson.

19 (The juror, a white female, approaches.)

20 What say you for the State?

21 MS. BYRD: Please present Ms. Johnson.

22 THE CLERK: What say you for the defendant?

23 MR. VITETTA: Please swear the juror.

24 THE CLERK: You've been selected as a juror

25 in this case. Please have a seat in the jury box.

1 Juror number 291, Debra White?

2 (The juror, a white female, approaches.)

3 What say you for the State?

4 MS. BYRD: Please present Ms. White.

5 THE CLERK: What say you for the defendant?

6 MR. VITETTA: Please swear the juror.

7 THE CLERK: Ma'am, please take a seat in the
8 jury box. You've been selected for the trial of this
9 case.

10 Juror 258, Christine Snarsky-Leckonby.

11 (The juror, a white female, approaches.)

12 What say you for the State?

13 MS. BYRD: Please present Ms. Leckonby.

14 THE CLERK: What say your for the defendant?

15 MR. VITETTA: Please swear the juror.

16 THE CLERK: You have been selected as a juror
17 in this case. Take a seat in the jury box.

18 Juror number 68, Chadwick Davis?

19 (The juror, a white male, approaches.)

20 What say you for the State?

21 MS. BYRD: Please present Mr. Davis.

22 THE CLERK: What say you for the defendant?

23 MR. VITETTA: Please excuse Mr. Davis.

24 THE CLERK: Mr. Davis, you have been excused
25 from this case. You may return to your seat.

1 Juror number 265, Debra Stokes.

2 (The juror, a white female, approaches.)

3 What say you for the State?

4 MS. BYRD: Please excuse the juror.

5 THE CLERK: You've been excused from the
6 trial of this case. You may return to your seat.

7 Juror number 227, Sheila Richardson?

8 (The juror, a black female, approaches.)

9 What say you for the State?

10 MS. BYRD: Please present the juror.

11 THE CLERK: What say you for the defendant?

12 MR. VITETTA: Please swear the juror.

13 THE CLERK: Ma'am, you've been selected as a
14 juror in this case. You may take a seat in the jury box.

15 Juror number 121, Chris Hammond.

16 (The juror, a white male, approaches.)

17 What say you for the State?

18 THE COURT: Who is this? Come up here a
19 second.

20 (At sidebar.)

21 What is your number?

22 A PROSPECTIVE JUROR: 187.

23 THE COURT: Ms. McDuffie? What's up?

24 A PROSPECTIVE JUROR: I just need to go the
25 bathroom.

1 THE COURT: Is that all? Sure. I thought
2 you wanted to be excused from the jury. All right. Go
3 right ahead.

4 THE CLERK: What say you for the State?

5 MS. BYRD: Please present Mr. Hammond.

6 THE CLERK: What say you for the defendant?

7 MR. VITETTA: Please swear the juror.

8 THE CLERK: Sir, you've been selected as a
9 juror in this case. You may take a seat in the jury box.
10 Juror number 179, Gwen Marcantonio.

11 (The juror, a white female, approaches.)

12 What say you for the State?

13 MS. BYRD: Please present Ms. Marcantonio.

14 THE CLERK: What say you for the defendant?

15 MR. VITETTA: Please swear the juror.

16 THE CLERK: Ma'am, you've been selected as a
17 juror in this case. You may take a seat.

18 Juror number 271, John Thoma.

19 (The juror, a white male, approaches.)

20 What say you for the State?

21 MS. BYRD: Please present Mr. Thoma.

22 THE CLERK: What say you for the defendant?

23 MR. VITETTA: Please swear the juror.

24 THE CLERK: Sir, you've been selected as a
25 juror in this case. You may take a seat in the jury box.

1 Juror number one, Erica Aiken.

2 (The juror, a black female, approaches.)

3 What say you for the State?

4 MS. BYRD: Please excuse Ms. Aiken.

5 THE CLERK: You've been excused from the
6 trial of this case. You may return to your seat.

7 Juror number 256, Brian Smith.

8 (The juror, a black male, approaches.)

9 What say you for the State?

10 MS. BYRD: Please present Mr. Smith.

11 THE CLERK: What say you for the defendant?

12 MR. VITETTA: Please swear the juror.

13 THE CLERK: Sir, you've been selected as a
14 juror in this case. You may take a seat in the jury box.

15 Juror number 216, Robert Polk.

16 (The juror, a white male, approaches.)

17 What say you for the State?

18 MS. BYRD: Please present Mr. Polk.

19 THE CLERK: What say you for the defendant?

20 MR. VITETTA: Please swear the juror.

21 THE CLERK: Sir, you've been selected as a
22 juror in this case. You may take a seat in the jury box.

23 Juror number 97, Bruce Francey.

24 (The juror, a white male, approaches.)

25 What say you for the State?

1 MS. BYRD: Please present Mr. Francey.

2 THE CLERK: What say you for the defendant?

3 MR. VITETTA: Please excuse this juror.

4 THE CLERK: Sir, you've been excused from the
5 trial of this case. You may return to your seat. The
6 defendant has exhausted five of its ten strikes.

7 Juror number 278, Charles Traywick.

8 (The juror, a white male, approaches.)

9 What say you for the State?

10 MS. BYRD: Please present Mr. Traywick.

11 THE CLERK: What say you for the defendant?

12 MR. VITETTA: Please swear the juror.

13 THE CLERK: Sir, you've been selected as a
14 juror in this case. You may take a seat in the jury box.

15 THE COURT: All right. One strike, two
16 strikes, and there are two alternates.

17 THE CLERK: All right. Juror number 218,
18 Richard Postell.

19 (The juror, a white male, approaches.)

20 What say you for the State?

21 MS. BYRD: Please present Mr. Postell.

22 THE CLERK: What say you for the defendant?

23 MR. VITETTA: Please swear the juror.

24 THE CLERK: Sir, you've been selected as our
25 first alternate. You may take a seat in the jury box.

1 Now picking for our second alternate. Again,
2 strikes are one and two. State strikes first.

3 Juror number 153, Robert Keller.

4 (The juror, a white male, approaches.)

5 What say you for the State?

6 MS. BYRD: Please present Mr. Keller.

7 THE CLERK: What say you for the State?

8 MR. VITETTA: Please excuse the juror.

9 THE CLERK: Sir, you've been excused from the
10 trial of this case. You may return to your seat.

11 Juror number 235, Patricia Rouse.

12 (The juror, a black female, approaches.)

13 What say you for the State?

14 MS. BYRD: Please excuse Ms. Rouse.

15 THE CLERK: Ms. Rouse, you've been excused
16 from the trial of this case. You may return to your
17 seat.

18 Juror number 181, Elizabeth Mason.

19 (The juror, a white female, approaches.)

20 Any challenges from the State?

21 MS. BYRD: None from the State.

22 THE CLERK: What say you for the defendant?

23 MR. VITETTA: Please swear the juror.

24 THE CLERK: Ma'am, you've been selected as
25 our second alternate. You may take a seat in the jury

1 box.

2 THE COURT: All right. Is there anything
3 from the State?

4 MS. BYRD: Nothing from the State, Your
5 Honor.

6 THE COURT: From the defense?

7 MR. VITETTA: No, sir.

8 THE COURT: All right. Well, folks, you are
9 our jury panel then. What I'm going to do is send you
10 back with the bailiffs right now to the jury room, and
11 they'll show you where you will report to after you have
12 lunch.

13 When you come back from lunch, don't come
14 here. Go to where they're taking you now, and they'll
15 show you how to get in and out.

16 Now, you've heard a little bit about the
17 case. You don't really know anything about it, but I
18 give a standard instruction every time we take a break,
19 either for the day or for the rest room, and you're not
20 to begin deliberations or discussions or discuss anything
21 about the case with each other or anyone else.

22 Once people get picked on a jury, they
23 sometimes get invested in it, and they want to start
24 finding things out about it, looking on the Internet,
25 going down and looking in the clerk's office, et cetera.

1 Everything that you need to know about this
2 case, we'll tell you about this case. Throughout the
3 trial, I will repeat this instruction, but it's really
4 just a matter of fairness, because you're going to take
5 an oath when you come back, and you basically are saying,
6 I promise I'm going to make my decision based on what I
7 hear in this courtroom, not what other people tell me
8 about the case, their feelings, their thoughts, and you
9 also need to hear both sides of the story before you
10 begin to make up your mind.

11 So you need to hear all the evidence. You
12 need to hear direct, cross-examination, et cetera, and
13 it's not fair to begin deliberations until you've heard
14 all of the evidence, so that's why I tell you not to talk
15 with each other about the case, as well as other people.

16 Also, these days, we have to tell people,
17 now, don't go on the Internet. Don't go on Facebook or
18 Twitter, or any kind of social media and start talking
19 about the case. You know, sometimes you get people who
20 want to tweet things or post stuff about their jury
21 experience during the trial, and you end up talking about
22 things that went on during the trial.

23 Again, those are improper to do during the
24 trial, and you can do it all you want after the trial is
25 over with, but please don't do it during the trial.

1 So, it's almost 1:00 right now. So if you
2 would, be back in the jury room at a quarter after 2:00.
3 Then we will get started. That will give you time to get
4 some lunch. You can go to lunch with each other if you
5 want to, or anybody, if you want to; again, just don't
6 talk about the case, and if anybody does approach you to
7 talk about the case, please report back when you come
8 back.

9 All right? We'll see you back at 2:15.
10 Thank you.

11 (In open court, jury not present.)

12 All right. Now, the rest of you folks, they
13 have used other members for the panel to start with the
14 other trial, so you folks are free to go now for the rest
15 of the day. You can certainly come back and watch any
16 trials that you want to, and you do have free parking for
17 the rest of the day.

18 If you want to just stay and walk around
19 downtown, feel free to do that, but you don't have to
20 come back to the courthouse today. Call the telephone
21 number after 6:00 tonight, and it will tell you whether
22 or not you need to report tomorrow or whether or not you
23 need to call back again tomorrow night.

24 So thank you for your patience. I don't know
25 if I'll see you again the rest of this week, but we very

1 much appreciate you serving and showing up this week.

2 (Jury panel dismissed.)

3 MR. VITETTA: There is a motion having to do
4 with the affidavits that were the basis of Mr. Butler's
5 arrest. What has been a problem with Mr. Butler is he
6 didn't get to have a preliminary hearing, and there is a
7 case, Franks vs. Delaware, that talks about the
8 importance of a preliminary hearing, and the fact that if
9 an arrest is made, based on misinformation or lies in an
10 affidavit, that the warrant should be dismissed and the
11 evidence against him for the arrest should be dismissed.

12 So Mr. Butler believes that the arrest
13 warrants were obtained based on false information,
14 misstatements, and lies, and in support of that, he would
15 use the evidence that was submitted from the police
16 reports that directly contradicts the --

17 THE COURT: He was subsequently indicted,
18 though, so doesn't that just kind of cure all those
19 problems?

20 MR. VITETTA: Well, that would be -- yes,
21 Your Honor. That's what I think would be an issue;
22 however, Mr. Butler believes that Franks vs. Delaware
23 says that the whole case should be dismissed. His -- and
24 then any fruits after the arrest should be dismissed, and
25 basically what he's saying is that the arrest warrant

1 talks about --

2 THE COURT: Let's do this: We'll take it up
3 when we get back. Is there any other motions you'll
4 have?

5 MR. VITETTA: No, Your Honor. That's it. I
6 understand there are no statements to be used against
7 him; is that fair?

8 MS. BYRD: That is correct.

9 MR. VITETTA: Mr. Butler was raising an issue
10 with guns being used against him at the trial, but I just
11 want to state for the record I did not move to suppress
12 the gun because it wasn't found on his property. It
13 wasn't found in his house.

14 I don't feel I have any standing to suppress
15 it, so we're going to have to argue the facts on that,
16 and there is no other motions, Your Honor.

17 THE COURT: Okay. Well, then let's be ready
18 to begin at 2:15. We'll start with openings, and you'll
19 call your first witness.

20 MS. BYRD: Thank you, Your Honor.

21 (Recess taken.)

22 A F T E R N O O N S E S S I O N

23 (In open court, jury not present.)

24 THE COURT: All right. Is there anything
25 else we need to put on the record before we begin?

1 MR. VITETTA: Did you want me to argue
2 anything more about that motion on Franks?

3 THE COURT: Unless you have anything more to
4 bring to the table on it, I'm of the opinion that the
5 fruit of poisonous tree does not extend to direct
6 indictment, so the lack of a preliminary hearing or
7 whatever he feels like was faulty in the arrest warrant
8 affidavit, the indictment cures those problems.

9 MR. VITETTA: Just so that I could preserve
10 this with Mr. Butler, just the basis, there's two
11 statements, and the one talks about a victim observing
12 the defendant leaving the Odd Lots {sic}, and Mr. Butler
13 says that's a lie because the evidence that's been
14 presented to us says that this witness actually picked up
15 Mr. Butler from the Odd Lots and didn't observe him.

16 And the second point is the second sentence
17 of the second paragraph of the affidavit that talks about
18 how further people identified him, his photograph, and
19 Mr. Butler believes that's a lie because there's only one
20 person who identified him, which was the same person who
21 picked him up from behind Odd Lots, and that's the basis
22 of our motion under Franks vs. Delaware to suppress the
23 affidavit and all the fruits of the arrest.

24 Thank you, Judge.

25 THE COURT: Would the State like to be heard

1 on that?

2 MS. BYRD: Your Honor, I think you hit the
3 nail on the head, pointing out this was a direct
4 indictment; therefore, the issue of Franks v. Delaware
5 wouldn't apply here and the grand jury hearing was the
6 proper time for probable cause to be heard, so, again, we
7 would argue that this situation just does not apply here.

8 THE COURT: All right. Your motion is
9 denied.

10 MR. VITETTA: Thank you, Judge.

11 THE COURT: Okay. Jurors are all here.
12 State ready?

13 MS. BYRD: Yes, Your Honor.

14 THE COURT: Defense ready?

15 MR. VITETTA: Yes, Your Honor.

16 THE COURT: Bring the jury in.

17 (In open court, jury present.)

18 THE COURT: All right. I had the bailiffs
19 tell you all I wanted you to pick a jury foreperson, and
20 you didn't pick? Well, that's a jury foreman chair, so
21 what's your name?

22 A PROSPECTIVE JUROR: I'm Charles Traywick.

23 THE COURT: All right. Well,
24 congratulations. You're the jury foreman. You don't get
25 any extra pay, you just handle the verdict at the end,

1 all right? If the crowd gets a little rowdy in the back,
2 just settle them down, but, basically, you just conduct
3 the jury deliberations and write the verdict on the back
4 at the end of the trial.

5 Now, folks, the next couple minutes I'm going
6 to give you some -- just a brief overview of how we
7 conduct a trial and what to expect, but before I do that,
8 the clerk needs to administer your oath to you, so if you
9 would, stand and raise your right hand. The clerk will
10 administer the oath.

11 (Jury duly sworn.)

12 THE CLERK: Please let the record reflect the
13 jury has been sworn. You may be seated.

14 Okay. Now, let me go over a few things with
15 you. I'm just giving you a little overview as to what
16 goes on in a criminal trial, some of the terms that we
17 always use that may be unfamiliar with you, and then
18 we'll start with the beginning of the trial.

19 All right? This is a criminal case, and so
20 the State of South Carolina has charged Mr. Keeon Butler
21 with armed robbery and possession of a firearm during the
22 commission of a violent crime. These two indictments
23 which I just read out to you during the voir dire process
24 are allegations against him. The indictments were
25 brought by the grand jury. They are here today and

1 issued solely for the purpose of letting Mr. Butler know
2 what he is to stand trial for, and it gives this Court
3 jurisdiction to hear the case.

4 Now, the fact that he was charged, arrested,
5 and indicted with these crimes are not any indication or
6 evidence of guilt. They do not raise any presumptions of
7 guilt, and you're not to consider the fact that he was
8 indicted for these crimes in any way during your
9 deliberations. Again, it just puts him on notice of what
10 he's to stand trial for, and the only thing Mr. Butler
11 has to do is show up, and he's done that.

12 So the State charged him with these crimes.
13 He pled not guilty to both of these, and it is therefore
14 incumbent upon the State to now give him a trial, 12 of
15 you folks to hear the evidence, apply the law that I
16 charge you applies to the facts of this case, and render
17 a verdict.

18 The State has to prove that he is guilty. He
19 doesn't have to prove that he is innocent, and that is an
20 important concept for you to remember and to understand.
21 No one in this country is ever required to prove their
22 innocence. The State must prove their guilt beyond a
23 reasonable doubt.

24 Now, some of you may have served as a juror
25 in a civil case, and you've heard a phrase called a

1 preponderance of the evidence. That is a burden of
2 proof, and, in that case, the person who sues has to
3 prove what they have alleged in order to prevail. Like
4 in a criminal case, the person that gets sued doesn't
5 have to bring anything. The person who brings the
6 lawsuit has to prove what they allege in their complaint.

7 The burden of proof in a civil case is a lot
8 lower than it is in a criminal case like this. The
9 burden of proof in a civil case is called a preponderance
10 of the evidence. It's also called the greater weight of
11 the evidence, or, stated another way, is whatever the
12 party trying to prove more likely true than not true?
13 And in terms of probability, it's just a little tip over
14 50 percent.

15 So if you're like me and you have trouble
16 hearing things, or understanding things without some sort
17 of visual aid for it, you might think of the scales of
18 justice where you have, on the one hand, the person that
19 brings that lawsuit on one side of the scale, and the
20 person who gets sued, the defendant, on the other side of
21 the scale.

22 Well, at the beginning of a civil trial,
23 those scales are even, and for the plaintiff, or the
24 person that brings the lawsuit to prevail, they have to
25 tip those scales, even if it's just a little bit, and

1 they've met the burden of proof of a preponderance of the
2 evidence, and they would be entitled to a verdict.

3 On the other hand, at the end of the trial if
4 the scales are still even or if the jury thinks that they
5 tip in favor of the defense, then the plaintiff has not
6 met the burden of proof, and the defense is entitled to a
7 verdict.

8 Well, in a criminal case it's a different set
9 of scales, or it's the same set of scales, but with a
10 different burden of proof. In a criminal case, the
11 burden of proof is called beyond a reasonable doubt. You
12 probably heard that phrase, even if it was just TV or a
13 movie, but it doesn't maybe help you to understand any
14 better what it is that we're talking about without that
15 visual aid, but the law says that beyond a reasonable
16 doubt is simply evidence that leaves you, the jury,
17 firmly convinced of the defendant's guilt.

18 There's not any way in life to prove
19 something to 100 percent certainty, and the law doesn't
20 require that the State present something that's absolute
21 or 100 percent certain. They only have to leave -- they
22 only have to prove to you enough evidence that leaves you
23 firmly convinced of the defendant's guilt, and at the end
24 of the trial, if you are not firmly convinced that the
25 defendant is guilty, then you're required under your oath

1 to find him not guilty.

2 So if we took that same set of scales, and we
3 have the State on this hand, the defendant on this
4 hand -- remember, in a civil case the scales just had to
5 tip just a little bit like this? Well, in a criminal
6 case, the scales have to tip a lot more. Just imagine a
7 larger tip than 50 percent, so that is maybe a helpful
8 reference for you to -- when you hear that phrase beyond
9 a reasonable doubt to visualize that a little bit.

10 Now, because the State has the burden of
11 proof, the State gets to call their witnesses first and
12 present evidence first, so you will hear from the State
13 first. They will call their witnesses. They'll get to
14 ask questions of the witnesses first. That's called
15 direct examination.

16 The defendant, however, through his attorney,
17 will have the opportunity to question those same
18 witnesses, and that's called cross-examination. So
19 you'll have direct and then cross, and then I allow a
20 follow-up round. So we'll have direct, cross, then
21 redirect, and recross, and then we move on to the next
22 witness. All right?

23 So after the State has the opportunity to
24 call all of their witnesses, then the defendant can, if
25 he wants, call witnesses, but he is not required to, and,

1 again, this goes back to what I said at first. He
2 doesn't have to do anything other than show up, and under
3 our United States constitution and the state constitution
4 of South Carolina, he doesn't have to prove he's
5 innocent. He's done the only thing he's had to do, and
6 that's to show up, so he doesn't have to call witnesses,
7 he doesn't have to testify, and he doesn't even have to
8 tell me that he wants to at this point in the trial.

9 The only thing he has got to do is show up,
10 and if he doesn't call witnesses and he doesn't testify,
11 then you are not to hold that against him in any way
12 while you are deliberating. You shouldn't even let that
13 enter your mind, and you certainly cannot talk about that
14 during your jury deliberations.

15 So keep that in mind because that's not just
16 one of those theoretical concepts. That's a very
17 important right, that not only does Mr. Butler have, but
18 it's something that you have and that I have and that
19 every person that's arrested for a crime in this country
20 has. So it's not just one of those theoretical things,
21 that's a real thing.

22 So, remember, he doesn't have to prove he's
23 innocent, and he doesn't have to testify or put up any
24 evidence if he wants to. All right?

25 Now, the State will call their witnesses

1 first, and they'll get the opportunity to ask questions.
2 That's one of the rules of procedure that we follow.
3 There are two functions I have during this trial: One is
4 to conduct the trial and make sure that both sides get a
5 fair trial. I don't have a dog in this fight or any
6 interest in the outcome of the lawsuit or the case any
7 more than you do, all right?

8 My sole function is to make sure that both
9 sides get a fair trial, and that consists of two things:
10 One, making sure that our rules of procedure and evidence
11 are followed; and then the other is to tell you what the
12 law is on these charges that are brought by by the State
13 against Mr. Butler. So that's what makes me, as we call
14 it, judge of the law.

15 You, on the other hand, are judges of the
16 facts, so it's up to you to resolve any kind of factual
17 dispute. I don't know what's going to come out as far as
18 evidence goes in this case. I don't really know anything
19 more about the case than you do at this point, to be
20 honest with you, but you will hear witnesses, and they'll
21 be placed under oath and they will tell you what they
22 heard, they saw, they touched, they felt, they smelt, all
23 right? That's what witnesses do. They tell you what
24 those things are that make them be called as witnesses.

25 You decide how much weight to give to their

1 testimony. You decide things such as credibility,
2 whether or not they have an interest in the outcome of
3 the lawsuit, whether what they said makes any sense at
4 all. You judge their demeanor on the witness stand.
5 That's totally -- all of those things are within your
6 purview as jurors, and however you decide conflicts
7 between what one witness says over another witness, we're
8 bound by that, all right? It's totally up to you as to
9 how you resolve conflicts and evidence. On the other
10 hand, you're bound to apply the law that I charge you
11 applies at the end of the trial.

12 The other thing I started to tell you is my
13 job is to make sure that we follow our rules of procedure
14 and our rules of evidence, and procedure simply means,
15 you know, that we follow the order of how things go:
16 State calls witnesses first, defense calls witnesses
17 second, et cetera. We have a lot of different rules for
18 those sort of things, and that's my job.

19 Evidence rules are those that are designed to
20 get evidence to you in the best form that we know how.
21 We call that legally competent evidence, and so sometimes
22 there's evidence that you're supposed to hear, and that's
23 fine. That's what we want you to do. Sometimes there's
24 evidence that you're not supposed to hear, because for
25 whatever reason, the rules of evidence determine,

1 basically, that it's not reliable, and so it's my job to
2 make sure that you hear the kind of evidence that you're
3 supposed to hear and to keep you from hearing evidence
4 that isn't that reliable.

5 That's part of my function, and so one of the
6 things that happens throughout a trial is sometimes the
7 lawyers will -- y'all hear them say "objection." That's
8 kind of like our code word for, Judge, you're on notice.
9 You need to make a decision.

10 Evidence may come in, is about to come in,
11 that is proper or improper, and I have to make a ruling
12 on it. Sometimes I can make a ruling on it just based on
13 the context. For instance, a lawyer may say, Objection.
14 That's hearsay, and I can rule, either sustained or
15 overruled.

16 Sometimes I have to have the lawyers just
17 come up and say, Tell me why you're objecting to this,
18 and what is the basis for this again? and I can rule
19 then, just out of your earshot. Sometimes I have to hear
20 what the witness is getting ready to say before I can
21 make a determination whether it's proper for you to hear
22 it, because, again, I don't know anything about what
23 these people are getting ready to say. I don't really
24 seriously know anything more about the case than you know
25 at this point. All right?

1 So I have to send you out. I hear what the
2 witness is getting ready to say, and then I can make a
3 determination whether it's proper for you to hear it or
4 not. We're not trying to keep anything from you. We're
5 just trying to do this correctly so that we only do it
6 one time, because if I ever make a mistake, by either
7 charging you the law incorrectly or not following the
8 rules of procedure or letting you hear something you
9 weren't supposed to hear or I kept you from hearing
10 something you were supposed to hear, well, then, they'll
11 send it back and say, The judge made a mistake. Do it
12 again.

13 Well, nobody is interested in doing it again,
14 so we just take our time, follow our procedures. They're
15 time tested. They make sense. Hopefully they'll make
16 sense to you, and whatever the verdict comes in at the
17 end, we'll live with it. All right?

18 Now, as far as time frames and things like
19 that go, what, it's about 20 minutes to 3:00 right now.
20 We usually go to somewhere around 5:00, maybe a little
21 before, maybe a little after, depending where we are at
22 with a witness, but we'll usually break somewhere around
23 5:00, and then we'll resume tomorrow morning.

