

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County
Tanya A. Gee, Circuit Court Judge

VOLUME I OF II

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S.C. SUPREME COURT

JAVIER HICKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000570

APPENDIX

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State of South Carolina)
County of Aiken) Court of General Sessions
2010-GS-02-670, 679
2009-GS-02-2291, 2294

The State of South Carolina)
Plaintiff)
vs.) Transcript of Record
Javier Hickson and Artrell)
Hickson)
Defendants)

September 20, 2010
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge; and a jury.

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

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Lisa H. Davenport, RPR
Official Court Reporter

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1 (Whereupon, on September 20, 2010 the following
2 proceedings were held:)

3 MS. RINGLER: The State is ready to call its first
4 case. It is State versus Javier Hickson, indictment
5 number 2009-GS-02-2291 and 2010-GS-02-679. The State will
6 also be calling State versus Artrell Hickson,
7 2009-GS-02-2294 and 2010-GS-02-670.

8 THE COURT: All right. Please bring out Mr. Artrell
9 Hickson or Jabar -- Javier, I guess.

10 All right. Gentlemen, come forward.

11 (Whereupon, the Defendants entered the courtroom.)

12 THE COURT: Is the State ready to proceed?

13 MS. RINGLER: Yes, Your Honor.

14 THE COURT: The Defendants ready to proceed?
15 Mr. Artrell Hickson?

16 MRS. BROWN: Yes, Your Honor.

17 THE COURT: Mr. Javier Hickson?

18 MR. ROUTZONG: Yes, Your Honor.

19 THE COURT: Ladies and gentlemen of the jury panel,
20 we're about to begin the trial of the case of the State of
21 South Carolina versus Artrell Jabar Hickson.

22 Mr. Hickson, would you please stand and face the jury
23 panel?

24 (Whereupon, the Defendant Artrell Hickson complies.)

25 THE COURT: Thank you. You may be seated.

1 As well as the case of the State of South Carolina
2 versus Javier Hickson.

3 Mr. Hickson, am I pronouncing that correctly?

4 THE DEFENDANT JAVIER HICKSON: Yes, sir.

5 THE COURT: Would you look at the jury panel, please?

6 (Whereupon, the Defendant Javier Hickson complies.)

7 THE COURT: Thank you.

8 Ladies and gentlemen, these two gentlemen have been
9 indicted by the Aiken County Grand Jury. Please bear in
10 mind that an indictment is not evidence in the case. It
11 is simply the charging document by way the case comes into
12 this courtroom. They have been indicted for -- each one
13 of them for armed robbery and for possession of a firearm
14 during the commission of or an attempt to commit a violent
15 crime.

16 Both Defendants have plead not guilty to each
17 indictment. A plea not of not guilty, obviously, places
18 the burden on the State of South Carolina through the
19 Solicitor's Office to prove to the jury beyond a
20 reasonable doubt each and every allegation of each
21 indictment and each and every element of each indicted
22 offense. Obviously, I'll go over all of that with you at
23 that time, but at this present time these are the two
24 indictments that the state are proceeding against these
25 two individuals.

1 I'll have to ask you some questions about this so if
2 any of these questions apply to you please stand once
3 again and give us your name.

4 Has any member of the jury panel ever been related by
5 blood or marriage or do you now or have you in the past
6 had a close personal or social relationship with either of
7 the Defendants Artrell Hickson or Javier Hickson? If so,
8 please stand.

9 Do not get frightened when I do this, but we have a
10 potential witness list and I will ask you -- read out
11 these names and then I am going to ask you the same
12 question: Are you related by blood or marriage now or in
13 the past or do you now or have you in the past had a close
14 personal or social relationship and if any of the
15 witnesses that I call or -- if you are in the courtroom
16 would you please stand and face the jury panel?

17 Investigator Greg Savell, S-A-V-E-L-L. Thank you. You
18 may be seated. Lieutenant Clay Adams. Lieutenant Billy
19 Fleury, F-L-E-U-R-Y, both of the Aiken County Sheriff's
20 Office. Investigator Chuck Cain. Investigator James
21 Criscillis, C-R-I-S-C-I-L-L-I-S, also with the Aiken
22 County Sheriff's Office. Deputy Earl Roberts. Demetrick
23 Drumming with the Aiken Department of Public Service --
24 Public Safety. Daphne Carroll with Security Federal Bank.
25 Ms. Carroll. Thank you. Tonya Key with Security Federal.

1 Thank you. Amanda Wood with Security Federal. Thank you.
2 Gabrielle Hastings. Ms. Hastings. Carol McCleskey.
3 Thank you. David Kearse. Stanley Galloway. Sabrina
4 Oakman. Beatrix Wright. Candice Bryant. Monique
5 Hickson. Devon Jones. Crystal Harris. Randolph
6 Wilson, Jr. Phillip Paul. Chris Pitman. Beulah Hickson.
7 Is Ms. Hickson in the courtroom? Beulah Hickson. Thank
8 you. You may be seated. Tommy Lee Parker.

9 Any member of the jury panel related by blood or
10 marriage now or in the past or do you now or have you in
11 the past had a close personal or social relationship with
12 any of these potential witnesses? If so, please stand.

13 Yes, ma'am, your name?

14 THE JUROR: My name is Aliceteen Belcher. I work
15 with some of the family members.

16 THE COURT: Where do you work?

17 THE JUROR: Walmart.

18 THE COURT: Walmart. And the fact that you work with
19 some of the Defendants' family members, would that in any
20 way, ma'am, keep you from being fair and impartial in the
21 trial of this case?

22 THE JUROR: I prefer not to.

23 THE COURT: I know you prefer not to, ma'am, but we
24 have a civic duty for you to sit on a jury as a citizen of
25 this community and can you sit on that jury panel and

1 determine what evidence you hear as to be true and apply
2 those facts to the law as I give it to you. Can you do
3 that?

4 THE JUROR: Yes, sir.

5 THE COURT: Thank you, ma'am. Your name, ma'am?

6 THE JUROR: Cagney Pruett, Juror 131, and I am
7 personal friends with Demetrick Drumming -- was in the
8 past.

9 THE COURT: The fact that you are a personal friend
10 with a potential witness in the trial of this case, ma'am,
11 would that any any way preclude or keep you from being
12 fair and impartial in to both sides? We all have personal
13 friendships.

14 THE JUROR: No, sir.

15 THE COURT: Thank you. You may be seated.

16 The lawyers in the case -- the State will be
17 represented by members of the Solicitor's Office,
18 Ms. Susie Ringler and Solicitor Thurmond -- Strom
19 Thurmond, Jr. The Defendants are represented by
20 Mr. Michael Routzong and Mrs. Kelley Perkins Brown.

21 Any member of the jury panel now or in the past have
22 had a close personal or social relationship with any of
23 the lawyers or are you related by blood or marriage to any
24 of the lawyers involved in the case? If so, please stand.

25 MR. WEEKS: Your Honor, Mr. Hayes is going to be

1 participating.

2 THE COURT: Oh, I'm sorry. Mr. David Hayes. That's
3 why I was looking at him trying -- I didn't know. Any
4 member of the jury panel now or in the past had legal
5 services provided by any of the lawyers? If so, please
6 stand.

7 Ladies and gentlemen, it is alleged -- these are
8 simply allegations. This is not evidence in the case.
9 You will base your decision based on evidence that you
10 hear from the witness stand from live witnesses and or
11 exhibits that are relevant to the case, but it is alleged
12 that here in Aiken County on or about June 25, 2009 that
13 these two men participated in a robbery -- an armed
14 robbery -- and took from Ms. Gabrielle Hastings and
15 Ms. Amanda Wood by means of force or intimidation goods
16 from the Security Federal Bank while using a deadly weapon
17 and this bank -- the Security Federal Bank is located
18 where?

19 MS. RINGLER: Graniteville, Your Honor.

20 THE COURT: In Graniteville, South Carolina. An
21 alleged bank robbery or bank robbery that's alleged to
22 have been committed by these gentlemen on June 25, 2009 in
23 Graniteville at the Security Federal Bank.

24 Any member of the jury panel -- have you read
25 anything about this case, heard anything about it? Has

1 anybody discussed it with you, seen anything on TV,
2 anything on the internet? Anything anywhere? Know
3 anything about the facts in the case, formed any opinions
4 about the facts in the case? If so, please stand.

5 Any member of the jury panel been a victim of a
6 violent crime? If so, please stand.

7 Any member of the jury panel either you or your close
8 family member or have relatives who are -- work with or
9 involved with the SLED -- State Law Enforcement
10 Division -- work in the Solicitor's Office, attorney
11 general's office, or any law enforcement agency? If so,
12 please stand.

(13 THE JUROR: My mother works for the Aiken County
14 Sheriff's Department.

15 THE COURT: Ma'am?

16 THE JUROR: My name is Cagney Pruett. My mother
17 works for the Aiken County Sheriff's Department.

18 THE COURT: Okay. The fact that your mom works for
19 the Sheriff's Department, would that in any way preclude
20 or keep you from being fair and impartial?

21 THE JUROR: No.

22 THE COURT: Thank you. You may be seated. Yes,
23 ma'am, your name?

(24 THE JUROR: My name is Margaret Lind, number 96. I
25 go by Maggie.

1 THE COURT: Well, it's always interesting sitting up
2 here when I ask people their names they look down at their
3 name tags.

4 THE JUROR: My daughter works in Columbia County for
5 the Sheriff's Department.

6 THE COURT: The fact --

7 THE JUROR: I don't know if that's relevant.

8 THE COURT: Well, it is. The fact that you have a
9 daughter that's involved in law enforcement, would that,
10 ma'am, keep you from being fair and impartial?

11 THE JUROR: No.

12 THE COURT: Thank you. Any member of the jury
13 panel -- are you a member of or a contributor to an
14 organization which has as its primary aim the enforcement
15 of law such as MADD, Mothers Against Drunk Drivers; SADD,
16 Students Against Drunk Drivers; CAV, Citizens Against
17 Violent Crime, or any other type of organization? If so,
18 please stand.

19 Ladies and gentlemen of the jury, one of the main
20 responsibilities I have as the trial judge is to make sure
21 that the Defendants in this trial as well as the State of
22 South Carolina both receive a fair trial and to do that I
23 have to make sure that my jurors are fair and impartial
24 and what your role is is that when you're selected the 12
25 of you acting collectively as one you become what we call

1 the judges of the facts or the finders of the facts.

2 I practiced law for 30 years. I have been a judge
3 for over six, and I can tell you one thing that you will
4 hear different versions of the facts from different
5 witnesses like you do day-in and day-out with your
6 children, husband, wife, employees, employers. People
7 give you different versions of the facts.

8 Your job is to determine what the true facts are, and
9 when you find what the true facts are then you apply it to
10 the law as I give it to you or instruct you. So, I am
11 asking does anyone on this jury panel -- are you unable to
12 perform that duty because of personal beliefs against the
13 jury system, religious beliefs, any kind of beliefs that
14 would keep you from being fair and impartial and perform
15 this civic duty, this civic obligation? Anybody that
16 cannot do that, I need to know now.

17 Any additional questions by the State?

18 MS. RINGLER: None from the State, Your Honor.

19 THE COURT: Mr. Routzong?

20 MR. ROUTZONG: None, Your Honor.

21 THE COURT: Mrs. Kelley Perkins Brown?

22 MRS. BROWN: No, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, we're
24 going to draw the jury. In a criminal case such as this
25 your names are put into a computer program and you're

1 randomly selected out. Your name will be called. When
2 your name is called, please come forward and stand right
3 here in front.

4 In this case each Defendant has ten strikes and the
5 State has five strikes per Defendant. So, that's a total
6 of 30 strikes. They don't have to use them all, but they
7 can. So, let's get going, and we'll see how we go. As
8 your name is called, please come forward right here. If
9 you are selected, obviously, you'll sit in the jury box.
10 If you are excused by either side, then return to your
11 seat.

12 We've gone -- in the last year we've gone to a
13 computer system that all the names are put into the
14 computer and it randomly selects out whoever -- who is
15 named first, second, third, fourth, and all the way down.
16 So, you're randomly put into this. We just recently had
17 an old metal box up here where they put all of the names
18 in it and shake it up and draw one out at the time. We've
19 moved forward.

20 THE CLERK: As I call your name, please come forward
21 to the bench and face the attorneys. Juror number 96,
22 Margaret Lind. (white female)

23 THE COURT: Mrs. Kelley P. Brown, Mr. Routzong, who
24 is going first and who is going second? Or do you want to
25 swap it back and forth?

1 MRS. BROWN: I think swapping back and forth would be
2 fair.

3 THE COURT: All right. Mr. Routzong, ladies go
4 first.

5 What say the State?

6 MS. RINGLER: Please present this juror.

7 THE COURT: What say Mrs. Kelley Perkins Brown?

8 MRS. BROWN: Please excuse the juror from the trial
9 of this case.

10 THE COURT: You may have a seat.

11 THE CLERK: Juror number 105, Michael Mayo. (white
12 male) What say ye for the State?

(13 MS. RINGLER: Please present this juror.

14 THE CLERK: What say ye for the defense?

15 THE COURT: Mr. Routzong?

16 MR. ROUTZONG: Please seat this juror.

17 THE COURT: Mrs. Kelley Perkins Brown?

18 MRS. BROWN: Please seat the juror.

19 THE CLERK: Thank you. Please have a seat in the
20 jury box. Juror number 129, Lisa Price. (black female)

21 What say ye for the State?

22 MS. RINGLER: Please excuse this juror.

23 THE CLERK: Thank you. Please return to your seat.

24 Juror number 27, Gladys Cannon. (black female)

(25 What say ye for the State?

1 MS. RINGLER: Please excuse this juror.

2 THE CLERK: Thank you. Please return to your seat.

3 Juror number 120, Cynthia Nichols. (white female) What
4 say ye for the State?

5 MS. RINGLER: Please present this juror.

6 THE CLERK: What say ye for the Defendant?

7 THE COURT: Hold on a second. Mrs. Brown?

8 MRS. BROWN: Please excuse the juror from the trial
9 of this case.

10 THE CLERK: Thank you. Please return to your seat.

11 THE CLERK: Juror number 12, Joseph Bernier. (white
12 male) What say ye for the State?

13 MS. RINGLER: Please present this juror.

14 THE CLERK: What say ye for the Defendant,
15 Mr. Routzong?

16 MR. ROUTZONG: Please seat Mr. Bernier.

17 THE COURT: Hold on. Mrs. Kelley Brown?

18 MRS. BROWN: Please seat the juror.

19 THE CLERK: Please have a seat in the jury box.

20 Juror number 67, Connie Harms. (white female) What say
21 ye for the State?

22 MS. RINGLER: Please present this juror.

23 THE CLERK: What say ye for the Defendant,
24 Mrs. Brown?

25 MRS. BROWN: Please present this juror.

1 THE CLERK: Defendant, Mr. Routzong?

2 MR. ROUTZONG: Please seat Ms. Harm,

3 THE CLERK: Please have a seat in the jury box.

4 THE BAILIFF: Ma'am, this way.

5 THE COURT: That's a good try, Ms. Harm.

6 THE CLERK: Juror number 53, David Foreman. (white
7 male) What say ye for the State?

8 MS. RINGLER: Please present this juror.

9 THE CLERK: What say ye for the Defendant Routzong?

10 MR. ROUTZONG: Please seat Mr. Foreman.

11 THE CLERK: I'm sorry?

12 THE COURT: Mrs. Brown?

13 MRS. BROWN: Please seat the juror.

14 THE CLERK: Thank you. Please have a seat in the
15 jury box. Juror number 110, Sharon Melton. (white
16 female) What say ye for the State?

17 MS. RINGLER: Please present this juror.

18 THE CLERK: What say ye for Defendant Brown?

19 THE COURT: No. We have Mrs. Brown.

20 MRS. BROWN: Please present the juror.

21 THE CLERK: What say ye for Defendant Routzong?

22 MR. ROUTZONG: Please seat Ms. Melton.

23 THE CLERK: Please have a seat in the jury box.

24 Juror number 43, Jason Drennen. (white male) What say ye
25 for the State?

1 MS. RINGLER: Please present this juror.

2 THE CLERK: What say ye for the defense,

3 Mr. Routzong?

4 MR. ROUTZONG: Please excuse Mr. Drennen.

5 THE CLERK: Please return to your seat. Juror number

6 15, Myles Black. (white male) What say ye for the State?

7 MS. RINGLER: Please present this juror.

8 THE CLERK: What say ye for defense, Mrs. Brown?

9 MRS. BROWN: Please present this juror.

10 THE CLERK: What say ye for defense, Mr. Routzong?

11 MR. ROUTZONG: Please seat Mr. Black.

12 THE CLERK: Thank you. Have a seat in the jury box.

13 THE COURT: Mr. Black, you work for the University of

14 Georgia?

15 THE JUROR: Yes, sir.

16 THE COURT: Nice to have you with us.

17 THE JUROR: Thank you.

18 THE COURT: I won't say a word about Carolina

19 whipping you.

20 THE CLERK: Juror number 136, Laurie Roby. (white

21 female) What say ye for the State?

22 MS. RINGLER: Please present this juror.

23 THE CLERK: What say ye for the Defendant,

24 Mr. Routzong?

25 MR. ROUTZONG: Please seat Ms. Roby.

1 THE CLERK: What say ye for Defendant, Mrs. Brown?

2 MRS. BROWN: Please seat the juror.

3 THE CLERK: Please have a seat in the jury box. The
4 State has exhausted two strikes. Defendant Routzong one,
5 Defendant Brown two.

6 THE COURT: Did you leave something, ma'am?

7 THE JUROR: I left a paper.

8 THE COURT: Go get it. You're good. She can go get
9 it or somebody give it to her.

10 THE CLERK: Juror number 106, Bryan McElwain. (white
11 male) What say ye for the State?

12 MS. RINGLER: Please present this juror.

13 THE CLERK: Thank you. What say ye for defense,
14 Mrs. Brown?

15 MRS. BROWN: Please present the juror.

16 THE CLERK: What say ye for the Defendant,
17 Mr. Routzong?

18 MR. ROUTZONG: Please seat Mr. McElwain.

19 THE CLERK: If you would please have a seat. Juror
20 number 46, Michelle Ebenroth. (white Female) What say ye
21 for the State?

22 MS. RINGLER: Please present this juror.

23 THE CLERK: What say ye for the defendant,
24 Mr. Routzong?

25 MR. ROUTZONG: Please excuse this juror.

1 THE CLERK: Please return to your seat. Juror number
2 156, Danielle Walter'Dehn. (White female) What say ye
3 for the State?

4 MS. RINGLER: Please present this juror.

5 THE CLERK: What say ye for the Defendant,
6 Mrs. Brown?

7 MRS. BROWN: Please present this juror.

8 THE CLERK: What say ye for the Defendant,
9 Mr. Routzong?

10 MR. ROUTZONG: Please excuse Ms. Walter-Dehn.

11 THE CLERK: Thank you. Please return to your seat.
12 Juror number 103, Andrew Martin. (white male) What say
13 ye for the State?

14 MS. RINGLER: Please present this juror.

15 THE CLERK: What say ye for the Defendant,
16 Mr. Routzong?

17 MR. ROUTZONG: Please excuse Mr. Martin.

18 THE CLERK: Please return to your seat. The State
19 has exhausted two strikes, Defendant Routzong four,
20 Defendant Brown two. Juror number 92, Shane Lattimer.
21 (white male) What say ye for the State?

22 MS. RINGLER: Please present this juror.

23 THE CLERK: What say for the Defendant, Mrs. Brown?

24 MRS. BROWN: Please excuse the juror.

25 THE CLERK: Thank you. Please return to your seat.

1 Juror number 9, John Beeland. (white male) What say ye
2 for the State?

3 MS. RINGLER: Please present this juror.

4 THE CLERK: What say ye for the Defendant,
5 Mr. Routzong?

6 MR. ROUTZONG: Please excuse Mr. Beeland.

7 THE CLERK: Thank you. Please return to your seat.

8 Juror number 82, Melissa Johnson. (black female) What
9 say ye for the State?

10 MS. RINGLER: Please excuse this juror.

11 THE CLERK: Please return to your seat. Juror number
12 128, Hazel Ann Poston. (white female) What say ye for
13 the State?

14 MS. RINGLER: Please present this juror.

15 THE CLERK: What say ye for the Defendant Brown?

16 MRS. BROWN: Please present the juror.

17 THE CLERK: What say ye for Defendant Routzong?

18 MR. ROUTZONG: Please excuse Ms. Poston.

19 THE CLERK: Thank you. Please return to your seat.

20 Juror number 26, Ryan Campbell. (white male) What say ye
21 for the State?

22 MS. RINGLER: Please present this juror.

23 THE CLERK: What say ye for Defendant Routzong?

24 MR. ROUTZONG: Please excuse Mr. Campbell.

25 THE CLERK: Thank you. Please return to your seat.

1 The state has exhausted three strikes, Defendant Routzong
2 seven, Defendant Brown three. Juror number 95, Olivia
3 Lewis. (black female) What say ye for the State?

4 MS. RINGLER: Please present this juror.

5 THE CLERK: Thank you. What say ye for Defendant
6 Routzong?

7 MR. ROUTZONG: Please present Ms. Lewis.

8 THE CLERK: What say ye for Defendant Brown?

9 MRS. BROWN: Please seat the juror.

10 THE CLERK: Please have a seat in the jury box.
11 Juror number 5, Jamie Anderson. (white female) What say
12 ye for the State?

13 MS. RINGLER: Please present this juror.

14 THE CLERK: What say ye for Defendant Brown?

15 MRS. BROWN: Please present the juror.

16 THE CLERK: Thank you. What say ye for Defendant
17 Routzong?

18 MR. ROUTZONG: Please seat Ms. Anderson.

19 THE CLERK: Thank you. Please have a seat in the
20 jury box. Juror number 86, Twantanesha King. (black
21 female) What say ye for the State?

22 MS. RINGLER: Please present this juror.

23 THE CLERK: Thank you. What say ye for Defendant
24 Routzong?

25 MR. ROUTZONG: Please present Ms. King.

1 THE CLERK: What say ye for Defendant Brown?

2 MRS. BROWN: Please seat the juror.

3 THE CLERK: Please have a seat in the jury box.

4 Juror number 75, Sommer Horne. (white female) What say
5 ye for the State?

6 MS. RINGLER: Please excuse this juror.

7 THE CLERK: Thank you. Please return to your seat.

8 Juror number 19, Tina Brown. (black female) What say ye
9 for the State?

10 MS. RINGLER: Please present this juror.

11 THE CLERK: What say ye for Defendant Brown?

12 MRS. BROWN: Please present the juror.

13 THE CLERK: What say ye for Defendant Routzong?

14 MR. ROUTZONG: Please seat the juror.

15 THE CLERK: Thank you. Please have a seat in the
16 jury box. Alternates?

17 THE COURT: Let me have two alternates. The State
18 will have one strike -- The State will have two strikes
19 and each Defendant -- The State will have one strike and
20 each Defendant will have two strikes. One and two.

21 THE CLERK: Juror number 115, Wanda Moseley. (white
22 female) What say ye for the State?

23 MS. RINGLER: Please excuse this juror.

24 THE CLERK: Thank you. Please return to your seat.

25 Juror number 4, Holly Anderson. (white female) What say

1 ye for the State?

2 MS. RINGLER: Please present this juror.

3 THE CLERK: Thank you. What say ye for Defendant
4 Routzong?

5 MR. ROUTZONG: Please present Ms. Anderson.

6 THE CLERK: Thank you. What say ye for Defendant
7 Brown?

8 MRS. BROWN: Please excuse the juror.

9 THE CLERK: You may return to your seat. Juror
10 number 41, Mary Dawson. (white female) What say ye for
11 the State?

12 MS. RINGLER: Please present this juror.

13 THE CLERK: What say ye for Defendant Brown?

14 MRS. BROWN: Please present the juror.

15 THE CLERK: What say ye for Defendant Routzong?

16 MR. ROUTZONG: Please seat Ms. Dawson.

17 THE CLERK: Thank you. Please have a seat in the
18 jury box.

19 THE COURT: All right. One more alternate.

20 THE CLERK: Juror number 87, Kimberly Kirkbride.
21 (white female) What say ye for the State?

22 MS. RINGLER: Please present this juror.

23 THE CLERK: What say ye for Defendant Routzong?

24 MR. ROUTZONG: Please present Ms. Kirkbride.

25 THE CLERK: What say ye for Defendant Brown?

1 MRS. BROWN: Please seat this juror.

2 THE CLERK: Please have a seat in the jury box.

3 THE COURT: Thank you. Any motions by the in
4 connection with the selection of the jury?

5 MS. RINGLER: None from the State, Your Honor.

6 THE COURT: Mr. Routzong, any motions in connection
7 with the selection of the jury?

8 (pause)

9 Mr. Routzong?

10 MR. ROUTZONG: Your Honor, I think juror number --

11 THE COURT: No, sir. Any motions?

12 MR. ROUTZONG: Yes, Your Honor, under Batson.

13 THE COURT: Mrs. Kelley Perkins Brown, any motions?

14 MRS. BROWN: No, Your Honor.

15 THE COURT: All right. Let me see the Solicitor,
16 Mr. Routzong, Mrs. Kelley Perkins Brown here. Everybody
17 sit tight for one second.

18 (Whereupon, a bench conference was held.)

19 THE COURT: Let the record reflect that the motion
20 filed by Mr. Routzong on behalf of his client, the Batson
21 motion, has been withdrawn. Is that correct;
22 Mr. Routzong?

23 MR. ROUTZONG: Yes, Your Honor.

24 THE COURT: We are going to release them in just one
25 second.

1 Can you wait just a second, ma'am? Are you a juror,
2 ma'am?

3 MR. WEEKS: She is a witness.

4 THE COURT: Does she need to step outside a second?

5 FEMALE SPEAKER: I'll wait.

6 THE COURT: Ma'am, you can step right there if you
7 need to step out.

8 All right. Let me have order. All right. Ladies
9 and gentlemen, I am going to let y'all step back with
10 Mr. Whittle just for a second and we'll go ahead and
11 stretch your legs, if you need to use the restroom or
12 whatever. We'll be starting in about 5 to 10 minutes.
13 Thank you.

14 Everybody else remain seated.

15 (Whereupon, the jury exited the courtroom at 3:15.)

16 (Whereupon, a break was taken.)

17 THE COURT: Anything from the state before we bring
18 the jury in?

19 MS. RINGLER: Nothing from the State, Your Honor.

20 THE COURT: Mrs. Kelley Perkins Brown?

21 MRS. BROWN: No, Your Honor.

22 THE COURT: Mr. Michael Routzong?

23 MR. ROUTZONG: Nothing, Your Honor.

24 MRS. BROWN: Your Honor, I have a quick question.

25 When would the court plan to hear the State's motion in

1 limine?

2 THE COURT: We've discussed it in chambers and I
3 think I told them what to do. About the photographs?

4 MR. THURMOND: We had a motion about the photo and a
5 motion in limine to prohibit them from crossing some of
6 our witnesses about what their exposure was.

7 THE COURT: I said on both of them before you do that
8 we'll do a proffer and I'll rule on it.

9 MRS. BROWN: Thank you, Your Honor.

10 THE COURT: Don't mention it in opening statement.

11 (Whereupon, the jury came into open court at
12 approximately 3:33.)

(13 THE COURT: All right. Ladies and gentlemen, the
14 first thing we're going to do is you have to be sworn in
15 again for this particular trial. So, if you would please
16 stand and raise your right hand. The clerk will
17 administer one more oath.

18 (Whereupon, the jury was sworn at 3:34.)

19 THE COURT: All right. Ladies and gentlemen, let me
20 just tell you a little bit about what you can expect. In
21 this case as I told you when we selected you as jurors --
22 Y'all okay? Both of these young men have been indicted
23 for armed robbery and possession of a firearm during the
24 commission of a violent crime or the attempt to commit a
(25 violent crime and I'll remind you, once again, they have

1 both plead not guilty to each of the two indictments as it
2 pertains to each one of them. Once again, the indictment
3 is not evidence in the case. It is simply the charging
4 document by which the case comes into this courtroom.

5 The way the case is tried is that these young men
6 have plead not guilty and a plea of not guilty, obviously,
7 puts the burden of proof on the State of South Carolina to
8 prove the elements of each of the indictments to you
9 beyond a reasonable doubt.

10 Last week we tried civil cases. Last week we had
11 people involved in automobile wrecks, people suing their
12 doctors, suing their lawyers for malpractice, breach of
13 contracts, those sorts of things where you're asking for
14 monetary damages. In those cases the parties come into
15 court on an equal footing and for the plaintiff to prevail
16 he has to prove by what we call the preponderance or
17 greater weight of the evidence his case. He has to tip
18 the scales of justice ever so slightly in order to
19 prevail. That's the burden of proof in a civil case.

20 This is a criminal case. In in case the Defendants
21 are presumed to be innocent until proven guilty beyond a
22 reasonable doubt -- Constitutional safeguards. They come
23 into the courtroom and the scales of justice tip way in
24 their favor and in order for the state to prevail they
25 have to prove their case beyond a reasonable doubt.

1 That's the degree of proof in a criminal case. It is
2 different than a civil case.

3 The state has the burden of proof so they present
4 their case first. Once they've completed all of their
5 evidence the Defendants if they choose to do so have the
6 right to present their own defense. So, that's how the
7 case will proceed. After the Defendants have presented
8 their case, then the State has the right to present any
9 reply or rebuttal testimony. So, the State will go first
10 with their case followed by the Defendants if they choose
11 to put up anything followed by the State if they want to
12 reply. Once we do that then the State and the Defendants
13 will present final arguments. Now, after the final
14 arguments are over then I will instruct or charge you the
15 law and then you'll be in a position to make a decision in
16 the case.

17 You and I have distinct roles to play in the trial of
18 the case. Let me tell you about my role first because
19 it's not nearly as important as your role. My role is
20 two-fold. Number one, I am the Judge of the law in the
21 case -- not Jack Early, but my position makes me the judge
22 of the law in the case. So, you have taken an oath that
23 when you come into the courtroom you have to accept the
24 law as I give it to you. If you come in with some
25 preconceived idea about what the law is or it should be

1 and it doesn't agree with what I tell you, please set that
2 aside and accept the law as I give it to you. I am the
3 judge of the law in the case. I tell you what the law is.

4 I also rule on the admissibility of evidence. The
5 lawyers on both sides have to play or try the case within
6 the rules of evidence, the rules of criminal procedure.
7 Most everything that you hear will be admitted into the
8 trial of the case. Once the evidence is admitted into the
9 trial of the case, then you -- 12 of you collectively
10 acting as one -- you determine what the true facts are.

11 As I told you when we were selecting the jury you
12 will hear different versions of the facts more than
13 likely. It is your job to listen to the evidence and
14 determine which evidence convinces you of its truth.

15 You'll be asked to judge the credibility or
16 believability of the witnesses so use your ordinary common
17 sense on how you deal with your husbands, your wives,
18 children, friends, and in dealing with how you tell the
19 truth. Once you determine what the true facts are, then
20 you take those true facts as you find them to be, apply it
21 to the law as I give it to you, and you'll be in a
22 position to render a true and just verdict. So, you are
23 the judges of the facts. I am the judge of the law.
24 Judges of the facts have a much more difficult task than
25 my task.

1 Throughout the trial we will from time to time take
2 breaks. We'll probably try to go until about 5 o'clock
3 this afternoon. Is that okay with everybody? Everytime
4 we take a break I will tell you please do not start
5 deliberating. Do not start talking about the case. Don't
6 discuss the case until all of the evidence is in. You've
7 taken an oath to do so. So, please don't discuss or
8 deliberate anything about the case until all the evidence
9 is in. You can go back there and talk about anything you
10 want -- how bad South Carolina beat Georgia -- I am not
11 going to let you live that down. You can talk about
12 anything, but don't start deliberating the case.

13 I will ask you when we take a break or perhaps over
14 the evening when we come back in the morning to select a
15 foreperson for the jury between the 12 of you. The
16 foreperson is simply a person who acts as a spokesman for
17 the jury. You head up the deliberations. You bring to my
18 attention any problems you may have.

19 I try to run an efficient courtroom. I try to run
20 things on time, start on time, keep the lawyers moving. I
21 know your time is valuable as well as everyone else's, but
22 I am not trying to run an endurance race so if at any time
23 during the trial of the case you become uncomfortable,
24 your back hurts, you need to go to the bathroom, you need
25 to stand up, you need to stretch, you're tired of

1 listening to me, whatever, please raise your hand. Don't
2 get uncomfortable. I want to make sure your needs are
3 met..

4 Tomorrow we'll probably try to be efficient again and
5 I'll probably order your lunch in so we can eat lunch here
6 and take a minimal lunch break so we can try to get
7 everything done by tomorrow. We'll just see how it goes.

8 In just a few minutes the state will make an opening
9 statement -- the solicitor's office followed by the
10 defendants, each one of them. Please bear in mind that
11 the opening statements is not evidence in the case. It is
12 simply what they contend the issues will be, what the
13 facts will be. They'll give you sort of a roadmap as to
14 what I they're going to attempt to prove or to prove.
15 Likewise, the Defendant will give you some ideas about
16 what their case is about, what their defenses are, that
17 sort of thing, but bear in mind that the only facts that
18 you can find come from this witness stand. So, please
19 listen carefully so you'll be in a position to render a
20 true and just verdict at the conclusion.

21 Any objections to my opening remarks by the state?

22 MS. RINGLER: None from the State, Your Honor.

23 THE COURT: By the Defendant, Mrs. Kelley Perkins
24 Brown?

25 MRS. BROWN: No, Your Honor.

1 THE COURT: Mr. Routzong?

2 MR. ROUTZONG: Nothing, Your Honor.

3 THE COURT: Let the record please reflect that when I
4 refer to the Defendant Kelley Perkins Brown, both
5 Defendants have the same last name and it is just easier
6 for everybody to keep that in mind.

7 Mrs. Ringler or Mr. Thurmond, which one?

8 Mrs. Ringler?

9 OPENING STATEMENT

10 MS. RINGLER: It is June 25, 2009 and three men run
11 into the Security Federal in Graniteville armed with guns,
12 wearing masks. They shoved guns in the faces of the
13 teller, demand money, and make off with \$4,900. Those
14 three men are Artrell Hickson, Javier Hickson, and David
15 Kearse. You are here today for the trials of Artrell
16 Hickson and Javier Hickson sitting over there. David
17 Kearse will have his day in court, but not today. All
18 three have been charged with armed robbery, but David
19 Kearse is going to testify during this trial and he is
20 going to tell you about what happened on June 25, 2009.

21 The robbery happened around noon. The three men run
22 in. David Kearse covers the door. Artrell Hickson covers
23 the two offices, and Javier Hickson goes up to the
24 counter. He demands money and the teller gives him money
25 from her top drawer. Then Artrell Hickson turns from the

1 offices and goes up to the other teller. He demands money
2 from her as well and she also gives him money. The three
3 leave and it's all over in a matter of moments.

4 Now, all of this has been captured on the bank
5 security video and you'll see that here today. Once
6 outside the three men realize that their get-away car is
7 not there so they split up. David Kearse runs and is
8 found by law enforcement hiding under a shed near a nearby
9 church and house. With him he still has his silver gun
10 and he has \$290 in \$5 bills with him.

11 Now, in addition to the names of Artrell Hickson,
12 Javier Hickson, and David Kearse, you're going to hear
13 some other names as well. The names Jelani Edwards,
14 Phillip Paul, and Randolph Wilson. Those three men were
15 involved in another robbery that occurred after this one
16 and Jelani Edwards was killed. Phillip Paul and Randolph
17 Wilson are both currently incarcerated, but Randolph
18 Wilson was there for some of the planning of this case.
19 So, you'll hear from him. He is going to tell you what he
20 witnessed.

21 Now, there is no physical evidence in this case
22 linking the Defendants with the crime. The Defendants saw
23 to that. They wore masks and gloves -- gloves so they
24 wouldn't leave any fingerprints and masks and layers of
25 clothing so that they wouldn't be identifiable from the

1 security video. So, instead, you're going to hear from
2 the people who were there -- the people who were there
3 during the planning meetings, the people that were there
4 when the group met up at Kalmia Apartments near the bank
5 just before committing the robbery, and you're going to
6 hear from David Kearse, and he is going to be able to tell
7 us the most about what happened because he took part in
8 it.

9 Now, the individuals -- the Hicksons have been
10 charged with arm robbery and possession of a firearm
11 during the commission of a violent crime. Armed robbery
12 is when a person commits a robbery, a taking from another,
13 while armed with a deadly weapon, and possession of a
14 firearm during a violent crime -- the law categorizes
15 armed robbery as a violent crime.

16 So, the State is confident that after you watch the
17 security video, hear the testimony from all the witnesses,
18 and review all of the photographs that you will do what
19 truth dictates and justice demands and find them guilty of
20 armed robbery and possession of a firearm during a violent
21 crime.

22 THE COURT: Mrs. Kelley Perkins Brown?

23 MRS. BROWN: Thank you, Your Honor. May it please
24 the court.

25 OPENING STATEMENT

1 MRS. BROWN: It occurred to me on Saturday night that
2 a trial is a lot like a football game. I'm not talking
3 about the Gamecocks against Furman. I'm talking about
4 sitting there watching Clemson play Auburn and everything
5 was going great in the first half of that game until right
6 at the end of the first half and then the momentum changed
7 and everything changed and that second half was a whole
8 lot different than the first half of that ballgame.
9 Clemson went from being up 17 to nothing to it being tied
10 at 17 to them tying again and ended up losing in overtime.

11 The reason that it occurred to me that a trial is a
12 whole lot like that football game is that the game doesn't
13 end at half-time. The state's case is like the first half
14 of that football game. If I had gone to bed at half-time
15 I would have missed everything that came after. That's
16 why every time you leave this room the Judge is going to
17 give you those instructions not to talk about the case --
18 not with each other, not with your husband, not with your
19 wife, not with your kids, not with your best friend, not
20 with your preacher, not with anybody because when you
21 start talking about it you start making up your mind and
22 if you start making up your mind before you've heard
23 everything, you may as well have gone to bed at half-time
24 thinking that Clemson had everything well in hand because
25 that's what a trial is about.

1 It's about the state presenting their case. It's
2 about the defense questioning and presenting a case, but
3 they don't have to. The reason why the defense doesn't
4 have to do anything -- I didn't have to get up out of that
5 chair and come talk to you. Mr. Routzong doesn't have to
6 do that because it's up to the state to prove to you
7 beyond a reasonable doubt that Artrell Hickson had
8 anything to do with that robbery at the Security Federal.

9 Was there a bank robbery? Yes. Was it a horrific
10 experience for these ladies who are going to have to
11 testify? Yes, it was. And for one of the individuals
12 involved, you're going to hear from him. One of the
13 things that's going to be your job to decide as you hear
14 from David Kearse and you hear from these other witnesses,
15 who has something to gain?

16 At the end of this case the judge will tell you a
17 whole bunch of stuff. That's called being charged on the
18 law. Basically, the judge is going to give you the rules.
19 The law that you have to look at to apply the facts as it
20 comes out here to decide whether or not the State has
21 proved beyond a reasonable doubt that Artrell Hickson was
22 one of the three men who went into that bank.

23 He is going to talk about a whole lot of things, but
24 one of the things he is going to talk about is credibility
25 of the witnesses, the believability of the witnesses. The

1 fact that you -- each and every one of you has a job to do
2 and that's to determine whether or not you believe what a
3 witness has said. You can believe some of what they said
4 but not everything. You can choose to believe everything
5 or nothing or bits and pieces and it's up to each and
6 every one of you individually to make that determination
7 because as you do that you will decide whether or not the
8 state has given you enough evidence to convince you beyond
9 a reasonable doubt that Artrell Hickson was one of those
10 three men.

11 One of my favorite images is of a court at one time
12 stated that that burden of proof, that presumption of
13 innocence is like a robe of righteousness that's been
14 placed around the shoulders of Artrell Hickson and it's
15 there right now and it's there all through this trial.
16 It's there while the Judge is talking to you and it stays
17 there until each and every one of you individually decide
18 that the state has presented you enough evidence to take
19 it off, and only at that point if you get to that point
20 does it come off.

21 We ask you to wait, to be patient, to use that common
22 sense, and, most of all, don't go to bed at half-time.

23 THE COURT: Mr. Routzong?

24 MR. ROUTZONG: May it please the court, Your Honor.

25 OPENING STATEMENT

1 MR. ROUTZONG: I will take a rare opportunity here to
2 agree with the State on something. I will agree that on
3 June 25, 2009 Security Bank in Graniteville got robbed.
4 and I will agree with her on two other things. She used
5 two words: Truth and justice. Those are kind of loaded
6 words actually if you studied a little bit of philosophy.

7 Truth means or one definition of truth is that your
8 belief corresponds to reality. Definitions of justice --
9 I know at least three of them -- treating equal things
10 equally. That means looking at who is offering the
11 testimony and why they might be doing that.
12 Discriminating between good and evil or what's right and
13 wrong, choosing what to believe, choosing what is
14 believable. That's a second definition of justice.

15 Now, the third definition of justice is giving every
16 person their due and that will be what arises out of your
17 verdict. If you do that, ladies and gentlemen, you will
18 -- if you do all of those things, those prerequisites to
19 see that the belief corresponds to reality and those other
20 things that justice involves, then you will, in fact, be
21 giving Javier Hickson his due by finding him not guilty.
22 Thank you.

23 THE COURT: You may call your first witness.

24 MR. THURMOND: Judge, the State calls Ms. Tonya Key.

25 TONYA KEY, after being duly sworn, testified as

1 follows:

2 THE CLERK: Please have a seat in the witness box and
3 state your full name for the court spelling your last.

4 THE WITNESS: My name is Tonya Key; K-E-Y.

5 DIRECT EXAMINATION

6 BY MR. THURMOND:

7 Q Good afternoon, Ms. Key.

8 A Hello.

9 Q Where are you employed?

10 A Security Federal Bank in Graniteville.

11 Q What is the address there?

12 A 50 Canal Street, Suite one.

13 Q Is that in Aiken County?

14 A Yes, sir.

15 Q And how long have you been there?

16 A I have been there three years.

17 Q And how long have you been in the banking business or
18 worked for Security Federal Corporation?

19 A Eighteen years.

20 Q What is your current position there at the bank in
21 Graniteville?

22 A I am a Branch Manager.

23 Q Were you present on June 25 of 2009?

24 A Yes.

25 Q Ma'am, will you please tell the jury what you

1 observed around noon that day?

2 A At noon around 12 o'clock noon was a bank robbery.

3 Q And about what time would you usually take your
4 lunch?

5 A I usually take my lunch about 12, 12:15. At this
6 point something just asked me to stay a little longer, go
7 about 12:30, and I went back to my office to go to my
8 computer and do some work and at that point I heard a lot
9 of noise coming from the lobby and I was about to go get
10 up and see what was going on and as I was getting up out
11 of my seat I -- someone -- well, one of the guys
12 approached my office and pointed a gun at me.

(13 Q You were in your office when the robbery began?

14 A Yes, sir.

15 Q What observations, if any, did you make about the
16 person that you saw come by your office? What did he look
17 like?

18 A It was a guy, a black male about 5'4 with dark
19 clothing on. He had his face covered. I couldn't see who
20 it was.

21 Q 5'4 . That's a pretty precise height. Was this
22 person short?

23 A Basically about my height, yes.

24 Q And what did you notice about his face and about his
(25 clothing?

1 A I just noticed that it was dark clothing with -- with
2 a dark piece of rag around his face. I couldn't see him.

3 Q How many people did you see at this time from the
4 vantage point of your office?

5 A At that point I only saw one person.

6 Q What did this person do to you?

7 A He asked me to get out of the office and open the
8 vault with a gun pointed at me.

9 Q The gun was pointed at you?

10 A Yes, sir, it was.

11 Q Did you open the vault?

12 A No, sir, I did not. I couldn't move. I was frozen.
13 I couldn't move.

14 Q What happened next?

15 A I heard a lot of commotion. They finally left.

16 Q And about how many seconds or moments were they in
17 the bank?

18 A Maybe 30 seconds to a minute or two. It wasn't very
19 long.

20 Q Very were there any customers in the bank at this
21 time?

22 A No, sir, there wasn't.

23 Q What did you do next?

24 A We immediately locked the door. We ran and locked
25 the door and we called -- There was an alarm that we

1 pushed and the police came.

2 Q Did you activate an alarm?

3 A I did after they left.

4 Q Did anybody else in the bank activate an alarm?

5 A Yes, sir, they did.

6 Q And locked the door?

7 A Yes.

8 Q And that's pursuant to bank procedures?

9 A Yes.

10 Q About how many moments or minutes after the robbery
11 did law enforcement arrive?

12 A It wasn't too long. It was a matter of minutes.

13 Q Have you ever had a gun pointed in your face before?

14 A Never.

15 Q Were you in fear for your life?

16 A Yes.

17 Q Did you give a statement to law enforcement after
18 they arrived on the 25th?

19 A Yes, sir, I did.

20 Q Shortly after 12 pm?

21 A Yes, sir.

22 Q And specifically did you give the height description
23 on June 25 of 2009 --

24 MRS. BROWN: Objection, Your Honor.

25 Q -- to a member of the Aiken County Sheriff's Office?

1 THE COURT: Hold on. What is the objection?

2 MRS. BROWN: It's already been asked and answered.

3 THE COURT: Overruled.

4 Q Did you give a specific description of the height to
5 a member of the Aiken County Sheriff's Office?

6 A Yes, I did.

7 Q What height did you give to them?

8 A I said approximately 5'4, black male.

9 Q Does the bank have video surveillance equipment?

10 A Yes, sir, we do.

11 Q Was it working that day?

12 A Yes, it was.

13 Q Let me show you a couple of exhibits and what's been
14 marked for ID as State's 1, 2, 3, 4, 5, and 12. I'll get
15 you to flip through those and ask if you can identify
16 them.

17 A Yes.

18 Q What are they?

19 A These are the outline of the bank.

20 Q State's --

21 A I'm sorry?

22 Q State's No. 1?

23 A State's No. 1.

24 Q Go ahead. I'm sorry to interrupt you.

25 A State's no. 2, this is the lobby of the entrance of

1 our bank. State's No. 3, this is the front door where the
2 customer sits in the lobby. State's No. 4, this is a
3 picture of the two offices as well as the teller line.
4 State's No. 5, this is a picture of the teller window, and
5 State's No. 12, this is where three guys was in the office
6 in the branch robbing us.

7 Q All right. State's No. 1, 2, 3, 4, 5, and 12, do
8 those exhibits truly and accurately depict what they
9 purport to show?

10 A Yes.

11 MR. THURMOND: Judge, we'd offer those into evidence
12 at this time.

13 THE COURT: Any objection. Mrs. Kelley Perkins Brown?

14 MRS. BROWN: No, Your Honor.

15 THE COURT: Mr. Routzong?

16 MR. ROUTZONG: No, Your Honor.

17 THE COURT: Without objection.

18 (Whereupon, State's Exhibit Nos. 1 - 5, 12 were
19 admitted into evidence.)

20 MR. THURMOND: Your Honor, if I could ask her to step
21 down and we are going to put up the big screen here and
22 publish those photographs to the jury.

23 THE COURT: You may.

24 Q I am going to show you State's No. 1. If you can
25 orient us, please. Show this jury where your office was.

1 A My office is here.

2 Q This is a schematic of the entrance of the bank; is
3 that correct?

4 A That's correct.

5 Q And then who was at the teller positions?

6 A Gabrielle Hastings was at this teller window. Amanda
7 Wood was here in the second one. There was no teller
8 here. The third teller was at lunch.

9 Q So what are those teller positions called as far as
10 how they are numbered?

11 A This is number one, two and three.

12 Q Whose office was this? Let me get you to step aside
13 so these folks can see. Whose office was this?

14 A This is Daphne Carroll.

15 Q Thank you. State's No. 2, please. Okay. What are
16 we looking at here?

17 A This is the front entrance of the branch.

18 Q If somebody came in the front door of the bank where
19 would that be?

20 A Right here.

21 Q Okay. What is this?

22 A This is the tell -- this is the rope for the teller
23 window.

24 Q Okay. Go to State's No. 3. I will show you State's
25 No. 3. Orient us here. What is the layout there?

1 A This is also -- this is the same door entrance in the
2 front. This is where the customers sit in the lobby, and
3 this is the rope for the teller window.

4 Q Okay. Let me show you what's in evidence as State's
5 No. 4.

6 A This is my office here, Daphne Carroll's office here.
7 This is the teller window. This is teller station three.
8 This was empty and this is where Amanda was at that time.

9 Q Let me show you what's in evidence as State's
10 Exhibit No. 5. Tell us about that one, please.

11 A This is the teller window. There's the ropes. This
12 is teller station three, two, and one. Gabrielle was
13 here. Amanda Wood was here, and, like I said, there was
14 no teller there.

15 Q Let me show you what's in evidence as State's Exhibit
16 No. 12. What are we looking at here, State's No. 12?

17 A This is where the robbery happened. This is my
18 office here. This is Daphne Carroll's office here. This
19 is teller station two where Amanda was at and Gabrielle is
20 on the other end.

21 Q Where is the man that you described in your written
22 statement that you gave on June 25 of 2009 as being 5'4?
23 Where is he standing?

24 A Right here. This guy here.

25 Q Thank you, ma'am. You can have a seat.

1 A Up here?

2 Q Yes, ma'am. Ms. Key, that's all the questions I am
3 going to have for you. Answer any questions that
4 Mr. Routzong or Mrs. Brown may have for you.

5 THE COURT: Mrs. Brown?

6 MRS. BROWN: I have no questions for this witness.

7 THE COURT: Mr. Routzong?

8 CROSS-EXAMINATION

9 BY MR. ROUTZONG:

10 Q Afternoon, Ms. Key.

11 A Hello.

12 Q You have never been presented with a photographic
13 line-up so that you could identify anyone?

14 A No, I haven't.

15 Q In fact, you've never identified anyone as being one
16 of the perpetrators?

17 A Right.

18 Q Thank you very much.

19 A You're welcome.

20 REDIRECT EXAMINATION

21 BY MR. THURMOND:

22 Q Did you see the robber's face?

23 A No, sir, I didn't.

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

25 MS. RINGLER: The State calls Amanda Wood.

1 AMANDA WOOD, after being duly sworn, testified
2 as follows:

3 THE CLERK: Please have a seat in the witness box.
4 State your full name for the court and spell your last.

5 THE WITNESS: My name is Amanda Wood; W-O-O-D.

6 DIRECT EXAMINATION

7 BY MS. RINGLER:

8 Q Thank you, Ms. Wood. Where do you currently work?

9 A I am a homemaker now.

10 Q Were you working on June 25, 2009?

11 A Yes, I was.

12 Q Where were you working?

13 A I was in the middle teller station on teller station
14 number two at Security Federal in Graniteville.

15 Q And what does a teller do?

16 A We handle all of the customer transactions such as
17 deposits and savings and any kind of payments they may
18 have for loans.

19 Q And do you remember the robbery that occurred on
20 June 25, 2009?

21 A Yes, I do.

22 Q Were you working that day?

23 A Yes, I was.

24 Q And what happened -- excuse me. About what time did
25 the robbery occur?

1 A It was somewhere around noon.

2 THE COURT: Ma'am, speak up for me, please.

3 THE WITNESS: Somewhere around noon.

4 Q And did you see them first, hear them at first?

5 A We saw them come in the door.

6 Q What happened when they came into the door?

7 A They came -- one come straight to my window and asked
8 for money. The other ones went over to the offices next
9 to us.

10 Q How many men were there?

11 A There were three.

12 Q So, one came to you, one went to the office, and
13 where was the third gentleman?

14 A He was standing at the door.

15 Q What happened when the one man came up to your
16 window?

17 A He told me, Give me your money. So I moved forward
18 and handed him the money out of my top drawer.

19 Q Can you describe how he came up to the window?

20 A He came up and shoved my envelopes onto the floor in
21 front of me and told me to, Give me your money. So that's
22 what I did and I stood back afterwards.

23 Q Did he have a gun?

24 A Yes, he did.

25 Q What was he doing with the gun?

1 A He was pointing it at me.

2 Q And he demanded money. Did you give him any money?

3 A Yes.

4 Q You mentioned the individual by the offices. What
5 did he do?

6 A He was standing there pointing guns at the two ladies
7 that I worked with telling them to come out of the office
8 and open the vault, and afterwards he walked over to me
9 and asked for money and I told him I didn't have
10 anymore -- that I gave it already. Then he went to the
11 next teller and asked her.

12 Q I'm sorry this is difficult, but the money that you
13 gave him, what money did you give him?

14 A It was the money out of my top drawer.

15 Q And why is that significant?

16 A Because that's where we have the smallest amount and
17 it's not strapped.

18 Q What are dye packs?

19 A They have dye in them in the middle of the money
20 where it sets off an alarm and explodes when they walk out
21 the door.

22 Q Did you use any dye packs at your bank?

23 A No, we don't.

24 Q What do you remember -- you said there were two men:
25 The first man that came up to your window and then the

1 second man. Please describe the first man. What do you
2 remember about him?

3 A Both -- he was fairly short, probably about my
4 height. He was wearing all black.

5 Q How tall are you? I'm sorry.

6 A I'm 29.

7 Q I'm sorry. How tall?

8 A I'm sorry. 5'4 or 5'3 1/2.

9 Q He was about your height? What else do you remember?

10 A He had all dark clothing on and he had on a bandanna
11 around his face.

12 Q And then the second man that came up to you, what do
13 you remember about his appearance?

14 A It was the same. He had dark clothing on. He was a
15 black male. Also had a bandanna around his face.

16 Q And do you remember his height as well?

17 A He was a little bit shorter than the first one,
18 probably maybe 5'4, 5'3, I guess. They were both fairly
19 short.

20 Q Okay. I am handing you what's been previously marked
21 as State's Exhibit no. 22. Do you recognize it?

22 A Yes, I do.

23 Q What is it?

24 A The footage from our bank from the robbery.

25 Q The security video?

1 A Yes.

2 Q Have you viewed the video?

3 A Yes, I have.

4 Q Does it truly and accurately depict the robbery that
5 occurred on June 25, 2009?

6 A Yes, it does.

7 MS. RINGLER: Your Honor, at this time the state
8 move's State Exhibit 22 into evidence.

9 THE COURT: Any objection?

10 MRS. BROWN: No, Your Honor.

11 MR. ROUTZONG: None, Your Honor.

12 THE COURT: No. 22, without objection.

13 (Whereupon, State's Exhibit No. 22 was admitted into
14 evidence.)

15 MS. RINGLER: At this time, Your Honor, the state
16 would like to publish the video to the jury.

17 THE COURT: You may.

18 MS. RINGLER: There were four cameras so we'll just
19 watch one at the time. This is the first one.

20 Your Honor, if the witness may step down so that she
21 can kind of talk us through it.

22 THE COURT: She may.

23 MS. RINGLER: If you want to stand to the side there
24 that might be easier.

25 (Whereupon, the video is started.)

1 Q Where is this camera positioned?

2 A I believe that's the first teller station.

3 THE COURT: Speak up please, ma'am.

4 THE WITNESS: Station one.

5 Q Is that your --

6 A No, it's not.

7 MS. RINGLER: Actually, Your Honor, we're have having
8 a little technical difficulty at this time.

9 THE COURT: You can call her back.

10 MS. RINGLER: We'll call her back. I apologize. Your
11 Honor.

12 (Whereupon, the video is stopped.)

13 THE COURT: Come on back up here, ma'am. Just have a
14 seat.

15 MS. RINGLER: Thank you. We'll have no further
16 questions at the time. The State would reserve the right
17 to recall her once we get our technical difficulties
18 worked out.

19 THE COURT: Thank you. Any cross, Mrs. Brown?

20 MRS. BROWN: No, Your Honor.

21 THE COURT: Mr. Routzong?

22 MR. ROUTZONG: No, Your Honor.

23 THE COURT: All right. You may step down. Next
24 witness.

25 MS. RINGLER: Thank you, Your Honor. The State next

1 calls Gabrielle Hastings.

2 GABRIELLE HASTINGS, after being duly sworn,
3 testified as follows:

4 THE CLERK: Please have a seat in the witness box.
5 State your full name for the court and spell your last.

6 THE WITNESS: Gabrielle Hastings; H-A-S-T-I-N-G-S.

7 DIRECT EXAMINATION

8 BY MS. RINGLER:

9 Q Thank you, Ms. Hastings. Where do you currently
10 work?

11 A I still work at Security Federal.

12 Q What which branch are you working at now?

13 A Currently I am working at the Security Federal Bank
14 on Whiskey Road.

15 Q Which branch were you working at in June of 2005 -- I
16 mean, June of 2009?

17 A At the Graniteville branch.

18 Q Do you remember the robbery that occurred on June 25,
19 2009?

20 A I do.

21 Q Were you working at that time?

22 A I was working, yes.

23 Q What were you doing there at that time?

24 A I was in -- I was a teller at the first station --
25 the first teller window at the Graniteville branch.

1 Q And we've seen some photos of the bank at this point.
2 Which window is yours?

3 A It would have been the one closest towards the wall.
4 If you come into the main entrance I would be the first
5 one straight ahead on the right.

6 Q So your window faces the front door?

7 A Yes, ma'am.

8 Q And, Ms. Woods -- which window is hers?

9 A She was right in the middle next to me to my right.

10 Q Okay. And what did you see around noon on June 25,
11 2009?

12 A I was actually -- I was at my window clearing my
13 station from some coin that I had taken in from the last
14 customer when I looked up and I saw three men -- three
15 figures kind of hunched back or bent over coming into the
16 branch and I saw them having guns in their hands and I
17 stepped away from my station because I realized what was
18 going to happen and I pressed my alarm right under my
19 table and I said, Oh my, and then they were here. I mean
20 they were in the branch at that time.

21 Q Okay. So you pressed the alarm. Do you remember
22 what, if anything, they said when they came into in the
23 bank?

24 A They were demanding money, pointing guns at us -- at
25 me and Amanda. They spread out when they came in, and we

1 were -- just like Amanda stated already, too, I opened my
2 top drawer where I keep all the unstrapped money and I
3 gave some money to them -- or to the one that was in my
4 window.

5 Q So, just to clarify, the one that came up to your
6 window, where was he before then?

7 A To be honest, I can't tell you that. I was -- I know
8 that there were three people coming in and they spread out
9 when they came in.

10 Q Okay.

11 A One went to the two offices. I do remember that.
12 And the other one was -- stayed at the door and the second
13 one came along and walked up and down the teller line for
14 a while and demanded money from us.

15 Q And the man that came up to you, did he -- he
16 demanded money. Did you give him any?

17 A I did.

18 Q Which money did you give him?

19 A I remember giving him some \$5 bills and some \$1
20 bills, I think, and maybe a few 20's.

21 Q Where did you take the money from?

22 A The top drawer.

23 MS. RINGLER: Your Honor, I think we're ready to
24 publish the video at this time. I think we can do so
25 through this witness.

1 Your Honor, the state would ask the witness to please
2 step down.

3 THE COURT: You can step down.

4 (Whereupon, the video is started.)

5 Q So this is your teller right there. Your teller
6 window?

7 A Yes.

8 MS. RINGLER: Your Honor, I apologize. It keeps
9 skipping and I am not really sure what's going on. We'll
10 work on that and try again. If you can please have a
11 seat. Up there. I'm sorry..

12 (Whereupon, the video is stopped.)

13 MS. RINGLER: Please answer any questions that
14 defense counsel might have.

15 THE COURT: Any questions?

16 MRS. BROWN: No, Your Honor.

17 THE COURT: Mr. Routzong?

18 MR. ROUTZONG: No, sir.

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

20 MS. RINGLER: And, Your Honor, the State calls Deputy
21 Roberts.

22 EARL ROBERTS, after being duly sworn, testified
23 as follows:

24 THE CLERK: Please have a seat in the witness box.
25 State your full name for the court and spell your last.

1 THE WITNESS: Sargeant Earl Roberts: R-O-B-E-R-T-S.

2 DIRECT EXAMINATION

3 BY MS. RINGLER:

4 Q Thank you, Deputy Roberts. Where where do you
5 currently work?

6 A Aiken County Sheriff's Office.

7 Q And what is your position there?

8 A I am with the Juvenile Investigation Division, School
9 Resource Officer at Midland Valley High School.

10 Q Are you a deputy?

11 A I am a sargeant.

12 Q Sargeant?

13 A Yes.

14 Q What are your responsibilities as Sargeant?

15 A Responsibilities as a Sargeant through the Juvenile
16 Investigation Division, School Resource Officer is to
17 handle anything that happens inside of the school at
18 Midland Valley High School or Area Three School in Aiken
19 County.

20 Q Do you also work on patrol?

21 A I do work the roads during the summertime.

22 Q And were you working the roads in June of 2009?

23 A I was.

24 Q Were you working on June 25, 2009?

25 A I was.

1 Q Did you respond to the Security Federal in
2 Graniteville on that day?

3 A I did.

4 Q What did you see when you first arrived?

5 A When I first arrived at the scene along with Sergeant
6 Loftin we observed the females in the bank in hysterics.
7 We asked them, you know, what had happened. They
8 described the three men that were inside the bank. They
9 told us that they had run out the front of the bank and
10 around the side towards the back into the wooded area.

11 At that time I told Sergeant Loftin to get back in
12 his car, start a roving perimeter, and we cordoned off the
13 scene with tape.

14 Q So you talked about setting up a a perimeter. What
15 did you do with regard to the bank?

16 A We made sure all of the doors were locked. We made
17 sure all of the females inside were safe and secure. We
18 cordoned off the crime scene that no one else could enter
19 and -- to interfere with the situation.

20 Q Did you obtain a description of the suspects?

21 A We did.

22 Q And how many individuals were you looking for?

23 A We were looking for three.

24 Q And where -- I'm showing you what's been previously
25 marked as State's Exhibit 14. Do you recognize it?

1 A I do.

2 Q What is it?

3 A It is a map of Graniteville, South Carolina, Aiken
4 County.

5 Q And does it truly and accurately depict the area in
6 Graniteville around the bank?

7 A It does.

8 MS. RINGLER: Your Honor, at this time the State
9 would move to admit State's Exhibit 14.

10 THE COURT: Any objection?

11 MRS. BROWN: No, Your Honor.

12 MR. ROUTZONG: None, Your Honor.

13 (Whereupon, State's Exhibit No. 14 was admitted into
14 evidence.)

15 MS. RINGLER: And, Your Honor, the State would like
16 to publish it at that time.

17 THE COURT: You may.

18 Q Sargeant Roberts, would you mind coming down and
19 walking us through a little bit the area?

20 A I do not.

21 Q Where is the bank on this map?

22 A The bank is located right here on Canal Street.

23 Q Okay. And what are the major roads in this area?

24 A Major road is Canal Street. You also have Ascauga
25 Lake Road. You have Gregg Highway, Trolley Line Road and

1 then you also have Aiken Road here. That goes out to
2 Highway One.

3 Q Can you circle the bank on the map --

4 A I sure can.

5 Q -- with a red pen?

6 A Right there.

7 Q And is that -- what shopping center is that in?

8 A Masonic Shopping Center in Graniteville.

9 Q And then you talked about setting up a perimeter.
10 What is involved in that?

11 A In setting a perimeter we broadcast the description
12 of the individuals that we're looking for. We also set up
13 areas that we need to put people in order to -- on main
14 roads and off side streets either stationary or roving --
15 roving meaning moving back and forth keeping each other in
16 sight and looking and listening for anything out of the
17 ordinary or looking for things that, you know, match the
18 description of the individuals we're looking for around
19 the area. It can be small or broad depending on what kind
20 of situation we have.

21 Q In addition to securing the scene and setting up a
22 perimeter, were there any other steps that you took when
23 you arrived to help locate the suspects?

24 A I just assisted Investigator Savell with looking at
25 the video, making sure that we had the right descriptions

1 with what the females gave us at the bank and what the
2 video shows.

