

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County
Honorable Robert E. Hood, Circuit Court Judge

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S.C. SUPREME COURT

ANTHONY MARQUISE MARTIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002458

APPENDIX

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JULIE COLEMAN
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

COURT OF GENERAL SESSIONS
2010-GS-02-00666

State of South Carolina)
PLAINTIFF)
vs.)
Anthony M. Martin)
DEFENDANT)

TRANSCRIPT OF RECORD

April 25-27, 2011

Aiken, South Carolina

B E F O R E:

DOYET A. EARLHY III, Judge.

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

SUZANNA M. RINGLER, SOLICITOR
Elizabeth B. Young, SOLICITOR
Attorneys for the State

C. DAVID HAYES, ESQ.
DEGRANT GIBBONS, ESQ.
Attorneys for the Defendant

Lisa H. Davenport, RPR
Official Court Reporter
Transcribed by Dinah M. Garvin
Official Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 MS. RINGLER: Thank you, Your Honor. The state calls
2 the State versus Anthony Marquise Martin, indictment
3 2010-GS-02-1087 and 2010-GS-02-0666.

4 THE COURT: All right. Ladies and gentlemen, the
5 state has called for trial the case entitled the state of
6 South Carolina versus Anthony Marquise Martin. He is
7 indicted in two indictments. One is for armed robbery.
8 The other is for criminal conspiracy. Mr. Martin, good
9 afternoon. Would you please stand and face the jury
10 panel.

11 (Whereupon, Defendant complies with request)

12 THE COURT: Thank you, sir. You may be seated.
13 Thank you.

14 Ladies and gentlemen, as I said Mr. Martin has been
15 indicted by the Aiken County Grand Jury on these two
16 charges of armed robbery and criminal conspiracy. The
17 indictment is not evidence in this case. It is simply the
18 formal document by which the case comes into the
19 courtroom. Mr. Martin has plead not guilty to both
20 indictments and obviously a plea of not guilty puts the
21 burden on the State of South Carolina to prove his guilt
22 to you beyond a reasonable doubt, and I will explain all
23 of that as we go along.

24 But my question now is, is anyone in the jury panel,
25 are you related by blood or marriage or do you have now or

1 in the past a close personal or social relationship with
2 Mr. Martin? If so, please stand. All right. Don't get
3 frightened when I do this. I am going to ask you the same
4 questions and I am going to give you a list of potential
5 witnesses. The fact that they listed all of these
6 witnesses, I don't think they're going to call this many,
7 but I still have to go over it with you. Mona Floyd with
8 the Bank of America. If you're in the courtroom, please
9 stand. Mrs. Floyd.

10 (Whereupon, witness complies with request)

11 THE COURT: Thank you, ma'am. Turn around and let
12 the jury see you. Thank you. Mrs. Kim White of Bank of
13 America. Tara Goodwin or Tara Derrick of Bank of America.
14 Are they in the courtroom?

15 MS. RINGLER: No, Your Honor, not all of the tellers
16 are here today.

17 (Whereupon, the following complied with the Juges's
18 request)

19 THE COURT: Donna Longshore, Mrs. Jessica Elkins.
20 Mrs. Tammy Murphy, Bank of America. Thank you. Jeffery
21 Jones. Brenda Hawes, HAWES. David Dixon. Thank you,
22 Mr. Dixon. Roosevelt Johnson Junior. Thank you, sir.
23 Quinton Harmon. Attorney James Huff. Patricia
24 Christopher. Tara Banks. Robert Hoffman. Investigator
25 Luke Sherman with North Augusta Department of Public

1 Safety. Thank you. Investigator Phillip Turner, North
2 Augusta. Investigator George Shaw, North Augusta.
3 Officer Jason Pearce, North Augusta. Officer MC Ransom
4 North Augusta. Sergeant Blaise Dresser Richmond County,
5 that's in Augusta. Officer Christopher Poythress.
6 P-O-Y-T-H-R-E-S-S from Dekalb County Georgia. That's
7 Atlanta, right?

8 THE POLICE OFFICER: Correct.

9 THE COURT: Glad to have you. Glenn Dolphin with the
10 FBI. Marquise Marshall, Marquet Widener, Thomas Wilson,
11 Tyewan Tidy Johnson. Thank you. Kenyon Harmon, Pelham
12 Burts, Jacob Mckie, M-C-K-I-E. Jasmine Harmon. Thank
13 you, Mrs. Harmon. Anthony Costello, Wesley Hunter. Thank
14 you. Jeanette Harmon, Paul Grant with the Aiken County
15 Solicitor's Office, also known as Cricket Grant. Norwood
16 Bodie, Aiken County Solicitor's Office. Mr. Bodie.
17 Jessica Adams, Aiken County Solicitor's Office. Alma
18 Fumbah, F-U-M-B-A-H.

19 MR. HAYES: She's not here, Your Honor.

20 THE COURT: Dora McKenny, Patricia Christopher,
21 Robert Anderson, Detective George Shaw.

22 Any member of the jury panel related by blood or
23 marriage now or in the past or have you now or in the past
24 had a close personal or social relationship with any of
25 the witnesses who I have just called out? Please stand.

1 All right, sir. In the blue shirt your name?

2 THE JUROR: Craig Myers.

3 THE COURT: And Mr. Myers who --

4 THE JUROR: I used to pastor the Harmon family.

5 THE COURT: He is a potential witness in the trial of
6 the case?

7 THE JUROR: Yes.

8 THE COURT: And you're his pastor.

9 THE JUROR: I used to be.

10 THE COURT: Use to be.

11 THE JUROR: Yes, sir.

12 THE COURT: I am not going to ask that. He's left
13 you or you left him?

14 THE JUROR: I left him. Good terms, though.

15 THE COURT: All right. The fact that one of the
16 witnesses in the trial of the case is a former member of
17 your church, would that in any way keep you from being
18 fair and impartial in the trial of this case?

19 THE JUROR: No. It wouldn't keep me from being fair.

20 THE COURT: I didn't think so. Yes, ma'am, your
21 name?

22 THE JUROR: Yes, Carolyn Byrd, one particular witness
23 I am friends with his mother.

24 THE COURT: Which witness is that?

25 THE JUROR: Light blue shirt here.

1 THE COURT: Right here. With the tie. Your name
2 sir.

3 THE JUROR: Roosevelt Johnson.

4 THE COURT: You're friends with his mom.

5 THE JUROR: Yes.

6 THE COURT: We all live in small communities, ma'am.

7 The fact that you happen to know one of the potential
8 witnesses mother would that in any way keep you from being
9 a fair and impartial juror?

10 THE JUROR: No.

11 THE COURT: Thank you. Thank you for standing. All
12 right, ladies and gentlemen, the trial of this case the
13 state will be the solicitor's office prosecuting the case
14 is Mrs. Susan Ringler -- Susan Ringler, and Mrs. Beth Ann
15 Young. The defendant will be represented by Mr. David
16 Hayes, Dave Hayes and Mr. Grant Gibbons.