24 This case may very well end tomorrow. It may
25 go over into Wednesday; we don't know yet. These things

1 are best guesses, sometimes when I ask for estimates, but
2 they'll definitely -- we'll definitely finish it this
3 week, and more than likely, we'll finish it either
4 tomorrow or Wednesday.

5 So we take a break about every hour and a
6 half, hour and 15 minutes. If anybody needs to go to the
7 bathroom before that, just kind of send word down to the
8 bailiff and they'll catch my attention, and we'll go
9 ahead and call a break.

10 But right now I'm going to turn it over to
11 the lawyers so they can make their opening statements.
12 Opening statements are simply the lawyers getting up and
13 telling you -- I call it a little Reader's Digest
14 condensed version of the case. It helps you follow the
15 case a little bit better by knowing what it is you're
16 likely to hear.

17 They're not testifying, the lawyers, and this
18 is an important concept for you to remember, because you
19 more than likely will hear from the lawyers more than you
20 will hear from anybody else throughout the trial. The
21 lawyers aren't witnesses. They're not giving you
22 evidence. Evidence is people on the witness stand,
23 again, telling you what they heard, they saw, they
24 touched, they felt, they smelt. It might be documents.
25 It might be photographs. It might be weapons sometimes.

1 Those things are evidence. The lawyers
2 talking are not evidence. They weren't witnesses, so
3 they don't have anything to tell you about what they
4 heard, they saw, they touched, they felt, they smelt, et
5 cetera.

6 So this is important to remember: They're
7 not witnesses. What they say isn't to be considered by
8 you as evidence. So when a lawyer is talking, that's not
9 evidence. When they ask a question, that's not evidence.
10 The answer to the question, though, that's evidence, all
11 right? So that might help you follow that.

12 So you'll hear opening statements first, and
13 then we'll get into calling the witnesses. Once we get
14 through with all the witnesses, then we bring the lawyers
15 back. They'll make closing arguments in which they will
16 attempt to persuade you to render a verdict on their
17 behalf based on what you heard, and then I'll charge you
18 on the law and then you'll retire to decide what your
19 verdict will be.

20 So, Madame Solicitor, if you're ready, you
21 may begin.

22 MS. YOUNG: Thank you, Your Honor. May it
23 please the Court, Mr. Vitetta: December 16th, 2011 was
24 the morning that Jeanie Hampton and Pamela Sanders will
25 never forget. It's the morning that they were working at

1 the Big Lots over at 1401 Sam Rittenberg Boulevard, a
2 morning that was going usual, when a man walked in the
3 back of the store, in the manager's office, pulled out a
4 weapon, and brought them from the safe at Big Lots.

5 Now, the man responsible for robbing those
6 victims that day is in the courtroom with us. He's the
7 defendant sitting right there, Keeon Butler.

8 The defendant in this case is charged with
9 armed robbery and possession of a weapon during the
10 commission of a violent crime. Now, as the judge
11 mentioned, at the end of the case, he's going to explain
12 to you what the law is, so let me briefly go through what
13 we're presenting to you in this case.

14 Armed robbery will require us to show there
15 was a taking and carrying away of property of another
16 with the intent to deprive them of possession and that
17 that was done with findings of force, threats, or
18 intimidation and while armed with a deadly weapon, or the
19 victim reasonably believed him to be armed with a deadly
20 weapon based on actions or words that he was armed with a
21 deadly weapon.

22 The second crime is possession of a weapon
23 during the commission of a violent crime. Basically, the
24 legislature has defined what a violent crime is, and
25 armed robbery is included in that, so we must show you

1 that the defendant was in possession of a weapon during
2 the trial of the armed robbery, or visibly displayed what
3 appeared to be a firearm in this case.

4 In this case, we are going to prove to you
5 Keeon Butler armed himself with a deadly weapon, a gun,
6 in this case. He walked into the Big Lots, forced the
7 victims in the back, and took \$1,450 from the cash in the
8 safe that day. Here is what we're going to present to
9 you:

10 We have Pamela Sanders and Jeanie Hampton,
11 the two victims in this case. Now, Jeanie was the
12 manager at the time, and she's going to explain to you
13 that she was working that morning when the defendant came
14 in the back of the store where the manager's office is
15 located. It's basically where customers shouldn't be at
16 the time.

17 He pulled out a firearm. He pressed it to
18 her forehead: Show me where the safe is.

19 She took him to the safe and started getting
20 the money out. This is when the other employee, Pamela,
21 kind of walked through midway through this robbery. He
22 held her in the back as well so he could get the job
23 done.

24 You're going to hear testimony that this
25 defendant was wiping stuff down, wiping down the door,

1 making sure he didn't leave any fingerprints behind.
2 Fortunately for us, the crime didn't go as smoothly as
3 planned. He left one big piece of evidence behind.
4 There's testimony that you'll hear about that the
5 defendant came in there with these white plastic Family
6 Dollar grocery bags.

7 He pulled them out of his pocket, put the
8 money in. He forgot one of those bags. We have that bag
9 in evidence. It's been tested, and the fingerprints
10 match Keeon Butler.

11 In addition to the fingerprints, to the
12 victims' testimony, we also have the video from the Big
13 Lots that day, the surveillance video, where it shows the
14 suspect who committed this armed robbery. He's wearing
15 khakis and a dark hoody, and you'll be able to see that
16 video and see the gun that we're talking about.

17 Now, after this robbery happens, he makes the
18 victims unlock the back door to the Big Lots so he can go
19 out that way. Through police investigation, it was
20 determined the defendant left the area in a blue Crown
21 Victoria vehicle, and it had beige paint on the hood and
22 on the roof.

23 Police were able to locate that vehicle, and
24 it belonged to an India Grant. Now, you're going to hear
25 from India in this case, and India is probably going to

1 say -- you're going to hear she gave two different
2 stories in this case, but I want you to keep in mind --
3 make note that that's important to know why she gave two
4 different statements in this case.

5 India Grant knew Keeon Butler. They had
6 hooked up a couple times, and he had called her that
7 morning and asked her for a ride. She had been doing
8 some laundry, kind of downstairs in her apartment area.
9 So she went and picked him up. He asked her to pick him
10 up in the back of the store complex, in the back, where
11 the Big Lots was.

12 She drove there, waited for him, and saw him
13 coming from the bushes. He was wearing khakis and a dark
14 hoody, same description victims gave. They go back to
15 her apartment. She finished doing her laundry while he
16 went to her apartment. She'll note for you that he
17 changed outfits at her apartment.

18 Now, a little bit after that time frame, when
19 she was out of the apartment, the police set up
20 surveillance, and you'll hear that they noted that nobody
21 went into India Grant's apartment that day and nobody
22 came out until they executed a search warrant, and you're
23 going to hear more about the results of that search
24 warrant.

25 Now, the detectives also showed India Grant a

1 photo. Remember, India knew the defendant. The photo
2 was basically a close-up from the surveillance footage of
3 the person that committed that armed robbery. She
4 identified Keeon Butler as that person that committed the
5 armed robbery.

6 Ladies and gentlemen: It is your job as
7 jurors to use your common sense when listening to all
8 these witnesses and viewing all the evidence, and as you
9 carry out your duty as jurors, you're going to see
10 everything we present to you matches up, and when it
11 does, we ask you to deliver a verdict that justice
12 demands, and that is a verdict of guilty.

13 Thank you.

14 THE COURT: Mr. Vitetta?

15 MR. VITETTA: Thank you, Judge.

16 So the government presents on its face a
17 rather compelling case: They said they have fingerprints
18 and an eyewitness, and all these kinds of things, but
19 you're going to hear that there's a lot more evidence in
20 this case. You're going to hear a lot of evidence that
21 was collected, statements that were made that don't link
22 my client, Keeon Butler, to this crime.

23 And it's important that you have all this
24 stuff in context, because when the judge charges you on
25 the law of reasonable doubt that you have to find Keeon

1 guilty beyond a reasonable doubt. You've got to have
2 those kinds of doubts that are beyond reasonable, and
3 it's a high standard. So you're going to see that
4 certain evidence was collected and it wasn't tested or it
5 was tested a little late or it doesn't line up with
6 Mr. Butler, those kind of things, and all of those things
7 are important.

8 You're also going to have a reasonable --
9 you're also going to have a reason for why certain
10 evidence may be linked to Keeon. We're going to present
11 you evidence that causes you to doubt not the veracity of
12 the fingerprints, but whether or not he actually was in
13 the store and left fingerprints in the store. Okay? So
14 you're going to hear all of this, and I want you to keep
15 an open mind because it's important that he's sitting
16 here as an innocent man, and we don't want any wrongful
17 conviction, and we have to be very careful because this
18 is a very serious crime, okay?

19 Armed robbery is one of the most serious
20 things you could be charged with in this state, and so I
21 want you to just look at all of the evidence and think
22 about how this evidence came to be, where it came from,
23 and what other reasonable explanations there are for it,
24 and there are reasonable explanations.

25 And so when you go back to deliberate, and I

JEANIE HAMPTON - DIRECT EXAMINATION

1 would imagine probably tomorrow afternoon, you're going
2 to see the evidence and you're going to have the
3 fingerprints and you're going to have the video. You're
4 going to have certain people saying, well, we can prove
5 it was him, but there's also going to be other reasonable
6 explanations that you're going to hear. And I think when
7 you hear all this, at the end of the day, you're going to
8 find that you do have a doubt, and you're going to find
9 Keeon Butler not guilty.

10 Thank you.

11 THE COURT: All right. Call your first
12 witness, Madame Solicitor.

13 MS. BYRD: Your Honor, the State calls Ms.
14 Jeanie Hampton.

15 JEANIE HAMPTON,
16 having been first duly sworn,
17 was examined and testified as follows:

DIRECT EXAMINATION

18
19 BY MS. BYRD:

20 Q. Good afternoon, Ms. Hampton.

21 A. Good afternoon.

22 Q. Thank you for being here today. Could you please
23 tell the jury where you currently live.

24 A. I currently live in Spruce Pine, North Carolina.

25 Q. Where do you currently work?

1 A. I work for the warden at a prison, Mountain View
2 Correctional.

3 Q. At one time did you live in the Charleston area?

4 A. Yes, I did.

5 Q. How long did you live here?

6 A. Twenty-eight years.

7 Q. And when you lived in Charleston, where were you
8 last employed?

9 A. Big Lots.

10 Q. And can you tell us where that Big Lots is
11 located?

12 A. 1175 Sam Rittenberg Boulevard, west of the Ashley,
13 the West Ashley store.

14 Q. On Sam Rittenberg Boulevard?

15 A. Yes.

16 Q. Okay. How long did you work there at Big Lots?

17 A. I was there for five years, a couple weeks short
18 of five years.

19 Q. Were you working there on December 16th of 2011?

20 A. Yes, I was.

21 Q. Did anything out of the ordinary happen during
22 that day and while you were working at the Big Lots?

23 A. I was held up that day.

24 Q. So you were the victim of a crime that happened
25 that day?

1 A. Yes, I was.

2 Q. Can you tell us kind of what happened as you were
3 working that morning.

4 A. I was in charge of the front, and I went into the
5 back where the warehouse is, and I was in the electronic
6 lockup room, and I was in there, taking things out to put
7 in a buggy to push out on the floor, and somebody came by
8 real fast, and I thought it was one of my employees
9 playing.

10 And when I stuck my head out, somebody was holding
11 a gun and put it to my head, and he told me that there --
12 that he knew that there was a safe in the office and had
13 a timer on it, to that effect, and, you know, let him in
14 there, you know, something like that. I won't get hurt.
15 You know, go ahead and get in there.

16 Q. So what did you do at that point?

17 A. I paused because it was like it didn't seem real.
18 I mean, I was like -- this is not real. And I was like,
19 Oh, God, there's a chance that I will make it or maybe I
20 won't.

21 And he told me not to look at him, but I turned
22 around and looked at him, and I said if anything happened
23 to me, perhaps I could remember something.

24 Q. What were you able to see of the suspect?

25 A. I was only able to see the nose and the mouth. He

1 was covered.

2 Q. What was he wearing?

3 A. It was a pair of khakis and it was a hoody. It
4 was a dark color, like, brown and maroon hoody, and I
5 thought it was a mask. All I could see was the nose.

6 Q. Did he have something -- did he have anything
7 covering his face?

8 A. He had a hood on it, yeah.

9 Q. Were you able to notice anything specific about
10 the part of his face that you could see?

11 A. Like I said, the only thing that I could see part
12 of the time was his nose and the lips, and that was what
13 was showing.

14 Q. Did you notice any details about the nose or the
15 lips or --

16 A. He didn't have thin lips. They were kind of full.
17 I noticed they were a couple of shades lighter than me.

18 Q. Once the suspect asked you to take him to the
19 safe, what did you did?

20 A. Exactly what he said. I took him to the safe.

21 Q. All right. Where was the safe located?

22 A. The safe is located in the office, and then
23 there's another door which is the lock-up room, and
24 that's where the safe is.

25 Q. In that lock-up room?

1 A. Yes, ma'am.

2 Q. What happened once you got inside the office and
3 inside the lock-up room?

4 A. The whole time, he still had the gun on me, and he
5 when I got near here he told me to open the safe, and I
6 opened the safe. And he had a phone. He was talking to
7 somebody the whole time as well, he was holding the gun
8 on me.

9 Q. Do you recall what the phone looked like?

10 A. No, I don't. I couldn't tell you what the phone
11 looks like.

12 Q. Were -- once you got inside the lock-up room, what
13 did you do while he was holding the gun on you?

14 A. Getting money out of the safe and hoping nothing
15 happens to me.

16 Q. Where did you put the money as you removed it from
17 the safe?

18 A. He gave me a plastic grocery bag, like a plastic
19 bag you get from the grocery store.

20 Q. Okay. And you put it in that?

21 A. Yes.

22 Q. After you got all the money in the bag, what
23 happened next?

24 A. Well, after all the money was in there, I put the
25 bill in there first and the change, and I asked him, do

1 you want that too? And I put that in there, and at some
2 point, he picked up the bag and the bag broke. But after
3 I put all the money in there, it was some time.

4 I mean, he was on the phone and he still had the
5 gun on me, so I dropped down in a chair and I started
6 crying because I did everything that he had told me to
7 do, so -- I went -- I couldn't do anything else, you
8 know?

9 Q. While you were in the office, did anyone else come
10 in there?

11 A. Yes, my manager came in. She called on the phone
12 because it took me too long to come back up front. Then
13 she called to see what was going on, and she ended up
14 coming in to the front office. And he waited till she
15 got in, and then he had me open the door, and that's when
16 he took me out.

17 Q. Okay. Once you got back inside the manager's
18 office -- and your manager is now present, correct?

19 A. Correct.

20 Q. What happened?

21 A. I can't recall all that he said, but he had us
22 there, and then we ended up opening the door and he asked
23 us where was the exit? You know, how do you get out of
24 here? And --

25 Q. And what did you tell him?

1 A. He came out. He obviously went to the left, and
2 then we made a right hand. We were at that door.

3 Q. What door?

4 A. When you come out of the office, you make a right
5 and then a sharp left, and then there's an exit door
6 there.

7 Q. Where does that door lead to?

8 A. It leads outside of the store.

9 Q. The front side or the back side?

10 A. No, back side. That's the front part of the
11 store.

12 Q. Are you aware that -- did Big Lots have any type
13 of surveillance cameras at the store?

14 A. Was I aware of that? Yes.

15 Q. I'm going to show you what's been marked as
16 State's Exhibit 1 for identification purposes.

17 MR. VITETTA: No objection, Your Honor.

18 BY MS. BYRD:

19 Q. Ms. Hampton, do you recognize this item?

20 A. Yes.

21 Q. Can you tell me what that is?

22 A. That's the footage from our Big Lots store.

23 Q. From the surveillance camera?

24 A. Yes.

25 Q. How are you able to recognize that as your photos?

JEANIE HAMPTON - DIRECT EXAMINATION

1 A. Because I initialed on it, and it's exhibit --

2 Q. So these are your exhibits?

3 A. Yes.

4 Q. Have you seen what's on here?

5 A. Yes, I have.

6 Q. And when did you initial that, before or after you
7 viewed it?

8 A. After I viewed it.

9 Q. Okay. And, Ms. Hampton, would you say the footage
10 on this disk is a fair and accurate representation of the
11 incident as it occurred as you experienced it?

12 A. Yes, I did.

13 MS. BYRD: Your Honor, at this time the State
14 would move to admit State's Exhibit 1 into evidence.

15 MR. VITETTA: No objection.

16 THE COURT: It's admitted. You may publish.

17 MS. BYRD: Thank you, Your Honor.

18 (State's Exhibit No. 1 was marked for
19 identification and admitted into evidence.)

20 MS. BYRD: I would like to play for the jury
21 the footage from the Big Lots.

22 BY MS. BYRD:

23 Q. Could you tell us what we're looking at here?

24 A. We're looking at the electronic lock-up room, and
25 that's me putting some items in that carriage.

1 Q. Okay. And where exactly is this room located in
2 Big Lots store?

3 A. That's in the back of the warehouse, in the back.

4 Q. Okay. Now, is anybody supposed to be back there?

5 A. At this point where I am? No. It's a public rest
6 room, but as far as beyond that, that's where I am.

7 You're not supposed to be there, and, like I -- this is
8 in slow time, but a person walked past real fast and they
9 came in and I stuck my head out and see --

10 Q. Okay. We're going to pause it just a second, but
11 this person here that just walked past and now walked
12 into -- that person, who is that person? Who is that
13 person to you?

14 A. That was the person that held me up.

15 Q. Okay. And can you explain what's happening here?

16 A. That's when I stuck my head out, and when I stuck
17 my head out, the person immediately had the gun and put
18 it by my head and he told me he knows there is a safe and
19 that there is a timer on it, open it. And then that's me
20 going to the office because the office is right across
21 the hall from there.

22 Q. Okay. And what are you -- you're going into the
23 office?

24 A. Yes. That's the first office to go into because
25 it's a safe room.

1 Q. Okay. Now, the second footage, can you tell us
2 what we're looking at here?

3 A. This is the money room. That's where the safe is,
4 and that's where I was taken to get the money out of the
5 safe.

6 Q. Okay. Now, can you give us kind of an idea of
7 where the safe is located in here?

8 A. It's underneath this white table right here. It's
9 underneath there.

10 Q. Okay. Where you've made a green mark on the screen
11 for us?

12 A. Yes.

13 Q. Okay.

14 A. And -- I mean, I'm down there, and I'm emptying
15 that safe. He just had the gun on me the whole time, and
16 he has the bag.

17 Q. Ms. Hampton, you mentioned several times that the
18 suspect obviously had a weapon and that he had,
19 specifically, a gun, that he had it pointed at you. Did
20 you happen to notice what that weapon looked like during
21 the incident?

22 A. All I know, it was a small black handgun, and it
23 looked like it could fit in the palm of your hand.

24 Q. Would you be able to recognize maybe what type of
25 handgun it was? Not necessarily the make or model, but

1 just something about it?

2 A. I knew it was black. It wasn't round, it was
3 square, and, like I said, it was black handgun that could
4 fit in the palm of your hand, and that's when I sat down
5 in the seat and I started crying because, like I said, I
6 mean, everything was put in there. I put all the money
7 in there, and I thought he was going to leave, so I
8 started crying.

9 This must be when Pam came into the office, to get
10 me out of the office.

11 Q. Was Pam your manager at the time?

12 A. Yes.

13 Q. What did the defendant have to do once it was
14 clear that she approached the door?

15 A. When she came in, that's when he asked me to open
16 the door, just open the door. And that other office,
17 he's on that side of the office, and he told us about the
18 exit, and when we got out the door, he told us to get up
19 against the wall, and that's when he asked us, you know,
20 about the exit, how can he get out of here?

21 Q. Okay. Ms. Hampton, I'm going to show you several
22 items that have been marked as State's Exhibits 2 through
23 20. If you would, just kind of flip through those, and
24 just let me know if you can recognize what's in those
25 items.

JEANIE HAMPTON - DIRECT EXAMINATION

1 A. Okay. This is the Big Lots store and different
2 areas in it and the back of the store.

3 Q. Do you recognize each of those areas?

4 A. Yes.

5 Q. Do those photos at the Big Lots store depict a
6 fair and accurate representation of the store as you saw
7 it that day?

8 A. Yes, it does.

9 MS. BYRD: The State would move to admit
10 State's Exhibits 2 through 20 into evidence, please.

11 MR. VITETTA: No objection.

12 THE COURT: Admitted. You can publish.

13 (State's Exhibit Nos. 2 through 20 were
14 marked for identification and admitted into evidence.)

15 BY MS. BYRD:

16 Q. Now, Ms. Hampton, you said that the suspect left
17 out -- left out of the door from the warehouse and went
18 toward the back. Can you tell us in this picture if
19 that's the door?

20 A. Yes. Right there where the exit sign is, that's
21 the door.

22 Q. That's the door?

23 A. Yes. That is the door.

24 Q. And you say where -- I'm sorry. Where is this
25 leading out to?

1 A. That's in the back of the store.

2 Q. And it would be about there?

3 A. Yes, that's the loading dock.

4 Q. Now, when the suspect left, did he leave with any
5 items?

6 A. He had what I had given him in the safe, and I
7 didn't know if it was inside the office or on the
8 outside, he had a jacket, and when we were at the back of
9 the door, the both of us, he let Pam go out first.

10 He told Pam to run, and then I had to stay and
11 told the door open and tell me when he left don't -- I'd
12 better not call the police. Wait 15 minutes to call, and
13 when he left, I immediately ran to the office and called
14 911.

15 MS. BYRD: Beg the Court's indulgence.

16 BY MS. BYRD:

17 Q. Just so we get a full understanding of where
18 everything happened -- I know we saw a lot with the
19 surveillance video, so we can do these quickly. Can you
20 tell us what these two doors are?

21 A. Yes. That's the electronic lockup room, where I
22 was, and he came, and across there right here is the
23 office.

24 Q. So they're directly across from each other?

25 A. Yes.

JEANIE HAMPTON - DIRECT EXAMINATION

1 Q. Okay. And can you tell us -- what this?

2 A. This is inside the office from outside the door
3 that we just looked at. That's the inside of the office,
4 and in there, that's where the safe is.

5 Q. So that door that you indicated with the green
6 mark there, is that -- that's the room where the safe is?

7 A. Yes.

8 Q. Okay. Can you tell me where this is located?

9 A. That's when you come from the outside.

10 Q. Okay. So is that the manager's office?

11 A. Yes, that's the manager's office.

12 Q. And those money rolls, do you know how they got
13 there, where they came from?

14 A. I think they were the ones that were dropped,
15 because some things were dropped.

16 Q. Okay.

17 A. Some money was dropped.

18 Q. Can you tell us what room that is?

19 A. That's the safe room, that's where the safe is,
20 the cash office.

21 Q. Okay. And these rolls of coins on the floor, how
22 did they get there?

23 A. That was the money that was in the safe, and when
24 the bag broke, the money dropped.

25 Q. Okay. And then what is this?

1 A. Those are the empty cash boxes.

2 Q. Those were empty. Were they empty before the
3 incident?

4 A. No. Those are the ones that I emptied into the
5 bag.

6 Q. Okay. Can you tell us where this desk is.

7 A. When you first come in the door, this is where
8 this desk is, this ledge right here. That's when we
9 first walk in the office.

10 Q. Okay. And do you know how that bag got there?

11 A. It was brought in because it wasn't there.
12 Apparently it was left.

13 Q. Left by whom?

14 A. Left by the person who held me up.

15 Q. Okay. Can you describe the weapon that the
16 suspect used during the robbery, the weapon that the
17 suspect put in your face and held --

18 A. Yes, ma'am.

19 Q. -- up to you the entire time?

20 I'm going to show you what's been marked as
21 State's Exhibit 42 for identification purposes, and I
22 just want you to tell me, does this look familiar?

23 A. It looks like that. Like I said, it was black --

24 Q. What is that?

25 A. The gun looks like the gun that was used when I

1 was held up. Like I said, it was a small black gun. It
2 looks like the gun.

3 Q. Beg the Court's indulgence.

4 Ms. Hampton, I know a lot was going on in the cash
5 room where the safe was. Do you recall anything else the
6 defendant was doing while he was in the office and you
7 were getting money out of the safe?

8 A. Just that he was on the phone. I couldn't hear
9 what was being said. I wasn't thinking about that. I
10 was worrying about my life.

11 Q. Of course, of course. And we saw in the video
12 that the suspect had grabbed her roll of paper towels
13 from the desk and kind of tore some off. Do you know
14 what he was doing with the paper towels?

15 A. Wiping down the doors and stuff, the areas in
16 which we were in, or he was in and where he touched.

17 Q. Okay. Do you happen to know how much cash he
18 removed from the safe and how much he took with him when
19 he left?

20 A. I don't know the exact amount. Would it be 1,000?
21 I don't know. I think it was over 1,000. I do not
22 recall the exact number -- amount of the money that was
23 there.

24 Q. Okay. At the time of the incident, though, it was
25 reported how much -- it was reported to officers how much

1 was taken?

