

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Colleton County

Honorable Michael G. Nettles, Circuit Court Judge

GEORGE LAGRANDE BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002579

APPENDIX

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State of South Carolina

County of Colleton

In the Court of General Sessions

State of South Carolina,

Plaintiff,

-vs-

George Brown,

Defendant.

2011-GS-15-00029, 00118

January 25, 26 & 27, 2011

Transcript of Record

BEFORE:

The Honorable Perry Buckner, Judge

APPEARANCES:

Ben Shelton, Esquire
Assistant Solicitor for 10th Judicial Circuit
Attorney for the State

Harris Beach, Esquire
Attorney for the Defendant

Becky Hill
Circuit Court Reporter

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PLAINTIFF State of South CarolinaATTORNEY Ben SheltonDEFENDANT George BrownATTORNEY Harris BeachCASE NO. 2011-GS-15-00029, 00118JUDGE Perry BucknerDATE January 25, 2011COURT REPORTER Becky HillDATE ENDED January 27, 2011

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
17	Debra O. Branham	W	F			X	
67	Allen Graham	B	M		X		
115	Susie F. Paddgett	W	F				X
109	Cheryl A. Mizzell	W	F				X
111	Brindel M. Myers	W	F				X
42	Natasha S. Ellis	B	F			X	
31	Letty R. Craven	W	F			X	
34	Stephanie M. Crosby	W	F			X	
120	Termika A. Pinckney	B	F			X	
8	Richard D. Avant	W	M				X
161	Gregory L. Varner	B	M				X
51	Lorraine Frazier	B	F			X	
95	Joan L. Juliano	W	F				X
138	Mary L. Rourk	W	F				X
32	Mary Alice F. Craven	W	F			X	
22	Ronald J. Bryant, Jr.	B	M				X
158	Kathy A. Thompson	W	F			X	
35	Edward L. Culpepper, Sr.	W	M				X
79	Tamera J. Hiers	W	F				X
74	Linda C. Herndon	W	F			X	
57	Lavern D. Garrett	B	F				X
106	Vakevia D. Matthews	B	F				X
146	John H.R. Spear	W	M				X
152	Jo D. Szermeta (ALT)	W	F			X	
104	Robbie M. Lovett	W	F			X	
61	Katrina Y. Gethers (ALT)	B	F				X

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for

1 **JANUARY 25, 2011**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 THE COURT: I need to see counsel at the bench.

5 (WHEREUPON, a bench conference was held off the
6 record.)

7 THE COURT: Is the State ready to proceed?

8 MR. SHELTON: Yes, Your Honor.

9 THE COURT: Is the Defendant ready to proceed?

10 MR. BEACH: Yes, Your Honor.

11 THE COURT: All right. Solicitor, call your
12 case.

13 MR. SHELTON: Thank you, Your Honor. The State
14 calls the case of State versus George Brown, indictment
15 numbers for the first indictment for armed robbery, a
16 robbery while armed or alleged -- allegedly armed with a
17 deadly weapon, indictment number 2011-GS-15-00029. Also,
18 the State is proceeding in the State versus George Brown,
19 indictment number 2011-GS-15-00118 for kidnaping, Your
20 Honor. It's the same incident, Your Honor. Do you have
21 the originals, Your Honor?

22 THE COURT: I have them on the bench.

23 MR. SHELTON: Thank you.

24 THE COURT: All right. Ladies and gentlemen of
25 my potential jury panel, please give me your attention if

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6

1 you would. The State has called for trial the case of
2 the State versus George Brown. Mr. Brown is charged by
3 these two pieces of paper, which I hold in my hand, with
4 the offenses of kidnaping ...

5 Do I have everyone now?

6 THE BAILIFF: Yes, sir.

7 THE COURT: All right.

8 Mr. Brown is charged by these two pieces of paper
9 which I hold in my hand which we call indictments with
10 the offenses of kidnaping and with the offense of armed
11 robbery. The elements of those offenses if you are
12 selected as a juror in the trial of this case will be
13 explained to you by me in my charge to you on the law at
14 the conclusion of the case. You should understand that
15 the indictments are not evidence of any of the
16 allegations contained therein. The indictments are
17 simply the formal written documents by which the case is
18 brought in to this court.

19 To these indictments, the Defendant, George Brown,
20 has pled not guilty. That places the burden on the State
21 of South Carolina to prove each and every element of the
22 offenses charged beyond a reasonable doubt. And it will
23 be your duty if you are selected as a juror in the trial
24 of the case to determine whether or not the State has met
25 that burden.

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1 Now, ladies and gentlemen, I'd like for you to meet
2 the lawyers that are going to be trying this case.
3 They're going to stand and face you, and they're going to
4 introduce themselves -- and in the case of the Defendant,
5 Mr. Beach, I want you to have your client stand and face
6 my jury panel and introduce your client and identify
7 where he's from -- beginning with Counsel for the State
8 of South Carolina.

9 Counsel?

10 MR. SHELTON: Thank you, Your Honor.

11 Good afternoon again. My name is Ben Shelton. I'm
12 Assistant Solicitor for Colleton County. I'm happy to be
13 so. And serving with me today assisting in the case is
14 Assistant Solicitor Chas Ballish. Thank you.

15 THE COURT: Counsel for the Defendant?

16 MR. BEACH: May it please the Court.

17 THE COURT: Yes, sir.

18 MR. BEACH: Ladies and gentlemen, good
19 afternoon again. I'm Harris Beach. I'm from Colleton
20 County. And with me is Mr. George Brown. He is the
21 Defendant in this action.

22 THE COURT: Where is he from?

23 MR. BEACH: He is from Roundo, South Carolina.

24 THE COURT: All right. Ladies and gentlemen,
25 this is Mr. George Brown from Roundo, South Carolina, who

1 is the Defendant in this case represented by Mr. Beach.

2 Now, you've met the lawyers that are going to be
3 involved in the trial of this case for the State of South
4 Carolina and for the Defendant, and you've met the
5 Defendant. I remind you, ladies and gentlemen, that
6 earlier this afternoon you were placed under oath by the
7 Clerk. And I told you that questions I asked you during
8 qualifications and questions I'm about to ask you to
9 determine your impartiality to serve as a juror in the
10 trial of this case are under oath. So your responses to
11 me are under the oath administered to you earlier this
12 afternoon by the Clerk.

13 Number one, is any member of my jury panel related
14 by blood, connected by marriage or a close personal
15 friend of the Defendant, George Brown, of Roundo, South
16 Carolina, whom you have just met? If so please stand at
17 this time.

18 (No response)

19 THE COURT: Let the record reflect, Becky, no
20 one is standing.

21 Now, you've met Counsel for the State of South
22 Carolina, Mr. Ben Shelton and Mr. Chas Ballish, both with
23 the Fourteenth Judicial Circuit Solicitor's Office
24 representing the State of South Carolina in this case. I
25 ask first of all is any member of my jury panel related

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1 by blood, connected by marriage or a close personal
2 friend of either Mr. Ben Shelton or Mr. Chas Ballish who
3 you have just met, Counsel for the State of South
4 Carolina in this case? If so please stand at this time.

5 (No response)

6 THE COURT: Let the record reflect no one is
7 standing.

8 Has any member of my jury panel ever been
9 represented in the past or currently represented by
10 either Mr. Ben Shelton or Mr. Chas Ballish, Counsel for
11 the State of South Carolina in this case? If so please
12 stand at this time.

13 (No response)

14 THE COURT: Let the record reflect no one is
15 standing.

16 You've also met Counsel for the Defendant, Mr.
17 Harris Beach, with the Colleton County Public Defender's
18 Office. Any member of my jury panel related by blood,
19 connected by marriage or a close personal friend of the
20 Counsel for the Defendant in this case, Mr. Harris Beach?
21 If so please stand at this time.

22 (No response)

23 THE COURT: Let the record reflect no one is
24 standing.

25 Any member of my jury panel ever been represented in

1 the past or currently represented by Counsel for the
2 Defendant in this case, Mr. Harris Beach? If so please
3 stand at this time.

4 (No response)

5 THE COURT: Let the record reflect no one is
6 standing.

7 I'm advised that the potential witnesses in the
8 trial of this case will be as follows. Listen carefully.
9 They're not all going to be in the courtroom. I'm going
10 to be calling out names and hometowns, and I'm going to
11 be asking you questions about your relationship to these
12 people. So I want you to listen to the full list. These
13 are potential witnesses.

14 If they are present in the courtroom when I call
15 your name, please stand and face my jury panel so they
16 can see you as well as hear the name and hometown called
17 out.

18 Sanquenetta Blocker, Roundo, South Carolina; Jeffrey
19 Vic Sellers, Hanahan, South Carolina -- that's S-E-L-L-E-
20 R-S -- Robin Kinsey Cooper, Neal, South Carolina; Sargent
21 Kurt Wallace, Colleton County Sheriff's Office;
22 Investigator Jody Taylor, Colleton County Sheriff's
23 Office; Devron Brown, Adams Run, South Carolina; Deputy
24 Thomas Walker, Colleton County Sheriff's Office; Deputy
25 James Rusty Davis, Colleton County Sheriff's Office;

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1 Kathy Washington, Johns Island, South Carolina;
2 Investigator David Thomas, Colleton County Sheriff's
3 Office, Investigator Rubin Carter, Colleton County
4 Sheriff's Office; George Brown -- stand up, Mr. Brown,
5 and face my jury panel -- Roundo, South Carolina --
6 please be seated -- Wesley Clemons, Summerville, South
7 Carolina; C.T. Horton, Walterboro, South Carolina.

8 Any additional witnesses from the State?

9 MR. SHELTON: No, sir, Your Honor.

10 THE COURT: Any additional witnesses from the
11 Defendant?

12 MR. BEACH: No, your honor.

13 THE COURT: Any member of my jury panel related
14 by blood, connected by marriage or a close personal
15 friend of any of the potential witnesses in the trial of
16 this case whose names I have just called? If so please
17 stand at this time.

18 Yes, ma'am? Now, listen carefully to me. Give me
19 your name and your juror number, and let me ask you a yes
20 or no question. Otherwise, I'll have to bring you down
21 here. Do you understand?

22 THE JUROR: Yes.

23 THE COURT: Thank you. Name and juror number?

24 THE JUROR: Cynthia Hills, number 81.

25 THE COURT: Hold on one second. Counsel, this

1 is juror number 81, Cynthia B. Hills.

2 Is that right?

3 THE JUROR: Correct.

4 THE COURT: Ms. Hills, listen carefully. Are
5 you related by blood to any of the potential witnesses?

6 THE JUROR: Yes, sir.

7 THE COURT: Which witness?

8 THE JUROR: Sanquetta Blocker.

9 THE COURT: Sanquetta Blocker? And how are
10 you related to Sanquetta Blocker?

11 THE JUROR: She's my sister.

12 THE COURT: She's your sister?

13 THE JUROR: Yes, sir.

14 THE COURT: I'll excuse you from service in the
15 trial of this case only. Thank you. You may be seated.

16 THE JUROR: Thank you.

17 THE COURT: Anyone else related by blood,
18 connected by marriage or a close personal friend of any
19 of the potential witnesses in the trial of this case
20 whose names I have just called? If so please stand at
21 this time.

22 (No response)

23 THE COURT: Let the record reflect no one is
24 standing other than the one juror who stood in response
25 to my question.

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1 All right. Ladies and gentlemen, I'm going to tell
2 you a little bit about the allegations -- and that's
3 exactly what they are -- in the indictment. They are not
4 evidence. You must decide the case solely upon the
5 evidence introduced during the trial of the case when
6 both sides are present with the right of cross-
7 examination. But I need to tell you a little bit about
8 the allegations in order to ensure your impartiality to
9 serve as a juror in the trial of the case. In the
10 indictment for armed robbery, it is alleged that on or
11 about November the 27th, 2010, in Colleton County, South
12 Carolina, the Defendant, George Brown, at 16273 Ace Basin
13 Parkway by use of force, threats or intimidation and
14 allegedly while armed with a deadly weapon or while
15 alleging either by action or words that he was armed
16 while using a representation of a deadly weapon or other
17 object which a person present during the commission of
18 the robbery reasonably believed to be a deadly weapon,
19 did take and carry away goods or monies or property from
20 the person or immediate presence of Sanquenetta Blocker
21 with the intent to permanently deprive the victim of
22 possession thereof.

23 It is alleged in the indictment charging the
24 Defendant with kidnaping that in Colleton County, South
25 Carolina on or about on or about November 27th, 2010 that

1 the Defendant, George Brown, unlawfully did seize,
2 confine, inveigle, decoy, kidnap, abduct or carry away
3 the victim, Sanquenetta Blocker, and or Devron Brown,
4 without authority of law.

5 Now, those are allegations, ladies and gentlemen. I
6 tell you about those allegations simply to ask you this.
7 Has any member of my jury panel read about, heard about
8 or know anything whatsoever about the facts which are
9 alleged in this case? If so please stand at this time.

10 (No response)

11 THE COURT: Let the record reflect no one is
12 standing.

13 Has any member of my jury panel formed any opinion
14 whatsoever about the facts which are alleged in this
15 case? If so please stand at this time.

16 (No response)

17 THE COURT: Let the record reflect no one is
18 standing.

19 Any member of my jury panel formerly a member of the
20 Colleton County Grand Jury which found the indictment in
21 this case? If so please stand at this time.

22 (No response)

23 THE COURT: Let the record reflect no one is
24 standing.

25 Has any member of my jury panel formed any opinion

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1 about the alleged guilt or innocence of the Defendant in
2 this case, George Brown? If so please stand at this
3 time.

4 (No response)

5 THE COURT: Let the record reflect no one is
6 standing.

7 Any member of my jury panel a member of or a
8 contributor to any group which has as its primary concern
9 the promotion of law enforcement or victims' rights?
10 These groups would include MADD, SADD, CAVE or CADRY
11 (phonic). If so please stand at this time.

12 (No response)

13 THE COURT: Let the record reflect no one is
14 standing.

15 Any member of my jury panel or a member of his or
16 her immediate family -- by immediate family I mean your
17 husband, your wife, your mother, your father, your
18 brother, your sister or your child. That's it. Any
19 member of my jury panel or a member of their immediate
20 family ever been the victim of an armed robbery or a
21 kidnaping? If so please stand at this time.

22 Yes, ma'am, just your name and juror number, please.

23 THE JUROR: My name is Chastity Ginn, and I'm
24 juror number is 63.

25 THE COURT: Counsel, this is Chastity Ginn.

1 Am I pronouncing it right or Gin (phonic)?

2 THE JUROR: Ginn.

3 THE COURT: Ginn? And this is juror number 63.

4 Ms. Ginn, was it you or a member of your immediate
5 family will that was the victim of an armed robbery or a
6 kidnaping?

7 THE JUROR: It was myself, sir.

8 THE COURT: It was what?

9 THE JUROR: It was myself.

10 THE COURT: Yourself? The fact that you were a
11 victim -- was it armed robbery or kidnaping?

12 THE JUROR: Armed robbery.

13 THE COURT: The fact that you were the victim
14 of an armed robbery, Ms. Ginn, with that in any way
15 affect your ability to get the state of South Carolina or
16 the Defendant in this case a fair and an impartial trial?

17 THE JUROR: No, sir, I don't believe so.

18 THE COURT: Thank you, ma'am. You may be
19 seated.

20 Yes, ma'am, your name and juror number, please.

21 THE JUROR: Joyce Litchfield, number 100.

22 THE COURT: Counsel, this is Joyce Litchfield,
23 juror number 100.

24 Ms. Litchfield, were you are a member of your
25 immediate family the victim of an armed robbery or

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1 kidnapping?

2 THE JUROR: Yes, sir.

3 THE COURT: You are a member of your ---

4 THE JUROR: My son.

5 THE COURT: Pardon?

6 THE JUROR: My family -- my son was.

7 THE COURT: Your son? Was your son a victim of
8 an armed robbery or a kidnapping?

9 THE JUROR: Armed robbery.

10 THE COURT: The fact that your son was the
11 victim of an armed robbery, would that in any way, Ms.
12 Litchfield, affect your ability to give the state of
13 South Carolina or the Defendant in this case a fair and
14 an impartial trial?

15 THE JUROR: Yes, sir, it would because he was -
16 -

17 THE COURT: I'll -- that's all right. You
18 don't have to give me an explanation. I'll excuse you
19 from service in the trial of this case only. You may be
20 seated.

21 Anyone else?

22 (No response)

23 THE COURT: Let the record reflect no one else
24 is standing in response to my last question.

25 Does any member of my jury panel know of any bias or

1 prejudice they may have about the facts which are alleged
2 in this case, any of the witnesses involved therein or
3 any of the parties or attorneys involved therein? If so
4 please stand at this time.

5 (No response)

6 THE COURT: Let the record reflect no one is
7 standing.

8 Any member of my jury panel know of any reason
9 whatsoever why they can't give the state of South
10 Carolina or the Defendant a fair and an impartial trial
11 with particular emphasis being placed on your ability to
12 be fair and impartial to both the State of South Carolina
13 and to the Defendant? If so, if you feel that you cannot
14 be fair and impartial to both sides in this case for any
15 reason, please stand at this time.

16 (No response)

17 THE COURT: Let the record reflect no one is
18 standing.

19 Any additional voir dire from the State?

20 MR. SHELTON: No, your honor.

21 THE COURT: From the Defendant?

22 MR. BEACH: No, your honor.

23 THE COURT: Counsel, I understand from meeting
24 with you at the bench during the break that you both
25 agree the strikes are ten for the Defendant and five for

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19

1 the State. We'll be drawing two alternates. Two and one
2 on the alternates. Is that correct from the State of
3 South Carolina?

4 MR. SHELTON: Yes, your honor.

5 THE COURT: Correct from the Defendant?

6 MR. BEACH: Yes, your honor.

7 THE COURT: Very well. Madam Clerk, LaTonya,
8 would you give us the jury, please?

9 It's working, ladies and gentlemen. It's just quiet
10 in here when it's working. But it amazes me how quiet
11 everybody gets once we let computers draw the jury.

12 Have many pages, LaTonya?

13 MADAM CLERK: Two.

14 THE COURT: Two?

15 MADAM CLERK: Yes, sir.

16 THE COURT: One for Becky, one for y'all, one
17 for the law clerk, one for the Court.

18 MADAM CLERK: I'm ready.

19 THE COURT: You're ready?

20 If the State ready to proceed?

21 MR. SHELTON: Yes, sir, Your Honor.

22 THE COURT: Is the Defendant ready to proceed?

23 MR. BEACH: Yes, Your Honor.

24 THE COURT: Madam Clerk, the strikes are ten
25 for the Defendant and five for the State of South

1 Carolina, two and one on the alternates. We're drawing
2 two alternates. Would you give us the jury, please?

3 MADAM CLERK: Yes, sir.

4 As I call your name, please bring all your personal
5 belongings with you and come stand in the front of my
6 desk and turn and face the counsel tables.

7 Number 17, Debra O. Branham. Please come all the
8 way up, Ms. Branham. Thank you.

9 What say you for the State?

10 MR. SHELTON: Please present the juror.

11 MADAM CLERK: What say you for the Defendant?

12 MR. BEACH: Excuse the juror.

13 MADAM CLERK: Please have a seat back with the
14 panel.

15 Number 67, Allen Graham.

16 MR. BEACH: What's that number?

17 MADAM CLERK: 67, Allen Graham.

18 THE COURT: 67.

19 MADAM CLERK: What say you for the State?

20 MR. SHELTON: Please excuse the juror from the
21 trial of this case.

22 MADAM CLERK: Please have a seat back with the
23 panel.

24 Number 115, Susie F. Padgett.

25 What say you for the State?

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1 MR. SHELTON: Please present this juror.

2 MADAM CLERK: What say you for the Defendant?

3 MR. BEACH: Swear the juror.

4 MADAM CLERK: Please have a seat to my right.

5 The bailiff here will show you where to sit.

6 Number 109, Cheryl A. Mizzell.

7 What say you for the State?

8 MR. SHELTON: Please present this juror.

9 MADAM CLERK: What say you for the Defendant?

10 MR. BEACH: Swear the juror.

11 MADAM CLERK: Please have a seat in the jury

12 box.

13 111, Brindel M. Myers.

14 What say you for the State?

15 MR. SHELTON: Please present this juror.

16 MADAM CLERK: What say you for the Defendant?

17 MR. BEACH: Swear the juror.

18 MADAM CLERK: Please have a seat in the jury

19 box.

20 Number 42, Natasha S. Ellis.

21 What say you for the State?

22 MR. SHELTON: Please present the juror.

23 MADAM CLERK: What say you for the Defendant?

24 MR. BEACH: Excuse the juror.

25 MADAM CLERK: Please have a seat back with the

1 panel.

2 Number 31, Letty R. Craven.

3 MR. BEACH: What was that number?

4 MADAM CLERK: Number 31.

5 What say you for the State?

6 MR. SHELTON: Please present the juror.

7 MADAM CLERK: What say you for the Defendant?

8 MR. BEACH: Excuse the juror.

9 MADAM CLERK: Please have a seat back with the

10 panel.

11 Number 34, Stephanie M. Crosby.

12 What say you for the State?

13 MR. SHELTON: Please present the juror.

14 MADAM CLERK: What say you for the Defendant?

15 MR. BEACH: Excuse the juror.

16 MADAM CLERK: Please have a seat back with the

17 panel.

18 Number 120, Termika A. Pinckney.

19 MR. BEACH: 120?

20 THE COURT: 120.

21 MADAM CLERK: 120.

22 What say you for the State?

23 MR. SHELTON: Please present the juror.

24 MADAM CLERK: What say you for the Defendant?

25 MR. BEACH: Excuse the juror.

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23

1 MADAM CLERK: Please have a seat back with the
2 panel.

3 Number 8, Richard D. Avant.

4 What say you for the State?

5 MR. SHELTON: Please present the juror.

6 MADAM CLERK: What say you for the Defendant?

7 MR. BEACH: Swear the juror.

8 MADAM CLERK: Please have a seat in the jury
9 box.

10 Number 161, Gregory L. Varner.

11 What say you for the State?

12 MR. SHELTON: Please present this juror.

13 MADAM CLERK: What say you for the Defendant?

14 MR. BEACH: Swear the juror.

15 MADAM CLERK: Please have a seat in the jury
16 box.

17 Number 51, Lorraine Frazier.

18 What say you for the State?

19 MR. SHELTON: Please present the juror.

20 MADAM CLERK: What say you for the Defendant?

21 MR. BEACH: Excuse the juror.

22 MADAM CLERK: Please have a seat back with the
23 panel.

24 95, Joan L. Julino (phonic).

25 THE COURT: Juliano.

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1 MADAM CLERK: Juliano.

2 MR. BEACH: What number is that?

3 MADAM CLERK: That's number 95.

4 THE COURT: 95.

5 MADAM CLERK: What say you for the State?

6 MR. SHELTON: Please present this juror.

7 MADAM CLERK: What say you for the Defendant?

8 MR. BEACH: Seat the juror.

9 MADAM CLERK: Please have a seat in the jury
10 box.

11 138, Mary L. Rourk.

12 What say you for the State?

13 MR. SHELTON: One moment. Please present this
14 juror.

15 MADAM CLERK: What say you for the Defendant?

16 MR. BEACH: Swear the juror.

17 MADAM CLERK: Please have a seat in the jury
18 box.

19 Number 32, Mary Alice F. Craven.

20 What say you for the State?

21 MR. SHELTON: Please present the juror.

22 MADAM CLERK: What say you for the Defendant?

23 MR. BEACH: Excuse the juror.

24 MADAM CLERK: Please have a seat back with the
25 jury panel.

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25

1 Number 22, Ronald J. Bryant, Jr.
2 What say you for the State?
3 MR. SHELTON: Please present this juror.
4 MADAM CLERK: What say you for the Defendant?
5 MR. BEACH: Swear the juror.
6 MADAM CLERK: Please have a seat in the jury
7 box.
8 Number 158, Kathy A. Thompson.
9 What say you for the State?
10 MR. SHELTON: Please present the juror.
11 MADAM CLERK: What say you for the Defendant?
12 MR. BEACH: Excuse the juror.
13 MADAM CLERK: Please have a seat back with the
14 panel.
15 Number 35, Edward L. Culpepper, Sr.
16 What say you for the State?
17 MR. SHELTON: Please present this juror.
18 MADAM CLERK: What say you for the Defendant?
19 MR. BEACH: Swear the juror.
20 MADAM CLERK: Please have a seat in the jury
21 box.
22 79, Tamera J. Hiers.
23 What say you for the State?
24 MR. SHELTON: Please present this juror.
25 MADAM CLERK: What say you for the Defendant?

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1 MR. BEACH: Swear the juror.

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

4 Number 74, Linda C. Herndon.

5 What say you for the State?

6 MR. SHELTON: Please present this juror.

7 MADAM CLERK: What say you for the Defendant?

8 MR. BEACH: Excuse the juror.

9 MADAM CLERK: Please have a seat back with the
10 panel.

11 Number 57, Lavern D. Garrett.

12 What say you for the State?

13 MR. SHELTON: Please present this juror.

14 MADAM CLERK: What say you for the Defendant?

15 MR. BEACH: Swear the juror.

16 MADAM CLERK: Please have a seat in the jury
17 box.

18 Number 106, Vakevia D. Matthews.

19 What say you for the State?

20 MR. SHELTON: Please present the juror.

21 MADAM CLERK: What say you for the Defendant?

22 MR. BEACH: Swear the juror.

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

25 MADAM CLERK: Alternate?

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1 THE COURT: Alternate number one, Counsel. Two
2 and one on the alternates. Two for the Defendant, one
3 for the State. Alternate number one.

4 MADAM CLERK: Number 146, John H.R. Spear.

5 What say you for the State?

6 MR. SHELTON: Please present the juror.

7 MADAM CLERK: What say you for the Defendant?

8 MR. BEACH: Swear the juror.

9 MADAM CLERK: Please have a seat in the jury
10 box.

11 Number 152, Jo D. Szermeta.

12 THE COURT: Alternate number two, Counsel. Two
13 and one.

14 MADAM CLERK: What say you for the State?

15 MR. SHELTON: Please present this juror.

16 MADAM CLERK: What say you for the Defendant?

17 MR. BEACH: Excuse the juror.

18 MADAM CLERK: Please have a seat back with the
19 panel.

20 Number 104, Robbie M. Lovett.

21 What say you for the State?

22 MR. SHELTON: Please present this juror.

23 MADAM CLERK: What say you for the Defendant?

24 MR. BEACH: Excuse the juror.

25 MADAM CLERK: Please have a seat back with the

1 panel.

2 Number 61, Katrina Y. Gethers.

3 What say you for the State?

4 MR. SHELTON: Please present this juror.

5 MADAM CLERK: Does the Defense have any strikes
6 for cause?

7 MR. BEACH: No. Please swear the juror.

8 MADAM CLERK: Please have a seat in the jury
9 box.

10 THE COURT: Alternate number two.

11 Are there any matters of law pertaining to the
12 selection of the jury only that need to be decided before
13 the jury is sworn from the State of South Carolina?

14 MR. SHELTON: No, your honor.

15 THE COURT: From the Defendant?

16 MR. BEACH: No, Your Honor.

17 THE COURT: You understand that decision is
18 final? You understand that, Mr. Beach?

19 MR. BEACH: Yes, sir.

20 THE COURT: You understand that, Solicitor?

21 MR. SHELTON: Yes, Your Honor.

22 THE COURT: All right.

23 Now, ladies and gentlemen, you haven't heard any
24 evidence in this case, so I don't want you to talk about
25 the case. But I want you to do a little bit of work for

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1 me. I'm going to send you to your jury room now because
2 I have to take up some matters of law. And I don't want
3 to waste your time while I'm doing that. And I'm going
4 to explain to you our roles in that regard. And you'll
5 understand that you're the judges of the facts, I'm the
6 sole judge of the law. I can't tell you what the facts
7 are. I can't comment to you about the facts, and you
8 shouldn't differ with me about what the law is.

9 In a moment I'm going to swear you, but not quite
10 yet until I've taken up a couple of matters of law. Once
11 I've taken up those matters of law, I'm going to bring
12 you back. While you're in your jury room, don't talk
13 about the case.

14 Now, my alternate jurors, you're just as important,
15 sir, you and ma'am. If for some reason a member of the
16 jury becomes disabled or for some legal reason cannot
17 continue to serve on the jury, you'll take their place.
18 You'll be with the jury at all times throughout the trial
19 of the case. But the twelve of you not counting the
20 alternates are eligible to be foreperson. Let me tell
21 you what the duties of the foreperson are. The
22 foreperson presides in the jury room just like the
23 chairperson of a committee presides in a committee
24 meeting. It's the foreperson's job to see that each and
25 every member of my jury has a full and fair opportunity

1 to voice their opinions in the jury room once
2 deliberations began. So the foreperson presides just
3 like the chairperson of a committee in the jury room.
4 The foreperson speaks for the jury out here in the
5 courtroom. So the foreperson is the spokesperson for the
6 entire jury.

7 And finally, the foreperson writes the jury's
8 verdict. Now, I will tell you how to write the verdict.
9 I'll give you a form. And you'll decide it on the form.
10 My law clerk will be holding on to these indictments
11 right here that I've got on my desk. There's a place on
12 the indictments where it says the word verdict and has
13 the signature of the foreperson. And my law clerk, Nick
14 Riviera, will be looking for the foreperson at the end of
15 the trial for whatever they write on the jury verdict
16 form to write on these indictments.

17 So those are the jobs of the foreperson. Write the
18 jury's verdict, preside in the jury room, be the jury
19 spokesperson out here in the courtroom. Any of the
20 twelve of you -- not my alternate jurors. But any of the
21 twelve of you are eligible to be foreperson.

22 When you go to your jury room, they're going to give
23 you a pad and a piece of paper. Quickly amongst the
24 twelve of you -- even though the alternates will be in
25 there, they don't have a vote on this until they become a

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1 member of the jury. Decide on a foreperson. Write the
2 name on a piece of paper. Knock on the jury room door.
3 And as soon as I finished with the matter of law that I'm
4 about to take up, I'll bring you back into the courtroom
5 and we'll swear you at that time and continue with the
6 trial of the case.

7 Now, while you're in the jury room, once you select
8 the foreperson, do not discuss this case. You have not
9 heard any evidence in this case. And it would be
10 improper for you to discuss it. So if somebody tries to
11 talk to you about it, just say I can't talk to you about
12 that. The Judge asked me not to. So I'll be back with
13 you just as -- talk about the weather, talk about sports,
14 talk about knitting or whatever. Just don't talk about
15 this case because you haven't heard anything in this
16 case. And I'll be back with you just as quick as I can.
17 Please retire to your jury room and select a
18 foreperson for me.

19 (WHEREUPON, the jury exited the courtroom.)

20 THE COURT: Counsel, approach.

21 Shut that door for me, please.

22 (WHEREUPON, a bench conference was held off the
23 record.)

24 THE COURT: Ladies and gentlemen that were not
25 selected as jurors in the trial in this case, I want to

1 thank you for your presence and for your patience. I
2 know you've been here since two o'clock, Linda. I'm
3 aware of that. And Mary Alice, I'm aware of that. I
4 don't think I've ever gotten you out of the office for
5 this long a time. So I feel blessed to have had you.
6 Y'all don't know how many times I've looked for Mary
7 Alice. I need to start something -- she's my nurse,
8 ladies and gentlemen. She's here. She's not serving on
9 the jury in this case. But I spend at least one day of
10 my life -- my wife -- I want Mary Alice to know this
11 before she leaves. My wife says that I spend more time
12 with you than she does in the grocery store.

13 (Laughter)

14 THE COURT: I guess that's indicative of my
15 health. I want to thank you for your patience. I want
16 to thank you for your presence. You were not selected as
17 a juror in the trial of this case. Now, each of you
18 should have a card, and it has a telephone number on it.
19 It looks like this. It has a telephone number on it,
20 549-1775. Mr. Padgett is holding up plenty of them. If
21 you don't have this card, raise your hand. If you've got
22 it -- we've got a customer right here, Mr. Padgett --
23 raise your hand and we'll bring you one. I want you to
24 have that telephone number.

25 All right. When you get home tonight, I want you to

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1 call that number after six o'clock tonight. Do not call
2 the number prior to six o'clock. I will leave a taped
3 message on that number telling you when, if at all, I
4 might need you to return.

5 If I do ask you to return, please report to the area
6 of the courtroom that you're seated in now. That's
7 reserved only for my jurors. If I ask you to be here at
8 ten o'clock tomorrow morning, please be out there on time
9 at ten o'clock. If one of you is late, all the rest of
10 you have to sit and wait.

11 Now, there will be one message for all jurors. So
12 if the line is busy, just keep on calling. You'll get
13 through. It may tell you to call back tomorrow night.
14 It may tell you to report at a certain time tomorrow. It
15 may tell you thank you very much, your jury service is
16 concluded for the week.

17 I'm going to keep working. We're here late. I can
18 promise you that. We come early; we stay late while
19 we've got a jury. As soon as I know -- that's why I
20 don't want you to call before six because I wait until
21 we've done all the work that we can do that I know what
22 tomorrow is going to bring based on the best information.
23 And then I put the message on the tape.

24 So wait until after six o'clock. Call 549-1775
25 which is on that card and take the taped message and

1 follow the instructions. Any questions about the
2 callback procedure from any juror? Everybody understand
3 what to do?

4 (No response).

5 THE COURT: I want to thank you for your
6 patience. I hope I'll get to see you again. I'm not
7 sure that I will. I don't know yet. I may or may not
8 depending on what happens with the cases for trial this
9 week. But you are now excused for the balance of the
10 day. You may leave the courtroom through this door.

11 Thank you very much. Just call the number after six
12 o'clock.

13 (WHEREUPON, the jury panel exited the courtroom.)

14 THE COURT: Mr. Beach, you and your client come
15 around, please.

16 Are both doors shut?

17 THE BAILIFF: Yes, sir.

18 THE COURT: Swear him, Madam Clerk, please.

19 **GEORGE BROWN,**

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 THE COURT: I'm going to ask you to speak into
22 the microphone, speak up, give me a verbal answer so the
23 clerk can accurately take down what you say. Do you
24 understand?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Very good. Speak up for me.

2 Are you George Brown?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Brown, I have been handed by
5 the State two indictments. The first indictment is
6 indictment number 2011-GS-15-00029. It is entitled the
7 State of South Carolina versus George Brown. It is an
8 indictment for armed robbery. It has been true-billed by
9 the Grand Jury of Colleton County. This indictment
10 alleges that on or about November 27th, 2010 in Colleton
11 County South Carolina that you, George Brown, at 16273
12 Ace Basin Parkway by use of force, threats or
13 intimidation and while armed with a deadly weapon or
14 while alleging either by action or words that you were
15 armed while using a representation of a deadly weapon or
16 other object which a person present during the commission
17 of the robbery reasonably believed to be a deadly weapon,
18 that you did take and carry away goods and or monies from
19 the person or immediate presence of Sanquenetta, S-A-N-Q-
20 U-E-N-E-T-T-A, Blocker with the intent to permanently
21 deprive the victim of possession thereof. Do you
22 understand that charge for the offense of armed robbery
23 against you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How do you plead to that charge,

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Arraignment

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1 guilty or not guilty?

2 THE DEFENDANT: Not guilty.

3 THE COURT: And how do you wish to be tried?

4 THE DEFENDANT: By God and my country.

5 THE COURT: I've also been handed an indictment

6 2011-GS-15-00118, the State versus George Brown,

7 indictment for kidnaping, true-billed by the Colleton

8 County Grand Jury. This indictment alleges that you did

9 in Colleton County, South Carolina on or about November

10 27th, 2010, that you, George Brown, unlawfully did seize,

11 confine, inveigle, decoy, kidnap, abduct or carry away

12 the victim, Sanquetta Blocker, and or Devron Brown

13 without authority of law. Do you understand that charge

14 in that indictment for the offense of kidnaping?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And how do you plead to that

17 charge, guilty or not guilty?

18 THE DEFENDANT: Not guilty.

19 THE COURT: And how do you wish to be tried?

20 THE DEFENDANT: My God and my country.

21 THE COURT: Very well. You may return to your

22 seat.

23 Let the record reflect that this arraignment has

24 occurred even though the jury has been selected before

25 the jury is sworn by agreement of counsel we would do it

1 so as not to send the entire venire panel out of the
2 room. Is that correct, Mr. Beach?

3 MR. BEACH: Yes, sir.

4 THE COURT: And is that correct, Solicitor?

5 MR. SHELTON: Yes, Your Honor.

6 THE COURT: So let the record reflect that even
7 though the arraignment occurred after the jury was drawn
8 and not sworn by agreement of Counsel.

9 All right. Mr. Beach, I understand you have a
10 motion.

11 MR. BEACH: Thank you Your Honor.

12 Your Honor, I do have a motion. And it is a motion
13 to continue this case. And it's based on two grounds.
14 The first ground is the rapidity to which this thing has
15 occurred. This incident happened on November the 27th.
16 The actual arrest was right after midnight on the 28th.
17 We are less than sixty days away from when the incident
18 happened. And I would assert to the Court that we have
19 not had adequate time to investigate the case and to come
20 -- and to really put it together for the Defendant. In
21 fact, my investigator at my behest was interviewing
22 potential witnesses this morning as we were in court
23 dealing with the Grand Jury.

24 The Grand Jury has just indicted this case this
25 morning and direct indicted on the grounds that were not

1 in the original warrant. He has just been arraigned just
2 a few moments ago. I got the actual indictments at two
3 o'clock when I returned back from lunch. But the basis
4 of this is that we didn't have time for a sight of the
5 indictment.

6 I know that under the statute it is allowed in a
7 criminal case. We think it should be allowed -- in a
8 capital case. We think it should be allowed in less than
9 a capital case also. Maybe not even the whole three days
10 sight of indictment, but at least a partial siting so
11 that we can prepare this thing. But the main basis on
12 this ground is that we just haven't had enough time to
13 prepare this case and present it to the jury and present
14 it to Your Honor. And that would be our first basis.

15 THE COURT: All right. Now, let me break down
16 before I hear from the Solicitor a couple of things
17 because you made your motion on kind of a ground other
18 than what I understood from our conference in chambers.
19 You told me you were going to make the motion on § 17-19-
20 80 ---

21 MR. BEACH: Yes, sir.

22 THE COURT: --- which is a person indicted for
23 a capital offense has a copy of the indictment within
24 three days, but not the names of the witnesses,
25 interestingly enough, Mr. Beach. But then when you start

1 arguing your motion, you made it on that you weren't
2 prepared.

3 So I'm going to start first, Solicitor, with § 17-
4 19-80. That statute says, whoever shall be accused and
5 indicted for any capital offense shall have a true copy
6 of the whole indictment, but not the names of the
7 witnesses, delivered to him three days at least before he
8 shall be tried for such offense whereby to enable him to
9 advise with counsel, his attorney, agent or any of them
10 requiring a copy, paying the officer his usual fees for
11 the copy.

12 And when I met with Counsel earlier today in
13 chambers about this case, Mr. Beach asked me about the
14 sight of indictment rule. And I looked it up because at
15 that point we weren't sure about the time or the
16 requirements. The requirements are for a capital
17 offense. The timing was not twenty-four hours but three
18 days in the statute. And I informed Mr. Beach of that,
19 and he told me he wanted to make this motion.

20 Now, although this offense allegedly occurred in
21 November 2010 and today is January 24th, 2011, some, as
22 Mr. Beach says, sixty days approximately ago ...

23 MR. BEACH: Yes, sir.

24 THE COURT: ... I am aware that Mr. -- the
25 Solicitor has told me in chambers that he had an open-

1 file policy, that he had provided Mr. Beach -- actually
2 there are -- of course, there's no stipulation on the
3 chain of custody. I understand several of these
4 witnesses are chain of custody witnesses.

5 MR. SHELTON: Yes, Your Honor. I feel that
6 only -- they were just listed on the witness out of an
7 abundance of caution in case the Court is so inclined as
8 to require chain of custody for some of the items.

9 THE COURT: I understand. How many witnesses
10 are just custody witnesses?

11 MR. SHELTON: I'd have to look at the list
12 here.

13 THE COURT: All right. Well, you want to -- my
14 copy?

15 MR. SHELTON: Yes, sir, Your Honor.

16 THE COURT: You don't have a copy?

17 MR. SHELTON: I just misplaced it when I was
18 looking for something else.

19 THE COURT: I know that the witness you added,
20 Mr. Carter, is just a substitute for Ms. Taylor who was
21 the evidence custodian and you told me a chain of custody
22 witness?

23 MR. SHELTON: Yes, Your Honor. And the -- Ms.
24 Jody Taylor would be chain of custody. In replace of her
25 would be Ruben Carter if necessary. Investigator David

1 Thomas would be a potential chain of custody, but I do
2 not think chain of custody is required for that evidence,
3 the videotaped evidence. I believe that can be
4 admissible through being able to authenticate it through
5 a witness. But just out of an abundance of caution, I
6 put him on the witness list.

7 Thomas Walker and Rusty Davis are not chain of
8 custody witnesses. They are fact witnesses if they are
9 called. And Kurt Wallace is chain of custody and fact
10 witness.

11 THE COURT: So you have at least, what, three
12 chain of custody witnesses?

13 MR. SHELTON: Yes, Your Honor.

14 THE COURT: And there were ten witnesses
15 originally for the State on their list. They added an
16 eleventh today because, as you know, Mr. Beach, Jody
17 Taylor who is the evidence custodian for the Colleton
18 County Sheriff's Department is ill, not in court today.
19 And they added Rubin Carter who is the assistant evidence
20 custodian in the event Ms. Taylor's illness prevents her
21 from being in court tomorrow.

22 MR. BEACH: Yes, sir.

23 THE COURT: So as to those two witnesses plus
24 one third witness, according to the Solicitor, three of
25 the witnesses of the ten witnesses or potentially eleven

1 are chain of custody witnesses.

2 Now, when you made your motion just then, you made
3 it on the fact -- you didn't base it solely on § 17-19-80
4 as you told me in chambers, but you based it in part on
5 not being prepared. The Solicitor tells me he's provided
6 you with everything in his file. And I assume, Mr.
7 Beach, that I know your office well enough to know that
8 you have made a Rule 5 request and a *Brady* request which
9 is the standing on behalf of your client. So any
10 exculpatory evidence that the State has has been provided
11 to you. And in addition, pursuant to Rule 5, the State
12 has complied with your Rule 5 request. I think I
13 understand the basis of it.

14 This involves an incident that occurred in Colleton
15 County on November 27th and apparently involves
16 Sanquenetta Blocker and or Devron Brown, both of which
17 are listed as witnesses, Ms. Blocker being a resident of
18 Colleton County and Devron Brown being a resident of
19 Adams Run, which is just across the line in Charleston
20 County, who I've identified as fact witnesses as to
21 whether or not an alleged armed robbery and or kidnaping
22 occurred on that date.

23 Mr. Beach, you and I have known each other our
24 professional life. We've tried cases together.

25 MR. BEACH: Yes, sir.

1 THE COURT: You've been my public defender now
2 how long?

3 MR. BEACH: Since 2003.

4 THE COURT: You've been my public defender for
5 almost eight years, and you've practiced law here since
6 ...

7 MR. BEACH: 1972.

8 THE COURT: And so you've been practicing law
9 here almost forty years.

10 MR. BEACH: Yes, sir.

11 THE COURT: And I don't know how many cases
12 that you've tried in front of me as judge. I couldn't
13 put a number on it, but they've been numerous.

14 MR. BEACH: Yes, sir.

15 THE COURT: And I know you well enough to know
16 that with your experience both as a public defender --
17 and I want the record to reflect that Mr. Beach, in his
18 thirty-nine years of practice, did criminal defense work.
19 He and I both were appointed and tried a death penalty
20 murder case in this courtroom in 1987 in which Pat Grant
21 was present as co-counsel. And I've known Mr. Beach
22 since he was in school. I know his reputation for
23 criminal work. And I understand that he always would
24 want more time for his client. But I haven't found
25 anything so far yet that you haven't been provided. I

1 understand you've had your investigator out interviewing
2 people, but you've also listed your investigator as a
3 potential witness on behalf of the Defendant.

4 MR. BEACH: The reason for that, Your Honor ---

5 THE COURT: I'm sure that you -- I'm not asking
6 you to give a reason for that.

7 MR. BEACH: Well, it may be indicative of a
8 problem, Your Honor.

9 THE COURT: All right.

10 MR. BEACH: One of the things we found out last
11 week, late last week, was that the Co-defendant had given
12 an exhaustive narrative.

13 THE COURT: Which was exculpatory, according to
14 what you told me in chambers, of your client meaning it
15 tended to exonerate your client of the charges.

16 MR. BEACH: Yes, sir. And so what we have been
17 doing is trying to put together -- put that together so
18 that it would be admissible. And we've also subpoenaed
19 the Co-defendant.

20 THE COURT: I see that you've subpoenaed the
21 Co-defendant and that you have listed your investigator
22 as a witness. But again -- and that tells me, Mr. Beach,
23 you've done your usual thoroughness to prepare the case
24 on behalf of your client.

25 MR. BEACH: We are trying, Your Honor.

1 THE COURT: I know that. But I still haven't
2 seen from you or heard from you any prejudice by moving
3 forward. Your client's been arraigned. The statute that
4 you told me you were making your motion under applies to
5 capital cases, Mr. Beach.

6 Your client is in custody. The Solicitor knows that
7 we're in -- although we have people that have been in
8 jail longer than your client, I have -- I'm waiting on a
9 mental evaluation, I'm waiting on D.N.A., I'm waiting on
10 the fact that it's been assigned to another judge as a
11 death penalty case, I'm waiting on the firearms results
12 before I can try people that have been in jail longer
13 because, as you know, we try to give priority to people
14 in custody, and your client being one of those people
15 who's in custody.

16 MR. BEACH: Yes, sir.

17 THE COURT: All right. Solicitor, I'm happy to
18 hear from you now. His motion is twofold. His motion is
19 under the statute § 17-19-80. And also moving for a
20 continuance on the basis that he hasn't had sufficient
21 time because he found out about the Co-defendant's
22 statement last week, and that that statement, although
23 exculpatory, made him have to do some work in order to
24 try to ensure that that statement is admissible.

25 You can be seated, Mr. Beach.

1 MR. BEACH: We do have one other ground, Your
2 Honor.

3 THE COURT: Yes, sir?

4 MR. BEACH: I didn't know if you wanted to hear
5 that now.

6 THE COURT: Yes, sir. I thought we had covered
7 everything.

8 MR. BEACH: No. One of the grounds we would
9 like to raise is the constitutionality of the particular
10 statute even along with death penalty. We think it's a
11 denial of equal protection of the law as far as this
12 Defendant not to have the same rights to sight of
13 indictment as a capital defendant would when he is
14 looking at a considerable number of years possible
15 penalty for these two felonies. We feel that that's a
16 denial of equal protection on his part. And we would ask
17 the Court to so rule.

18 THE COURT: Very well.

19 Thank you very much. Now, as I understand it,
20 Solicitor -- I want to know this. First of all, when
21 this Defendant was arrested the day after this
22 occurrence, according to Mr. Beach, November 28th, he was
23 ultimately served with an arrest warrant. Is there any
24 information in this indictment different from the arrest
25 warrant?

1 MR. SHELTON: He was originally arrested, Your
2 Honor, under a warrant for strong-arm robbery, not armed
3 robbery.

4 THE COURT: That it's for the same incident.
5 That is involving the same victim Sanquetta Blocker
6 November 27th, 2010 at 16273 Ace Basin Parkway?

7 MR. SHELTON: Yes, Your Honor.

8 THE COURT: All right. And then later on he
9 was also charged with kidnaping and armed robbery?

10 MR. SHELTON: Yes. It was a decision obviously
11 made by our office working in consult with law
12 enforcement to change the charges to kidnaping and armed
13 robbery after reviewing all the evidence in the case.

14 THE COURT: All right. And my understanding
15 then is that you -- as soon as that decision was made,
16 you made that known to Mr. Beach?

17 MR. SHELTON: Yes, Your Honor. I provided Mr.
18 Beach a trial notice on November -- excuse me -- January
19 the 5th ---

20 THE COURT: Yes, sir.

21 MR. SHELTON: --- listing indictment numbers
22 00029 and 00118, both being 2011, of course, the first
23 being for armed robbery and the second being for
24 kidnaping. I also have receipt of discovery that shows
25 that we did provide discovery to his office on November

1 -- excuse me -- January the 4th, 2011. That was all the
2 paper discovery. And then we provided all the video and
3 audio discovery on January the 7th of 2011. That
4 discovery, Your Honor -- I'll approach his various
5 motions on different grounds of the motion. First, the
6 statute in question I would argue, Your Honor, does not
7 apply here and that is all -- I'll leave that at that --
8 because it only applies to capital offenses.

9 For the second ground, Your Honor, I think Mr. Beach
10 raised a concern that there was an exculpatory statement
11 made regarding his client and an inculpatory statement
12 made on behalf of -- made regarding the Co-defendant, Mr.
13 Wesley Clemons. I've reviewed the statement, Your Honor.
14 And of course we can't get into the evidence of the case.
15 But I know that what is in this statement can be
16 determined to be truthful or untruthful by reviewing the
17 evidence in the case. We have video in the case, Your
18 Honor, from inside the store and on the outside of the
19 store. So some of this can -- and also audio from inside
20 the store. So if there's any prejudice, Your Honor,
21 regarding the actual corpus delecti, if you will, of the
22 case, I do not believe would be affected by this
23 statement.

24 Now, for planning and intent and whatnot, perhaps
25 so. I will freely admit that. However, we did provide

1 trial notice and all discovery over two weeks ago.

2 Actually over three weeks ago. I think there's been
3 ample time, your honor.

4 I know the Public Defender's office has multiple
5 clients. I know that I let Mr. Beach know that this
6 would be my first trial to go it as soon as I found out
7 this would be my first trial to go.

8 THE COURT: And when was that?

9 MR. SHELTON: That was, I believe, at least two
10 weeks ago. And correct me if I'm wrong. I believe it
11 was at least two weeks ago.

12 And the other trials I had noticed Mr. Beach that
13 they probably weren't going forward or they definitely
14 were not going to go forward because of various reasons.
15 So ---

16 THE COURT: Well, Mr. Beach knows my rule on
17 that. If Mr. Beach is noticed for more than one case,
18 Mr. Beach knows that I don't make him try back-to-back
19 unless he agrees to it because he can't prepare for one
20 and try a second one unless he agrees. Now, he very
21 often said he would do it, but that doesn't mean that he
22 has to do it. I don't make anybody do that because
23 there's no way to prepare and try simultaneously.

24 MR. SHELTON: As for the witnesses, Your Honor,
25 the availability, even though Mr. Devron Brown lives in

1 Adams Run, he actually works right down the street at the
2 -- still at this location in Colleton County. He can be
3 reached there. I met with him there personally.

4 THE COURT: The facts of this case -- is this a
5 business that was alleged to be robbed?

6 MR. SHELTON: Yes. It's the Kangaroo B.P.
7 Station at the corner of Ace Basin Parkway and Charleston
8 Highway. The -- where the Church's Chicken is, the big
9 station. If you're going down 46 and you come to Ace
10 Basin Crossroads in Jacksonboro -- it's Highway 17 -- the
11 one on your right. Ms. Blocker lives right down the
12 street. Ms. Robin Cooper lives in Walterboro as well.
13 All the substantial factual witnesses in this case are
14 easy to locate.

15 The one witness -- the only witness that does not
16 live in Colleton County or in the alternative is not
17 regularly in Colleton County is Mr. Sellers. He goes by
18 Vic. And he lives in Hanahan. And he runs a tow truck
19 business, and he has -- he's on call all the time, so you
20 can call him any time and he'll answer the phone.

21 THE COURT: Was his telephone number made
22 available to the Defendant?

23 MR. SHELTON: Yes, made available through his
24 witness statement as well as a video recording of him
25 dictating the telephone number to Sargent Kurt Wallace.

1 THE COURT: Do you have statements from all of
2 your witnesses that are fact witnesses that you provided
3 to capsule for the Defendant?

4 MR. SHELTON: All the statements that I have, I
5 have provided to Counsel for the Defendant. All the
6 statements to my knowledge the State has either by --
7 through the Solicitor's office or through law enforcement
8 I provided.

9 THE COURT: Well, you didn't have a statement
10 of a fact witness to provide. Did you provide Defense
11 counsel with the location of that witness by address and
12 or telephone number?

13 MR. SHELTON: Yes. The fact witness, I believe
14 -- let me look for this -- Robin Cooper. I know Ms.
15 Robin Cooper, Vic Sellers as well as Sanquetta Blocker
16 all wrote statements and included their address. Mr. Vic
17 Sellers included his address in a video statement.

18 THE COURT: And he was given a copy of the
19 video?

20 MR. SHELTON: Yes, Your Honor. Ms. Sanquetta
21 Blocker wrote a statement, and she provided her address
22 in that statement. I do not believe she provided a
23 telephone number in that statement, but she did provide
24 an address in that statement. It may be in the police
25 report, Your Honor. We're viewing that right now. Yes,

1 her number is here, Ms. Sanquetta Blocker. Again, she
2 was working at the Church's Chicken or ---

3 THE COURT: Kangaroo Express.

4 MR. SHELTON: --- Kangaroo, yes. And Ms. Robin
5 Kinsey Cooper, her address is here. She was also working
6 at the Kangaroo. I do not believe, quite honestly, that
7 her number is in the incident report, but her address is
8 here, and where she is employees is known by the incident
9 report. And also statements, her statement.

10 Finally, Ms. Kathy Washington who the State has even
11 attempted to subpoena and has not been able to find and
12 locate. However, she was outside; she was not inside.
13 She was on the witness list, but we can't find her. So
14 we're not going to call her. So that's the only --
15 that's the only witness that I've not been able to
16 locate. She does not work at the store anymore. She was
17 outside at the time of the robbery. The videotape
18 indicates that. She was not inside

19 Mr. Vic Sellers, he dictated, as I've already said,
20 his number to Sargent Wallace in the video. There's
21 definitely -- if it wasn't specifically given to them,
22 there's definitely a means to locate him.

23 THE COURT: So you believe he's had sufficient
24 time to prepare from the information that you've provided
25 in the time frame in which you provided?

1 MR. SHELTON: Respectfully, yes, your honor.

2 THE COURT: Very well. As to the equal
3 protection argument?

4 MR. SHELTON: Your Honor, this is a rule made
5 by the Legislature. I would defer to the Legislature for
6 such a decision to be made. When it comes to the
7 constitutionality of it, I think you're kind of comparing
8 apples to oranges when you compare death penalty capital
9 cases to non-capital cases.

10 I definitely believe due process and fair notice is
11 obviously always incorporated in every case. In this
12 case I believe that due process standards and equal
13 protection standards as far as affecting one charge and
14 not the other, I don't even know if there's standing. I
15 won't go to that argument because it's not a class. But
16 it's a different charge, if that makes any sense, Your
17 Honor.

18 THE COURT: Very well.

19 Mr. Beach, let me tell you my thinking. I
20 understand completely your motion for continuance. I
21 don't think that you've shown me sufficient prejudice in
22 which to grant a motion for continuance. I know you well
23 enough to know that you are probably more than prepared
24 based on your reputation before me to try this case and
25 your experience to do so. I realize that in every case

1 that everyone likes to have sufficient time. And if I
2 thought there was any chance that you were legally
3 prejudiced from the standpoint of time in your
4 preparation, I would certainly give you additional time.
5 I find that there hasn't been a sufficient showing of
6 legal prejudice sufficient to constitute a continuance.