17 Now, a couple of questions. Any member of the jury
18 panel now or in the past have had legal services provided
19 to you by any of the four lawyers? Any member of the jury
20 panel related by blood or marriage or do you have a close
21 personal or social relationship with any of them -- any of
22 the lawyers now or in the past? If so, please stand.
23 Yes, sir, your name?

24 THE JUROR: Jim W. Wunder. Grant Gibbons is my
25 neighbor.

1 THE COURT: Bless your heart. Grant does an
2 excellent job. The fact that Mr. Gibbons lives down the
3 street from you sir would that in any way preclude or keep
4 you from being a fair and impartial juror in the trial of
5 this case?

6 THE JUROR: No, sir, it won't.

7 THE COURT: Yes, ma'am, my stay at home mom?

8 THE JUROR: My name is Ashly Day and I have been
9 represented by David Hayes but the case got dropped --

10 THE COURT: He represented you in the past ma'am.

11 THE JUROR: Yes, sir, but the case got dropped.

12 THE COURT: The fact that he was your lawyer in the
13 past would that keep you from being fair or impartial.

14 THE JUROR: No, sir.

15 THE COURT: Any member of the jury panel ever been a
16 victim of a violent crime? If so, please stand. Yes,
17 ma'am, Mrs. Waffle House, your name?

18 THE JUROR: Crystalynn Doolittle. I was robbed at
19 knife point and gun point at Waffle House.

20 THE COURT: And the fact that you've had to endure
21 that unpleasant situation, ma'am, would that preclude or
22 keep you from being fair and impartial?

23 THE JUROR: No, sir.

24 MR. DOLPHIN: I got to be honest. I was assaulted on
25 the job one time. And the gentleman was convicted of

1 interference with a federal officer in the line of duty
2 and it would not cause me to be impartial.

3 THE COURT: Just one time?

4 MR. DOLPHIN: I learned to judge it better the rest
5 of them.

6 THE COURT: We thank you for all that you do. Do any
7 member of the jury panel that you or your close family
8 works with law enforcement, SLED, solicitor's office,
9 attorney generals office, any federal law enforcement
10 agency? If so, please stand. Yes, ma'am, your name?

11 THE JUROR: Susan Dederscheck. My son-in-law is the
12 captain of the Grovetown Police Department.

13 THE COURT: Captain where?

14 THE JUROR: Grovetown Police Department.

15 THE COURT: And the fact that your son-in-law is
16 involved in law enforcement would that preclude or keep
17 you from being fair and impartial?

18 THE JUROR: No.

19 THE COURT: I didn't think so.

20 THE COURT: Ma'am?

21 THE JUROR: My name is Cheryl Fogle. My husband
22 Jason Fogle is with Aiken Public Safety. He is a public
23 safety officer.

24 THE COURT: This is not an Aiken Public case? It is
25 North Augusta. The fact that your husband is employed in

1 law enforcement ma'am would that preclude or keep you from
2 being fair and impartial.

3 THE JUROR: No, sir.

4 THE COURT: Thank you. You may be seated. Sir, in
5 the blue?

6 THE JUROR: My son is an investigator for the county.

7 THE COURT: Aiken County Sheriff's Office?

8 THE JUROR: Right.

9 THE COURT: Your name please.

10 THE JUROR: Cliff Evensen.

11 THE COURT: The fact that you have a son in law
12 enforcement would that preclude you from being fair and
13 impartial.

14 THE JUROR: No, sir.

15 THE COURT: Thank you. You may be seated. My lady
16 at the Waffle House?

17 THE JUROR: Crystalynn Doolittle. My ex
18 mother-in-law is a classification officer at the Aiken
19 County.

20 THE COURT: That's your what?

21 THE JUROR: Ex mother-in-law.

22 THE COURT: Would that preclude you, ma'am, from
23 being fair and impartial?

24 THE JUROR: No, sir.

25 THE COURT: Yes, sir?

1 THE JUROR: My brother in law works for Lee County as
2 a police officer.

3 THE COURT: And your name, please.

4 THE JUROR: Matthew Buffett.

5 THE COURT: Sir, would that preclude you from being
6 fair and impartial?

7 THE JUROR: No, sir.

8 THE COURT: You can't.

9 THE JUROR: No. I thought you asked it the other
10 way.

11 THE COURT: You can be fair and impartial
12 notwithstanding you have a relative in law enforcement.

13 THE JUROR: Yes, sir.

14 THE COURT: Thank you. Ladies and gentlemen of the
15 jury panel, do you have anybody you or your close family a
16 contributor to groups that have as their major emphasis
17 the enforcement of crime or backing of police agency such
18 as MADD, that's Mother's Against Drunk Drivers, SADD,
19 CAVE, citizens against violent crime, those sorts of
20 organizations. Anybody a contributor to or member of
21 those types of organizations. If so, please stand. Yes,
22 ma'am, your name again?

23 THE JUROR: My name is Cheryl Fogle. I am a
24 volunteer with the Cumbee Center to assist abused persons.

25 THE COURT: Would that preclude you from being fair

1 and impartial?

2 THE JUROR: No, sir, it would not.

3 THE COURT: Thank you. Thank you for your work
4 there. Ladies and gentlemen, let me just tell you what
5 the allegations are. Once again these are allegations.
6 It's not evidence in the case. I need to ask you if you
7 know anything about this. It is alleged that here in
8 Aiken County back on April 23 of the year 2009 that this
9 defendant Anthony Marquise Martin, he is also known as
10 T-Money, along with others, while armed with a deadly
11 weapon took by force or intimidation monies from employees
12 of Bank of America and that Bank of America was where?

13 MS. RINGLER: West Martin Town Road in North Augusta.

14 THE COURT: North Augusta. It's also alleged that he
15 conspired with Quinton Harmon, Roosevelt Johnson and David
16 Dixon to conspire to commit the crime of armed robbery.
17 Question, does anybody know anything about the facts of
18 this case? Have you read anything about it? Heard on the
19 radio? Seen anything on TV about an alleged bank robbery
20 on April 23, 2009 in North Augusta or Martin Town's Road?
21 Yes? All right. Hold on one second. The four of you
22 would you please walk right up here for me?

23 (Whereupon, The Court conucts discussions with the
24 jurors out of the hearing of the Court Reporter)

25 THE COURT: Any member of the jury panel a customer

1 of that bank. The one on Martin Town's Road?