2 A. Uh-huh.

3 Q. Okay.

4 A. Yes, it was.

5 MS. BYRD: Ms. Hampton, I have no further
6 questions. Please answer anything Mr. Vitetta has for
7 you.

8 THE WITNESS: Okay.

9 THE COURT: Cross?

10 MR. VITETTA: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. VITETTA:

13 Q. Ms. Hampton, you never made an identification of
14 the person that robbed you, did you?

15 A. No, I did not.

16 Q. You weren't presented with a photographic lineup?

17 A. No, I was not.

18 Q. And you weren't provided with an in-person lineup?

19 A. No, I was not.

20 Q. And when you described the robber to the police
21 officer, you described somebody in their 20's, a young
22 man.

23 A. From what I could tell, from the nose and the
24 mouth, and, like I say, the balance was covered, yes,
25 they were in their 20's.

JEANIE HAMPTON - CROSS-EXAMINATION

1 Q. There was a coat that was taken from the room; is
2 that correct?

3 A. Yes.

4 Q. And was that your coat?

5 A. No, it was not.

6 Q. Do you know if that coat was ever recovered?

7 A. No, I do not know that.

8 Q. There is a surveillance camera, correct, in the
9 store? Isn't there also one in the back of the store, on
10 the driveway?

11 A. Oh, I don't know about that. I know about the two
12 that I was asked about inside the safe office, and the
13 one outside the -- I don't know about that.

14 Q. And the gun that you described, again, that's not
15 a gun that -- you don't know if that's the gun that the
16 robber used, right?

17 A. No, I do not. I said it looks like the gun that I
18 just described to them.

19 Q. So you said you saw a nose and mouth during the
20 whole time of this robbery?

21 A. Not the whole time, but that's what I saw when I
22 turned around, when I looked at him from the lock-up
23 room, and, you know, when we're coming out or whatever,
24 yes.

25 Q. Thank you.

JEANIE HAMPTON - REDIRECT EXAMINATION

1 MR. VITETTA: I have nothing further from
2 this witness.

3 THE COURT: Redirect?

4 MS. BYRD: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. BYRD:

7 Q. Ms. Hampton, you didn't happen to see -- or did
8 you happen to see the serial number on the gun that was
9 used during the incident?

10 A. No, ma'am.

11 Q. So are you able to testify to what the serial
12 number was on that gun?

13 A. No, I'm not.

14 Q. Okay.

15 THE DEFENDANT: Your Honor, may I please say
16 something?

17 THE COURT: No. You can talk to your lawyer.
18 Let me send the jury out for just a minute.
19 Mr. Butler, be quiet.

20 (In open court, jury not present.)

21 MR. VITETTA: He's --

22 THE COURT: All right.

23 MR. VITETTA: Mr. Butler says that the video
24 does not show anybody wiping anything down.

25 THE COURT: That's something you can argue in

1 front of the jury.

2 MR. VITETTA: And I have seen the video, and
3 it does show people wiping -- it does show the robber
4 wiping down the door and all that.

5 THE DEFENDANT: Well, we just watched it, and
6 it didn't show that.

7 THE COURT: Mr. Butler, here's my suggestion:
8 Either you talk with your lawyer privately, outside the
9 presence of the jury and outside the presence of us. If
10 you have something that you want to bring up during
11 trial, you can either whisper it to him, or you can write
12 it down, but I will not have you making outbursts during
13 the course of the trial.

14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, if you have
17 something that you want your lawyer to ask or to argue,
18 again, speak to him privately or write it down on a piece
19 of paper and hand it to him, but he talks for you during
20 the course of the trial, and you cannot have outbursts.
21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Now, I'm going to
24 bring the jury back in so that we can have you ask any
25 cross-examination that you want to ask, and then move on

1 to the next witness. All right?

2 (Recess taken.)

3 THE BAILIFF: One of the jurors, she has a
4 migraine headache.

5 THE COURT: Well, bring her in.

6 (In open court, juror present.)

7 THE COURT: All right. You're Ms.
8 Marcantonio?

9 Okay. Well, I have a son who has those. I
10 know you don't get rid of them with an Ibuprofen, so I'm
11 going to go ahead and excuse you. You don't have to come
12 back today, and then just call the telephone number after
13 6:00, and it will tell you whether or not you need to
14 report back further, but call after 6:00, okay?

15 All right. Thank you. You can go.

16 All right. Let's go ahead and take a
17 ten-minute break, and we'll come back and resume.

18 (Recess taken.)

19 (In open court, jury not present.)

20 THE COURT: All right. Y'all ready to go?

21 MR. VITETTA: He would like me to show the
22 video again to the victim in slow motion.

23 THE COURT: Which part?

24 MR. VITETTA: The whole thing.

25 THE COURT: Well, we're not going to show the

JEANIE HAMPTON - REDIRECT EXAMINATION

1 whole thing in slow motion. We'll show it at regular
2 speed, and then if you get to a part you that you feel
3 like needs some testimony, we'll do that.

4 All right. Juror number 179, Gwen
5 Marcantonio, I had excused because she has come down with
6 a migraine. Under the statute, I've taken the numbers of
7 the two alternates, put them in this cup.

8 Madame Clerk, will you come around here.
9 Reach in there and draw one of those numbers out there
10 for me that I put on a piece of paper.

11 She has drawn number 181, that is alternate
12 number two, Elizabeth Mason, so Ms. Mason will be seated
13 now as a regular juror. Okay.

14 You got the video cued up? You want it to
15 the point where you're in the room with the safe.

16 MS. YOUNG: She has one more question on
17 redirect, Your Honor.

18 MR. VITETTA: There's two parts, when he
19 walks in the door, the first one he wants to see --

20 MS. BYRD: When he walks into the door of the
21 cash office?

22 MR. VITETTA: No, this door right here. If
23 you just leave it cued up right here, and finish --

24 THE COURT: Do you have another question you
25 wanted to ask on redirect?

1 MS. BYRD: Yes, Your Honor. I wasn't quite
2 finished before the -- we had to take a break.

3 THE COURT: Okay. All right. Everybody's
4 in? Bring the jury back.

5 MS. BYRD: Your Honor, before the jury gets
6 in here, I just want to make sure if I have an
7 opportunity for another redirect after --

8 THE COURT: No, you only get one redirect.
9 He only gets one recross.

10 MS. BYRD: All right.

11 THE COURT: We had direct and recross.
12 You're on redirect, so when you're done, you're done.
13 You'll get recross, and then we'll move to the next one.

14 MS. BYRD: Okay. Thank you.

15 (In open court, jury present.)

16 THE COURT: Okay. Folks, Ms. Marcantonio
17 I've excused because she came down with a migraine.
18 Ms. Mason is now going to be seated as a regular juror,
19 Elizabeth Mason, number 181. So that's you? You are now
20 a regular juror. All right?

21 You may continue with your redirect.

22 MS. BYRD: Thank you, Your Honor.

23 BY MS. BYRD:

24 Q. Ms. Hampton, before the break you remember we had
25 watched surveillance footage from the store, and we were

1 talking about the weapon. Just briefly about the
2 surveillance footage from the Big Lots.

3 Were the surveillances cameras able to capture
4 your entire encounter with the suspect during the crime?

5 A. No, it was not, because it's only in the two areas
6 in the footage that's shown.

7 Q. And was it also your testimony that you witnessed
8 the suspect wiping down areas of the office?

9 A. Right.

10 Q. Okay. And was that something that you observed in
11 the moment?

12 A. In the moment.

13 Q. Okay. And, again, briefly going back to the
14 weapon, before the break, you testified that you didn't
15 see the serial number --

16 A. No, I did not.

17 Q. -- of the gun the suspect used and that you
18 wouldn't be able to testify to the serial number now,
19 correct?

20 A. That is correct.

21 Q. But is it also your testimony that the weapon that
22 I showed you looked very much like --

23 A. Looked similar to the one that I described.

24 Q. Okay.

25 MS. BYRD: No further question. Thank you.

RECROSS-EXAMINATION

BY MR. VITETTA:

Q. So, Ms. Hampton, you indicated that the -- you saw the robber's nose and mouth?

A. That's correct.

Q. And when did you see that?

A. When I turned around and looked in his face.

Q. And at what point was that?

A. That was when I was in this lockup room right here.

Q. Okay.

A. Because when he came back -- this is in slow time, but in realtime, it happened real fast. He walked by real fast. I stuck my head out, and he backed me up in there with the gun. And then he told me turn around, he had the gun on me, and he was telling me about the safe and having a timer on it, and, you know, we were there -- I don't know how long we were there.

Q. Well, can I show you that part of the video and you tell us where you saw his face or his mouth?

A. You can't see it. You can play the video back, but you can't see inside there when all that was going on.

Q. Okay. Would you just start from now, and then I'll just -- just tell us when, at what point you saw,

1 okay?

2 A. As I stated before, you cannot see that part on
3 the tape. When we were inside, when he told me to turn
4 around, we were there for a moment, and that's when I
5 took a chance, and I turned around to look and see if I
6 could identify -- you know, if anything happened to me,
7 if I could have anything identifiable to report to
8 authorities.

9 Q. Yes, ma'am.

10 A. So you can't see that, because that's part is not
11 shown on there, so I don't know what you want me to say.

12 Q. That's fine. So it was just in that room?

13 A. Right. It was in that room.

14 Q. And we couldn't see that.

15 A. That's correct.

16 Q. Okay. And then the only other question I have for
17 you, are you sure you saw somebody wiping down -- the
18 robber wiping down things?

19 A. At one point -- like I said, this has been a
20 while, but during the showing on the footage, I did
21 remember.

22 Q. I'm sorry?

23 A. I did remember, during the showing of the footage,
24 that he did, but I wasn't, like, trying to look at him
25 anymore after that at that point in the lockup room after

1 he told me, you know, don't look at him, and he kept the
2 gun on me the whole time during the robbery. I wasn't
3 trying to look at him anymore.

4 Q. I understand. Would you please play that second
5 video for me? And this is the video for the cash room,
6 and would you tell us where in here the robber is wiping
7 down.

8 A. The paper towel.

9 Q. Now, is this where the cleaning is happening?

10 A. Yes, it is.

11 Q. And what are you claiming he was wiping down?

12 A. Well, when you first asked me this, y'all asked me
13 what areas, I said the areas in which were involved and
14 which were touched, and that's right in that area.

15 MR. VITETTA: Okay. Thank you.

16 THE COURT: Okay. Are you finished?

17 MR. VITETTA: Yes, sir.

18 THE COURT: All right. You may step down.

19 All right. Next witness.

20 MS. BYRD: Your Honor, the State calls Pamela
21 Sanders.

22 PAMELA SANDERS,

23 having been first duly sworn,

24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MS. BYRD:

2 Q. Good afternoon, Ms. Sanders. Could you please
3 tell us where you're currently employed?

4 A. Big Lots.

5 Q. Where is that Big Lots located?

6 A. 1401 Sam Rittenberg.

7 Q. And were you working at that Big Lots on December
8 16, 2011?

9 A. Yes.

10 Q. Did an incident happen at that store when you were
11 working that morning?

12 A. Yes.

13 Q. Could you please tell us what happened that day.

14 A. The store was robbed.

15 Q. Were you able to witness, yourself, the robbery?

16 A. Yes.

17 Q. When did you -- at what point did you realize that
18 the store was being robbed?

19 A. We had just opened the door, and one of the
20 employees went back to the office to get something. It
21 took her a while to come back, so I went back to check on
22 her.

23 Q. Who was that employee?

24 A. Jeanie Hampton. When I went back to check on her,
25 she was in the cash office and the door was locked, so I

1 knocked on the door to ask her what was taking her so
2 long.

3 She said she had a phone call, she was on her
4 phone, and I said, Well, just open the door and let me
5 come in and get what I need to get.

6 And she goes, No, I'm on the phone.

7 I said, Jeanie, just open the door so I can get it
8 so I can go back up to the front.

9 She finally opened door. When she opened the
10 door, a guy was in there with a gun pointed at her.

11 Q. What happened after he open -- after she opened
12 the door?

13 A. When she opened the door, she was bending down,
14 picking up change. The guy pointed a gun at her and told
15 her to go walk through. He pointed to her to go out the
16 door.

17 Q. Which door?

18 A. The door leading out of the cash office.

19 Q. Okay. And you said that you saw the suspect with
20 a gun in his hand?

21 A. Yes.

22 Q. To your knowledge, did he take anything from the
23 cash office, or the manager's office?

24 A. He took money.

25 Q. Do you know about how much money?

PAMELA SANDERS - DIRECT EXAMINATION

1 A. No.

2 Q. Did he take anything else?

3 A. He took some of my personal items.

4 Q. What items were those?

5 A. My car keys, my license, my purse, and my jacket.

6 Q. And what happened after he had you both in the
7 manager's office?

8 A. He told us to go through the second door and took
9 us to the back door so we could let him out.

10 Q. Did he leave out that door?

11 A. He left out that door.

12 Q. Ms. Sanders, could you tell us, did you know the
13 suspect that was robbing the Big Lots?

14 A. No.

15 Q. Did that person have permission to be back in that
16 area of the store?

17 A. No.

18 Q. Did he have permission to be in that cash office?

19 A. No.

20 Q. Did he have permission to take that money?

21 A. No.

22 MS. BYRD: I have no further questions for
23 you, Ms. Sanders. Please answer any questions
24 Mr. Vitetta has for you.

25 THE WITNESS: Okay.

1 THE COURT: Cross?

2 MR. VITETTA: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. VITETTA:

5 Q. You were never able to make an identification of
6 the robber?

7 A. No.

8 Q. Were you ever presented a photographic lineup?

9 A. No.

10 Q. Or an in-person lineup, six or eight people?

11 A. No.

12 Q. There is -- there's surveillance inside the store,
13 correct?

14 A. Yes.

15 Q. And is there surveillance in the back of the
16 store, outside in the parking lot?

17 A. No.

18 Q. You lost a coat, did you say?

19 A. Jacket.

20 Q. And what kind of jacket was it?

21 A. Black with fur around the collar.

22 Q. Have you ever gotten that back?

23 A. No.

24 Q. Have you ever asked to see any evidence in this
25 case?

PAMELA SANDERS - REDIRECT EXAMINATION

1 A. No.

2 Q. Did you give a description of this person that
3 robbed you?

4 A. No.

5 Q. Do you remember how he looked?

6 A. All I can remember is his nose and his lips.

7 Q. And what did they look like?

8 A. He had a broad nose and big lips.

9 Q. Okay.

10 MR. VITETTA: Nothing further for this
11 witness. Thank you.

12 THE COURT: Redirect?

13 MS. BYRD: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. BYRD:

16 Q. Beg the Court's indulgence.

17 Ms. Sanders, I'm going to show you what's been
18 marked as State's Exhibit 46. Do you recognize this?

19 A. No.

20 Q. No? Does this look like any article of clothing
21 you've seen before?

22 A. No.

23 Q. Okay. And, ma'am, as you were talking about
24 giving authorities a description -- or, rather, not
25 giving the authorities a description of the suspect, did

1 you see the suspect for very long?

2 A. No.

3 Q. Did you get a very good look at who the suspect
4 was or any particular features?

5 A. Just his noise and his lips.

6 MS. BYRD: Nothing further. Thank you.

7 THE COURT: Recross?

8 MR. VITETTA: No, sir.

9 THE COURT: You may step down. Next witness.

10 INDIA GRANT,

11 having been first duly sworn,

12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. BYRD:

15 Q. Good afternoon, Ms. Grant. I'm going to ask you
16 to please speak up as much as you can so each juror can
17 hear you and so the court reporter can hear you. She's
18 going to be writing down everything you're saying, okay?

19 A. Okay.

20 Q. Ms. Grant, can you tell us where you live.

21 A. In Charleston.

22 Q. Okay. Do you work here in the area?

23 A. Yes, ma'am.

24 Q. Okay. Ms. Grant, could you tell us what you were
25 doing on the day of December 16, 2011.

INDIA GRANT- DIRECT EXAMINATION

1 A. That morning?

2 Q. Yes, ma'am.

3 A. I got my son ready for school and got up to do
4 laundry.

5 Q. And where were you doing your laundry?

6 A. In Magnolia, on Magnolia Road.

7 Q. And what -- is that a facility for doing laundry,
8 a laundromat?

9 A. Uh-huh, I think it's George, George's.

10 Q. Okay. And, Ms. Grant, did anything occur to you
11 that day before you were able to do your laundry?

12 A. Yeah. I got a phone call.

13 Q. Huh?

14 A. I got a phone call.

15 Q. You did? Who did you get a phone call from?

16 MR. VITETTA: Your Honor, excuse me. I'm
17 having a hard time hearing over here.

18 THE COURT: We're going to need you to speak
19 louder.

20 THE WITNESS: Got a phone call from Keeon.

21 BY MS. BYRD:

22 Q. Keeon who?

23 A. Butler.

24 Q. Is Keeon present in the courtroom today?

25 A. Yes.

1 Q. Can you point him out to us?

2 A. Yes, ma'am. (Indicating.)

3 Q. Can you describe briefly what he's got on today.

4 A. A red tie.

5 Q. Okay. And you said that Keeon called you?

6 A. Yes, ma'am.

7 Q. What did he say when he called you?

8 A. If I could come pick him up.

9 Q. Where did he need you to come pick him up from?

10 A. On -- Charlestowne Road.

11 Q. Do you know what that road is near?

12 A. A shopping center.

13 Q. What's in that shopping center?

14 A. A gym, a Dollar Tree, Big Lots, Burlington's, Citi
15 Trends.

16 Q. Okay. And did you go that day to pick up Keeon?

17 A. Yes, ma'am.

18 Q. Okay. Do you recall exactly where you picked him
19 up?

20 A. About three houses from the top of the road.

21 Q. From the top of Charlestowne Road?

22 A. Uh-huh.

23 Q. And when you saw Keeon that day, do you remember
24 what he was wearing?

25 A. A black hoody.

1 Q. He was wearing a black hoody?

2 A. Uh-huh.

3 Q. Do you remember what kind of pants he had on?

4 A. Some khaki pants.

5 Q. Did you pick up someone else with him?

6 A. Yes.

7 Q. Who did you pick up?

8 A. A girl named Keya.

9 Q. What was her name?

10 A. Keya.

11 Q. Did you know her?

12 A. No.

13 Q. And when you picked up Keeon and the girl, Keya,
14 who you didn't know, what happened then?

15 A. I took them on DuPont.

16 Q. On DuPont?

17 A. Road, yeah.

18 Q. Why did you take them there?

19 A. Because they asked me to take them there.

20 Q. Did he ask you for anything else?

21 A. Yeah. We had a brief argument the day before
22 that, so he wanted to know if he could get -- we had a
23 brief argument the day before that, so he asked me for
24 the key to get the rest of his belongings out of my
25 house.

1 Q. He asked you to get what out of your house?

2 A. The rest of his belongings.

3 Q. The rest of his belongings. Okay. And did you
4 give him a key?

5 A. Yes, ma'am.

6 Q. Once you gave him the key, what happened?

7 A. He got out the car.

8 Q. What did you do?

9 A. Continued what I was doing, going to the
10 laundromat.

11 Q. Did you see Keeon again at any point that day?

12 A. When he brought my key to the laundromat.

13 Q. Okay. What did you do after you got your key back
14 from him in the laundromat?

15 A. I went back to the mall because I bought my son
16 some stuff that didn't fit, so I went back to the mall
17 and dropped Keya off and went back home to get ready for
18 work and pick my son up, and I took him to -- I was
19 thinking of going to his goddaddy's house that day, and
20 then I went to work.

21 Q. Okay. Did anything unusual happen once you got to
22 work that day?

23 A. Yeah. The cops came and took my car and took me
24 downtown.

25 Q. Did they tell you why they were taking you

1 downtown?

2 A. 'Cause they said my car was in a robbery -- yeah,
3 basically, my car been in a robbery.

4 Q. Okay.

5 A. Well, my car was seen leaving the scene of a
6 robbery.

7 Q. Did you speak with officers that day?

8 A. Uh-huh.

9 Q. And what did you tell the officers?

10 A. They just asked me if I saw Keeon that day. I
11 told them earlier that day, and they asked if anything
12 was suspicious about him when I got him. You know, Keeon
13 was kind of strange in a way, but no.

14 Q. Did you tell them that you had picked him up
15 earlier that day?

16 A. Right.

17 Q. Did you tell them what you saw him wearing that
18 day?

19 A. Yeah, and they explained to me what happened.

20 Q. Okay. After you spoke with officers and gave them
21 information --

22 A. Uh-huh.

23 Q. -- to your knowledge, were they able to use that
24 information for, you know, purposes of their
25 investigation?

1 A. Yeah, and he said it gave them probable cause to
2 have a search warrant for my house.

3 Q. Did they get a search warrant for your house?

4 A. I signed the search warrant because he said either
5 I would have signed it or they would kick the door in, so
6 I signed it.

7 Q. Did you tell them that Keeon had gone to your
8 house after you picked him up that day?

9 A. I wasn't aware if he went to my house that day or
10 not, but I told them I gave him the key because I didn't
11 do anything different from the time I left there until
12 the time I changed clothes.

13 Q. Okay. When -- to your knowledge, the officers
14 executed the search warrant at your house?

15 A. Uh-huh.

16 Q. And did they locate anything at your house?

17 A. Yeah. They said they found a black handgun under
18 my couch, under the cushion of my couch.

19 Q. Ms. Grant, I'm going to show you some items that
20 have been marked as State's Exhibits 35 through 41. If
21 you'd look at these briefly and just let me know if you
22 recognize, once again, those items, just generally where
23 they are.

24 A. This my couch. This is by the front door.

25 Q. Is that couch the couch in your apartment?

INDIA GRANT- DIRECT EXAMINATION

1 A. Uh-huh.

2 Q. Are those photos a fair and accurate
3 representation of your apartment at that time?

4 A. Yes.

5 MS. BYRD: Your Honor, at this time the State
6 would move to put State's 35 through 41 into evidence.

7 MR. VITETTA: No objection.

8 THE COURT: Admitted.

9 (State's Exhibit Nos. 35 through 41 were
10 marked for identification and admitted into evidence.)

11 BY MS. BYRD:

12 Q. You said this was your couch?

13 A. Uh-huh.

14 Q. And that's in your living room, your apartment,
15 right?

16 A. Yes, ma'am.

17 Q. And to your knowledge, where did investigators
18 locate the weapon that's sitting on the couch?

19 A. They said under the cushion on the couch.

20 Q. Is that your weapon?

21 A. No, it's not.

22 Q. Did you know that weapon was in your apartment?

23 A. No, I didn't.

24 Q. Would you have known if that weapon was in your
25 apartment underneath your couch cushions?

1 A. Would I have known?

2 Q. Would you have known?

3 A. No, I wouldn't know. If it was under there, my
4 son tears my house up, so if it was under there, he would
5 have found it.

6 Q. And was that weapon in your home, to your
7 knowledge, prior to you leaving for the day, to start
8 your day, on December 16th?

9 A. No, it wasn't.

10 Q. And you said your son had been with you in the
11 morning?

12 A. That morning, yes, ma'am.

13 Q. And then you picked him up from school and took
14 him to a family member's house?

15 A. Yes, ma'am.

16 Q. Okay. Now, Ms. Grant, you said you spoke to
17 officers on December 16th?

18 A. Yes, ma'am.

19 Q. And you told them that you had picked up Keeon
20 from there, in Charlestowne Road, behind the shopping
21 center where Big Lots is, and you described what he had
22 been wearing, the black hoody and khaki pants, and you
23 said that you gave him a key to your apartment so he
24 could get some things. He brought that key back to you
25 after some time, and at any point after speaking with

INDIA GRANT- DIRECT EXAMINATION

1 officers on December 16, 2011, did you give anyone else a
2 different version of events?

3 A. Uh-huh.

4 Q. Do you remember who you gave a different story to?

5 A. I can't remember. I know one was -- Novak?

6 Q. Do you recall speaking with a Mr. Novak from the
7 public defender's office?

8 A. Yeah.

9 Q. And you speak with Mr. Vitetta and his
10 investigator, Mr. Marshall?

11 A. Yes.

12 Q. And did you give them a different version than
13 what you told us today?

14 A. Yes, ma'am, uh-huh.

15 Q. Can you tell us why, when you spoke with
16 Mr. Novak, you gave them a different version of events?

17 A. 'Because after I spoke with the detective that day
18 and found out what all happened, it kind of went --

19 Q. It was what now?

20 A. The whole situation, I had wanted to disappear.

21 Q. Why did you tell them something different?

22 A. Because I thought it would disappear. I thought,
23 you know, if I tell something different, it would just be
24 a day.

25 Q. Why did you want it to disappear?

1 A. I got a lot going on. I got school; I got a kid.
2 I wanted it to disappear.

3 Q. When you spoke with Mr. Vitetta and his
4 investigator, Mr. Marshall, why did you give them a
5 different story?

6 A. That was the reason.

7 Q. Was that the only reason?

8 A. Uh-huh.

9 Q. Because you wanted to disappear?

10 A. Yes, ma'am.

11 Q. Beg the Court's indulgence.

12 After meeting with Mr. Vitetta and Mr. Marshall,
13 do you recall meeting with me and Ms. Young and
14 Investigator Scarborough?

15 A. Yes, ma'am.

16 Q. And do you remember at that time why you told us
17 that you gave a different version?

18 A. After I spoke to them, that's when I started
19 getting calls and --

20 Q. What kind of calls?

21 A. That I better not testify.

22 Q. Was there anything else related to you during
23 those calls?

24 A. He said I better not testify and knock down my
25 door, just craziness.

INDIA GRANT- DIRECT EXAMINATION

1 Q. How did those calls make you feel?

2 A. Nervous about the whole situation.

3 Q. You're scared?

4 A. I am. Not for me, but mostly for my son. It's
5 just me and him.

6 Q. And did you want to be here today?

7 A. No.

8 Q. Just briefly, you said investigators let you know
9 your car had been seen at the crime scene. Can you
10 describe to us what your car at that time looked like?