3 Q Was there a bloodhound tracking team involved?

4 A Yes, we called -- the on-duty road supervisor called
5 out the bloodhound tracking.

6 Q And how many teams were there?

7 A I want to say they called out at least two teams.

8 Q And do you know where they started to track?

9 A They started tracking from the bank.

10 Q Do you know where around the bank they started to
11 track?

12 A They started tracking around the side of the bank
13 here and towards the wooded area in the back.

14 Q Are you familiar with the Kalmia Apartments?

15 A I am.

16 Q Can you -- I know you said your penmanship is not
17 great, but can you maybe put a star by the bank?

18 A I can. Being left-handed, it's kind of...

19 Q And can you also circle Kalmia Apartments on there?

20 A Sure.

21 Q And then maybe write Kalmia next to that.

22 Nothing further from the witness. Please have a seat
23 and answer any questions that defense counsel might have.

24 THE COURT: Cross?

25 THE COURT: Anything, Mrs. Brown?

1 MRS. BROWN: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MRS. BROWN:

4 Q Sergeant, what other stores are in that shopping
5 center?

6 A You have a hardware store. You have a Chinese
7 restaurant. You have the judge's office at the top, and
8 I'm sure there is another one in there somewhere.

9 Q Did you check with any of those stores to see if any
10 of them had outside video surveillance?

11 A I did not.

12 MRS. BROWN: No questions, Your Honor.

13 THE COURT: Mr. Routzong?

14 CROSS-EXAMINATION

15 BY MR. ROUTZONG:

16 Q Do you have a copy of your incident report with you?

17 A I do not, no, sir. I was just the responding
18 officer. Everything was handed over to the investigating
19 officer.

20 Q Did you make an incident report or sign one?

21 A I believe I did.

22 Q Did not?

23 A I believe I did. I don't know -- I mean, I did an
24 incident report.

25 Q You took a descriptions at the scene?

1 A What were written down, I believe, were -- yes. I
2 did, actually. If they were written in the incident
3 report, I haven't seen it. So, I can't remember a year
4 ago.

5 MR. ROUTZONG: For ID purposes only, Your Honor.

6 THE COURT: Well, mark it for ID. Mr. Routzong, mark
7 it for ID.

8 (Whereupon, Defendant's (Routzong) Exhibit No. 1 was
9 marked for identification only.)

10 Q I guess this would be the descriptions for the height
11 and weight descriptions for subject one.

12 THE COURT: Mr. Routzong, is that a question or are
13 you just talking?

14 Q And subject two --

15 THE COURT: Sir, is that a question?

16 THE COURT: Mr. Routzong --

17 MR. ROUTZONG: Yes, sir.

18 THE COURT: -- ask it in a question.

19 Q Subject one and subject two -- could you give me the
20 height and weight descriptions?

21 A Subject one was written down at 5'10, 160. Subject
22 two, 6 foot, 200.

23 Q Sergeant Roberts, you've been to the Criminal Justice
24 Academy; right?

25 A I believe I have.

1 Q And when you're at the academy they teach you things
2 like being accurate?

3 A Yes, sir.

4 Q And they teach you not to make up things?

5 A Right.

6 Q So, you wouldn't have put something in your report
7 unless somebody told you that?

8 A Right.

9 MR. ROUTZONG: I don't have any other questions, Your
10 Honor.

11 THE COURT: Redirect, if any.

12 MS. RINGLER: Nothing from the State, Your Honor.

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

14 MS. RINGLER: Demetrick Drumming.

15 DEMETRICK DRUMMING, after being duly sworn,
16 testified as follows:

17 THE CLERK: Please have a seat in the witness box.
18 State your full name for the court and spell your last.

19 THE WITNESS: My name is Demetrick Ruben Drumming.

20 DIRECT EXAMINATION

21 BY MS. RINGLER:

22 Q Thank you. Officer Drumming, where do you work?

23 A Aiken Public Safety.

24 Q How long have you been in law enforcement?

25 A Four and a half years.

1 Q Are you on the bloodhound tracking team?

2 A Yes.

3 Q How long have you been doing that?

4 A Approximately two and a half years.

5 Q And what agencies are -- take part in the tracking
6 team?

7 A There is Aiken Public Safety, Aiken County Sheriff's
8 Office, and North Augusta Public Safety.

9 Q And what sort of training did you do to be part of
10 the team?

11 A There is a class we have to attend before we become
12 members of the team as well as we train once a week as a
13 team.

14 Q And what type of bloodhounds do you use?

15 A We use last-scent bloodhounds which, basically, go
16 off the last human scent in that area.

17 Q What do you do as a handler to assist the
18 bloodhounds?

19 A While the bloodhound is tracking we also hand-track
20 and look for possible shoe impressions or shoe prints.

21 Q Do you work in teams?

22 A Yes.

23 Q How many individuals generally work in a team?

24 A Usually, it's three members per team.

25 Q How many bloodhounds?

- 1 A One bloodhound.
- 2 Q Do you ever work multiple teams?
- 3 A Yes.
- 4 Q Why is that?
- 5 A Usually, if there is multiple suspects or if the
6 first team is getting tired or need assistance they'll
7 call out a second team.
- 8 Q And did you respond to a bank robbery that occurred
9 at Security Federal in Graniteville on June 25, 2009?
- 10 A Yes.
- 11 Q How many teams were working that day?
- 12 A We were the second team called out.
- 13 Q And do you remember -- excuse me. Does the
14 temperature affect the bloodhound at all?
- 15 A Yes. When it's hotter days we're not able to push
16 the bloodhounds as hard because they get tired and it's
17 easily to over-run them.
- 18 Q Do you remember the temperature that day?
- 19 A It was in the low 90's. Low to mid 90's.
- 20 Q Where did you take the hounds that afternoon?
- 21 A I actually took them to St. James Church.
- 22 Q And what brought you there?
- 23 A There was a sighting -- a witness that called in and
24 said they saw a subject in the wooded area.
- 25 Q Can you describe the area of the church?

1 A There's the actual church and then next door to it is
2 separated by a driveway is a residence with two appeared
3 to be garages or storage buildings in the backyard for
4 that residence.

5 Q What did you do when you responded to the church and
6 that residence -- that area there?

7 A When we responded to the area two of the other
8 members -- team members -- went to search the wooded area.
9 I went and searched in back of the residence up underneath
10 the two storage buildings.

11 Q What, if anything, did you see back around those
12 storage buildings?

13 A I located a suspect hiding up underneath the storage
14 building.

15 Q What caught your attention?

16 A I looked at the bottom between the two storage
17 buildings. It appeared to be a black shirt or something
18 and when I looked down I actually saw his hands and his
19 eyes.

20 Q What happened after you found the individual hiding
21 under the shed?

22 A We basically got him out -- brought him from up
23 underneath the shed and placed him in custody.

24 Q Did anything happen after that?

25 A We located some evidence up underneath the shed.

1 Q What items were under the shed?

2 A There was money underneath the shed as well as silver
3 handgun.

4 Q Did you conduct a track after that?

5 A Well, we continued to track further just to see if we
6 could locate any other suspects in the area.

7 Q Okay. And were you able to locate anyone else?

8 A No.

9 Q Just using this map that's already been previously
10 admitted as State's Exhibit 14 can you just show us where
11 the church was on this map?

12 THE COURT: You can step down. Officer, stand back
13 so all of my jurors can see it.

14 Q Where was the church on this map? Or if you just
15 remember the general area of where it was.

16 A The church, I believe, was in this general area.

17 Q Okay. You can please have a seat. Do you remember
18 approximately how far from the bank to the church?

19 A I don't remember the exact distance.

20 Q Okay. Thank you. Please answer any questions that
21 defense counsel may have.

22 CROSS-EXAMINATION

23 BY MRS. BROWN:

24 Q I may be asking a dumb or obvious question. How do
25 the dogs know what they're looking for?

1 A Basically, what we do is the responding officers
2 secure the area and as trackers we come to that area and
3 try to locate signs of just whether somebody has been
4 through there. If we locate a shoe impression or
5 something like that we will strike the dog on that area in
6 that area.

7 Q So, this wasn't a situation where you struck -- and
8 by striking your dog, what do you mean by that?

9 A Basically, place the dog on the track and give him a
10 command to start tracking.

11 Q Okay. Now, so, you didn't strike the dogs from the
12 bank in this case; is that correct?

13 A Correct.

14 Q Okay. When did you arrive on scene?

15 A I arrived on scene at approximately 1:30.

16 Q A.m. or p.m.?

17 A P.m. Sorry.

18 Q If we can refer to State's 14, if you don't mind
19 stepping down. Can you show me where it was marked
20 approximately, the church?

21 A I believe the church is in this general area.

22 Q Okay. Now, where -- where approximately did you
23 start or strike?

24 A We started in the church parking lot.

25 Q Okay. And how was it that you were called to that

1 location?

2 A There was a member at the church who saw a suspect in
3 the woods and thought it was suspicious. So, they called
4 us.

5 Q And where were you prior to striking your dogs there
6 at the church?

7 A We met. I'm not. It wasn't at the incident
8 location. It was another location where we met up with
9 the actual deputy on the perimeter and they gave us --
10 they told us to respond to the church -- that we had a
11 possible sighting of one of the suspects.

12 Q And did you see anything else around the church area
13 that you -- for which you struck your dog, or you just
14 struck him in the area in general?

15 A Well, we struck the dog, but I just went to secure
16 the storage buildings -- basically went off what the
17 witness stated where she saw the suspect last.

18 Q And approximately how far did you work your dogs out
19 from the church?

20 A From the church we just -- before or after we located
21 the suspect?

22 Q After.

23 A After? We continued to run the track until we got
24 another possible sighting where the suspect was stated --
25 somebody called and said he ran through a residence.

1 Q So, approximately -- so, you said the church is in
2 this area?

3 A Yes.

4 Q Can you show me on the map approximately how far you
5 worked your dog prior to getting another call? If you
6 can.

7 A I mean, it's tough to remember exactly how far we
8 went.

9 Q Can you estimate -- You can have a seat. Can you
10 estimate distance?

11 A Yes, ma'am.

12 Q Or time?

13 A Yes.

14 Q Okay. And approximately what distance did you strike
15 your dog from the church?

16 A Where we struck him from --

17 Q Or did you work your -- excuse me -- did you work
18 your dog from the church?

19 A I would say approximately a quarter mile.

20 Q And how long did y'all work that?

21 A Approximately 30 minutes.

22 Q And that was with -- not finding anything?

23 A Well, we struck the dog and when I found a suspect we
24 came back to that -- the other trackers came back to that
25 location and then once we apprehended him we continued the

1 search.

2 Q Right. I was talking about after locating the
3 suspect that you've testified about --

4 A Yes.

5 Q -- did you find anything else in that area?

6 A No, ma'am.

7 Q And then you left because y'all were called to
8 another location?

9 A Yes.

10 Q Okay.

11 I have nothing further, Your Honor.

12 THE COURT: Mr. Routzong?

13 CROSS-EXAMINATION

14 BY MR. ROUTZONG:

15 Q The dog didn't find this person under the shed; isn't
16 that correct?

17 A No, sir.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MS. RINGLER:

21 Q Now, when you found the individual what was -- you
22 were hand-striking or -- what was the term for that?
23 Hand-tracking?

24 A Hand-tracking, yes.

25 Q When you do any kind of tracking with the bloodhound

1 what is that called?

2 A It's just tracking.

3 Q Okay. And when you're tracking do you always find an
4 individual?

5 A No.

6 Q What are some of the factors that play into when
7 you're able to have a successful track? What affects a
8 track?

9 A The weather, the amount of time it's been between the
10 crime and the actual get to the scene and tracking.
11 Subjects use cell phones and call up rides and have
12 somebody pick them up.

13 MS. RINGLER: Nothing further from the this witness,
14 Your Honor.

15 THE COURT: Thank you. You may step down.

16 MS. RINGLER: Your Honor, that's all that we have for
17 today.

18 THE COURT: All right. Ladies and gentlemen, we're
19 going to break for the evening. Once again I remind you
20 please don't discuss the case or deliberate or talk with
21 anyone about the case. I've got a 9:30 hearing in the
22 morning that will take us about 15 or 20 minutes. So,
23 let's start at 10. I don't want y'all sitting back there
24 waiting on me while I am doing business.

25 I normally buy or have breakfast provided. The

1 choices are sausage biscuits, fruit, or pastries, i.e.,
2 what is it Ms. Barbara, muffins?

3 THE BAILIFF: Yes.

4 THE COURT: Fattening stuff. What is your pleasure?
5 Sir?

6 THE JUROR: Fruit.

7 THE COURT: What is your pleasure?

8 THE COURT: I figured a Georgia person would.

9 THE JUROR: Do we have to agree with the group?

10 THE COURT: No, ma'am.

11 THE JUROR: Fruit.

12 THE COURT: Fruit?

13 THE JUROR: Well, you've been picking on him all the
14 time so I'm --

15 THE COURT: I am not picking on him. They normally
16 beat us.

17 THE JUROR: I think we should have fruit and
18 pastries.

19 THE COURT: That's fine.

20 THE BAILIFF: Fruit and pastries.

21 THE COURT: Yes. Mr. Bill can handle that. All
22 right. I'll see y'all -- we'll start right at 10 o'clock.
23 So, if you want to partake of the fruit and pastries, be
24 here before that. We'll have some hot coffee back there
25 tomorrow and I'll get you some lunch tomorrow.

1 Everybody else please remain seated.

2 I will excuse y'all. Ms. Barbara will show you how
3 to get in and out in the morning and where to come. Thank
4 you. Everybody got rides, everybody okay?

5 THE JUROR: Yes, sir.

6 THE COURT: You know I am picking on you.

7 THE JUROR: Oh, yea. I'll wear the appropriate
8 colors tomorrow.

9 THE COURT: What's that? Arkansas?

10 THE JUROR: No, that's Alabama.

11 THE COURT: I know what it is.

12 (Whereupon, the jury exited the courtroom at 4:52.)

13 THE COURT: Anything for the record before we break
14 for the evening?

15 MS. RINGLER: Nothing from the State, Your Honor.

16 THE COURT: Mrs. Kelley P. Brown?

17 MRS. BROWN: No, Your Honor.

18 THE COURT: Mr. Routzong?

19 MR. ROUTZONG: No, sir.

20 THE COURT: All right. The Defendants are in
21 custody. Let me see the lawyers in chambers, please.

22 (Whereupon, the proceedings were concluded for the
23 day and were reconvened on September 21, 2010 as
24 follows:)

25 THE COURT: Mr. Solicitor, as I understand it from a

1 pretrial -- strike that -- from an in-chambers discussion
2 there is a photograph taken at the booking of one of the
3 Defendants. Identify him, please.

4 MR. THURMOND: Mr. Artrell Hickson, Judge.

5 THE COURT: Mr. Artrell Hickson -- that the State
6 intends to introduce. Please --

7 MR. THURMOND: Yes, sir.

8 THE COURT: -- I don't know that we need to do a
9 proffer. I think you can show the picture and tell me
10 what's going on.

11 MR. THURMOND: Yes, sir. Judge, we propose to
12 introduce what's been marked for ID as State's No. 20 as a
13 booking photograph of Mr. Artrell Hickson. There are a
14 couple of reasons for that.

15 THE COURT: We've shown that photograph in chambers.

16 MR. THURMOND: We've shown it in chambers.

17 THE COURT: Show it to defense counsel and make sure
18 it is the same one.

19 MR. THURMOND: Judge, the record will reflect that
20 his hair is longer than it is now and he's wearing a light
21 blue or light green shirt. It would not identify as
22 prison orange or black and white stripes and the relevance
23 of this picture or the reasons the state seeks to
24 introduce it are some surveillance videos which are marked
25 for ID as State's No. 16 and State's No. 17 and I have

1 shown these to defense counsel and can pass all of these
2 up to to court.

3 THE COURT: I have seen them in chambers.

4 MR. THURMOND: And Your Honor will note that State's
5 No. 20 which is the photograph of Mr. Artrell Hickson he
6 really has some pronounced eyebrows. He's got a real
7 round area on the top of his nose and those are two pretty
8 key identifiers in State's No. 17 and State's No. 16 --
9 the pronounced eyebrows, the roundness of the nose.

10 Additionally, there appears to be a real fullness
11 around his head. The photograph that was taken of him
12 five days after this incident he has a full head of hair
13 and we think that's relevant as well and goes directly to
14 his identity.

15 Judge, the case we would rely on is State versus
16 Traylor. It is a 2004 South Carolina Supreme Court case
17 and it states that a mugshot -- of course, we wouldn't
18 call it a mugshot. We would call it a photograph or a
19 booking photograph -- of a defendant is reversible error
20 unless the state has a demonstrable need to introduce the
21 photograph and those are the reasons I just stated and
22 then two and three are interesting -- the photograph shown
23 to the jury does not suggest that the defendant has a
24 criminal record and, three, the photograph is not
25 introduced in such a way as to draw attention to its

1 origin or implication.

2 I think the bases behind two and three would be in a
3 pre-arrest identification of a defendant where somebody
4 was able to use a photo line-up and if they were in the
5 black and white stripes or the orange that would then
6 cause a subsequent jury to know that they had previously
7 been arrested thus implicating a Fifth Amendment issue,
8 but, Judge, we think there is a demonstrable need for it.

9 These bank robbers did their best to conceal any
10 evidence that may have been left by virtue of their
11 wearing gloves and masking up, but the eyebrows are
12 pronounced. The top of the nose is pronounced. The
13 poofiness of the area around the head is pronounced and we
14 think that this picture speaks directly to those three
15 issues.

16 We would ask that it be introduced -- it be
17 introduced through Greg Savell, the case agent, the third
18 proposed witness of this morning.

19 THE COURT: Mrs. Kelley Perkins Brown, any objection?

20 MRS. BROWN: Yes, Your Honor. May it please the
21 court. Your Honor, I have had the chance to study state
22 versus Traylor and the State is correct in the three-prong
23 test in order to admit this mugshot into evidence. Your
24 Honor, we would argue that there is no demonstrable need
25 that is shown here. I believe that under the theory the

1 state essentially wants to be able to argue to the jury
2 these similarities in the facial features of Mr. Hickson
3 and the head shapes.

4 Mr. Hickson is here. The jury has ample opportunity
5 to observe him here in the courtroom. If the jury is --
6 can be -- he is sitting right here. The only demonstrable
7 need that the state is attempting to show is for the jury
8 to have this picture in order to be able to look at these,
9 compare these pictures back in the jury room. I think if
10 this were a case where Mr. Hickson were not present for
11 his trial, there was no person here for the State to point
12 at and say, Look at him, I think they may be closer to
13 that showing that -- making that showing of a demonstrable
14 need.

15 Mr. Hickson is present. If the State wishes to
16 invite the jury to look at him so that they can draw their
17 own conclusions in looking at the pictures which have been
18 introduced into evidence or they're seeking -- I am not
19 sure if the pictures of which they're speaking at the
20 moment, they may not have been introduced yet, but I
21 believe the state is seeking to introduce those.

22 THE COURT: Any other argument, ma'am?

23 MRS. BROWN: Yes, Your Honor. If the State -- if the
24 court does see that there is the demonstrable need, then
25 we would argue that the photograph does show jail uniform

1 and it would show as a booking photograph and if the court
2 allows it we would ask that the photograph either be
3 redacted to remove the jail uniform from it or to
4 introduce the picture in black and white so that the color
5 of the shirt does not show.

6 THE COURT: Thank you. Anything else? Mr. Routzong?

7 MR. ROUTZONG: Your Honor, Mr. Hickson is joining
8 with Mrs. Brown's objection. It also seems to me, Your
9 Honor, that the court held we find the demonstrable need
10 to introduce the photo line-up because they had another
11 way of identifying that the person was in the house in
12 Traylor. Well, the same situation applies here, Your
13 Honor. I assume they're going to call one of the
14 co-defendants who is going to say that he was with the
15 defendants in the bank.

16 I don't --- I do not see any need -- any demonstrable
17 need to introduce this photograph. Moreover, Your Honor,
18 even if it's relevant it irretrievably links a photograph
19 with a person on the video. They're going to say, This
20 person is this person, and that's just the opinion of the
21 state. It's -- if it is relevant, Your Honor --

22 THE COURT: Isn't that a factual issue for the jury
23 to determine?

24 MR. ROUTZONG: Well, it's prejudicial nature would
25 outweigh it's probative value.

1 THE COURT: Thank you. Anything in reply?

2 MR. THURMOND: Well, Judge. I'll wait until you rule.

3 THE COURT: Thank you. Yes, ma'am?

4 MRS. BROWN: Your Honor, if I can just point out one
5 final thing. In the conclusion of this case --

6 THE COURT: Which case?

7 MRS. BROWN: Of the Traylor case which the State has
8 passed up to Your Honor. In the conclusion the Supreme
9 Court fervently cautions trial court judges against
10 utilization of mugshot photos unless absolutely necessary.
11 We would argue that the State has not shown that this is
12 absolutely necessary in this case.

(13 THE COURT: I find that the State has met the
14 three-prong test of Traylor. They have shown the
15 demonstrable need to introduce the photograph. It is not
16 suggestive that he has a criminal record and that the
17 photograph is relatively benign and I caution the State
18 when introducing it to not draw attention to its origin or
19 implication. Thank you. Anything else?

20 MS. RINGLER: Your Honor, we just had one other
21 matter. We did have the technical difficulty yesterday
22 with the video. We have a working copy now. We've tested
23 it. It is working. I didn't know if we could possibly
24 now substitute that for the disk that was entered in
(25 yesterday, if that would be proper to proceed in that

1 matter.

2 THE COURT: Any objection by either defense counsel?

3 Just substitution of the disk. It is the same thing.

4 It's just a different disk that works.

5 Mrs. Kelley Perkins Brown?

6 MRS. BROWN: No, Your Honor.

7 THE COURT: Mr. Routzong?

8 MR. ROUTZONG: I don't have any.

9 THE COURT: All right. Just substitute it.

10 MR. ROUTZONG: Thank you, Your Honor.

11 THE COURT: All you do is just switch them out. All
12 right. Bring the jury in, please.

13 MR. THURMOND: Judge, just a point --

14 THE COURT: Hold on.

15 MR. THURMOND: -- of clarification on the
16 introduction of this photograph. Through Investigator
17 Savell can I ask him the date that the Defendants were
18 arrested?

19 THE COURT: Certainly.

20 MR. THURMOND: Can I ask him the date the photograph
21 was taken?

22 THE COURT: Certainly.

23 MR. THURMOND: Thank you.

24 THE COURT: I mean, the date that was taken certainly
25 doesn't show that he has a criminal record or draw

1 implication to its origin in my opinion.

2 Bring the jury in.

3 (Whereupon, the jury came into open court at
4 approximately 10:09.)

5 THE COURT: Good morning. Who was the lucky person
6 that got elected as foreperson? Who?

7 THE COURT: Mr. Whittle, can we have a Bulldog as a
8 foreperson?

9 THE BAILIFF: We'll have to have a recount.

10 THE JUROR: It was unanimous.

11 THE COURT: You sure it wasn't 17 to 6? Thank you
12 for letting me cut up with you. You got your garnet and
13 black colors on today. You're doing well.

14 Sorry about the mix-up in the fruit this morning. I
15 don't know how that happened. Mr. Whittle -- I heard him
16 tell them to bring fruit. Apparently, they just -- we'll
17 get it straightened out.

18 Lunch today -- we can do a couple of things. When
19 you take your first break this morning we'll talk about it
20 and make a decision on that. I will let the county
21 purchase your lunch.

22 We're going to continue on with the testimony.
23 Please pay close attention. If you get uncomfortable,
24 cold, hot, or whatever, raise your hand and I'll make sure
25 that you're taken care of.

1 Next witness, please.

2 MS. RINGLER: Thank you, Your Honor. The State calls
3 Amanda Wood.

4 THE CLERK: Do you want her resworn? She was sworn
5 yesterday.

6 THE COURT: You're still under oath from yesterday.

7 THE WITNESS: Okay.

8 THE COURT: You may have a seat. I think we -- they
9 have the technical difficulties fixed, but please don't go
10 over everything that you did yesterday. Just go over what
11 didn't work so we won't be redundant.

12 AMANDA WOOD, after being previously duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. RINGLER:

16 Q Ms. Wood, just like we tried to do yesterday if you
17 can come down and stand right there and sort of talk us
18 through what's being depicted in the video. Just stand to
19 the side so that the jury can see. Again, if you can just
20 point out the number of cameras that are on this video.

21 A There are five cameras.

22 THE COURT: Ma'am, speak up for me, please.

23 THE WITNESS: Five cameras.

24 Q Which is the camera that shows your window?

25 A Right here where it says teller two.

1 Q Okay.

2 A That's the back of my head.

3 Q So that window is depicting your point of view as it
4 faces the front door?

5 A Correct.

6 Q And then what is the teller where Ms. Hastings was?
7 Which is the camera that depicts her view?

8 A She's here. Teller one.

9 Q And then teller three, that window is open?

10 A Correct. There was no one there.

11 Q And then the camera that's to the far right that
12 appears to be an office?

13 A Correct. That's Daphne Carroll's office. She is our
14 CSR.

15 Q The fifth camera, what is that view of?

16 A That's going to be the lobby area where the customers
17 enter.

18 Q And now we'll just -- we'll play it and all the video
19 will play at the same time, but we'll just pause it and
20 kind of talk about it at that point.

21 (Whereupon, the video is started.)

22 Q Stop it right there. Okay. Back up where you see
23 all three. Okay. And if you can look to the camera
24 that's showing the full lobby area, can you just kind of
25 talk us through what's going on at that point in time?

1 A Yes. The gentleman that's entering my window came up
2 with a gun and demanded money from me. The one wearing
3 the white standing towards the door was watching out as a
4 look-out. He kept going out the door and looking to see
5 if anyone was coming in. The gentleman over by the
6 offices had guns pointed in both offices demanding that
7 the ladies come out and open the vault.

8 Q Okay. And if you'll look to the camera that says
9 teller two, what is going on at that point in time?

10 A That was when he approached my window. He leaned
11 into the window, knocked my envelopes all onto the floor
12 and demanded that I give him my money which I did.

13 Q Okay. There. What's happened at this point?

14 A At this point the other gentleman left my window.
15 The one that was at the offices approached my window and
16 asked for my money and then I told him that I had already
17 given the other man everything that I had.

18 Q So, at that point what's going on there?

19 A At that point he went over to the other teller window
20 to Ms. Hastings and approached her and asked her to give
21 money to him.

22 Q Okay. Thank you. Please have a seat, Ms. Wood, back
23 up there. Thank you. Ms. Wood, I am handing you what's
24 been previously marked as State's 15, 16, 17, 18, and 19.
25 What are they?

1 A They're all pictures of the robbery.

2 Q And do those -- do they truly and accurately depict
3 the still shots of the video and what occurred at the
4 robbery?

5 A Yes, they do.

6 Q Thank you.

7 At this time, Your Honor, the State would move to
8 admit Exhibits 15, 16, 17, 18, and 19.

9 THE COURT: Mrs. Kelley Perkins Brown, any
10 objections?

11 MRS. BROWN: No objection, Your Honor.

12 THE COURT: Mr. Routzong?

13 MR. ROUTZONG: No, sir.

14 THE COURT: Thank you.

15 (Whereupon, State's Exhibit Nos. 15 - 19 were
16 admitted into evidence.)

17 MS. RINGLER: And, Your Honor, we would just like to
18 publish them at this time.

19 THE COURT: You may.

20 Q Ms. Wood if you can come on down again just to kind
21 of talk us through these. We're looking at what's been
22 admitted as State's Exhibit 15. Can you talk a little bit
23 about when during the robbery this was and what's going on
24 or what's going on in the image?

25 A I believe that was when they first entered the branch

1 and the man who was look-out, he had the white cover on
2 his face, he kind of started towards the teller line, but
3 then he backed up and went to the door.

4 Q And then the other individual next to him?

5 A I believe from the way it is showing that that is the
6 gentleman that entered my window.

7 Q Okay. And now State's Exhibit 16. What is being
8 depicted in this photo?

9 A That was when he first approached my teller station.

10 Q Okay. And then was this the first gentleman or the
11 second gentleman?

12 A I believe that was the second gentleman.

13 Q Okay. And State's Exhibit 17, what is being depicted
14 in this photo?

15 A I believe that was after I told him I didn't have any
16 more money left and he went on to the next teller and was
17 fixing to move over.

18 Q And then State's Exhibit 18?

19 A That was the first gentleman that approached me and
20 asked me to give him my money.

21 Q And does he have something with him in that photo?

22 A There was like a bookbag of some type.

23 Q Okay. And then -- Thank you so much. If you'll
24 have a seat and answer any questions that defense counsel
25 might have.

1 THE COURT: All right. Mrs. Brown, any cross
2 concerning the photographs and the video?

3 MRS. BROWN: Just briefly for clarification, Your
4 Honor.

5 CROSS-EXAMINATION

6 BY MRS. BROWN:

7 Q I am showing you what was introduced as State's
8 Exhibit No. 17 which is what you were just shown on the
9 large screen. Is that the first or the second or the
10 third individual who came in?

11 A I don't remember exactly what order they came in. I
12 know he was the second one that approached me at my teller
13 station.

14 Q So he was the second one who approached you at your
15 teller station?

16 A Correct.

17 Q So, that was a different individual from who you
18 described as being the one who initially approached your
19 teller station?

20 A Correct.

21 Q Okay. Thank you. I have no further questions, Your
22 Honor.

23 THE COURT: Mr. Routzong, anything on the photos and
24 the video?

25 MR. ROUTZONG: No, sir.

1 THE COURT: Thank you, ma'am. You may step down.

2 Next witness, please.

3 MR. THURMOND: The State calls Clay Adams.

4 MARTIN CLAY ADAMS, after being duly sworn,
5 testified as follows:

6 THE CLERK: Have a seat in the witness box. State
7 your full name for the court spelling your last.

8 THE WITNESS: Martin Clay Adams; A-D-A-M-S.

9 DIRECT EXAMINATION

10 BY MR. THURMOND:

11 Q You go by Lieutenant Adams; is that correct?

12 A Yes.

13 Q And where are you employed?

14 A I'm employed at the Aiken County Sheriff's Office.

15 Q How long have you been there?

16 A For approximately 10 years.

17 Q And what are your current duties?

18 A I am Lieutenant of Forensic Investigations. I
19 oversee the crime scene response units.

20 Q That would be your day-to-day activities?

21 A Yes, sir.

22 Q And what kind of training or certifications do you
23 hold in the area of fingerprints?

24 A I have additional studies at the South Carolina
25 Criminal Justice Academy in latent print examination,

1 latent print processing, crime scene processing, detective
2 level one. I have also served a three-year apprenticeship
3 under a certified latent print examiner.

4 Q How many times have you testified in court?

5 A Twelve times.

6 Q Have you ever failed to testify -- failed to qualify
7 to testify?

8 A No, sir.

9 MR. THURMOND: Your Honor, at this time we would
10 offer Lieutenant Clay Adams as an expert in the area of
11 latent print identification.

12 THE COURT: Mrs. Kelley Perkins Brown, any
13 examination?

14 MRS. BROWN: No, Your Honor.

15 THE COURT: Mr. Routzong?

16 MR. ROUTZONG: No.

17 THE COURT: All right. Mr. Foreman, ladies and
18 gentlemen, this witness will now since he's been qualified
19 as an expert in fingerprints he'll be able to give opinion
20 testimony. Normally, our rules of evidence do not allow
21 people to give opinion testimony unless they have been
22 qualified as an expert. So, please listen to his opinions
23 and then, obviously, you can give them whatever weight, if
24 any, you decide to give it. I'll explain that to you at
25 the conclusion of the case.

1 Q Let me draw your attention to June 25, 2009. Do you
2 recall that date?

3 A Yes, sir.

4 Q Can you tell us what you did that day?

5 A On that day I was dispatched to the Masonic Shopping
6 Center for an armed robbery at the Security Federal bank.

7 Q Is that in Graniteville?

8 A Yes, sir.

9 Q And what did you do upon your arrival?

10 A Upon my arrival I met with the investigators that
11 were already on the scene.

12 Q What, if anything, did you do there?

13 A Typically, we would approach the scene to process.
14 However, I was informed that the persons that robbed the
15 bank were wearing gloves and wearing masks.

16 Q And so what would you be looking for in processing
17 the scene?

18 A Typically, fingerprints.

19 Q And, obviously, if somebody is wearing gloves do you
20 expect to find fingerprints?

21 A No, sir.

22 Q All right. So, what did you do next?

23 A At that point in time we had three armed individuals.
24 So, I redeployed to the perimeter.

25 Q And specifically where on the perimeter?

1 A Specifically, over towards the Laurel Drive area.

2 Q How many dog teams were utilized that day?

3 A In total, four dog teams.

4 Q And were you asked to transport any of the
5 bloodhounds that day?

6 A Yes, sir, I was.

7 Q And so then where did you go?

8 A I went to a church located on Laurel Drive which is
9 off of Trolley Line.

10 Q And what did you do next?

11 A At that point in time I met up with two of the
12 bloodhound tracking team members. We started to
13 hand-track the area at which time myself and one of the
14 bloodhound tracking team members located a person
15 underneath a storage building. We drew our weapons and
16 ordered the person out from underneath the storage
17 building and placed him into custody.

18 Q Okay. Do you recall the other member of that
19 bloodhound tracking team?

20 A Drummond, I believe. He is a PSO with Aiken Public
21 Safety.

22 Q What did you do next?

23 A After we had him in custody I relocated back to the
24 Masonic Shopping Center to retrieve my vehicle and came
25 back to the area where we found him and photographed the

1 scene around where he was discovered.

2 Q You went back and got your forensic vehicle and
3 relocated back to the site of the arrest; is that correct?

4 A Yes, sir.

5 Q What did you do once you relocated?

6 A Photographed up underneath the metal storage building
7 that he was underneath and that's where we located several
8 items.

9 Q And that individual was under arrest and in custody
10 at that point?

11 A Yes, he was.

12 Q Do you recall who that was?

13 A David Kearse.

14 THE COURT: Spell the last name.

15 THE WITNESS: I believe it is K-E-A-R-S-E.

16 THE COURT: Kearse.

17 Q And your duties in the forensics department is to
18 take some photographs?

19 A Yes, it is.

20 Q Let me show you what's been marked for ID as State's
21 6, 7, 8, 9, 10, and 11. Take a look at those and I ask
22 you if you can identify them, please?

23 A Yes, I can.

24 MR. THURMOND: Judge, we'd offer 6, 7, 8, 9, 10, 11
25 into evidence. Are these --

1 THE COURT: Hold on. Show them to them. Any
2 objections, Mrs. Kelley P. Brown?

3 MRS. BROWN: Just for clarification, Your Honor, it
4 is 6, 7, 8 --

5 THE COURT: Please stand when you --

6 MRS. BROWN: 6, 7, 8, 9, 10, and 11?

7 MR. THURMOND: That's correct, Your Honor.

8 MRS. BROWN: No objection, Your Honor.

9 THE COURT: Mr. Routzong?

10 MR. ROUTZONG: No, sir.

11 THE COURT: Without objection.

12 MR. THURMOND: Judge, we'd offer these into evidence
13 at this time --

14 THE COURT: Without objection.

15 MR. THURMOND: -- and request to publish them to the
16 jury on the big screen.

17 THE COURT: You may.

18 (Whereupon, State's Exhibit Nos. 6 - 11 were admitted
19 into evidence.)

20 Q Can I get you to step down, sir? Let me show you
21 what's been marked in evidence as State's No. 6. What are
22 we looking at here?

23 A State's No. 6 is a picture of a double car garage
24 next to a metal storage building.

25 THE COURT: Stand back this way so to make sure they

1 can see you.

2 THE WITNESS: This -- these two -- this garage and
3 this storage building are located at
4 which is right next door to a church.

5 Q And is this the location where your colleague at the
6 Aiken Department of Public Safety on the bloodhound
7 tracking team observed an individual?

8 A It is.

9 Q Let me show you what's in evidence as State's No. 7,
10 Lieutenant Adams. Tell us what the scene depicts, please.

11 A This is the alley way between the two buildings.
12 This is stick-built building and this is the portable
13 metal building.

14 Q And did you find the individual between there? What
15 is the significance of this?

16 A Mr. Kearse was up underneath this part of the
17 building approximately a foot, 2 feet up under it.

18 Q Let me show you what's in evidence as State's no. 8.

19 A This is just a ground level view looking back up
20 underneath.

21 Q And Mr. Kearse was up underneath here?

22 A Up underneath this area.

23 Q All right. Let me show you what's in evidence as
24 State's No. 9. Now, this would ordinarily look like an
25 uninteresting picture. Is there anything interesting that

1 you see in this picture?

2 A In this picture there is a wad of U.S. currency that
3 was hidden back behind this cinder block, which is holding
4 up the frame of that metal building.

5 Q Let me show you what's in evidence as State's No. 10.

6 A These are the items that we recovered behind that
7 cinder block where Mr. Kearse was. It is identified as a
8 Jennings firearm and US currency in \$5 increments.

9 Q This is a firearm and the currency that was recovered
10 from Mr. Kearse; is that correct?

11 A Yes, sir.

12 Q And then what's -- let me show you what's in evidence
13 as State's No. 11.

14 A This is just a close-up photograph of the Jennings
15 firearm pistol that was recovered.

16 Q Thank you. Have a seat. Let me show you what's been
17 marked for ID as State's No. 13. I ask if you can
18 identify that for me?

19 A Yes, sir, I can identify it.

20 Q What is it?

21 A It is a Jennings firearm, .22 caliber semiautomatic
22 pistol.

23 Q Is that the pistol that you took into your possession
24 on June 25 of 2009?

25 A It is.

1 MR. THURMOND: Your Honor, we'd offer State's 13 into
2 evidence.

3 THE COURT: Any objection, Mrs. Kelley Perkins Brown?

4 MRS. BROWN: No, Your honor.

5 THE COURT: Mr. Routzong?

6 MR. ROUTZONG: No, sir.

7 THE COURT: Thank you.

8 (Whereupon, State's Exhibit No. 13 was admitted into
9 evidence.)

10 Q Specifically, how did you take possession of the
11 money and the gun out there by that shed on 25th? What
12 did you do?

13 A The two items were packaged individually. I put the
14 money into one bag, secured the gun into another one and
15 secured the weapon into a gun box.

16 Q Did you handle the gun?

17 A Yes, I handled the gun to make sure that the weapon
18 was not a loaded weapon.

19 Q And did you handle it in such a way as to not
20 contaminate anything that may be on it?

21 A No, I didn't.

22 Q How about the money?

23 A No, I didn't.

24 Q What did you do with the -- how did you package the
25 money?

1 A The money was put into a paper bag.

2 Q And what next did you do with the gun, with the
3 money?

4 A They were transported back to the office to our
5 forensic laboratory for processing.

6 Q Let me ask you this. What are fingerprints?

7 A A fingerprint is a water -- a mainly water-based
8 residue impression of your finger. On our hands and the
9 soles of our feet we have what's called ridge detail. It
10 is friction ridge. It allows us to actually grasp an
11 item. It can be correlated into a person who wears flats
12 like loafers or something that has a very smooth bottom.
13 You don't get very much traction. However, if you swear a
14 tennis shoe or cleats or shoes that have a real rough
15 bottom, you get traction and you can run. It's the same
16 thing with a fingerprint. Our hands and our feet with
17 those friction ridges that allow us to grasp items.

18 Well, a fingerprint is an oily water residue that is
19 secreted through sweat pores in your fingers, hands and
20 soles that is left when an item is handled or touched.

21 Q Now, on television the police always find
22 fingerprints. Do you always find fingerprints?

23 A No, I do not.

24 Q How do you look for fingerprints?

25 A We use a variety of different methods. There's

1 chemical processes. There's powder processes. There's
2 just looking through the naked eye. A fingerprint is a
3 three dimensional item. It is water. It is actually on
4 top of a nonporous surface. So, by just manipulating the
5 change of light you can see them. The best example I can
6 give you is a door to a convenience store. I mean, you
7 look through that glass as you walk you can see the
8 smudges. You can see -- those are fingerprints.

9 Q Did you perform any procedures in this case to look
10 for fingerprints specifically on item number 13, the
11 handgun?

12 A I did.

13 Q What procedure did you perform?

14 A I used the procedure called cyanoacrylate ester
15 fuming and that is commonly known as super glue. It is
16 where we take super glue and heat it up to where it forms
17 a vapor and that vapor then adheres to the moisture of the
18 fingerprint causing it to turn kind of a shade of white
19 and also to permanently imprint that fingerprint.

20 Q Now, this gun was taken from the person of Mr. David
21 Kearse; is that correct?

22 A It was taken in very close to proximity to where he
23 was discovered.

24 Q So, were you necessarily looking for his fingerprints
25 or somebody else's or any fingerprints?

1 A We were just looking for any fingerprints.

2 Q Did you find any fingerprints?

3 A I did not.

4 Q Now, tell us in your experience are guns generally a
5 suitable for -- a suitable surface for obtaining
6 fingerprints?

7 A Typically not. The make of a weapon, the metals that
8 are used and sometimes even polymers or plastics that are
9 used in some of the weapons are not good surfaces for a
10 fingerprint. A fingerprint typically requires a good
11 smooth surface for us to develop for identification. In
12 this case on these weapons the surface area is not as
13 smooth as what would be needed for development.

14 Q And what are -- in your experience what are some
15 other reasons for not finding fingerprints?

16 A A fingerprint is the most delicate physical evidence
17 at any crime scene. It is water -- about 98 percent
18 water. The rest of it is typically oils, amino acids, and
19 other oils of the human body. A fingerprint being
20 typically 98 percent water is equivalent to taking a drop
21 of water and putting it on a piece of glass such as a
22 condensation from a drink -- how you can put it on a table
23 and when you lift it off there is a water ring. Well, all
24 you have to do is just swipe your hand and the ring is
25 gone or take a piece of cloth or paper towel. So, a

1 fingerprint is very delicate. It is very easily
2 destroyed.

3 In this case you could have environmental conditions
4 such as rain, extreme heat because water evaporates, and
5 just general contact with outside forces such as grass,
6 cloth, wood, any other contact that would cause a wiping
7 of that imprint.

8 Q Now, this gun, item number 13, that was found in
9 close objection proximity to Mr. David Kearse; is that
10 correct?

11 A Yes, it was.

12 Q Did you fingerprint the money?

13 A No, I did not.

14 Q Why not?

15 A Well, fingerprint -- the money was not fingerprinted
16 because it was brought to our attention that the
17 assailants were wearing gloves.

18 Q No reason to look for them; is that correct?

19 A That's correct.

20 Q What are shoe impressions?

21 A A shoe impression is an impression left by the
22 outsole of a shoe. This is, basically, a negative
23 impression. Whereas a fingerprint is a secretion of water
24 that is on an item, a foot print is a reversed imprint
25 negative impression into a substance such as soil, mud, or

1 any other medium that will accept the print.

2 Q Did you look for any shoe impressions in this case?

3 A I did.

4 Q Did you find any?

5 A We found some partials. However, they were not
6 enough detail to render any kind of size or outsole
7 characteristics.

8 Q I am going to get you to step down and help me with
9 this map a little bit, please. Okay. You want to orient
10 us? Where is the Security Federal Bank?

11 A The Security Federal Bank is right here in the
12 Masonic Shopping Center.

13 Q Step a little closer, if you don't mind. Where was
14 Mr. Kearse arrested?

15 A Mr. Kearse was arrested underneath that metal
16 building. You can see a parking lot. This is the rear
17 parking lot to this church. This is and
18 those two metal buildings right there.

19 Q Where was bloodhound tracking team one working that
20 day?

21 A Bloodhound tracking team one went to this direction.

22 Q Okay. Following a track or scent?

23 A Following the scent.

24 Q Where was the bloodhound tracking team two?

25 A We were deployed up here.

1 Q And where is the water tower in this case?

2 A The water tower in this case is located right here
3 off of Mt. Arthur Drive.

4 Q You can have a seat, please. Thank you.

5 Lieutenant Adams, that's all the question I have for you.
6 If you would care to answer any that Mr. Routzong or
7 Mrs. Brown would have for you.

8 THE COURT: Mrs. Kelley P. Brown?

9 MRS. BROWN: Thank you, Your Honor. May it please
10 the court.

11 CROSS-EXAMINATION

12 BY MRS. BROWN:

13 Q Investigator Adams, I apologize. I did not have the
14 best of views just then so if you could step back down so
15 you could help me see those areas in which you were just
16 pointing. Could you please show again the direction --
17 well, first of all, show again where the two buildings
18 were where David Kearse was detained?

19 A The two buildings were located right there right here
20 next to this parking lot.

21 Q Okay. And the direction that tracking team one went?

22 A Tracking team one went off in this direction.

23 Q And tracking team two?

24 A Tracking team two was up here in this direction.

25 Q Okay. And the water tower was where?

1 A Water tower is located right here off of Mt. Arthur
2 Drive.

3 Q Okay. Thank you very much for that. Now,
4 Investigator Adams, you made an assumption about that
5 money, didn't you?

6 A I don't follow.

7 Q Did you make an assumption about that money not
8 having any fingerprints for you to discover?

9 A Yes, I did.

10 Q Based on the fact that these individuals were wearing
11 gloves there in the bank?

12 A Yes.

13 Q What was the time of this robbery at the bank?

14 A I do not know right offhand.

15 Q Do you know approximately?

16 A Approximately 12 o'clock noon.

17 Q And what was the time in which you detained or you
18 were part of the bloodhound tracking team that detained
19 David Kearse?

20 A At, I believe, approximately 2:15.

21 Q So, approximately two hours and 15 minutes had
22 elapsed in that timeframe in between when the bank was
23 robbed and when your team and you recovered this money; is
24 that correct?

25 A That's correct.

1 Q Thank you.

2 I have no further questions, Your Honor.

3 THE COURT: Mr. Routzong?

4 CROSS-EXAMINATION

5 BY MR. ROUTZONG:

6 Q You've gotten fingerprints off of guns before?

7 A I'm sorry?

8 Q You have gotten fingerprints off of guns before?

9 A Latent fingerprints have been developed on weapons
10 before, yes, sir.

11 MR. ROUTZONG: I don't have anything else.

12 THE COURT: Thank you. Anything on redirect?

13 MR. THURMOND: Yes, sir, Judge, just for
14 clarification.

15 REDIRECT EXAMINATION

16 BY MR. THURMOND:

17 Q Lieutenant Adams, if I can get you to step down and
18 circle these locations that we mentioned earlier. If you
19 would draw a circle around the location where Mr. Kearse
20 was taken into custody.

21 A. He was taken into custody underneath those buildings.

22 Q Okay. And if you would draw number one the area
23 where bloodhound tracking team number one was operating.

24 A Approximately in this direction.

25 Q Okay. Where was bloodhound tracking team two

1 operating?

2 A Bloodhound number two was right there.

3 Q And if you would also circle the water tower
4 previously you referenced.

5 A And the water tower is right there.

6 Q Thank you. That's all the questions I have for you.

7 THE COURT: Anything else from this witness?

8 MR. THURMOND: No, sir.

9 THE COURT: Next witness, please.

10 MR. THURMOND: Your Honor the State calls
11 investigator Greg Savell, S-A-V-E-L-L.

12 GREG SAVELL, after being duly sworn, testified
13 as follows:

14 THE CLERK: Have a seat in the witness box. State
15 your full name for the court spelling your last.

16 THE WITNESS: Investigator Greg Savell; S-A-V-E-L-L.

17 DIRECT EXAMINATION

18 BY MR. THURMOND:

19 Q Good morning.

20 A Good morning, sir.

21 Q Are you employed by the Aiken County Sheriff's
22 Office?

23 A Yes, I am.

24 Q And how long have you been there?

25 A Approximately nine years.

1 Q What are your current duties with the Aiken County
2 Sheriff's Office?

3 A I am currently assigned with the CID division which
4 is Criminal Investigative Division on the adult crimes.

5 Q And did you have an opportunity to respond to
6 Security Federal Bank in Graniteville on June 25 of 2009?

7 A Yes, I did.

8 Q Tell us what you did when you got there.

9 A Upon my arrival I first off made sure that the scene
10 was secured. I made sure that everybody inside of the
11 bank was okay. Then I got with the branch manager of the
12 bank, sat down and spoke with her and the rest of the
13 clerks to ascertain description of suspects. Once I
14 gathered all that intel I immediately gave a BOLO out to
15 to the perimeter units on the description of suspects that
16 we're looking for.

17 Q Let me ask you about the BOLO at the moment. As a
18 result of your interviews with those in the bank were you
19 able to determine how many suspect were involved?

20 A Yes. There were three suspects.

21 Q How about a description -- how about a physical
22 description of them and what they were wearing?

23 A Three black male subjects wearing dark clothing,
24 masks, 5'4 on the description.

25 Q What about gloves?

1 A And all wearing gloves, yes.

2 Q And you sent something out called a BOLO. What is a
3 BOLO?

4 A It's Be-On-The-Look-Out for all units. It's a way of
5 us communicating so that we put it out to all of the
6 people on the road so that they would know what we're
7 looking for.

8 Q You say you spoke with each employee of the bank?

9 A Yes, I did.

10 Q The ladies present here?

11 A Yes, sir.

12 Q Specifically speak with Ms. Key?

13 A Mrs. Key.

14 Q Did you ask her to provide a written statement?

15 A Yes, I did.

16 Q Did the information she provided you go into this
17 BOLO -- this Be-On-the-Look-Out?

18 A Yes, I did.

19 Q What information did you send out on the BOLO?

20 A I sent out three armed subjects with carrying
21 handguns, dark clothing, gloves, ski masks or bandannas on
22 the face and the height range was 5'4 is what I was given.
23 5'4.

24 Q 5'4. That came directly from --

25 A Ms. Key.

1 Q -- Ms. Key? What was the demeanor of these ladies in
2 the bank upon your arrival?

3 A Very upset, tears, distraught, just in shock.

4 Q And did you remain there at the bank?

5 A Yes, I did.

6 Q Why did you remain there?

7 A It took quite some time to interview each one
8 individually and also had to stand by for security --
9 their security officer to come by and generate a copy of
10 the surveillance.

11 Q And did you receive a copy of the video of the bank's
12 videotape surveillance at that point?

13 A Yes, sir.

14 Q And this kind of became your case, if you will --

15 A That's correct.

16 Q -- is that correct? And at some point you left the
17 bank; is that correct?

18 A I was notified by Lieutenant Fleury that a suspect
19 had been caught and he was at that point at the St. James
20 Lutheran Church so I responded over to there.

21 Q You then left the Security Federal Bank in
22 Graniteville and went to the St. James Lutheran Church.
23 About how far are those two locations?

24 A About a mile, mile and a half maybe.

25 Q Are you familiar with the Kalmia Apartments?

1 A Yes.

2 Q How far are the Kalmia Apartments from the Security
3 Federal Bank?

4 A Just a couple of blocks.

5 Q A couple of blocks? Close proximity?

6 A Yes, sir, walking distance.

7 Q All right. What did you do next once you got to the
8 St. James Lutheran Church?

9 A I arrived there and David Kearse was the suspect. I
10 put him in my patrol vehicle and transported him to the
11 Aiken County Detention Center for an interview.

12 Q Did you, in fact, interview Mr. Kearse?

13 A Yes, I did.

14 Q Did you read him his rights before you interviewed
15 him?

16 A Yes, sir, I did.

17 Q Specifically, what rights did you read him?

18 A Our agency miranda rights forms that are issued.

19 Q I ask you to read those rights that you read to
20 Mr. Kearse before he told you what happened.

21 A Yes, sir. Would you like for me to read them?

22 Q Yes, sir.

23 A Before I ask you any questions you must understand
24 your rights. You have the right to remain silent.

25 Anything you say can and will be used against you in a

1 court of law. You have the right to talk to an attorney
2 for advice before we ask you any questions and have him or
3 her present during questioning. If you cannot afford an
4 attorney, the court will appoint an attorney to represent
5 you without cost if you wish. If you decide to answer
6 questions now without an attorney present you will still
7 have the right to stop answering questions at any time.
8 You also have the right to stop answering questions at any
9 time until you talk to your attorney.

10 I asked him if he clearly understood those and he
11 initialed each box stating that he did and he signed his
12 name.

13 Q What time did he sign that?

14 A 2:45.

15 Q What time was the bank robbery?

16 A 12:08.

17 Q So less than three hours after the robbery you have
18 Mr. Kearse in custody?

19 A Yes, sir.

20 Q You've read him his miranda rights?

21 A Yes, sir.

22 Q He's agreed to talk to you?

23 A Yes, sir.

24 Q Does he implicate himself in this robbery?

25 A Yes, he did.

1 Q Who else did he implicate?

2 A He implicated Artrell and Javier Hickson.

3 Q Would you point them out for me, please?

4 A Yes, sir.

5 Q Which one is Mr. Artrell Hickson?

6 A Artrell Hickson is on the right and Javier is on the
7 left.

8 Q Mr. Artrell Hickson is seated next to his lawyer
9 Mrs. Brown?

10 A Yes.

11 Q Mr. Javier Hickson is seated next in to his lawyer
12 Mr. Routzong?

13 A Yes, sir.

14 Q What did you do with Mr. Kearse after you talked to
15 him?

16 A Mr. Kearse indicated an area where the three subjects
17 -- where the three of them divided the money up and
18 separated and parted ways and we transported him back to
19 the water tower.

20 Q You had Mr. Kearse at the Sheriff's Office; correct?

21 A Yes, sir.

22 Q And you transported him back to a location where he
23 had advised you that he divided the money with Mr. Artrell
24 Hickson and Mr. Javier Hickson; is that correct?

25 A That's correct.

1 Q Can I get you to step down for a moment, please. Let
2 me show you State's no. 14. If you could point to the
3 location. That's where Mr. Kearse took you at
4 approximately 3 o'clock --

5 A Yes, sir.

6 Q -- on June 25, 2009?

7 A That's correct.

8 Q And that's where he told you that he divided the
9 monies up from with his co-defendants Artrell and Javier
10 Hickson?

11 A That's correct.

12 Q Okay. Have a seat, please, sir. And after
13 Mr. Kearse provided you an oral statement after you read
14 his miranda rights what did you then ask Mr. Kearse to do?

15 A I asked him to provide me with a written statement.

16 Q Would he agree to do that then?

17 A No, sir, he wouldn't.

18 Q Why not?

19 A He was scared.

20 Q What did you do with Mr. Kearse next?

21 A After we went out to the water tower shortly a while
22 after walking around and looking around I transported him
23 to the Aiken County Detention Center.

24 Q Let me show you what's in evidence as State's No. 17.
25 Have you had occasion to go back in the Security Federal

1 Bank in Graniteville?

2 A Yes, I have.

3 Q For what purpose?

4 A To measure the countertops.

5 Q What is the height of the countertops depicted in
6 State's No. 17?

7 A At the highest point of the countertop is 56 inches
8 tall or 4 feet 8 inches. The lowest portion of the
9 countertop is 40 inches or 3 feet 4 inches.

10 MR. THURMOND: Judge, if he can step down, I'd like
11 to show him No. 17 on the big screen, please.

12 Tell the jury the countertop heights that you
13 measured.

14 A At the two different heights. This is the -- this
15 portion right here is the tallest portion of the
16 countertop and this being the lowest portion of the
17 countertop.

18 Q And what was the height of this countertop?

19 A This right here was 40 inches or 3 feet 4 inches.

20 Q And how about the height of this countertop?

21 A 56 inches.

22 Q Now, this particular bank robber's face is mostly
23 covered. Do you have any observations about the
24 characteristics as to his facial features?

25 A The eyebrows are very pronounced.

1 MRS. BROWN: Objection, Your Honor. It calls for
2 speculation on the witness. He's not been qualified as an
3 expert in facial recognition. I think the photograph
4 speaks for itself for the jury.

5 MR. ROUTZONG: I join in that objection, Your Honor.

6 THE COURT: Overruled. He can say what the guy looks
7 like.

8 Q Tell us about the eyebrows.

9 A Pronounced, very bushy eyebrows. Also, the head area
10 here is extremely full. There is no -- it almost gives
11 the impression that it's packed. There is no -- there is
12 no sagging or anything in the hood itself.

13 Q Thank you. Have a seat. Again, let me pass you back
14 up State's No. 17. If I could ask you to write on
15 State's No. 17 the countertop heights of the lower
16 countertop and the taller countertop.

17 A (Witness complies)

18 Q Now, Investigator Savell, the upper countertop --
19 where does it appear to hit this bank robber in his chest?

20 A It's right at his arm pit.

21 Q Let me show you what's in evidence as State's no. 16.
22 Does that appear to be the same individual as in
23 State's No. 15?

24 A Yes, sir.

25 Q Same facial characteristics as in No. 15?

1 MRS. BROWN: Same objection as before, Your Honor.

2 MR. ROUTZONG: Join in that objection.

3 THE COURT: Overruled.

4 THE WITNESS: Yes, sir.

5 Q What kind of handgun do you carry?

6 A I carry a Glock .40 caliber.

7 Q Can you make any observations about the handgun
8 depicted in State's 15 and 16?

9 A That would be a Glock.

10 Q That would be a full sized Glock just like yours?

11 A Full sized Glock, yes, sir.

12 Q Let me ask you about some heights and weights of
13 several individuals. The name Jelani Edwards has been
14 mentioned. What is Mr. Edwards' height and weight?

15 A Jelani was 6'3, 180 pounds.

16 MRS. BROWN: Your Honor, objection to relevance. The
17 only persons who have mentioned this individual was the
18 state in opening. No foundation has been made for
19 relevance.

20 THE COURT: Lay a foundation, Mr. Solicitor.

21 MR. ROUTZONG: Join in that objection, Your Honor.

22 MR. THURMOND: Your Honor, it would be easier to
23 approach.

24 (Whereupon, a bench conference was held.)

25 THE COURT: All right. Based on the side bar I will

1 allow the testimony with the assurance of the Solicitor
2 that he will tie in the relevance through -- Ma'am in the
3 Levi's t-shirt, if you want to stay in here, this is not a
4 social gathering. You can behave or leave. Your choice.

5 FEMALE SPEAKER IN AUDIENCE: You said behave?

6 THE COURT: Yes, ma'am. Behave. Thank you.

7 Move forward.

8 MR. THURMOND: Thank you, Your Honor.

9 Investigator Savell, you stated that Mr. Jelani
10 Edwards' height was 6'3, 180 pounds?

11 THE WITNESS: Yes, sir.

12 Q How about Mr. Phillip Paul?

13 A He was 6-foot, 375 pounds.

14 Q Great big man?

15 A Yes, ma'am.

16 Q How about Mr. Randy Wilson?

17 A 5'8, 190 pounds.

18 Q How about Mr. Devon Jones?

19 A 5'11, 195 pounds.

20 Q Let me ask you a couple of easy ones. How about

21 Mr. Artrell Hickson?

22 A Mr. Hickson is 5'4, 170 pounds.

23 Q How about his brother Mr. Javier Hickson?

24 A 5'6, 160 pounds.

25 Q Now, Mr. Artrell Hickson and Mr. Javier Hickson, they

1 were arrested on June 30, 2009; is that correct?

2 A That's correct.

3 Q Now, have you come into possession of a photograph
4 that was taken of Mr. Artrell Hickson on June 30, 2009?

5 A Yes, sir.

6 Q Let me show you what's been marked for ID as
7 State's No. 20 and ask if you can identify it?

8 A Yes, sir.

9 Q What is it?

10 A That is a photograph of Artrell Hickson.

11 Q Is that photograph a true and accurate depiction of
12 how he appeared on June 30, 2009, five days after the
13 robbery?

14 A Yes, sir, it does.

15 MR. THURMOND: Your Honor, we offer that photograph.

16 THE COURT: You've stated your objection prior.
17 Anything additional to that?

18 MRS. BROWN: Your Honor, I would renew my objection
19 at this time and ask for clarification what number this
20 was identified as.

21 MR. THURMOND: Twenty.

22 MRS. BROWN: Thank you.

23 THE COURT: You're protected on the record. Same
24 ruling. Likewise, Mr. Routzong.

25 MR. ROUTZONG: Thank you.

1 (Whereupon, State's Exhibit No. 20 was admitted into
2 evidence.)

3 Q Investigator Savell, how much money was stolen from
4 the Security Federal Bank?

5 A \$4,902.

6 Q And how much money did you recover from the person of
7 Mr. David Kearse upon his arrest?

8 A \$290 all in \$5 bills.

9 Q All in \$5 bills?

10 A Yes, sir.

11 Q Has any other monies that were taken from the
12 Security Federal Bank that day on June 25 been recovered?

13 A No, sir.

14 Q As a result of your investigation did you attempt to
15 obtain any video surveillance tape from the Walmart on the
16 south side of Aiken?

17 A Yes, sir.

18 Q Excuse me, on the north side of Aiken. Where is that
19 Walmart located?

20 A It's off of Whiskey Road, sir.

21 Q South side?

22 A South side. Yes, I did attempt to get video
23 surveillance.

24 Q Did you determine who worked at the Walmart on
25 Whiskey Road in June of 2009?

1 A Yes, sir. It was Artrell and Javier's sister and --
2 just bear with me for a moment. Ms. Hicks.

3 Q Hickson or Hicks?

4 A Ms. Hickson and --

5 Q Is the name Crystal Harris familiar?

6 A I am corrected. Crystal Harris. That's correct.

7 Q Again, what is Ms. Hickson's relationship with the
8 Defendants Mr. Javier Hickson and Mr. Artrell Hickson?

9 A Sister.

10 Q And what is the relationship of Ms. Harris to
11 Mr. Javier Hickson?

12 A That would be the girlfriend.

13 Q Were you able to -- I believe you testified you were
14 not able to obtain any video surveillance from the
15 Walmart?

16 A I did not get any video surveillance from them. They
17 changed systems and did not save any of the old system or
18 any of the old footage.

19 Q Did you interview any of the witnesses associated
20 with this case?

21 A No, I didn't.

22 Q Now, there were several interviews that were
23 conducted in March of 2010; is that correct?

24 A That's correct.

25 Q Approximately, nine months after the bank robbery?

1 A Yes, sir.

2 Q Did you conduct those interviews?

3 A No, I didn't.

4 Q Who did?

5 A Investigator Chuck Cain.

6 Q Investigator Savell, that's all the questions I have
7 for you. Please answer any anything that the defense has
8 for you.

9 THE COURT: Mrs. Kelley Perkins Brown.

10 CROSS-EXAMINATION

11 BY MRS. BROWN:

12 Q Investigator Savell, this incident happened a little
13 over a year ago; isn't that correct?

14 A That's correct.

15 Q One of the jobs that you have as lead investigator on
16 this case is to prepare a report; correct?

17 A That's correct.

18 Q And that's just one of the functions that you do;
19 right?

20 A Yes, ma'am.

21 Q Because you investigate a lot of cases over the
22 course of a year; right?

23 A Yes, I do.

24 Q And it would be virtually impossible for you to
25 remember the fine details of all of those cases over the

1 course of a year; correct?

2 A That's correct.

3 Q That's why a report is done pretty much at the time
4 after you're doing an investigation or as you do your
5 investigation along the way; correct?

6 A It's done in a timely manner.

7 Q Done in a timely manner so that you can note down the
8 pertinent information at that time; right?

9 A That's correct. We do take notes along the way as
10 we're going.

11 Q Right. And you prepare that report in order to be
12 able to remember what happened; right?

(13 A That's correct.

14 Q And what was told to you; right?

15 A That's correct.

16 Q And why you went to to any particular areas; correct?

17 A (No response.)

18 Q Now, I believe your testimony earlier was that you
19 went with David Kearse and you pointed out an area on the
20 map where it was a location where they divided the money
21 and parted ways; correct?

22 A That's correct.

23 Q Yet in your report you mentioned none of that; isn't
24 that correct?

(25 A I believe I indicated in my report that they also

1 ditched a gun. That's correct.