2 THE JUROR: Heather Rumbaugh.

3 THE COURT: The fact that you bank there would that
4 keep you from being fair and impartial.

5 THE JUROR: No.

6 THE COURT: Thank you, ma'am. You may be seated.
7 Once again --

8 THE JUROR: I am sorry. I have accounts at Bank of
9 America at Martin Town Road, my husband and I.

10 THE COURT: You can be fair and impartial.

11 THE JUROR: Yes.

12 THE COURT: Ladies and gentlemen, one of my main
13 responsibilities as Judge is to make sure that people who
14 are tried in this courtroom receive a fair trial, a fair
15 and impartial trial. And the way the system works is
16 this, the evidence is presented by the state and or by the
17 defendant. And I've been doing this a long time, thirty
18 years as a lawyer and now seven years as a judge. And
19 dare say in just about any trial that is tried you will
20 hear different versions of the facts. In fact you might
21 hear completely different facts. Your job as a juror, the
22 12 of you collectively acting as one, you have to listen
23 to what comes from this witness stand, the various
24 versions of the facts and the various facts and you have
25 to determine -- you determine what the true facts are.

1 In other words you judge the credibility of the
2 witnesses or the believability of the witnesses and you
3 determine, the 12 of you, like I said, acting together as
4 one, you determine what the true facts are. Then you take
5 the true facts, because you're the judges of the facts,
6 and you apply those true facts to the law as I give it to
7 you. I am the judge of the law. You're the judge of the
8 facts and you work together. You take the law as I give
9 it to you and you apply it to the true facts and you
10 render a verdict. But we have to do that by listening to
11 what's presented in the courtroom without any influence
12 from the outside.

13 So my question to you is, do I have any member of the
14 jury panel who is unable to perform that task, that you
15 can't sit and judge the credibility or believability of
16 witnesses and determine what the true facts are? You may
17 have some religious belief, political belief, personal
18 belief, any kind of belief that would keep you from being
19 able to do that job? Do I have anybody that can not serve
20 and perform your civic duty as a juror in determining what
21 the true facts are? Let me know now.

22 Any member of the jury panel know of any reason
23 whatsoever why he or she can not serve as a juror in this
24 case, with particular emphasis being placed on your
25 ability to be fair both to the state and to the defendant?

1 If so, please stand. Any additional questions by the
2 state?

3 MS. RINGLER: None from the state.

4 THE COURT: By the defendant?

5 MR. HAYES: None, Your Honor.

6 THE COURT: It is five and 10 right?

7 MS. RINGLER: Yes, Your Honor.

8 THE COURT: The way we draw a jury in a criminal case
9 is your names will now be randomly selected. If your name
10 is called, please come forward and stand right here
11 between the two tables. The state has five strikes. The
12 defendant has 10 and they can strike you within certain
13 bounds for most any reason, but there are some bounds to
14 it. But they know what they are. So don't get your
15 feelings hurt if you get struck. But we'll come forward
16 and we'll go through that process until I get 12 jurors
17 and two alternates. This will take us about another 10 or
18 15 minutes at the most. Anybody uncomfortable? Bathroom?
19 All right. Instead of letting everybody go I have two
20 that need to go to the restroom. Go right over here with
21 Burt. Okay, as your name is called please come forward.

22 THE CLERK: Juror number 80, James Heath.

23 THE COURT: Mr. Heath, if you'll come. If you'll
24 turn around and face the lawyers for me.

25 THE CLERK: What say ye for the state?

1 MS. RINGLER: Please present this juror.

2 THE CLERK: What say ye for the defense?

3 MR. HAYES: Please seat the juror.

4 THE COURT: All right. Mr. Heath, have a seat over
5 here in the jury box. Ladies, and I guess some guys, if
6 you have a purse just bring that with you because if you
7 get selected you'll want to have it with you.

8 THE CLERK: Juror number 47, Crystalynn Doolittle.

9 THE CLERK: What say ye for the state?

10 THE SOLICITOR: Please present this juror.

11 THE CLERK: What say ye for the defense?

12 MR. HAYES: Please excuse this juror.

13 THE COURT: Have a seat back in the jury box.

14 THE CLERK: Juror 190, Richard West.

15 THE COURT: 190. Mr. West.

16 THE CLERK: What say ye for the state?

17 MS. RINGLER: Please present this juror.

18 THE CLERK: What say ye for the defense?

19 MR. HAYES: Please seat the juror.

20 THE CLERK: Juror 182. Gayle Tripp. What say ye for
21 the state?

22 MS. RINGLER: Please present this juror.

23 THE CLERK: What say ye for the defense?

24 MR. HAYES: Please seat the juror.

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

1 Juror number 50, Lisa Dyer. What say ye for the state?

2 THE SOLICITOR: Please present this juror.

3 THE CLERK: What say ye for the defense?

4 MR. HAYES: Please seat the juror.

5 THE CLERK: Please have a seat in the jury box to the
6 left. Juror number 79, Richard Hazel. What say ye for
7 the state?

8 THE SOLICITOR: Please present this juror.

9 THE CLERK: What say ye for the defense?

10 MR. HAYES: Please excuse this juror.

11 THE CLERK: Please take your seat. Juror 185, Damon
12 Wallenzine.

13 THE COURT: How do you pronounce it?

14 MALE SPEAKER: Wallenzine.

15 THE CLERK: What say ye for the state?

16 THE SOLICITOR: Please present this juror.

17 MR. HAYES: I'm sorry what was the number again?

18 THE CLERK: 185.

19 MR. HAYES: Please seat the juror.

20 THE CLERK: You can have a seat to the jury box to
21 the left. Juror number 191, David White. What say ye for
22 the state?

23 THE SOLICITOR: Please present this juror.

24 THE CLERK: What say ye for the defense?

25 MR. HAYES: Please seat the juror.

1 THE CLERK: Please have a seat in the jury box to the
2 left, sir. Juror number 55, John Fagan.

3 THE CLERK: What say ye for the State?

4 THE SOLICITOR: Please seat the juror.

5 THE CLERK: What say ye for the defense?

6 MR. HAYES: Please seat the juror.

7 THE CLERK: Juror number 117, Anita Martin. What say
8 ye for the state?

9 THE SOLICITOR: Please present the juror.

10 THE CLERK: What say ye for the defense?

11 MR. HAYES: Please seat the juror.

12 THE CLERK: Juror number 57. Brenda Flowers. What
13 say ye for the state?

14 THE SOLICITOR: Please present this juror.

15 THE CLERK: What say ye for the defense?

16 MR. HAYES: Please seat the juror.

17 THE CLERK: Please have a seat in the jury box to the
18 left. Juror number 159 Heather Rumbaugh. What say ye for
19 the state?

20 THE SOLICITOR: Please present this juror.

21 THE CLERK: What say ye for the defense?

22 MR. HAYES: Please excuse this juror.

23 THE CLERK: You may take your seat. Juror number 99
24 Kathleen Jones. What say ye for the state?

25 MS. RINGLER: Please present this juror.

1 THE CLERK: What say ye for the defense?

2 MR. HAYES: Please seat the juror.

3 THE CLERK: Juror number 20, Evelyn Bryant. What say
4 ye for the state?

5 MS. RINGLER: Please present this juror.

6 THE COURT: What say ye for the defense?

7 MR. HAYES: Please seat the juror.

8 THE CLERK: Please have a seat in the jury box to the
9 left. Juror number 135, Joseph Ortaldo. What say ye for
10 the state?