11 A. A blue Crown Vic.

12 Q. And Crown Vic, that is Crown Victoria?

13 A. Yeah, Crown Victoria.

14 Q. Could you describe the exterior for us a bit.

15 A. It's blue. I got chrome hubcaps.

16 Q. Okay. I'm going to show you what's been marked as
17 State's Exhibit 26 and 27. If you could, tell me what
18 you recognize in those pictures.

19 A. My car.

20 Q. Is that a fair and accurate representation of how
21 your car looked at that time?

22 A. Yes, ma'am.

23 MS. BYRD: The State would move to admit
24 Exhibits 26 and 27 into evidence.

25 MR. VITETTA: No objection.

1 THE COURT: Admitted.

2 (State's Exhibit Nos. 26 and 27 were marked
3 for identification and admitted into evidence.)

4 BY MS. BYRD:

5 Q. As soon as this focuses, Ms. Grant, just to
6 reiterate, this was your car at the time?

7 A. Yes, ma'am.

8 Q. Okay. The blue Crown Victoria? Okay.

9 Now, Ms. Grant, you said that Keeon had took your
10 apartment key with him when you dropped him off.

11 A. Uh-huh.

12 Q. And that he went his way, went back to the
13 laundromat, and he came back to the laundromat and
14 brought the key. Do you remember what he was wearing,
15 when he --

16 A. No. When he brought the key back, I don't
17 remember.

18 Q. Okay. You don't remember if he was wearing the
19 same clothes, different clothes?

20 A. It was different.

21 Q. It was what?

22 A. It was different.

23 Q. So he no longer had on the black hoody or the
24 khaki pants?

25 A. Right, uh-huh.

INDIA GRANT- DIRECT EXAMINATION

1 Q. Okay. And now, also, one of the things that --
2 when you met with officers at CPD, did they have you make
3 any type of identification in this case?

4 A. Yeah, uh-huh.

5 Q. I'll show you what was marked as State's Exhibit
6 47 for identification purposes. Do you recognize just
7 the piece of paper?

8 A. Yes.

9 Q. And how are you able to recognize this? How do
10 you know you've seen that piece of paper before?

11 A. Because I signed it when they gave it to me.

12 Q. You signed it, and that's your signature?

13 A. Yes.

14 Q. Is that sheet of paper in the same condition it
15 was in as the last time you saw it?

16 A. Yeah.

17 Q. Okay. Is this what they showed you at CPD?

18 A. Yes, ma'am.

19 MS. BYRD: At this time, the State would move
20 to admit State's Exhibit 47 into evidence, please.

21 MR. VITETTA: No objection.

22 THE COURT: Admitted.

23 (State's Exhibit No. 47 was marked for
24 identification and admitted into evidence.)

25 BY MS. BYRD:

1 Q. Could you explain to the jury what's in that
2 picture.

3 A. It's a picture of Keeon.

4 Q. It's a picture of whom?

5 A. Keeon.

6 Q. And do you know where this picture is from?

7 A. Now I do, yeah.

8 Q. Where is it from?

9 MR. VITETTA: I'm going to object. Calls for
10 hearsay.

11 THE COURT: What is this a picture of? It's
12 the defendant?

13 MS. BYRD: It's --

14 THE COURT: So that's a still of what we saw
15 earlier? Okay. Go ahead.

16 BY MS. BYRD:

17 Q. Okay. So investigators showed you the picture.
18 You were able to identify who was in the picture?

19 A. Yeah.

20 Q. And that was, again --

21 A. Keeon.

22 Q. Did you make any statements or comments on the
23 picture?

24 A. Just that it was him.

25 Q. And the person you know as Keeon Butler is the

INDIA GRANT- CROSS-EXAMINATION

1 person sitting at defense table with the red tie?

2 A. Yes, ma'am.

3 Q. Okay. Did you later learn where that picture had
4 come from?

5 A. Yeah.

6 Q. And where was that?

7 A. At Big Lots.

8 Q. Okay. And, again, that's your handwriting?

9 A. Yes.

10 Q. Is that your signature?

11 A. Yeah.

12 Q. And did you date and put a time on this?

13 A. Yes.

14 Q. And is that -- what does that date and time
15 indicate?

16 A. It was the day he picked me up.

17 MS. BYRD: Ms. Grant, thank you. I have no
18 further questions at this time. Please answer any
19 questions Mr. Vitetta has.

20 THE COURT: Cross?

21 MR. VITETTA: Thank you, Judge.

22 CROSS-EXAMINATION

23 BY MR. VITETTA:

24 Q. Ms. Grant, do you remember what time you actually
25 went to the police station on the 16th?

1 A. Around 7:00 or a little after 7:00.

2 Q. And you were being interviewed by the police
3 officers, by -- was it several or one --

4 A. About three.

5 Q. And how long did you talk to them during this
6 interview?

7 A. I'm not sure, till about 3:30 in the morning.

8 Q. And did the police officers to you appear to have
9 a suspect in mind?

10 A. Yeah.

11 Q. And the suspect was Mr. Butler, correct?

12 A. Yeah.

13 Q. And did you get the impression that they wanted
14 you to name Mr. Butler as the robber?

15 A. Not -- I got some impression.

16 Q. Do you remember a Detective Holmes interviewing
17 you?

18 A. Yes.

19 Q. Do you remember him telling you, I know he did it
20 and you know he did it?

21 Do you remember that?

22 A. It was more of, I know someone in the picture,
23 more than I know that he did it.

24 Q. And you were concerned because you may have been a
25 suspect. They may have been thinking of you as a suspect

1 in this robbery, correct?

2 A. Not -- a little, from what they explained if I had
3 been telling them what was going on, yeah.

4 Q. Because your car apparently is alleged to have
5 been involved in this?

6 A. Right.

7 Q. And at the time your son was a baby, correct?

8 A. Uh-huh, five.

9 Q. Five. So that would have been a big hardship on
10 your son if you had gone to jail for robbery.

11 A. Right.

12 Q. Plus, this was about ten days before Christmas?

13 A. Uh-huh.

14 Q. And that came up in your interview?

15 A. Right.

16 Q. And Christmas was close?

17 A. Uh-huh.

18 Q. And then you talked to Keith Novak.

19 A. Uh-huh.

20 Q. And told him that Keeon was not involved in the
21 robbery, correct?

22 A. I didn't tell him that. I told him I didn't know
23 anything about it, but I --

24 Q. Then you actually told us that he wasn't involved
25 at all?

1 A. Uh-huh.

2 Q. And that was just about a month ago?

3 A. Uh-huh.

4 Q. And I'm presenting to you what has been marked as
5 Defendant's Exhibit No. 1. Can you identify that for me.

6 A. It was on the 28th when they interviewed me.

7 Q. All right. That's the statement that you gave us,
8 and is that your signature on it?

9 A. Yeah.

10 Q. May I see that again, please?

11 And in this statement, you said that you were
12 going to be charged if you didn't identify Keeon?

13 A. I mean, they told me I could be charged if I
14 already know it's him, you know.

15 Q. And in the statement, you say that you didn't want
16 to go to jail, and that's why you gave them Keeon.

17 A. No. In the statement, you asked if I felt like I
18 was being pressured into saying what I said.

19 Q. And in the statement you gave us, you said you
20 didn't see Keeon December 16th, 2011?

21 A. Right.

22 Q. And he didn't have your car or keys or access to
23 your house. You told us that.

24 A. He didn't have my car. I had my car.

25 Q. And he did not have any keys to get in the house.

1 A. That part -- like I told them, that part I didn't
2 remember me giving him the key to the apartment that day.
3 I mean, like, a whole lot of it is a blur, like,
4 afterwards, as I was thinking about it, I remember the
5 whole thing.

6 MR. VITETTA: Judge, I would move this into
7 evidence at this time.

8 THE COURT: It's admitted.

9 (Defendant's Exhibit No. 1 was marked for
10 identification and admitted into evidence.)

11 BY MR. VITETTA:

12 Q. And, Ms. Grant, you know Keeon?

13 A. Right.

14 Q. You know him personally?

15 A. Uh-huh.

16 Q. And you had a relationship with him?

17 A. I wouldn't say a relationship, but, you know, we
18 go together.

19 Q. He stayed at your place for a while?

20 A. Sometimes.

21 Q. Okay. And he had been in your car?

22 A. Uh-huh.

23 Q. And I think you've lent him the car?

24 A. I have.

25 Q. And, in fact, you probably, like all of us, lend

1 your car to other people all the time, right? Well, not
2 all the time, but sometimes.

3 A. No.

4 Q. No?

5 A. No, just between him and my cousin China.

6 Q. China. Okay. In the past, you've owned guns,
7 right?

8 A. I have.

9 Q. You've purchased guns, and you've had them at your
10 house?

11 A. I have.

12 Q. And the gun that you identified today you're
13 claiming was not your gun?

14 A. It's not.

15 Q. You think that could have been a problem to have a
16 gun under your cushion like that?

17 A. I know it's a problem. It would have been a
18 problem for the gun to be under my cushion. It would
19 have been.

20 Q. Right, because you said your son at the time --

21 A. Right.

22 Q. -- could have gotten hurt?

23 A. He could have.

24 MR. VITETTA: Nothing further, Your Honor.

25 THE COURT: Redirect?

INDIA GRANT- REDIRECT EXAMINATION

1 MS. BYRD: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. BYRD:

4 Q. Ms. Grant, when you were talking with CPD
5 investigators, were you telling them the truth?

6 A. Yes, ma'am.

7 Q. Did they prep you in any way to --

8 A. No.

9 Q. Did they encourage or attempt to elicit certain
10 responses from you?

11 A. No.

12 Q. Did they feed you specific answers?

13 A. No. They made me nervous about the whole thing,
14 about Christmas right there, and me and a lot of girls
15 who do stuff for guys.

16 Q. And they told you that your car was seen at the
17 crime scene.

18 A. Right.

19 Q. So were you afraid that you would be considered an
20 accomplice?

21 A. Yes.

22 Q. Did the fear of possibly being mistaken as an
23 accomplice in this crime, did that cause you to lie to
24 officers?

25 A. It did.

1 Q. Lie when?

2 A. I didn't really lie to the officers, but the guy I
3 talked to afterward, after I found out the whole
4 situation.

5 Q. So the fear of being mistakenly accused of this
6 crime as an accomplice caused you to lie to the
7 investigator, Mr. Novak, correct, after the interview was
8 taken?

9 A. Yeah, because I didn't know --

10 Q. After the interview with CPD?

11 A. Because I didn't know the whole extent to the
12 thing when I first talked to the detectives, but
13 afterward, I talked to Mr. Novak.

14 Q. Were you afraid to tell investigators from CPD on
15 December 16th the truth?

16 A. No, because I didn't really know the extent of the
17 crime yet.

18 Q. And you were telling them the truth then. That's
19 your testimony?

20 Okay. And you seemed to express some difference
21 in interpretation in the statement that you gave
22 Mr. Vitetta. Again, why did you give Mr. Vitetta that
23 statement?

24 A. I guess I wanted it to go away.

25 Q. Were you influenced by any other outside --

1 A. The threats that were made.

2 Q. So is that why you gave that particular statement
3 to Mr. Vitetta, knowing it wasn't true?

4 A. Yes.

5 Q. Okay. And just so we're aware of the times, the
6 search warrant executed at your apartment, was that after
7 you had your interview with CPD officers?

8 A. Yes, ma'am.

9 Q. So you had already told them everything before a
10 search warrant was executed?

11 A. Yes, ma'am.

12 Q. And you already told them everything before they
13 located a gun in your apartment?

14 A. Yes, ma'am.

15 Q. Okay. And you said that three officers were
16 questioning you. Did you sit -- were you sitting down
17 with three officers the entire time?

18 A. No, ma'am.

19 Q. Were you one-on-one with an officer?

20 A. One time I was one-on-one and it was two of them.

21 Q. Okay. And you said that you were there until the
22 early hours of the morning. Were you being questioned
23 the entire time?

24 A. Not the entire time, but the majority of the time.
25 For about two, three hours they questioned me.

1 Q. Okay.

2 MS. BYRD: No further questions, Your Honor.
3 Thank you, Ms. Grant.

4 THE COURT: Recross?

5 MR. VITETTA: Thank you, Judge. Just a
6 couple questions.

7 RECROSS-EXAMINATION

8 BY MR. VITETTA:

9 Q. So I don't understand why you changed your story
10 when you learned about all this stuff. Didn't you learn
11 on December 16th that Keeon was a suspect in an armed
12 robbery?

13 A. Yeah, on December 16th, that evening when the
14 police took me down to question me.

15 Q. Those facts never really changed from that date,
16 correct?

17 A. Right. And, like I told them, I found out, like,
18 the full extent of it during that time, so afterwards,
19 when Mr. Novak interviewed me, I got -- you know, I just
20 wanted everything to just go away and I just wanted out
21 of the situation, period.

22 Q. Do you remember telling the police in their
23 investigation that you took Keeon and Keya to a gray
24 Impala in the St. Andrews Gardens neighborhood?

25 A. No. I said I took them on DuPont Road, but it

1 wasn't -- I know it was on DuPont Road.

2 Q. Okay.

3 MR. VITETTA: Nothing further. Thank you,
4 Judge.

5 THE COURT: Okay. You can step down.

6 Okay, folks. This is where we're going to
7 break for today. I want you to go home tonight, and you
8 can obviously tell someone you got picked for a jury.
9 That's probably the first thing they're going to ask if
10 you haven't had them ask you already, but just tell them,
11 you know, it's an armed robbery case. I really don't
12 know anything that much about it, and the judge told me I
13 couldn't talk to anybody about it, that would include
14 anyone, including other members of the jury panel,
15 especially, though, outside influences; spouses,
16 boyfriends, girlfriends, neighbors, bartenders, whomever.
17 They aren't in here. They're not seeing what
18 you're seeing. They're not hearing what you're hearing.
19 It's completely improper for them to influence your
20 thinking on that. It's not fair to the parties, so I
21 need you to go home tonight, just relax.

22 I don't know if there has been a reporter
23 covering anything, so I don't know if there is going to
24 be any coverage tomorrow in the paper, but if you get up
25 tomorrow morning and look in the paper and there is some

1 article in the paper, please don't read it. Just put it
2 aside. You can read it after the trial is over with.

3 Again, don't try to go on the Internet to
4 find out anything. Please don't go by the crime scene.
5 Please don't put anything on social media about the case.

6 I have a couple of things in the morning that
7 I have to do on other cases, so we'll start at 10:00. If
8 you would, be in the jury room by 10:00, and hopefully we
9 will be ready to go at 10:00. So thank you for your
10 patience today, and we will see you tomorrow morning at
11 10:00.

12 (Jury recessed.)

13 THE COURT: All right. I've got a couple
14 things in the morning I have to deal with, so we'll be
15 ready to go at 10:00.

16 MS. BYRD: Yes, Your Honor. I apologize for
17 the timeliness of this objection, but I would object to
18 State's {sic} Exhibit 1 being entered into evidence.

19 THE COURT: State's --

20 MS. BYRD: Excuse me, Defendant's Exhibit 1
21 being entered into evidence.

22 THE COURT: What is it?

23 MS. BYRD: Your Honor, it's a statement --
24 the objection is based on hearsay.

25 THE COURT: Well, you didn't object at the

1 time.

2 MS. BYRD: I know, and I apologize, Your
3 Honor. I didn't -- I didn't notice that there was an
4 opportunity to object.

5 THE COURT: I looked over at you. Well,
6 again, I think it comes in under -- what is it, 613, it's
7 extrinsic evidence of a prior inconsistent statement.

8 MS. BYRD: Well, Your Honor, it's the State's
9 understanding that that statement could be used to
10 impeach the witness but not be submitted into evidence.

11 THE COURT: Well, at the time I looked over,
12 you didn't make any objection, and it came in.

13 MS. BYRD: Your Honor, I apologize. I didn't
14 realize --

15 THE COURT: I'm sorry, but it's in. It's too
16 late.

17 All right? See you in the morning.

18 (Recess taken.)

19 (May 20, 2015.)

20 (In open court, jury present.)

21 THE COURT: All right, folks. Welcome back.
22 My hearing took a little bit longer than I thought it was
23 going to, but we are now going to start now with the
24 State calling their next witness, so, Madame Solicitor,
25 call your next witness.

1 MS. YOUNG: Thank you, Your Honor. The State
2 calls Sarah Gladwell.

3 SARAH GLADWELL,
4 having been first duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. YOUNG:

8 Q. If you could pull that microphone close to you so
9 the court reporter can hear you? Great.

10 Where are you currently employed?

11 A. The city of Charleston Police Department.

12 Q. And how long have you been with law enforcement?

13 A. For a little over four years now.

14 Q. Tell us about what type of training you need for
15 the position you're in.

16 A. Aside from the 90-day training we get when we are
17 hired on with the crime scene unit, I've had training
18 with forensic photography, forensic latent fingerprint
19 processing, forensic entomology training, forensic death
20 investigation; I've had training with forensic -- excuse
21 me, latent fingerprint processing, and organization clues
22 and latent prints.

23 Q. Were you working with the crime scene back in
24 December of 2011?

25 A. Yes.

1 Q. What were your duties at that time, pretty much
2 the same as they are now?

3 A. Yes. Our duties as crime scene investigator are
4 to respond to crime scene calls; and we do things such as
5 take photographs, process items for latent fingerprints,
6 and collect evidence.

7 Q. Turning your attention to December 16, 2011, did
8 you have the occasion to respond to the Big Lots at 1401
9 Sam Rittenberg Boulevard?

10 A. Yes, ma'am.

11 Q. And why did you respond to that location?

12 A. I responded to that location because I was
13 dispatched to an armed robbery that had just occurred.

14 Q. And who did you meet with when you got to the
15 scene?

16 A. I met with Officer McGuire.

17 Q. And what was the purpose of meeting with Officer
18 McGuire?

19 A. The purpose to meet with the officer is so they
20 can let you know of how the incident occurred, what took
21 place, and after that, we do a walk-through together at
22 the scene and so that the officer can point out that the
23 areas that are of significance and importance so that I
24 may focus my investigation on those areas.

25 Q. And when you got on the scene, what was the first

1 thing you did as part of processing that scene?

2 A. The first thing I did for this case was take
3 photographs.

4 Q. I'm showing you what has already been marked and
5 admitted as State's 16, 13, and 15. Are those some of
6 the photographs that you took that day?

7 A. Yes, ma'am.

8 Q. Let me show them over here.

9 MR. VITETTA: That's fine.

10 BY MS. YOUNG:

11 Q. And while that's warming up, did you seek any
12 forensic evidence in this case?

13 A. Yes. The first thing that I would have looked for
14 in this case after photographs were taken would be latent
15 fingerprint processing.

16 Q. And how do you process for fingerprints?

17 A. The first thing we do is we assess the surface,
18 and we apply certain powders, like black fingerprint
19 powder to the surface with either a fingerprint brush
20 that has bristles or a magnetic fingerprint wand so that
21 once we assess the surface and decide what print powder
22 we're going to use, we apply that powder to the surface
23 in hopes that a fingerprint will develop so we can see it
24 and lift it.

25 Q. In this case, is the Big Lots a fairly big store?

1 A. Yes.

2 Q. And how did you determine where to attempt to
3 process for fingerprints, and what clues did you use to
4 do so?

5 A. As I said before, when I spoke with Officer
6 McGuire, she pointed out some of the areas that were
7 involved. I spoke with the office manager that day, and
8 she pointed out the areas that she remembered that the
9 suspect had touched, so I then focussed my attention on
10 those specific items and areas.

11 Q. And you've already explained how you process for
12 fingerprints. What leaves a fingerprint?

13 A. What leaves a fingerprint are the oils and the
14 sweat in your fingers on the friction ridge parts of your
15 skin, which would be the hands and the bottoms of the
16 feet, and when you touch, you come in contact with the
17 surface with your -- in this case, your fingers. You can
18 leave a fingerprint behind.

19 Q. Does someone leave fingerprints behind every time
20 they touch a surface?

21 A. No.

22 Q. Why or why not?

23 A. It depends on the situation. There are lots of
24 factors that can affect if a fingerprint is successfully
25 developed. The first would be the surface. If you have,

1 for instance, smooth glass, you're more likely to leave a
2 fingerprint. Another factor is the texture of the
3 surface -- well, like I said before, but also there's
4 going to be the fact that some people secrete more oils
5 and sweat out of your pores than other people do, and the
6 other factor is the weather or the season.

7 When it's summertime in Charleston and it's hot
8 and you're sweating, you're more likely to leave those
9 sweaty, oily fingerprints behind, as opposed to the
10 wintertime when your fingers are dry, so there are
11 certain reasons why you may or may not leave one behind.

12 Q. And if someone touched a surface and wiped it down
13 afterwards, would you still be able to locate a
14 fingerprint?

15 A. It is possible, but it depends on how well and
16 thorough that area has been wiped down. If you are, for
17 example, cleaning a mirror in your house and you have the
18 time and you're very thorough and you go and you wipe
19 down the entirety of that surface, then you're most
20 likely going to get clean everything without the
21 possibility of fingerprints being left behind, but if you
22 do it quickly and you're not as thorough, then, yes,
23 there may be the possibility that you missed a spot and
24 there could still be fingerprints on it.

25 Q. In this case, did you learn whether some areas

1 were wiped down by the suspect?

2 A. Yes.

3 Q. After locating the fingerprints, are those then
4 sent to a fingerprint analyst to conduct a comparison?

5 A. Yes, they are.

6 Q. So you're just in charge of collecting any latents
7 from the scene?

8 A. Yes, ma'am.

9 Q. So after taking the photographs and processing for
10 latent fingerprints, what's the next step in your
11 investigation?

12 A. The next step in this investigation will be to
13 collect evidence.

14 Q. What types of evidence did you collect in this
15 case?

16 A. In this case, the item that was of interest is
17 that I learned while speaking with the manager, she
18 advised that the suspect brought along with him a plastic
19 grocery bag and it was in the cash office, which was
20 inside the manager's office. There was a plastic bag and
21 a plastic bag handle.

22 So I collected those items, as well as a roll of
23 paper towels and a detached paper towel that the suspect
24 was observed to be using to wipe down an area as well as
25 a shoe print lift that I developed in front of the cash

1 office door to the manager's office.

2 Q. Can you explain why you would collect a shoe print
3 in this case?

4 A. Yes. In this case, because the manager's office
5 and the cash office had limited personnel access and we
6 knew that only a few people had been in there as well as
7 the suspect, I knew that it would be a good idea to
8 process the floor for shoe prints, which I did.

9 Q. Without being provided any outside information,
10 such as shoes to compare to, is there any way to tell who
11 the specific individual was who left the shoe print?

12 A. No.

13 Q. Now, in collecting evidence in this case, do you
14 have certain procedures that CPD requires you to follow
15 in order to protect and preserve the integrity of the
16 evidence?

17 A. Yes. We package all of our evidence ourselves,
18 and we mark all of the items with the case number, our
19 initials, as well as the item numbers, and that's
20 evidence that goes along with the case, and when we --
21 after we package our evidence, we seal it and we write
22 our initials on it so we know that it's us that packaged
23 that evidence.

24 Q. And why do you go through these steps?

25 A. To preserve the integrity of the evidence, to make

1 sure that there's not any tampering with the evidence,
2 and to make sure there is no cross contamination of the
3 evidence.

4 Q. After you collect the items, where do you take
5 them?

6 A. After we collect the items, we transport them, and
7 it depends on what the evidence is. In this case, I had
8 evidence that I submitted to our latent recovery lab.
9 They process items for fingerprints using chemicals, so
10 those items get submitted directly to them to put in a
11 secure locker until they have access to them, and then
12 the other items that are not sent to the latent
13 fingerprint lab, in this case the shoe print, it's
14 submitted directly to our evidence unit which is located
15 at CPD headquarters.

16 Q. And the evidence is secured in a secure location?

17 A. Yes.

18 Q. I'm showing you what has been marked for
19 identification as State's Exhibit 45. Do you recognize
20 that?

21 A. Yes, ma'am, I do.

22 Q. How do you recognize that?

23 A. I recognize it because it has my handwriting on
24 it, has my name on it, and the most important is that it
25 has my initials on the seal as well as my reporting

1 number.

2 Q. And when was this item collected?

3 A. This item would have been collected December 16th,
4 2011.

5 Q. And where was it collected from?

6 A. This was collected -- this is the white grocery
7 bag and the white grocery -- the grocery bag handle.
8 This was collected from the cash office at Big Lots.

9 Q. And is this in substantially the same condition
10 now as when you first saw it? You can pull it out. If
11 there is any changes, please describe those.

12 A. No, other than it being covered with fingerprint
13 patterns, in the same condition.

14 Q. So that's the reason for the different color?

15 A. Yes.

16 MS. YOUNG: Your Honor, at this time the
17 State would seek to admit State's 45 into evidence.

18 MR. VITETTA: No objection.

19 THE COURT: Admitted.

20 (State's Exhibit No. 45 was marked for
21 identification and admitted into evidence.)

22 BY MS. YOUNG:

23 Q. Now, can you explain us to again, what is the item
24 that you collected?

25 A. This is the plastic Family Dollar grocery bag and

1 the plastic grocery bag handle.

