

1 STATE OF SOUTH CAROLINA
2 COUNTY OF UNION

COURT OF GENERAL SESSIONS

3
4 THE STATE)

5 -vs-)

6 ELSON MCKANIC)

TRANSCRIPT OF RECORD
INDICTMENT #91-G.S.44-0557
INDICTMENT #91-G.S.44-0558

7
8 September 24, 1991
9 Union, South Carolina

10
11 B E F O R E:
12 HONORABLE DEAN HALL, Judge; and a jury.

13
14 A P P E A R A N C E S:

15 LARRY GRANT, Assistant Solicitor
16 JACK FLYNN, Assistant Solicitor
Attorney for the State

17 JOSEPH WORKMAN, Public Defender
18 Attorney for the Defendant

RECEIVED

MAR 31 2017

SC Court of Appeals

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22
23 JANET M. GIBSON
24 Circuit Court Reporter
25

1			<u>I N D E X</u>		
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	CHARLES LEE				
4	Mr. Grant	21		37	
5	Mr. Workman		36		
6	FELICIA MITCHELL				
7	Mr. Grant	37			
8	Mr. Workman		46		
9	SUSAN LIVELY				
10	Mr. Grant	48		56	
11	Mr. Workman		54		
12	AL GRIFFIN				
13	Mr. Grant	63			
14	Mr. Workman		69		
15	ELSON MCKANIC				
16	Mr. Workman	72			
17	Mr. Grant		82		
18	State reply witness				
19	CHARLES LEE				
20	Mr. Grant	89			
21	Charge of the Court	114			
22	Verdict of the Jury	135			
23					
24					
25					

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	KNIFE		28
S-2	MONEY	44	53
S-3	CIGARETTES	44	68
C-1	DOCUMENTS		

1 THE COURT: We are about to begin the trial of the
2 case of the State against Elson McKanic. He is charged
3 by the Grand Jury of Union County with the offense of
4 armed robbery and with the offense of assault and
5 battery with intent to kill. And Solicitor are you
6 also proceeding on the count---

7 MR. GRANT: Yes, sir, on count two, the use of a
8 knife in the commission of a crime.

9 THE COURT: Ladies and gentlemen of the jury, he
10 is also charged in count two of possession of a knife
11 during the commission of or in the attempted commission
12 of a crime.

13 The defendant Elson McKanic is represented by Mr.
14 Workman. Mr. Workman is a member of the Union County
15 bar. Would you please stand, Mr. Workman.

16 (Complies)

17 And would you please have Mr. McKanic stand and
18 face the jury panel. All right both of you may be
19 seated. (Complies)

20 Ladies and gentlemen of the jury, of the petty
21 jury panel, I now direct the following questions to
22 you, are any members of the petty jury panel related by
23 or connected, related by blood or connected by marriage
24 with the defendant Elson McKanic. If so, please
25 stand.

1 (No response)

2 All right. Now, Solicitor, who are your
3 prosecuting witnesses.

4 MR. GRANT: Yes, sir, potential prosecuting
5 witnesses from the Union Public Safety Department
6 Officer Windrow Johnson.

7 THE COURT: Please stand and face the panel.

8 MR. GRANT: Officer Al Griffin, Officer Glen Tony,
9 Captain Wade Hampton, Detective Ernest Wilson, Susan
10 Lively, Charles Chuck Lee, and Felicia Mitchell, who is
11 not in the courtroom, Your Honor.

12 THE COURT: All right, are any members of the
13 petty jury panel related by blood or connected by
14 marriage to any of those prosecuting witnesses. If so,
15 please stand.

16 (No response)

17 THE COURT: Have any members of the petty jury
18 panel formed or expressed an opinion as to the guilt
19 or innocence of the defendant. If so, please stand.

20 (No response)

21 THE COURT: Are any members of the petty jury
22 panel conscious of any interest or bias or any
23 prejudice for or against the defendant Elson McKanic.
24 If so, please stand.

25 (No response)

1 THE COURT: Can each member of the petty jury
2 panel give the State and the defendant Elson McKanic a
3 fair and impartial trial. If not, please stand.

4 (No response)

5 THE COURT: The Court has been made aware there
6 have been some publicity in this case in the local
7 newspaper. I need to ask you each of you, has this
8 publicity affected your ability to give the defendant,
9 Elson McKanic, a fair and impartial trial on this
10 case. If so, please stand.

11 (No response)

12 THE COURT: Is there any further inquire requested
13 of the petty jury panel by the State?

14 MR. GRANT: None by the State, Your Honor.

15 THE COURT: By the defense?

16 MR. WORKMAN: No, sir.

17 THE COURT: All right, Clerk, will you please
18 prepare the jury. The State gets five strikes and the
19 defendant ten.

20 THE COURT: Mrs. Kollack, I'm going to appoint you
21 Foreperson of the jury. If you would sit there. Clerk
22 if you would swear the jury please.

23 (Jury panel sworn)

24 THE COURT: I'm going to ask that you that each
25 time you come back into the courtroom you always sit in

1 that seat. Ms. Longshore, you are the alternate in
2 this case. You will participate throughout the trial
3 with this case, and I will tell you when you have
4 completed your duties, but throughout the trial every
5 time we come back into courtroom you would be assigned
6 to that seat.

7 The rest of the jury panel you can sit anywhere
8 you want to. And just as a suggestion I'm going to
9 Mrs. Kollack and Ms. Longshore, you maybe want to be
10 the last people out every time that way you wouldn't
11 get climbed over each time you come back into the
12 courtroom.

13 Now Foreperson and members of the jury panel, I'm
14 going to send you to your jury room, we've got some
15 matters to take up before we begin the trial of this
16 case. I am going to instruct you though that you have
17 not heard any evidence in this case and I've instructed
18 you not to discuss this case in any matter whatsoever.
19 Of course, you may discuss other matters, but do not
20 discuss anything pertaining to this case that you have
21 been warned as a juror.

22 So, at this time I'm going ask the bailiff to
23 please take you to the jury room. You will have time
24 for refreshments, let him know what you want. I
25 imagine it will be somewhere around 15 or 20 minutes

1 before we call you back in. Okay, you may leave.

2 (Jury exits)

3 (Jury Enters)

4 THE COURT: Let the record reflect all 13 jurors
5 are present. Madame Foreperson, ladies and gentlemen
6 of the jury, I am sure that each of you can further
7 appreciate that this court of General Sections in Union
8 County exists for the purpose of resolving questions of
9 alleged criminal conduct arising between the State of
10 South Carolina and the defendant.

11 ~~It is a guaranteed right of every citizen that the~~
12 charge of criminal conduct be presented in open court
13 according to certain rules of procedure. The State has
14 not only an equal right but the duty to present a
15 charge of criminal conduct in open court according to
16 the same rules of procedure.

17 Each of the parties therefore, both the State and
18 the defendant then have the equal right to the
19 opportunity of this judicial proceeding and have you as
20 the jury selected and now sworn for the trial of this
21 case.

22 One of the most important aspects of your duty as
23 the jury lies essentially in the oath that you have
24 taken, "to well and truly try" and determine the facts
25 of this case. That oath in a very essential way says

1 that you are the sole judges of the facts in this
2 case.

3 Obviously, any case tried in court involves a
4 question about what happened, or how something came to
5 happen, or who, if anyone, did anything in a particular
6 occurrence or circumstance. From this point forward
7 then, no one concerned with this trial has the right to
8 decide any question of fact in this trial or the truth
9 of it except you the jury. The facts now are for your
10 resolution and your decision and yours alone.

11 And after you hear all the evidence in this case
12 then it will be your duty, by your mutual and joint
13 discussions to determine the truth of this case by
14 deciding the weight and the believability of each part
15 of the evidence and by applying the law of the case
16 thereto.

17 The trial judge is the judge of the law in this
18 case. He also has the responsibility among other
19 duties to preside over this trial, to rule on the
20 admissibility of evidence offered during the progress
21 of the trial and to state to the jury the law
22 applicable to this case.

23 The constitution of South Carolina mandates that
24 the trial judge cannot directly or indirectly comment
25 about the facts in this case. Then the process of the

1 verdict is simply that you, the jury, first determine
2 what is the truth of the facts and then apply to that
3 true state of facts that principle of law that would be
4 applicable and by that process determine and return to
5 this court your final verdict in the case. Speaking
6 the truth of the case as you determine it.

7 The court will fully and more completely state to
8 you the principles of law applicable to the issues in
9 this case before the case is submitted to the jury for
10 your decision.

11 However there are certain principles of law
12 applicable to the framework of every case in the
13 General Sessions Court and now in a very basic fashion
14 I will now announce several of these basic principles
15 to you.

16 The defendant has entered a plea of not guilty to
17 the charges contained in these indictments. The
18 indictment in this case is not evidence. It is simply
19 the written instrument that contains the charge or
20 charges against the defendant and it serves as the
21 formal document by which this case is presented into
22 this court.

23 The plea of not guilty places upon the State the
24 burden of proof in this case, and I will now define for
25 you the term "burden of proof." The defendant is

1 presumed in law innocent of all charges contained in
2 these indictments. The burden of proof requires the
3 State to prove guilt beyond a reasonable doubt and
4 therefore consistent with that burden, the defendant or
5 the accused party shall be presumed innocent and that
6 presumption of innocence is sufficient to propel a
7 verdict of not guilty or a verdict of acquittal unless
8 the jury concludes that the State has satisfied its
9 obligation to prove the defendant's guilt beyond a
10 reasonable doubt. A reasonable doubt is the kind of
11 doubt that would cause a reasonable person to hesitate
12 to act.

13 This case will be opened by the Solicitor reading
14 or explaining to you the indictments. The State will
15 then proceed by presenting evidence after which the
16 same opportunity will be afforded to the defendant and
17 to have evidence offered. When all the evidence has
18 been received by the Court, counsel for the State and
19 counsel for the defendant will state to the jury their
20 respected positions. After which the Court will fully
21 say the applicable law in this case.

22 Obviously, all parts of the case are important.
23 You do not know which witness in the case will most
24 impress you, whether the first witness or the last. In
25 reaching your final conclusion you will need the

1 guidance of judgment of the other jurors. You will
2 need the guidance of the principles of law that will be
3 stated to you by the Court. For all of these reasons
4 then if we have any recess periods such as lunch or any
5 other breaks when you retire to your jury room or
6 should this case not be finished today, the Court
7 instructs you that you must not discuss this case among
8 yourselves until the case is finally given to you for
9 deliberation.

10 The verdict in this case must be the unanimous
11 ~~verdict of all 12 of you jurors.~~

12 All right, Solicitor, ready proceed.

13 MR. GRANT: Yes, sir. Madam Forelady, ladies and
14 gentlemen of the jury, my name is Larry Grant. I am
15 Solicitor of Union County and York County, 16th
16 Judicial Circuit. I will present the case on behalf of
17 South Carolina, representing the people of the State
18 of South Carolina in the prosecution of criminal
19 cases.

20 Mr. Workman, Joe Workman, is the public defender
21 in Union county, represents the defendant Elson
22 McKanic. And you will have these two pieces of papers
23 I have called the indictments. You will have the
24 indictment with you in the jury room, but if you do, it
25 should not be considered as evidence. This is simply

1 the means by which we inform the Court, the defendant,
2 or anybody else, with the formal statement of charge.
3 And these indictments there's only two actual charges,
4 actually charges three charges, three counts, one
5 indictments two counts, and I will read it to you and
6 explain it to you.

7 It's your job as jurors again, is as His Honor has
8 already stated to you, the 13 of you or ultimately the
9 12, are the fact finders. You find the facts of the
10 matter. What happened on this particular occasion.
11 Who did what? What happened? Seek the truth. Find
12 the truth of what happened.

13 And then you take that truth from the facts as you
14 determine them to be and apply it to the law as His
15 Honor charges you the law; and after taking the law as
16 His Honor charges you, you have to accept it. You may
17 not think that's the law is or should be changed. You
18 may think the law is something else. You take the law
19 as His Honor charges you at the end of the case. And
20 during the arguments or whatever if I misstate the law,
21 I assure you it is unintentional, and you take the law
22 from His Honor when he charges you.

23 You are the judges of the facts. You take the
24 facts as you find them to be, as you determine them to
25 be, not as I state them, not as Mr. Workman states

1 them, not as anyone, you and your collective wisdom
2 tells you true facts of the case are, and then once you
3 find the truth, the facts and the truth, and apply the
4 law as His Honor charges you the law as it applies in
5 this case, then that's how you deliver a verdict.

6 And verdict simply means to speak the truth. To
7 speak the truth of justice to you, the defendant, the
8 State of South Carolina to the law and to the facts.

9 And I ask you very simply, let your verdict speak
10 the truth under the facts and under the law and once
11 ~~you have done that and you have reached a verdict then~~
12 no one can quarrel with that.

13 Now in these indictments charge Elson McKanic
14 first with armed robbery, and I'll read that indictment
15 to you. "State of South Carolina, County of Union,
16 indictment for armed robbery in a Court of General
17 Sessions convened on August 26, 1991, the Grand Jurors
18 of Union County presented under their oath said that
19 Elson McKanic did in Union County on or about July 29,
20 1991, while armed with a deadly weapon, to wit, a knife
21 feloniously take from the personal presence of one
22 Susan Wood, who is now Susan Wood Lively, by means of
23 force or intimidation goods or monies from Fast Fare.
24 Such goods or monies being described as follows: \$107
25 American currency and two packs of cigarettes against

1 the peace and dignity of the State and contrary to the
2 statute in this State made and provided. Signed
3 Larry S. Grant, Solicitor."

4 This indictment charges armed robbery, and armed
5 robbery of a person, in this case Susan Wood. The
6 indictment alleges that Susan Wood was cashier at Fast
7 Fare and was robbed of money belonging to the Fast Fare
8 of cigarettes from the Fast Fare. This is what the
9 State alleges. Susan Wood is now Susan Wood Lively.

10 It's your determination whether or not Elson
11 McKanic robbed her and committed armed robbery.
12 Robbery is basically to steal. Stealing by force. If
13 you steal something by force or intimidation that is
14 robbery. If you steal by force or intimidation that is
15 robbery. If you take something by force or
16 intimidation with a deadly weapon then that is armed
17 robbery. So armed robbery, and I ask you again to take
18 His Honor's charge to you. Armed robbery is stealing.
19 Stealing from a person. Stealing from another by use
20 of a deadly weapon. I submit to you under the law a
21 knife is a deadly weapon. So if a person steals while
22 using a deadly weapon while armed with a deadly weapon,
23 I submit to you they are guilty of armed robbery.
24 Stealing while use of a deadly weapon.

25 If there was no weapon involved then it would be

1 called strong armed robbery, or common-law robbery
2 where you take by force and intimidation but with no
3 weapon. Again, you have a weapon involved. In this
4 case there was a deadly weapon, in this case a butcher
5 knife, a deadly weapon involved, then the jury can find
6 armed robbery.

7 Armed robbery is again the stealing from a person
8 with the use, by the use of a deadly weapon. That is
9 armed robbery and, it is one of the indictments that
10 Elson McKanic is charged with and you have to make a
11 ~~decision as to whether or not he is guilty of that.~~

12 The other indictment charges two counts and I'll
13 read it to you, "State of South Carolina, County of
14 Union, indictment of assault and battery with intent to
15 kill, and possession of a knife during the commission
16 of a violent crime. At a Court of General Sessions
17 convened on August 26, 1991, the Grand Jurors of Union
18 County presented on their oath Count One of assault and
19 battery with intent to kill that Elson McKanic did in
20 Union County on or about July 26, 1991, with malice
21 aforethought commit an assault and battery on one
22 Charles Lee with intent to kill said victim.

23 "Count two that Elson McKanic did in Union County
24 on or about July 29, resist the and display a knife
25 during the commission of a violate crime against the

1 peace and dignity of the State and contrary to the
2 statutes of such case made and provided. Signed
3 Larry S. Grant, Solicitor."

4 This indictment charges two counts. Count one and
5 count two. Count one is assault and battery with an
6 intent to kill. His Honor will charge you as to what
7 the elements of that are. Basically that's an assault
8 and battery with malice aforethought, with malice
9 aforethought. And I submit to you, under the law of
10 malice there may be several kinds. You may have
11 expressed malice, when somebody says, I'm going to kill
12 you. I'm going to kill you -- expressed by verbalizing
13 it by words.

14 You can have implied malice or inferred malice.
15 Malice may be inferred by the use of a deadly weapon.
16 And I ask you to simply look at the facts and determine
17 whether or not there was assault and battery with
18 malice aforethought both expressed by words and
19 inferred or implied by the use of a deadly weapon.
20 That is count one. An assault and battery, an attack
21 on another with malice aforethought.

22 Count number two is that a weapon, a knife, or a
23 gun, in this case you're not dealing with a firearm.
24 It's simply a knife -- was used in the commission of a
25 violent crime. Assault and battery with intent to kill

1 is a violent crime. It is the second count, a second
2 crime a person commits an assault and battery with
3 intent to kill with a knife and that's what count two
4 in this indictment charges. The use of a knife in the
5 commission of violent crime in count one which is
6 assault and battery with intent to kill.

7 So you have three, three possible verdicts or
8 three possible things you have to decide on, armed
9 robbery, assault and battery with intent to kill, use
10 of a knife in the commission of an assault and battery
11 and those will be the questions that you have to ask,
12 ask and answer.

13 And I ask you very simply to listen to all the
14 evidence, all of it, and then judge that with your
15 common sense, what the judges tells you on the law,
16 and judge the credibility and believability and just
17 your good common sense and then come to the true facts
18 and apply those true facts to the law and render a
19 verdict that speaks the truth, that speaks justice,
20 then you will have done your duty.