11 MS. RINGLER: Please present this juror.

12 THE CLERK: What say ye for the defense?

13 MR. HAYES: Please seat the juror.

14 THE CLERK: You may have a seat in the jury box to
15 the left.

16 THE COURT: All right. Give me two alternates. Two
17 and one.

18 THE CLERK: Juror number 56, Anthony Fallaw. What
19 say ye for the state?

20 MS. RINGLER: Please present this juror.

21 THE CLERK: What say ye for the defense?

22 MR. HAYES: Please excuse this juror.

23 THE CLERK: Juror number seven. Takiyah Barnes.
24 What say ye for the state?

25 MS. RINGLER: Please present this juror.

1 THE CLERK: What say ye for the defense?

2 MR. HAYES: Please seat the juror.

3 MS. RINGLER: Please have a seat in the jury box to
4 the left. Juror number 70. Melinda Gay.

5 MS. RINGLER: Please present this juror.

6 THE CLERK: What say ye for the defense?

7 MR. HAYES: Please present this juror.

8 THE COURT: Any motions by the state?

9 MS. RINGLER: None by the state, Your Honor.

10 THE COURT: Any motions by the defendant, I guess
11 none?

12 MR. HAYES: No, sir.

13 THE COURT: Ladies and gentlemen, those of you who
14 were not drawn. I am going to excuse you now for the
15 balance of the day. Please call back in on the call back
16 number after six this afternoon for instructions regarding
17 tomorrow. Everyone else please remain seated. The jurors
18 are excused.

19 THE COURT: Follow Mrs. Barbara back to your jury
20 room.

21 (Whereupon, the jury exited the courtroom at
22 3 o'clock.)

23 THE COURT: Mrs. Ringler, anything for the record?

24 Well we haven't sworn the jury yet. Let's take about a
25 five minute break. Y'all walk back in chambers and let me

1 know where we are.

2 (Whereupon, a break was taken.).

3 MS. RINGLER: Attorney Chuck Jones represents one of
4 the cooperating co-defendants. He informed me after we
5 picked a jury that juror James Heath is his wife's first
6 cousin. At no point the fact that he is representing one
7 of the co-defendants would come out at trial. But I do
8 feel like I needed to bring that to The Court's attention.

9 THE COURT: Mr. Hayes?

10 MR. HAYES: You said that he was a family friend of
11 Chuck's?

12 MS. RINGLER: Chuck Jones' wife's first cousin so
13 related by marriage.

14 MR. HAYES: I don't see where that is as an issue,
15 Your Honor.

16 THE COURT: Mr. Jones is not a defendant is he?

17 MS. RINGLER: No, Your Honor. I just wanted to bring
18 that to The Court's attention.

19 THE COURT: Anything else?

20 MS. RINGLER: I believe the defense does have a
21 pretrial motion. The state does intend to introduce
22 evidence of flight. Officer Poythress who is here from
23 the Dekalb County Police Department. After the robbery
24 occurred our co-defendants would testify that they first
25 took the defendant to a bus stop, but the power was out;

1 so they couldn't buy a ticket. They then took him to the
2 mall and waited until a ride came and picked him up. He
3 said he was going to Atlanta. Some months after the
4 robbery Dekalb County got a tip that the defendant was
5 staying at this apartment complex. He went through an
6 investigation was able to determine that that was the
7 defendant. The defendant provided a false name, false
8 date of birth and also gave misleading information as far
9 as what he was doing in the apartment complex. Some
10 conflicting information while officers were questioning
11 him. So we would ask to introduce that.

12 We would also as supporting evidence introduce the
13 fact that he was on probation and he left probation
14 without providing notice, without transferring his
15 probation. We would have that supporting evidence today
16 as evidence to support that he left pursuant to his
17 flight. And so the evidence that we seek to admit is the
18 officer's testimony that he provided false name, false
19 date of birth and gave misleading information about what
20 he was doing there in an attempt to evade law enforcement.

21 THE COURT: Mr. Hayes?

22 MR. HAYES: May it please The Court, Your Honor.
23 What I would specifically motion is two fold. One, that
24 the arrest for the false name and address should not be
25 used under 404, that it was a previous conviction and that

1 would be a misuse of character evidence. That he
2 committed a crime of the false information so therefore he
3 must have committed the crime of the armed robbery.

4 THE COURT: What crime of false information? He was
5 arrested where?

6 MR. HAYES: He was arrested in Dekalb County and
7 convicted of giving a false name and information to the
8 officer.

9 THE COURT: We don't have to say he was convicted.
10 Would just say what he did. Isn't that what you are going
11 to do?

12 MS. RINGLER: Yes, Your Honor. We would only try to
13 introduce that evidence if he decided to take the stand.

14 MR. HAYES: I don't think that would be a proper use
15 of it that way. Also under the flight evidence the state
16 would have to make sure that each link of the chain of
17 inferences leading to the conclusion is sturdy supported
18 and that's in B ham 644 fed second 414 and I do have
19 copies here for The Court. The facts in this case, Your
20 Honor, is that the defendant was picked up a year almost
21 later than when the crime occurred. So a significant
22 amount of time had passed from the time he allegedly left
23 the state. The robbery occurred on 4/23/09 and they're
24 alleging that he fled the state on 4/23. However, he was
25 arrested on January 16, 2010. There is no indication that

1 he understood or knew that the investigation was taking
2 place or that the police in Dekalb County was seeking him
3 for armed robbery alleged here in Aiken County.

4 THE COURT: Anything else?

5 MR. HAYES: No, sir.

6 MS. RINGLER: Your Honor, just in response. The case
7 the defendant's cited is a federal case actually out of --
8 originally out of Virginia, but then decided by the Fourth
9 Circuit. Your Honor, the law that our courts in South
10 Carolina have stated in reference to this evidence of the
11 fact of flight -- excuse me, is looking at the totality of
12 the circumstances and so we would -- Your Honor, we would
13 be happy to proffer this evidence. The witnesses are here
14 and ready willing to testify. He told his co-defendants
15 he was going to Atlanta. This was immediately after the
16 bank robbery. And then he actually did not -- he was
17 under probation. He skipped town and did not tell his
18 probation officer. Did not transfer it back to Atlanta.
19 So that and also in addition, Your Honor, the fact that --
20 the officer was in uniform, approached the defendant and
21 he again gave false name, false date of birth, evaded law
22 enforcement.

23 THE COURT: I will deny the motion to suppress.

24 MS. RINGLER: Thank you, Your Honor.

25 THE COURT: And obviously, Mr. Hayes, you know how to

1 handle it during the trial. Hold on one second.