7 Now, it's very clear to me that § 17-19-80, which is
8 entitled, persons indicted for capital offense shall have
9 a copy of indictment. You know, Mr. Beach, this has been
10 in our state for a long time. You're not biased that it
11 goes back to the 1800s in our state. Long before there
12 was a Rule 5, which you took advantage of in this case,
13 long before there was a *Brady* discovery requirement
14 constitutionally for exculpatory evidence -- and it just
15 required that when a person is accused and indicted for a
16 capital offense has to have a true copy of the whole
17 indictment, but not even the names of the witnesses which
18 I don't know provided you with anything but the nature of
19 the charges.

20 I find in this case that the charges have been known
21 to you for at least several weeks and to your client much
22 longer than that. Although I realize that a strong-arm
23 robbery was changed to an armed robbery later on based on
24 probably further investigation as to whether or not there
25 was a deadly weapon or a weapon involved in the robbery,

1 I don't believe that's the kind of legal prejudice that
2 necessarily would enable me based on what I've been shown
3 to grant a continuance.

4 As to your motion that there is a denial of equal
5 protection in treating it, it appears to me the purpose
6 of this statute was that you had to give three days sight
7 of indictment before the case could be called in a
8 capital case to enable your lawyer to advise with
9 counsel, particularly his attorney, about the charges. I
10 think he's had more than that time.

11 Now, it is true that your client wasn't arraigned
12 until today because this is the first meeting of the
13 Grand Jury since the charges. There has been no meeting
14 of the Colleton County Grand Jury in Colleton County
15 since the day that this alleged offense. So the very
16 first opportunity the State had to present it to the
17 Grand Jury ---

18 MR. SHELTON: There was, Your Honor, just for
19 the record on January 17. However that was after the
20 cutoff dates for presentment to the Grand Jury and before
21 we could do a thorough investigation of the case.

22 THE COURT: Well, that would have been last
23 year's Grand Jury met on January 17th, 2011?

24 MR. SHELTON: Excuse me, excuse me. December
25 17th.

1 THE COURT: Oh.

2 MR. SHELTON: For the record. Sorry.

3 THE COURT: All right.

4 Apparently, Mr. Beach, I'm being told that the Grand
5 Jury did meet in December, but it was -- they looked at
6 offenses that occurred prior to November 27th, 2010. So I
7 stand corrected. This is the first meeting of the Grand
8 Jury for offenses that occurred after -- that date or
9 after in Colleton County.

10 I also do not -- I decline your invitation to hold
11 the statute unconstitutional on equal protection grounds
12 as I do not think there's any prejudice from a due
13 process standpoint. I believe you and your client knew
14 the nature of these charges, that you were able to
15 confront the evidence which was provided to you in
16 statements and video and to prepare a defense thereto.

17 And therefore, your motion for continuance is
18 respectfully denied. Your motion under § 17-19-80 is
19 respectfully denied for three days sight of indictment.
20 And your motion for me to find unconstitutional § 17-19-
21 80 is respectfully denied. So all of that will appear on
22 the record as set forth.

23 All right. I have a jury waiting for sometime now,
24 Mr. Beach.

25 You got me a foreman?

1 THE BAILIFF: Yes, sir.

2 THE COURT: Bring it on up to me.

3 (WHEREUPON, the bailiff handed a document to the
4 Court.)

5 THE COURT: Counsel, I am advised that the jury
6 has chosen juror number 109 who is Cheryl Mizzell -- I
7 hope I'm reading it right -- Cheryl Mizzell as foreperson
8 of the jury. Any objection to making the jury's note a
9 Court's Exhibit from the State?

10 MR. SHELTON: No, your honor.

11 THE COURT: From the Defendant?

12 MR. BEACH: No, Your Honor.

13 THE COURT: Court's Exhibit Number 1, Becky,
14 without objection.

15 (WHEREUPON, Court's Exhibit Number 1 was marked for
16 identification only.)

17 THE COURT: Because of the hour -- it's ten
18 after five -- I don't plan on us starting today. I'll
19 swear the jury in the morning rather than today because I
20 don't think we'd get to anything but closing [sic]
21 statement. And because I'm told that the weather is
22 going to change tonight and cloud up and start raining, I
23 want to get the jury home. I've got some jurors who have
24 got to drive a little bit. Any objection from the State?

25 MR. SHELTON: No, Your Honor.

1 THE COURT: Any objection from the Defendant?

2 That will give you an additional day to prepare, Mr.

3 Beach, in light of your motion.

4 MR. BEACH: No, Your Honor.

5 THE COURT: Didn't think so.

6 Bring me the jury.

7 (WHEREUPON, the jury entered the courtroom at

8 approximately 5:12 p.m.)

9 THE COURT: Congratulations, Ms. Mizzell. Is
10 that right? Congratulations on your election as
11 foreperson. That will be your seat throughout the trial
12 of the case.

13 Ladies and gentlemen, the rest of you can sit
14 anywhere you want to. Now, I see my alternates got
15 switched around a little bit. That's all right. But I'd
16 like for you to sit in the order in which you were
17 selected -- because we've had a discussion about that --
18 so we know who's alternate one and alternate two. If you
19 want to sit by somebody, just line up in your jury room
20 back there by them and come in.

21 I do ask that those of you on the back row go all
22 the way down when you come in. Don't sit down in the
23 seat early and make people crawl over you because there's
24 a step off back there. And I've had people slip. You
25 have to step up to get to the back row, and you have --

1 and you step off when you're on the back. So fill all
2 the way down. Don't make people crawl over you.

3 Now, ladies and gentlemen, I've been working out
4 here. It's now five fifteen. I realize the weather is
5 going to change. It looks like we're going to have some
6 rain tomorrow. I'm going to take good care of you. I'm
7 going to feed you tomorrow. And I want you to be here in
8 the morning in your jury room by nine fifteen.

9 Now, don't come to the courtroom. Report to your
10 jury room. We're going to start at nine thirty. But
11 I've got -- and we'll have something for you to drink;
12 we'll have a snack for you. You can get here as early --
13 you can get here at nine o'clock, if you want to. But be
14 here by nine fifteen.

15 If anybody has a problem with transportation, let me
16 know right now. I'll provide transportation to get you
17 here on time because if one of you is late, all the rest
18 if you have to sit and wait until everybody is here.

19 And it's going to be raining in the morning. It's
20 going to start tonight. It's going to rain all day
21 tomorrow, according to the forecast. So I want everybody
22 to prepare for that and leave early and get here. If you
23 have a question about how to get in and out or where to
24 park, my bailiffs will help you when you leave tonight.
25 Just ask them so you're prepared to get here in the

1 morning and we can get started at nine thirty.

2 Over the overnight recess, please do not discuss
3 this case. I know people are curious. And they'll say,
4 are you on the jury? What's happening? Just say, I
5 can't talk about the case. If somebody persists in
6 wanting to talk to you about the case, you get their
7 name, you give it to me. And I'll handle that problem
8 for you, and that person is not going to bother you
9 anymore. I can promise you that.

10 Now, I don't know if there'll be anything on radio,
11 in the newspaper or on television about this case. I ask
12 you not to read such, watch such or listen to such you
13 must decide this case solely upon evidence introduced in
14 this courtroom when both sides are present with the right
15 of cross-examination. So please don't read the
16 newspaper, watch television or read -- or listen to the
17 radio about the case.

18 Now, many of you have cellular phones. We now have
19 smart phones. We have iPhones. We have Blackberries.
20 Everybody has one. I could talk about this all day long.
21 I ask you not to use your phone if it has communication
22 capability to do any investigation of anybody in this
23 case, any witness, any lawyer, any party. It's improper
24 for you to do that. And you think about why. Because
25 the parties are entitled to know what you're basing your

1 decision on. They won't know that if you try to conduct
2 any kind of independent investigation.

3 You must decide the case solely upon evidence
4 introduced in the courtroom when both sides are present
5 with the right of cross-examination. It's very simple.
6 I'll tell you -- I'll explain to you all about what is
7 evidence in the morning and how it can take several
8 forms. As long as it's something introduced into
9 evidence, you have the right to consider that as the
10 jury. But not on any outside source.

11 So if you have a computer at home or a Blackberry or
12 an iPhone, please don't do any research on that. Don't
13 try to look up anything about the case or any news
14 account of the case or anything like that. It's improper
15 for you to do that. We do not allow cell phones or
16 beepers while you're in the jury room or at any time
17 while you're on jury service.

18 Now, I haven't sworn you yet by purpose. I'll do
19 that first thing in the morning. I'll swear you. And we
20 will begin the trial of the case promptly at nine thirty
21 in the morning. This case will not take long. I can
22 tell you. I promised y'all that this was a good week,
23 and I intend to keep my word to you. In the morning when
24 you come in, Pat is going to have a menu for you. So the
25 first -- and one of the reasons I want you early is I

1 want you to fill out your lunch menu.

2 Normally in court we start at nine to nine thirty.

3 And we're going to -- I'm going to take a midmorning

4 break somewhere around ten thirty or eleven o'clock so

5 you can use the restroom, stretch your legs. We're going

6 to work till at least twelve forty-five to one o'clock.

7 We're going to break for lunch. We're going to serve you

8 lunch in your jury room. That's the reason I want you to

9 fill out your lunch order in your jury room when you

10 arrive in the morning.

11 We'll then start back around two o'clock. And we'll

12 work. I'll take a mid-afternoon break, so you won't be

13 sitting here in the jury box and get tired. I'll give

14 you a break in the morning and in the afternoon.

15 Remembering at all times during a break or at any time

16 when you're not with me, you cannot discuss the case with

17 each other or with anyone else. It's improper for you to

18 talk about it with your fellow jurors, and it's proper

19 for you to talk about it only with your fellow jurors in

20 your jury room after I give you the case when I charge

21 you the law at the conclusion of the case. It's real

22 important, ladies and gentlemen, that each of you keep an

23 open mind and not decide the case until the entire matter

24 has been submitted to you under my instructions at the

25 conclusion of the case.

1 Now, if anybody has a transportation problem either
2 to get home tonight or to get back here in the morning,
3 let me know. I'll solve it right now. I can promise you
4 we can take care of that. Anybody got a problem?

5 (No verbal response)

6 THE COURT: Everybody feel they can be in the
7 jury room by nine fifteen in the morning?

8 (No verbal response)

9 THE COURT: All right. I'm going to ask you to
10 be here, fill out a lunch menu. And we'll try to get
11 started as close to nine thirty as we can. We had to
12 take up some matters today. And I'll explain to you
13 about our roles tomorrow when I give you a preliminary
14 charge.

15 I want to thank you, ladies and gentlemen, because I
16 know you had to be patient today. But it takes a while,
17 as you can see, to have a roll call, to qualify a jury,
18 to select a jury, to hear matters that are pretrial
19 motions that I have to hear in order to get started. It
20 doesn't just (snapping fingers). It's not like -- and
21 I'm going to talk to you about this. It's not like
22 television. It's not like C.S.I. and Cold Case and those
23 shows that you watch on television where people walk out
24 and go in a big fancy lab with white coats and they run a
25 test and they say, ah, that's the person who did it. It

1 doesn't work like that, ladies and gentlemen. That's for
2 entertainment. And this -- an actual trial is not for
3 entertainment. It's a search for the truth in an effort
4 to make sure that justice is done between the parties
5 before the Court.

6 Now, please try to be on time. I know the weather
7 is going to get bad, and I'm going to send you home now.
8 I want to get you home as early as I can now rather than
9 work later tonight which I would normally do.

10 My court reporter is the accompanist at her church,
11 and she's got to accompany her praise team tonight at her
12 church. And she's looking at me like, when are you going
13 to stop. And I'm going get her to her church. I can
14 promise that.

15 Please drive carefully. If any of you need -- the
16 bailiffs will assist anybody to their car that needs to.
17 I'll see you in the morning. I hope everybody has a
18 pleasant evening. You may leave the courtroom through
19 this door at this time.

20 Everyone else remain seated while the jury is
21 leaving.

22 (WHEREUPON, the jury exited the courtroom.)

23 THE COURT: Anything on the record from the
24 State of South Carolina before we adjourn this trial for
25 the evening?

1 MR. SHELTON: Yes, Your Honor. There's
2 something I need to bring to the Court's attention.
3 Detective Gethers informed me that alternate number two
4 is a distant, distant cousin of hers. And I just wanted
5 to bring it to the Court's attention.

6 THE COURT: Thank you. I'll inquire about
7 that. Alternate number two is what number?

8 MR. SHELTON: And Detective Gathers is not a
9 witness, but I think it is relevant.

10 THE COURT: Well, if she's seated at a table, I
11 know Mr. Beach would want you to bring that -- Katrina
12 Gethers? Is that right?

13 MR. SHELTON: Yes, sir.

14 THE COURT: That's juror number 61, Mr. Beach.
15 I'll inquire about that in the morning.

16 MR. BEACH: Thank you, your honor.

17 THE COURT: What's Detective Gathers full name?

18 DETECTIVE GATHERS: Katrina Jeanette Gethers,
19 G-E-T-H-E-R-S. And she's a G-E.

20 THE COURT: G-A?

21 DETECTIVE GATHERS: I'm a G-A-T-H-E-R-S.

22 THE COURT: All right. And she's a G-E?

23 DETECTIVE GATHERS: And she's a G-E-T-H-E-R-S.

24 THE COURT: But she's -- there's still a
25 relationship?

1 DETECTIVE GATHERS: Yes, sir.

2 THE COURT: What degree?

3 DETECTIVE GATHERS: Way down the line. She's
4 like my sister's ---

5 THE COURT: Fourth or fifth?

6 DETECTIVE GATHERS: Probably sixth or seventh.

7 THE COURT: Sixth or seventh?

8 DETECTIVE GATHERS: Yes, sir.

9 THE COURT: All right. I'll inquire of her
10 before we swear the jury. I'm making a note about it.
11 Thank you very much.

12 DETECTIVE GATHERS: Yes, sir.

13 THE COURT: Mr. Beach, anything further on that
14 matter or anything else from the Defendant before we
15 adjourn this trial for the evening?

16 MR. BEACH: Nothing tonight, your honor.

17 THE COURT: All right.

18 All right. Counsel, it's five thirty now. And I
19 told Becky would stop at five thirty so she could get to
20 her church. Court is adjourned.

21 (WHEREUPON, court stood at recess for the day.)

22 **JANUARY 26, 2011**

23 (WHEREUPON, court convened with all parties present
24 and the following proceedings were had.)

25 (WHEREUPON, State's Exhibits Number 1 and 2 were

1 marked for identification only.)

2 THE COURT: I understand, Mr. Beach, before I
3 bring the jury and swear them that -- I was informed
4 yesterday that Detective Gathers -- is she in the
5 courtroom?

6 MR. SHELTON: No, Your Honor she was only here
7 for the purposes of jury selection.

8 THE COURT: All right. And she advised us that
9 alternate number two who is juror number 61, Katrina
10 Gethers, is a distant relative of hers. She said sixth
11 or seventh possibly cousin. She wasn't sure of the
12 degree of kinship. And I'm going to ask that first you
13 bring out for me just Ms. Katrina gathers, juror number
14 61, please.

15 THE BAILIFF: Yes, sir.

16 (WHEREUPON, Katrina Gethers, juror number 61,
17 entered the courtroom.)

18 THE COURT: Ms. Gethers, come right on down
19 here, if you would, and have a seat for me. I need to
20 ask you a question. Come on down, if you would, and be
21 comfortable. You can come right down here and have a
22 seat. Are you doing all right this morning?

23 THE JUROR: My asthma is acting up.

24 THE COURT: Oh, I'm sorry to hear that. Just
25 get comfortable and sit down.

1 Ms. Gethers, you didn't know this. But yesterday
2 afternoon in the court room was a Detective with the
3 Colleton County Sheriff's Department. She spells her
4 name G-A-T-H-E-R-S. But she advised us that -- she's not
5 a witness in this case. But she advised us -- and she
6 was doing exactly what the Court asked -- that she
7 believes she's related to you as a sixth or seventh
8 cousin even though you spell your name G-E -- I think
9 it's G-E-A, isn't it?

10 THE JUROR: G-E-T.

11 THE COURT: Do you know Detective Gathers that
12 was here yesterday?

13 THE JUROR: Yes, sir.

14 THE COURT: All right. The fact that Detective
15 Gathers was here and she was sitting at the counsel table
16 for the State of South Carolina -- she's not a witness in
17 this case -- would that in any way affect your ability to
18 give the State of -- are you related to her, or do you
19 know?

20 THE JUROR: Yes, I am related.

21 THE COURT: See, I asked you about whether you
22 are related by blood or marriage. But she wasn't a
23 witness, so you didn't get a chance to respond to that
24 question. And she wanted to tell me that.

25 Now, the fact that she was here yesterday -- and I

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1 know you're just an alternate juror, but you might get on
2 the jury. Would that in any way, the fact that you are
3 related to her -- even though she's not a witness --
4 would that in any way affect your ability to give the
5 State or the Defendant in this case a fair and an
6 impartial trial?

7 THE JUROR: (Shook head side to side in the
8 negative.)

9 THE COURT: It would not?

10 THE JUROR: (Shook head side to side in the
11 negative.)

12 THE COURT: You have to say yes or no.

13 THE JUROR: No, sir.

14 THE COURT: No? Thank you very much. You may
15 return to your jury room.

16 MR. SHELTON: Your Honor, may I approach?

17 THE COURT: Yes, sir.

18 Mr. Beach?

19 (WHEREUPON, a bench conference was held off the
20 record.)

21 THE COURT: Ms. Gethers, you may return to your
22 jury room. Thank you very much.

23 THE JUROR: Yes, sir.

24 (WHEREUPON, the juror exited the courtroom.)

25 THE COURT: In light of Detective Gathers'

1 statement to the Court yesterday, is there anything
2 further as to alternate juror number two, juror number
3 61, as to the State of South Carolina?

4 MR. SHELTON: No, thank you, Your Honor.

5 THE COURT: As to the Defendant?

6 MR. BEACH: No, Your Honor.

7 THE COURT: Very well. All right. Counsel,
8 I'm ready to swear the jury and proceed. Anything
9 further on the record from the State before I bring the
10 entire jury?

11 MR. SHELTON: No. There's not been a
12 sequestration motion made by the Defendant. I don't know
13 if he's getting ready to make it or not. I have all my
14 witnesses here. I would ask ---

15 THE COURT: Hold on just a second, Counsel.
16 Look at me when you're talking.

17 MR. SHELTON: I apologize.

18 THE COURT: Don't look down. I can't
19 understand what you're saying when you look down.

20 MR. SHELTON: I understand.

21 THE COURT: And number one, what motion by the
22 Defense? I haven't seen it. Is it a written motion?

23 MR. SHELTON: No. There hasn't been one. I
24 was ---

25 THE COURT: Well, in that case then, until

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1 there is, we don't have to deal with it, do we?

2 MR. SHELTON: No, we don't, Your Honor. Thank
3 you.

4 THE COURT: And until it rains, you don't have
5 to put an umbrella up?

6 MR. SHELTON: That's true.

7 THE COURT: All right. Anything further from
8 the State?

9 MR. SHELTON: No. Thank you.

10 THE COURT: Anything further from the
11 Defendant?

12 MR. BEACH: No, your honor.

13 THE COURT: Bring us the jury.

14 (WHEREUPON, the jury entered the courtroom at
15 approximately 9:50 a.m.)

16 THE COURT: Good morning.

17 THE JURORS (IN UNISON): Good morning.

18 THE COURT: Watch your step on that back row
19 for me.

20 All right. Madam Foreperson, ladies and gentlemen
21 of the jury, good morning to you. And we're starting a
22 little bit behind because we had a matter we had to take
23 up. But we're going to get the train on the track,
24 ladies and gentlemen. I can promise you that.

25 Madam Clerk, will you please swear the jury for me?

1 MADAM CLERK: I will. Thank you.

2 Madam foreperson and ladies and gentlemen, please
3 stand and raise your right hand.

4 (WHEREUPON, the jury members were duly sworn.)

5 THE COURT: All right, ladies and gentlemen.

6 PRELIMINARY CHARGE

7 BY THE COURT:

8 You've now been sworn as a juror in the trial of
9 this case. And we're going to start in just a moment.
10 I'm going to briefly outline for you a little bit of the
11 procedure that we follow in the courtroom and some of the
12 rules so you'll have a better idea of what may be
13 happening from time to time as the trial unfolds.

14 The first thing I want to remind you -- I told you
15 this briefly yesterday. While you're on the jury and
16 while you're here for jury service, you should not
17 discuss the case with anyone including your fellow jurors
18 until the Court orders you to begin your deliberations.
19 And the reason for that, as I told you, we don't allow
20 premature deliberations because obviously if you start
21 talking about the case and then three hours later another
22 witness shows up that completely changes your mind, you
23 can see how that could really be fatal to a matter. So
24 we want you to keep an open mind and not decide the case
25 until the entire matter has been submitted to the ---

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1 (Interruption by siren)

2 THE COURT: Hold on, ladies and gentlemen. We
3 are in the siren zone. That's going to happen more than
4 once today.

5 I'm going to ask you also that if you -- all of us
6 think that having a cell phone or a Blackberry or
7 computer or any other electronic device with
8 communication capability, they are not permitted to be
9 used by you, as I told you yesterday, for information
10 about any party, witness, attorney for court officer.
11 And any news account online cannot be referenced by you
12 about the case. In fact, ladies and gentlemen, what I
13 tell my juries is I'm required to confiscate such devices
14 if they are used. You're not supposed to communicate
15 with anyone about the case on your cell phone or through
16 e-mail or through your Blackberry or your iPhone or text
17 messaging or on twitter or on any blog or chat room such
18 as Facebook, MySpace, Linkpen (phonic), YouTube.

19 I tell this story to all my juries so you'll know.
20 I have two sons. Some of you know my sons. They like to
21 tell me -- they are always referencing things. They tell
22 me that there are two generations in the world now, the
23 Facebook generation which they are a part of and the
24 facelift generation which I'm a part of. So I'm going to
25 ask you to stay in the facelift generation with me while

1 you're on jury duty this week.

2 Now, before we actually start this trial, you're
3 going to probably find that this trial is different from
4 what you probably expect. You know, many people, in
5 fact, most people do not have the opportunity to attend
6 an actual court session as if each of you are doing right
7 now because you're busy working, you're raising a family,
8 you're at your jobs or your homes. And even though our
9 courtroom is open and we invite you to come, you just
10 don't have the time to attend an actual court session.
11 And most people think -- because they get exposed to what
12 they think is a court session from watching television or
13 going to a movie or reading a book -- that trials are
14 always full of high drama and in tense action and
15 riveting and entertaining circumstances.

16 Now, ladies and gentlemen, while all those things
17 may be true at times, an actual trial, unlike a
18 television show, unlike C.S.I. or Cold Case, an actual
19 trial is not for entertainment. An actual trial is a
20 fundamental part of our democracy. It is a search for
21 the truth in an effort to make sure that justice is done
22 between the parties that are before the Court.

23 Searching for the truth and making sure that justice
24 is done is often slow. It is often repetitive. It is
25 often deliberate. It is the exact opposite of what many

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1 of you may have seen on television or read in a book or
2 seen in a movie.

3 This courtroom, ladies and gentlemen, is a place of
4 honor. It is dedicated to the protection and the
5 preservation of citizens' rights, what many people have
6 called the greatest justice system ever created.

7 The attorneys that are going to appear before you,
8 ladies and gentlemen, they are advocates for either the
9 State of South Carolina or the Defendant for the parties
10 they represent. But first and foremost, the attorneys
11 are officers of this court. And as officers of this
12 court, they took an oath just like you just took. And in
13 their oath, they said -- we call it a civility oath that
14 attorneys take. They're going to be courteous. They're
15 going to be respectful to each other. And you're going
16 to see it. They're going to treat you with complete
17 courtesy. They're going to treat each other with
18 complete courtesy and civility as well as the Court. And
19 in their oath, they swore that they would uphold the
20 integrity and the fairness of our judicial system. And
21 they swore that they would help you in doing so in a
22 search for the truth.

23 You should expect the attorneys to be professional.
24 You should expect the attorneys to be confident. You
25 should expect the attorneys to be courteous and ethical

1 in the discharge of their duties and in the
2 representation of their clients prospective interest.

3 Now, ladies and gentlemen, I want to remind each of
4 you that just like the attorneys took that oath, you just
5 took an oath. You swore or affirmed as a juror that you
6 would try this case and that you would reach a fair and a
7 just verdict. And so as a juror under that oath you just
8 took, each of you are also expected to be reasonable, to
9 be ethical, to be professional in the discharge of your
10 duty as jurors.

11 Now, before we even begin the trial, I want to thank
12 each and every one of you for accepting what I consider
13 to be a very important responsibility. And that is jury
14 service. I want to thank you because what you're doing
15 by your service is you are contributing to our justice
16 system by your service. Without you, ladies and
17 gentlemen, justice can never be accomplished in a
18 courtroom. Our forefathers knew what they were doing,
19 ladies and gentlemen, when they put in the Constitution
20 the right to trial by jury. And I thank you for that
21 service before we begin.

22 Now, the case we're about to try, ladies and
23 gentlemen, is the case of the State of South Carolina
24 versus George Brown.. Mr. Brown, the Defendant whom you
25 met when we were asking you questions about your

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1 impartiality to serve as a juror in the trial of this
2 case, is charged by these two pieces of paper right here
3 which we call indictments. He's charged in one
4 indictment with the offense of kidnaping and in the other
5 indictment with the offense of armed robbery.

6 Now, I'm going to explain to you the elements of
7 each of those charges in my charge to you at the
8 conclusion of the case. So don't think that something is
9 being left out. Those elements of each charge will be
10 explained to you later. And there's a reason for that.
11 You should understand for now that as a juror that the
12 indictments are simply the charges by which the case is
13 brought to the Court of General Sessions before a trial
14 jury. So it's simply the instrument by which the case is
15 brought into this court, each of those pieces of paper.
16 And it is not in any sense -- even though I read to you
17 some allegations that are contained within the
18 indictment, it is not in any sense evidence of any of the
19 allegations contained in the indictments.

20 Now, to the indictment, the Defendant has pled not
21 guilty. The State, therefore, of South Carolina has the
22 burden of proving each of the essential elements that I'm
23 going to talk to you about in my charge at the conclusion
24 of the case each of the elements of the indictment beyond
25 a reasonable doubt. It will ultimately be your duty,

1 ladies and gentlemen, when I ask you to begin your
2 deliberations to decide whether or not the State has met
3 that burden.

4 It is your solemn responsibility as a juror to
5 decide the guilt or the innocence of the Defendant. And
6 your verdict, as I told you yesterday, must be based
7 solely on the evidence as it is presented to you during
8 this trial and on the law as I instruct it to you to be
9 during the trial and at the close of the trial.

10 Now, in just a minute, the Assistant Solicitor will
11 make what is called an opening statement in which he'll
12 stand before you -- he's going to turn that rostrum
13 around because it's backwards right now. And the reason
14 for that is there's a microphone there. And my lawyers
15 love to put their heads down when they talk, and it's
16 sometimes hard for you to hear, hard for her to hear,
17 hard for me to hear because they are so anxious in their
18 preparation. That's why you see they've got papers on
19 their desk. He's going to stand before you at that
20 rostrum and use the microphone. He's going to make an
21 opening statement. Following that, the attorney for the
22 Defendant will make an opening statement. Mr. Shelton
23 first and then Mr. Beach.

24 We have an order for everything we do in the
25 courtroom because the party with the burden of proof, the

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1 State of South Carolina, goes first. They make their
2 opening statement first; they present their evidence to
3 you first.

4 Now, the lawyers have worked hard to prepare the
5 case for you today. But what the lawyers tell you in
6 opening statements, what the lawyers argue to you in
7 their closing arguments, what the lawyers suggest to you
8 by the questions that they ask is not evidence in this
9 case. The lawyers are advocates for the parties they
10 represent. And although they are here to assist you, I
11 remind you that they are advocates either for the State
12 of South Carolina or the Defendant. And what they tell
13 you is not evidence. Now, that doesn't mean that I don't
14 want you to listen to them. I do. But I want you to
15 understand that you must decide the case solely upon
16 evidence introduced during the trial of this case. And
17 what the attorneys tell you is not evidence in this case.
18 In the opening statement, it's only their contention as
19 to what the issues in the case are as an advocate for
20 their respective client.

21 Now, what is evidence? Because you have to decide
22 the case on that. Evidence is sworn testimony from this
23 witness stand. There will be witnesses coming up, being
24 sworn by the Clerk right in front of you. They're going
25 to walk up those steps right there. They're going to sit

1 down. They're going to talk into that microphone, and
2 they're going to testify in front of you. So evidence
3 may take the form of testimony from a live witness.

4 There also will be -- and you'll hear me say this.
5 Because my job -- one of my jobs will be to rule on the
6 admissibility of evidence. It might take the form of an
7 exhibit such as a photograph or video or a model. And as
8 to any such exhibit, before you see it, you will hear me
9 say, as the gatekeeper, that it is in evidence. That
10 means it's available to you for your consideration during
11 your deliberations in your jury room at the conclusion of
12 the case. Evidence may also even take the form of what
13 we call a stipulation. The parties reach an agreement
14 that a fact is true, an understanding. And they'll
15 publish that to you so that it isn't necessary to prove
16 that fact.

17 So evidence may be testimony. It may be an exhibit
18 such as a photograph. It might be a stipulation. That
19 is what you, as a juror, must base your decision on in
20 this case.

21 Now, in the consideration of this evidence in this
22 case, you should remember at all times as a juror that
23 under the Constitution of the State of South Carolina,
24 you, and you alone, are the sole judges of the facts in
25 this case. No one but you will be permitted -- we call

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1 it weighing the evidence, consider the evidence. Think
2 about it. Talk about it at the appropriate time, the
3 evidence.

4 You're the sole judges of the facts in this case
5 based on evidence introduced during the trial of the
6 case. And the same law that makes you, the jury, the
7 sole judges of the facts based on evidence makes me the
8 sole judge of the law. I cannot invade your province and
9 tell you what the law is, and you should not invade my
10 province and differ with me. I can't tell you what the
11 facts are. I think I said I can't tell you what the law
12 is. I'm going to tell you what the law is. I cannot
13 invade your province and make any comment to you about
14 what the facts are or what the evidence suggests, and you
15 should not invade my province and differ with me about
16 what the law is.

17 Everything that I say during the course of this
18 trial is being taken down by my court reporter, Becky
19 Hill, right below me. And if I make a mistake as to the
20 law to the detriment of either party, they can appeal the
21 case to an appellate court. And if the appellate court
22 agrees that I've made a mistake on the law, the appellate
23 court will send the case back for a new trial.

24 So don't you as a juror worry about whether or not I
25 have told you the law correctly. That is somebody else's

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1 worry. That is not your concern. Your job is to take
2 the law as I give it to you and apply it to the facts as
3 you find them to be based on evidence introduced during
4 the trial of the case. And after doing that, you will
5 render your verdict at the conclusion of the case, a true
6 and just verdict, under that oath that each of you just
7 to that you swore you'd do from the Clerk of Court.

8 Now, from time to time if this case is like many
9 others -- I've gotten to the point now, ladies and
10 gentlemen, I used to try to keep up with how many cases I
11 tried as a lawyer because -- I started out when I was an
12 assistant attorney general when I was in the Facebook
13 generation. I used to keep up with my trials. And I
14 stopped a long time a go. I have no idea. It's in the
15 hundreds.

16 Now, if this case is like many others that I've
17 tried as a lawyer or judge, you may hear one of the
18 lawyers say something like, Your Honor, I believe we have
19 a question of law, or, Your Honor, we have a matter of
20 law we'd like to discuss with you. Or you might hear one
21 of the lawyers say, Your Honor, may we approach the
22 bench. Or I myself might find it necessary -- as I just
23 did. I delayed the start of court this morning because
24 we had to take up a matter. I myself might ask you to go
25 to your jury room or remain in your jury room while I

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1 take up a matter of law, while the attorneys and I
2 discuss a matter of law.

3 Now, the reason for this is not that we're trying to
4 hide anything from you. If you see us talking and you
5 see me turn my microphone off and I talk to them,
6 sometimes when I'm discussing a matter of law with them,
7 by necessity I have to make a comment to them about the
8 facts of the case in order to rule whether or not a
9 particular piece of law applies to the facts of this
10 case. So the custom in this State, since I can't make
11 any comment to you as the judge about the facts in this
12 case, is to either take up those matters outside of your
13 hearing or ask you to step to your jury room so that you
14 will not be influenced by anything that I might say or do
15 in ruling on whether or not a particular piece of law
16 applies to this case or not.

17 And let me in that connection tell you again, ladies
18 and gentlemen -- I want to emphasize this to you, now.
19 You, and you alone, the members of the jury, are the sole
20 judges of the facts in this matter. And if you should
21 gather from anything that I say or do during the course
22 of this trial in the ruling on the admissibility of
23 evidence or otherwise, anything that I might say that you
24 think I have any opinion as to the facts in this case,
25 please erase that from your mind because the law does not

1 allow me to have an opinion about the facts in the case.
2 You, the jury, are the sole judges of the facts in this
3 case, and no one else but you will be permitted to decide
4 the facts in this case.

5 Now, I've told you you're the sole judges of the
6 facts and I'm the sole judge of the law. How do you go
7 about determining what the true facts are? Well, ladies
8 and gentlemen, part of your job on the jury is you will
9 have to of necessity pass upon the credibility which
10 simply means the believability.

11 Are you all right, sir? I can get you some water if
12 you'd like some.

13 THE JUROR: I'm okay.

14 THE COURT: You're okay?

15 THE JUROR: Yes, sir.

16 THE COURT: You will have to pass upon the
17 credibility which means the believability of the
18 witnesses who are going to take this witness stand.

19 Now, it will be my responsibility to rule as a
20 matter of law whether or not certain testimony is
21 admissible or not or evidence is admissible or not. But
22 once I've allow the evidence to be admitted or the
23 testimony to be admitted or the exhibit to be admitted,
24 whether or not you believe the evidence is solely a
25 matter for you, the jury, to determine.

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1 And in passing upon that credibility or
2 believability, ladies and gentlemen, of the witnesses,
3 you have the right as the jury to take into consideration
4 the interest of any witness, the bias of any witness, the
5 prejudice of any witness, the opportunity for the witness
6 to have observed the things upon which he or she might
7 testify. You may even take into consideration what we
8 call the demeanor of the witness, the appearance of the
9 witness while the witness is on the witness stand.

10 Anything that is in evidence, you, as the jury, have
11 the right to consider in ruling upon the believability or
12 the credibility of the witnesses who will testify during
13 the trial of the case. And that means, Madam Foreperson,
14 and that means, ladies and gentlemen of the jury -- and I
15 want you to listen carefully -- that it is your duty
16 under that oath which each of you just took from the
17 Clerk, your sworn obligation as jurors, to pay close
18 attention to the witnesses and the Court, to listen to
19 the witnesses. Don't let your thoughts wander. But give
20 strict attention to the evidence in this case so that at
21 the conclusion of all the testimony and after the closing
22 arguments of the attorneys and you get my charge on the
23 law in the case, you will be in a position as a juror,
24 because you listened and you paid attention, to determine
25 what you believe to be the true facts from evidence

1 introduced during the trial of the case and to apply the
2 law as I give it to you at the end to the facts as you
3 find them to be based on the evidence introduced during
4 the trial of the case.

5 Now, you must not consider anything that you may
6 have read or heard about this case outside of this
7 courtroom whether before or during this trial. And until
8 this case is submitted to you by me, you may not discuss
9 it with anyone, not even your fellow jurors. And when it
10 is submitted to you at the end, you must discuss it only
11 with your fellow jurors in your jury room. It's very
12 important, as I told you, that each of you keep an open
13 mind and not decide the case until the entire matter has
14 been submitted to you under my instructions at the end.

15 Now, Madam Foreperson, it will be your added duty,
16 as I told you when you got elected, to write the jury's
17 verdict. You will preside in the jury room. You'll be
18 the jury spokesperson out here in the courtroom. I will
19 give you instructions in my charge to you on the law. I
20 will explain to you the verdict form, how to fill it out,
21 where to sign your name, what to do for the jury to
22 publish the verdict.

23 My law clerk back here, Nick Riviera, is going to be
24 looking for you because he's going to want you to write
25 the exact same thing that you write on the verdict form I

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1 prepare for you on the indictments which I just handed
2 him which he now has in his hands. So he'll be looking
3 for you at the end of the trial to make sure you sign
4 your name on the indictment as you did the verdict form.

5 Now, a couple of housekeeping matters. And my
6 lawyers know this. And you're not here -- and my court
7 reporter certainly does. If you cannot hear at any time
8 -- the lawyers know I'll tell them. But very often y'all
9 are timid about -- you're sitting there and you're
10 listening. If you can't hear, raise your hand. I'm
11 going to be watching all fourteen of you throughout this
12 trial. And I want you to be able to hear at all times.
13 We've got microphones. I can turn it up. I can promise
14 you you're going to be able to hear. If you can't hear,
15 you let me know.

16 Now, if something comes into evidence -- and believe
17 me is that true. Let me give you an example where it
18 becomes a problem for Becky. You know that Becky is
19 looking at me right now. So she's looking at my lips and
20 she's taking down everything I say. And it's really easy
21 for her. I talk loud. I'm used to being in court, and
22 she can see me. But lawyers love to ask witnesses to
23 step down from the witness stand.

24 Now Becky's got her back to everybody. Although her
25 chair swivels, if she can't see the person talking, it's

1 harder for her to do it. Plus when a person steps down
2 on the witness stand, opposing counsel can't see when
3 they turn toward you. So we have portable microphones,
4 and we try to use those to help the court reporter who's
5 got to do her job to make sure opposing counsel for
6 either side can see what's going on and to make sure we
7 have an accurate record and that you can hear and that
8 she can hear. So let me know if you can't hear.

9 If an exhibit gets introduced into evidence and
10 you've heard me say it is in evidence -- and you'll hear
11 me say that. We'll give it a number. We'll say, exhibit
12 number two is now in evidence. You may publish to the
13 jury. If you can't see, raise your hand. I want my
14 jurors to be able to hear and to see at all times
15 throughout the trial of the case. So if you can't hear,
16 you can't see, you let me know.

17 Now, Madam Foreperson, we normally do not allow
18 jurors to ask questions here in the courtroom. If at any
19 time a member of the jury has a question, here's the
20 procedure we have to follow. If you're not already in
21 your jury room, you'll retire to your jury room. You'll
22 write the question on a piece of paper. You give it to
23 my bailiff. He'll bring it out. I will then have to
24 rule as a matter of law whether or not the question can
25 or cannot be answered just as I would any question asked

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Preliminary Charge

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1 by either one of the parties to the case. Do you
2 understand?

3 Now, I've tried it both ways, ladies and gentlemen.
4 I ask that you do not take written notes. You wonder
5 why? I'll tell you why. Because I found that if the
6 written note-taker makes an error in the written notes,
7 the notes can be harmful in your jury room rather than
8 helpful once deliberations began. The time-tested system
9 is for each of you to listen and listen carefully.

10 Now, if you're worried about remembering, Becky is
11 making an audiotape of the witnesses' testimony. Not
12 video, but audio. We can play an audiotape back for you,
13 if necessary. But I ask that you do not take written
14 notes. Please listen.

15 Now, ladies and gentlemen, I don't intend by what
16 I've just told you that you should construe -- I'm trying
17 to give you some idea of how we proceed with opening
18 statement, presentation of evidence, closing argument, my
19 charge to you on the law and then the presentation to you
20 of the verdict form and an explanation.

21 This hasn't been a charge on the law of this case
22 because I don't know any more than you do what evidence
23 is going to be introduced in this case. I honestly can't
24 give you a charge on the law until I've heard the
25 evidence and until you've heard the evidence because I

1 don't know what law yet applies to this case. It's
2 important that both of us have an open mind. I will
3 charge you the law that applies to this case at the
4 conclusion of the case. This has been merely an attempt
5 on my part to briefly explain to you some of the
6 procedures that we use in the courtroom so you'll have a
7 better understanding as to what may be happening from
8 time to time during the trial.

9 Now, nevertheless, in order to preserve everyone's
10 rights, I'll give the parties an opportunity to object or
11 except to anything that I've told you if they have any
12 such exceptions or objections.

13 Any exceptions or objections from the State of South
14 Carolina?

15 MR. SHELTON: No, Your Honor.

16 THE COURT: Found the Defendant?

17 MR. BEACH: None, Your Honor.

18 THE COURT: Ladies and gentlemen of the jury,
19 we will now begin the trial of the case. I ask that you
20 give the lawyers your careful consideration in their
21 opening statements.

22 Mr. Shelton?

23 MR. SHELTON: Thank you, your honor. May it
24 please the Court.

25 THE COURT: Yes, sir.

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Opening Statement by Mr. Shelton

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1 MR. SHELTON: Mr. Beach.

2 MR. SHELTON: Ladies and gentlemen of the jury,
3 good morning.

4 THE JURORS: Good morning.

5 OPENING STATEMENT

6 BY MR. SHELTON:

7 Let me move this around for you.

8 The door man. This case is about the door man. Not
9 the man that lets you in or lets you out, but the man who
10 confines a person, who won't let a person go out, who
11 stops them, who seizes them, who holds them hostage while
12 his partner goes to the register, puts his hand behind
13 his back like this, has a bandanna over his face and says
14 to the clerk behind the counter, give me the money, give
15 me the money.

16 The clerk, Ms. Sanquenetta Blocker, she just started
17 working there in October. There is the Kangaroo in
18 Jacksonboro. Many of you probably know where that is.
19 It's at the corner of 17, Ace Basin Parkway, and 46. She
20 worked -- Charleston Highway, you may want to say. She
21 worked the third shift. You might call it the late, late
22 shift. This occurred at 11:30 at night. She was there
23 alone in the store with one other employee at the time,
24 Mr. Devron Brown. Ms. Blocker.

25 When the partner, the Co-defendant, first walked up

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Opening Statement by Mr. Shelton

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1 and put his hand behind his back like that and said, give
2 me the money, she said, I don't have any money. And then
3 she freaked out. Mr. Brown, he worked at Church's. He
4 didn't work -- he didn't have control of the cash
5 register. He said he worked at Church's. And she
6 thought quickly. She said I work at Church's too. So
7 she tried to run out and she tried to go out the door.
8 But waiting for her, obstructing her, and keeping her
9 from going out the door was the Defendant, Mr. Wayne
10 [sic] Brown. He comes around his partner. His partner
11 is standing right here. He walks up to him right here
12 and he steps in front of Ms. Blocker -- Mrs. Blocker.
13 Ms. Blocker can't leave. Then he backs up. And he backs
14 up and he keeps her from going outside. He puts one hand
15 right here on the door, not letting anyone in, not
16 letting anyone out. And he points at her. Mr. Brown
17 asked him, are you going to let us out. He says no. He
18 says no.

19 At this time, the Co-defendant who is standing like
20 this confronting them as well, still confronting them.
21 And then the Co-defendant basically gives up on the
22 register, goes back and gets whatever he can grab which
23 is as many cigarettes as he can hold. While he's back
24 behind the register -- Mr. Devron Brown will tell you
25 this -- this Defendant said to Ms. Sanquetta Blocker,

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Opening Statement by Mr. Shelton

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1 Mrs. Sanquetta Blocker, go open the register. Go open
2 the register. Only at that point after they got whatever
3 they could, they ran out.

4 You know what Mr. Brown -- by my statement -- this
5 is all in evidence. You're going to have to hear it from
6 them first. But the facts will show you what Ms. Brown
7 -- excuse me -- what Mrs. Blocker -- what Mr. Brown saw.

8 But there's somebody else involved too. There's
9 actually two other people, civilians, that are
10 intricately involved in this case. One is Mr. Vic
11 Sellers. His name is Jeffrey Victor Sellers. He goes by
12 Vic. Vic was coming back that night from Valdosta,
13 Georgia. He was driving his mom back, and he had with
14 him his friend who he takes care of. They had stopped at
15 Pointe South to go ahead and get some food. But they
16 didn't get gas. And they were driving back, and they
17 realized they needed to get gas.

18 So they stopped in Jacksonboro at the BP station,
19 Kangaroo. Now, then he was pumping gas, he sent his
20 friend to go in and pay for the gas. He was waiting.
21 Then after a while, it didn't happen. Nothing was
22 happening. The pump wasn't working, so he became
23 suspicious.

24 If this is where the pump is, he's on the other
25 side. There's no pump between him and the front door,

1 right? He looks around, and he sees what's going on
2 inside. And then he sees what's really going on inside.
3 And he sees this Defendant standing at the door like this
4 keeping anybody from going in and going out. So he walks
5 up slowly, and then he kind of backs up catty corner to
6 the door.

7 When the Defendants leave, they start to take off
8 around the corner. But he follows them. Mr. Sellers
9 sees an officer driving in who had been flagged down by
10 other people that were outside the store. Mr. Sellers
11 runs behind the two suspects, the Defendant included, and
12 jumps and basically clotheslines both of them. He takes
13 them down and the officer is able to arrest both of them
14 right there at the scene.

15 And there's one other witness that was actually
16 there that will testify today besides the officer. Her
17 name is Robin Kinsey Cooper. Ms. Cooper works at
18 Church's as well. And her mom had just come to pick her
19 up with her little brother. You'll see them exiting the
20 store the moment that these guys -- right before these
21 guys come in with her little boy.

22 Now, she's outside. She sees -- feels something
23 suspicious is going on, and she sees the officer. She
24 goes and then she sees what's happening inside, and she
25 goes and she flags the officer down right there. And the

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1 officer comes. And as the officer is coming out, Mr.
2 Sellers is tackling the two Defendants and are right
3 there at the foot of the car.

4 Now, my words aren't evidence. You'll hear all of
5 this from the witnesses and from other evidence in the
6 trial. The officer who stopped is Sargent Wallace.
7 Sargent Wallace was right there, and he ended up
8 arresting both of them at the scene.

9 Now, I think that's all that's really necessary for
10 you to know for this case from me as the purpose of the
11 opening statement. What I want to tell you a little bit
12 now is reasonable doubt and what my duty as a prosecutor
13 is, a representative of the State is. Okay?

14 Reasonable doubt is basically just that, a
15 reasonable doubt. There are few things in this world
16 that you can prove to a scientific certainty. Maybe
17 none. The law doesn't require that. If you are firmly
18 convinced that the Defendant is guilty, the Judge will
19 tell you at the end of the case that you must convict. I
20 want you to bear that in mind while you're listening to
21 on the evidence, while you're listening to the testimony.

22 The Defendant is charged with armed robbery, and he
23 is also charged with kidnaping. Now, to kidnap is to
24 unlawfully confine, to deprive one of someone's freedom.
25 Armed robbery is an act of robbery which is the forceful

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1 taking -- you'll listen to the Judge on this. I don't
2 want to get too much into it. But when you hold a gun --
3 when you act like you have a gun like this, you're
4 allegedly armed. You can be armed for armed robbery.
5 You can have a representation of a weapon for an armed
6 robbery as well. I want you to consider that as you
7 listen to the facts.

8 I thank you for listening, for paying such close
9 attention. I ask you to pay as close attention to Mr.
10 Beach. He deserves it as well. And please listen to
11 every witness that we have.

12 Thank you.

13 MR. BEACH: May it please the Court.

14 THE COURT: Mr. Beach.

15 MR. BEACH: Solicitor.

16 OPENING STATEMENT

17 BY MR. BEACH:

18 Good morning, ladies and gentlemen, on this dreary
19 day.

20 You've got a hard task in front of you today. You
21 have to, as the Judge said, find the truth. That's what
22 verdict means. It means to speak the truth. And this
23 case is a case of armed robbery and kidnaping, and that's
24 what the State has charged my client, Mr. Brown, with
25 committing.

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1 Now, one of the things that you're going to have in
2 this case that we don't have in a whole lot of cases is
3 you're going to be able to see what happened through the
4 marvel and magic of videotape. As you can see, we've got
5 everything set up. You're going to be able to see the
6 in-store cameras to show exactly what happened in that
7 store that day.

8 Obviously our position on what happened is
9 specifically different than what the Solicitor just told
10 you. Our position is that these two men went to the
11 store, that Mr. Brown went in the store with Mr. Clemons
12 who is the other fellow that we've been talking about,
13 and that he was going to go to the bathroom. And then
14 Mr. Clemons turned on the clerk and started doing things
15 he wasn't supposed to do. Our position is that Mr. Brown
16 did not take part in this, that he did not take part in
17 any robbery, that he did not profit from any robbery,
18 that he didn't contribute to any robbery, that he didn't
19 do anything to help any robbery. That he had no weapon,
20 that he didn't even put a mask over his face. He didn't
21 do anything to show that he was part of what Mr. Clemons
22 was doing and that he did not keep anybody from leaving
23 that store. You can see that on the tape. You can see
24 that he wasn't holding the door or anything like that.
25 And what the witnesses may perceive is one thing, and

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1 what's on the tape is another.

2 What I ask you to do is to look at that tape very
3 carefully and see exactly what this man did, not what Mr.
4 Clemons did. Mr. Clemons obviously did what he wasn't
5 supposed to do. But what this man did. What this man
6 did was basically freeze like a deer in the headlights
7 because he didn't -- couldn't figure out what was going
8 on. And when he did, he ran out at the same time the
9 other fellow ran out.

10 Did he have a gun? No. Did he make a
11 representation that he had a gun? No. Did he keep
12 anybody in that place? No. They could have left at any
13 time.

14 Look at the video, ladies and gentlemen. That's
15 what we are relying on is that you will look at the video
16 and see exactly what happened on that day. It's got some
17 audio too, so -- all of it doesn't have audio, but some
18 of it does. So if you'll do that, I think that you will
19 come to the realization that this young man didn't have
20 anything to do with this robbery. But he was there, and
21 he did walk in with the fellow, and he did know the
22 fellow and he did arrive with the fellow. But he did not
23 rob the store.

24 Thank you very much.

25 THE COURT: Call your first witness.

1 MR. SHELTON: Thank you, Your Honor. The State
2 calls Ms. Sanquetta Blocker, Ms. Sanquetta Blocker.

3 I apologize, Ms. Blocker.

4 MADAM CLERK: Please come forward, Ms. Blocker,
5 and be sworn.

6 (WHEREUPON, the witness was duly sworn.)

7 THE COURT: Watch your step. Make yourself
8 comfortable, pull that chair up and pull the microphone
9 down, adjust it to your height. Now, Ms. Blocker, I'm
10 going to need you to speak up so my last juror down
11 there, this lady on the end at the top, she can hear you
12 and everybody in the courtroom can hear you. That
13 microphone is going to amplify your voice. I want you to
14 begin by stating your full name and spelling your last
15 name for the court reporter.

16 THE WITNESS: Sanquetta Blocker, B-L-O-C-K-E-
17 R.

18 THE COURT: Very good.

19 Your witness, Counsel.

20 MR. SHELTON: Thank you, Your Honor.

21 **SANQUENETTA BLOCKER,**

22 Being first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SHELTON:

25 Q. Ms. Blocker, can you hear me?

1 A. Yes.

2 Q. And I can hear you. If we keep it that way, we'll
3 be good.

4 Will you please tell the Court, first of all, and
5 tell the jury where you're from and what you do now?

6 A. I lived in Roundo. I'm unemployed now.

7 Q. Why are you unemployed?

8 A. Because after the robbery I quit.

9 Q. Now, let's talk about your personal life just a
10 little bit so they understand who you are. Are you
11 married?

12 A. Yes.

13 Q. Do you have any children?

14 A. Yes, I have two boys.

15 Q. How old are they?

16 A. Sixteen and seven.

17 Q. Sixteen and seven?

18 A. Yes.

19 Q. Do they play any sports?

20 A. Yes. My oldest son plays basketball and football,
21 and my youngest son plays coaches pitch.

22 Q. Now, let's talk about now when you started working
23 at the Kangaroo in Jacksonboro, all right?

24 A. Okay.

25 Q. First of all, when did you start working there?

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Sanquetta Blocker - Direct Examination by Mr. Shelton

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- 1 A. October 7, 2010.
- 2 Q. Why did you take the job?
- 3 A. Because I needed the money.
- 4 Q. And did you know what shift you were going to be
- 5 working at that time?
- 6 A. Yes.
- 7 Q. Were you worried about that?
- 8 A. Sort of, but they said that the police was going to
- 9 be coming around. So ...
- 10 Q. Not too much?
- 11 A. Not too much.
- 12 Q. Now, this seems like a silly question. But that
- 13 Kangaroo in Jacksonboro, is that in Colleton County to
- 14 your knowledge?
- 15 A. Yes.
- 16 Q. Okay. Now, the Kangaroo, when you're working there,
- 17 what do you do?
- 18 A. I greet the customers, I help them with the
- 19 merchandise. I take customers' money, I sell cigarettes
- 20 and all kinds.
- 21 Q. Are you in control of the cigarettes when you sell
- 22 them?
- 23 A. Yes. The cigarettes are right behind me.
- 24 Q. Do you control the cash register as well?
- 25 A. Yes.

1 Q. So basically it's your responsibility -- you're in
2 control of everything behind the register?

3 A. Yes.

4 Q. Now, let's turn to the night in question. It was
5 November 27, 2010. Do you remember that night?

6 A. Yes.

7 Q. Do you remember it clearly?

8 A. Yes.

9 Q. As clear as a bell?

10 A. Yes.

11 Q. Now, what were you doing just before the robbery?

12 A. Standing off to the register talking to Devron.

13 Q. Who is Devron?

14 A. (Pointing).

15 Q. You don't need to point him out. Who is he?

16 A. He worked at Church's.

17 Q. How old is he? Do you know? Is he in high school?

18 A. I think he's -- yes, he's in high school.

19 Q. Okay. Now, Mr. Brown then was there. Were you
20 talking to him?

21 A. Yes.

22 Q. And did you notice anything suspicious? Nothing --
23 anything going on right before while you're talking to
24 him?

25 A. No, I didn't notice anything.

1 Q. What's the first thing you noticed that put you on
2 guard?

3 A. When the man came to the register with a bandanna on
4 his face and said, you're about to be robbed. Give me
5 the money.

6 Q. What else did he do?

7 A. He came with his hands behind his back.

8 MR. SHELTON: I ask if the witness could just
9 stand, Your Honor, to demonstrate to the jury what she
10 saw the man do.

11 THE COURT: Any objection, Mr. Beach?

12 MR. BEACH: No objection, Your Honor.

13 THE COURT: You may stand.

14 (WHEREUPON, the witness stood.)

15 A. He came with his hands behind his back like this.

16 (WHEREUPON, the witness resumed the witness stand.)

17 Q. Okay. So if I'm -- I'm going to stand up. And I
18 want you to stop when you tell me how close you were to
19 him when he did that.

20 A. About right there.

21 Q. About right here?

22 A. Uh-huh (affirmative).

23 Q. Okay. Now, and he had his hand behind his back like
24 this?

25 A. Yes.

1 Q. What did that indicate to you?

2 A. That he had a gun.

3 Q. Did you believe he had a gun?

4 A. Yes.

5 Q. Were you frightened?

6 A. Yes.

7 Q. Very frightened?

8 A. Very.

9 Q. What did you do?

10 A. I looked at Devron.

11 Q. What does Devron do?

12 A. Devron said, I don't work here. I work for

13 Church's, and we're closed. So I said, me too.

14 (Laughter)

15 Q. Now, why did you say that because you were the

16 cashier?

17 A. Because I was scared.

18 Q. You were scared? Why did you believe that he would

19 think that you work for Church's and not at ---

20 A. I didn't even think. I had on a jacket that covered

21 my shirt.