2 Q. Okay. I'm going to show you State's 16, and what
3 is that depicting? Is that the handle we're talking
4 about?

5 A. Yes.

6 Q. Okay. And this is State's 15. What is that
7 showing?

8 A. That is the intact grocery bag.

9 Q. Okay. The bag that's in there?

10 A. Yes, ma'am.

11 Q. That you collected that day from the Big Lots?

12 A. Yes, ma'am.

13 Q. And this is State's 13. Is that the handle as
14 well, just a different view?

15 A. Yes, ma'am.

16 Q. So then after you collected the bag, did you just
17 submit it to the lab to process the items?

18 A. Yes. The bag and the grocery bag handle were
19 submitted to the latent recovery fingerprint lab for the
20 fingerprint processing.

21 Q. Court's indulgence.

22 Before you processed the scene, you said it's
23 important to know what areas to process for fingerprints
24 and for evidence collection.

25 A. Yes.

1 Q. Was it reported to you whether the suspect was
2 wearing gloves?

3 A. The manager, I believe, and the other employees
4 that were there were not really sure if the suspect had
5 gloves on that day or not. So because of that, that's
6 why we went ahead on the fingerprint processing of the
7 scene.

8 Q. Did they point out areas where the suspect touched
9 that day?

10 A. Yes.

11 Q. Okay.

12 MS. YOUNG: That's all I have for you.
13 Please answer any questions Mr. Vitetta has for you.

14 MR. VITETTA: Thank you.

15 CROSS-EXAMINATION

16 BY MR. VITETTA:

17 Q. Thank you. Good morning, Officer. Officer, you
18 testified that you spoke with people, Officer McGuire and
19 the manager, and you kind of figured out where you should
20 be doing your testing, correct?

21 A. Yes, sir.

22 Q. And a latent print is when you put the powder on
23 and you get a lift, and, in your opinion, it looks like
24 something that might match somebody, correct?

25 A. Yes. When we lifted it, it has certain

1 characteristics. We call it detail, so enough that we
2 can turn in to the latent fingerprint office.

3 Q. Yes. And there were a total of 11 latents lifted?

4 A. Yes, sir.

5 Q. And there were, I think, five from a shopping cart
6 and a dead bolt package?

7 A. Five from a dead bolt package that was in the
8 shopping cart.

9 Q. That was in a shopping cart, and you were directed
10 to that shopping cart by somebody who said you might find
11 prints of the robber?

12 A. Officer McGuire directed me. She explained that
13 the suspect was observed by people shopping around. He
14 was observed pushing the shopping cart around and that
15 was found with the dead bolt package in it, but I did not
16 process those items.

17 Q. But you know they were processed?

18 A. Yes, sir.

19 Q. And there were two from the door in the manager's
20 office?

21 A. Yes, sir.

22 Q. And then there was also four from a cash office
23 door?

24 A. Yes, sir, that's correct.

25 Q. And so those were all, in your opinion, latents?

1 A. Yes, sir.

2 Q. So then you sent them for testing?

3 A. Yes.

4 Q. Okay. Very good. And the shoe print, was that
5 also submitted as evidence as well?

6 A. It was, yes.

7 Q. And you have a photograph of that shoe print with
8 you?

9 A. I don't have a photograph with me.

10 Q. Okay. But you took one?

11 A. Yes, sir.

12 Q. Okay. And the latents -- just so I'm clear, the
13 latents from the grocery bag and grocery bag handle,
14 those are in addition to the 11?

15 A. Yes. Those were processed by -- it would have
16 been the latent recovery specialist, so any prints she
17 collected from that she turned in separately, so those
18 would have been in addition to the 11 --

19 Q. And who tested those, do you know?

20 A. Who tested those latent fingerprints?

21 Q. Yes. From the grocery bag handle, yes, ma'am.

22 A. Who compared them and analyzed them?

23 Q. No, who did the latent lifts?

24 A. Oh, excuse me. Jennifer Wooley. She was the
25 latent recovery specialist at that time.

JENNIFER WOOLEY - DIRECT EXAMINATION

1 Q. Great.

2 MR. VITETTA: One moment, please, Your Honor.

3 Thank you.

4 THE COURT: Redirect?

5 MS. YOUNG: No, Your Honor.

6 THE COURT: You can step down.

7 Next witness?

8 MS. BYRD: State calls Jennifer Wooley.

9 JENNIFER WOOLEY,

10 having been first duly sworn,

11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. BYRD:

14 Q. Where are you currently employed?

15 A. Charleston Police Department..

16 Q. How long have you been with the Charleston Police
17 Department?

18 A. November will be 12 years.

19 Q. And what's your current position in CPD?

20 A. Crime scene supervisor.

21 Q. Were you in that position back in December of
22 2011?

23 A. In 2011, I was assigned as a crime scene
24 technician and a latent recovery specialist.

25 Q. What type of training did you receive for that

1 position that you were in back in December of 2011?

2 A. When I started in the crime scene unit, each crime
3 scene tech actually did that position where you processed
4 your own evidence, so that was part of my original crime
5 scene training.

6 I've been to a couple of additional fingerprint
7 training classes, and I've taught many officers on the
8 basic fingerprint processing techniques.

9 Q. And what were your duties at that time back in
10 December 2011?

11 A. My primary duties were to process evidence that
12 was collected by crime scene technicians in the field
13 that required either additional chemical processing or
14 maybe just a harder technique or a harder surface to
15 process if they were going to a laboratory setting for
16 processing.

17 Q. So it was common for some items collected at the
18 scene to be processed back in the laboratory?

19 A. Correct.

20 Q. Turning your attention to December 19, 2011, did
21 you receive evidence for processing for this case, case
22 11-20532.

23 A. Yes, I did.

24 Q. Where did you receive that evidence for
25 processing?

1 A. The evidence is placed in a locker, an evidence
2 transfer locker.

3 Q. And where did you process that?

4 A. In the crime scene latent recovery labs.

5 Q. And why do you sometimes process evidence in a
6 laboratory?

7 A. There were several different reasons: One is it's
8 chemical processing. If it's non-porous, it would
9 require that. Sometimes it's just a harder surface to
10 process, so it's easier to do in a laboratory or a
11 controlled environment; and, number two, I use a
12 technique that makes the recovery a little more
13 successful.

14 Q. How do you process for fingerprints?

15 A. Well, it depends on the surface. I look at the
16 surface and determine which way it needs to be processed
17 for a non-porous surface, the oils set on top of the
18 surface itself, so I use a technique called
19 cyanoacrylate, which is actually Superglue in a heating
20 chamber. That actually hardens the fingerprint, and then
21 I use typically a type of fingerprint powder, which will
22 stick to those oils in the fingerprint and help develop
23 that, and then if -- once a fingerprint was developed, I
24 would use a fingerprint lifting tape to recover that.

25 Q. And what leaves a fingerprint?

1 A. There's several factors in fingerprints being
2 left. First of all, fingerprints are those small ridges
3 you see on your hands. Then what the typical fingerprint
4 that we are recovering is something called a latent
5 fingerprint. It's hidden, or invisible, and it's
6 actually in your natural body secretions, your sweat
7 glands and stuff, so you have to have that -- you have to
8 have sweat on your hands.

9 I always say, you know, look at your hands as a
10 rubber stamp and sweat is the ink, so you actually have
11 to have ink or that sweat on the surface. You can
12 actually have too much or too little at the time; how you
13 make contact with a surface; same thing if you go back to
14 the rubber stamp, if you kind of smear it as you make
15 contact, you get a smeared impression, so it's how you
16 make contact with it, and not every surface is actually a
17 good surface for fingerprints. Some of them are better
18 than others, some of them are not very good at all, and
19 then there's other factors, like contamination and
20 destruction that would affect it.

21 Q. So does someone leave fingerprints every time they
22 touch a surface?

23 A. No, they do not.

24 Q. I'm showing you what has been admitted as State's

25 45. Do you recognize that?

1 A. Yes.

2 Q. How do you recognize it?

3 A. There are two ways: One, my initials are on the
4 bag where I cut the bag open and drew my initials and the
5 case number, and the crime scene technician that
6 collected it is also on there.

7 Q. So did you process State's 45 for latent prints?

8 A. Yes.

9 Q. And once you process this information, does
10 CPD require you to generate a report listing the results?

11 A. Yes.

12 Q. And in the normal and ordinary course of business,
13 do you generate this sort immediately after you do the
14 results?

15 A. Correct.

16 Q. And are these kept in the normal and ordinary
17 course of business for CPD policies and procedures?

18 A. Correct.

19 Q. I'm showing you what has been marked for
20 identification as State's 50 and 51. Are these the
21 reports that you generated for this case?

22 A. Correct. These are two of my reports.

23 Q. How do you recognize those reports?

24 A. My signature.

25 MS. YOUNG: Your Honor, at this time the

1 State would ask State's Exhibit 50 and 51 be admitted.

2 MR. VITETTA: Without objection.

3 THE COURT: Admitted.

4 (State's Exhibit Nos. 50 and 51 were marked
5 for identification and admitted into evidence.)

6 BY MS. YOUNG:

7 Q. Can you tell us about the results of the bag that
8 you processed.

9 A. I recovered one fingerprint from the bag and one
10 fingerprint from the bag handle.

11 Q. And turning your attention to item 8-101 on the
12 other report, did you process a firearm in this case?

13 A. Yes.

14 Q. Showing you what has already been marked as
15 State's 42, do you recognize that item?

16 A. Yes.

17 Q. How do you recognize that?

18 A. Again, my initials are on the box as far as me
19 sealing it, and the item matches the description of the
20 evidence in the other report.

21 Q. And did you recover a latent print on that weapon?

22 A. No fingerprints were recovered from that weapon.

23 Q. How many times would you say in your 12 years that
24 you processed weapons for fingerprints?

25 A. I've processed probably at least 1,000.

1 Q. And out of those 1,000 would you say you always
2 recover a latent?

3 A. No.

4 Q. And can you tell us why not.

5 A. It goes back to kind of the reasons why
6 fingerprints are left, you know, does the person who's
7 handling the weapon have any oil secretions on theirs
8 hands, is the surface a good surface for fingerprints,
9 and this gun is not a great surface.

10 It doesn't mean it's not possible, it's just not a
11 great surface for fingerprints, and then you also have
12 the contamination and the destruction. Contamination is,
13 is there oils or dirt or something that would prevent
14 that from being left on the surface, or destruction
15 afterwards, you know, was there contact with a surface
16 that rubbed those oils off.

17 Q. And if someone touched the gun and held it but
18 then wiped it down afterwards, would that impact the
19 ability to process a latent off of that?

20 A. It would certainly impact the recovery of that
21 fingerprint.

22 (State's Exhibit No. 43 and 44 were marked
23 for identification and admitted into evidence.)

24 BY MS. YOUNG:

25 Q. I'm showing you what has been marked as State's 43

1 and 44. Do you recognize those?

2 A. My name is on those, yes.

3 Q. And are those related to the grocery bags and
4 plastic handle from your reports?

5 A. Yes, those are. And -- let's see. Let me look at
6 these. This one is not from the plastic bag, but these
7 two are from the plastic bag.

8 Q. So that would be from State's 45, the actual bag
9 you pulled the latent print from?

10 A. Yes.

11 Q. And after locating those fingerprints and pulling
12 them, are they generally sent to a fingerprint analyst to
13 conduct a comparison?

14 A. Correct. We have an evidence exchange lockbox,
15 basically, that I drop them into, and the latent
16 examiners collect them from there.

17 Q. So once you recover the latent prints, what
18 policies and procedures do you follow to secure the
19 evidence?

20 A. Basically, the fingerprints are placed in a
21 plastic bag and secured with my initials on both sides,
22 and then they're placed in these envelopes into the
23 secured lockbox.

24 Q. Okay. So you recover them, and then the
25 fingerprint analysts do the comparison?

NADA KERSTEIN - DIRECT EXAMINATION

1 A. Correct.

2 MS. YOUNG: Court's indulgence.

3 No further questions.

4 THE COURT: Cross?

5 MR. VITETTA: No questions.

6 THE COURT: You can step down. Next witness?

7 MS. YOUNG: State calls Nada Kerstein.

8 NADA KERSTEIN,

9 having been first duly sworn,

10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. YOUNG:

13 Q. Where are you currently employed?

14 A. With the City of Charleston Police Department.

15 Q. How long have you been employed with CPD?

16 A. I've been employed for ten years.

17 Q. And what is your current position there?

18 A. I am a senior criminal identification specialist.

19 Q. And what are your official duties in that
20 position?

21 A. I analyze and compare fingerprint evidence to
22 known prints for the purpose of identification or
23 elimination. I'm also certified to run AFIS, which is
24 Automated Fingerprint Identification System. I also
25 classify and compare ten-print cards for the department.

1 Q. How long have you been employed in the area of
2 fingerprint analysis?

3 A. I've been doing ten-print work since 2004, and
4 I've been doing latent print work since 2008.

5 Q. What specialized education and training have you
6 received to become a fingerprint analyst?

7 A. Since 2004 I've had over a dozen classes that
8 pertain to fingerprints specifically. Most of those
9 classes are week-long classes, at least 40 hours, and
10 most of them are taught by instructors who have been
11 doing the work for many, many years.

12 Q. And what type of technical equipment do you use
13 during your analysis?

14 A. When we do comparisons, we use magnifiers and
15 pointers and sometimes additional light or some kind of
16 additional magnification. I have an instrument that can
17 blow up the print a little bit more than a magnifier can.

18 Q. And do you have occasion to compare latent prints
19 to known prints of other individuals?

20 A. Yes.

21 Q. Approximately how many times have you done this
22 type of comparison?

23 A. I don't have a specific number, but between my
24 classes and proficiency testing and my cases and other
25 training, it's probably over 100,000, but I don't have an

1 exact number.

2 Q. And have you testified in court before?

3 A. Yes, I have.

4 Q. And on those occasions, have you ever been
5 qualified as an expert witness?

6 A. Yes.

7 Q. What is a known point?

8 A. A known print is a reproduction of the friction
9 ridges of your fingers and palms. Usually it is done
10 with a black printers ink, can be done electronically,
11 and they are reproduced on to a contrasting surface,
12 which is usually a ten-print card, and that is a card
13 specifically designed to capture the ten fingers
14 individually and then the slabs at the bottom so that you
15 can see the simultaneous impression.

16 Q. And what is a latent print?

17 A. Latent means not readily seen by the naked eye, so
18 it is a print that is invisible and needs to be
19 developed, usually with a chemical or a powder, and then
20 it can be lifted and used for comparison.

21 Q. And how is it possible for a person to leave
22 behind a fingerprint?

23 A. Fingerprints are made up, basically, of moisture.
24 You have sweat glands in your fingers, and your fingers
25 attract oils, like, if you rub your fingers on your face,

1 you get oils on your hands, and when you touch a surface,
2 you're leaving an impression with that moisture.

3 Q. And what types of surfaces are conducive for
4 leaving fingerprints?

5 A. Usually smooth surfaces are the best type;
6 something like wood or glass or a mirror are usually the
7 best surface for fingerprints. If you have something
8 that has a little bit of texture, it's a little bit
9 harder, but they can be lifted from those types of
10 things.

11 Q. Is it possible for somebody to touch a particular
12 surface and not leave a fingerprint?

13 A. Yes. If you have very cold hands or if you have
14 very dry fingertips, you're not going to have a lot of
15 moisture and you can touch something and not leave any
16 residue.

17 Q. And, again, does the surface also impact the
18 ability?

19 A. Yes, if you have a very rough surface, carpeting,
20 a brick -- things like that would not leave a sufficient
21 amount of residue to capture a fingerprint that's of
22 value.

23 Q. And why are fingerprints used as a means of
24 identification?

25 A. There are two factors for using fingerprints for

1 identification. The first one is uniqueness. No two
2 fingers of any person are exactly the same in their ridge
3 arrangement. Every finger is different when you're
4 looking at the characteristics that are in that
5 arrangement.

6 The second is permanence. The fingerprint
7 arrangement that you have when you're born you keep until
8 death and decomposition. There are some exceptions to
9 the rule; that would be scarring, mutilation, chemical
10 accidents, those types of things, but the arrangement
11 that you have when you're born is the arrangement that
12 you have when you die.

13 Q. And what are the distinguishing characteristics of
14 a fingerprint that would make each one unique?

15 A. What I look for when I'm looking at the ridge
16 arrangement are certain characteristics, and we have
17 names for the basic ones. I look for bifurcation, which
18 is a ridge that's running along and then splits. I look
19 for ending ridges, which are exactly what they sound
20 like. They run along and then they stop, and then there
21 are dots, and those are just single ridge units that have
22 one pore. Now, there are variations of those three, but
23 those are the basic ones that we look for.

24 Q. And based on your training and your studying and
25 your years of experience, have you ever seen two persons

1 with the same fingerprints?

2 A. No.

3 Q. Based on your training and study, can two people
4 have the same fingerprints?

5 A. No.

6 Q. How many points of identification are needed to
7 make an identification?

8 A. In the United States, we do not have a set number
9 that we have to use for identification. When we look at
10 the print, we're looking at not just the characteristics,
11 but the whole picture. I look at the pattern type. I
12 look at the ridge flow. I look for scars and creases
13 that can help with an identification, so it's not just a
14 point system that we're looking at. It's not just
15 characteristics, we're looking at the whole entire thing.

16 Q. And how are your comparisons performed?

17 A. When we do a side-by-side comparison, we have a
18 latent print on one side, and I have the ten-print card,
19 which is the known print, right next to it. I have two
20 magnifying glasses and I have pointers. I start at a
21 point that is common in both prints if I can find one, or
22 I start with a cluster of characteristics in the same
23 position, and then I go around the entire print, ridge by
24 ridge, and what I'm looking for is that the
25 characteristics are the same and they're in the same

1 order around the entire print.

2 Q. So after you do this comparison, is it your policy
3 to have another fingerprint analyst verify your findings
4 as well?

5 A. Yes, it is.

6 MS. YOUNG: At this time, the State moves
7 that this witness be declared as an expert in latent
8 print analysis and comparison.

9 THE COURT: Any objection, or do you wish to
10 voir dire the witness?

11 MR. VITETTA: No, I agree.

12 THE COURT: Remember yesterday when I told
13 you when witnesses come in and testify and they tell you
14 about their observations; that is, what they heard, they
15 saw, they touched, they felt, they smelt, that sort of
16 thing? They're not allowed to come in and give you their
17 opinion about evidence, all right?

18 Sometimes, though, the law says, well, some
19 people are experts because of training or specialized
20 skills, experience in some field, that sort of thing.
21 They rise to the level of expertise, and they are
22 recognized by the Court as an expert and will be allowed
23 to not only tell you about their observations, but to
24 give you their opinions as well.

25 This witness has now been qualified as an

1 expert in the field of latent print analysis and will be
2 allowed to give you her opinion about the testimony. You
3 are not required to give any expert witness's testimony
4 any greater weight just simply because of the fact they
5 are qualified as an expert.

6 You decide how much weight this witness, and
7 any other experts that testify, for that matter, deserve,
8 based on the testimony that you'll hear from her as well
9 as all of the other testimony that you'll hear throughout
10 the trial, and you decide, in your sole discretion, how
11 much weight her testimony deserves.

12 All right? You may begin.

13 MS. YOUNG: Thank you, Your Honor.

14 BY MS. YOUNG:

15 Q. I'm showing you what has been marked as State's 44
16 and 43. Have you seen these before?

17 A. Yes. These are two envelopes associated with case
18 11-20532.

19 Q. And when did you first see these?

20 A. Can I look at my notes?

21 Q. Yes.

22 A. The date that I first worked on these cases was
23 April 17th -- I'm sorry, December 28th of 2011.

24 Q. And can you explain what the exhibits are.

25 A. Envelope 14 is latent evidence, two latent print

1 cards that have several latent prints on them, and
2 envelope 16 is a copy with several latent prints on it.

3 Q. And could you correspond that with the State's
4 exhibit numbers, just for the record.

5 A. State's Exhibit 44 is a copy of a piece of paper
6 that had several latent prints on it, and State's Exhibit
7 43 are two latent print cards with several latents on
8 them.

9 Q. So were you asked to find a print of value for
10 comparison purposes, or was there a print of value for
11 comparison purposes?

12 A. Yes. When we do our analysis, that's what we're
13 looking for, prints that we can use for comparison.

14 Q. And were you requested to compare the results of
15 the latent print to a ten-print card in this case?

16 A. Yes.

17 Q. And can you explain what a ten-print card is.

18 A. Ten-print card is an eight-by-ten card designed
19 specifically to capture the ten fingers individually and
20 then simultaneously at the bottom.

21 Q. And do you have the ten-print card you used for
22 comparison in this case?

23 A. Yes, I do.

24 Q. And whose known prints are on that ten-print card?

25 A. The ten-print card that I was asked to compare is

1 associated with the name Keeon Dejarvace Butler.

2 Q. So you compared latent fingerprints on State's
3 Exhibit 44, I believe, and 40 -- I just want to get the
4 numbers right.

5 A. 43 and 44.

6 Q. Thank you -- with the known prints of Keeon
7 Butler?

8 A. Yes.

9 Q. What was the result of your comparison?

10 A. I'm going to need to open this. Could I have a
11 pair of scissors?

12 On State's Exhibit 43, on latent lift number one,
13 there was one print that was comparable. That was
14 associated with the number three finger of the ten-print
15 card bearing the name Keeon Butler.

16 On latent lift number two, there was one print
17 that was sufficient for comparison. That print was
18 associated with the number eight finger of the ten-print
19 card bearing the name Keeon Butler.

20 Q. And how did you come to this conclusion?

21 A. It's a side-by-side comparison, like I explained
22 before. I have the ten-print card, and I have the latent
23 card, and I use two magnifying glasses and I go ridge by
24 ridge to make sure that the characteristics are the same,
25 in the same order around the entire print.

1 Q. And was your analysis verified by another
2 fingerprint examiner as the policy requires?

3 A. Yes, it was.

4 Q. In your expert opinion, based on your experience
5 and training in the field of fingerprint analysis, were
6 the results conclusive as to the identity of the latent
7 print, State's Exhibit 43 and 44, with the known
8 ten-print form of the defendant, Keeon Butler?

9 A. Yes.

10 Q. Once you conducted your comparison, did you then
11 generate a report?

12 A. Yes, I did.

13 Q. And can you tell us about the results of the
14 report.

15 A. The results basically state what I just told you,
16 that latent lift one identified to the right middle
17 finger, and latent lift number two identified to the left
18 middle finger of the ten-print card bearing the name
19 Keeon Butler.

20 Q. Thank you.

21 MS. YOUNG: I have no further questions.

22 THE COURT: Cross?

23 MR. VITETTA: Thank you.

24 CROSS-EXAMINATION

25 BY MR. VITETTA:

1 Q. Ms. Kerstein, the results of the latents that you
2 just testified to, the date of that report is April 17th
3 of 2014, correct?

4 A. Correct.

5 Q. Okay. Do you know why it took this long to make
6 this comparison or do this testing?

7 A. I did that comparison when the request was
8 submitted to us through our -- we have a computer system
9 that handles all of the evidence, and when we are asked
10 to do a comparison, it is put through that system and
11 then it shows up as a case that needs to be worked.

12 Q. So you weren't asked until just about two months
13 ago, about a month and a half ago?

14 A. Correct.

15 Q. And on that same day, you also made a comparison
16 on 11 other latents, correct?

17 A. That's correct.

18 Q. Okay. And what were the results of those other --
19 11 other latents?

20 A. None of those latents identified to the ten-print
21 card bearing the name Keeon Butler.

22 Q. But doesn't your report indicate he was eliminated
23 as a contributing source?

24 A. On those latents, yes.

25 Q. Yes. And those latents involved a dead lock

1 package?

2 A. Without seeing them, I can't tell you that. I
3 didn't know.

4 Q. Do you have a copy of your report with you?

5 A. Yes, I do have that report.

6 Q. So there were five latents that you tested from a
7 dead lock package?

8 A. Correct.

9 Q. And you indicate that Mr. Butler was eliminated as
10 a contributing source of those latents?

11 A. That is correct.

12 Q. And then you had four from the interior cash
13 office door?

14 A. That's correct.

15 Q. And, again, Mr. Butler was eliminated?

16 A. Yes.

17 Q. And then you had two from the interior manager's
18 door.

19 A. Yes.

20 Q. And, again, Mr. Butler was eliminated?

21 A. That's correct.

22 Q. And, finally, there was another latent you did
23 regarding a copy?

24 A. Correct.

25 Q. And that was a latent that you compared?

1 A. Yes. It was a copy of a piece of paper, and there
2 were several prints on that copy.

3 Q. And he was again eliminated?

4 A. That's correct.

5 Q. Now, you're not saying today that -- the bag where
6 you did match latents with Mr. Butler, you're not saying
7 today Mr. Butler was guilty of the robbery?

8 A. No.

9 Q. You're not saying that he was even in the Big
10 Lots.

11 A. What I saying --

12 MS. YOUNG: Your Honor, objection. That is
13 outside the scope of her knowledge.

14 THE COURT: Overruled.

15 THE WITNESS: What I'm saying is that at some
16 point in time, the ten print bearing the name Keeon
17 Butler is associated with the prints that were on that
18 evidence.