2 MS. RINGLER: I know that the witness are not here.
3 But the defense has told me that the Defendant's mother
4 and grandmother will serve as his alibi witnesses for this
5 trial. I understand that they are not here today and they
6 weren't here earlier. And the defense has stated that
7 they would like our witnesses to be sequestered. We would
8 say the same for his witnesses. I am including those
9 alibi witnesses.

10 MR. HAYES: I will specifically tailor my exclusions
11 to the courtroom just to testifying co-defendants who did
12 give statements. One has not given a statement. So I
13 don't know what his testimony potentially would be. Those
14 are the only witnesses that I would ask the court to
15 exclude. I would ask the court to consider --

16 THE COURT: I'll grant both of your motions to
17 exclude the witnesses that you're asking to exclude.

18 THE SOLICITOR: Thank you, Your Honor.

19 THE COURT: All right.

20 (Whereupon, the jury came into open court at
21 approximately 3:20.) .

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, the first thing we have to do to get started is you
24 have to be sworn in for this particular case. If you
25 would please stand and raise your right hands and the

1 clerk will administer the oath.

2 (WHEREUPON, the jury was sworn at 3:21.)

3 THE COURT: You may be seated. Ladies and gentlemen,
4 let me remind you, once again, that the fact that the
5 defendant in this case has been indicted for armed robbery
6 and criminal conspiracy, obviously that is not evidence in
7 the case. It cannot create any inferences of guilt.
8 That's simply the allegations. The State of South
9 Carolina has the burden of proving each and every element
10 of both of these indictments to you beyond a reasonable
11 doubt, and I will instruct or charge you what the elements
12 are at the conclusion of the case.

13 Let me remind you once again that during the trial of
14 any type of cases, I have a particular job to perform and
15 you have a particular job to perform. In my opinion, your
16 job is much, much, much more important than mine. Let me
17 tell you what my functions are. Number one, the position
18 of judge makes me the judge of the law in the case. So I
19 tell you what the law is at various times during the case
20 and at particular at the close of the case when I instruct
21 you on the law or charge you on the law. So you've taken
22 an oath that if you come into the courtroom with some
23 preconceived idea about what the law is or what it should
24 be, and it doesn't agree with what I say, you have to set
25 that aside and accept the law as I give it to you. I tell

1 you what the law is.

2 My other function is to obviously rule -- preside
3 over the case and one of the things I have to do with that
4 is rule on the admissibility of evidence. These lawyers
5 have to play or conduct themselves under the rules of
6 evidence and the rules of criminal procedure. So as long
7 as they ask the questions within the rules, they'll ask
8 the witnesses up here on the witness stand, that evidence
9 or that testimony is admitted into the trial of the case.
10 And one witness may say it's green, and one witness may
11 say it's blue, and one witness may say it's red, and one
12 witness may say it's pink, but it's still admitted into
13 trial of the case. So you got different people saying
14 different things. That is where you come into play.
15 Because the 12 of you collectively acting as one, you are
16 the judges of the facts in the case. You judge the
17 credibility or the believability of the witnesses and you
18 determine who is telling the truth and what the true facts
19 are from everybody who testifies.

20 You take those true facts as you find them to be and
21 apply it to the law as I give it to you. And that's how
22 it works. So obviously your job is much more important
23 than mine. Because you have to use your every day common
24 sense dealing with your husband, your wife, your children,
25 your employers, employees about who is telling the truth

1 and then take those true facts and you'll be in a position
2 to render a verdict.

3 The State has the burden of proof in this case and in
4 a criminal case it's what we call beyond a reasonable
5 doubt, and I will define that to you at the conclusion of
6 the case. Because they have the burden of proof, they
7 will go first, followed by the defendant. But before any
8 testimony is taken the lawyers will have an opportunity to
9 make an opening statement. Opening statements is not
10 evidence in the case. It is simply what the lawyers
11 contend the issues are, sort of a road map as to what
12 they're going to prove or try to prove. Once the opening
13 statements are completed, then we'll go ahead with
14 testimony. I would like to run until about five or just a
15 tad beyond five today to try to get some people who can't
16 be here tomorrow in and out. We'll start back in t5he
17 morning, we will talk about that before we leave here this
18 afternoon, either 9:30 -- probably about 9:30 in the
19 morning. And we will run, take about an hour and half
20 lunch break. We hope to get through with tomorrow
21 afternoon. That's what we plan on right now.

22 I am not trying to run a race up here. But I am
23 trying to be efficient with your time and my time and the
24 court's time. But if at any time during the trial of the
25 case you become uncomfortable, you need to go to the

1 restroom, bathroom, you want something to drink, you just
2 need to stand up and stretch, cigarette break, whatever.
3 Please raise your hand and I'll make sure your needs are
4 met. I will tell you each time we take a break, please do
5 not start deliberating or talking about the case until all
6 the evidence is in, the final arguments have been made and
7 I've instructed or charged you on the law. You can talk
8 about anything in the jury room you'd like, but don't
9 start discussing the case.

10 Either late this afternoon when we take our break or
11 before we start back in the morning I would like my 12
12 regular jurors to select a person to serve as a
13 foreperson. The foreperson is simply the spokesman for
14 the jury. If you can't do that, then I'll just sort of
15 pick one out of the air, randomly. As I said in just a
16 few minutes the lawyers will be making their opening
17 remarks. Please pay close attention and we will get
18 started. Any objections to my opening remarks by the
19 State?

20 MS. RINGLER: None by the State, Your Honor.

21 THE COURT: Mr. Hayes?

22 MR. HAYES: No, sir.

23 THE COURT: All right. Mrs. Ringler.

24 OPENING STATEMENT

25 MS. RINGLER: Mona floyd never expected to have a gun

1 pointed at her when she went to work that day. This
2 wasn't a TV show. All right. This wasn't a movie. This
3 was real. Very real. On April 23, 2009 this defendant,
4 Anthony Martin, entered the Bank of America on West Martin
5 Town Road armed with a gun. It was around lunch time and
6 inside were tellers and two customers. This defendant
7 came into the bank, arm raised, gun pointed, and inside
8 again are those tellers and two customers. He goes up to
9 the counter where Mona is the teller. He puts a bag on
10 the counter and demands money. She gives him the \$12,000
11 that she's just gotten from the bank, from the vault.
12 Terrified, she puts the money in the bag and then he takes
13 the money and leaves the bank. An employee from the bank
14 rushes to the door to lock it after he's left, so that he
15 won't be able to come back in.

16 Now this defendant robbed the Bank of America. But
17 he didn't do it alone, he had help. And you'll hear from
18 the men who helped him. There was Quinton Harmon, who was
19 the scout. He went in first before the robbery. And he
20 went in so he could tell this defendant how many people
21 were in the bank and whether or not there was a security
22 guard. So when he comes back out, he gives that
23 information to the defendant. Then there is David Dixon
24 and David Dixon is a look out and he looks for any police,
25 law enforcement that might be driving around down Martin

1 Town Road while this defendant is in the bank. Then there
2 is Roosevelt Johnson, who is out waiting in his red
3 mustang for this defendant to come out of the bank.