2 Q In your report you didn't mention anything about him
3 taking you to the location where they divided money and
4 parted ways; isn't that correct?

5 A I -- honestly, I'd have to go back and --

6 Q Would looking at your report refresh your
7 recollection?

8 A Sure. Yes, I don't indicate in there anything about
9 the money.

10 Q You merely mentioned that he told you where a gun was
11 tossed; isn't that right?

12 A That's correct.

13 Q And who went out later to look for that? Was that
14 you or was that other individuals?

15 A When we went and looked for the gun?

16 Q Yes.

17 A I was present.

18 Q And did you find anything?

19 A No.

20 Q Investigator Savell, what's a CAD report?

21 A It's the report of the calls coming in of dispatch,
22 the times.

23 Q A CAD report notates what information is going out on
24 the radios; is that right?

25 A That's correct.

1 Q Information such as this BOLO that went out?

2 A Yes.

3 Q And you testified earlier that in that BOLO was the
4 description of subject being 5'4; is that correct?

5 A That would be correct; yes.

6 Q Yet in this CAD report there is no mention of height
7 of subject in the BOLO, is there?

8 A I haven't seen the CAD report.

9 Q Would reviewing that refresh your recollection of
10 that? Without saying what that is can you identify what
11 I've handed you?

12 A Yes. I don't see it on here, but I don't recall
13 whether or not I put it out on the 400 -- 0400 system.
14 That is the 800 system.

15 Q But you testified earlier that when you put out the
16 BOLO you used the height that was given; is that correct?

17 A Yes, I did.

18 Q And you testified that this CAD report is the report
19 for essentially the radio chatter of the things that are
20 going out; correct?

21 A That's correct.

22 Q And, yet, there is no mention in that CAD report of a
23 height being listed in the BOLO, is there?

24 A No, there's not.

25 Q You also testified earlier that Mr. Kearse gave you a

1 statement; right?

2 A Yes.

3 Q And that he implicated himself?

4 A Yes, he did.

5 Q And that he implicated Mr. Artrell and Mr. Javier
6 Hickson; is that correct?

7 A That's correct.

8 Q At what point in time did he give you those names?

9 A When we were at the Sheriff's Office after I
10 mirandized him.

11 Q During that initial interview?

12 A Yes.

13 Q So, why is it that those names don't go out until
14 17:07?

15 A Probably until I was able to obtain warrants for
16 them.

17 Q Well, don't you put out identifications in the BOLOs
18 as soon as you get information?

19 A Sometimes.

20 Q Isn't it helpful as soon as you have the name of a
21 potential suspect to get that name out to other law
22 enforcement so they can narrow their search for
23 individuals?

24 A Yes. We also utilized our cell phones a lot in the
25 course of a day. We don't -- a lot of our communication

1 with people on the road, we use our cellular telephones
2 quite often.

3 Q Well, a cellular telephone communication is just
4 going out to one individual; correct?

5 A One individual who then passes on a lot of
6 information to a lot of other people out there. We do
7 utilize our cell phones quite often.

8 Q But a radio transmission goes out to everybody at
9 once; isn't that correct?

10 A That's correct.

11 Q And in this case the names of the potential suspects
12 didn't get broad cast out on the radio to all individuals
13 right at the time when Mr. David Kearse gave his initial
14 statement to you, did they?

15 A I'm not -- you said that it was put out at what time?

16 Q Would looking at that refresh your recollection?

17 A Well, I am not familiar with it because I didn't put
18 it out.

19 MR. THURMOND: He is kind of being cross examined on
20 a document created by a dispatcher that he has no control
21 over what they put out or don't put out.

22 THE COURT: I agree.

23 MR. THURMOND: I object on along the lines of
24 relevance at this point.

25 THE COURT: Well, it's relevant, but I don't know --

1 Sir, if you know it -- did you create that document? Do
2 you know what's on there, how it's created? If you can,
3 if not.

4 THE WITNESS: No, sir.

5 THE COURT: Thank you.

6 (Whereupon, Defendant's (Brown) Exhibit No. 1 was
7 marked for identification only.)

8 Q I am giving you what's been marked as Defendant's
9 Exhibit 1 Brown. Do you recognize the individual --
10 without saying what that piece of paper is, do you
11 recognize the individual mentioned in that report?

12 A Yes.

13 Q Or mentioned on that page?

14 A Yes.

15 Q And who is that?

16 A Randy Wilson.

17 Q And what is his height and weight listed on there?

18 A 5'5, 163.

19 Q Thank you.

20 I beg the court's indulgence one moment, Your Honor.
21 Thank you, Your Honor. I have no further questions for
22 this witness at this time.

23 THE COURT: Mr. Routzong?

24 CROSS-EXAMINATION

25 BY MR. ROUTZONG:

1 Q Investigator Savell, when did you go the Walmart to
2 get that surveillance video that you couldn't get?

3 A The exact date?

4 Q This year?

5 A Yes.

6 Q What month?

7 A September.

8 Q This September 2010?

9 A Yes, sir.

10 Q When did you go out to measure those cabinets -- that
11 countertop, rather?

12 A I believe that was in August.

13 Q 2010?

14 A Yes.

15 Q Thank you, Investigator Savell.

16 THE COURT: Redirect, if any.

17 REDIRECT EXAMINATION

18 BY MR. THURMOND:

19 Q Investigator Savell, is a CAD report -- does a CAD
20 report contain every bit of radio traffic?

21 A No, sir.

22 Q Who generates the CAD report?

23 A Dispatch.

24 Q And can you control what dispatch puts in or does not
25 put in a CAD report?

1 A No, sir.

2 Q Just because something is not in a CAD report that
3 wouldn't mean it didn't happen; is that correct?

4 A That's correct.

5 Q Thank you.

6 THE COURT: You may step down.

7 Would y'all rather order and let me get the lunch
8 here or would you rather walk up the street to the Bowery
9 or would you rather eat on your own? What's the easiest?
10 Y'all want to walk up there to the Bowery?

11 THE JUROR: Whatever is convenient.

12 THE COURT: Just call them and tell them. We're
13 going to break about 12:15 or 12:30 because I got two
14 1:30's. We'll go from there. Y'all step in the jury
15 room. Stretch your legs. We'll start back up in five or
16 10 minutes. Don't discuss the case and deliberate,
17 please.

18 (Whereupon, the jury exited the courtroom at 11:24.)

19 THE COURT: All right. Anything from the state
20 before we take a short break?

21 MR. THURMOND: Judge, the next witness is
22 investigator Chuck Cain. He might be a three or four
23 minute witness. That will kind of close out the law
24 enforcement witnesses. If you did want to do one more
25 that would be it for the morning.

1 THE COURT: Well, I want to go until about 12:15. So
2 if you got stuff to keep us busy until then, that would be
3 great.

4 MR. THURMOND: Okay.

5 THE COURT: If you don't --

6 MR. THURMOND: Okay.

7 THE COURT: If you don't, let me know. Anything from
8 Mrs. Kelley Perkins Brown?

9 MRS. BROWN: No, Your Honor.

10 THE COURT: Mr. Routzong?

11 MR. ROUTZONG: No, sir.

12 THE COURT: We'll stand at ease for about 10 minutes.

13 (Whereupon, a break was taken.)

14 THE COURT: Anything for the record before we start
15 back on behalf of the state?

16 MR. THURMOND: No, sir.

17 THE COURT: Mrs. Kelley P. Brown?

18 MRS. BROWN: No, Your Honor.

19 THE COURT: Mr. Routzong?

20 MR. ROUTZONG: No, sir.

21 (Whereupon, the jury came into open court at
22 approximately 11:39.)

23 THE COURT: You may call your next witness.

24 MS. RINGLER: Thank you, Your Honor. The State calls
25 investigator Chuck Cain.

1 CHARLES CAIN, after being duly sworn, testified
2 as follows:

3 THE CLERK: Have a seat in the witness box. State
4 your full name for the court and spell your last.

5 THE WITNESS: Investigator Charles Cain: C-A-I-N.

6 DIRECT EXAMINATION

7 BY MS. RINGLER:

8 Q Thank you. Investigator Cain, where do you work?

9 A I work at the Aiken County Sheriff's Office.

10 Q What do you do there?

11 A I am a criminal investigator.

12 Q And as -- what type of cases do you investigate?

13 A Property crime, violent crime, financial crime, but
14 the largest percentage of my investigation is violent
15 crime.

16 Q And how long have you been an investigator?

17 A I have been an investigator for seven years.

18 Q How long have you been in law enforcement?

19 A Twenty years.

20 Q In March of this year were you investigating another
21 case and then was there a break in this case? Did you
22 receive information on this bank robbery?

23 A Yes, that's correct.

24 Q And how did that come about?

25 A Originally, I had gone to Dry Branch Road in New

1 Ellenton, South Carolina for a drive-by shooting into a
2 residence. While I was there looking into that separate
3 incident the victims of the home mentioned information to
4 me pertaining to this case.

5 Q And based on that information that you obtained what
6 did you do as a result of that?

7 A Resulting from that I spoke -- I provided that
8 information to Investigator Savell and several months
9 later I revisited Investigator Savell and offered my
10 assistance to completely follow up on that small amount of
11 information I received.

12 Q And did you follow up? Did you speak to any
13 individuals as a result of that information?

14 A Yes, I did in March of this year.

15 Q Did you speak to Stanley Galloway?

16 A Yes, I did.

17 Q Sabrina Oakman?

18 A Yes, ma'am.

19 Q Beatrix Wright?

20 A Yes, ma'am.

21 Q Candice Bryant?

22 A Yes, ma'am.

23 Q Did they tell you what they saw?

24 A Yes, ma'am. They --

25 Q Did you get a statement?

1 A -- reflected to me their experiences pertaining to
2 the incident.

3 Q Did you make any threats or promises to them?

4 A No, ma'am.

5 Q Did you also speak to Crystal Harris?

6 A Yes, ma'am.

7 Q And you said March of this year. Do you have the
8 specific dates or range of days that this occurred when
9 you spoke to them?

10 A Yes, ma'am. That was March 11 through March 15 of
11 this year.

12 Q Thank you. Please answer any questions that the
13 defense counsel might have.

14 THE COURT: Mrs. Kelley P. Brown, any questions?

15 MRS. BROWN: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MRS. BROWN:

18 Q This investigation that you were conducting that led
19 you to this -- how did you describe it, break in the
20 case -- that occurred on July 27 of 2009; isn't that
21 correct?

22 A When you said the investigation I was conducting,
23 which one do you mean?

24 Q You just testified that you were investigating an
25 unrelated --

1 A Drive-by shooting.

2 Q -- drive-by shooting --

3 A Yes, ma'am.

4 Q -- on Dry Branch Road?

5 A Yes, ma'am.

6 Q And that was July 27 of 2009; is that correct?

7 A Yes, ma'am.

8 Q And you provided that information to Investigator

9 Savell in July of 2009; is that correct?

10 A July 28, yes, ma'am.

11 Q And you were not asked to do any follow-up at that
12 time?

13 A No, ma'am.

14 Q And you did not offer to do any follow-up -- Let me
15 rephrase. Your testimony was that you then offered to do
16 further follow-up in March of this year?

17 A Yes, ma'am.

18 Q Some how many months after you received that
19 information?

20 A Eight months.

21 Q You also had the occasion to investigate a case
22 involving Randy Wilson; is that correct?

23 A Yes, ma'am.

24 Q And you were there when Randy Wilson plead guilty; is
25 that correct?

1 A Yes, ma'am.

2 Q And at the time he plead his sentence was deferred so
3 that you could do some follow-up --

4 A Yes, ma'am.

5 Q -- for some information that he gave?

6 A Yes, ma'am.

7 Q And later when he was sentenced you informed the
8 court that that information was of no value; is that
9 correct?

10 A I informed the courts that the information that Randy
11 Wilson provided was consistent with what I had already
12 developed. The question was did it further my
13 investigation and my answer to that was no.

14 Q Thank you. I have no further questions.

15 THE COURT: Mr. Routzong?

16 MR. ROUTZONG: Nothing, Your Honor.

17 THE COURT: Redirect, if any?

18 MS. RINGLER: None from the State, Your Honor.

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

20 MR. THURMOND: The State calls Ms. Sabrina Oakman;
21 O-A-K-M-A-M.

22 THE COURT: Ms. Oakman, please.

23 SABRINA OAKMAN, after being duly sworn,
24 testified as follows:

25 THE CLERK: Have a seat in the witness box. State

1 your full name for the court spelling your last.

2 THE WITNESS:

3 DIRECT EXAMINATION

4 BY MR. THURMOND:

5 Q Good morning.

6 A Good morning.

7 Q How are you doing?

8 A Fine.

9 THE COURT: Speak up loud for me.

10 Q Ms.-Oakman, where do you reside?

11 A Right now?

12 Q Yes, ma'am.

13 A In Crosland Park.

14 Q Where did you reside in June of 2009?

15 A On Brayboy Road.

16 Q Specifically, what was that address?

17 A

18 Q Where is Brayboy Road?

19 A Off of 278.

20 Q Off of where?

21 A Highway 278.

22 Q That little square in front of you is a microphone.

23 Speak into that as best you can. Back in June of 2009 who
24 was living there with you?

25 A My kids and David Kearse.

1 THE COURT: Ma'am, you're going to have to speak up
2 louder. Your kids and who?

3 THE WITNESS: David Kearse.

4 Q David Kearse?

5 A Uh-huh.

6 THE COURT: Thank you.

7 Q How long have you and David been together?

8 A Five years.

9 Q You still together?

10 A Uh-huh.

11 Q Was David working at the time?

12 A No, sir.

13 Q June of 2009?

14 A No, sir.

15 Q Ma'am, the day prior to the robbery -- the robbery
16 occurred on June 25 -- June 24 were you with David Kearse
17 that day?

18 A Not the whole day.

19 Q You don't know what he did or where we went on
20 June 24, the day prior to the robbery?

21 A No, sir.

22 Q On the morning of the robbery, June 25, about what
23 time did Mr. David Kearse get up?

24 A Between 8 and 9.

25 Q Did he get up before you?

- 1 A Yes, sir.
- 2 Q What time did you get up?
- 3 A I got up about 10.
- 4 Q Did David leave that morning?
- 5 A Yes, sir.
- 6 Q About what time did David leave?
- 7 A He left about right when I got up.
- 8 Q And what, if anything, did you tell him when he left?
- 9 A Be back before 11.
- 10 Q What vehicle did he take?
- 11 A My Tahoe.
- 12 Q Why did you tell him to be back before 11?
- 13 A Because I had plans to go to Augusta.
- 14 Q Did David tell you where he was going?
- 15 A No, sir.
- 16 Q Was he gone long?
- 17 A No, sir.
- 18 Q About what time did he get back?
- 19 A He got back about 10:15, 10:30.
- 20 Q You told him to be back before 11; is that correct?
- 21 A Uh-huh.
- 22 Q Did he get back before 11?
- 23 A Uh-huh.
- 24 Q Did he then ask you to take him somewhere?
- 25 A Yes, sir.

1 Q And what vehicle did you take when you left?

2 A My Tahoe.

3 Q Your Tahoe. Your black Tahoe?

4 A Uh-huh.

5 Q Where did he ask you to take him?

6 A To Javier and Artrell's house.

7 Q To Javier and Artrell's house. And about how far
8 away did Javier and Artrell live from your residence at
9 539 Brayboy Road?

10 A About five minutes.

11 Q Let me ask you this. How long have you known
12 Mr. Artrell Hickson?

13 A About four years.

14 Q How long have you known his brother Mr. Javier
15 Hickson?

16 A About four years.

17 Q Are you better friends with one of them than the
18 other?

19 A Knew Javier more.

20 Q And how did you know Javier better than Artrell?

21 A Him and David used to DJ together.

22 Q Him and David DJ's together? Him and David were
23 friends?

24 A Uh-huh.

25 Q Could you please point out Mr. Artrell Hickson for

1 me, please?

2 A Right there in the white shirt.

3 Q Sitting next to his lawyer there at the end?

4 A Uh-huh.

5 Q How about Mr. Javier Hickson? Can you point him out
6 for me?

7 A Right here.

8 Q Seated to your right of his lawyer?

9 A Yes, sir.

10 Q So, you and David left and left at approximately what
11 time?

12 A Between 10:15, 10:30.

13 Q And where did you go?

14 A We went to Javier and Artrell's house.

15 Q And who did they live with?

16 A Their grandmother.

17 Q What road is that on?

18 A Woodland Extension, off of Woodland Extension.

19 Q Woodland Extension?

20 A Uh-huh.

21 Q Again, that's about five minutes from you?

22 A Uh-huh.

23 Q What happened when you got to Artrell and Javier
24 Hickson's house on the morning of June 25?

25 A They came out and got in the truck with us.

1 Q What, if anything, were you telling them at this
2 point?

3 A Hurry up because I had to go.

4 Q Hurry up, you had an appointment? Did Javier or
5 Artrell have anything with them that morning?

6 A Artrell had a black bookbag.

7 Q Artrell had a black bookbag. Everybody got into your
8 Tahoe?

9 A Uh-huh.

10 Q Where did you go next?

11 A We went to David's grandmother's house.

12 Q Where does David's grandmother live?

13 A On Camel Street in New Ellenton.

14 Q Again, what was your conversation with them in the
15 car?

16 A Nothing really.

17 Q Was it hurry up?

18 A Yes, to David when we he got out to hurry up.

19 Q All right. What happened when you got to David's
20 grandmother's house?

21 A He went in the backyard. He came back out and he put
22 something in the back of the truck.

23 Q All right. So you get to David's grandmother's
24 house?

25 MRS. BROWN: Your Honor, I am still having a very

1 hard time hearing the witness. I apologize.

2 THE COURT: Thank you.

3 Ma'am, speak up a little bit louder for me, please.

4 You got to David's grandmother's house and what?

5 THE WITNESS: We got to David's grandmother's house.

6 He went in the backyard. He came back out. He put

7 something in the back of my truck, got in and we left.

8 Q All right. You're driving?

9 A Uh-huh.

10 Q Where is Mr. David Kearse seated?

11 A Passenger side.

12 Q Front passenger seat?

13 A Uh-huh.

14 Q Who was in the back passenger seats?

15 A Javier and Artrell.

16 Q And you go to David's grandmother's house?

17 A Uh-huh.

18 Q And David went inside. Was he in long?

19 A No. He didn't go inside. He went in the backyard.

20 Q What did he do when he came back out?

21 A He put something in the back of the truck, got back
22 in the truck and said okay.

23 Q Where did you go after you left David's grandmother's
24 house?

25 A They told me to go to Walmart.

1 Q And which Walmart would that be?

2 A The South side on Richland Avenue. Whiskey Road, I'm
3 sorry.

4 Q Whiskey Road? Where did you park at the Walmart?

5 A Back by Tire and Lube Express.

6 Q Tire and Lube? Why did you go to the Walmart?

7 A Javier had to talk to his sister and his girlfriend
8 about something.

9 Q Who is Javier's sister?

10 A Monique Hickson.

11 Q She was employed at the Walmart?

12 A Uh-huh.

13 Q Who was his girlfriend?

14 A Crystal.

15 Q She was employed at the Walmart?

16 A Uh-huh.

17 Q Do you know what kind of vehicles these young ladies
18 drive?

19 A Not exactly. I know Monique has a Jeep. I am not
20 sure exactly what kind of car Crystal drives.

21 Q Monique has a Jeep. So you go to the Walmart. What
22 happens next?

23 A Javier and David got out. Javier went inside. He
24 went inside and I guess he went in and talked to them. I
25 am not sure. Me and Artrell stayed outside in the truck.

1 David stayed outside.

2 Q You and Artrell stayed in the Tahoe.

3 A We was in the Tahoe.

4 Q All right. What happened next?

5 A Javier went inside, came back out and we left.

6 Q David get in your car?

7 A David got in my car.

8 Q And did David Kearse have a cellphone then?

9 A Yes, sir.

10 Q Did he have his own phone?

11 A No, sir.

12 MR. HAYES: Objection, leading.

(13 THE COURT: Is this your witness? Are you going to
14 cross examine her?

15 MR. HAYES: No, sir.

16 THE COURT: You can't make the objection. You know
17 the rules.

18 MR. HAYES: Yes, sir.

19 Q Did Mr. David Kearse have his own phone in June of
20 2009?

21 A No.

22 Q Did you have your own phone in June of 2009?

23 A Yes.

24 Q Was your phone working then?

(25 A No, sir.

1 Q All right. So, you leave the Walmart. Where did you
2 go next?

3 A We went down the bypass.

4 Q Is everybody in the car at this point?

5 A Me, David, and Artrell are in the car.

6 Q Okay. So, Javier is not in the Tahoe at this point?

7 A No. He is behind us in another car.

8 Q In another car. Do you remember what that car looked
9 like?

10 A No, sir.

11 Q So, Javier is following --

12 A Uh-huh.

13 Q -- the Tahoe and you're driving the Tahoe, David in
14 the front seat, Artrell in the back seat; is that correct?

15 A Yes, sir.

16 Q Where did you go next?

17 A We went to Graniteville. We went through on the back
18 road going right off the bypass like going through
19 Clearwater.

20 Q All right. Then where did you go?

21 A We went to Kalmia Apartments.

22 Q Kalmia Apartments?

23 A Uh-huh.

24 Q What did you do once you got to Kalmia Apartments?

25 A We turned in. We turned in and we made the first

1 left into the dead end and I dropped them off there.

2 Q You drove to the back of the Kalmia Apartments?

3 A No, the front. We're still in the front.

4 Q Who did you drop off?

5 A Artrell and David.

6 Q Did Artrell have anything with him when he got out?

7 A A bookbag.

8 Q A bookbag. All right. What did you do next after
9 you dropped them off? Do you remember about what time
10 that was?

11 A Not exactly.

12 Q Before 12 o'clock?

13 A It was before 12 o'clock.

14 Q What did you do next after you dropped them off?

15 A I left.

16 Q Then where were you headed?

17 A I was fixing to go to my grandmother's house.

18 Q Before you went to visit your friend?

19 A Uh-huh.

20 Q What happened on the way to your grandmother's house?

21 A My truck broke down right up Whiskey Road -- I mean,
22 Richland Avenue.

23 Q When you say broke down, in retrospect what happened
24 to your truck?

25 A I ran out of gas.

1 Q Ran out of gas. What did you do with your truck once
2 it ran out of gas?

3 A This man came out of the car lot and he helped me get
4 it out of the road and I used his cellphone. Well, I used
5 his phone to call my cousin Vonda to bring me some gas.

6 Q Somebody loaned you a phone and you called a friend?

7 A Uh-huh.

8 Q Did that friend show up?

9 A Uh-huh.

10 Q Did they help you get some gas in your car?

11 A Yes, sir.

12 Q Now, at some point -- this is shortly after
13 12 o'clock?

14 A Uh-huh.

15 Q At some point you hear a noise in the back seat.
16 What is that?

17 A A phone ringing.

18 Q Phone ring. Was it a ringing tone or was it music?

19 A Music.

20 Q And then did you retrieve a phone from the back seat?

21 A Yes, sir.

22 Q Where did you find the phone?

23 A Like down in between the back of my seat.

24 Q Between the seats?

25 A Uh-huh.

1 Q Did you look at the phone?

2 A Yes, sir.

3 Q And as the phone was ringing what did you see on the
4 phone?

5 A My bro.

6 Q My bro.

7 A Uh-huh.

8 Q Did you see a telephone number on the phone?

9 A Yes, sir.

10 Q And whose numbers did you recognize that as being?

11 A Artrell's.

12 Q How do you know it was Artrell's number?

13 A It had called my phone before.

14 Q Could you describe the phone? What does it look
15 like?

16 A It was like a little black, nothing extravagant
17 little phone.

18 Q You had seen Artrell with that phone?

19 A I seen Javier with that phone.

20 Q You seen Javier with that phone. And the words that
21 came up when the phone rang was "my bro?"

22 A Uh-huh.

23 Q Did you answer the phone?

24 A Yes.

25 Q Who was on the other end of the line?

1 A David.

2 Q And David did not have a phone?

3 A No.

4 Q And the phone that you had came up "my bro" when it
5 rang?

6 A Yes.

7 Q And you've testified the phone that you had you knew
8 to be Javier Hickson's phone?

9 A Yes.

10 Q So you answered the phone and it's David?

11 A Yes.

12 Q And what conversation did you have with David?

13 A He asked me where I was at.

14 MRS. BROWN: Objection, Your Honor.

15 THE COURT: What is the objection?

16 MRS. BROWN: Objection to hearsay of her testifying
17 to what David Kearse said to her.

18 THE COURT: Overruled.

19 MR. ROUTZONG: Your Honor, I join in that objection.

20 THE COURT: Thank you.

21 THE WITNESS: He asked me where I was at and I told
22 him my truck broke down. He just started telling me to
23 come get him, I had to come get him.

24 Q What was his demeanor on the telephone?

25 A He sounded like he was mad. He was breathing heavy.

1 Q Where was he telling you to come get him?

2 A He was trying to describe a church.

3 Q And that call then ended; is that correct?

4 A Yes.

5 Q And you're on Javier's telephone?

6 A Uh-huh.

7 Q Talking to David on the phone that has rang on

8 Javier's phone as "my bro;" is that correct?

9 A Yes.

10 Q Where did you go next?

11 A I walked to the Circle K.

12 Q And then what did you do once you left the Circle K?

13 A I went and got my truck and went back to Kalmia

14 Apartments.

15 Q Back to Kalmia Apartments.

16 A Uh-huh.

17 Q Who did you see at the Kalmia Apartments when you

18 pulled up?

19 A Monique, Crystal, and Devon.

20 Q When you say Monique, Monique Hickson?

21 A Yes.

22 Q That's the sister of the Defendants?

23 A Yes.

24 Q And how long have you known Monique?

25 A About four years -- don't know her personally, but I

1 know her.

2 Q And Crystal Harris was there?

3 A Uh-huh.

4 Q How well do you know her?

5 A We speak.

6 Q How long have you known her?

7 A About four years.

8 Q And at some point at the Kalmia Apartments did you
9 notice any law enforcement vehicles or anything on your
10 way back there?

11 A I noticed a lot of them going down past me when I was
12 on the phone.

13 Q And did you speak to Crystal Harris at the Kalmia
14 Apartments?

15 A Yes.

16 Q How would you describe that conversation you had with
17 her?

18 A An argument.

19 Q What was the nature of that argument?

20 A Me siding with David over her siding with Javier.

21 Q And then while -- you didn't remain for a few moments
22 at the Kalmia amounts?

23 A We were out there for a while.

24 Q Do you recall if you saw a Phillip Paul or a Jelani
25 Edwards at the Kalmia Apartments afterwards?

1 A Yes.

2 Q What did you do next?

3 A We went out looking for David.

4 Q Did you find him?

5 A No.

6 Q You ultimately left the Kalmia Apartments?

7 A Yes.

8 Q In what vehicle were you in?

9 A I was driving Jelani's Cadillac.

10 Q You got there in a Tahoe. Why were you leaving in a
11 Cadillac?

12 A Because everyone had started saying that I was
13 supposed to be there to go back and pick them up and I am
14 the reason why they got left and I didn't want to drive my
15 Tahoe.

16 Q Let me make sure I understand what you said. People
17 were suggesting that you were the getaway driver?

18 A Yes.

19 Q Is that why you didn't want to drive your Tahoe when
20 you left?

21 A Yes.

22 Q All right. So, what vehicle did you leave in?

23 A The Cadillac.

24 Q Describe that Cadillac for me?

25 A It is brown, four-door. I think it had the 28-inch

1 rims on it, I think.

2 Q And that was Mr. Jelani Edwards' vehicle?

3 A Uh-huh.

4 Q Where did you drive his vehicle?

5 A Dexter Arms.

6 Q Where did he drive your vehicle?

7 A To Dexter Arms.

8 Q And this, again, is in the afternoon of June 25,
9 2009?

10 A Uh-huh.

11 Q What did you do when you got back to Dexter Arms?

12 A We swapped cars.

13 Q You got the Tahoe back?

14 A Uh-huh.

15 Q Where did you go?

16 A I went to New Ellenton.

17 Q Let me show you what's in evidence as State's no. 18.
18 Take a look at that for me.

19 A Uh-huh.

20 Q Do you recognize that bag?

21 A Yes.

22 Q Who had that bag earlier that morning?

23 A Artrell.

24 MR. THURMOND: Step down. I want to show her this
25 photo on the big screen, Judge.

1 THE COURT: Step down for me, ma'am.

2 Q Would you point that bookbag out for us?

3 A It's right there.

4 Q Had you seen that before?

5 A Uh-huh.

6 Q Had you seen it that morning?

7 A Yes.

8 Q Thank you. You may have a seat. Ma'am, thank you.

9 That's all the questions I have for you. Please answer
10 any questions that the defense counsel has for you.

11 THE COURT: Mrs. Brown?

12 CROSS-EXAMINATION

13 BY MRS. BROWN:

14 Q Ms.-Oakman, how many children do you have with David
15 Kearse?

16 A Two.

17 Q You had an opportunity to speak with investigator
18 Cain regarding this incident back in March of this year;
19 correct?

20 A Yes, ma'am.

21 Q And you hadn't talked to anybody about this incident
22 before March -- well, any law enforcement officers about
23 this incident prior to March of this year, did you?

24 A No, ma'am.

25 Q And, in fact, you wrote a statement outlining what

1 you talked to Investigator Cain about, didn't you?

2 A Yes.

3 Q In that statement you don't make any mention of
4 Javier Hickson leaving the Walmart in a different vehicle,
5 did you?

6 A No.

7 Q But, yet, you testified to that today?

8 A Yes.

9 Q You didn't tell that to Investigator Cain?

10 A I forgot.

11 Q You forgot?

12 A Yes.

13 Q So, you just so happened to remember everything else
14 about a day that had happened some nine months earlier,
15 but you forgot that Javier Hickson was not in the vehicle
16 with you in the Tahoe when you dropped people off at
17 Kalmia Apartments?

18 A I forgot certain parts.

19 Q You forgot certain parts?

20 A Yes.

21 Q But you just happened to remember other parts?

22 A Yes.

23 Q Did you also forget to mention to Investigator Cain
24 that you left Kalmia Apartments trying to find David?

25 A I told that. I told him when I went back I had every

1 intention of finding David.

2 Q You said -- you told him that you had every intention
3 of finding him?

4 A Yes.

5 Q But you didn't tell him that you actually left --

6 A Kalmia.

7 Q -- and tried to look for him?

8 A Yes.

9 Q So, your testimony today is that you dropped who off
10 at the Kalmia Apartments?

11 A I dropped off David and Artrell.

12 Q And where did you drop them off?

13 A In Kalmia Apartments.

14 Q And your testimony today is that Javier Hickson was
15 not with you when you dropped them off?

16 A He was there.

17 Q He was there?

18 A He followed us there.

19 Q And you conveniently forgot that when you talked with
20 Investigator Cain?

21 A Yes.

22 Q You likewise said nothing to Investigator Cain about
23 Artrell having a backpack, did you?

24 A I don't remember.

25 Q You don't remember?

1 A No.

2 Q Would reading the statement that you wrote refresh
3 your recollection?

4 A Yes.

5 (Whereupon, Defendant's (Brown) Exhibit No. 2 was
6 marked for identification only.)

7 Q I am showing you what's been marked for
8 identification Defendant's Exhibit 2 Brown. Do you
9 recognize what that is?

10 A Yes.

11 Q Is that the statement that you wrote for Investigator
12 Cain in the March 2010?

13 A It is the statement I gave.

14 Q It is the statement you gave?

15 A Yes.

16 Q Take a moment to read it, please.

17 A Yes, this is what I said.

18 Q Did you mention Artrell having a bookbag?

19 A I didn't go into detail about anything because I
20 didn't feel I was going to be --

21 Q Did you mention --

22 A No.

23 THE COURT: Held on, ladies. Let her finish the
24 sentence. Then answer. Let her answer. Then you ask.

25 Q Did you mention that Artrell had a bookbag?

1 A No, I did not.

2 Q Likewise, did you tell Investigator Cain in your
3 statement that David Kearse brought anything out from his
4 grandmother's house?

5 A No.

6 MRS. BROWN: I beg the court's indulgence one moment.
7 Thank you, Your Honor. I have no further questions for
8 this witness at this time.

9 THE COURT: Mr. Routzong?

10 CROSS-EXAMINATION

11 BY MR. ROUTZONG:

12 Q Have you had a chance to look at your statement?

13 A Yes, sir.

14 Q And you remember telling Investigator Cain that you
15 got a Ford Focus three days after the robbery?

16 A Yes, sir.

17 Q And you recall from your statement -- that you said
18 in your statement, rather, that you asked David Kearse,
19 What have you done?

20 A Uh-huh.

21 Q Then you switched the cars with Jellani?

22 A Yes, sir.

23 Q And you drove the Cadillac?

24 A Yes, sir.

25 Q He drove the Tahoe?

1 A Yes, sir.

2 Q Thank you very much.

3 A Uh-huh.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MR. THURMOND:

7 Q Ma'am, how about read your statement that you gave in
8 its entirety rather than it being parsed. Read every
9 word.

10 A On the morning the Security Federal Bank in
11 Graniteville got robbed me and David Kearse were at my
12 place in Aiken, South Carolina. David said he needed my
13 car, the black Tahoe. I told him to be back before 11.
14 He left for a while and came back. He said I am ready to
15 go. He directed me to pick up Artrell Hickson at
16 Artrell's house. I drove there and Artrell and Javier
17 Hickson got in. I drove to David's grandma's house on
18 Camel Street, New Ellenton, South Carolina. We stayed in
19 the the Tahoe but David went inside for minute and came
20 back. We went to Walmart south side. I parked by Tire
21 and Lube. I drove there because Javier wanted to meet --
22 wanted to talk to his sister Monique and his girlfriend
23 Crystal. Javier walked to the front parking lot out of
24 sight and came back a few minutes later. Artrell and
25 David were giving me directions to drive to the apartments

1 in Graniteville. I drove them to the apartment complex,
2 made the first left, drove to the dead end and dropped
3 them off. I drove away and went to my grandmother's house
4 on Plunkett Street but never made it. My Tahoe broke down
5 on Richland Avenue at the Highway 421 exit by the car lot.
6 A guy at the car lot helped me push it out. It was
7 between 11 and 12 when I dropped them off. I walked to
8 the store, the Circle K, and used the store phone. I
9 called Vonda for a ride. I had Javier's cellphone. It
10 had been on the back seat. I took it when I walked to the
11 store. It was locked so I could not call out. Javier's
12 phone rang and it showed bro or my brother. I answered
13 it. It was David. David asked, where you at? I told him
14 my car broke down. He said over and over come get me. I
15 asked, Where you at? What have you done? He did not
16 answer, but tried to describe where he was at. I could
17 not understand. Vonda brought me money to get gas. I got
18 gas at Circle K and drove back to the apartments in
19 Graniteville. Monique, Crystal, Devon Jones were at the
20 entrance to the apartments. Phillip and Jelani showed up
21 later. People were accusing me saying I was the getaway
22 driver. I said, Hell no, and got scared. I drove
23 Jelani's Cadillac to Dexter Arms and Jelani drove my Tahoe
24 to Dexter Arms. I drove my Tahoe to David's grandmother's
25 and learned what happened to David. In March 2009 my

1 Tahoe got hit on the driver's side by Shante. After the
2 robbery I put the Tahoe in Kelly's Paint and Body in Aiken
3 for repairs. Her Nationwide insurance paid for an
4 Enterprise rental car, a silver Ford Focus, three days
5 after the robbery.

6 Q Is that statement in your handwriting?

7 A No.

8 Q You gave that statement to Investigator Cain?

9 A Yes, sir.

10 Q You told him what happened?

11 A Yes, sir.

12 Q He wrote down what happened?

13 A Yes, sir.

14 Q So, he made the decision what went in the statement
15 and what didn't?

16 A Yes, sir.

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

18 THE COURT: Thank you, ma'am. You may step down.

19 MRS. BROWN: Your Honor, may I have brief recross?

20 THE COURT: No, ma'am. It's discretionary with the
21 court. I treat everybody the same. No recross.

22 We're going to break for lunch. We'll start back at
23 2 o'clock. That's a little longer that you may need, but
24 I've got three hearings at 1:30. That will take about 30
25 minutes to do. So, y'all are going to walk up there. It

1 is pretty upside. Everybody comfortable walking?

2 THE JUROR: Yes, sir.

3 THE COURT: All right. And once you finish your
4 lunch if you want to stroll downtown or whatever, just be
5 back and be ready to go at 2 o'clock. Please do not
6 discuss the case. Do not let anybody discuss it with you.
7 There are a lot of people in the courtroom. If you see
8 any of them, just stay away from them. If anybody tries
9 to discuss it with you, let me know and I'll take care of
10 that situation. Who is going to lunch?

11 THE BAILIFF: Jimmie and Mert.

12 THE COURT: You got two people and just have a nice
13 lunch.

14 (Whereupon, the jury exited the courtroom at 12:16.)

15 THE COURT: Anything from the State before we break
16 for lunch?

17 MR. THURMOND: No, sir.

18 THE COURT: The Defendants collectively, Mrs. Kelley
19 P. Brown?

20 MRS. BROWN: No, Your Honor.

21 THE COURT: Mr. Routzong?

22 MR. ROUTZONG: No, sir.

23 THE COURT: Thank you. We'll stand at ease. We'll
24 start the trial of this case back at 2 o'clock sharp.

25 (Whereupon, a break was taken.).

1 THE COURT: Officer McFarland, please relate to me
2 what happened when we adjourned court for lunch.

3 THE POLICE OFFICER: I heard a disturbance from the
4 front door. I proceeded upstairs where I saw a large
5 crowd of people that were verbally sparring with each
6 other, for better choice of words. At the same point in
7 time I saw that the jury was coming out right through the
8 two crowds of people. We immediately tried to separate
9 the two crowds that were having a disagreement and at the
10 same time getting the jury out of the building at which
11 point in time we sent the parties that were having the
12 disagreement outside and they were dispersed by the
13 Sheriff's Office and Aiken Department of Public Safety.

14 THE COURT: And, obviously, the parties were talking
15 about -- in the courtroom I observed we got sort of two
16 sides. We got the people here in support of the
17 Defendants and I assume there is another group here with
18 the lady who testified -- Ms.-Oakman -- before lunch and
19 I -- even though I didn't see any misbehavior I sensed
20 there was some tension in the crowd and I got the lawyers
21 in chambers and requested additional security for this
22 afternoon. I am concerned now, Solicitor, Defense lawyers
23 of any tainting of that jury by anything they may have
24 heard, seen, or observed out there.

25 Was any words spoken, Officer McFarland?

1 THE POLICE OFFICER: The only thing I could hear was
2 from several of the parties that were outside that were
3 accusing the other parties of, quote, unquote, Don't put
4 your hands on my brother, and He could wouldn't do that,
5 he didn't do this. Those were the only words that stand
6 out in my mind.

7 THE COURT: All right. Any suggestion,
8 Mr. Solicitor?

9 MR. THURMOND: I mean, I --

10 THE COURT: Confer with the old sage over here.

11 MR. THURMOND: -- don't want to make it a bigger deal
12 than it is.

13 THE COURT: Mrs. Kelley Perkins Brown?

14 MRS. BROWN: Your Honor, can I have a moment to
15 confer with my colleagues as well?

16 (Pause).

17 THE COURT: All right. Mrs. Kelley Perkins Brown,
18 Mr. Routzong, Mr. Solicitor, here is what I think I am
19 going to do. I am just going to explain to the jury,
20 obviously, a lot of times in these cases we have emotions
21 that get rather heated and people sometimes say things in
22 the heat of passion. I apologize for not letting the jury
23 go out separately, but we don't have but one way out and
24 they may have observed some display of emotions out there
25 but they're not to let that in any way enter into their

1 deliberations.

2 Is that satisfactory, something along those lines, by
3 the Solicitor?

4 MR. THURMOND: Yes, sir.

5 THE COURT: Mr. Routzong, Mrs. Perkins Brown --
6 Kelley P. Brown?

7 MRS. BROWN: I have no objection to that, Your Honor.

8 MR. ROUTZONG: That's fine, Your Honor.

9 (Whereupon, a break was taken.)

10 THE COURT: Ladies and gentlemen, this is a public
11 courtroom. You are all welcome to attend and listen to
12 the proceedings, but you must conduct yourselves
13 accordingly. It's been brought to my attention that
14 tempers flared, words were exchanged, accusations were
15 made out in the hall when we broke for lunch. It was also
16 done in the presence of my jury.

17 I have called in extra security. You can look around
18 the courtroom and see that. You are -- each and every one
19 of you are welcome to stay. However, if anyone creates a
20 disturbance, if anyone points fingers at the other, if
21 anyone disturbs these proceedings you'll be held in
22 contempt of court and locked up immediately. If you do
23 not feel that you can comply with that behavior code,
24 please leave now. Fair warning. Thank you.

25 MS. RINGLER: Your Honor, I think we do have one

1 matter to bring up before the jury comes in.

2 THE COURT: Wait on Mrs. Brown, please.

3 MS. RINGLER: Thank you, Your Honor. Just the one
4 matter that we wanted to bring up is our next witness is a
5 records custodian from Walmart who is going to present
6 evidence of time sheets. We did Rule Five the time sheets
7 that we had to the defense last week. However, when the
8 custodian of records showed up today he had additional
9 records that we did not have prior. Basically, the sheets
10 that we had before now just showed that Monique Hickson
11 and Crystal Harris left work early that day. They were
12 scheduled to work approximately eight hours and both left
13 five hours early.

14 The sheet that we were just provided today, Your
15 Honor, shows the exact hours that they left -- excuse me,
16 shows the exact hours that they worked that day.

17 THE COURT: And you've given those to the defense?

18 MS. RINGLER: Yes, Your Honor. Over the lunch break.
19 That's when we got them and we immediately Rule Fived
20 them.

21 THE COURT: Thank you. Any objection to that by
22 Defense counsel?

23 MRS. BROWN: Yes, Your Honor. I would object to
24 evidence being introduced that I was provided with by it
25 being on the table, you know, some a minute or so before

1 they seek to introduce it.

2 THE COURT: Well, they just got it themselves.

3 MRS. BROWN: But if they had it available to them --

4 THE COURT: Well, they subpoenaed the records. They
5 got what they subpoenaed. I don't think they're under an
6 obligations to go out and go through Walmart's records.

7 THE COURT: Mr. Routzong?

8 MR. ROUTZONG: We would join in that objection.

9 THE COURT: Thank you. Bring the jury in. Objection
10 overruled.

11 (Whereupon, the jury came into open court at
12 approximately 2:17.)

13 THE COURT: I hope you enjoyed your lunch. It's been
14 brought to my attention that as you were leaving to go to
15 lunch there was some disturbance out in the hall.
16 Obviously, when we try cases sometimes we have family
17 members and friends that are here for both sides, so to
18 speak, and sometimes emotions get a little heated. So, if
19 you heard anything or saw anything, just disregard all of
20 that. That's just people's emotions running a little bit
21 and you know how people act.

22 So, we're going to try this case based on what we see
23 and hear in this courtroom that comes from the witness
24 stand. So please don't let -- if you saw anything or
25 heard anything -- let that have any influence on you

1 whatsoever and they've all been reminded that if we have
2 any further outbursts they'll be immediately incarcerated
3 for contempt of court. So I don't think we'll have any
4 more problems.

5 Any objection to that --

6 MS. RINGLER: None from the state, Your Honor.

7 THE COURT: -- instruction to the jury? By the
8 Defendants?

9 MRS. BROWN: No, Your Honor.

10 MR. ROUTZONG: No, sir.

11 THE COURT: Thank you. You may call your next
12 witness.

13 MS. RINGLER: Chris Pittman.

14 JACK CHRISTOPHER PITTMAN, after being duly
15 sworn, testified as follows:

16 THE CLERK: Have a seat in the witness box. State
17 your full name for the court spelling your last.

18 THE WITNESS: Jack Christopher Pittman;
19 P-I-T-T-M-A-N.

20 DIRECT EXAMINATION

21 BY MS. RINGLER:

22 Q Thank you. Where do do you work?

23 A Walmart.

24 Q And how long have you worked there?

25 A The current facility I've worked there for a year.

1 Overall I've worked for Walmart for five years.

2 Q And which location is that?

3 A I am currently at the Whiskey Road location.

4 Q What is your title there?

5 A Shift Manager.

6 Q As Shift Manager are you familiar with how Walmart
7 keeps track of its employees' hours?

8 A Yes, ma'am.

9 Q Is it necessary for Walmart to keep track of hours of
10 employee hours as part of their regular business practice?

11 A Yes, ma'am.

12 Q I am handing you what's been previously marked as
13 State's Exhibit No. 23. Do you recognize it?

14 A Yes, I do.

15 Q What is it?

16 A This is the week to date hours and expense report
17 which keeps up with associates' time throughout the week.

18 MS. RINGLER: Your Honor, at this time the State
19 would move to admit State's Exhibit No. 23 in evidence.

20 THE COURT: All right. Subject to the objections
21 expressed earlier by defense counsel I'll allow it.

22 MRS. BROWN: Your Honor, specifically for the record
23 my objections would be to the last two pages of State's
24 23.

25 THE COURT: Thank you, ma'am.

1 (Whereupon, State's Exhibit No. 23 was admitted into
2 evidence.)

3 Q You can hold on to State's Exhibit 23. I am going to
4 ask you a few questions about it. What are the three
5 reports that are included in State's Exhibit No. 23?

6 A The first part is the week to date hours and expense
7 summary.

8 Q What is that?

9 A This would actually break down -- we can we can print
10 it off each day showing the amount of hours that an
11 associate accumulates by each day.

12 Q Okay and the other two reports? The other report?

13 A The second report is the attendance tracking
14 exception report. It prints off any associate's name if
15 they do not work the scheduled shift that's in system and
16 then we can look at that and see what times they did work.

17 Q Okay. And then the third report?

18 A The third report is the at attendance tracking
19 maintenance report. This can be printed off by each
20 associate's name and break down every exception they've
21 had in the system anytime they've worked off their
22 schedule.

23 Q Okay. And what do you mean by exception?

24 A Ma'am?

25 Q What do you mean by exception? I'm sorry.

1 A Anytime you don't work your schedule, the scheduled
2 shift. If it was a defined shift of you working 7 o'clock
3 to 4 o'clock, if you came in 7:15 or left 30 minutes early
4 any deviation from that schedule it'll keep up with and
5 start tracking.

6 Q Okay. And does Crystal Harris work for Walmart?

7 A Yes, she does.

8 Q Was she working on June 25, 2009?

9 A Yes, ma'am, she was.

10 Q And what -- how many hours was she scheduled to work
11 that day?

12 A She was scheduled to work from 10:30 am to 7 o'clock.

13 Q So, seven and a half hours?

14 A Yes, ma'am.

15 Q And did she leave early that day?

16 A Yes. She did.

17 Q How many hours of her -- excuse me. How many hours
18 of her shift did she not work?

19 A She did not work five hours of her shift.

20 Q Okay. And the third report that you mentioned, the
21 attendance tracking maintenance report, what is the
22 detailed in that report?

23 A Showing the times that she actually worked for that
24 day.

25 Q And what were the times that she worked that day?

1 A She worked from 10:26 to 12:55.

2 Q Okay. And then Monique Hickson -- did she work at
3 Walmart in June -- Does she work there now?

4 A Yes, she does.

5 Q Did she work there on June 25, 2009?

6 A Yes, she did.

7 Q Was she under a different name in your records?

8 A It goes under her first name Shantrell.

9 Q So, it has her as Shantrell Monique Hickson?

10 A Yes.

11 Q And she worked on June 25. How many hours was she
12 scheduled to work that day?

13 A She was scheduled to work eight hours.

14 Q What hours was she scheduled to work?

15 A She was scheduled to from work from 7 am until 4 in
16 the afternoon.

17 Q And did she work the full eight hours?

18 A No, she did not.

19 Q What hours did she work?

20 A She worked from 9:55 am to 12:55 pm.

21 Q And do employees have to give advance warning for
22 doctor appointments?

23 A If they would like for it to be excused -- an excused
24 absence -- they must have something showing that they were
25 having -- they must put in for that day off or for that

1 day to leave early.

2 Q And how long -- do you have security video at the
3 store?

4 A Yes, we do have security video.

5 Q How long is the video kept?

6 A No more than two and a half months.

7 Q When they left suddenly at 12:55 that day were their
8 absences excused or not excused?

9 A No, neither one of them were excused.

10 Q Nothing further. Please answer any questions that
11 the defense counsel might have.

12 THE COURT: Mrs. Kelley Perkins Brown?

13 MRS. BROWN: I have no questions, Your Honor.

14 THE COURT: Mr. Routzong?

15 MR. ROUTZONG: I don't have any, Your Honor.

16 THE COURT: Thank you. You may step down. You are
17 released from your subpoena. You may go back to Walmart
18 or I can keep you here a little while.

19 THE WITNESS: They'll start come up here looking for
20 me.

21 THE COURT: Thank you. Next witness, please.

22 MR. THURMOND: Your Honor, the State calls
23 Mr. Stanley Galloway.

24 STANLEY GALLOWAY, after being duly sworn,
25 testified as follows:

1 THE CLERK: Have a seat in the witness box. State
2 your full name for the court spelling your last.

3 THE COURT: Good afternoon, Mr. Galloway. How are
4 you doing?

5 THE WITNESS: I'm all right.

6 MR. THURMOND: You need to spell your name, sir.

7 THE WITNESS: S-T-A-N-L-E-Y.

8 DIRECT EXAMINATION

9 BY MR. THURMOND:

10 Q Afternoon. How are you doing?

11 A I am all right.

12 Q You are here pursuant to a subpoena; is that correct?

13 A Uh-huh.

14 THE COURT: All right, sir. Hold on. Not uh-huh,
15 huh-uh. Please yes or no.

16 THE WITNESS: Yes.

17 MRS. BROWN: Your Honor, if he could speak a little
18 louder.

19 THE COURT: Speak a little louder.

20 THE WITNESS: Yes.

21 THE COURT: Thank you.

22 Q Mr. Galloway, how old are you, sir?

23 A Twenty-one.

24 Q Where do you live?

25 A New Ellenton, South Carolina.

1 Q Where were you living back in June of 2009?

2 A New Ellenton, South Carolina.

3 Q Where were you working?

4 A Reids.

5 Q How long have you been at Reids?

6 A About a year and a half.

7 Q How many hours a week do you work?

8 A At least six or seven.

9 Q I draw your attention to June 25 of 2009. Do you
10 remember that day?

11 A Uh-huh.

12 THE COURT: Yes or no.

13 THE WITNESS: Oh, yea.

14 Q Where did you wake up that morning?

15 A In Kalmia.

16 Q Where specifically in Kalmia?

17 A

18 Q

19 A Uh-huh. Yes, sir.

20 THE COURT: Thank you.

21 Q Do you know a Mr. David Kearse?

22 A Yea.

23 Q How long have you known Mr. Kearse?

24 A For about all my life. Half of it.

25 Q Do you know Mr. Artrell Hickson?

1 A Yea.

2 Q Do you see him in the courtroom?

3 A Yea.

4 Q Can you point him out for me, sir?

5 A Right there.

6 THE COURT: What color shirt does he have on?

7 THE WITNESS: White.

8 THE COURT: Thank you.

9 Q How long have you known Mr. Artrell Hickson?

10 A Half my life.

11 Q Do you know Mr. Javier Hickson?

12 A Yea.

13 Q Do you see him present in the courtroom?

14 A Yea.

15 Q Can you point him out for me?

16 THE COURT: What color shirt does he got on?

17 THE WITNESS: I don't know what color that is, man.

18 THE COURT: Well, is it checked or solid?

19 THE WITNESS: No, it's checked.

20 THE COURT: Thank you.

21 Q On June 25 of 2009 outside of the Kalmia Apartments
22 before lunch time who did you see?

23 A Dave, Artrell and Jav.

24 Q Dave, Artrell, and Jav?

25 A Yea, Javier.

1 Q Artrell Hickson and Javier Hickson?

2 A Yea.

3 Q Where did you see them?

4 A They was up to my door like where I be at. We was
5 talking. They asked me about a black. I didn't told them
6 that I didn't have one.

7 Q They asked you about a black. What is a black?

8 A A black.

9 Q A cigar?

10 A Yea.

11 Q Did they come in

12 A No.

13 Q Where did you see them?

14 A They was outside in the front.

15 Q Did you see any vehicles?

16 A Just the black Tahoe. That's it.

17 Q Did you see any other vehicles?

18 A No.

19 Q On March 15 of 2010 were you interviewed by Chuck
20 Cain with the Aiken County Sheriff's Office?

21 A Yes, sir.

22 Q Did you give him a statement?

23 A Yea. He wrote it, though.

24 Q Did you tell him that on March 15 -- when you told

25 him on March 15 what you had seen the previous June 25 did

1 you tell him that you had seen David Kearse, Artrell
2 Hickson, and Javier Hickson?

3 A Uh-huh.

4 Q Together?

5 A They was like separated, but Dave was next to me
6 talking to me.

7 Q At the Kalmia Apartments?

8 A Yea.

9 Q On June 25, 2009?

10 THE COURT: That's yes or no?

11 THE WITNESS: I said yea.

12 Q Before lunch time?

13 A I don't know what time it was. That's what I told
14 him.

15 Q That's all the questions I have for you. Thank you.

16 THE COURT: Mrs. Brown, any questions?

17 MRS. BROWN: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MRS. BROWN:

20 Q When you gave that statement to Investigator Cain you
21 signed it, didn't you?

22 A Yea, I signed it.

23 Q Indicating that what you have said in it was correct?

24 A Yea.

25 Q And you said in that statement that they left in a

1 black Tahoe.

2 A I ain't say what they left in because I didn't see
3 what they left in.

4 (Whereupon, Defendant's (Brown) Exhibit No. 3 was
5 marked for identification only.)

6 Q Let me rephrase the question first. Did you see them
7 leave?

8 A No.

9 Q You did not see them leave?

10 A I walked back in the house before I seen that. I
11 ain't seen where they went.

12 Q I am going to ask you to take a look at what's been
13 marked Defendant's Exhibit 3 Brown. Do you recognize
14 that?

15 A Yea, I remember that.

16 Q Is that your signature?

17 A Yea.

18 Q Is that the statement that Investigator Cain wrote
19 and that you signed?

20 A I ain't read this part, though. I signed it though.

21 Q What you signed indicated that they left in a black
22 Tahoe?

23 A Uh-huh.

24 THE COURT: Is this a yes or no?

25 A Yes.

1 Q All three of them?

2 A Who? All three of them? Yea, I guess, but I told
3 him I didn't even see them though. I didn't know that was
4 in there to tell you the truth. I should have read it
5 more carefully.

6 Q I guess so. No further questions, your Honor.

7 THE COURT: Mr. Routzong?

8 MR. ROUTZONG: I don't have any questions, Your
9 Honor.

10 THE COURT: Redirect?

11 MR. THURMOND: No, sir.

12 THE COURT: You're excused to go. Thank you for
13 coming.

14 THE WITNESS: You're welcome.

15 MS. RINGLER: Beatrix Wright.

16 BEATRIX WRIGHT, after being duly sworn,
17 testified as follows:

18 THE CLERK: Have a seat in the witness box. State
19 your full name for the court spelling your last.

20 THE WITNESS: Beatrix Wright; W-R-I-G-H-T.

21 DIRECT EXAMINATION

22 BY MS. RINGLER:

23 Q Thank you, Ms. Wright. Where were you living in June
24 of 2009?

25 A

1 THE COURT: Speak up, please.

2 THE WITNESS:

3 Q And was anybody with you the morning of September 25
4 or before noon of September 25, 2009?

5 A Stanley Galloway and Candice Bryant.

6 Q Okay. And who are they? What is your relationship
7 with Stanley Galloway?

8 A That's my boyfriend.

9 THE COURT: Ma'am, do me a favor. You're going to
10 have to speak up louder, please.

11 Q What is your relationship to Candice Bryant?

12 A My cousin.

13 Q She's your cousin?

14 A Uh-huh.

15 Q And before lunch did you look outside your apartment?

16 A Before breakfast, yea.

17 Q Okay. What caused you to look outside?

18 A Stanley got up and went outside.

19 Q What did you see outside?

20 A I seen cars out there.

21 Q Who was that?

22 A Cars. I seen cars outside.

23 Q Okay. Which cars did you see?

24 A I seen an SUV.

25 Q Do you remember what kind of SUV?

1 A No.

2 Q Do you remember what color?

3 A Black.

4 Q And was there another car there?

5 A Yea.

6 Q What kind of car?

7 A It was a small car. I am not sure what kind.

8 Q I'm sorry. And I'm talking about June 25, 2009. I
9 apologize for that. But on June 25 did you see a black
10 SUV outside?

11 A Yea.

12 Q What was the other car? I'm sorry.

13 A A small car. I am not sure what kind.

14 Q Do you remember if it was a light colored, do dark
15 colored?

16 Q Light.

17 Q Do you remember the exact color?

18 A Like a beige color.

19 Q In addition to seeing the SUV and the small beige car
20 did you see anybody that you recognized out there?

21 A Not really. I just took a quick glance outside.

22 Q You didn't see anybody that you recognized out there?

23 A No, not really. People was in the cars, but I don't
24 know for sure who was in there. I was inside.

25 Q Okay. Do you remember meeting with Investigator

1 Bodie and Investigator Greg Savell who are both here today
2 on the 17th?

3 A I don't know what day it is, but, yea, I remember.

4 Q Do you remember coming down and meeting with them?

5 A Yes.

6 Q Okay. Do you remember speaking with them and what
7 you said?

8 A Uh-huh.

9 THE COURT: Yes or no?

10 THE WITNESS: Yes.

11 Q And on that day you told them that you saw Javier
12 Hickson out there?

13 A No. I told them what -- Stanley told me he went
14 outside to talk to him. I am not sure who was outside. I
15 am just going on that's like hearsay like you say that's
16 why someone else was not in.

17 Q You deny that you said Javier Hickson was outside?

18 A Yea, I said he was outside. Yea, I did.

19 Q You did see him outside?

20 A No. I said he was outside because I know who Stanley
21 went out there to talk to.

22 Q Do you admit or deny saying that you saw Artrell
23 Hickson out there?

24 A Same situation.

25 Q Do you admit or deny that you saw David Kearse

1 outside?

2 A I saw him outside.

3 Q You saw him outside? And do you know Artrell
4 Hickson?

5 A Yes.

6 Q How long have you known him?

7 A Not long. I know of him, but I really don't know
8 him.

9 Q Do you know him to recognize him?

10 A Yes.

11 Q Do you see him here in the courtroom today?

12 A Yes, with the white shirt on.

13 Q Okay. And do you know Javier Hickson?

14 A Yes.

15 Q Do you see him in the courtroom today?

16 A Yea, I do.

17 Q And do you know David Kearse?

18 A Yes.

19 Q How do you know him?

20 A Just from the neighborhood.

21 Q And, again, from that meeting do you remember saying
22 that you saw Artrell and Javier in a small car?

23 A I knew what car they was in. So, I knew what car
24 they was in, but I didn't really see them. With my own
25 eyes I didn't see them.

1 Q Did you tell Investigator Savell that you saw Artrell
2 and Javier in a small car?

3 A No. I said it was a small car out there and I knew
4 David was with his girlfriend.

5 Q And do you admit or deny that you saw -- you said
6 that you saw David Kearse and Sabrina Oakman in the SUV?

7 A Uh-huh.

8 THE COURT: Is that yes or no?

9 THE WITNESS: Yes.

10 Q And after the robbery did you see anybody in the
11 apartment complex?

12 A Yea. I seen someone in the apartment complex.

13 Q Okay. Who did you see?

14 A I mean, who did I see? What you mean?

15 Q Did you see Devon Jones in the apartment complex
16 after the robbery?

17 A Yea, yea.

18 Q Thank you. Please answer any questions that defense
19 counsel might have.

20 MRS. BROWN: I beg the court's indulgence one moment.

21 CROSS-EXAMINATION

22 BY MRS. BROWN:

23 Q Do you remember meeting with Investigator Cain back
24 in March of 2010?

25 A Yes, ma'am.

1 Q Did you tell -- you didn't tell Investigator Cain
2 about seeing any vehicles outside the house, did you?

3 A I think I did.

4 Q You think you told him about seeing vehicles?

5 A Yea, I think so.

6 Q At what point in time did you see vehicles outside
7 your house?

8 A When I glanced out when Stanley went outside.

9 Q And what time of the morning was that?

10 A I am not sure what time it was. It was early.

11 Q So was it closer to breakfast or closer to lunch?

12 A Early breakfast time.

13 Q I have no further questions, Your Honor.

14 THE COURT: Mr. Routzong?

15 MR. ROUTZONG: Nothing, Your Honor.

16 THE COURT: Redirect?

17 MS. RINGLER: No redirect, Your Honor.

18 THE COURT: You may step down. You're excused to go.

19 Next witness.

20 MS. RINGLER: Candice Bryant.

21 CANDICE BRYANT, after being duly sworn,
22 testified as follows:

23 THE CLERK: Have a seat in the witness box. State
24 your full name for the court spelling your last.

25 THE WITNESS: Candice B-R-Y-A-N-T.

DIRECT EXAMINATION

2 BY MS. RINGLER:

3 Q Ms. Bryant, are you in school right now?

4 A Yes.

5 Q Where do you go to school?

6 A Silver Bluff High School.

7 Q What year are you? What grade?

8 A Twelfth.

9 Q So you're a senior this year?

10 A Yes, ma'am.

11 Q And what do you plan on doing after you graduate?

12 A I am going into the Army.

13 Q Did you come speak to me this week or last week?

14 A Yes, ma'am.

15 Q Okay. Excuse me -- on Monday. And did you receive a
16 text message last night?

17 A Yes, ma'am.

18 Q What did the text message say?

19 MRS. BROWN: Your Honor, objection, relevance.

20 THE COURT: You received a text message? That's the
21 answer?

22 THE WITNESS: Yes.

23 THE COURT: I assume the next question is going to be
24 what did it say; is that correct?

25 MS. RINGLER: Yes, Your Honor.

1 THE COURT: And is it relevant to this case?

2 MS. RINGLER: Yes, Your Honor. I think it will
3 explain the witnesses' demeanor here today for the jury.

4 THE COURT: I'll allow it. If it's not relevant,
5 I'll strike it. I don't know what it's going to be.

6 Q What did the text message say?

7 A What are you at the courthouse snitching?

8 THE COURT: What?

9 THE WITNESS: What are you at the courthouse
10 snitching?

11 Q When did you receive that text message?

12 A Yesterday about four.

13 Q Did you receive a subpoena to be here today?

14 A Yes.

15 Q Are you nervous about being here today?

16 A Yes.

17 Q Where were you on the morning -- excuse me -- before
18 lunch on June 25, 2009?

19 A

20 Q Were you staying there at that time?

21 A Yes.

22 Q Who's apartment was that?

23 A Beatrix.

24 Q Beatrix Wright?

25 A Yes.

1 Q Did you see anyone in the complex that morning?

2 A Yes.

3 Q Did you see David Kearse there that morning?

4 A Yes.

5 Q Did you see Javier Hickson there that morning?

6 A Yes.

7 THE COURT: Speak up, please.

8 THE WITNESS: Yes.

9 Q Did you see Artrell Hickson there that morning?

10 A Yes.

11 Q Okay. How do you know Artrell Hickson?

12 A I went to school with him.

13 Q You went to school with him?

14 A Yes.

15 Q High school, middle school?

16 A Middle school.

17 Q And do you know Javier Hickson?

18 A I seen him a couple times.

19 Q Do you see him here in the courtroom today?

20 A Yes.

21 Q What kind of shirt does he wear?

22 A That checkered shirt.

23 Q And Artrell -- do you see him in the courtroom today?

24 A Yes.

25 Q What is he wearing?

1 A A white shirt.

2 Q And have you been convicted of a crime?

3 A Yes.

4 Q What was that crime?

5 A Credit card fraud.

6 Q Nothing further from the state. Please answer any
7 questions that the defense might have.

8 THE COURT: Any questions, Mrs. Brown?

9 CROSS-EXAMINATION

10 BY MRS. BROWN:

11 Q Ms. Bryant, is financial transaction card fraud the
12 only thing that you've been convicted of?

13 A No.

14 Q In fact, you've also been convicted of a shoplifting;
15 is that correct?

16 A Yes.

17 Q Do you remember speaking with Investigator Chuck Cain
18 in March of this year?

19 A Yes.

20 Q Do you remember telling him that you saw these three
21 drive up in a white Ford Focus?

22 A No.

23 Q You don't remember?

24 A I told him that I seen a white Ford Focus in the
25 parking lot.

1 Q Do you remember giving a statement to Investigator
2 Cain?

3 A Yes.

4 THE COURT: Clean copy, please. Not one that's
5 highlighted.

6 (Whereupon. Defendant's (Brown) Exhibit No. 4 was
7 marked for identification only.)