19 BY MR. VITETTA:

20 Q. And that's all you're saying.

21 A. Correct.

22 MR. VITETTA: I have nothing further.

23 THE COURT: Redirect?

24 MS. YOUNG: No, Your Honor.

25 THE COURT: You may step down. Next witness.

RENE CHARLES - DIRECT EXAMINATION

1 MS. YOUNG: State calls Rene Charles.

2 RENE CHARLES,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. BYRD:

7 Q. Where are you currently employed?

8 A. By the city of Charleston Police Department.

9 Q. How long have you been employed with them?

10 A. For 16 years.

11 Q. Can you explain what you do for city of
12 Charleston?

13 A. Yes, ma'am. I am a crime scene investigator. My
14 job is to process crime scenes.

15 Q. And what type of experience and training have you
16 received for that position?

17 A. I completed all my education in Montreal, Canada,
18 and I also completed the National Forensic Academy in
19 Knoxville, Tennessee.

20 Q. As a crime scene for the city of Charleston, what
21 are your duties and responsibilities in that position?

22 A. My job as a crime scene investigator is to respond
23 to crime scenes called, process the scene, collecting
24 evidence, took photographs, and also just any type of
25 evidence collections.

1 Q. Were you working in that position back in December
2 16th of 2011?

3 A. Yes, ma'am.

4 Q. And at that time, did you have occasion to be
5 involved in an investigation regarding the defendant?

6 A. Yes, I do.

7 Q. And how did you become involved in this case?

8 A. I was advised by Detective Bailey in reference to
9 conducting a search warrant on the vehicle.

10 Q. Did you take any photographs of the vehicle as you
11 executed the search warrant?

12 A. Yes, ma'am, I did.

13 Q. I'm showing you what has already been admitted as
14 State's 26 and 27 and what has been marked for
15 identification as State's 28 through 34. Could you take
16 a look at those, please. Do you recognize those?

17 A. Yes, ma'am. They are the photographs that I took
18 from the vehicle.

19 Q. And do they fairly and accurately depict the
20 vehicle as you searched it that day?

21 A. Yes, ma'am.

22 Q. Have they been altered or any deletions made?

23 A. No, sir.

24 MS. YOUNG: At this time the State offers
25 State's Exhibits 28 through 34 to be admitted into

RENE CHARLES - DIRECT EXAMINATION

1 evidence.

2 MR. VITETTA: No objection.

3 THE COURT: Admitted.

4 (State's Exhibit No. 28 through 34 were
5 marked for identification and admitted into evidence.)

6 BY MS. YOUNG:

7 Q. You said you were searching this vehicle in
8 response to a search warrant?

9 A. Yes, ma'am.

10 Q. What was the purpose of searching the vehicle?

11 A. I was advised by the detective that the vehicle,
12 1998 Ford Crown Victoria, was observed leaving the scene
13 of the armed robbery that took place at 1401 Sam
14 Rittenberg in West Ashley.

15 Q. And this is the vehicle that you searched?

16 A. Yes, ma'am.

17 Q. Is this just a back view of the vehicle?

18 A. Yes, ma'am, that's the back view. Yes, ma'am,
19 that's the back of the vehicle.

20 Q. And that was State's 27. What is that showing a
21 picture of?

22 A. That is showing the interior driver's side door
23 and also has the item and the receipt, Family Dollar
24 receipt, inside the driver's side door.

25 Q. That was State's 30. This is State's 31.

1 A. That's a close-up picture of the Family Dollar
2 receipt inside the driver's side door.

3 Q. State's 32?

4 A. That's the photograph of the driver's side visor.

5 Q. State's 33?

6 A. That's the photographs of the interior back seat
7 and also the driver's rear floorboard.

8 Q. And State's 34?

9 A. That's a close-up photograph of the Family Dollar
10 container which is on the driver side floorboard.

11 Q. Is that what you're talking about, the Family
12 Dollar --

13 A. Yes, ma'am.

14 Q. Thank you. Showing you what's been marked as
15 State's 52, do you recognize that?

16 A. Yes, ma'am.

17 Q. When did you first see that paperwork, or a copy
18 of the paperwork?

19 A. This paperwork was located in the back of the
20 driver's side visor.

21 Q. And is that a fair and accurate copy of the
22 paperwork that you obtained that day?

23 A. Yes, ma'am.

24 Q. If there's been any changes, could you kind of
25 explain what the changes are.

RENE CHARLES - DIRECT EXAMINATION

1 A. That's the copy of the actual paperwork.

2 Q. And has it been redacted?

3 A. Yes. That's the copy of it.

4 Q. Despite the redactions, does this fairly and
5 accurately depict the paperwork you collected that day?

6 A. Yes.

7 MS. YOUNG: Your Honor, at this time State
8 would offer State's Exhibit 52 into evidence.

9 MR. VITETTA: No objection.

10 THE COURT: Admitted.

11 (State's Exhibit No. 52 was marked for
12 identification and admitted into evidence.)

13 BY MS. YOUNG:

14 Q. And, again, State's 52, this was paperwork that
15 you obtained from the blue Crown Victoria, the vehicle
16 that you searched in this case?

17 A. Yes, ma'am. That is correct.

18 Q. And could you read out the name right here.

19 A. Yes, ma'am. It's Mr. Keeon Butler.

20 Q. Where is that located in the vehicle?

21 A. It was located in the back of the driver's side
22 visor on the top.

23 MS. YOUNG: Thank you. No further questions.

24 THE COURT: Cross?

25 MR. VITETTA: Yes, sir. One sec, Your Honor.

CROSS-EXAMINATION

BY MR. VITETTA:

Q. I'm presenting to you what's been marked as State's Exhibit 31.

A. Yes, sir.

Q. That is a photograph of the Family Dollar receipt, sir?

A. Yes, sir. That is correct.

Q. And did you retrieve that separately?

A. Yes, sir, I did. Yes, sir, I did photograph it and collect it, yes.

Q. Okay. And so you took it out of the door, correct?

A. Yes, sir, I did.

Q. Okay. Thank you. Do you remember what the date was on the receipt?

A. I don't have the receipt in front of me, sir. I couldn't tell you the exact date.

Q. Okay. Thank you.

MR. VITETTA: I have no further questions.

THE COURT: Redirect?

MS. YOUNG: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. YOUNG:

Q. Do you have a copy of your report?

RENE CHARLES - REDIRECT EXAMINATION

1 A. Yes, ma'am.

2 Q. Okay. Looking at the Family Dollar receipt we're
3 talking about in that photograph, did you inventory that
4 or did you collect it? It would be on page 18.

5 A. Just give me one second, please.

6 Q. Great.

7 A. Yes. I just inventoried a Family Dollar receipt.

8 Q. So you didn't actually collect it, you just
9 inventoried it?

10 A. Yes. I took a photograph of it.

11 MS. YOUNG: Thank you.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Let's take a break. Again, don't
14 begin deliberations or discussions about the case, and
15 we'll have you back in just about ten, fifteen minutes.

16 (In open court, jury not present.)

17 THE COURT: Mr. Butler, you need to stand up
18 for a second.

19 You heard me tell the jury that you have no
20 burden of proof. In other words, you don't have to prove
21 you're innocent. The State has to prove you're guilty.
22 That's a constitutional right you have.

23 Part of that constitutional right includes
24 the right to not call any witnesses and not testify. You
25 can testify, if you want, and if you do, then your lawyer

1 will ask you questions. The State will have the right to
2 cross-examine you; however, you have the right to not
3 testify, and if you decide you don't want to testify,
4 then I will instruct the jury that they're not to hold
5 that against you while they are deliberating.

6 You don't have to make a final decision yet
7 as to whether or not you want to present a defense or
8 whether or not you intend to testify, but it looks like
9 shortly after we come back from lunch you will need to
10 make a decision. You can talk about this with your
11 lawyer, anybody else that you have, friends or family
12 that are here, but, ultimately, this is your decision and
13 your decision alone because it is a constitutional right
14 that you have.

15 And so while I strongly suggest you talk with
16 your lawyer about it, ultimately, I'll be asking you,
17 what is your decision on this matter? Do you understand
18 that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any questions that
21 you want to ask me about that?

22 THE DEFENDANT: No, sir.

23 THE COURT: Okay.

24 Now, primarily do y'all intend to call any
25 witnesses?

1 MR. VITETTA: Here's where I am with that,
2 Your Honor. In addition to what we talked about
3 yesterday, that very same person, her name is Natasha
4 Martin -- briefly, by way of background, I'm the third
5 lawyer representing Mr. Butler. He had two public
6 defenders he said he discharged before I got on the case
7 in December. I was appointed by OID.

8 The public defender's office spoke to this
9 woman. They had their investigator speak with her. She
10 did not provide them any information that would provide
11 any evidence of an alibi, and nobody filed an alibi --
12 notice of alibi as a result of that investigation.

13 THE COURT: Did the State ask for --

14 MR. VITETTA: Yes, yes, Your Honor, yes.
15 Now, Mr. Butler in December told me this was his critical
16 witness. My investigator, Tom Marshall, has tried to get
17 ahold of her. He spoke with her once. She didn't give
18 him any information regarding an alibi. She never called
19 him back. She's never contacted me, but she showed up
20 here this morning and she's ready to provide an alibi.

21 Now, I've never provided any information of
22 an alibi to the State because I've never had any evidence
23 of an alibi until 9:00 this morning.

24 THE COURT: And, in fact, she said just the
25 opposite previously?

1 MR. VITETTA: Yes. She said just the
2 opposite to the public defender's office, to Keith Novak,
3 who is the investigator. Now, she's denying that she
4 told him that, but that's what he wrote in his notes of
5 his meeting.

6 I don't really know. These guys now -- the
7 solicitors object, and I understand. I didn't have
8 any -- I thought I had evidence of an alibi, and I
9 actually started preparing the notice, but then we were
10 never able to speak with her, and she never contacted me.
11 I would have thought, in two-and-a-half years, if she
12 knew Keeon was with her, she would have called somebody
13 and said that.

14 THE COURT: Have you tried getting ahold of
15 her?

16 MR. VITETTA: Yes, that's what I'm saying.
17 Tom talked to her once. She couldn't speak with him. He
18 left a phone number. She never called him back.

19 Finally went there last night, subpoenaed
20 her. She still didn't -- what she told him last night
21 is, I'm not coming to court today.

22 And now she's here ready to provide alibis,
23 so I'm kind of -- in addition to what we spoke about
24 yesterday, I mean, I'm kind of -- I don't really know
25 what to do. These guys have spoken with the alibi.

1 They've gotten the information.

2 MS. BYRD: Your Honor, to that end, my
3 investigator did get the witness's name; however, he's
4 already attempted several times to run her information
5 and nothing is coming back on the names, so even as of
6 right now we haven't gotten correct information from this
7 witness. And we --

8 THE COURT: And you did ask under Rule 5 for
9 names of alibi witnesses?

10 MS. BYRD: Yes, Your Honor, we did when we
11 delivered our discovery to the defense.

12 MR. VITETTA: I was trying to explain.
13 Neither I nor any of other two attorneys provided that
14 information because we didn't have it. We didn't have
15 alibi witnesses until this morning at 9:00.

16 THE COURT: All right. Well, under the
17 rules, if the State asks for it in writing, then you have
18 to provide it, and y'all didn't provide it because you
19 didn't have it; nevertheless, it's at the eve of trial.

20 It would be a complete surprise to the State
21 and prejudice to the State to have to go forward, and
22 considering the fact that it is evidence that is
23 suspicious on its face because when she was -- previous
24 investigator did talk to her, she stated that she could
25 not provide an alibi for the defendant, that lends the

1 inference that it is perhaps perjury testimony as well,
2 so I'm going to exclude that testimony.

3 MR. VITETTA: Thank you, Judge. And would
4 you permit Mr. Butler to proffer this witness's testimony
5 for the record?

6 THE COURT: Sure. We'll put that up a little
7 bit later.

8 Let's go ahead and take a restroom break,
9 come back, and you have one or two witnesses that you
10 wanted to get in before we break for lunch?

11 MS. BYRD: A stipulation and one witness.

12 THE COURT: Okay. All right. Well, let's
13 take a ten-minute break, and then we'll come back.

14 (Recess taken.)

15 (In open court, jury present.)

16 THE COURT: Before we call the next witness,
17 which will be the last witness we call before lunch,
18 we're going to have the solicitor read a stipulation to
19 you.

20 Stipulations are facts that are not
21 contested, but rather than call people in for the purpose
22 of proving it to you, the sides have stipulated, in other
23 words, that the stipulation that is being read to you is,
24 in fact, true. It's not controverted, and so you won't
25 have to have testimony on it.

1 You are to treat this as evidence that has
2 been proven. You decide how much weight to give it,
3 based on all of the testimony that you will hear
4 throughout the trial.

5 So, Madame Solicitor, you can read the
6 stipulation.

7 MS. BYRD: Thank you, Your Honor. Per the
8 cases of the State of South Carolina vs. Keeon Butler,
9 indictment 2012-GS-10-4586, 3824, regarding the
10 stipulation on chain witnesses, the pistol, which is
11 marked as State's Exhibit 42 for identification purposes,
12 attorneys for the State and the defense agree and
13 stipulate to the following: The crime scene technician,
14 Ashleigh Dockery, and other investigators with the
15 Charleston Police Department properly executed a search
16 warrant at [REDACTED], a residence in
17 Charleston County in an effort to locate a firearm, any
18 clothing, any stolen items related to an armed robbery
19 that occurred at 1401 Sam Rittenberg Boulevard in
20 Charleston County on December 16th, 2011.

21 Pursuant to that search warrant, in
22 Charleston Police Department case number 11-20532, an
23 item labelled pistol, automatic, semi-automatic, was
24 recovered from the residence and submitted into evidence.

25 Detective Tommy Bailey recovered the pistol

1 from underneath the cushions of a couch located inside
2 the living room of the residence. Crime Scene Technician
3 Dockery documented the execution of the search warrant
4 and the location of the pistol inside the residence
5 through photographs she took of the scene marked as
6 State's Exhibits 35 through 41.

7 Crime Scene Technician Dockery properly
8 packaged, secured, transported, and submitted the pistol
9 recovered from the residence to the evidence department
10 at Charleston Police Department headquarters. The pistol
11 recovered from the residence was assigned PR No. 26406 by
12 the evidence custodians at Charleston Police Department.

13 Crime Scene Technician Dockery submitted a
14 written report in this case. Her report accurately
15 reflects that the pistol recovered from the residence and
16 assigned to the PR number 26406 was a black nine
17 millimeter semiautomatic Taurus CT-709 bearing the serial
18 number TCU56833, as signed by myself and Mr. Vitetta.

19 THE COURT: All right. Call your next
20 witness.

21 MS. BYRD: Thank you, Your Honor. The State
22 calls Bryant Tatman.

23 BRYANT TATMAN,
24 having been first duly sworn,
25 was examined and testified as follows:

BRYANT TATMAN - DIRECT EXAMINATION

1 DIRECT EXAMINATION

2 BY MS. BYRD:

3 Q. Could you tell us where you're currently employed.

4 A. Charleston County police department.

5 Q. How long have you been employed there?

6 A. Ten years.

7 Q. What college did you attend and what degrees did
8 you receive?

9 A. I went to the University of Delaware, double major
10 in criminal justice and political science.

11 Q. Do you have any specialized or continued training
12 for your division in Charleston Police Department?

13 A. Yes. We do annual refresher training every year,
14 as well as I've been to basic detective training as well
15 as interviewing and interrogation.

16 Q. What position did you hold at CPD in December of
17 2011?

18 A. I was a detective in the robbery unit.

19 Q. What were some of your duties and responsibilities
20 in that position?

21 A. I respond to any robberies that occurred in the
22 city and then investigate those cases and try to
23 apprehend the suspects.

24 Q. On December 16th of 2011, did you have an occasion
25 to become involved in an investigation regarding the

1 defendant, Keeon Butler?

2 A. Yes, I did.

3 Q. Can you tell us how you became involved in that
4 investigation?

5 A. There was an armed robbery reported at Big Lots in
6 West Ashley. I responded to that.

7 Q. And was -- do you recall where that Big Lots was
8 located?

9 A. 1401 Sam Rittenberg Boulevard.

10 Q. Is that in Charleston County?

11 A. Yes, that's Charleston County.

12 Q. Thank you. Do you recall approximately what time
13 the armed robbery is reported to have occurred?

14 A. 9:47 a.m.

15 Q. As part of your duties as an investigator, when
16 you arrive at a crime scene, do you gather information
17 for various people present at the scene?

18 A. Yes.

19 Q. And what's the purpose of speaking with all those
20 people to get information?

21 A. I get it as much information about what happened
22 as we can and investigate and get the leads for suspects.

23 Q. What happened when you arrived at the scene at the
24 Big Lots on December 16th?

25 A. Started talking to employees and witnesses there.

BRYANT TATMAN - DIRECT EXAMINATION

1 Q. What information were you able to gather from the
2 witnesses involved in the case?

3 A. They told me a black male came into the store,
4 walked around a little bit. He was talking on a white
5 cellphone, then went to the back of the store, to the
6 manager's office, and robbed employees back there and
7 money from the safe.

8 Q. Do you recall how much money was reported stolen
9 from the safe?

10 A. \$1,450.

11 Q. Did they give you any description of the suspect?

12 A. Yeah, black male with light skin, about five foot
13 ten, in his 20's. He was wearing some type of black
14 hoody and khaki pants. He was also carrying a black
15 handgun.

16 Q. When you were at the scene, did you find anything
17 that would help you in identifying any particular
18 suspects in this case?

19 A. Yeah. They had a surveillance system inside there
20 so security video of the incident.

21 Q. Did you happen to see the security footage?

22 A. Yes. I watched it and I responded there while the
23 crime scene was being processed.

24 Q. I beg the Court's indulgence.

25 In addition to the surveillance videos you were

1 shown at Big Lots, did you receive any other information
2 from the witnesses to further develop a possible suspect?

3 A. Yeah. There were some witnesses that were working
4 on the roof of the shopping center. They said they saw a
5 blue Ford Crown Victoria pull up just before the incident
6 occurred and then leave at a high rate of speed shortly
7 thereafter.

8 Q. And were you able to use that information and
9 eventually develop a suspect in this case?

10 A. Yes. We developed Keeon Butler as a suspect.

11 Q. Okay. After gathering the information about the
12 car and then using it to develop Keeon Butler, what did
13 you do?

14 A. Well, we knew that car belonged to India Grant so
15 we got in touch with her, spoke with her about where her
16 car had been used, and we also got a search warrant for
17 that vehicle.

18 Q. To your knowledge, you said that you made contact
19 with Ms. Grant.

20 A. Yes.

21 Q. Was she able to provide any information that was
22 helpful in your investigation?

23 A. Yes. She placed the defendant Keeon Butler --

24 MR. VITETTA: I'm going to object on the
25 basis of hearsay on Ms. Grant. Ms. Grant has already

1 testified.

2 THE COURT: Sustained.

3 BY MS. BYRD:

4 Q. Based on the information that you obtained from
5 Ms. Grant in this case, what did you then do to further
6 your investigation?

7 A. We got a search warrant for her apartment and for
8 her vehicle.

9 Q. And to your knowledge, did anything during
10 execution of that search warrant for her vehicle located
11 inside the car that you felt to be helpful?

12 A. Yes. There was paperwork with the defendant Keeon
13 Butler's name on it inside the vehicle.

14 Q. And why did you also seek a search warrant for her
15 apartment?

16 A. She gave us information that he was at her
17 apartment shortly after the robbery occurred.

18 Q. Were there any specific items that you hoped to
19 locate in her apartment?

20 A. Yes. We hoped to find any money that may have
21 been taken in the robbery, any belongings of the victim
22 of the robbery, any firearms that may have been used in
23 the robbery, and clothes that matched what he was wearing
24 in the robbery.

25 Q. Were any items recovered during the execution of

1 that search warrant for her apartment?

2 A. Yes, a black nine millimeter semiautomatic pistol
3 was recovered.

4 Q. From what you saw on the surveillance footage from
5 the crime, did you describe the firearm that was used
6 during the commission of the armed robbery?

7 A. It was a black semi-automatic pistol.

8 Q. Okay. I'm going to hand you what has been marked
9 as State's Exhibit 42 for identification purposes. If
10 you could, on the top of that label, read the PR number
11 that has been --

12 A. 26406.

13 MS. BYRD: Your Honor, at this time, based on
14 the stipulation between the defense and the State, I
15 would like to submit that into evidence as State's
16 Exhibit 53.

17 THE COURT: It's admitted.

18 MS. BYRD: Okay. Thank you, sir.

19 (State's Exhibit No. 53 was marked for
20 identification and admitted into evidence.)

21 And in light of the stipulation and Officer
22 Tatman identifying the pistol in question, we move to
23 have State's Exhibit 42 admitted into evidence at this
24 time.

25 MR. VITETTA: Which one is that? Oh, okay.

1 Yes.

2 THE COURT: It's admitted.

3 MS. BYRD: Thank you, Your Honor.

4 (State's Exhibit 42 was marked for
5 identification and admitted into evidence.)

6 BY MS. BYRD:

7 Q. After you executed the search warrants for Ms.
8 Grant's car and Ms. Grant's apartment, what happened next
9 in this case?

10 A. She helped us lure the defendant to her apartment.

11 Q. And why?

12 A. So we could apprehend him.

13 Q. Were you able to apprehend the defendant in this
14 case?

15 A. Yes.

16 Q. Going back to the gun here that was recovered in
17 this case in Ms. Grant's apartment, to your knowledge,
18 was the gun submitted for latent print processing?

19 A. Yes.

20 Q. And to your knowledge, were any prints found on
21 the gun at all?

22 A. No, there were no prints at all.

23 THE COURT: Folks, you'll see that gun which
24 can go back to the jury room with you has a plastic band
25 in it that keeps it from being able to be fired. There

1 is no ammunition in it. That mechanism right there keeps
2 it from being fired. Guns make people nervous.

3 I'm pointing that out to you so that there is
4 no possibility that that gun can be accidentally or
5 intentionally fired so you're at ease here, and if you
6 want to take it back into the jury room, you can. There
7 is no ammunition that is in it, and there won't be any in
8 it, if you want to look at it later while you're
9 deliberating.

10 MS. BYRD: Thank you, Your Honor.

11 BY MS. BYRD:

12 Q. I'm going to show you what's already been admitted
13 into evidence as State's Exhibit 1, which is evidence
14 already submitted from the crime scene, and, Detective
15 Tatman, you indicated you were looking for a firearm in
16 relation to this crime when you were executing search
17 warrants for Ms. Grant's car and/or apartment, and you
18 testified that one was recovered.

19 If you can see this, I would like for you to -- we
20 have the scene paused. Can you see where the handgun is
21 being held by the suspect in this still?

22 A. Yes.

23 Q. Okay. And I'm going to show you what's been
24 marked as State's Exhibit 24 for identification purposes.
25 Do you recognize what that is?

BRYANT TATMAN - DIRECT EXAMINATION

1 A. Yes, that's a still shot of the video.

2 Q. Okay.

3 MS. BYRD: Your Honor, the State would move
4 to admit Exhibit 24 into evidence.

5 MR. VITETTA: No objection.

6 THE COURT: It's admitted.

7 (State's Exhibit No. 24 was marked for
8 identification and admitted into evidence.)

9 BY MS. BYRD:

10 Q. Mr. Tatman, can you describe the firearm being
11 used by the suspect during the crime.

12 A. That would be a black semi-automatic pistol.

13 Q. Is there any type of identifying marker that's
14 located on the top of the gun that you could notice?

15 A. I see a little bit of discoloration that maybe
16 there is some silver on the top of it.

17 Q. Would you say it looks similar to --

18 A. Yes, I would.

19 Q. -- the top of Exhibit 42?

20 A. Yes, I would.

21 Q. The gun recovered from Ms. Grant's apartment?

22 A. Yes.

23 MS. BYRD: Beg the Court's indulgence.

24 I have no further questions at this time.

25 Please answer any Mr. Vitetta has for you. Thank you.

CROSS-EXAMINATION

BY MR. VITETTA:

Q. Is it Detective, Officer?

A. I'm officer now. It was detective then.

Q. I just have one question: You spoke with Ms. Hampton, who was the victim of this robbery, correct?

A. Right.

Q. And she described a robbery suspect in his 20's to you?

A. Okay.

Q. Is that correct? Do you remember?

A. Yeah, I believe so.

Q. One moment, please, Your Honor.

And then she indicated to you that she couldn't see the suspect, correct, because of the hoody?

A. Not all of the suspect's face.

Q. When she said it was just his eyes and the area of his face around that that were visible, that's what she told you?

A. Right.

MR. VITETTA: Nothing further. Thank you, Officer.

THE COURT: Redirect?

MS. BYRD: No redirect, Your Honor.

THE COURT: You can step down.

LATASHA MORTON - DIRECT EXAMINATION

1 All right, folks. We're going to go ahead
2 and break for lunch right now. Let me have you be back
3 in the jury room at 2:00, and we will begin again at
4 2:00.

5 Please, again, don't discuss the case with
6 anyone, including other jury members. If anyone tries to
7 approach you to talk about the case, please report that
8 when you come back, and please, again, don't try to do
9 anything on social media or go to the scene or anything
10 like that, and we'll see you back at 2:00.

11 (Recess taken.)

12 (In open court, jury not present.)