22 Q. Right.

23 A. But I wasn't even thinking.

24 Q. What did you want to do at that point?

25 A. Get out.

- 1 Q. You wanted to get out? Why did you want to get out?
- 2 A. Because I was scared.
- 3 Q. And then what did you do?
- 4 A. Came from behind the counter. I was hiding behind
- 5 Devron.
- 6 Q. Uh-huh (affirmative).
- 7 A. And we went to the door. Devron said, let us out.
- 8 And the man was blocking the door. He said no. Devron
- 9 said, you're not going to let us out? And he said no.
- 10 So we went back to the deli where the chairs are and we
- 11 just stand there.
- 12 Q. And what happened -- now, when you were doing that,
- 13 was the other fellow there too?
- 14 A. The other fellow went behind the counter and started
- 15 grabbing cigarettes.
- 16 Q. Right. And now, you said you were hiding behind
- 17 Devron?
- 18 A. Yes.
- 19 Q. So you didn't see everything that happened at that
- 20 point? You just kind of ...
- 21 A. Yeah, I just was -- I heard someone saying, give us
- 22 the money, give us the money. And I was like, we don't
- 23 have no money.
- 24 Q. And when you are there and hearing that, did you
- 25 feel that you could leave?

1 A. No.

2 Q. Was there any other way out of that store at that
3 time?

4 A. No.

5 Q. Why so?

6 A. Because we keep the side door locked.

7 Q. Did you feel free?

8 A. No.

9 Q. Did you feel confined?

10 A. Yes.

11 Q. Did you feel seized?

12 A. Yes.

13 Q. How long did it seem to you?

14 A. Forever.

15 Q. How long is forever?

16 A. Too long. Forever.

17 Q. Were you frightened for your children?

18 A. Yes.

19 Q. Were you frightened for your husband?

20 A. Yes.

21 Q. Now, when they leave, what do you do? When they
22 leave, where do they -- do they go out the door?

23 A. Yeah, they left out the door. And I stand to the
24 door.

25 Q. And what do you do then?

- 1 A. Run.
- 2 Q. You run? Why did you run?
- 3 A. I don't know.
- 4 Q. You just ran? Because you were frightened?
- 5 A. Yes.
- 6 Q. You wanted to get out of there?
- 7 A. Uh-huh (affirmative).
- 8 THE COURT: You have to say yes or no.
- 9 A. Yes.
- 10 Q. Now ...
- 11 MR. SHELTON: Beg the Court's indulgence.
- 12 May I approach, Your Honor?
- 13 THE COURT: You may.
- 14 Q. I'm handing you, Ms. Blocker, what's been previously
- 15 marked as Court's [sic] Exhibit Number 1. I want you to
- 16 tell the Court if you recognize it.
- 17 A. Yes.
- 18 Q. What is it?
- 19 A. This is a video of the robbery at the store.
- 20 Q. Where does it come from?
- 21 A. Kangaroo.
- 22 Q. From the surveillance system?
- 23 A. Yes.
- 24 Q. Have you seen it before?
- 25 A. Yes.

1 Q. Does it show fairly and accurately what happened
2 inside?

3 A. Yes.

4 Q. You say it's a fair and accurate depiction of what
5 occurred inside that store?

6 A. Yes.

7 Q. Now, we're talking about two videos here, the one
8 that's behind the counter and the one that shows toward
9 the counter, correct?

10 A. Yes.

11 Q. Those two videos?

12 A. Yes.

13 MR. SHELTON: Your Honor, I move State's
14 Exhibit Number 1 into evidence.

15 THE COURT: Any objection as to State's Exhibit
16 1?

17 MR. BEACH: We have no objection to the
18 introduction, Your Honor, of the video.

19 THE COURT: Counsel, approach.

20 (WHEREUPON, a bench conference was held off the
21 record.)

22 THE COURT: Ladies and gentlemen of the jury,
23 State's Exhibit Number 1 will be admitted into evidence
24 in the trial of this case without objection. State's 1
25 in evidence.

1 (WHEREUPON, State's Exhibit Number 1 was admitted
2 into evidence.)

3 THE COURT: You may now publish to the jury,
4 Counsel.

5 MR. SHELTON: Thank you, Your Honor. Beg the
6 Court's indulgence.

7 Can everyone see?

8 (No response)

9 THE COURT: Hold on a second. Pat?

10 MADAM CLERK: You want to take it down some?

11 THE COURT: You've got control of it.

12 MADAM CLERK: Take it down some more?

13 THE COURT: Dim the overhead just a little bit.

14 Can everybody see the board on the jury?

15 THE JURORS: (No verbal response)

16 THE COURT: Mr. Beach, can you and your client
17 see?

18 MR. BEACH: We can, Your Honor.

19 THE COURT: Proceed, Solicitor.

20 MR. SHELTON: Thank you, Your Honor.

21 Q. For the record, I'm showing you now, Ms. Blocker,
22 the file number on the CD, 10112701.

23 MR. SHELTON: And without objection, Your
24 Honor, I would just move to move the entire video, DVD,
25 into the record.

1 THE COURT: Mr. Beach?

2 MR. BEACH: Without objection, your honor.

3 MR. SHELTON: Thank you.

4 THE COURT: So ordered without objection. You
5 mean -- every file number is on this one CD?

6 MR. SHELTON: Correct?

7 THE COURT: Is that right? Or DVD.

8 MR. SHELTON: Yes, Your Honor.

9 THE COURT: Very well.

10 Without objection, Mr. Beach?

11 MR. BEACH: Yes, Your Honor.

12 THE COURT: Proceed.

13 MR. SHELTON: Thank you, your honor.

14 Now, this is the one that has audio, so I want to
15 make sure the audio is correct before we start.

16 (WHEREUPON, State's Exhibit Number 1, a DVD, was
17 played in open court before the jury.)

18 Q. Can you see that, Ms. Blocker?

19 A. Yes.

20 Q. I want you to explain to the jury what's going on
21 right there. What does that show, first of all?

22 A. That's showing me behind the counter and Devron
23 coming -- Devron coming around. We were talking because
24 someone was at the gas pump trying to get gas. And I was
25 saying he has to come in and prepay first.

- 1 Q. All right. Now, I'm going to keep playing it, okay?
- 2 MR. SHELTON: Now, can everyone hear?
- 3 THE JURORS: (No verbal response)
- 4 (WHEREUPON, State's Exhibit Number 1, a DVD,
- 5 continued to be played in open court before the
- 6 jury.)
- 7 Q. What did Devron just say?
- 8 A. Card or money.
- 9 Q. And he's talking to someone outside?
- 10 A. Yes.
- 11 Q. Or he's motioning to someone?
- 12 A. He's motioning at the window.
- 13 Q. Okay.
- 14 (WHEREUPON, State's Exhibit Number 1, a DVD,
- 15 continued to be played in open court before the
- 16 jury.)
- 17 Q. Now, right here -- you told us about your duties
- 18 before. I want you to show everyone what is right here.
- 19 I'll try to point if I can get my hand right here.
- 20 What's this here?
- 21 A. That's the cash register.
- 22 Q. Where are the cigarettes?
- 23 A. Behind me.
- 24 Q. Over here?
- 25 A. Yes.

1 Q. Okay. So that's where you're supposed to be?

2 A. Yes.

3 Q. That's where you had control over?

4 A. Yes.

5 (WHEREUPON, State's Exhibit Number 1, a DVD,
6 continued to be played in open court before the
7 jury.)

8 Q. What do you see right there?

9 A. The man coming up with the bandana over his face.

10 Q. I'm going to play that back real quick.

11 (WHEREUPON, State's Exhibit Number 1, a DVD,
12 continued to be played in open court before the
13 jury.)

14 Q. What did you hear him say?

15 A. Give me the money.

16 (WHEREUPON, State's Exhibit Number 1, a DVD,
17 continued to be played in open court before the
18 jury.)

19 Q. Do you see his hand behind his back there? Could
20 you see the back of him at that point?

21 A. At the -- I didn't look back.

22 Q. You didn't look back? You thought he had a gun?

23 A. Yes.

24 (WHEREUPON, State's Exhibit Number 1, a DVD,
25 continued to be played in open court before the

- 1 jury.)
- 2 Q. What is that?
- 3 A. I had a coworker outside. And then Robin and them
- 4 was going. I told him he had to let them come back in
- 5 because they worked there. I worked at Church's.
- 6 Q. Who did you say them? Did you say? Who are you
- 7 talking to?
- 8 A. Kathy Washington. She actually worked that night.
- 9 She was outside.
- 10 Q. Now, who were you speaking to when you said that?
- 11 A. Both of them.
- 12 Q. Both of them?
- 13 A. (No verbal response)
- 14 Q. Now, right at that point the guy that was at the
- 15 door, what was he doing?
- 16 A. That's when we was -- me and Devron was walking to
- 17 the door and he's standing in front of the door to block
- 18 it.
- 19 Q. All right.
- 20 (WHEREUPON, State's Exhibit Number 1, a DVD,
- 21 continued to be played in open court before the
- 22 jury.)
- 23 Q. What did you say just then?
- 24 A. Go ahead. He said we're going to get it. I say go
- 25 ahead.

1 Q. You said, we're going to get it, and you said, go
2 ahead?

3 A. Yes.

4 (WHEREUPON, State's Exhibit Number 1, a DVD,
5 continued to be played in open court before the
6 jury.)

7 Q. What do you hear right there?

8 A. Go to the register, give us the money.

9 Q. Who was saying that?

10 A. I really don't know who was saying it.

11 Q. Because you're standing behind ---

12 A. Because I was standing behind ---

13 Q. Devron?

14 A. --- Devron.

15 Q. And you were frightened?

16 A. I was scared.

17 (WHEREUPON, State's Exhibit Number 1, a DVD,
18 continued to be played in open court before the
19 jury.)

20 Q. Who's saying, I ain't got nothing to do with it?

21 A. Devron.

22 Q. And then they leave?

23 A. Uh-huh (affirmative).

24 (WHEREUPON, State's Exhibit Number 1, a DVD,
25 continued to be played in open court before the

- 1 jury.)
- 2 Q. Now, you see that and it doesn't seem like there is
- 3 that much time, correct?
- 4 A. No.
- 5 Q. When you look back?
- 6 A. When you look at that, no.
- 7 Q. But how did it feel at that time?
- 8 A. Forever.
- 9 Q. Forever? You felt confined?
- 10 A. Yes.
- 11 Q. You felt deprived of your freedom?
- 12 A. Yes.
- 13 Q. Okay. I want to show you another view now. Okay.
- 14 I'll play this all the way through so the jury can hear
- 15 what happened.
- 16 (WHEREUPON, State's Exhibit Number 1, a DVD,
- 17 continued to be played in open court before the
- 18 jury.)
- 19 Q. What's all that commotion about?
- 20 A. That's -- Devron was telling them, get 'em, get 'em,
- 21 get 'em.
- 22 Q. Telling who?
- 23 A. The customer.
- 24 Q. Who?
- 25 A. Who ran behind them and ---

1 Q. Tackled them?

2 A. --- tackled them, and then the police officer was
3 coming.

4 (WHEREUPON, State's Exhibit Number 1, a DVD,
5 continued to be played in open court before the
6 jury.)

7 Q. Okay. I'm going to play another video for you now.
8 Okay?

9 A. Okay.

10 MR. SHELTON: For the record, this is 101127.

11 Q. This is the view looking toward the register. Okay?
12 This does not have sound.

13 (WHEREUPON, State's Exhibit Number 1, a DVD,
14 continued to be played in open court before the
15 jury.)

16 Q. Who is that right there?

17 A. What?

18 Q. The boy in the red right there.

19 A. That's Robin's little brother.

20 Q. Who is this?

21 A. That's Robin's mother.

22 Q. Who is this?

23 A. That's Robin.

24 Q. Where are they going?

25 A. Home.

- 1 Q. Who is that?
- 2 A. That's the two men who came in to rob us.
- 3 Q. What do you see there?
- 4 A. The man coming to the cash register with his hand
- 5 behind his back.
- 6 Q. Now, you see his hand behind his back like this?
- 7 A. Yes.
- 8 Q. You couldn't see the back of him though when you
- 9 were there, could you?
- 10 A. No, sir.
- 11 Q. What did it look like to you?
- 12 A. Like he had a gun behind his back.
- 13 (WHEREUPON, State's Exhibit Number 1, a DVD,
- 14 continued to be played in open court before the
- 15 jury.)
- 16 Q. What do you see there?
- 17 A. They trying to block us from coming from the cash
- 18 register.
- 19 Q. You say they. Both of them?
- 20 A. Yes.
- 21 (WHEREUPON, State's Exhibit Number 1, a DVD,
- 22 continued to be played in open court before the
- 23 jury.)
- 24 Q. What do you see there?
- 25 A. He's blocking the door. That's when Devron was

1 going to ask him can we get out.

2 Q. What is this man doing?

3 A. He's still got his hand behind his back.

4 Q. Like he has a gun?

5 A. Like he has a gun.

6 Q. What do you see this man doing with his left hand?

7 A. Holding the door.

8 Q. What do you see the man at the door doing there?

9 A. He's still holding the door.

10 (WHEREUPON, State's Exhibit Number 1, a DVD,
11 continued to be played in open court before the
12 jury.)

13 Q. What is he -- do you know what he's telling you at
14 that time?

15 A. I can't remember, no.

16 Q. You can't remember because you're behind Devron and
17 you don't know who is saying it?

18 A. (No verbal response)

19 (WHEREUPON, State's Exhibit Number 1, a DVD,
20 continued to be played in open court before the
21 jury.)

22 Q. What is he doing there? The man at the door.

23 A. He's still holding the door pointing his finger.

24 (WHEREUPON, State's Exhibit Number 1, a DVD,
25 continued to be played in open court before the

- 1 jury.)
- 2 Q. What about there?
- 3 A. He still holding the door.
- 4 Q. And the other man is going around the counter?
- 5 A. Yeah, he's going around the counter getting the
- 6 cigarettes.
- 7 (WHEREUPON, State's Exhibit Number 1, a DVD,
- 8 continued to be played in open court before the
- 9 jury.)
- 10 Q. What did he do right there? Do you know?
- 11 A. What did I do?
- 12 Q. No. What did he do right there?
- 13 A. Oh, he ---
- 14 THE COURT: Refer to who he is for the record,
- 15 counsel.
- 16 MR. SHELTON: I apologize, Your Honor.
- 17 Q. The man at the door, what is he doing right there?
- 18 A. He's still holding the door. Looks like he's saying
- 19 something, but I don't know.
- 20 (WHEREUPON, State's Exhibit Number 1, a DVD,
- 21 continued to be played in open court before the
- 22 jury.)
- 23 Q. And will you please tell the jury, now that you just
- 24 exited the door on the video, what do you do next?
- 25 A. Run.

1 Q. Why did you run?

2 A. I was getting out of there.

3 Q. Because you wanted to get out?

4 A. Yes.

5 Q. I'm going to show you another video.

6 MR. SHELTON: This is in evidence. This, for
7 the record, is 709, the same preceding numbers and the
8 last three digits are 709.

9 (WHEREUPON, State's Exhibit Number 1, a DVD,
10 continued to be played in open court before the
11 jury.)

12 Q. What does this depict here? Can you tell?

13 A. That's the customer.

14 Q. That's the customer? Is that the inside of the
15 store?

16 A. Yes.

17 Q. Where is that camera pointing toward? Where is it
18 from?

19 A. That's the back toward the -- I'm thinking that's
20 the desk and the medicine.

21 Q. And then right here on the left-hand side, what is
22 that?

23 A. The register.

24 Q. Back here is the register? Is this the -- right
25 here is the eating area? Well, anyway that's the inside

1 of the store. Now, I want to watch this and I want you
2 to tell me what you see in just a minute.

3 (WHEREUPON, State's Exhibit Number 1, a DVD,
4 continued to be played in open court before the
5 jury.)

6 Q. Do you recognize those two?

7 A. Yes.

8 Q. Who are they?

9 A. That's the two that came in and robbed us.

10 Q. What are they doing right there?

11 A. They are walking together back toward, I'm thinking,
12 the cooler.

13 Q. They turn together?

14 A. Yes.

15 Q. And then they go back toward together?

16 A. Yes.

17 Q. Okay. You believed he had a gun that night?

18 THE COURT: Are you done with the exhibit?

19 MR. SHELTON: Yes, Your Honor.

20 THE COURT: Would you give us the lights,
21 please, Madam Clerk?

22 MR. SHELTON: Thank you, Your Honor.

23 Thank you, Madam Clerk.

24 Q. You believed he had a gun that night?

25 A. Yes.

1 Q. Why so?

2 A. Because of the way he had his hand behind his back.

3 Q. Did you feel free to leave?

4 A. No.

5 Q. You felt deprived of your freedom?

6 A. Yes.

7 Q. And he took those cigarettes?

8 A. Yes.

9 Q. And the guy that didn't have the mask on kept you
10 from leaving ...

11 A. Yes.

12 Q. ... while the other guy took the cigarettes?

13 A. Yes.

14 Q. Thank you. That's all the questions I have. Please
15 answer any questions Mr. Beach might have.

16 CROSS-EXAMINATION

17 BY MR. BEACH:

18 Q. Ms. Blocker, I'm not sure about the layout of the
19 store. The door in which these two fellows came in,
20 where does that lead to?

21 A. That's coming in and going out.

22 Q. All right.

23 A. In the front of the store.

24 Q. Is that the gas pumps?

25 A. It goes out to the gas pumps in the parking lot.

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1 Q. Okay. If you walk in through those doors, then the
2 register is to your left; is that correct?

3 A. Yes.

4 Q. And if you walk further back, what's back there?

5 A. The cooler, the bathroom.

6 Q. The bathrooms are back there?

7 A. Yes.

8 Q. And the side door is back there too, isn't it?

9 A. Yes.

10 Q. That's where Church's is?

11 A. Yes, Church's. Well, Church's is in the middle
12 because the diesel side is by the door, actually by the
13 door.

14 Q. Okay. So that's been moved around a little bit?

15 A. Uh-huh (affirmative).

16 Q. Where is the fire exit?

17 A. I mean, how do you mean the fire exit?

18 Q. Isn't there a fire exit in the back back there?

19 A. Oh, yes. That's way in the back.

20 Q. Okay.

21 A. But ...

22 Q. Go ahead.

23 A. That's way in the back. We don't -- that's where
24 they have all the stock, stocking area.

25 Q. Okay. And that is open from the inside; is that

1 correct?

2 A. Actually, I don't know.

3 Q. Okay. Now, when the two men came in, did you notice
4 them immediately?

5 A. No.

6 Q. And where were they headed? Or do you know?

7 A. For me thinking, they must have been going to the
8 cooler.

9 Q. And then one came up to the register with the mask
10 on; is that correct?

11 A. Yes.

12 Q. Did the other fellow, Mr. Brown, the Defendant, did
13 he have a mask on?

14 A. No, he did not.

15 Q. Did he ever put a mask on?

16 A. No.

17 Q. Did he ever represent to you that he had a gun?

18 A. Not to me, no.

19 Q. Did he ever present a gun? Did he ever show you any
20 type of weapon?

21 A. No, he didn't.

22 Q. And the fellow who came up to the register, Mr.
23 Clemons, the one with the bandanna on, did he ever pull
24 out a gun?

25 A. No, he didn't pull out a gun. But he kept his hand

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1 behind his back like he had a gun.

2 Q. Did he keep his hand behind his back the whole time
3 or just part of the time?

4 A. For me it seemed like forever. But I know when he
5 went back to get the cigarettes, his hand wasn't behind
6 his back.

7 Q. Well, what did he tell you?

8 A. He kept saying, give him the money, give him the
9 money. Open the drawer.

10 Q. Did he tell you he had a gun?

11 A. No.

12 Q. And when the two gentlemen were tackled outside, was
13 a gun found?

14 MR. SHELTON: Objection, knowledge.

15 MR. BEACH: She hasn't testified whether she
16 knew.

17 THE COURT: Overruled. This is cross-
18 examination. She can testify to what she knows of her
19 own knowledge, not based on what somebody else said but
20 what she knows of her own senses.

21 Proceed.

22 A. No, I didn't know because I took off running.

23 Q. Okay. And you were in the store with Devron?

24 A. Yes.

25 Q. And where did y'all go when all this happened?

1 A. When they came up?

2 Q. When you left the register, where did you and Devron
3 go?

4 A. We went to the door. We was trying to get to the
5 door to go out. But when he wouldn't let us out the
6 door, we backed up to the tables and just stand there.

7 Q. How far away from the table -- were the tables from
8 the door?

9 A. Not that far, but not that close.

10 Q. Did he tell you to go to the tables?

11 A. No.

12 Q. Did he tell you to go anywhere in particular?

13 A. No, he didn't.

14 Q. And what exactly did he tell you about the door?

15 A. Well, Devron said, can we get out. And he said no.

16 Devron said, you're not going to let us out. And he said
17 no.

18 Q. And he was standing by the door?

19 A. Yes.

20 Q. Was anybody else in the store with them?

21 A. With us?

22 Q. With the two fellows who came in?

23 A. No.

24 Q. Did you see anybody outside waiting for them?

25 A. I didn't see anyone outside.

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1 Q. Were you scared?

2 A. Was I scared?

3 Q. Yes.

4 A. Yes.

5 Q. What time of night was this?

6 A. Eleven thirty.

7 MR. BEACH: The Court's indulgence for a
8 moment?

9 THE COURT: Yes, sir.

10 MR. BEACH: No further questions. Thank you,
11 ma'am.

12 THE COURT: Redirect?

13 MR. SHELTON: None, Your Honor.

14 THE COURT: As to this witness, Solicitor?

15 MR. SHELTON: I ask if she may be excused.

16 THE COURT: Any objection to this witness being
17 excused?

18 MR. BEACH: I have no objection, Your Honor.

19 THE COURT: Very well. You may step down from
20 the witness stand, and you're excused from the trial of
21 this case. You may leave the courtroom at this time.
22 Watch your step.

23 Madam Foreperson, ladies and gentlemen of the jury,
24 I'm going to take my one and only midmorning break at
25 this time and let you stretch your legs and use the

1 restroom. Please do not discuss the case. You've not
2 heard all the evidence in the case. It would be improper
3 to discuss it.

4 You may retire to your jury room at this time.

5 (WHEREUPON, the jury exited the courtroom.)

6 THE COURT: Counsel, approach.

7 (WHEREUPON, a bench conference was held off the
8 record.)

9 THE COURT: All right. We'll be at ease during
10 the break. We'll take ten minutes.

11 (WHEREUPON, court stood at recess for a short
12 break.)

13 THE COURT: Where is Mr. Beach? Go get him.

14 Come on and join us, Harris.

15 MR. BEACH: Thank you, Your Honor.

16 THE COURT: Is the Defendant ready to proceed,
17 Mr. Beach?

18 MR. BEACH: Yes, sir.

19 THE COURT: Bring us the jury, please.

20 (WHEREUPON, the jury entered the courtroom.)

21 THE COURT: All right. Madam Foreperson,
22 ladies and gentlemen of the jury, we'll now continue with
23 the testimony in the trial of this case.

24 Solicitor, call your next witness.

25 MR. SHELTON: Thank you, Your Honor. May it

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1 please the Court. The State calls Mr. Jeffrey Victor
2 Sellers.

3 THE COURT: Your witness, Counsel.

4 MR. SHELTON: Thank you, Your Honor.

5 JEFFREY VICTOR SELLERS,

6 Being first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SHELTON:

9 Q. Mr. Sellers, how old are you?

10 A. Fifty-three.

11 Q. And what do you do for a living?

12 A. I own Carolina Towing in Charleston.

13 Q. Where are you originally from?

14 A. Valdosta, Georgia.

15 Q. And where do you live now?

16 A. In Hanahan.

17 Q. Now, on November the 27th, 2010, that evening, what
18 were you doing?

19 A. We were -- had went up to Valdosta, went down to
20 Valdosta, to ---

21 Q. You said we. I'm sorry who were you talking about?

22 A. My mother who is seventy-two years old and has got
23 breast cancer, just being finished up with her chemo
24 treatments. And Margarita Mitzi, a lady that lives with
25 me -- I take care of her. She's a hundred percent mental

1 disability veteran.

2 Q. Thank you. So you were coming back from Valdosta.

3 What were you doing in Valdosta?

4 A. When Mama got cancer -- she's got two brothers that
5 still live in Valdosta. And she wanted to get down there
6 and be with them. So we went down to look at a house for
7 her to purchase. And we've got the business up for sale.
8 And once we do all this, hopefully, we're going to get
9 down there.

10 Q. Go back home?

11 A. Go back home, yes, sir.

12 Q. Now, heading back up, which route did you take?

13 A. We hit 95 and come up to 17. And right there at 17
14 and 95, we stopped at the -- I can't think of the name of
15 the little restaurant right there. We stopped there and
16 ate. We get back in the car and we leave out headed on
17 back to Hanahan. And we realized ---

18 Q. I'm sorry to interrupt. What time do you think it
19 was about that time?

20 A. I'm going to say probably eleven or ten after eleven
21 or something like that.

22 Q. Okay.

23 A. On the way toward Jacksonboro, I noticed the fuel
24 was -- actually Mama noticed that the fuel was low and
25 that we shouldn't be leaving the I-95 area. I needed to

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1 go ahead and get fuel. Well, I know what the distance
2 is. And I run that road all the time. I figured I would
3 just stop there in Jacksonboro and get gas and roll on.

4 So we pull on up to the truck stop gas station, pull
5 up out front. Margarita and Mama wanted to get them a
6 soda to drink. And I'd given Margarita -- she was going
7 to go in and get the sodas. So I gave her twenty-five
8 dollars to pay for the fuel and to tell them because I
9 think on the pump it says something about after hours you
10 pay first or whatever. For her to give the money to them
11 to get the pump rolling.

12 Q. And what did she do?

13 A. She went to the back of the store where the sodas
14 are at.

15 Q. And how do you know that? I'm sorry.

16 A. I had cut the pump on. And I'm standing there and
17 waiting and waiting. And nothing is happening with the
18 pump. So I looked around the edge of the pump. And I
19 see Margarita back toward the back end -- not way back in
20 the store, about middle ways of the store -- standing
21 there looking at something. And then all of a sudden,
22 she starts starting up toward the cash register like she
23 realized that she had messed up and needed to pay for the
24 fuel first.

25 Q. And did you have any interaction with other people

1 inside the store before you saw Margarita?

2 A. Absolutely. The gentleman that was in the store
3 behind the cash register -- it was a young guy and a
4 young girl behind the cash register. And the guy was
5 motioning for me to shut the pumps off.

6 Q. Okay.

7 A. Shut the pump off. So I had shut it off. And then
8 Margarita goes up to the pump [sic]. Of course, it never
9 got turned on at that time.

10 Q. So when she walks up, what else do you see? Excuse
11 me. When she walks up toward the register -- I want to
12 be clear -- what else do you see?

13 A. She's walking up to the register at the same time
14 these two guys are walking up to the register. And one
15 of the guys, the slender taller -- the slender fellow, as
16 he's walking up to the register, he's messing with this
17 bandanna, white bandanna with a black -- white and black
18 bandanna -- pulling it up over his face. Right off the
19 rip, you know what's going on just, you know, by seeing
20 it. And then there's -- as he walks up to the register,
21 he's got his right hand behind his back.

22 Q. What does that indicate to you?

23 A. That he had a gun.

24 Q. Then what do you see?

25 A. They kind of scuffled around in there a little bit.

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1 Margarita is standing right beside him, looking up at him
2 like as if -- she's a hundred percent mentally disabled.
3 She really didn't know what was going on, I don't think.
4 So the other gentleman that was with that guy there backs
5 up to the door, and he's standing in between both doors
6 with his hands out, you know, kind of standing like this
7 here and like he's being a door man to not let nobody in,
8 not let nobody out.

9 Q. Right.

10 A. You know, that was his duty.

11 Q. Uh-huh (affirmative). Did it look like he was a
12 part of it?

13 A. Absolutely. Absolutely, without a doubt.

14 Q. What do you do then?

15 A. I start walking towards the door.

16 Q. Why do you do that?

17 A. Beats me.

18 (Laughter)

19 A. I don't -- I just -- I start walking towards the
20 door. And I reckon just scared. Margarita is in the
21 store. You know, what do you do?

22 Q. Right.

23 A. So I start walking up there. I kind of pause a
24 little bit as they're getting ready to come out of the
25 door. And in my mind what I was thinking was I wanted to

1 let them come on out. And then once they got out, I want
2 to get behind them.

3 Q. Right.

4 A. Wherever it was going to be at, I wanted to be
5 behind them. And that's -- they come out of the store.

6 Q. One second. Did you make any motions or anything
7 like that while you were walking up toward the store?

8 A. I motioned to Margarita to get back in the back of
9 the store. And I start -- as I start approaching the
10 guys, I noticed ---

11 Q. I'm sorry to interrupt you, Mr. Sellers.

12 A. Yes, sir.

13 Q. Why did you do that? Why did you motion to her to
14 get back in the back of the store?

15 A. Because I didn't want her to get killed, to be
16 totally honest with you, if anything happened. It was a
17 robbery. It was obvious. The -- as I'm approaching the
18 guys, coming up behind them, there on the end of the
19 building, slowly coming up at the end of the building I
20 see a Colleton County Sheriff's car approaching. Going
21 very slow, but he was coming. And I just -- I took off
22 running and jumped up and grabbed both of them around the
23 neck, and down we went to the ground.

24 Q. Why did you do that?

25 A. Because I was afraid they was going to get away. I

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- 1 didn't -- this officer had no idea of what was going on.
2 It was just obvious that he didn't know what was
3 happening. There were probably -- I don't know. It
4 seemed like a bunch of them. But it was probably four,
5 five or six people scurrying around over here in the
6 parking lot at the end of the building. But it was all
7 kind of things going on. But they was scurrying around
8 down here hollering, they're robbing the store, they're
9 robbing the store. Now, who were they talking to at that
10 point? I didn't know because in my mind all I was doing
11 was planning what I was getting ready to do.
- 12 Q. Now, after the two people that were inside the store
13 who you say were robbing the store left the store, did
14 you see either one of them do anything?
- 15 A. Like in the store? The guy ---
- 16 Q. After they walk out of the store and they're walking
17 away?
- 18 A. I got you. I got you. But I really don't think I
19 told you that he went around the counter ---
- 20 Q. Okay.
- 21 A. --- and was taking cigarettes and all off of it and
22 his -- you know, it looked like he was going to, you
23 know, go for the register.
- 24 Q. Uh-huh (affirmative).
- 25 A. And then they just -- they come out. And as they

1 come out the store, they walked out the store and they
2 make a left. There's propane bottles, a rack, sitting
3 there of propane. And he sees the cop.

4 Q. Who is he?

5 A. The guy that had the mask on.

6 Q. Okay.

7 A. And he takes the mask off and throws it on the
8 ground. And then they just steadily, slowly like, uh-
9 huh, you know, nothing's wrong. I'm coming to you. You
10 don't know. And I'm going to walk right on past you. So
11 that's what happened. And I took off running and
12 clothes-lined him.

13 Q. State's Exhibit Number 1 is already in evidence.

14 Have you viewed that, Mr. Sellers?

15 A. Yes, sir.

16 Q. Have you viewed the entire -- all the videos from
17 outside the store or the ones to your knowledge?

18 A. Yes, sir.

19 Q. I'm going to ask you does it fairly and accurately
20 show what happened out there?

21 A. Yes, sir.

22 MR. SHELTON: If I may, I'd like to publish to
23 the jury and to the witness -- of course, it's already in
24 evidence.

25 THE COURT: Is it part of State's Exhibit

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1 Number 1?

2 MR. SHELTON: Yes, Your Honor.

3 THE COURT: It's in evidence. You may proceed.

4 MR. SHELTON: Thank you, Your Honor.

5 THE COURT: Mr. Beach, can you see?

6 MR. BEACH: Yes, Your Honor.

7 MR. SHELTON: Beg the Court's indulgence.

8 THE COURT: Identify for the record what you're
9 going to publish now for the jury.

10 MR. SHELTON: Yes, Your Honor. Okay. This is
11 number, for the record, 10112715, the file number. This
12 is from the corner of the store looking toward the door,
13 and toward where Mr. Sellers was parked.

14 (WHEREUPON, State's Exhibit Number 1, a DVD,
15 continued to be played in open court before the
16 jury.)

17 Q. Now, I'm going to pause it for one second. And I'd
18 like you to describe this scene to the jury. Where are
19 you and what do you see? Where are you in this picture?

20 A. That pump that's closest, the far pump to your right
21 that's close to the building right there.

22 Q. This one here?

23 A. The silver Cadillac.

24 Q. The silver Cadillac?

25 A. Yes, sir.

1 Q. Is that you right there?

2 A. Yes, sir.

3 Q. Okay. So what are you doing at this point?

4 A. Looking around the pump to see what's going on, why
5 Margarita didn't pay the bill. I believe in that area
6 right there is where the fellow was telling me at the
7 window to shut the pump down.

8 Q. Hold on one second. I want to make it clear for the
9 jury. What area are you speaking of?

10 A. When I leaned over toward the pump, he had told me
11 to -- he was motioning for me to turn the pump off.

12 Q. He was motioning through the window?

13 A. Through the window over there, yes, sir, right
14 behind the cash register.

15 Q. To the right of the screen?

16 A. Yes, sir.

17 Q. Now, the folks over here moving around, is that what
18 you were speaking of people scurrying around?

19 A. You know, I don't know if it was at that point right
20 there or what. But I had -- I was looking -- I had
21 looked around the pump, and I cut the pump off. And then
22 I looked back around the corner of it. And when I looked
23 around the corner of the pump again, the guys were
24 walking up to the register. And that's when he was
25 pulling the mask up on -- the scarf on his face. And so

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1 that's where -- that there was -- and there were -- I
2 don't remember if this was the part where all those
3 people were out there. But there were about five or six
4 people running around the parking lot hollering.

5 Q. I'm going to go ahead and play it again. And you
6 just stop me whenever you think there's something
7 important to state that was going through your mind at
8 the time.

9 (WHEREUPON, State's Exhibit Number 1, a DVD,
10 continued to be played in open court before the
11 jury.)

12 A. At this point is when I noticed that they're
13 actually in there robbing it, and I start walking toward
14 it to ...

15 Q. Now, right here what do you see?

16 A. That's where I'm motioning to Margarita to get back
17 in the back of the store so that, you know, I could get
18 her out of the way.

19 Q. She's standing at the register at that point?

20 A. Yes, sir. That's where I pause and I back up. I'm
21 pointing now to the police officer that they're coming
22 out of the store, they're coming out of the store. And
23 now I'm starting to follow them. I'm still pointing.
24 Here they are right there, right there.

25 Q. Uh-huh (affirmative).

1 A. I don't even remember that woman standing there.

2 And I just -- there's the rag, the scarf, on the ground
3 right there that he dropped.

4 Q. And you saw that?

5 A. At the scene. I seen him pull it off and throw it
6 down.

7 Q. Now, I'm going to show you another view, Mr.
8 Sellers, if you don't mind.

9 MR. SHELTON: For the record, this is file
10 number 10112716 of State's Exhibit Number 1.

11 (WHEREUPON, State's Exhibit Number 1, a DVD,
12 continued to be played in open court before the
13 jury.)

14 Q. Okay. I want you to briefly describe the scene
15 here. Where are you now?

16 A. At the pump out there. Yes, sir, I'm at the pump.

17 Q. So this is from the opposite side?

18 A. Right.

19 Q. And to the left-hand side, you can see the store
20 front?

21 A. Right.

22 (WHEREUPON, State's Exhibit Number 1, a DVD,
23 continued to be played in open court before the
24 jury.)

25 Q. And all this time as you were explaining, what were

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1 you doing right there?

2 A. Standing there waiting for the pump to get cut on.
3 The gentleman inside that worked there at the store,
4 looked like he was working behind the register, was
5 motioning for me to cut the pump off and cut it back on.
6 And that's it with me, trying to get the pumps on. And
7 once I done that, I looked back around the pump right
8 there. And that's when I seen Margarita come running up
9 like, oh, I didn't pay for the fuel.

10 Q. And all this time while you were explaining, what
11 were you doing right there?

12 A. Standing there waiting for the pump to get cut on.
13 The gentleman inside that worked there at the store --
14 looked like he was working behind the register -- was
15 motioning for me to cut the pump off and cut it back on.
16 And that's it. Trying to get the pumps on. And once
17 I've done that, I looked back around the edge of the pump
18 there. And that's what I seen Margarita come running up
19 like, oh, I didn't pay for the fuel. And the two guys
20 going up to the register ---

21 Q. You said two guys going up to the register. Were
22 they walking together?

23 A. Yeah, they robbed it together, yeah. And as soon as
24 one guy went to the register, the other guy started --
25 seemed like he was backing up to the door.

1 (WHEREUPON, State's Exhibit Number 1, a DVD,
2 continued to be played in open court before the
3 jury.)

4 Q. Right here, what do you see when you're looking in
5 right at that point?

6 A. There were -- the people that were inside the store,
7 the guy that was at the door was holding back. The other
8 guy was around the other end of the cash register. It
9 seemed to me that he went toward the cash register and
10 then turned around and started grabbing cigarettes off of
11 it. And then I stood there and waited.

12 Q. And that point there, where was that point at?

13 A. Pardon?

14 Q. That point you just made, what were you doing there?

15 A. I was just standing there. It was like a pause.
16 They were getting ready to come out the door, both the
17 guy with the bandanna and the other fellow.

18 (WHEREUPON, State's Exhibit Number 1, a DVD,
19 continued to be played in open court before the
20 jury.)

21 Q. And that was you tackling them?

22 A. That was me tackling them.

23 Q. Now, those headlights you see right there, what is
24 that?

25 A. That's the Colleton County Sheriff's car.

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Jeffrey Victor Sellers - Direct Examination by Mr. Shelton

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1 Q. I'll show you one more view. This is basically
2 going to be the same view but from a little bit closer in
3 from that same side.

4 A. Right.

5 MR. SHELTON: And for the record, this is
6 10112713, the file number, of State's Exhibit Number 1.

7 (WHEREUPON, State's Exhibit Number 1, a DVD,
8 continued to be played in open court before the
9 jury.)

10 Q. Now, it's going to be a little bit before you
11 actually see yourself in this picture, correct?

12 A. Right.

13 Q. Do you know who these other people are in the
14 picture at this point?

15 A. No, sir. And like I said, I heard them over there
16 hollering, they're being robbed, they're being robbed.
17 They're robbing the store.

18 Q. Okay. Now, for a moment -- at this point, you're
19 back in -- kind of back here, this area?

20 A. Yes, sir.

21 Q. And you're looking in. And you told the jury
22 earlier that the guy at the door was the more heavier set
23 one?

24 A. Yes, sir.

25 Q. And the one with the bandanna was the skinnier one?

1 A. Yes, sir.

2 Q. And right here, what do you see right there?

3 A. Both guys leaving the store.

4 Q. What do you see behind the fellow behind the front
5 guy?

6 A. What do I see behind? That's him dropping that rag
7 that he had around his face on the ground.

8 MR. SHELTON: We are finished with exhibit
9 number 1 for the purposes of this witness, Your Honor.

10 THE COURT: Pardon?

11 MR. SHELTON: We are finished with exhibit
12 number 1 for the purposes of this witness.

13 THE COURT: Very well. Proceed.

14 Q. Now, it's hard to say what was going through your
15 mind. And you've already told the jury why you did what
16 you did.

17 A. Yes, sir.

18 Q. Will you please tell them one more time?

19 A. Well, I just -- I was afraid that they were going to
20 get away. I was also -- I feared that Margarita, you
21 know, something happening to her. I was really afraid
22 that they were going to get away.

23 Q. And the one with his hand behind his back, what does
24 that indicate to you?

25 A. That he had a gun.

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1 Q. And you were fearful for Margarita's safety?

2 A. Yes, sir.

3 Q. Now -- and the one at the door, what did he look
4 like he was doing?

5 A. To me he looked like he was blocking the door, you
6 know, kind of with his legs opened up and both hands out
7 telling the people that was in there, no, you ain't going
8 out. You know, he was -- he wasn't letting them in,
9 wasn't letting nobody out. It was an obvious door man.

10 Q. Thank you. That's all the questions I have for you,
11 Mr. Sellers. Please answer any questions Mr. Beach might
12 have.

13 A. Yes, sir.

14 MR. BEACH: May it please the Court.

15 THE COURT: Proceed.

16 CROSS-EXAMINATION

17 BY MR. BEACH:

18 Q. Mr. Sellers, that was some tackle. Did you play
19 football?

20 A. Yes, sir.

21 Q. That was some take down. The guy at the door, you
22 say he was obviously the door man. Was there anybody
23 from the outside that he would not let in?

24 A. No, sir.

25 Q. Now, the inside, did you see him talking to anyone

1 on the inside?

2 A. Yes, I did. I mean, I seen him motioning. His back
3 was towards me. I couldn't see him, and I couldn't hear
4 anything.

5 Q. Could hear what he was saying?

6 A. No, sir. They were on the other side of the glass.

7 Q. Did he have any type of weapon on him?

8 A. I couldn't tell you that, sir.

9 Q. And the fellow who was inside the store, the one
10 with the bandanna, did you ever see a weapon?

11 A. No, sir.

12 Q. And when you tackled him outside, did either one of
13 them have a weapon?

14 A. No, sir.

15 Q. Now, when the guys were inside the store, were
16 people coming in and out of the door before you walk up
17 to the ---

18 A. When they were in the store, was anybody was going
19 in and out?

20 Q. Yeah?

21 A. No, sir.

22 Q. Was anybody trying to go in and out?

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

24 Q. Did you see any other doors that people could go in
25 and out of?

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1 A. No, sir. No, sir. I was at the front of the
2 building. I didn't go around the building.

3 Q. All right. The guy who was at the door, did he have
4 a bandanna on?

5 A. No, sir.

6 Q. Did he make any representations that he was trying
7 to hide his face or anything?

8 A. No, sir.

9 Q. Did you ever hear him say anything?

10 A. Yes, sir.

11 Q. In the store?

12 A. No, sir.

13 Q. This was after the fact?

14 A. Yes, sir.

15 Q. And your mama is still in the car?

16 A. Yes, sir.

17 Q. And Margarita was in the store?

18 A. Yes, sir.

19 MR. BEACH: I don't think I have any further
20 questions, Your Honor.

21 THE COURT: Redirect?

22 MR. SHELTON: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. SHELTON:

25 Q. Mr. Beach asked you a question about seeing the

1 Defendant or talking to the Defendant. Can you I.D. the
2 Defendant if you saw him, the one that was standing at
3 the door?

4 A. Yes, sir.

5 Q. Do you see him in the courtroom today?

6 A. Yes, sir.

7 Q. Will you point him out to the Court?

8 A. Sitting right there beside him.

9 Q. He was the door man? He was the one at the door?

10 A. Yes, sir.

11 Q. Thank you, Mr. Sellers.

12 THE COURT: Recross limited to redirect.

13 MR. BEACH: No, your honor.

14 THE COURT: As to this witness, Solicitor?

15 MR. SHELTON: I asked that he may be excused.

16 THE COURT: Any objection to this witness being
17 excused, Mr. Beach?

18 MR. BEACH: No objection, Your Honor.

19 THE COURT: Mr. Sellers, you may step down.

20 You're excused from the trial of this case. You may
21 remain with us as you wish.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Thank you.

24 Call your next witness.

25 MR. SHELTON: Thank you, Your Honor. The State

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Robin Kinsey Cooper - Direct Examination by Mr. Shelton

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1 calls Ms. Robin Kinsey Cooper.

2 THE COURT: Come around. Watch your step.

3 Have a seat, pull that microphone down, pull the chair up
4 to you, up to the microphone. I want you to speak into
5 it. You'll have to speak up:

6 ROBIN KINSEY COOPER,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. SHELTON:

10 Q. Ms. Kinsey, how old are you?

11 A. Eighteen.

12 Q. Do you go to school?

13 A. Yes, sir.

14 Q. Where?

15 A. Colleton County High.

16 Q. Do you work?

17 A. Yes, sir.

18 Q. Where do you work?

19 A. Church's in Jacksonboro.

20 Q. Were you working at Church's in Jacksonboro -- the
21 Church's in Jacksonboro, just to be clear, is that in the
22 same store as the Kangaroo?

23 A. Yes, sir.

24 Q. The B.P. station?

25 A. Yes, sir.

- 1 Q. Were you working there on November 27th, 2010?
- 2 A. Yes, sir.
- 3 Q. When did you go in to work that day? Do you
- 4 remember?
- 5 A. Four o'clock.
- 6 Q. And what time did you get off?
- 7 A. Eleven thirty.
- 8 Q. Who came to pick you up?
- 9 A. My mother.
- 10 Q. Did she bring anybody else with her?
- 11 A. My little brother.
- 12 Q. How old is he?
- 13 A. Eight.
- 14 Q. Now, you work at Church's? What do you do at
- 15 Church's?
- 16 A. Cashier.
- 17 Q. How long have you been working there?
- 18 A. Two years.
- 19 Q. Two years? Since you were sixteen years old?
- 20 A. Yes, sir.
- 21 Q. How many hours a week do you work for them?
- 22 A. Thirty.
- 23 Q. Thirty hours a week and you go to school too?
- 24 A. Yes, sir.
- 25 Q. Now, I want you to state to the jury what you

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- 1 remember that night. Okay? Nothing that you seen,
2 nothing that anyone else told you. Just what you
3 remember okay? Now, you went outside the store that
4 night when you were leaving with your mother, correct?
5 A. Yes, sir.
6 Q. What happened at that point?
7 A. When I was leaving to come out, it was like -- it
8 was suspicious. I was outside the building and you could
9 have seen the truck outside the building when I have
10 flagged the police down. And as the police was coming
11 and ---
12 Q. Slow down a little bit. So you flagged the police
13 down. Did you see a police officer?
14 A. Yes, sir.
15 Q. Where was that police officer headed? Where was he
16 or she?
17 A. He was coming around like going toward Walterboro.
18 Q. Okay. And you say you flagged him down. Why did
19 you flag him down? You just thought something was
20 suspicious?
21 A. Yes, sir, I did. At the moment we were being
22 robbed.
23 Q. And you flagged him down. Did he come?
24 A. Yes, sir.
25 Q. And what did you do when you saw him coming?

- 1 A. I was walking back to go inside the store.
- 2 Q. Did you see what was going on inside?
- 3 A. Yes, sir.
- 4 Q. How do you describe that?
- 5 A. It was one man was holding the door, and you could
- 6 see Devron and Sanquenetta. They was coming, like was
- 7 trying to come down.
- 8 Q. Uh-huh (affirmative).
- 9 A. And he was blocking them.
- 10 Q. He was blocking them from going outside?
- 11 A. Yes, sir.
- 12 Q. Did you make any phone calls at that point?
- 13 A. After everything happened, I had called 9-1-1.
- 14 Q. What did you tell the 9-1-1 operator?
- 15 A. That we had just been robbed. And I think they had
- 16 a gun. It was at gunpoint. And she told me to lock the
- 17 doors.
- 18 Q. Now, she told you to lock the doors. When was that?
- 19 Was that at the time you were talking to her -- at that
- 20 point, were the Defendants still in the store or outside
- 21 the store?
- 22 A. They was already outside.
- 23 Q. So they were already outside? So had the individual
- 24 who had tackled the Defendants already tackled the
- 25 Defendants?

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- 1 A. Yes, sir.
- 2 Q. And you went inside the store and locked the doors?
- 3 Is that what you just said?
- 4 A. (Nodded head up and down in the affirmative)
- 5 THE COURT: You have to say yes or no.
- 6 A. Yes, sir.
- 7 Q. Thank you. I'm going to show you briefly -- I don't
- 8 want to get into extreme detail. I just want you to
- 9 identify yourself, if that's all right, on the video.
- 10 Okay? This is State's Exhibit Number 1, 1012705.
- 11 (WHEREUPON, a portion of State's Exhibit Number 1, a
- 12 DVD, was played in open court before the jury.)
- 13 Q. This is inside the store looking toward the counter,
- 14 Ms. Kinsey. I'm going to pause it right here. I just
- 15 want you to identify who you see in that picture there.
- 16 Who is there?
- 17 A. Me, my mother, my little brother and Sanquenetta.
- 18 Q. This is you?
- 19 A. Uh-huh (affirmative).
- 20 Q. This is your brother?
- 21 A. Yes.
- 22 Q. Who is that?
- 23 A. My mother.
- 24 Q. And that is?
- 25 A. Sanquenetta.

1 Q. So at that point you go back outside?

2 A. Yes, sir.

3 Q. Do you go back inside at any time during the
4 robbery?

5 A. No, sir.

6 Q. Okay. I'm going to go ahead and show you another
7 picture, if that's all right. This is State's Exhibit
8 Number 1, folder number 1012713.

9 (WHEREUPON, State's Exhibit Number 1, a DVD,
10 continued to be played in open court before the
11 jury.)

12 Q. Can you see?

13 A. Uh-huh (affirmative).

14 Q. Okay. I'm going to pause it right there. Can you
15 tell me who you see in the picture here? Who is this?

16 A. That's me.

17 Q. Who is this?

18 A. That's my little brother and cousin.

19 Q. Okay. And who is this?

20 A. My mother.

21 Q. Do you know who this is?

22 A. That's the other coworker that was on the gas
23 station.

24 Q. I saw you just look back at them.

25 THE COURT: Ask a question.

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1 MR. SHELTON: I'm sorry, Your Honor.

2 THE COURT: Don't make a statement.

3 MR. SHELTON: Yes, Your Honor.

4 Q. Ms. Kinsey, right here, what are you doing?

5 A. I was turning around and going back in the store.

6 That's when I flagged down the police, me and Miss Kathy.

7 Q. I'm just going to let this play.

8 (WHEREUPON, State's Exhibit Number 1, a DVD,
9 continued to be played in open court before the
10 jury.)

11 Q. Is that you in the picture again at that point?

12 A. Yes, sir.

13 Q. For fifty-four seconds?

14 A. (No verbal response)

15 Q. And then I see you run out of the picture. What are
16 you doing there?

17 A. I was running still trying to flag the policeman.

18 (WHEREUPON, State's Exhibit Number 1, a DVD,
19 continued to be played in open court before the
20 jury.)

21 Q. What are you doing right there? This is at one
22 minute and fourteen seconds into the film.

23 A. Oh, I was pointing at the police.

24 Q. What do you see inside?

25 A. That there was -- one man was holding the door. And

1 he was about to walk out of the store.

2 Q. Were you frightened at that point?

3 A. Yes, sir.

4 Q. Ms. Kinsey, you called 9-1-1. Why did you call 9-1-
5 1?

6 A. Because I was scared.

7 Q. And tell the jury again what you told the 9-1-1
8 officer?

9 A. I told him that we had just been robbed and I think
10 it was at gunpoint.

11 Q. That's all the questions I have for you. Please
12 answer any questions Mr. Beach might have for you.

13 CROSS-EXAMINATION

14 BY MR. BEACH:

15 Q. Ms. Kinsey, did you see a gun?

16 A. No, sir.

17 Q. Did you ever see a gun throughout this whole
18 situation?

19 A. No, sir.

20 Q. And you were outside when the two young men were
21 tackled; it's that correct?

22 A. Yes, sir.

23 Q. Did you see a gun on the ground or anything after
24 they were tackled?

25 A. No, sir.

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Robin Kinsey Cooper - Cross-Examination by Mr. Beach

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1 Q. Who had the mask on?

2 A. The short fellow.

3 Q. He was the fellow who went to the register?

4 A. Yes, sir.

5 Q. Now, Mr. Brown, the gentleman in court today, did he
6 have a mask on?

7 A. No, sir.

8 Q. And did he ever go to the register?

9 A. No, sir.

10 Q. He was back at the door the whole time?

11 A. Yes, sir.

12 Q. All right. Could you hear what was going on at the
13 door?

14 A. No, sir. I just heard the yelling and everything
15 when they came out.

16 Q. Okay. And did -- tell me what you saw at the door.

17 Did you see him with his hand on the door, or did you see
18 him -- what was he doing?

19 A. He was holding the door. He was standing at the
20 door.

21 Q. And he was touching the door?

22 A. Yes, sir.

23 Q. And did you see the clerk?

24 A. Yes, sir. She was in the back like toward the lobby
25 area.

1 Q. All right. And did you see the other gentleman who
2 was in there?

3 A. Uh-huh (affirmative). Them two was together.

4 Q. They were in the back?

5 A. Uh-huh (affirmative).

6 Q. And was anybody at the door other than the
7 Defendant?

8 A. No, sir.

9 Q. I think I've already asked you this. But could you
10 hear any of the conversation?

11 A. No, sir.

12 MR. BEACH: I don't have any other questions,
13 Your Honor.

14 THE COURT: Redirect?

15 MR. SHELTON: No, your honor.

16 THE COURT: As to this witness?

17 MR. SHELTON: I asked that she be excused, Your
18 Honor.

19 THE COURT: Any objection?

20 MR. BEACH: No objection, Your Honor.

21 THE COURT: Ms. Kinsey, you may step down from
22 the witness stand. You're excused from the trial of this
23 case, or you may remain as you wish.

24 Call your next witness.

25 MR. SHELTON: Thank you, Your Honor. The State

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Kurt Wallace - Direct Examination by Mr. Shelton

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1 calls Officer -- excuse me -- Sargent Kurt Wallace.

2 THE COURT: Your witness, Counsel.

3 MR. SHELTON: Thank you, Your Honor.

4 KURT WALLACE,

5 Being first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SHELTON:

8 Q. Sargent Wallace, it's pretty obvious by your
9 uniform. But will you please tell the jury who you work
10 for?

11 A. I work for the Colleton County Sheriff's Department.

12 Q. And what is your rank?

13 A. I'm a sargent, road patrol.

14 Q. How long have you been working for them?

15 A. I'd say about a year and a half now.

16 Q. Were you on duty on November the 27th, 2010?

17 A. Yes, sir.

18 Q. What area were you patrolling?

19 A. I was patrolling the Ace Basin area, Highway 17 area
20 in Jacksonboro.

21 Q. Can you tell -- Jacksonboro, is that all that area
22 consists of?

23 A. It consists of several stores, the Kangaroo being
24 one of them, the Sunoco and the El Cheapo. Those are the
25 main stores that we cover on that stretch of highway.

1 Q. What were you doing at around eleven fifteen that
2 night?

3 A. I was patrolling the area. Normally we drive north
4 and south just to keep an eye on the businesses in that
5 area.

6 Q. What are you looking for?

7 A. Anything out of the ordinary just to make sure all
8 the businesses are secure. And the Kangaroo was one
9 store that stayed open twenty-four seven. So we wanted
10 to make our presence known and to make sure that
11 everything is okay.

12 Q. At around eleven thirty did you drive by the
13 Kangaroo?

14 A. That's correct. I did.

15 Q. Did you see anything?

16 A. As I was driving by the Kangaroo, I was on my -- I
17 was traveling south turning onto -- we call it the
18 Charleston Highway -- Highway 63 going back toward
19 Walterboro. As I was making that turn, I noticed a lot
20 of commotion at the Kangaroo. People were kind of
21 running around the parking lot, and I was being flagged
22 down.

23 Q. Who was flagging you down? Who did you see flagging
24 you down?

25 A. I couldn't pinpoint exactly who it was, but I

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1 noticed there was a lot of commotion. And I'll --
2 several people were telling me to come toward where they
3 were. So I knew right off the bat something wasn't
4 right.

5 Q. And did you turn in to the parking lot?

6 A. Yes, I did. I turned in to the parking lot. As I
7 was coming toward the store, I noticed there was a pickup
8 truck, gray truck, driving off slowly. My experience
9 told me that that truck had something to do with it. I
10 was debating to stop the truck or to go toward where the
11 people were. Of course, I chose to go toward more the
12 people because I was kind of concerned with what was
13 going on there more than the truck. So I had to kind of
14 weigh my options based on what I needed to take -- what
15 was more urgent to take care of.

16 Q. When you drive up toward where the people are, what
17 part of the store do you pull up to?

18 A. I pull up to -- actually to the corner part of the
19 store where I could see the front of the store more than
20 the side of the store. Is that the south side of the
21 store or the north side of the store?