21 THE COURT: Mr. Workman.

22 MR. WORKMAN: May it please the court, Your
23 Honor. Madam Forelady, ladies and gentlemen of the
24 jury, Elson McKanic is not guilty of armed robbery.
25 He's not guilty of assault and battery with intent to

1 kill. And I would ask that you listen very closely
2 because I believe the evidence that you will hear today
3 will make that stand out in your minds.

4 This is the United States of the America. This is
5 not Communist China or Russia. In this country
6 individual walks into this courtroom presumed to be
7 innocent and the burden is on the State, and in this
8 case Mr. Grant is the Solicitor representing the State
9 of South Carolina, to prove that the person that is
10 charged with a crime is guilty beyond a reasonable
11 doubt.

12 Now the State's burden is they are going convince
13 all 12 of you jurors beyond a reasonable doubt that the
14 person that's charged is guilty. And I believe that
15 once you listen closely there will be more than
16 reasonable doubt as to Elson's guilt regarding these
17 charges.

18 Now I appreciate your attention. I know you're all
19 paying close attention and that's very important. This
20 is a very important day for Elson McKanick. This is the
21 first opportunity that he has had to prove anything to
22 present his defense in this case.

23 People have been questioned and statements have
24 been taken, but there hasn't been one taken from him;
25 and I think that there are factors that are going to

1 come out here.

2 Elson admits that he got into little trite with
3 Mr. Lee; he doesn't deny is that. He thought Mr. Lee
4 made a remark to the other defendant. Whether he did
5 or not, I don't know. I wasn't there. But Elson
6 thought he did and got into a fight with him; and he
7 entered this convenience store with another individual;
8 while the fight was going on, the other individual
9 proceeded to rob the store. Elson did not enter that
10 convenience store with the intent to rob anybody. He
11 did not take part in the robbery. He did not seek
12 anything from the robbery. He's not guilty of armed
13 robbery. He's guilty of using poor judgment in getting
14 in a fight.

15 But that's not what he's on trial for. He's on
16 trial for armed robbery and assault and battery with
17 intent to kill. Now I submit to you that he's just,
18 bottom line is, he's not guilty of those charges.

19 As I said he's guilty of using poor judgment. He
20 is guilty of being somewhere with somebody who used
21 even worse judgment in deciding to rob the store. And
22 I believe that once you've heard all evidence and you
23 have a chance to analyze them I sincerely believe that
24 there will be more than a reasonable doubt and if
25 that's true, you are bound to follow your duty as

1 jurors and find him not guilty. Thank you.

2 THE COURT: Mr. Grant you may call your first
3 witness.

4 MR. GRANT: We call Charles Lee.

5 CHARLES E. LEE, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. GRANT:

8 Q Mr. Lee I believe you need to speak into that
9 microphone and state your full name for the Court.

10 A Charles E. Lee.

11 Q What do go by; what are you called?

12 A Chuck.

13 Q How old are you?

14 A 27.

15 Q Where do you live?

16 A Lawson Avenue, 223 Lawson Avenue.

17 Q How long have you lived in Union?

18 A All my life.

19 Q What kind of work do you do?

20 A I work at Tarrington.

21 Q And do you have any other jobs?

22 A On the weekends I'm assistant paper carrier for
23 the State.

24 Q For the State paper?

25 A Yes, sir.

1 Q And as paper carrier on weekends, what do you have
2 to do?

3 A I pick up my papers up and deliver them to
4 different individuals and businesses and boxes
5 throughout Union.

6 Q And on July the 29th of this year, were you
7 working?

8 A Yes, sir.

9 Q And on which job?

10 A Doing the State paper route.

11 Q And early in the early-morning hours of July 29,
12 1991, where had you been?

13 A I was at the Fast Fare in Monarch.

14 Q Fast Fare in Monarch?

15 A Yes, sir.

16 Q Is that on corner of 49 and---

17 A East main.

18 Q East Main. All right, sir. And again what time
19 of the morning was it?

20 A About five minutes to four. Four a.m.

21 Q And what day of the week was this?

22 A Sunday night.

23 Q Sunday night. Were we into Monday morning?

24 A It was into Monday morning.

25 Q All right and when you got to the Fast Fare, how

1 did you get there?

2 A Drove my truck.

3 Q Was anybody else with you?

4 A No, sir.

5 Q When you got to the Fast Fare, did you see
6 anything; what did you see if anything when you got
7 there?

8 A I seen Mr. MacKenzie and this other lady walking
9 towards the telephone. When I pulled over in the
10 parking lot, they were walking towards the telephone.

11 Q Where was the telephone located in the parking
12 lot?

13 A In the parking lot, it's on, as you're looking at
14 the building, it's on the righthand side of the door,
15 of the glass.

16 Q And as you drove up, where was this defendant?

17 A They was walking towards the left telephone. I
18 believe there is three telephones out there, and they
19 went to the one on the left.

20 Q And how many people went in?

21 A The other lady. There was one other lady.

22 Q What did you see them do?

23 A She picked up the phone and he stood besides her
24 as if they were making a telephone call, which I assume
25 was what they was doing.

1 Q And let me, regular course of this Fast Fare is
2 there in Union County?

3 A Yes, sir.

4 Q And after you had pulled in and saw them near the
5 phone, what did you do?

6 A I went ahead and grabbed my papers and I went on
7 in the store. Normally I wouldn't think nothing about
8 them being on the phone. I went and carried my papers
9 in that's what I do. I always stop and have a cup of
10 coffee, talk there a few minutes, drink my coffee, and
11 then go on.

12 Q And who was working at the Fast Fare that night?

13 A Susan.

14 Q That's Susan, I believe her name's Lively now?

15 A Yes, sir.

16 Q Susan Wood?

17 A Uh-huh.

18 Q When you got to Fast Fare, went inside, who was
19 inside the Fast Fare?

20 A Just me and Susan.

21 Q You and Susan. And once you got inside, what did
22 you do?

23 A I laid my papers down on the rack that we have
24 once you walk out on the righthand side of the door,
25 went to the coffee machine and got a cup of coffee and

1 come back to the cash register.

2 Q And how near to Susan when you came back to the
3 cash register; how close were y'all?

4 A I would say closer to me and Your Honor, the judge
5 here.

6 Q And what happened while you were there drinking
7 your coffee?

8 A Mr. MacKenzie and other lady come in the store and
9 approached me from behind and cussed me and jumped on
10 me.

11 Q Did you know him before?

12 A No, sir.

13 Q Had you every seen him?

14 A Never seen him.

15 Q Ever met him before?

16 A No, sir.

17 Q All right. When he came into the store, you say
18 they came with them?

19 A Uh-huh.

20 Q Could you tell where she went as far as in the
21 store?

22 A I think she was right there next to the other
23 door.

24 Q What did he do when he came in?

25 A He walked up behind me and said, I hate you son of

1 a bitch and jumped on me.

2 Q And how near was he to you when he said that?

3 A Closer than we are, you and him are.

4 Q And where you standing up?

5 A Yes, sir.

6 Q Where was he when he said it?

7 A Right there, well right along here, right behind
8 me.

9 Q What did he do when he said that?

10 A He hit me.

11 Q Where did he hit you?

12 A First time in the head.

13 Q What happened when he hit your head?

14 A He me several more times. I dropped my coffee.

15 Q All right do you know how many times he hit you?

16 A Several times.

17 Q And you dropped your coffee; what happened after
18 he struck you, hit you?

19 A He hit me until I got on the floor and he begin
20 kicking me.

21 Q And did he knock you on the floor?

22 A Yes, sir.

23 Q And after you were on the floor, what did he do?

24 A Begin kicking me.

25 Q And he, you already said he said something before

1 he started hitting, did he say anything else to you or
2 did say anything else to you while this was going on?

3 A Well, while he was kicking me, he took two steps
4 back and said, I'm going to kill your damn white ass,
5 and he pulled a butcher knife out of his righthand back
6 pocket.

7 Q And saw the knife here?

8 A Yes, sir. Kill your damn ass, kill your damn white
9 ass.

10 Q What was he doing; what did he pull out of his
11 pocket?

12 A A butcher knife.

13 Q I'll show you this ask if that appears to be what
14 he pulled out of his pocket?

15 A Yes.

16 MR. GRANT: We would offer this for identification
17 at this time.

18 MR. WORKMAN: No objection.

19 THE COURT: All right. Mark it for
20 identification.

21 MR. GRANT: If you have no objection, I'll mark it
22 into evidence unless you want me to---

23 MR. WORKMAN: No, I don't have any objection.

24 MR. WORKMAN: We'd offer it into evidence.

25 THE COURT: All right. Hearing no objection this

1 would be State's number one.

2 (State exhibit 1 marked into evidence.)

3 BY MR. GRANT:

4 Q What did he say to you?

5 A He was going to kill me.

6 Q What did you do when you heard that?

7 A I got up and I ran.

8 Q What did he do?

9 A At that time when I got up he swung, and when I
10 got up he went back up towards the cash register.

11 Q When you say he swung, what did he do; what did he
12 swing at?

13 A Myself.

14 Q Did he hit you with the knife?

15 A No, sir.

16 Q You ran?

17 A Yes, sir.

18 Q All right did he say anything else to you?

19 A No, sir.

20 Q Did you hear him say anything else to anybody
21 else?

22 A He told the other lady to get the money, to get
23 the damn money.

24 Q And he was talking to who?

25 A The lady who come in with him.

1 Q Where was she when he said that?

2 A She was at the cash register.

3 Q And what he was doing when he said that get the
4 money, get the damn money. Where was he when he said
5 that?

6 A In between me and the cash register and the
7 door -- he was more or less out the door. We inside
8 looking at the doors, there's two doors, he was on next
9 to the righthand door.

10 Q And when he said that, what happened?

11 A I assume at this time they was getting the money.
12 I mean it all happened so fast. Then he told Susan to
13 open the damn door bitch and he went and she told him
14 it was locked, the other one was unlocked and they both
15 went out the other side.

16 Q We're talking the front door?

17 A The front door.

18 Q How many doors is there at the front?

19 A Two doors.

20 Q Two doors. They join together?

21 A Side by side. One of them is usually locked at
22 night.

23 Q We're talking about one door. The left side was
24 unlocked and the right one.

25 A Well, there was two doors just side by side.

1 Q And after he had done that, knocked you down,
2 pulled the knife, said get the money and told Susan to
3 open the door?

4 A Yes, sir.

5 Q What did he do then?

6 A They left. I don't know where; they walked out the
7 door.

8 Q What did you do?

9 A I watched them walk around the corner of the
10 building, and Susan, she was nervous, and I was too.

11 All I could think of was to go to any truck. I got to
12 my truck and got on my radio, my two-way radio, to the
13 fire department. The voluntary and I called the city
14 dispatcher on the fire frequency and she told me the
15 police officers were on the way, they'd be there in 60
16 seconds.

17 Q And did the police officers come?

18 A Yes, sir.

19 Q Which one?

20 A All through of them.

21 Q Mr. Johnson?

22 A Yes, sir.

23 Q Let me ask you this how long a period of time were
24 you there in the Fast Fare after it was Mr. McKanic
25 came in and how long did it take?

- 1 A I ain't sure about the question.
- 2 Q How long this whole thing take from the time they
3 came in from the time they went out the door, how long
4 did that take?
- 5 A Couple of minutes.
- 6 Q Couple of minutes. And what was the lighting like
7 there in the Fast Fare?
- 8 A Pretty good.
- 9 Q Pretty good lighting. And did you get a good look
10 at him?
- 11 A Yes, sir.
- 12 Q Have any problems at all looking at him, seeing
13 him?
- 14 A No, sir.
- 15 Q You recognize him?
- 16 A Yes, sir.
- 17 Q Did you see the man who pulled the knife on you?
- 18 A Yes, sir that's him sitting over there.
- 19 Q Did you know him by name?
- 20 A No, sir.
- 21 Q Have you ever known him before?
- 22 A No, sir.
- 23 Q When the police came how long was it?
- 24 A It was about a minute.
- 25 Q And then what did you do when the police came?

1 A I just got out of my truck and walked right there
2 at the door and Al pulled up in the parking lot, and
3 asked me, which way did he go. And I told him the
4 dispatcher which way he went but he was reassuring and
5 he told me to get in the car with him and I did.

6 Q Officer Griffin?

7 A Yes, sir.

8 Q And had you given him a description of the people
9 that had robbed the store?

10 A Yes, sir.

11 Q What description did you give him?

12 A A black man and a black woman.

13 Q And how were they dressed?

14 A I think he had jeans on and a white t-shirt.

15 Q How about her?

16 A I think it was a jumpsuit. I mean it happened so
17 fast. I really didn't pay no attention to what they
18 had on.

19 Q And after when Officer Griffin got there, what did
20 you do?

21 A I got in the car with him.

22 Q Where did y'all go?

23 A Right behind the Fresh Air Galaxy.

24 Q Was that the direction you had seen them go?

25 A Yes, sir.

1 Q What happened when you got in the car with Mr.
2 Griffin, and went behind the Fresh Air Galaxy?

3 A Lin, he had come on. He was already there with
4 the red lights right there.

5 Q Your talking about Officer Lyndon Johnson?

6 A Yeah Lyndon Johnson.

7 Q As far as what you remember, what did you do?

8 A I was just sitting in the car.

9 Q What did you see after you saw Mr. Johnson car?

10 A Al and I went across the parking lot. We went
11 across the parking lot, and we seen them running, and I
12 said Al there's he goes right there. He went and got
13 in the car and chased them.

14 Q All right when you say you saw him running, who
15 did you see running?

16 A The fellow right there.

17 Q Where was he when you first saw him?

18 A Right behind the Revco.

19 Q All right how close were you and Officer Griffin
20 when you saw him?

21 A Probably from here to the back of the courtroom
22 where he was running.

23 Q And what did you do when you saw him running?

24 A Continued sitting there; continued sitting in the
25 car.

1 Q And which way did he run?

2 A Back behind the house that first house there and
3 in their backyard.

4 Q And what did you do after that?

5 A I got out, I stepped out of the car and walked
6 over there cause Al and the other officer was coming up
7 then.

8 Q All right. When you say you and Al, you mean
9 Officer Griffin?

10 A Yes, sir.

11 Q How did Officer Griffin catch him; did you see
12 that?

13 A Uh-uh.

14 Q All right, sir. So when you got there to where
15 the officer was, what was he doing?

16 A What was who doing?

17 Q Officer Griffin.

18 A He was handcuffed him and standing beside his
19 side.

20 Q And the man?

21 A Sir.

22 Q The man that Officer Griffin was handcuffing, was
23 that the same man that robbed you at the Seven Eleven
24 and beat you at the Seven Eleven?

25 A Not at the Seven Eleven, it was the Fast Fare.

1 Q Fast Fare. Excuse me, I'm sorry. Was that the
2 same man you few saw a few minutes earlier?

3 A Yes, sir.

4 Q Any questions in your mind?

5 A None.

6 Q And did you see when you got there the officer was
7 handcuffing him?

8 A He had already handcuffed him.

9 Q Already handcuffed him. Did you see Officer
10 Griffin recover anything?

11 A I hollered out to him, he got a knife, and I think
12 he got it out of his back pocket.

13 Q Did you see the knife at that time?

14 A Yeah, when he got the knife out of his back
15 pocket.

16 Q And did you see anything else?

17 A No, sir. After he stood up, Officer Tony found
18 this package of cigarettes there.

19 Q And the man Mr. Griffin arrested was the same man
20 who attacked you in the store?

21 A Yes, sir.

22 Q Any question about that?

23 A None.

24 Q Please any questions Mr. Workman might have.

25 CROSS EXAMINATION BY

1 MR. WORKMAN:

2 Q Mr. Lee, you didn't ever see Elson McKanic
3 threaten Ms. Lively; did you, Susan?

4 A I don't think so, no, sir.

5 Q Now are aware at this point that the woman that
6 was with Elson McKanic name is Felicia Mitchell?

7 A No, sir, but I mean I know I would know her if I
8 seen her again but not by name.

9 Q Okay. Now it's true that Felicia had the money
10 when she walked out store; correct?

11 A I don't know who had the money. I'm pretty sure
12 she did, but I ain't saying that she did or he did.
13 I know they had the money and the cigarettes.

14 Q But I mean, who had it. Who had it in their
15 hands. Did Felicia have the money and the cigarettes
16 when she went out the door?

17 A Yes, sir. But it seemed like the money traded
18 hands once they got outside the door.

19 Q Did you see that?

20 A Yes, sir.

21 Q How far away from the door did that occur?

22 A Right outside the door. They was walking out
23 going toward the corner of the store.

24 Q And you're sure you saw some money change hands?

A Seem like they put it in a bag. They was given,

1 changed hands, you know, when you're walking and you
2 swap.

3 Q There was no doubt in your mind there was money
4 there?

5 A Yes, sir.

6 Q That's all I have.

7 REDIRECT EXAMINATION BY MR. GRANT:

8 Q And Mr. Workman asked you where was Susan; he was
9 dealing with you; is that correct?

10 A He was dealing with me and I really don't know
11 what he said to Susan or what the girl said to Susan.

12 Q Did you hear him say anything to her?

13 A Told the girl that was with him?

14 Q Yes?

15 A Told her to get the damn money. Get the money.

16 Q Get the money?

17 A Yes, sir.

18 Q While---

19 A While he was holding up on me.

20 Q Thank you, sir.

21 THE COURT: You may step down.

22 MR. GRANT: Call Felicia Mitchell.

23 FELICIA MITCHELL, first having been
24 duly sworn, testified as follows:

25 THE COURT: If there's a question you can direct

1 it to me.