8 Q I am handing you what's been marked as Defendant's
9 Exhibit 4 Brown. Do you recognize that?

10 A Yes.

11 Q Is that the statement that you signed on March 12,
12 2010?

13 A Yes.

14 Q Is that the statement that you signed telling
15 Investigator Cain what you saw that day?

16 A Yes.

17 Q Have you had a chance to read that statement?

18 A Yes.

19 Q You've read it right now?

20 A Uh-huh.

21 Q And didn't you tell Investigator Cain in that signed
22 statement, They were in a white Ford Focus?

23 A Yea. I told him that it was the in the parking lot.
24 I didn't tell him that I seen them drive up in it.

25 Q Did you sign that statement?

1 A Yes, I did.

2 Q And in that statement does it say, They were in a
3 white Ford Focus?

4 A Yes, it says that.

5 Q No mention of seeing a black Tahoe at that time;
6 correct?

7 A No.

8 MRS. BROWN: No further questions.

9 THE COURT: Mr. Routzong?

10 MR. ROUTZONG: I don't have any questions, Your
11 Honor.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MS. RINGLER:

15 Q Can you please read your entire statement? Do you
16 have a copy of it in front of you?

17 A No.

18 THE COURT: Can you read your entire statement?

19 THE WITNESS: I got one page of it.

20 MS. RINGLER: You just got one page of it?

21 THE COURT: Was there more than one page?

22 MS. RINGLER: Yes, Your Honor.

23 THE COURT: Well, let's put the whole thing in
24 instead of parcels of it.

25 MS. RINGLER: Can we just put the exhibit marker on

1 this one?

2 THE COURT: It is two pages to the statement? Two
3 pages to that statement to be included in the record.

4 Q If you could plead just read both pages to us?

5 A Both of these are the same thing.

6 MS. RINGLER: I've got the two pages right here. Can
7 we just use that copy?

8 THE COURT: Time out. Walk up here and make sure
9 it's right, Mrs. Brown. You put it in.

10 MRS. BROWN: Your Honor, I would object. This is the
11 statement as was presented. I would object to the
12 statement being read in its entirety as it does contain
13 inadmissible hearsay.

14 THE COURT: Well, Mrs. Brown, you're the one who put
15 it in the record. Overruled.

16 MRS. BROWN: Your Honor, I did not introduce it as
17 evidence.

18 THE COURT: You certainly did.

19 MRS. BROWN: No, Your Honor. I had it marked for
20 identification purposes. I did not introduce it as
21 evidence.

22 THE COURT: You may read it.

23 MR. ROUTZONG: I join in that objection.

24 THE COURT: Thank you.

25 THE WITNESS: On the day of the robbery at Security

1 Federal.

2 THE COURT: Hold on. You have read it more distinct
3 than that.

4 THE WITNESS: On the day of the robbery at Security
5 Federal Graniteville Artrell Hickson, Javier Hickson, and
6 David Kearse came to my cousin's Beatrix Wright's
7 apartment. They were in a white Ford Focus. A dark
8 skinned girl was driving. She worked -- she -- it was
9 thought that she worked at Walmart on the south side.
10 They were talking to Beatrix's boyfriend Stanley. After a
11 while they left. Stanley remained. Me and Beatrix took
12 Stanley home to New Ellenton. We came back and saw the
13 police who told us the bank had been robbed. Sabrina
14 Oakman drove her black Tahoe and asked if Stanley knew
15 where David was. We told her we had taken him to New
16 Ellenton. Big Phil and Devon were at Kalmia Apartments
17 saying, Them boys done robbed the bank I think. I saw a
18 white Ford Focus. Phil and Devon were at the entrance to
19 Kalmia Apartments. Sabrina kept calling Artrell's
20 cellphone because David had it because Big Phil said David
21 had the phone. Sabrina kept saying, David is in a storage
22 in the woods. Sabrina was crying and said she was here to
23 find him and pick him up. Sabrina and Artrell -- Sabrina,
24 Artrell, and Javier along with Devon. Beatrix told me
25 that Artrell, Javier, and David were trying to get Stanley

1 to rob the bank with them. Beatrix said Stanley told me
2 this. Artrell dated a girl at Walmart on the south side.
3 The girl was thought to be in the white Ford Focus.

4 Q Okay. And then when you say Phillip Paul, who do you
5 mean by -- excuse me. When you say Phil, who do you mean
6 by that?

7 A Big Phil.

8 THE COURT: Who?

9 THE WITNESS: Phillip Paul.

10 Q Okay. And then when you say Devon, do you know
11 Devon's full name?

12 A Devon Jones.

13 Q And Sabrina?

14 A Oakman.

15 Q And Beatrix is?

16 A My cousin.

17 Q Thank you.

18 THE COURT: You may step down.

19 MR. THURMOND: May we approach briefly?

20 THE COURT: Ma'am, you're free to go if you'll wait
21 right there at the back door. Thank you. Sheriff?

22 MS. RINGLER: Crystal Harris.

23 THE COURT: Ms. Harris? Crystal Harris? Is she
24 outside?

25 THE BAILIFF: Crystal Harris?

1 THE COURT: Yes, ma'am.

2 (Pause)

3 THE BAILIFF: Judge, I called three times for Crystal
4 Harris and there was no response, nor did I see any people
5 in the foyer.

6 THE COURT: Thank you, Ms. Barbara. Is she under
7 subpoena?

8 MS. RINGLER: Yes, Your Honor. She was here
9 yesterday. She is still under subpoena. She's not been
10 excused.

11 THE COURT: Next witness after her.

12 MR. THURMOND: Judge, the State calls Mr. Randy
13 Wilson.

14 RANDY WILSON, after being duly sworn, testified
15 as follows:

16 THE CLERK: Have a seat in the witness box. State
17 your full name for the court spelling your last.

18 THE WITNESS: Randy Wilson.

19 MR. THURMOND: Judge, if I could have a little
20 latitude to lead him through why he is dressed like he
21 is.

22 DIRECT EXAMINATION

23 BY MR. THURMOND:

24 Q Mr. Wilson, good afternoon. I noticed you're in
25 South Carolina Department of Corrections prison clothes

1 and handcuffs?

2 A Yes, sir.

3 Q You were arrested on July 1, 2009 for robbing the
4 First Citizens Bank in Jackson, South Carolina; is that
5 correct?

6 A Yes, sir.

7 Q Who was with you that day?

8 A Phillip Paul and Jelani Edwards.

9 Q Was Jelani Edwards shot and killed that day?

10 A Yes, sir.

11 Q Phillip Paul was arrested that day along with you?

12 A Yes, sir.

13 Q And late in the afternoon or evening of July 1, 2009
14 were you interviewed by an FBI agent?

15 A Yes, sir.

16 Q During that interview more than a year ago did you
17 confess to your involvement in the armed robbery of that
18 First Citizens Bank in Jackson?

19 A Yes, sir.

20 Q And I believe you gave a six-page typed statement to
21 the FBI. Is that your recollection?

22 A I am not sure about how long it was. but, yes, sir.

23 Q And, also, during that interview did you disclose to
24 the FBI what you knew about the Security Federal robbery
25 that occurred in Graniteville on the 25th of June of 2009?

1 A Yes, sir.

2 Q Did you implicate Mr. Artrell Hickson and Mr. Javier
3 Hickson in that robbery?

4 A Yes, sir.

5 Q How do you know Mr. Artrell Hickson? How long have
6 you known him?

7 A Probably since '06.

8 Q Five or six years?

9 A Yea.

10 Q Point him out for me. Is he in the white shirt?

11 A Yes.

12 Q How about Mr. Javier Hickson? How long have you
13 known him?

14 A Probably about seven years.

15 Q Is he in a checked shirt?

16 A Yes, sir.

17 Q So, on December 14 of 2009 you plead guilty to armed
18 robbery; is that correct?

19 A Yes, sir.

20 Q Three days prior to your guilty plea were you
21 interviewed by Investigator Chuck Cain with the Aiken
22 County Sheriff's Office?

23 A Yes, sir.

24 Q And on December 11, 2009 did you tell him who robbed
25 the bank in Graniteville on June 25, 2009?

1 A Yes, sir.

2 Q Who did you tell him?

3 A Javier and Artrell.

4 Q Now, on March 8 of 2010 you were sentenced for the
5 offense of armed robbery; is that correct?

6 A Yes, sir.

7 Q And subsequent to your sentencing your attorney filed
8 a motion on your behalf; is that correct?

9 A Yes, sir.

10 Q All right. To ask that the court reconsider your
11 sentence?

12 A Yes, sir.

13 Q Do you see your lawyer in the courtroom?

14 A Yes, sir.

15 Q What is your lawyer's name?

16 A Bob Harte.

17 Q That motion has not been heard to your understanding?

18 A No, sir.

19 Q Has any deal been made with you in exchange for your
20 testimony today?

21 A No, sir.

22 Q Have you been promised anything in exchange for your
23 testimony today?

24 A No, sir.

25 Q Let me ask you this. June 24 of 2009, the day before

1 the bank robbery, did you have conversations about the
2 robbery that was to take place on the 25th?

3 A Yes, sir.

4 Q Where did those conversations take place?

5 A In my yard.

6 Q In your yard?

7 A Yes, sir.

8 Q Who was present at that meeting?

9 A Phillip Paul, Jelani Edwards, Artrell, and Javier.

10 Q When you say Artrell and Javier, it's Artrell and
11 Javier Hickson, the Defendants?

12 A Yes, sir.

13 Q Was Mr. Kearse present for that meeting?

14 A No, sir.

15 Q This is the day before the robbery; correct?

16 A Yes, sir.

17 Q Do you recall about what time the meeting was that
18 day?

19 A I can't remember what time.

20 Q Just that it occurred that day?

21 A Yea.

22 Q And at this meeting what was decided?

23 A What bank we were going to rob and who was going to
24 go.

25 THE COURT: I'm sorry. What bank was going to be

1 robbed and what?

2 THE WITNESS: Who was going to go.

3 THE COURT: Thank you.

4 Q And it was decided that which bank was going to be
5 robbed?

6 A The one in Graniteville.

7 Q The Security Federal in Graniteville?

8 A Yes, sir.

9 Q And was going to commit that robbery?

10 A Artrell and Javier.

11 Q And who else?

12 A I can't remember his name. Kearse is his last name.

13 Q Kearse is his last name?

14 A Yea.

15 Q You did not know David Kearse well?

16 A I met him one time.

17 Q You didn't know him like you knew Artrell and Javier;
18 is that correct?

19 A No, sir.

20 Q Who was going to supply the guns for this robbery?

21 A Phillip Paul.

22 Q Who was Phillip Paul going to supply the guns to?

23 A Artrell and Javier.

24 Q Do you remember Artrell asking to use a specific kind
25 of gun?

- 1 A AK-47.
- 2 Q What is an AK-47?
- 3 A It is a gun.
- 4 Q What is it a rifle, a pistol, a shotgun?
- 5 A A rifle, I guess.
- 6 Q Got a big clip in it?
- 7 A Yes, sir.
- 8 Q With bullets?
- 9 A Yes, sir.
- 10 Q Would Phillip Paul give the AK-47 to Artrell Hickson?
- 11 A No, sir.
- 12 Q Did Phillip Paul have any other guns?
- 13 A Yes, sir.
- 14 Q What other guns did he have?
- 15 A .38, a Glock 40.
- 16 Q A Glock 40?
- 17 A Yes, sir.
- 18 Q Who was going to drop Mr. Hickson -- Mr. Artrell
- 19 Hickson, Mr. Javier Hickson, and Mr. David Kearse off at
- 20 the bank from what you learned from the meeting on the
- 21 24th?
- 22 A Kearse's girlfriend.
- 23 Q Kearse's girlfriend. And you don't know if his
- 24 girlfriend was in on it or not. You just heard that she
- 25 was to drop them off; is that correct?

1 A Yes, sir.

2 Q Was there a plan for a getaway driver?

3 A Yes, sir.

4 Q Who was the getaway driver to be?

5 A I just know him by Von.

6 Q Von?

7 A Yes, sir.

8 Q As in Devon Jones?

9 A I'm not sure of his last name. I just know him by
10 Von.

11 Q The day of the robbery, the 25th of June of 2009,
12 where were you?

13 A I was home.

14 Q Were you home on the afternoon of the 25th?

15 A Yes, sir.

16 Q Who was there at your house on the afternoon of the
17 25th?

18 A Phillip Paul and Jelani Edwards.

19 Q Anybody receive a phonecall on the afternoon of
20 June 25?

21 A Jelani.

22 Q Were you sitting right next to him?

23 A Yes, sir.

24 Q Did you hear a voice --

25 A Yes, sir.

1 Q -- on the other end of the line?

2 A Yes, sir.

3 Q Whose voice was it?

4 A Artrell.

5 Q How do you know Artrell Hickson's voice?

6 A Just being around him talking to him.

7 Q For years and years?

8 A Yes, sir.

9 Q What did you hear Artrell Hickson say to Jelani
10 Edwards at your house on the afternoon of June 25, 2009?

11 A That they're hemmed up in Graniteville.

12 Q I'm sorry. They're what in Graniteville?

13 A They're hemmed up.

14 Q Hemmed up in Graniteville. Did Jelani then leave?

15 A Yes, sir.

16 Q Who did he leave with?

17 A Phillip Paul.

18 Q What car did they leave in?

19 A Jelani's Cadillac.

20 Q What color Cadillac?

21 A Champagne color.

22 Q Did you go with them?

23 A No, sir.

24 Q Did you speak to Mr. Artrell Hickson a couple of days
25 after the robbery?

1 A Yes, sir.

2 Q A couple of days after the 25th of June?

3 A Yes, sir.

4 Q What did you ask him?

5 A What did they get out of there.

6 Q What did Mr. Artrell Hickson tell you?

7 A Little or nothing.

8 Q Little or nothing. That's all the questions I have
9 for you. Please answer any questions from either
10 Mrs. Brown or Mr. Routzong.

11 THE COURT: Mrs. Kelley Perkins Brown?

12 CROSS-EXAMINATION

13 BY MRS. BROWN:

14 Q You had a rather extensive interview with the FBI
15 agent on July 2, 2009, didn't you?

16 A I can't remember the date.

17 Q Well, how about that interview that you just told
18 Mr. Thurmond that you had right after you were arrested?
19 Do you remember that?

20 A Yes, ma'am.

21 MR. THURMOND: Just for clarification we object. I
22 gave the interview that evening. It was typed up by the
23 agent the following day. He gave the interview after the
24 arrest that evening of the 1st.

25 THE COURT: Thank you.

1 Q You gave an extensive interview to the FBI agent the
2 evening you were arrested on July 1; is that correct?

3 A Yes, ma'am.

4 Q Talked to him for a while, didn't you?

5 A Yes, ma'am.

6 Q Told him a lot of stuff, didn't you?

7 A Yes, ma'am.

8 Q You didn't tell him about this planning meeting that
9 happened the day before this robbery, did you?

10 A They didn't ask.

11 Q Oh, and they asked you specifically about everything
12 else you told them?

13 A Yes, ma'am.

14 Q Did they ask you about the Graniteville robbery?

15 A I think so, yes, ma'am.

16 Q But you didn't tell them about being in on a planning
17 meeting for the Graniteville robbery, did you?

18 A I wasn't in on the planning. I was just there.

19 Q Didn't you just testify answer Solicitor Thurmond's
20 questions about this meeting on June 24?

21 A Yes, ma'am. I was there.

22 Q And that was in relation to the Graniteville robbery?

23 A Yes, ma'am.

24 Q Correct?

25 A Yes, ma'am.

1 Q And in answering the question that the agent posed
2 about the Graniteville robbery you said nothing about a
3 meeting or any conversations that were held on June 24,
4 did you?

5 A No, ma'am.

6 Q When you spoke with Investigator Cain on December 11
7 you didn't say anything about this conversation that was
8 had the day before, did you?

9 A They didn't ask.

10 Q They were asking you about the robbery, yes?

11 A Mostly asking about my robbery.

12 Q Again, on that day when you talked with Investigator
13 Cain three days prior to pleading guilty to the First
14 Citizens robbery you likewise gave them a lot of
15 information about different kinds of things; right?

16 A Yes, ma'am.

17 Q And you did not say anything about any conversation
18 prior that you had with any of these people prior to the
19 Graniteville robbery, did you?

20 A No, ma'am.

21 Q As it stands right now you're going to be in the
22 South Carolina Department of Corrections for a good long
23 time, aren't you?

24 A Yes, ma'am.

25 Q And you know that that motion to have your sentence

1 reconsidered hasn't been heard yet, has it?

2 A No, ma'am.

3 Q And you're hoping that whatever help you give to the
4 state will help you on that motion to reconsider, don't
5 you?

6 A I wasn't promised anything.

7 Q I didn't ask if you were promised anything. I am
8 asking are you hoping that the help that you give the
9 State will help you on your motion to have your sentence
10 reduced?

11 A I'm hoping that the State will reduce my time -- I am
12 not saying for this, but I am hoping that they do.

13 Q You're hoping that the State will reduce your time;
14 right?

15 A Yes.

16 MRS. BROWN: I have no further questions, Your Honor.

17 THE COURT: Mr. Routzong?

18 CROSS-EXAMINATION

19 BY MR. ROUTZONG:

20 Q The robbery that you were convicted for you were
21 wearing a black mask, black neck bandanna, black gloves,
22 all of that kind of stuff; right?

23 A I didn't have no bandanna on.

24 Q Everything was all black?

25 A I can't really remember.

1 Q You don't remember what you were wearing when you
2 robbed the bank.

3 Thank you, Your Honor.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY THE SOLICITOR:

7 Q How tall are you?

8 A About 5'8.

9 Q Are you sure?

10 A I am not really sure.

11 Q You want to step down and we'll check? Stand right
12 here in front of this jury, Mr. Wilson. Would you agree
13 that you're approximately 68 1/2 inches tall? I'll give
14 you 68. How about that?

15 THE WITNESS: Yes, sir.

16 MRS. BROWN: Your Honor, let the record reflect --

17 THE COURT: Ma'am --

18 MRS. BROWN: -- that the tape measure --

19 THE COURT: Ma'am --

20 MRS. BROWN: -- is not parallel.

21 MR. THURMOND: Mrs. Brown can hold the bottom of the
22 tape. Mrs. Brown can measure the defendant (sic), Judge.

23 THE COURT: Y'all quit squabbling over that. Put it
24 all of the way to the floor and tell me how tall he is.
25 Stand up straight for me, sir.

1 What does it say. Sergeant Toole?

2 THE POLICE OFFICER: Sixty-eight and a half inches.

3 THE COURT: Is that it for him?

4 MR. THURMOND: Yes, sir.

5 THE COURT: You may go back. Next witness.

6 MS. RINGLER: Your Honor, Investigator Criscillis.

7 JAMES G. CRISCILLIS, II, after being duly sworn,
8 testified as follows:

9 THE CLERK: Have a seat in the witness box. State
10 your full name for the court spelling your last.

11 THE WITNESS: James Green Criscillis, II;
12 C-R-I-S-C-I-L-L-I-S.

13 DIRECT EXAMINATION

14 BY MS. RINGLER:

15 Q Thank you. Investigator Criscillis, where do you
16 work?

17 A Aiken County Sheriff's Office.

18 Q How long have you worked there?

19 A Since 2005.

20 Q And how long have you been an investigator?

21 A Since September of 2008.

22 Q Were you an investigator in June of 2009?

23 A Yes, ma'am.

24 Q Did you respond to the Security Federal on June 25,
25 2009?

1 A Yes, ma'am, I did.

2 Q Did you work the perimeter there?

3 A Yes, ma'am, I did.

4 Q What does working the perimeter entail? Actually, if
5 you could come down and use the map. This is State's
6 Exhibit 14.

7 A We're given an assignment.

8 Q Could you stand to the side?

9 A Certainly. We're given an assignment of an area to
10 cover. At the beginning I was roving from Gregg Street up
11 Gregg Highway all the way --

12 Q Maybe just -- I'm sorry. If you could just kind of
13 hit the major roads and sort of orient the jury as to the
14 map a little bit.

15 A This would be Gregg Highway in Graniteville. This
16 would be Gregg Street. Okay. This is actually a dirt
17 path and this would be Canal Street in Graniteville and
18 the bank would be right here.

19 Q I'm sorry. Please continue. You said you were
20 roving?

21 A I was roving for the majority of the time and then I
22 would sit stationary right here below the old Lavelle
23 McCampbell High School ball field pointing towards the
24 bypass.

25 Q Okay. And what, if anything, happened while you were

1 stationed -- I mean, parked in front of the ballpark
2 there?

3 A I observed Jelani Edwards' car pass by me --

4 Q Okay.

5 A The gold Cadillac with 22-inch rims.

6 Q Can you show us where they were coming from and where
7 they were traveling to?

8 A I was parked here facing up towards the bypass. They
9 came from behind me traveling this way. I followed in
10 behind them catching up to them almost to the bypass. We
11 went left onto 118, went to Trolley Line Road behind USC
12 Aiken, and made a right on to Trolley Line Road and pulled
13 into the University behind the old softball entrance is
14 where I initiated a traffic stop.

15 Q Okay. Thank you. Please have a seat. Okay. You
16 said you mentioned Jelani Edwards. You were able to
17 identify the driver?

18 A Yes, ma'am. Once the vehicle was stopped the driver
19 was identified as Jelani Edwards. It was also occupied by
20 Phillip Paul. Jelani was driving.

21 Q What kind of car was Jelani driving?

22 A It was a gold -- champagne gold Cadillac with very
23 large rims like 22-inch.

24 Q You said -- if we can just go back to the map again.
25 I'm sorry. You said that when you were at the ball park

1 is when you first saw them?

2 A That's correct.

3 Q Can you point that out again here? And about what
4 time was that?

5 A I believe around 3:30, 3:29, somewhere right around
6 there.

7 Q Okay. And then can you show us where the Kalmia
8 Apartments are on this?

9 A Kalmia Apartments would be right here.

10 Q Okay. And then are you familiar with the Lutheran
11 Church?

12 A The Lutheran Church? Yes, ma'am. The Lutheran
13 Church if I am not mistaken would be right here.

14 Q Okay.

15 A I'm sorry. I apologize. The Lutheran Church is up
16 here. That's the Catholic Church. I'm sorry.

17 Q Thank you.

18 A Yes, ma'am.

19 Q Thank you. Please answer any questions that the
20 defense counsel might have.

21 THE COURT: Mrs. Brown?

22 MRS. BROWN: I have no questions, Your Honor.

23 THE COURT: Mr. Routzong?

24 MR. ROUTZONG: No questions, Your Honor.

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

1 MS. RINGLER: Your Honor, we might see if Crystal
2 Harris is here.

3 THE COURT: Have you gotten somebody to call her?

4 MRS. HALLING: We have.

5 MS. RINGLER: Your Honor, she should be a short
6 witness. I think the witness after her would be a rather
7 lengthy one.

8 THE COURT: I suspect that you need to call your next
9 one. She doesn't appear to be here.

10 MR. THURMOND: Judge, the State calls Mr. David
11 Kearse.

12 THE COURT: Is she here, Ms. Barbara?

13 THE BAILIFF: No, sir. I was told by one of the
14 persons outside that she is on her way. She is not here.

15 THE COURT: We'll have to call her out of turn, I
16 guess.

17 Hold on one second, Mr. Thurmond. You say this one's
18 a little lengthy?

19 MS. RINGLER: Yes, Your Honor.

20 THE COURT: Everybody okay? Do you need a bathroom?
21 Ma'am, do or don't? You do need a bathroom break?

22 THE JUROR: I'm okay.

23 THE COURT: Alabama, are you okay? Ladies?
24 Mr. Foreman? If you get uncomfortable, just please,
25 please raise your hand. All right. Bring the next

1 witness, please. Right up here, sir.

2 DAVID KEARSE, after being duly sworn, testified
3 as follows:

4 THE CLERK: Have a seat in the witness box. State
5 your full name for the court spelling your last.

6 THE COURT: Full name and spell your last.

7 THE WITNESS: David Kearse; K-E-A-R-S-E.

8 THE COURT: Mr. Kearse, if you would, please, answer
9 loud -- not shout, but answer loud enough so that the
10 jurors can hear you. Fair enough?

11 THE WITNESS: David Kearse; K-E-A-R-S-E.

12 DIRECT EXAMINATION

13 BY MR. THURMOND:

14 Q Good afternoon, Mr. Kearse. You are currently
15 charged with two offenses; is that correct?

16 A Yes, sir.

17 Q Armed robbery?

18 A Yes, sir.

19 Q Possession of a firearm during the commission of a
20 violent crime; is that correct?

21 A Yes, sir.

22 Q Is that stemming from the June 25 incident at the
23 Security Federal Bank?

24 A Yes, sir.

25 Q Has your case been resolved?

1 A Yes, sir.

2 Q Is it still pending?

3 A Yes, sir.

4 Q Listen to my question. Your case hadn't be resolved
5 yet, has it?

6 A No, sir.

7 Q Have you been promised anything in exchange for your
8 testimony?

9 A No, sir.

10 Q Any deals been cut with you?

11 A No, sir.

12 Q Anything, a wink and a nod at all?

13 A No, sir.

14 Q Is your lawyer present in the courtroom?

15 A Yes, sir.

16 Q You want to point him out for us?

17 A Right here.

18 Q What is his name?

19 A Everett chandler.

20 MR. THURMOND: Mr. Everett Chandler?

21 (Whereupon, Mr. Everett Chandler stands.)

22 Q I'll get right to the point. Let's go to June of
23 2009. Where were you working?

24 A Savannah River Site.

25 Q What kind of money were you making a week?

- 1 A About \$400 a week.
- 2 Q Who were you living with at the time?
- 3 A I stay with my mother.
- 4 Q You stay with your mother? Were you dating
- 5 Ms. Sabrina Oakman at the time?
- 6 A Yes, sir.
- 7 Q Are you still dating her?
- 8 A Yes, sir.
- 9 Q You and her on good terms?
- 10 A Yes, sir.
- 11 Q How do you know Artrell and Javier Hickson?
- 12 A I knew them since elementary. We grew up together.
- 13 Q You known them most of your life?
- 14 A Yes, sir.
- 15 Q Are they present in the courtroom?
- 16 A Yes, sir.
- 17 Q You want to point them out for me?
- 18 A Right here.
- 19 Q What color shirt is Mr. Artrell Hickson wearing?
- 20 A A white shirt.
- 21 Q How about his brother Mr. Javier Hickson?
- 22 A Beige shirt.
- 23 Q This bank robbery that occurred on June 25 of 2009,
- 24 when was it planned?
- 25 A Last week -- the last week before the bank robbery.

1 Q About a week before?

2 A A week before.

3 Q Where was the first conversation that you had about
4 this bank robbery?

5 A New Ellenton in front of the Sunshine Club.

6 Q The Sunshine Club in New Ellenton? Who was present
7 for that conversation?

8 A It was my, Jelani, Artrell.

9 Q You, Jelani Edwards, and Artrell Hickson?

10 A Yes, sir.

11 Q Where specifically did you have a conversation?

12 A Inside the car -- Jelani's car.

13 Q Inside Jelani's car. What kind of car did he have?

14 A A Cadillac.

15 Q At the Sunshine Club?

16 A Uh-huh.

17 Q In New Ellenton about a week prior to the robbery?

18 A Yes, sir.

19 Q Tell me about the conversation in that car.

20 A Jelani brought it up we need to do another bank and
21 Artrell was like we need another bank because money is
22 running low. So we need to hit another bank.

23 Q Did you owe anybody any money?

24 A Yea, Jelani.

25 Q How much money did you owe Jelani?

1 A 500.

2 Q Have any other conversation that evening?

3 A No, sir.

4 Q Everybody kind of went their separate ways?

5 A Yes, sir.

6 Q When was the next conversation about the bank
7 robbery?

8 A The same week we did the bank robbery.

9 Q Earlier that part of the week?

10 A Uh-huh.

11 Q The 25th was a Thursday. It was before Thursday?

12 A Yes, sir.

13 Q Do you remember about what day that was?

14 A I would say Tuesday.

15 Q And where did this conversation take place?

16 A At Artrell and them's house.

17 Q At whose house?

18 A Artrell's. Javier. At their grandma house.

19 Q Where did they live?

20 A Woodland drive.

21 Q Did they live with their grandmother?

22 A Yes, sir.

23 Q Did you go there?

24 A Yes, sir.

25 Q And who was present at that meeting?

1 A Artrell, me, Javier, and Big Phillip.

2 Q Big Phil. Is that Phillip Paul?

3 A Yes, sir.

4 Q Is he called Big Phil because he's 400 pounds as
5 we've heard in testimony?

6 A Yes.

7 Q And what was planned at that meeting?

8 A When we was going to do the bank, what we was going
9 to wear, all kind of stuff like that.

10 Q What was your role to be?

11 A The lookout.

12 Q Who picked the bank?

13 A Artrell.

14 Q Did Jelani Edwards go? Did he want to go?

15 A Yea, he wanted to go.

16 Q Why didn't he go?

17 A He was being watched. He said he was being watched.
18 The police was watching him.

19 Q Who agreed to go in his place?

20 A Whose place?

21 Q In Jelani Edwards' place?

22 A Nobody. I don't know nothing about that.

23 Q Who all agreed to do the robbery?

24 A Us three.

25 Q Who is us three?

1 A Jelani and Artrell and me.

2 Q Listen to my question. Who are the three people who
3 agreed to do the robbery?

4 A Artrell, Javier, and me.

5 Q Artrell, Javier, and you?

6 A Uh-huh.

7 Q Let me go to Wednesday the 24th, the day before the
8 robbery. What did you do that day?

9 A We was -- we had got in his car. So we went to his
10 house. So we got in the car and we rode around the bank.
11 We was supposed to be do it that day, but I told them we
12 don't need to do it that day. We just rode around.

13 Q Whose car were you in?

14 A Artrell's car.

15 Q Artrell's car. What was Artrell driving in June of
16 2009?

17 A A red Crown Vic.

18 Q Who was in the car?

19 A Me, Artrell, and Javier.

20 Q And where did you go?

21 A In Graniteville around the bank.

22 Q When you say the bank, what bank are you talking
23 about?

24 A Security Federal.

25 Q What time did you go by there?

- 1 A Around lunch time.
- 2 Q After you rode by the bank where were you taken?
- 3 A Back home.
- 4 Q All right. Let's go to the day of the robbery, the
5 25th. That morning did you receive a phonecall?
- 6 A Yes, sir.
- 7 Q What time?
- 8 A 8 o'clock.
- 9 Q 8 o'clock. Who called you?
- 10 A Artrell.
- 11 Q Artrell Hickson?
- 12 A Yes, sir.
- 13 Q What did he say to you when he called?
- 14 A He called me and asked was I ready.
- 15 Q Were you ready. What did you do then?
- 16 A I asked Sabrina for the keys to truck and I rode down
17 there.
- 18 Q And the keys to the truck -- specifically, what kind
19 of vehicle was that?
- 20 A A Tahoe, Chevrolet.
- 21 Q All right. Where did you go once you left yours and
22 Sabrina's house with the Tahoe?
- 23 A Repeat the question.
- 24 Q Where did you go?
- 25 A I went to Artrell's house.

1 Q Went to Artrell's house. When you're saying
2 Artrell's house, you're talking about his grandmother's
3 house?

4 A Yes, sir.

5 Q And who was present when you got to his house?

6 A Jelani, Artrell, Javier, me -- during the bank
7 robbery that day, right --

8 Q This is the morning of the robbery.

9 A Okay. Just us three and they grandma. They grandma
10 that was there.

11 Q What is the grandmother's name?

12 A Beulah Mae Hickson.

13 Q She was present at her house on the morning of the
14 25th?

15 A Yes, sir.

16 Q When you went there to pick up her grandsons Javier
17 and Artrell?

18 A Yes, sir.

19 Q About what time did you get there?

20 A At about 8:30.

21 Q What did you do when you got there?

22 A I got out of the truck and went inside and got them.

23 Q Did you then leave their house and go back to your
24 house?

25 A No, sir. I went straight to my grandma's house.

1 Q Listen to my question. I know you're nervous.
2 A Yea.
3 Q You've testified that on the morning of the
4 robbery --
5 A Uh-huh.
6 Q -- you drove the Tahoe to Mrs. Beulah Mae Hickson's
7 house?
8 A Uh-huh.
9 Q That was the first thing in the morning; is that
10 correct?
11 A Yes, sir.
12 Q You were there a few moments; is that correct?
13 A Yes, sir.
14 Q What did you do when you left back there? Where did
15 you go?
16 A Oh, I went back to Sabrina's house.
17 Q You went back to Sabrina's that house?
18 A Yes, sir..
19 Q By yourself?
20 A Yes, sir.
21 Q Then what did you ask Sabrina to do?
22 A I asked her to take me back to the house.
23 Q Back at their house. About what time are you and
24 Sabrina going back to the Hickson's residence?
25 A About I would say 9:30.

- 1 Q Did you go inside?
- 2 A Yes, sir.
- 3 Q Did Sabrina remain in the car?
- 4 A Yes, sir.
- 5 Q All right. What happened next?
- 6 A We -- they got a bookbag. Artrell had got his
- 7 bookbag and he had some stuff in it. I don't know -- he
- 8 had clothes, clothes in there and we went back to the car.
- 9 Q Who went back to the car?
- 10 A Us three.
- 11 Q You, Javier, and Artrell Hickson; is that correct?
- 12 A Yes, sir.
- 13 Q Did you testify that Artrell Hickson had a bookbag?
- 14 A Yes, sir.
- 15 Q What color was it?
- 16 A It was black.
- 17 Q Where did they put the bookbag?
- 18 A Inside the car.
- 19 Q Where were you sitting when you left?
- 20 A I was in the front seat, passenger side.
- 21 Q Who was seated in the back seat?
- 22 A Artrell and Javier.
- 23 Q Where did you go after you left the Hickson house for
- 24 the second time that morning?
- 25 A My grandmother.

- 1 Q Where does your grandmother live?
- 2 A New Ellenton,
- 3 Q What is her name?
- 4 A Cara Mae Gray.
- 5 Q Why did you go to your grandmother's house that
- 6 morning?
- 7 A They said they needed some gloves so I went and got
- 8 my granny's gloves out the drawer.
- 9 Q You went to your grandparent's house and took your
- 10 granddaddy's gloves?
- 11 A Uh-huh.
- 12 Q Where did you go next?
- 13 A Went to Aiken. We stopped by Walmart.
- 14 Q Which Walmart?
- 15 A South side.
- 16 Q Where did you park?
- 17 A In front of Walmart.
- 18 Q Anybody get out of the car?
- 19 A Javier. Javier and me.
- 20 Q Where did y'all go?
- 21 A We went inside Walmart.
- 22 Q Who works at the Walmart?
- 23 A His girlfriend Crystal.
- 24 Q Do you know her full name?
- 25 A Harris.

- 1 Q Who else works at the Walmart?
- 2 A His sister Monique.
- 3 Q Monique Hickson?
- 4 A Yes, sir.
- 5 Q At some point you left the Walmart. Did you get back
- 6 in the Tahoe?
- 7 A Yes, sir.
- 8 Q What did Javier do?
- 9 A He got Crystal car.
- 10 Q What kind of car does Crystal have?
- 11 A She had a Cavalier, Chevrolet Cavalier.
- 12 Q What color was it?
- 13 A Beige.
- 14 Q A beige Cavalier. Did you get back in the Tahoe?
- 15 A Yes, sir.
- 16 Q Who is still in your back seat?
- 17 A Artrell.
- 18 Q All right. Where did you go next?
- 19 A Graniteville.
- 20 Q Who follows you?
- 21 A Javier.
- 22 Q In what vehicle?
- 23 A The Cavalier.
- 24 Q Where in Graniteville did you go?
- 25 A Kalmia Apartments.

- 1 Q What happened when you got to Kalmia Apartments?
- 2 A We parked in front of some apartments.
- 3 Q What did you do then?
- 4 A We got out.
- 5 Q Did you see anybody there?
- 6 A Yes, sir.
- 7 Q Who did you see?
- 8 A Devon.
- 9 Q Devon as in Devon Jones?
- 10 A Yes, sir.
- 11 Q Who was he talking to?
- 12 A Artrell.
- 13 Q Did Devon Jones know of the plan to rob this bank?
- 14 A Yes, sir.
- 15 Q Was he given a role?
- 16 A Yes, sir.
- 17 Q What was his role to be?
- 18 A The getaway.
- 19 Q And how was he to be to getaway? What vehicle were
- 20 you taking to the bank?
- 21 A Crystal car, the beige Cavalier.
- 22 Q The beige Cavalier. Who was to drive it?
- 23 A Devon.
- 24 Q Where did you get your clothes ready for the robbery?
- 25 A Outside of the car in front of the apartments.

- 1 Q What did you wear?
- 2 A I had some black pants on and a white t-shirt -- well
- 3 a black t-shirt, too.
- 4 Q What did you have covering your face?
- 5 A A white t-shirt.
- 6 Q What was Artrell and Javier wearing?
- 7 A Artrell had a black hoodie and Javier had two black
- 8 hats. He had a hat on top of a hat.
- 9 Q Javier had a bandanna?
- 10 A Yes, sir.
- 11 Q Where were the guns?
- 12 A They were in the bookbag.
- 13 Q What gun were you given?
- 14 A A .25 pistol.
- 15 Q Chrome?
- 16 A Chrome.
- 17 Q When was the first time you seen that gun?
- 18 A That was the first time.
- 19 Q What other gun did you see?
- 20 A A black 40.
- 21 Q A big black gun?
- 22 A Uh-huh.
- 23 Q Did you see what kind of gun Javier was given?
- 24 A No, sir.
- 25 Q All right. So, you and your co-defendants have

1 readied yourselves. You've put on your clothes,
2 distributed the guns. Devon is going to drive you in the
3 beige Cavalier.

4 A Yes, sir.

5 Q You leave out of Kalmia Apartments at that point?

6 A Yes, sir.

7 Q Where do you go?

8 A Goes behind the bank.

9 Q And what was the plan as far as how you were going to
10 get back in that car?

11 A Get dropped off. We got dropped off behind the bank.
12 The plan was to go inside of the bank as he drive around
13 the bank as soon as we come out he should be out there
14 ready for us to get in the car.

15 Q Was he to circle the bank?

16 A Yes, sir.

17 Q Who all went into the bank?

18 A Me, Artrell, and Javier.

19 Q The three of y'all.

20 A The three of us.

21 Q What was your role?

22 A My role was to be the watch-out.

23 Q Kind of the front of the bank where the doors are?

24 A Yes, sir.

25 Q What were Artrell's and Javier's roles to be?

- 1 A To go get the money.
- 2 Q How long did the robbery take?
- 3 A No longer than 10 minutes.
- 4 Q How about a few second, maybe?
- 5 A A few seconds. You could say that.
- 6 Q After the robbery did you run out the door?
- 7 A Yes, sir.
- 8 Q Did Javier did run out the door?
- 9 A Yes, sir.
- 10 Q Did Artrell run out the door?
- 11 A Yes, sir.
- 12 Q Who do you think was the last one out the door?
- 13 A Artrell.
- 14 Q What happened to your ride, Mr. Kearse?
- 15 A He wasn't there. He was gone.
- 16 Q He left you. What did y'all do next?
- 17 A We was in the wooded area where it is getting cleared
- 18 off.
- 19 Q Did you start running?
- 20 A Yes, sir.
- 21 Q Who was running right with you?
- 22 A Javier.
- 23 Q And then at some point did Artrell meet up with you?
- 24 A Yea. He caught up with us.
- 25 Q Where did the three of y'all meet up?

- 1 A Behind a blue water tower.
- 2 Q A blue water tower. And what was done when you met
- 3 up behind the blue water tower?
- 4 A Artrell went to separate the money.
- 5 Q Separate the money. You were given some money?
- 6 A Yes, sir.
- 7 Q Were everybody's gloves on or off when this money was
- 8 distributed?
- 9 A Our gloves was on, but as we was getting the money --
- 10 as we done got settled we took them off.
- 11 Q When you started distributing the money everybody had
- 12 the gloves on?
- 13 A Uh-huh.
- 14 Q What kind of gloves did you have on?
- 15 A A latex glove and a regular glove.
- 16 Q You had your granddaddy's glove on one hand?
- 17 A Uh-huh.
- 18 Q And a latex glove on the other?
- 19 A Yes, sir.
- 20 Q What about the glove -- did you give one of your
- 21 granddaddy's gloves to either Artrell or Javier?
- 22 A Javier.
- 23 Q You gave one of your gloves to Javier?
- 24 A Yes, sir.
- 25 Q So, once the money is divided up what happens next?

- 1 A Durango sees one of us and we run off. I ran off and
2 then they ran off too.
- 3 Q Was anybody running with you at that point?
- 4 A No, sir.
- 5 Q Did you have a telephone on you?
- 6 A Yes, sir.
- 7 Q Back in June of 2009 did you have your own phone?
- 8 A Yes, sir.
- 9 Q Did you have your phone with you that day?
- 10 A Oh, no, sir.
- 11 Q Mr. Kearse, whose phone did you have?
- 12 A Artrell Hickson.
- 13 Q Artrell Hickson's phone. Why did you have his phone?
- 14 A He gave it to me.
- 15 Q When did he give it to you?
- 16 A As we was in the woods.
- 17 Q So you continued to run?
- 18 A Yes, sir.
- 19 Q And you ultimately were caught; is that correct?
- 20 A Yes, sir.
- 21 Q With Artrell's phone did you start calling anybody
22 else's phone?
- 23 A Yes, sir.
- 24 Q Whose phone were you calling?
- 25 A I called my mother and Sabrina's phone.

- 1 Q Do you remember if you called Javier's phone?
- 2 A No, I didn't call his phone.
- 3 Q And at some point you were arrested under a shed; is
- 4 that correct?
- 5 A Yes, sir.
- 6 Q And when you were arrested you had a gun on you; is
- 7 that correct?
- 8 A Yes, sir.
- 9 Q And you had some money on you?
- 10 A Yes, sir.
- 11 Q Quite a few \$5 bills; is that correct?
- 12 A Yes, sir.
- 13 Q You were placed under arrest?
- 14 A Yes, sir.
- 15 Q Taken to the Sheriff's Office?
- 16 A Yes, sir.
- 17 Q You were read your miranda rights?
- 18 A Yes, sir.
- 19 Q And then at that point you agreed to tell
- 20 Investigator Greg Savell what you had done; is that
- 21 correct?
- 22 A Yes, sir.
- 23 Q And also to tell what Mr. Javier Hickson and
- 24 Mr. Artrell Hickson had done; is that correct?
- 25 A Yes, sir.

1 Q Let me get you to step down. I want to show you some
2 exhibits. Step over here for a minute. Let me show you
3 what's in evidence as State's No. 12. I want you to
4 orient us on this bank robbery. Where are you?

5 A I am right there in the white.

6 Q Get up there and point out for the jury. You are
7 wearing the white t-shirt on your head. This little short
8 guy here with the long pants, who is he?

9 A Artrell.

10 Q Artrell Hickson. Stand away for me so the people
11 behind you can see. Who is standing right here with the
12 bandanna tied around his head?

13 A That's Javier.

14 Q Let me show you State's No. 15. Where are you in
15 this picture, Mr. Kearse?

16 A Right here.

17 Q And tell me about these gloves you're wearing. What
18 glove is this?

19 A That's the regular -- regular glove, I think. I
20 really can't tell.

21 Q I hate to keep saying, but is that is that your
22 grandfather's glove on your left hand?

23 A Yes, sir.

24 Q And this kind of clear glove, what is that on your
25 right hand?

- 1 A Latex.
- 2 Q Who is this standing right behind you?
- 3 A Javier.
- 4 Q Javier Hickson?
- 5 A Yes, sir.
- 6 Q Let me show you what's marked in evidence as
- 7 State's No. 16. Who is that a photograph of?
- 8 A That's Javier.
- 9 Q Is that Javier or Artrell? Who had the big Glock?
- 10 A That's Artrell.
- 11 Q Let me show you what's marked as State's No. 18 in
- 12 evidence. Mr. Kearse, who is this?
- 13 A That's Javier.
- 14 Q Is that the blue bandanna he was wearing?
- 15 A Yes, sir.
- 16 Q Is that his backpack?
- 17 A Yes, sir.
- 18 Q Is that the backpack that you had seen earlier that
- 19 day?
- 20 A Yes, sir.
- 21 Q Now, is that Artrell's backpack or Javier's backpack?
- 22 A Artrell's.
- 23 Q Let me show you one more picture, State's No. 19.
- 24 All right. That blue bandanna, is that Javier?
- 25 A Yes, sir.

1 Q And do you notice his his right hand?

2 A Uh-huh.

3 Q What do you notice is on his right hand? Is he
4 wearing a glove?

5 A Yes, sir.

6 Q Is that the right glove?

7 A Yes, sir.

8 Q You were wearing the left glove?

9 A Yes, sir.

10 Q You gave Javier the right glove?

11 A Yes, sir.

12 Q Have a seat for me, please. Let me show you what's
13 in evidence as State's 13. Is this the handgun you used
14 to commit that armed robbery?

15 A Yes, sir.

16 MR. THURMOND: Mr. Kearse, that's all the questions I
17 have for you. Thank you.

18 THE COURT: Just sit tight. All right.

19 Mr. Foreman, ladies and gentlemen, we're going to
20 take a quick bathroom break. Don't discuss the case.
21 Don't start deliberating. We're going to go until about
22 5, I suspect, depending on what else we got left, but we
23 will not finish tonight. I'll talk to you a little bit
24 about the situation tomorrow.

25 THE BAILIFF: Everyone remain seated.

1 THE COURT: Thank you. Y'all step on out.

2 (Whereupon, the jury exited the courtroom at 3:44.)

3 THE COURT: A couple of things. Anything for the
4 record before we break by the State?

5 MR. THURMOND: No, sir.

6 THE COURT: Mr. Kelley Perkins Brown?

7 MRS. BROWN: No, Your Honor.

8 THE COURT: Mr. Routzong?

9 MR. ROUTZONG: No, sir.

10 THE COURT: All right. Mr. Kearse, you're absolutely
11 under in the middle of your testimony so do not discuss
12 your testimony with anybody while we take a break. The
13 officers will make arrangements for you to use the
14 restroom.

15 For those in the audience, we're going to take about
16 a 10-minute break. My admonitions about the behavior
17 carry over into the hall. If there is any disruptions in
18 the hall the officers are instructed to immediately detain
19 you. Please behave as you have done so. Thank you. Ten
20 minutes. let me see the lawyers when y'all have had a
21 chance to go to the bathroom.

22 (Whereupon, a break was taken.)

23 THE COURT: Mr. Solicitor, what is your decision on
24 that? For the record when I say that, we had an
25 in-chambers discussion in connection with cross

1 examination and a discussion on State versus --

2 MRS. BROWN: Mizell.

3 THE COURT: Mizell?

4 MRS. BROWN: Yes, Your Honor.

5 THE COURT: Dealing with biased testimony or showing
6 bias by -- showing the amount of time that the witness is
7 potentially facing because there's not been a negotiation
8 or plea agreement at this point in time.

9 MR. THURMOND: Judge, the case says what it says.

10 THE COURT: It does say what it says. We'll just go
11 ahead and continue like we've been doing.

12 Bring the jury in, please.

13 MR. THURMOND: Your Honor, could I be heard on one
14 more point?

15 THE COURT: Hold on, Ms. Jimmie.

16 MR. THURMOND: I assume that inquiry would end with
17 you're looking at 10 to 30 on the armed robbery and not
18 get into the discussion of 85 percent and all this
19 business?

20 THE COURT: That's correct. Very succinct. All
21 right.

22 (Whereupon, the jury came into open court at
23 approximately 4:03.)

24 THE COURT: Mrs. Kelley P. Brown, you may cross.

25 CROSS-EXAMINATION

1 BY MRS. BROWN:

2 Q Mr. Kearse, you had a conversation with Investigator
3 Greg Savell right after they arrested you for this, didn't
4 you?

5 A Yes, sir. Yes, ma'am.

6 Q And you gave him a little bit different story than
7 you gave to the jury today, didn't you?

8 A Yes, ma'am.

9 Q In fact, you told him that y'all had met at the
10 Sunshine Club that morning; correct?

11 A Yes, ma'am, but I didn't remember.

12 Q You didn't give any information about Sabrina Oakman
13 being involved, did you?

14 A No, ma'am.

15 Q What?

16 A No, ma'am.

17 Q Because y'all aren't just dating. She's the mother
18 of your kids; right?

19 A Correct.

20 Q And you were just trying to keep her out of it,
21 weren't you?

22 A (No response.)

23 Q You were trying to keep her out of it, weren't you?

24 A No, ma'am.

25 Q No?

- 1 A She's not involved.
- 2 Q Well, but your testimony today was that you had her
- 3 drive back to Artrell and Javier's grandmother's house and
- 4 had her pick them up; right?
- 5 A Yes, ma'am.
- 6 Q You didn't tell that that Investigator Savell, did
- 7 you?
- 8 A No, ma'am.
- 9 Q And you didn't tell Investigator Savell about any
- 10 meetings that y'all had in the week or two prior to this,
- 11 did you?
- 12 A No, ma'am.
- 13 Q In fact, you told him that you had met up with these
- 14 boys earlier at the Sunshine Club; right?
- 15 A I think I did.
- 16 Q And that y'all left directly from there; right?
- 17 A Yes, ma'am.
- 18 Q And you didn't tell them anything about having met up
- 19 and divided money, did you?
- 20 A No, ma'am.
- 21 Q In fact, you told him -- the only thing you told him
- 22 about afterwards was throwing away a gun; right?
- 23 A Yes, ma'am.
- 24 Q A gun that they never found?
- 25 A Yes, ma'am.

1 Q Because your statement was you threw away one gun but
2 you had forgotten about the gun that was in your pocket;
3 right?

4 A No. I ain't forgot about it.

5 Q What's that?

6 A I didn't forget about it.

7 Q And that wasn't your statement to Investigator
8 Savell?

9 A Yes, it was.

10 Q It was?

11 A Yes, ma'am.

12 Q So, you lied on several occasions during that
13 conversation with Investigator Savell, didn't you?

14 A I was nervous at the time when I got caught.

15 Q Oh, you were nervous at the time?

16 A Yea, I was scared.

17 Q Scared?

18 A Yes, ma'am.

19 Q So, right there when everything was fresh and you're
20 nervous and scared you lied about what happened?

21 A Repeat that one more time.

22 Q So when you were nervous and scared, you lied about
23 what happened?

24 A Yes, ma'am. It was just words coming out. I was
25 scared. Put it like that. I just --

- 1 Q Yes. You lied?
- 2 A Uh-huh.
- 3 Q Correct?
- 4 A Yea. Yes, ma'am.
- 5 Q You're facing a pile of time for this charge, aren't
6 you?
- 7 A I don't know.
- 8 Q You don't know?
- 9 A No, ma'am.
- 10 Q You don't know that you're facing 10 to 30 years on
11 an armed robbery?
- 12 A No, ma'am.
- 13 Q Oh, you don't know that? Your lawyer hasn't gone
14 over that with you?
- 15 A Yes, he has. Yes, ma'am.
- 16 Q Well, which is it? Yes or no you know how much time
17 you're facing?
- 18 A Yes, ma'am.
- 19 Q So that was another lie just then, wasn't it?
- 20 A I am not looking at that time. I'm just -- I know
21 what I am facing, but I am not looking at that time.
- 22 Q You're not looking at that time? You're not looking
23 at that time because you're here telling this story to the
24 jury? So you're not worried about that?
- 25 A I am not saying that.

1 Q You're hoping to help yourself out here today, aren't
2 you?

3 A Yes, ma'am.

4 Q Just like you're looking to help yourself because you
5 know that you're looking at up to five years on that
6 possession of that gun during the commission of a violent
7 crime, aren't you?

8 A Yes, ma'am.

9 Q Looking to help yourself out.

10 No further questions, Your Honor.

11 THE COURT: Mr. Routzong?

12 CROSS-EXAMINATION

13 BY MR. ROUTZONG:

14 Q Afternoon, Mr. Kearse.

15 A How are you doing?

16 Q I'd like to ask you to look at State's Exhibit --
17 what's been admitted as State's Exhibit No. 17. Remember
18 when you were standing over here just a second ago you
19 first identified that as Javier Hickson, didn't you?

20 A Yes, sir.

21 Q Okay. Thank you. You spoke to Investigator Savell.
22 You didn't say anything about Devon Jones?

23 A No, sir.

24 Q Beige car?

25 A Oh, no, sir.

1 Q You were the person that was wearing the white
2 t-shirt; right?

3 A Yes, sir.

4 Q Can you refresh my memory? How long have you said
5 that you've known the Hicksons?

6 A For a good -- a long time. Since we were young since
7 I would say elementary.

8 Q Just a second, Your Honor. That's it, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. THURMOND:

11 Q Mr. Kearse, just brief follow up. The document that
12 Mrs. Kelley Brown cross examined you about she attributed
13 as your statement was Investigator Savell's typed
14 rendition of what he says you said; is that correct?

15 A Yes, sir.

16 Q You declined to give a videotaped statement the
17 afternoon that you were arrested; right?

18 A Yes, sir.

19 Q You declined to give a written statement?

20 A Yes, sir..

21 Q So, everything that's in his typed report is his
22 rendition of what you said?

23 A Yes, sir.

24 Q It may not be everything you said.

25 A (No response.)

1 MR. THURMOND: That's all the questions I have.

2 THE COURT: Thank you. You may step down. Next
3 witness.

4 MS. RINGLER: Crystal Harris, Your Honor.

5 THE COURT: Hold on one second. Just go right there
6 with the Sheriff.

7 MS. RINGLER: Crystal Harris.

8 CRYSTAL C. HARRIS, after being duly sworn,
9 testified as follows:

10 THE CLERK: Have a seat in the witness box. State
11 your full name for the court spelling your last.

12 THE COURT: State your full name for the record,
13 please.

14 THE WITNESS: Crystal Carhonda Harris.

15 DIRECT EXAMINATION

16 BY MS. RINGLER:

17 Q Ms. Harris, you date Javier Hickson; is that correct?

18 A Right.

19 Q You were dating in June of 2009?

20 A Yes.

21 Q Do you own a Chevy Cavalier?

22 A Yes.

23 Q Did you own it in June of 2009?

24 A Yes.

25 Q What color is your Chevy Cavalier?

1 A Gold.

2 Q Nothing further from the state.

3 THE COURT: Cross?

4 MRS. BROWN: No, Your Honor.

5 THE COURT: Mr. Routzong?

6 MR. ROUTZONG: No, sir.

7 THE COURT: You may step down. Thank you. Next
8 witness.

9 MR. THURMOND: Your Honor, the State rests.

10 THE COURT: Thank you. Mr. Foreman, ladies and
11 gentlemen of the jury, that concludes the testimony by the
12 state. I am going to ask you the step back to your jury
13 room just for a second to determine how much more
14 testimony we got on behalf of the Defendant. We may have
15 some. We may not have any. I don't know quite yet, but
16 I'll let you know. If we have some I am going to try to
17 finish it up this afternoon. If we don't have any, we're
18 going to probably break because it's 4:15 now and by the
19 time we got to the arguing and charging it would be 6,
20 6:30, 7. We would be running late. So, I think what
21 we'll do is just start in the morning fresh and if we're
22 through with the testimony we'll leave. If not, we'll
23 come back and finish it up.

24 Step back there just for a second. Let me make the
25 determination. Then I'll get you back.

1 (Whereupon, the jury exited the courtroom at 4:15.)

2 THE COURT: All right. Anything from the State?

3 MR. THURMOND: No, sir.

4 THE COURT: Motions by the Defendant on behalf of --
5 Mrs. Kelley Perkins Brown, on behalf of your client any
6 motions?

7 MRS. BROWN: Yes, Your Honor. May it please the
8 court. Your Honor at this time on behalf of my client
9 Mr. Artrell Hickson I would request that the court direct
10 a verdict of not guilty to the two indictments, one for
11 armed robbery and one for possession of a weapon during
12 the commission of a violent crime. Your Honor, taking the
13 evidence in the light most favorable to the State there
14 has been no credible evidence presented which would link
15 Mr. Hickson to these crimes by which the jury could find
16 him guilty beyond a reasonable doubt and we would move
17 that the directed verdict be granted.

18 THE COURT: Thank you. Respectfully denied. I think
19 you hit the nail on the head. You say no credible
20 evidence. There's been plenty of evidence and the jury
21 determines whether or not it's credible. I respectfully
22 deny your motion.

23 Mr. Routzong?

24 MR. ROUTZONG: As to Javier Hickson, Your Honor, we
25 would join that motion.

1 THE COURT: For the same reason I respectfully deny
2 it. All right.

3 Mr. Javier Hickson and Mr. Artrell Hickson, would
4 y'all please stand and raise your right hand?

5 JAVIER HICKSON AND ARTRELL HICKSON, after being
6 duly sworn, testified as follows:

7 THE COURT: You can be seated. Gentlemen, let me
8 explain to you a couple of things. We're at the stage of
9 the trial now where, obviously, you have the right to
10 present your own defense. That includes calling any
11 witness that you deem necessary to call, introducing any
12 evidence or any exhibits that are relevant to the case,
13 and, more importantly, you have the right to testify in
14 your own defense. Okay?

15 You also have the right to claim the protections
16 given to you by the Fifth Amendment of the Constitution to
17 the United States which states in part that no person
18 shall be compelled in a criminal case to be a witness
19 against himself. What that means is that you have the
20 absolute right to remain silent. You do not have to
21 testify in this case. If you choose to testify,
22 obviously, you'll be put on the witness stand, put under
23 oath, and you'll be subjected to the same rules of
24 evidence that every other witnesses have been subjected to
25 including cross examination and if you -- Do they have

1 prior records that would be impeachable?

2 MRS. BROWN: No, Your Honor.

3 THE COURT: Neither one?

4 MR. ROUTZONG: I think Mr. Javier Hickson, Your
5 Honor, has a possession with intent to distribute that is
6 probably impeachable.

7 THE COURT: Mr. Javier Hickson, if you were to
8 testify then the state may could use your prior record to
9 attack your credibility or believability. If they tried
10 to do so, obviously, I would have to weigh the fact as to
11 whether or not it was more prejudicial than probative or
12 more probative than prejudicial before I would let them
13 introduce that, but if I did allow them to introduce it it
14 would simply be to attack your credibility and I will
15 instruct the jury that that is the only reason they could
16 use that prior record. That is if you testified.

17 If you exercised your constitutional right to remain
18 silent, then when I instruct the jury or when I charge the
19 jury one of the main charges would be that, ladies and
20 gentlemen of the jury panel, these Defendants have chosen
21 not to testify. You cannot hold the fact that they did
22 not testify against them in any manner whatsoever. In
23 fact, I would instruct them that they can't even consider
24 the fact that you did not testify when they deliberate
25 your guilt or innocence. It would be a violation of their

1 oath to even talk about the fact that you didn't testify
2 when they deliberated your case.

3 So, that's what I would tell them if you choose not
4 to testify. Obviously, whether or not you exercise this
5 constitutional right is a personal right that you
6 individually must decide. I will give you an opportunity
7 to talk to your lawyers, talk among yourselves or however
8 you want to do it before you make that choice.

9 First of all, Mr. Javier Hickson, do you understand
10 what I've told you?

11 THE DEFENDANT JAVIER HICKSON: Yes, sir.

12 THE COURT: Any questions you'd like to ask me about
13 your Fifth Amendment right to remain silent?

14 THE DEFENDANT JAVIER HICKSON: No, sir.

15 THE COURT: Mr. Artrell Hickson, do you understand
16 what what I've told you?

17 THE DEFENDANT ARTRELL HICKSON: Yes, sir.

18 THE COURT: Do you have any questions you'd like to
19 ask me about your Fifth Amendment right to remain silent?

20 THE DEFENDANT ARTRELL HICKSON: No, sir.

21 THE COURT: And do y'all need additional time to
22 discuss it with your lawyers or are you in a position now
23 to tell me whether or not you will testify in the trial of
24 the case. Mr. Artrell Hickson? Are you going to testify
25 or are you going the exercise your right to remain silent?

1 THE DEFENDANT ARTRELL HICKSON: Remain silent.

2 THE COURT: And, Mr. Javier Hickson, what is your
3 decision?

4 THE DEFENDANT JAVIER HICKSON: The same.

5 THE COURT: And in exercising that right and making
6 that decision, obviously, the jury will be informed what I
7 just told you about failure of the defendant to testify.
8 It will be a charge on that and I'll tell them exactly
9 what I just told you and, obviously, that they cannot hold
10 the fact that you do not testify against you in any manner
11 what several. Okay?

12 Now, Mrs. Kelley Perkins Brown, do you intend to
13 offer any additional witnesses?

14 MRS. BROWN: No, Your Honor.

15 THE COURT: And Mr. Michael Routzong?

16 MR. ROUTZONG: No, sir.

17 THE COURT: Okay. Well, it is 4:25. I think what I
18 am going to do is bring the jury back out and tell them
19 that we have concluded all of the testimony. I am going
20 to excuse them and as I told you in chambers we will not
21 be able to start at 9:30 in the morning. We will start at
22 10 because of a personal commitment my court reporter has
23 and it is very, very seldom that she asks for an
24 additional 30 minutes, but I am going to give it to her
25 tomorrow.

1 We'll start right at 10 and, gentlemen, when we come
2 in in the morning we'll be at the stage of the trial where
3 we will listen to the closing arguments made by the state,
4 by your lawyers, and then I will instruct or charge the
5 jury on the law in the case. I'll go over that law with
6 your lawyers this afternoon before they leave.

7 Mrs. Kelley Perkins Brown, you've asked me for a copy
8 of my reasonable doubt charge. I have it right here. If
9 you'll remind me when we take the break I will be more
10 than happy to go back in the back and copy it for you.

11 Anything else by the state?

12 MS. RINGLER: Nothing from the State, Your Honor.

13 THE COURT: By Mrs. Kelley Perkins Brown?

14 MRS. BROWN: Yes, Your Honor. As in essence the
15 defense has rested I would renew my motion for directed
16 verdict on behalf of Artrell Hickson.

17 THE COURT: And likewise, Mr. Routzong?

18 MR. ROUTZONG: Yes, sir.

19 THE COURT: For the same reason, respectfully denied.
20 Anything else?

21 MRS. BROWN: Your Honor, I would assume that
22 Mr. Routzong and I are able to use amongst ourselves the
23 order in which we close?