22 A. The south side of the store.

23 Q. The south side of the store going back toward
24 Charleston?

25 A. Going back toward Charleston, that's correct.

1 Q. In the corner toward the front of the store?

2 A. That's correct, yes.

3 Q. And when you pull up, what do you see?

4 A. When I pulled up, again, I saw a lot of commotion.

5 The reason why I was driving slowly -- he mentioned I was

6 driving slowly -- I didn't want to rush into something

7 that I wasn't sure what was going on. So I was trying to

8 observe ten different things at the same time and --

9 because I was trying to make out what was going on and

10 who was who. What I observed as I was approaching the

11 store, I noticed two guys coming out of the store,

12 quickly coming out of the store. And as I noticed them

13 coming out of the store, I also noticed a civilian

14 tackling them at the same time as they were coming out.

15 Q. How far away were you when the civilian tackled them .

16 from the store?

17 A. If I were to guess, I'd say about a good twenty-five

18 feet.

19 Q. Twenty-five feet?

20 A. Yeah.

21 Q. And what did you do at that point?

22 A. What I did at that point is I did try to determine

23 what was going on. I exited my vehicle. And the guys

24 that was being tackled -- and one of them looked very

25 suspicious. I kind of knew right off the bat that they

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1 were the parties that I needed to detain. Put it that
2 way.

3 Q. And without saying anything about anything being
4 said or anything like that ...

5 A. Uh-huh (affirmative).

6 Q. ... you detained them; is that correct?

7 A. Right. That's correct.

8 Q. And ---

9 A. Because I had no facts.

10 Q. And did you read them their rights?

11 A. No, I did not at that point because, again, I was
12 still trying to determine what was going on and what
13 happened.

14 Q. Did you ever read them their rights?

15 A. Yes, I did.

16 Q. How did you read them their rights?

17 A. I read them their rights, both of them at the same
18 time, both of the parties that were involved.

19 Q. Uh-huh (affirmative).

20 A. I read them their rights, said -- if you need to
21 specifically quote what I said, I would have no problem
22 doing that.

23 Q. First of all, describe the scene.

24 A. Upon detaining both subjects ---

25 Q. While you were reading their rights, describe the

1 scene.

2 A. Okay. As I was reading them their rights, both
3 subjects were detained sitting on the sidewalk. There
4 were cigarettes scattered throughout on the ground.

5 Q. Was anything else on the ground?

6 A. There was also a scarf.

7 Q. Okay.

8 A. A bandanna or however you want to call it. I told
9 both parties that they were being detained. Okay? And I
10 said, before we discuss any further, I need to read you
11 your rights.

12 Q. Uh-huh (affirmative).

13 A. All right. So I quoted to them, you have a right to
14 remain silent. If you give up your right to remain
15 silent, anything you say or do can and will be used
16 against you in a court of law.

17 Q. Uh-huh (affirmative).

18 A. You have the right to have an attorney. And if you
19 cannot afford an attorney, one will be provided for you
20 at any time. You can exercise your rights, and you don't
21 have to answer any of my questions.

22 Q. Do you believe they understood their rights?

23 A. They understood my rights -- or their rights.

24 Q. Now, without going into anything anybody said right
25 now, I want you to describe -- now, fast forward at the

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1 time where you're actually securing the scene. Did you
2 make sure that nothing was tampered with on the ground?

3 A. I made sure nothing was tampered with on the ground.
4 I made -- as a matter of fact, the evidence was on the
5 ground for a while. Any vehicle that was approaching up,
6 my guys made sure that they stayed a proper distance
7 because, like I said, the evidence was scattered on the
8 ground. And nothing was tampered with until the time to
9 actually collect the evidence.

10 Q. Please clarify for the jury -- you said your guys.
11 Did other people respond as well?

12 A. Yes. I had two other guys that responded. If you
13 need me to tell you who they were ---

14 Q. That's fine.

15 A. --- I'll be more than welcome to tell you. Corporal
16 Walker -- he's one of the guys that work with me -- and
17 Corporal Davis was another guy that work with me. And
18 they eventually came to the scene. I can't tell you
19 exactly how long it took.

20 Q. That's fine.

21 A. But they came to the scene.

22 Q. And when they arrived, was there any other crime
23 being committed at that point?

24 A. No.

25 Q. When you arrived, had the crime been committed to

1 your knowledge?

2 A. Yes, yes.

3 Q. Now, I want you to describe how you collected the
4 evidence. And you said -- call it evidence. First of
5 all, say exactly what you saw on the scene that led you
6 to believe what was evidence and what was not.

7 A. What I saw on the scene, what I believed was
8 evidence, were the cigarettes all over the ground ...

9 Q. Right.

10 A. ... which is not a normal thing to see. And the
11 bandanna or the scarf that was worn. So those were the
12 particular evidence that were located among the evidence.
13 Which another piece of evidence that we were looking that
14 was in question which we didn't locate.

15 Q. And what was that?

16 A. And that was a weapon that was supposed to be
17 mentioned that was involved in the incident.

18 Q. And so you were looking for a gun?

19 A. Yes, we were looking for a weapon.

20 Q. You did not find one?

21 A. We did not find a one.

22 Q. Now, describe how you took the evidence and you
23 secured it.

24 A. I had, again, one of my guys, Corporal Davis, he got
25 an evidence bag that we normally have in our vehicles.

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1 Q. Yes, sir.

2 A. And I told him to go ahead and pick up the
3 cigarettes off the ground and place them in the bags.

4 Q. Yes, sir.

5 A. And the scarf also, to place that in a bag.

6 Q. Did you supervise this?

7 A. Yes, I did.

8 Q. How far away were you when he was doing this?

9 A. No more than five or six feet.

10 Q. So he was taking it and you're watching him put it
11 in the bag?

12 A. I was watching him pick up the evidence and putting
13 it in the bag.

14 Q. And you took it out of this car? You took the bag
15 out of his car?

16 A. That's correct.

17 Q. Now, who transported the evidence back to the scene
18 -- back to the Sheriff's office?

19 A. I collected the evidence, and I transported the
20 evidence back to the Sheriff's department.

21 Q. Okay. So you took the evidence bag out of his car?

22 A. That's correct.

23 Q. You supervised and watched him put every piece of
24 evidence into that bag?

25 A. That's correct.

1 Q. And then you took these bags -- what did you do with
2 the bag -- what did y'all do with the bag once you got
3 the evidence in the bag?

4 A. What we do is we take the bag -- we take the
5 evidence that's in the plastic bag back to our
6 headquarters. Evidence has to be properly documented and
7 properly sealed. Okay? The evidence was placed into a
8 plastic evidence bag that can be sealed.

9 Q. Uh-huh (affirmative). What all did you put in that?
10 You say the evidence. What ---

11 A. What I put in there was the packs of cigarettes that
12 were on the ground and the bandanna.

13 Q. And who sealed that bag?

14 A. I sealed that bag.

15 Q. Did you initial it?

16 A. I initialed the bag and I also have a witness that
17 put his initials that I -- that the evidence has been
18 properly documented.

19 MR. SHELTON: May I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 (WHEREUPON, State's Exhibit Number 3 was marked for
23 identification only.)

24 Q. Now, I'm handing you what has just been marked,
25 Sargent Wallace, as State's Exhibit Number 3.

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1 A. Uh-huh (affirmative).

2 Q. I want you to describe what you see and what it is.

3 A. These are the packs of cigarettes that were located
4 on the ground outside the Kangaroo on the sidewalk
5 throughout the ground. And also this was the bandanna
6 that was also collected as evidence that was on the
7 ground, lying on the ground.

8 Q. I see that bag is sealed. Is that the seal that you
9 made?

10 A. This is the seal that I did make.

11 Q. That you made?

12 A. That's right, uh-huh (affirmative).

13 Q. Is your signature on that bag anywhere?

14 A. Yes, it is.

15 Q. Will you please explain to the jury where your
16 signature is?

17 A. Sargent Kurt Wallace. And you can see where it was
18 taken to the evidence locker.

19 Q. So that went straight from you and Mr. Davis'
20 possession, when you took it, straight to your car into
21 another bag which you used for temporary evidence?

22 A. That's correct.

23 Q. I don't mean to tell you what this is.

24 A. Right, correct.

25 Q. And I'm just trying to repeat your testimony. And

1 then you drove and you delivered it directly to the
2 evidence locker?

3 A. That's correct.

4 Q. Does it appear to be tampered with in any way?

5 A. No, sir.

6 Q. Does it appear to be altered in any way?

7 A. No, sir.

8 Q. Is it in substantially the same condition as when
9 you found it?

10 A. Yes, it is.

11 MR. SHELTON: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. SHELTON: Without objection, Your Honor,
14 the State moves State's Exhibit Number 3 into evidence.

15 THE COURT: Any objection?

16 MR. BEACH: No, Your Honor.

17 THE COURT: Ladies and gentlemen of the jury,
18 State's Exhibit Number 3 will be admitted into evidence
19 without objection. State's 3 now in evidence.

20 (WHEREUPON, State's Exhibit Number 3 was admitted
21 into evidence.)

22 THE COURT: You may publish.

23 MR. SHELTON: Thank you, Your Honor. May I
24 present it to the jury, Your Honor?

25 THE COURT: You may. It's in evidence.

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- 1 Q. Now, the ladies and gentlemen of the jury are
2 looking at this right now. And you've already described
3 where you found it. Will you please tell them, explain
4 to them exactly what you believe that to be? What is it?
5 A. Those are the cigarettes.
6 Q. Those are the cigarettes?
7 A. Those are the cigarettes that was supposedly taken
8 out of the Kangaroo and the bandanna that was worn by one
9 of the subjects.
10 Q. Okay. Thank you. Now, did you have the opportunity
11 to take the Co-defendant and talk to him after you
12 mirandized him, Mr. Wesley Clemons?
13 A. Yes, sir.
14 Q. Did you have an opportunity to speak with him one-
15 on-one?
16 A. Yes, I did.
17 Q. Now, how did you do that? Where did you do it,
18 first of all? Where did you speak with him?
19 A. I spoke to Mr. Wesley Clemons in the back seat of
20 Corporal Davis' vehicle.
21 Q. Okay. Now, while you're speaking with him ...
22 A. Uh-huh (affirmative).
23 Q. ... do you wear an body mike?
24 A. Yes, I do.
25 Q. Where does that body mike transmit to?

1 A. The body mike transmits audio and video. But the
2 body mike transmits the audio to our L-3 System in our
3 vehicle.

4 Q. Explain to the jury briefly what an L-3 system is.

5 A. Basically what an L-3 system is, is we have audio
6 and we have video in our vehicles. Every time we respond
7 to a call, we can manually turn the body mikes on and can
8 start recording our audio and our video. Also, those
9 videos and audios can be turned on by actually turning on
10 my blue lights. They automatically come on. And what it
11 does is it has a huge amount of megabytes so we don't be
12 concerned about how long we can have it on. So what we
13 do when we respond to each call, we start to record our
14 audio and whatever the video can pick up at the time
15 around our vehicles. That can -- that transmits through
16 a main feed. Once we go back to our headquarters, it
17 downloads everything that's been previously recorded.
18 They download it to a main system that we can pull up on
19 our computer. That way we can review it at any time.
20 Also, it can actually create a disk that can be uploaded
21 to our detectives just in case we need it for these very
22 circumstances.

23 Q. How do you mark it to record, to save as a disk?

24 A. What we do is when we -- upon breaking of our L-3
25 system, we can actually characterize it exactly what case

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1 it's under a case number. That way we can determine what
2 video and audio to use at a certain time. And again,
3 like I say, it's marked by the officer that's been
4 involved and marked by the case number. It's marked by
5 the subject or the Defendant that's been involved, you
6 know. And we can actually give it a personal name if we
7 want to like the Kangaroo.

8 Q. Is it time and date stamped?

9 A. Yes, time and date -- stamped for time and date for
10 that date.

11 Q. Can you alter that time and date?

12 A. No, you cannot. Not that I know of.

13 Q. Now, that night, did you turn on the system at any
14 point?

15 A. Yes, I did. Yes, I did. I turned on the system --
16 upon my coming to the place. And when the guy was
17 tackling, I know something was going on. That's when I
18 turned on my system.

19 Q. But you had it on when you were interviewing Mr.
20 Clemons?

21 A. That's correct. That's correct.

22 Q. And did it record your interview with Mr. Clemons?

23 A. Yes, it did.

24 Q. Now, when you were speaking with Mr. Clemons, I want
25 you to tell the jury if he said anything to implicate Mr.

1 Brown.

2 MR. SHELTON: And I can approach, Your Honor,
3 if you think we need to before I ask that question...

4 THE COURT: You may proceed absent anything
5 being called to my attention.

6 MR. SHELTON: Thank you, Your Honor.

7 Q. Was anything -- in that interview with Mr. Clemons,
8 what did he say to you?

9 A. I asked Mr. Clemons what happened ...

10 Q. Uh-huh (affirmative).

11 A. ... what took place, what was going on. Okay? He

12 ---

13 THE COURT: Just a moment.

14 Yes, sir?

15 MR. BEACH: Upon reflection, I would object to
16 this. The testimony is ---

17 THE COURT: You don't have to say anything.

18 Counsel, approach.

19 (WHEREUPON, a bench conference was held off the
20 record.)

21 A. This is the audio and video of my conversation with
22 Mr. George Brown.

23 Q. Okay. Thank you. Have you viewed it before?

24 A. Yes, sir.

25 Q. Now, have you reviewed the audio of the interview

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1 you had with Mr. Clemons?

2 A. Yes, sir.

3 Q. Is it a fair and accurate depiction of what was said
4 and what transpired?

5 A. Yes, sir, it is.

6 MR. SHELTON: Your Honor, the State would like
7 to move State's Exhibit Number 2 into evidence, but only
8 for a certain portion of the playback.

9 THE COURT: Whatever you want -- let first me
10 see ...

11 Is there an objection as to State's Number 2?

12 MR. BEACH: No, Your Honor.

13 THE COURT: Very well. State's Exhibit Number
14 2 is now in evidence, Counsel. You may publish all or a
15 portion as you so desire, but the entire exhibit is in
16 evidence. Proceed..

17 (WHEREUPON, State's Exhibit Number 2 was admitted
18 into evidence.)

19 THE COURT: Without objection.

20 MR. SHELTON: Beg the Court's indulgence, Your
21 Honor.

22 MR. SHELTON: Your Honor, this takes a long
23 time to load.

24 THE COURT: Is it working?

25 MR. SHELTON: Yes, sir.

1 THE COURT: Ladies and gentlemen, bear with us.

2 Q. Sargent Wallace, this is going to take a long time
3 to load. I'd like to ask you some questions in the
4 meantime. Now, when you first got on the scene, what
5 were the facts that you had at hand? What did you know?

6 A. Upon coming to the scene after the subjects were
7 tackled by the civilian, got both subjects detained, saw
8 cigarettes on the ground. I immediately -- what we do --
9 we immediately start to determine what we might have,
10 what we might not have and start determining what charges
11 might be pending ---

12 Q. Uh-huh (affirmative).

13 A. --- if that makes sense.

14 Q. Yes.

15 A. Okay? In my experience, right off the bat I knew we
16 had a shoplifting.

17 Q. Right. You knew it was at least a shoplifting?

18 A. At least at that point, pretty much early in my
19 investigation, at that point, I felt we had a
20 shoplifting.

21 Q. Did you tell the Defendants you were going to charge
22 them with shoplifting?

23 A. I told the Defendant that based on the evidence I
24 had at that point that they could be charged with
25 shoplifting.

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1 Q. Did you gather more information from, say, your on-
2 scene investigation?

3 A. Yes. As more time progressed, as more we were able
4 to interview more witnesses or victims, especially after
5 viewing the video, then of course things can definitely
6 change in reference to charges.

7 Q. Right. Now, did you ever tell them that you were
8 not going to charge them with armed robbery?

9 A. Did I ever tell -- not that I recall.

10 Q. Are you sure about that?

11 A. Not that I can recall that I never told them that I
12 was not going to charge them with armed robbery. If I'm
13 not mistaken after viewing -- after hearing the witnesses
14 and et cetera, it was mentioned to the Defendants that
15 they could be charged with armed robbery.

16 Q. Uh-huh (affirmative).

17 A. But at that point I still didn't have all the
18 evidence I needed to make that a fact. Put it that way.

19 Q. Right.

20 A. I basically told my Defendants -- basically I think
21 it's three charges I came up that they could possibly be
22 charged with based on the evidence that we were gathering
23 at the time.

24 Q. Now -- and what did you -- because I think it's fair
25 for everyone to know -- what did you initially charge

1 them with? Once you had the evidence at the scene, what
2 did you them with?

3 A. After I gathered all the evidence that I could have
4 gathered that night, I charged them with strong-arm
5 robbery.

6 Q. You charged them with strong-arm robbery initially?

7 A. Initially, yes.

8 Q. Now, this is still within -- Sargent Wallace, I
9 apologize. It takes a long time. I apologize because it
10 takes a long time to get where we're going.

11 And what fact did you base that decision on?

12 A. The fact that I based the decision on to charge them
13 with strong-arm robbery is where it was previously
14 thought that a weapon was used, due to the fact that a
15 weapon was not found and it was concluded that a weapon
16 was not involved, that's the reason why I charged them
17 with strong-arm robbery.

18 Q. And that's your discretion at that point?

19 A. That's my discretion at that point.

20 Q. Now that this is loaded, I want to go back to the
21 interview with Mr. Wesley Clemons. Now, when you spoke
22 to Mr. Clemons, what was your -- you were in the back
23 seat of your -- you already said you were in the back
24 seat of Mr. Davis' patrol car?

25 A. That's correct, in the doorway. Mr. Clemons was in

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1 the back seat of Corporal Davis' car.

2 Q. And you had your L-3 mike on, correct?

3 A. Yes, sir.

4 Q. Now, at that time with the L-3 mike on, you had an
5 interview with him. Was it -- were you abrasive in any
6 way? Were you forceful with them, or were you just
7 having a conversation?

8 A. No, not at all. Not at all. I was cooperating with
9 him as much as he was cooperating with me.

10 MR. SHELTON: I'd like to play back, for the
11 record, State's Exhibit Number 2. I'm going to start it
12 at time 23.52.44.

13 THE COURT: Make a note of when you stop it as
14 well, Solicitor.

15 MR. SHELTON: And I will stop it at 23.53.52.

16 THE COURT: Proceed.

17 Ladies and gentlemen, he's publishing a portion of
18 State's Exhibit Number 2 which is in evidence without
19 objection.

20 Proceed.

21 (WHEREUPON, a portion of State's Exhibit Number 2, a
22 DVD, was played in open court before the jury.)

23 Q. Now, I'm going to pause it one second. Mr. Clemons
24 is saying, he. Who is he referring to?

25 A. Mr. Clemons is referring to Mr. George Brown.

1 (WHEREUPON, a portion of State's Exhibit Number 2, a
2 DVD, continued to be played in open court before the
3 jury.)

4 Q. Did he say, you're supposed to be covering with a
5 shirt?

6 A. That's correct.

7 Q. And who is he referring to?

8 A. Mr. George Brown.

9 Q. I'd like to now start at 01.52. At this point is it
10 your understanding you're still having a conversation
11 with Mr. Clemons?

12 A. Yes, sir.

13 (WHEREUPON, a portion of State's Exhibit Number 2, a
14 DVD, continued to be played in open court before the
15 jury.)

16 Q. Who is the he that he is referring to?

17 A. Mr. George Brown.

18 Q. You said that -- did he say that he was the one that
19 sent me in here?

20 A. He said that he was the one that sent me in here.

21 Q. One more question for you, Sargent Wallace. Do you
22 know the address of the Kangaroo station?

23 A. It's 16273 Ace Basin, Jacksonboro, South Carolina,
24 29452.

25 Q. Is that 16273 Ace Basin Parkway?

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1 A. Yes, sir.

2 Q. Thank you. No further questions. Please answer any
3 questions Mr. Beach may have.

4 THE COURT: Give me the lights, please, Madam
5 Clerk.

6 Cross-examination?

7 MR. BEACH: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BEACH:

10 Q. Sargent Wallace, you say you did not find a weapon?

11 A. No, sir, we did not.

12 Q. Did y'all search the area pretty carefully?

13 A. Yes, sir. We did search the area.

14 Q. Did either one of the Defendants tell you that they
15 had a weapon?

16 A. No, sir.

17 Q. Did either one of the Defendants tell you that Mr.
18 Brown had a mask on?

19 A. No, sir.

20 Q. Mr. Clemons, did he say something about Mr. Brown
21 having a mask?

22 A. No. He said something in reference to Mr. Brown
23 supposed to use his shirt.

24 Q. Supposed to use his shirt?

25 A. Right.

1 Q. Okay. But did any of the other witnesses tell you
2 that Mr. Brown had anything over his face?

3 A. No, they did not.

4 Q. Is it your -- well, I withdraw that.

5 How many cigarettes were there? How many packages?

6 A. Eight packs.

7 Q. Eight packs?

8 A. Yes, sir.

9 Q. What are they worth?

10 A. I couldn't tell you that. I'd have to I just look
11 back at my records. I'm not a smoker, so I don't know.

12 Q. Now, there was a statement in here that Mr. Brown
13 sent Mr. Clemons in to get the cigarettes. Is that your
14 understanding?

15 A. That Mr. Brown's statement said Clemons to get the
16 cigarettes?

17 Q. Yes.

18 A. That's my understanding in speaking with Mr.
19 Clemons.

20 Q. All right. Now, is there anything to indicate that
21 Mr. Brown forced Mr. Clemons to go in and do anything?

22 A. No.

23 Q. In fact, Mr. Clemons lied to you, didn't he?

24 A. I couldn't tell you whether he was lying or telling
25 the truth.

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1 Q. All right.

2 A. That's the way it is when you talking to anybody in
3 general.

4 Q. When was the first time you saw these gentlemen?

5 A. When was the first time I seen ...

6 Q. Yes, sir. After the incident inside the Kangaroo.

7 Were they coming out, or had they already been tackled?

8 When was it that you saw them?

9 A. I first saw them as they were quickly coming out of
10 the store before they were -- just before they were
11 tackled.

12 Q. Who had the mask on?

13 A. Mr. Wesley Clemons.

14 Q. Clemons had the mask on?

15 A. Yes.

16 Q. Mr. Brown had no mask?

17 A. Mr. Brown had no mask.

18 Q. Was he following Mr. Clemons, or was he in front of
19 Mr. Clemons? Or do you recall?

20 A. Not that I recall. I don't want to make a
21 speculation on exactly where both of them were. If I
22 were to, they were both walking side by side.

23 Q. And the next time you saw them, they had been
24 tackled?

25 A. That is correct.

1 Q. And you did not find a weapon on either one of them?

2 A. No, sir, I did not.

3 Q. Did Mr. Brown ever indicate to you that he had a
4 weapon?

5 A. No, he did not.

6 Q. Did he say specifically that he did not have a
7 weapon?

8 A. Not that I recall by him specifically saying that he
9 did not have a weapon. Not that I recall.

10 Q. Did he say anything to you about blocking the door?

11 A. No, he did not.

12 Q. Did Mr. Clemons say anything to you about him
13 blocking the door?

14 A. During my interview with Mr. Clemons, the only thing
15 that Mr. Clemons mentioned was that Mr. Brown pushed him
16 up to take the cigarettes. So the answer to your
17 question is no.

18 Q. And you were going to charge them with shoplifting
19 initially?

20 A. Initially. Based on what I saw when I first arrived
21 there, shoplifting -- like I say, prematurely in our
22 investigation, we determine what we have right then and
23 there. And based on what I saw, shoplifting came up.

24 Q. All right. And after a full examination of all the
25 witnesses, you settled on strong-arm robbery?

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1 A. That is correct.

2 Q. You did not charge him with kidnaping?

3 A. I did not charge him with kidnaping.

4 MR. BEACH: No other questions, Your Honor.

5 Thank you, Sargent.

6 THE COURT: Redirect?

7 MR. SHELTON: Briefly, Your Honor.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. SHELTON:

11 Q. Mr. Beach just asked you a question about what Mr.
12 Brown said.

13 A. Right.

14 Q. Did you have an opportunity to talk to Mr. Brown at
15 all?

16 A. Yes, I did.

17 Q. Now, at any time did you tell Mr. Brown anything
18 about what charges he was going to face?

19 A. Yes. I told him what charges he could possibly
20 face.

21 Q. And what did you say in relation to the charges he's
22 facing with relation to what Mr. Clemons was facing?

23 A. I specifically told him that both of them could be
24 faced with the same charges.

25 Q. And why is that? What did you say to him?

1 A. To Mr. George Brown?

2 Q. Yes.

3 A. I explained to Mr. George Brown that due to the fact
4 that he partaked (phonic) -- yeah, that he partaked in
5 what was going on that he could also be charged with the
6 same thing that Mr. Clemons would be charged with. I
7 even made an example to Mr. George Brown in reference to
8 the old bank robber. When somebody's robbing the bank
9 and you're out there sitting in the car and you're
10 waiting, you can also be charged with the same thing.

11 Q. And what did he say?

12 A. He agreed.

13 Q. No more questions. Thank you.

14 THE COURT: Recross limited to redirect.

15 RECROSS-EXAMINATION

16 BY MR. BEACH:

17 Q. What do you mean by he agreed?

18 A. What I mean by he agreed as I was explaining all
19 this to Mr. George Brown, I first at some point in my
20 talking to Mr. George Brown -- which is the main reason
21 why we separated them so we can get -- try and get an
22 accurate story. In my talking with Mr. George Brown, at
23 first he was very uncooperative in saying he had
24 absolutely nothing to do with it.

25 The further we engaged in our conversation, the more

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1 cooperative Mr. George Brown became. And that's when he
2 said, okay, I understand. After explaining about what
3 could be charged and giving him an example, he said,
4 yeah, you're right, Mr. Wallace, you're right. I
5 understand.

6 Q. He admitted that you could charge him with that?

7 A. He admitted that I could charge him with that.

8 Q. But at no time did he say he actually participated
9 in the robbery?

10 A. When I asked Mr. George Brown did he have absolutely
11 anything to do with it, at first he told me, no, he
12 didn't. Upon further conversations with him and upon Mr.
13 George gradually cooperating, he said, okay, yes, I did.
14 And I said, you lied to me about three times already.
15 Did you or did you not have anything to do with it? And
16 he said, yes, he did.

17 Q. Did he tell you what he had to do with it?

18 A. No, not in specifics, he did not.

19 Q. But he had initially said, I didn't have anything to
20 do with it?

21 A. He initially said he had nothing to do with it.

22 Q. No other questions.

23 THE COURT: As to this witness?

24 MR. SHELTON: I please ask that he be excused.

25 MR. BEACH: No objection.

1 THE COURT: You may step down, and you're
2 excused from the trial of this case.

3 Counsel, approach.

4 (WHEREUPON, a bench conference was held off the
5 record.)

6 THE COURT: Madam Foreperson, ladies and
7 gentlemen of the jury, I'm going to stop at this point so
8 that you can have your delicious lunch which should
9 arrive momentarily. And you won't have to go outside in
10 this rain because, as I told you, it is raining,
11 according to my secretary, outside. And it's forecast
12 for some time. I don't think it's supposed to clear
13 until tomorrow afternoon.

14 During the lunch period, I ask that you please not
15 discuss the case. You obviously haven't heard all the
16 evidence in the case, so it would be improper for you to
17 discuss it. If I have any smokers on the jury, the
18 bailiffs will take you during the lunch break outside of
19 the courthouse to smoke. You can't -- smoking is not
20 permitted in the courthouse at any time. So if I have a
21 smoker that wants to smoke, then obviously while you're
22 doing that, please don't discuss the case with anyone.

23 I hope everybody has a pleasant lunch. It ought to
24 be here in the next ten minutes. It's going to take a
25 while because I'm requiring that everybody eat at the

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1 same time. That is the lawyers, the parties, the clerk,
2 the court reporter, myself, my law clerk. I also have a
3 matter that I have to take up during lunch. So as soon
4 as we can all get done and I know you've been taken care
5 of, we'll start back. I'm not sure exactly how long
6 that's going to be. Probably not before two o'clock.
7 It's now twenty minutes till one. I hope to be back
8 rolling in -- it might be a little later than that. But
9 as soon as I can get back to you.

10 You may retire to your jury room at this time.

11 (WHEREUPON, the jury exited the courtroom at
12 approximately 12:40 p.m.)

13 THE COURT: All right. Anything on the record
14 from the State before we adjourn for lunch outside the
15 presence of the jury?

16 MR. SHELTON: No, Your Honor.

17 THE COURT: From the Defendant?

18 MR. BEACH: No, Your Honor.

19 THE COURT: All right. Counsel, as y'all know
20 I'm going to try to start back -- lunch is going to be
21 here.

22 We told them one, didn't we?

23 MADAM CLERK: Twelve fifty. But you know, that
24 will give them time for them to be there.

25 THE COURT: All right. Lunch is going to be

1 here in about eight minutes. And I hope y'all filled out
2 your lunch order. I'm going to try to start back as
3 close to two as I can. My one o'clock is going to
4 probably take till one thirty to one forty. I'll come
5 straight back here, gobble down whatever we're going to
6 have for lunch and try to start back by two. It might be
7 two fifteen, but as quick as I can get started again.
8 We'll be in recess until that time.

9 Thank you very much.

10 (WHEREUPON, court stood at recess for the lunch
11 break and reconvened at 2:08 p.m.)

12 THE COURT: All right. Let the record reflect
13 that the Defendant is present along with his attorney and
14 the Solicitor's office is now present in the courtroom.

15 Is the State ready to proceed?

16 MR. SHELTON: Yes, sir, Your Honor.

17 THE COURT: Is the Defendant ready to proceed?

18 MR. BEACH: We are, Your Honor.

19 THE COURT: Bring us the jury.

20 (WHEREUPON, the jury entered the courtroom at
21 approximately 2:10 p.m.)

22 THE COURT: Madam Foreperson, ladies and
23 gentlemen of the jury, I hope everybody had a good lunch.
24 We'll now continue with the testimony in the trial of
25 this case.

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1 Solicitor, call your next witness.

2 MR. SHELTON: Thank you, Your Honor. The State
3 calls Mr. Devron Brown.

4 THE COURT: Mr. Brown, come around and be sworn
5 by the Clerk.

6 MADAM CLERK: Please come forward to be sworn.

7 THE COURT: Have a seat, pull that chair up,
8 adjust that microphone. Now, I want you to speak up so
9 they can hear you out there. If you need to get close to
10 it -- there you go. Speak up, now.

11 Your witness, Counsel.

12 MR. SHELTON: Thank you, Your Honor.

13 **DEVRON BROWN,**

14 Being first duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 BY MR. SHELTON:

17 Q. How are you today?

18 A. All right, fine.

19 Q. How old are you?

20 A. Eighteen.

21 Q. Eighteen?

22 A. Yes, sir.

23 Q. And where are you from?

24 A. Adams Run, South Carolina.

25 Q. Is that where you live now?

- 1 A. Yes, sir.
- 2 Q. Where do you go to school?
- 3 A. Baptist Hill High School in Hollywood.
- 4 Q. Are you going to graduate this year?
- 5 A. Absolutely, yes, sir.
- 6 Q. And what do you plan to do next year?
- 7 A. Attend Claflin University and join the Army
- 8 Reserves.
- 9 Q. Now, where do you work?
- 10 A. At Church's Chicken in Jacksonboro.
- 11 Q. Were you working on November 27th, 2010?
- 12 A. Yes, sir.
- 13 Q. What shift were you working that night -- or that
- 14 day rather?
- 15 A. The night shift actually.
- 16 Q. The night shift? And what time does that begin, and
- 17 what time does that end?
- 18 A. The night shift starts roughly around, I'll say,
- 19 three o'clock till close.
- 20 Q. Does it depend on the day sometimes?
- 21 A. Yes, sir.
- 22 Q. You're in school full-time, right?
- 23 A. Yes, sir.
- 24 Q. How many hours a week do you work?
- 25 A. The maximum a week is twenty-five.

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- 1 Q. Twenty-five?
- 2 A. Yes, sir.
- 3 Q. And you're in school full-time as a high school
- 4 student?
- 5 A. Yes, sir.
- 6 Q. I want to talk about that night.
- 7 A. Uh-huh (affirmative).
- 8 Q. Okay? Now, do you remember at any time two people
- 9 coming in and anything suspicious happening?
- 10 A. They just came in and they turned around.
- 11 Q. Where did they turn around?
- 12 A. They turned around by the medicine aisle, and they
- 13 came back to the cash register very rapidly, walking
- 14 fast.
- 15 Q. What were they doing when they were walking toward
- 16 the cash register?
- 17 A. They were looking in our direction like in our face.
- 18 Q. Who is our?
- 19 A. Me and Sanquetta.
- 20 Q. What did they do when they walked up to the
- 21 register?
- 22 A. The shortest fellow, he slipped a bandanna over his
- 23 face.
- 24 Q. Uh-huh (affirmative).
- 25 A. And he told Ms. Blocker to give him the money.

- 1 Q. What was he doing when he asked to give -- for Ms.
2 Blocker to give him the money?
3 A. He had his hand -- right hand behind his back.
4 Q. What did you believe that to mean?
5 A. I thought he had a gun.
6 Q. Were you scared?
7 A. Yes.
8 Q. What did you do?
9 A. I went to go step down from behind the register.
10 Q. What happens?
11 A. The tallest guy, he ran to the door and told me no
12 one's going anywhere. He blocked the door with his
13 hands.
14 Q. Now, the tallest guy, is he in the courtroom today?
15 A. Yes, sir.
16 Q. Can you I.D. him for the Court?
17 A. Yes, sir.
18 Q. And for the jury?
19 A. Yes, sir.
20 Q. Will you please point in his direction?
21 A. Right there.
22 MR. SHELTON: Please let the record reflect
23 that he's pointing to the Defendant, George Brown.
24 Q. Now, you said that he said, you're not going
25 anywhere?

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- 1 A. Yes, sir.
- 2 Q. What did he do to keep you from going anywhere?
- 3 A. He stood in front of the door, and he blocked it.
- 4 He held it with his hands.
- 5 Q. Is there any other way to get out of the store at
- 6 that time that you remembered at the time?
- 7 A. No, sir. The other doors was locked.
- 8 Q. Is there an emergency exit in the store?
- 9 A. Yes. It's in the storage room.
- 10 Q. Have you ever been through that exit before?
- 11 A. No, sir.
- 12 Q. Now, while the Defendant, Mr. Brown, is standing at
- 13 the door, I'd like for you to show the door exactly how
- 14 he's standing to the best of your recollection.
- 15 A. At the door?
- 16 Q. Uh-huh (affirmative).
- 17 A. Stand up and show the jury?
- 18 Q. Yes, please. Just stand up where you are.
- 19 A. He was at the door standing like that.
- 20 Q. Like that?
- 21 A. Uh-huh (affirmative).
- 22 Q. Now -- you can sit back down, please. Thank you.
- 23 THE COURT: Go ahead.
- 24 Q. Make sure you speak up, Mr. Brown. You're doing a
- 25 good job, but please speak up.

1 Please tell the jury all the things that you
2 remember Mr. Brown saying to you or Ms. Blocker.

3 A. I asked him can -- I asked him can I go because I
4 don't have anything to do with it anyway. He was like,
5 no, no one's going anywhere. I was like, well, why can't
6 I go?

7 Q. Slow down. He said -- what did he say?

8 A. He said, no, no one's going anywhere.

9 Q. And then what did he say? Then what happened next?

10 A. I said, I can't go anywhere? He said, no, no one's
11 going anywhere. And then Ms. Blocker, she started
12 crying.

13 Q. Uh-huh (affirmative).

14 A. And the skinniest fellow, he was like, well, give us
15 the money. She was like, I don't have the money. I
16 don't have keys to the register. So he ran behind the
17 register and started grabbing a whole lot of cigarettes.

18 Q. While he was behind the register, did the Defendant
19 say anything?

20 A. No. He remained quite; he remained silent.

21 Q. He remained silent at that point?

22 A. Uh-huh (affirmative).

23 Q. Okay. Now, were you free to leave while he was
24 standing at the door?

25 A. No, sir.

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1 Q. No, sir, you were not free to leave?

2 A. No, sir.

3 Q. Would you say you were confined?

4 A. Yes, sir.

5 Q. Do you believe he had a weapon?

6 A. Yes, sir, I believe so.

7 MR. SHELTON: Beg the Court's indulgence.

8 Q. I'm going to play the video for you, Mr. Brown. And

9 I'd like you to show the jury ---

10 THE COURT: Identify the exhibit number for the
11 record.

12 MR. SHELTON: Yes, Your Honor.

13 Q. It's exhibit number 1. And the first video I'm
14 going to play for you is the one that ends in 701.

15 MR. SHELTON: And it takes a little bit for
16 this to load. I apologize to the jury.

17 (WHEREUPON, a portion of State's Exhibit Number 1, a
18 DVD, was played in open court before the jury.)

19 Q. Right there, what are y'all carrying on about, if I
20 may ask?

21 A. The guy at the gas -- at the pump, the gas pump.

22 Q. What was he doing?

23 A. He -- from the inside of the gas station, when you
24 take the pump off the hook, it beeps a lot. I don't know
25 if you can hear it in the video. It beeps. And you have

1 to pay first in order, you know, to activate the pump.

2 Q. I see. And ...

3 (WHEREUPON, a portion of State's Exhibit Number 1, a
4 DVD, continued to be played in open court before the
5 jury.)

6 Q. What do you see right there?

7 A. The two guys coming to the register.

8 Q. Now, this is the guy that said, give me the money?

9 A. Yes, sir.

10 (WHEREUPON, a portion of State's Exhibit Number 1, a
11 DVD, continued to be played in open court before the
12 jury.)

13 Q. Right there. Now, I want to rewind this a little
14 bit. I want you to point something out if you can see
15 it. I'm going to ask a question.

16 (WHEREUPON, a portion of State's Exhibit Number 1, a
17 DVD, continued to be played in open court before the
18 jury.)

19 Q. Whose feet are those right there?

20 A. I believe that's the other lady that was in the
21 store with us.

22 Q. The other lady?

23 A. (Nodded head up and down in the affirmative)

24 Q. Okay.

25 (WHEREUPON, a portion of State's Exhibit Number 1, a

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1 DVD, continued to be played in open court before the
2 jury.)

3 Q. And then Sanquenetta was saying what?

4 A. That she works at Church's with me.

5 (WHEREUPON, a portion of State's Exhibit Number 1, a
6 DVD, continued to be played in open court before the
7 jury.)

8 Q. Now, who said that?

9 A. The tallest guy.

10 Q. The guy that was standing at the door?

11 A. Yes, sir.

12 Q. Are you sure about that?

13 A. Positive.

14 Q. Can you I.D. again the tallest guy for the Court?

15 A. Yes, sir.

16 Q. Will you please point him out for the jury?

17 A. He's right there.

18 MR. SHELTON: Please let the record reflect
19 that the witness pointed to the Defendant.

20 (WHEREUPON, a portion of State's Exhibit Number 1, a
21 DVD, continued to be played in open court before the
22 jury.)

23 Q. Now, I'm going to rewind it just a little bit. I
24 want to hear that again now that we know who's saying
25 that.

1 (WHEREUPON, a portion of State's Exhibit Number 1, a
2 DVD, continued to be played in open court before the
3 jury.)

4 Q. Who said it the second time?

5 A. The tallest guy.

6 Q. The Defendant?

7 A. Yes, sir.

8 (WHEREUPON, a portion of State's Exhibit Number 1, a
9 DVD, continued to be played in open court before the
10 jury.)

11 Q. Okay. We've seen that plenty. I'm going to stop
12 that now.

13 Now, Mr. Brown, from exhibit number 1, State's
14 Exhibit Number 1, I'd like to play another video for you.
15 It's the video that shows the counter and the back of the
16 Defendant. Have you seen it before?

17 A. Yes, sir.

18 Q. Are you familiar with it?

19 A. Yes, sir.

20 Q. Does it depict what happened that day or that night?

21 A. Yes, sir.

22 Q. This is number 705.

23 (WHEREUPON, a portion of State's Exhibit Number 1, a
24 DVD, was played in open court before the jury.)

25 Q. Right now, what are you trying to do?

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1 A. Get from behind the register.

2 Q. Why?

3 A. Because when I noticed the guy came to the counter
4 with the bandanna over his face, it seemed unreal to me.

5 Q. Uh-huh (affirmative).

6 A. And I was like, well, you best get out before
7 anything happens. That's when he was like, give me the
8 money. I was like, oh, he's really robbing this place.

9 Q. Were you frightened?

10 A. Yes, I was.

11 Q. Very fearful?

12 A. Yes, I was.

13 Q. And you saw his hand behind his back?

14 A. Yes, I did.

15 Q. With his hand behind his back -- I know I'm
16 belaboring this point. But what did you believe?

17 A. I thought had a gun.

18 (WHEREUPON, a portion of State's Exhibit Number 1, a
19 DVD, continued to be played in open court before the
20 jury.)

21 Q. Right now what happens?

22 A. I was about to go. I was trying to ask -- I was
23 asking him can I go over. He was like, no, no one's
24 going anywhere. That's when he backed up to the door,
25 and he was blocking it so we couldn't get out.

1 (WHEREUPON, a portion of State's Exhibit Number 1, a
2 DVD, continued to be played in open court before the
3 jury.)

4 Q. What's going on right there?

5 A. The shortest fellow that's asking Ms. Blocker for
6 the money -- and she was like she don't have the money.

7 And I'm still asking, can we get out. He was like, no
8 one's going anywhere. And she got behind ---

9 Q. Okay. Now, who said -- who is he that said, no
10 one's going anywhere?

11 A. The tallest fellow said, no one's going anywhere.

12 Q. The one standing at the door?

13 A. Yes, sir.

14 (WHEREUPON, a portion of State's Exhibit Number 1, a
15 DVD, continued to be played in open court before the
16 jury.)

17 Q. Now, you're standing right there. Are you still
18 frightened at that point?

19 A. Yes, sir.

20 Q. What do you want to do at that point?

21 A. Run, just run away. But there's nowhere to run to.

22 (WHEREUPON, a portion of State's Exhibit Number 1, a
23 DVD, continued to be played in open court before the
24 jury.)

25 Q. Now, the Co-defendant is behind the register getting

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1 the cigarettes?

2 A. Yes, sir.

3 Q. Is that when the Defendant said, go open the
4 register?

5 A. Before that.

6 Q. Before that?

7 A. Uh-huh (affirmative).

8 Q. The one standing at the door?

9 A. Uh-huh (affirmative).

10 (WHEREUPON, a portion of State's Exhibit Number 1, a
11 DVD, continued to be played in open court before the
12 jury.)

13 Q. And then they leave?

14 A. Yes, sir.

15 Q. Are you relieved?

16 A. Yes, sir.

17 Q. Do you feel free again?

18 A. At that point I do now.

19 Q. Now, Mr. Brown, could you draw a depiction of the
20 inside of the store for the jury?

21 A. Yes, sir.

22 THE COURT: Just a moment.

23 Mr. Beach, you may come around outside the jury box
24 to view.

25 Pat, I need the portable mike.

1 And when you step down, I want you to use this mike.

2 And you've got to hold it close in order for it to work.

3 THE WITNESS: Yes, sir.

4 THE COURT: All right?

5 THE WITNESS: Yes, sir.

6 Q. And Mr. Brown ...

7 MR. SHELTON: May the witness step down, Your
8 Honor?

9 THE COURT: He may.

10 Q. Please come down, Mr. Devron Brown.

11 (WHEREUPON, the witness stepped down from the
12 witness stand.)

13 Q. I can hold the mike for you or you can hold it if
14 you want, either way.

15 THE COURT: You got to hold it closer, the
16 microphone.

17 THE WITNESS: All right.

18 A. This right here is the entrance to the store. This
19 right here is the register area that leads to Church's.

20 This is the steps where I was going to step down at.

21 These are the lobby and the chairs in the lobby. And
22 this right here is the medicine area. And that camera,
23 there's a camera right here.

24 Q. There's a camera right there? Where's that camera
25 pointed?

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1 A. It's pointed toward -- right here towards the
2 office. Where the other lady that was in the store and
3 the guys came in and turned around at ...

4 Q. Uh-huh (affirmative).

5 A. ... it goes right here to the bathrooms and stuff.

6 Q. The bathrooms are -- how far is that from up here?

7 A. I'd say maybe thirty feet. And that side door right
8 there is locked.

9 Q. That's a locked side door? That's the only way in
10 and out from the main part of the store?

11 A. Yes, sir.

12 Q. What's back here?

13 A. Back here is the cooler with the beer and things,
14 and those are the rest of the shelves in the store.

15 Q. Okay. So there's a camera that points here that
16 goes out. How far is this to the best of your
17 estimation? Instead of saying how many feet it is, just
18 say how far is this from the register. When I'm back --
19 I'm backing up from you right now.

20 THE COURT: Just a moment. Can everybody on
21 the jury see the board? Ma'am, can you see?

22 MR. SHELTON: I might need to step to the side.
23 I'm sorry.

24 Thank you, Your Honor.

25 Q. Now, again, right here is where you're saying the

1 lady was standing?

2 A. Yes.

3 Q. And this is where the register is, right?

4 A. Uh-huh (affirmative).

5 Q. You say it's around thirty feet or so back here,

6 give or take?

7 A. Yes, sir.

8 Q. Now -- just repeating your testimony now. Now, I'm

9 going to back up. Will you tell me how far it is from

10 here, to the best of your estimation -- it doesn't have

11 to be perfect ---

12 A. Yes, sir.

13 Q. --- back to the register?

14 A. All right.

15 MR. SHELTON: Can the jury see me? I'm going

16 to go this way so the jury can see me, okay?

17 A. It's about right there.

18 Q. About right here?

19 A. About right there. Hold on, hold on. A little bit

20 -- out a lot.

21 Q. Okay.

22 A. Right in there.

23 Q. About right there?

24 A. Yes, sir.

25 Q. Okay. Now, if you're standing right there -- now

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1 I'm going to back up. I want to show -- I want you to
2 show me how far it is from that spot to the bathrooms.

3 A. To the bathrooms?

4 Q. Yeah.

5 A. Like -- I'm like --- it's like catty-cornered. It's
6 like on the side back to this back.

7 Q. Far away?

8 A. Far away.

9 Q. Okay. Thank you.

10 MR. SHELTON: I ask if the witness can take a
11 seat back.

12 (WHEREUPON, the witness resumed the witness stand.)

13 THE COURT: Move the board so the Defendant can
14 view the jury.

15 MR. SHELTON: Yes, Your Honor.

16 Q. Can you see, Mr. Brown?

17 A. Yes, sir.

18 MR. SHELTON: At this time, Your Honor, the
19 State moves this sketch as State's Exhibit Number 4.

20 THE COURT: Any objection?

21 MR. BEACH: No objection, Your Honor.

22 THE COURT: Have the court reporter mark it.

23 (WHEREUPON, State's Exhibit Number 4 was marked for
24 identification only.)

25 THE COURT: Ladies and gentlemen of the jury,

1 State's Exhibit Number 4 will be admitted into evidence
2 in the trial of this case. State's 4 now in evidence.

3 (WHEREUPON, State's Exhibit Number 4 was admitted
4 into evidence.)

5 MR. SHELTON: Thank you, Your Honor.

6 THE COURT: You're going to have to remove that
7 from the board ultimately. Go ahead.

8 MR. SHELTON: Thank you. Yes, sir.

9 Q. So this is the front door?

10 A. Yes, sir.

11 Q. This is the register?

12 A. Yes, sir.

13 Q. And this is where the camera views that aisle coming
14 down where the lady was?

15 A. Yes, sir.

16 Q. And this is where the seats are in the seating/lobby
17 area?

18 A. Yes, sir.

19 Q. And then back here, way back here, are the
20 bathrooms?

21 A. Yes, sir.

22 Q. Okay. I'm going to play another video now for you
23 now, please.

24 A. Yes, sir.

25 MR. SHELTON: This is number 10112709. And for

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1 the record, all of these videos, the first five digits
2 are the same, and just the last three differ.

3 (WHEREUPON, State's Exhibit Number 1, a DVD, was
4 played in open court before the jury.)

5 Q. Now, right here, I'd like you, Mr. Brown, to show to
6 the jury what part of the store this is.

7 A. That is where the medicine aisle is. The medicine
8 aisle is in the middle. That's exactly where it is.

9 Q. So is this where the camera is that you indicated?

10 A. Yes, sir.

11 Q. And this is at the end of the medicine aisle?

12 A. Yes, sir.

13 Q. Where would the bathrooms be from this view?

14 A. Straight back.

15 Q. Back ---

16 A. Towards the back, towards going up on the screen ...

17 Q. Uh-huh (affirmative).

18 A. ... and going over in the back.

19 Q. Okay. I'm going to go ahead and play this.

20 (WHEREUPON, a portion of State's Exhibit Number 1, a
21 DVD, continued to be played in open court before the
22 jury.)

23 Q. Right there, what do you see?

24 A. Two guys walking up.

25 Q. Do you know who those two guys are?

1 A. Yes, sir.

2 Q. Who are they?

3 A. The two guys that came to rob the store.

4 Q. Do you know which one is the Defendant who is seated
5 here?

6 A. Yes, sir.

7 Q. Which one is he?

8 A. The one that has on the light colored jacket.

9 Q. Okay. I'm going to rewind it just a little bit. I
10 want to watch that again.

11 (WHEREUPON, a portion of State's Exhibit Number 1, a
12 DVD, continued to be played in open court before the
13 jury.)

14 Q. So they both turn at the same time?

15 A. Yes, sir.

16 Q. And what direction are they walking at that point
17 together?

18 A. Back toward the register.

19 MR. SHELTON: I'm finished with the video.

20 Q. So pointing to exhibit number 4, State's Exhibit
21 Number 4, this is what the video is?

22 A. Yes, sir.

23 Q. This is where the lady was standing?

24 A. Yes, sir.

25 Q. With her back to the guys who walked up?

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1 A. Yes, sir.

2 Q. The Defendant in the gray shirt?

3 A. Yes, sir.

4 Q. And the gray shirt -- and the bathrooms are back
5 here?

6 A. Uh-huh (affirmative).

7 Q. And the Defendant in the gray shirt turns around and
8 walks back toward the register?

9 A. Yes, sir.

10 Q. And what happens right after that?

11 A. That's when the shortest fellow put the bandanna on
12 his face and asked Ms. Blocker for the money.

13 MR. SHELTON: I beg the Court's indulgence.

14 (Pause)

15 Q. Thank you, Mr. Brown. Please answer any questions
16 that Mr. Beach might have for you.

17 THE COURT: Cross-examination?

18 MR. BEACH: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. BEACH:

21 Q. Mr. Brown, did you ever see a gun?

22 A. No, sir.

23 Q. Did anybody ever tell you they had a gun?

24 A. No, sir.

25 Q. Now, the fellow you say you thought had a gun, was

1 that the Defendant here, Mr. Brown, or the Defendant at
2 the register?

3 A. The Defendant at the register.

4 Q. Did Mr. Brown ever indicate to you that he had a
5 weapon?

6 A. Yes, sir, he -- Mr. Brown?

7 Q. Mr. Brown, the one who was at the door.

8 A. No, sir, no, he didn't.

9 Q. And did he tell you where to go?

10 A. No, sir.

11 Q. Did he -- tell me on this diagram that you made,
12 where is the emergency exit?

13 A. The emergency exit is all the way in the back in the
14 storage room area.

15 Q. And that's not locked; is that correct?

16 A. I have never been to that.

17 Q. How long had you worked there when this happened?

18 A. How long had I worked there?

19 Q. Yes.

20 A. I had been there since July.

21 Q. Okay. But you knew where the emergency exit was,
22 didn't you? Is that correct?

23 A. Yes, sir.

24 Q. And you had been advised that if something happened,
25 to go out the emergency exit?

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Devron Brown - Redirect Examination by Mr. Shelton

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1 A. No, sir.

2 Q. Okay. What did you think the emergency exit was
3 for?

4 A. I knew it was for an emergency like if we had a fire
5 or something like that.

6 Q. All right. Now, did Mr. Brown, the gentleman at the
7 door, did he ever cover his face?

8 A. No, sir.

9 Q. And the other fellow, Mr. Clemons, did he have a
10 mask on?

11 A. Yes, sir. He had a bandanna on his face.

12 Q. Were you outside after they were captured?

13 A. Yes, sir, I went outside.

14 Q. Did you see a gun or anything on the ground?

15 A. No, sir.

16 Q. Do you know how many cigarettes they stole?

17 A. Not to be exact, no, sir.

18 Q. Do you know what kind of cigarettes they stole?

19 A. No, sir.

20 MR. BEACH: I don't think I have any other
21 questions, Your Honor. Thank you, sir.

22 THE COURT: Redirect?

23 MR. SHELTON: Briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. SHELTON:

1 Q. Why did you not go out the emergency exit?

2 A. I was afraid -- I was -- I had a thought in my head.

3 I was like, maybe I should run. But then I didn't think

4 about the emergency exit at that time. I thought about

5 the locked door that was over there.

6 Q. Uh-huh (affirmative).

7 A. And was like, if I run he might shoot. So I was

8 like, no, I'll just stay here.

9 Q. You thought if you run they might shoot?

10 A. Yes, sir.

11 Q. That's all the questions I have. Thank you, Mr.

12 Brown.

13 THE COURT: Recross limited to redirect?

14 MR. BEACH: None, Your Honor.

15 THE COURT: As to this witness, Solicitor?

16 MR. SHELTON: I ask that he be excused, Your

17 Honor.

18 THE COURT: Any objection, Mr. Beach?

19 MR. BEACH: No, Your Honor.

20 THE COURT: You may step down, and you are

21 excused from the trial of this case, Mr. Brown. You may

22 remain with us if you so desire.

23 Call your next witness.

24 MR. SHELTON: That concludes the State's

25 presentation of evidence for this trial, Your Honor.

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1 THE COURT: Are there any matters of law that I
2 need to take up at this time, Mr. Beach?

3 MR. BEACH: Yes, Your Honor.

4 THE COURT: Madam Foreperson, ladies and
5 gentlemen of the jury, I need to take up a matter of law.
6 I'll be with you just as quickly as I can. Please do not
7 discuss the case. I'll ask you to retire to your jury
8 room at this time.

9 (WHEREUPON, the jury exited the courtroom at
10 approximately 2:35 p.m.)

11 THE COURT: Counsel, approach.

12 MR. SHELTON: Yes, Your Honor.

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 THE COURT: Earlier in the trial, Becky, when
16 Officer Wallace, Sargent Wallace, was on the stand, we
17 had a discussion much like we just had at the bench. And
18 there was an objection to the officer testifying to what
19 the Co-defendant told him about the Defendant. In other
20 words, Sargent Wallace was asked to testify to what the
21 Co-defendant said to the officer, to him, Sargent
22 Wallace. An objection was made under hearsay and the
23 best evidence rule. To that testimony, I sustained that
24 objection. I wanted there to be a record of that bench
25 conference.

1 On that basis ultimately an exhibit, State's Exhibit
2 Number 2, was put into evidence concerning that same
3 matter, but I sustained the objection to the testimony of
4 Sargent Wallace being elicited as to hearsay. And the
5 record will so reflect.

6 Mr. Beach, I understand -- and I said I'd make a
7 record of it outside the presence of the jury at that
8 time. I meant to do so before we adjourned for lunch,
9 but didn't remember to do it until now.

10 Mr. Beach, I understand the Defendant has a matter
11 of law they wish to take up with the Court.

12 MR. BEACH: I do, Your Honor. Your Honor, at
13 this time we would make a motion for a directed verdict
14 in this case based upon our assertion that the State has
15 not proven a prima facie case for armed robbery or for
16 kidnaping, particularly with regard to the kidnaping when
17 we have discovered through the evidence that there was an
18 alternate exit to this building and that the people just
19 chose not to take it and that the -- and it was found
20 from the testimony that this -- these people were not
21 ordered to a specific area or to any specific part of the
22 store, and they could have escaped if they had wished to
23 at any time. We believe that that negates the elements
24 of kidnaping, and we'd ask that the case be -- that there
25 be a directed verdict on that matter.