2 JUROR: I left my pad.

3 THE COURT: He can get it for you.

4 DIRECT EXAMINATION BY MR. GRANT:

5 Q State your full name for the Court.

6 A Felicia Mitchell.

7 Q You need to speak into the microphone so they can
8 hear you over here. How old are you?

9 A 19.

10 Q 19.

11 ~~THE COURT: Excuse me just a second. Madam~~

12 Foreperson, ladies and gentlemen of the jury, I notice
13 that you had gotten a pad. I'm going to ask you not to
14 take notes for the simple reason that your version of
15 the notes may not be identical to what somebody else
16 taking notes may get, and you all end up with all
17 different versions of notes.

18 So I'm going to ask that you pay close attention
19 to the testimony from the witness stand and any other
20 evidence that's presented and not take any notes. All
21 right go ahead.

22 BY MR. GRANT:

23 Q And where you living right now; where you staying?

24 A Right now I'm serving time in the Woman's
25 Correctional Center.

1 Q And you're from Union?

2 A Yes, sir.

3 Q Do you know Elson McKanic?

4 A Yes, sir.

5 Q How long have you know him?

6 A About 7, 8 years.

7 Q What did you call him?

8 A Bull.

9 Q And on the early morning of July 29th, the morning
10 the Fast Fare was robbed; did you see him that morning?

11 A Yes, sir.

12 Q Where did you first see him?

13 A At the Fast Fare behind Fast Fare.

14 Q And what time would that be?

15 A Approximately four o'clock.

16 Q I am sorry?

17 A Approximately four o'clock, four am in the
18 morning.

19 Q Was anybody else with you?

20 A No, sir.

21 Q Was anybody else with him?

22 A No, sir.

23 Q And in relation to the Fast Fare, as far as where
24 was he, where were you in relation to the Fast Fare?

25 A He was coming from behind it, and I was going

1 towards it.

2 Q And what did he do when he saw you?

3 A He called me. He asked me to come here and I
4 stated to him I wasn't coming. So he came to me.

5 Q He came to you and where was y'all standing?

6 A Right on the side of the Fast Fare.

7 Q And what did he say to you?

8 A He said that I had told on him about another
9 incident that had taken place.

10 Q Don't go into anything else. What does he say to
11 you about that night -- that night?

12 A He was going to rob the Fast Fare.

13 Q He was what?

14 A He was going to rob the Fast Fare.

15 Q What did he tell you to do?

16 A Told me that I was going to help him rob the Fast
17 Fare.

18 Q What did he say to you?

19 A We were going to rob Fast Fare.

20 Q And did you know if he had a weapon?

21 A Yes.

22 Q What did he have?

23 A A knife.

24 Q Did you see the knife?

25 A Yes, sir.

1 Q What kind of knife was it?

2 A Butcher knife. It was like a straight knife.

3 Q Where did he have it?

4 A In his back pocket.

5 Q In his back pocket. I'll show you this knife
6 State's Exhibit Number One does that look like the
7 knife that he had?

8 A Yes.

9 Q And after you talked to him there and he told you
10 you were going to rob the store. What happened then?

11 A We walked around to the front of the store. He
12 had his shirt off. As we were close to the front of
13 the store there was a girl that was working at the
14 store and she was emptying a trash container. I
15 continued to walk and he turned around.

16 Q When you say a girl, was this the blond headed
17 lady?

18 A Yes.

19 Q Was anybody else there inside the store besides
20 her at that time?

21 A At that time, no. But then later another guy
22 pulled, a guy pulled up in the truck.

23 Q Is that him in the read shirt?

24 A Yes, sir.

25 Q And when he pulled up where was Elson McKanic?

1 A Elson and myself were like coming across the
2 street because he had walked across the street.

3 Q What happened when the man pulled up in the truck?

4 A Elson said, he's going to fuck up everything, and
5 he asked me to get on telephone act like I was calling
6 someone. That's what I did.

7 Q And after you got on telephone attempted to call
8 somebody, what happened then?

9 A This guy continued to go in and out of the store
10 and Bull then stated that he's not going to leave.

11 ~~He's going fuck up everything. I'm just going to go in~~
12 the store. You got the money. He said to me, get the
13 money and some Newport cigarettes. That's what we
14 did. We went in the store at that time. This guy was
15 standing next to there.

16 Q When you went into the store, both of you went in
17 the store?

18 A Yes, sir.

19 Q Where was the guy where he standing when y'all got
20 in the store?

21 A At the counter.

22 Q Where was lady that was running the store, where
23 was she?

24 A Behind the counter.

25 Q All right what happened when y'all went in? What

1 did Elson McKanic do?

2 A As soon as we walked in he started beating on the
3 guy.

4 Q Beating on him?

5 A Yes, sir.

6 Q And what happened when he started beating him?
7 When Elson started beating on him?

8 A It was like they was travelling around store, and
9 I was standing at the door, and she comes up and says,
10 what the hell is going on. What is going on. And the
11 girl was yelling, what he was doing. And at that time
12 Bull stated to me, Bitch get the money.

13 I yelled out to the girl give me the money. She
14 had called the police, but she wasn't saying nothing.
15 I don't know if it was because she was scared or what,
16 but she wasn't saying anything, so I snatched the phone
17 out of the wall. And she gave me the money. I took
18 the money. He cup from back behind the store up the
19 aisle by the soda machines and he had a knife in his
20 hand and it was up in his palm like this.

21 And we went out store. The door was locked and
22 the girl stated -- Bull stated to the girl, open this
23 mother-fucking door, and she said the other one's
24 open. And we both went out of the store.

25 Q And what did you take from the girl?

1 A What did I take from her?

2 Q Yeah, what did you take from her?

3 A Money and two packs of Newports.

4 Q What did you do with that money and the

5 cigarettes?

6 A Bull took the money and cigarettes out of my

7 pocket once we got outside the store.

8 Q And I'll show you this pack of money and ask if

9 that looks like the money that you took?

10 A Is that the money? It was a stack of ones. This

11 ~~was more ones than anything.~~

12 Q About that same size?

13 A Yes. It wasn't much more than that.

14 Q We'd offer for identification.

15 THE COURT: Mark for identification only.

16 (State's two marked for I.D. only.)

17 Q Is that the kind of cigarettes that you took?

18 A Yes, sir.

19 MR. GRANT: We'd marked that for identification.

20 THE COURT: Mark the cigarettes for identification

21 only. Give the court reporter time to do her work.

22 MR. GRANT: Yes, sir.

23 (State's three marked for I.D. only)

24 BY MR. GRANT:

25 Q And when you say you did something to the

1 telephone. What did you do with the telephone?

2 A I snatched it out of the wall.

3 Q And after you snatched it out of the wall, what
4 did you do with it?

5 A Nothing. I didn't do nothing with it.

6 Q Just left it in there?

7 A Yes.

8 Q When you got outside you had the money and
9 cigarettes, what did you and Elson McKanic do?

10 A We got to the corner outside of Fast Fare and we
11 were running and I stopped and I said, just stop Bull.
12 Like this. We be going to jail. He said bitch come
13 on. And there is an opening on the side of laundry mat
14 and behind the Fast Fare, so we went behind there and
15 there was opening space back there. I told him just
16 take the money and the cigarettes and go to hell. I
17 reach in my pocket and took the money and the
18 cigarettes out, and he put a knife to my throat and
19 stated to me, bitch, I kill you. Because I snitched on
20 him, but anyway. I told him that I didn't snitch on
21 him but that the guy that he had jumped on before.

22 Q Wait a minute. Hold it. After you -- you got the
23 money, what did you do?

24 A We ran trying to get this opening in the bushes,
25 but he couldn't. And I could because I was smaller. I

1 went through the opening, and I was like running ahead
2 of him and I saw the police at that time, and then they
3 didn't see me. They spotted him before they spotted
4 me.

5 Q Did you see them catch him?

6 A Yes, I did.

7 Q Did they later find you?

8 A Yes, later on they did.

9 Q Please any questions Mr. Workman might have.

10 CROSS EXAMINATION

11 BY MR. WORKMAN:

12 Q Ms. Mitchell, are you also charged with armed
13 robbery?

14 A Yes, sir.

15 Q Okay. You haven't been to trial on that charge;
16 have you?

17 A No, sir.

18 Q What has the State promised you in return for
19 coming here to testify?

20 A Nothing.

21 Q You're not expecting any help; aren't you
22 expecting some help?

23 A Expecting?

24 Q Some help from the Solicitor's office?

25 A They haven't offered me any.

1 Q But you're expecting something right?

2 A Not exactly.

3 Q Not exactly? Was the time you and Elson entered
4 the store, was the first time you'd been in that store
5 that night?

6 A No, I had been in already for grape soda.

7 Q So you'd been in the store twice that night?

8 A Yes.

9 Q Was the time you; was Elson at the store when you
10 went in for the soda?

11 A Yes.

12 Q He was there?

13 A Yes.

14 Q And this was after he told you he was going to rob
15 the Fast Fare, wasn't it?

16 A No, he hadn't told me then. He had seen the girl
17 and hadn't told me then.

18 Q What's that now?

19 A He didn't tell me that because he had seen the
20 girl, so he didn't tell me that. I don't know why.

21 Q What's that?

22 A I don't know why he didn't state it to me then,
23 but I think that's he didn't, because he saw the girl
24 and he had his shirt off.

25 MR. GRANT: Thank you. Come down.

1 THE COURT: All right. You can step down.

2 MR. GRANT: Call Susan Wood Lively.

3 SUSAN WOOD LIVELY, first being
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. GRANT:

6 Q I need you speak up and state your full name for
7 the court.

8 A Susan Wood Lively.

9 Q And where do you work?

10 A Fast Fare in Monarch.

11 Q Back on July the 29 with this year, were you
12 working at Fast Fare?

13 A Yes, sir.

14 Q And on that early morning, who was else was
15 working with you that night?

16 A None else was working with me, sir.

17 Q Do you know Charles Lee, Chuck Lee?

18 A Uh-huh.

19 Q How do you know him?

20 A He delivers the State paper on weekends.

21 Q I'm going to need you speak up a little louder.
22 Push the microphone a little closer, please. I can't
23 quite hear you.

24 And about what time that morning did you see him?

25 A Chuck?

1 Q Yes, ma'am.

2 A He come in about five minutes to four.

3 Q And was anybody else in the store when he came in?

4 A No, sir.

5 Q Had you seen anybody else around or near the store
6 that morning near the time he came right near four
7 o'clock?

8 A Uh-huh, I saw the gentleman right there and the
9 girl that was just up here.

10 Q Talking about this defendant?

11 A Uh-huh.

12 Q And Felicia Mitchell, the one who just testified?

13 A Yes, sir.

14 Q Where was did you see them? Where did you first
15 see him?

16 A Well, I was out changing the trash and he was in
17 the parking lot and they were over behind the Fast
18 Fare, and I thought I saw somebody and when I turned
19 around to look they moved. And that's what I saw.

20 Q And what did you see them do anything?

21 A They were didn't do anything then.

22 Q And after that, what happened? Did you see them
23 again after that?

24 A Yeah, when they come into the store.

25 Q How many times did they come into the store that

1 night?

2 A She came in once before and got a grape drink and
3 a piece of gum, but he didn't come in that night to me.

4 Q Do you know if she came in was Chuck there at that
5 time?

6 A No he wasn't.

7 Q Okay. Do you know where Elson McKanic was when
8 she came in the grocery?

9 A No, I don't.

10 Q Had you ever seen her before?

11 A No.

12 Q Did you know her?

13 A (Nods head)

14 Q How about Elson McKanic, had you every seen him
15 before?

16 A I saw him the night before. Saturday night he
17 came in the store and there was someone on poker
18 machine on the corner and he had stood there for a
19 minute and looking at it, and then he just left.

20 Q Same man that you seen the night before?

21 A Uh-huh.

22 Q All right. And what happened after Chuck got
23 there?

24 A Chuck put his papers in the rack and got him a cup
25 of coffee and come up to the cash register and we were

1 talking. And then the defendant and the girl came in.
2 And he walked up to Chuck and said something. And then
3 just started hitting him.

4 Q Just started hitting him?

5 A Uh-huh.

6 Q What happened when he started doing that?

7 A Then I got, I picked up the phone to call the
8 police cause I thought, you know, this was man was mad
9 at him for something. I didn't realize what they were
10 going to do. And when I did, she said, she jerked the
11 phone from me. And jerked it out of the wall. And
12 then she told me to give her all the money and I did.
13 And then she asked for the cigarettes and she got
14 those.

15 Q What kind of cigarettes did she get?

16 A Newports.

17 Q And could you hear what was going on with Elson
18 McKanic and Chuck?

19 A No, sir.

20 Q Did you ever see any weapon?

21 A I saw the weapon when he hit the right door which
22 was locked. I saw it sticking out of his hand.

23 Q Which way did they go when we went outside?

24 A They left to the left toward the Galaxy.

25 Q And what money did you give her?

1 A I gave her, it was only -- I gave her, it was only
2 bills. I didn't give her any change. It was about
3 \$107.

4 Q And I show you this, what's been marked as State's
5 Identification Number 2 and I ask you if you can
6 identify that money?

7 A That's it.

8 Q How can you identify it?

9 A I know it was a lot of ones. And I know it was
10 definitely that two dollar bill.

11 Q Is that two dollar bill for any particular
12 purpose?

13 A Yeah, we keep it in there to keep the serial
14 number on it so if somebody does rob us, if they find
15 the money then we knew that it was ours is what it was.

16 Q So that two dollar bill is put there for that
17 purpose?

18 A Right.

19 Q And what did you do with that money?

20 A I give it to her.

21 Q What did she do with it?

22 A She just kept it in her hand. I really don't
23 know.

24 Q We're going to offer the money into evidence at
25 this time.

1 MR. WORKMAN: No objection.

2 THE COURT: Comes in without objection.

3 (State Exhibit 2 marked into evidence)

4 Q And these cigarettes, is that the same type of
5 cigarettes she took?

6 A Yes, sir.

7 Q How many packs did she take?

8 A Two.

9 Q Two packs?

10 A Uh-huh.

11 Q Is there any marks markings on those that say that
12 those were Fast Fare?

13 A No, sir.

14 Q You don't do that anymore?

15 A No.

16 Q And what did you do after they went out the door;
17 what did you do?

18 A Well, I was looking for the key 'cause I wanted to
19 lock the door so nobody else could get in. And Chuck
20 went out and got in his truck and the whole time I was
21 looking for the key.

22 Q And how quickly did the police come?

23 A It wasn't more than a minute.

24 Q Did you see the man who robbed you in the
25 courtroom?

1 A Uh-huh.

2 Q Where is he?

3 A I see him right there.

4 Q Any doubt in your mind?

5 A (Nods head.)

6 MR. GRANT: Let the record reflect she identified
7 the defendant Elson McKanic.

8 MR. GRANT: Please answer any questions Mr.
9 Workman might have.

10 CROSS EXAMINATION

11 BY MR. WORKMAN:

12 Q Mrs. Lively, would it be fair to say from your
13 vantage point behind the counter you could probably see
14 what was going on in the store that night better than
15 anyone else in there?

16 A Yeah.

17 Q Okay. Did Elson McKanic ever threaten you?

18 A No, sir.

19 Q He didn't threaten you with that knife?

20 A (Nods head)

21 Q Did he ask you for any money?

22 A No.

23 Q Did he take any money out of the cash register?

24 A No.

25 Q You didn't hear him tell Felicia Mitchell to get

1 the money, did you?

2 A No.

3 Q Elson McKanic didn't rob you; did he Susan?

4 A He didn't get the money from me, no.

5 Q He didn't threaten you with a weapon or he didn't
6 say anything to you, did he?

7 A The only thing he said to me---

8 (crying)

9 He hit the door on the right side which was locked
10 and he said, open the door bitch, and that was all he
11 said.

12 Q But he never asked you for any money or any
13 cigarettes?

14 A (Nods head)

15 Q He's not the one who ripped the phone out of the
16 wall?

17 A (Nods head)

18 (Pause.)

19 Q Mrs. Lively, and I know, I'll make this as short
20 as possible. I know this is hard. Did it appear while
21 Felicia Mitchell and Elson McKanic were in the store,
22 did you ever, you didn't hear Elson threaten Felicia;
23 did you?

24 A No.

25 Q Did you see him force her to do anything she did

1 in the store?

2 A No.

3 Q It appeared she was acting of her own free will;
4 isn't that correct?

5 A Well, she told me that -- I asked one thing, what
6 are y'all doing, and she said, I don't know. He's
7 making me do this. Give me the money.

8 Q But you never saw him?

9 A No.

10 Q Do anything to back that statement up as far as
11 threatening her or forcing her to do anything?

12 A (Nods head)

13 MR. WORKMAN: That's all I have.

14 REDIRECT EXAMINATION BY MR. GRANT:

15 Q While he was in there, he was beating on Chuck?

16 A Right.

17 Q Chasing him around?

18 A Uh-huh.

19 Q Were you scared of him?

20 A Yeah. (chuckles)

21 MR. GRANT: Thank you, ma'am.

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

23 THE COURT: Madame Foreperson and ladies and
24 gentlemen of the jury, at this time we'll going recess
25 for lunch. I am going to ask that you be back in the

1 jury room, do not come back into the courtroom, go to
2 your jury room and be back there by 2:30.

3 Now, while you're out at lunch, and when you come
4 back from lunch, do not discuss this case with any
5 other member of the jury panel. You've not heard all
6 of the evidence yet, so it would be premature for you
7 to start deliberating or discussing this case.

8 While you're on your lunch break do not allow
9 anyone that's not on the jury or any member of the
10 public or any family member or friend should approach
11 you and try to talk to you about this case, tell them
12 you've been instructed not to discuss this case.
13 Should someone persist to talk to you about the case,
14 get their name and when you come back at 2:30 you can
15 give it to the bailiff and he can pass it up to the
16 court.

17 Also I will instruct you that should there be any
18 news reports on television or radio during the lunch
19 recess or should there be any publication in the
20 newspaper or whatever, has any story about this case
21 please disregard it. Please do not listen to radio the
22 report. Please don't watch the T.V. report, and please
23 do not read anything that is published in a newspaper
24 or any other kind of publication.