4 Now the other day I was watching some TV. I was
5 watching one of those crime shows. And in that crime show
6 they had some security footage. And the people on the
7 show were able to tell exactly who this person was, they
8 had one of those photo database things. They got a DNA
9 profile and they were able to tell what the man had for
10 breakfast in the morning. But that's TV. That's fiction.
11 We're here because of reality. And the reality is the
12 fear that those victims, those people felt in the bank
13 that day. They were terrified with good reason, because
14 that defendant, that man pointed a gun at them and for all
15 of his acts he's been charged with armed robbery and
16 conspiracy. And armed robbery is a robbery that occurs
17 that one commits while armed with a deadly weapon or an
18 object that a person believes is a deadly weapon. And
19 conspiracy is an agreement between two or more people, a
20 plan.

21 Now, at the end of this trial, you, the jury, will
22 have your part to play. You'll go back into this room.
23 You'll deliberate and then you'll decide what the truth
24 dictates and justice demands and find this defendant
25 guilty.

1 THE COURT: Mr. Hayes.

2 OPENING STATEMENT

3 MR. HAYES: Good afternoon, ladies and gentlemen. I
4 am not going to stand up here and deny there was not a
5 bank robbery. Our sole question or the sole question that
6 we're arguing for this trial, is whether or not they can
7 prove beyond a reasonable doubt that it was Mr. Anthony
8 Martin. Our position is, no, it was not. We don't have a
9 burden. We don't have to prove anything under our
10 constitution. That burden solely falls on the state. As
11 the state has told you and the judge told you when he was
12 addressing y'all and swearing you in.

13 I am going to ask y'all to closely look at the
14 videos that's presented. Because I perceive there is
15 going to be some videos. There is going to be some audio
16 possibly. There is going to be testimony from people who
17 are saying we did this and they're saying that we did it
18 for Mr. Martin. Our position is, please listen. Listen
19 to each and everyone of those. Look at the videos. Look
20 at the audio. Listen to each individual who has
21 testified. Y'all's job as juror is to decide who is
22 telling the truth and who is not. This is a very
23 important case to y'all and to Mr. Martin. At the end of
24 this y'all have to decide, not guilty, or guilty. That's
25 going to effect everybody, especially, Mr. Martin, who has

1 waited for a trial.

2 If y'all believe after watching all the videos,
3 listening to all the evidence, the testimony, that he is
4 guilty, you must come back with a guilty verdict.
5 However, if y'all reasonably hesitate to act, that is
6 reasonable doubt. Also if you believe that he did not do
7 it, without hesitation that is not guilty. Those are our
8 options today. And all I ask for y'all is to carefully
9 listen to each person. Weigh what they're telling you and
10 determine how much of it is true, how much of it is not,
11 and then at the end of the trial, y'all will deliberate
12 and y'all will make that decision.

13 THE COURT: Mrs. Ringler, you may call your first
14 witness.

15 MS. RINGLER: Thank you, Your Honor. The state calls
16 Mona floyd.

17 THE COURT: Mrs. Floyd, you come right up here and
18 place your left hand on the bible and raise your right.
19 Madam clerk.

20 MONA FLOYD, after being duly sworn, testified
21 as follows:

22 THE CLERK: Have a seat in the witness box and state
23 your full name for the Court and spell your last.

24 THE WITNESS: Mona Floyd. It is F-L-O-Y-D.

25 DIRECT EXAMINATION

1 BY MS. RINGLER:

2 Q Where do you work?

3 A I'm sorry?

4 Q Where do you work?

5 A Bank of America.

6 Q How long have you worked there?

7 A Almost 25 years.

8 Q And what do you do at Bank of America.

9 A I'm a teller.

10 Q What do you do as a teller?

11 A Well, take deposits, pay out, cash checks, different
12 things.

13 Q And were you working on April 23, 2009 around noon?

14 A I was.

15 Q Where were you working?

16 A On the teller line.

17 Q I am going to hand you what's been previously marked
18 as State's Exhibit 1. If you can look at this for me.

19 It's a packet of slides there.

20 A Okay.

21 Q Do you recognize what's in those slides, those
22 photos?

23 A Yes, sir.

24 Q Do they truly and accurately depict how the bank
25 looked?

1 A Yes.

2 MS. RINGLER: Your Honor, at this time we would move
3 to admit State's Exhibit Number 1.

4 MR. HAYES: No objection.

5 MS. RINGLER: Your Honor, we would ask to publish
6 these to the jury.

7 Q Mrs. Floyd, we're going to show them to you on what
8 we call, The Beast, this big television. We may need you
9 to come on down. But we'll wait and see if that's
10 necessary.

11 (State's Exhibit Number 1 is received into evidence:)

12 Q I think we might need you to come on down actually.
13 That's kind of some small font. You can just stand to the
14 side, or actually this side might work better actually.
15 If you can just sort of point out where sort of the roads
16 in the map and where we are basically?

17 A This is West Martin Town Road.

18 THE COURT: Speak up for me, ma'am, please.

19 A This is West Martin Town Road. This is the bank.
20 The car wash, and then the BP station next to it and on
21 down there is the shopping center.

22 Q And this is all in North Augusta?

23 A Uh-huh.

24 Q So this is -- if you're on Martin Town Road, where
25 would I-20 be in relation to all of this?

1 A Well --

2 Q Would it be to your left or right?

3 A Leaving the bank you would go to the right.

4 Q So on the map can you point out which direction you
5 travel to get to I-20?

6 A It's this way.

7 Q And then with the bank, can you point out the parking
8 lot?

9 A This is where the tellers park, and this is the
10 customers.

11 Q And the drive-thru window? Can you point that out?

12 A It goes around. The drive-thru window is under here.

13 Q And you said there is the car wash. Can you point
14 that out again?

15 A Right here.

16 Q And then there's?

17 A A BP station.

18 Q Thank you. You can please take the stand again.

19 Thank you. Who else was working that day?

20 A Tammy Murphy, Tara Goodwin, Kim White, Donna
21 Longshore, Jessie, Jessica.

22 Q Were there any other tellers up front at around lunch
23 time that day?

24 A No.

25 Q At around lunch time was there anyone that came into

1 the bank that caught your attention?

2 A Yea.

3 Q Please tell us about that?

4 A I had a gentleman came in and was just asking
5 questions about the different kind of accounts we had and
6 that kind of thing.

7 Q And why -- what was about it that caught your
8 attention?

9 A Well the biggest thing that stuck out with me was the
10 shirt he was wearing.

11 Q Okay.

12 A It was a black t-shirt with the North Augusta High
13 School logo. Some of my children went to school there.

14 Q I am showing you what was part of that original
15 packet. Is that the gentleman that you saw in the bank
16 that day?