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1 With the regard to the armed robbery, there's no
2 evidence that any weapon was found. There's no evidence
3 that any were recovered after the fact. There's no
4 evidence of any weapon whatsoever, only that the guy had
5 his hand behind his back. He never at any time said, I
6 have a weapon. He never at any time said, this is an
7 armed robbery. He never said at any time, I'm going to
8 shoot you or I'm going to stab you or I'm going to hit
9 you with something. We don't think there's any evidence
10 here of armed robbery.

11 THE COURT: Very well.

12 Solicitor?

13 MR. SHELTON: Thank you, Your Honor. First
14 upon the motion for kidnaping, first the law. The State
15 believes the correct law for kidnaping is that it's a
16 continuous offense that begins and when a person --
17 excuse me -- when one is wrongfully deprived of their
18 freedom, Your Honor. By the statute, it is unlawful for
19 anyone to confine, seize without authority of law.
20 Furthermore, kidnaping can be an offense separate from
21 armed robbery or robbery, even if it is incidental to the
22 robbery, the act of confinement.

23 The evidence shows that at least one of the victims
24 did not leave through the emergency exit because, first
25 of all, he'd never been through the emergency exit

1 before. Secondly, his fear -- he succumbed to the fear
2 created by the threat of force used by the Defendant and
3 his Co-defendant and that Mr. Brown feared that if he
4 ran, he would get shot.

5 Now, that leads me into the argument for armed
6 robbery. Armed robbery, no weapon has to be found. One
7 does not even have to have a weapon under South Carolina
8 law now. You merely have to allege, either through
9 action or words, that you have a weapon, and you must
10 represent that you have weapon or have some object or
11 have some object that a person would reasonably believe
12 was a weapon.

13 As Your Honor, I'm sure, is aware, this law changed
14 in 1996 after there was a case reversed by the Supreme
15 Court when a toy gun was used and the Co-defendant
16 testified to the toy gun and -- that it was a toy gun.
17 And it was reversed because there was not evidence
18 necessarily of a deadly weapon. In this case this, the
19 State would submit, is a representation of a deadly
20 weapon.

21 Mr. Vic Sellers outside says he knew what was going
22 on. Everyone there believed the Defendant had a gun, at
23 least for the continuation of the crime. Mr. Brown,
24 Devron Brown, believed he had a gun to such an extent
25 that he was fearful that he would be shot if he ran. Ms.

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1 -- and I don't mean to belabor the point, Your Honor.
2 I'm just trying to put all the evidence into the record
3 that I believe supports the charge of armed robbery. Ms.
4 Sanquenetta -- she stated -- Blocker. She stated that I
5 thought he had a gun. I believed he had a gun. She was
6 in fear that he had a gun.

7 If this is not armed robbery, what's to keep a
8 defendant from not showing a gun, but having a gun, and
9 then argue for a lesser-included charge of strong-arm
10 robbery in any case? I think that this is why the
11 Legislature changed the law, to allegedly -- and I
12 believe it's why they state, and also, words are not
13 enough. It's not that you can just say, I have -- you
14 can't just hand a note up and say, I'm going to shoot
15 you. It has to be actions or words with a
16 representation. So the action and a representation.

17 I believe it's sufficient, far sufficient, to
18 support evidence in the factual record beyond directed
19 verdict, Your Honor. And I'd just ask that you deny the
20 motion.

21 THE COURT: I agree, Solicitor. Mr. Beach, I
22 think there is evidence from which the jury at this stage
23 -- and you realize the standard at the directed verdict
24 stage. I don't have to remind you.

25 Now, I will say this, Solicitor. I'm denying the

1 motion for directed verdict. That does not mean that I'm
2 not going to submit a lesser-included offense to the jury
3 in my charge because the jury could conclude that a crime
4 other than the offense of armed robbery may have occurred
5 for which they believe the evidence proves the Defendant
6 guilty beyond a reasonable doubt.

7 On the other side of that fence, as to the
8 kidnaping, Mr. Beach, regardless of whether there happens
9 to be a means of escape -- you know, the statute has so
10 many verbs. It says seized. It says confined. It says
11 inveigled. It says decoyed. It says kidnaped, abducted
12 or carried away another person without authority of law
13 knowingly and unlawfully.

14 So I certainly think there is evidence. The
15 Solicitor went to great length with Ms. Blocker who she
16 testified that she believed he had a gun and also that
17 she was in fear. And she said she felt confined. And in
18 light of that, he actually asked the words from the
19 kidnaping statute, without objection, I might add. And
20 with that, I think that provides ample evidence upon
21 which to deny your motion for directed verdict.

22 The Solicitor is correct about the law for the very
23 reason -- Mr. Beach, you're very familiar with this --
24 people wear jackets or coats. And they hold up a jacket
25 or coat in this fashion with their finger. Obviously,

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1 even if no weapon is found on the person, there is a
2 representation of a weapon. And you can't tell, if
3 you're the victim, whether that's a gun or a finger.
4 When a person says, I want money, and has their hand
5 behind their back, there is a representation, like the
6 finger, that a weapon may be present. For those reasons,
7 your motion for directed verdict is respectfully denied.

8 Mr. Beach, I would ask you and your client to come
9 forward and be sworn by the Clerk.

10 Solicitor, what's his record? Does he have a record
11 that could possibly, if I determine that the probative
12 value outweighs its prejudicial effect, be admitted into
13 evidence for the purposes of affecting his credibility or
14 impeachment purposes?

15 MR. SHELTON: Yes, Your Honor.

16 THE COURT: And what is that record? I'm sure
17 Mr. Beach has a copy of it.

18 MR. SHELTON: Yes, he does. And I have a
19 certified copy from Dorchester County of three
20 convictions within the last ten years. One is for ABHAN,
21 one is for grand larceny -- excuse me. There's two
22 convictions within the last ten years I have certified
23 copies of, Your Honor. I would submit to the Court the
24 grand larceny is certainly admissible. Also, his RAP
25 sheet indicates in the last ten years, Your Honor, that

1 he has a separate ABHAN conviction. So two ABHAN
2 convictions and one grand larceny in the last ten years.
3 I'd like to note for the record that one ABHAN conviction
4 that I have the signed sentencing sheet with the nol pros
5 form here, there was an armed robbery charge that was nol
6 prossed pursuant ---

7 THE COURT: Then that would not be admissible.

8 MR. SHELTON: No, no.

9 THE COURT: So I don't even want to go into
10 that because that door isn't going to get opened in this
11 trial. We're not retrying a Dorchester County case in
12 Colleton County.

13 MR. SHELTON: Yes, sir, Your Honor. Thank you.

14 THE COURT: The answer to my question,
15 Solicitor, is that he has prior convictions carrying more
16 than one year within the past ten years that you may seek
17 to introduce if I found the probative value of admitting
18 the evidence outweighed its prejudicial effect. Is that
19 correct?

20 MR. SHELTON: Yes, Your Honor.

21 THE COURT: Thank you.

22 Madam Clerk, would you swear the Defendant, please?

23 THE COURT: Put that microphone up, Harris.

24 They've got it for the speakers for the computer.

25 GEORGE BROWN,

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1 Being first duly sworn, testified as follows:

2 THE COURT: Mr. Brown, at this time I'm going
3 to explain to you certain of your rights. If you do not
4 understand anything that I say, please let me know. If
5 you want me to explain anything in further detail, please
6 let me know. Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: We've now reached the stage of the
9 trial where you may present your defense. You have the
10 right to testify in your own behalf. However, no one, no
11 one can make you testify.

12 In the event you have a criminal record -- that is a
13 record for any conviction -- involving dishonesty or
14 false state or for any crime punishable by imprisonment
15 of more than one year and this Court determines as a
16 matter of law that the probative value of admitting this
17 evidence outweighs its prejudicial effect to you, the
18 Solicitor, if you testify on cross-examination, would be
19 able to introduce this record for impeachment purposes to
20 attack your credibility or your believability.

21 If you elect not to take the witness stand, I will
22 charge the jury that they are not to give the fact that
23 you did not testify any consideration whatsoever. And
24 there is to be absolutely no prejudice to you because you
25 did not testify.

1 You have a constitutional right to remain silent.
2 The decision as to whether or not you testify in this
3 case will be left entirely up to you. It is your
4 decision. It is not your attorney's decision. It is
5 your decision. You may talk with your attorney, but the
6 ultimate decision as to whether or not you testify in the
7 trial of this case is yours.

8 Have you understood what I've just told you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Beach, would you like a minute
11 with your client?

12 MR. BEACH: I would, Your Honor.

13 THE COURT: Very well. I'll give you one.

14 (Pause)

15 MR. BEACH: Your Honor, he does not intend to
16 testify at this time.

17 THE COURT: I need him back up here, Mr. Beach.
18 I want him to tell me under oath on the record.

19 MR. BEACH: Yes, sir.

20 THE COURT: Mr. Brown, have you had sufficient
21 time to talk to your attorney now?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you made a decision yourself
24 as to whether or not you wish to testify in the trial of
25 this case?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: And what is your decision?

3 THE DEFENDANT: I'm not going to.

4 THE COURT: And is that your decision and no
5 one else's?

6 THE DEFENDANT: That's my decision.

7 THE COURT: Did anyone promise you anything or
8 threaten you in any way in making that decision?

9 THE DEFENDANT: No, sir.

10 THE COURT: Did you make that decision of your
11 own free will and accord?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Very well. You may return to your
14 seat.

15 Anything from the State before I bring the jury?
16 Mr. Beach tells me that he has ...

17 Two witnesses, Mr. Beach?

18 MR. BEACH: That was one of the witnesses, Your
19 Honor.

20 THE COURT: So you have one?

21 MR. BEACH: I have one.

22 THE COURT: He has one witness. It's ten
23 minutes to three. And frankly, we're at that, what I
24 call, the line because you ...

25 Mr. Beach, how long are you going to request in

1 argument?

2 MR. BEACH: It shouldn't be a long argument, no
3 more than twenty minutes.

4 THE COURT: You can do it in twenty.

5 Solicitor, can you do it in twenty?

6 MR. SHELTON: I believe so, Your Honor.

7 THE COURT: All right. Then let me see your
8 requests to charge. Does the State have any requests?

9 MR. SHELTON: I've already handed them up to
10 Nick, and I provided a copy to Mr. Beach.

11 THE COURT: Solicitor, you don't cite anything
12 in your charge.

13 MR. SHELTON: We provided documentation of two
14 different charges -- two different cases that actually
15 have it highlighted, Your Honor.

16 THE COURT: All right, Solicitor. My intent
17 would be at this point to both note ...

18 Mr. Beach, do you have any requests to charge?

19 MR. BEACH: I don't have a specific request,
20 Your Honor. I would ask that you give your general
21 charge for strong-arm robbery and also your general
22 charge for the lesser-included offense of grand larceny.

23 THE COURT: Mr. Beach, it's my intention to
24 charge strong-arm robbery. I'll need to hear you on
25 grand larceny.

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1 MR. BEACH: Yes, sir.

2 THE COURT: Of course, you know and I know --
3 we've been down this road many times. There's one school
4 of thought that believes that you'd rather have it up or
5 down on the greater. There's another school of thought
6 that says you give the jury some -- assuming that the
7 lesser is included in the greater under the test, that
8 you give the jury the opportunity to consider lesser-
9 included. Tell me why -- I agree with you that strong-
10 arm robbery ought to be charged to the jury. There is
11 evidence of armed robbery. And that's why I denied your
12 motion for directed verdict.

13 MR. BEACH: Yes, sir.

14 THE COURT: So it's my intention to charge
15 strong-arm robbery.

16 MR. BEACH: Yes, sir.

17 THE COURT: On the other side of that fence, it
18 was not my intention to charge grand larceny. I'll be
19 happy to hear from you. I don't recall that -- grand
20 larceny requires a monetary amount. And you asked the
21 question how much the cigarettes were worth, and there
22 was no testimony.

23 MR. BEACH: That's correct, Your Honor.

24 THE COURT: I believe it's either strong-arm
25 robbery or armed robbery or not guilty. But I'm happy to

1 hear from you.

2 MR. BEACH: Your Honor, our position on that
3 would be that, according to the evidence within the light
4 most favorable to the State, the people went in, went
5 behind the register ---

6 THE COURT: Now, we're talking about a charge
7 now, not a directed verdict.

8 MR. BEACH: Oh, yes, sir, I agree. A charge,
9 just a charge. And the evidence is that Mr. Clemons went
10 behind the register and took cigarettes and committed the
11 act of grand larceny -- committed the act of larceny
12 which is a lesser-included offense of robbery.

13 THE COURT: Well ...

14 Let me see my charge.

15 Now, this is a situation in which it is alleged by
16 the State that the Defendant took property, personal
17 property, whether it be cigarettes or what, from the
18 person or presence of another person. You must prove
19 that they carried the property away intending to
20 permanently deprive the owner of the property and to keep
21 the property for their own use. And property that's in
22 the presence of another person is property within the
23 person's control or reach or inspection so that the
24 person could, if not overcome with violence or prevented
25 by fear, keep possession of the property. So the taking

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1 and the carrying away must have been done with violence
2 or by putting the person in control of the property in
3 fear of violence. And then for armed robbery, obviously
4 you have to prove the additional element, the State
5 would, beyond a reasonable doubt that the Defendant was
6 armed with a deadly weapon during the robbery.

7 Mr. Beach, I'll hear from the State on that. I'm
8 not certain that I believe that there is evidence that
9 the Court could charge grand larceny.

10 Solicitor?

11 MR. SHELTON: Yes, Your Honor. Of course, it
12 would be larceny, I believe, and not grand larceny and
13 ---

14 THE COURT: Well, how can I say that when
15 there's no evidence of a monetary amount?

16 MR. SHELTON: Correct, Your Honor.

17 THE COURT: If you're talking about petit
18 larceny versus grand larceny, there's actually no
19 evidence in this record. Unless y'all correct me, Mr.
20 Beach asked the only question about that. And I recall
21 that was to Mr. Devron Brown. And he said he didn't know
22 what the value of the cigarettes were.

23 MR. SHELTON: Correct, Your Honor. So there's
24 no way to tell whether it's simple or grand larceny. I
25 think that all the evidence indicates in this case that

1 there is no evidence that would not show that this was
2 done by putting the cashier in fear of her safety.

3 THE COURT: I agree.

4 Mr. Beach, your request for grand larceny is
5 respectfully denied. And so that -- grand larceny is
6 simply the taking and carrying away of property without
7 the consent of another person. Here, the testimony is
8 clear to me -- at least the jury could choose to believe
9 it -- that the people that were in the control of the
10 property in this store were put in fear as a result of
11 this taking.

12 Now, Mr. Beach, neither one of you have mentioned
13 it. It's my intention -- I'm going to charge the hand of
14 one is the hand of all ...

15 MR. BEACH: Yes, sir.

16 THE COURT: ... Solicitor, which you should
17 have requested.

18 And Mr. Beach, you should have requested it, but I'm
19 going to charge mere presence also.

20 MR. BEACH: Yes, sir.

21 THE COURT: And I will charge strong-arm
22 robbery or common-law robbery, which of course requires
23 putting the person in fear also, taking away. But I
24 decline to charge larceny, either grand or otherwise, on
25 the basis that I don't think the evidence is supportive

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1 of that in the light of what's been presented to the
2 Court.

3 Now, Solicitor, I will charge the definition that
4 you asked me for. The State must prove beyond a
5 reasonable doubt -- I think Mr. Beach would want this
6 too, I'm sure -- that either he was armed with a deadly
7 weapon or alleged either by actions or words he was armed
8 while using a representation of a deadly weapon or any
9 object which a person present during the commission of
10 robbery reasonably believed to be a deadly weapon.
11 Display of a deadly weapon is not required to prove armed
12 robbery. Words coupled with a representation that the
13 Defendant possesses a deadly weapon are enough if it
14 leads the victim to reasonably believe the Defendant is
15 armed. And I'll charge that because I think -- I'm going
16 to charge my normal strong-arm robbery or common-law
17 robbery charge. You gave me a charge on that. I'm going
18 to charge it. The only difference is whether or not the
19 State has proved that the Defendant is armed with a
20 deadly weapon.

21 MR. SHELTON: Your Honor?

22 THE COURT: That is the difference between
23 common-law and armed robbery.

24 MR. SHELTON: Yes, Your Honor. I understand
25 you've made your decision. I would just submit for the

1 alleged -- I would just ask that the statutory language
2 of armed robbery be included in the strong-arm robbery
3 charge. If you do not find the statutory -- include the
4 statutory language about allegedly armed by
5 representation, action or words -- and or action or
6 words, then you can find the strong-arm. If we don't
7 prove that beyond a reasonable doubt -- because the way
8 it's read right now is that if you prove beyond a
9 reasonable -- right now it's that you have to prove that
10 he was armed. And I do not believe that's the correct
11 reflection of the law, respectfully, Your Honor.

12 THE COURT: My charge begins with armed
13 robbery. And it says the Defendant is charged with it,
14 and I define it. I define robbery, and then I also
15 define that the State must prove the Defendant was armed
16 with a deadly weapon during the robbery. And I define a
17 deadly weapon.

18 Then I say, if you find that the State has failed to
19 prove that the Defendant was armed with a deadly weapon,
20 you may then consider whether the State has proven beyond
21 a reasonable doubt that the Defendant committed robbery.
22 And in order to prove robbery, the State must prove
23 beyond a reasonable doubt all the elements that I've just
24 explained except that the Defendant was armed with a
25 deadly weapon which I think clearly tells the jury what

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1 they can do. Now, you can tell me if there's some
2 confusion in that charge.

3 MR. SHELTON: The only -- there's no confusion
4 there at all, Your Honor. What I would say is that the
5 charge only includes the language that the Defendant is
6 armed with a deadly weapon. I think that the State can
7 prove beyond a reasonable doubt armed robbery by the
8 allegations, the alleged deadly weapon.

9 THE COURT: I'm going to tell them that in the
10 armed robbery charge.

11 MR. SHELTON: Okay.

12 THE COURT: Because the only time a
13 representation comes out is if you're trying to prove
14 armed robbery. It has nothing whatsoever to do with
15 robbery. There is no representation of the use of a
16 weapon by action or words for robbery because it isn't an
17 element of robbery. Do you understand that?

18 MR. SHELTON: Oh, I understand, Your Honor,
19 yes.

20 THE COURT: All right. I'm not sure that we
21 are communicating on that, but it's my intention to
22 charge armed robbery and strong-arm robbery.

23 MR. SHELTON: Yes, Your Honor.

24 THE COURT: Anything else?

25 MR. SHELTON: No, Your Honor. I'd just like to

1 state an objection to that charge on the record for --
2 and I respectfully do this, Your Honor.

3 THE COURT: I'll give you that chance after I
4 charge the jury.

5 MR. SHELTON: Yes, Your Honor. Yes, Your
6 Honor.

7 THE COURT: I'm not sure -- I'm not going to
8 repeat the elements of armed robbery to define strong-arm
9 robbery. I'm going to explain to them that it doesn't
10 contain that element. And if you want to object to it,
11 that will be fine.

12 Anything else?

13 MR. SHELTON: No, Your Honor.

14 THE COURT: Anything further from the
15 Defendant?

16 MR. BEACH: No, Your Honor.

17 THE COURT: All right. Can you do it in twenty
18 minutes?

19 MR. SHELTON: Yes, Your Honor.

20 THE COURT: Counsel, approach the bench and
21 take a look at the verdict form. I'm not going to stop
22 once we go back in to this case.

23 MR. BEACH: Your Honor, we do have another
24 witness.

25 THE COURT: I know you do. But I'm not going

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1 to take another break if we're going to try to finish.

2 MR. BEACH: Right.

3 THE COURT: It's already three o'clock. That's
4 why it's so hard to plan whether or not we can do all
5 y'all's arguments which is twenty minutes each. My
6 charge is going to be twenty minutes. So that's clearly
7 an hour.

8 MR. BEACH: Yes, sir.

9 THE COURT: And by the time we do another
10 witness, they're not going to get the case until four
11 thirty. And that means they're going to be home after
12 dark. But I'm willing to do it if y'all want to try to
13 complete it today. Look at the charge -- look at the
14 verdict form.

15 (WHEREUPON, a bench conference was held off the
16 record.)

17 THE COURT: Let the record reflect that both
18 sides have reviewed the verdict form, and neither side
19 has any objection to the form of the verdict which I have
20 prepared in connection with the case.

21 Now, both lawyers tell me that they can do their
22 argument in twenty minutes. Mr. Beach still has one more
23 witness. It's now five after three or a couple of
24 minutes after three. I'd like to move forward. If you
25 want to take a break now, either get water, use the

1 restroom, do it right now so that when we finish all the
2 testimony in this case we can go into argument and charge
3 so the jury is not here later than is absolutely
4 necessary. So take your break right now.

5 MR. SHELTON: Yes, sir, Your Honor.

6 MR. BEACH: Thank you, Your Honor.

7 (WHEREUPON, court stood at recess for a short
8 break.)

9 MR. SHELTON: Mr. Dave Matthews represents Mr.
10 Clemons. He is not present in the courtroom.

11 THE COURT: Who represents him?

12 Where is Mr. Matthews, Harris?

13 MR. BEACH: I don't know, Your Honor. I saw
14 him this morning. He was going to go over to talk with
15 Mr. Clemons. And I haven't -- I've been in here. I
16 haven't seen him since.

17 THE COURT: All right. Confound it. We're
18 going to end up having to finish this case tomorrow.
19 He's represented, and I know he's charged. I got to have
20 his lawyer here ...

21 MR. SHELTON: Yes, sir.

22 THE COURT: ... if he wants to consult with
23 him.

24 Harris, where is Fran? She was here.

25 MR. BEACH: She was here, Your Honor.

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1 THE COURT: She'd be the most likely person to
2 find him. Have you got her cell phone number?

3 MR. BEACH: No, sir.

4 MR. BALLISH: Your Honor, I have their number.

5 THE COURT: Step out and get them on the phone.
6 Tell them I need them now, and I'll send an officer to
7 pick them up if I need to, if they need transportation.
8 They're holding my trial up.

9 Take one step forward and ten steps backwards. It's
10 just like the Army, hurry up and wait.

11 MR. BALLISH: Mr. Matthews is on his way, sir.

12 THE COURT: Well, isn't that nice of him.

13 Thank you, Mr. Ballish, and thank you for making that
14 call.

15 MR. BALLISH: Yes, sir.

16 THE COURT: He didn't tell you he was in
17 Richland, did he?

18 MR. BALLISH: No, sir. He's at the Public
19 Defender's office just across the street. I told him to
20 run.

21 THE COURT: Well, I'll let you open the blinds
22 and tell me if you can see him running if he's coming
23 from the Public Defender's office. But I find that a
24 little hard to believe.

25 (Pause)

1 THE COURT: Counsel, approach.

2 (WHEREUPON, a bench conference was held off the
3 record.)

4 THE COURT: Oh, Mr. Matthews, thank you so much
5 for being here..

6 MR. MATTHEWS: Yes, sir.

7 THE COURT: Your client is in the jury box, Mr.
8 Matthews.

9 MR. MATTHEWS: Thank you, Your Honor.

10 THE COURT: And it is Mr. Beach's intention to
11 call him as the next witness in the trial of this case.

12 MR. MATTHEWS: Thank you, Your Honor.

13 (Pause)

14 MR. MATTHEWS: May I approach, Your Honor.

15 THE COURT: You can when I finish looking this
16 up. So just sit right there, Mr. Matthews, and don't wet
17 your pants, and I'll be with you. We waited on you; you
18 can sure wait on me.

19 MR. MATTHEWS: Yes, sir.

20 (Pause)

21 THE COURT: Counsel, approach.

22 (WHEREUPON, a bench conference was held off the
23 record.)

24 THE COURT: Let the record reflect, Madam Court
25 Reporter, that I've waited since five till three. Mr.

1 Matthews got here about three twenty. It's now about
2 three twenty-seven. And I was not going to start the
3 Defendant's case in this trial until Mr. Matthews had an
4 opportunity to confer with his client because Mr. Beach
5 advised me on his list of witnesses -- which I've got
6 somewhere or my law clerk does -- that Mr. Wesley Clemons
7 is a witness on behalf of the Defendant. And that's C-L--
8 E-M-O-N-S.

9 After Mr. Matthews arrived in the courtroom this
10 afternoon, he had the opportunity to confer with Mr.
11 Clemons. Mr. Beach has now approached the bench with the
12 Solicitor and advised me that Mr. Matthews, as the
13 attorney for Mr. Clemons, has advised Mr. Beach that his
14 client will take the Fifth Amendment to any questions
15 asked about what allegedly occurred on November 27th,
16 2010.

17 I have told Mr. Beach I'll be more than happy to
18 give him the opportunity to call this witness who is
19 present in the courtroom. He can testify in my jury box
20 with his lawyer, Mr. Matthews, in the courtroom, call him
21 as a witness, and we'll see. But Mr. Beach tells me in
22 light of what he's been told by Mr. Matthews, he no
23 longer wishes to call him as a witness in the trial of
24 this case. Is that correct, Mr. Beach?

25 MR. BEACH: That is correct, Your Honor.

1 THE COURT: All right. In light of this --
2 your decision not to call him as a witness and have him
3 exercise either his privilege not to incriminate himself
4 or not based on what his lawyer's told you, do you have
5 any other witnesses the Defendant intends to call in the
6 trial of this case?

7 MR. BEACH: We have none, Your Honor. The
8 Defense rests.

9 THE COURT: Very well.

10 Since the Defendant has not presented evidence in
11 the trial of this case, Solicitor, the Defendant will
12 have final argument.

13 MR. SHELTON: Yes, sir.

14 THE COURT: You both have told me that you can
15 do it in twenty minutes, but you both have agreed now
16 that we've gotten to three thirty in the afternoon or
17 almost, that it would be better -- because the jury won't
18 get this case until right at five o'clock or close to
19 five o'clock by the time you argue, he argues and I
20 charge the jury. That it would be better to let the jury
21 have it first thing in the morning when they're fresh now
22 that they've heard all the evidence in the case.

23 It would be my intention then to call the jury back,
24 let them get home, ask them to be back here at nine
25 thirty in the morning at which time we'll do closing

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1 arguments, charge and complete the trial first thing in
2 the morning. Is that correct from the Solicitor?

3 MR. SHELTON: Yes, sir, Your Honor.

4 THE COURT: Correct from the Defendant?

5 MR. BEACH: It is, Your Honor.

6 THE COURT: Bring us the jury.

7 (WHEREUPON, the jury entered the courtroom at
8 approximately 3:30 p.m.)

9 THE COURT: Madam Foreperson, ladies and
10 gentlemen of the jury, you've heard the evidence from the
11 State of South Carolina. We'll now hear from the
12 Defendant.

13 Mr. Beach?

14 MR. BEACH: The Defendant rests, Your Honor.

15 THE COURT: All right. Ladies and gentlemen,
16 you've heard all the evidence in this case. You have not
17 heard the closing arguments of the attorneys or my charge
18 to you on the law. I have a rule, ladies and gentlemen,
19 that I never give a jury a case after three thirty in the
20 afternoon. That's so that you get home -- if we finish
21 today, you wouldn't be getting the case until right at
22 dark because it's going to take approximately an hour and
23 a half to finish it with arguments and charge.

24 Rather than do that to you, I'm going to ask you to
25 be back in your jury room at nine thirty in the morning.

1 That's all that's left of the case. You'll hear just the
2 closing arguments of the attorneys and then my charge on
3 the law, and you'll have the case for your consideration.

4 During the overnight recess, as I've instructed you
5 throughout the trial, please do not watch television,
6 listen to radio or read any newspaper account of the
7 case. Please don't talk to anybody about the case. If
8 somebody persists in talking to you, just tell them
9 you're on the jury and you can't talk about it. And if
10 they really persist, get their name, give it to me. Let
11 me handle that problem for you. I'll take care of it for
12 you.

13 Now, ladies and gentlemen, I want to thank you for
14 your patience. I know you feel like you've been sent
15 back and forth. Very often I have to take up matters of
16 law. And those were matters that I had to take up
17 outside of your presence because of the rule that I told
18 you that you're the sole judges of the facts. I'm the
19 sole judge of the law. Sometimes I have to make a
20 comment to them about the facts and the ruling on whether
21 evidence is admissible. And that's why I asked you to go
22 to your jury room. We weren't trying to hide anything
23 from you. We're trying to make sure you weren't
24 influenced by what I might say.

25 We will complete this trial promptly at nine thirty

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1 in the morning. When you come in the morning, report
2 directly to your jury room. We'll have something for you
3 to drink back there, a snack. We'll be ready to go at
4 nine thirty in the morning.

5 I'm going to excuse you now for the balance of the
6 today, and I'll look forward to seeing you at nine thirty
7 in the morning. You may leave the courtroom at this
8 time.

9 Everyone else remain seated while the jury is
10 leaving.

11 (WHEREUPON, the jury exited the courtroom.)

12 THE COURT: All right. Anything on the record
13 outside the presence of the jury from the State? I think
14 I have your requests to charge.

15 MR. SHELTON: Yes, sir, Your Honor. Thank you.

16 THE COURT: Anything from the Defendant?

17 MR. BEACH: Nothing, Your Honor, except we
18 would renew our earlier motion for directed verdict.

19 THE COURT: At the close of all the evidence
20 based on the same ground?

21 MR. BEACH: Same ground, Your Honor.

22 THE COURT: And for the reasons I enunciated on
23 the record at the close of the State's case, your motion
24 for directed verdict at the close of all the evidence is
25 respectfully denied.

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1 MR. BEACH: Thank you, Your Honor.

2 THE COURT: Now, Counsel, you've looked at my
3 verdict form and approved it. However, I will be glad,
4 if you so desire -- since we've taken this break -- to go
5 over my entire charge or any portion of my charge so that
6 tonight you can tailor your arguments to my charge if you
7 so desire. And I'll do that with either one of you if
8 either one of you request it. Just let me know.

9 Solicitor?

10 MR. SHELTON: I wouldn't mind hearing it this
11 afternoon.

12 THE COURT: All right. Then I'll be glad to do
13 that with you. Mr. Beach, if I'm going to do it with
14 him, I'm going to need you present.

15 MR. BEACH: Yes, sir.

16 THE COURT: Mr. Matthews, appreciate your being
17 here.

18 MR. MATTHEWS: Yes, sir.

19 THE COURT: I don't believe we need you for
20 this case; however, I don't know if the Solicitor's going
21 to call any other matters. So while you're here -- I
22 know you and Mr. Beach don't have Ms. Pye which means
23 you're not going to be able to find a single file.
24 However, I do believe that at least somebody, Mr.
25 Ballish, I hope, has Ms. Pye's number.

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1 Did she answer the phone in the Public Defender's
2 office?

3 UNKNOWN MALE: I'm not sure if it was her.

4 UNKNOWN MALE: I think it was Ms. Caldwell.

5 MR. DOUSCHEN: It was Ms. Caldwell, I believe,
6 who answered.

7 THE COURT: All right. As to this case, we're
8 adjourned. I'll see y'all in chambers about the charge.
9 But do you have any non-jury matters you wish to take up
10 this afternoon?

11 MR. SHELTON: Your Honor -- may I approach?

12 THE COURT: You may.

13 (WHEREUPON, a bench conference was held off the
14 record after which court stood at recess for the
15 day.)

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17 (WHEREUPON, court convened with all parties present
18 and the following proceedings were had.)

19 THE COURT: Our jury, I now understand, has
20 arrived safely. Now, I understand you've set up visual
21 aids. But one of the things that I will allow, Mr. Beach
22 -- it's difficult, but you can stand in the well of the
23 door. But I will allow you -- the problem is the angle
24 if you want to see visual aids by the State or if the
25 State wants to see visual aids by the Defendant. I don't

1 allow you to block a juror or get in the jury box, but
2 you can stand in the well of the doorway where you're not
3 blocking anyone's view during the closing arguments so
4 you can view what's being shown to the jury.

5 Becky, let the record reflect that I had a charge
6 conference last night after court adjourned with the
7 Solicitor and with Counsel for the Defendant, that I have
8 been over my entire charge with them. I have actually
9 read it to them. And they have agreed on the verdict
10 form. I am going to submit the lesser-included offense
11 of robbery or common-law robbery or -- also known as
12 strong-arm robbery to the jury in addition to armed
13 robbery and kidnaping. And I'm going to charge hand of
14 one is the hand of all, and I'm going to charge mere
15 presence.

16 And I think that covers everything except for the
17 fact that at the end of the trial the Defendant chose not
18 to present any evidence. Therefore, the Defendant has
19 final argument, so the State will argue first followed by
20 the Defendant. Both lawyers tell me they can do it in
21 twenty minutes. We're starting fifteen minutes behind,
22 but I have the jury coming back.

23 And Mr. Beach, I assume that -- have you gotten word
24 to Mr. Matthews that he's up at two o'clock?

25 MR. BEACH: I told him last night, Your Honor.

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1 THE COURT: Wonderful. Thank you very much.

2 The jury will be back at two o'clock for Mr. Matthew's
3 trial.

4 When you have reached fifteen minutes, what will you
5 hear, Mr. Shelton?

6 MR. SHELTON: What will I hear?

7 THE COURT: What will you hear after you've
8 argued for fifteen minutes?

9 MR. SHELTON: Oh ...

10 THE COURT: Mr. Shelton ...

11 MR. BALLISH: (Tapping on table)

12 THE COURT: There we go, Mr. Ballish. Thank
13 you always for trying to help your brother colleagues.
14 The familiar tapping. And that tap means that you have
15 five more minutes to go to try to wrap it up because you
16 asked me for twenty minutes. And I've found -- and Mr.
17 Ballish knows this -- sometimes y'all get up there and
18 y'all are so interested in what you're saying that you
19 lose a little track of time. So the tap is to help you
20 come back to reality and remember that time is still
21 going forward. And I'll do the same thing with Counsel
22 for the Defendant.

23 All right. Now, I think that covers everything we
24 did last night. Have I left anything out?

25 (No verbal response)

1 THE COURT: Anything from the State before I
2 bring the jury?

3 MR. SHELTON: No, thank you, Your Honor.

4 THE COURT: Anything from the Defendant before
5 I bring the jury?

6 MR. BEACH: Your Honor, we would -- we made a
7 motion to have a charge on larceny. And I don't know
8 whether that's on the record or not. But we would make
9 that motion.

10 THE COURT: Yes, sir.

11 And what's the State's position on charging larceny?
12 We discussed that last yesterday when we were on the
13 record. We did discuss it because I told you there
14 wasn't any evidence of value. What's your position? Is
15 it the same?

16 MR. SHELTON: The same, Your Honor.

17 THE COURT: Mr. Beach, I decline to charge
18 larceny, and I want the record to reflect that. I'm
19 going to give the jury strong-arm robbery. I believe
20 it's up or down on either armed or robbery as opposed to
21 larceny because no evidence was submitted by the
22 Defendant. And the evidence submitted by the State in
23 this case was that -- it was alleged at least that your
24 client took property from the person or presence of
25 another and that the property was carried away and also

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1 that it was done either with violence or by putting the
2 owner or the person in control of the property in fear of
3 violence. And for that reason, I decline to charge
4 larceny. Do you understand?

5 MR. BEACH: Yes, sir.

6 THE COURT: But it's on the record. Anything
7 further from the Defendant?

8 MR. BEACH: I do have one other matter, Your
9 Honor. I didn't know this morning that this was going to
10 be presented on a different format than was presented to
11 the jury earlier, the DVD.

12 THE COURT: What do you mean? Now, I don't
13 know what you're talking about. What is a -- you mean
14 because we have the portable unit up as opposed to the
15 wall unit?

16 MR. BEACH: Yes, sir. The jury was presented
17 this evidence using this large format, and we think that
18 that is what should be used if it's going to be replayed
19 in argument rather than using a different format, rather
20 than using a smaller unit which may not show all the
21 things that the larger format shows.

22 THE COURT: Well, I haven't -- may not. And I
23 understand. Is there any difference in what the jury
24 will see, or what -- just so the record's clear, Counsel
25 has rolled in -- I assume this is a unit from the

1 Solicitor's office.

2 MR. SHELTON: Yes, we keep it here in the
3 courtroom, Your Honor.

4 THE COURT: Pardon?

5 MR. SHELTON: We keep it here in the courtroom.

6 THE COURT: All right. Counsel has rolled in a
7 Hitachi screen. And we have a big screen that is
8 attached to the wall behind the jury location, the old
9 jury location, which sits across from the present trial
10 jury on the wall across the courtroom. What they have in
11 the courtroom now is a -- I don't know. What is this? A
12 forty-inch screen that you've rolled in?

13 MR. SHELTON: I believe forty or forty-six.
14 I'm not sure.

15 THE COURT: Either forty or forty-six inch
16 mobile screen. I'm advised that Mr. Beach is concerned
17 that there may be some difference -- of course, I'm going
18 to let him see it by standing over here. And if there is
19 a difference that he discerns, I'm sure that he's going
20 to call it to my attention. I have no way of knowing
21 that without looking at it. Are you going to use the
22 exact same tape that was used in evidence?

23 MR. SHELTON: I can make this short by saying
24 I'm not -- I don't plan on using the video in closing.
25 This is a Powerpoint.

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1 THE COURT: Well, Mr. Beach, this is not going
2 to be for the jury, so I assume that takes care of the
3 matter.

4 MR. BEACH: That does, Your Honor.

5 THE COURT: Very well. Anything else before I
6 bring the jury?

7 MR. SHELTON: No, Your Honor.

8 THE COURT: All right. Mr. Beach, you have
9 closing argument. Mr. Shelton, you argue first.
10 Bring us the jury, please.

11 (WHEREUPON, the jury entered the courtroom at
12 approximately 9:50 a.m.)

13 THE COURT: Good morning.

14 THE JURORS (IN UNISON): Good morning.

15 THE COURT: All right. Ladies and gentlemen,
16 we're starting a little behind because I was waiting on a
17 juror this morning and I had to wait until I had
18 everybody here before we could begin.

19 You've heard the evidence in this case. You're now
20 going to hear the closing arguments from each side, first
21 from the State of South Carolina and then from the
22 Defendant, followed by my charge to you on the law in
23 this case. I ask that you give the attorneys your
24 careful consideration.

25 Mr. Shelton?

1 MR. SHELTON: Thank you, Your Honor. May it
2 please the Court.

3 THE COURT: Yes, sir.

4 MR. SHELTON: Mr. Beach?

5 Good morning.

6 THE JURORS (IN UNISON): Good morning.

7 CLOSING STATEMENT

8 BY MR. SHELTON:

9 No doubt, the Defendant was a part of it. Those
10 aren't my words. Those are Mr. Vic Sellers' words.
11 Remember that? Fifty-three years old, the man with the
12 most experience, the man that saw everything from the
13 outside in. Didn't even know what was going on inside
14 that store orally, but he could see what was happening.
15 There was a robbery, and both of them were a part of it.
16 You're the finders of fact, the seekers of the truth.
17 It's your job to figure out what part he had in it.

18 Now, I'm going to present some law to you, and I'm
19 going to explain to you why the facts fit in with the law
20 that is charged. But first, let's talk about facts.

21 You've viewed -- you've had the opportunity to view,
22 a real privilege, everything that happened pretty much on
23 that screen. All right. Most juries don't get that.
24 Now -- but that is an incomplete view. It's like a prism
25 of a view. And just like a prism, the light shining

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1 through a prism, it is not complete.

2 How do we know to make it complete? Well, we have
3 the witnesses. We have the witnesses' statements, how
4 the witnesses felt, the fear that gripped them. Let's
5 talk about that. Ms. Blocker, right, the first witness.
6 Does everyone remember her? She's the cashier. She had
7 control of the property. She had control of the cash.
8 She had control of the cigarettes. The Co-defendant in
9 this case walked up to her this close with a mask over
10 his face with his hands in his pockets. You saw that.
11 But what you didn't see -- you weren't able to be on the
12 ground level. You weren't able to be eye-to-eye with him
13 this close. You weren't a single woman in that store at
14 eleven-thirty at night and the only other employee in
15 that store an eighteen-year-old young man.

16 Think of the fear that gripped her. What does he
17 represent? That he has a gun. You don't have take the
18 State's word for it. Every witness who was there, even
19 the ones outside, believed he had a gun. All right.

20 What did she want to do? What did she think of?
21 She thinks of her children. She thinks of her husband.
22 What does she want to do? She wants to get out. But who
23 prevents her from getting out? This man. Mr. George
24 Brown. He wasn't just standing there. He didn't go in
25 there to go to the bathroom.

1 In fact, remember Mr. Devron Brown? He drew this.
2 I'm bringing it to you right now. This is the diagram he
3 drew for me. This is how well he knows it. He just
4 stood down here and he drew it for you. That's how well
5 he remembers everything.

6 They come in through the door. They walk back here.
7 That lady you saw right here, the lady that Mr. Sellers
8 is motioning to, to get away. Here's the camera. It
9 shows here. They walk in. And the man with the light
10 colored jacket on -- who turns first? The man with the
11 light colored jacket on, he turns first and goes toward
12 the register. This man, the Defendant, who Mr. Devron
13 Brown identified. He turns first. He goes toward the
14 register. The other man goes in front of him, and he's
15 his backup. He's his enforcer. He's the big guy.

16 They tried -- and Ms. Blocker just wants to get out
17 of there. He steps in front of her. He seizes her. He
18 confines her. He prevents her from leaving. And then he
19 backs up and keeps her -- keeps himself between her and
20 the door. He puts his hands on the door. You can
21 clearly see that despite what has been said. And then he
22 points at her. And both Ms. Blocker and Mr. Devron Brown
23 stated that he said, you aren't going anywhere. You're
24 not going to let us out? No. And Ms. Sanquenetta
25 Blocker behind Mr. Devron Brown crying. How long did it

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1 last for her? Forever. Forever.

2 Again, we see it through the prism of the video. We
3 weren't there. We don't know the fear. They testified
4 to the fear. Why didn't Devron Brown just go out the
5 emergency exit? It's not kidnaping. He didn't confine
6 him. Just go out the emergency exit. Well, he thought
7 he would be shot. That's how much he believed they had a
8 gun.

9 Let's talk about the law. Armed robbery, this is
10 the state law on a person who commits robbery. Robbery
11 is like larceny, like stealing, unlawful taking of
12 property from another. Property is this. It's not a lot
13 of property, but it's property. It's cigarettes, right?
14 By means of violence or by putting the person in fear of
15 violence -- Ms. Blocker was in fear -- while armed with a
16 pistol, dirk, sling shot, metal knuckles, blah, blah,
17 blah, or a deadly weapon. A pistol would be the case
18 here. Or allegedly either by actions or words he was
19 armed using a representation of a deadly weapon. A
20 representation by actions. A representation. This
21 close. Armed with a deadly weapon or while alleging
22 either by actions or words he was armed while using the
23 representation of a deadly weapon. Armed robbery.

24 You don't have to have a weapon. You don't have to
25 find a weapon. The reason the law is the way it is is

1 because when you think that someone has a weapon, you're
2 just as scared. When you reasonably believe they have a
3 weapon, you are just as scared as if that weapon is
4 pointed at you. Was Ms. Blocker to wait until she had a
5 bullet in her head to find out whether he had a weapon?

6 Again, commits robbery, actions or words while using
7 a deadly weapon. Robbery, takes cigarettes in control of
8 Ms. Blocker by force and or intimidation. Action, holds
9 his hand behind his back as if he had a gun. Represent
10 that he had a gun by holding and keeping his hand behind
11 his back.

12 Now, this is something that no one's talked about,
13 and this is what the Judge is going to tell you the law
14 is. Mr. Wesley Clemons' hand is Mr. George Brown's hand.
15 By the law, the hand of one is the hand of all. Mr.
16 Brown was the door man. That was his job. Mr. Clemons
17 was the front man. His job was to go to the register.
18 Mr. Brown was the enforcer. Look how it's connected.
19 The act is done by both. The act of one is the act of
20 all. One who aids, abets or assists is guilty of the
21 same crime as the main actor.

22 Now, you might hear some -- you're going to hear
23 from the Judge about mere presence, and you might hear
24 from Defense counsel about mere presence. Now, merely
25 present, here? Absolutely not. Mere presence will never

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1 support a conviction. Who was merely present? Was it
2 George Brown? No. Was it Ms. Sellers' friend,
3 Marguerita? Yes. That's mere presence. Here, the
4 Defendant was much, much more than merely present.
5 Without a doubt he was part of it. Again, not my words,
6 Mr. Sellers' words.

7 And this is why he's a part of it. They turn around
8 and go to the register together. This is all the
9 evidence that you have, including more that I don't have
10 up here, things that you come together and think of
11 together. The Defendant steps in front of Ms. Blocker
12 and Mr. Brown. He grabs the door. He points at the
13 victims. You're not going anywhere. Go open the
14 register. Go open the register. He says that. Vic
15 Sellers, without a doubt he was part of it. How many
16 people said they were robbing? Not he was robbing, they
17 were robbing.

18 The Co-defendant. He's the one who's sitting in
19 here. He was supposed to cover his face with his shirt.
20 And then he goes back around. This is the plan. Now,
21 you ought to show the plan because once he gets in there,
22 the minute he takes a step towards Ms. Blocker, he's a
23 part of it. But it helps to show his intent, doesn't it?

24 These are many other reasons he's guilty of armed
25 robbery. Sanquenetta Blocker believed he had a gun. Vic

1 Sellers, hand behind his back. What does that mean? To
2 me it means he has a gun. He kept victims from leaving.
3 He assisted in the robbery. Vic Sellers, without a doubt
4 he was a part of it. Vic Sellers, they robbed it
5 together. Co-defendant, you're about to be robbed.
6 That's what he said. Go open the register. Didn't leave
7 until they had cigarettes. Mr. Brown didn't leave until
8 they had gotten something.

9 Now, he didn't have a part of it? He was just
10 standing there? The act of one is the act of all.
11 That's what the law is. Mr. Clemons' hand is George
12 Brown's hand by the eyes of the law. Go open the
13 register, give me the money. Robin Kinsey called 9-1-1.
14 They held the store at gunpoint. Devron Brown, the last
15 words of evidence in the trial. Why didn't you just go
16 out the back door? If I run, they might shoot me. Not
17 Mr. Clemons is going to shoot me, not the guy with the
18 rag over his face is going to shoot me. They might shoot
19 me because they were in there together. They were in it
20 together.

21 Kidnaping, whoever shall seize, confine, inveigle,
22 decoy, kidnap or abduct. Now, when you think of
23 kidnaping, you think of a white van and somebody throwing
24 a kid in a white van or holding someone without their
25 will underneath the ground in a bunker somewhere, right?

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1 That's what we think of when we think of kidnaping..
2 Unfortunately or fortunately for the citizens of the
3 State, that's not the law. It can be simple confinement.
4 Unlawful confinement. There's nothing lawful about the
5 way the Defendant confined them.

6 And this is what the law says confined means. To
7 limit, to restrict, to keep in, to shut in. All of those
8 things mean confine.

9 Did Ms. Blocker feel confined? Absolutely. She
10 tried to get out. All she wanted to do was get out of
11 that store, but he kept her from leaving. How long did
12 it seem to her? Forever.

13 Did Mr. Wayne [sic] Brown feel confined? His
14 freedom was deprived. He did not feel free until he
15 stepped -- they locked the door. He was afraid to run
16 because they might shoot him.

17 Both victims tried to leave. The Defendant stepped
18 in front of them. He stood in front of the door, refused
19 to let them out, kept them shut in, restricted their
20 movement. The back exit was locked. Emergency exit? If
21 I run, they might shoot. Overcome with fear, seized with
22 fear. Ms. Blocker was seized with fear. And this is
23 many of the reasons -- there are more that I don't have
24 on here -- why he's guilty of kidnaping. You're not
25 going anywhere. You're not going to let us out? No. If

1 I run, they might shoot.

2 Ms. Kinsey, the Defendant was holding the door. Vic
3 Sellers, not letting anybody in, not letting anybody out.
4 He could even see that from outside the store. Stepped
5 in front of Ms. Blocker, kept the victims from leaving.
6 The victims were not free until the Defendant left. This
7 Defendant held the door shut, pointed at the victims to
8 go back. Seized with fear. All I wanted to do was get
9 out.

10 Ms. Blocker, deprived of their freedom. They could
11 not get out. They were held there. Did not feel free.
12 And again, these are the reasons they're guilty of armed
13 robbery.

14 Now, do not be swayed by the fact that only
15 cigarettes were taken. If anything, that should make one
16 more appalled that an act of violence like this was done
17 for anything. All they wanted was anything. An act of
18 violence of this nature, representing that you have a gun
19 to an innocent person who leaves and never comes back --
20 she quit that night -- over cigarettes? That should make
21 -- I argue that should make you more appalled than if it
22 was over five hundred dollars. They didn't care what
23 they had to do to get anything they could get.

24 Is it shoplifting? Absolutely not. Shoplifting is
25 when you go in and take some gum off of an isle and put

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1 it in your pocket and leave out. Not when you're acting
2 like you have a gun and you kidnap somebody, confining
3 them and keeping them from leaving. Everybody knew that.
4 It doesn't take a genius or a legal mind to know that.

5 Do not be swayed. Do not be swayed by the fact that
6 no gun was found because the law says you don't have to
7 have a gun. And why is that? Because you're just as
8 scared if you think they have a gun. Everyone thought
9 they had a gun. Ms. Kinsey outside thought they had a
10 gun. Mr. Sellers thought they had a gun. Do not be
11 swayed by that.

12 Do not be swayed by the length of time that they
13 were stopped and held there. That does not matter. How
14 long did it feel to Ms. Blocker? Remember that prism of
15 light. We can see the film. We don't view it if you're
16 not there. Forever. Forever. That's how she felt.
17 That's why you do not have to keep them forever because
18 forever she is going to remember that.

19 Do not be swayed by the officer's initial charge.
20 He didn't know what was going on. All that matters is
21 what happened in that store. Lucky for you, every one of
22 you, you know that. You know that. Not just by seeing
23 it, by experiencing it through what the victims felt. Do
24 not be swayed by that. It's a red herring. It's just
25 something to try to take your mind off the facts, off the

1 real issues in the case.

2 Now, the final thing you should not be swayed by is
3 an argument that there's reasonable doubt here. As I
4 said in my opening statement, you can't prove anything
5 beyond one hundred percent scientific certainty. If
6 there are any things in this world that you can prove if
7 there is, they are very few. The law does not require
8 that. That's why it says a reasonable doubt.

9 Of course, there are doubts. Of course, there are
10 doubts in everything almost in life, but is that doubt
11 reasonable? Is the argument for a reasonable doubt
12 reasonable or is it far fetched? If you are firmly
13 convinced that the Defendant is guilty -- the Judge will
14 tell you this -- then you must convict. And I, as a
15 representative of the State, argue that the evidence here
16 compels you to convict for the reasons that I've shown
17 you. It all fits together.

18 Thank you so much for listening so intently. It is
19 really an honor to appear before you. Thank you.

20 THE COURT: Counsel, take the easel and put it
21 where it doesn't block the view of the jury.

22 MR. SHELTON: Yes, sir, Your Honor.

23 THE COURT: Mr. Beach?

24 MR. BEACH: May it please the Court.

25 THE COURT: Yes, sir.

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1 MR. BEACH: Solicitor?

2 MR. SHELTON: Yes, sir.

3 CLOSING ARGUMENT

4 BY MR. BEACH:

5 Ladies and gentlemen, good morning. Thank you for
6 your attention to all of the evidence that's been
7 presented.

8 As I said to you when we started this case, you've
9 got a real advantage in this case rather than most of the
10 ones that we try in that you've got videotape from
11 several different angles showing exactly what happened in
12 that store that particular day. You can see. Most of
13 the time we're up here arguing about what the one witness
14 said, what another witness said or trying to put back
15 together some physical evidence. But in this case, you
16 can see the videotape. You can see what happened. And
17 what you can see is two people walk into that store.
18 They started walking back to the back toward the
19 restrooms and then toward the counter. And then Mr.
20 Clemons, the masked man, jumps in front of my client, Mr.
21 Brown, and goes to the register and starts to commit a
22 robbery.

23 Now, my position is a little different than that of
24 the State. The State says don't be swayed by reasonable
25 doubt, don't be swayed by any of this stuff. I ask you

1 to look at it and look and see what happened in that
2 store. Because our position is that two men walk into
3 the store. One man decided he was going to rob the store
4 and the other man was not a part of it.

5 Now, why do I say that? And you saw what happened.
6 You saw all the dancing over there, everybody walking
7 around or whatever they did. But let's talk about what
8 happened. These two fellows walked in, walking back, as
9 we said, back toward the restroom. Then I think they
10 drifted toward the cash register.

11 And then what happens? Here comes the masked man.
12 He jumps in front of Mr. Brown who has no mask. He has
13 nothing to protect his identity. And he goes up and
14 says, I want your money. What did he say? I don't have
15 no money. I work for Church's. That's what happened.
16 Does this man go up and start grabbing stuff or start
17 trying to get in to the register or try to do anything
18 that would indicate that he is part of any type of
19 robbery, either armed robbery or common law robbery? No.
20 He backs up. He gets out of there. He backs up back to
21 the door. He's ready to go. He's trying to figure out
22 what's going on.

23 Now, the State says that this was all planned. That
24 they went in there to rob and that that's what went on.
25 Well, ask yourself if they went in there to rob, why did

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1 only one of them have a mask? Why did the other fellow
2 not have any protection on his face whatsoever to show
3 that he was part of a robbery and to hide his identity so
4 that he wouldn't be sitting in here today answering to
5 justice? Because he wasn't part of it when he went in.
6 He wasn't a part of it. He wasn't hiding his face
7 because he didn't think he had anything to hide. And he
8 backed up to the door.

9 You saw his actions at the door. Yes, he did touch
10 the door at one time. But did he completely prevent
11 these people from leaving? Listen to the tape. I don't
12 hear anything on the tape saying, you can't go. Now,
13 they may have thought they couldn't go because he was
14 back there, but he has to do something to prevent them
15 from going to be included in this particular crime as a
16 principle or to be included in a kidnaping of these
17 folks. And he didn't do that. Why would he want to keep
18 them in anyway? To have more witnesses to the fact that
19 he didn't have a mask on his face? To have more
20 witnesses who could come up and say that he's the one who
21 did it? Why wouldn't he let them go?

22 Y'all saw the tape. Other people left that store as
23 these guys are coming in. He didn't prevent any of them
24 from leaving. He didn't prevent any of them from
25 leaving. He didn't tell them to go anywhere or do

1 anything. So is he a part of this robbery or is he -- or
2 is he a deer in the headlights? Remember, he had no
3 mask.

4 Now, remember what was said on the tape, what the
5 masked man said on the tape. Oh, he made me go in there
6 and get cigarettes. Well, we know that's a lie. He made
7 me go in there and get cigarettes. Why did he go in with
8 him? Why did he do that? That's not part of the
9 robbery.

10 Now, we haven't even talked about whether it's an
11 armed robbery or whether it's a common-law robbery.
12 Those are different crimes. An armed robbery, as the
13 Solicitor accurately pointed out to you, is a robbery,
14 the taking of somebody's goods from them with the use of
15 a deadly weapon.

16 Well, to start off with, there is no deadly weapon.
17 Nobody found it. Nobody saw one. And as you can hear
18 from the talk on the tape, nobody ever said, I've got a
19 gun. Or nobody said, stick 'em up. Nobody said anything
20 like that. Nobody said anything about a gun. Now, the
21 State -- so you cannot find him guilty of armed robbery.
22 It doesn't have to be a gun. It can be a weapon.

23 And the State says he had his hand behind his back.
24 Does that mean he has a gun, or what does that mean? We
25 don't know. I mean, you saw the video. How far behind

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1 his back was it? Was he holding up his pants? Was he
2 holding his jacket shut? What was he doing?