25 All right, at this time you may leave and ask you

1 be back in the jury room at 2:30. Everyone else remain
2 seated.

3 (Jury exits)

4 (Lunch recess taken)

5 (Court back in session)

6 THE COURT: All right you may bring in the jury.
7 All right. Let the record show that all 13 jurors are
8 present.

9 Madame Forelady, members of the jury, we have to
10 take up another matter that's going to take about ten
11 or 15 minutes. So I'm going to ask that you go back to
12 your jury room. We'll call you in just a few minutes.

13 (Jury exits.)

14 THE COURT: I understand Mr. Workman has a matter
15 to bring before the court. I'll be glad to hear from
16 you.

17 MR. WORKMAN: Yes, sir, Your Honor. We have the
18 jury was brought back in. Mr. McKanic told me he
19 would like to proceed on the defense of his case and
20 defend himself, and he would also like to direct the
21 court.

22 THE COURT: All right Mr. McKanic I'll be glad to
23 hear from you. No, sir, you can stand back there.

24 MR. MCKANIC: Sir, I'd like to represent myself.

25 THE COURT: Sir, just stand back there. Please

1 Mr. McKanic go behind the defendant's table. You can
2 stand just please stay at your seat.

3 MR. MCKANIC: I feel that I'm being poorly
4 represented, sir.

5 THE COURT: You what?

6 MR. MCKANIC: I feel that I'm being poorly
7 represented. It's not any disrespect to his job or his
8 ability. I have asked him and recommended him some
9 questions and asked him a number of them State's
10 witnesses about them, and he figured he didn't need
11 to. I feel that's the whole essence with this case.

12 THE COURT: Well, Mr. McKanic, you need to realize
13 your attorney Mr. Workman has had a lot of training.
14 He's been in a lot of trials. He's the public defender
15 of Union County and you would probably be well advised
16 to listen to him.

17 MR. MCKANIC: I understand what you are saying,
18 sir. My life is at stake here. I could use your
19 assistance to correct me, or you could correct me in
20 this courtroom---

21 THE COURT: No, sir. I can't correct you. I
22 can't assist you. I'm supposed to be mutual.

23 MR. MCKANIC: I'm saying if I make a mistake, if
24 I'm saying something about in there. What I'm saying,
25 I do not want Mr. Workman to do it because he's

1 scared. And I know this---

2 THE COURT: He's what?

3 MR. MCKANIC: Scared.

4 THE COURT: Scared.

5 MR. MCKANIC: He told me he was nervous from the
6 start with this case. He's got scared to assist me. I
7 consider this poor representation of my rights.

8 THE COURT: And you want the Court to allow you to
9 question the witness.

10 MR. MCKANIC: If I go down, I go down, but not
11 with him, no way.

12 THE COURT: All right, Mr. McKanic I'm going to
13 deny your motion to represent yourself. I'm going to
14 let you continue with Mr. Workman. And Mr. McKanic
15 what you need to do is cooperate with Mr. Workman. If
16 you have some questions you want him to ask a witness.

17 MR. MCKANIC: I have all ready told him. I've
18 already done that and he refused me to ask them.

19 MR. WORKMAN: Your Honor, for the record most of
20 questions was pertaining to after the witnesses left
21 the witness stand just before we came in the courtroom.

22 MR, MCKANIC: You came over here twice. You came
23 over here twice.

24 THE COURT: Mr. McKanic, we're not going to have
25 an argument.

1 MR. MCKANIC: I understand but I'm just tr
2 make it straight. I do not trust the man. The man
3 said he was nervous from before the trial started. He
4 was shaking and said, I do believe that he is scared of
5 Mr. Grant and I do not believe he's putting the
6 pressure on the witnesses like Mr. Grant is doing.
7 What's up, man.

8 THE COURT: Well, Mr. McKanic, I think you'd be
9 making a grave mistake not having an attorney to
10 represent you in a serious matter like this.

11 MR. MCKANIC: Another thing, I haven't seen this
12 man except one time. On a guilty plea and they try to
13 get me to plea bargain, but I only seen the man
14 yesterday. I haven't seen the man since yesterday.

15 MR. WORKMAN: Your Honor, for the record I saw Mr.
16 McKanic last week with a list of the State's witnesses
17 statements, the incident report, things to him last
18 Wednesday, and I talked to him again this morning
19 before the trial.

20 MR. MCKANIC: When you saw me last Wednesday?

21 MR. WORKMAN: I saw you last Thursday or Friday.
22 I asked you if you had any witnesses you wanted to
23 subpoena. You said you did not.

24 MR. MCKANIC: That was Friday.

25 MR. WORKMAN: That was Friday.

1 MR. MCKANIC: All right. I told you I had
2 questions I wanted you to ask them. I showed the
3 questions did you write them down?

4 THE COURT: All right. What we're going to do.
5 Mr. McKanic, do you need some additional time to
6 consult with Mr. Workman or are you ready to proceed.
7 You need some additional time?

8 MR. MCKANIC: Yes, sir.

9 THE COURT: All right. We'll be in recess. We'll
10 give Mr. McKanic a chance to talk to his attorney.

11 (Recess taken.)

12 THE COURT: All right Mr. Workman you made a
13 motion, I presume it's a motion to be relieved.

14 MR. WORKMAN: Yes, sir.

15 THE COURT: And allow Mr. McKanic to proceed
16 pro se during the balance of the trial. And the my
17 understanding of the case law in this State leaves that
18 in the discretion of the trial judge. I am going to
19 deny your motion to be relieved and I am going to deny
20 Mr. McKanic's motion to proceed pro se at this point
21 on.

22 MR. MCKANIC: I'd like to apologize for my
23 behavior in the courtroom, Your Honor. To the
24 Solicitor---

25 THE COURT: Well, I accept your apology, and so we

1 will proceed. Your motion's in the record Mr. McKanic
2 and so your's Mr. Workman.

3 MR. MCKANIC: All right, sir.

4 THE COURT: Ready for the jury.

5 MR. GRANT: State is Your Honor.

6 THE COURT: All right, bring the jury in.

7 (Jury in.)

8 THE COURT: All 13 jurors are present. Mr. Grant
9 you may call your next witness.

10 MR. GRANT: Call Al Griffin.

11 FRED A. GRIFFIN, JR., having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION MR. GRANT:

14 Q State your name for the court.

15 A Fred A. Griffin, jr.

16 Q By whom are you employed?

17 A Union Public Safety.

18 Q I'll ask you if you were working on the early
19 morning hours of July 29th of this year?

20 A Yes, I was.

21 Q And sometime around four o'clock that morning did
22 you go to the Fast Fare?

23 A Yes, I did.

24 Q All right, sir. And when you went to the Fast
25 Fare which Fast Fare is it, please, sir?

- 1 A In Monarch Boulevard.
- 2 Q And when you went there, who did you see there?
- 3 A Talked with Chuck Lee.
- 4 Q Chuck, did you know him?
- 5 A Yes, sir.
- 6 Q And after talking to him, what did you do?
- 7 A I asked him to get the car with him and ride
- 8 around the back to see if we could see the guy.
- 9 Q All right, sir. And did he get in the car with
- 10 you?
- 11 A Yes, sir.
- 12 Q Where did you go?
- 13 A We went around behind the Fast Fare to the Fresh
- 14 Air Galaxy parking lot. We went around back.
- 15 Q How far is it from the Fast Fare?
- 16 A About tenth of a mile.
- 17 Q And when you went into this area, what if anything
- 18 did you see?
- 19 A We saw Elson running behind the house.
- 20 Q Where did you first see him?
- 21 A He was standing beside the house right behind the
- 22 Fresh Air Galaxy.
- 23 Q All right. When you saw him, what did he do?
- 24 A He took off running.
- 25 Q What did you do when he took off running?

1 A I exited my vehicle and took off running after
2 him.

3 Q All right, sir, and where did he go?

4 A Up in the some woods back behind the first house.

5 Q What did you do?

6 A I went in the woods after him and called him.

7 THE COURT: All right. Where is the bailiff back
8 there? Let's keep this traffic down to a minimum.
9 We're trying to conduct a trial. All right. Go ahead,
10 Mr. Grant.

11 MR. GRANT: Thank you, Your Honor.

12 Q Mr. Griffin, when you first saw Elson McKanic how
13 close were you to him?

14 A About to the back of the courtroom.

15 Q From here to the back of the courtroom?

16 A Yes.

17 Q What did you do?

18 A I exited my vehicle and chased him.

19 Q What did you do?

20 A I exited my vehicle and run after him.

21 Q Ran after him. All right, sir. Did you catch
22 him?

23 A Yes, I did.

24 Q Did you ever lose sight of him?

25 A No, I didn't.

- 1 Q All right, sir. And where did you catch him?
- 2 A Back behind the house. Behind Revco. The first
- 3 house behind Revco.
- 4 Q What did you do when you caught him?
- 5 A Told him to get down on his stomach. I had him by
- 6 his arm. I told him to get down on his stomach, and he
- 7 got down on his stomach, and I handcuffed him.
- 8 Q And was anybody with you at that time?
- 9 A No, sir.
- 10 Q Other officers arrived?
- 11 A Yes, sir.
- 12 Q All right sir. And after you handcuffed him, what
- 13 happened then?
- 14 A Glen Tony come over and we picked him up and found
- 15 the knife in his back pocket on the right side.
- 16 Q You found, who found the knife?
- 17 A I did.
- 18 Q Where was it?
- 19 A In his right back pocket.
- 20 Q And I'll show State's Exhibit Number One and ask
- 21 if you can identify that knife?
- 22 A That's it.
- 23 Q That's the knife you found in Mr. McKanic's back
- 24 pocket?
- 25 A Yes, sir.

1 Q All right, sir. When you got him up, what else
2 did you see?

3 A I pack of Newport cigarettes.

4 Q Where were the cigarettes?

5 A Up under, up under him in his chest.

6 Q When you picked him up where were they?

7 A On the ground.

8 Q On the ground?

9 A Yeah.

10 Q Who recovered those?

11 A Glen Tony.

12 Q Did you see him do that?

13 A Yes, I did.

14 Q And this pack of Newport cigarettes, was that the
15 cigarettes Mr. Tony picked up?

16 A Yes.

17 Q When you first saw the cigarettes, where were
18 they?

19 A They was on the ground when I seen them.

20 Q And who had just been on the ground there?

21 A Elson McKanic.

22 Q Elson McKanic. These are offered for I.D. We're
23 going to offer them into evidence.

24 MR. WORKMAN: No objection.

25 THE COURT: All right. These are now, the pack of

1 cigarettes is now in evidence be marked State's next
2 exhibit.

3 (State's exhibit number 3 into evidence)

4 Q You got him handcuffed, picked him up, and found
5 the knife and the cigarettes, what did you do then?

6 A I turned him over to Glen Tony and I kept
7 searching for the female.

8 Q And I'll ask you, did you find her?

9 A Not at that time I didn't. I went back to the
10 Fast Fare.

11 Q Did you later find her?

12 A Yes, sir.

13 Q Was that Felicia Mitchell?

14 A Yes, sir.

15 Q Did you look for money?

16 A Yes, sir.

17 Q Who found the money?

18 A I did.

19 Q Where did you find the money?

20 A In front of that house that I had captured Elson
21 behind, in front of in a flower pot.

22 Q In a flower pot?

23 A Yes, sir.

24 Q And how near was that to there was Elson McKanic
25 when you first saw him?

1 A Probably 50, 60feet.

2 Q And this money was to be marked into evidence as
3 State Exhibit Number Two. Does that appear to be the
4 money that you found?

5 A Yes, sir.

6 Q Did you take that into evidence. Did you turn
7 that over to anyone?

8 A Yes, sir.

9 Q Please answer any questions Mr. Workman may have.

10 CROSS EXAMINATION

11 BY MR. WORKMAN:

12 Q Officer Griffin, did you say that you were the
13 officer that found Felicia Mitchell?

14 A Yes, sir.

15 Q Where was Felicia found?

16 A Under a car.

17 Q All right. What area was that in? The car she
18 was under?

19 A Between the first and the second house where I had
20 found him.

21 Q Where was the -- how far away from where the money
22 was found was it where you found Felicia Mitchell.

23 A About 30 or 50 feet.

24 Q So from what you testified to in regard to the
25 distance from where you found Elson to where you found

1 Felicia, she was closer to where you found the money
2 than he was?

3 A Yeah.

4 Q Okay. Did -- when you went to take Elson into
5 custody after you caught up with him, he didn't resist
6 you; did he?

7 A No, sir.

8 Q Okay.

9 (Pause.)

10 MR. WORKMAN: That's all I have, Thank you,

11 Officer Griffin.

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

13 MR. GRANT: State's case, Your Honor.

14 THE COURT: Mr. Workman, any motions.

15 MR. WORKMAN: Yes, sir.

16 THE COURT: Madame Forelady and members of the
17 jury, if you would go back to your jury room at this
18 time and we'll be with you in just a few minutes.

19 (Jury exits)

20 THE COURT: All right, Mr. Workman.

21 MR. WORKMAN: Your Honor, at this point on behalf
22 of Mr. McKanic I would make a motion of direct verdict.

23 THE COURT: Any response from the State. Any
24 other arguments from Mr. Workman.

25 MR. WORKMAN: The evidence presented thus far

1 viewed in the light most favorable to the State, I
2 believe they have failed to prove the essential
3 elements of the crimes to which Mr. McKanic is charged.

4 MR. GRANT: Your Honor, again, the State's
5 position is that McKanic both in the armed robbery and
6 the assault and battery with intent to kill and the use
7 of a knife and the evidence as presented has carried
8 the burden of this stage of the game to make at least a
9 factual issue on all those elements and obviously, Your
10 Honor, again we have two persons involved in the crime
11 and a principle of aiding and abetting, the hand of all
12 is the hand of all, and on those facts and on those
13 grounds there was more than sufficient evidence to
14 carry forth at this stage.

15 THE COURT: Any other comments Mr. Workman?

16 MR. WORKMAN: No, sir.

17 THE COURT: All right, Mr. Workman, your motion is
18 noted and I think there was enough testimony and enough
19 evidence at this point to create a factual issue which
20 would be a decision that the jury would make. Of
21 course, there are circumstantial evidence and there is
22 direct evidence. They can apply either one. So I
23 think at this point I would deny your motion for
24 directed verdict on all the charges. Any other motions?

25 MR. WORKMAN: No, sir. I do need a minute or two

1 to confer with my client about whether he wants to
2 testify or not.

3 THE COURT: All right, if you do that just let the
4 bailiff know when you're ready to go come back in.
5 We'll be in recess.

6 (Recess taken.)

7 THE COURT: State ready.

8 MR. GRANT: State is Your Honor.

9 THE COURT: Defense.

10 MR. WORKMAN: Yes.

11 ~~THE COURT: All right. You may bring in the jury.~~

12 All right. All 13 jurors are present. Mr. Workman you
13 may proceed.

14 MR. WORKMAN: Thank you, Your Honor, we would call
15 Elson McKanic.

16 ELSON MCKANIC, being first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. WORKMAN:

19 Q Elson, I know you probably, I need you to speak up
20 so that this lady can take down your testimony. Elson,
21 how old are you?

22 A 42.

23 Q On the night of July the 29 of this year, when did
24 you first see Felicia Mitchell?

25 A About 10 o'clock that night.

1 Q Ten o'clock on July the 28th?

2 A July 28 on East Main about ten o'clock.

3 Q Where did you -- where did you first see her?

4 A At a place called Fedo's on East Main.

5 Q Where did you and she go from there?

6 A We separated. I went to another place for awhile
7 and then I run into her again at another person's
8 house.

9 Q Tell the jury what happened next, Elson?

10 A It was getting ready going on 3:30 close to 4
11 o'clock. I said it's about time, I said I'm going
12 home. I said I am going to walk home and she said she
13 was going to some girlfriend's house down in Monarch.

14 Q Now you said she, you're talking about Felicia?

15 A Felicia. Well, I said you know, she's, can I go
16 down there with you. Sure you can come we both
17 walking.

18 Q Elson, I know slow down a little bit. Speak a
19 little slower. Let's get this microphone up a little
20 closer. So you were wanting to go home and you ran
21 into her again?

22 A So what she did was, instead of us walking she
23 could get this dude who had an old-type car, it was
24 old, but it was around about '37 and she said she could
25 get him to go at least down to the drive-in. So I

1 said, okay. You know, I got in the back seat. He the
2 dude dropped us off in front of it. And I got out and
3 she got out and I said, I'm going to home. I better
4 not get no ride from you. She told me she said she
5 wanted to use the phone and she wanted me to go with
6 her. She said come on.

7 Q But she told you she was wanting to use the
8 telephone?

9 A Yes, sir.

10 Q She wanted you to go with her?

11 A Yeah. And then later a lady come out and went to
12 the side picking up papers or something.

13 Q Where was this Elson?

14 A We got out of the car and the back of Fast Fare.
15 This lady was on the side. This Susan, the manager of
16 the store, she was picking up paper or trash or
17 something. You know. You know, I had been drinking,
18 you know, so she was doing something in the yard cause
19 she had a broom there at first. She went around the
20 front and this girl, Felicia Mitchell, told me she was
21 going to use the phone. So she went somewhere in the
22 store. Getting change to use the phone. I don't know
23 who she was talking to either.

24 Q Do you remember Felicia bothering anybody when she
25 was coming in the store?

1 A She bought bubble gum and grape soda. I seen the
2 grape soda. She was chewing on something. I thought
3 it was chewing gum or something.