24 THE COURT: I will give you that opportunity.

25 MRS. BROWN: Thank you, Your Honor.

1 THE COURT: Anything else?

2 MR. THURMOND: For purposes of preparation did
3 Mrs. Brown introduce the statement?

4 THE COURT: I think she did. Didn't you introduce
5 evidence?

6 MRS. BROWN: No, Your Honor. I moved nothing into
7 evidence.

8 THE COURT: Is that correct, Mrs. Lisa?

9 THE COURT REPORTER: I think she just marked it for
10 ID.

11 THE COURT: So they'll have the final say. Is that
12 your understanding, Mrs. Kelley?

13 MRS. BROWN: Yes, Your Honor.

14 THE COURT: I assume you that did that for a purpose.

15 MRS. BROWN: Yes, sir.

16 THE COURT: Mr. Routzong, is that your understanding?

17 MR. ROUTZONG: Yes, sir.

18 THE COURT: Gentlemen, what I'm talking about when
19 you don't introduce exhibits or evidence and you do not
20 take any -- strike that -- and you do not introduce any
21 witnesses or testimony you have the right for the last
22 argument. So, normally the state does, but you'll have
23 that argument tomorrow.

24 Explain that to them, please, ma'am.

25 MRS. BROWN: I have.

1 THE COURT: Anything else?

2 Mert, see if you can get my jury in.

3 Everybody please remain seated.

4 (Whereupon, the jury came into open court at
5 approximately 4:24.)

6 THE COURT: Mr. Foreman, ladies and gentlemen, that
7 will conclude all of the testimony in the case. What we
8 have left is the final argument by the state, final
9 arguments by each Defendant, and then my charge. My
10 charge is about 10 minutes, 12 minutes, 15 at the most. I
11 don't limit the lawyers on their argument, but I don't
12 suspect it will be real, real long. So, if we start at 10
13 in the morning it should be in your hands by -- I am not
14 going to say -- before lunch.

15 Here is what we'll do. I'll have you some
16 refreshment in the morning like we did this morning. I'll
17 try to have some fruit tomorrow. I'll get more sausage
18 biscuits. I had to eat the ones y'all didn't eat. That's
19 terrible. We'll come on out and hear the arguments.
20 You'll hear my instructions. Depending on where we are
21 probably close to lunch time and I'll give you an
22 opportunity to see how we're running. If we have to we'll
23 order lunch in so you don't have to go out and continue
24 with your deliberations so you can be efficient with your
25 time. So, we'll just see how we're running at that time.

1 I am going to ask you once again please do not
2 discuss the case. Do not do any deliberating. Don't go
3 home and do any internet research about armed robbery or
4 anything of that nature, please. We try these cases based
5 simply on what we hear in the courtroom.

6 Does anyone need a ride? We okay with everyone? All
7 right.

8 Mr. Bailiff, officers, how about y'all escort the
9 jury out?

10 Everyone else remain seated, please.

11 I'll see you bright and early in the morning. We'll
12 start at 10. If you want your biscuits be here a few
13 minutes early. Have a very pleasant evening.

14 (Whereupon, the jury exited the courtroom at 4:26.)

15 THE COURT: Ladies and gentlemen in the audience, I
16 am going to ask that you please remain seated. I am going
17 to go in my chambers and meet with the lawyers for a
18 second.

19 Ladies, y'all may leave. See you in the morning.

20 Officer, I am going to let the bank tellers leave out
21 this door. Go on down -- these ladies right here. You're
22 going to get a message from downstairs when they're clear?

23 THE POLICE OFFICER: Yes, sir.

24 THE COURT: When the jurors have cleared the
25 courthouse, everyone else will be allowed to leave at that

1 time. Thank you for being courteous to everyone this
2 afternoon.

3 (Whereupon, the proceedings were concluded for the
4 day and were reconvened on September 22, 2010 as
5 follows:)

6 THE COURT: While we're waiting for them to complete
7 their wardrobe, as to the charge any specific requests by
8 the state?

9 MS. RINGLER: None from the State, Your Honor.

10 THE COURT: By the Defendant Brown?

11 MRS. BROWN: No, Your Honor.

12 THE COURT: Routzong?

13 MR. ROUTZONG: No, sir.

14 THE COURT: Very well.

15 (Whereupon, a break was taken.)

16 THE COURT: Is the State ready to proceed?

17 MR. THURMOND: Yes, Your Honor.

18 THE COURT: Is the Defendant ready to proceed?

19 MR. ROUTZONG: Yes, sir.

20 THE COURT: Where is the clients?

21 MRS. BROWN: They won't leave them out here when
22 we're at ease.

23 THE COURT: Bring them in.

24 (Whereupon, both Defendants entered the courtroom.)

25

1 (Whereupon, the jury came into open court at
2 approximately 10:05.)

3 THE COURT: Good morning, Mr. Foreman, ladies and
4 gentlemen. I'm sorry about the parking situation. I'm
5 going to talk with the clerk and we're going to start
6 getting some reserved parking for you. I apologize. If
7 anybody gets a ticket today -- I don't know if you would
8 or not. Do they have meters out there? If you get a
9 ticket, let me know. I'll make sure that's taken care of.

10 What we got left is the closing arguments. Just like
11 opening arguments this is not evidence in the case.
12 Obviously, you've already heard all the evidence from
13 which you'll make your determination as to what is the
14 true facts. Each side, obviously, represents their
15 clients so they'll be arguing as adversaries, arguing to
16 you the evidence as they seem to think it came out as in
17 their client's best interest, but the arguments are not
18 evidence.

19 Please listen carefully to both sides. Once they
20 have completed their arguments, then I will charge or
21 instruct you on the law which it's not a very long charge.
22 So, we should have the case to you sometime early this
23 morning. Thank you.

24 Mr. Solicitor?

25 MR. THURMOND: Thank you, Your Honor. May it please

1 the court.

2 CLOSING STATEMENT

3 MR. THURMOND: Mr. Foreman, ladies and gentlemen of
4 the jury, good morning. I want to talk with you about a
5 couple of things today. I want to talk to you about the
6 law in the case. I want to talk about the facts of the
7 case and how those facts apply to the law.

8 The crime is armed robbery and the crime is
9 possession of a firearm during the commission of a violent
10 crime. I am going to let the Judge read the statutes to
11 you, but it's common sense you can't go into a bank with a
12 firearm pointed at people, demand money from them, take
13 the money from them, and run out. You don't need a law
14 degree to know that. You need common sense to know that.

15 That's what this case is really about. It's about
16 common sense. We all come from different walks of life,
17 from different backgrounds. This jury was picked for this
18 trial for this moment to tell us what happened in this
19 case. When you came through the metal detector downstairs
20 if you had a pocketknife you had to leave that in the car.
21 You may have had to leave the cellphone in the car. You
22 may have had to leave your personal belongings in the car,
23 but you brought your common sense up here with you. You
24 brought your life experiences up here with you and that's
25 going to be important in telling us what the truth is in

1 this case and telling us what happened on June 25 of 2009.

2 In their opening statements Mrs. Brown and
3 Mr. Routzong talked a lot. Mrs. Brown talked in an
4 analogy that a trial is like a football game. I think
5 Ms. Tonya Key and her colleagues at the bank who have been
6 here all week -- I think it's a little more serious than a
7 game. We try cases up here all week long, all day long,
8 all year long. Sometimes victims will take the stand and
9 testify, get out the courthouse, they did their job, go on
10 with their lives, go on with their daily duties, their
11 daily obligations. These ladies have sat here for three
12 days waiting to see what y'all are going to do with this
13 case.

14 Mr. Routzong talked -- and he's a philosopher --
15 about the origins of the words of truth and the origins of
16 the words of justice and the philosophical connotations of
17 those. Mrs. Brown talked about the cloak of
18 righteousness, and all of that stuff is important and
19 interesting and some of it sounds like it ought to be in a
20 classroom setting in a college philosophy course or in a
21 Shakespeare play, but let me tell you what the law is.

22 Reasonable doubt. Are you firmly convinced that
23 Artrell and Javier Hickson did it or not? Firmly
24 convinced. It's not a burden that can't be reached. It
25 is a high burden. We welcome that burden. That's what

1 the State of South Carolina does in criminal prosecutions.
2 Are you firmly convinced they did it? All of this
3 high-minded talk about cloaks of righteousness and origins
4 of words, it's interesting but it doesn't really appeal to
5 your common sense. You've heard everything that's happened
6 in this case. Everything. Are you firmly convinced that
7 they did it?

8 Now let me tell you how you're going to be firmly
9 convinced and I am going to give you some reasons why you
10 should. You may have some of your own. These are the
11 witnesses we called. We called 17 people to tell you how
12 this bank robbery at Security Federal on the 25th of June
13 of 2009 happened and when we call them we kind of grouped
14 them so they would be easy for you all to understand.

15 We have bank employees that we called first. Our
16 next group were the law enforcement officers. Our next
17 group were our witnesses from the community. We called
18 Investigator James Criscillis a little out of turn because
19 he corroborated what Randy Wilson said. Out of these 17
20 people came in here -- and this is a vast conspiracy
21 involving the Security Federal Bank Corporation, the Aiken
22 County Sheriff's Office, the Aiken Department of Public
23 Safety, the FBI, Walmart, and several members of our
24 community who join this conspiracy, who perjured
25 themselves to frame Artrell and Javier Hickson or they're

1 guilty of armed robbery. That's the choice. What makes
2 sense? What does your common sense tell you is the
3 reasonable outcome of those two choices?

4 Let me start with these ladies at the bank.
5 Ms. Tonya key. Been there for 18 years. Works hard.
6 Does her job. Responsible for millions of dollars of the
7 customer's money. Any given moment they've got tens if
8 not hundreds of thousands of dollars of cash in that bank.
9 You think in her 18 years she takes notice of who comes in
10 and out of that bank? You think she's learned how to size
11 people up, to make mental notes of people? Do you think
12 she needed training to do that or does 18 years of
13 on-the-job experience and somebody comes in the bank and
14 just take note of them, just file it away in your head.

15 State's no. 12. That's her office right there. She
16 sees the guy come in her office, point a gun at her --
17 open the vault. She freezes. Scared to death. Fear is
18 going to be a theme kind of throughout my comments. She's
19 scared to death. The bank robbery happens at 12 noon. At
20 12:15 -- 15 minutes later -- she's giving a written
21 statement the man who was standing in my doorway was 5'4.
22 You believe her? Is she lying when she said that in 18
23 years of experience -- the man in my doorway was 5'4,
24 African American male, had a gun, pointed a gun at me, I
25 was afraid for my life. He was 5'4 fifteen minutes

1 afterwards.

2 She doesn't know Artrell and Javier Hickson. She
3 doesn't have any reason to make this up against them. She
4 doesn't have an axe to grind with the defense in this
5 case. That's what she saw. That's what she perceived.
6 Her colleagues in the bank are scared to death. The right
7 corner of this picture -- there is a Amanda Wood in the
8 blue shirt with her hands up. Please don't kill me.
9 Don't shoot me. She said she's about 5'3 1/2. One of the
10 bank robbers was about her height. 5'4. The other bank
11 robber was a little taller. 5'6. Is she making this up?
12 That was her perception. That's what these people are
13 trained to do when people come in that bank. They know
14 who is coming in there.

15 State's 16 and 17, 5'4. Mr. Artrell Hickson, 5'4.
16 Forty inches high to the lower counter. Investigator
17 Savell came back and measured it. Mr. Routzong wanted to
18 know when did you measure it? Who cares? Was the counter
19 supposed to shrink? Was it supposed to grow between when
20 the time the bank robbery occurred and when it was
21 measured? Lower counter, 40 inches. Upper counter,
22 56 inches. He is 5'4. Look at where it hits him on the
23 chest. Right here.

24 This is the first time you're seeing this picture,
25 State's No. 20 we put in evidence. I've waited until now

1 to show it to you. This is Mr. Artrell Hickson. This is
2 how he appeared five days after the robbery June 30, 2009.
3 You will be able to take all of this back with you. We
4 got nothing to keep from you. Study these. Study the
5 eyebrows of Mr. Artrell Hickson. Study the eyebrows of
6 the man in this picture. Study the top of Mr. Artrell
7 Hickson's nose. It's round. Study the top of the nose of
8 the man in this picture. Study the hairstyle of
9 Mr. Artrell Hickson. Notice in these two exhibits -- look
10 how poofy he is around the head. He's got hair piled up
11 under there.

12 What makes sense? They are high and tight today.
13 Look how he looked on the 25th. His hair looked -- look
14 at the hat he had on. Look at how the hair was piled up
15 underneath the hat. What makes sense? What is
16 reasonable? Be firmly convinced that this is him.

17 After these three ladies were terrorized they gave up
18 the money. They didn't give up a lot. It's a lot to
19 me -- \$4,900. Maybe not a lot to the bank which usually
20 has custody of tens if not hundreds of thousands of
21 dollars, but they gave them what they had. They didn't
22 give them any dye packs. Forty-nine hundred bucks. They
23 set off the alarms. They locked the doors. That is the
24 procedure. These lady didn't take the stand and say, yea,
25 I recognize this defendant. I recognized this defendant.

1 Yea, that looks just like Mr. Javier Hickson. That is
2 Mr. Artrell Hickson. That's him right there. They're not
3 saying that to you. They're not saying that to you.
4 They're saying he was 5'4 and this is what they did to us.

5 If these bank witnesses were going to frame these
6 Defendants as part of this conspiracy they would do a
7 better job. They would sit in that stand and say that's
8 him, I recognize him. I recognize his face. I recognize
9 his eyes. They didn't do that. They didn't come in here
10 and enhance their testimony and make that up. They told
11 you on this witness stand what they perceived.

12 Deputy John Roberts, first law enforcement officer on
13 the scene. He is a School Resource Officer. This bank
14 robbery is a big deal. You got everybody and anybody in
15 law enforcement descending on the Security Federal at that
16 time. We got three armed gunmen with physical
17 descriptions on the loose. They're trying to find them.
18 Everybody goes to the bank. So he gets there, and his day
19 job is protecting kids, making sure that the schools are
20 safe, but he runs to the bank first. He makes sure these
21 ladies are safe. He tells you about their demeanor.
22 They're hysterical. They're crying. He didn't need to
23 tell you that. You saw Ms. Wood on the stand breaking
24 down reliving having a pistol stuck in her face over a
25 year ago, and then on cross examination -- he's got no axe

1 to grind with Artrell and Javier Hickson. He just says I
2 went there to make sure the door was locked, to make sure
3 nobody was coming in and out at that point and did my best
4 to comfort these ladies and wait for the Calvary to
5 arrive.

6 Mr. Routzong is asking him when you went to the
7 police academy, Mr. Roberts, is that where they taught you
8 how to tell the truth? Folks, people in law enforcement
9 deserve a little better than that. What did he do wrong?
10 What did Officer Roberts do wrong? Should he not have
11 responded? Is that how you avoid the ire of defense
12 counsel? You not go to the bank? No. You go to the
13 bank. He went to the bank. He did his job. He saw that
14 that crime scene was secure and he comforted the people
15 inside of it that had guns stuck that their face.

16 We also heard from Demetrick Drumming with dog team
17 number two. We had dog team number one that was working
18 this way following a scent this way in the direction of
19 the water tower and dog team number two that was working
20 up this direction. It was 95 degrees and I don't think it
21 took much testimony for y'all to kind of understand that
22 it was kind of hot for the dogs out that day. They
23 weren't doing a very good job. They didn't catch anybody
24 over here. They tried.

25 They finally caught Mr. Kearse up here. Here is this

1 water tower. Here is where Mr. Kearse and Mr. Artrell and
2 Mr. Javier Hickson ran from the bank. Here is where the
3 money was split up and David Kearse goes back up this way.
4 That's a pretty good clip -- runs back up this way where
5 he is ultimately caught at that shed. They use some terms
6 like sight tracking. I think that's a fancy way of saying
7 there were some citizens who had the courage to say,
8 officer, I saw them go that way. Officer, they went that
9 way. And I think that the citizens of Graniteville who
10 were unafraid, who were willing to do the right thing, who
11 appreciated right from wrong, who knew the importance of
12 cooperating with law enforcement when one of our banking
13 institutions has been robbed at gun point to tell these
14 police officers the direction that they saw an individual
15 who ultimately turned out to be Mr. Kearse who was
16 apprehended right here not too far away from the bank here
17 on Canal Street, not too far away from the Kalmia
18 Apartments that you're going to hear about more in a
19 little bit.

20 We called Lieutenant Clay Adams. This is kind of the
21 state of affairs these days. It seems like everybody
22 watches CSI and everybody watches Law and Order and I had
23 to call a fingerprint expert to tell you we didn't find
24 any fingerprints. That may seem kind of silly. If we
25 don't do that, you're going to have defense counsel

1 rolling around in here in front of you, they didn't look
2 for fingerprints. They should have looked for
3 fingerprints.

4 Mrs. Brown talked about the little Chinese restaurant
5 in Graniteville and if we looked to see if they had a
6 video surveillance system that was so sophisticated it
7 could view the traffic out on the street to see if maybe
8 Mr. Artrell Hickson or Mr. Javier Hickson had ridden by.
9 Is that what we are expecting of little Chinese
10 restaurants in Graniteville?

11 Please don't go down that road. Don't trick yourself
12 into thinking that the burden of proof is this
13 insurmountable hurdle where every possible investigative
14 technique must be utilized and then and only then have we
15 met our burden. I suppose if we looked there and didn't
16 didn't find any we could have called somebody to say we
17 looked and didn't find any. Then it would be, well, did
18 you check any satellite systems? Maybe NASA or somebody
19 could have had an aerial that shown this vehicle going by.
20 If we had the vehicle we could have said, well, yea, we
21 did that and we've got the vehicle. Well, you should have
22 looked in the vehicle to see if you could have found any
23 DNA on Mr. Artrell and Mr. Javier Hickson. Then and only
24 then will the state have met its burden, and the game that
25 Mrs. Brown references -- the game she references is to

1 continue to move the goal lines to a field that the
2 evidence is not playing on. I think you're smarter than
3 that to not play that game. I think you're smart enough
4 to focus on what we've presented to you in this case.

5 Clay adams said I was with investigator -- with
6 Mr. Drumming with the Aiken Department of Public Safety
7 dog team when we caution Mr. Kearse right here. I brought
8 the dog wagon back over here. I saw Mr. Kearse taken into
9 custody. I looked under the shed. I found \$290 in \$5
10 bills. Artrell and Javier kind of stiffed him if there
11 was \$4,900. Mr. Kearse is only going to have half the
12 money that he needed to pay back Jelani Edwards who he
13 owed \$500 which is his reason for doing the robbery to
14 start with. And we found a pistol. The gun is in
15 custody. The gun is in evidence. It is going back in the
16 jury room. It's the gun in Mr. Kearse's hand in the
17 robbery. A little small silver gun. We have photographs
18 of it. Found in proximity to him. Nothing else was found
19 with him other than the gun and money. Whatever phone he
20 had on him he had done away with. Anything else he had on
21 him he had disposed at that point in this vast amount of
22 woods through there.

23 We heard from Investigator Savell. He gave us this
24 height and weight of these countertops. He also gave us
25 some other pretty critical information. There had been

1 some mention of an individual by the name of Jelani
2 Edwards, 6'3, 180 pounds. Well, you know that's not
3 Jelani Edwards because he is 5'4. He is a little taller,
4 about 5'6. Amanda Wood is about 5'3 1/2. He's a little
5 bit taller than she is.

6 Ladies and gentlemen, it's not Phillip Paul. These
7 guys aren't 6 foot tall and 375 pounds. It's not Phillip
8 Paul. It's not Randy Wilson, 5'8 1/2, 190 pounds. How do
9 you know Randy Wilson is 5'8? You watched me measure him.
10 He's not 5'5. I don't know what document Mrs. Brown had
11 to try to suggest to one of our investigators that Randy
12 Wilson was 5'5 hoping to plant in your mind that Randy
13 Wilson is 5'5 and so this is not Artrell Hickson. By God,
14 it is Randy Wilson. Wrong. Randy Wilson measured right
15 in front of you yesterday 5'8 1/2. I even offered to let
16 Mrs. Brown measure him.

17 We heard from Investigator Chuck Cain. He was kind
18 of late coming into this investigation. Through working
19 another case in March 2010 he was able to identify several
20 fact witnesses. They talked to him. They gave him
21 statements. They said this is what we saw. They didn't
22 give him a hard time. They didn't lie to him. He didn't
23 have to beat it out of them. They said this is what we
24 saw.

25 On September 11, 2001 -- I know a day we all

1 remember -- I was in this courtroom picking a jury in an
2 armed robbery case and when we all got the news about what
3 had happened the Judge on the bench broke court, led the
4 courtroom in a prayer which was something I appreciated,
5 and that moment is kind of burned in my own memory. That
6 was a big event in my life. A big event in everybody's
7 life. I am not going to forget it. I can't tell you what
8 color tie I wore that day. I can't tell you what I had
9 for breakfast that day. I can't tell you what time I went
10 to bed that night, but I remember that day. I remember
11 that being a critical aspect of that day.

12 By way of another analogy my kid the other day
13 brought home a 93 on the test. He did pretty good. He
14 understood the big concepts. He got them right. He
15 missed some of the details, but his teacher, ladies and
16 gentlemen, was firmly convinced that he understood the big
17 concepts, the big deals on that test. He may have got
18 some of the details wrong, but he knew what he was doing.

19 These other folks -- Ms. Oakman, Mr. Galloway,
20 Ms. Wright, Mrs. Bryant -- they all gave statements.
21 Believe it or not there are very few kind of Perry Mason
22 Matlock moments in here. We talk to the witnesses
23 beforehand. They have given statements. We know what
24 they're going to say up there. We know if they have a
25 written statement given nine months after an event or if

1 some of the details are fuzzy.

2 Don't let them have it both ways. If they get up
3 there -- a witness gets up here and says exactly the same
4 thing -- if Sabrina Oakman has committed her three-page
5 statement that she read to you in its entirety in her
6 handwriting -- Chuck Cain didn't write that for her -- if
7 she studies it really hard and remembers every word and
8 repeats it out verbatim like a computer, she is obviously
9 lying because nobody can say the same thing twice. If you
10 say the same thing twice, you've rehearsed it and you're
11 lying. If you miss a few of the details, you missed
12 detail A and R. So, you missed those details, you're
13 obviously lying. We can't take your statement for
14 anything. You're not telling the truth. That is just an
15 unreasonable expectation of anybody at this stand.

16 These folks that we call -- they told you what they
17 perceived on June 25 of 2009. Just like September 11 was
18 a big deal for me, this bank robbery that you can hit the
19 Kalmia Apartments with a rock from the Security Federal
20 Bank was a big deal in that neighborhood. It was a big
21 deal to them. They remember it.

22 Sabrina remembers Artrell and Javier and David being
23 dropped off at the Kalmia Apartments. Stanley Galloway
24 who clearly did not want to be here had some courage. You
25 got to walk through the gauntlet of the peanut gallery to

1 step into this arena and take that stand and that takes
2 courage. That takes being unafraid.

3 Stanley Galloway came up here with his mother. Has a
4 job. He works at Reids. Not in trouble. Knows right
5 from wrong. Didn't want to be here. Didn't want to be a
6 snitch per the text message on Ms. Bryant's cellphone.
7 Text message didn't say don't you get up there and lie.
8 Don't you go make something up. Don't snitch. Don't
9 tell. Don't cooperate. Be afraid.

10 Stanley Galloway was unafraid. He didn't like me. I
11 don't think he liked Mrs. Brown. I don't think he liked
12 anybody, but he took an oath on that Bible and sat up
13 there and Stanley Galloway told you before lunch time on
14 June 25, 2009 Artrell Hickson, Javier Hickson, and David
15 Kearse were out in front of 703 Kalmia Apartments. Kalmia
16 Apartments. Security Federal Bank. Oh my God, he is
17 lying. His statement said he thought they left in a black
18 car instead of a white car. You can't believe anything he
19 said. He said they were there. That is the take-away
20 from you. That is the important thing that he said.

21 Sabrina Oakman gave a very detailed statement and I
22 think the best way of kind of separate it and make it a
23 little understandable -- she read the whole statement in
24 the record. We didn't try to parse things and pull
25 snippets from statements that will be helpful to our case,

1 helpful to our witnesses. We said, ma'am, read the whole
2 statement. Tell the jury everything you said. We got
3 nothing to hide. We want you to hear it all.

4 Sabrina Oakman woke up that morning, took David to
5 the Hickson's house. Artrell came out with a black
6 backpack. Went from there to David's grandparent's house
7 where David tells you -- and this is is kind of one of the
8 sadder points of the whole case. David goes and gets his
9 granddaddy's gloves to perpetrate this armed robbery and
10 they go from there to the Walmart. Sabrina omits in her
11 written statement that Javier followed in his girlfriend's
12 beige Cavalier -- I guess that means the whole statement
13 is not true -- and go from there to Kalmia where they were
14 dropped off. So, Kalmia's (sic) statement -- one trip to
15 the Hicksons; one trip to David's grandparents, drops him
16 off at Kalmia. She then leaves and ultimately runs out of
17 gas. I'll talk a little bit more in a few moments about
18 some of the other things in her statement. I dropped
19 David off. I dropped Artrell off. I dropped Javier off
20 at the Kalmia Apartments.

21 Stanley Galloway -- before noon on the 25th. I don't
22 want to be here, but I saw David Kearse. I saw Artrell
23 Hickson. I saw Javier Hickson at the Kalmia Apartments.
24 Stanley Galloway. Did you hear any testimony, any beef he
25 had with the Hicksons? Any axe to grind that he had with

1 them?

2 Candice Bryant. The snitch. She had courage. She's
3 like a scared rabbit hiding in that witness stand. Did
4 you see her body language was like this? She didn't want
5 to be here. She's afraid. A lot of elements of fear in
6 this case. She told you on the morning of June 25 before
7 noon she was at the Kalmia Apartments with her cousin
8 Beatrix Wright and Stanley Galloway. She told you before
9 noon on the 25th of June I saw David Kearse, I saw Artrell
10 Hickson, I saw Javier Hickson at the Kalmia Apartments
11 together.

12 Some other details -- she said she thought she saw a
13 white Ford Focus, I think. I think the vehicle that we
14 believed was used as to getaway vehicle was a beige
15 Chevrolet Cavalier. If Candice Bryant thinks it was a
16 white Ford Focus, is she a liar? I guess she's already a
17 snitch. Is she a liar and a snitch? I submit to you that
18 the crux of her testimony, the thrust of her testimony --
19 the statement that she gave in March of 2010 I saw them
20 there. Stanley Galloway saw them there. Sabrina Oakman
21 took them there. There is some details in Sabrina's
22 statement that kind of gets put in the category of is kind
23 of the stuff you couldn't make up especially on no notice
24 by Investigator Chuck Cain knocks on your door in
25 March 2010 -- ma'am, I want to talk to you about the

1 Security Federal Bank robbery that happened June 25, 2009
2 approximately nine months ago. Would you talk to me? She
3 talks to him.

4 After she drops the three of them off at Kalmia
5 Apartments she has run out of gas up on Richland Avenue
6 headed back to Graniteville. It all makes sense. We're
7 all from the Aiken area. We know these roads. She hears
8 a ringing in the back seat. It is a phone that has fallen
9 between the seats. She's good friends with Artrell and
10 Javier Hickson. She's better friends with Javier. She
11 knows Artrell. She says I know Artrell's number, and on
12 that phone I submit to you that's Javier's phone that he
13 inadvertently left in the car and fell between the seats
14 it comes up "my bro" with Artrell's phone number. They're
15 brothers. It comes up "my bro." It is significant and I
16 think that's something that you just don't concoct nine
17 months after the fact on no notice when you're interviewed
18 by the investigators.

19 It is David on the other end of the line. He's got
20 Artrell's phone. I don't know how many phones Artrell
21 has. I suppose he can have as many as he chooses, but
22 it's David saying, Come get me, I'm at the church. You
23 heard her testimony. He's out of breath. Come get me.
24 Come get me.

25 She heads back down Richland Avenue back to the

1 Kalmia Apartments and sees police cars everywhere. This
2 is after 12 noon. Critical point. When she's at the
3 Kalmia Apartments she sees Ms. Shontrell Monique Hickson,
4 the sister of Javier and Artrell, and Mr. Javier Hickson's
5 girlfriend Ms. Crystal Harris who testified under oath
6 yesterday, yea, I got a beige Chevrolet Cavalier. Yes, I
7 am Javier Hickson's girlfriend. She puts the two women
8 who are most important in Javier Hickson's life at the
9 Kalmia Apartments after the bank robbery that is a stone's
10 throw from the bank.

11 She says we went to Walmart on the south side. She
12 says David and Javier got out. Javier and Monique --
13 sister. Javier and Crystal -- boyfriend and girlfriend.

14 The other component of this conspiracy to frame
15 Mr. Artrell Hickson, Mr. Javier Hickson is the Walmart
16 Corporation and we heard yesterday from an individual
17 employed by Walmart, Mr. Chris Pittman. He is kind of a
18 Walmart bureaucrat, if you will. He brought the
19 timesheets. Shontrell Monique Hickson -- Shontrell
20 Hickson -- and Crystal Harris, both employees at Walmart.
21 Lo and behold Thursday June 25, 12:55 pm 55 minutes after
22 the bank robbery at Security Federal Bank in Graniteville
23 the two women closest to Javier Hickson have fled work
24 with no excuse, no notice presumably in Monique Hickson's
25 Jeep because Crystal Harris' Chevrolet Cavalier was

1 already at the Kalmia Apartments.

2 Sabrina Oakman says I saw them there. Why are they
3 there? There's lots of apartments in Aiken. This one
4 happens to be right next to the bank. Why are these two
5 women so close to this Defendant with no notice leaving
6 their work, not telling anybody, descending on the Kalmia
7 Apartments? I'll tell you why. Because they're part of
8 the group looking for Artrell and Javier to pick them up
9 out of those woods. That's why they're there. That's the
10 only plausible reason why these two ladies on no notice
11 would leave their jobs. No doctors appointments. No
12 emergencies. They just left. 12:55. I think that's
13 critical. I think that's an aspect that goes into your
14 common sense and being firmly convinced of what happened
15 on June 25.

16 Folks, we called Randy Wilson -- 5'8 1/2 Randy
17 Wilson, not 5'5 Randy Wilson, and we didn't dress him up.
18 I didn't put him in a suit. He was handcuffed, shackled
19 in a brown South Carolina Department of Corrections
20 uniform. Let me give you -- let me get my file on Randy
21 Wilson.

22 On July 1, 2009, six days -- five days after the
23 Security Federal Bank robbery Mr. Randy Wilson, Mr. Jelani
24 Edwards, and Mr. Phillip Paul -- again, Phillip Paul, 6
25 foot tall, 375 pounds; Jelani Edwards, 6'3 -- robbed the

1 First Citizens Bank in Jackson. They are caught shortly
2 thereafter. You've heard some testimony that Jelani
3 Edwards was killed during the course of that robbery and
4 that Phillip Paul and Randy Wilson were arrested.

5 That evening July 1, 2009 Randy Wilson has been
6 captured. Randy Wilson is being interviewed by the FBI
7 and on July 1, 2009 before Mr. Wilson has a lawyer, before
8 he had Bob Harte sitting in here with him, he tells you
9 Mr. FBI Agent, you got me. I want to cooperate. I want
10 to tell you about the bank robbery at the Security Federal
11 in Aiken on June 25, 2009, and I want to tell you that
12 Artrell and Javier Hickson were involved in it.

13 Fast forward a few months later. November 11, 2009.
14 Randy Wilson has not plead guilty yet. He pleads guilty
15 on December 14 to armed robbery. He is interviewed by
16 Chuck Cain. Investigator Cain, you got me. I want to
17 cooperate. I want to tell you about the bank robbery at
18 Security Federal June 25, 2009. Investigator Cain, I want
19 to tell you that Artrell and Javier Hickson were involved
20 in that. He's ultimately sentenced on March 8, 2010. His
21 attorney has filed a motion with the court for the Judge
22 to reconsider that sentence. You heard the testimony. No
23 deals, no promises. The only thing you need to do,
24 Mr. Wilson, is get up here and tell the truth. That was
25 the testimony from the stand.

1 What else did Mr. Randy Wilson tell us on the stand?
2 He tells us about a meeting that occurred June 24 of 2009,
3 the day before the bank robbery. There is a meeting at
4 Randy Wilson's home. Present was Jelani Edwards, Phillip
5 Paul, Mr. Artrell Hickson, Mr. Javier Hickson. David
6 Kearse was not present. This is one of those details you
7 can't make up. David Kearse's testimony -- David Kearse's
8 testimony says the day before the bank robbery the 24th I
9 was with Artrell and I was with Javier and about lunch
10 time we rode by the Security Federal Bank. We are in
11 Artrell's red Ford Crown Vic. We checked it out. We
12 checked the bank out and they took me home.

13 Randy Wilson says David Kearse was not at that
14 meeting, the operational planning session the day before.
15 David Kearse says they took me home. Are those details
16 that these two guys are going to get together and concoct?
17 So at this meeting Randy says Artrell is wanting this
18 great big AK-47 assault rifle and it's not given to him.
19 I think one of Phillip Paul's roles, I suppose, is out of
20 the armour -- Phillip Paul, 6-foot tall, 375 pounds, keeps
21 the guns. I asked Mr. Wilson what kind of guns does
22 Mr. Paul have? One of the guns he said he has is a Glock
23 pistol. How do we know that's a Glock pistol? It is the
24 same kind of pistol that Investigator Greg Savell carries.
25 He told you it's a Glock pistol.

1 They decided who was going to drop him off. Randy
2 Wilson told us Kearsse's girlfriend. I think Sabrina
3 Oakman was kind of an unwitting participant in all of
4 this. I don't know that she knew that she was to be a
5 getaway driver. I don't know that it ultimately matters
6 for you. Their plan was she was going to take them there.
7 This guy who Randy Wilson only knows as Von was to be to
8 getaway driver.

9 We've heard testimony from a couple of witnesses.
10 Devon Jones was hanging around there. We've heard
11 testimony from David Kearsse who said we've got Devon Jones
12 to get us in that beige Cavalier that belonged to Crystal
13 Harris that Javier drove from the Walmart and followed the
14 Tahoe from the Walmart to the Kalmia Apartments. That's
15 Devon Jones. He wasn't a very good getaway driver. He
16 drove them to the bank. David Kearsse, Artrell Hickson,
17 Javier Hickson go in and do the robbery and they come out
18 waiting on their ride and their ride has probably thought
19 a little better of himself than the position he had just
20 inserted himself in and he left. Among other things, when
21 Crystal Harris and Monique go back to the Kalmia
22 Apartments I suppose that's so Crystal Harris can get her
23 car back.

24 Randy Wilson also told us on the afternoon of the
25 25th, the day of the robbery, he was with Jelani Edwards

1 and he was with Phillip Paul again at Randy Wilson's house
2 and Jelani Edwards gets a telephone call after 12 after
3 the bank robbery. Randy Wilson has told you how well he
4 knows Artrell Hickson. He heard Artrell talking to Jelani
5 Edwards. He was sitting right next to him. He hears
6 Artrell on the telephone, We're hemmed up. We're hemmed
7 up.

8 Shortly thereafter Jelani Edwards and Phillip Paul
9 leave in a gold Cadillac. That's why Investigator
10 Criscillis' testimony is so important. At 3:39 pm -- now
11 mind you, David Kearse was caught at 2:15 and at 2:40 he's
12 been mirandized and is saying, Guys, you got me. I did
13 this. This is how it happened. He gave us some more
14 details on the stand than he did orally to Greg Savell on
15 the 25th of June, but, again, on the 25th of June -- I did
16 this robbery. Artrell Hickson, Javier Hickson are with
17 me.

18 Did he omit some details? Are some of the details
19 fuzzy? Perhaps? Are those details fuzzy, who is with me?
20 This is what I did. This is how I was dressed. I put two
21 white t-shirts over my head. That's me David Kearse. I'm
22 an armed robber. Here is a silver gun in my hand, in my
23 -- in State's 15 in my right hand I am wearing a latex
24 glove. In my left hand I am wearing the glove I took from
25 my granddaddy.

1 Look at the picture of Mr. Javier Hickson. David
2 Kearse says I gave one of my gloves to Javier. Again,
3 this is the stuff that you don't make up. David Kearse
4 has his left glove. He said I gave my other glove to
5 Javier. You can clearly see Javier has got a leather
6 glove on his right hand. I mean, is that a detail that's
7 capable of just being concocted?

8 Then at 3:39 pm, an hour after David Kearse is now at
9 the Sheriff's Office giving a statement implicating
10 himself, implicating 5'4 Artrell Hickson and 5'6 tall
11 brother Javier Hickson Investigator Criscillis is right
12 here and sees Jelani Edwards and Phillip Paul in a gold
13 Cadillac driving down this road. Stops him over here.
14 Why are they there? They're there for the same reason
15 that Crystal Harris and Monique Hickson left work with no
16 notice and go to Kalmia Apartments. They are looking for
17 Artrell Hickson and are looking for Javier Hickson.

18 This road is right in the middle of this massive
19 police manhunt. In fact, this road splits dog team one
20 from dog team number two. Here is the blue water tower.
21 Here is where David Kearse said, We divided up the money.
22 We had our gloves on. When the money was divided the
23 gloves came off and I got short-changed. I took my \$290
24 in \$5 bills with me, and I guess Artrell and Javier got
25 the other 4,000.

1 But what this tells you is when they're stopped
2 here -- when they're stopped up here but seen here at 3:39
3 a quarter mile away from the Kalmia Apartments it tells
4 you Randy Wilson was telling the truth about the phonecall
5 he overheard with Jelani Edwards. It corroborates that.
6 It corroborates it. He says -- when Randy Wilson says,
7 We're at my house. I hear Jelani talking on the phone to
8 Artrell. We're hemmed up. We're hemmed up. Jelani and
9 Phil leave. They leave Randy Wilson's house. What are
10 they doing right here? What are they doing in the middle
11 of the police manhunt other than looking to pick up
12 Artrell and Javier?

13 What makes sense? Be firmly convinced that that is
14 the reason that they were there. Folks, we heard from
15 David Kearse -- I think we called Crystal Harris last
16 because she wasn't available, but David Kearse was the
17 last long fact witness -- the admitted armed robber, the
18 third man in the deal. He told us what happened. If he
19 was just going to frame them he would have said, yea, I
20 did it with them. That's my testimony. They came and got
21 me. It was all their idea. But he gave us this pretty
22 elaborate statement -- how this scheme was hatched about a
23 week prior to it in the Sunshine Club. Again, in Jelani
24 Edwards' gold Cadillac. The three of them met in Jelani
25 Edwards' car. Artrell, David Kearse, Jelani Edwards. The

1 plan was hatched.

2 The Monday or Tuesday the week that the bank was
3 robbed there is a second meeting at the Hickson's house.
4 They live with their grandma. Present at that meeting --
5 Phillip Paul, Jelani Edwards, David Kearse, Artrell,
6 Javier Hickson. Randy Wilson is not there. They talk
7 about what they're going to do, how they're going to do
8 it. The day before the robbery -- that meeting took place
9 Monday or Tuesday the week of the robbery. The day before
10 the robbery David Kearse tells us Artrell has got a red
11 Crown Vic. We drove by the place about lunch time.
12 Picked that bank, not a lot of people there, knew there
13 wouldn't be a lot of people inside. They took me home.
14 Javier and Artrell then go on to the meeting at Randy
15 Wilson's house.

16 The day of the robbery I got up early, got a call
17 from Artrell. Are you ready? I go to Artrell's house,
18 come back to my house. Sabrina takes me back to Artrell's
19 house. We pick up Artrell and Javier. Javier has a
20 backpack. We go from there to my grandparents' house, I
21 take my granddaddy's gloves. We go from there to the
22 Walmart, Whiskey Road on the south side. I get out.
23 David Kearse gets out. Javier gets out. We're there
24 because Javier's girlfriend works there. We're there
25 because Javier's sister Monique Shontrell Hickson works

1 there.

2 Crystal Harris has a beige Chevrolet Cavalier.

3 Crystal took the stand and told you I got a beige
4 Chevrolet Cavalier. They follow the Tahoe. Javier is
5 driving the Cavalier, follows the Tahoe, and in the Tahoe
6 Sabrina Oakman driving, David Kearse front seat, Artrell
7 back seat. Go to the Kalmia Apartments. That's when he
8 told you happened. Asked Von Jones, Will you help us?
9 Von Jones agrees to it.

10 Are you firmly convinced that David Kearse is
11 involved in this thing? I sure hope so. David is saying,
12 That's me. I did it. Are you firmly convinced that
13 Artrell Hickson and Javier Hickson are the co-defendants
14 in this case? 5'4. By way of analogy my Deputy who is
15 not in the courtroom is Bill Weeks. He is about 6'8 1/2.
16 You may have seen him in and out of the courtroom during
17 the trial. He is a giant of a man. He is perhaps the
18 only person I know who is 6'8. He's probably taller than
19 95 percent of the male population. By the same token if
20 you're 5'4 -- I don't know how many 5'4 people I know. I
21 suggest to you that that is such a distinguishing feature
22 it is something that you have to consider. I would say a
23 male who is 5'4 is probably 95 percent shorter than most
24 of the male population. I think it's something that is
25 critical in this case. 5'4. Look at the photographs.

1 Ladies and gentlemen, Ms. Tonya Key and the employees
2 of her bank have been waiting 15 months since June 25,
3 2009 for justice in this case, for a jury just like this
4 to be firmly convinced of the guilt of Artrell and Javier
5 Hickson. Don't let them down. Go back there and convict
6 these guys.

7 THE COURT: Mr. Solicitor, if you'll take that easel
8 down.

9 Mr. Foreman, ladies and gentlemen, I got a matter I
10 need to address real quickly. Y'all step back in the jury
11 room. Go ahead and take your bathroom break. We'll start
12 back in about five or ten minutes. Don't discuss the
13 case. Don't deliberate.

14 Everybody else remain seated.

15 (Whereupon, the jury exited the courtroom at 10:56.)

16 THE COURT: All right. Son with the red hair, come
17 up here.

18 (Whereupon, the Judge spoke with the man outside of
19 my hearing.).

20 THE COURT: Anybody else's phones or texting messages
21 in this courtroom, please cut your phones off. If I find
22 any more texting going out during these proceedings you'll
23 be arrested for contempt of court.

24 We'll take a quick five-minute break. Thank you.

25 (Whereupon, a break was taken.)

1 THE COURT: Mrs. Brown, are you ready to proceed?

2 MRS. BROWN: Yes, Your Honor.

3 THE COURT: Bill, bring them in.

4 (Whereupon, the jury came into open court at
5 approximately 11:08.)

6 THE COURT: Mrs. Kelley Perkins Brown?

7 MRS. BROWN: Mr. Routzong.

8 MR. ROUTZONG: Thank you, Your Honor.

9 CLOSING STATEMENT

10 MR. ROUTZONG: Good morning, ladies and gentlemen. I
11 guess I would like to start out by thanking the Solicitor
12 for his kind comments about my being a philosopher or
13 thinking philosophically. I would like to return the
14 compliment and do him some good by inviting him to elevate
15 his thinking into the realm of common sense.

16 THE COURT: Mr. Routzong, we're not going to make
17 personal attacks on anybody. Y'all are much more
18 professional than that.

19 MR. ROUTZONG: We know -- the Solicitor mentioned
20 common sense. We know that our common sense tells us a
21 couple of things -- one of which is that people who have
22 reason to lie will lie. We know that. That's our common
23 sense. Our life experiences tell us that.

24 What else do we know? We know that it's common sense
25 to realize that when people present you a false choice

1 that you have to choose one or the other. That's not
2 true. For example, the solicitor said either this is a
3 grand conspiracy on behalf of the Sheriff's Department or
4 those two guys are guilty. That would be a little bit
5 like me saying you can either drive Chevrolet or Ford.
6 One or the other. Actually, we know that's not true.
7 There is a whole host of other possibilities that you must
8 consider.

9 Investigator Roberts sat right there in that chair
10 and I asked him the question about subject number one,
11 subject number two, subject number three. I asked him,
12 What does it say? He says one person the description was
13 6 feet tall. Another person was 5'10. And I asked him --
14 I didn't disparage him. I said you've been to the
15 criminal justice system -- I'm sorry, the academy where
16 they teach you to be accurate and not to make things up --
17 not that he would make something up anyway, but -- and I
18 asked him, You didn't make it up, did you? He said no.
19 He said somebody told me that.

20 Here we go with one of those other things that's
21 common sensical (sic) about treating equal witnesses
22 equally. Now, we know that those ladies out there are
23 being truthful as best they can, no doubt, because they
24 don't have anything to lose or gain. They just merely
25 reported what they think they saw -- just like Sergeant

1 Robert was told by someone that those people that did this
2 crime were 6 feet tall and 5'10.

3 Investigator Adams testified ---by the way, before I
4 get to that, Ms. Hastings also said -- remember what she
5 said? She used the word hunched over. I remember it just
6 distinctly as it can be. In her testimony she said they
7 were hunched over. I guess almost skulking might be a
8 better word for it.

9 Investigator Adams -- what did he say? He said that
10 about 2 o'clock, thereabouts, under that shed he found
11 David Kearse. He found guns and he found money. He found
12 David Kearse. You know what's odd about all that? What
13 they didn't find is a cellphone. They didn't find a
14 cellphone. Maybe because it didn't exist. Remember what
15 Ms.~Oakman said? I got a phonecall and it was from
16 Javier. It was on Javier's phone from Artrell and it said
17 my brother. Yet, they didn't find a cellphone. You don't
18 see any cellphone. They didn't talk about that. Nobody
19 wonders where the cellphone went that he was supposed to
20 have? He said -- excuse me, Ms.~Oakman said something
21 about being around the storage. Eight months after the
22 fact, but still there is no cellphone. Where is it at?
23 An inconsistency.

24 And I know the Solicitor made a comment about we were
25 going to try to make hay out of the fact that the

1 fingerprints weren't done. You know I do have to point
2 out that one of the steps when you do investigation to
3 fingerprint stuff because you know what? What did they
4 say? They said different people may have handled the
5 money because there was -- part of their story was the
6 money was split up. Who knows? It is a possibility, but
7 they didn't do it.

8 Then we come to Investigator Savell. Investigator
9 Savell testified that pretty early on he was told they
10 were looking for somebody 5'4, yet he can't find it
11 anywhere on the CAD report. The CAD report is that report
12 of radio traffic, what they say over the radio.
13 Mrs. Brown asked him about the CAD report. He said, well,
14 I don't know that much about it, I guess, more or less and
15 he said, We like to talk on cell phones.

16 That doesn't make a whole lot of sense, ladies and
17 gentlemen, because if you're forming a perimeter and it
18 takes more than one person to form a perimeter what you do
19 is you broadcast it to everybody -- all of the information
20 to everybody, but it wasn't done. Maybe it wasn't
21 important.

22 When they found David Kearse I think the testimony
23 was they took him to the Sheriff's Office and started
24 talking to him according to them at about 2:40. He is
25 spilling the beans, apparently, and yet no mention of who

1 to look for until after 5 o'clock. It doesn't make sense.

2 Remember what we talked about in the beginning about
3 truth and belief. Truth is belief that corresponds to
4 reality. Truth is not just what the state says. We know
5 that.

6 Investigator Cain -- he didn't have a whole lot to
7 offer except it is interesting on a separate case that
8 he's investigating somebody says, oh, by the way, I know
9 this, that, and the other -- completely unrelated, yet
10 they know. So he goes back and he tells another
11 investigator -- I think it might have been Criscillis --
12 hey, guess what I found out? Shazam. I found out some
13 new information. And it was so important and accurate
14 that they had to think about it for eight or nine months
15 before they acted on it.

16 Meanwhile, by the way, David Kearse has told his
17 story to law enforcement and over this eight or nine
18 months he's got plenty of time to line up everybody else
19 because he needs this story to be believed because he is
20 depending on it. He told them the story and he can't back
21 off of it because, guess what? If you change your story,
22 they can't use you because people like me will point it
23 out. And he needs to line these other people up and who
24 does he line up? Baby's mama. His baby's mom. That lady
25 that he has two children with came in here and she added

1 things that weren't in her statement.

2 It's actually a year now -- over a year, but even in
3 March I think when she made her statement she didn't put
4 those things in there, but after the story evolves -- the
5 truth doesn't have to evolve, ladies and gentlemen. The
6 only people that have to try to remember what they said or
7 what they did are liars. People who know -- like the
8 solicitor said, when you've been in an event that is
9 startling you don't have to sit down and think about this,
10 that, and the other thing. You know the truth.

11 She wants him back home and that's why she comes in
12 here and testifies because she knows he's facing a lot of
13 time. So, their story is evolving to fit what the state
14 wants you to believe, and we know that truth is not equal
15 to what they want you to believe. Truth corresponds to
16 reality.

17 I don't know what to make of Stanley Galloway. What
18 I do remember he said was he didn't know -- excuse me --
19 and some of the things that he did say weren't in his
20 statement.

21 Beatrix and Candice. Candice, poor thing, is a
22 shoplifter and I think there's a check fraud. That means
23 she's a thief and a deceitful person. Look who the state
24 is trying to fix their case with. Bank robbers,
25 shoplifters, and people who have a very definite interest

1 in making sure the least thing --

2 MR. THURMOND: Object. Move to strike as to an
3 allegation of shoplifting.

4 THE COURT: That's denied. It was brought out in the
5 testimony.

6 MR. ROUTZONG: Here is the thing. Going back look
7 who they're trying to fix their case with -- these people,
8 the armed robbers, the people who get -- who were there
9 when somebody got killed because they just robbed a bank
10 and who are facing -- already have been sentenced to a lot
11 of time and hope to get some consideration and the people
12 who are facing time because they haven't been convicted
13 yet and people who have already been convicted. What are
14 their motivation?

15 I am not speculating on anything. I don't know.
16 It's not my job to speculate, but, ladies and gentlemen,
17 look at this case and see what corresponds to reality.
18 It's not equal to what they say. Mr. Kearse and
19 Mr. Wilson are two of those people that I just mentioned.
20 The people that need to do it.

21 Ladies and gentlemen, taking my cue from them on my
22 opening statement I talked about what truth is and what
23 justice is. Here is what justice is. Remember what I
24 talked about? Justice is treating equal things equally.
25 That's the definition. In other words, treating equal

1 witnesses equally. You can't give the same weight to bank
2 robbers and shoplifters and people that have a reason to
3 lie -- you can't give those people the same weight that
4 you give those ladies right there. You have to treat
5 equal witnesses equally, and if you do that then you have
6 to discriminate between what's truth and what's false.
7 That's another definition of justice -- looking at finding
8 what is true and separating it out from what is false that
9 is somewhat predicated on what comes before. The quality
10 of the witnesses.

11 Finally, ladies and gentlemen, the third definition
12 of justice is you give every person their due. Now, if
13 you do all of those things, ladies and gentlemen, you
14 don't come up with this story that the solicitor comes and
15 tells you about because it's not true just because they
16 say it. You get this. Nothing. They don't have anything
17 and they're trying to fix their case.

18 Ladies and gentlemen, if you consider all of the
19 evidence you will find I'm confident that these men are
20 not guilty.

21 THE COURT: Mrs. Brown?

22 CLOSING STATEMENT

23 MRS. BROWN: Your Honor, may it please the court.

24 THE COURT: Yes, ma'am.

25 MRS. BROWN: I think you all are smart enough to

1 realize that when I use an analogy to invite you to wait
2 to hear all of the evidence in this case I'm not
3 belittling this process. This isn't a game. I never said
4 this was a game. It's not a game when two young men are
5 facing trial. It's not a game when people have to come in
6 here to talk about David Kearse who admitted to being one
7 of those who walked in with a gun that day. That's not a
8 game.

9 I think what Mr. Thurmond has invited you to do he
10 wants to confuse the issue with this talk of a vast
11 conspiracy versus their guilt because the fact is the
12 State has rested their case squarely on the shoulders of
13 the man who's desperate to get out of prison, the man who
14 is desperate not to go to prison, and the woman who is
15 desperate to keep him home.

16 This idea that Sabrina Oakman was completely
17 surprised with that knock on her door in March of 2010 --
18 how is that shocking to her when the man that she's been
19 with for five years was arrested for this charge back in
20 June of 2009? His case hasn't gone to trial yet. He
21 hasn't plead guilty yet. How is that a surprise to her
22 for that investigator to knock on her door? Don't you
23 think she knows it's coming? Don't you think they know
24 this investigation is ongoing?

25 And this isn't about these ladies waiting for justice

1 because one of the things that the Judge is going to tell
2 you is it's not your job to reward. It's not your job to
3 punish. Your job is to find the truth of this case.
4 That's your role, and if the state was so concerned about
5 these ladies having to wait so long, why hasn't David
6 Kearse's case been resolved yet? They asked him, The case
7 hasn't been resolved yet, has it? He hasn't come to
8 trial. He hasn't come and put his hand on that Bible and
9 plead guilty, been sentenced. If he is so eager and
10 willing to take responsibility, why are they waiting?
11 Because he has something to gain.

12 David Kearse didn't omit details that he added to
13 here in court. He changed it up. He changed it up, and
14 he admitted to that. He admitted that he went from
15 talking about having a meeting that morning which is what
16 he said back when he was arrested to having these couple
17 of meetings, and if Randy Wilson is saying that the
18 meeting that happened on the day before was to decide what
19 bank to rob and the Solicitor pointed out to you that
20 Randy Wilson said David Kearse wasn't there for that
21 meeting, then why is David Kearse talking about the day
22 before they're scoping out the bank that Randy Wilson is
23 saying we hadn't even chosen that bank until the meeting?
24 That doesn't make any sense, and it doesn't make any sense
25 because Randy Wilson is also trying to add things so he

1 can get a benefit.

2 I thought it was very interesting what Investigator
3 Cain testified to. He told you that when Randy Wilson
4 plead guilty to his armed robbery the Judge didn't
5 sentence him right away because the Investigator wanted
6 sometime to check out this information that he had given
7 three or four days before he plead, and upon being
8 questioned about what he told the court when Randy Wilson
9 was finally sentenced he said, I told the court that his
10 information was of no further value. In other words, he
11 hadn't given us anything new.

12 So, what do you have now? You have Randy Wilson who
13 is in prison who admitted he wants the state to reduce his
14 sentence. He's all of a sudden talking about this
15 conspiracy, these planning meetings that he attended that
16 he never said one word about either six days after this
17 robbery happened or six months after it happened. Two
18 opportunities six months apart to talk about Artrell
19 Hickson having planned this out and him, Randy Wilson,
20 being present for that. But what he did hear at his
21 sentencing was that his information had given no further
22 value so he knows he better come up with something
23 different because that motion to reconsider his sentence
24 is still outstanding and he's hoping that the state is
25 going to reduce his sentence.

1 David Kearse. You saw his demeanor when I was
2 questioning him. Did that look like a man who is worried
3 about what is going to happen? We don't know why he
4 picked their names. Bad blood. The fact that perhaps
5 they had been together earlier that morning and it would
6 be plausible? We don't know. What I do know is that the
7 state is weighing its whole case on those three
8 individuals who have everything to gain.

9 Is this a vast conspiracy by Walmart and Security
10 Federal and the Sheriff's Office? No. No. To suggest
11 that, I would suggest that is ludicrous. What this is are
12 three individuals who were shown to be liars on that stand
13 by saying different things -- not just missed details.
14 Different things.

15 Sabrina Oakman leaving out Artrell Hickson having
16 this black backpack when she gave that statement in March.
17 Is that a missed detail or is that a new fabrication? And
18 this idea that, well, Investigator Cain didn't write
19 everything in the report, don't you think that seasoned
20 investigator would have put that in that statement for her
21 to sign if she had said it? Don't you think that that
22 fact was so important that if she had told him that it
23 would have been in that statement? I think it's even more
24 critical to realize that Investigator Cain was the one who
25 wrote down the summary of what she said and then she

1 signed it because he is going to know what's important and
2 what's not. And with everything else that was in there
3 did he forget that she told him about about a black
4 bookbag? No. She didn't tell it to him because that was
5 a new fact that she threw in to bolster the case, to help
6 her man look better so he can come home.

7 And when we talk about reasonable doubt it is a
8 fundamental bed rock of our system -- our system that has
9 been held up as being the best in the world. The bedrock
10 of our system and our way of life. That's not philosophy.
11 That's not showmanship. That's truth. That's what we
12 fight for. And if you think that there is a real
13 possibility that the only three individuals who directly
14 linked them to this bank robbery are lying about it, you
15 have a reasonable doubt.

16 JURY CHARGE

17 THE COURT: Mr. Foreman, ladies and gentlemen of the
18 jury, let me now charge or instruct you on the law. The
19 first part will be sort of general propositions of law
20 that I charge throughout the state in all criminal cases
21 and then once we complete that we'll turn our attention to
22 the indictments in this case. There are two charges in
23 this case, i.e., armed robbery and possession of a weapon
24 during the commission or attempt to commit a violent
25 crime.

1 Let me remind you once again, ladies and gentlemen,
2 that the two Defendants -- the fact that the two
3 Defendants in these cases were arrested, charged, and
4 indicted in the case by these four indictments, these four
5 indictments are not evidence in the case and, obviously,
6 cannot be considered by you as evidence of guilt in this
7 case, nor does it create any presumption or inference of
8 guilt. These indictments are simply the charging
9 documents or the written -- formal written instruments by
10 which the charges are given to the Defendant and it is the
11 formal document by way these cases are brought into the
12 court.

13 In this particular case we're dealing with,
14 obviously, two Defendants and each Defendant has two
15 indictments against him. So you're to consider each
16 indictment separate and apart from the other and you're to
17 consider the case against each separate and apart from the
18 other. So, you have the right to find one Defendant not
19 guilty, the other guilty, both guilty, both not guilty, or
20 any combination thereof. You have to consider each
21 indictment separate and each Defendant separate based on
22 the facts that you heard, and you'll be given four
23 different verdict forms dealing with all four indictments,
24 and I'll explain that to you in just a few minutes.

25 To each of these four indictments the -- or each

1 Defendant has plead not guilty. A plea of not guilty as I
2 told you earlier puts the burden on the State of South
3 Carolina to prove each Defendant guilty beyond a
4 reasonable doubt as to each indictment. A person charged
5 with committing a criminal offense in our state is never,
6 never required to prove himself innocent. The burden is
7 on the State of South Carolina to prove his guilt beyond a
8 reasonable doubt or their guilt in this case.

9 I charge you and instruct you that it is an important
10 rule of law that a defendant in a criminal trial no matter
11 how serious the crime or the charges may be they will
12 always be presumed to be innocent of the crimes for which
13 the indictments were issued unless guilt has been proven
14 by evidence satisfying you of that guilt beyond a
15 reasonable doubt. The presumption of innocence does not
16 end when you begin your deliberations but it stays with
17 the Defendants throughout the trial unless and until you
18 reach a verdict of guilt based on evidence satisfying you
19 of that guilt beyond a reasonable doubt.

20 Presumption of innocence is not a mere legal theory.
21 It is a most important constitutional protection that all
22 defendants are entitled to. It is not just a legal
23 phrase. It is a substantial constitutional right to which
24 every defendant is entitled unless you, the jury, are
25 satisfied from the evidence of the defendant's guilt

1 beyond a reasonable doubt.

2 Reasonable doubt has been defined on a number of
3 occasions by our State Supreme Court, and it is very
4 simply defined as the kind of doubt that would cause a
5 reasonable person to hesitate to act. A reasonable doubt
6 is the kind of doubt that would cause a reasonable person
7 to hesitate to act. They also define reasonable doubt --
8 they say proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the defendant's guilt.

10 There are very few things in the world that we know
11 with absolute certainty, and in criminal cases the law
12 does not require proof that overcomes every possible
13 doubt, but based on your consideration of the evidence you
14 are firmly convinced that the defendant is guilty of the
15 crimes charged, then you must find the defendant guilty.

16 However, on the other hand, if you think there is a
17 real possibility that the defendants are not guilty, you
18 must give the defendants the benefit of the doubt and find
19 them not guilty.

20 As I told you when we first started the trial of this
21 case, ladies and gentlemen, that you and I have certain
22 duties to perform. My duties have been to rule on the
23 admissibility of evidence and my duty is to instruct and
24 charge you on the law. More importantly is your duty to
25 determine the true facts in the case. Since I am the

1 Judge of the law in the case the law does not allow me to
2 have any opinion about the facts. So if at any time
3 during the trial of the case I yawned or rolled my eyes or
4 raised my eyebrows or did something that you would think
5 that I have some opinion about the facts, please
6 disconsider that. The law does not allow me to have any
7 opinion about the facts. You are the sole finders of the
8 facts in the case and it is your responsibility to
9 determine what the true facts are in this case.

10 Obviously, in doing that you have the responsibility
11 and you are charged with determining the credibility of
12 the witnesses who have testified in the case. Credibility
13 simply means believability. It becomes your duty as
14 jurors to analyze and evaluate the evidence and determine
15 which evidence convinces you of its truth. In carrying
16 out the task of determining credibility or believability
17 of witnesses you may believe one witness over several,
18 several over one. You can believe everything a witness
19 says. You can disregard everything a witness says. You
20 can believe a portion of what he says, disregard the
21 remaining portion. You have the right to consider how the
22 witness appeared on the stand and whether or not the
23 witness has exhibited to you any interest, prejudice,
24 bias, or other motive in the case.

25 If after considering all of the evidence you're not

1 convinced of the guilt beyond a reasonable doubt, then,
2 obviously, your verdict would be not guilty. If you're
3 convinced of the evidence beyond a reasonable doubt your
4 verdict would be guilty.

5 Now, one other important constitutional safeguard
6 that all people who are tried is the right to remain
7 silent. I charge and instruct you and emphasize that the
8 fact that the Defendants in this case did not testify is
9 not a factor to be considered by you in any way in your
10 deliberation and in your consideration on the question of
11 the guilt or innocence of the defendant. It must not be
12 considered by you in any manner whatsoever. A defendant
13 has a constitutional right to remain silent, and the
14 assertion of his right to remain silent must not be
15 considered by you in your deliberations.

16 I repeat you're under oath not to place any emphasis
17 whatsoever on the fact that these Defendants did not
18 testify in the case. It is a fact that should not even be
19 brought up or considered in your deliberation of guilt or
20 innocence.

21 Mr. Foreman, that's one of your duties. If anybody
22 as attempts to bring that up, please remind them that the
23 Defendants have the constitutional right to remain silent
24 and absolutely no inference should be derived from their
25 exercise of their constitutional right to remain silent.

1 The Defendants are not required to prove their innocence.
2 The burden remains on the State of South Carolina to prove
3 guilt beyond a reasonable doubt.

4 One other proposition in determining credibility or
5 believability of a witness. A person who has a past
6 criminal record is competent to testify during the trial.
7 A past record does not affect the ability of that witness
8 to testify. Past record may only be considered by you, if
9 at all, in determining the witness' believability.
10 Remember, you're the sole judges of the facts in the case
11 and the believability or credibility of any and all
12 witnesses is within your province.

13 You've heard some argument and testimony about the
14 punishment -- concerning the punishment or penalties a
15 person can serve for the crime alleged. In determining
16 the guilt or innocence of the Defendants you cannot
17 consider any possible penalty or sentence of a particular
18 crime. The punishment for the crime is a matter for me to
19 determine and should never be considered by you in any way
20 whatsoever in arriving at a fair and impartial verdict in
21 this case.

22 Mr. Foreman, ladies and gentlemen of the jury, those
23 are pretty standard constitutional safeguards that all
24 defendants have. It is the definition of reasonable
25 doubt, the explanation of failure to testify, the exercise

1 of constitutional right to remain silent. It's a charge
2 to you on how you determine believability and credibility
3 of witnesses. Mainly you use your common sense to
4 determine who is telling the truth.

5 Now let's turn to the two offenses charged in this
6 case or indicted in this case. Each Defendant has been
7 charged with armed robbery. Each Defendant has been
8 charged with possession of a weapon during the commission
9 or the attempt to commit violent crime. A person or
10 defendant charged with armed robbery as they are in this
11 case -- in order to prove this offense the state must
12 first prove beyond a reasonable doubt that the Defendants
13 took personal property from the person or presence of
14 another person. Pretty simple. Property is in the
15 presence of a person if it is within the person's reach,
16 control so that the person could, if not overcome with
17 violence or prevented by fear, keep possession of the
18 property.