13 LATASHA MORTON,

14 having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. VITETTA:

18 Q. Ms. Morton -- is it Morton or Martin?

19 A. Morton.

20 Q. How do you know Keeon Butler?

21 A. He's my son's father.

22 Q. And do you know he's been charged with armed
23 robbery?

24 A. Yes.

25 Q. And he's been charged with two, correct?

1 A. Yes.

2 Q. He's been charged with committing an armed robbery
3 on August 25th of 2011 and then December 16th, 2011?

4 A. Yes.

5 Q. And December 16th, 2011, do you know where Keeon
6 was in the morning around 9:00, 9:30?

7 A. Yes.

8 Q. And where was he?

9 A. He was at my home.

10 Q. Okay. And did he spend the night there?

11 A. Yes.

12 Q. And then when did he leave?

13 A. He left approximately 9:30 that morning to take my
14 daughter to school.

15 Q. Take your daughter?

16 A. Uh-huh.

17 Q. Is that his daughter too?

18 A. No.

19 Q. Okay. And he's got a son with you or girl?

20 A. A son.

21 Q. And did the son stay home that morning?

22 A. I didn't have my son either. I was pregnant with
23 him.

24 Q. I see. At some point, you met -- you spoke with
25 an investigator in 2012, a few months after this robbery,

1 correct?

2 A. Yes.

3 Q. And that was a guy named Keith Novak?

4 A. Yes.

5 Q. And he was an investigator with the public
6 defender?

7 A. Yes.

8 Q. And did you tell him that you were at work on the
9 day of the Big Lots robbery?

10 A. No.

11 Q. Did you tell him you were at work on the day of
12 the robbery of December 16th?

13 A. No.

14 Q. I guess you didn't tell him either of those
15 things.

16 A. On the date of -- can you repeat that?

17 Q. Well, on August -- on the robbery, I think August
18 of 2011, August 26th, did you tell him you believed you
19 were working on that day, you couldn't remember if you
20 saw Keeon or not?

21 A. On August --

22 Q. For the August robbery.

23 A. I didn't see Keeon. Well, I did see Keeon. Let
24 me rephrase that. I did see Keeon, but I was working
25 when I saw him that day.

1 Q. Okay. What about December 16th?

2 A. I went to work after Keeon dropped my daughter off
3 to school. I did have to work.

4 Q. So what time did Keeon leave your house on the
5 16th?

6 A. About 9:30.

7 Q. 9:30? Okay. Did you know Keeon had a lawyer?

8 A. If I knew Keeon had a lawyer?

9 Q. Yes.

10 A. When I spoke to the investigator?

11 Q. Yes.

12 A. Yes.

13 Q. And so did you think that Keeon was involved in
14 the December robbery?

15 A. No.

16 Q. And did you reach out to his attorney at that
17 time, back when he had a public defender?

18 A. No.

19 Q. And did you know I was his lawyer?

20 A. No.

21 Q. Since December? Did Keeon not tell you I was his
22 lawyer, did he not give you my number and tell you to
23 call me?

24 A. In December of when?

25 Q. No, this year. Did you have my number, Guy

1 Vitetta, as Keeon's lawyer?

2 A. I spoke to you several times.

3 Q. You spoke to me?

4 A. When I called for Keeon, Keeon had me to call your
5 office a couple of times.

6 Q. A third party call?

7 A. Yeah.

8 Q. Okay. And then you spoke with Mr. -- with my
9 investigator, Tom Marshall?

10 A. Yes.

11 Q. But you never told us any of these things about
12 this alibi, correct?

13 A. I was waiting to speak to Tom Marshall. He was
14 supposed to come meet with me, and we were supposed to
15 speak with each other.

16 Q. Well, he talked to you. He called you, correct?

17 A. Yes, and he was supposed to meet with me. At the
18 time he was calling, I was at work.

19 Q. And he left you his number?

20 A. And he left me his number and I called him back.
21 I spoke to him several times, and we were supposed to
22 meet with each other. One of the times he told me he was
23 sick, and he --

24 Q. Did you ever tell him that you had evidence that
25 Keeon was not there?

1 A. Yeah. We spoke to each other over the phone.

2 Q. And you told him Keeon was not at the robbery on
3 December 16th because he was with you?

4 A. If I told him Keeon was not at the robbery, no.
5 We were supposed to meet and we were supposed to speak.

6 Q. So when you talked to my investigator, you didn't
7 tell him that.

8 A. You asked me questions. He said do I know
9 anything about the date that he was asking me about? And
10 we were supposed to meet, and we were supposed to go over
11 that. We were supposed to talk when we met. He said it
12 would take, like, 45 minutes but we never met.

13 Q. Okay.

14 MR. VITETTA: Nothing further, Your Honor.

15 THE COURT: You want to ask any questions?

16 MS. YOUNG: Your Honor -- sure, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. YOUNG:

19 Q. How long have you known the defendant?

20 A. Since I was 13.

21 Q. Okay. Were y'all living together --

22 A. Yes.

23 Q. -- at the time -- I'm sorry. Were you living
24 together back in December 2011?

25 A. Yes.

1 Q. And you have two children in common or one?

2 A. I have one child with Keeon.

3 Q. Okay. Is it fair to say you love the defendant?

4 A. Yes.

5 Q. You would do anything for him?

6 A. No.

7 Q. No? Okay. Now, you knew Keeon was arrested back
8 in December 2011, right?

9 A. Yes.

10 Q. So you went to the police and told them that day
11 that you would be an alibi.

12 A. No.

13 Q. Did you go to them in December of 2011 at all?

14 A. No.

15 Q. Did you go in 2012?

16 A. No, I never spoke to a policeman at all.

17 Q. So you didn't go in 2011, 2012, 2013 or 2014?

18 A. No.

19 Q. Never mentioned that he was with you the day of
20 the robbery?

21 A. Until the investigator started calling, that's
22 when I spoke to someone, but I never went to anyone and
23 spoke with anyone.

24 Q. Didn't you think that would be kind of important
25 to do?

1 A. I mean, yeah, it would be important, but I just
2 never went and spoke to anyone.

3 Q. Now, you spoke with Keith Novak. When did you
4 talk to him, in the public defender's office?

5 A. Like, in 2012.

6 Q. Okay. What did you tell him?

7 A. He asked me about two -- both of the armed
8 robberies, and he asked me where was Keeon in August, and
9 I told him me and Keeon wasn't together. Keeon was with
10 his mother, and then he asked me about December, and I
11 told him that Keeon spent the night at my home, and he
12 left that morning to take my daughter to school.

13 Q. What car did he leave in?

14 A. A silver Chevy Impala.

15 Q. And do you usually drive your child to school?

16 A. No. Keeon was taking her.

17 Q. Do you usually drive your daughter, or your child,
18 to school every day?

19 A. Yes. She was at a day care. She was only, like,
20 three.

21 Q. Okay. Do you remember about three-and-a-half
22 years later that Keeon drove that day even though you
23 normally drive?

24 A. No. What I just said was Keeon normally drives
25 her to school in the morning.

LATASHA MORTON - CROSS-EXAMINATION

1 Q. You just testified that you normally drive your
2 daughter to school.

3 A. You asked me two separate questions. You asked me
4 if Keeon normally drives her to school, and I said yes,
5 and then you turned around and said do you normally drive
6 your child to school, yes. And that's what I just said.

7 Keeon usually takes her or I take her. She
8 couldn't go on the bus, so we had to take her to school
9 in the morning.

10 Q. Were you at the Big Lots on December 16th, 2011
11 around 9:30?

12 A. No, I was home.

13 Q. So you don't know if Keeon was there because you
14 weren't there?

15 A. Right.

16 MS. YOUNG: No further questions.

17 THE COURT: You can step down.

18 All right. Let's meet back at 2:00. You're
19 going to have how many more witnesses?

20 MS. BYRD: Just one from the State, Your
21 Honor.

22 THE COURT: All right. See y'all at 2:00.

23 (Recess taken.)

24 A F T E R N O O N S E S S I O N

25 (In open court, jury present.)

TIMOTHY CROMER - DIRECT EXAMINATION

1 THE COURT: All right, folks. Welcome back.
2 We're going to resume now with the State calling their
3 next witness.

4 MS. BYRD: Thank you, Your Honor. The State
5 calls Timothy Cromer.

6 TIMOTHY CROMER,
7 having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 THE WITNESS: Sergeant Timothy Cromer, last
11 name is C-r-o-m-e-r. I'm with the Charleston Police
12 Department.

13 BY MS. BYRD:

14 Q. Sergeant Cromer, were you working with the
15 Charleston Police Department on December 16 of 2011?

16 A. Yes, ma'am.

17 Q. And at that time did you have occasion to become
18 involved in an investigation involving the defendant,
19 Keeon Butler?

20 A. Yes, ma'am.

21 Q. Could you please tell us how you became involved
22 with that investigation.

23 A. We had information that he was possibly going to
24 be coming to St. Andrews Garden Apartments, which is at
25 [REDACTED], so we were conducting

TIMOTHY CROMER - DIRECT EXAMINATION

1 surveillance in that area, looking out for him.

2 Q. Did you have any type of warrant for Keeon Butler?

3 A. Yes. There was an armed robbery warrant at that
4 time.

5 Q. Was that his address?

6 A. Yes.

7 Q. What happened when you attempted to serve that
8 warrant?

9 A. We observed him going into an apartment, 39-Gin
10 St. Andrews Gardens Apartments, and we went and knocked
11 on the door. The leaseholder, she opened door, and we
12 asked her who was inside, and she said it was her
13 daughter and then some guy she didn't know.

14 We told her that we had a warrant, and she let us
15 in, and when she let us in, he was in the back bedroom
16 with the daughter, the daughter's back bedroom, and we
17 detained him at that time.

18 Q. When you detained the defendant in that bedroom,
19 did you happen to retrieve anything from his person
20 during the arrest?

21 A. Yeah. There was a white HTC cellphone which he
22 had dropped on the floor.

23 Q. Where exactly did the phone come from?

24 A. He was on the bed at first, and he stood up when
25 we came in there, and it was right by the bed.

1 Q. Was anything else recovered from the defendant at
2 the time of his arrest?

3 A. Yes. Pursuant to his arrest I recovered \$101 and
4 some change from his pants pocket.

5 Q. Sergeant Cromer, I'm going to show you what's been
6 marked as State's Exhibit 48. Do you recognize this
7 item?

8 A. Yes, ma'am. That's the cellphone we confiscated
9 from him that night.

10 Q. And how are you able to recognize that's the same
11 item?

12 A. Because after we retrieved it from him, we kept
13 possession of it, and we took it down to the station and
14 logged it in our secure locker and put a voucher, which
15 is on here now, which is the same cellphone which I
16 retrieved that night.

17 Q. Are there identifying markers on the exhibit that
18 would demonstrate you're the one who collected it and
19 submitted it?

20 A. Yes. On the bag, we initialed it with our
21 signatures, which is my initials on there.

22 MS. BYRD: Your Honor, at this time the State
23 would move to admit State's Exhibit 48 into evidence.

24 MR. VITETTA: Without objection.

25 THE COURT: Admitted.

TIMOTHY CROMER - CROSS-EXAMINATION

1 (State's Exhibit No. 48 was marked for
2 identification and admitted into evidence.)

3 MS. BYRD: I have no further questions at
4 this time. Please answer anything Mr. Vitetta has for
5 you.

6 THE WITNESS: Thank you.

7 THE COURT: Cross?

8 MR. VITETTA: Thank you.

9 CROSS-EXAMINATION

10 BY MR. VITETTA:

11 Q. Officer -- is it Officer?

12 A. Sergeant Cromer, Officer.

13 Q. Sergeant, which apartment were you asked to
14 surveil?

15 A. We weren't sure at the time which one it was. We
16 were in the St. Andrews Apartments, but we didn't have a
17 specific building number he was going to.

18 Q. And then so you weren't specifically surveilling
19 Apartment G?

20 A. No, sir.

21 Q. Okay. But you did see him go in there?

22 A. Yes, sir.

23 Q. And then did you actually see the cellphone in his
24 possession, or did you see it just on the floor by where
25 he was --

1 A. No, sir. He was on the phone, but, obviously, we
2 asked him -- he said it was his and also made sure we
3 asked the leaseholder's daughter if it was hers, and she
4 said it wasn't, and we also made sure nothing else was
5 dropped in there.

6 Q. Do you remember what time you began surveillance?

7 A. No, sir. I mean, it was kind of around 1:00, from
8 what I remember, but we were in there for a while.

9 Q. You were in there for several hours?

10 A. Yes, sir.

11 MR. VITETTA: Thank you. I have no further
12 questions.

13 THE COURT: Redirect?

14 MS. BYRD: Nothing from the State, Your
15 Honor.

16 THE COURT: You can step down. All right.
17 Does the State have any other witnesses?

18 MS. BYRD: No, Your Honor. At this time, the
19 State would rest.

20 THE COURT: All right. Folks, we're getting
21 ready to move into the next phase of the trial. We're
22 going to move you into the jury room for the next couple
23 of minutes while we get ready for the next phase of the
24 trial.

25 Please don't begin deliberations or

1 discussions about the case, and we'll have you back in
2 about ten minutes.

3 (In open court, jury not present.)

4 THE COURT: All right. Mr. Butler, we talked
5 before at lunch, and I told you you had right to testify
6 or not testify.

7 The State has presented all their evidence,
8 and so you now have to make a decision as to whether or
9 not you want to call any witnesses or you want to
10 testify. If you do not want to testify, we'll instruct
11 the jury they're not to hold that against you while they
12 are deliberating.

13 Have you made a decision as to whether or not
14 you want to testify?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And what is your decision?

17 THE DEFENDANT: I want to testify.

18 THE COURT: All right. Are there any prior
19 convictions that we need to discuss?

20 MS. BYRD: Yes, Your Honor. Two prior
21 convictions from 1997 for strong-arm robbery.
22 Admittedly, those are outside of the ten-year window;
23 however, from 2005, there is also an attempted armed
24 robbery conviction and assault and battery with intent to
25 kill conviction.

1 THE COURT: There was a '97 strong arm?

2 MS. BYRD: Yes, Your Honor, two counts of
3 strong arm. He received a YOA sentence and was released
4 in 2002.

5 THE COURT: Well, those are too old to come
6 in.

7 MS. BYRD: Yes, Your Honor.

8 THE COURT: So you want to have the attempted
9 armed robbery and the assault and battery -- is that
10 simple assault?

11 MS. BYRD: No, sir, assault and battery with
12 intent to kill.

13 THE COURT: All right. Mr. Vitetta, what
14 would you like to say about those?

15 MR. VITETTA: Judge, I just would have to
16 object that they are more prejudicial than probative.
17 They're identical charges to the current charges, and I
18 believe that they would prejudice him to the extent where
19 a jury would convict simply based on his prior
20 convictions. I think that they're unnecessary in this
21 matter to the evidence and ask that they be excluded.

22 THE COURT: Well, the attempted armed robbery
23 might be in the same family as armed robbery, but assault
24 and battery with intent to kill is not.

25 MR. VITETTA: Yes, sir, there's a gun

1 allegation in this case as well so that's sort of why I
2 tied that in as well.

3 THE COURT: Well, I don't know anything about
4 what the underlying conviction is, and it won't come in.
5 It would just simply be allowed for the purpose of
6 impeachment without any details into that, unless you
7 bring it out.

8 I find that the -- the attempted armed
9 robbery is too similar to what he has to come in. I
10 think the prejudice to the defendant would be too much.
11 The jury might likely say, well, he got convicted of that
12 before, so he is probably guilty of this; however, the
13 assault and battery with intent to kill is under ten
14 years old. It is not similar, and I think the jury
15 should be allowed to know about that for the purposes of
16 weighing his credibility.

17 So, Mr. Butler, what we've been talking about
18 is your prior record and whether or not the jury can be
19 informed of that. We have some rules about whether or
20 not cases can come in, depending on how old the prior
21 convictions are, whether they're similar to what you're
22 charged with.

23 Essentially, what I've done is I've said the
24 strong-arm robbery cases are too old. The attempted
25 armed robbery is too similar to what you're charged, and

1 the jury might be likely to convict your based on the
2 fact that you were charged with -- convicted of something
3 very similar; however, the assault and battery with
4 intent to kill charge is a felony. It's over a year, and
5 I don't find that the prejudicial value, or the
6 prejudicial effect to you, is such that it would not be
7 outweighed by the probative value if the jury should be
8 allowed to know that you got convicted of that charge for
9 the purpose of determining whether or not it would affect
10 your ability to tell the truth. That's called
11 impeachment.

12 So if you want to testify, the jury will
13 allowed to be informed about that prior assault and
14 battery with intent to kill charge. I will instruct them
15 that they are only to consider that for the purpose of
16 determining whether or not that makes you more or less
17 believable when you are testifying.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Does that change your mind about
21 whether or not you want to testify?

22 THE DEFENDANT: No, sir.

23 THE COURT: You still want to testify?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is that the only witness you're

1 going to call?

2 MR. VITETTA: Yes, sir.

3 THE COURT: Well, is there anything further
4 from the State?

5 MS. BYRD: Yes, Your Honor. We would ask
6 that we be permitted to refer to the attempted armed
7 robbery conviction as a conviction of another felony in
8 2005 that carried more than a year.

9 THE COURT: All right. Well, I will allow
10 the specifics of the assault and battery with intent to
11 kill. That is a charge you were convicted of and another
12 felony.

13 MS. BYRD: Thank you, Your Honor.

14 THE COURT: I don't know if you intend to
15 bring it out in direct.

16 MR. VITETTA: Yes, sir. Most likely I will.

17 THE COURT: But you won't be allowed to go
18 into any details of either of the convictions.

19 MR. VITETTA: Yes.

20 THE COURT: Okay.

21 MR. VITETTA: And, Judge, I wanted to make
22 a --

23 THE COURT: Does that change your mind about
24 testifying? I'm going to allow it to be brought out
25 with, one, you were convicted of assault and battery with

1 intent to kill and that you were convicted of another
2 felony charge, but not that it was attempted armed
3 robbery.

4 MR. VITETTA: They won't know it was a
5 robbery?

6 THE DEFENDANT: No. That doesn't change my
7 mind.

8 THE COURT: Okay. Yes?

9 MR. VITETTA: I want to do a directed verdict
10 motion.

11 THE COURT: All right. Go ahead.

12 MR. VITETTA: I'm moving for a directed
13 verdict under Rule 19 of the South Carolina rules of
14 criminal procedure. There has been a failure of
15 competent evidence. Specifically, there were 11 latent
16 prints that were lifted that excluded my client. There's
17 no direct evidence linking him to the gun, and the
18 witnesses testified that the robber was somebody who was
19 their 20's, and, on those grounds, the issues -- the
20 motions raised and overruled and objections raised and
21 overruled, if any, I would ask for a directed verdict.

22 Thank you, Judge.

23 THE COURT: State want to respond?

24 MS. BYRD: Yes, Your Honor. The State would
25 respectfully disagree with Mr. Vitetta's assessment of

1 the evidence that's been submitted. At this point,
2 everything must be viewed in the light most favorable to
3 the State, and the State has provided sufficient evidence
4 so the issues can go to the jury.

5 The victims have given a description of a
6 suspect that match a third witness's description of the
7 suspect as seen shortly after the armed robbery occurred.
8 The defendant's fingerprint is present at the crime
9 scene, as well as a weapon that is reasonably connected
10 to the crime and to a place that the defendant has
11 testified to have been shortly after the crime itself.

12 And, in addition, the third witness,
13 specifically India Grant, specifically identified the
14 defendant as the suspect in the surveillance video
15 footage, and for those reasons, we would say the case
16 needs to go forward to the jury.

17 THE COURT: All right. Well, the defendant
18 matches the description of the victims, and while it's
19 difficult for any of us identify him on the video and
20 none of the two ladies that work at Big Lots could, the
21 other witness, Ms. India Grant, they would testify she
22 ID'd him as the person in the video, and she's very
23 familiar with him.

24 You got his fingerprint at the scene, and he
25 had no reason to otherwise be there. This picture of the

1 gun looks similar to the gun that was found underneath
2 Ms. Grant's couch that she says was not there prior to
3 the date of the robbery, so I find that there is
4 substantial circumstantial evidence to allow the case to
5 go forward, so the motion is denied.

6 MR. VITETTA: Thank you, Judge.

7 THE COURT: Anything else?

8 MR. VITETTA: If I could just have two
9 minutes, please, to run to the bathroom.

10 THE COURT: Okay. All right. We'll take
11 five, and then we'll get started.

12 (Recess taken.)

13 (In open court, jury not present.)

14 MR. VITETTA: I think we thought we had an
15 agreement, but now I think we do not, so I would like to
16 wait for Ms. Byrd to get back.

17 MS. YOUNG: You want me to put the official
18 offer on the record?

19 THE COURT: For the purposes of the record,
20 what are we discussing and --

21 MR. VITETTA: Here's where we are, Judge: We
22 were discussing a settlement offer. Do you want me to
23 tell you a little bit it?

24 THE COURT: Sure.

25 MR. VITETTA: All charges pending against

1 him, which is this armed robbery, another armed robbery,
2 an indecent exposure and some marijuana charges that he
3 picked up at the jail -- indecent exposure was at the
4 jail also. The offer was 35 years negotiated on all
5 charges. The only issue was -- one of the issues was the
6 sex offender registry.

7 I know it would be in your discretion, and we
8 would like an agreement from the government that he not
9 be placed on the registry.

10 THE COURT: What were the sex offender
11 charges, just the indecent exposure charges at the jail?

12 MR. VITETTA: Yes. He was in the medical
13 unit and he was masturbating in front of a corrections
14 officer.

15 THE COURT: Is that the only holdup?

16 MR. VITETTA: Well, he's now asking that the
17 other armed robbery be dismissed, which the government is
18 not willing to do, but it would still be 35 negotiated.

19 MS. YOUNG: I need to speak with Lindsey, but
20 I don't know that we would be able to dismiss the other
21 armed robbery.

22 MR. VITETTA: That's the other holdup, is the
23 other one.

24 THE COURT: Well, if you got a 35-year
25 sentence, would you really need to be --

1 MS. YOUNG: Your Honor, it's not my call,
2 so -- this is Lindsey's case.

3 MR. VITETTA: She went up just to get the
4 sentencing sheets.

5 THE COURT: Well, for whatever it's worth,
6 based on what you represented to me are the sex offender
7 charges, I don't know that that would necessarily be
8 something that I feel like he needed to have registration
9 as a sex offender, especially considering he would be,
10 you know, doing the better part of 35 years, which while
11 that's a long time, is still better than life without
12 parole, which I think you have a fairly good chance of
13 getting convicted of at this point, based on the evidence
14 that I have heard.

15 So let's see what Ms. Byrd says about the
16 armed robbery charge. Thirty-five years, you got a
17 negotiated plea. How much time has he done?

18 MR. VITETTA: December 16th, 2011 was the
19 date of arrest. It's, like, two-and-a-half years.

20 THE COURT: Okay. You still got to do over
21 30 years.

22 (Recess taken.)

23 MS. BYRD: I thought we worked out a plea
24 offer, but it's my understanding that the defendant had
25 some changes?

1 I'm sorry, Your Honor. It appears we do not
2 have a plea agreement.

3 THE COURT: Come here. Let me understand
4 something.

5 (The following discussion was held at
6 sidebar):

7 MR. VITETTA: He changed his mind. He wanted
8 all charges dismissed.

9 THE COURT: The lesser ones are --

10 MR. VITETTA: There's actually two indecent
11 exposures, same facts, masturbating, and then some weed
12 charges from the jail.

13 THE COURT: You're not willing to dismiss
14 those? They're five-year charges. He wouldn't even
15 serve time on those, based on how long he's been in jail,
16 theoretically. He's got 35 years.

17 MS. BYRD: Right.

18 Your Honor, I would have to speak with the
19 Solicitor and the Chief Deputy Solicitor and make sure
20 that dismissing all those charges in light of the 35
21 years would be approved.

22 THE COURT: Do you want to talk to him or do
23 you want me to talk to him?

24 MS. BYRD: I was just on the phone with
25 Mr. DuRant moments ago, so I can get him back on the

1 phone.

2 THE COURT: Okay. Just tell him they're
3 all -- they're five-year charges. You're getting 35
4 years.

5 (Recess taken.)

6 THE COURT: Okay.

7 Well, Mr. Butler we are at the point in the
8 trial where we were getting ready to start your defense.
9 I understand that you have reached an agreement with the
10 solicitor's office. In exchange to your plea to the
11 indicted offense of armed robbery, which you're on trial
12 for now, and the possession of a firearm during the
13 commission of a violent crime that you're on trial for
14 now, you will plead guilty to those, get a sentence of 30
15 years on the armed robbery, plus five on the possession
16 of a weapons charge. In exchange, the State is going to
17 dismiss all the other pending indictments that you have.

18 Is that what you understand this plea
19 agreement is?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. And you want to give
22 up your right then to finish this trial and plead guilty?

23 MR. VITETTA: He's pleading no contest. I'm
24 sorry.

25 THE COURT: No contest. You want to end --

1 you are giving up your to finish the trial and enter this
2 plea in exchange for them dismissing these other charges?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. All right. Other than
5 what I just said, and that is that you will get a 35-year
6 sentence, in exchange, they're taking life without parole
7 off the table, which if you got convicted is what you
8 would get today, and the dismissal of all the remaining
9 pending charges you have against you, did anyone promise
10 you anything or threaten you to get you to enter this
11 plea?