4 Q After this point Elson let me ask you, had there
5 been any problems between you and Felicia that night?

6 A No, sir.

7 Q Had you made any threats toward her?

8 A No, sir.

9 Q Go ahead. She came back out of the store and then
10 what happened?

11 A After she came and then we went back in the
12 store. Felicia was on the phone and she was talking to
13 somebody. What I did, I left. I walked down toward
14 the rest of the phones. That is when Mr. Chuck, Mr.
15 Chuck pulled up in a big truck or something like that.
16 He pulled up and I turned around and I heard, I heard
17 him saying something. I don't know if he was talking
18 to me or the lady. You know. So, evidently I thought
19 he said something, so I walked over.

20 Q Slow down, Elson, what did you think you heard him
21 say?

22 A I thought I heard him say, what are those niggers
23 doing hanging around. So what I did, I walked back
24 over there. And I said to Felicia, I said damn, I know
25 he called us niggers and she was on the phone and she

1 said yeah, he called us niggers. And I said I'm going
2 show him who is a nigger just like that. He was, he
3 was drinking coffee he was smiling. And he turned and
4 looked like he was, he was grinning, and I said hey,
5 man, just like that, you called me a name. I didn't,
6 when I left I don't go in the store. Felicia she still
7 had that phone in her hand.

8 Q She was still outside on the phone when you went
9 in the store?

10 A I turned my back and I was going to fight this man
11 here. ~~Sure I didn't know whether she was behind me or~~
12 not.

13 Q Up until this point you went into the store to
14 because of what you thought Chuck had said to you, had
15 you said anything about robbing that store?

16 A No, sir, no.

17 Q And you hadn't threatened Felicia?

18 A No.

19 Q Go ahead. Tell the jury what happened once you
20 went in the store?

21 A I went in the store, I walked up on him and I said
22 hey man, who you calling a damn nigger. I fight you.
23 He said, hey man. He was panicked and scared and I was
24 beating on him. And we got to scuffling, fighting, and
25 the first time he fell down against the aisle in front

1 of him, the way the aisle was built, he fell down the
2 first time and his coat was over his head. He got up
3 and I said, mother fucker I'm going fuck you up. And I
4 just kept on beating him.

5 We went to the aisle next to the window where the
6 door was and I was beating him so more. He kept
7 hollering at me and I was still cussing him and hitting
8 on him. Then I kneed him and he fell back. And at
9 that point I stepped back twice. I reached in my
10 pocket and I pulled a knife and then I flipped that
11 toward the bookstand. I reached up and grabbed him.
12 And I told him if you ever call me a nigger again I'll
13 fuck you up.

14 Q Did you did you ever try to cut Chuck with the
15 knife, Elson?

16 A No, sir. If I was going to kill him I had plenty
17 of time to kill him. I knocked him down twice. I was
18 standing over him. I could have killed him. I was
19 standing over him I could have then.

20 Q Elson, that brings up a good question;.

21 MR. GRANT: Your Honor, I object to the form of
22 question.

23 MR. WORKMAN: Withdrawn I'll change the form.

24 Q Elson where did you get that knife?

25 A Off the railroad track. Off the railroad track.

1 Q How when did you get the knife?

2 A About four maybe five hours before that.

3 Q Four or five hours before this?

4 A Yeah.

5 Q Why did you have the knife with you?

6 A I'm going to be honest with you, you know, if seen
7 I got knife somebody on home and I was good there to
8 have a good time. If I walked on there with this knife
9 and I find it. We ain't messing with you. The way
10 they treat you. So I just stuck it in my back pocket.
11 You know.

12 Q So what go on and tell the jury, Elson, what
13 happened after you pulled the knife out and you were
14 fighting with Chuck?

15 A After I pulled the knife out and I lost it and
16 regained it. He got up and went around the thing. All
17 that time I was saying, if you ever call me nigger
18 again I'm going to fuck you up. And at that time I had
19 the knife against him and I was holding him. I never
20 swung at him. What I did was, when I turned around I
21 saw Felicia, back over the counter with her knees.

22 Q Say that again. You saw Felicia, what was she
23 doing?

24 A Her knee was on the counter. You know I looked at
25 her. I stood there and looked at her. I didn't go

1 near her. I didn't go near the counter. You know, I'm
2 like this here. I was there a minute or more, if she
3 wanted to go she had plenty of chances.

4 Q Did you know what she was doing?

5 A No. When I told her, I looked at her, you know.
6 To me that was it.

7 Q Did you ever tell her to get any money?

8 A No, sir. When I had turned around she had
9 finished robbing the store. And I looked at her. I
10 never said give me this or give me that. Take this or
11 take that. I don't mess with it. If she said that I
12 said I forced her to do so she had all day and all
13 night. She had all the area to run.

14 Q What happened after you saw her coming over the
15 counter?

16 A I said I just said, man what's the fucks going on
17 here. So I looked at her and I told.

18 Q That's Susan?

19 A Yeah, Susan. I told her to look bitch unlock this
20 door so I can get the fuck out of here. And she told
21 me that door's unlocked. Go, please, leave. I turned
22 my back and went out. I didn't say Felicia come on or
23 nothing. I turned my back and walked out of the store.

24 Q So you -- did you tell Felicia to come with you?

25 A No, sir, I never took Felicia in the store.

1 Q What happened go on and tell the jury what
2 happened when you went out the door?

3 A When I went out the door I turned on my back on
4 the place. I never looked back to see if Felicia came
5 out was she there or nothing like that. I walked
6 around the store with my fast walk. Cause I know I
7 messed up when I jumped that guy, you know. I went
8 around the store. I got to the corner Felicia shot by
9 me and she was gone. She was running.

10 Q So she ran past you?

11 A Yup.

12 Q At this point did you have any money from inside
13 the store?

14 A No, sir.

15 Q Do you have any of the cigarettes?

16 A I never took nothing from the store. I never took
17 nothing out of the store.

18 Q What happened after she passed you running?

19 A There was another corner and when she went around,
20 I was a fast walker I walked, and there was these
21 cigarettes, a pack of Newports. I reached down and
22 picked them and stuck them in my pocket, stuck them
23 in. I just said, Oh, a pack of Newports and I just
24 walked along.

25 Q Did you know how those Newports got there?

1 A Never did. She must have been dropped them
2 running or something, I guess. Cause she left me. She
3 passed me and she was gone.

4 Q Elson, what happened after you are picked up the
5 cigarettes?

6 A I walked over to the Fast Fare and I walked
7 through the woods through the bushes, and then I cut
8 and I was as I was walking out towards the clearing,
9 police cars come up, you know, and then after I seen it
10 was a cop come up. What I did, I turned around fast
11 walking back. He hollered hold it. I just stopped.

12 Q Did you resist him when he tried to arrest you?

13 A No.

14 Q Do you know where Felicia went when she went past
15 you running?

16 A No, sir. She said I run into those bushes. If I
17 had threatened her why did she go hide under a car when
18 the police car passing by she should've broken in and
19 gotten in the police car for safety.

20 MR. WORKMAN: Excuse me one second, Your Honor.

21 Q Elson, did you benefit in any way from Felicia's
22 robbery from that store. Did you gain anything?

23 A Did I gain anything? Yeah.

24 Q What's that?

25 A On trial for armed robbery and assault and battery

1 with intent to kill.

2 Q What's that Elson, I didn't understand you?

3 A I've gained a trial armed robbery, assault and
4 battery with intent to kill.

5 Q You've gained this trial?

6 A Yeah.

7 Q Did you get any of the money?

8 A No, sir, I never seen the money.

9 Q Did you ever threaten Felicia?

10 A No, sir. What would I threaten her for. She's
11 going beat me up.

12 Q Thank you, Elson. Answer any questions Mr. Grant
13 might have.

14 CROSS EXAMINATION

15 BY MR. GRANT:

16 Q You 42 years old?

17 A Yes, sir.

18 Q And this Sunday night you said you'd be drinking?

19 A Yes, sir.

20 Q How much you been drinking?

21 A To be honest, I'd been drinking about three and
22 half hours probably.

23 Q Three and a half hours? You weren't out working?

24 A Working?

25 Q Working that night?

1 A No, sir.

2 Q Not like this man was out working on his paper
3 route; you weren't out working; were you?

4 A No, sir.

5 Q Did you see him up carrying his papers back and
6 forth; his papers back there at the store?

7 A No, sir.

8 Q How big a fellow are you? How tall are you?

9 A About six and half.

10 Q How much you weigh?

11 A Roughly 260.

12 Q You bigger than that fellow right there, Chuck?

13 A Give or take a little.

14 Q Give or take a little?

15 A Yeah.

16 Q You just got this thing just find it laying on the
17 side of the road. You just stick it in your pocket and
18 carry it around with you?

19 A I walked the railroad tracks, sir. I found it on
20 the railroad tracks. I find a lot of things.

21 Q Okay. You go in and you feeling pretty good;
22 weren't you?

23 A Well, yeah.

24 Q You knock him done on the floor?

25 A Twice.

1 Q Knock him down twice?

2 A Yes, sir.

3 Q Down on the floor?

4 A Yes, sir.

5 Q He ain't no match for you; is he?

6 A No. I'm going to be honest with you, he probably

7 would be, I just took him by surprise.

8 Q Total surprise you got him from behind that's not

9 a total surprise; is it?

10 A Yes, sir in a way, yes, sir.

11 Q Got him down on the floor you got to pull a knife

12 out. This knife and threaten him with it?

13 A No, sir, not really.

14 Q Not really?

15 A No, sir, if I wanted to hurt him I could of been

16 hurting him.

17 Q You pulled a knife, didn't you?

18 A I stepped back from him and then pulled out the

19 knife.

20 Q With him laying on the floor after you already

21 knocked him down?

22 A Well if I wanted to hurt him I would have still

23 hurt him.

24 Q And pulled the knife out, didn't you?

25 A I stepped back from him though, didn't I.

- 1 Q You pulled the knife out?
- 2 A I stepped back from him.
- 3 Q Did you pull the knife out?
- 4 A Yes, sir I pulled the knife out.
- 5 Q Did you show it to him?
- 6 A I showed it to him.
- 7 Q What did you pull it out for?
- 8 A To tell him if he ever called me a nigger again I
- 9 was going to fuck him up.
- 10 Q To threaten him with it?
- 11 A No.
- 12 Q Four o'clock in the morning?
- 13 A Yes, sir.
- 14 Q Where you live close to the Fast Fare there?
- 15 A I live down Sam Tuck highway.
- 16 Q Sam Tuck Highway; how many miles from Fast Fare?
- 17 A About two.
- 18 Q Two. How long you know Felicia Mitchell?
- 19 A To be honest with you about couple of weeks.
- 20 Q Couple of weeks; you know where she lives?
- 21 A No, sir.
- 22 Q You know her family?
- 23 A I know her mother.
- 24 Q Know her mother. Do you know where her mother
- 25 lives?

1 A No.

2 Q How long you know her mother?

3 A Well, I've been knowing her about, I guess, 10 or

4 12 years.

5 Q 10 or 12 years?

6 A Yeah.

7 Q Nobody else ran out there except you and Felicia?

8 A (Nods head)

9 Q Chuck Lee and his truck and that little girl

10 running the store?

11 A Yes, sir.

12 Q Nobody else around?

13 A No, sir.

14 Q Four o'clock in the morning?

15 A Yes, sir.

16 Q You been drinking?

17 A Yes, sir.

18 Q And four o'clock in the morning this man was on

19 his paper route comes up to just calls you some type of

20 racial name out of the clear blue?

21 A I used the word, I thought.

22 Q You thought?

23 A Yes, sir.

24 Q He didn't say nothing to you, did he?

25 A I heard him say something. Thought he said you

1 know, nigger. Then Felicia confirmed it.

2 Q So you went in there and started pounding him?

3 A Yeah, I went, I was under the influence you know.
4 I thought he said it, you know.

5 Q Started on pounding on him, pulling your knife
6 out?

7 A Yes, sir. I admit it. I did it, yeah.

8 Q And then you and Felicia out the door together?

9 A No, we didn't go out together.

10 Q Didn't go out together?

11 A No, sir, I went in there by myself. I come out
12 there by myself.

13 Q She didn't go in that store?

14 A I didn't take her with me.

15 Q I asked you, did she go in there?

16 A To be honest with you when I went in there to
17 fight that man I didn't see Felicia come in the store.

18 Q So You just, you were in a rage when you went in
19 there to fight?

20 A Yes, sir. I didn't see her come in that door. I
21 didn't make sure she come out that door.

22 Q What did you say to this man before you started
23 pounding him in the back of the head?

24 A I said, Who the fuck you calling a nigger. I was
25 hitting him the same time I was saying it.

1 Q Was he laying down when you said it?

2 A Laying down where.

3 Q After you hit him?

4 A No, he didn't fall.

5 Q He didn't fall. How many times did you have to
6 hit him before he fell?

7 A About eight.

8 Q How many times you kick him when he was down?

9 A Twice.

10 Q Twice. All that before you pulled your knife out?

11 A After I stepped back.

12 Q Stepped back, pulled the knife out?

13 A Made the statement, that was it.

14 Q Told him you'd kill him; didn't you?

15 A Told him I'd fuck him up for calling me nigger
16 again, sure.

17 Q Did he ever call you a nigger?

18 A You want to know my opinion.

19 Q I asked you, did you hear him ever call you that?

20 A I thought he did.

21 Q Did you ever hear him call you that?

22 A I thought he did, sir.

23 Q Did you hear him call you that?

24 MR. WORKMAN: Your Honor, the witness has answered
25 that.

1 THE WITNESS: I thought he did.

2 THE COURT: He's already asked you that question.
3 Let's move on.

4 Q And out of the clear blue he verbally insults you,
5 so you thought?

6 A Yes, sir, so I thought. Felicia, I asked her did
7 this guy call me a nigger and Felicia confirmed it.
8 Yeah, he called us niggers and I went in there. I seen
9 him laughing and to be honest I went there with the
10 intention of whipping his butt. I'm not going to lie
11 about it.

12 THE COURT: Anything on redirect.

13 MR. WORKMAN: No, sir, that's all.

14 THE COURT: You may step down.

15 MR. WORKMAN: That's the defenses case.

16 THE COURT: All right.

17 MR. GRANT: State has one reply witness. Chuck
18 Lee.

19 DIRECT EXAMINATION BY MR. GRANT:

20 Q How big are you?

21 A Five eleven.

22 Q How much do you weigh.

23 A 162 pounds.

24 Q When that man came into that Fast Fare, did you
25 say anything to him?

1 A No, sir.

2 Q When he came in there and started beating on you,
3 did he say anything to you before he started hitting
4 you?

5 A Yes, sir.

6 Q What did he say?

7 A I hate you.

8 Q I hate you?

9 A I hate you S.O.B.

10 Q Had you said anything to him?

11 A No, sir.

12 Q After he hit you, what did you do?

13 A Continued to hit me even more.

14 Q When he had you down, did he pull this knife out?

15 A Yes, sir.

16 Q What did he do with that knife when he pulled it
17 out?

18 A He swung at me and I was stepping back running.

19 Q What did he say to you?

20 A I'm going to kill your damn white ass.

21 Q And did you hear him say anything to Felicia
22 Mitchell while he was there attacking you?

23 A Get the money, get the damn money.

24 Q How many times did he say that?

25 A Just like he said it. Just like he said that.

1 Get the money. Get the damn money.

2 Q What did you do when he pulled that knife?

3 A I run.

4 Q Had you been drinking anything that night?

5 A Cup of coffee (laughs) other than that, no, sir.

6 Q Were you working?

7 A Yes, sir.

8 Q Please answer any questions Mr. Workman might
9 have.

10 MR. WORKMAN: No questions.

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

12 MR. GRANT: We have nothing further.

13 THE COURT: Madame Foreperson, ladies and
14 gentlemen of the jury, at this time I'm going ask you
15 step back to the jury room for a few minutes. As I
16 told before lunch, please do not discuss the case.
17 It's not ready for you begin deliberating. You can
18 talk about other things but do not discuss this case.
19 You maybe excused.

20 (Jury exits.)

21 THE COURT: All right any matters to take up to
22 the court at this time.

23 MR. WORKMAN: No, sir.

24 THE COURT: All right. Let me just, y'all ready
25 for me to go to the charge.

1 MR. GRANT: Yes, sir.

2 MR. WORKMAN: Yes.

3 THE COURT: Okay. Of course, the general charge
4 which includes duty of the jury, look at the witnesses,
5 credibility, believability, presumption of innocence
6 and then we get into the, where are the indictments?

7 MR. GRANT: Right here, Your Honor.

8 THE COURT: Charge armed robbery it's a standard
9 charge and then we have a charge on assault and battery
10 with intent to kill and assault and battery of a high
11 and aggravated nature. And then on the count two
12 possession of a knife. I'll read the code section
13 which is, which section is this now on the indictment
14 16-23-4-90?

15 MR. GRANT: Yes, that's correct.

16 THE COURT: Is that the correct one? There is one
17 that says 16-3-6-20.

18 MR. GRANT: 16-3-6-20 is assault and battery with
19 intent to kill. 16-9-460 is the count two use of a
20 firearm which would only apply if they reach a verdict
21 of assault and battery with intent to kill.

22 THE COURT: Okay. Any other requests of charge.

23 MR. WORKMAN: Well, Your Honor, we would like the
24 jury to be charged as to the elements of high, assault
25 and battery of a high and aggravated nature.

1 THE COURT: I thought I said that. I'd charge
2 assault and battery with intent to kill and assault and
3 battery with of a high and aggravated nature.

4 MR. WORKMAN: I didn't hear that.

5 THE COURT: I'm sorry. Any other requests?

6 MR. GRANT: Yes, sir. State requests a charge
7 under aiding and abetting. When two or more person are
8 in a commission of a common design, the act of one is
9 the act of all. Mere presence of course would not be
10 sufficient. The defense is entitled to the charge of
11 mere presence. When two or more people pursuant to a
12 common design, commit an unlawful act, in this way the
13 commission is unlawful, and the commission is unlawful,
14 the act of one is the act of all.