19 The state also must prove beyond a reasonable doubt
20 that the Defendants carried the property away intending to
21 permanently deprive the owner of the property and keep the
22 property for the Defendants' own use. The slightest
23 removal of the property or complete possession of the
24 property even for an instance by the Defendant is
25 sufficient to show a taking and carrying away of the

1 property. The taking and carrying away of the property
2 must have been done with violence or by putting the owner
3 of the property in fear of violence.

4 Finally, the state must prove beyond a reasonable
5 doubt that the Defendant or the Defendants were armed with
6 a deadly weapon during the robbery. Obviously, a deadly
7 weapon is any instrument which is likely to cause death or
8 great bodily harm. Whether an instrument has been used as
9 a deadly weapon depends on the facts and circumstances of
10 each case and, obviously, a pistol is an example of a
11 deadly weapon and a gun may be a deadly weapon even if it
12 is not operating or empty or not operational.

13 So, armed robbery is not that complicated of an
14 offense. Let me just go over it one more time. To prove
15 armed robbery the state must prove beyond a reasonable
16 doubt, number one, that the defendant took property from
17 the person or a company; that they had to take complete
18 control of that property. It must be done with violence
19 or putting the owner of the property in fear of violence,
20 and it must be shown that the Defendants were armed with a
21 deadly weapon during the robbery and all of that must be
22 shown and proven beyond a reasonable doubt.

23 The second indictment in this case is possession of a
24 weapon during the commission of or attempt to commit a
25 violent crime. These Defendants are charged with that.

1 In order to prove it the state must show beyond a
2 reasonable doubt that the Defendants were in possession of
3 a firearm or visibly displayed what appeared to be a
4 firearm during the commission of a violent crime. Our law
5 defines firearms as any gun, revolver, pistol which is
6 designed to or may be readily conversed to expel a
7 projectile, and in order to find the Defendants guilty of
8 a weapon during the commission of a violent crime you must
9 find them either guilty of committing a violent crime or
10 attempting to commit a violent crime and our law defines
11 the offense of armed robbery as a violent crime.

12 Ladies and gentlemen, your verdict must be unanimous.
13 All twelve of you must unanimously agree as to what the
14 verdict is. You must consider all four indictments. As
15 to each Defendant you'll have to consider the armed
16 robbery first of all. If you find the Defendants not
17 guilty of armed robbery, obviously, you would not go to
18 the possession of a weapon because no violent crime has
19 been committed. If you find the Defendants guilty of
20 armed robbery or one of them or both of them or a
21 combination thereof, then you would then consider whether
22 or not they possessed a weapon during the commission of
23 that violent crime.

24 The verdict form is very simple. It is as to each
25 Defendant, each offense, armed robbery, commission --

1 possession of a weapon during the commission. It's either
2 not guilty or guilty. When you make your unanimous
3 decision you check whichever one is appropriate, sign your
4 name. Obviously, when you finish everything let the
5 bailiff know and he'll let me know and we'll receive you
6 back into the courtroom and receive the verdict at that
7 time.

8 As I said your verdict must be unanimous. It must be
9 solely based on the facts as you find them to be, the true
10 facts, apply those fact to the law as I have given it to
11 you. You have absolutely no friends to reward, no enemies
12 to punish. It can't be based on passion, anything of that
13 nature. It has to be simply based on the evidence in this
14 case as you find it to be.

15 If at any time during the deliberations, Mr. Foreman,
16 y'all have a question, please write that question out on a
17 notepad that you'll have in there. Knock on the door.
18 The bailiffs will give it to me. Sometimes I can answer
19 the question. Sometimes I can't depending on what the
20 question is, but if it is something that I can answer I'll
21 either send an answer back in there, I'll bring you back
22 out here and I'll give you the answer, or I'll write that
23 I cannot answer that and I'll try to give you a reason.
24 There would be a reason if I can't.

25 I will now ask you twelve to return to your jury

1 room. Let's put the two alternates in the alternate room.
2 Do not start deliberating. I have to ask the lawyers if I
3 have left anything out. We have to gather the exhibits
4 and make sure we have them all. Once we do that, it takes
5 two or three minutes. We'll send all of the exhibits back
6 into the jury room along of the verdict forms and you may
7 start your deliberations.

8 We've ordered you lunch. I am not sure if it is here
9 yet. It should be shortly. You can do a couple of
10 things. You can stop deliberating while you eat. You can
11 eat and deliberate, but I am not going to let you go
12 downstairs and get separated. Once we turn it over to you
13 I am going to keep you together as a group. If you want
14 to eat and deliberate or however you want to do it, that's
15 up to you.

16 Just let me know when you've completed your task.
17 Thank you very, very much. You may go with the bailiff.

18 (Whereupon, the jury exited the courtroom at 11:52.)

19 THE COURT: Any requested admissions, deletions, or
20 objections to the charge by the state?

21 MS. RINGLER: None from the state, Your Honor.

22 THE COURT: By the Defendant represented by
23 Mrs. Brown?

24 MRS. BROWN: No, Your Honor.

25 THE COURT: By the Defendant represented by

1 Mr. Routzong?

2 MR. ROUTZONG: No, sir.

3 THE COURT: Would each of you please come forward and
4 go through the exhibits to make sure that we have each and
5 every one? Would you please review the verdict form?
6 Completely unloaded?

7 THE POLICE OFFICER: Yes, sir.

8 THE COURT: No bullets in the bag? All right. On
9 behalf of the state are all exhibits accounted for?

10 MR. THURMOND: Yes, sir.

11 THE COURT: On behalf of the Defendant represented by
12 Mrs. Brown? Mrs. Brown, are you satisfied?

13 MRS. BROWN: What was 22?

14 THE COURT REPORTER: Video.

15 MRS. BROWN: Yes, Your Honor.

16 THE COURT: Is everyone satisfied that all exhibits
17 are present? Mr. Thurmond?

18 MR. THURMOND: Yes, sir.

19 THE COURT: Mrs. Brown?

20 MRS. BROWN: Yes, Your Honor.

21 THE COURT: Mr. Routzong?

22 MR. ROUTZONG: Yes, sir.

23 THE COURT: Have y'all reviewed the verdict forms?
24 Are you satisfied with those? All of them are simply not
25 guilty, guilty.

1 MS. RINGLER: Yes, Your Honor.

2 THE COURT: The State?

3 MS. RINGLER: Yes, Your Honor.

4 MRS. BROWN: Yes, Your Honor, as to Artrell Hickson.

5 THE COURT: Mr. Routzong?

6 MR. ROUTZONG: As to Javier Hickson, yes, sir.

7 THE COURT: All right. Mr. Bailiff, if you'll take
8 the exhibits and verdict forms and tell the jury they may
9 start deliberating. It is 11:56. We'll stand at ease
10 just for a second.

11 (Whereupon, the Jury begins to deliberate at 11:56.)

12 THE COURT: I got a note from the jury: Can we get a
13 computer to see the DVD and video? With permission from
14 all parties I am going to ask the Foreperson do they want
15 it back there or look at it out here.

16 (Whereupon, the Foreperson enters the courtroom at
17 approximately 1:30.)

18 THE COURT: Mr. Foreman, I got your note. We may
19 have a little technical difficulty sending it back there
20 with the computer. I got the guy coming up to find out.
21 Would it suit you to come out here and look at it or do
22 y'all want it back in there so you can watch it?

23 THE FOREPERSON: Well, we do need to see it.

24 THE COURT: I understand that. Would it suit to see
25 it out here or suit to see it better suited back there? I

1 don't know if I can send it back there. I don't know if I
2 have the capability.

3 THE FOREPERSON: I see what you're saying.

4 THE COURT: Go back there and discuss it with them.
5 Tell them I know I can show it to them out here and I'll
6 see if I can do it back there. We'll get you an answer in
7 just a few minutes.

8 THE FOREPERSON: All right. Thank you.

9 (Whereupon, the Foreperson exits the courtroom at
10 approximately 1:31.)

11 THE COURT: What we're trying to find out is can we
12 only watch the video out here or can we send the computer
13 back there and they can watch it back there?

14 MR. NORWOOD BODIE: This is not an easy video to play
15 so it would probably be easier to bring it out here.

16 THE COURT: I am going to tell them unless they
17 absolutely got to have it I would have to send the whole
18 contraption back there.

19 Any problems with that?

20 MRS. BROWN: No, Your Honor.

21 THE COURT: Mr. Whittle, I am going to send it back
22 to them and tell them that it'll have to be played out
23 here or you can just tell them that it has to be played
24 out here, and if they went to let me know and I'll bring
25 them out to show it to them or not.

1 (Whereupon, a break was taken.)

2 (Whereupon, the jury came into open court at
3 approximately 1:45.)

4 THE COURT: All right. Mr. Foreman, it is my
5 understanding that y'all would like to review the video.
6 I apologize for not having the technical capabilities of
7 sending it to the jury room so I have to reshow it to you
8 out here. We'll play it as many times as you want and
9 stop it when you want it stopped. Y'all just let us know.

10 THE FOREPERSON: Twice to start off with.

11 THE COURT: If you want it stopped at any point
12 during the video raise your hand. All right.

13 (Whereupon, the video is played.)

14 THE COURT: What you need?

15 THE FOREPERSON: One more time.

16 THE COURT: One more time.

17 (Whereupon, the video is played.)

18 THE FOREPERSON: Thank you, Your Honor.

19 (Whereupon, the jury exited the courtroom at 1:58.)

20 (Whereupon, a break was taken.)

21 THE COURT: Ladies and gentlemen, I am informed the
22 jury has a verdict in the trial that we just concluded.
23 Some of the members of the jury panel are, I think, in the
24 restroom so it's going to be about three or four more
25 minutes before we receive the verdict. First of all, let

1 me say this. I don't know what the verdict is.
2 Obviously, it is going to be one of two things, but if you
3 cannot control your emotions -- notwithstanding whether
4 it's guilty or not guilty, if you cannot control your
5 emotions I am asking you now very nicely to please step on
6 out and you can find out what the verdict is after the
7 fact.

8 Everyone is to conduct themselves with good behavior
9 like you've done so far through the trial. I know it's an
10 emotional situation for family members as well as victims
11 as well as friends, but I intend for this courtroom to be
12 respected, and if you cannot do that I am asking you to
13 leave now. If there is any outburst, any untoward
14 behavior the courtroom has deputies all around and you
15 will be gently, if possible, removed and held in contempt.

16 So, fair warning. If you cannot conduct yourself
17 appropriately, please leave now. Thank you.

18 (Whereupon, the jury came into open court at
19 approximately 2:20.)

20 (Whereupon, Court's Exhibit Nos. 1 - 2 were marked
21 for identification only.)

22 THE COURT: Mr. Foreman, have y'all reached a
23 verdict?

24 THE FOREPERSON: Yes, Your Honor, we have.

25 THE COURT: If you would pass it to the bailiff,

1 please.

2 THE CLERK: Your Honor, the State of South Carolina
3 versus Artrell Jabar Hickson, indictment number
4 2010-GS-02-00670, As to the offense of possession of a
5 firearm --

6 THE COURT: Do the other one first.

7 THE CLERK: Sir?

8 THE COURT: Do the armed robbery first.

9 THE CLERK: Yes, sir. As to offense of armed robbery
10 we, the jury -- excuse me. Let me start over. The State
11 of South Carolina versus Artrell Jabar Hickson, indictment
12 number 2009-GS-02-02294, as to the offense of armed
13 robbery we, the jury, find the Defendant guilty. We
14 unanimously agree, Foreperson, Myles Black, September 22,
15 2010.

16 The State of South Carolina versus Javier Hickson,
17 indictment number 2009-GS-02-02291, as to the offense of
18 armed robbery we, the jury, find the Defendant guilty. We
19 unanimously agree, Foreperson, Myles L. Black, September
20 22, 2010.

21 The State of South Carolina versus Artrell Jabar
22 Hickson, indictment number 2010-GS-02-670, as to the
23 offense of a possession of a firearm during the commission
24 of or attempt to commit a violent crime, we, the jury,
25 find the Defendant guilty. We unanimously agree, Myles L.

1 Black, September 22, 2010.

2 The State of South Carolina versus Javier Hickson,
3 indictment number 2010-GS-02-00679, as to the offense of
4 possession of a firearm during the commission of or an
5 attempt to commit a violent crime we, the jury, find the
6 Defendant guilty. We unanimously agree, September 22,
7 2010, Myles L. Black.

8 Mr. Foreman, ladies and gentlemen of the jury, is
9 this still your verdict? Please indicate by raising of
10 your right hand.

11 All hands are raised, Your Honor.

12 THE COURT: Thank you. Mr. Routzong, Mrs. Perkins,
13 anything for the jury before I release them?

14 MR. BROWN: No, Your Honor.

15 MR. ROUTZONG: Nothing, Your Honor.

16 THE COURT: All right. Everybody remain seated,
17 please.

18 Mr. Foreman, ladies and gentlemen, I thank you for
19 your service. I could not have asked for a better jury.
20 Y'all payed close attention. You've taken your duties
21 serious. You listened to the evidence, and you've done
22 your job. I appreciate it.

23 You're welcome to leave now. You'll be excused for
24 the balance of the week. If anyone needs a work excuse
25 we'll be glad to get one of those for you.

1 What is left I'll be doing here in just a few minutes
2 will be the sentencing. You're welcome to stay for that
3 if you would like. If not, you're free to go. We'll be
4 sentencing here in just a few seconds. So if you'd like
5 to leave you can leave now. If not, you're welcome to
6 stay.

7 (Whereupon, the jury exited the courtroom at 2:26.)

8 THE COURT: Sheriff, I'd like at least a deputy or
9 two to escort them out in the parking lot so they can get
10 out.

11 THE SHERIFF: Yes, sir.

12 THE COURT: Pass up the sentence sheets, please.

13 Mr. Routzong, Mrs. Kelley Perkins Brown, if you'd
14 bring your clients forward, please.

15 JAVIER HICKSON AND ARTRELL HICKSON, after being
16 duly sworn, testified as follows:

17 THE CLERK: Sworn, Your Honor.

18 THE COURT: Mrs. Kelley Perkins Brown, Mr. Michael
19 Routzong, in connection with the armed robbery charges it
20 is my understanding that carries a minimum of 10, maximum
21 of 30.

22 Is that correct, Ms. Solicitor?

23 MS. RINGLER: Yes, Your Honor.

24 THE COURT: Mr. Routzong, Mrs. Kelley P. Brown, do
25 you agree with that?

1 MRS. BROWN: Yes, Your Honor.

2 MR. ROUTZONG: Yes, Your Honor.

3 THE COURT: Possession of a weapon during the
4 commission of a violent crimes carries up to five.

5 MS. RINGLER: Five years, Your Honor, yes.

6 THE COURT: Y'all all agree to that?

7 MRS. BROWN: Yes.

8 MR. ROUTZONG: Yes, Your Honor.

9 THE COURT: Bear with me one second. I am going to
10 listen to you, but I need to sign some things. I am not
11 putting the sentence off.

12 Also, Ms. Ringler would you, please, give me the
13 prior record of Mr. Javier Hickson, if any?

14 MS. RINGLER: Yes, Your Honor, he's got a 2003 public
15 disorderly conduct and also a possession of a controlled
16 substance first. In 2004 he has a possession of a stolen
17 pistol.

18 THE COURT: Would you please give me the record of
19 Mr. Artrell Hickson, if any?

20 MS. RINGLER: He does not have a record, Your Honor.

21 THE COURT: All right. Ladies first. Mrs. Kelley
22 Perkins Brown, I'll be glad to hear as to Artrell Jabar
23 Hickson.

24 MRS. BROWN: Thank you, Your Honor. Your Honor,
25 Artrell is 20 years old. He has lived here in the Aiken

1 area for all of his life. He went to Silver Bluff High
2 School. He did not graduate and he tells me that he was
3 trying to get into a GED program. He has one child who
4 was born in April of this year -- a son -- and as the
5 court has heard he was living with his grandmother. He
6 was working doing part-time work at a carwash.

7 Your Honor, the court has heard he has no prior
8 record. He is a young man. We would ask the court
9 sentence him accordingly.

10 THE COURT: Mr. Artrell Hickson, anything you'd like
11 to tell me?

12 THE DEFENDANT ARTRELL HICKSON: No, sir.

13 THE COURT: Does he have any members of his family
14 that would like to speak? Thank you.

15 Mr. Michael Routzong?

16 MR. ROUTZONG: May it please the court.

17 (Whereupon, the attorney conferred with the client.)

18 MR. ROUTZONG: May it please the court, Your Honor.

19 THE COURT: Yes, sir.

20 MR. ROUTZONG: Mr. Hickson is 27 years old. He is a
21 resident of Aiken. I think he has one child. I believe
22 that child is 10 years old, Your Honor. I'd also ask the
23 court to consider a relatively minor record in sentencing,
24 Your Honor.

25 THE COURT: Mr. Javier Hickson, anything you want to

1 tell me?

2 THE DEFENDANT JAVIER HICKSON: No, sir.

3 THE COURT: Any member of his family would like to
4 say anything? Any comments by the victims, the tellers?
5 Anyone want to say anything?

6 MS. RINGLER: I believe none of them would like to
7 speak, Your Honor. None wish to speak.

8 THE COURT: All right. Mr. Javier Hickson, as to
9 indictment 2009-GS-02-2291, an indictment for armed
10 robbery, the sentence of this court is that you be
11 committed to the State Department of Corrections for a
12 period of 28 years. As to the possession of a weapon
13 during the commission of a violent crime the sentence of
14 this court is that you be committed to the State
15 Department of Corrections for a period of five years.
16 They're to run concurrent.

17 Mr. Artrell Hickson, as to indictment
18 2009-GS-02-2294, an indictment for armed robbery, the
19 sentence of this court is that you be committed to the
20 State Department of Corrections for a period of 28 years.
21 As to indictment 2010-GS-02-670, the sentence of this
22 court is that you be committed to the State Department of
23 Corrections for a period of five years. They're to run
24 concurrent.

25 Good luck to both of you. We'll stand at ease for a

(1 few minutes.

2 (End of Transcript of Record.)

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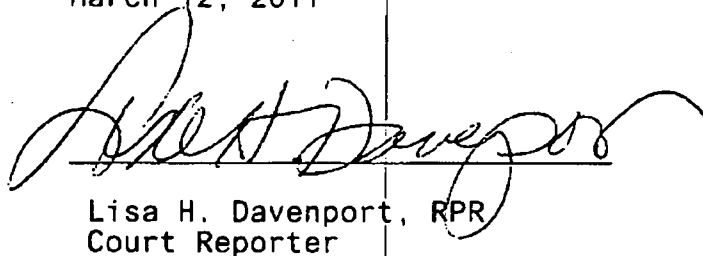
CERTIFICATE OF REPORTER

State of South Carolina)
County of Aiken)

I, Lisa H. Davenport, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, on the 20-22 day of September, 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 12, 2011


Lisa H. Davenport, RPR
Court Reporter

**IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

No. 2010-173726

RECEIVED
AUG 13 2012
SC Court of Appeals

**APPEAL FROM AIKEN COUNTY
Court of General Sessions**

The Honorable Doyet A. Early III

Case No. 2009-GS-02-2291, -2294

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STATE OF SOUTH CAROLINA..... Respondent,

v.

JAVIER HICKSON Appellant.

FINAL BRIEF OF APPELLANT JAVIER HICKSON

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Attorney for Appellant
Javier Hickson

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STATEMENTS OF ISSUE ON APPEAL**I.**

To the extent the trial judge erred in admitting two hearsay portions of a witness' statement during trial, any error was harmless in light of the isolated nature of the hearsay evidence, the context in which the hearsay evidence was presented to the jury, and the other overwhelming evidence of Appellant's guilt presented during trial, which included the uncontradicted testimony of Appellant's accomplice in the bank robbery directly implicating him in the crime.

II.

The trial judge did not abuse his discretion in admitting a mug shot photograph taken of Appellant's brother shortly after the bank robbery because there was a demonstrable need for the photograph, the photograph did not suggest either Appellant or his brother had a prior criminal record, and no improper attention was called to the photograph's origin. Furthermore, the admission of the photograph resulted in no meaningful prejudice to Appellant, particularly in light of the fact the photograph depicted Appellant's brother and not Appellant.

STATEMENT OF THE CASE

In June of 2009, Appellant Javier Hickson and his brother, Artrell Jabar Hickson, were arrested following an investigation into the armed robbery of the Graniteville branch of Security Federal Bank. In December of 2009, the Aiken County grand jury indicted Appellant and his brother for one count of armed robbery. In April of 2010, the Aiken County grand jury additionally indicted Appellant and his brother for one count of possession of a firearm during the commission of a violent crime. On September 20, 2010, a jury trial was commenced in the Aiken County court of general sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant and his brother as indicted. The trial judge sentenced Appellant and his brother to concurrent terms of imprisonment of twenty-eight years for the armed robbery convictions and five years for the firearm convictions. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

Around noon on June 25, 2009, Gabrielle Hastings was working as a teller at the Graniteville branch of Security Federal Bank when she looked up and saw three gunmen wearing dark clothes, gloves, and bandanas over their faces enter the bank. (Tr. pp. 42-43; p. 53; pp. 56-57; pp. 90-91; p. 95; p. 112). After entering the bank, the first gunman approached the counter of Amanda Wood, another teller at the bank, knocked her envelopes into the floor, pointed a gun at her, and demanded money. (Tr. pp. 51-52). Wood gave the gunman, who was approximately 5'4" tall and was wearing a backpack, money from her cash drawer. (Tr. p. 52; p. 91). Meanwhile, the second gunman, who was also around 5'4" tall, approached the office of Tonya Key, the branch manager of the bank, and ordered her to open the vault. (Tr. p. 43; p. 52). Terrified, Key was too afraid to move and did not respond. (Tr. p. 43). The second gunman then left the offices and demanded money from Wood. (Tr. p. 52). Wood told him she already gave the money to the first gunman, so he moved to the next counter and took stacks of \$1 bills, \$5 bills, and \$20 bills from Hastings at gunpoint. (Tr. p. 52; pp. 57-58). Throughout the robbery, the third gunman remained at the door and acted as a lookout for the others. (Tr. p. 51; p. 58; pp. 90-91).

Approximately two minutes after the robbery began, the three gunmen fled from the bank and ran towards a nearby wooded area.¹ (Tr. p. 43; p. 61). The bank employees then locked the door and triggered an alarm. (Tr. pp. 43-44; p. 57). Shortly thereafter, law enforcement officers responded to the bank, secured the scene, and obtained a description of the suspects from the terrified employees inside the bank. (Tr. pp. 60-61;

¹ During the robbery, the gunmen stole a total of \$4,902 from the bank. (Tr. p. 123). The majority of the money was never recovered. (Tr. p. 123).

pp. 111-113). The bank employees informed the officers that the robbers were three black males wearing dark clothing, masks, and gloves. (Tr. pp. 111-112). Additionally, the bank employees described the suspects as approximately 5'4" tall. (Tr. p. 111). Subsequently, several bloodhound tracking teams were called to the scene and attempted to track the gunmen in the direction they fled after the robbery. (Tr. p. 64).

Officer Demetrick Drumming of the Aiken Public Safety Department and Lieutenant Clay Adams of the Aiken County Sheriff's Office followed the bloodhounds to a nearby church. (Tr. p. 67; p. 69; p. 96; p. 98). Next to the church, the officers discovered David Kearsé hiding underneath a storage shed. (Tr. p. 70; pp. 96-97). The officers removed Kearsé from underneath the shed and took him into custody. (Tr. p. 70; pp. 96-97). After arresting Kearsé, the officers looked underneath the shed where Kearsé had been hiding and discovered a semi-automatic pistol and a large wad of \$5 bills hidden behind a cinder block.² (Tr. p. 71; p. 97; pp. 100-102; p. 108).

Meanwhile, Investigator Greg Savell of the Aiken County Sheriff's Office responded to the bank and obtained a copy of the surveillance footage of the robbery. (Tr. p. 100; p. 113). He then travelled to the location of Kearsé's arrest and transported him to the Aiken County Detention Center. (Tr. pp. 133-114). After arriving at the detention center, Investigator Savell informed Kearsé of his rights and interviewed him about the robbery. (Tr. pp. 114-115). Kearsé admitted to committing the robbery and implicated Appellant Javier Hickson and Appellant's brother, Artrell Jabar Hickson ("Artrell"), as his accomplices in the crime.³ (Tr. pp. 115-116).

² In total, Kearsé was in possession of \$290 comprised entirely of \$5 bills at the time of his arrest. (Tr. p. 123). Notably, Kearsé was also dressed in black. (Tr. p. 70).

³ Kearsé refused to provide a written statement because he was scared. (Tr. p. 117). However, he directed the officers to the location where he parted ways with Appellant and Artrell after the robbery. (Tr. p. 117).

Subsequently, on June 30, 2009, Appellant and Artrell were arrested in connection to the robbery of the Graniteville branch of Security Federal Bank.⁴ (Tr. p. 122). Once they were taken into custody, officers took photographs of the men during the booking process. (Tr. pp. 79-80; p. 122). Thereafter, Appellant and Artrell were each indicted for armed robbery and possession of a firearm during the commission of a violent crime, and the brothers proceeded to trial together. (Tr. p. 7; Indictments).

During trial, the bank employees recounted the circumstances of the bank robbery, and the responding officers testified about their investigation into the robbery leading up to the arrests of Kearse, Appellant, and Artrell. (Tr. p. 42; pp. 50-51; p. 57; p. 70). Additionally, the surveillance footage of the robbery was played for the jury. (Tr. pp. 54-55). Subsequently, the solicitor informed the trial judge that he intended to introduce a photograph taken of Artrell after he was arrested for the robbery. (Tr. p. 79). The solicitor noted Artrell's appearance had changed since the photograph was taken and asserted Artrell's identifiable features displayed in the photograph could be used to identify Artrell as one of the gunmen when compared to the surveillance footage. (Tr. pp. 79-80). In response, defense counsel for Artrell objected to the admission of the photograph and argued there was no demonstrable need for it since Artrell was available in the courtroom for comparative purposes. (Tr. p. 81). Defense counsel further claimed the photograph showed Artrell in a jail uniform. (Tr. pp. 82-83). Appellant's defense counsel also objected, arguing the prejudicial nature of the photograph outweighed its probative value. (Tr. p. 83). Following the arguments of counsel, the trial judge ruled the photograph was admissible after determining there was a demonstrable need for it under the circumstances, it was not suggestive of a criminal record, and it was relatively

⁴ At the time of their arrests, Artrell was 5'4" tall and Appellant was 5'6" tall. (Tr. p. 121).

benign. (Tr. p. 84). However, the trial judge cautioned the solicitor to avoid calling attention to the photograph's origins. (Tr. p. 84).

Thereafter, during Investigator Savell's testimony, Investigator Savell reviewed several photographs taken from the surveillance footage of the robbery and noted one of the robbers had pronounced bushy eyebrows and appeared to fully fill the space of the hood covering his head. (Tr. pp. 118-119). The solicitor then introduced a photograph of Artrell taken on the day of Artrell and Appellant's arrest five days after the robbery, and the photograph was admitted into evidence over objection.⁵ (Tr. p. 122). No reference was made regarding why the photograph of Artrell was taken. (Tr. p. 122).

As the trial progressed, Sabrina Oakman, who was living with Kearsa at the time of the robbery, testified about the events of June 25, 2009. (Tr. pp. 140-141). Oakman stated Kearsa got up on the morning of the robbery, left the home, and then returned around 10:30 a.m. (Tr. p. 142). After returning home, Oakman testified Kearsa asked her for a ride, and she drove him to Appellant and Artrell's home. (Tr. pp. 142-143). Oakman stated she and Kearsa picked up Appellant and Artrell, who was wearing a backpack, before driving to Kearsa's grandmother's house, where Kearsa retrieved something from his grandmother's backyard. (Tr. pp. 144-146). Oakman indicated the four then drove to a Wal-Mart where Appellant's girlfriend and sister worked. (Tr. pp. 146-147). At the Wal-Mart, Oakman testified Appellant went inside, returned a short time later, and followed them to Graniteville in another vehicle. (Tr. pp. 147-148). Oakman noted Kearsa was in possession of a cell phone at the time even though he did not own one. (Tr. p. 148). After leaving the Wal-Mart, Oakman testified she dropped the

⁵ In the photograph, Artrell's full head of hair and distinctive eyebrows and nose are clearly visible. (State's Ex. # 20). Additionally, Artrell is pictured wearing a white shirt underneath a blue or green shirt in the photograph. (State's Ex. # 20). Notably, it is not readily apparent that the clothing Artrell is wearing is prison-issued attire, and nothing visible on the clothing identifies it as such. (State's Ex. # 20).

men off at Kalmia Apartments prior to 12:00 p.m. and then left.⁶ (Tr. p. 150). Shortly after noon, Oakman stated she heard a phone ringing in her vehicle, found Appellant's phone, and answered the call. (Tr. pp. 151-152). Oakman testified Kears, who sounded mad and was breathing heavily, was the caller, and he asked her to pick him up at a church before the call ended.⁷ (Tr. pp. 152-154). Oakman indicated she then returned to Kalmia Apartments and encountered Appellant and Artrell's sister, Monique Hickson ("Monique"), Appellant's girlfriend, Crystal Harris, and "Devon."⁸ (Tr. pp. 154-156; p. 189). At the apartment complex, Oakman testified she got into an argument with Harris and was accused of failing to fulfill her responsibilities as the getaway driver. (Tr. pp. 155-156). Oakman stated she then left the apartments in an effort to find Kears but was unable to do so. (Tr. p. 156).

Consistent with Oakman's testimony, Stanley Galloway, a guest at Kalmia Apartments, confirmed he saw Kears, Appellant, and Artrell at the apartment complex before lunchtime on June 25, 2009. (Tr. pp. 179-180). Likewise, Beatrix Wright acknowledged she told investigators she saw Appellant, Artrell, and Kears at the apartment complex on the morning of the robbery. (Tr. pp. 187-188). Additionally, Candice Bryant, Wright's cousin, testified she saw Kears, Appellant, and Artrell outside of Wright's apartment prior to the robbery.⁹ (Tr. p. 185; pp. 192-193).

⁶ Notably, Kalmia Apartments was located only a few blocks away from the Graniteville branch of Security Federal Bank. (Tr. p. 114).

⁷ Kears called Appellant's phone using Artrell's cell phone. (Tr. pp. 151-153). The caller I.D. on Appellant's phone identified the caller as "My Bro." (Tr. p. 152).

⁸ Notably, Harris and Monique were supposed to be working at the Wal-Mart at that time. (Tr. pp. 175-176). However, the two unexpectedly left work at 12:55 p.m. that day, and their absences were unexcused. (Tr. pp. 175-177).

⁹ At the outset of her testimony, Bryant noted she received a text message on the preceding night stating: "What are you at the courthouse snitching?" (Tr. p. 192).

On cross-examination, defense counsel questioned Bryant about a portion of her statement to law enforcement officers, and Bryant's statement was marked for identification purposes. (Tr. pp. 194-195). Thereafter, the solicitor asked Bryant to read her entire statement to the jury, and defense counsel for both Appellant and Artrell objected, arguing it contained inadmissible hearsay. (Tr. p. 197). The trial judge then asserted Artrell already introduced the statement before permitting Bryant to read her statement to the jury.¹⁰ (Tr. p. 197). Bryant then read the following statement:

On the day of the robbery at Security Federal Graniteville Artrell Hickson, Javier Hickson, and David Kears came to my cousin's Beatrix Wright's apartment. They were in a white Ford Focus. A dark skinned girl was driving. She worked – she – it was thought that she worked at Walmart on the south side. They were talking to Beatrix's boyfriend Stanley. After a while, they left. Stanley remained. Me and Beatrix took Stanley home to New Ellenton. We came back and saw the police who told us the bank had been robbed. Sabrina Oakman drove her black Tahoe and asked if Stanley knew where David was. We told her we had taken him to New Ellenton. Big Phil and Devon were at Kalmia Apartments saying, Them boys done robbed the bank I think. I saw a white Ford Focus. Phil and Devon were at the entrance to Kalmia Apartments. Sabrina kept calling Artrell's cellphone because David had it because Big Phil said David had the phone. Sabrina kept saying, David is in a storage in the woods. Sabrina was crying and said she was here to find him and pick him up. Sabrina and Artrell – Sabrina, Artrell, and Javier along with Devon. Beatrix told me that Artrell, Javier, and David were trying to get Stanley to rob the bank with them. Beatrix said Stanley told me this. Artrell dated a girl at Walmart on the south side. The girl was thought to be in the white Ford Focus.

(Tr. pp. 198-199). Wright identified "Big Phil" as Phillip Paul and "Devon" as Devon Jones. (Tr. p. 199).

Following Wright's testimony, Randy Wilson testified about his knowledge of the robbery of the Graniteville branch of the Security Federal Bank. (Tr. pp. 201-202). At the outset of his testimony, Wilson noted he robbed a different bank on July 1, 2009, with

¹⁰ Near the end of trial, the court reporter confirmed Artrell did not introduce any exhibits during trial. (Tr. p. 258).

Paul and Jelani Edwards, and was arrested.¹¹ (Tr. p. 201). After he was arrested, Wilson confirmed he implicated Appellant and Artrell in the robbery on June 25, 2009. (Tr. pp. 202-203). Wilson stated he met with Paul, Edwards, Appellant, and Artrell on June 24, 2009, to discuss the robbery that was to occur the next day. (Tr. pp. 203-204). During the meeting, Wilson testified they determined which bank was going to be robbed and who was going to commit the crime. (Tr. pp. 204-205). Wilson stated they decided Appellant, Artrell, and Kearsse were going to commit the crime, and Paul was going to supply the firearms.¹² (Tr. pp. 204-205). Wilson indicated Kearsse's girlfriend was supposed to drop the robbers off before the crime and "Von" was going to drive them away afterwards. (Tr. p. 207). Subsequently, on the day of the robbery, Wilson stated he was at home with Paul and Edwards when Edwards' phone rang. (Tr. p. 207). Wilson testified Edwards answer the call and he overheard Artrell state "they" were "hemmed up" in Graniteville. (Tr. p. 208). Wilson stated Edwards and Paul then left in Edwards' vehicle.¹³ (Tr. p. 208).

Subsequently, David Kearsse testified about his involvement in the robbery of the Graniteville branch of Security Federal Bank. (Tr. p. 219). Kearsse stated they began planning to rob the bank a week before the crime occurred, and the initial discussion regarding the robbery involved Artrell, Edwards, and Kearsse. (Tr. p. 222). Later that week, Kearsse testified he met with Appellant, Artrell, and Paul to further discuss the robbery. (Tr. pp. 223-224). During the second meeting, Kearsse testified they planned

¹¹ At the time of trial, Wilson was serving a sentence for armed robbery. (Tr. p. 203). Wilson testified he hoped to have his sentence reduced after testifying during Appellant and Artrell's trial. (Tr. p. 212).

¹² Wilson testified Artrell asked Paul to let him use an AK-47 during the robbery, but Paul declined to give it to Artrell. (Tr. pp. 205-206).

¹³ Around 3:30 p.m. on the day of the robbery, Investigator James Criscillis of the Aiken County Sheriff's Office observed Edwards and Paul travelling in Edwards' vehicle near the bank. (Tr. p. 214; pp. 216-217).

when they were going to commit the crime and what they were going to wear. (Tr. p. 224). Following that meeting, Kears, Artrell, and Appellant initially agreed to commit the robbery on June 24, 2009. (Tr. p. 225). However, on the day of the planned robbery, Kears stated they drove by the bank and decided to wait. (Tr. p. 226). Then, on the next day, Kears testified he asked Oakman to drive him to Appellant and Artrell's house and they picked up Appellant and Artrell. (Tr. pp. 228-229). Kears stated they then went to his grandmother's house and picked up some gloves before driving to Wal-Mart. (Tr. pp. 229-230). At the Wal-Mart, Kears indicated Appellant borrowed his girlfriend's car, and they then all drove to Kalmia Apartments in Graniteville. (Tr. pp. 230-231). At the apartment complex, Kears stated they changed into black clothes and retrieved their guns from Artrell's backpack. (Tr. pp. 233). They then met with Jones, who was supposed to be the getaway driver, and rode with Jones to the bank. (Tr. p. 232; p. 234). Kears stated they went into the bank, committed the robbery, and came back outside. (Tr. pp. 234-235). Once outside, Kears testified Jones was nowhere to be found, so they fled to a nearby wooded area. (Tr. pp. 235-236). Kears stated they then split up and he called Oakman on Artrell's phone. (Tr. pp. 237-238). Kears testified he was later arrested while hiding under a shed and implicated Artrell and Appellant in the crime. (Tr. p. 238). Kears then identified Appellant and Artrell in the surveillance photographs of the robbery. (Tr. p. 239).

Subsequently, the State rested its case, and Artrell's defense counsel moved for a directed verdict, arguing no "credible evidence" linking Artrell to the crime had been presented, and Appellant's defense counsel joined in the motion. (Tr. pp. 252-253). The trial judge denied the motion. (Tr. pp. 252-253). Thereafter, during closing arguments, the solicitor noted Artrell's eyebrows, nose, and amount of hair matched the same

features of one of the robbers visible in the surveillance photographs. (Tr. pp. 267-268). The solicitor further argued Bryant's statement was important in placing Appellant and Artrell at the apartment complex prior to the robbery. (Tr. pp. 279-280). However, the solicitor did not reference or emphasize any of the challenged portions of Bryant's statement in his argument to the jury. (Tr. pp. 279-280). Thereafter, at the conclusion of trial, Appellant was convicted as indicted. (Tr. pp. 321-322). The trial judge then sentenced Appellant to an aggregate term of imprisonment of twenty-eight years.¹⁴ (Tr. p. 326).

¹⁴ Artrell was also convicted as indicted and received an identical sentence. (Tr. pp. 321-322; p. 326).

ARGUMENT

I. THE TRIAL COURT'S ERRONEOUS ADMISSION OF HEARSAY EVIDENCE WAS NOT HARMLESS.

A. "Them Boys Done Robbed The Bank."

In its initial brief, the State argued that "the jury was aware the comment was . . . not made by someone with any direct knowledge of who committed the robbery, which minimized any prejudice that could have resulted from the comment." (Initial Br. of Resp't 15.) Yet if that were all that was required, then the admission of any hearsay would be deemed harmless error provided that the party proffering the evidence told the jury that it was hearsay.

Clearly, such reasoning would negate the very essence of the long and well-established hearsay rule "prohibit[ing] the admission of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies." *Dawkins v. State*, 346 S.C. 151, 156, 551 S.E.2d 260, 262 (2001). As such, Bryant's inadmissible hearsay should never have even been considered by the jury in the first place. *See, e.g., State v. Byers*, 392 S.C. 438, 447-48, 710 S.E.2d 55, 59-60 (2011) (trial court committed prejudicial error when it admitted hearsay testimony from alleged coconspirator that implicated defendant in the crime, for without such testimony another rational conclusion could have been reached by the jury).

Furthermore, the State argued that this single reference to a hearsay statement ought to be deemed harmless. (*See* Initial Br. of Resp't 15-16.) Yet there is no

"single-reference" hearsay exception. *See Dawkins*, 346 S.C. at 156, 551 S.E.2d at 262 ("The rule against hearsay prohibits the admission of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies."). Alternatively, this is just one of several factors considered by the court when considering whether the erroneous admission of evidence had a prejudicial effect. *See State v. Norman*, 145 S.W.3d 912, 918 (Mo. Ct. App. 2004); *State v. Henderson*, 607 So. 2d 733, 735 (La. Ct. App. 1992).

The State also argued that the comment "was highly vague" such that "it is uncertain if the jury actually understood it to be a reference to Appellant." (Initial Br. of Resp't 15.) Although it cannot be said that the jury *definitively* understood the reference, it is certainly *more likely than not* that the jury understood the reference. In any event, this is just one of several factors considered by the court when considering whether the erroneous admission of evidence had a prejudicial effect. *See Norman*, 145 S.W.3d at 918; *Henderson*, 607 So. 2d at 735.

B. Bryant Asserted That Wright Told Her That Galloway Told Her "That Artrell, Javier, And [Kearse] Were Trying To Get [Galloway] To Rob The Bank With Them."

In its initial brief, the State argued that because Wright and Galloway testified at trial and were thus available for cross-examination, the admission of their hearsay statements constitutes harmless error. (*See* Initial Br. of Resp't 16.)

In the instant case, however, neither Wright nor Galloway did in fact corroborate the subject statement during trial and, thus, the statement remained hearsay, i.e., an out-of-court statement to prove the truth of the matter asserted. (See Initial Br. of Resp't 16 (acknowledging that neither Wright nor Galloway "corroborated the statement during their trial testimony").) Cf. *State v. Caldwell*, 283 S.C. 350, 351-52, 322 S.E.2d 662, 662 (1984) (the admission of hearsay evidence was deemed harmless where the declarants were actually cross-examined at trial); see also *State v. Cooper*, 45,320, p. 16 (La. App. 2 Cir. 6/30/10); 42 So. 3d 460, 471 (admission of hearsay testimony deemed harmless due to adequate cross-examination of declarants); *State v. Steele*, 314 S.W.3d 845, 850-51 (Mo. Ct. App. 2010) (same).

To the extent that the State suggests that it was up to defense counsel to cure the hearsay evidence proffered by the State, such is simply not the case. See *State v. McHoney*, 344 S.C. 85, 98-99, 544 S.E.2d 30, 36-37 (2001) (the State bears the burden of proving a criminal defendant guilty beyond a reasonable doubt; defense counsel need only prove reasonable doubt to obtain a defense verdict).

Alternatively, the State argued that "any potential for prejudice was greatly diminished" "[b]ecause the jury was completely aware of the hearsay nature of the comment[.]" (Initial Br. of Resp't 16.) Furthermore, the State argued that this single reference to a hearsay statement ought to be deemed harmless. (See Initial Br. of Resp't 17.) For the same reasons identified above, both of these arguments are without merit. See *supra* Part I.A.

Additionally, the State asserted that the hearsay statement was not offered to prove the truth of the matter asserted but, rather, "the statement was solely offered to prove Bryant saw Appellant at the apartment complex before the robbery." (Initial Br. of Resp't 17.) Even assuming, *arguendo*, the truth of the State's assertion in its brief, the subject statement would still be inadmissible under Rule 403, SCRE, because the hearsay statement's prejudicial effect would substantially outweigh its probative value. *See State v. James*, 355 S.C. 25, 583 S.E.2d 745 (2003) (reversing trial judge's admission of defendant's prior convictions on basis of Rule 403, SCRE).

C. The State's Other Evidence Of Javier's Guilt Was Not So Overwhelming As To Render The Erroneous Admission Of The Above-Summarized Hearsay Harmless.

In its final alternative argument regarding the above-summarized hearsay statements, the State posits that even if the challenged statements are "sufficiently prejudicial to warrant reversal when considered in isolation," any error in their admission was harmless when considered "in conjunction with the other overwhelming evidence of Appellant's guilt presented during trial." (Initial Br. of Resp't 17.)

As a general matter, in the harmless-error analysis,

it is not sufficient for this court to find merely that there was enough other evidence to support the verdict. A higher standard must be met. For us to conclude that the admission of the statement constituted harmless error we must be able to conclude, beyond a reasonable doubt, that the improperly admitted hearsay did not contribute to the verdict.

Chapman v. State of Cal., 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967) *rehearing den.* *Chapman v. California*, 386 U.S. 987, 87 S. Ct. 1283, 18 L. Ed. 2d 241 (1967); *State v. Anderson*, 450 So. 2d 684 (La. App. 4th Cir. 1984) *writ denied* 452 So.2d 696 (La. 1984).

Henderson, 607 So. 2d at 735.

Under South Carolina law, when hearsay is erroneously admitted into evidence, prejudice is presumed if the hearsay has some probative value on a material fact in the case. *See Cooper Corp. v. Jeffcoat*, 217 S.C. 489, 495, 61 S.E.2d 53, 56 (1950).

In the instant case, the hearsay testimony clearly had probative value on a material fact in the case, in that it directly implicated Javier in the bank robbery and there was minimal, noncredible other evidence directly implicating Javier therein. *See, e.g., State v. Davis*, 371 S.C. 170, 182, 638 S.E.2d 57, 63-64 (2006) (trial court's error in admitting hearsay testimony of state's witness was not harmless, given that the statement was a crucial piece of evidence in a case involving mostly circumstantial evidence and the credibility of a majority of the witnesses was poor).

In support of its argument, the State cites the confession of David Kears ("Kears") regarding the subject robbery, wherein Kears implicated both Javier and his brother Artrell Hickson. (*See* Initial Br. of Resp't 18.) Yet Kears's credibility was highly suspect given that he was an admitted bank robber and was seeking leniency from prosecution at the time of his confession. (*See* Tr. 221:11-238:25 (Kears admitting to having participated in the robbery of the Bank on June 25, 2009 and to having identified Javier and Artrell as his partners in that crime); Tr. 247:5-

248:8 (Kearse testifying against Javier and Artrell in an effort to help himself out with his own sentencing); *see also* Tr. 246:12–247:24 (Kearse admitting that he had previously lied to investigators).) *See Gilchrist v. State*, 350 S.C. 221, 228, 565 S.E.2d 281, 285 (2002) ("[B]ecause of [the State's witness's] admitted drug use at the time of the crime, his prior convictions, and his interest in providing favorable testimony for the State to obtain leniency in his own case, [the witness's] credibility clearly was questionable.").

The State also points to several other persons whose testimony corroborated Kearse's testimony. (*See* Initial Br. of Resp't 18-19.) Yet Randy Wilson's credibility suffered from the same deficiencies as Kearse's credibility. (*See* Tr. 200:24–202:4 (Wilson admitting to having committed a wholly unrelated bank robbery and, once in custody, to having identified Javier and Artrell as having committed the robbery of the Bank on June 25, 2009); *see also* Initial Br. of Resp't 9 n.11 ("At the time of trial, Wilson was serving a sentence for armed robbery. . . . [and] testified he hoped to have his sentence reduced after testifying during [the] trial.").)

Furthermore, the testimony of Sabrina Oakman, Kearse's girlfriend, did not directly implicate Javier nor did her testimony bear on the veracity of Kearse's testimony. (*Cf.* Initial Br. of Resp't 18-19 & n.18 (summarizing Oakman's testimony).) Moreover, the testimony of the bank employees and investigating officer, regarding the similarity in physical characteristics between Javier and the robbers as seen on the surveillance footage, is merely circumstantial and by no means

overwhelming. (Cf. Initial Br. of Resp't 19 & n.19 (briefly summarizing said testimony).)

Rather, as previously indicated, the erroneously admitted hearsay testimony was prejudicial in that it directly implicated Javier in the bank robbery and there was minimal, noncredible other evidence directly implicating Javier therein. *See, e.g., Davis*, 371 S.C. at 182, 638 S.E.2d at 63-64.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN ADMITTING ARTRELL'S MUG SHOT.

A. Abuse Of Discretion

As noted in the Initial Brief of Appellant, the admission of a criminal defendant's mug shot is the exception rather than the rule. *See State v. Taylor*, 360 S.C. 74, 84, 600 S.E.2d 523, 528 (2004) ("[W]e strongly admonish the state against utilization of such photos except in the rarest of cases[.]"), *cert. denied*, 543 U.S. 1063 (2005). Mug shots are admissible only when a three-part test is satisfied. *See id.* In the instant case, however, only the "demonstrable need" element of the test is at issue.

In its initial brief, the State argues that there was a demonstrable need for the mug shot because the video surveillance footage showed one of the robbers with "a large amount of hair" that "fully filled the hood" he was wearing at the time and that Artrell "had a similarly large amount of hair at the time of his arrest only days after the robbery" but Artrell had since "altered his appearance" by sporting a "high and tight" hair style at trial. (See Initial Br. of Resp't 22-23 & n.20.)

However, the State proffered other evidence at trial in its effort to establish that Artrell committed the robbery. Most notably, Kears identified Artrell as his accomplice and Wilson identified Artrell as one of the men who robbed the Bank on June 25, 2009. (See Tr. 200:24–202:4 (Wilson); Tr. 221:11–238:25 (Kears).) Furthermore, the State presented multiple witnesses who described the physical attributes of the persons who robbed the bank. (See Tr. 42:15–43:2, 52:24–54:6.)

Therefore, the trial court's admission of Artrell's mug shot was an abuse of discretion. See, e.g., *Traylor*, 360 S.C. at 84, 600 S.E.2d at 528 (prosecution's witness identified the defendant as one of his accomplices and testified that the defendant was at the scene of the crime and described the assailants; "The State could very easily have questioned the victims as to their observations of the white male assailant at the time of the crime, his tall thin frame and thin face, in order to support their in-court identifications without resort to the photo line-up."); *State v. Tate*, 288 S.C. 104, 106, 341 S.E.2d 380, 381 (1986) (where the defendant was positively identified in court, "we fail to see the demonstrable need to introduce the 'mug shot'").

B. Harmless Error

The State further contends that even if the mug shot was improperly admitted, any such error was harmless. (See Initial Br. of Resp't 25.) In support of this argument, the State cites *State v. Nance*, 320 S.C. 501, 466 S.E.2d 349 (1996), for the proposition that "[i]f the offered photograph serves to corroborate testimony, it is not

an abuse of discretion to admit it.'" (Initial Br. of Resp't 25 n.21 (quoting *Nance*, 320 S.C. at 508, 466 S.E.2d at 353).) However, *Nance* is easily distinguished from the instant case.

Unlike the instant case, the subject photographs in *Nance* were not mug shots but, rather, photographs of the victim in his hospital bed. See 320 S.C. at 507-08, 466 S.E.2d at 353. Also unlike the instant case, the subject photographs in *Nance* were not objected to as hearsay but, rather, as unduly prejudicial because they graphically illustrated the victim's stab wounds. See *id.*

Whereas the admission of improper hearsay evidence is harmless where the evidence is merely cumulative to other evidence, see *State v. Price*, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006), that is not the case when the improper hearsay is cumulative to evidence of one's credibility. See, e.g., *State v. Whisonant*, 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999) (erroneous admission of child victim's hearsay statements to her stepmother concerning alleged sexual abuse by defendant was reversible error because case was essentially swearing contest, pitting defendant's word against victim's as to whether incident occurred, and stepmother's testimony improperly bolstered victim's story in minds of jury).

As previously mentioned, Kearse and Wilson, the two witnesses who directly implicated Artrell in the robbery, have significant credibility issues. See *supra* Part I.C. Thus, the State improperly bolstered the credibility of its witnesses by proffering Artrell's mug shot. See, e.g., *Whisonant*, 335 S.C. 148, 515 S.E.2d 768; see also

Smith v. State, 386 S.C. 562, 569, 689 S.E.2d 629, 633 (2010) (where the outcome of the case hinged on the witness's credibility regarding identification of the perpetrator and there was otherwise an absence of overwhelming evidence of the defendant's guilt, the defendant was prejudiced by the erroneous admission of the witness's hearsay testimony).

Therefore, the trial court's erroneous admission of Artrell's mug shot was not harmless.

CONCLUSION

In light of the foregoing arguments and authorities provided, it is clear that the trial court committed one or more reversible errors in the trial of the above-captioned proceedings.¹

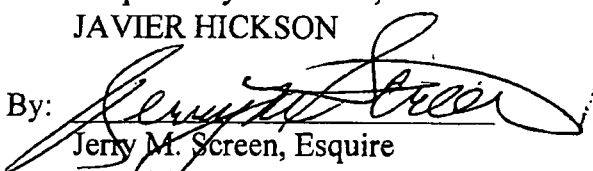
WHEREFORE, Javier respectfully requests that this Court:

- A. Vacate the jury verdict in this case;
- B. Remand the matter to the trial court with instructions to commence a new trial; and

¹Notably, Javier has not responded to the State's counter-arguments concerning the directed verdict issue raised in Javier's Initial Brief. Javier now concedes that the State presented sufficient evidence to withstand the motion for a directed verdict. Accordingly, Javier hereby abandons that issue for purposes of this appeal.

C. Grant Javier any other and further relief the Court deems just and equitable.

Respectfully submitted,
JAVIER HICKSON

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**IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
No. 2010-173726**

**APPEAL FROM AIKEN COUNTY
Court of General Sessions**

**The Honorable Doyet A. Early III
Case No. 2009-GS-02-2291, -2294**

STATE OF SOUTH CAROLINA..... Respondent,

v.

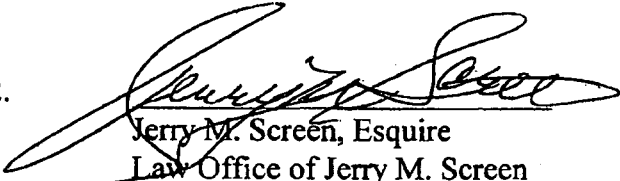
JAVIER HICKSON Appellant.

PROOF OF SERVICE

I hereby certify that I have served the within Final Brief of Appellant Javier Hickson on the Respondent by depositing two copies of the same in the U.S. mail, first-class postage prepaid, addressed as follows:

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ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2010-173726

THE STATE,

Respondent,

vs.

JAVIER HICKSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

To the extent the trial judge erred in admitting two hearsay portions of a witness' statement during trial, any error was harmless in light of the isolated nature of the hearsay evidence, the context in which the hearsay evidence was presented to the jury, and the other overwhelming evidence of Appellant's guilt presented during trial, which included the uncontradicted testimony of Appellant's accomplice in the bank robbery directly implicating him in the crime.

II.

The trial judge did not abuse his discretion in admitting a mug shot photograph taken of Appellant's brother shortly after the bank robbery because there was a demonstrable need for the photograph, the photograph did not suggest either Appellant or his brother had a prior criminal record, and no improper attention was called to the photograph's origin. Furthermore, the admission of the photograph resulted in no meaningful prejudice to Appellant, particularly in light of the fact the photograph depicted Appellant's brother and not Appellant.

III.

The trial judge properly denied Appellant's directed verdict motion because the State presented both direct evidence and substantial circumstantial evidence from which the jury could find Appellant guilty of each element of the indicted offenses.

STATEMENT OF THE CASE

In June of 2009, Appellant Javier Hickson and his brother, Artrell Jabar Hickson, were arrested following an investigation into the armed robbery of the Graniteville branch of Security Federal Bank. In December of 2009, the Aiken County grand jury indicted Appellant and his brother for one count of armed robbery. In April of 2010, the Aiken County grand jury additionally indicted Appellant and his brother for one count of possession of a firearm during the commission of a violent crime. On September 20, 2010, a jury trial was commenced in the Aiken County court of general sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant and his brother as indicted. The trial judge sentenced Appellant and his brother to concurrent terms of imprisonment of twenty-eight years for the armed robbery convictions and five years for the firearm convictions. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

Around noon on June 25, 2009, Gabrielle Hastings was working as a teller at the Graniteville branch of Security Federal Bank when she looked up and saw three gunmen wearing dark clothes, gloves, and bandanas over their faces enter the bank. (R. pp. 42-43; p. 53; pp. 56-57; pp. 90-91; p. 95; p. 112). After entering the bank, the first gunman approached the counter of Amanda Wood, another teller at the bank, knocked her envelopes into the floor, pointed a gun at her, and demanded money. (R. pp. 51-52). Wood gave the gunman, who was approximately 5'4" tall and was wearing a backpack, money from her cash drawer. (R. p. 52; p. 91). Meanwhile, the second gunman, who was also around 5'4" tall, approached the office of Tonya Key, the branch manager of the bank, and ordered her to open the vault. (R. p. 43; p. 52). Terrified, Key was too afraid to move and did not respond. (R. p. 43). The second gunman then left the offices and demanded money from Wood. (R. p. 52). Wood told him she already gave the money to the first gunman, so he moved to the next counter and took stacks of \$1 bills, \$5 bills, and \$20 bills from Hastings at gunpoint. (R. p. 52; pp. 57-58). Throughout the robbery, the third gunman remained at the door and acted as a lookout for the others. (R. p. 51; p. 58; pp. 90-91).

Approximately two minutes after the robbery began, the three gunmen fled from the bank and ran towards a nearby wooded area.¹ (R. p. 43; p. 61). The bank employees then locked the door and triggered an alarm. (R. pp. 43-44; p. 57). Shortly thereafter, law enforcement officers responded to the bank, secured the scene, and obtained a description of the suspects from the terrified employees inside the bank. (R. pp. 60-61;

¹ During the robbery, the gunmen stole a total of \$4,902 from the bank. (R. p. 123). The majority of the money was never recovered. (R. p. 123).

pp. 111-113). The bank employees informed the officers that the robbers were three black males wearing dark clothing, masks, and gloves. (R. pp. 111-112). Additionally, the bank employees described the suspects as approximately 5'4" tall. (R. p. 111). Subsequently, several bloodhound tracking teams were called to the scene and attempted to track the gunmen in the direction they fled after the robbery. (R. p. 64).

Officer Demetrick Drumming of the Aiken Public Safety Department and Lieutenant Clay Adams of the Aiken County Sheriff's Office followed the bloodhounds to a nearby church. (R. p. 67; p. 69; p. 96; p. 98). Next to the church, the officers discovered David Kearsé hiding underneath a storage shed. (R. p. 70; pp. 96-97). The officers removed Kearsé from underneath the shed and took him into custody. (R. p. 70; pp. 96-97). After arresting Kearsé, the officers looked underneath the shed where Kearsé had been hiding and discovered a semi-automatic pistol and a large wad of \$5 bills hidden behind a cinder block.² (R. p. 71; p. 97; pp. 100-102; p. 108).

Meanwhile, Investigator Greg Savell of the Aiken County Sheriff's Office responded to the bank and obtained a copy of the surveillance footage of the robbery. (R. p. 100; p. 113). He then travelled to the location of Kearsé's arrest and transported him to the Aiken County Detention Center. (R. pp. 133-114). After arriving at the detention center, Investigator Savell informed Kearsé of his rights and interviewed him about the robbery. (R. pp. 114-115). Kearsé admitted to committing the robbery and implicated Appellant Javier Hickson and Appellant's brother, Artrell Jabar Hickson ("Artrell"), as his accomplices in the crime.³ (R. pp. 115-116).

² In total, Kearsé was in possession of \$290 comprised entirely of \$5 bills at the time of his arrest. (R. p. 123). Notably, Kearsé was also dressed in black. (R. p. 70).

³ Kearsé refused to provide a written statement because he was scared. (R. p. 117). However, he directed the officers to the location where he parted ways with Appellant and Artrell after the robbery. (R. p. 117).

Subsequently, on June 30, 2009, Appellant and Artrell were arrested in connection to the robbery of the Graniteville branch of Security Federal Bank.⁴ (R. p. 122). Once they were taken into custody, officers took photographs of the men during the booking process. (R. pp. 79-80; p. 122). Thereafter, Appellant and Artrell were each indicted for armed robbery and possession of a firearm during the commission of a violent crime, and the brothers proceeded to trial together. (R. p. 7; Indictments).

During trial, the bank employees recounted the circumstances of the bank robbery, and the responding officers testified about their investigation into the robbery leading up to the arrests of Kears, Appellant, and Artrell. (R. p. 42; pp. 50-51; p. 57; p. 70). Additionally, the surveillance footage of the robbery was played for the jury. (R. pp. 54-55). Subsequently, the solicitor informed the trial judge that he intended to introduce a photograph taken of Artrell after he was arrested for the robbery. (R. p. 79). The solicitor noted Artrell's appearance had changed since the photograph was taken and asserted Artrell's identifiable features displayed in the photograph could be used to identify Artrell as one of the gunmen when compared to the surveillance footage. (R. pp. 79-80). In response, defense counsel for Artrell objected to the admission of the photograph and argued there was no demonstrable need for it since Artrell was available in the courtroom for comparative purposes. (R. p. 81). Defense counsel further claimed the photograph showed Artrell in a jail uniform. (R. pp. 82-83). Appellant's defense counsel also objected, arguing the prejudicial nature of the photograph outweighed its probative value. (R. p. 83). Following the arguments of counsel, the trial judge ruled the photograph was admissible after determining there was a demonstrable need for it under the circumstances, it was not suggestive of a criminal record, and it was relatively benign.

⁴ At the time of their arrests, Artrell was 5'4" tall and Appellant was 5'6" tall. (R. p. 121).

(R. p. 84). However, the trial judge cautioned the solicitor to avoid calling attention to the photograph's origins. (R. p. 84).

Thereafter, during Investigator Savell's testimony, Investigator Savell reviewed several photographs taken from the surveillance footage of the robbery and noted one of the robbers had pronounced bushy eyebrows and appeared to fully fill the space of the hood covering his head. (R. pp. 118-119). The solicitor then introduced a photograph of Artrell taken on the day of Artrell and Appellant's arrest five days after the robbery, and the photograph was admitted into evidence over objection.⁵ (R. p. 122). No reference was made regarding why the photograph of Artrell was taken. (R. p. 122).

As the trial progressed, Sabrina Oakman, who was living with Kearsse at the time of the robbery, testified about the events of June 25, 2009. (R. pp. 140-141). Oakman stated Kearsse got up on the morning of the robbery, left the home, and then returned around 10:30 a.m. (R. p. 142). After returning home, Oakman testified Kearsse asked her for a ride, and she drove him to Appellant and Artrell's home. (R. pp. 142-143). Oakman stated she and Kearsse picked up Appellant and Artrell, who was wearing a backpack, before driving to Kearsse's grandmother's house, where Kearsse retrieved something from his grandmother's backyard. (R. pp. 144-146). Oakman indicated the four then drove to a Wal-Mart where Appellant's girlfriend and sister worked. (R. pp. 146-147). At the Wal-Mart, Oakman testified Appellant went inside, returned a short time later, and followed them to Graniteville in another vehicle. (R. pp. 147-148). Oakman noted Kearsse was in possession of a cell phone at the time even though he did not own one. (R. p. 148). After leaving the Wal-Mart, Oakman testified she dropped the

⁵ In the photograph, Artrell's full head of hair and distinctive eyebrows and nose are clearly visible. (State's Ex. # 20). Additionally, Artrell is pictured wearing a white shirt underneath a blue or green shirt in the photograph. (State's Ex. # 20). Notably, it is not readily apparent that the clothing Artrell is wearing is prison-issued attire, and nothing visible on the clothing identifies it as such. (State's Ex. # 20).

men off at Kalmia Apartments prior to 12:00 p.m. and then left.⁶ (R. p. 150). Shortly after noon, Oakman stated she heard a phone ringing in her vehicle, found Appellant's phone, and answered the call. (R. pp. 151-152). Oakman testified Kearse, who sounded mad and was breathing heavily, was the caller, and he asked her to pick him up at a church before the call ended.⁷ (R. pp. 152-154). Oakman indicated she then returned to Kalmia Apartments and encountered Appellant and Artrell's sister, Monique Hickson ("Monique"), Appellant's girlfriend, Crystal Harris, and "Devon."⁸ (R. pp. 154-156; p. 189). At the apartment complex, Oakman testified she got into an argument with Harris and was accused of failing to fulfill her responsibilities as the getaway driver. (R. pp. 155-156). Oakman stated she then left the apartments in an effort to find Kearse but was unable to do so. (R. p. 156).

Consistent with Oakman's testimony, Stanley Galloway, a guest at Kalmia Apartments, confirmed he saw Kearse, Appellant, and Artrell at the apartment complex before lunchtime on June 25, 2009. (R. pp. 179-180). Likewise, Beatrix Wright acknowledged she told investigators she saw Appellant, Artrell, and Kearse at the apartment complex on the morning of the robbery. (R. pp. 187-188). Additionally, Candice Bryant, Wright's cousin, testified she saw Kearse, Appellant, and Artrell outside of Wright's apartment prior to the robbery.⁹ (R. p. 185; pp. 192-193).

⁶ Notably, Kalmia Apartments was located only a few blocks away from the Graniteville branch of Security Federal Bank. (R. p. 114).