17 A Yes.

18 Q Does that truly an accurately depict on how he looked
19 that day when he came into the bank?

20 A Yes.

21 Q Is that the gentleman that you saw come in the bank
22 that day?

23 A Yes.

24 Q Now, this is just sort of a rough sketch. You said
25 before this is a rough sketch of the diagram of the bank.

1 And you said you were working at the window. Can you
2 point out where you were working, which window?

3 A Come down there?

4 Q Yes, please.

5 A It would have been right here.

6 Q You were working there. Where is the front door of
7 the bank?

8 A Indicating.

9 Q Off to the side?

10 A This is the branch manager office. This was
11 Jessica's office. This is the vault.

12 Q And you said that this gentleman came to the bank.
13 Can you talk a little bit about where he went and what he
14 did, the one that caught your attention with the t-shirt?

15 A He walked in and was just looking around and asking
16 questions about the different accounts we have and
17 services we offered.

18 Q Did he open an account that day.

19 A No.

20 Q Did he stay -- did he stay long in the bank?

21 A Just kind of hung around for a minute or two and then
22 left.

23 Q Thank you. And after the gentleman left, what did
24 you do at this point?

25 A Just continued waiting on the customers that were

1 coming in.

2 Q Can you talk a little bit about the money that you
3 had at that point in time?

4 A Well, I didn't have a whole lot. I was buying money.
5 I had given our head teller an idea of what I needed. She
6 was getting it together for me.

7 Q What does it mean to buy money.

8 A That's when I don't have enough money to wait on my
9 customers needs and we buy it from the vault.

10 Q Can you talk a little bit about that and what
11 happened that day.

12 A I had let Kim know what I needed and she had gotten
13 it for me.

14 Q How much money did she give you.

15 A 12,000.

16 Q Can you describe the make up of that 12,000?

17 A It was 10,000 in 100's. A strap of 100's. A
18 thousand dollar strap of 10's, a \$500 strap of five's and
19 500 one's.

20 Q As you were fixing your drawer did any customers come
21 into the bank at that time.

22 A Yes.

23 Q Did you know those customers? Were they regulars?

24 A Yes.

25 Q Talk about that, please.

1 A Brenda was standing in front of me and we were just
2 chatting a little bit while I was, you know, just fixing
3 my drawer.

4 Q Were there any other customers that came in at the
5 same time as Brenda?

6 A Jeff from the BP.

7 Q Do you know where Brenda works?

8 A Crystal.

9 Q And then Jeff worked for?

10 A For the BP.

11 Q Did they come in about the same time?

12 A Yes.

13 Q When they came in did anything else happen about that
14 time?

15 A Well, that's when we got robbed.

16 Q When did you first realize that that is what was
17 happening?

18 A When I heard the gentleman on me. He just threw a
19 bag at me.

20 Q Did you hear or see him at first.

21 A I think I heard him first.

22 Q Do you remember what he said?

23 A Well, he threw this bag at me -- or on the counter
24 and he told me to put the money in the bag, Bitch.

25 Q What did you do at that point?

1 A I put the money that Kim had sold me in the bag.

2 Q So the \$12,000 you had just gotten?

3 A Yea.

4 Q What if anything else did he say at that point?

5 A Nothing at that point. I put the money in the bag.

6 And he wanted more money, larger money. And anyway I just
7 told him I didn't have any more.

8 Q By larger money do you remember what he said.

9 A Well I had put the five's and the 10's. The strap of
10 five's, 10's and the 500 one's in the bag. He didn't want
11 that. He wanted more money.

12 Q When he told you he didn't want one's and five's,
13 what did you do?

14 A Well, I kind of fumbled trying to take it back out
15 and I told him that I didn't have any more -- any more
16 money.

17 Q What did he say or do when you tried to take the
18 one's and five's out.

19 A He just reached over and grabbed the bag and just
20 took it from me.

21 Q Do you remember where everyone else was when this was
22 going on?

23 A He made Brenda and Jeff both lay down on the floor.

24 Q These are the two customers that had just come in?

25 A Uh-huh. And he also made Tara and Kim get on the

1 floor.

2 Q And where were they? Were they in front of or behind
3 the counter?

4 A Kim and Tara both are drive-thru tellers and they
5 were behind the counter.

6 Q So the customers were in front of the counter?

7 A In front of the counter.

8 Q Do you remember anything about the bag?

9 A It was kind of an off white, white color, kind of
10 resembled like a pillow case.

11 Q Do you remember anything about his appearance?

12 A He had on like a dark hoodie and a mask. His face
13 was covered.

14 Q When he came up to the counter, describe that.

15 A Well, I remember hearing him yell, to get down --
16 anyway made the two customers lay down and Kim and Tara.
17 And then he tossed the bag over the counter to me and
18 that's when he told me he wanted the money.

19 Q And what was his demeanor like as he did that?

20 A Kind of agitated, like he was in a big hurry.

21 Q And so after you filled the bag with money, what did
22 he do at that point?

23 A He snatched it back and took off.

24 Q And by, took off, what do you mean by that?

25 A He turned and ran out the door.

1 Q And after he ran out the door, how did you react?

2 A I hit the alarm and then immediately lost it.

3 Q I am handing you what's been previously marked as
4 State's Exhibit 2, the security footage. Have you looked
5 at that video?

6 A Uh-huh.

7 Q Does it truly and accurately depict what happened in
8 the bank that day.

9 A Uh-huh. Yes.

10 THE SOLICITOR: Your Honor, at this time the State
11 would move to admit State's Exhibit 2.

12 MR. HAYES: No objection.

13 (State's Exhibit Number 2 is received into evidence.)

14 MS. RINGLER: Thank you, Your Honor. And the State
15 would like to publish this to the jury.

16 Q Mrs. Floyd, if you could please come down and stand
17 next to the screen again. With defense permission, I
18 think it starts around 12:32 is when the robbery starts.
19 Is it all right to skip to that then? Can you please walk
20 us through what's going on?

21 (Video is played for the jury)

22 A That's Tammy going to lunch, Tammy Murphy.

23 Q What is going on here?

24 A This is Brenda and Jeff coming in the bank.

25 Q And what's going on right now?

1 A This is when he came in.

2 Q That's him leaving the bank?

3 A Uh-huh. This is Jeff.

4 Q What's happening there?

5 A That's Jessica. She ran and locked the door.

6 Q This is a different camera angle. Again if you can
7 just walk us through what's going on?

8 A This is Kim and Tara in the back. That's me. This
9 is Kim coming with the money that she had just sat down.
10 This is Donna, she was coming out of the break room. This
11 is Tammy going to lunch. This is Brenda and Jeff coming
12 in and this is the man coming in with the gun, that's when
13 he made Jeff and Brenda lay down. That's when he tossed
14 me the bag. That's when he's leaving.