15 MR. WORKMAN: Your Honor, if you do see fit to
16 charge that, we would request that you charge mere
17 presence.

18 THE COURT: Charge what?

19 MR. WORKMAN: Mere presence.

20 THE COURT: All right. On the forms of verdict
21 I'll send on 91-0557, of course, two forms. This is
22 the armed robbery indictment. Guilty or not guilty.
23 Then on the 91-0558, you can have possibility of not
24 guilty, of course, then you would have, find the
25 defendant guilty of assault and battery with intent to

1 kill. Which would also include count two.

2 MR. GRANT: Yes, sir.

3 MR. WORKMAN: Yes, sir.

4 THE COURT: Then they could also find him guilty
5 of assault and battery of high and aggravated nature
6 which would not include count two.

7 MR. GRANT: Yes, sir.

8 MR. WORKMAN: Yes, sir.

9 THE COURT: So there would be three possible forms
10 of verdict.

11 MR. WORKMAN: I would ask that those indictments
12 themselves not be sent back to the jury room because
13 they have do have the stamps on them for potential
14 guilty plea.

15 MR. GRANT: Your Honor, if necessary, we can copy
16 those over with the guilty stamp off.

17 THE COURT: Why don't we let them the secretary
18 can put a piece of paper on that and sufficiently hide
19 that to give us something to send back. Any objection
20 to that.

21 MR. WORKMAN: Well Your Honor, I don't have any
22 objection to covering that copy. I have a feeling if
23 we cover it and send it back, the jury might wonder
24 what is under it.

25 THE COURT: Well, I think they over cover

1 one-third of the back. Is that what you're talking
2 about?

3 MR. GRANT: Your Honor, we could make a copy of
4 with that part covered. We could send a copy of that
5 to the jury room and they could write on that copy.

6 THE COURT: We would have the original in the
7 courtroom and they could take the other and cover this
8 portion here with a copy of sheet of paper and we'd
9 send a copy back.

10 MR. WORKMAN: That's fine.

11 THE COURT: Anything else.

12 MR. GRANT: I don't know if the, Mr. Workman is
13 going to require the State to open or not. I would
14 waive my opening and reserve the right to close.

15 MR. WORKMAN: We're not going to require the State
16 to open.

17 THE COURT: Anything else.

18 MR. WORKMAN: I would like a few minutes to confer
19 with my client before we close.

20 THE COURT: All right. It's going take me few
21 minutes to go back and check on the jury charge. While
22 I'm doing that, you can talk. It will be at least ten
23 minutes.

24 MR. WORKMAN: That would be fine.

25 THE COURT: Of course, how much time, Mr. Workman,

1 you think you'll need to argue to the jury.

2 MR. WORKMAN: I'd say probably 15, 20 minutes.

3 THE COURT: Mr. Grant.

4 MR. GRANT: About the same Your Honor.

5 THE COURT: Okay, we'll be at ease.

6 (Recess taken)

7 THE COURT: All right. Bring the jury in.

8 (Jury enters the courtroom)

9 THE COURT: Gentlemen, while they are doing that.

10 We have made these copies of the original indictment
11 without the stamp on it. That's what I'm going to send
12 to the jury.

13 MR. WORKMAN: All right.

14 THE COURT: Do you need these to argue to the
15 jury.

16 MR. GRANT: Yes, sir.

17 MR. WORKMAN: All right let the record show all 13
18 jurors are present. State are you going to open?

19 MR. GRANT: State would waive opening, reserving
20 the right to close.

21 THE COURT: Mr. Workman.

22 MR. WORKMAN: May it please the Court, Your
23 Honor, Madame Forelady, ladies and gentlemen of the
24 jury, again I want to thank you for your attention. As
25 I told you when the trial started this is a very

1 important day for Elson McKanic.

2 During the entire investigation of his trial this
3 has been his first opportunity to come into a courtroom
4 and tell somebody who is totally unbiased what
5 happened.

6 There are few things that I'd like to point out to
7 you that have come out during the trial. First of all,
8 Elson admits that he was drinking on the night that
9 this happened. He admits he got into a fight. And the
10 important factor because there's conflicting testimony
11 here that you're going to have to consider, is the
12 credibility of the witnesses and the believability of
13 the witnesses and I would just like to point out a few
14 factors that came out during the trial in regard to the
15 witness's testimony and regard to Mr. Lee, Mr. Chuck
16 Lee. You know the gentlemen that was delivering the
17 newspapers at the Fast Fare.

18 Mr. Lee was involved in a serious fight and I'm
19 sure he can tell you in this courtroom that he did his
20 best to tell you what he could remember as best as he
21 could. I can't help but believe---

22 MR. GRANT: I'm sorry. Mr. Workman's beliefs are
23 not proper matters.

24 MR. WORKMAN: Pardon me. I submit to you ladies
25 and gentlemen of the jury, that Mr. Lee may have an

1 interest in seeing Elson McKanic punished to the very
2 fullest extent of the law. Maybe he even more so than
3 he's warranted by the fight. He had an interest
4 because of the fight, and I think that's very human
5 response to what happened.

6 I also would like to point out to the testimony of
7 Susan Lively, who by her own testimony, stated that she
8 felt she had, she had the best vantage point to see
9 what happened that night at Fast Fare. She did not see
10 Elson threaten Mr. Lee with that knife. According to
11 the way I heard her testimony to be. She saw him with
12 the knife when he was leaving.

13 Again talking about Mrs. Lively. She never heard
14 Elson ask for any money. She never heard him tell
15 Felicia to get any money, and if there was all this
16 screaming and hollering in this small convenience store
17 about getting money, I'm sure she would have heard it
18 because she had the best opportunity, she was in the
19 best position to hear that.

20 And if Elson, he testified he didn't ask for any
21 money. He didn't know the robbery was occurring until
22 after he got in the fight with Mr. Lee. According to
23 Susan Lively, Elson McKanic never threatened her at
24 all. A weapon was not used to get that money.

25 According Mrs. Lively, the victim of the robbery,

1 according to her testimony that is taking the witness
2 stand, Elson McKanic did not rob her. It's just that
3 simple.

4 Now let's talk about Felicia Mitchell. Felicia's
5 a liar and a thief. Her defense is Elson forced her to
6 do this. And I just want in that regard point out a
7 few factors. They are in the store together. Elson
8 has gotten in a fight with Mr. Lee. What does Felicia
9 do? She doesn't run out the door. Sure doesn't sound
10 like a girl that is in fear because somebody is forcing
11 her to rob a store. No she goes over to the counter,
12 gets the money, gets the cigarettes, rips the phone out
13 of the wall. Now does that sound like somebody that's
14 being forced to rob a store or does that sound like
15 somebody that's gone in the store and robbed it.
16 And I submit to you, that that was the case. She went
17 in there and robbed that store and she took the
18 opportunity of the fight between Elson and Mr. Lee to
19 do it.

20 Again, Felicia didn't remember when the fight
21 started. Once they left the store according to
22 Felicia's own testimony and according to the testimony
23 of Officer Griffin, she was found under a car. I
24 submit to you that does not make sense. This lady told
25 you that she was forced to rob this store. She runs

1 out, the police cars in the area and she's under a
2 car. Doesn't make sense. Does not add up.

3 According to Officer Griffin, Felicia's, the car
4 she's hiding under, is approximately 40 feet from where
5 the money that was taken from the robbery was found.
6 The backyard of the residence of where Elson was
7 arrested is a good 60 to 70 feet from where the money
8 was found, as I heard Officer Griffin's testimony.

9 Another important thing Officer Griffin testified
10 that he had no problem taking Elson McKanic into
11 custody. Didn't resist arrest. He didn't try to fight
12 him, according to Officer Griffin's testimony as I
13 heard it. Does that sound like actions of a man that
14 just committed an armed robbery? No, it does not.

15 The only item that was found with Elson McKanic
16 that came out of that store was the pack of Newport
17 cigarettes, and he was very truthful. Felicia dropped
18 them and he picked them up. That makes sense. She ran
19 by him going out the store and she dropped them.

20 And lastly, Felicia testified that the State had
21 not promised her anything in exchange of her
22 testimony. But I'm sure she expects some help. She
23 robbed a convenience store. And I think you should
24 take into consideration the way that affects her
25 credibility. The fact first of all she tells you she

1 robbed that store, and secondly she looking at some
2 very serious charges herself. She's got a very
3 positive motive that will benefit her to come into this
4 courtroom and then implicate Elson in an armed robbery
5 that he's not guilty of. Because exactly what that
6 does is that takes the burden off of her and puts it on
7 him.

8 A man that maybe guilty of poor judgment. He
9 maybe guilty of fighting, but he is not guilty of armed
10 robbery. Again, I submit to you the most credible
11 witness you heard today, the one that had the best
12 opportunity to observe what happened in that Fast Fare
13 store on that July night was Susan Lively.

14 Now I would just ask to you remember that
15 according to Mrs. Lively's testimony as I heard it,
16 there were no threats toward her from Elson. No
17 participation involving her from Elson McKanic. No
18 money was taken by Elson McKanic. No weapon was
19 presented to her by Elson McKanic.

20 There was absolutely no evidence presented to you
21 that Elson McKanic robbed that convenience store. No
22 credible evidence from a believable witness. There was
23 no weapon used in that robbery.

24 After Mr. Grant and I do our closing arguments,
25 the judge is going to charge you on the theory of law

1 called mere presence. Which that means that if you are
2 merely present at the scene of a crime and do not
3 assist in that crime, you can not be convicted of a
4 crime. And I'll ask you to listen closely when the
5 judge charges you.

6 As far as the charge of assault and battery with
7 intent to kill. If Elson McKanic had wanted to kill
8 Mr. Lee, he had every opportunity. I submit to you
9 that he did not attack Mr. Lee with that knife. He did
10 not attempt to cut him with that knife. By Mr. Lee's
11 very own testimony, before Elson pulled that knife out,
12 he took two steps back. Does that sound like a man who
13 is intent of stabbing somebody with a knife. I submit
14 to you it doesn't.

15 Ladies and gentlemen, at most you can, I submit to
16 you, that you can find Elson McKanic guilty of assault
17 and battery of a high and aggravated nature. The judge
18 will charge you what that is. He admits he got into a
19 fight. He was very honest about that. And he's been
20 very honest about what his knowledge of and his
21 participation in this robbery. And I'll ask you that
22 if there is any reasonable doubt in your mind as to
23 whether Elson McKanic is guilty of armed robbery or
24 assault and battery with intent to kill, please follow
25 your sworn duty as jurors and return a verdict of not

1 guilty.

2 Again, thank you for your attention.

3 MR. GRANT: May it please the court. Madame
4 Forelady, ladies and gentlemen of the jury, again I
5 thank you on behalf of the State for your time and your
6 attention in this matter.

7 You've heard all the evidence that you are going
8 to hear. You'll hear His Honor's charge on the law and
9 apply it to that evidence after I finish my summation.

10 You know what we're talking about. We're talking
11 about armed robbery and a charge of assault and battery
12 with intent to kill. And it was alleged to have been
13 done with a knife a deadly weapon. You'll have several
14 verdicts that you can reach.

15 And Mr. Workman I appreciate what you've done.
16 You are a good lawyer. You've done a good job. I
17 think he tells you that there's no credible evidence
18 that Elson McKanic was involved in armed robbery. Yet
19 he ignores completely the law as His Honor will charge
20 you. I submit to you that the law which we commonly
21 call, the hand of one is the hand of all, which we
22 commonly call aiding and abetting and assisting. Which
23 is the law of the State which says if two or more
24 people engage in a common plan or design to commit a
25 crime, and both participated in any way, shape, or

1 form, then the act of one is the act of all and all are
2 responsible. All are responsible.

3 And I submit to you under the credible evidence,
4 and you have a right to believe and to judge the
5 credibility of the witnesses. That's your job. This
6 was a two person robbery. Elson McKanic and Felicia
7 Mitchell. This is the State versus Elson McKanic on
8 this paper. Felicia Mitchell's case has yet to come to
9 court. You're not to be concerned with it.

10 The question is what did Elson McKanic's
11 responsibility under the law as His Honor charges you
12 in this case under the law as he charges you and under
13 the facts as you heard them and as you find them to
14 be. Based upon the credible evidence, based upon the
15 believability of the witnesses, based upon your good
16 common everyday sense that you use in every decision
17 you make. The decisions you make with your family, at
18 home, at work on your job in your church, in play,
19 wherever. You don't leave that common sense out there
20 in the pew when you come into the jury box. You bring
21 that with you as your most important tool and then you
22 apply it along with the judge's charge on the law and
23 determine the truth.

24 Credibility means believable. Who to believe.
25 You can believe one witness as against many. You can

1 believe many as against one. You don't count
2 witnesses. You can believe part of what a witness says
3 and disbelieve the other part and you can, if you want
4 to, if you have a good reason to, to disregard a
5 witness's testimony in it's entirety. And you can use
6 things that will tell you how to judge a witness's
7 credibility. Demeanor, how they appear.

8 Many times just looking at a person you can tell
9 whether or not they are telling the truth. And I ask
10 you to go back and look at the demeanor of all the
11 witnesses. Look at their opportunity to observe the
12 things they testified to. Look at their interest or
13 bias in the case and whether or not there is one or is
14 any. And whether or not Elson McKanic has an interest
15 in his testimony. Or whether or not the police
16 officers or these people who are working in the middle
17 of the night on their job. One lady at Fast Fare and
18 the other guy doing his paper route. Paper route at
19 four o'clock in the morning. What interest do they
20 have in this case?

21 Your Honor, I'll ask the bailiff not to let
22 anyone else in this courtroom.

23 (Pause.)

24 Your Honor, I'll ask the bailiff to get the other
25 witnesses.

1 THE COURT: All right. Everyone remain in their
2 seats. Here she comes.

3 MR. GRANT: I apologize, ladies and gentlemen of
4 the jury. The victims were not here and they should be
5 here in the prosecution of this case. And I apologize
6 that I had to stop in the middle of my summations.

7 I ask you simply think of that. You as jurors you
8 are to be fair and impartial. Fair and impartial to
9 the State of South Carolina and fair and impartial to
10 Elson McKanic. Not emotion. Case based on no sympathy
11 ~~but on the facts involved. On the facts and judged on~~
12 the credibility and believability of the witnesses.

13 Again I'll go back to demeanor or to interest to
14 bias in the case -- to what interest or bias do these
15 people have. Four five o'clock in the morning on their
16 jobs. The thankless job of working at the Fast Fare
17 where you work all night long.

18 Man out on the weekends carrying paper, State
19 paper, however you heard it. Carrying papers four
20 o'clock in the morning out delivering. He's not out
21 drinking. He's not intoxicated out there like Mr.
22 Workman tells you this man is. Intoxication is not a
23 defense under the law. Should not be considered as
24 evidence in this case cause voluntary intoxication is
25 not a defense and what you do when you get drunk in

1 South Carolina counts, and it's only as it should be.
2 And I think when you face it and use your good common
3 sense, you'll understand that, and agree with it.

4 An intoxication is not a defense and should not be
5 considered that and what a person does when they are
6 intoxicated does count and they are responsible for
7 it.

8 Now what's armed robbery. It's the taking of
9 money by force and intimidation with a threat of deadly
10 weapon. And when you saw this lady on the stand
11 telling you she turned that money over, did she look
12 like she was scared. Did you see her tears when she
13 replayed that. What fear she was going through and
14 what is she afraid of and who is she afraid of.

15 I ask you to use your good common sense. Who is
16 in there pounding this man on the floor. Pounding on
17 him on the floor, kicking him, and pulling this knife
18 on him. Oh, this knife that he just happened to find.
19 Just happened to be carrying it in his pocket in some
20 way, shape, or form. Just happened to pick it up.
21 Just like he just happened to pick up some cigarettes
22 that were laying out. Just happened.

23 Common sense. You got a man by his own
24 description, six feet, 200 pounds, and you've seen him.
25 200-plus pounds. Five eleven, 165 pounds, in the

1 middle of the night he's going to say something to this
2 man. He's going to start something with this man.
3 Common sense tells you, no way. No way.

4 Four o'clock in the morning out drinking. He
5 tells Felicia Mitchell he's going to rob a store,
6 according to go her testimony. They go in pound this
7 guy that's in there messing things up for them.
8 That's what he told Felicia Mitchell. Gets him down
9 and then pulls out a knife and then what he tells him,
10 I'm going to kill you. Malice, expressed malice.

11 ~~Oh, if he had meant to kill him he'd went ahead~~
12 and done it. That doesn't make it not malice. What
13 did he mean when he said I'm going to kill you.
14 Standing there with a knife in his hand. What does
15 this man supposed to think. What is he supposed to
16 think when a man knocks you down on the floor, he's
17 going to knock you down, he's going to kick you, and
18 then he pulls out this. Little pantry knife, a little
19 kitchen knife and says, I'm going to kill you and
20 according to this man took a swing at him and what did
21 he do, what would any person do, he ran. Chuck Lee
22 told you he ran and thank goodness that he did.

23 What does Chuck Lee? He's also saying to him, I'm
24 going to kill you. But he, Elson McKanic, is yelling
25 to Felicia Mitchell, get the damn money. Get the damn

1 money. Excuse my language. You take it as you heard
2 it. What is does that tell you. And that's not the
3 not Felicia Mitchell's telling you that. That's Chuck
4 Lee. When a man is going through something, he's going
5 to forget what's going on, he's going to forget the
6 look in that man's eye. He's going to forget the knife
7 that he had in his hand. He's going to forget, I'm
8 going to kill you. And he's going to forget that he
9 was yelling to that woman twice, and the words you
10 heard and you remember the way you heard, said, the way
11 Chuck Lee said, get the money, get the money.