⁷ Kearse called Appellant's phone using Artrell's cell phone. (R. pp. 151-153). The caller I.D. on Appellant's phone identified the caller as "My Bro." (R. p. 152).

⁸ Notably, Harris and Monique were supposed to be working at the Wal-Mart at that time. (R. pp. 175-176). However, the two unexpectedly left work at 12:55 p.m. that day, and their absences were unexcused. (R. pp. 175-177).

⁹ At the outset of her testimony, Bryant noted she received a text message on the preceding night stating: "What are you at the courthouse snitching?" (R. p. 192).

On cross-examination, defense counsel questioned Bryant about a portion of her statement to law enforcement officers, and Bryant's statement was marked for identification purposes. (R. pp. 194-195). Thereafter, the solicitor asked Bryant to read her entire statement to the jury, and defense counsel for both Appellant and Artrell objected, arguing it contained inadmissible hearsay. (R. p. 197). The trial judge then asserted Artrell already introduced the statement before permitting Bryant to read her statement to the jury.¹⁰ (R. p. 197). Bryant then read the following statement:

On the day of the robbery at Security Federal Graniteville Artrell Hickson, Javier Hickson, and David Kears came to my cousin's Beatrix Wright's apartment. They were in a white Ford Focus. A dark skinned girl was driving. She worked – she – it was thought that she worked at Walmart on the south side. They were talking to Beatrix's boyfriend Stanley. After a while, they left. Stanley remained. Me and Beatrix took Stanley home to New Ellenton. We came back and saw the police who told us the bank had been robbed. Sabrina Oakman drove her black Tahoe and asked if Stanley knew where David was. We told her we had taken him to New Ellenton. Big Phil and Devon were at Kalmia Apartments saying, Them boys done robbed the bank I think. I saw a white Ford Focus. Phil and Devon were at the entrance to Kalmia Apartments. Sabrina kept calling Artrell's cellphone because David had it because Big Phil said David had the phone. Sabrina kept saying, David is in a storage in the woods. Sabrina was crying and said she was here to find him and pick him up. Sabrina and Artrell – Sabrina, Artrell, and Javier along with Devon. Beatrix told me that Artrell, Javier, and David were trying to get Stanley to rob the bank with them. Beatrix said Stanley told me this. Artrell dated a girl at Walmart on the south side. The girl was thought to be in the white Ford Focus.

(R. pp. 198-199). Wright identified "Big Phil" as Phillip Paul and "Devon" as Devon Jones. (R. p. 199):

Following Wright's testimony, Randy Wilson testified about his knowledge of the robbery of the Graniteville branch of the Security Federal Bank. (R. pp. 201-202). At the outset of his testimony, Wilson noted he robbed a different bank on July 1, 2009, with

¹⁰ Near the end of trial, the court reporter confirmed Artrell did not introduce any exhibits during trial. (R. p. 258).

Paul and Jelani Edwards, and was arrested.¹¹ (R. p. 201). After he was arrested, Wilson confirmed he implicated Appellant and Artrell in the robbery on June 25, 2009. (R. pp. 202-203). Wilson stated he met with Paul, Edwards, Appellant, and Artrell on June 24, 2009, to discuss the robbery that was to occur the next day. (R. pp. 203-204). During the meeting, Wilson testified they determined which bank was going to be robbed and who was going to commit the crime. (R. pp. 204-205). Wilson stated they decided Appellant, Artrell, and Kearsse were going to commit the crime, and Paul was going to supply the firearms.¹² (R. pp. 204-205). Wilson indicated Kearsse's girlfriend was supposed to drop the robbers off before the crime and "Von" was going to drive them away afterwards. (R. p. 207). Subsequently, on the day of the robbery, Wilson stated he was at home with Paul and Edwards when Edwards' phone rang. (R. p. 207). Wilson testified Edwards answer the call and he overheard Artrell state "they" were "hemmed up" in Graniteville. (R. p. 208). Wilson stated Edwards and Paul then left in Edwards' vehicle.¹³ (R. p. 208).

Subsequently, David Kearsse testified about his involvement in the robbery of the Graniteville branch of Security Federal Bank. (R. p. 219). Kearsse stated they began planning to rob the bank a week before the crime occurred, and the initial discussion regarding the robbery involved Artrell, Edwards, and Kearsse. (R. p. 222). Later that week, Kearsse testified he met with Appellant, Artrell, and Paul to further discuss the robbery. (R. pp. 223-224). During the second meeting, Kearsse testified they planned when they were going to commit the crime and what they were going to wear. (R. p.

¹¹ At the time of trial, Wilson was serving a sentence for armed robbery. (R. p. 203). Wilson testified he hoped to have his sentence reduced after testifying during Appellant and Artrell's trial. (R. p. 212).

¹² Wilson testified Artrell asked Paul to let him use an AK-47 during the robbery, but Paul declined to give it to Artrell. (R. pp. 205-206).

¹³ Around 3:30 p.m. on the day of the robbery, Investigator James Criscillis of the Aiken County Sheriff's Office observed Edwards and Paul travelling in Edwards' vehicle near the bank. (R. p. 214; pp. 216-217).

224). Following that meeting, Kears, Artrell, and Appellant initially agreed to commit the robbery on June 24, 2009. (R. p. 225). However, on the day of the planned robbery, Kears stated they drove by the bank and decided to wait. (R. p. 226). Then, on the next day, Kears testified he asked Oakman to drive him to Appellant and Artrell's house and they picked up Appellant and Artrell. (R. pp. 228-229). Kears stated they then went to his grandmother's house and picked up some gloves before driving to Wal-Mart. (R. pp. 229-230). At the Wal-Mart, Kears indicated Appellant borrowed his girlfriend's car, and they then all drove to Kalmia Apartments in Graniteville. (R. pp. 230-231). At the apartment complex, Kears stated they changed into black clothes and retrieved their guns from Artrell's backpack. (R. pp. 233). They then met with Jones, who was supposed to be the getaway driver, and rode with Jones to the bank. (R. p. 232; p. 234). Kears stated they went into the bank, committed the robbery, and came back outside. (R. pp. 234-235). Once outside, Kears testified Jones was nowhere to be found, so they fled to a nearby wooded area. (R. pp. 235-236). Kears stated they then split up and he called Oakman on Artrell's phone. (R. pp. 237-238). Kears testified he was later arrested while hiding under a shed and implicated Artrell and Appellant in the crime. (R. p. 238). Kears then identified Appellant and Artrell in the surveillance photographs of the robbery. (R. p. 239).

Subsequently, the State rested its case, and Artrell's defense counsel moved for a directed verdict, arguing no "credible evidence" linking Artrell to the crime had been presented, and Appellant's defense counsel joined in the motion. (R. pp. 252-253). The trial judge denied the motion. (R. pp. 252-253). Thereafter, during closing arguments, the solicitor noted Artrell's eyebrows, nose, and amount of hair matched the same features of one of the robbers visible in the surveillance photographs. (R. pp. 267-268).

The solicitor further argued Bryant's statement was important in placing Appellant and Artrell at the apartment complex prior to the robbery. (R. pp. 279-280). However, the solicitor did not reference or emphasize any of the challenged portions of Bryant's statement in his argument to the jury. (R. pp. 279-280). Thereafter, at the conclusion of trial, Appellant was convicted as indicted. (R. pp. 321-322). The trial judge then sentenced Appellant to an aggregate term of imprisonment of twenty-eight years.¹⁴ (R. p. 326).

¹⁴ Artrell was also convicted as indicted and received an identical sentence. (R. pp. 321-322; p. 326).

ARGUMENT

I.

To the extent the trial judge erred in admitting two hearsay portions of a witness' statement during trial, any error was harmless in light of the isolated nature of the hearsay evidence, the context in which the hearsay evidence was presented to the jury, and the other overwhelming evidence of Appellant's guilt presented during trial, which included the uncontradicted testimony of Appellant's accomplice in the bank robbery directly implicating him in the crime.

Appellant asserts the trial judge erred in allowing a witness to read her statement to law enforcement during trial because portions of the statement constituted improper hearsay evidence. Appellant maintains the hearsay evidence was unduly prejudicial because it directly implicated him in the bank robbery. To the extent the trial judge erred in admitting the two challenged hearsay portions of the witness' statement, any error in the admission of that evidence was harmless under the circumstances of Appellant's case. Significantly, the challenged comments were only mentioned a single time during trial, clearly conveyed to the jury that the witness and the people the original statements were attributed to had no actual first-hand knowledge of the accuracy or truthfulness of the comments, and were never repeated or discussed during the remainder of trial. Furthermore, substantial other competent evidence of Appellant's guilt was presented during trial, including the testimony of his accomplice in the robbery directly implicating him in the crime. Accordingly, when viewing the challenged hearsay evidence in the proper context and in light of the insignificance of the hearsay evidence in relation to other competent evidence conclusively establishing Appellant's guilt, any error in the admission of the hearsay evidence was harmless and did not warrant a reversal of Appellant's convictions. Appellant's convictions should be affirmed.

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). “A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.” State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). “Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury’s verdict.” State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

Hearsay “is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. “The general rule is that hearsay is not admissible.” State v. Ladner, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007); see Rule 802, SCRE (“Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute.”). The rationale for excluding hearsay evidence is that such evidence denies the adverse party an opportunity to cross-examine the declarant of the hearsay statement. State v. Mitchell, 286 S.E.2d 572, 573, 336 S.E.2d 150, 150-151 (1985); see State v. James, 255 S.C. 365, 370, 179 S.E.2d 41, 43 (1971) (“The hearsay rule signifies a rule rejecting assertions offered testimonially which have not been in some way subjected to the test of cross-examination.”).

However, even if improper hearsay evidence is admitted, any error in the admission of the hearsay evidence is subject to a harmless error analysis and only warrants reversal if it results in actual prejudice. State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006). Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) (“No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.”). “When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

In the case at bar, certain portions of Bryant’s statement to law enforcement consisted of statements not attributable to Bryant herself. To the extent those portion of Bryant’s statement constituted inadmissible hearsay, they should not have been introduced during trial. However, viewing the challenged portions of Bryant’s statement in the proper context and in relation to the other evidence presented during trial, any error in the admission of the hearsay portions of the statement was harmless and did not

warrant a reversal of Appellant's convictions. See State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) ("While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal.").

In the first challenged portion of Bryant's statement, Bryant recounted: "[Paul] and [Jones] were at Kalmia Apartments saying, Them boys done robbed the bank I think." Notably, Appellant and his brother were not specifically referenced in the challenged comment, and the comment itself was highly vague. Therefore, it is uncertain if the jury actually understood it to be a reference to Appellant. Cf. State v. Chisholm, 395 S.C. 259, 274, 717 S.E.2d 614, 622 (Ct. App. 2011) (finding any error in the admission of hearsay evidence to be harmless where the improper hearsay comment was fleeting, it was unclear if the jury understood the comment to be a reference to Chisholm, and Chisholm was identified as the perpetrator of the crime through the testimony of two other witnesses). However, assuming the comment suggested Paul and Jones were referring to Appellant and his brother as "them boys," the comment established Paul and Jones only thought Appellant committed the crime and did not have any actual first-hand knowledge of what occurred.¹⁵ Thus, the jury was aware the comment was hearsay and was not made by someone with any direct knowledge of who committed the robbery, which minimized any prejudice that could have resulted from the comment. Cf. State v. Price, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006) (finding the improper admission of hearsay evidence to be harmless where the hearsay evidence was impeached by the jury's exposure to the fact the evidence was not based on any first-hand knowledge).

Furthermore, the comment was never mentioned again during the remainder of trial, and

¹⁵ Tellingly, Kearse and Wilson later testified Paul and Jones were involved in the planning of and execution of the bank robbery, which might have explained why they thought "them boys" committed the robbery. (R. pp. 203-205; p. 207; p. 224; p. 232).

the solicitor made no reference to it during his closing argument.¹⁶ For these reasons, the first challenged portion of Bryant's statement, which was isolated, vague, unspecific, and uncertain, was not sufficiently prejudicial to warrant a reversal of Appellant's convictions.

In the other challenged portion of Bryant's statement, Bryant asserted: "Beatrix told me that Artrell, [Appellant], and [Kearse] were trying to get [Galloway] to rob the bank with them. [Wright] said [Galloway] told me this." Initially, Wright, who relayed Galloway's alleged comment to Bryant, and Galloway, who allegedly made the comment to Wright, both testified during trial and were available for cross-examination.¹⁷ Because both Wright and Galloway could be questioned about their alleged statements and because neither corroborated the statement during their trial testimony, the admission of the challenged comment was harmless under the circumstances. See, e.g., State v. Huggins, 275 S.C. 229, 231, 269 S.E.2d 334, 335 (1980) (finding any error in the admission of a hearsay statement to be harmless where the declarant of the statement testified at trial and was available for cross-examination). Additionally, based on the nature of the comment, the jury was fully aware Bryant had no actual knowledge about the substance of Appellant's conversation with Galloway, no first-hand knowledge that Appellant actually asked Galloway to participate in the robbery, and was, instead, relaying what another person claimed Galloway said to her. Because the jury was completely aware of the hearsay nature of the comment, any potential for prejudice was greatly diminished. See Price, 368 S.C. at 499, 629 S.E.2d at 366 ("Defense counsel

¹⁶ Significantly, the physical copy of Bryant's statement was not introduced into evidence during trial and was not available to the jury during their deliberations. (R. p. 258).

¹⁷ Notably, during trial, Galloway acknowledged he spoke with Appellant and his brother on the day of the robbery, but he merely testified they asked him for a cigar. (R. p. 181).

impeached Richardson's improper testimony by eliciting that his information was solely based on information from informants."'). Furthermore, the comment was never repeated during trial, and the solicitor made no reference to it during his closing argument. See Chisholm, 395 S.C. at 274, 717 S.E.2d at 622 (considering the fleeting nature of a hearsay statement in concluding the statement was harmless). Specifically, the solicitor argued to the jury: "I submit to you that the crux of [Bryant's] testimony, the thrust of her testimony – the statement that she gave in March of 2010 I saw them there." (R. p. 279). Thus, the solicitor did not have Bryant read her statement to law enforcement during trial to prove Paul and James knew Appellant committed the bank robbery or to prove Appellant asked Galloway to participate in the crime. Instead, the statement was solely offered to prove Bryant saw Appellant at the apartment complex before the robbery. See State v. Vick, 384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct. App. 2009) ("It is well settled that evidence is not hearsay unless offered to prove the truth of the matter asserted.'). Therefore, under the circumstances, the other challenged portion of Bryant's statement was, likewise, not sufficiently prejudicial to warrant a reversal of Appellant's convictions. See Id. ("[I]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice.').

Considering the isolated nature of the challenged comments along with the fact the jury was fully aware Bryant had no actual knowledge regarding the truthfulness of those comments, any error in the admission of the comments did not warrant a reversal of Appellant's convictions. However, even if the challenged comments were sufficiently prejudicial to warrant reversal when considered in isolation, any error in the admission of comments was harmless when considering those comments in conjunction with the other overwhelming evidence of Appellant's guilt presented during trial.

Most significantly, Appellant's accomplice, Kears, confessed to committing the robbery just hours after the crime and identified Appellant and Artrell as his accomplices. Kears further identified Appellant as one of the robbers from the surveillance footage of the robbery and testified about Appellant's role in the crime. Cf. State v. Evans, 378 S.C. 296, 300-301, 662 S.E.2d 489, 491 (Ct. App. 2008) (finding any error in the admission of improper hearsay during Evan's trial for possession of a stolen vehicle to be harmless where other competent evidence was presented during trial establishing Evans' guilt, including eyewitness testimony placing Evans in possession of the stolen vehicle). Kears's uncontradicted testimony directly implicating Appellant in the bank robbery constituted competent and compelling evidence of Appellant's guilt. See, e.g., State v. Key, 256 S.C. 90, 97, 180 S.E.2d 888, 891 (1971) ("The jury had before it positive identifications of each of the defendants. Such identifications were not denied. It is academic that failure of the defendants to testify created no inference of guilt against them. They did not have the burden of proving anything. However, undisputed testimony is more conclusive than testimony which is in dispute, and it is less difficult for this court to reason that guilt is conclusively proven when there is no denial, than when an accused person disputes the truthfulness of the State's evidence.").

In addition to Kears's testimony, Investigator Savell confirmed Kears confessed to the robbery and immediately identified Appellant and Artrell as his accomplices in the crime. Additionally, Oakman corroborated Kears's testimony about what occurred before the robbery and testified she accompanied Kears, Appellant, and Artrell to Kalmia Apartments in Graniteville shortly before the bank, which was only a short

distance away, was robbed.¹⁸ Oakman additionally testified Kears called her after the crime on Appellant's phone and asked for a ride away from the area. Substantiating Oakman's testimony, several other witnesses confirmed Kears, Appellant, and Artrell were all at the apartment complex near the bank prior to the robbery. Also, Appellant's co-conspirator, Wilson, testified Appellant participated in the planning of the bank robbery, and Wilson further stated he overheard Appellant call two other known bank robbers on the day of the robbery to notify them he was "hemmed up" in Graniteville. Furthermore, in addition to the testimony of the witnesses establishing Appellant's whereabouts on the day of the bank robbery along with his role in the crime, other evidence and testimony was presented during trial establishing Appellant and Artrell were approximately the same height as the robbers and Artrell shared many of the same physical features as one of the robbers captured on the surveillance footage.¹⁹

Considering the challenged hearsay comments in the proper context and in relation to the other overwhelming evidence of guilt, any error in the admission of the hearsay testimony was harmless. In light of the fact Appellant was identified as one of the robbers through the testimony of multiple witnesses, including his accomplice in the bank robbery, the admission of the challenged evidence, which consisted of an isolated comment that two men at the apartment complex thought "them boys" committed the robbery along with an isolated comment that was not corroborated by the testifying

¹⁸ Oakman also testified Artrell was in possession of a black backpack when she picked Appellant and Artrell up at their home before the robbery. (R. p. 145). One of the robbers was wearing a black backpack in the surveillance footage, and Kears identified the backpack as belonging to Artrell at the same time he identified Appellant and Artrell from the surveillance footage. (R. p. 240).

¹⁹ Specifically, the bank employees testified two of the gunmen were approximately 5'4" tall with one of the gunmen slightly taller than the other. (R. p. 42; p. 45; p. 53). Thereafter, Investigator Savell confirmed Artrell was 5'4" tall and Appellant was 5'6" tall. (R. p. 121). Additionally, Artrell's features and appearance, including his eyebrows, nose, and hair, matched the features and appearance of one of the robbers depicted in the surveillance footage. (State's Ex. # 17; State's Ex. # 20).

witnesses who allegedly made it, could not have impacted the jury's verdict. Compare Chisholm, 395 S.C. at 274 (finding the admission of hearsay to be harmless where Chisholm was identified as the perpetrator of the crime by two other witnesses); and Key, 256 S.C. at 91, 180 S.E.2d at 891 (finding any error in the admission of hearsay evidence to be harmless where Key was identified by a witness as one of the robbers during trial and his co-defendant was identified as one of the robbers by two witnesses during trial, including by one witness who only identified him by voice); with Byers, 392 S.C. at 448, 710 S.E.2d at 60 (finding the admission of hearsay not to be harmless where Byers' other accomplices did not directly state Byers was in the car at the time of the robbery and the other evidence, which included an alibi, did not establish Byers' guilt for the robbery). Notwithstanding the challenged hearsay statements, which were isolated, vague, and not further explored during trial, abundant other evidence was presented conclusively establishing Appellant's guilt. See Mitchell, 286 S.C. at 573, 336 S.E.2d at 151 (finding the admission of improper hearsay evidence to be harmless where "there was abundant evidence in the record from which the jury could have found appellant guilty, notwithstanding the hearsay testimony"). Therefore, to the extent the trial judge erred in admitting the two isolated hearsay statements, any error was harmless and did not warrant a reversal of Appellant's convictions. See Wyatt, 317 S.C. at 372, 453 S.E.2d at 891 ("While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal."). Appellant's convictions should be affirmed.

II.

The trial judge did not abuse his discretion in admitting a mug shot photograph taken of Appellant's brother shortly after the bank robbery because there was a demonstrable need for the photograph, the photograph did not suggest either Appellant or his brother had a prior criminal record, and no improper attention was called to the photograph's origin. Furthermore, the admission of the photograph resulted in no meaningful prejudice to Appellant, particularly in light of the fact the photograph depicted Appellant's brother and not Appellant.

Appellant contends the trial judge committed reversible error by permitting the State to introduce a mug shot photograph of Appellant's brother, Artrell, taken after they were arrested for the bank robbery. Appellant maintains there was no demonstrable need for the photograph because Artrell was present in the courtroom for comparative purposes and their accomplices identified Artrell as one of the robbers. However, contrary to Appellant's assertions, there was a demonstrable need for the photograph because it enabled the jury to compare Artrell's features and appearance only days after the crime to the features and appearances of the robbers depicted in the surveillance footage of the crime. Significantly, the jury was unable to make such a comparison without the photograph because Artrell altered his appearance prior to trial. Furthermore, the photograph did not suggest either Appellant or Artrell had a prior criminal record, and no improper attention was called to the photograph's origin. For these reasons, the trial judge did not abuse his discretion in admitting the photograph into evidence during trial. However, even if the trial judge did err in admitting the photograph, Appellant was not entitled to a reversal of his convictions because the photograph's admission resulted in no meaningful prejudice to Appellant, particularly in light of the fact the photograph was of Artrell instead of Appellant. Appellant's convictions should be affirmed.

The reception or exclusion of evidence is a matter left largely to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32

(1980). A trial judge's ruling on the admission or exclusion of evidence will not be reversed on appeal unless that ruling constituted "a **manifest abuse of discretion** accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) (emphasis added). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." Byers, 392 S.C. at 444, 710 S.E.2d at 58. On appeal, an appellate court will give "great deference" to the trial judge when reviewing a ruling on the admissibility of evidence. State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010).

The admission of a mug shot photograph of a defendant during trial constitutes reversible error unless: (1) there is a demonstrable need to introduce the photograph; (2) the photograph does not suggest the defendant has a criminal record; and (3) the photograph is not introduced in such a way as to draw attention to its origin or implication. State v. Traylor, 360 S.C. 74, 84, 600 S.E.2d 523, 528 (2004). The rationale behind the rule prohibiting the admission of mug shots unless specific criteria are met is "that such photos are prejudicial because they imply a defendant's prior bad acts." Id. at 84-85, n.12, 600 S.E.2d at 528.

In Appellant's case, the trial judge did not abuse his discretion in admitting the photograph of Appellant's brother taken after Appellant and his brother were arrested for the bank robbery. Initially, there was a demonstrable need for the photograph to be admitted during trial. Prior to trial, Artrell altered his appearance and had a different hair style than he did at the time of the crime. Notably, one of the robbers appeared to have a large amount of hair at the time of the robbery, which fully filled the hood he wore in an effort to conceal his identity, and Artrell had a similarly large amount of hair at the time of his arrest only days after the robbery was committed. Subsequently, Artrell's hair was

much shorter at the time of trial due to the changes he made to it.²⁰ Therefore, without the photograph, the jury would have been unable to accurately compare Artrell's hair as it appeared in the courtroom to the hair of the robbers depicted in the surveillance footage. Because the photograph allowed the jury to compare Artrell's hair and distinctive features just five days after the crime to the same features of the robbers shown in the surveillance footage, Artrell's mug shot was necessary to allow the jury to properly determine if Artrell was one of the perpetrators of the crime.

Additionally, the photograph of Artrell did not suggest either Appellant or Artrell had a criminal record. The photograph, which was a picture of Artrell's head and shoulders with Artrell facing forward, depicted Artrell wearing a white shirt underneath a blue or green shirt. (State's Ex. # 20). Nothing in the photograph suggested Artrell was dressed in prison attire, and nothing in the photograph indicated it was taken by law enforcement officers. Most importantly, the photograph contained nothing indicating Artrell or Appellant, who was not depicted in the photograph, had a prior criminal record. See State v. Robinson, 274 S.C. 198, 201, 262 S.E.2d 729, 730 (1980) ("While the photographs are police 'mug shots,' there was nothing on the face of the pictures which would indicate that Robinson had a prior criminal record."). Therefore, because the photograph did not suggest either Appellant or Artrell committed any prior bad acts aside from the bank robbery, the rationale typically justifying the exclusion of mug shot photographs did not apply to the photograph in Appellant's case. Cf. State v. Denson, 269 S.C. 407, 412-413, 237 S.E.2d 761, 764 (1977) ("[T]he photographs did not imply that appellant had a prior criminal record. The photographs were not the juxtaposed full

²⁰ The solicitor noted Artrell's hair was longer at the time of the crime, but the solicitor described Artrell's hair at the time of trial as "high and tight." (R. p. 70; p. 268). Artrell's hair in the photograph taken shortly after his arrest was long and cannot reasonably be described as "high and tight." (State's Ex. # 20).

face and profile photographic display normally associated with 'mug shots.' Neither did the appearance of the words 'Richland County' on one of the photographs inform the jury that appellant had a prior criminal record.”).

Finally, the photograph was not introduced in such a way as to call attention to its origin or to any negative implications. During trial, testimony was offered establishing the photograph showed Artrell's appearance five days after the crime occurred, which was the same day as his arrest. However, no testimony was specifically presented regarding why the photograph was taken or how it was taken. Therefore, no improper attention was called to the origin of the photograph, and the testimony associated with the photograph did not create any negative implications about its existence. Cf. Robinson, 274 S.C. at 201, 262 S.E.2d at 730 (“The jury could just have easily inferred that the photograph was the result of the investigation of the murder. Since there was nothing to draw particular attention to the source or implications of the photograph, its admission was proper.”); Denson, 269 S.C. at 413, 237 S.E.2d at 764 (“[T]here is no intimation in the record that the admission of the photographs in any way focused the jury's attention on the source of the pictures. The jury was told at one point in the trial that the photographs came from the files of the Richland County's Police Department and the Columbia Police Department, but this testimony only explained the source of the photographs, it did not 'draw particular attention to the source or implications of the photographs.' ” (citations omitted)).

Because there was a demonstrable need for the photograph, the photograph did not suggest either Appellant or Artrell had a criminal record, and no improper attention was called to the photograph's origin, the trial judge did not commit a manifest abuse of discretion in admitting the photograph during trial. Cf. State v. Ford, 334 S.C. 444, 450,

513 S.E.2d 385, 388 (Ct. App. 1999) (“[T]he lineup was admissible because the state had a demonstrable need to introduce the photos and because there was nothing about the photographs or the way they were introduced that suggested Ford had a prior criminal record.”). However, even assuming the photograph was somehow improperly admitted, Appellant suffered no meaningful prejudice from its admission.²¹ As the trial judge noted, the photograph was largely benign and merely depicted a frontal shot of Artrell’s head and shoulders. Critically, the photograph did not show Appellant and in no way suggested Appellant or his brother had a prior criminal record or had been arrested in connection with any crime other than the bank robbery. Cf. Traylor, 360 S.C. at 84, 600 S.E.2d at 528 (holding Traylor suffered no prejudice as a result of the admission of a booking photograph where the testimony established the photograph of Traylor was taken upon his arrest and the photograph was explained in such a manner that it did not imply Taylor committed a prior bad act). Therefore, because no prejudice resulted from the admission of the photograph, any error in its admission did not warrant reversal. See State v. Crocker, 366 S.C. 394, 408, 621 S.E.2d 890, 897 (Ct. App. 2005) (“To warrant reversal, an appellant must show both error and resulting prejudice.”). The trial judge did not abuse his discretion in admitting the photograph of Artrell taken only five days after

²¹ On appeal, Appellant contends the photograph was prejudicial because the only evidence directly implicating Artrell in the crime was “questionable” testimony from admitted criminals. Although the evidence against Appellant and Artrell consisted of much more than the testimony of their accomplices, Appellant’s appellate argument demonstrates exactly why there was a demonstrable need for the photograph since it enabled the jury to compare Artrell’s features around the time of the crime to the features of the perpetrators of the robbery depicted in the surveillance footage and since it corroborated the brothers’ accomplices’ “questionable” testimony identifying Artrell as one of the robbers. See, e.g., State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996) (“If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.”). Therefore, the trial judge did not abuse his discretion in admitting the photograph during trial.

the bank robbery, and Appellant suffered no prejudice from the admission of the photograph.²² Appellant's convictions should be affirmed.

²² Notably, the trial judge instructed the jury to consider Appellant's guilt and Artrell's guilt separately. (R. p. 305). That instruction helped to minimize any effect the photograph of Artrell, which constituted evidence of Artrell's guilt, could have had on Appellant's case.

III.

The trial judge properly denied Appellant's directed verdict motion because the State presented both direct evidence and substantial circumstantial evidence from which the jury could find Appellant guilty of each element of the indicted offenses.

Appellant contends the trial judge erred in denying his directed verdict motion. Appellant maintains the evidence presented during trial, which included the testimony of one of Appellant's accomplices directly implicating Appellant in the crime, was not sufficient for the jury to find him guilty of the charges. To the contrary, both direct and circumstantial evidence of Appellant's guilt for the indicted offenses of armed robbery and possession of a firearm during the commission of a violent crime was presented during trial. The trial judge properly restricted his consideration of the evidence solely to whether it existed and not to its credibility before denying Appellant's directed verdict motion. Appellant's contentions during trial and on appeal merely go to the weight of the evidence as opposed to its existence, and the weight of the evidence was a matter solely for the jury to decide. Therefore, the trial judge properly denied Appellant's directed verdict motion. Appellant's convictions should be affirmed.

When presented with a motion for a directed verdict, the trial judge is concerned with the existence or non-existence of evidence and not its weight. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). The trial judge should deny a directed verdict motion and submit the case to the jury if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. Weston, 367 S.C. at 292,

625 S.E.2d at 648. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling. Gaster, 349 S.C. at 555, 564 S.E.2d at 92. "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

In the case sub judice, direct evidence and substantial circumstantial evidence was presented during trial reasonably tending to prove Appellant's guilt for the armed robbery of the Graniteville branch of the Security Federal Bank. Most critically, one of Appellant's accomplices, Kears, directly identified Appellant as one of the robbers involved in the planning of and commission of the bank robbery. In addition to Kears's testimony on Appellant's role in the robbery, Kears also specifically identified Appellant as one of the gunmen in a photograph taken from the bank surveillance footage. Kears's trial testimony identifying Appellant as one of the robbers constituted direct evidence of Appellant's guilt and alone required the trial judge to deny Appellant's directed verdict motion. See State v. Salisbury, 343 S.C. 520, 524, n.1, 541 S.E.2d 247, 248-249 (2001) ("Evidence can be divided into two basic categories: direct and circumstantial. Direct evidence is evidence based on actual knowledge and proves a fact without inference or presumption. Direct evidence immediately establishes the main fact to be proved." (citations omitted)); State v. Grippon, 327 S.C. 79, 83, 489 S.E.2d 462, 464 (1997) (approving of a jury charge instructing: "Direct evidence is the testimony of a

person who asserts or claims to have actual knowledge of a fact, such as an eyewitness.”); see also Weston, 367 S.C. at 292, 625 S.E.2d at 648 (“If there is **any direct evidence** or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court **must** find the case was properly submitted to the jury.” (emphasis added)). Critically, the question of whether Kearsse’s testimony was credible, self-serving, or both was a determination only the jury could make and had no bearing whatsoever on the merits of Appellant’s directed verdict motion. See State v. Pitts, 296 S.C. 420, 427, 182 S.E.2d 738, 742 (1971) (“A motion for a directed verdict of acquittal is properly refused where the determination of guilt is dependent upon the credibility of a witness, as this is a question that goes to the **weight** of evidence and is clearly for determination by a jury.” (emphasis added)); see also State v. Vanderhorst, 257 S.C. 114, 117, 184 S.E.2d 540, 541 (1971) (“When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. Among other considerations is the credibility of the witnesses, including that of the appellant himself.”).

In addition to Kearsse’s testimony, substantial other evidence was presented during trial establishing Appellant’s guilt. Initially, another of Appellant’s co-conspirators, Wilson, confirmed Appellant was involved in the planning of the bank robbery before it occurred. Additionally, Wilson testified Appellant’s brother, Artrell, called two other known bank robbers on the day of the robbery to notify them “they” were “hemmed up” in Graniteville, which was where the robbery occurred. In addition to Wilson’s testimony, Oakman testified she picked up Appellant and Artrell at Kearsse’s direction on the morning of the robbery and dropped them off at an apartment complex only a few blocks away from the bank shortly before the robbery occurred. Oakman further testified

Kearse called her after the robbery using Artrell's phone and asked her to pick him up near a church, which was where law enforcement officers discovered Kearse hiding after the crime. In addition to Oakman's testimony placing Appellant in the company of an admitted participant in the bank robbery shortly before it occurred, multiple other witnesses confirmed Appellant was at Kalmia Apartments near the bank involved in the robbery shortly before the robbery occurred. Additionally, the evidence and testimony presented during trial established Appellant and his brother were approximately the same height as the robbers. Furthermore, Investigator Savell confirmed Kearse confessed to the robbery only hours after the crime and identified Appellant and his brother as his accomplices. Collectively, this evidence established Appellant's guilt for the charged crimes beyond a reasonable doubt.

Viewing the evidence in a light most favorable to the State as required, the evidence presented during trial was sufficient to enable the jury to fairly and logically find Appellant guilty of each element of the indicted offenses. See State v. Claypoole, 371 S.C. 473, 477, 639 S.E.2d 466, 468 (Ct. App. 2006) ("[A] defendant is entitled to a directed verdict at the trial level when the State does not produce evidence of the offense charged; however, if the State presents *any* evidence at trial which reasonably tends to prove the defendant's guilt, the case must go to the jury." (italics in original)). Accordingly, the trial judge properly denied Appellant's directed verdict motion and submitted the case to the jury. See Nix, 288 S.C. at 496, 343 S.E.2d at 629 ("[U]nless **there is a total failure of evidence** tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." (emphasis added)). Appellant's convictions should be affirmed.

CONCLUSION

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

Respectfully submitted,

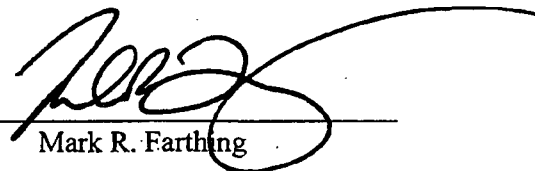
ALAN WILSON
Attorney General

JOHN W. McINTOSH
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MARK R. FARTHING
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J. STROM THURMOND, JR.
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BY: 

Mark R. Farthing

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ATTORNEYS FOR RESPONDENT

July 24, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2010-173726

THE STATE,

Respondent,

vs.

JAVIER HICKSON,

Appellant.

CERTIFICATE OF COUNSEL

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

ALAN WILSON
Attorney General

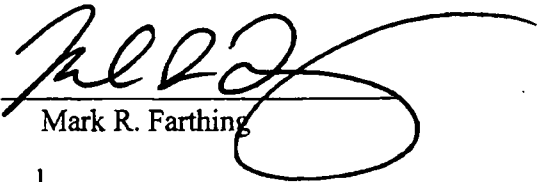
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Assistant Attorney General

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Solicitor, Second Judicial Circuit

BY:


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ATTORNEYS FOR RESPONDENT

July 24, 2012

STATE OF SOUTH CAROLINA
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THE STATE,

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vs.

JAVIER HICKSON,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jerry M. Screen, Esquire
Law Office of Jerry M. Screen
1337 Gregg Street
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served.
This 24th day of July, 2012.



ELLEN R. DuBOIS
Legal Assistant

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

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

The State, Respondent,

v.

Javier Hickson, Appellant.

Appellate Case No. 2010-173726

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2012-UP-661
Submitted November 1, 2012 – Filed December 19, 2012

AFFIRMED

Jerry M. Screen, Sr., of Law Office of Jerry M. Screen,
of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General Mark R. Farthing, all of Columbia; and
Solicitor J. Strom Thurmond, Jr., of Aiken, for
Respondent.

PER CURIAM: Javier Hickson appeals his convictions of armed robbery and possession of a firearm during the commission of a violent crime, arguing the trial court erred in admitting (1) two hearsay statements and (2) a mug shot. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the admissibility of the two hearsay statements: *State v. Garner*, 389 S.C. 61, 65, 697 S.E.2d 615, 617 (Ct. App. 2010) ("Evidentiary rulings are within the sound discretion of the trial court, and such rulings will not be reversed absent an abuse of discretion or the commission of legal error that prejudices the defendant."); *id.* at 67, 697 S.E.2d at 618 ("[I]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice."); *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) ("Whether an error [in admitting hearsay] is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."); *Garner*, 389 S.C. at 68, 697 S.E.2d at 618 ("[E]rror is deemed harmless when it could not have reasonably affected the result of the trial, and an appellate court will not set aside a conviction for such insubstantial errors.").

2. As to the admissibility of the mug shot: *Id.* at 65, 697 S.E.2d at 617 ("Evidentiary rulings are within the sound discretion of the trial court, and such rulings will not be reversed absent an abuse of discretion or the commission of legal error that prejudices the defendant."); *id.* ("The trial court abuses its discretion when the ruling is based on an error of law or factual conclusion that is without evidentiary support."); *State v. Traylor*, 360 S.C. 74, 84, 600 S.E.2d 523, 528 (2004) ("The introduction of a 'mug-shot' of a defendant is reversible error unless: (1) the state has a demonstrable need to introduce the photograph, (2) the photograph shown to the jury does not suggest the defendant has a criminal record, and (3) the photograph is not introduced in such a way as to draw attention to its origin or implication."); *State v. Robinson*, 274 S.C. 198, 201, 262 S.E.2d 729, 730 (1980) (holding the admission of a mug shot was proper when the State did not draw attention to the origin of the picture and nothing about the picture implied appellant had a prior criminal record.).

AFFIRMED.

SHORT, KONDUROS, and LOCKEMY, JJ., concur.

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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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February 11, 2013

The Honorable Liz Godard
PO Box 583
Aiken SC 29802-0583

REMITTITUR

Re: The State v. Hickson, Javier
Lower Court Case No. 2009GS0202291, 2010GS0200679
Appellate Case No. 2010-173726

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Jerry M. Screen, Sr.
Mark Reynolds Farthing

STATE OF SOUTH CAROLINA

County of AikenJavier Hickson #306715

Full name and prison number (if any) of Applicant

v.

State of South Carolina

FORM 15 020087
MO20091

IN THE COURT OF COMMON PLEAS

Michael D.
Rabitzong

APPLICATION FOR

POST-CONVICTION RELIEF

2013 CP-02-01146
 2010 GS-02-00679 2009-02291
 Filed 5-20-2013
 C.C.P. & G.S. 15-100
 Court Reporter: L. A. [illegible]
 Deputy Clerk: [illegible]
 Trial Judge: [illegible]
 Trial Judge: [illegible]
 Court Reporter: L. A. [illegible]
 Sec. PCR Postconviction: [illegible]
 General Sessions: [illegible]
 Appointed Atty: [illegible]

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Corr. Inst. 990 wisocky Hwy
Bishopville SC 29010
2. Name and location of Court which imposed sentence Aiken County Court of
General Sessions Aiken South Carolina
3. Name(s) of co-defendant(s) (if any) Artell Hickson and David
Kearse
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-02-00679 Poss. Weapon during commission of a
violent crime
 - (b) 2009-GS-02-02291 Arm Robbery

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Sept 22, 2010 28 years
- (b) Sept 22, 2010 5 years concurrent
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes, I did.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Dec 19, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion No 2012-up-661
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance trial counsel (see attachment)
- (b) ineffective assistance trial counsel (see attachment)
- (c) ineffective assistance trial counsel (see attachment)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment
- (b) See attachment
- (c) See attachment
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
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

- (c) the disposition thereof:
- i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (d) the date of each such disposition:
- i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO, They Have not.
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
 - ii. N/A
 - iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
 - ii. N/A
 - iii. N/A

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

(a) First time filing PCR (See: Attachment)
 (b) First time filing PCR (See: Attachment)
 (c) First time filing PCR (See: Attachment)

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

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

N/A

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

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

i. Mr. Routzong

ii. Jerry M. Screen 1337 Gregg St.
Columbia SC 29201

iii.

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

i. Trial and Sentencing

ii. Direct Appeal Court South Carolina

iii.

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

Based on the Above Convictions and sentence
be Re and Re for a New Trial

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

No, I am not.

STATE OF SOUTH CAROLINA)

County of Aiken)

VERIFICATION

I, JAVIER HICKSON #306715, 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.

Javier Hickson

SWORN to and subscribed before me this 16
 day of May 2013.
[Signature] (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

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

I, Javier Hickson #306715, 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.

Javier Hickson
Applicant

SWORN or affirmed to and subscribed before me this

16 day of May, 2013.
[Signature]
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA]
COUNTY OF AIKEN]

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Javier Hickson # 306715

Applicant,

- - vs - -

THE STATE OF SOUTH CAROLINA,

Respondent.

CIVIL ACTION NO:

(To be assigned by Clerk)

ATTACHMENT TO APPLICANT'S
POST-CONVICTION RELIEF
APPLICATION

GROUND FOR RELIEF WITH SUPPORTING FACTS

10(a) - 10(j) through 11(a) - 11(j)

10(a):... The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina Law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's are robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.

11(a):.. Affiant J.D. Sanders affidavit in support of the arm robbery arrest warrant stated: upon information and belief, that on June 25, 2009, in the city/county of Aiken, one Javier Hickson, along with others while armed with handguns did enter the Security Federal Bank, located at 50 Canal Street in Graniteville, Aiken County, demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitute the crime of arm robbery and is in violation of section 16-11-330 of the S.C. Code of Laws, as amended.

ARM ROBBERY - WARRANT NO: M-020091 .

Affiant J.D. Sanders affidavit in support of the possession of a weapon during the commission of a violent crime arrest warrant stated: upon information and belief that on June 25, 2009 in the city/county of Aiken, one Javier Hickson did knowingly and willfully along with others while armed with handguns did enter the Security Federal bank, located at 50 Canal Street in Graniteville, Aiken County demanding money and did force the tellers at gun point to hand over an amount of cash; all of which constitutes the crime of possession of a weapon during the commission of a violent crime and is in violation of section 16-23-490 of the S.C. Code of Laws, as amended.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME -
WARRANT NO: M-020087

10(b):... The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina Law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavits in support of each warrant was conclusory and insufficient to establish probable cause.

11(b):... Affiant J.D. Sanders affidavit in support of the arm robbery arrest warrant stated: upon information and belief that on June 25, 2009 in the city/county of Aiken, one Javier Hickson along with others while armed with handguns did enter the Security Federal Bank located at 50 Canal Street in Graniteville, Aiken County demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitute the crime of arm robbery and is in violation of section 16-11-330 of the S.C. Code of Laws, as amended.

ARMED ROBBERY - WARRANT NO: M-020091

Affiant J.D. Sanders affidavit in support of the possession of a weapon during the commission of a violent crime arrest warrant stated: upon information and belief that on June 25, 2009, in the city/county of Aiken, one Javier Hickson did knowingly and willfully along with others while armed with handguns did enter the Security Federal Bank located at 50 Canal Street in Graniteville, Aiken County demanding money and did force the tellers at gun point to hand over an amount of cash; all of which constitutes the crime of possession of a weapon during the commission of a violent crime and is in violation of section 16-23-490 of the S.C. Code of Laws, as amended.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME -
WARRANT No: M-020087.

Sabrina Oakman	(Voluntary Statement)
Candice Patrice Bryant	(Voluntary Statement)
Beatriz Tanika Wright	(Voluntary Statement)
Stanley Leon Galloway	(Voluntary Statement)
Randolph "Randy" Wilson, Jr	(16 page Investigative
Report)	
Gabiela E. Hastings	(Voluntary Statement)
Amanda Wood	(Voluntary Statement)
Tonya Key	(Voluntary Statement)

Daphae Carrol
 Investigator Greg Savell
 Summary)

(Voluntary Statement)
 (Investigating Officer's

Cad Incident Report
 Aiken Bloodhound Tracking
 Supplementary Reports
 Incident Report
 Supplemental Incident Report
 Bank Surveillance - 4 CD's
 Aiken County Sheriff's Office (Evidence/Property Sheet)
 Javier Hickson
 (Miranda Warning)

10(c):... The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina Law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime Indictments, because the affidavits in support of each arrest warrant was conclusory and insufficient to establish probable cause.

11(c):... ARM ROBBERY - INDICTMENT No: 2009 GS0202291.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A

VIOLENT CRIME - INDICTMENT NO:
2010 GS0200679

Affiant J.D. Sanders affidavit in support of the (Arm Robbery) arrest warrant stated: upon information and belief, that on June 25, 2009 in the city/county of Aiken, one Javier Hickson along with others while armed with handguns did enter the Security Federal Bank, located at 50 Canal Street in Graniteville, Aiken County, demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitutes the crime of arm robbery and is in violation of section 16-11-330 of the S.C. Code of Laws, as amended.

ARM ROBBERY - WARRANT No: M-020091

Affiant J.D. Sanders affidavit in support of the (Possession of a Weapon during the Commission of a violent crime) arrest warrant stated: upon information and belief that on June 25, 2009, in the city/county of Aiken, one Javier Hickson did knowingly and willfully along with others while armed with handguns did enter the Security Federal Bank located at 50 Canal Street, in Graniteville, Aiken County, demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitutes the crime of

possession of a weapon during the commission of a violent crime, and is in violation of section 16-23-490 of the S.C. Code of Laws, as amended.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME -
WARRANT NO: M-020097.

10(d):.. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to provide the State with a written notice of the applicant's intent to offer a "Alibi Witness."

11(d):..

10(e):.. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to call alibi witnesses, Crystal Harris; Charles Smalls; and Tommy Parker, for the defense during applicant's criminal trial.

11(e):.. (Crystal Harris) voluntary statement indicated that morning of the Security Federal Bank robbery, Javier was with me at 1070 Ella Circle. I took him to his grandmothers at 137 Woodland Drive Extension, because he had to work with his Uncle Pee Wee on cars. I drove to work at Walmart southside and started work 8:30 - 9:00 a.m. (morning shift). I did not see Javier the rest of the day. Around 2:00 p.m. I left work to take my daughter to a Doctor's appointment. I went by the Circle K store on 118 bypass and went home.

(Charles Smalls), statement written by Michael D. Routzong at 8:35, stated: ... Mr. Tommy Parker picked me up at my residence (71 Moody Street, Aiken S.C.). Mr. Parker and I went for coffee and then went to Mr. Parker's sister house (Ms. Beulah Hickson). We picked up Javier and Artell at approximately 9:00. The date was June 25, 2009.

After we picked up Javier we went to Mr. Parker's place of business (154 Brickley Court). We, Mr. Parker, Javier and

Artell took engines apart and cleaned the parts. We separated the bad parts from the good parts. Javier and Artrell were with me and Mr. Parker until 4:30 p.m. until the time I went home.

(Tommy Parker's) statement indicated on June 25, 2009, I picked up Javier Hickson from my sister's house (Beulah Hickson) Woodland Drive in Aiken at 9:00. Javier wanted to learn Auto Mechanics and I agreed to teach him. After I picked him up I went to 154 Brickley Court, Aiken SC. Also with me was Charles Smalls. I also picked up Artrell Hickson at the same time I picked up Javier. We, Javier, Artrell, Charles and I remained at 154 Brickley Court until 16:30 (4:30 p.m.). Javier, Artrell and I took Charles Smalls to 71 Moody Street, Aiken SC. Mr. Small's wife had an appointment and Mr. Smalls had to go home. After we dropped Mr. Smalls off we went to the BP Store for sodas and then we returned to 154 Brickley Court until 7:00 p.m. Javier Hickson and Artrell were with me the entire day.

10(f):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fifth and Fourteenth Amendments of the United States and South Carolina Law was violated by trial counsel failing to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony

would be seriously compromised.

11(f):.. (Crystal Harris's) voluntary statement indicated that morning of the Security Federal Bank robbery Javier was with me at 1070 Ella Circle. I took him to his grandmothers at 137 Woodland Drive Extension because he had to work with his Uncle Pee Wee on cars. I drove to work at Walmart southside and started work 8:30 - 9:00 a.m. (morning shift). I did not see Javier the rest of the day. Around 2:00 p.m. I left work to take my daughter to a Doctor's appointment. I went by the Circle K store on 118 by-pass and went home.

(Charles Smalls) statement written by Michael D. Routzong at 8:35, stated: ... Mr. Tommy Parker picked me up at my residence (71 Moody Street, Aiken, SC.). Mr. Parker and I went for coffee and then went to Mr. Parker's sister's house (Ms. Beulah Hickson). We picked up Javier and Artrell at approximately 9:00. The date was June 25, 2009. After we picked up Javier we went to Mr. Parker's place of business (154 Brickley Court). We, Mr. Parker, Javier and Artrell took engines apart and cleaned the parts. We separated the bad parts from the good parts. Javier and Artrell were with me and Mr. Parker until 4:30 p.m. until the time I went home.

(Tommy Parker's) statement indicated on June 2009 I

picked up Javier Hickson from my sister's house (Bealah Hickson) on Walland Drive in Aiken at 9:00. Javier wanted to learn auto mechanics and I agreed to teach him. After I picked him up we went to 154 Brickley Court, Aiken, SC. Also with me was Charles Smalls. I also picked up Artrell Hickson at the same time as I picked up Javier,, Charles and I remained at 154 Brickley Court until 16:30 . At 16:30 (4:30 pm) Javier, Artrell and I took Charles Smalls to 71 Moody Street, Aiken SC. Mr. Smalls wife had an appointment and Mr. Smalls had to go home. After we dropped Mr. Smalls off we went to the BP Store for sodas and then we returned to 154 Brickley Court until 7:00 pm. Javier Hickson and Artrell were with me the entire day.

10(g):.. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to request a NEIL -vs- BIGGERS Hearing due to the allege victim's bank employees never picked the applicant out of any type of photo array or line-up procedures prior to his arrest.

11(g):.. (Supplementary Report) indicated that bank employee (Daphne Carroll) stated she was sitting in her office when the subjects came into the bank. Carroll stated that one of the subjects told her to come out from her office and open the safe.

Carroll stated that she stayed at her desk and pushed the alarm button. Carroll stated that the subject standing at the door kept saying lets go. Carroll stated that she could not get a good look at the subjects because their faces were covered. Carroll stated that all three subjects had guns; bank employee (Amanda Wood) stated that three black male subjects entered the bank with guns. Wood stated that one of the subjects yelled open your drawers and give me the money. Wood stated that the subject pointed a gun at her while she was getting the money out of the drawer. Wood stated that another subject took money from her co-worker while the third subject stood at the door telling them to hurry up.

Wood stated that the subjects said something to her manager and customer service representative and left. Wood Stated that the only thing she could remember was they were wearing dark clothing and all three had guns; bank employee (Tonya Key) stated she was sitting in her office when the three black male subjects came into the bank demanding money. Key stated that one of the subjects stood in her doorway and told her to come out and open the vault. Key stated that he was waiving a gun at her and she could not move. Key stated that they appeared to be young with their actions. I/O asked her what she meant with actions and she stated that they were acting very nervous and could not stand still; bank employee (Garielle Hastings) stated that three black male subjects came into the bank and two of the subjects came up to the tellers line demanding the money. Hastings stated that all

Javier

three subjects were carrying handguns. Hastings stated that they were unorganized running up and down the teller line saying hurry up, all of it and don't press the alarm. Hastings stated that she only gave the subject small bills out of her drawer. Hastings stated that when the subjects left they ran to the rear of the building.

10(h):.. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury their entire voluntary statements whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence.

11(h):.. State's witness Sabrina Oakman's statement was marked for identification only: Q:... would reading the statement that you wrote refresh your recollection. A:... Yes. Where upon defendants Brown Exhibit No: 2 was marked for identification only. I'm showing you what's been marked for identification defendant's exhibit 2 Brown. Do you recognize what that is? TR. TR. page 161, lines 2-9.

On re-direct examination the solicitor Mr. Thurmond advised Sabrina Oakman to read her entire statement. Q:.. Ma'am how about read your statement that you gave in its entirety rather than it being parsed. Read very word. A:.. On the morning the Security Federal bank in Graniteville got robbed me and David Kearse were at my place in Aiken, SC. David said he needed my car the black tahoe. I told him to be back before 11. He left for a while and came back. He said I am ready to go. He directed me to pick up Artrell Hickson at Artrell's house. I drove there and Artrell and Javier Hickson got in. I drove to David's grandma house on Camel Street, New Ellenton, SC. We stayed in the tahoe but David went inside for a minute and came back. We went to Walmart Southside. I parked by tire and lube. I drove there because Javier wanted to meet -- wanted to talk to his sister Monique and his girlfriend Crystal. Javier walked to the front parking lot out of sight and came back a few minutes later. Artrell and David were giving me directions to drive to the apartments in Graniteville. I drove them to the apartment complex, made the first left, drove to the dead end and dropped them off. I drove away and went to my grandmother's house on Plunkett Street, but never made it. My tahoe broke down on Richland Avenue at the highway 421 exit, by the car lot. A guy at the car lot helped me push it out. It was between 11 and 12 when I dropped them off. I walked to the Circle K and used the store's

phone. I called Vonda for a ride. I had Javier's cellphone. It has been on the back seat. I took it when I walked to the store. It was locked so I could not call out. Javier's phone rang and it showed bro or my brother. I answered it. It was David. David asked where you at? I told him my car broke down. He said over and over come get me. I asked where are you at? What have you done. He did not answer, but tried to describe where he was at. I could not understand. Vonda bought me money to get gas. I got gas at Circle K and drove back to the apartments in Graniteville. Monique, Crystal, Devon Jones were at the entrance to the apartment. Phillip and Jelani showed up later. People were accusing me saying I was the getaway driver. I said hell no and got scared. I drove Jelani's cadillac to Dexter Arms and Jelani drove my tahoe to Dexter Arms. I drove my tahoe to David's granmothers and learned what happened to David. In March 2009 my tahoe got hit on the driver's side by Shanta. After the robbery I put the tahoe in Kelly's Paint and Body in Aiken repairs. Her Nationwide Insurance paid for and enterprise rental car a silver Ford Focus, three days after the robbery. TR. TR. page 163, lines 7-2; TR. TR. page 164, lines 1-25 and TR. TR., page 165, lines 1-5.

The Court: clean copy please. Not one that's highlighted. Whereupon defendants (BROWN) exhibit No: 4 was marked for identification only. Q:... I am handing you whats been marked as defendant's exhibit No: 4 Brown. Do you recognize that?

A:.. Yes. Q:.. Is that the statement you signed on March 12, 2010. A:.. yes. TR. TR. page 195, lines 4-13. The Court: time out. Walk up here and make sure it's right Mrs Brown you put it in. Mrs Brown your honor I would object. This is the statement as was presented. I would object to the statement being read in its entirety as it does contain inadmissible hearsay. The Court: well Mrs Brown you're the one who put it in the record. Overruled. Mrs Brown your honor I did not introduce it as evidence. The Court: you certainly did. Mrs. Brown, no your honor. I had it marked for identification purposes. I did not introduce it as evidence. The Court, you may read it. Mr. Routzong: I join in that objection. The Court: thank you. Candice Bryany stated on the day of the robbery at Security (TR.TR. page 197, lines 8-25) Federal. The Court: hold on. You have read it more distinct than that. On the day of the robbery at Security Federal Graniteville, Artrell Hickson, Javier Hickson and David Kearse came to my cousins, Beatriz Wright's apartment. They were in a white ford focus. A dark skinned girl was driving. She worked -- she -- it was thought that she worked at Walmart on the southside. They were talking to Beatriz's boyfriend Stanley. After a while they left. Stanley remained. He and Beatriz took Stanley home to new Ellenton. We came back and saw the police who told us the bank had been robbed. Sabrina Oakman drove her black tahoe and asked if Stanley knew where David was. We told her we had taken him to New Ellenton. Big phil and Daven were at Kalmia apartment saying.

them boys done robbed the bank I think. I saw a white ford focus. Phil and Devon were at the entrance to Kalmia Apartments. Sabrina kept calling Artrell's cellphone because David had it because big Phil said David had the phone. Sabrina kept saying David is in a storage in the woods. Sabrina was crying and said she was here to find him and pick him up. Sabrina and Artrell

_____ Javier along with Devon. Beatrice told me that Artrell, Javier and David were trying to get Stanley to rob the bank with them. Beatrice said Stanley told me this. Artrell dated a girl at Walmart on the southside. The girl was thought to be in the white ford focus. TR. TR. page 198, lines 1-25 and TR. TR. page 199, lines 1-5.

10(i):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel failing to fully and completely cross-examine cooperating witness _____ concerning charges that were dismissed as part of his plea agreement with the State and the minimum and maximum penalties he would have faced for those offenses.

11(i):...

10(j):.. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to MOTION FOR RECONSIDERATION of his sentence where cooperating witness _____ received a lesser sentence following his testimony against the applicant; thereby, giving rise to the inference that this witness may have been lead to expect far greater potential benefit from his cooperation than the jury could reasonably have anticipated.

11(j):..

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT
)
)

2013-CP-02-1146

Javier Hickson, #306715,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief filed May 20, 2013, 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 Aiken County Clerk of Court. The Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury for Armed Robbery (2009-GS-02-2291) and at the April 2010 term of the Aiken County Grand Jury for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime (2010-GS-02-0679). Michael Routzong, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was found guilty, and on September 22, 2010, Applicant was sentenced to twenty-eight years imprisonment for Armed Robbery and five years imprisonment for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime with all sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jerry M. Screen, Esquire. The South Carolina Court of Appeals affirmed the Applicant's

conviction and sentence. State v. Hickson, Op. No. 2012- UP- 661 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial transcript. 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 trial counsel.
 - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
 - b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
 - c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."

- d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial.
- e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."
- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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 trial 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.

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).

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2013-CP-02-1146

JAVIER HICKSON, 306715,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

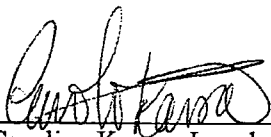
STATE OF SOUTH CAROLINA,)

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:

Lance S. Boozer, Esquire
 The Boozer Law Firm, LLC
 602 Meeting Street, Suite A
 West Columbia, SC 29169

DATED this 28th day of June, 2013.


 Caroline Kaiser, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2013-CP-02-1146
	)	
Javier Hickson, #306715,	)	
	)	
Applicant,	)	
	)	AMENDMENT TO PRIOR PCR
v.	)	APPLICATION
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claims and amendments to his prior application for post-conviction relief filed May 20, 2013:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(h) "Although counsel made an objection to Bryant's statement coming into evidence, see Tr. p. 197, lines 14-15, yet counsel never introduced Bryant's statement into evidence but rather only had it marked for identification purposes. See Tr. p. 197, lines 16-21; pg. 258, lines 2-10, confirmed by the court reporter at trial judge's request. Counsel prejudiced me when he failed to make a contemporaneous objection. Nor did counsel get a ruling on his objection. Both errors denied me proper appellate review upon the merits."

(d-1 and f) "Counsel prejudiced me when he failed to investigate or call my alibi witness Mr. Charles Smalls"

"Counsel further prejudiced me when he failed to investigate or call Mr. Tommy Parker upon my behalf."

"Counsel prejudiced my whole case by calling my alibi witnesses, knowing that the State was going to rely on this alleged co-defendant(s) theory/lies."

Appellate counsel failed to file a Motion for Rehearing following the Court of Appeals' decision.

Appellate counsel failed to raise the issue that Investigator Savell had not been qualified as an expert in facial recognition.

Trial counsel failed to object to improper jury instructions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LSB", is written over a horizontal line.

Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

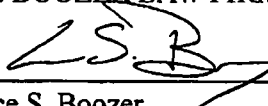
Columbia, South Carolina
March 12, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2013-CP-02-1146
	)	
Javier Hickson, #306715,	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE BY MAIL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior PCR Application upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
March 12, 2015

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2013-CP-02-01146

3
4 JAVIER HICKSON,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Tuesday, May 19, 2015

11 Aiken, South Carolina

12
13
14 BEFORE:

15 THE HONORABLE TANYA A. GEE

16
17
18 APPEARANCES:

19 Counsel on Behalf of the Applicant:

Lance S. Boozer, Esq.

20 Counsel on Behalf of the Respondent, State of SC:

21 Daniel F. Gourley, II, Esq.

22
23 Cheri L. Young, RPR
Circuit Court Reporter
P O Box 5232
24 Aiken, SC 29803-5232
25

EXAMINATION INDEX

JAVIER HICKSON

DIRECT BY MR. BOOZER

6

CROSS BY MR. GOURLEY

28

MICHAEL ROUTZONG

DIRECT BY MR. BOOZER

34

CROSS BY MR. GOURLEY

56

EXHIBIT INDEX

Applicant's	MAR	ADM
1 Statement of Charles Smalls	38	38
2 Statement of Tommy Parker	43	43

1 ON TUESDAY, MAY 19, 2015 AT 9:49 A.M.:

2 THE COURT: Mr. Gourley, do you want to
3 call the next case?

4 MR. GOURLEY: Yes, Your Honor.

5 This is going to be Javier Hickson versus
6 the State of South Carolina, Docket Number
7 2013-CP-02-1146.

8 He's presently confined in the South
9 Carolina Department of Corrections pursuant to
10 orders of commitment of the Aiken County Clerk of
11 Court. He was true bill indicted at the December
12 2009 term of the Aiken County Grand Jury for
13 armed robbery, and at the April 2010 term of the
14 Aiken County Grand Jury for possession of a
15 firearm during the commission of or attempt to
16 commit a violent crime.

17 Mr. Routzong represented him. He proceeded
18 to a jury trial before the Honorable Doyet A.
19 Early the Third and was found guilty. And on
20 September 22nd, 2010, he was sentenced to 28
21 years imprisonment for armed robbery and five
22 years imprisonment for possession of a firearm
23 during the commission of or attempt to commit a
24 violent crime. Those sentences were running
25 concurrently.

1 Timely notice of appeal was filed on
2 Applicant's behalf. Mr. Screen perfected the
3 appeal. South Carolina Court of Appeals affirmed
4 the Applicant's conviction and sentence and the
5 remittitur was issued on February 11th, 2013.

6 Subsequently filed an application for PCR,
7 on May 20th, 2013, alleging ineffective
8 assistance of counsel. He additionally filed an
9 amended application, Your Honor, on March 12th,
10 2015, alleging additional grounds of ineffective
11 assistance of counsel and ineffective assistance
12 of appellate counsel.

13 Your Honor, the State filed its return on
14 June 28th, 2013, and he is here today represented
15 by Mr. Boozer.

16 THE COURT: All right. Mr. Boozer?

17 MR. BOOZER: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. BOOZER: Judge, we'd go ahead and call
20 Mr. Hickson to the stand.

21 THE COURT: All right. Mr. Hickson, if you
22 could step forward and be sworn in, please.

23 THE APPLICANT: Yes, ma'am.

24 JAVIER HICKSON, having been duly sworn, was
25 examined and testified as follows:

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1 THE CLERK: Please have a seat in the
2 witness box and state your full name for the
3 Court.

4 THE APPLICANT: My name's Javier Hickson.

5 THE COURT: Go ahead, Mr. Boozer.

6 DIRECT EXAMINATION

7 BY MR. BOOZER:

8 Q. Mr. Hickson, how are you doing today?

9 A. I'm doing fine.

10 Q. If you would for me, just let's make sure that you
11 speak up and speak slowly and clearly so everyone can
12 hear you and so Madam Court Reporter can take down
13 everything you're saying. Okay?

14 A. Yes, sir.

15 Q. Mr. Hickson, do you know why you're here today and
16 what you filed to get you here to court today?

17 A. Yes, sir. Ineffective assistance of counsel.

18 Q. Okay. And you filed that through what's called a
19 post-conviction relief application?

20 A. Yes, sir.

21 Q. All right. And you understand that you were
22 convicted at trial of armed robbery and got a 28-year
23 sentence along with a conviction for possession of a
24 weapon.