3 I have a friend who's in the Detroit airport one
4 time and the elastic broke in his band, and he walked
5 around holding his pants like this. God help him if he
6 happened -- he'd still be over there.

7 But did he say he had a gun? No. Did he represent
8 that he had a gun? No. It's a dangerous world if the
9 way you stand up and look at somebody might be indicative
10 of an armed robber. Didn't have a gun. 'If they had
11 planned this out, wouldn't they have had a gun? Wouldn't
12 they have had something they could represent as a gun?
13 But no, that goes back to my argument that this was not a
14 planned-out event. That this was something that the
15 masked man decided to do as he walked in that Mr. Brown
16 did not participate in, that Mr. Brown moved away from
17 the action. He stood away at the door and didn't take
18 part in this common-law robbery or armed robbery or
19 whatever would be done by the masked man.

20 No doubt what the masked man did. You can see him
21 on the tape. You can hear him saying, give me the money.
22 I want the money. Open the register. You can hear him
23 on the tape saying all that stuff. You can see that.
24 You can replay the tape if you'd like. And you can see
25 exactly what they did.

1 My man stood out of the way. Mr. Brown stood out of
2 the way. Now, maybe he should have just run, or maybe he
3 should have grabbed the masked man and said, don't do
4 this. Maybe he should have done those things. But to
5 say that he's a part of the robbery because he didn't do
6 these things I think is a terrible indictment of our
7 society.

8 Now, this thing started off as a shoplifting, and
9 then it went to a common-law robbery. and then it went to
10 an armed robbery, and then went to a kidnaping. You
11 know, if we waited another month, it might be a capital
12 crime. But if they did something, they ought to be
13 guilty of what they did.. And I don't think that the
14 evidence would show that this man participated in the
15 armed robbery.

16 The State has ignored the fact that this other
17 fellow was in there, that this other fellow was doing all
18 of this stuff and then wants you to come back with the
19 hand of one is the hand of all. Well, we submit to you
20 that there is another doctrine called mere presence,
21 which the Judge is going to charge you on, which says
22 that if the person is there and is not participating,
23 then he is not guilty of a crime. We think that's the
24 situation here.

25 Now, let's talk about kidnaping. The Solicitor said

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1 something interesting about kidnaping. He said that the
2 common thought about kidnaping is somebody grabbing
3 somebody, throwing them in a van, taking them off and
4 holding them for ransom. That is the common idea about
5 kidnaping. But kidnaping has to go farther than just
6 merely doing something that may in some way confine
7 somebody.

8 If you take the evidence most favorable to the State
9 -- and y'all can see it on the tape. You can see what
10 happened. Did he kidnap these people? Remember the
11 testimony. No, he didn't tell us where to go. No, he
12 didn't tell us to stay over here. We could have gone
13 anywhere we wanted to go except out that door, if you
14 believe what the State says. It isn't kidnaping if you
15 can leave.

16 Do you remember what the testimony was? There is an
17 emergency door right there wherever the key is, right in
18 the back of the store. They could have walked right out
19 there. That's not locked at night like the other
20 entrance is. It's not locked. They could walk out at
21 any time they wanted to walk out.

22 Now, that's not kidnaping. If he grabs them or
23 tells them, you stand right here and you stand over
24 there. 'Don't you move. If he threatens them, that's
25 different. But if they have the total freedom to go out

1 of that store, they could have gone outside with these
2 other people who were already outside flagging down the
3 deputy. They could have gone out at any time. They were
4 not held against their will. They were just told -- if
5 you believe the evidence on that tape, they were told not
6 to go out that door. But then again, listen to the tape.
7 Listen to hear if you can hear anything anybody's saying,
8 no, you can't go out that door.

9 Now, I have no doubt that Ms. Blocker was scared,
10 and I don't belittle that in any way whatsoever. But she
11 said on the stand that she was not held in one place.
12 She said on the stand that she knew about the emergency
13 exit. And if this wasn't an emergency, why not use the
14 emergency exit? She said that she could have gone out of
15 it, but she didn't.

16 The young man said he was afraid somebody was going
17 to shoot him. Nobody had presented a gun. Nobody had
18 pulled out a weapon or anything like that. And like I
19 said earlier, if he'd said -- if they had told him, you
20 stay right here, you stay over here, you don't move,
21 that's a different situation. But that's not what was
22 said. What was said is if -- it was on that tape -- and
23 I invite you to listen to the tape, to see if it's on
24 that tape, you can't go out this door. You know, there
25 were two doors there.

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1 I ask you, ladies and gentlemen, to consider this in
2 light of the evidence that was actually presented and
3 remember two things. There were two men in that
4 establishment and that there's no evidence to show that
5 Mr. Brown -- who's seated over here in the blue shirt --
6 there's no evidence that he was anything other than a
7 mere presence. And there's absolutely no evidence of an
8 armed robbery. You saw the tape. You look at the tape,
9 you think about what was in the tape and come back with a
10 verdict.

11 I ask you to find him not guilty. I ask you to find
12 him not guilty of kidnaping because I don't think there
13 was a kidnaping of any kind here. I ask you to find him
14 not guilty of armed robbery because there was no weapon.
15 There was no serious representation of a weapon. And I
16 ask you to find him not guilty of common law robbery --
17 because the Judge will tell you exactly what that is --
18 because he didn't participate in that. He didn't take
19 the things. He didn't intimidate these people. He
20 didn't do anything but be merely present on the premises
21 at that time.

22 Thank you very much.

23 THE COURT: Madam Foreperson, I'd be happy if
24 you want to check with the members of the jury, if y'all
25 would like to take a quick break. The charge will take

1 between twenty and thirty minutes. If you'd like to take
2 a break, use the restroom before I give the charge, I'll
3 be happy to do that or we'll go right on. Do you want to
4 check and see if anybody needs a break or move on?

5 MADAM FORELADY: Yes.

6 THE COURT: Are you ready to move on?

7 MADAM FORELADY: Yes.

8 THE COURT: Very well. All right.

9 CHARGE

10 BY THE COURT:

11 Madam Foreperson, ladies and gentlemen of the jury,
12 it's now my duty to charge you the law of this case. The
13 State of South Carolina has charged the Defendant, George
14 Brown, with armed robbery in indictment number 2011-GS-
15 15-00029, and the State has charged the Defendant, George
16 Brown, in indictment number 2011-GS-15-000118 with
17 kidnaping.

18 Now, I remind you first of all -- I'm holding the
19 indictments in my hand, and I remind you, Madam
20 Foreperson, that Nick is going to be looking for you to
21 sign your name on them after your verdict.

22 The fact that the Defendant was indicted, the fact
23 that the Defendant was arrested, the fact the Defendant
24 was charged is not evidence in this case, nor does it
25 create any presumption or inference of guilt. These

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1 documents that I hold in my hand, these indictments, are
2 simply the formal written instruments which contain the
3 charges made against the Defendant, and they're the
4 formal documents by which the case is ultimately brought
5 in to this Court so that you have an opportunity to hear
6 it.

7 Now, to the indictments, ladies and gentlemen, the
8 Defendant has pled not guilty. And that plea puts the
9 burden on the State of South Carolina to prove the
10 Defendant guilty beyond a reasonable doubt. A person
11 charged with committing a criminal offense in South
12 Carolina is never required to prove himself innocent. I
13 charge you, ladies and gentlemen, that it is an important
14 rule of the law that the Defendant in a criminal trial in
15 South Carolina, no matter what the seriousness of the
16 charge may be, will always be presumed to be innocent of
17 the crime for which the indictment was issued, unless
18 guilt has been proven by evidence satisfying you, the
19 jury, of that guilt beyond a reasonable doubt.

20 This presumption of innocence, ladies and gentlemen,
21 does not end when you begin your deliberations, but it
22 accompanies each and every Defendant throughout the trial
23 until you, the jury, reach a verdict of guilty based on
24 evidence satisfying you of that guilt beyond a reasonable
25 doubt.

1 The presumption of innocence is not a mere legal
2 theory. It's not just a legal phrase. It is a
3 substantial right to which every Defendant in this court
4 is entitled unless you, the jury, are satisfied from the
5 evidence of the Defendant's guilt beyond a reasonable
6 doubt.

7 Now, what is a reasonable doubt in the law? A
8 reasonable doubt is the kind of doubt that would cause a
9 reasonable person to hesitate to act. The State has the
10 burden of proving the Defendant guilty beyond a
11 reasonable doubt.

12 Some of you may have served as a juror in a civil
13 case. Of course, this is a criminal case. Some of you
14 may have served or heard about people serving as a juror
15 in a civil case where we tell the juries in civil court
16 that it is only necessary that a fact be more likely true
17 than not true. We call that in a civil case the burden
18 being the greater weight or the preponderance of the
19 evidence. In a criminal case, such as the case here, the
20 State's proof must be more than that. It must be beyond
21 a reasonable doubt.

22 Now, proof beyond a reasonable doubt, ladies and
23 gentlemen, is proof that leaves you, as a juror, firmly
24 convinced of the Defendant's guilt. There are very few
25 things in this world that any of us know with absolute

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1 certainty. And in a criminal case, the law does not
2 require proof that overcomes every possible doubt. If,
3 based on your consideration of all the evidence in this
4 case, you are firmly convinced that the Defendant is
5 guilty of the crimes charged, you must find the Defendant
6 guilty. On the other hand, if you think there is a real
7 possibility that the Defendant is not guilty, you must
8 give the Defendant the benefit of the doubt and find the
9 Defendant not guilty.

10 I remind you that during this trial you and I have
11 had certain duties to perform. As the trial judge, it's
12 been my responsibility to preside over the trial of the
13 case. I also have the duty to rule on the admissibility
14 of evidence offered during the trial. So I tell you now
15 in my charge that you're to consider only the competent
16 evidence before you.

17 If there was any evidence that I ordered stricken
18 from the record in this case during the trial, you must
19 disregard that testimony or evidence. You're to consider
20 only the testimony from the witness stand, any exhibits
21 which have been introduced into evidence, which you will
22 have with you in your jury room during your
23 deliberations. And if there were any stipulations of
24 counsel during the course of the trial.

25 In addition to those jobs as a trial judge that I

1 described about presiding and ruling on evidence, I have
2 the additional duty or job to charge you the law that
3 applies to this case. And as I told you at the outset,
4 because I like for you to understand our roles, I'm the
5 sole judge of the law. And it is your duty as jurors to
6 accept and to apply the law exactly as I now state it to
7 you.

8 If you are like some people at my house, if you
9 already have some ideas as to what the law is or some
10 opinions about what you feel the law ought to be, and it
11 does not now agree with what I tell you the law is, you
12 must put aside any opinions or preconceived ideas because
13 that oath that you took from the Clerk, you swore or
14 affirmed that you would accept and you would apply the
15 law exactly as I now state it to you.

16 In every case tried in this courtroom before a jury,
17 the jury becomes, as I told you, the sole and the
18 exclusive judges of the facts in the case. A trial
19 judge, such as myself, cannot comment on, intimate, state
20 -- a trial judge can't make any comment or statement to a
21 trial jury about the facts in a case.

22 Since you, the jury, are the sole judges of the
23 facts in this case, ladies and gentlemen, you are not to
24 infer from anything that I may have said during the
25 progress of this trial in ruling upon the admissibility

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1 of evidence or otherwise or anything that I say now
2 during the course of this charge to you that I have any
3 opinion whatsoever as to the facts in this case. The law
4 does not allow me to have an opinion as to the facts.
5 This is a matter that is solely for you, the trial jury,
6 to determine.

7 As jurors, it is your duty -- just as it's been mine
8 to preside over the trial and rule on the evidence and
9 charge you the law, it is your duty when it comes to the
10 facts to determine the effect, to determine from the
11 evidence the value, to determine from the evidence the
12 weight and ultimately the truth of the evidence that's
13 been presented during the trial of this case, which is
14 why I told you at the outset that it's so important that
15 you listen, that you observe, that you pay close
16 attention to the evidence presented during the trial of
17 the case.

18 Now, like many things in the law, ladies and
19 gentlemen, we have names for many things. There are two
20 types of evidence generally presented in a trial, and we
21 have names for that. We call it direct evidence and
22 circumstantial evidence. Direct evidence is testimony of
23 a person who claims to have actual knowledge of a fact,
24 such as an eyewitness to an event. Direct evidence is
25 evidence, which immediately establishes the main fact to

1 be proved.

2 Circumstantial evidence, as contrasted with direct
3 evidence, is proof of a chain of facts and circumstances
4 indicating the existence of a fact. Circumstantial
5 evidence is evidence that immediately establishes a
6 collateral fact from which the main fact may or may not
7 be inferred. Circumstantial evidence is based on
8 inference and not on personal knowledge or personal
9 observation.

10 The law makes absolutely no distinction between the
11 weight or the value to be given to either direct evidence
12 or circumstantial evidence, nor is a greater degree of
13 certainty required of circumstantial evidence than of
14 direct evidence. You, as the jury, should weigh or
15 consider all the evidence in this case, both direct and
16 circumstantial evidence.

17 After considering or weighing all of the evidence in
18 this case, if you are not firmly convinced of the guilt
19 of the Defendant beyond a reasonable doubt, you must find
20 the Defendant not guilty. On the other hand, after
21 weighing all the evidence in this case, both direct and
22 circumstantial, if you are firmly convinced of the guilt
23 of the Defendant beyond a reasonable doubt, you must find
24 the Defendant guilty.

25 Necessarily, you're going to have to determine the

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1 credibility or believability of the witnesses who have
2 testified during the trial of this case. It becomes your
3 duty as a juror to analyze. It becomes your duty to
4 evaluate the evidence and determine which evidence in
5 this case convinces you of it's truth.

6 In determining the believability of the witnesses
7 who have testified from this witness stand during the
8 trial of the case, you may believe one witness over
9 several witnesses. You may believe several witnesses
10 over one witness. You may believe a part of the
11 testimony of a witness and reject the remaining part of
12 the testimony of that same witness. You may believe the
13 testimony of a witness in its entirety or you may reject
14 the testimony of a witness in its entirety.

15 You may consider whether any witness has exhibited
16 to you, a jury, any interest in the outcome, any bias,
17 any prejudice or other motive in this case. You may also
18 consider -- as I told you at the beginning, you may also
19 consider the appearance or the manner of the witness,
20 which we call the demeanor of the witness while the
21 witness is on the witness stand. Anything that is in
22 evidence, you, as a jury, have the right to consider in
23 deciding the believability or credibility of the
24 witnesses who have testified during the trial of this
25 case.

1 Now, I instruct you, ladies and gentlemen, and I
2 emphasize to you that the fact that the Defendant in this
3 case did not testify is not a factor to be considered by
4 you in any way in your jury room in your deliberations
5 and in your consideration in your jury room on the
6 question of the guilt or innocence of the Defendant. It
7 must not be considered by you in any manner whatsoever.
8 A Defendant has a Constitutional right -- every Defendant
9 has a Constitutional right in a criminal trial to remain
10 silent. And the assertion of this Constitutional right
11 must not be considered by you in your deliberations.

12 I repeat, that under that oath which each of you
13 took, you are to draw no conclusion whatsoever from the
14 fact that the Defendant in this case did not testify.
15 The fact that the Defendant did not testify should not be
16 discussed in your jury room.

17 The State -- the burden of proof, as I've stated to
18 you, is on the State. The Defendant is not required to
19 prove his innocence. The burden of proof remains on the
20 State of South Carolina to prove guilt beyond a
21 reasonable doubt.

22 I charge you, ladies and gentlemen, that we have a
23 term in the law which you've heard about during argument
24 in this case, and I charge you now that mere presence at
25 the scene of the crime is not sufficient to prove someone

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1 guilty of a crime. A Defendant's presence where a crime
2 is being committed or mere association with a person who
3 commits a crime does not make a Defendant an accomplice
4 or an aider or abetter of the person committing the
5 crime.

6 The burden is on the State from evidence introduced
7 during the trial of this case to prove every element of
8 the crime charged. If you should find, after reviewing
9 all of the evidence in this case that the State has
10 proved that the Defendant was only present at a scene of
11 a crime and that they have not proved beyond a reasonable
12 doubt any other participation in the crime, then you must
13 find the Defendant not guilty. The law is that proof of
14 mere presence at the scene of the crime is not sufficient
15 to find someone guilty.

16 Now, we have another doctrine in the law, a doctrine
17 that you've heard about during argument which we call the
18 hand of one. If a crime is committed by two or more
19 people who are acting together in committing a crime
20 based on evidence introduced during the trial of the
21 case, the act of one is the act of all. A person who
22 joins with another to commit an unlawful act is
23 criminally responsible for everything done by the other
24 person which happens as a probable or natural consequence
25 of the acts done in carrying out the common plan or the

1 purpose.

2 For example, two people can be guilty of killing
3 another person when only one of the two had a gun. There
4 was only one bullet, and only one of the two fired the
5 shot that caused the death. If two or more people, based
6 on evidence introduced during the trial of the case, are
7 acting together, assisting each other in committing the
8 offense, the act of one is the act of all. Or as it is
9 sometimes said, the hand of one is the hand of all.

10 Prior knowledge that a crime is going to be
11 committed without more is not sufficient to make a person
12 guilty of that crime. Mere knowledge that another person
13 is going to commit a crime, even if the Defendant is
14 present when the crime is committed, is not sufficient to
15 convict the Defendant as a principle. Guilt as a
16 principle is shown by actual or constructive presence at
17 the scene as a result of prior arrangement. Therefore, a
18 finding of a prior arrangement, plan or common scheme is
19 necessary for a finding of guilt as a principle.

20 Based on evidence introduced during the trial of the
21 case, the State must prove beyond a reasonable doubt by
22 competent evidence the theory of the hand of one is the
23 hand of all which is why you examine the evidence in the
24 case, both direct and circumstantial, in order to reach a
25 decision.

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1 A principle in a crime is one who either actually
2 commits the crime or who is present, aiding, abetting, or
3 assisting in committing the crime. When a person does an
4 act in the presence of and with the assistance of
5 another, the act is done by both. Where two or more
6 people are acting with a common plan or a common intent
7 and they are present at the commission of a crime, it
8 does not matter who actually commits the crime. All are
9 guilty. The hand of one is the hand of all.

10 Present at the commission of a crime means to be
11 sufficiently near to aid and abet and assist in the
12 commission of the crime. However, mere presence at the
13 scene of a crime, is not sufficient to convict one as a
14 principle on the theory of aiding and abetting.

15 Intent also is a necessary element, for there must
16 have been a common design or common intent to commit the
17 crime, and the crime must have been committed pursuant
18 thereto with the person aiding and abetting by some overt
19 action based on evidence introduced during the trial of
20 the case. Intent means intending the result which
21 actually occurs, not accidentally or involuntarily.

22 Intent may be shown by the acts and the conduct of
23 the Defendant and other circumstances from which you may
24 naturally and reasonably infer intent. The State must
25 prove these elements from evidence beyond a reasonable

1 doubt.

2 Now, in order to establish criminal liability --

3 I've just talked about that for you. I've used the word

4 intent. Criminal intent is required. For example, let

5 me give you an example of what I'm talking about. It's

6 the mental state required to be proven by the State for a

7 particular crime. I'll give you examples of criminal

8 intent. It might be knowledge. It might be

9 recklessness. It might be criminal negligence. It might

10 be intent. Those are just examples of criminal intent.

11 Criminal intent must be proven by the State beyond a

12 reasonable doubt. Criminal intent is always a matter

13 that must be determined by the jury from the facts and

14 circumstances surrounding the situation based on evidence

15 introduced during the trial of the case.

16 Now, ladies and gentlemen, there is no way, no way

17 to prove intent to a mathematical certainty. There is no

18 way that medical science can dissect someone's brain, cut

19 the top of your head open and look inside and see what

20 you had in mind. So the law says, ladies and gentlemen,

21 that criminal intent may be inferred from the

22 circumstances shown to have existed based on evidence

23 introduced during the trial of the case. This is how

24 you, as a jury, make a determination of whether or not

25 any element in any crime requiring intent was present.

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1 It is not necessary obviously to establish intent by
2 direct or positive evidence, but intent may be
3 established by inference in the same way as any other act
4 or any other fact, by taking into consideration the acts
5 of the parties and all the facts and circumstances of the
6 case based on evidence introduced during the trial of the
7 case.

8 Criminal intent, ladies and gentlemen, is a mental
9 state, a conscious wrong-doing. It is up to you to
10 determine what the Defendant intended to do based on the
11 circumstances shown to have existed from evidence
12 introduced during the trial of the case. Criminal intent
13 can arise from action or a failure to act. It may arise
14 from negligence, recklessness or an indifference to duty
15 or to consequences considered by the law being the
16 equivalent of criminal intent.

17 Now, I charge you, ladies and gentlemen, in this
18 case there are -- the State has alleged different
19 offenses against the Defendant. The charges, as I told
20 you, are the Defendant, George Brown, is charged in
21 indictment 2011-GS-15-00029 with armed robbery as to
22 Sanquenetta Blocker. And indictment 2011-GS-15-000118,
23 the Defendant, George Brown, is charged with kidnaping as
24 to Sanquenetta Blocker and or Devron Brown.

25 Each of those charges, ladies and gentlemen, is a

1 separate and a distinct offense, criminal offense. You
2 must decide each charge separately on the evidence and
3 the law as I charge it to you that applies to it
4 uninfluenced by your decision as to any other charge. If
5 you find the Defendant guilty or not guilty of armed
6 robbery or the lesser-included offense of armed robbery
7 which is robbery -- sometimes called strong-arm robbery,
8 sometimes called common-law robbery and sometimes just
9 called plain robbery -- which is a lesser-included
10 offense of armed robbery, then you will also be asked on
11 a verdict form to find the Defendant either guilty or not
12 guilty of the offense of kidnaping, uninfluenced by any
13 decision that you make on the indictment for armed
14 robbery or the lesser-included offense of the robbery,
15 common law robbery or strong-arm robbery. You will be
16 asked, ladies and gentlemen of the jury, to write a
17 separate verdict of guilty or not guilty for each charge
18 following the instructions that I will give you now and
19 on your verdict form, which I will submit to you.

20 Now, I will now define the offenses for you. The
21 Defendant is charged with armed robbery. In order to
22 prove this offense, the State must prove beyond a
23 reasonable doubt that the Defendant took personal
24 property from the person or presence of another person.
25 Property is in the presence of a person if it is within

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1 that person's reach, within the person's inspection or
2 within that person's control or observation so that the
3 person could, if not overcome with violence or prevented
4 by fear, keep possession of the property. The State must
5 also prove beyond a reasonable doubt that the Defendant
6 carried the property away intending to permanently
7 deprive the owner of the property and to keep the
8 property for the Defendant's own use.

9 The slightest removal of the property or the
10 complete possession of the property, even for just an
11 instant by the Defendant, is sufficient to show a taking
12 and carrying away of the property. The taking and
13 carrying away of the property must have been done with
14 violence or by putting the owner of the property or the
15 person in control of the property in fear of violence.

16 Finally, for armed robbery, the State must prove
17 beyond a reasonable doubt that the Defendant either was
18 armed with a deadly weapon during the robbery or alleged
19 either by action or words that he was armed while using a
20 representation of a deadly weapon or any objection which
21 a person present during the commission of the robbery
22 reasonably believed to be a deadly weapon.

23 The display of a deadly weapon is not required to
24 prove armed robbery. Words coupled with a representation
25 that the Defendant possesses a deadly weapon are enough

1 if it leads a victim to reasonably believe the Defendant
2 is armed. A deadly weapon is any article, instrument or
3 substance which is likely to cause death or great bodily
4 harm.

5 Whether an instrument has been used as a deadly
6 weapon depends on the facts and circumstances of each
7 case based on evidence introduced during the trial of the
8 case. The following are just examples of instruments
9 which may be deadly weapons, depending on the evidence in
10 this case. A shotgun, a pistol, a rifle, a dirk, a
11 dagger, a knife, a slingshot, metal knuckles, a razor,
12 gasoline, a fire bomb, Molotov cocktail, lighter fluid.
13 A gun may be a deadly weapon, even if the gun is not
14 operated. Those are examples of a deadly weapon for your
15 information.

16 I charge you, ladies and gentlemen, that robbery,
17 strong-arm robbery, common-law robbery are three names
18 for the same thing. They are the lesser-included offense
19 of armed robbery. If you find that the State has failed
20 to prove that the Defendant was armed with a deadly
21 weapon, you may then, as a jury, consider whether the
22 State has proven beyond a reasonable doubt that the
23 Defendant committed robbery or strong-arm robbery or
24 common-law robbery.

25 Included within the offense of armed robbery is the

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1 lesser included offense of strong-arm, common-law, or
2 robbery. In order to prove robbery, the State must prove
3 beyond a reasonable doubt all of the elements I just
4 described to you for armed robbery, that I just explained
5 to you, except that the Defendant was armed with a deadly
6 weapon.

7 Now, in the second indictment in this case, the
8 Defendant is charged with kidnaping. The State must
9 prove this offense beyond a reasonable doubt that the
10 Defendant knowingly and unlawfully seized, confined,
11 inveigled, decoyed, kidnaped, abducted or carried away
12 another person without authority of law. To do a thing
13 unlawfully, ladies and gentlemen of the jury, is to do it
14 willfully against the law.

15 Knowingly means with knowledge or consciously, not
16 accidentally. Seize means to take hold of suddenly or
17 forcibly. Confine means to limit, to restrict or to
18 enclose within bounds, to imprison or to shut or to keep
19 in. Inveigle means to lure, to entice, or lead astray by
20 false representation, promise or other deceitful means.
21 Decoy means to lure by as if by decoy. A decoy is
22 something to entice a person into a trap. Kidnap is to
23 remove a person against his or her will by unlawful force
24 or by fraud. Abduct means to carry off secretly or by
25 force for an illegal purpose. Carry away means simply to

1 remove.

2 The State does not have to prove that the Defendant
3 did all of those things. I gave you the verbs of seize,
4 confine, inveigle, decoy, kidnap, abduct or carry away
5 another person without authority of law, knowingly and
6 unlawfully. The State does not have to prove that the
7 Defendant did all of those things. Instead, if you find
8 beyond a reasonable doubt, ladies and gentlemen, that the
9 Defendant did any of these things, you may find the
10 Defendant guilty of kidnaping.

11 Something done without authority of the law is
12 something which the law does not sanction, that the law
13 does not permit, allow, condone or provide justification
14 for. The kidnaping does not have to be for any personal
15 or monetary gain, for any illegal purpose, but it may be
16 for any reason whatsoever.

17 Now, Madam Foreperson, I told you I would prepare --
18 and I've stapled it together -- a verdict form for you.
19 Pay absolutely no attention to the order in which I wrote
20 the forms of verdict. I obviously had to write one
21 before the other. So the order in which they're written
22 has no significance whatsoever.

23 On the verdict form, I've given you a caption. I
24 put the State of South Carolina, County of Colleton, in
25 the Court of General Sessions, and I wrote the indictment

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1 numbers. I put State of South Carolina versus George
2 Brown, Defendant. I wrote verdict. And then I've got
3 question one of three questions.

4 And as to verdict, we, the jury, by unanimous
5 consent, find the Defendant, George Brown, in indictment
6 number 2011-GS-15-0029 -- that's the indictment for armed
7 robbery. And under that question I have the first form
8 of verdict, guilty of armed robbery. If that be your
9 form of verdict, ladies and gentlemen of the jury, your
10 foreperson would place a check mark on the line beside
11 that form of verdict. Under question one, we, the jury,
12 by unanimous consent, find the Defendant, George Brown,
13 in indictment number 2011-GS-15-00029 -- the second form
14 of verdict is not guilty of armed robbery. If that be
15 your form of verdict, Madam Foreperson, you would check
16 on the line beside that form of verdict. You must find
17 under question one, either guilty or not guilty of armed
18 robbery. You cannot find both. It must be one or the
19 other.

20 Question two implies that you have found the
21 Defendant not guilty of armed robbery, because you would
22 not go to question two -- which is robbery, the lesser
23 included offense -- unless you found the Defendant not
24 guilty of armed robbery. Under question two it states,
25 we, the jury, by unanimous consent, find the Defendant,

1 George Brown -- and it is either guilty of the lesser
2 included offense of robbery. If that be your verdict,
3 you would have found him not guilty of armed robbery and
4 you would check on the line, Madam Foreperson, for the
5 jury, guilty of the lesser-included offense of robbery as
6 the first form of verdict.

7 The second form of verdict under question two, if
8 you answer question two, would be not guilty of the
9 lesser-included offense of robbery. If that be your form
10 of verdict, you would check on the line for the entire
11 jury, decide that form of verdict. I wrote you
12 instructions under question two. If you find the
13 Defendant guilty of armed robbery in question one, you do
14 not need to answer the question of guilty or not guilty
15 of the lesser-included offense of robbery if you find the
16 Defendant guilty of armed robbery in question one.

17 Finally, question three. We, the jury, by unanimous
18 consent find the Defendant, George Brown, in indictment
19 number 2011-GS-15-00018, either guilty of kidnaping. If
20 that be your form of verdict, ladies and gentlemen of the
21 jury, you would check on the line beside that form of
22 verdict. Or under question three, we, the jury, by
23 unanimous consent find the Defendant, George Brown, in
24 indictment number 2011-GS-15-00018, not guilty of
25 kidnaping. If that be your form of verdict, you would

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1 check on the line beside that form of verdict. You would
2 then sign your name when you check your appropriate
3 lines, Madam Foreperson of the jury, on the line where it
4 says foreperson and fill in today's date.

5 The second page is only because there are
6 instructions in italics to me that say please indicate
7 your findings by checking the appropriate line and
8 certify the finding by the foreperson's signature. And
9 then when you've reached a verdict, you knock on the jury
10 room door, tell the bailiff that you've reached a
11 verdict. We will then bring you back into the courtroom
12 and publish your verdict when you have signed and dated
13 the verdict form.

14 Now, ladies and gentlemen, your verdict -- and one
15 other thing, even though he's behind me now walking up --
16 and that is before you leave today -- after you publish
17 your verdict -- whatever you write on this verdict form,
18 Madam Foreperson, Nick Rivera is going to ask you to
19 write the exact same words on the indictment so that we
20 have a record.

21 Now, ladies and gentlemen of the jury, your verdict
22 must be unanimous. That is, the verdict must be the
23 verdict of each and every one of you. All twelve of you
24 must agree on a verdict before the foreperson puts a
25 check mark on any verdict line.

1 Now, Madam Foreperson, ladies and gentlemen of the
2 jury, I have now charged you on the law in order to help
3 guide you to a fair and a just result in this case.
4 You're the judges of the facts in this case. And based
5 on your determination of the facts in this case and the
6 law as I have explained it to you, which you are bound to
7 accept and apply, you will soon go to your jury room and
8 I'll instruct you to begin your deliberations.

9 Now, I want to remind each of you that you've been
10 selected as fair and you've been selected as impartial
11 jurors, and you took an oath to fairly and to impartially
12 try and determine the facts of this case. And when you
13 comply with that oath, ladies and gentlemen, to do it
14 fairly and impartially, no one, no one can criticize your
15 verdict.

16 You're to decide the case based on the testimony
17 you've heard from this witness stand and any exhibits
18 which have been introduced into evidence -- which I'll
19 see that you have with you in your jury room -- and if
20 there were any stipulations entered into during the trial
21 of the case, because your decision has to be based solely
22 on the evidence. You must decide the issues in this
23 case, ladies and gentlemen, without bias or prejudice
24 towards either of the parties in this case.

25 You cannot allow yourself to be governed by any

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1 arbitrary fact, public opinion or emotion, prejudice for
2 or against any person or party. Both the Defendant and
3 the State of South Carolina have the absolute right to
4 expect that each of you on this jury, because of that
5 oath that you took, will carefully, will impartially
6 consider all of the evidence in this case and that you
7 will follow the law as I have instructed to you to be in
8 reaching your verdict in this case.

9 Now, I'm going to ask you at this time, ladies and
10 gentlemen, to retire to your jury room. I do not want
11 you to begin your deliberations yet. I will send my
12 bailiff in with the verdict form and all the exhibits
13 which have been introduced into evidence. Now, we have
14 an exhibit that requires you to be able to play it.
15 Because of that and because the equipment's out here,
16 that exhibit, which I believe is number ---

17 MADAM COURT REPORTER: 1 and 2.

18 THE COURT: --- 1 and 2.

19 Is that right, Counsel? The court reporter is
20 saying 1 and 2.

21 (No verbal response)

22 THE COURT: If you want to view that exhibit at
23 any time, it will be necessary to have the foreperson and
24 any other members of the jury to come back and sit in the
25 jury box so that you can see it and play it for you on

1 the screen rather than just hold it in your hand in the
2 jury room. I'll be happy to send the tape in, but I
3 realize you don't have the capability to play it unless
4 you come back in the courtroom which we'll be happy to do
5 if you so desire. But you'll have those exhibits with
6 you in the courtroom [sic]. Just let me know if that's
7 the jury's wish, if you want to review that in any way.
8 Do you understand? I'll send the tape in, but you let me
9 know that if that becomes your desire.

10 Please don't begin your deliberations. It might be
11 necessary for me to briefly bring you back into the
12 courtroom for some very brief additional instruction. So
13 I don't want you to begin your deliberations until I send
14 the verdict form into you along with all the exhibits
15 which have been introduced into evidence and have the
16 bailiff inform you that you may then commence your
17 deliberations.

18 I'm going to ask you to retire to your jury room.
19 My alternate jurors, please remain in the courtroom with
20 me.

21 You may retire to your jury room at this time.

22 (WHEREUPON, the jury exited the open court at
23 approximately a.m.)

24 THE COURT: I want to thank both of you for
25 your patience and your presence during the trial of this

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1 case. I'm going to give you a long lunch break. Did you
2 order lunch this morning?

3 THE ALTERNATE JURORS: Yes, sir.

4 THE COURT: Well, Ms. Pat will see that it -- I
5 can't let you go back to the jury room now because no one
6 became ill or for some reason could not continue, and
7 this completes your service in this case. However, it is
8 my understanding we're going to start right back at two
9 o'clock, ladies and gentlemen. So I'm going to give you
10 about two and half hours. Your lunch will be here in
11 about twenty minutes. And Pat will see to it that you
12 get your lunch and you can take a little break, if you'd
13 like, and be seated out in the courtroom with me at two
14 o'clock this afternoon at which time we'll start another
15 one, ladies and gentlemen, because we like to keep
16 working. I told you I'd keep the train on the track.

17 I want to thank you very much. I hope this has been
18 an educational experience for you. Has it been, ma'am?

19 THE JUROR: Yes, sir.

20 THE COURT: Good. I hope we've treated you
21 okay and that you'll save your questions about anything.
22 I can promise you that I'll answer those for you after
23 your service is concluded. But because court's still
24 going on, I have to wait. You're excused from the trial
25 of this case. And if you will -- Pat, where do you want

1 them to go? Do you want them to go in the attorney's
2 conference room?

3 THE CLERK: That will be fine.

4 THE COURT: All right. Anybody in my attorney
5 conference room on the left or the right in there?

6 THE BAILIFF: No, sir, but I don't think
7 they've cleaned them out over there.

8 THE COURT: Well, you find a room for them,
9 okay?

10 THE BAILIFF: Yes, sir.

11 THE COURT: And put them there. Not in the
12 jury room. Let them have their lunch when it arrives.
13 Thank you very much. You're excused at this time.

14 (WHEREUPON, the alternate jurors were excused and
15 exited the open court.)

16 THE BAILIFF: I got them in a room.

17 THE COURT: Thank you. Any exceptions or
18 additions to the charge from the State of South Carolina?

19 MR. SHELTON: No, thank you, Your Honor.

20 THE COURT: Any exceptions or additions to the
21 charge from the Defendant?

22 MR. BEACH: None, Your Honor.

23 THE COURT: Very well. All right. Counsel,
24 I'm going to ask you to come forward -- first of all,
25 Solicitor, one of y'all -- or I know you'll try to put

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1 this on Becky. I'm not going to let you. You're going
2 to have to take it off that easel and give it to Becky,
3 certify to me that the court reporter has all the
4 exhibits and that you're satisfied that we have all the
5 exhibits and that the bailiff may take the exhibits and
6 the jury form in to the jury and the bailiff inform the
7 jury that they may now commence their deliberations.

8 Get the tape out. I told them they could have it,
9 but they can't play it without coming back in.

10 MR. SHELTON: Okay.

11 THE COURT: It's not plugged in. You've got to
12 give it power to open it.

13 MR. SHELTON: Yeah. I think it's got battery
14 power.

15 THE COURT: Well, maybe it has enough.

16 MR. SHELTON: The little blue light is on at
17 least.

18 THE COURT: Go tell them not to smoke those
19 cigarettes.

20 THE BAILIFF: Do what?

21 THE COURT: Tell them not to smoke those
22 cigarettes.

23 THE BAILIFF: No kidding.

24 THE COURT: Has everybody had a chance to look
25 at it?

1 MR. SHELTON: Yes, sir.

2 MR. BEACH: Yes, sir, Your Honor.

3 THE COURT: All right. First of all,
4 Solicitor, are you satisfied the court reporter has all
5 the exhibits?

6 MR. SHELTON: Yes, sir, Your Honor, I am.

7 THE COURT: Do you have any objection to the
8 bailiff taking the exhibits and the jury -- verdict form
9 in to the jury and the bailiff informing the jury that
10 they may now commence their deliberations?

11 MR. SHELTON: Yes, sir. I do not have any
12 objections, Your Honor.

13 THE COURT: Very well.

14 Mr. Beach, on behalf of the Defendant, are you
15 satisfied that the court reporter has all the exhibits?

16 MR. BEACH: Yes, sir.

17 THE COURT: Do you have any objection on behalf
18 of the Defendant that the bailiff take the verdict form
19 and the exhibits in to the jury and the bailiff inform
20 the jury that they may now commence their deliberations?

21 MR. BEACH: No objection, Your Honor.

22 THE COURT: All right. Here's my verdict form.
23 Becky's got the exhibits. You've got to come around.
24 Let them know if they want to look at a tape once again,
25 they'll have to come back into the courtroom with

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1 everybody present. How many tapes have I got?

2 THE BAILIFF: Two.

3 THE COURT: I don't see but one here. Oh,
4 okay. All right. Have you got everything?

5 THE BAILIFF: Yes, sir.

6 THE COURT: Tell the jury they may now commence
7 their deliberation.

8 THE BAILIFF: Yes, sir.

9 (WHEREUPON, the verdict form and exhibits were
10 delivered to the jury to begin their deliberations
11 at approximately 11:15 a.m. after which court stood
12 at recess awaiting the verdicts of the jury.)

13 THE COURT: All right. Counsel, I see that the
14 Defendant's present in the courtroom, Mr. Brown, and with
15 his attorney Mr. Beach. The Solicitor is also present.
16 I've just been informed by the bailiff that the jury's
17 reached a verdict.

18 Anything from the State outside the presence of the
19 jury before we publish the verdict?

20 MR. SHELTON: Nothing, Your Honor.

21 THE COURT: From the Defendant before we
22 publish the verdict?

23 MR. BEACH: Nothing, Your Honor.

24 THE COURT: Bring us the jury, please.

25 (WHEREUPON, the jury entered the open court at

1 approximately 11:45 a.m.)

2 MADAM CLERK: Madam Foreperson, have you
3 reached a verdict?

4 MADAM FORELADY: We have.

5 THE COURT: You may publish the verdict, Madam
6 Clerk.

7 MADAM CLERK: In indictment number 2011-GS-15-
8 29 and 2011-GS-15-118, the State of South Carolina versus
9 George Brown, we, the jury, by unanimous consent find the
10 Defendant, George Brown, in indictment 2011-GS-15-29,
11 guilty of armed robbery.

12 We, the jury, by unanimous consent find the
13 Defendant, George Brown, in indictment 2011-GS-15-118
14 guilty of kidnaping. And this is signed by the
15 foreperson, Cheryl A. Mizzell.

16 If this is your verdict, please raise your right
17 hand.

18 (WHEREUPON, all jurors' hands were raised.)

19 MADAM CLERK: Thank you.

20 THE COURT: Let the record reflect twelve hands
21 were raised. Mr. Beach, anything from the Defendant
22 concerning the jury before I excuse the jury?

23 MR. BEACH: We would request the jury be
24 polled, Your Honor.

25 THE COURT: All right. Madam Clerk, would you

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1 please poll the jury?

2 MADAM CLERK: As I call your name, please

3 stand. Cheryl A. Mizzell. Is this your verdict?

4 THE JUROR: Yes, ma'am.

5 MADAM CLERK: Is it still your verdict?

6 THE JUROR: Yes, ma'am.

7 MADAM CLERK: Susie L. Padgett. Is this your

8 verdict?

9 THE JUROR: Yes, ma'am.

10 MADAM CLERK: Is it still your verdict?

11 THE JUROR: Yes, ma'am.

12 MADAM CLERK: Brindel M. Meyers, is this your

13 verdict?

14 THE JUROR: Yes, ma'am.

15 MADAM CLERK: Is it still your verdict?

16 THE JUROR: Yes, ma'am.

17 MADAM CLERK: Richard D. Avant, is this still

18 your verdict?

19 THE JUROR: Yes.

20 MADAM CLERK: Is it still your verdict?

21 THE JUROR: Yes, ma'am.

22 MADAM CLERK: Gergory L. Varner, is this your

23 verdict?

24 THE JUROR: Yes, ma'am.

25 MADAM CLERK: Is it still your verdict?

1 THE JUROR: Yes, ma'am.

2 MADAM CLERK: You may be seated.

3 Joan L. Juliano. Is this your verdict?

4 THE JUROR: Yes, ma'am.

5 MADAM CLERK: Is it still your verdict?

6 THE JUROR: Yes, ma'am.

7 MADAM CLERK: Mary L. Rourke. Is this your
8 verdict?

9 THE JUROR: Yes, ma'am.

10 MADAM CLERK: Is it still your verdict?

11 THE JUROR: Yes, ma'am.

12 MADAM CLERK: Ronald J. Bryant, Jr., is this
13 still your verdict?

14 THE JUROR: Yes.

15 MADAM CLERK: Is this your verdict?

16 THE JUROR: Yes.

17 MADAM CLERK: Is it still your verdict?

18 THE JUROR: Yes.

19 MADAM CLERK: Edward L. Culpepper, Sr., is this
20 your verdict?

21 THE JUROR: Yes, ma'am.

22 MADAM CLERK: Is it still your verdict?

23 THE JUROR: Yes, ma'am.

24 MADAM CLERK: Tamera J. Hiers. Is this your
25 verdict?

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1 THE JUROR: Yes, ma'am.

2 MADAM CLERK: Is it still your verdict?

3 THE JUROR: Yes, ma'am.

4 MADAM CLERK: Lavern D. Garrette. Is this your
5 verdict?

6 THE JUROR: Yes, ma'am.

7 MADAM CLERK: Is it still your verdict?

8 THE JUROR: Yes, ma'am.

9 MADAM CLERK: Vakevia D. Matthews. Is this
10 your verdict?

11 THE JUROR: Yes, ma'am.

12 MADAM CLERK: Is it still your verdict?

13 THE JUROR: Yes, ma'am.

14 MADAM CLERK: John H. Spear -- I'm sorry.
15 That's it. The jury's been polled.

16 THE COURT: Mr. Beach, the jury's been polled.
17 The verdict stands.

18 MR. BEACH: Yes, sir.

19 THE COURT: Anything further from the jury
20 before I excuse the jury?

21 MR. BEACH: No, Your Honor.

22 THE COURT: Madam Foreperson, ladies and
23 gentlemen of the jury, on behalf of Colleton County and
24 this Court, I want to thank you for your service in this
25 case. And I'm going to give you the rest of the day off

1 today. I'm going to ask you -- you deserve it. You've
2 been working hard with me this week. And your lunch is
3 going to be here. It probably already is here. And you
4 can take it to go with you home, or you can eat it here
5 in the jury room if you'd like, whichever one you'd like
6 to do. We'll serve you lunch.

7 I'm going to ask you to call the number. Each of
8 you have a card. She's got one right here. So I'll show
9 you what it looks like. Each of you have -- if you don't
10 have one of these, it's got a number on it right here in
11 the middle, 549-1775. If you don't have one of these
12 cards, raise your hand for me. All right. Everybody's
13 got one. All right.

14 In that case then, I want you to call the number on
15 that card after six o'clock tonight. I'll leave a taped
16 message whether or not I need you to come back at all,
17 and if so when, the balance of this week. It may be that
18 you're done for the week. It might be that I need you to
19 come back. I don't know yet. We'll be working this
20 afternoon after you go home, and I want you to be aware
21 of that.

22 Now, if any of you have any questions about anything
23 that's happened, if you'll save that, if I'm with you, or
24 if you want to contact me after you're no longer a juror
25 -- once you complete your jury service, I'll answer any

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1 question about anything that's happened in court for you
2 because I like for you to know anything you want to know
3 about what's going on.

4 Now, in just a matter of a minute or two, sentencing
5 is going to occur in this trial. I invite, if you'd like
6 to stay for sentencing -- because they're going to come
7 right on up here and we're going to sentence in
8 accordance with your verdict. And if you'd like to stay
9 for sentencing, I'll be happy for you to do so. You
10 don't have to if you don't want to. You're free to go on
11 home. You just call that number after six o'clock
12 tonight.

13 If anybody needs a work excuse from serving on the
14 jury this week, if they'll go ...

15 Pat, you want them to go to General Sessions?

16 MADAM CLERK: Yes, sir.

17 THE COURT: If you'll go downstairs to the door
18 that has General Sessions marked on it over the door,
19 we'll be happy -- that's the Clerk's office. We'll be
20 happy to provide you with a work excuse for serving on
21 the jury this week and you can provide it to your
22 employer. Call the number after six o'clock.

23 If you'd like to stay right here in the jury box
24 during sentencing, I'll promise you -- you can stay right
25 there. My bailiffs and I will assist you in going home

1 later if you'd like to stay for sentencing. Court is a
2 public proceeding. We're happy to have you stay. I'm
3 going to go through post-verdict motions, and then
4 sentencing will occur immediately thereafter. So it's
5 not going to be any lapse of time. If you'd like to get
6 up and have a seat out in the courtroom, you may do so.
7 Entirely as you desire. Remember that your lunch is
8 coming.

9 Is it here yet, Gerald?

10 THE BAILIFF: Yes, sir. They're bringing them
11 up now, sir.

12 THE COURT: All right. Your lunch will be
13 provided to you in your jury room and you can take that
14 home with you or eat it here. For those that want to
15 leave at this time, you can. For those that want to
16 remain in the jury box, you may do so at this time.

17 All right. Solicitor, have you got a sentence sheet
18 prepared?

19 MR. SHELTON: Yes, I do, Your Honor.

20 THE COURT: All right. Mr. Beach, are there
21 any post verdict motions?

22 MR. BEACH: Your Honor, just the standard
23 motion for a new trial based upon our previous motions
24 that have been placed on the record and based upon our
25 assertion that the jury's verdict was not based upon the

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1 evidence but was based upon some other determination.

2 And we would ask for a new trial.

3 THE COURT: All right. And for the reasons I
4 enunciated at the close of the State's case and your
5 motion for directed verdict and at the close of all the
6 evidence, I deny your motion for a new trial. I think
7 there was ample evidence from which the jury could have
8 concluded that the Defendant was guilty of both armed
9 robbery and kidnaping. I certainly understand your
10 motion, but your motion for a new trial is respectfully
11 denied. I see absolutely no reason to change the outcome
12 of the jury's decision because I think there was clearly
13 evidence from which the jury could have logically deduced
14 the guilt of the Defendant beyond a reasonable doubt.
15 And I decline your invitation to grant a new trial.

16 Solicitor, will you, Mr. Beach and your client come
17 around for sentencing at this time?

18 (WHEREUPON, Mr. Shelton, Mr. Beach and the Defendant
19 approach the bar.)

20 MR. SHELTON: May I approach, Your Honor?

21 THE COURT: You may.

22 (WHEREUPON, a bench conference was held off the
23 record.)

24 THE COURT: All right. Ladies and gentlemen of
25 the jury panel, so you'll know what's going on, we've got

1 a sentence sheet that we follow when we're sentencing a
2 Defendant. I'm going to hear from Mr. Beach in
3 mitigation. I'll also hear, if they so choose, from the
4 victim or from the Solicitor before I sentence. I'll
5 also hear from the Defendant if he chooses to address the
6 Court. The sheet that we're filling out right now has
7 certain blocks on it and one of which, so you'll know, is
8 a block that determines whether the offense that I'm
9 taking the conviction for, whether it be by jury or plea,
10 is violent, non-violent, serious, most serious, whether
11 it involves a mandatory sentence of life imprisonment
12 without parole.

13 So you'll know before we begin, kidnaping involves a
14 sentence not to exceed thirty years. That's the maximum
15 sentence for kidnaping. The maximum sentence for armed
16 robbery is not less than ten years up to thirty years.
17 And both of these offenses are violent, which has
18 significance to the amount of time you have to serve.

19 And Mr. Beach, you're going to hear me asking this
20 question so you'll know.

21 Mr. Beach will advise his client that he has to
22 assume he has to serve every day of any sentence I give
23 because you don't know if somebody's going to qualify for
24 any reduced time. That's up to the Department of
25 Corrections, not the Court or the people involved. And

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1 that's the reason that these blocks have been checked on
2 here, to make sure that what we have is accurate.

3 The sentence for armed robbery is up to -- not less
4 than ten years, up to thirty years. Thirty years for
5 kidnaping. And both of these offenses are violent, and
6 both of these offenses are most serious. Most serious
7 means that that's a strike under our three-strikes law in
8 South Carolina. And that means that if he's convicted in
9 the future, if and when he gets out of jail, if he's
10 convicted he could face the possibility of what we call
11 L-WOP, life imprisonment without any possibility of
12 parole, because he's been convicted of a most serious,
13 offense. I wanted you to know what the discussion was
14 about at the bench, so that we could get the paperwork
15 correct.

16 All right. Mr. Beach, I've obviously heard the
17 evidence in this case. I don't know his record.

18 What's his record, Solicitor?

19 MR. SHELTON: Well, it begins in 1992, Your
20 Honor, with a minor charge, a minor in possession of
21 beer. Then in 1995 he was convicted of criminal domestic
22 violence and also failure to complete a -- and also
23 resisting arrest. In 1996 he was convicted of criminal
24 domestic violence, second offense. In 1997 he was
25 convicted of driving while intoxicated, driving under the

1 influence in this State, Your Honor. In 1998, he was
2 convicted of possession of ice or cocaine base. In 2000
3 he was convicted of escape, which he received probation
4 of five years for. In 2001, he had a parole -- a
5 probation violation based on a criminal domestic violence
6 and the probation was revoked on the escape. In 2003 he
7 was charged with ---

8 THE COURT: He was revoked in full?

9 MR. SHELTON: He was revoked two years out of
10 four -- out of five, Your Honor.

11 THE COURT: All right.

12 MR. SHELTON: And in 2003, he was convicted of
13 driving under suspension, third offense or more. In 2003
14 he was convicted of assault and battery of a high and
15 aggravated nature, which he was convicted of and
16 sentenced to five years suspended to three years and five
17 years probation to follow. In 2005 he was convicted of
18 grand larceny, one thousand to five thousand. That was a
19 probation violation as well or probably a parole
20 violation at that point, Your Honor. And then in 2008,
21 he was convicted again of assault and battery of a high
22 and aggravated nature. That was in 2009 for a charge
23 that occurred in 2008. And his probation for the grand
24 larceny was revoked at that point for one year. Those
25 are all of his charges, Your Honor, that he's been

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1 convicted of that the State has a record of.

2 THE COURT: Solicitor, I notice on the sentence
3 -- thank you for his record -- you've got that he's
4 pleading and this is not ---

5 MR. SHELTON: That was a scrivener's error.

6 THE COURT: You have convicted on one and
7 pleading on the other, but they have to be consistent.

8 MR. SHELTON; A scrivener's error, Your Honor.
9 Yes, sir.

10 THE COURT: Mr. Beach, they're going to take it
11 off. I want you and your client to be able to see it.

12 MR. BEACH: Yes, sir.

13 THE COURT: Anything that's changed on there, I
14 want you to see it.

15 (Pause)

16 THE COURT: All right. Let the record reflect
17 both sentence sheets show a conviction now and not one
18 showing a plea and one showing a conviction.

19 Mr. Beach?

20 Solicitor, do any of the victims wish to be heard
21 prior to sentencing?

22 MR. SHELTON: I'm sure they would, Your Honor.
23 They had other matters to attend to today. I'll be happy
24 to speak on their behalf.

25 THE COURT: All right.

1 Mr. Beach, I'll be happy to hear from you in
2 mitigation.

3 MR. BEACH: Thank you, Your Honor. Your
4 Honor's heard all the evidence. I'm not going to go into
5 any of that. The jury has given consideration of that
6 and we accept the verdict.

7 He is thirty-seven years old, Your Honor. He has
8 two children, both of them teenagers. He pays child
9 support. They do not live with him. His record is
10 extensive, but most of it is alcohol related. Most of it
11 is related to some sort of drug or alcohol situation.
12 And I believe he was drinking this day also. It didn't
13 come out in the evidence, but I think everybody involved
14 had had something to drink that day.

15 He does take care of his family. He is on probation
16 right now, Your Honor, as I'm sure the probation is going
17 to bring that up in just a moment.

18 THE COURT: Ms. Parrish (phonic), is he on
19 probation now?

20 MS. PARRISH: Yes, sir, he is.

21 THE COURT: For assault and battery of a high
22 and aggravated nature?

23 MS. PARRISH: Yes, sir.

24 THE COURT: And this conviction would be a
25 violation of his probation?

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1 MS. PARRISH: Yes, sir.

2 THE COURT: Mr. Beach, you're aware of that?

3 MR. BEACH: Yes, sir. We were aware of it
4 coming in, Your Honor. And he is -- everything he's done
5 has involved alcoholism -- that would be the fighting, or
6 driving or something like that -- with these assault
7 cases. And we would ask the Court for mercy in this
8 case, to be as lenient as you can on him. I think that
9 whatever did happen that day did -- that he did formulate
10 any intent after he went into that store, and we would
11 ask the Court to take that into consideration.

12 THE COURT: Very well.

13 Ms. Parrish, tell me about his sentence for assault
14 and battery of a high and aggravated nature.

15 MS. PARRISH: Your Honor, he was sentenced in
16 Charleston County on indictment 09-GS-10-02563 by Judge
17 Young. He received a sentence of four years, suspended
18 to two hundred and forty-six days, credit for time served
19 and five years probation. Substance abuse counseling,
20 random testing, and stay away from the victim and several
21 addresses.

22 THE COURT: So he's got the balance of the
23 four-year sentence hanging over his head. And what is
24 the indictment numbers on that probation?

25 MS. PARRISH: 09-GS-10-02563.

1 THE COURT: Thank you. I assume your
2 recommendation is a full revocation, being with him being
3 supervised here, to run concurrent with any sentence I
4 impose as a result of this conviction; is that correct?

5 MS. PARRISH: Yes, sir, it is.

6 THE COURT: Mr. Beach, I know you've told me
7 this, but does your client understand that this
8 conviction constitutes a violation of his probation?

9 MR. BEACH: Yes, sir.

10 THE COURT: Very well.

11 Mr. Brown, is there anything you'd like to tell me
12 prior to sentencing? I'll be happy to hear from you.

13 MR. BROWN: No, sir.

14 THE COURT: Solicitor, I'll be happy to hear
15 anything you wish to tell me.

16 MR. SHELTON: Thank you, Your Honor. The State
17 would admit this isn't the heist of the century. But
18 anytime you put someone in fear of their life, I think it
19 is a very, very serious matter. And that goes without
20 saying. I know that Ms. Blocker, from speaking to her
21 personally is going to have to deal with this the rest of
22 her life. It's affected her for the rest of her life.
23 She's afraid to go into gas stations to this day. She
24 thinks she always will be. She has flashbacks. She
25 pretty much stays at home now.