12 And that ain't got nothing to do with Felicia
13 Mitchell. Nothing to do with her. You can take
14 Felicia Mitchell if you so chose and throw her out of
15 this case and not listen to her testimony at all if you
16 so chose. What you heard from Chuck Lee and what you
17 heard from this lady, I submit to you Elson McKanic is
18 guilty of armed robbery and assault and battery with
19 intent to kill and assault and battery with commission
20 with a knife.

21 Without that if you so chose, but you have Felicia
22 too. And what did she tell you. He told me he was
23 going to rob the store. He told me that. And he told
24 me he had a knife. And you may or may not accept
25 whether she was scared or not. And what is she going

1 to do; she going to run. He knows her and knows where
2 she lives. Whether she went along with him,
3 voluntarily or involuntarily doesn't make any
4 difference. Maybe she did. She didn't rob that store
5 by herself. Get the money. She did and going out the
6 door, what did Chuck Lee tell you. He says her sees
7 her, transferring, transferring. Of course they find
8 this 40 feet closer to her than it is to him. Doesn't
9 make any difference where the money was found, it was
10 taken from her presence from that lady there.

11 ~~When it was taken from her presence was it done by~~
12 force and intimidation by this man who used a deadly
13 weapon by this man. And I submit you, yes it was. Yes
14 it was. And Felicia Mitchell, and she even told her,
15 she even told Susan that he's making me do this. And
16 you can believe that or not but in the heat of the all
17 this. In the heat of this matter. In the heat of him
18 beating this man there, and pulling the knife out,
19 Felicia Mitchell is saying to this lady, he's making me
20 do this. Give me the money to me, he's making me to do
21 this. You can believe that or not. Doesn't make any
22 difference cause when you look at what Chuck Lee told
23 you this man says get the money. He's gone past just
24 mere presence. He's gone past just being there and
25 someone else robbing. He's guilty of participating in

1 the robbery and when they go out they change the goods
2 and lo and behold, lo and behold, the cigarettes are
3 found just lying and I picked them up. Common sense.

4 Use your common sense. Apply the law and the
5 common sense to the facts of the case. Which one
6 speaks the truth. Use your memory. I make law notes.
7 I know y'all listened. Y'all don't have notes. Use
8 your memory. That's why we trust jurors memory.
9 Determine the facts; you have to decide what happened.
10 What happened. Was there an armed robbery? Was there
11 a stealing of money by the use of a deadly weapon by
12 force and intimidation? Did two people participate?
13 Did two people rob? Force and intimidation, a deadly
14 weapon provided by Elson McKanic.

15 I ask you to take the opportunity to find the
16 truth. The hand of one is the hand of all. That knife
17 was in her hand just like it was in his and that money
18 was in his hand just like it was in hers. And that's
19 the law. And that's the law. When two people engage
20 in a criminal activity and participated in any manner
21 -- that's why the look out, the look out is as guilty
22 as the man who goes in the bank, the man who robs the
23 bank. He plays a part. A participant.

24 And I'll read to you again, mere presence just
25 happened to be present does no more and should not be

1 considered a part. That's not the case here and that's
2 not the case under the facts and under the truth here.

3 Mr. Workman tells you again he simply did not rob
4 because he didn't take the money from her and ignores,
5 ignores the law of the State. You remember your oath
6 not to ignore the law of this State. That's why I am
7 going to ask you look at what the judge charges you
8 look at the circumstances and decide where the truth
9 lies. Where the truth lies and I submit to you the
10 truth is he intended to go out and attacked for no

11 ~~reason except to carry off a robbery and he had a knife~~
12 and money was taken because of that threat. Because of
13 that threat that night Susan Lively saw one man,
14 because of that force and intimidation and because of
15 that knife. That armed robbery.

16 Again this case is not based on Felicia Mitchell
17 and you can disregard the testimony of her. When you
18 consider all the testimony exclude her and render a
19 verdict that speaks the truth. I ask you again to use
20 your common sense and when you evaluate his testimony.
21 His testimony, just picked up this knife on the side of
22 the road -- he had no reason to carry it. He's out
23 drinking and he thinks this man, this man in the middle
24 of the night working four o'clock in the morning,
25 putting his papers up, only thing he said he drinks is

1 a cup of coffee, and he because of what he thinks he
2 said, goes in and unprovokedly attacks from behind,
3 knocks a man to the floor, and kicks him and pulls a
4 knife on him. As soon as he pulled that knife Chuck
5 Lee ran. Get away from him. I submit to you did he
6 Elson McKanic that night did threaten him. And the
7 malice, evil intent, evil state of mind. And thank
8 goodness Chuck Lee was not hurt and you don't have a
9 murder.

10 I submit to you we have assault and battery with
11 intention to kill by evidence of malice expressed by
12 word of mouth implied or inferred by the use of a
13 deadly weapon. And from all the facts and the law and
14 the facts is what your verdict is to be based upon.
15 Nothing else. Nothing more. Nothing less. True
16 verdict reach.

17 And you've heard the facts and you've heard the
18 testimony. And it goes back to the same old story.
19 You got people who are working hard at their thankless
20 jobs. You got people out drinking. Nothing to do with
21 a knife in their pocket, belly full of liquor. Hate
22 evil and love good and bring justice to the court. I
23 ask you where is the justice of people working their
24 jobs in the middle of the night. Where is the justice
25 when a man like Elson McKanic breaks in there, comes in

1 as he did in the fashion that he did, with the knife
2 that he did and take the money, the \$107 and puts their
3 life on the line, and you saw that lady tears, was she
4 in fear for her life? Was this man in fear for his
5 life? He's laying on the floor and saw that knife come
6 out and I ask you, I ask you to do your duty. I ask
7 you to look at good to look at evil and to bring
8 justice to this courtroom to Union County, South
9 Carolina today. And render a verdict of that says
10 guilty of armed robbery, that says guilty of assault
11 and battery with intent to kill, that says guilty of
12 commission of a violate crime with a knife, and I ask
13 you to do that with a clear conscious because under the
14 facts and under the law I submit to you it is the only
15 verdict that speaks the truth and brings justice to you
16 to your conscious, and I ask you to look at it for what
17 it is. Your conscious and your mind and you render a
18 verdict that speaks the truth.

19 THE COURT: Madame Foreperson, ladies and
20 gentlemen of the jury, the State of South Carolina
21 charges the defendant Elson McKanic with the offense of
22 armed robbery and the offenses of assault and battery
23 with intent to kill and possession of a knife during
24 the commission of or attempt to commit a violate
25 crime.

1 These indictments have been read to you so I will
2 not repeat the allegations contained in each them. You
3 will have them in your jury room during your
4 deliberations.

5 Now to these indictments the defendant has pled
6 not guilty which places upon the State the burden of
7 proving of the defendant guilty.

8 A person charged with committing a criminal
9 offense in South Carolina is never required to prove
10 himself innocent. I charge you that it is a vital,
11 important rule of the law of evidence that a defendant
12 in a criminal trial no matter great or how serious may
13 be the offense with which he is charged, must always be
14 presumed innocent until his guilt has been proven
15 beyond a reasonable doubt.

16 This presumption of innocence remains with the
17 defendant at all times from the moment of his
18 arraignment, throughout the trial, and until the jury
19 has upon the testimony and evidence presented, reached
20 a verdict of guilty beyond a reasonable doubt. For it
21 is the solemn duty of the jury, if not clearly
22 convinced of his guilt beyond every reasonable doubt to
23 the contrary to acquit the defendant.

24 So the burden of proof is upon the State to
25 establish by evidence to your satisfaction the guilt

1 beyond a reasonable doubt of this defendant here on
2 trial for the crimes of armed robbery and the crimes of
3 assault and battery with intent to kill and possession
4 of a knife during the commission or attempt to commit a
5 violent crime.

6 Now, what is reasonable doubt. A reasonable doubt
7 is the kind of doubt that would cause a reasonable
8 person to hesitate to act. Now Mr. Foreman, excuse me,
9 Madame Foreperson and members of the jury, under the
10 constitution and laws of South Carolina you are the
11 finders of the facts in this case. I do not have in my
12 capacity to pass to you any opinion I have nor to
13 intimate in any way what I think about the guilt or
14 innocence of the defendant. You are also the judges
15 and the sole judges of the credibility, the
16 believability of the witnesses who have testified in
17 this case.

18 In passing upon their credibility you may take
19 into consideration many things such as the following.
20 The appearance or manner of the witness on the stand
21 sometimes referred to as the demeanor of the witness.
22 Was the witness forthright or hesitant. Was the
23 witness's testimony consistent or did it contain
24 discrepancies. What was the ability of the witness to
25 know the facts about which he or she testified. Did

1 the witness have a cause or a reason to be biased and
2 prejudiced in favor of the testimony he or she gave.
3 Was the testimony of the witness collaborated or made
4 stronger by other testimony and evidence or was it made
5 weaker or impeached by other testimony and evidence.

6 As jurors you have a right to believe a small
7 portion of the witness's testimony and disregard larger
8 and vice-versa. You may believe all of what a
9 witness's testimony or none. You may believe the
10 testimony of a single witness against that of many
11 witnesses or the other way around. Most certainly you
12 do not determine the matter of the credibility or the
13 believability by counting the number of witnesses who
14 may have testified on behalf of the parties.

15 Throughout this entire process you have but one
16 single objective and that is to seek the truth
17 regardless of from what witness the testimony may have
18 come. All of these things you will consider bearing in
19 mind that you should give the defendant the benefit of
20 every reasonable doubt.

21 Now by the same constitution and law that's makes
22 you the finders of facts and the evidence as I have
23 discussed with you, I am the judge being the sole and
24 only instructor in the law. You must accept as correct
25 the law that I charge and apply it to the evidence as

1 you find it and reach your verdict.

2 If I should make an error on the law as I instruct
3 to you there was another time and another place and
4 another court at which that error can be considered and
5 if necessary repaired. But for the purpose of this
6 case today you must accept the law as I charge it to
7 you to be the correct law, and finally I charge you in
8 this regard that you nor for that matter I, should not
9 be concerned about what the law ought to be but rather
10 what I charge you the law to be.

11 I am now going to explain to you the offense known
12 in law as armed robbery. I am going to read to you in
13 part section 16-11-330 code of laws of this State. Any
14 person convicted for the crime of robbery while armed
15 with a pistol, dirk, sling shot, metal knuckles, razor
16 or other deadly weapon shall suffer punishment for
17 armed robbery.

18 I will now define for you the offense of armed
19 robbery while armed with a deadly weapon and for which
20 for your convenience in this instruction I will call
21 armed robbery. In order that you may understand what
22 is meant by armed robbery, I am going to first define
23 for you the crime of larceny and then robbery and then
24 what constitutes armed robbery because larceny is
25 embraced within robbery and then armed robbery is the

1 aggravation of the crime of robbery.

2 What is larceny. Larceny is the felonious taking
3 and carrying away of any personal goods or personal
4 property of another with the felonious intent to
5 permanently deprive the owner of his property and
6 convert it to the takers own use. The essential
7 elements of the crime of larceny which ordinarily is
8 called stealing are one, the felonious taking into the
9 possession of personal property of another. Two, the
10 carrying away and the removal of the personal
11 property. Three, the felonious intent. The intent to
12 steal or to take or to permanently deprive the owner of
13 the personal property and to convert the property to
14 the takers own use.

15 Now robbery is felonious taking and carrying away
16 of personal property of anything of another from his
17 person or in his presence by violence or putting him or
18 her in fear of violence. Robbery includes larceny and
19 all the elements which are necessary to constitute
20 larceny are also necessary to constitute robbery. The
21 elements of robbery are, first, the property taken must
22 be the subject of the larceny. That is personal
23 property. I charge you that lawful coin and currency
24 of the United States of America is personal property.
25 Second, it must be a felonious taking and carrying away

1 of personal property; that is, there must be a
2 trespassing to and transportation of personal property
3 with the intent to steal.

4 The complete possession of the personal property
5 by the taker even for an instant is sufficient and
6 carrying away or even the slightest removal of the
7 personal property is sufficient in law. Third, the
8 taking and carrying away of personal property must be
9 done with felonious intent. That is with the intent it
10 steal on the part of the taker to permanently deprive
11 the owner of the personal property and to convert
12 personal property to the takers own use.

13 Forth, the aggravated circumstances necessary to
14 constitute robbery as sustained from larceny are
15 these. Property must be taken from the person of
16 another, but it is taken in his or her presence it is
17 taken constructively from him or her. The taking must
18 not only be without his or her consent, but it must be
19 accomplished with violence or by putting him or her in
20 fear of violence.

21 Now in order for one to be guilty of robbery while
22 armed with a deadly weapon the law requires that one
23 must have used a deadly weapon to accomplish the
24 purpose of robbery as I have defined that term to you.
25 I charge you that a knife is a deadly weapon as defined

1 by the statute which I will read to you. I charge you
2 ladies and gentlemen, that the State of South Carolina
3 is required to prove all the material and essential
4 allegations of the charge in the indictment beyond a
5 reasonable doubt before you can convict any a defendant
6 and find him guilty.

7 I will now give you the definition of assault and
8 battery. The definition of an assault is defined as an
9 attempt to do violence to a person of another in a rude
10 and angry and resentful manner. The definition of
11 battery. A battery is defined as carrying into affect
12 an assault or by using and applying force to a person
13 of another however slight in a rude, angry and
14 resentful manner.

15 Now there are two kinds of assault and battery
16 with which you are concerned in this case. The first
17 is assault and battery with intent to kill. The second
18 is an assault and battery of a high and aggravated
19 nature which is included in an indictment for assault
20 and battery with intent to kill under a principle in
21 South Carolina that the greater crime may include a
22 lesser crime. At times in this instruction I will
23 refer to assault and battery with intent to kill, as
24 intent to kill. And I will refer to assault and
25 battery of a high and aggravated nature as aggravated

1 assault.

2 What is assault and assault and battery with
3 intent to kill. Assault and battery with intent to
4 kill is the infliction of injury upon a human being
5 with malice aforethought. There must be malice or
6 there can be no intent to kill. Malice is any plan,
7 designed to do mischief whether it rises from hatred,
8 ill will or otherwise it is still malice. And malice
9 aforethought means that the malice must have been in
10 the minds of the party at the time the blow was struck
11 or the shot fired.

12 Malice need not be in the mind of the party who
13 struck the blow or fired the shot for any appreciable
14 length of time. If it was in the mind just before the
15 blow was struck and at the time the blow was struck,
16 then under the law that is malice aforethought.

17 Now malice aforethought is divided into two
18 counts. Express malice and implied malice. Expressed
19 malice is shown when one by word of mouth expresses his
20 hatred or ill will to another. Or when the State can
21 show that one is making preparation beforehand to do
22 the deed which was later accomplished and done. Lying
23 in wait for a person in any acts of preparation go to
24 show the deed that was in his mind is expressed
25 malice.

1 Now what is implied malice. The law implies
2 malice when the deed is done with a deadly weapon such
3 as a knife, pistol, or dagger or some weapon of that
4 nature. Which when used with the intent to injury
5 another party is calculated to produce their serious
6 bodily harm. Malice may be required where no express
7 intent to injure is proved by that evidence, it is
8 indirectly but necessarily inferred from the facts and
9 circumstances which offer it. And malice is implied or
10 presumed from the willful, deliberate, and intentional
11 doing of an unlawful act without just cause or excuse.
12 But even if facts proved are sufficient to raise a
13 presumption of malice, such presumption would be
14 rebutted. That is it may be overcome by evidence in
15 the case.

16 It is for the jury to determine from all the
17 evidence whether or not the malice has been proved
18 beyond a reasonable doubt. While malice is presumed
19 from the use of a deadly weapon whereas in this case
20 the circumstances relating to the assault were brought
21 in the evidence the presumption of damages and the
22 burden is on the State to prove by evidence satisfying
23 the jury beyond a reasonable doubt.

24 Now what is aggravated, excuse me, now what is
25 assault and battery of a high and aggravated nature and

1 what is aggravated assault. Aggravated assault is the
2 infliction of injury upon a human being in the sudden
3 and heat passion upon a sufficient legal provocation.
4 Now sudden heat and passion does not necessarily mean
5 that it should entirely eliminate reason, but it must
6 be such as would disturb and sway the reasoning of an
7 ordinary person and shut out the power to cool
8 reflection and create in that person's mind the
9 uncontrollable impulse to do injury.

10 Now the other elements in aggravated assault is
11 the element of a sufficient legal provocation. No mere
12 words however insulting or offensive will justify
13 inflicting an injury on another. However a sufficient
14 legal provocation arises where for example one pulls a
15 person's nose or spits on him or slaps him in the face
16 or after a blow has been struck or a shot fired while
17 under the influence of passion. But if the blow is
18 struck or the shot fired after he goes away, has time
19 to cool and then comes back and resents the indignity
20 or by some way injuring his adversary, the law says
21 that is not aggravated assault but it is assault and
22 battery with intent to kill.

23 In connection with what I instructed to you with
24 the time to cool, and in determining whether or not
25 reasonable time for cooling is allowed, you should take

1 into consideration the old circumstances surrounding
2 the difficulty. You should consider the nature of the
3 provocation and defendant physical and mental
4 constitution. His education, his conduct, and his
5 conversation throughout the transaction in were
6 circumstances should be considered and the time an
7 ordinary person in like circumstances would have cooled
8 that is the reasonable time.

9 Now, if you should find the defendant guilty and
10 there is a reasonable doubt as to whether he is guilty
11 of assault and battery with intent to kill or guilty of
12 assault and battery of a high and aggravated nature.
13 You should give him that benefit of that doubt and find
14 him guilty of the lesser offense of assault and battery
15 of a high and aggravated nature.

16 But of course, Madame Foreperson and ladies and
17 gentlemen of the jury, you could not convict him either
18 of assault and battery with of high and aggravated
19 nature or assault and battery with intent to kill
20 unless his guilt has been established beyond a
21 reasonable doubt.