25 You understand that the only thing that this Court

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1 can do today is give you a new trial on your original
2 charges, or may grant a belated appeal or something to
3 that effect. This Court can't reduce your sentence or
4 cut your time or let you out early or anything like
5 that. You understand that, right?

6 A. Yes, sir.

7 Q. And knowing all of that, do you still wish to go
8 forward?

9 A. Yes, sir.

10 Q. Okay. Now, who was your trial attorney?

11 A. Michael Routzong.

12 Q. Was he appointed or was he retained in your case?

13 A. He was appointed.

14 Q. Do you know when he was appointed to represent you?

15 A. July.

16 Q. Of what year?

17 A. 2009.

18 Q. 2009. And when was your trial?

19 A. 2010.

20 Q. Was it in September of 2010?

21 A. Yes, sir.

22 Q. Okay. During that time, how many times did you
23 meet with your lawyer?

24 A. Twice.

25 Q. You met twice?

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- 1 A. Yeah. Twice.
- 2 Q. Did you ever bond out?
- 3 A. Yes, sir.
- 4 Q. Okay. You did. Where would you meet with him?
- 5 A. When I bond out?
- 6 Q. Uh-huh.
- 7 A. At his office.
- 8 Q. Okay. What would you guys talk about at his
- 9 office?
- 10 A. We on certain times went over my case and stuff.
- 11 And he was telling me about, that he had talked to the
- 12 solicitor and the solicitor ain't had -- they were going
- 13 over my case and so he had showed me, like, the video and
- 14 stuff. And we were going over that and he ain't had
- 15 nothing.
- 16 Q. You're saying he didn't have anything?
- 17 A. Right.
- 18 Q. You're saying he thought it was a good case for
- 19 you?
- 20 A. Uh-huh, yeah.
- 21 Q. That was your understanding?
- 22 A. Uh-huh.
- 23 Q. And try to say yes or no. I know it's hard.
- 24 A. Yes, sir.
- 25 Q. Okay. Thank you. So obviously you filed an

JAVIER HICKSON - DIRECT BY BOOZER

1 application for PCR. So let's kind of go through your
2 allegations. Okay?

3 A. Okay.

4 MR. BOOZER: And, Judge, I would ask for a
5 little bit of leeway to kind of frame all of
6 these for the Court.

7 THE COURT: Sure, please. Whatever you
8 need.

9 BY MR. BOOZER:

10 Q. Mr. Hickson, you got a few allegations that are
11 regarding ineffective assistance of counsel regarding
12 your arrest warrants; is that right?

13 A. Yes, sir.

14 Q. Okay. And one of those specifically is that you've
15 alleged in the amended application that counsel failed to
16 file a motion to quash the indictments because you felt
17 that the affidavits in support of each warrant were
18 conclusory?

19 A. Yes, sir.

20 Q. And we'll kind of take these as a group. And I'm
21 going to let you talk about them in just a second, okay,
22 but I want to get these on the record for you. You've
23 also got under that same kind of claim that counsel
24 failed to suppress during pretrial evidence emanating
25 from the arrest warrants for armed robbery and possession

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1 of a weapon because, again, you felt that they were
2 conclusory?

3 A. Yes, sir.

4 Q. All right. And then you also have a third one
5 along that same vein, that counsel failed to file a
6 motion to dismiss the armed robbery and possession of a
7 weapon arrest warrants because, again, you felt that they
8 were conclusory and failed to establish probable cause;
9 is that right?

10 A. Yes, sir.

11 Q. Explain in a little bit of detail if you can what
12 you mean by those allegations.

13 A. By that -- I got my paper.

14 Q. Or, if that's what you mean by them. Maybe you
15 just, you felt that he should have made some sort of
16 motion -- Your Honor, may I approach with his package of
17 documents?

18 THE COURT: Yes. Absolutely.

19 MR. BOOZER: Thank you.

20 (Documents handed to the witness.)

21 THE APPLICANT: I don't have it with me.

22 BY MR. BOOZER:

23 Q. Mr. Hickson, let me help you out. Those
24 allegations, do you feel that just those arrest warrants
25 were not sufficient to, I guess, get you before the

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1 Court; is that right?

2 A. Right.

3 Q. Okay. And you feel your lawyer should have done
4 something about that?

5 A. Right.

6 Q. And did he do anything?

7 A. No.

8 Q. Okay. Let's move forward a little bit. What was
9 your defense at trial?

10 A. I ain't had no defense. He didn't call my defense.

11 Q. Okay. Well, was it attacking 'this wasn't you'?

12 A. Right.

13 Q. That you weren't there?

14 A. Uh-huh.

15 Q. Okay.

16 A. Yes, sir.

17 Q. Okay. And let me ask you this: Did you ever ask
18 your lawyer to investigate any, any witnesses on your
19 behalf, any alibi witnesses?

20 A. Yes, sir.

21 Q. And you got an allegation that your lawyer wasn't
22 effective for failing to investigate and call a couple of
23 witnesses. Who were those witnesses?

24 A. Charles Small and Thomas Parker.

25 Q. And who are Mr. Smalls and Mr. Parker?

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1 A. Charles Small, he a friend of Thomas Parker and
2 Thomas Parker is my uncle.

3 Q. Say that one more time for me.

4 A. Charles Small, he a friend to the family and Thomas
5 Parker is my uncle.

6 Q. All right. So you got a friend of the family and
7 then your uncle?

8 A. Yes, sir.

9 Q. Did you ask him to investigate those folks?

10 A. Yes, sir.

11 Q. Do you know if he did?

12 A. Really, I don't -- yes.

13 Q. Okay. To your knowledge he did investigate those
14 folks?

15 A. Yes.

16 Q. Okay. And did he ever call those folks as
17 witnesses at your trial?

18 A. No, sir.

19 Q. Well, tell me this. What was your understanding of
20 his investigation of those witnesses? What was it that
21 you thought that they would have said?

22 A. They would have said I was there with them.

23 Q. That you were there with them?

24 A. Yes, sir.

25 Q. On the day that the crime occurred?

JAVIER HICKSON - DIRECT BY BOOZER

1 A. Yes, sir.

2 Q. Okay. And Mr. Routzong never called those folks to
3 your trial?

4 A. No, sir.

5 Q. All right. Now you've also got -- did you testify
6 at your trial?

7 A. No, sir.

8 Q. You've also got a claim that your lawyer was
9 ineffective for failing to advise you of the pros and
10 cons of offering testimony at trial, and then negligently
11 advising you not to testify; is that right?

12 A. Uh-huh. Yes, sir.

13 Q. And that's still one of your claims?

14 A. Yes, sir.

15 Q. Tell the Court a little bit about that. What
16 discussions did you have with your lawyer about offering
17 testimony or testifying at trial?

18 A. He say the best thing for me to do not to testify.
19 And if I do then they bring up my prior record.

20 Q. Okay. And is that all he said?

21 A. Yeah. That's it.

22 Q. Okay. Did you want to testify?

23 A. No, sir.

24 Q. You didn't want to testify?

25 A. No, sir.

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1 Q. Okay. Now, you've also got that trial counsel
2 failed to request a Neal v. Biggers hearing due to the
3 alleged victim having never identified you in a photo
4 lineup prior to the arrest.

5 A. Yes, sir.

6 Q. Explain to the Court what you mean by that.

7 THE COURT: Can you repeat that? I'm
8 sorry.

9 MR. BOOZER: Absolutely, Your Honor.

10 Q. Your allegation is that trial counsel failed to
11 request a Neal v. Biggers hearing due to the alleged
12 victim having never identified you in a photo lineup.
13 And that's the allegation you made, Mr. Hickson?

14 A. One minute. (Looking through papers.) Can you
15 repeat that?

16 Q. Okay. That's one of your allegations, correct?

17 A. Yes, sir.

18 Q. Okay. And did your lawyer make that request for
19 any sort of hearing like that?

20 A. No, sir.

21 Q. Do you feel that he should have done that?

22 A. Yes, sir.

23 Q. Okay. Now, this is a little bit of a very specific
24 allegation. You had a couple of folks that testified --
25 and I don't say you had a couple folks but some folks

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1 testified at your hearing or at your trial by the name of
2 Sabrina Oakman and Candace Bryant; is that right?

3 A. Yes, sir.

4 Q. And specifically if you would, tell the Court what
5 you thought your lawyer should have done with regard to
6 Ms. Bryant and Ms. Oakman.

7 A. He should have -- he should have investigate them
8 and ask them questions and stuff, cross-examine.

9 Q. Okay. What is it that happened? Were some
10 statements read before the jury that Ms. Oakman and
11 Ms. Bryant had given?

12 A. Yes, sir.

13 Q. And were they objected to, or what happened?

14 A. Yes, sir.

15 Q. Well, what happened with those statements; do you
16 recall?

17 A. My lawyer had objected to it. The Court overruled
18 it.

19 Q. Okay. He objected to it but the Court eventually
20 overruled that?

21 A. Yes, sir.

22 Q. Now did you have -- were there some folks that were
23 involved in your case as co-defendants that actually
24 ended up testifying at your trial?

25 A. Huh?

JAVIER HICKSON - DIRECT BY BOOZER

1 Q. Were there people that were defendants or
2 co-defendants that ended up testifying in your case?

3 A. Yes, sir.

4 Q. And who were they?

5 A. David Kearse and Randy Wilson. David Kearse.

6 MR. BOOZER: Judge, I believe that's
7 Kearse, K-E-A-R-S-E.

8 THE COURT: Okay.

9 THE WITNESS: And Randy Wilson.

10 BY MR. BOOZER:

11 Q. Do you know if they had any plea deals prior to
12 their testimony?

13 A. No, sir.

14 Q. Did you want your lawyer to investigate that?

15 A. Yes, sir.

16 Q. Do you feel that he did?

17 A. No, sir.

18 Q. Today are you aware of any sentences that they
19 received?

20 A. No, sir.

21 Q. Well, let me ask you this. Are they presently
22 incarcerated?

23 A. No, sir.

24 Q. They're not?

25 A. No. One of them, one of them not. David Kearse is

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1 not.

2 THE COURT: Kearse is not?

3 THE WITNESS: Yeah.

4 THE COURT: Kearse is not.

5 THE WITNESS: Right. And Wilson is, Randy

6 Wilson, Your Honor.

7 BY MR. BOOZER:

8 Q. And, Mr. Kearse, {sic} if the clerk of court's
9 record reflected that Mr. Kearse got a YOA sentence,
10 would you agree with that if that's what the clerk of
11 court's records say?

12 A. Yes, sir.

13 Q. Okay. And do you feel through his cross-
14 examination he should have tried to discover that
15 information if there was a deal?

16 A. Yes, sir.

17 Q. Now, you've also got a claim that your lawyer
18 failed to file a motion to reconsider your sentence after
19 this. Is that a claim that you have?

20 A. Yes, sir.

21 Q. All right. Did you ever ask your lawyer following
22 this trial to file a motion to reconsider?

23 A. No, sir.

24 Q. Okay. Well, would you -- did he even discuss that
25 with you?

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1 A. No, sir.

2 Q. And what's your understanding of what a motion to
3 reconsider your sentence is?

4 A. Have time reduced or time cut.

5 Q. Now you understand that if you file a motion to
6 reconsider there may be a hearing before the sentencing
7 judge to determine if that was, for lack of better words,
8 if that was the appropriate sentence?

9 A. Yes, sir.

10 Q. And maybe try to get the judge to lower the
11 sentence as you just said?

12 A. Yes, sir.

13 Q. And you never had a discussion with your lawyer
14 about that?

15 A. No, sir.

16 Q. All right. You've got another -- and, Judge, we're
17 going to be looking at page 118 to 119 of the transcript.

18 And, Mr. Hickson, there was testimony from an
19 investigator by the name of Savell?

20 A. Yes, sir.

21 Q. Do you recall that?

22 A. Yes, sir.

23 Q. And do you recall what she was there to give
24 testimony about? What was it the State tried to do with
25 that investigator?

JAVIER HICKSON - DIRECT BY BOOZER

1 Mr. Hickson, this may be a little bit easier if I
2 ask you this question. Was there -- this crime allegedly
3 occurred, where, at a bank?

4 A. Yes, sir.

5 Q. This was allegedly a bank robbery?

6 A. Yes, sir.

7 Q. Okay. And there was video surveillance?

8 A. Yes, sir.

9 Q. All right. Now, Investigator Savell when she was
10 called, if you recall, on page 119 of the transcript, she
11 was there to testify and they actually --

12 A. Excuse me. Excuse me. He a guy. He ain't no
13 lady.

14 Q. Okay. He. Excuse me. Investigator Savell came in
15 to testify and he was basically asked to be -- on page
16 118, and I'm reading from the transcript. This is line
17 22. Now, this particular bank robber's face is mostly
18 covered. Do you have any observations about the
19 characteristics as to his facial features. And he
20 responds, the investigator responds: The eyebrows are
21 very pronounced; is that right?

22 A. Yes, sir.

23 Q. And at this point your co-defendant had a lawyer?

24 A. Yes, sir.

25 Q. And who was your co-defendant's lawyer, if you

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1 remember?

2 A. Chandler. Chandler. I forgot his last name.

3 Chandler?

4 Q. Was there a Mrs. Brown?

5 A. Oh. Talking about my brother lawyer?

6 Q. Right.

7 A. Oh. Kelley Brown.

8 Q. And --

9 A. Oh. Kelley Brown, Your Honor.

10 Q. -- Ms. Brown, on line 19, she actually objects to
11 this. And she says: Objection, Your Honor, calls for
12 speculation on the witness. He's not been qualified as
13 an expert in facial recognition. I think the photographs
14 speaks for itself for the jury. And your lawyer then
15 says, I join in that objection, but the Court overrules
16 it; is that right?

17 A. Yes, sir.

18 Q. Okay. Now, again, after that the Court overrules
19 the objection, Investigator Savell is then allowed to
20 testify even further about those characteristics, facial
21 characteristics?

22 A. Yes, sir. Through page 120, line four.

23 Q. Okay.

24 A. 19 through 129 where he kept going.

25 Q. Okay. And what is it about that testimony that you

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1 think your lawyer should have done? Is your allegation
2 saying that your lawyer should have continued to object
3 to this testimony rather than just making one objection?

4 A. Yes, sir.

5 Q. Okay. Did your lawyer continue to object?

6 A. No, sir.

7 Q. All right. Let me ask you another question. Do
8 you recall that there was obviously some jury
9 instructions given by the judge, correct?

10 A. Yes, sir.

11 Q. All right. And looking at page -- Judge, I'm going
12 to 310 of the transcript.

13 THE COURT: Okay.

14 MR. BOOZER: And I'm looking at, beginning on line
15 18.

16 THE COURT: Okay.

17 BY MR. BOOZER:

18 Q. Mr. Hickson, and I'm just going to read this into
19 the record. This is from the transcript. During the
20 judge's charge it says: The punishment for the crime is
21 a matter for me to determine and should never be
22 considered by you in any way whatsoever in arriving at a
23 fair and impartial verdict in this case.

24 Did you recall the judge giving that instruction?

25 A. Yes.

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1 Q. Okay. And did your lawyer make any sort of
2 objection to that instruction?

3 A. No, sir.

4 Q. Okay. And do you feel that he should have?

5 A. Yes, sir.

6 Q. Do you feel that that instruction with the language
7 of fair and impartial prejudiced your trial?

8 A. Yes, sir.

9 Q. Now we've covered quite a few issues so far. Is
10 there anything that we have not been over yet that you
11 want to bring to the Court's attention regarding your
12 allegations?

13 A. Yes, sir.

14 Q. Okay. And what would that be?

15 A. I thought counsel had made a objection to grant a
16 statement called into evidence. See page 197, Your
17 Honor, line 14 and 15.

18 THE COURT: Okay. Just one second. Let me
19 get there.

20 MR. BOOZER: You're talking -- this is
21 talking about Bryant's statements coming in?

22 THE APPLICANT: Yes, yes, sir.

23 MR. BOOZER: Okay. Court's indulgence,
24 Your Honor.

25 (Pause.)

JAVIER HICKSON - DIRECT BY BOOZER

1 Q. Okay. So basically this is one of your amended
2 allegations, right?

3 A. Yes, sir.

4 Q. So, and what you originally allege was that
5 although counsel made an objection here on 197 to
6 Ms. Bryant's statement coming into evidence, that
7 statement was really never introduced into evidence, was
8 it?

9 A. Yeah.

10 Q. Okay.

11 A. No, no, no, sir. No, no, Your Honor.

12 Q. Right. It had only been marked for identification;
13 is that right?

14 A. Yes, sir.

15 Q. Okay. But later on on page 258.

16 THE COURT: Okay.

17 THE APPLICANT: You want me to read it,
18 Your Honor?

19 THE COURT: On page 258. I'm there.

20 BY MR. BOOZER:

21 Q. Go ahead, Mr. Hickson.

22 A. On page 258.

23 Q. And read slowly.

24 A. Okay. On 258 line two through 10 performed by the
25 court reporter at the trial judge request. Counsel

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1 prejudiced me when he failed to make a constant
2 objection, neither did counsel get a ruling on his
3 objection, Your Honor. Both error denied me proper
4 appellate review upon the amendment.

5 Q. Okay. And what we're talking about is back on
6 197 --

7 A. Right.

8 Q. -- the statement was never really introduced into
9 evidence, right?

10 A. Right. Yes, sir.

11 Q. And your co-defendant, your brother, her {sic}
12 lawyer said, Your Honor -- and this is back on 197.

13 A. Your Honor --

14 THE COURT: Uh-huh.

15 BY MR. BOOZER:

16 Q. The statement is as was presented, I would object
17 to the statement being read in its entirety as it does
18 contain inadmissible hearsay. And the Court says, well,
19 Ms. Brown you're the one who put it on the record.
20 Overruled.

21 And Ms. Brown says, well, Your Honor, I
22 introduced it as evidence -- I didn't introduce
23 it as evidence. The Court says: You certainly
24 did. Ms. Brown says: No, Your Honor, I had it
25 marked for ID. I did not introduce it as

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1 evidence. The Court says: You may then read
2 it. And your lawyer says, I join in that
3 objection. Thank you.

4 There was no further ruling on that; is
5 that correct?

6 THE WITNESS: Right. Yes, sir.

7 THE COURT: What page were you just reading
8 from?

9 MR. BOOZER: I'm sorry, Your Honor. I
10 should have jumped back.

11 THE COURT: I'm on 258 but I think you
12 jumped back to 197.

13 THE APPLICANT: 197.

14 MR. BOOZER: I jumped back to 197.

15 THE COURT: That's okay. I just want to
16 make sure that I'm following you.

17 THE APPLICANT: Yeah, 197.

18 THE COURT: And then it comes up again on
19 258.

20 THE APPLICANT: Yes, sir -- yes, ma'am,
21 Your Honor.

22 THE COURT: Continue.

23 MR. BOOZER: Court's indulgence.

24 THE COURT: Sure.

25 BY MR. BOOZER:

JAVIER HICKSON - DIRECT BY BOOZER

1 Q. Mr. Hickson, other than that claim that we've just
2 gone through, are there any other allegations that we've
3 not covered?

4 A. Yes, sir. Ineffective appellate counsel.

5 Q. I'm sorry?

6 A. Ineffective appellate counsel.

7 Q. Okay. Now, you had an appeal in this case; is that
8 right?

9 A. Yes, sir.

10 Q. And who was your appellate lawyer?

11 A. Jerry M. Screen.

12 Q. Jerry Screen?

13 A. Yes, sir.

14 Q. Did you hire Mr. Screen to represent you?

15 A. Yes, sir.

16 Q. What is your allegation against Mr. Screen?

17 A. Here, Your Honor, counsel, Jerry M. Screen, failed
18 to provide a motion for a rehearing to the Supreme Court
19 when the Court of Appeals misunderstood the issue
20 raised. The trial court submitting reversible error when
21 it allowed, read the statement into evidence over
22 counsel's objection and read it on intelligent hearsay,
23 writing the statement into the record before the jury and
24 the trial court submitting reversible error where the
25 trial judge had reversed its decision and was the

JAVIER HICKSON - DIRECT BY BOOZER

1 commission of a legal errors and prejudice me, Your
2 Honor.

3 Q. All right. So you feel that your appellate
4 lawyer -- obviously your appeal was denied?

5 A. Right.

6 Q. Did Mr. Screen ever file for, a motion for
7 rehearing?

8 A. No, sir.

9 Q. Do you feel that he should have to go back and
10 review the issues that the Court may -- that you feel the
11 Court may have missed?

12 A. Yes, sir.

13 Q. And he didn't do that?

14 A. No, sir.

15 Q. And that's one of your claims against Mr. Screen.
16 Is that the only claim you have against Mr. Screen?

17 A. Yes, sir.

18 Q. Any other issues that we've not reviewed?

19 A. No, sir. That's it.

20 MR. BOOZER: Your Honor, at this time I
21 don't have any further questions of Mr. Hickson.

22 THE COURT: All right. Mr. Gourley?

23 MR. GOURLEY: Thank you, Your Honor.

24

25

JAVIER HICKSON - CROSS BY GOURLEY

CROSS-EXAMINATION

BY MR. GOURLEY:

Q. Mr. Hickson, you said you met with your attorney twice?

A. Yes, sir.

Q. Okay. And when did you get out on bond?

A. I got out on bond October 2009.

Q. Okay. And your trial was September of 2010?

A. Yes, sir.

Q. Okay. And you met with Mr. Routzong at his office?

A. Yes, sir.

Q. Okay. Your first allegation is: Counsel failed to file a motion to squash {sic} the arrest warrants and the arrest warrants were conclusory, so on and so forth.

Right?

A. Yes, sir.

Q. Did you all have a preliminary hearing?

A. No, sir.

Q. No preliminary hearing?

A. No, sir, no.

Q. But you were true bill indicted, right?

A. Yes, sir.

Q. Okay. Regarding your defense at trial you stated that your counsel didn't put up any defense?

A. Yes, sir.

JAVIER HICKSON - CROSS BY GOURLEY

1 Q. Okay. Did y'all have any discussions about that or
2 any reason why y'all didn't call a defense?

3 A. Not really. The only thing he told me that it
4 wouldn't be no use to call. I asked him why. He ain't
5 say no --

6 Q. What?

7 A. I asked him why. He didn't answer nothing about
8 it.

9 Q. Okay. Regarding these alibi witness, Charles
10 Smalls and Tony Parker?

11 A. Thomas Parker.

12 Q. Thomas Parker?

13 A. Yes.

14 Q. Okay. Are they here today?

15 A. No, sir.

16 Q. Okay. But your attorney did look into those
17 witnesses?

18 A. Yes, sir.

19 Q. He just didn't call them?

20 A. Yes, sir.

21 Q. Did he ever tell you why he didn't call them?

22 A. No, sir.

23 Q. Okay. Regarding your right to testify at trial, do
24 you recall the Court advising you of your right to
25 testify?

JAVIER HICKSON - CROSS BY GOURLEY

1 A. Yes, sir.

2 Q. And you told the Court that you did not want to
3 testify, right?

4 A. Yes, sir.

5 Q. Okay. The Neal v. Biggers stuff, you were never
6 identified by any of the victims, correct?

7 A. No, sir.

8 Q. All right. The failure to investigate into Sabrina
9 Oakman and Candace Bryant. Both of those witnesses
10 testified at trial for the State, right?

11 A. Yes, sir.

12 Q. And Sabrina Oakman was your co-defendant's
13 girlfriend?

14 A. Yes, sir.

15 Q. And then Candace Bryant just happened to live at
16 the Camellia Apartments?

17 A. That's her cousin.

18 Q. Cousin?

19 A. Yes, sir.

20 Q. Okay. And just for the Judge's background the
21 Camellia Apartments was what the State alleged was kind
22 of the gathering point or the launching off point going
23 into this armed robbery. Right?

24 A. Yes, sir.

25 THE COURT: Is Bryant his cousin or

JAVIER HICKSON - CROSS BY GOURLEY

1 Oakman's cousin?

2 THE APPLICANT: Oakman.

3 THE COURT: The co-defendant's girlfriend
4 is Oakman and Bryant is the cousin of the
5 girlfriend. Got it.

6 MR. GOURLEY: Yes, Your Honor.

7 Q. What did you feel like Mr. Routzong should have
8 looked into?

9 A. He should have investigate the case.

10 Q. In what way?

11 A. He should have went to investigate those witness
12 and stuff.

13 Q. Okay. But you would agree with me he cross-
14 examined them?

15 A. Let me go back and see.

16 Q. Now if he didn't, I apologize. He did not cross-
17 examine Mr. Bryant. I believe he cross-examined Sabrina
18 Oakman.

19 I'll withdraw that question, Your Honor.

20 THE COURT: Okay.

21 BY MR. GOURLEY:

22 Q. Regarding the failure to file a motion for
23 reconsideration, Mr. Hickson, you stated that you did not
24 ask your attorney to file a motion for reconsideration?

25 A. No, sir.

JAVIER HICKSON - CROSS BY GOURLEY

1 Q. Okay.

2 Beg the Court's indulgence, Your Honor.

3 THE COURT: Sure.

4 (Pause.)

5 BY MR. GOURLEY:

6 Q. And you stated in regards to Investigator Savell
7 that your defense counsel did object to the fact that he
8 was allowed to talk about the characteristics of your
9 facial features?

10 A. Repeat that.

11 Q. Mr. Routzong did object to Mr. Savell, Investigator
12 Savell being able to discuss your facial features, right?

13 A. Let's see.

14 Q. Page 119.

15 A. 119?

16 Q. Yes, sir.

17 A. Yeah. Yes, sir.

18 Q. Okay. And you just felt like he should have
19 continually objected time after time?

20 A. Yes, sir.

21 Q. Okay. Regarding Candace Bryant's statements coming
22 into evidence, you did have an appeal in this case,
23 right?

24 A. Yes, sir.

25 Q. And Mr. Screen did raise this issue on appeal?

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1 A. Yes, sir.

2 Q. And the Court found that that was harmless error,
3 essentially, that maybe the judge shouldn't have let it
4 in because it was hearsay evidence.

5 A. Yes, sir.

6 Q. But that the error was harmless because of the
7 overwhelming evidence against you, right?

8 A. Yes, sir.

9 Q. Okay.

10 MR. GOURLEY: Your Honor, that's all I
11 have. Thank you, Mr. Hickson.

12 THE COURT: All right. Any redirect?

13 MR. BOOZER: No redirect, Your Honor.

14 THE COURT: All right. You may step down.
15 Thank you very much.

16 THE WITNESS: Thank you.

17 THE COURT: All right. Mr. Boozer, any
18 additional witnesses?

19 MR. BOOZER: Yes, Your Honor. We'll
20 actually call his trial counsel, Michael
21 Routzong, to the stand.

22 THE COURT: Okay.

23 MICHAEL ROUTZONG, having been duly sworn,
24 was examined and testified as follows:

25 THE CLERK: Please have a seat in the

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1 witness box and state your full name for the
2 Court.

3 THE WITNESS: Yes, ma'am. Michael
4 Routzong. R-O-U-T-Z-O-N-G.

5 THE COURT: Go ahead.

6 MR. BOOZER: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. BOOZER:

9 Q. Mr. Routzong, how are you?

10 A. Fine, sir.

11 Q. Good. As you're aware, I'm Mr. Hickson's lawyer
12 for his PCR in this case. Okay?

13 A. Yes, sir.

14 Q. I just want to ask you a few questions. Were you
15 appointed or retained in this case?

16 A. Appointed.

17 Q. Do you know how many times, you've heard
18 Mr. Hickson's testimony, how many times you met with him
19 prior to trial?

20 A. Not exactly but I think it's at least, at least
21 two, like he said.

22 Q. At least two?

23 A. Yes, sir.

24 Q. Do you think it was more than two?

25 A. I feel like it was more but I don't -- I can't

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1 answer that question specifically. It wasn't -- it was
2 probably less than five. Between two and five, something
3 like that.

4 Q. Is that a typical amount of time you would spend
5 meeting with a client with these type of charges?

6 A. I don't know that I can answer anything as being
7 typical because it really is case dependent.

8 Q. Well, let me ask you this. Did you feel that you
9 had a sufficient amount of time to meet with Mr. Hickson
10 prior to trial?

11 A. Yes, sir.

12 Q. Okay. Tell me about your discussions with
13 Mr. Hickson prior to trial and what your strategy was in
14 this case.

15 A. I actually, because the case lingered so long I
16 think I actually wondered if a plea bargain would come
17 our way. Normally I look for things like that. I think
18 more than anything else it was just whenever -- if plea
19 bargains weren't going to come our way it was just a
20 matter of waiting for the State to let us know they were
21 going to call it for trial.

22 Q. Was there ever a plea offer in this case?

23 A. I don't recall there being but I'm not sure. There
24 may have been. There usually is.

25 Q. Now, you've heard his initial allegations regarding

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1 arrest warrants that he feels you should have moved to
2 either suppress or dismiss or quash as he thought that
3 they were conclusory or didn't establish probable cause.
4 Did you have any discussion with him regarding the arrest
5 warrants or anything of that nature?

6 A. I don't recall having any discussions with
7 Mr. Hickson although a lot of times my clients will find
8 errors in spelling or dates or something like that, it
9 might have been something like that with Mr. Hickson, but
10 I definitely didn't discuss anything that I recall about
11 the indictments being conclusory.

12 Q. Now you've also heard some testimony regarding
13 Mr. Hickson's claim of failure to investigate or call
14 alibi witnesses?

15 A. Yes, sir.

16 Q. Did you have a discussion with Mr. Hickson about
17 some alibi witnesses?

18 A. Yes, sir.

19 Q. And do you recall who those folks were?

20 A. Uncle and I believe uncle's employee or friend. It
21 was, I'm thinking it was employee.

22 Q. Well, let me -- Your Honor, if I may approach the
23 witness?

24 THE COURT: Sure.

25 MR. BOOZER: Thank you.

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1 Q. I'm going to first hand you a document and if you
2 would, could you identify that for me after you've taken
3 a look at it?

4 A. Yes, sir. This is a form that we use in the public
5 defenders office. It's got Mr. Hickson's name at the
6 top. It's witnessed by one of our paralegals,
7 Ms. Walker. And I think that's my handwriting. It looks
8 to me like I wrote that.

9 MR. BOOZER: Okay. And, Your Honor, would
10 the Court like a copy of this?

11 THE COURT: I would, so I can see what
12 everybody else is looking at.

13 BY MR. BOOZER:

14 Q. Mr. Routzong, which one I did hand you, which
15 witness is this?

16 A. Charles Smalls.

17 Q. Okay. (Document handed to the Court.)

18 THE COURT: Thank you.

19 BY MR. BOOZER:

20 Q. And is this -- looking at this document, if you
21 look at the top it says State of South Carolina versus
22 Javier Hickson; is that right?

23 A. Yes, sir.

24 Q. So that's Mr. Hickson's case. That's the trial
25 we're talking about?

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1 A. Yes, sir.

2 Q. And it says statement of Charles Smalls?

3 A. Yes, sir.

4 Q. And date, August 17th, 2009?

5 A. Yes, sir.

6 Q. And time of 9:15 a.m.?

7 A. Yes, sir.

8 Q. And then it has witnessed by -- you may have to
9 help me out on that.

10 A. Loretta Walker.

11 Q. And who is that?

12 A. That's Ms. Alves' paralegal. She might have been
13 my paralegal at that time as well.

14 Q. Okay. And then it says written by Michael Routzong
15 at my request?

16 A. Yes, sir.

17 Q. Is this your handwriting?

18 A. Yes, sir.

19 Q. Okay.

20 Your Honor, at this time I'd move to introduce this
21 as Petitioner's Exhibit One?

22 THE COURT: Okay. Any objection?

23 MR. GOURLEY: No, Your Honor.

24 THE COURT: It's so admitted.

25 MR. BOOZER: Thank you, Your Honor.

MICHAEL ROUTZONG - DIRECT BY BOOZER

1 (Applicant's Exhibit No. 1, statement of

2 Charles Smalls, received into evidence.)

3 BY MR. BOOZER:

4 Q. Mr. Routzong, if we could take a look at this, do
5 you recall the alleged date of this incident?

6 A. Not right off. Not right offhand, no, sir.

7 Q. If I told you the alleged date of this incident was
8 June 25th, 2009, would you agree with that?

9 A. Yes, sir.

10 Q. Do you also recall what time of day this incident
11 was alleged to have occurred?

12 A. I'm sorry?

13 Q. Do you recall what time of day, if it was in the
14 morning or the evening?

15 A. It was in the morning if I recall correctly. Yes,
16 sir.

17 Q. And looking at this if you could, I'm looking --
18 I'm going to go through the statement with you. And it
19 says at 8:35 Mr. Tommy Parker picked me up at my
20 residence. And this is Charles Smalls, right?

21 A. That's correct.

22 Q. Okay. in Aiken. Mr. Parker and I
23 went for coffee and then went to Mr. Parker's sister's
24 house and in parens or in parentheses it has Ms. Beulah
25 Hickson. We picked up Javier and Artrell at

MICHAEL ROUTZONG - DIRECT BY BOOZER

1 approximately nine o'clock. The date was June 25th,
2 2009.

3 So, is this -- you're writing down that Mr. Smalls
4 is telling you they picked up Mr. Hickson and his brother
5 who was his co-defendant at nine o'clock on June 25th,
6 2009?

7 A. That's correct.

8 Q. And after we picked up Javier we went to
9 Mr. Parker's place of business, 154 Brickley Court; is
10 that right?

11 A. Yes, sir.

12 Q. Mr. Parker, Javier, Artrell, took engines apart and
13 cleaned the parts. We separated the bad parts from the
14 good parts. Javier and Artrell were with me and
15 Mr. Parker until 4:30 p.m. until the time I went home; is
16 that right?

17 A. Yes, sir.

18 Q. Okay. Now, is that -- so if they're saying that he
19 was, that Artrell and Javier were with him from nine a.m.
20 until 4:30 p.m. on June 25th, 2009, wouldn't that
21 establish an alibi?

22 A. Yes, sir.

23 Q. Okay. And this was signed at the bottom by Charles
24 Smalls and then of course it looks like there was a
25 notary. Was the notary, is that someone that was with

MICHAEL ROUTZONG - DIRECT BY BOOZER

1 you?

2 A. That appears to be somebody that was working in our
3 office at that time.

4 Q. Did you actually go out and conduct this interview
5 or was this interview done at your office or do you
6 recall?

7 A. Both gentlemen came to my office.

8 Q. Okay. Do you recall specifically meeting with
9 them?

10 A. Yes, sir.

11 Q. All right. And what is taken down on this,
12 although it is the statement of Charles Smalls, it's
13 written by you. Is this what they told you that day?

14 A. Yes, sir.

15 Q. Okay. Now, I'm also going to look at -- Your
16 Honor, if I may approach the witness?

17 THE COURT: Sure.

18 MR. BOOZER: And, Your Honor, I also have
19 one copy for the Court. (Document handed to the
20 Court.)

21 THE COURT: Thank you.

22 BY MR. BOOZER:

23 Q. Have you had a moment to review this document?

24 A. Yes, sir.

25 Q. Okay. And, again, is this kind of a similar sort

MICHAEL ROUTZONG - DIRECT BY BOOZER

1 of form that was used for Mr. Smalls?

2 A. Yes, sir.

3 Q. Looking at the top it says State of South Carolina
4 versus Javier Hickson. That's Mr. Hickson's trial?

5 A. Yes, sir.

6 Q. And it has statement of Tommy Parker. Who's Tommy
7 Parker?

8 A. I think that was his uncle.

9 Q. Okay. And this presumably is the gentleman that
10 was referred to by Mr. Smalls in his statement?

11 A. Yes, sir.

12 Q. And it says the date of August 17th, 2009. So this
13 would have been the date this statement was written?

14 A. Yes, sir.

15 Q. And time of 9:15?

16 A. That's correct.

17 Q. Okay. And then we have the same witness from your
18 office. And then it says, written at the request of
19 Mr. Parker by Michael. And it's cut off a little bit.
20 Is that your name?

21 A. Yes, sir.

22 Q. And is this your handwriting?

23 A. It is.

24 Q. Okay. And then at the bottom it's got signed by
25 Tommy Parker; is that right?

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1 A. Yes, sir.

2 Q. And this is a fair and accurate copy of the
3 statement as you took it?

4 A. I think it is.

5 Q. All right.

6 Your Honor, I would move to have this marked as
7 Petitioner's Exhibit Two.

8 THE COURT: All right. Any objection?

9 MR. GOURLEY: No, Your Honor.

10 THE COURT: All right. Be so entered.

11 MR. BOOZER: Thank you.

12 (Applicant's Exhibit No. 2, statement of
13 Tommy Parker, received into evidence.)

14 BY MR. BOOZER:

15 Q. Just going through this statement, it reads: On
16 June 25th, 2009, I picked up Javier Hickson from my
17 sister's house, Beulah Hickson, on Ramono or Willing
18 Drive in Aiken at nine o'clock. And that's 0900. So
19 presumably that's nine a.m.; is that correct?

20 A. Yes, sir.

21 Q. And June 25th, 2009, is the date that this alleged
22 bank robbery occurred that Mr. Hickson was alleged to
23 have been involved in?

24 A. Yes, sir.

25 Q. It says: Javier wanted to learn auto mechanics and

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1 I agreed to teach him. After I picked him up we went to
2 154 Brickley {sic} Court, Aiken, South Carolina. Also
3 with me was Charles Smalls. I also picked up Artrell
4 Hickson at the same time as I picked up Javier. We,
5 Javier, Artrell, Charles and I, remained at 154 Brickley
6 Court until 1630.

7 So that would be 4:30 in the afternoon?

8 A. Yes, sir.

9 Q. At 1630, 4:30 p.m., Javier, Artrell and I took
10 Charles Smalls to , Aiken, South Carolina,
11 where Mr. Smalls' wife had an appointment and Mr. Smalls
12 had to go home. After we dropped Mr. Smalls off we went
13 to the BP store for sodas and then we returned to 154
14 Berkeley {sic} Court until seven p.m. Javier Hickson and
15 Artrell were with me the entire day. Signed Tommy
16 Parker.

17 And then again we have a notary signed at the
18 bottom; is that right?

19 A. Yes, sir.

20 Q. Are these all the things that Mr. Parker told you
21 on August 17th, 2009?

22 A. Yes, sir.

23 Q. Okay. In looking at this statement as a whole as
24 we said June 25th, 2009, was the date of the alleged
25 incident, correct?

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1 A. Yes, sir.

2 Q. And they're saying they picked up Javier and
3 Artrell at nine a.m.?

4 A. Yes, sir.

5 Q. And that they were with Javier and Artrell until
6 4:30 p.m.?

7 A. Yes, sir.

8 Q. And so is that spanning the timeline that this
9 alleged robbery occurred?

10 A. Yes, sir.

11 Q. And so, would that also constitute an alibi
12 witness?

13 A. Yes, sir.

14 Q. And let me ask you this. We've got these two
15 statements that are written by you and you've obviously
16 interviewed these folks. Why were they not called at
17 trial?

18 A. The answer to that question, I spoke with Ms. Brown
19 and together we decided that because there was evidence
20 that contradicted this, these statements by these two
21 men -- in other words, I believe there was video evidence
22 at the Wal-Mart and there was testimony from, I think
23 there was going to be testimony from one of these two
24 young men's girlfriend that they were with -- one of
25 these two gentlemen was with them at the Wal-Mart.

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1 And I believe that's the reason we didn't call
2 them. However, I think this is kind of like going to war
3 without all your weapons. I think it was not for me to
4 actually try to do the jurors' job on that. So I have
5 regretted not calling them since this trial.

6 Q. Well, looking back at this case because it's been
7 some time since this case went to trial, would that be a
8 regret and something you would do over in this case?

9 A. I would absolutely call both witnesses. Because
10 the jury could conclude, for example, that the gentlemen
11 were just mistaken as to the timeline. In other words,
12 it's for them to figure out, you know, what part of it
13 they believed, not for me to try to take their place.

14 And I just believe that if there's an alibi witness
15 and this has been kind of my policy since this trial, if
16 there's an alibi witness I'm going to let the jury sort
17 that out.

18 Q. And was the jury ever allowed to hear any of this
19 testimony or anything of substance from these statements
20 that day in court?

21 A. I'm not aware that they heard any of this.

22 Q. And you would agree with me that that, that
23 prejudiced my client by the jury not being able to be
24 allowed to hear an alibi defense?

25 A. I think it very well could have prejudiced

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1 Mr. Hickson.

2 Q. Now you've also heard the Applicant testify that
3 you failed to review the pros and cons of even offering
4 testimony or in the alternative him testifying himself.

5 Do you recall what conversation you had with
6 Mr. Hickson about testifying at trial?

7 A. I do not but I would not be surprised if I told
8 Mr. Hickson that there would be dangers in him testifying
9 if he has a record. I don't recall what his record is
10 right now.

11 Q. Is that something that you would have discussed
12 with him?

13 A. Yes, sir.

14 Q. Now also you've heard Mr. Hickson allege that you
15 failed to request, I guess, a Neal versus Biggers hearing
16 because the victims at the bank never identified
17 Mr. Hickson in a photo lineup.

18 Do you have any recollection of that or any
19 identification that was made or not made?

20 A. I don't recall, because everyone was covered up in
21 the video. So, the evidence that we had, I don't think
22 they could have made any identification.

23 And that's probably the reason why we didn't call
24 them or ask for a Biggers hearing.

25 Q. Now there was a co-defendant by the name of David

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1 Kearse. Do you remember Mr. Kearse?

2 A. I do not.

3 Q. Okay. Do you recall what his alleged involvement
4 was or what he had been charged with?

5 A. I don't right offhand. No, sir.

6 Q. Well -- and, Your Honor, Mr. Kearse's testimony
7 starts on page 219 of the transcript.

8 THE COURT: Okay.

9 BY MR. BOOZER:

10 Q. And, Mr. Routzong, on page 219, and I'm not sure if
11 you're there, but if the transcript reflects that
12 Mr. Kearse was charged with two offenses, one of which
13 was armed robbery, the other of which was possession of a
14 firearm during the commission of a violent crime, would
15 you agree with me that that's what he was charged with at
16 that time?

17 A. Yes, sir.

18 Q. And these were stemming from the same allegations
19 that Mr. Hickson was there defending himself on?

20 A. Yes, sir.

21 Q. Okay. Now, obviously Mr. Kearse is testifying for
22 the State in this case. Do you know -- did you know at
23 that time what sort of deal or if he had received any
24 deal or been offered a deal at that point for his
25 testimony?

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1 A. I don't recall making any inquiries into that issue
2 at all.

3 Q. And, I believe if we're -- flipping over to some of
4 your cross-examination on 248 is where I believe your
5 cross-examination of this witness begins. And I'll
6 certainly let everyone get to that point.

7 THE COURT: Two --

8 MR. BOOZER: Yes, 248.

9 THE COURT: 248.

10 BY MR. BOOZER:

11 Q. And if you'd just take one moment to look at your
12 cross-examination on 248 through 249. Do you see any
13 questions regarding what any sort of deal or plea offer
14 he had been offered or if he was even offered one by the
15 State?

16 A. No, sir.

17 Q. And, if the clerk of court's records reflect that
18 Mr. Kearse received a YOA sentence, would you agree with
19 that?

20 A. I have no reason to disagree.

21 Q. Okay. Looking at this, do you feel that you could
22 have questioned him on that issue if he did have any sort
23 of a deal?

24 A. Yes, sir.

25 Q. Now, Mr. Hickson has also testified and alleged

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1 that you failed to file a motion to reconsider based on
2 the sentence that he eventually received. Did you have
3 any conversation with Mr. Hickson after his trial about
4 filing a motion to reconsider or discuss that option with
5 him?

6 A. I don't recall having any such discussion.

7 Q. Okay. And in this case he received very close to
8 the maximum penalty; is that right?

9 A. Yes, sir.

10 Q. Okay. Do you normally have that conversation with
11 your clients when you're done with the trial about, well,
12 you can file a motion to reconsider the sentence?

13 A. Not normally.

14 Q. And why is that?

15 A. Frankly, the answer would be, it would be futile.

16 Q. Okay. Do you know -- and you don't recall even
17 having that discussion with Mr. Hickson?

18 A. No, sir.

19 Q. Now if we're flipping back through to the
20 transcript and we'll look at page 118 and 119
21 specifically. There was testimony of an Investigator
22 Savell. I apologize if I'm mispronouncing his name. Do
23 you recall the testimony of this investigator?

24 A. Somewhat.

25 Q. Okay. What was the purpose of his testimony in

MICHAEL ROUTZONG - DIRECT BY BOOZER..

1 your opinion by the State? And certainly take a moment
2 to look at it if you need to refresh.

3 A. I believe these people were wearing masks or they
4 had something covering their face and I think they were
5 trying to argue that part of the Defendant's face was
6 exposed and it was eyebrows, bushy eyebrows, I guess.

7 Q. So do you recall that the investigator -- they were
8 basically attempting to elicit testimony of, I guess
9 specific facial features or what could be seen behind
10 these masks; do you recall that?

11 A. I think that's the case. Yes, sir.

12 Q. And co-defendant's counsel, Ms. Brown, she actually
13 objected and made an objection that he wasn't qualified,
14 I guess, as a facial recognition expert. And I guess you
15 joined in that objection?

16 A. Yes, sir.

17 Q. And that was, of course, overruled?

18 A. Yes, sir.

19 Q. Do you think there was anything you could have done
20 to further continue to object to that?

21 A. I can't think of anything, sir.

22 Q. Now you've also heard the Applicant's testimony
23 regarding cross-examination or really a lack of cross-
24 examination of one witness by the name of Candace
25 Bryant.

MICHAEL ROUTZONG - DIRECT BY BOOZER

1 Do you recall who Ms. Bryant was?

2 A. No, sir.

3 Q. I'm looking at, specifically on page 197 of the
4 transcript.

5 A. Yes, sir.

6 Q. All right. And this is where if you're looking on
7 197 -- please feel free to take a moment to read that.

8 A. Yes, sir.

9 Q. At this point we've got what looks like the
10 solicitor's office trying to put into evidence her
11 statement; is that right?

12 A. Yes, sir.

13 Q. All right. And Mrs. Brown who was the
14 co-defendant's lawyer objected and said she objects to
15 the statement being read in its entirety as it does
16 contain inadmissible hearsay to which the Court responds,
17 "well, Mrs. Brown, you're the one who put it in the
18 record." And -- "overruled."

19 And Mrs. Brown says, "Your Honor, I did not
20 introduce it as evidence." The Court says, "You
21 certainly did." Ms. Brown, "No, Your Honor. I had it
22 marked for identification purposes. I did not introduce
23 it as evidence," to which the Court says, "You may read
24 it." And you joined in that objection.

25 Do you recall that this statement was never

MICHAEL ROUTZONG - DIRECT BY BOOZER

1 actually put into evidence? It was only marked for
2 identification, and later on that is actually what
3 happened?

4 A. I don't recall. No, sir.

5 Q. Okay. But it was admitted into evidence by the
6 Court, correct?

7 A. I don't -- I don't know the answer to that. If
8 it's reflected as such in the transcript, I don't
9 disagree with that.

10 Q. And also -- and you may or may not be aware of
11 this. You weren't involved in the appeal?

12 A. No, sir.

13 Q. Okay. Now, going to the jury instructions in this
14 case. If you would flip over to page 310 for me.

15 A. Yes, sir.

16 Q. Okay. And just take a moment and beginning at line
17 13 on 310, just review from lines 13 to line 21.

18 A. Yes, sir. (Complies.) I'm finished.

19 Q. And specifically what I'm looking at in here is we
20 have during the jury instruction beginning on line 18,
21 "The punishment for the crime is a matter for me to
22 determine and should never be considered by you in any
23 way whatsoever in arriving at a fair and impartial
24 verdict in this case."

25 Did you make any sort of objection to that?

MICHAEL ROUTZONG - DIRECT BY BOOZER

1 A. No, sir.

2 MR. BOOZER: Okay. And, Judge, this may
3 best be probably handled in a brief closing --

4 THE COURT: Okay.

5 MR. BOOZER: -- at the end of this to cite
6 some case law.

7 THE COURT: I think closings would be very
8 helpful in this particular case anyway. So.

9 BY MR. BOOZER:

10 Q. Certainly. No objection was made to that?

11 A. No, sir.

12 Q. Okay. Looking at this where it -- specifically the
13 words fair and impartial. Are you aware that our Supreme
14 Court has instructed that sort of verbiage to be removed
15 from jury instructions?

16 A. No, sir.

17 Q. Okay. And specifically the instructions, and I'm
18 going to hand up some case law here shortly. The
19 specific words that have been requested to be removed are
20 'just and fair' to all parties, and here we have 'fair
21 and impartial'. Would you agree with me that that's
22 pretty much -- we have one word that's exactly the same,
23 impartial and fair or just, that would be, that would be
24 the same?

25 A. I'm sorry. You may have to ask that again. I'm

MICHAEL ROUTZONG - DIRECT BY BOOZER

1 not sure --

2 Q. That was a terrible question.

3 A. I'm not sure I comprehended that.

4 Q. I just confused myself. Looking at that language,
5 we have the words 'fair and impartial'?

6 A. Yes, sir.

7 Q. Okay. In the case law that I'm going to hand up
8 shortly in my closing, the Supreme Court has said that
9 all trial judges are to remove from the general sessions
10 charges that a criminal jury's duty is to return a
11 verdict that is, quote, just or fair to all parties.

12 So in this language in Mr. Hickson's trial, he does
13 have the word fair and impartial?

14 A. Yes, sir.

15 Q. Which although not verbatim to the language that
16 was instructed to be removed, just and fair, it's pretty
17 much similar and is pretty much telling the jury the same
18 thing.

19 A. Yes, sir.

20 Q. Would you agree with that?

21 A. Yes, sir.

22 Q. But no objection was made; is that right?

23 A. That's correct.

24 MR. BOOZER: Court's indulgence, Your
25 Honor.

MICHAEL ROUTZONG - CROSS BY GOURLEY

1 THE COURT: Sure.

2 (Pause.)

3 MR. BOOZER: Thank you, Your Honor. I
4 don't have any further questions. And thank you,
5 Mr. Routzong.

6 THE COURT: Mr. Gourley?

7 MR. GOURLEY: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. GOURLEY:

10 Q. Mr. Routzong, were you prepared to try the case?

11 A. I think so.

12 Q. Okay. And certainly at the time regarding these
13 alibi witnesses, I think you stated that it was your
14 decision in discussion with your co-counsel, Kelley
15 Brown, not to call these alibi witnesses, right?

16 A. That's correct. That's my recollection.

17 Q. Strategic decision not to call them. After fully
18 investigating them, obviously having their statements,
19 you elected not to call them, right?

20 A. That's correct.

21 Q. And certainly you don't want to do anything
22 detrimental to your client at that time?

23 A. That's correct.

24 Q. Okay. And now in hindsight, and of course every
25 case that you lose I'm sure that there's something you

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1 feel you should have done differently at the time. Would
2 you agree with me on that?

3 A. Every time.

4 Q. Okay. And in hindsight looking back after
5 Mr. Hickson has been convicted you feel that maybe you
6 should have presented the alibi and thrown everything on
7 the table?

8 A. I absolutely think I should have called the alibi
9 witnesses.

10 Q. Certainly. But at the time when you were
11 representing Mr. Hickson during the course of trial,
12 without looking back in time, you made the strategic
13 decision not to call the alibis after having fully
14 investigated it?

15 A. The only thing I might differ with you in your
16 statement was the word strategy.

17 Q. Okay.

18 A. In the sense that, I guess it was kind of strategy
19 in that I felt and I think Ms. Brown felt that there was
20 a conflict in the time --

21 Q. Okay.

22 A. -- that they gave. However, and I guess it could
23 be construed as strategy in the sense that I felt they
24 might be, the witnesses, the alibi witnesses might not be
25 believed and then the case becomes incredible.

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1 But I think with the -- with -- with that kind of
2 impact that they might have had --

3 Q. Uh-huh.

4 A. -- on this case, I feel like they should have been
5 called.

6 Q. So, now, after he being convicted, not at the time
7 though, we've got two separate thought processes here, at
8 the time -- I want to know about your thought processes
9 at the time of trial why you did not call those alibis.

10 A. At that time I thought they conflicted with what
11 could be established --

12 Q. Okay.

13 A. -- in terms of timing.

14 Q. With the Wal-Mart videos, the testimony of the
15 girlfriend having driven Mr. Hickson, his brother, David
16 Kearse to Wal-Mart, Mr. Hickson then driving his
17 girlfriend's car, Crystal Harris's car, to the apartment
18 complex, Camellia Apartments, where multiple witnesses
19 saw him at that point in time. And of course you got the
20 co-defendant's testimony saying we all committed this
21 robbery, right?

22 A. Yes, sir.

23 Q. And do family members make good alibi witnesses in
24 your opinion in front of a jury?

25 A. There are problems with it that could be construed

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1 as biased witnesses.

2 Q. And did you ever look into the background of these
3 alibi witnesses to see if they had any kind of prior
4 records or any concerns about impeachment evidence?

5 A. I did not look into their backgrounds that I'm
6 aware of. I don't recall that.

7 Q. All right. Fair enough.

8 Now, just going through, did you feel there was any
9 basis to try to suppress an arrest warrant or anything
10 like that regarding the indictments?

11 A. I'm still not aware of any reason.

12 Q. Okay. Regarding the -- Mr. Hickson has alleged
13 that you didn't put up a defense at trial. What was your
14 strategy at trial? Just broadly, generally.

15 A. Well, there was no ID by the folks that were -- in
16 other words the tellers, what I'm trying to get to, the
17 bank tellers didn't ID anybody.

18 Q. Right.

19 A. Really the only people that could have put him
20 there would have been his co-defendant, both
21 co-defendants. And it's just an issue of trying to poke
22 holes and that was our defense.

23 Q. Certainly. Did you discuss his right to testify at
24 trial?

25 A. I don't -- I normally do because the judge always,

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1 I think almost always instructs us to talk about it.

2 Q. Uh-huh.

3 A. And of course we always talk about it because
4 there's always the issue of do you want to close last or
5 do you want to close first and all of those things. And
6 taking all of those things into consideration, I'm sure I
7 would have talked to him about it.

8 Q. Okay. And of course it's Mr. Hickson's decision to
9 testify, right?

10 A. Yes, sir.

11 Q. Okay. I believe we hit on the Neal v. Biggers.
12 Mr. Boozer covered that. Regarding Sabrina Oakman and
13 Candace Bryant, did you ever look into those witnesses?
14 Did you know about them?

15 A. I knew from the incident report. I don't think I
16 investigated anything about them.

17 Q. Okay.

18 Beg the Court's indulgence, Your Honor.

19 THE COURT: Sure.

20 (Pause.)

21 BY MR. GOURLEY:

22 Q. Did you know or have any evidence of any kind of
23 plea deals with David Kearse or Randy Wilson?

24 A. No, sir.

25 Q. And I believe you stated that a motion for

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1 reconsideration in your opinion would have been futile?

2 A. Yes, sir.

3 Q. Okay. Regarding Ms. Bryant's testimony, Ms. Brown
4 of course objected and you joined in that objection,
5 correct?

6 A. Yes, sir.

7 Q. So it was preserved for appeal, right?

8 A. I hope so. Yes, sir.

9 Q. Okay. Have you seen the opinion of the appellate
10 court?

11 A. I think I looked at it but, I --

12 Q. Okay.

13 A. -- it was just real brief. I just scanned it,
14 perhaps. I was aware that it had been decided.

15 Q. No problem.

16 Beg the Court's indulgence, Your Honor.

17 THE COURT: Uh-huh.

18 (Pause.)

19 BY MR. GOURLEY:

20 Q. And, again, you objected to Greg's, Investigator
21 Savell, I believe that's how you say his name, the Judge
22 allowing him to identify Mr. Hickson's facial
23 characteristics?

24 A. I believe that's my recollection. Yes, sir.

25 Q. Okay.

1 Your Honor, I don't have any other questions.

2 Thank you, Mr. Routzong.

3 THE WITNESS: You're welcome.

4 THE COURT: Mr. Boozer?

5 MR. BOOZER: No questions, Your Honor.

6 THE COURT: Thank you so much. You may
7 step down.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: All right. Mr. Boozer, any
10 additional witnesses?

11 MR. BOOZER: No additional witnesses, Your
12 Honor.

13 THE COURT: Mr. Gourley?

14 MR. GOURLEY: No, Your Honor. No
15 witnesses.

16 THE COURT: All right. Would you each like
17 to do closing arguments?

18 MR. BOOZER: Please, Your Honor.

19 THE COURT: Okay. Mr. Boozer?

20 MR. BOOZER: Thank you, Your Honor. If it
21 please the Court.

22 Judge, I want to focus really -- I'll keep
23 this brief. I'm going to let some of
24 Mr. Hickson's arguments stand on their own by the
25 testimony that's already in the record.

1 However, I do want to focus on two of his
2 claims..

3 THE COURT: Okay.

4 MR. BOOZER: One of which is the first one,
5 the alibi witnesses. The statements that
6 Mr. Routzong actually wrote himself for these
7 witnesses certainly establish an alibi defense.
8 And I think that they reached --

9 THE COURT: Can I interrupt you on that?

10 MR. BOOZER: Absolutely.

11 THE COURT: Is it incumbent on you during a
12 PCR hearing to have the alibi witnesses here, and
13 why aren't they here today?

14 MR. BOOZER: Judge, if I may. I believe I
15 have some -- I'm not sure if my -- if any
16 independent investigation I did -- and I want to
17 be an officer of the Court -- any independent
18 investigation I did qualifies as, I guess, a work
19 product. And I certainly don't want to do
20 anything that's prejudicial to my client.

21 THE COURT: Sure.

22 MR. BOOZER: But there was certainly
23 strategic reasons as to why they were not here
24 today.

25 THE COURT: Okay.

1 MR. BOOZER: I felt it in my client's best
2 interests to have those statements presented
3 through Mr. Routzong who actually wrote the
4 statements.

5 THE COURT: And is that all that is
6 required is to present via, perhaps, the
7 statement that we have written, from
8 Mr. Routzong --

9 MR. BOOZER: Judge --

10 THE COURT: -- their possible testimony?

11 MR. BOOZER: I'm sorry.

12 THE COURT: Go ahead.

13 MR. BOOZER: Your Honor, if I may, not
14 knowing the exact case law, I would say that
15 these qualify as a sworn statement, an
16 affidavit. And actually we have one even better
17 because he's the one who wrote them. So I think
18 that that would certainly reach that level that
19 that would be appropriate evidence to submit for
20 Your Honor's consideration if they qualify as an
21 alibi.

22 THE COURT: Okay. But my understanding is
23 perhaps that would go to the first prong of
24 ineffective assistance of counsel as to whether
25 it was unreasonable for the defense attorney not

1 to call the alibi witness because we obviously
2 know he knew of the alibi witness. But as to the
3 second prong of prejudice, is that why we need to
4 hear from the alibi witnesses to determine what
5 their testimony would be?

6 MR. BOOZER: Well, Judge, obviously that's
7 what was said --

8 THE COURT: Uh-huh.

9 MR. BOOZER: -- just a couple months after
10 this incident occurred. Presumably that's what
11 it would have been testified to at that time.
12 This has been over five years ago, close to six
13 years ago. So I would present those would
14 suffice and establish that prejudice prong for
15 Mr. Hickson.

16 THE COURT: Okay. Go ahead. Continue.

17 MR. BOOZER: But, clearly, the timeline and
18 the date, that that would have made it impossible
19 for Mr. Hickson to have been involved in the bank
20 robbery based on those statements of the
21 nine a.m. time frame to the 4:30 p.m. time frame
22 on June 25th, '09, the date of the alleged
23 incident.

24 Judge, the second argument I'd like to
25 focus on would be the jury instructions. And,

1 Your Honor, if I may, I have some case law that
2 I've handed to the attorney general that I'd like
3 to pass up. (Documents presented to the Judge.)

4 THE COURT: Okay. Thank you.

5 MR. BOOZER: And, Your Honor, this is a
6 Supreme Court case, State of South Carolina, the
7 State versus Gregory Daniels. This is Opinion
8 Number 27180 from Florence County and Judge
9 Russo.

10 Judge, this is actually a direct appeal
11 from a criminal conviction for murder and
12 possession of a weapon during a violent crime.
13 Judge, on direct appeal basically what was argued
14 on appeal by Mr. Daniels is that the Court erred
15 in giving some burden-shifting instructions.

16 And particularly as we were discussing
17 through testimony with Mr. Routzong is that -- if
18 the Court would indulge me for one moment --
19 turning to page three of this opinion, the Court
20 said that, yes, what was stated in this was that
21 we instruct the trial judge to remove any
22 suggestion from his general session charges that
23 a criminal jury's duty is to return a verdict
24 that is just or fair to all parties. Such a
25 charge could effectively alter the jury's

1 perception of burden of proof, substituting
2 justice and fairness for the presumption of
3 innocence, and the State's burden to prove the
4 defendant's guilt beyond a reasonable doubt.

5 Moreover to a lay person, all parties
6 involved in a criminal case may extend beyond the
7 defendant and the State and include the victim.
8 This inaccurate and misleading charge is a risk
9 depriving a criminal -- defendant of his right to
10 a fair trial.

11 The problem for Mr. Daniels was the Court
12 did not overturn his case because of that,
13 because his lawyer didn't object to it. So it
14 wasn't preserved.

15 Here we have almost a very similar instance
16 where the jury charge in this case, punishment
17 for the crime is a matter for me to determine and
18 should never be considered by you in any way
19 whatsoever in arriving at a fair and impartial
20 verdict in this case.

21 Judge, I would submit that that is -- part
22 of it is identical to the language that the
23 Supreme Court has said, don't have it in your
24 jury charges. And then in the other part, the
25 just part, I would say is likened to impartial.

1 I think that -- and his lawyer obviously didn't
2 object to it. I think this is an issue that
3 certainly Mr. Hickson should have been afforded a
4 new trial on based on the Supreme Court's opinion
5 in this case.

6 So that's our position on that, Judge.

7 THE COURT: Okay. Thank you.

8 Mr. Gourley?

9 MR. GOURLEY: Thank you, Your Honor.

10 In regards to alibi witness, just to go
11 back to Strickland, regarding hindsight. And
12 Strickland says specifically that we should avoid
13 looking at hindsight and take the attorney's
14 decision making at the time. Mr. Routzong
15 although maybe hesitant to call it strategy did
16 testify his reasonings after discussing it with
17 Ms. Brown who both are obviously very experienced
18 criminal defense attorneys as to their reason at
19 that time for not calling these alibi witnesses.

20 It's not a situation where Mr. Routzong
21 didn't know about it or heard about it and didn't
22 investigate. He obviously had sworn statements
23 by the alibi witnesses and made a strategic
24 decision not to call the alibi at that point in
25 time. Certainly when any defendant gets

1 convicted there may be regrets or second guessing
2 but that's not what we're here today to look at.
3 We're here today to look at whether or not his
4 decision or his strategic reasons were valid. We
5 obviously defer at that point in time and the
6 burden and presumption is very high that
7 Mr. Hickson has to overcome. I would submit to
8 the Court that Mr. Routzong's decision making at
9 that time was valid regardless of the outcome of
10 the case.

11 Furthermore, in regards to the jury
12 charges, Your Honor, in Justice Toal's concurring
13 opinion they note specifically that despite the
14 trial court's mistake -- and I apologize, Your
15 Honor, I'm not sure what -- after the burden
16 shifting, page number five in the back -- it
17 says: However, despite the trial court's
18 mistake, the instruction as a whole properly
19 conveyed the law to the jury and it is not
20 reasonably likely that the jury acted in
21 contradiction of the reasonable doubt standard.

22 The same situation here. We don't look at
23 just two or three words that the Court takes
24 contention with. You look at the jury charge as
25 a whole. I would submit to the Court that the