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1 Now, the State's stance on this is that this
2 conviction for this Defendant is a long time coming. We
3 believe he's been given adequate second chances and third
4 chances and fourth chances with the sentences that he has
5 received in the past. Of course, with the armed robbery
6 is a minimum of ten years.

7 THE COURT: It's not the Court's intention to
8 suspend any sentence.

9 MR. SHELTON: Oh, I understand. Yes, sir.

10 THE COURT: I'm not suspending any sentence.
11 This jury has convicted him of armed robbery and
12 kidnaping and is aware of his record.

13 MR. SHELTON: Yes, sir, Your Honor.

14 THE COURT: Mr. Beach knows that it's not going
15 to be a suspended sentence.

16 MR. BEACH: Yes, sir.

17 MR. SHELTON: And I believe because there's two
18 indictments -- you have discretion -- the State's not
19 going to ask for that. These sentences are as serious as
20 they need to be. The time is as serious as they need to
21 be.

22 THE COURT: These are violent, and he has to
23 assume that he's going to serve day-for-day, it's a
24 strike. He could, if he ever -- if he gets out, he could
25 face the possibility of life in prison without any

1 possibility of parole. Plus, he's been given
2 opportunities on probation.

3 And Mr. Beach may be very right that alcohol is a
4 factor in his convictions, but you and I both know that
5 voluntary intoxication is not a defense to any crime.
6 And unless he was willing to get a hold of his life and
7 do something about his drinking problem or whatever
8 problem he had, he either is going to be supervised in
9 the community or he's going to serve the time in jail.

10 MR. SHELTON: Yes, sir, Your Honor.

11 THE COURT: The citizens of our county do not
12 need to be subjecting people that go in stores in our
13 county and hold -- whether it be for cigarettes, money or
14 any kind of property -- and hold up employees and put
15 them in fear of their life. And I understand that.

16 MR. SHELTON: Thank you, Your Honor.

17 THE COURT: Anything else you want to tell me?

18 MR. SHELTON: If we're going to put a number on
19 it, Your Honor, the State's recommendation based on his
20 prior record with the sentencing being from ten to
21 thirty, the State would request twenty-five. And we
22 respect whatever decision you come to, of course, Your
23 Honor.

24 THE COURT: Anything further from the
25 Defendant, Mr. Beach?

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1 MR. BEACH: No, Your Honor.

2 THE COURT: Mr. Brown, I listened to the
3 evidence along with the jury. And although I don't make
4 any comments to the trial jury about the evidence, I
5 believe there was clear and logical evidence from which
6 this jury could conclude, as I told your lawyer, when he
7 moved for a new trial, that your guilt could be logically
8 and fairly abduced by this jury. I have no quarrel
9 whatsoever with the jury's verdict.

10 And I recognize that your offenses go back to the
11 '90s. Grand larceny, escape, assault and battery of a
12 high and aggravated nature, drugs. And Mr. Brown, each
13 time the court -- although you got some jail time, each
14 time the court suspended your sentence and gave you an
15 opportunity, either with drug counseling, with probation.
16 You're standing right here now. You're on probation.
17 And in Charleston they tried to get you to serve some
18 time and get some help.

19 And once again, you're back in front of the Court.
20 When that happens, I don't believe in suspending any
21 sentence. I believe the citizens of this county need to
22 know that they're not going to be subjected to people --
23 thank God nobody got hurt. I'll agree with that. That's
24 the only good thing in the entire case. But I can tell
25 you, there isn't any doubt in my mind that Ms. Blocker is

1 never going to work at a convenience store in her life
2 again. And if anybody was put in fear, she was. And
3 from what I've learned in this trial, she's never even
4 been back to the store since that night. And I can well
5 understand that.

6 Now, I want you to understand first of all for the
7 sentence I impose, you're going to have to serve day-for-
8 day.

9 He's how old, Mr. Beach?

10 MR. BEACH: Thirty-seven.

11 THE COURT: Thirty-seven years old. You're
12 going to be well into your life before you ever get out
13 of jail, Mr. Brown. And for what occurred here and with
14 your record, you deserve it.

15 First of all on your probation, 2009-GS-10 ...

16 I understand it's 02563?

17 MS. PARRISH: Yes, sir.

18 THE COURT: ... I'm revoking him in full.

19 Now, first of all on the kidnaping charge, 2011-GS-
20 15-00118, the State versus George Brown, the sentence of
21 this Court is the Defendant is committed to the
22 Department of Corrections for a term of twenty years. On
23 indictment 2011-GS-15-00029, State versus George Brown,
24 armed robbery, the sentence of this Court is the
25 Defendant is committed to the State Department of

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1 Corrections for a term of twenty years.

2 I will run those sentences concurrent to each other.

3 They will also be concurrent to your full revocation from

4 Charleston County in 2009-GS-10-002563. I will seek,

5 pursuant to our Code Section § 24-13-40 that you do

6 receive credit only for the time that you've served,

7 which I understand from the Solicitor and your lawyer has

8 been since your arrest on the date of this offense,

9 November 27th. You'll get credit for the time you've

10 been in jail up until today pursuant to § 24-13-40.

11 However, that is to be calculated and applied by the

12 State Department of Corrections.

13 Thank you. As to this matter, this court now stands

14 adjourned.

15 MR. SHELTON: Thank you, Your Honor.

16 THE COURT: And ladies and gentlemen of the

17 jury, I want to thank each and every one of you for your

18 service. I appreciate that. They're going to take the

19 Defendant out now, so just sit right there.

20 (WHEREUPON, court stood at recess in this case.)

21 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Fourteenth Judicial Circuit of the State
4 of South Carolina, do hereby certify that the foregoing
5 is a true, accurate, and complete transcript of record of
6 all the proceedings had and evidence introduced in the
7 trial of the captioned case, relative to appeal, in the
8 Circuit Court for Colleton County, South Carolina, on the
9 day of 2011.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 May 10, 2011

15

16

17


Circuit Court Reporter

AW
14

FORM 5

STATE OF SOUTH CAROLINA)

County of COLLETON)

IN THE COURT OF COMMON PLEAS

13-CP-15-59

George Brown #301460)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2013 JAN 25 PM 12:26

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEASINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
Post Office Box 205 Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Colleton County General
Sessions, Walterboro, S.C.
3. Name(s) of co-defendant(s) (if any) Wesley Clemons
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011-GS-15-00029 Armed Robbery

- (b) 2011-GS-15-00118 Kidnapping
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) On or about January 27, 2011, twenty-~~same~~ (20) years.
- (b) Same date twenty (20) years concurrent.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XXX
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 5, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2012-UP-640
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel
Denied Fifth, Sixth, and Fourteenth Amendment Rights
- (b) Denied rights under Article I, Section 14 of the S.C. Constitution
- (c) Ineffective assistance of appellate counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Brief In Support Attached Hereto
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Direct Appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14)-identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Harris Beach, Esq. 115 Benson St. Walterboro, S.C.
- ii. Breen Richard Stevens P.O. Box 11589 Columbia, S.C.
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment, Trial and Sentencing
- ii. Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Ten (10) year sentence for strong-armed robbery

which was my original charge

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, George Brown, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

George Brown

SWORN to and subscribed before me this 15th
day of January, 2013.

Luduan Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, GEORGE BROWN #301460, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

George Brown
Applicant

SWORN or affirmed to and subscribed before me this
15th day of January, 2013.

Ludeman Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

George Brown, #301460
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Case No.

APPLICANT'S BRIEF IN SUPPORT

AND MEMORANDUM OF LAW

This matter comes before the Court by way of an Application for Post-Conviction Relief filed by the Applicant listed above.

PROCEDURAL HISTORY

The Applicant was arrested on November 28, 2010, and charged with strong-armed robbery. Thereafter, on January 24, 2011, The Applicant was indicted by the Colleton County Grand Jury for Armed Robbery (2011-GS-15-00029) and Kidnapping (2011-GS-15-00118). The Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Clerk of Court for Colleton County. Applicant was represented by Harris Beach, Esquire, and on January 25, 2011, the Applicant proceeded to trial before the Honorable Perry Buckner, and a jury, after which, he was found guilty of the charges. Applicant was sentenced to twenty-~~two~~ (20) years for armed robbery and twenty (20) years to run concurrent for kidnapping.

A timely Notice of Appeal was filed and he was represented on appeal by Breen Richard Stevens, Esquire, of the South Carolina Indigent Defense Office. Following the submission of an ANDERS brief by his appellate counsel, The South Carolina Court of Appeals affirmed Applicant's conviction and dismissed his appeal.

Thereafter, the Applicant filed his Application for Post-Conviction Relief. In his application, Applicant alleges

that he is being held in custody unlawfully based on the following:

1. Ineffective assistance of trial counsel.

A. Trial counsel failed to effectively challenge Applicant's arrest and failed to challenge the sufficiency of the indictments.

B. Trial counsel failed to conscientiously discharge his professional responsibilities while acting as my attorney.

C. Trial counsel failed to put forth any type of strategic defense and failed to call material witness who would have created reasonable doubt as to Applicant's guilt.

D. Trial counsel did not have Applicant's best interest in mind and failed to conduct a proper investigation to be better prepared for my trial.

E. Trial counsel never explained to me the advantages or disadvantages of putting forth a defense or not putting forth a defense.

F. Trial counsel never explained or discussed the elements of these charges with me.

G. Trial counsel never informed me of any defenses available, or the possibility of a lesser included offense.

2. Applicant was denied his Fifth, Sixth, and Fourteenth Amendment right secured to him by the Constitution of the United States.

3. Applicant was denied his Constitutional protections afforded him under Article 1, Section 14, of the South Carolina Constitution.

4. Applicant was denied his right to effective assistance of appellate counsel.

QUESTIONS

DID APPLICANT'S TRIAL COUNSEL PROVIDE INEFFECTIVE ASSISTANCE THROUGHOUT THE COURSE OF APPLICANT'S CASE?

DID TRIAL COUNSEL'S CONDUCT AND PERFORMANCE CAUSE THE APPLICANT TO BE DEPRIVED OF HIS CONSTITUTIONAL PROTECTIONS?

DID APPLICANT'S APPELLATE COUNSEL PROVIDE INEFFECTIVE ASSISTANCE OF COUNSEL BY REFUSING TO ARGUE MERITORIOUS ISSUES ON APPEAL?

[STANDARD OF REVIEW]

"In order to establish a claim of ineffective assistance of counsel, the post-conviction relief (PCR) Applicant must show that: (1) counsel's performance was deficient; and (2) there is a

reasonable probability that, but for counsel's errors, the results of the trial would have been different." Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771(2008); see also Strickland v. Washington, 466 U.S. 668(1984).

"A deficient performance by counsel is prejudicial when there is a reasonable probability that, but for counsel's errors, the outcome would have been different." Lowry v. State, 376 S.C. 499, 657 S.E.2d 760(2008).

"For purposes of a claim of ineffective assistance of counsel, a "reasonable probability" that the outcome would have been different, absent counsel's deficient performance, is a probability sufficient to undermine confidence in the outcome of the trial." Sellers v. State, 362 S.C. 182, 607 S.E.2d 82(2005).

"A criminal defendant asserting a claim of ineffective assistance of counsel need not establish prejudice, because a court will presume it, when there has been an actual or constructive denial of the assistance of counsel all together." James v. Harrison, 389 F.3d 450(C.A.4 S.C.2004).

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available evidence tending to rebut any evidence introduced by the state." McKnight v. State, 378 S.C. 33, 661 S.E.2d 354(2008).

"Attorneys are required to render services with the degree of skill, care, knowledge, and judgement usually possessed and exercised by members of the profession." Smith v. Hastie, 367 S.C. 410, 626 S.E.2d 13(Ct.App.2005).

In the instant case, Applicant's trial attorney made numerous errors from the very beginning. The Applicant was arrested for the charge of strong-armed robbery and spent two months preparing a defense for that particular offense. On January 24, 2011, Applicant was indicted on a completely different crime and had an additional offense added to what he was to be called to defend. Applicant was the required to face these "new" charges and stand trial the very next day, January 25, 2011. Trial counsel was ineffective for allowing such prosecutorial misconduct to take place.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

1. My appellate attorney failed to raise meritorious issues on appeal and there is a reasonable probability, had these issue been argued, it would have changed the outcome of my appeal.

2. Because of my appellate attorneys negligence, many meritorious issues in my case have now been forever lost or are now considered waived thereby denying me of a "full and complete bite at the apple" and causing me to be denied fundamental due process and effective assistance of appellate counsel.

Both my trial counsel's and my appellate counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and in violation of Article 1, Section 14 of the South Carolina Constitution. The Applicant was also denied his Fifth, and Fourteenth Amendment rights secured to him by the United States Constitution.

The Applicant was provided deficient representation by his trial attorney and his appellate attorney, in that their conduct was "unreasonable under the circumstances." Strickland. The outcome of Applicant's proceedings were prejudiced, and it is reasonable and probable that the outcome of his entire case would have been different had these attorney's performance not been deficient, and had Applicant's Constitutional rights not been violated.

C O N C L U S I O N

The Applicant believes that he can meet his burden of proof and hereby respectfully request that he be afforded an evidentiary hearing because this case contains genuine issues of material fact that can only be brought to light from the witness stand.

s/ George Brown

Date: 1-23, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	
	)	
	)	2013-CP-15-0059
George Brown, #301460,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 25, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted at the January 2011 term of the Colleton County Grand Jury for armed robbery (2011-GS-15-0029) and kidnapping (2011-GS-15-0118). The Applicant was represented by Harris Beach, Esquire.

On January 26, 2011, the Applicant proceeded to trial and was convicted. The Applicant was sentenced by the Honorable Perry M. Buckner, III to confinement for a period of twenty years for both kidnapping and armed robbery. The sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Breen Stevens, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences

were affirmed by the Court of Appeals. State v. Brown, No. 2012-UP-640 (S.C. Ct. App. December 5, 2012). The Remittitur was issued on February 4, 2013.

Attached herewith and incorporated herein are the records of the Colleton County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. Counsel failed to challenge the Applicant's arrest or sufficiency of the indictments.
 - b. Counsel failed to conscientiously discharge his professional responsibility while acting as an attorney.
 - c. Counsel failed to put forth a strategic or call witnesses.
 - d. Counsel failed to have Applicant's best interest in mind and did not conduct a proper investigation.
 - e. Counsel failed to explain the advantages or disadvantages of putting forth a defense.
 - f. Counsel failed to explain or discuss elements of charges.
 - g. Counsel failed to inform him of any available defenses or the possibility of a lesser included offense.
2. Ineffective assistance of appellate counsel.
 - a. Counsel failed to raise meritorious issues on appeal.
3. Denied 5th, 6th, and 14th amendment rights.
4. Denied constitutional protections of Art. 1, Sec. 14 of the South Carolina Constitution.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so

undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of

counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant's remaining allegations claim constitutional violations. However, the Applicant does not explain with any specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to

"specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss these remaining allegations for failure to comply with the Uniform Post-Conviction Procedure Act.

VI.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

GEORGE BROWN, #301460

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

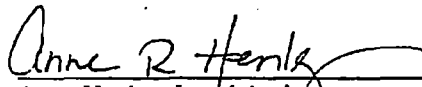
2013-CP-15-0059

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the abovecaptioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 30th day of May, 2014


 Anne Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	FOR THE 14th JUDICIAL CIRCUIT
	)	
George Brown	)	
	)	
Plaintiff	)	
vs.	)	
	)	2013-CP-15-00059
State of South Carolina	)	
	)	
Defendant,	)	AMENDED APPLICATION FOR
	)	POST CONVICTION RELIEF

To: Rutledge Johnson, Esq. Office of the South Carolina Attorney General,
PO Box 11549 Columbia, SC 29211- 1549

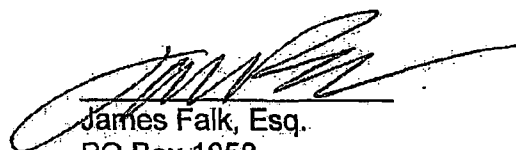
Plaintiff, by and through undersigned counsel, amends his Application for Post-Conviction Relief originally filed January 25, 2013. Plaintiff reincorporates all claims and grounds for relief set forth in his original PCR application and adds the following grounds for PCR relief.

1. Trial counsel was ineffective for failing to object the burden-shifting language uttered in the prosecution's opening statement. (T.T. p. 64).
2. Trial counsel was ineffective for failing to object to similar burden-shifting language in the Court's preliminary charge to the jury. (T.T. p. 74).
3. Trial counsel was ineffective for uttering the same burden shifting language in his opening statement. (T.T. p. 96).
4. Trial counsel failed to object to the testimony from Sargent Kurt Wallace, regarding hearsay statements made to him by co-defendant Wesley Clemons.

5. Trial counsel failed to object to the State's introduction and publication of Exhibit 2 which was an audio and video recording of an interview between Sargent Kurt Wallace and co-defendant Wesley Clemons.

6. Trial counsel was ineffective for failing to object to the solicitor's numerous "golden rule" references in his closing argument. (T.T. 253, 255, 256, 260, and 261).

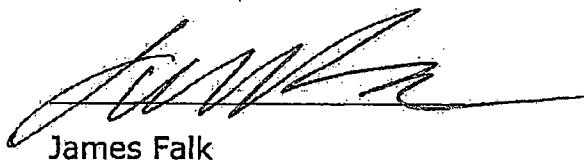
Respectfully Submitted,



James Falk, Esq.
PO Box 1058
Charleston, SC 29402
(843) 606- 6007
(843) 972 9005 fax
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on May 4, 2016 a copy of the above was deposited in the US mail to the party and address listed above. Additionally a copy of the above was emailed to the party listed above.



James Falk

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

GEORGE BROWN)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
14th JUDICIAL CIRCUIT

CASE NO.: 2013-CP-15-00059

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: JAMES FALK, Bar No. 80125 Address: PO BOX 1058, CHARLESTON 29402 Phone: 8436066007 Fax: 8439729005 E-mail: JFALKLAW@GMAIL.COM Other: _____	Defendant's Attorney: RUTLEDGE JOHNSON, Bar No. _____ Address: OFFICE OF THE ATTORNEY GENERAL PO BOX 11549, COLUMBIA SC 29211-1549 Phone: _____ Fax: _____ E-mail: _____ Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☒ Plaintiff / ☐ Defendant	
May 3, 2016 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2013-CP-07-00059

GEORGE LEGRANDE BROWN

PETITIONER

VERSUS

OCTOBER 18, 2016

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

RESPONDENT

B E F O R E:

HON. MICHAEL G. NETTLES, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PETITIONER
GEORGE LEGRANDE BROWN:

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ON BEHALF OF RESPONDENT
STATE OF SOUTH CAROLINA:

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ASSISTANT ATTORNEY GENERAL
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1 BEGINNING 9:48 A.M.

2 BY THE COURT:

3 THE COURT: Mr. Neely, the next case.

4 MR. NEELY: Thank you, your Honor. I guess since
5 we have Mr. Falk up here, I call the case of George V.
6 Brown -- or George Brown versus the State. And that's
7 the caption. 2013-CP-15-0059. And just as a way of
8 background, your Honor, the witness for the State would
9 have been Harris Beach. He has since passed away, so
10 there are no attorney witnesses at this point. My
11 understanding of the case law is that the State is
12 allowed to infer trial strategy from the transcript for
13 an attorney that is not present, so that's what we'll be
14 doing. We're relying heavily on the transcript.

15 The allegations that are being alleged by Mr. Falk,
16 in this case are that trial counsel was ineffective for
17 failing to object to burden-shifting language in the
18 prosecution's opening statement, burden-shifting
19 language in the Court's preliminary charge to the jury,
20 and burden-shifting language in trial counsel's opening
21 statement itself.

22 They also allege that trial counsel failed to
23 object regarding hearsay testimony from Sergeant Kurt
24 Wallace, and failed to object to the State's
25 introduction and publication of Exhibit 2, which was

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PCRH

1 audio/video recording from that same witness, Kurt
2 Wallace, regarding a co-defendant, Wesley Clemons. They
3 also allege that trial counsel was ineffective for
4 failing to object to *Golden Rule* references in the
5 closing argument.

6 THE COURT: Okay. And this is George Brown. Is
7 that correct?

8 MR. NEELY: Yes, sir.

9 MR. FALK: Yes, your Honor.

10 THE COURT: All right. Mr. Falk, I'm going to ask
11 you, if you could, to enumerate which -- your specific
12 grounds that you're going forward with here today, and
13 enumerate them with specificity.

14 MR. FALK: Yes, your Honor. Well, one issue --
15 I've had a cough.

16 THE COURT: That's all right. We've got the luxury
17 of time. Cough, drink water, do whatever you need to
18 do.

19 MR. FALK: Your Honor, one issue that I'm raising
20 is really the issue I raised yesterday in Mr. Williams'
21 case, regarding the *Daniels* and the burden shifting,
22 because it is very similar language. The one difference
23 in this case was, in addition to it being part of the
24 trial -- the trial court's charge, it was also -- excuse
25 me. The trial judge used that language in the charge to

1 the jury in the closing, but in addition to that, trial
2 counsel used that same language, which we think --

3 THE COURT: All right. And without getting into
4 the arguments, I just want you to enumerate. All right.
5 Now, burden shifting by --

6 MR. FALK: Burden shifting by the trial counsel.

7 THE COURT: All right. By trial counsel.

8 MR. FALK: And by the trial judge.

9 THE COURT: All right. What else?

10 MR. FALK: That of significant injury is the fact
11 that a co-defendant's statement was allowed to come in,
12 which implied -- which implicated my client, and there
13 was -- which was in violation of his confrontation
14 rights, because the co-defendant's statement came in,
15 but it was un-redacted. I think it's a *Bruton* issue.
16 And the fact that the jury not only heard the
17 investigating officer discuss the statement, they also
18 heard the actual statement.

19 THE COURT: All right. And your objection or your
20 grounds is that the trial counsel did not object to
21 that?

22 MR. FALK: Was ineffective for failing to object.

23 THE COURT: Did not object. Failure to object.
24 All right. What next?

25 MR. FALK: And then, there's the *Golden Rule*

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PCRH

1 argument that was allowed to go in, in the closing
2 argument.

3 THE COURT: All right. And what else?

4 MR. FALK: That's it.

5 THE COURT: That's it. And so, we've got burden
6 shifting by trial counsel and trial judge; a *Bruton*
7 issue with regard to a co-defendant's statement; and the
8 *Golden Rule*.

9 MR. FALK: Yes, your Honor.

10 THE COURT: Very good. If you would like to
11 summarize these in a certain fashion, and then, elicit
12 testimony, that would be fine. We'll proceed as you see
13 fit.

14 MR. FALK: Okay. Your Honor, (1) it's just the
15 sort of -- I think it's hard to consider this case
16 without sort of considering the other -- the framework
17 that it came up. My client went to trial 58 days after
18 he was arrested. The charges that he went to trial on
19 were indicted that morning. Trial counsel said --
20 advised Judge Buckner that he was not ready to proceed;
21 that he still had more witnesses to interview. Judge
22 Buckner told Mr. Beach, you and I have been practicing
23 law a long time, and this is nothing hard for you to do;
24 and there's no other case for us to try today, unless we
25 try your case.

1 Now, that is an issue that was raised on appeal in
2 an *Anders* brief. I guess there would be an issue to
3 consider whether or not he objected, whether or not
4 there was -- whether his objection denying his request
5 for a continuance was preserved for the record.

6 THE COURT: Apparently, that issue was addressed in
7 the *Anders* brief.

8 MR. FALK: It was addressed in the *Anders* brief,
9 but it was, as your Honor would, I'm sure, appreciate,
10 is that an *Anders* review is not quite the same as
11 something being fully briefed by both sides. And the
12 reason why there was an *Anders* review was because the
13 issue was not preserved. Now, I don't think that's my
14 strongest argument.

15 THE COURT: That's really not one of your -- you're
16 just laying the framework. That's not even a grounds
17 for a post-conviction relief.

18 MR. FALK: No, your Honor.

19 THE COURT: You're just sort of laying the
20 groundwork.

21 MR. FALK: As I say, I think the context and sort
22 of knowing how this case came about is important.

23 THE COURT: All right.

24 MR. FALK: Because, also, part of the discussion
25 that trial counsel had with the judge in his motion to

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PCRH

1 continue is, he was not -- he suggested that he wasn't
2 fully prepared to deal with the statement by Mr.
3 Clemons. So, and I think as we go forward, we'll see
4 that that's it. So, Mr. -- if I could have a moment,
5 please.

6 THE COURT: Sure.

7 MR. FALK: Okay. So then, if we look on Page 64,
8 Lines 2 through 5, this is part of the initial charge:

9 *And this is an actual trial. It's*
10 *not for entertainment. It's a search for*
11 *the truth in an effort to make sure that*
12 *justice is done between the parties before*
13 *the Court.*

14 Similar language comes up on Page 74.

15 THE COURT: Hang on just one second. And the
16 second one is what?

17 MR. FALK: Page 74, Lines 20 through 22:

18 *An actual trial is a fundamental*
19 *part of our democracy. It is a search for*
20 *the truth in an effort to make sure that*
21 *justice is done between the parties that*
22 *are before the Court.*

23 Judge Buckner asks then whether or not either
24 counsel had any objections to his opening remarks. And
25 on Page 90, Mr. Beach said he did not have any

1 objections to those remarks.

2 And then, on Page -- I'm sorry, that is on Page 90,
3 Line 13:

4 *Any exceptions or objections from the*
5 *State of South Carolina?*

6 *None, your Honor.*

7 *From the Defendant?*

8 *None, your Honor.*

9 Those are Lines 13 through 17.

10 Now, I'm going to go to Mr. Beach's opening
11 statement, which starts on Page 96. You have to go to
12 Line -- ask the Court to look at Line 20 on Page 96:

13 *You've got a hard task in front of you*
14 *today. You have to, as the judge said, find*
15 *the truth. That's what --*

16 THE COURT: This is from the statement of the
17 solicitor?

18 MR. FALK: No. Now, I'm going to Mr. Beach's
19 opening statement.

20 THE COURT: All right. That's 96?

21 MR. FALK: Yes, sir.

22 THE COURT: Line what?

23 MR. FALK: Well, probably just that last -- that
24 entire last paragraph, starting at Line 20.

25 *You've got a hard task in front of*

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1 you today. You have to, as the judge said,
2 find the truth. That's what verdict means.
3 It means to speak the truth.

4 And as I argued yesterday, and I would argue again
5 today, with the *Daniels* case, that that is almost
6 precisely the language that they were addressing. That
7 should not be part of it.

8 THE COURT: Let me see it. Do you have a copy of
9 that *Daniels* case?

10 MR. FALK: I have everything from that in my
11 Williams folder, and I'm sorry that that's at my office.
12 I could get you a copy, or I can send you the cite.

13 THE COURT: Do you have the cite with you?

14 MR. FALK: One moment.

15 MR. NEELY: The cite is 401 S.C. 251.

16 THE COURT: 401 S.C.?

17 MR. NEELY: 251.

18 THE COURT: And it's entitled what, again?

19 MR. NEELY: *State v Daniels*, a 2012 case, Supreme
20 Court.

21 THE COURT: It's a 2000?

22 MR. NEELY: '12.

23 THE COURT: 2012 case. All right.

24 MR. FALK: So, again, in a case like this, where
25 the State has to prove their case beyond a reasonable

1 doubt, we think it's burden-shifting language certainly,
2 framed and poorly before the jury. And I think that the
3 injury was magnified by the fact that his own counsel
4 was making that same argument; that it's a matter of a
5 search for the truth and a search for justice, not
6 necessarily whether or not the State could prove guilt
7 beyond a reasonable doubt.

8 THE COURT: Right. Mr. Falk, the -- you know, this
9 kind of argument makes for good discussion in appellate
10 opinion. And but do you really think the jury listens
11 to that?

12 MR. FALK: Your Honor, those twelve people there,
13 they've all got different backgrounds, sitting in a jury
14 box. You know what I'm saying? Maybe the majority
15 don't, but I'm only concerned about that one who does.

16 THE COURT: Right.

17 MR. FALK: And as you know, you're going to have a
18 variety of folks with different -- and some people are
19 going to be really focusing in and will know the judge
20 told us we can't do that; or yes, the judge told us
21 that's what we're looking for here. The judge said -- I
22 don't have any --

23 THE COURT: I don't think there's ever any case
24 that's ever been tried where people don't say that
25 verdict means to speak the truth. You think that all

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1 cases need to be -- need to be reversed when that was
2 said? That would be about every one of them.

3 MR. FALK: Well, your Honor, well, I'm not saying
4 that every case should be reversed, because there could
5 have also been overwhelming evidence.

6 THE COURT: All right. In *Daniels*, once again, I'm
7 going to review the case again, but in *Daniels*, was the
8 case reversed?

9 MR. FALK: No. It was more instructions for don't
10 do this again.

11 THE COURT: Right. Probably because of, in their
12 opinion, it didn't really make a lot of difference, but
13 as a matter of form, they probably could not do it that
14 way. Is that kind of what they're saying?

15 MR. FALK: I think that's an interpretation of the
16 decision, yes.

17 THE COURT: Right.

18 MR. FALK: But I really think our bigger issue here
19 is the *Bruton* -- I'm sorry, did you want to speak?

20 MR. NEELY: I just wanted to make sure -- my
21 understanding of *Daniels* was that, if the judge actually
22 used that language, and as part of his, like, closing
23 instruction to the jury, as instruction language, and
24 that was what caused the Court concern whenever you're
25 actually talk -- giving instructions to the jury about

1 how to weigh the case; as opposed to this case, where
2 you have, you know, these remarks made before the
3 trial's even begun where he's just kind of setting the
4 framework for what a trial is, what a jury's general job
5 is.

6 THE COURT: That might be a little distinction.
7 And you're saying that the fact that it was sort of an
8 insignificant comment in a preliminary discussion about
9 how a trial is to proceed.

10 MR. NEELY: Yes, your Honor. And you know, I would
11 admit that it's a little bit strange for defense counsel
12 to bring that language up, but in this case, we actually
13 have -- just kind of set up the facts. There was
14 complete video, two videos, of the alleged robbery,
15 where you can see the defendant and hear the defendant
16 during the entire video. And so, as a way of
17 background.

18 THE COURT: I don't think it's unusual for a
19 defense lawyer to do that, because, when you're talking
20 to a jury, you say, you know, we're here to search for
21 the truth, and you've got truth on your side, and right
22 and fairness and everything else.

23 MR. NEELY: And I think she was alleging an actual
24 complete instance. And so, I think that that's why all
25 in the world they tell the jury they're looking for the

1 truth, and the truth is that the man just stood in the
2 doorway, and that was the argument.

3 THE COURT: Yeah, he didn't do it. All right. All
4 right.

5 MR. FALK: Taking my argument sort of
6 chronologically, that comes first, but I don't think
7 it's my strongest argument.

8 THE COURT: Okay. And let me hear from Mr. Neely
9 the reasons why post-conviction relief ought not be
10 reversed on this argument of burden shifting and the
11 preliminary charge, and in a defense counsel's opening
12 statement.

13 MR. NEELY: Right. Your Honor has pointed out
14 quite aptly that this is very regular language for the
15 Court, and I believe the prosecutor uses this language
16 almost every time in their opening and closing arguments
17 as a framework for what justice is trying to achieve in
18 a courtroom.

19 In this case, and the case that your Honor heard
20 yesterday, and in *State v Daniels*, and the cases that
21 have reviewed this very same issue, none of them are
22 finding that this is enough to overturn a trial or to
23 sway a jury or to find counsel ineffective for failing
24 to object. It might not be the appellate court's
25 preferred language for judges to use in trial, as it --

1 as this Court has said, it could potentially cause
2 confusion.

3 But as in this case, as in every other case, the
4 judge gives a very strong statement about what
5 reasonable doubt is. And in this case, on Page 273, the
6 judge gives a very firm instruction on presumption of
7 innocence, and that the defense -- that the State has to
8 overcome the burden of proof beyond a reasonable doubt.
9 And then, the judge even goes back over that on Page 278
10 again, telling the jury the State must prove their case
11 beyond a reasonable doubt; they must be firmly convinced
12 beyond a reasonable doubt. So, any potential error, any
13 potential confusion the jury might have had, would have
14 definitely been diffused when the judge sat the jury
15 down in the trial and he gave them the instructions on
16 the law.

17 THE COURT: And I haven't read -- at this point,
18 I've not read the charge in its entirety, but I assume
19 there is a discussion about presumption of innocence and
20 the burden of proof; and that it's not the defendant's
21 burden to prove anything; it's on the State; they need
22 to prove each and every element beyond a reasonable
23 doubt; and all that's in there; isn't it?

24 MR. NEELY: Yes, your Honor.

25 THE COURT: All right.

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1 MR. FALK: Your Honor, just my response. The
2 argument that it's always been done, to the extent that
3 it addresses the burden of proof for my client's
4 protection to be found, and I think that's a *Fifth*
5 *Amendment*, due process issue. And the fact that the
6 courts have always done it doesn't mean that case law
7 always comes up, and we've said, oh, we've always done
8 this before, and now we're not doing it anymore. And I
9 think that sort of goes into *Crawford*-type cases.

10 THE COURT: Right.

11 MR. FALK: I'm just saying regularity is not a
12 defense.

13 THE COURT: I don't think there's any -- me
14 personally -- and of course, I know what *Daniels* says.
15 It says probably not good form to do that. But when you
16 say that we're searching for the truth, that's in the
17 confines of the law that I'm going to charge you and the
18 evidence that's been presented. And then, the truth
19 would be, number one, you start with the defendant's
20 presumption of innocence. Number two is, the State has
21 the burden of proof, and not the defendant, and that's
22 made clear in the charge. So, the truth is, to listen
23 to the evidence and apply it to the law as it's been
24 charged to them. And that's the truth, and that's what
25 a verdict is, is to speak the truth. You see what I'm

1 saying? I don't see where it's confusing at all.

2 MR. FALK: Well, and to use a high-profile example,
3 maybe the twelve jurors in O.J.'s case, they knew what
4 happened, but they didn't think the case was proven
5 beyond a reasonable doubt. So, I mean, there's a
6 difference. You know, the truth is what happened
7 yesterday. Well, yeah, he shot him. I think he shot
8 him, but the State hasn't proven it. So, I mean,
9 there's a difference.

10 THE COURT: All of that's set out in the -- in
11 presumption of innocence.

12 MR. FALK: Yes, your Honor.

13 THE COURT: And not only is it not -- not only is
14 it implied, it's explained to them that you just can't
15 convict somebody on suspicion. And the way that you
16 read those three charges, presumption of innocence,
17 burden of proof, and the standard of proof, it's clear
18 that the law is set up to turn people loose that have
19 done something that they haven't proven. I think the
20 law's clear on that. And every jury charge that I've
21 ever read of other judges, and every one that I've ever
22 charged sets forth that; that you can't convict somebody
23 on suspicion. No matter how strong that suspicion might
24 be, it has to be beyond a reasonable doubt. I
25 understand what you're talking about, and I'll take that

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1 under consideration.

2 MR. FALK: Thank you.

3 THE COURT: Let's move on to the next one, unless
4 you have anything else you want to say about that..

5 MR. FALK: It would just be repetitive.

6 THE COURT: Okay. Let's talk about the co-
7 defendant's statement, the *Bruton* issue.

8 MR. FALK: Yes, your Honor. Now, I went to the
9 Clerk's Office in Walterboro yesterday for her to give
10 me a certified copy of trial Exhibit Number 2, and she
11 said that it is not there. Mr. Beach doesn't -- and
12 then, I went to the Public Defender's Office for Mr.
13 Beach's file, to see maybe if he would have it. But of
14 course, it wouldn't be the trial exhibit. So, what I am
15 hoping the Court would consider is that, I think if you
16 read the transcript pages, it's clear that this was an
17 incriminating statement made by a co-defendant who was
18 not available for cross-examination. If the Court
19 thinks it needs to hear it, if we can hold the record
20 open maybe a week, and maybe I can find a copy from the
21 Prosecutor's Office. But it still won't be -- it will
22 be just his copy. It's not going to be the exhibit that
23 was with the trial, because as I said, Patricia Clark --

24 THE COURT: I assume in the transcript it makes
25 reference to the substance of the statement.

1 MR. FALK: Yes, sir.

2 THE COURT: Not in its entirety, but really what
3 I'm evaluating is what came before the jury. Isn't that
4 right?

5 MR. FALK: Yes, your Honor.

6 THE COURT: All right. Well, let's deal with that,
7 and if need be, we'll address the issue without.

8 MR. FALK: I think that I can just assume there
9 would be no point in playing the statement, unless it
10 was, because the co-defendant is not on trial.

11 THE COURT: And the co-defendant says that --

12 MR. FALK: My client was there. He was in the gas
13 station.

14 THE COURT: And they use his name.

15 MR. FALK: Yes.

16 THE COURT: Was that issue addressed in the *Anders*
17 brief?

18 MR. FALK: No, it was not. The only issue, when I
19 look at the *Anders* brief, the only issue that was
20 addressed in the *Anders* brief is the continuance.

21 THE COURT: Okay.

22 MR. FALK: And again, it may be --

23 THE COURT: Well, *Anders* brief, I think they kind
24 of look at the whole record on it. In an *Anders* brief.
25 They brief one issue, and then, the Supreme Court looks

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1 at the whole thing. Isn't that what they do?

2 MR. FALK: I don't think there's -- I think there's
3 case law out there that will say that you can't
4 necessarily presume, you know, what's the language,
5 regularity?

6 TRISTAN SHAFFER: Yeah. It's not presumption of
7 regularity.

8 MR. FALK: Yeah, it's not --

9 THE COURT: Say that again.

10 MR. FALK: I mean, I think we still have to apply
11 *Strickland*, and we can't have a presumption of
12 regularity as far as at the Court review all of the
13 possible issues in the case. I think it's my
14 understanding of the *Anders*' procedures is that, if the
15 Court finds an issue, then, they send it back for full
16 briefing.

17 THE COURT: Right. Okay.

18 MR. FALK: So, I mean, I don't think we can say
19 that the Court looked at everything or we could assume
20 that. I was discussing this issue with Mr. Shaffer this
21 morning, and that's what I got.

22 THE COURT: Let's look at the transcript.

23 MR. FALK: If we can go to Page 173. And this is
24 the testimony of Kurt Wallace. It's direct examination
25 by Ben Shelton.

1 THE COURT: All right. Let me get to it before you
2 start. All right. I'm on Page 173. What line?

3 MR. FALK: Let's start maybe about Line 12 or 13.
4 Line 13.

5 Now, that night, did you turn the
6 system on at any point?

7 He's referring to his recording system, the
8 officer's recording system. And he was interviewing Mr.
9 Clemons.

10 THE COURT: Who is the co-defendant.

11 MR. FALK: And then, Line 24:

12 Now, when you were speaking with Mr.
13 Clemons, I want you to tell the jury if he
14 said anything to implicate Mr. Brown.

15 And then, Counsel says:

16 And can I approach your Honor, --
17 If you think you need to. If you need
18 to.

19 -- before I ask that question?

20 Going on:

21 Was there anything in that interview
22 with Mr. Clemons, and what did he say to you?

23 I asked Mr. Clemons what happened.

24 Uh-huh.

25 And what took place? What was going

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1 on? Okay.

2 Then, the Court -- I think the Court's trying to
3 catch Mr. Beach's attention here. And he finally says
4 he's going to object to the testimony! And there is a
5 -- there is a conference that is off the record, and I
6 am not sure what issues were addressed during that
7 conference. But if you then look at the way the direct
8 examination follows after that, it would appear that Mr.
9 Beach maybe made an objection to whether or not there
10 was proper foundation for the video, because he goes
11 back and asks -- Mr. Shelton goes back and asks
12 foundational questions about State's Exhibit Number 2.

13 THE COURT: All right. Let's look at this:

14 *Now, that night, did you turn on the*
15 *system at any point?*

16 Answer:

17 *Yes, I did. Yes, I did. I turned on*
18 *the system, by my coming to the place. And*
19 *when the guy was tackling, I know something*
20 *was going on. That's when I turned on my*
21 *system.*

22 *But you had it on when you were*
23 *interviewing Mr. Clemons?*

24 *That's correct. That's correct.*

25 *And did it record your interview with*

1 Mr. Clemons?

2 Yes, it did.

3 Now, when you were speaking with Mr.
4 Clemons, I want you to tell the jury if you
5 said anything to implicate Mr. Brown.

6 And Mr. Shelton said:

7 And I can approach your Honor, if you
8 think we need to before I ask that question.

9 You may proceed, absent anything being
10 called to my attention.

11 Thank you, your Honor.

12 Was anything in that interview with
13 Mr. Clemons? What did he say to you?

14 I asked Mr. Clemons what happened, what
15 took place, what was going on. Okay, he --
16 just a moment.

17 Yes, sir.

18 Upon reflection, I would object to
19 this. The testimony is --

20 You don't have to say anything.

21 Counsel, approach.

22 This is the audio and the video of my
23 conversation with Mr. George Brown.

24 Okay. Thank you.

25 Have you viewed it before?

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1 Yes, sir.

2 And have you reviewed the audio of the
3 interview you had with Mr. Clemons?

4 Yes, sir.

5 Fair and accurate depiction of what
6 was said and what transpired?

7 Yes, sir, it is.

8 I still don't see where he said anything about Mr.
9 Brown.

10 MR. FALK: Then, if you fast-forward to Page 179.

11 THE COURT: 179. Okay.

12 MR. FALK: And it would appear that, starting at
13 Line 17 is when they published the exhibit.

14 THE COURT: All right. Is there anything in this
15 record where -- well, it goes on and says:

16 Did he say you were supposed to be
17 covering with a shirt?

18 That's correct.

19 And who is he referring to?

20 Answer:

21 Mr. George Brown.

22 MR. FALK: And also, on the --

23 Now I'm going to pause --

24 Going back to Page 179, Line 23:

25 Now I'm going to pause it one second.

1 Mr. Clemons is saying 'he'. Who is he
2 referring to?

3 Mr. Clemons is referring to George Brown.

4 Did he say you were supposed to be --

5 Yeah, that's when he was with the shirt.

6 Yes.

7 Who is he referring to?

8 George Brown.

9 Line 9:

10 At this point, is it your understanding
11 you're still having a conversation with
12 Mr. Clemons?

13 Yes, sir.

14 And who is he referring to?

15 And then, skipping down to 16:

16 And who is he referring to?

17 Mr. George Brown.

18 You said that -- did he say that he
19 was the one that sent me in here?

20 He said that he was the one that sent
21 me in here.

22 So, I think that certainly the point that --
23 certainly points to.

24 THE COURT: All right. Mr. Neely, I think it's
25 obvious that they played the statement, and it's clear

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1 in the transcript they made reference to the co-
2 defendant's statement about this defendant, who is on
3 trial. And I assume that Mr. Shelton was not there, and
4 did not testify in the trial.

5 MR. FALK: Clemons.

6 THE COURT: Yeah. Mr. Clemons, I mean.

7 MR. FALK: Yes. Yes, your Honor.

8 THE COURT: He did not testify.

9 MR. FALK: That is correct.

10 THE COURT: Okay. All right. Let me hear what Mr.
11 Neely has to say about that.

12 MR. NEELY: Thank you, your Honor. And just kind
13 of for background a little bit. My understanding is
14 that law enforcement did a double interview, and also
15 one-on-one interviews. And what we're talking about
16 here is a little bit over one minute of the tape. It
17 starts like, 15:52:54. And ends at a minute and a half
18 later. This is not like an extensive interview. This
19 is an officer putting the people in a patrol car, and
20 then, seeing what's going on.

21 THE COURT: All right. Tell me a little bit about
22 the facts of this case, and what this whole case is
23 about, and how this evidence is inculpatory.

24 MR. NEELY: Okay. Just starting from the very
25 beginning, it's a gas station. There was a cashier

1 behind the counter. Cashier is behind the counter with
2 a friend. There was also another lady in the gas
3 station as well, who was just getting a soft drink from
4 travels. The lady's husband was getting gas at the gas
5 pump. These two men come into the store, and Mr. Brown
6 stays at -- holding the door, just holding the door
7 open. Does not have a mask on. His face is clearly
8 visible. The man he's with pulls a bandana over his
9 face, goes to the cash register, and demands cigarettes,
10 with his hands behind his back, and all the witnesses
11 testify they all believed to have -- have a weapon.
12 There is testimony from witnesses that they tried to
13 leave, and Mr. Brown said, *no, you can't leave.*

14 On the video -- there's two videos, one from the
15 inside and one from the outside. So, you can see all
16 this happening on video. You can see Mr. Brown clearly
17 the entire time at the door, and you can see what the
18 State's alleging is his co-defendant robbing the gas
19 station of cigarettes. You don't hear that statement
20 from Mr. Brown, but it was testified to.

21 Mr. Brown told law enforcement that he was there
22 with the man, and that he told them to get cigarettes.
23 And so, the State's argument is that all of this lines
24 up really well for Mr. Beach's story that Mr. Brown was
25 there with them. He admitted to being there with them.

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1 So, you can't really deny that he was there with them.

2 THE COURT: In the video?

3 MR. NEELY: In the video. He walks up -- they walk
4 up together, and he holds the door. So, Mr. Beach's
5 arguments centered around the fact that he didn't have a
6 mask on. Neither one of the men had a pistol. And just
7 going back to the facts, law enforcement came by, and
8 the -- a person outside called law enforcement. They
9 came by; and the two co-defendants saw law enforcement
10 come by; and the co-defendant with the cigarettes
11 started running; and Mr. Brown starting walking. So, he
12 was playing the innocent card, for all intents and
13 purposes. And his co-defendant started running. And
14 what is perhaps foolhardy, perhaps heroic, the husband
15 of the lady that was in the store saw them running, and
16 ran up and clothes-lined both of them, tackling them
17 throughout. It's a good thing for him that they neither
18 one of them had a pistol.

19 So, law enforcement was going by the gas station,
20 and sees this man tackle two people coming out of the
21 store; runs over there; arrests him.

22 THE COURT: Tackled them at one time or tackled
23 one?

24 MR. NEELY: Tackled them both at the same time.
25 And so, law enforcement gets up, puts both of them under

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1 arrest, trying to figure out what's going on. I guess,
2 at that point, it's not an arrest. It'd be a temporary
3 detention to figure out what just happened, because I
4 don't think he had even received the call from the 911
5 call yet, I don't believe.

6 So, he detains them and asks them what's going on,
7 and that's kind of where this starts, where these
8 conversations start. So, you have a full video of the
9 incident. So, Mr. Beach's trial strategy is pretty
10 limited, honestly, in this trial, with video of these
11 two men walking in, the armed robbery. And then, to me,
12 if I'm Mr. Beach, the trial strategy in this case is not
13 to deny anything that this co-defendant's saying. In
14 fact, the only way you can get this co-defendant's
15 testimony in is going to be through this trial. As has
16 been stated earlier, Mr. Brown was tried very quickly
17 after this incident took place. Less than three months
18 after the incident took place, Mr. Brown was in a trial.
19 And because of that, I mean, the other -- his co-
20 defendant's charge is still pending. The man advertised
21 he had the gun. The man with the bandana on his face,
22 the man who is a much stronger case against for this
23 robbery is still in county jail, is still pending trial.
24 And if you call him as a witness, he's going to plead
25 the *Fifth*. He's going to plead the *Fifth*. You're not

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1 going to be able to get it in.

2 And so, we don't know what was said between Mr.
3 Beach, the judge, and the solicitor in this case.
4 However, it seems very reasonable to me that Mr. Beach
5 wanted to get his co-defendant's statement in, because
6 he was placing all the blame on that co-defendant,
7 professing his client's innocence. And without that
8 statement in the video, you're not going to be able to
9 pin it on him directly. And I don't think, from my
10 reading of it -- and again, I haven't watched the video;
11 we don't have the video in front of us. But from my
12 reading of this, there's no point where Mr. Brown's co-
13 defendant said, yes, this was a plan to go together.
14 This is not a full confession involving both people.
15 The closest we have to that is whenever he said he
16 should have had his shirt on, and that was the closest
17 we get to --

18 THE COURT: Say that again?

19 MR. NEELY: Where he says --

20 THE COURT: Where who says?

21 MR. NEELY: Where Clemons tells law enforcement,
22 *did he say you were supposed to be covering with a*
23 *shirt.* And that's as close to inculpatory with this co-
24 defendant as we get. But at the same time, Mr. Beach
25 has to explain why they walked in together, why his

1 person that he was with was robbing the store, while he
2 was holding the door. So, I think that's part of his
3 trial strategy to argue this is the man that did it; we
4 went there together; I told him I need cigarettes; I had
5 no idea he was going to do this. This whole incident
6 is, you know, incredibly quick.

7 THE COURT: Okay.

8 MR. NEELY: So, I guess, just kind of summarizing,
9 I think that Mr. Beach could have objected to this. I
10 do think it was an objectionable -- objectionable
11 hearsay. However, it would be the State's argument that
12 Mr. Beach wanted it to come in, so that he could cross-
13 examine and talk about the co-defendant's statements,
14 without having the co-defendant actually come to trial.

15 THE COURT: So, you're saying that the co-
16 defendant's statement, to some extent, was exculpatory
17 to Mr. Brown?

18 MR. NEELY: I would characterize that it reinforced
19 that they were going there together, which is part of
20 Mr. Brown's statement; and that he was going to get
21 cigarettes, which is part of Brown's statement. He was
22 pretty flagrantly caught red-handed, but he didn't
23 directly confess or directly implicate Mr. Brown as part
24 of a conspiracy or part of a plan to rob.

25 THE COURT: So, you're saying that it wasn't

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1 exculpatory in that it corroborated Mr. Brown's story
2 that they were there; and that the co-defendant is the
3 one who got the cigarettes; he's the one who put on the
4 mask; he's the one who got the cigarettes and ran.

5 MR. NEELY: And he's the one who pretended to have
6 the gun.

7 THE COURT: Right.

8 MR. NEELY: Whereas, Mr. Brown was standing at the
9 door with no mask on, with no gun, opportunity to have a
10 gun.

11 THE COURT: And in the statement, the fact that the
12 statement came in allowed him to argue all of those
13 things. Not to mention the fact that it's really
14 duplicative, because the video shows what happened;
15 doesn't it?

16 MR. NEELY: That's correct. Again, two videos.
17 Both show the entirety of the inside the store, and
18 also, the outside of the store. As they were --

19 THE COURT: Does the statement add anything to the
20 State's evidence that the video didn't divulge?

21 MR. NEELY: The State would argue that it does not.

22 THE COURT: And the videos, the videos obviously.

23 MR. NEELY: And both men were caught on-scene after
24 the witness tackled them, and law enforcement was
25 fortuitively on-scene.

1 THE COURT: So, your position, obviously, they
2 could have objected, pursuant to *Bruton*. A co-defendant
3 inculcating a co-defendant without him testifying,
4 clearly that's objectionable and precluded by *Bruton*.
5 But you maintain that you can infer from the fact that
6 they went up to discuss that at the Bench, there was a
7 discussion about the *Bruton* issue, and Beach decided to
8 go ahead and let it in, because it would help his
9 defense.

10 MR. NEELY: That's correct.

11 THE COURT: And not only that, it really doesn't
12 help to object to it, because there's a video of Mr.
13 Brown in the convenience store doing exactly what the
14 State says he was doing.

15 MR. NEELY: That's correct.

16 THE COURT: And that the statement was merely a
17 duplication.

18 MR. NEELY: And then, on Page -- in the cross-
19 examination of that witness by Mr. Beach, we have
20 multiple questions by Mr. Beach about Mr. Clemons to law
21 enforcement. Did Mr. Clemons --

22 THE COURT: Say that again, now.

23 MR. NEELY: We had multiple statements -- multiple
24 questions by Mr. Beach to the law enforcement officer on
25 cross-examination, asking about statements Mr. Clemons

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1 made, and I think driving in the idea that all the
2 blame, all the criminal intent was on Clemons. And I
3 don't think he would have been able to go into that
4 without that statement coming in. Or without putting
5 his client up on the stand.

6 THE COURT: And this robbery took place when?

7 MR. NEELY: It would have been some time in
8 November of 2010.

9 THE COURT: Good gracious. And you're saying the
10 co-defendant is still in detention in Colleton County on
11 these charges?

12 MR. NEELY: Not currently, but at the time. I was
13 only referencing the fact he certainly would have pled
14 the *Fifth*, or would have been advised to do that.

15 THE COURT: Right. Okay. All right. Now, what
16 happened to the co-defendant?

17 MR. NEELY: I do not know the answer to that.

18 MR. FALK: He had already been sentenced prior to
19 this trial.

20 THE COURT: And what did he get?

21 MR. FALK: He took a plea to 15.

22 THE COURT: All right. All right.

23 MR. NEELY: And just as a way of background
24 information, I believe Mr. Brown was out on probation
25 for an ABHAN charge when this took place. And so, I

1 believe the Court definitely considered that in
2 sentencing him. He also has a lengthy criminal history.

3 THE COURT: All right. Mr. Falk, anything further?

4 MR. FALK: Yes, your Honor. I think his statement
5 appears to put Mr. Brown more into the case than the
6 State has represented, in that, if you look at what we
7 originally discussed, Lines 18 through 20, he said that:

8 *He was the one that sent me in here.*

9 *You said that -- did he say that he was*
10 *the one that sent me in here?*

11 *He said that he was the one that sent me*
12 *in here.*

13 Referring to Mr. Brown. Now, the -- being an
14 active part in this, as opposed to possibly Mr. Brown
15 just being there when the guy goes up and steals
16 cigarettes, not knowing what's going on. So, I do think
17 that the statement is -- it is more putting him into the
18 crime scene than is necessary.

19 And it's a lot to presume what the trial strategy
20 is in this case, but to assume that Mr. Beach was aware
21 of the *Bruton* issue, based on the -- sort of the
22 chronology here, it really looks to me that Mr. Bruton
23 -- or that Mr. Beach was more concerned about
24 authenticating the statement, which was what the
25 objection was. Because, if he had no problems with the

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1 statement, then, why was there the bench conference?
2 So, I mean, he goes up there, and it looks like there
3 was an issue that he didn't think that a proper
4 foundation was going to be laid for the State, because
5 again, Mr. Beach's next questions are all foundational
6 as to, you know, was your recording device on; did you
7 download it onto -- is that what's on Exhibit 2; did you
8 listen to Exhibit 2; is it fairly. And that is what --
9 so, that seems more like foundation questions. And why
10 would he be objecting to the foundation if he doesn't
11 care about the statement anyway? So, I mean, I do think
12 that it's safe to assume that, you know, that seems to
13 be inferring a contradictory trial strategy. And again,
14 it seems like a lot to try to infer the trial strategy
15 from somebody who's not here to speak. And again, if
16 the Court thinks it would be helpful, maybe we should
17 hold the record open and give me a week to try to get
18 the actual statements.

19 THE COURT: I don't think it's really that -- it
20 would be necessary to do that, because we know what was
21 put before the jury by the transcript.

22 MR. FALK: But they publish -- because the court
23 reporter doesn't transcribe the statement that's
24 published. So, Exhibit 2 is published, and the court
25 reporter has not transcribe that. We just get sort of

1 -- they have to, in fact -- play-by-play.

2 THE COURT: Have you read the statement in its
3 entirety?

4 MR.. FALK: No, your Honor.

5 THE COURT: Okay. Have you read the statement in
6 its entirety?

7 MR. NEELY: The statement about the video?

8 THE COURT: The statement of the co-defendant.

9 MR. NEELY: I believe all the statements were done
10 via video. There was no written statement. So, that, I
11 mean, I think the Court can and has inferred what was
12 said during those statements via the testimony of the
13 officer and the questions that are asked about the
14 statements that were given. It's a very short video.
15 Again, this is not a lengthy interview process. This is
16 in the back of a patrol car.