12 THE DEFENDANT: No contest.

13 THE COURT: Anybody promise you anything or
14 threaten you?

15 THE DEFENDANT: No, they just said 35 years.

16 THE COURT: Okay. All right. Now, normally
17 I would tell you about all rights that you have, but you
18 have basically exercised all of your rights other than
19 the completion of the trial, and the only thing left in
20 this trial would be you can testify and tell the jury
21 whatever side of the story you want to, and if you didn't
22 want to testify, I would tell the jury to hold that
23 against you while deliberating.

24 Do you understand you have given up your
25 right to testify today in exchange for entering this

1 plea?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. How old are you?

4 THE DEFENDANT: Thirty-two.

5 THE COURT: How far did you get in school?

6 THE DEFENDANT: Graduated.

7 THE COURT: From high school?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you married?

10 THE DEFENDANT: No, sir.

11 THE COURT: And how many children do you
12 have?

13 THE DEFENDANT: One.

14 THE COURT: How old is your child?

15 THE DEFENDANT: Two.

16 THE COURT: All right. Mr. Vitetta, in your
17 opinion, does he understand what he's doing, entering
18 this plea today?

19 MR. VITETTA: He does, Your Honor.

20 THE COURT: And you agree with his decision?

21 MR. VITETTA: I do, Your Honor.

22 THE COURT: Well --

23 THE DEFENDANT: Your Honor, I want to
24 withdraw my plea.

25 THE COURT: You want to withdraw your plea?

1 You want to go ahead and testify then? All right. You
2 understand now if you get convicted, you're getting life
3 without parole.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And that means you never get out.
6 The only way you get out is in a box.

7 THE DEFENDANT: I can come back on appeal,
8 though.

9 THE COURT: You can appeal, but I don't know
10 at this point what you would appeal, but you would get
11 the right to appeal.

12 Because of your prior strike offense and if
13 you are convicted today of armed robbery, the sentence of
14 the Court, if you are convicted, will be life without
15 parole. You'll never be able to go up for parole. You
16 will end up dying in prison. That's the only way you get
17 out, unless you're successful on appeal.

18 I know 35 years seems like a long time, but,
19 you know, it is a day that will come. Are we proceeding
20 with the trial or proceed with the plea?

21 THE DEFENDANT: The plea.

22 THE COURT: All right. Well, I know a young
23 man of your age has got a hard time seeing that far down
24 the road. I'm telling you, I'm not that far down the
25 road from where you will be at the end of this road, and

1 it goes by. It's a day-by-day thing, but it goes by.

2 All right. Well, I have heard the evidence
3 that is coming to trial. There is a substantial factual
4 basis for this plea. In fact, I believe there is an
5 extremely good chance that if it went to verdict you
6 would be convicted of these charges, and I will therefore
7 accept your plea.

8 Is there anything else the State would like
9 to tell me?

10 MS. BYRD: No, Your Honor. You are familiar
11 with his prior record and the facts of this case, as well
12 as sentence being negotiated. We just ask you accept the
13 negotiated plea.

14 I would like to bring your attention to the
15 fact that the victim Pamela Sanders is present. She may
16 wish to address the Court if you are inclined to hear
17 from her.

18 THE COURT: All right. Is there anything you
19 would like to say? Anyone?

20 MS. BYRD: No, Your Honor. Thank you.

21 THE COURT: All right. Mr. Vitetta, is there
22 anything that you or Mr. Butler would like to say?

23 MR. VITETTA: No, Your Honor. This is a
24 negotiated plea. He has requested mental health
25 treatment. If the Court has a way of ordering that in

1 the department of corrections, I think that would be
2 helpful in this, and would you also make sure that the
3 sentencing sheets reflects this is a no contest.

4 THE COURT: I put on here nolo contendere.

5 All right, Mr. Butler. Is there anything
6 further you'd like to say?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. Well, the sentence of
9 the Court is 30 years on the armed robbery, five years
10 running consecutive to that on the possession of a
11 firearms charge. You'll get credit for the time that you
12 have served while awaiting trial. Good luck to you.

13 MR. VITETTA: And, Judge, is there a way you
14 can order that he be evaluated for mental health?

15 THE COURT: Well, this isn't a guilty but
16 mentally ill plea, so it will get done. Guilty but
17 mentally ill, they send them to evaluation. He'll get
18 evaluated with that on there. I just don't know what the
19 time frame is.

20 All right. Let's bring the jury in. Thanks
21 for working that out.

22 - - -

23 (Whereupon, the proceedings were concluded.)

24 - - -

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 20th of May 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 11, 2015

Amanda K. Haffenden

Circuit Court Reporter

F SOUTH CAROLINA)
 County of CHARLESTON)

2014-CP-10-4113
 IN THE COURT OF COMMON PLEAS

KEON BUTLER # 243002)
 Full name and prison number (if any) of Applicant)

v)

State of South Carolina)

APPLICATION FOR
 POST-CONVICTION RELIEF

FILED
 2014 AUG 18 PM 2:41
 JULIE J. ARMSTRONG
 CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention KIRKLAND CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence COURT OF COMMON PLEAS
AND GENERAL SESSIONS, 100 BROAD ST. STE 106 CHAS. SC 29401-225
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2012-6610045 B6 D I, M995345

(c) N/A

The date upon which sentence was imposed and the terms of the sentence:

(a) MAY 20, 2014 - 35 YRS, 85%

(b) N/A

(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere ☒

7. Did you appeal from the judgment of conviction or the imposition of sentence?

N/A

8. If you answered "yes" to (7), list

(a) the name of each Court to which you appealed:

i. SOUTH CAROLINA COURT OF APPEALS, PRO SE

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. UNDETERMINED

ii. N/A

iii. N/A

(c) the date of each such result

i. N/A

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) COUNSEL FAILED TO FILE

- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) INVOLUNTARY GUILTY PLEA
- (c) COUNSEL FAILED TO FILE FOR DIRECT APPEAL

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Failed to protect rights, Failed to suppress, Failed to argue =>
- (b) COUNSEL FAILED TO EXPLAIN TERMS OF NO CONTEST PLEA ->
- (c) COUNSEL FAILED TO FILE FOR DIRECT APPEAL AFTER ->

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? ~~NO~~ YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? YES

If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. Motion For Intent to appeal
 - ii. POST-CONVICTIONS RELIEF
 - iii. N/A
 - iv. Motion to RELIEVE COUNSEL
- (b) the name and location of the Court in which each was filed:
- i. CHARLESTON CLERK OF COURT, CHARLESTON COUNTY
 - ii. SOUTH CAROLINA COURT OF APPEALS, COLUMBIA COUNTY
 - iii. ATTORNEY GENERAL OFFICE, COLUMBIA COUNTY

- CONTINUE, FROM QUESTION 11. (A) MOTIONS, FAILED TO PROPERLY CROSS EXAMINE AND REPORT PERJURY TO COURT, OF BOTH WITNESSES AND VICTIMS. COUNSEL FAILED TO CALL DEFENSE WITNESS KEITH NOVAK TO THE STAND TO REFUTE WITNESS TESTIMONY ALTHOUGH HE WAS SERVED SUBPOENA. COUNSEL FAILED TO HAVE DEFENDANT MENTALLY EVALUATED. COUNSEL FAILED TO ESTABLISH ALIBI.
- CONTINUE, FROM QUESTION 11. (B) COUNSEL FAILED TO PROTECT RIGHTS OF DEFENDANT AND CHALLENGE EXCESSIVE PIER OFFER.
- CONTINUE FROM QUESTION 11. (C) COUNSEL STATED AT CONCLUSION OF HEARING THAT IT WAS HIS INTENT TO FILE APPEAL AGAINST ALL OBJECTIONS AND DENIED MOTIONS BUT DID NOT SUBMIT ANY APPEAL TO THE COURT. COUNSEL KNEW DEFENDANT DESIRED TO EXERCISE RIGHTS TO APPEAL.

- iv. N/A
- (c) the disposition thereof:
- i. Filed by clerk ON JUNE 4, 2014
- ii. PENDING RESPONSE
- iii. PENDING RESPONSE
- iv. N/A
- (d) the date of each such disposition:
- i. MAY 22, 2014
- ii. AUGUST 7, 2014
- iii. AUGUST 7, 2014
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Filed by clerk
- ii. AWAITING RESPONSE
- iii. AWAITING RESPONSE
- iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- ~~NO~~ YES
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. ~~N/A~~ INEFFECTIVE ASSISTANCE OF COUNSEL
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. ~~N/A~~ ~~N/A~~ Filed by COURT
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) COUNSEL Failed to FILE DIRECT APPEAL
- (b) FRAUDULENT MISREPRESENTATION
- (c) N/A
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. CASSANDRA WOODLEY Public Defender
100 Broad St. Charleston, SC 29401
- ii. Bonnie Butler Public Defender
100 Broad St. Charleston, SC 29401
- iii. Guy Vitelli, Vitelli Law Group
225 SEVENS FARMS DR. Ste. 201 DANIEL JARLAND, SC 29492
- (b) the proceedings at which each such attorney represented you:
- i. Cassandra Woodley
ARRAIGNMENT / PRE-IM
- ii. Bonnie Butler
TRIAL PREPARATION
- iii. Guy Vitelli
TRIAL

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

I seek relief in the capacity of a new
trial to be granted at the least, but
ultimately to have the sentence imposed vacated.

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

NO

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, KEEON D. BUTLER, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Keon Butler

SWORN to and subscribed before me this 14
 day of August, 2014.

[Signature] (L.S.)
 Notary Public

My Commission Expires:

DEVERLE ALBERT
 Notary Public, State of South Carolina
 My Commission Expires May 3, 2023

**OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, KEON D. BENTLEY, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Keon Bentley
Applicant

SWORN or affirmed to and subscribed before me this

14 day of August, 2014.

[Signature]
Notary Public

My Commission Expires:

DEVERLE ALBERT Notary Public, State of South Carolina My Commission Expires May 3, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
	)	
Keeon Butler, #243002,	)	2014-CP-10-4993
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed August 18, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 2012 term of the Charleston County Grand Jury for Armed Robbery (2012-GS-10-4586) and Possession of a Firearm during the Commission of a Violent Crime (2012-GS-10-3824). Guy Vitetta, Esquire, represented the Applicant at trial. On April 23, 2014, the Applicant pled nolo contendere before the Honorable Roger M. Young, Sr., and was sentenced to consecutive terms of thirty (30) years imprisonment for Armed Robbery and five (5) years imprisonment for Poss. of a Firearm.¹

The Applicant served a pro se notice of appeal on August 3, 2014. The Respondent then filed a motion to dismiss the appeal based on the Applicant's failure to file a timely notice of

¹ The Applicant is also serving a thirteen (13) month sentence from Greenville County for threatening the life of a public official (2011-GS-23-0767), aff'd, Op. No. 2014-UP-467(S.C. Ct. App. filed December 17, 2014).

appeal. By Order filed on November 19, 2014, the South Carolina Court of Appeals granted the Respondent's Motion and dismissed the appeal. The Remittitur was issued on December 5, 2014

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction(s), the application, the plea transcript, and Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Involuntary Guilty Plea"
3. "Counsel failed to file for direct appeal"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

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

IV.

The Applicant further alleges his plea was not voluntarily made. The Respondent submits that the Applicant's allegation that his plea was involuntary is without merit. In PCR

cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

The Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Applicant has alleged that Counsel failed to file a direct appeal. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-

Ortega, 528 U.S. 470, 120 S.Ct. 1029 (U.S.,2000.) The Respondent submits that the Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue.

VI.

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

VII.

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

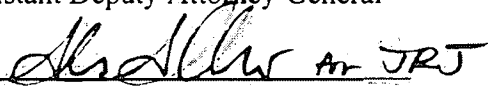
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

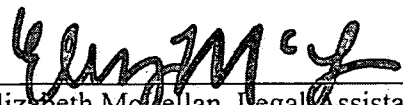
November 5, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-4993
KEEON BUTLER, #243002	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esq.
Murphy Law Offices, LLC
PO Box 2008
Mt. Pleasant, SC 29465

DATED this 5th day of November, 2015.


Elizabeth McVellan, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF CHARLESTON)

Keeon Butler)
)
 Plaintiff,)
 v.) Case No. 14-CP-10-4993
)
 State of South Carolina ,)
)
 Defendant.)

TRANSCRIPT OF HEARING

The within HEARING in the above-captioned matter was held January 20th, 2015, before The Honorable Perry H. Gravely in Courtroom 3E of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Christopher Murphy, Esq.
Appearing for Applicant

Rutledge Johnson, Esq.
 OFFICE OF ATTORNEY GENERAL
 ... Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 29616
dgarrison@sccourts.org

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INDEX OF EXHIBITS

- None Entered -

1 (APPLICANT PRESENT)

2 THE COURT: Are we ready?

3 MR. JOHNSON: May it please the
4 court, Your Honor?

5 THE COURT: Yes.

6 MR. JOHNSON: This is Keeon Butler
7 versus the State of South Carolina. It is
8 case number 2014-CP-10-4993.

9 Mr. Butler was indicted at the
10 August 2012 term of the Charleston County
11 Grand Jury for armed robbery and for
12 possession of a firearm during the commission
13 of a violent crime.

14 Mr. Butler was served with a notice
15 of life without parole based on his prior
16 history on April 23rd, 2014.

17 He began trial. The State had put
18 in all of its evidence and there was a
19 directed verdict. There were then
20 negotiations, to which he pled no contest
21 before The Honorable Roger M. Young, Sr. and
22 was sentenced to thirty (30) years in prison
23 for the armed robbery and a consecutive five
24 (5) years for possession of a firearm. I
25 believe that they dismissed another armed
26 robbery, two indecent exposures which came

Keeon Butler v State of South Carolina
Case No. 14-CP-10-4993
PCR Hearing of January 20, 2016
Testimony of Applicant - Direct Examination

4

1 out of the detention center -- I believe
2 public masturbation was the actual charge.
3 Also there was a marijuana charge, which the
4 State dismissed for his thirty-five year
5 negotiated plea.

6 He then served a *pro se* notice of
7 appeal. The State filed a Motion to Dismiss
8 based on the Applicant's failure to file a
9 timely notice of appeal. By Order of
10 November 14th, 2014, the Court of Appeals
11 granted the State's Motion and dismissed the
12 appeal. *Remittitur* was issued December 15th,
13 2014. He filed a timely PCR application on
14 August 18th, 2014 (sic), and the State filed
15 its Return on November 5th, 2015.

16 He is represented here today by Mr.
17 Chris Murphy.

18 MR. MURPHY: Thank you, Your Honor.
19 I would say that at the trial court, he was
20 facing LWOP charges -- or at least the
21 Solicitor planned to LWOP him, and that was
22 removed as part of his plea deal.

23 I have spoken to Mr. Butler about
24 the possibility that if he is successful here
25 today that he could be facing, and probably

Keeon Butler v State of South Carolina

5

Case No. 14-CP-10-4993

PCR Hearing of January 20, 2016

Testimony of Applicant - Direct Examination

1 would be facing an LWOP charge again. He has
2 indicated his desire to go forward today,
3 Your Honor.

4 THE COURT: All right. If you
5 could, just give me kind of a summary of ---

6 MR. MURPHY: A summary of this --
7 as Mr. Rutledge (Johnson) said, he went most
8 of the trial. Actually the State had rested
9 in this case and he then pled no contest.

10 The only issue in this case that
11 we're raising is that he was not sworn when
12 he pled no contest, which we believe would be
13 a fatal error. We would like to supplement
14 that with a brief amount of testimony today,
15 Your Honor.

16 THE COURT: All right.

17 MR. MURPHY: We would call Mr.
18 Butler to the stand.

19 (WITNESS TAKES STAND)

20 KEEON BUTLER, having been sworn to tell
21 the truth, and nothing but the truth,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MURPHY:

25 Q. Mr. Butler, do you recall your

Keeon Butler v State of South Carolina
Case No. 14-CP-10-4993
PCR Hearing of January 20, 2016
Testimony of Applicant - Direct Examination

6

1 charges for armed robbery and possession of
2 a firearm, in Charleston County?

3 A. Yes, sir.

4 Q. You were represented by Mr. Guy
5 Vittea?

6 A. Yes, sir.

7 Q. Mr. Vittea is in court right now?

8 A. (No verbal response).

9 Q. Do you see him?

10 A. Yes, sir.

11 Q. And throughout your representation,
12 did you maintain your innocence to these
13 charges?

14 A. Yes.

15 Q. Did you commit the crimes you were
16 accused of?

17 A. No, sir.

18 MR. JOHNSON: Objection, Your Honor,
19 that's -- innocence is not a claim of PCR.
20 I move to strike that.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. MURPHY:

23 Q. When you pled no contest before the
24 court, did you raise your right hand where
25 you were sworn in?

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Case No. 14-CP-10-4993
PCR Hearing of January 20, 2016
Testimony of Applicant - Cross Examination

7

1 A. No, sir.

2 Q. Tell me about what was going on that
3 day? Did you understand what was going on?

4 A. No, not really.

5 Q. Did everything happen fast?

6 A. Yeah.

7 MR. MURPHY: That's all that I
8 have, Your Honor.

9 THE COURT: Any cross-examination?

10 MR. JOHNSON: Yes, sir, just
11 briefly.

12 CROSS EXAMINATION

13 BY MR. JOHNSON:

14 Q. Mr. Butler, your claim today is that
15 you didn't understand what was going on at
16 the plea; correct?

17 A. Yes, sir.

18 Q. Okay. But you never stopped the
19 plea judge and said, 'Your Honor, I have no
20 idea what's going on.' Did you?

21 A. No, sir.

22 Q. Okay. And he read the agreement,
23 thirty-five years negotiated; correct?

24 A. Yes, sir.

25 Q. That's what you agreed to; right?

Keeon Butler v State of South Carolina

8

Case No. 14-CP-10-4993

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Testimony of Applicant - Cross Examination

1 A. Yes, sir.

2 Q. Okay. And he also said that the
3 plea judge said that you were facing life
4 without parole and that the State was taking
5 that off the table in order for you to accept
6 the thirty-five year plea offer. Correct?

7 A. Yes, sir.

8 Q. So what you're saying today is that
9 you want to go back and face life without
10 parole if you're successful here today?

11 A. Yes, sir.

12 Q. And they not only had one armed
13 robbery but they have two armed robberies
14 that they could line you up and try up for
15 life without parole. Correct?

16 A. Yes, sir.

17 Q. Okay. You realize that you gave up
18 your trial rights when you pled guilty,
19 correct? You pled no contest.

20 A. Yes, sir.

21 Q. So you gave up your trial rights,
22 the right to finish your trial, your right to
23 testify, in order to accept the thirty-five
24 year plea offer. Right?

25 A. Yes, sir.

Keeon Butler v State of South Carolina

9

Case No. 14-CP-10-4993

PCR Hearing of January 20, 2016

Closing Remarks - Ruling of The Court

1 Q. Okay.

2 MR. JOHNSON: That's all. No
3 further questions, Your Honor.

4 MR. MURPHY: Nothing further, Your
5 Honor.

6 THE COURT: All right.

7 MR. MURPHY: Your Honor, that would
8 be all that we have. We rest on the record
9 that shows that he was not sworn in.

10 THE COURT: Anything from the
11 State?

12 MR. JOHNSON: No, Your Honor, just
13 brief argument.

14 THE COURT: Well, based on the
15 issue of the part about him not being sworn,
16 we've researched the record and I've also
17 looked through the transcript here and it is
18 not in here. I could not find where he was
19 sworn in. But as we said yesterday (in
20 unrelated PCR), we did not find any authority
21 that said that made the plea defective. The
22 Court of Appeals or the Supreme Court may
23 decide otherwise. But I think if that's the
24 only issue -- again, I will be glad to hear
25 form y'all if you want to but we went over

Keeon Butler v State of South Carolina

10

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PCR Hearing of January 20, 2016

Closing Remarks - Ruling of The Court

1 this yesterday and ---

2 MR. JOHNSON: It's very straight-
3 forward and ---

4 THE COURT: Mr. Butler, like I
5 said, there may be authority out there. We
6 didn't find any yesterday. Somebody higher
7 than me will have to make that decision, so I
8 am going to deny your application but you can
9 file an appeal. Good luck to you, Mr.
10 Butler.

11 (HEARING CONCLUDED)

12

13

14

15

16

17

18

19

20

21

22

23

Keeon Butler v State of South Carolina

11

Case No. 14-CP-10-4993
PCR Hearing of January 20, 2016
Certificate of Court Reporter

1

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the post-
conviction relief hearing held in the within action
heard on January 20, 2016, before The Honorable
Perry H. Gravely;

I further certify that I am neither kin nor
counsel to any of the parties and have no interest
in the outcome of this action.



Deborah Garrison

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Greenville, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Keeon Butler, #243002,

2014-CP-10-4993

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED
2016 MAR 30 PM 4:02
STATE CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 18, 2014. Respondent made its Return on November 5, 2015. An evidentiary hearing into the matter was convened on January 20, 2016 at the Charleston County Courthouse. Christopher L. Murphy, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the trial/plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the August 2012 term of the Charleston County Grand Jury for Armed Robbery (2012-GS-10-4586) and Possession of a Firearm during the Commission of a Violent Crime (2012-GS-10-3824). Guy Vitetta, Esquire, represented Applicant at trial. On April 23, 2014, Applicant proceeded to trial, where he

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eventually pled nolo contendere (hereinafter referred to as the "plea") before the Honorable Roger M. Young, Sr. after the State had rested and Applicant's motion for a directed verdict was denied. Applicant was sentenced to consecutive terms of thirty (30) years imprisonment for Armed Robbery and five (5) years imprisonment for Possession of a Firearm During the Commission of a Violent Crime.¹

Applicant served a pro se notice of appeal on August 3, 2014. The Respondent then filed a motion to dismiss the appeal based on Applicant's failure to file a timely notice of appeal. By Order filed on November 19, 2014, the South Carolina Court of Appeals granted the Respondent's Motion and dismissed the appeal. The Remittitur was issued on December 5, 2014.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Involuntary Guilty Plea"
3. "Counsel failed to file for direct appeal"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

¹ The Applicant is also serving a thirteen (13) month sentence from Greenville County for threatening the life of a public official (2011-GS-23-0767), aff'd, Op. No. 2014-UP-467(S.C. Cl. App. filed December 17, 2014).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea or plea nolo contendere, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

Applicant testified that he was not sworn prior to his trial or plea. Applicant also stated that he did not understand the proceedings that day.

On cross-examination, Applicant admitted that he pled to a negotiated thirty-five year sentence in exchange for the State removing a Life Without Parole notice. Applicant admitted that he gave up his right to a trial by pleading nolo contendere. In addition, Applicant admitted that he did not stop the plea judge at any time to ask for an explanation or to say that he did not understand the proceedings.

This Court finds Applicant failed to meet his burden of proving ineffective assistance of counsel. Applicant failed to provide any testimony of alleged actions or inactions on the part of plea



counsel at all. Applicant did not call any other witnesses or provide any evidence of plea counsel's ineffectiveness. This Court finds that the plea transcript refutes Applicant's claims. According to the plea transcript, plea counsel advised Applicant of all of the charges and the sentences the charges carried. Applicant admitted nobody threatened him to plead nolo contendere, and there were no promises other than the negotiations to entice him to plead nolo contendere. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone. Furthermore, this Court finds that it was ultimately Applicant's decision to plead nolo contendere.

Applicant alleges that his plea was defective because he was not sworn prior to his plea. While the transcript seems to be absent of a notation that Applicant was sworn prior to questioning by the plea court, this Court finds no authority which would make Applicant's plea defective. "In the absence of evidence to the contrary, the regularity of the proceedings of a court of general jurisdiction will be assumed." Pringle v. State, 287 S.C. 409, 410–11, 339 S.E.2d 127, 128 (1986). Applicant provided no credible evidence that his guilty plea was unconstitutionally accepted. Applicant admitted that he, at no time, stopped the plea judge to state that he did not understand the proceedings. Further, this Court finds Applicant's guilty plea to be in compliance with Boykin v. Alabama, 395 U.S. 238 (1969).

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea nolo contendere and sentencing proceedings. Plea counsel was not deficient and Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

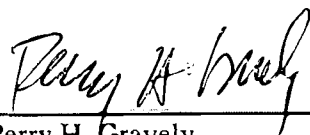
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.



AND IT IS SO ORDERED!



Perry H. Gravely
Presiding Circuit Court Judge
Ninth Judicial Circuit

March 15, 2016
Charleston, South Carolina

LMC20111208582

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1120532

ARREST WARRANT NUMBER

DIRIND1710

DATE OF ARREST

December 16, 2011

ACTION OF GRAND JURY

TRUE

Foreperson of Grand Jury
Date:

AUG 06 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1004586

The State of South Carolina

County of Charleston.

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

KEEON DEJARVACE BUTLER

DOB: 1980-08-26

D/M

Indictment for

Armed Robbery

FILED

8/23/2012 8:37:21 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

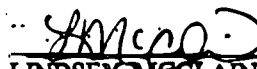
INDICTMENT

~~At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County~~ ---
present upon their oath:

Armed Robbery

That on or about December 16, 2011, in Charleston County, South Carolina, at 1401 Sam Rittenberg Blvd by use of force, threats or intimidation and while armed with a deadly weapon, to wit: handgun, the Defendant, KEEON DEJARVACE BUTLER, did take and carry away goods and/or monies from the person or immediate presence of Jeanie Hampton and Pamela Sanders With the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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


LINDSEY MCCLAIN
ASSISTANT SOLICITOR