22 Now I further charge you a principle in a crime is
23 one who either in person perpetrates a crime or who
24 being present aides, abets, and assists in it's
25 commission. When one does an act in the presence of

1 and with the assistance of another, the act is done by
2 both and where two or more acting with a common design
3 or intent are present at the commission of a crime it
4 matters not by who's immediate agency the crime is
5 committed, all are guilty. The hand of one is the hand
6 of all. Presence at the commission of a crime means to
7 be sufficiently near to aide and abet and assist in the
8 commission thereof.

9 However, mere presence at the scene of a crime is
10 insufficient to convict one as a principle on the
11 theory of aiding and abetting. Intent is also a
12 necessary element for there must have been common
13 design or intent to commit the crime and the crime must
14 have been committed soon thereto with the person aiding
15 and abetting by some overt act.

16 Now, I'll also charge you that voluntary
17 intoxication is never an excuse for or a defense for a
18 crime regardless of whether the crime is one involving
19 general or specific intent. A person who voluntarily
20 renders himself intoxicated is no less responsible for
21 his acts while in such condition. If one voluntarily
22 drinks intoxicating liquors, wines, or beer and becomes
23 intoxicated to any degree and if while in that
24 condition commits an act which would be a crime if it
25 had been committed by a sober person, the fact of

1 drunkenness would not relieve the intoxicated person
2 from responsibility where it is not produced permanent
3 insanity.

4 Madame Foreperson, ladies and gentlemen of the
5 jury, section 16-23-490 of South Carolina code of laws
6 reads in part. Any person who is convicted of
7 committing or attempting to commit a violent crime as
8 defined in section 16-1-60, if the person visibly
9 displays a knife during the commission of a violent
10 crime as used in this section, knife means an
11 instrument or tool consisting of a sharp cutting blade
12 whether or not that's capable of being used to inflict
13 a cut, slash point.

14 Section 16-1-60 of South Carolina code of laws
15 reads in part. Under South Carolina law a violent
16 crime includes the offenses of assault and battery with
17 intent to kill and armed robbery.

18 Madame Foreperson, ladies and gentlemen of the
19 jury, you have been selected as fair and impartial
20 jurors sworn to impartially try and determine the facts
21 in this case. And when you comply with your oath to do
22 so then no one will have any right to criticize your
23 verdict and you will have fully discharged your duty as
24 jurors. You should not be influenced by opinions or
25 expressions of opinions if any which you may have heard

1 on the outside, but you are to decide this case
2 according to the testimony that you have heard from the
3 lips of the sworn witnesses, along with other evidence
4 introduced.

5 Now, there are two indictments in this case
6 charging the defendant with three different crimes. On
7 indictment 91-G.S.44-0557, the State versus Elson
8 McKanic. The defendant is charged with armed robbery.
9 On this indictment there are two possible verdicts you
10 could reach in this case. There is no significance
11 whatsoever the order in which I state these verdicts.

12 It is simply that one must come first. On the charge
13 of armed robbery a verdict which you might find is not
14 guilty. Another verdict which you might find is
15 guilty. When you go to the jury room and begin
16 deliberating I will give you on this yellow sheet the
17 two possible forms of verdict on that indictment.

18 Indictment 91-G.S.44-0558 the State versus Elson
19 McKanic, indictment for assault and battery with intent
20 to kill and possession of a knife during the commission
21 or attempt to commit a violent crime. There are three
22 possible verdicts you could reach in count one of that
23 case which is assault and battery with intent to kill.
24 There again there was no significance whatsoever the
25 order in which I state these verdicts to you. It is

1 simply that one must come first and one second and then
2 of course one could come third.

3 On count one of this indictment, one verdict you
4 might find is not guilty. Another verdict which you
5 might find is guilty of assault and battery with intent
6 to kill. And another verdict you might find is guilty
7 of assault and battery of a high and aggravated
8 nature. Also in this indictment is count two which
9 charges the defendant with possession of a knife during
10 the commission or attempt to commit a violent crime.
11 There are two possible verdicts in count two. There
12 again there is no significance in the order that I
13 state these to you. One must come first and the then
14 the other one second. A verdict which you might find
15 in count two in the indictment is not guilty. Another
16 verdict you might find in count two is guilty.

17 Now Madame Foreperson, ladies and gentlemen of the
18 jury, your verdict must be a unanimous one. Madame
19 Foreperson, members of the jury when you reach your
20 verdict you will write it on the back of these
21 indictments and you will sign your name on the line
22 above where the words Foreman of the petty jury are
23 printed.

24 You will have both indictments with you in the
25 jury room and you will also have these yellow sheets

1 with the forms of possible verdict. Once again I will
2 instruct you when you reach your verdict you need to
3 take it from the yellow sheet of paper and right it on
4 the indictment under the word verdict and then sign
5 your name on the line above where the words Foreman of
6 the petty jury are printed.

7 Now, Mrs. Longshore you were selected in this case
8 to serve in the event that something should happen to
9 one of the jurors. And I think now that you understand
10 that and you have served a very useful purpose and in
11 many cases it becomes necessary for the alternate to

12 move to the jury. However, that has not occurred in
13 this case and accordingly, at this time your services
14 are ended. So I'm going ask that you now step from
15 your seat and return to the seat in the courtroom. Now

16 Madame Foreperson, ladies and gentlemen of the
17 jury, I ask you that retire to the jury room but do not
18 begin deliberating until you're advised by the clerk or
19 the bailiff to do so. There are some matters which
20 must be discussed with the attorneys before your
21 deliberations can begin.

22 (Jury exits.)

23 THE COURT: Any exceptions from the State.

24 MR. GRANT: Your Honor, in your charge on malice
25 there being rebuttable presumption with the use of a

1 deadly weapon, your Honor, I believe that that language
2 might be questionable and should have been cast in
3 terms of there being an inference of malice the use of
4 a deadly weapon and the inference merely being an
5 evidentiary fact to whatever weight the jury may
6 consider it. It's my understanding that the use of the
7 term presumption or rebuttable presumption could cast
8 a burden upon the defendant it should not have.

9 THE COURT: All right I think you're probably
10 correct on that. Let me see, look at that. Any other?

11 MR. GRANT: No, sir, my suggestion in that area
12 simply to the fact to the affect maybe the defendant
13 has no burden to prove the elements of the offense.
14 The burden is on the State to prove every element of
15 the offense beyond a reasonable doubt. There is no
16 presumption rebuttable or otherwise from the use of a
17 deadly weapon. There may be an inference of malice in
18 the use of a deadly weapon but such inference would
19 simply be an evidentiary fact to be given such weight
20 as the jury deems appropriate. And again the State has
21 the burden of proof every element coming and going.

22 THE COURT: Okay. Anything from the defendant?

23 MR. WORKMAN: No, sir.

24 (Jury returns to the courtroom.)

25 THE COURT: Madam Foreperson, ladies and gentlemen

1 of the jury, I now instruct you that the charge
2 previously given to you defining malice you are to
3 totally disregard and I'm now going to give you a
4 charge defining malice. This charge is the charge that
5 you shall consider when you deliberate. Malice is
6 divided into two kinds, express malice and implied
7 malice. Expressed malice is shown when one by word of
8 mouth expresses his hatred or ill will for another or
9 when the State has shown one has made in preparation
10 beforehand to do the deed which was later accomplished
11 and done. Lying in wait for a person and any acts of
12 preparation go to show that the deed was in his mind
13 would be express malice.

14 Now what is implied malice. The law defines
15 malice as when the deed is done with such as a knife,
16 pistol, or dagger or something of that nature which
17 when used with the intent to injure another party or to
18 produce death or serious bodily harm.

19 Malice may be inferred where the intent to injure
20 is proved by direct evidence is indirectly but
21 necessarily inferred from facts and circumstances which
22 are proved. And malice is inferred from the willful
23 deliberately and intentionally doing of an unlawful act
24 without just cause or excuse.

25 It is for the jury to determine from all the

1 evidence whether or not the malice has been proven
2 beyond a reasonable doubt. An inference of malice may
3 arise from the use of a deadly weapon. However such
4 inferences is an evidentiary fact to be taken into
5 consideration when all the other evidence in this
6 case. I also charge you that the burden is on the
7 State to prove all elements including malice. There is
8 no burden on the defendant to prove anything. The
9 burden is on the State to prove malice by evidence
10 satisfying you the jury beyond a reasonable doubt.

11 All right at this time, I will now ask you to go
12 to your jury room once again do not begin to deliberate
13 unless we give the instruction to start your
14 deliberations.

15 (Jury exits)

16 THE COURT: Any additional requests.

17 MR. GRANT: No exceptions by the State, Your
18 Honor.

19 THE COURT: And the defendant.

20 MR. WORKMAN: None from the defense.

21 THE COURT: All right, could we have all the
22 evidence matters there.

23 THE COURT: Bring the jury in.

24 (Jury returns to the courtroom)

25 THE COURT: Madame Foreperson, ladies and

1 gentlemen of the jury, on the indictment
2 91-G.S.44-0557, I am going to ask that you go back in
3 your jury room and I am not sure the form of the
4 verdict is written correctly. This was in the
5 indictment for armed robbery. And I am going give you
6 this instruction sheet and you had put the symbol for
7 the number two, in front of your verdict and I am going
8 to you to reconsider that, so if you'll going back to
9 your jury room on that indictment. Just let us know
10 when you are ready.

11 (Jury exits.)

12 (Jury returns to the courtroom.)

13 THE COURT: All right mad Foreperson ladies and
14 gentlemen of the jury on this indictment 91-0557, there
15 are two possible forms of verdict. And there is no
16 significance whatsoever the order that I gave to them
17 to you on this yellow sheet. One has to come first,
18 one has to come second. One verdict that you might
19 find in that case is not guilty and then of course the
20 other verdict is guilty. When you reach your or when
21 you do reach your verdict in this case, on the line
22 under the word verdict you would write either the words
23 not guilty or the word guilty. There will be no need
24 to bring any other symbols or anything like that. So
25 I'm going to let you go back to the jury room and

1 reconsider your verdict and then when you've reached
2 your verdict in this case you'll knock on the door.

3 (Jury exits.)

4 (Jury returns.)

5 THE CLERK: Indictment 91-557 State versus Elson
6 McKanic indictment for armed robbery. Verdict guilty
7 Sherry Kollack, Forelady. Forelady, lady and gentlemen
8 of the jury, is this your verdict please raise your
9 right hand.

10 THE COURT: Let the record show that all 12 jurors
11 raised their right hand.

12 THE CLERK: Docket number 91-558 the State versus
13 Elson McKanic indictment with assault and battery and
14 with intent to kill in the commission of a firearm or
15 knife. The during the commission of or attempt to a
16 violent crime. Verdict count one guilty of assault and
17 battery of a high and aggravated nature. Sherry
18 Kollack, Forelady. If this be your verdict please,
19 raise your right hand. All raised in the
20 affirmative.

21 THE COURT: Let the record show that all 12 raised
22 their right hand.

23 THE COURT: Anything from the State?

24 MR. GRANT: Nothing from the State.

25 MR. WORKMAN: Your Honor, we would ask the clerk

1 court to poll the jury.

2 THE COURT: All right poll the jury.

3 (Whereupon the jury was polled by the clerk and
4 all jurors answered affirmatively.)

5 THE COURT: All right Mr. Workman, you want to
6 bring Mr. McKanic up.

7 MR. GRANT: Your Honor, if we might there's
8 something on his record that I would like to be
9 confirmed. If it's all right I'd like his sentencing
10 to be deferred until the morning. I need to check in
11 Spartanburg.

12 THE COURT: Any objection.

13 MR. WORKMAN: No, Your Honor. I don't see any
14 reasonable grounds to object.

15 THE COURT: I think it would be the Court would
16 like to know the accurate record before sentencing and
17 such we'll uphold that until you complete your and let
18 us know when you have that completed so that we have an
19 accurate record. And also please furnish a copy to Mr.
20 Workman and to the defendant.

21 MR. GRANT: Yes, sir.

22 THE COURT: All right, the defendant.

23 MR. WORKMAN: At this time, Your Honor, I would
24 like to put a motion for a new trial on behalf of the
25 defendant. I feel like the verdict of the jury was

1 against the greater weight of the evidence presented.

2 THE COURT: Anything else.

3 MR. WORKMAN: No, sir.

4 THE COURT: All right the Court notes your motion
5 and the motion is denied. Any other motions.

6 MR. GRANT: None from behalf of the State, Your
7 Honor.

8 (Thursday, September 26, 1991.)

9 THE COURT: Elson McKanic. 91-44 0558.

10 MR. GRANT: Your Honor, of course Elson who was
11 convicted on Tuesday of aggravated assault and battery
12 and of armed robbery. And he has to be sentenced.

13 Your Honor, at this time I would pass up to the
14 Court a document and ask to make it part of the Court
15 record. Solicitor's request In section 17-25-45 State
16 South Carolina code of laws, for imposition of a life
17 sentenced based upon Mr. Elson McKanic's convictions in
18 1971, March the 15th of 1971 in Spartanburg County for
19 armed robbery. And on September 19 of 1975, was
20 convicted in Union County on the charge of armed
21 robbery, making it two prior armed robbery or violate
22 crime convictions. And the State would evoke the
23 portion of that statute which requires a life sentence
24 for the person convicted of such crimes, and request
25 the prior record be made part of the record.

1 THE COURT: Mr. Workman, have you seen the copy
2 that prior record.

3 THE COURT: Yes, sir, I have been aware of Elson
4 has been convicted twice of armed robbery.

5 THE COURT: All right. Do you have any comments
6 to make.

7 MR. WORKMAN: Well, Your Honor, I feel due to the,
8 I think one of the prior armed robberies was in '71 and
9 I think one was in 75, due the age of those convictions
10 I feel like I don't think the life sentence provision
11 should be revoked against.

12 THE COURT: Well, my interpretation, I maybe
13 wrong, of the statute is that the Court doesn't have
14 discretion. The way they allegedly worded the statute
15 it's says using the word mandatory to me, something as
16 mandatory it may not be given the option, but it says
17 that shall upon conviction, shall upon the third
18 conviction in this State of violent crime shall
19 experience life in prison, and the word shall be based
20 on case law that's intended the use of the word shall.
21 I would interpret that as being a mandatory instruction
22 from our legislature that I couldn't use any discretion
23 to change.

24 Mr. McKanic, any comments from you.

25 MR. MCKANIC: Armed robbery in '71 sir, from I

1 what I understand now, I pled guilty to a lesser charge
2 'cause I went to the State hospital for observation.
3 The State I know---

4 THE COURT: When was that?

5 MR. MCKANIC: In '71, '70, '71 something. I had
6 pled guilty to a lesser charge that was my, from my
7 understanding, sir.

8 THE COURT: Well, we've got a record here on?

9 MR. MCKANIC: I went to a mental hospital for
10 observation and stayed awhile and then they brought me
11 back. I went down there and in '70, I came back '71. I
12 pleaded guilty to a lesser crime, and he gave me a
13 year.

14 THE COURT: Your sentenced says that you were
15 sentenced to five years, provide upon the service of
16 one year the balance of the sentence was suspended.
17 You were placed on probation for four years that was in
18 1971 it says the offense was armed robbery.

19 MR. MCKANIC: I don't know.

20 THE COURT: Any other comments from you, Mr.
21 McKanic?

22 MR. MCKANIC: No, sir.

23 THE COURT: On 91-0557, armed robbery, the
24 sentence that the defendant Elson McKanic be committed
25 to the State Department of Corrections for the term of

1 life without parole. On indictment 91-0558, the jury
2 found Mr. McKanic guilty of assault and battery of a
3 high and aggravated nature, the sentence on 91-0558
4 will be the defendant Elson McKanic be committed to the
5 State Department of Corrections for period of ten
6 years. Okay.

7 MR. GRANT: Your Honor, just so the later.

8 THE COURT: Mr. Solicitor, I am making your
9 paperwork that you have passed up, mark the report,
10 pass the record to the court reporter and ask her to
11 mark it as part of the record.

12 MR. GRANT: And Your Honor, so the record will be
13 clear, I have a pending indictment on Mr. McKanic
14 91-44-595 for assault and battery of a high and
15 aggravated nature which occurred on July the 15 or 16th
16 some day after the armed robbery in which Mr. Floyd
17 Snider was hit in the head and his billfold was taken,
18 but due to these sections, I am nolle processing this
19 case and will not proceed on that case, but I want the
20 record to be clear as to this proceeding having taken
21 care of all pending charges against Elson.

22 THE COURT: All right this make this part of the
23 record.

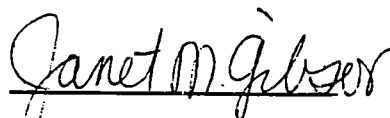
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25

1 I, the undersigned Janet M. Gibson, Official Court
2 Reporter for the 16th Judicial Circuit of the State of
3 South Carolina, do hereby certify that the foregoing is
4 a true, accurate, and complete Transcript of Record of
5 all the proceedings had and evidence introduced in the
6 trial of the captioned case, relative to appeal, in the
7 Criminal Court for Union County, South Carolina, on the
8 24th day of September, 1991.

9 I do further certify that I am neither of kin,
10 counsel nor interest to any party hereto.

11
12
13 January 31, 1992

14 

15 Janet M. Gibson

16 My Commission Expires February 25, 2001

17 Notary Public
18
19
20
21
22
23
24
25

Elson McKanic #182215
Perry Correctional Institution
430 Oak Lawn Road, P1-A221
Pelzer, South Carolina 29669

RECEIVED

MAR 29 2017

P.C.I. MAILROOM

RECEIVED

MAR 31 2017

SC Court of Appeals

South Carolina Court of Appeals
Jenny ABBOTT Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina 29211