17 And then, and I would point your Honor to Mr.
18 Brown's portion whenever the officer separated the two
19 co-defendants on re-direct, on Page 186 and 187. Law
20 enforcement -- the law enforcement officer says that he
21 spoke with Mr. Brown, who denied any involvement
22 whatsoever the first few times, until, after that, he
23 began cooperating with law enforcement and said, well,
24 yes, I was there with him, asked to get cigarettes.
25 That's it.

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1 And so, again, I would also argue that that covers
2 part of the argument that PCR counsel has made for your
3 Honor that co-defendant said --

4 THE COURT: Co-defendant's statement was merely a
5 duplication of what Brown already admitted to.

6 MR. NEELY: That's correct.

7 THE COURT: All right. Let's go on to the *Golden*
8 *Rule*.

9 MR. FALK: Calling Court's attention to Page 253 of
10 the transcript, Lines 11 through 17.

11 THE COURT: All right. Let me get to it. All
12 right.

13 MR. FALK: *But what you didn't see, you*
14 *weren't able to be on the ground level --*
15 Because he's referring to that they saw on the
16 videos.

17 *But what you didn't see, you weren't*
18 *on the ground level, you weren't able to be*
19 *eye-to-eye with him this close. You weren't*
20 *a single woman in that store at 11:30 at*
21 *night. The only other employee in that*
22 *store is an eighteen-year-old young man.*
23 *Think of the fear that gripped her. What*
24 *does he represent? That he has a gun.*
25 *You don't have to take the State's word for*

1 it.

2 I mean, I think that is clearly trying to put the
3 jury in the victims' shoes. Again, they go on to Page
4 255.

5 THE COURT: Well, let's look at that. Let's look
6 at this one. It's 11 through 17. Let's go over that
7 again. This is what you're saying is Mr. Shelton's
8 effort to put the jury in the shoes of the victim, I
9 assume?

10 MR. FALK: Yes, your Honor.

11 THE COURT: 53-year-old man with the most
12 experience, the man that saw everything from the outside
13 in; didn't even know what was going on inside the store
14 orally. Something must be wrong there.

15 MR. FALK: I'm referring to Lines 11 through 17, on
16 Page 253.

17 THE COURT: Oh, okay. All right. Very good. All
18 right. All right. I was looking at 252. I'm sorry.

19 All right.

20 MR. FALK: There are some more examples.

21 THE COURT: Well, let's deal with this one. What
22 do you have to say about this one, Mr. Neely?

23 MR. NEELY: Your Honor, I think this is perfectly
24 reasonable for the State to argue. In this particular
25 case, the State's trying to explain the kidnaping, other

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1 charge. Normally, whenever some layperson thinks of
2 kidnaping, what they're thinking of is somebody being
3 tied to a chair in a locked room, or locked up in a
4 house, in a basement somewhere. In this case, we have
5 about a minute and a half where people are being held in
6 the store by fear alone, and neither one of the co-
7 defendants had a weapon. And Mr. Brown didn't have a
8 mask on. So, the only thing keeping them in the store
9 was the fear that Mr. Brown had a weapon; the fear of
10 Mr. Brown, that he was involved with the man that they
11 thought had a gun at the front. And so, in the State's
12 opinion --

13 THE COURT: They're explaining it?

14 MR. NEELY: They're explaining the fear, and that's
15 all they're trying to do.

16 THE COURT: They're not saying that you ought to
17 convict him, because it might be you that gets robbed
18 tomorrow?

19 MR. NEELY: That's correct. And like, there's no
20 argument towards, this happened in your neighborhood.

21 THE COURT: In order for us to keep the community
22 safe, we need to lock up people like this so it won't
23 happen to you.

24 MR. NEELY: That's correct. So, they're explaining
25 why that cashier registerer was kidnaped, why she

1 wouldn't -- why she couldn't leave the store because it
2 was the fear that she felt under the circumstances. And
3 again, when you have -- when he's trying to explain
4 that, the fear, it's because we have a dispassionate cam
5 review for about a minute and a half, and that is
6 certainly not what the layperson would consider
7 kidnaping under normal circumstances.

8 THE COURT: All right. You want to address that
9 particular argument?

10 MR. FALK: Well, they had witness testimony. I
11 mean, there was testimony from witnesses saying that
12 they were in fear. I still think this is more trying to
13 inflame the jury to be concerned for what the woman was
14 feeling.

15 THE COURT: All right. Well, let's go to the next
16 example.

17 MR. FALK: 255, Lines 2 through 5.

18 *We don't know the fear. They testified*
19 *-- they testified to the fear. Why didn't*
20 *Devon Brown just go out the emergency exit?*
21 That might not be the best example.

22 MR. NEELY: And I think that reinforces the State's
23 position of what he was trying to explain and why he was
24 trying to explain it. Why is it kidnaping? Because the
25 fear held him there. And then, in fact, further down

1 the page, we have, on Line 24:

2 *You don't have to have a weapon. You*
3 *don't have to find a weapon. The reason*
4 *law is the way it is, is --*

5 And this is Page 256, Line 1:

6 *-- because when you think that someone*
7 *has a weapon, you're just as scared.*

8 THE COURT: All right. And once again, Page 255,
9 Line 2 through 5.

10 *Again, we see it through the prism of*
11 *the video. We weren't there. We don't*
12 *know the fear. They testified to the fear.*
13 *Why didn't Devon Brown just go out the*
14 *emergency exit? Just like kidnaping. He*
15 *didn't confine him. Just go out the emergency*
16 *exit. Well, he thought that he would be shot.*
17 *That's how he -- much he believed they had*
18 *a gun.*

19 So, you're saying that this, once again, is
20 explanation of the element of fear and apprehension and
21 belief that he had a gun, and it's legitimate for the
22 solicitor to address those concerns with the jury.

23 MR. NEELY: Correct. I believe any objections
24 would have been overruled, or at best, maybe the judge
25 would have given the solicitor just maybe a rephrase.

1 But this is certainly not the *Golden Rule* mistrial
2 level. And I think that it's perfectly reasonable to
3 make his argument. I think the objection would have
4 been overruled. He's talking about the witnesses' fear
5 and the witnesses' actions, and why the witnesses act
6 the way they did.

7 THE COURT: And not, would you be afraid, if you
8 were in this situation?

9 MR. NEELY: Correct. And then, again, we have the
10 same argument applied to the gun further down, on Page
11 255, Lines 24; and into Page 256 to Lines 2, where,
12 again, he's speaking of the witnesses' fear of the gun
13 that they believed him to have, but he, in fact, did not
14 have.

15 THE COURT: All right. What's the next example,
16 Mr. Falk?

17 MR. FALK: This may be a little bit removed from
18 the *Golden Rule*, but more trying to -- the solicitor, I
19 think, going over the line, as far as putting his own
20 opinions, passions, prejudices, into the argument. On
21 Page 260, Line 20:

22 *That should make -- I argue that*
23 *should make you more appalled than if it was*
24 *over \$500.00. They didn't care what they*
25 *had to do to get anything that they could*

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1 get.

2 So, the solicitor here is saying, in my opinion,
3 the fact that they didn't try to get more than \$500.00,
4 they just tried to get a pack of cigarettes, makes it
5 worse. I think that's an inappropriate opinion of the
6 solicitor being infused into the closing argument.

7 THE COURT: What do you have to say about that?

8 MR. NEELY: Your Honor, I think he's saying these
9 are both bad men doing bad things, and they should be
10 found guilty. I don't think there's anything wrong with
11 that. I know that, I believe trial counsel asked for a
12 petty larceny instruction to be given. I don't think it
13 ultimately was, but it seems like he's just telling the
14 jury they went for cigarettes; don't let that fact alone
15 keep you from charging them with armed robbery and
16 kidnaping, which they both deserve. The fact that
17 they're only going for cigarettes does not change the
18 kidnaping or armed robbery parts of the argument.

19 And later on in the same argument, he tells them
20 that's not shoplifting, because of that, because of the
21 armed robbery and kidnaping. I think that's where the
22 argument is lying in that circumstance, where he's
23 saying this is not somebody going into the grocery store
24 and stealing, you know, batteries; this is not
25 shoplifting; this is an armed robbery and a kidnaping

1 case.

2 THE COURT: Okay. Anything further on the *Golden*
3 *Rule*.

4 MR. FALK: Just one more reference. Again, on Page
5 261, Lines 20 through 23:

6 *All that matters is what happened in*
7 *that store. And lucky for you, every one of*
8 *you, you know that. You know that, not just*
9 *by seeing it, but by experiencing it through*
10 *-- by experiencing it through what the victims*
11 *felt.*

12 My arguments are the same for that as --

13 THE COURT: What do you have to say about that?

14 MR. NEELY: Well, I would argue that, literally,
15 the very first sentence after he says that is, *do not be*
16 *swayed by that; it's a red herring*. I don't think he's
17 saying you should be swayed by putting yourself in the
18 victims' shoes. He's certainly, directly after that,
19 saying, *do not be swayed by that; it's a red herring*. I
20 don't think that's what he's talking about. I think
21 what he's talking about is the officer didn't know what
22 was going on. Originally, the officer charged him with
23 strong-armed robbery before interviewing the witnesses
24 and deciding that they needed to indicted on armed
25 robbery. So, I think that's what he's talking in that

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1 paragraph is, you heard from the witnesses; and don't
2 even -- don't -- don't use that; don't hold that against
3 the State that he was originally charged with strong-
4 armed robbery. And again, literally directly after that
5 sentence, he says, *do not be swayed by that; it's a red*
6 *herring*. I don't think that that's trying to inflame
7 the passion of the jury or put the jury in the shoes --

8 THE COURT: So, he's explaining something that was
9 brought up by the defendants.

10 MR. NEELY: Correct.

11 THE COURT: Okay. Anything further?

12 MR. FALK: Those are my examples of the *Golden*
13 *Rule*.

14 THE COURT: All right. Anything further from that?

15 MR. FALK: No. Call my witnesses to the stand.

16 THE COURT: Certainly. Yes, sir. Please come
17 forward, Mr. Brown. I'm going to ask you, if you could,
18 it you could place your left hand on the *Bible*, and
19 raise your right hand as the Clerk administers the oath.

20 MADAM CLERK: Do you solemnly swear or affirm that
21 the testimony you give to the Court in this case shall
22 be the truth, so help you God?

23 GEORGE LEGRANDE BROWN: Yes, ma'am.

24 MADAM CLERK: You may be seated.

25 THE COURT: Mr. Brown, have a seat in that witness

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BROWN - DIRECT - FALK

1 chair. Pull up real close to that microphone. Speak
2 loudly and clearly and slowly, so the court reporter can
3 hear everything that you have to say. Let's start with
4 your full name, Mr. Brown.

5 GEORGE LEGRANDE BROWN: George LeGrande Brown.

6 THE COURT: Okay. Spell that. You say George
7 what?

8 DEFENDANT BROWN: LeGrande, L/e/G/r/a/n/d/e.

9 THE COURT: Okay. Very good. Mr. Falk.

10 GEORGE LEGRANDE BROWN

11 DIRECT EXAMINATION

12 BY MR. FALK:

13 Q Mr. Brown, prior to your case going to trial, how
14 many days left from the date of arrest did it take to
15 trial?

16 A 56 days.

17 Q Okay. Can you discuss your conversations that you
18 had with Mr. Beach during those 56 days.

19 A He came about, I don't know, I can't say for sure,
20 about two, maybe three weeks after original arrest, and
21 told me the State was offering a plea for common-law
22 robbery, 15 years, non-violent. And I told him that it
23 was too soon; that I didn't want to accept that until we
24 got further into it. And then, about a week or so after
25 that, his investigator came, and we went over video.

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BROWN - DIRECT - FALK

1 And his investigator informed me that I shouldn't plead
2 to nothing.

3 And then, about a week after that, Mr. Beach came
4 on a Sunday for about five minutes, and said we'd be
5 going to trial that Monday for strong-armed robbery, but
6 he thought the State was bluffing. When I walked into
7 the courtroom that Monday at 3:00-something that
8 afternoon, he handed me two indictments that they
9 indicted me that morning of trial. He handed me two of
10 them, and I asked him what that was. He said, they
11 indicted you this morning on this; he said, but don't
12 worry about it; I'm going to put in a motion for a
13 continuance due to the fact that we came here for a
14 strong-armed robbery trial, not an armed robbery and a
15 kidnaping trial. And that was -- that was the extent of
16 it. And next thing I know, we was picking a jury and
17 going to trial that day.

18 Q He said -- why do you think the investigator told
19 you not to go to trial?

20 A He -- yeah. He told me that -- that he wouldn't
21 plead to the -- to the common-law robbery, because
22 everything just happened. He said it was like three
23 weeks into the -- me being charged with strong-armed
24 robbery. He said, they come with something else; don't
25 plead to nothing. And next thing I know, I'm going to

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BROWN - DIRECT - FALK

1 -- Beach said that we was going to trial for strong-
2 armed robbery. When I walk in the courtroom, I'm
3 getting handed two indictments, armed robbery and a
4 kidnaping indictment. And I asked him, I said, what is
5 this? And he said they indicted me that morning. And
6 when he come back from lunch, he told the judge, he
7 said, your Honor, I didn't get these 'til I come back
8 from lunch this afternoon; I'm not ready -- not ready
9 for this. And Mr. Buckner told him, said, well, I've
10 been knowing you your whole law career; and he said, me
11 and you have handled capital cases in this courtroom,
12 and if I didn't think you was ready for this right here,
13 then, I'd grant you your motion, but I know you're
14 ready; motion denied.

15 And we -- they picked the jury; made me stand up
16 there in front of the jury; arraigned me in front of the
17 jury. This -- that's how it all took place. Me -- I
18 had seen Mr. Beach twice before all this took place. We
19 didn't talk nothing. He didn't tell me nothing about no
20 armed robbery, no kidnaping, nothing. I didn't know
21 nothing about this until the day of trial.

22 Q Did he discuss a trial strategy with you?

23 A I didn't know nothing about it. All he told me was
24 that we was going to trial for strong-armed robbery,
25 period. I didn't see him but twice for five minutes

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BROWN - DIRECT - FALK

1 each time.

2 Q Did you have any conversations with him about your
3 co-defendant's statement to the police officer?

4 A There was -- there was three of us. There was me
5 and two of my cousins. And my co-defendant, Wesley
6 Clemons, wrote a statement, and the nurse at the -- at
7 of the jail got copies of it and gave to Mr. Beach, and
8 gave it to Mr. Matthews, I think, the other lawyer was
9 Clemons' lawyer, saying that me and his brother had
10 nothing to do with it. But then, when Mr. Beach and
11 them got him to come to court, he pled the *Fifth* when
12 Matthews told him that they just upgraded the charges on
13 me; they had just indicted me. So, he pled the *Fifth*
14 the day of the trial.

15 Q Who did? Clemons did?

16 A Clemons.

17 Q Okay. But as far as the statement -- or the
18 conversation that Officer Wallace had with Mr. Clemons,
19 did he discuss that with you?

20 A Beach didn't -- the only thing Beach discussed with
21 me was a plea offer for a common-law robbery; and then,
22 we was going to trial. We never talked about nothing
23 else. I never seen him. Never got no -- my wife
24 couldn't get a hold of him. Nobody could get a hold of
25 him. Never seen him.

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BROWN - DIRECT - FALK

1 Q Did he discuss the trial -- did he discuss -- did
2 you see any of the discovery in this case?

3 A I asked for a motion. I think it's called a Rule 5
4 or a motion discovery. He said there was none. I
5 wrote, since I've been locked up, incarcerated at Leiber
6 for six years, I wrote him -- I wrote the Public
7 Defender's Office and asked for a copy of my case file,
8 what he did to prepare for my file. They told me and my
9 wife that they have nothing on a George Brown, nothing.
10 So, I -- I have got nothing, nothing but -- the only
11 thing I got is a transcript from trial. That's it. And
12 letters from you and my previous lawyer, Mr. Shaffer.

13 Q So, there was no discussion about trying to use Mr.
14 Clemons' statement to your advantage?

15 A Well, he told me he would try to get it in, if --
16 if they allowed him to.

17 Q You're talking about the written? You're talking
18 about the written?

19 A Oh, yeah. I didn't even know Mr. -- I didn't know
20 nothing about Mr. Clemons having a conversation with
21 Kurt Wallace until the day of trial when they told --

22 Q That's what I'm talking about.

23 A Yeah, I didn't know nothing about that.

24 Q Okay. So, there's no discussion about that it'd
25 be to your benefit if the jury heard his statement to

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BROWN - CROSS - NEELY

1 Officer Wallace?

2 A Mr. Beach didn't talk to me about nothing to deal
3 with no trial strategy on -- on strong-armed robbery or
4 armed robbery, because all he told me was we was going
5 to trial, to have my people bring my clothes. And that
6 was -- that was the end of our discussion until I walked
7 in the courtroom that Monday, and he handed me two
8 indictments. There was other discussion between me and
9 Mr. Beach.

10 MR. FALK: I have no further questions.

11 THE COURT: Cross-examination, Mr. Neely.

12 GEORGE LEGRANDE BROWN

13 CROSS-EXAMINATION

14 BY MR. NEELY:

15 Q Just very quickly. You just said that Beach said
16 he was going to try to get that statement in.

17 A It was the handwritten statement that the co-
18 defendant wrote. He said that he would try. He didn't
19 know if he could get it in, but he would try to.

20 MR. NEELY: Okay. No further questions.

21 BY THE COURT:

22 THE COURT: Re-direct.

23 MR. FALK: I just want to make sure we're clear
24 that there's actually two statements we're talking
25 about. There's a handwritten statement, plus the

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BY THE COURT

1 conversation with Wallace.

2 THE COURT: Very good. You may step down.

3 Anything further from anybody?

4 MR. NEELY: Just very, very briefly, your Honor.

5 One of the matters mentioned was kind of consistent with
6 the indictment. Mr. Beach did object to the fact that
7 he was direct-indicted the day of trial. In fact, he
8 went so far as to argue the *Statute 17-19-80*, which is
9 actually a capital crime statute. For a capital
10 offense, you're required three days' notice of an
11 indictment. It's called sight of indictment. And Mr.
12 Beach argued that they should at least get a portion of
13 that for a non-capital case, if not the full amount, for
14 a non-capital case, and the judge refused to go along
15 with that. So, it was objected to. It was raised by
16 Mr. Beach.

17 THE COURT: It really is -- far as the purposes for
18 this proceeding, they're not even arguing about the
19 issue of continuous, because it was appealed and
20 presented to the Supreme Court.

21 MR. NEELY: Correct.

22 THE COURT: Is that correct?

23 MR. FALK: That's correct, your Honor. But my
24 point is, is, again, we're trying to infer what the
25 trial strategy was regarding Clemons' conversations with

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BY THE COURT

1 the police officer. And I think when we look at the
2 whole picture of this case, it doesn't look like a case
3 where trial counsel had a long time to think of a trial
4 strategy. And to, you know, assume from this that he
5 purposely wanted to let this incriminating statement
6 from the co-defendant in is no more likely than to
7 assume that he just wasn't paying attention, because it
8 was all happening so fast.

9 The point still being that I believe my client was
10 prejudiced by the fact that he did not make the
11 objection to the *Bruton* objection to the admission of
12 the statement. And I think it doesn't look like this is
13 a case where somebody thought about it for a long time
14 doing the pros and cons. I think it's, you know, I
15 think he was put in a difficult situation by Judge
16 Buckner by forcing this trial on him, when he clearly
17 said he wasn't ready that day. But I don't think it is
18 any more fair to assume that he meant to do it than that
19 he just -- he missed it, but that it was still an issue
20 that we believe was extremely prejudicial to my client.

21 THE COURT: Very good. All right. I'm going to go
22 review some more of this transcript right now. I'm
23 going to take a break and do that. And I don't
24 anticipate I'm going to be able to make a decision on
25 this. These are very important matters. I want to

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BY THE COURT

1 review it and take everything under consideration. I
2 want to review some specific things while they're fresh
3 on my mind right now, and we're going to take about a
4 fifteen-minute recess.

5 MR. FALK: Thank you, your Honor.

6 OFF THE RECORD 11:03 A.M.

7 BACK ON THE RECORD 11:37 A.M.

8 BY THE COURT:

9 THE COURT: Mr. Falk, you ready?

10 MR. FALK: Thank you, your Honor. I think, in PCR
11 cases, it's always the State's argument that a
12 particular decision or lack of a decision can be
13 justified as being part of a greater trial strategy. I
14 think, in this case, since Mr. Beach is deceased and not
15 here to share with us his trial strategy, I'm just
16 cautioning the Court [sic] to go too far in inferring
17 what he meant to do, and that he had -- and that his
18 decisions were all part of a coherent trial strategy,
19 and not possibly a miss or an example of ineffective
20 assistance. That's all. Thank you.

21 THE COURT: All right. I'm going to take this.
22 I'm not going to make a decision here today. I'm going
23 to review everything, take a look at it, study it some,
24 and issue a memorandum directing an order be drafted.
25 And obviously, both counsel will get a copy of the

10-18-16 STATE V BROWN

BY THE COURT

1 memorandum. Very good.

2 MR. FALK: Thank you, your Honor.

END PROCEEDING 11:39 A.M.

11-18-16 BROWN V STATE OF SC

CERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

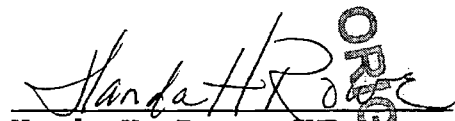
OCTOBER 18, 2016

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 18, 2016 Transcript of Post-conviction Relief Hearing is a true, accurate, and complete record of the proceedings had on said date, in the case of George LeGrande Brown versus State South Carolina, Beaufort County, Court of Common Pleas, Case Number 2013-CP-07-00059; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This certificate of reporter contains my original signature and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of this transcript must be made to the reporter. Unauthorized copying/emailing is prohibited.

Witness my signature March 13, 2017


Wanda H. Rowe, CVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

George Brown, #301460,)

Case No. 2013-CP-15-0059

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

PATRICIA L. GRANT
COLLETON COUNTY
COMMON PLEAS
2016 DEC 30 AM 8:45

This Court convened an evidentiary hearing into the matter on October 18, 2016, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Harris Beach, Esquire (hereinafter "trial counsel") is deceased. Testimony was elicited from Applicant. The Court had before it a copy of the trial transcript, the records of the Colleton County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. Applicant was indicted at the January 2011 term of the Colleton County Grand Jury for armed robbery (2011-GS-15-0029), and kidnapping (2011-GS-15-0118). Applicant was represented by Harris Beach, Esquire.

On January 26, 2011, Applicant proceeded to trial and was convicted. Applicant was sentenced by the Honorable Perry M. Buckner, III to confinement for a period of twenty years for both kidnapping and armed robbery. The sentences are to be served concurrently.

Applicant filed a timely Notice of Appeal. His appeal was perfected by Breen Stevens, Esquire of the Office of Appellate Defense. Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Brown, No. 2012-UP-640 (S.C. Ct. App. December 5, 2012). The Remittitur was issued on February 4, 2013.

II. ALLEGATIONS

On October 18, 2016, at the evidentiary hearing, Applicant moved forward on three grounds:

1. Counsel was ineffective for failing to object to statements in the trial judge's preliminary charge, which improperly shifted the burden of proof to the Applicant.
2. Counsel was ineffective for failing to object to the statement of Applicant's codefendant at trial.
3. Counsel was ineffective for failing to object to the Solicitor's closing arguments, which improperly asked the jury to place themselves in the victim's place.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this first prong, the proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 688.

This Court begins with a strong presumption trial counsel made all significant decisions in the exercise of reasonable professional judgment. Applicant has not overcome this presumption. The Court finds it can be reasonably inferred from the transcript that trial counsel

chose not to object to the Doyle¹ violation in order to cross-examine law enforcement on their failure to obtain forensic evidence, consistent with his prior attacks on the evidence of the case. Therefore, this Court finds trial counsel was not deficient.

Applicant alleges the purported deficiencies prejudiced him and resulted in an unfair trial. The Court finds Applicant was not prejudiced by trial counsel's lack of objection. Applicant failed to meet his burden to prove prejudice sufficient to undermine confidence in the result of the trial for constitutional concerns raised in Doyle as applied by Gantt v. State, 354 S.C. 183, 80 S.E.2d 133 (2003).

A. Burden Shifting

Applicant alleges the following statements made in trial judge's preliminary charge were an improper shift of the burden of proof from the State to Applicant. Applicant argues trial counsel should have objected to the forgoing comments. The excerpts are as follows:

That's for entertainment. And this – an actual trial is not for entertainment. It's a search for the truth in an effort to make sure that justice is done between the parties before the Court. Transcript page 64: 1-5.

It is a search for the truth in an effort to make sure that justice is done between the parties that are before the Court. Transcript page 74: 20-22.

Taking the preliminary charge and the jury instructions as a whole, it was made clear to the jury that defendant was presumed to be innocent, the state has the burden of proof, and the burden is beyond a reasonable doubt.

¹ Doyle v. Ohio, 426 U.S. 610, 96 S. Ct. 2240, 49 L. Ed. 2d 91 (1976)

Petitioner argues Daniels² and Aleksey³ stand for the proposition that trial counsel's failure to object to the Court's "seek the truth" language during preliminary remarks prejudiced Applicant. This Court disagrees and finds, similar to Aleksey, the trial court gave an adequately complete instruction, which remedied any potential burden-shifting. "There is not a reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt. The trial court's instructions concerning seeking the truth were given in the context of the jury's role in determining the credibility of witnesses." State v. Aleksey, 343 S.C. 20, 28-29, 538 S.E.2d 248, 252 (2000).

This Court finds the instant case distinguishable from Daniels. In Daniels, the Court's majority opinion was the matter was not preserved for review. In the consenting opinion, the Court still affirmed the conviction, but did so under a harmless error analysis. The concurring opinion distinguished Daniels from Aleksey as follows:

In the instant case, the trial court included several improper statements as part of his jury instruction. However, the trial court prefaced those remarks with full and adequate instructions on reasonable doubt. It is troubling that the trial court concluded his jury instruction with statements that could have distracted the jury from their core functions: to examine evidence and make factual determinations, weigh credibility, and perhaps most importantly, decide whether the State has proven its case beyond a reasonable doubt.

State v. Daniels, 401 S.C. 251, 260, 737 S.E.2d 473, 477 (2012).

Whereas in Aleksey:

The "seek" language here did not appear in either the reasonable doubt or circumstantial evidence charges, but in the instructions on juror credibility. Both the reasonable doubt and circumstantial evidence charges were complete and proper.

State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251-52 (2000).

² State v. Daniels, 401 S.C. 251, 260, 737 S.E.2d 473, 478 (2012)

³ State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000)

In the instant case, the trial court's "seek the truth" language pertained only to the trial judge's opening remarks before the start of the trial. They were cured by the trial judge's complete review of the State's burden and the correct charges on reasonable doubt and circumstantial evidence, which were given at the end of the trial.

Applicant further argues that trial counsel's opening statement was improper burden shifting and that he was ineffective in making these statements. The statement is as follows:

You've got a hard task in front of you today. You have to, as the Judge said, find the truth. That's what verdict means. It means to speak the truth. And this case is a case of armed robbery and kidnapping, and that's what the State has charged my client, Mr. Brown, with committing.

Transcript page 96: 20-25.

Trial counsel's argument, during the trial, was that Applicant's story was the truth. There was no prejudice to Applicant from trial counsel asserting his story as the truth and asking the jury to find his client not guilty. Furthermore, the evidence in this case was overwhelming. Video evidence as well as witness testimony proved the guilt of Applicant. "The presence of overwhelming evidence of guilt negates any claim that counsel's performance could have reasonably affected the result of the defendant's trial." Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), *cert. denied*, 535 U.S. 1114, 122 S.Ct. 2332 (2002); Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt). Therefore, this allegation is dismissed.

B. Bruton Issue

Trial counsel is deceased and, therefore, unable to testify in his own defense. The Court

strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. When trial counsel cannot be present to defend their strategy, all articulable arguments, which can be inferred from the transcript as trial strategy, can be argued in favor of competence. "A strategic or tactical decision does not have to be articulated by counsel on the record; counsel doesn't to have to personally identify his or her thinking. It is enough that the record shows a basis for strategy, not that counsel announce that strategy on the record." Wood v. Allen, 558 U.S. 290, 130 S.Ct. 841 (2010). Strickland itself recites that there are countless ways to provide effective assistance and even the best lawyers would not defend a particular client in the same way. 466 U.S. at 689. When counsel focuses on some issues to the exclusion of others, there is a strong presumption of doing so for tactical reasons rather than sheer neglect. Yarborough v. Gentry, 540 U.S. 1, 8, 124 S.Ct. 1, 5 (2003).

Trial counsel could have objected to the introduction of the statement of codefendant Mr. Clemmons. However, taking the transcript as a whole, it is clear that it was justifiable trial strategy to let it in. Moreover, the statement is duplicative of the video that was played at trial that obviously put Applicant at the scene and participating in the robbery.

Furthermore, the statement of Applicant was also duplicative. He admitted to the substance of the statement of codefendant Mr. Clemmons. A close look at trial counsel's cross-examination of the investigator who took Mr. Brown's statement reveals it was a reasonable trial strategy to allow the statement to be admitted. Additionally, at the evidentiary hearing, Applicant conceded he and trial counsel were hopeful the codefendant's statement would be admitted. Applicant also testified during cross-examination that both he and trial

counsel wanted the statement to come in, in an attempt to shift the responsibility to Applicant's codefendant Mr. Clemmons. Therefore, this allegation is denied.

C. Golden Rule

Applicant alleges he was prejudiced by trial counsel's failure to object to an impermissible 'Golden Rule' argument made by the solicitor in his closing argument. "A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice." State v. Reese, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006).

But what you didn't see -- you weren't able to be on the ground level. You weren't able to be eye-to-eye with him this close. You weren't a single woman in that store at eleven-thirty at night and the only other employee in that store an eighteen-year-old young man.

Trans. page 255: 2-5.

This excerpt does not violate the Golden Rule. It was merely a legitimate argument to explain the element of fear as it related to the charge of kidnapping and armed robbery.

Again, we see it through the prism of the video. We weren't there. We don't know the fear. They testified to the fear. Why didn't Devron Brown just go out the emergency exit? It's not kidnapping.

Trans. page 255: 2-5.

This is also a legitimate argument addressing how fear of a gun can support a conviction of kidnapping and armed robbery.

He didn't know what was going on. All that matters is what happened in the store. Lucky for you, every one of you, you know that. You know that. Not just by seeing it, by experiencing it through what the victims felt.

Trans. page 261: 20-23.

This does not violate the Golden Rule, but is instead an explanation of why the jury should not consider the fact that defendant was initially charged with strong armed robbery.

Again, we see it through the prism of the video. We weren't there. We don't know the fear. They testified to the fear. Why didn't Devron Brown just go out the emergency exit? It's not kidnapping.

Trans. Page 255: 2-5.

The way the jury experienced and came to know the victims' fear was through the victim's extensive testimony. Fear was the only force that kept the victim's kidnapped in the store. Fear of a firearm, which did not in actuality exist, was the only evidence by which armed robbery could be asserted. The jury judged the fear in both cases to be reasonable and found the Applicant guilty therewith. Therefore, this allegation is denied.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review.

See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20 day of December, 2016.


MICHAEL G. NETTLES
Presiding Judge
Fourteenth Judicial Circuit

Elmore, South Carolina

FALK LAW FIRM, LLC.

James K. Falk

(843) 606-6007

(843) 972-9005 Fax Admitted to practice: KY(1984) S.C. (2010) jfalklaw@gmail.com

December 30, 2016

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED
JAN -4 2017
S.C. SUPREME COURT

Re: George Brown, 2013-CP-15-000059

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Colleton County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

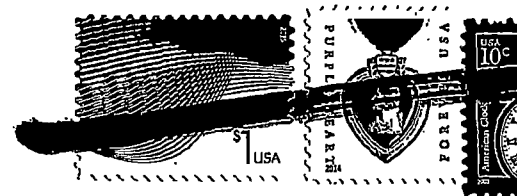
With best regards, I am,


James K Falk

Thank you for your assistance.

Cc: Ruston Neely, Esq.; George Brown 301460.

Mailing Address: PO Box 1058, Charleston, S.C. 29402
Location: 38 Broad Street, Suite 350, Charleston, S.C. 29401



FALK LAW FIRM

PO Box 1058

Charleston, SC 29402

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

DOCKET NO. 2011GS1500118

WITNESSES

J. Taylor, CCSO

J. Scott, CCSO

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

January Term 2011

ARREST WARRANT NUMBER

2011GS1500118

November 28, 2010

ACTION OF GRAND JURY

TRUE BILL

THE STATE

VS.

George Brown

Foreperson of Grand Jury

Date: 1/24/2011

VERDICT

Indictment for

Kidnapping

SC Code: 16-03-0910

CDR Code:0095

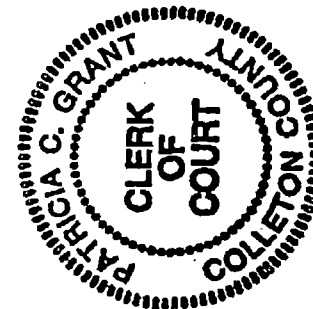
Foreperson of Petit Jury

Date: 1-26-11

INDICT

CERTIFIED TRUE COPIES OF RECORDS

Patricia C. Grant
 CLERK OF COURT, CP & GS
 COLLETON COUNTY, SOUTH CAROLINA
 DATE: 2-19-2013



STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)

INDICTMENT

2011GS1500118

At a Court of General Sessions, convened on January 24, 2011, the Grand Jurors of Colleton County present upon their oath:

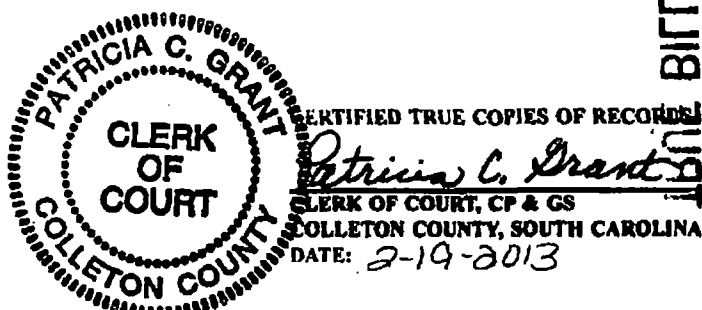
Kidnapping

That in Colleton County, South Carolina, on or about November 27, 2010, the Defendant, George Brown, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim(s), [REDACTED] and/or [REDACTED], without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Isaac M. Stone
Solicitor



STATE OF SOUTH CAROLINA

COUNTY OF Colleton
STATE VS.
George Brown

AKA:

Race: W Sex: M Age: 36DOB: [REDACTED] SS# [REDACTED]

Address:

City, State, Zip:

DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping / Kidnappingin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lev 2 Act) 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Shelton, BenSC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 ~~days/months/years~~ or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2011-65-15-00029, 2009-65-16-02563
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total plus 20% days/hours Public Service Employment

Payment Terms:

☐ Set by State

Recipient:

*Firm:

§ 14-1-205 (Assessment Fee)	\$	
§ 14-1-211 (Probation Surcharges)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharges)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharges)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharges)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/Deputy Clerk:

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

up to 30

INDICTMENT/CASE#: 2011GS1500118A/W#: 2011GS1500118Date of Offense: 11/27/2010S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

01221/26/2011

ARREST WARRANT

M-105175

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Colleton

THE STATE
against

10-6837

George Lagrande Brown

Address:

Phone: SSN:
Sex: M Race: W Height: 6 2 Weight: 200DL State: SC DL #:
DOB: Agency ORI #: SC0150000

Prosecuting Agency: Colleton County Sheriff

Prosecuting Officer: K. Wallace - S596

Offense: Robbery / Common law robbery, strong arm robbery

Offense Code: 0137

Code/Ordinance: 16-11-0325

This warrant is to be served FOR SERVICE in the
☐ County/ ☐ Municipality of

CERTIFIED TRUE COPIES OF RECORDS

is to be signed and provided before me to be
dealt with according to the law.

Patricia C. Drant
CLERK OF COURT, CP & GS
COLLETON COUNTY, SOUTH CAROLINA
(L.S.)
2-19-2013

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant George L. Brown
on 11-28-10

Paul S. Mayse
Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P O Box 620
101 Hampton Street
Walterboro, SC 29488

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Colleton

Personally appeared before me the affiant K. Wallace

being duly sworn deposes and says that defendant George Lagrande Brown

did within this county and state on or about 11/27/2010

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Colleton)
in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Common law robbery, strong arm robbery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

** See Attached Affidavit **

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Colleton

Affiant's Address 112 S. Miller Street
Walterboro 29488-

Affiant's Telephone (843)549-2211

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/27/2010 defendant George Lagrande Brown

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Colleton) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Common law robbery, strong arm robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 11/28/2010

K. D. Gadsden
Signature of Issuing Judge
Kensley D Gadsden
(L.S.)

Judge Code: 7076

Judge's Address 40 Klein Street

Walterboro, SC 29488-

Judge's Telephone (843)549-1122

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
B.C. Attorney General
April 27, 2003
SCCA 518

Judge AP Dacklock
on November 28, 2010
Type and Amount: CS #35,000
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol pros, etc.)
Disposition _____
Sentence _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name _____
Address: _____
Telephone _____

Name: _____
Address: _____
Telephone: _____

Name _____
Address: _____
Telephone: _____

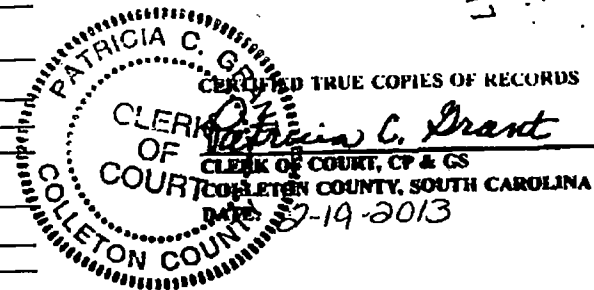
Name _____
Address: _____
Telephone: _____

Name _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



11/28/2010
AP Dacklock

Appointed Public Defender
on 11/28/2010

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

AFFIDAVIT
OCA# 10-5837

PERSONALLY APPEARED BEFORE ME, A JUDGE OF THIS COUNTY, ONE, DEPUTY KIRT L. WALLACE, WHO BEING DULY SWORN, DEPOSES AND SAYS THAT THE DEFENDANT, DID WITHIN THIS COUNTY AND STATE, VIOLATED THE CRIMINAL CODE OF LAWS OF THE STATE OF SOUTH CAROLINA IN THE FOLLOWING PARTICULARS:

DESCRIPTION OF OFFENSE:

CHARGE: **STRONG ARMED ROBBERY**. (16-11-325) G.S.
CODE SECTION:

OCA#: 10-5837

WARRANT#:

DEFENDANT: **GEORGE L. BROWN**
ADDRESS:
CITY/STATE/ZIP
PHONE:

SSN: [REDACTED]

SEX: M RACE: WHT HEIGHT: 603 WEIGHT: 200

DL STATE: S.C. [REDACTED] DOB: [REDACTED]

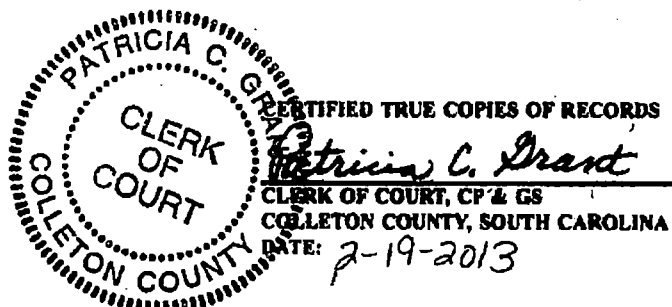
THE AFFIANT STATES THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT DID COMMIT THE CRIME SET FORTH, AND THAT SUCH PROBABLE CAUSE IS BASED ON THE FOLLOWING FACTS: THAT ON OR ABOUT THE 27TH OF NOVEMBER, 2010, THE DEFENDANT DID UNLAWFULLY COMMIT STRONG ARMED ROBBERY AT THE KANGAROO EXPRESS LOCATED AT [REDACTED] JACSONBORO, SC. BASED ON THE STORE'S VIDEO SURVEILLANCE, WITNESSES ACCOUNTS, AND THE DEFENDANT'S CONFESSION, THE DEFENDANT, ALONG WITH CO-DEFENDANT WESLEY CLEMONS, WENT INTO THE KANGAROO EXPRESS. THE DEFENDANT STOOD BY THE DOOR OF THE BUSINESS NOT ALLOWING ANYONE TO COME IN OR LEAVE, WHILE HIS CO-DEFENDANT PROCEEDED TO DEMAND MONEY AND TAKE CIGARETTES. UPON THE DEFENDANT'S CO-DEFENDANT FINISHING ROBBING THE STORE, BOTH PROCEEDED TO WALK OUT OF THE STORE. THE AFFIANT WITNESSED BOTH DEFENDANTS LEAVING THE STORE TRYING TO GET AWAY BEFORE BEING TAKEN TO THE GROUND BY AN EYE WITNESS. ALL AGAINST THE LAW, PEACE, AND DIGNITY OF THE STATE OF SOUTH CAROLINA.

SWORN TO AND SUBSCRIBED BEFORE ME THIS 28th DAY OF November 2010

AFFIANT: [Signature]

COLLETON CO. SHERIFF'S OFFICE
119 BENSON STREET
WALTERBORO, S.C. 29488
PHONE# 549-2211

[Signature]
(L.S.)
SIGNATURE OF JUDGE



325

WITNESSES

J. Taylor

J. Scott, CCSO

ARREST WARRANT NUMBER

M105175

November 28, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 1/24/2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1500029

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

January Term 2011

THE STATE

vs.

George Brown

Indictment for

Armed Robbery, robbery while armed or
allegedly armed with a deadly weaponSC Code: 16-11-0330(A)
CDR Code: 0139

STATE OF SOUTH CAROLINA)
)
COUNTY OF Colleton)

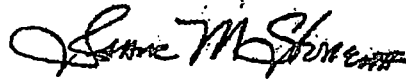
INDICTMENT
2011GS1500029

At a Court of General Sessions, convened on January 24, 2011, the Grand Jurors of Colleton County present upon their oath:

Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

That on or about November 27, 2010, in Colleton County, South Carolina, the Defendant, George Brown, at 16273 Ace Basin Pkwy., by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Sanquenetti Blocker with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Isaac M. Stone
Solicitor

FILED

330

STATE OF SOUTH CAROLINA

COUNTY OF Colleton
 STATE VS.
George Brown
 AKA:
 Race: W Sex: M Age: 36
 DOB: SS#:
 Address:
 City, State, Zip:
 DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Armed Robbery

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS | Mandatory GPS(CSC w/minor 1st or Lewd Act) § 17-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initials;
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the
 ATTORNEY:

Shelton, Ben SC Bar# Defendant Attorney for Defendant St Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*: the balance is suspended with probation for months/years

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2011-65-15-00118, 2009-65-11-02 03

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

10 up 30

INDICTMENT/CASE#: 2011GIS1500029

A/W/I: M105175

Date of Offense: 11/27/2010

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or PLEADS

0139

(defendant initials;
 the.

Attorney for Defendant St Bar#

☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 20 months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*: the balance is suspended with probation for months/years

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SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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§ 50-21-114 (DUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

§ 44-53-450(C) (Conditional Discharge) \$350 \$

3% to County (if paid in installments) \$ \$ 3.90

TOTAL \$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

Presiding Judge P. J. ...

Judge Code: 0122

Sentence Date: 1/26/2011

ARREST WARRANT
323
M-105175
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Colleton
THE STATE 10-5837
against
George Lagrande Brown
Address:
Phone:
Sex: M Race: W Height: 6 2 Weight: 200
State: SC DL #:
Agency ORI #: SC0150000
Prosecuting Agency: Colleton County Sheriff
Prosecuting Officer: K Wallace - S596
Offense: Robbery / Common law robbery, strong arm robbery
Offense Code: 0137
Code/Ordinance Sec: 16-11-0325
This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Date: _____
Signature of Judge

RETURN

A copy of this arrest warrant was delivered to
defendant George Lagrande Brown
on 11-28-10

Paul S. W. J.
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P O Box 620
101 Hampton Street
Walterboro, SC 29488

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Colleton)
Personally appeared before me the affiant K Wallace who
being duly sworn deposes and says that defendant George Lagrande Brown
did within this county and state on or about 11/27/2010 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Colleton)
in the following particulars:
DESCRIPTION OF OFFENSE Robbery / Common law robbery, strong arm robbery

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

** See Attached Affidavit **

Signature of Affiant
STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Colleton)
Affiant's Address 112 S. Miller Street
Walterboro 29488-
Affiant's Telephone (843)549-2211

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/27/2010 defendant George Lagrande Brown
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Colleton) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Common law robbery, strong arm robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 11/28/2010)
Signature of Issuing Judge (L.S.))
Keisha D Gadsden)
Judge Code: 7076)
Judge's Address 40 Klein Street
Walterboro, SC 29488-
Judge's Telephone (843)549-1122
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

422

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

AFFIDAVIT
OCA# 10-5837

PERSONALLY APPEARED BEFORE ME, A JUDGE OF THIS COUNTY, ONE, DEPUTY KIRT L. WALLACE, WHO BEING DULY SWORN, DEPOSES AND SAYS THAT THE DEFENDANT, DID WITHIN THIS COUNTY AND STATE, VIOLATED THE CRIMINAL CODE OF LAWS OF THE STATE OF SOUTH CAROLINA IN THE FOLLOWING PARTICULARS:

DESCRIPTION OF OFFENSE:

CHARGE: STRONG ARMED ROBBERY. (16-11-325) G.S.
CODE SECTION:

OCA#: 10-5837

WARRANT#:

DEFENDANT: GEORGE L. BROWN
ADDRESS: 1
CITY/STATE/ZIP
PHONE

SEX: M RACE: WHT HEIGHT: 603 WEIGHT: 200

DL STATE: S.C

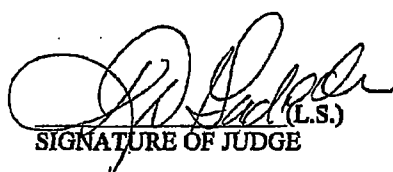
DOB:)

THE AFFIANT STATES THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT DID COMMIT THE CRIME SET FORTH, AND THAT SUCH PROBABLE CAUSE IS BASED ON THE FOLLOWING FACTS: THAT ON OR ABOUT THE 27TH OF NOVEMBER, 2010, THE DEFENDANT DID UNLAWFULLY COMMIT STRONG ARMED ROBBERY AT THE KANGAROO EXPRESS LOCATED AT 16273 ACE BASIN PWY., JACSONBORO, SC. BASED ON THE STORE'S VIDEO SURVEILLANCE, WITNESSES ACCOUNTS, AND THE DEFENDANT'S CONFESSION, THE DEFENDANT, ALONG WITH CO-DEFENDANT WESLEY CLEMONS, WENT INTO THE KANGAROO EXPRESS. THE DEFENDANT STOOD BY THE DOOR OF THE BUSINESS NOT ALLOWING ANYONE TO COME IN OR LEAVE, WHILE HIS CO-DEFENDANT PROCEEDED TO DEMAND MONEY AND TAKE CIGARETTES. UPON THE DEFENDANT'S CO-DEFENDANT FINISHING ROBBERING THE STORE, BOTH PROCEEDED TO WALK OUT OF THE STORE. THE AFFIANT WITNESSED BOTH DEFENDANTS LEAVING THE STORE TRYING TO GET AWAY BEFORE BEING TAKEN TO THE GROUND BY AN EYE WITNESS. ALL AGAINST THE LAW, PEACE, AND DIGNITY OF THE STATE OF SOUTH CAROLINA.

SWORN TO AND SUBSCRIBED BEFORE ME THIS 28th DAY OF November 2010

AFFIANT: 

COLLETON CO. SHERIFF'S OFFICE
119 BENSON STREET
WALTERBORO, S.C. 29488
PHONE# 549-2211

 (L.S.)
SIGNATURE OF JUDGE

COLLETON COUNTY
GENERAL SESSIONS CLERK
2010 DEC -2 PM 1:17

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE BROWN,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

BREEN RICHARD STEVENS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by failing to grant a motion for continuance where the indictment was true billed by the grand jury the day before trial, where case was less than 60 days old, and where defense counsel indicated his investigator was still in the process of interviewing witnesses in preparation of Brown's defense?

STATEMENT OF THE CASE

Appellant George Brown was indicted by the Colleton County Grand Jury on January 24, 2011, for kidnapping and armed robbery. R. 323 (Indictments). His case was called for trial on January 25, 2011, before the Honorable Perry Buckner, and a jury. Brown was represented by Harris Beach, and the State was represented by Ben Shelton. R. 1.

The jury found Brown guilty as charged, and the trial court imposed concurrent sentences of twenty years incarceration for each offense. R. 302, ll. 5-14; R. 320, ln. 19—R. 321, ln. 12.

ARGUMENT

The trial court erred by failing to grant a motion for continuance where the indictment was true billed by the grand jury the day before trial, where case was less than 60 days old, and where defense counsel indicated his investigator was still in the process of interviewing witnesses in preparation of Brown's defense.

On the first day of trial, and prior to the jury being sworn, counsel for Brown moved for a continuance before the trial court. Specifically, the defense asserted that it was unprepared for trial as there was inadequate time to fully investigate Brown's case and prepare a defense for Brown. Counsel pointed to the procedural timeline of the case to illustrate the problem. R. 37, ln. 12—R. 38, ln. 3.

The procedural timeline of Brown's case, as explained by both the defense and the State, is as follows: on the night of November 27, 2010, the Kangaroo gas station in Jacksonboro, SC, was purportedly robbed; after midnight on November 28, 2010, Brown was served an arrest warrant for strong-armed robbery; on January 4, 2011, paper discovery was given to counsel; on January 5, 2011, counsel was provided a "trial notice," although there were apparently several older cases pending in Colleton County where the defendants were likewise incarcerated; on January 7, audio and video discovery was released to counsel; January 24, 2011, the State obtained grand jury indictments against Brown for armed robbery and kidnapping, a copy of which counsel apparently received at 2:00 pm the day of trial; January 25, 2011, counsel's investigator was still interviewing potential witnesses, such as the codefendant, in preparation of Brown's defense; further, Brown was formally arraigned by the trial court on January 25, 2011, after the jury was struck but not yet sworn. R. 37, ln. 14—R. 38, ln. 3; R. 44, ll. 1-19; R. 45, ll. 6-15; R. 47, ln. 1—R. 48, ln. 3; R.323 (Indictments).

The State conceded Brown was originally arrested for strong-armed robbery, but indicted for armed robbery and kidnapping. R. 47, ll. 1-13. The State further admitted that investigation by the defense of exculpatory and inculpatory statements by the codefendant could affect the defense as far as aspects of planning and intent; however, the State asserted "there's been ample time" for the defense to prepare because Brown was provided trial notice and discovery two to three weeks before trial. R. 48, ln. 9—R. 49, ln. 3.

The trial court "understood completely [Brown's] motion for continuance," but denied the motion for failure to make "a sufficient showing of legal prejudice sufficient to constitute a continuance." R. 53, ln. 19—R. 54, ln. 6; R. 56, ll. 17-18.

In State v. Tanner, 299 S.C. 459, 462, 385 S.E.2d 832, 834 (1989), our Supreme Court not only reiterated the standard of review governing motions for continuance,¹ but also restated the two primary factors considered when determining whether a motion for continuance is proper: (1) whether there was a showing of any other evidence on behalf of the defendant that could have been produced; and (2) whether any other points on his behalf could have been raised had more time been granted for the purpose of preparing the case for trial. Id. (quoting State v. Squires, 248 S.C. 239, 244, 149 S.E.2d 601, 603 (1966)). Therefore, if the defendant shows that any other evidence or points could have been produced or raised on his behalf if he had more time to prepare his case for trial, then a motion for continuance should be granted.

¹ See State v. Tanner, 299 S.C. 459, 462, 385 S.E.2d 832, 834 (1989) ("A motion for continuance is addressed to the sound discretion of the trial court and its ruling on such motion will not be reversed without a clear showing of abuse of discretion."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Colden, 372 S.C. 428, 435, 641 S.E.2d 912, 917 (Ct. App. 2007).

In the present case, the defense made a showing of evidence that could have been produced. First, counsel indicated to court that he was still in the process of interviewing witnesses in its effort to develop and establish a viable defense. One such witness was the codefendant, whose prior statements to law enforcement included information exculpating the defendant while inculcating the codefendant. In addition to subpoenaing the codefendant, Counsel sought to have his investigator interview the codefendant "so that [the testimony] would be admissible" in Brown's case. R. 44, ll. 1-19.

More time was needed to establish proper defenses to both the armed robbery and kidnapping charges for which Brown was indicted, as opposed to the strong-armed robbery charge for which he was arrested. R. 47, ll. 1-16. Specifically, witnesses from outside of the Kangaroo gas station that the codefendant and Brown purportedly robbed needed to be interviewed to determine whether Brown indeed held the doors closed with his hands during the incident, as the State alleged, or whether Brown simply backed up to the door as he moved away from the codefendant, who was demanding money from the cashier with a bandanna across his face. Although two witnesses that were outside when the incident occurred testified for the State and indicated Brown either held the doors closed, or touched the doors, one other witness—Ms. Kathy Washington—was not available to subpoena for trial. R. 52, ll. 4-18. Washington's testimony could have provided critical facts against the kidnapping charge, as only persons outside the gas station had the proper vantage to see whether Brown's hands were actually holding the doors closed, or whether Brown was simply touching the door as he backed away from the codefendant's actions inside.

These points could have been raised had more time been granted for the purpose of preparing the case for trial. For instance, Brown's investigator may have been able to

obtain a statement from the codefendant prior to trial in preparation of the case, and possibly track down more leads generated from the interview; as the State admitted, such an interview could affected the codefendant's statements "for planning and intent and whatnot." R. 48, ll. 9-25. Additionally, Brown's investigator could have located Washington, interviewed her, issued her a subpoena, and called her to testify on his behalf at his trial pursuant to his state and federal constitutional rights to call witnesses in his defense. Accordingly, had more time been granted for preparation of the case, Brown may have produced a more complete defense against the indicted charges. The trial court's failure to permit a continuance was error.

Finally, Brown was prejudiced by the trial court's failure to grant a continuance. Although the trial court did not begin opening statements until the morning after Brown's motion for a continuance was made, Brown was still unable interview and subpoena Washington, and likewise still unable to obtain another statement from the codefendant, such a short span of time. R. 57, ln. 17—R. 58, ln. 4. As such, he was unable to present a full and complete defense to the charges of kidnapping and armed robbery. Thus, Brown was prejudiced by the trial court's failure to grant a continuance.

CONCLUSION

For the foregoing reasons, George Brown respectfully requests reversal of his convictions, and remand for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen Richard Stevens", written over a horizontal line.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of March, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

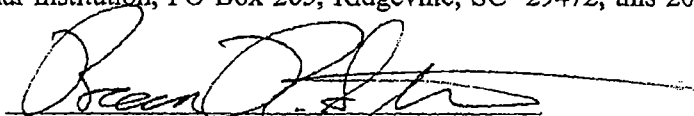
V.

GEORGE BROWN,

APPELLANT

CERTIFICATE OF SERVICE

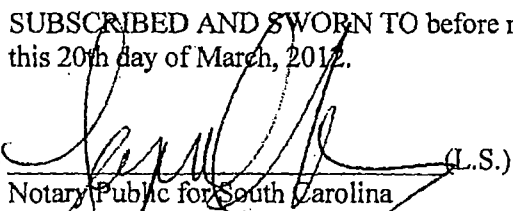
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a true copy of the Final Anders Brief of Appellant and Record on Appeal on George Brown, #301460 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 20th day of March, 2012.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of March, 2012.



(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017