15 Q Where is this camera angle, is that--

16 A Directly behind me. This is Brenda and Jeff coming
17 in. This is the man behind us. That's when he threw the
18 bag to me. That's the gun. That's when he was telling me
19 that he wanted more money and that's when he took the bag
20 and ran. That's Jeff.

21 Q Thank you, Mrs. Floyd. You can take the stand again.
22 I am handing you what's been marked as State's Exhibit 3,
23 those still shots that I have just handed you, are they
24 what's in the video -- accurate stills of the video?

25 A Yea. Yes.

1 Q Thank you.

2 MS. RINGLER: At this time the State would move to
3 admit State's Exhibit 3.

4 MR. HAYES: No objection.

5 (State's Exhibit Number 3 is received into evidence.)

6 Q Thank you, Mrs. Floyd. Please answer any questions
7 that the defense counsel might have.

8 CROSS-EXAMINATION

9 BY MR. HAYES:

10 Q Mrs. Floyd, how are you doing today?

11 A Just fine.

12 Q Mrs. Floyd, when you first came to work originally at
13 the beginning you said a suspicious individual or an
14 individual came in wearing a North Augusta High School
15 shirt, that was Mr. Quinton Harmon. Did he try to
16 actually open an account?

17 A No. He just asked questions.

18 Q So you didn't have to send him away because he didn't
19 have two forms of ID to open an account?

20 A No.

21 Q He just asked you about a checking account?

22 A Uh-huh.

23 Q And the only thing that got your attention was that
24 he was wearing a North Augusta High School shirt?

25 A Yea. And then he just kind of stood around for a few

1 minutes afterwards.

2 Q Did he seem nervous or out of place?

3 A Maybe a little bit.

4 Q When somebody in a normal procedure if y'all were
5 being robbed, are you supposed to drop a die pack or fake
6 money along with the actual real currency?

7 A Uh-huh.

8 Q Was that done in this case?

9 A No.

10 Q Can you tell me why it wasn't done?

11 A Kim had just set the money down on the counter beside
12 me and I just -- picked that money up and gave it to him.

13 Q Where is the die pack located?

14 A In my top drawer.

15 Q Top drawer. I beg The Court's indulgence. May I
16 approach? Mrs. Floyd, I want to show you something. Do
17 you recognize it?

18 A It's our branch. It looks like our branch.

19 Q That would be a photo from your security system at
20 your branch?

21 A I don't know. I have never seen this one.

22 Q Could it be the individual that had the North Augusta
23 High School shirt?

24 A I don't know that either, because I don't remember
25 the back of it, but the front of it.

1 Q The front of it?

2 A Had the high school logo.

3 Q Would it fairly and accurately represent your branch
4 and what it depicts?

5 A It looks a whole lot like the branch. Yea.

6 MR. HAYES: I would move to introduce as State's
7 Exhibit 1?

8 THE COURT: State's?

9 MR. HAYES: I mean, Defense. I am sorry, Your Honor.

10 THE COURT: The State?

11 MS. RINGLER: Without objection.

12 (Defendant's Exhibit Number 1 is received into
13 evidence.)

14 Q The individual when he came in the only thing he
15 asked about was the bank account or you would recognize
16 him because of the North Augusta High School shirt?

17 A Uh-huh.

18 Q The next individual when the robbery happened came in
19 they approached your window?

20 A Uh-huh.

21 Q Was that the only window they approached?

22 A When the robbery happened itself, yes.

23 Q Was there any other windows that were opened?

24 A No.

25 Q Was there any other people -- you said there were two

1 others?

2 A The two --

3 Q Was nobody working the front?

4 A The two drive-thru tellers.

5 Q Two drive-thru tellers. They were working just the
6 drive-thru.

7 A Uh-huh. From time to time they might help someone on
8 the front. But their windows are in the drive-thru.

9 Q Can you identify the person that robbed you?

10 A No.

11 Q Thank you.

12 THE COURT: Redirect?

13 MS. RINGLER: Nothing from the state, Your Honor.

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

15 Next witness.

16 MS. RINGLER: The state calls Jessica Elkins.

17 THE COURT: You may step down.

18 THE CLERK: Please come forward and place your left
19 hand on the Bible and raise your right.

20 JESSICA ELKINS, after being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. RINGLER:

24 Q Mrs. Elkins, where do you work?

25 A Bank of America.

1 Q What do you do there?

2 A I am a personal banker.

3 Q What does a personal banker do?

4 A Opens checking accounts.

5 Q How long have you worked for Bank of America?

6 A Almost 10 years.

7 Q How long have you been at this branch, the Martin
8 Town Road one?

9 A Nine years.

10 Q Did someone come into the bank, Bank of America on
11 Martin Town Road about 12:30 on April 23rd, 2009.

12 A I was in my office at that time. So I did not see
13 this person come into the bank.

14 Q Do you remember someone coming in at that time?

15 A Yes, we had customers coming and going.

16 Q I would like to talk a little bit about the bank
17 where you work. I am going to show you some photos that
18 have been previously admitted. Can you talk a little bit
19 about what's being depicted in this photo here?

20 A It looks like the parking lot. It looks like the
21 parking lot to the front of the banking center.

22 Q And what's being depicted here?

23 A Showing the inside of the banking center, the teller
24 line right here and my office right here.

25 Q And your office, where is your desk?

1 A Right here behind this gentleman, sitting at my desk
2 right here. When you come in the door on the right hand
3 side.

4 Q And so when you're seated at your desk, where do you
5 face?

6 A I face towards the lobby. So I can see the lobby
7 from my desk.

8 Q So you can see what's going on in the lobby?

9 A Yes, ma'am.

10 Q And then again what's in this photo?

11 A This is the banking center lobby and it looks like
12 once we roped off the area after the robbery.

13 Q And the teller windows, can you point those out?

14 A Yes. One here and one here and one here and one
15 there.

16 Q And I think Mrs. Floyd mentioned the drive-thru
17 windows. Can you point those out?

18 A We got two drive-thru windows right here.

19 Q And again what scene is depicted in this shot?

20 A The banking center lobby.

21 Q And?

22 A It shows my assistant manager's office here.

23 Q Where is the front door on this picture?

24 A The front door is right here behind this.

25 Q And again what's in that shot?

1 A The front door to the banking center. The check
2 rider, where the customer stops to do their deposit slips.

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

4 THE WITNESS: And the line that goes to the teller
5 coming right that way.

6 Q Thank you. You can please take a seat. I know you
7 said when you're seated in your office, you can see the
8 lobby. Did you see someone come into the bank at around
9 12:30?

10 A Yes, I did.

11 Q And what did you see?

12 A Well, as they were -- the front door opened, I heard
13 them hollering and that got my attention. So I looked up
14 and I saw him coming and pointing the gun.

15 Q And you said hollering. Do you remember what he was
16 saying?

17 A Get down. Get down.

18 Q And did you see him first or hear him first?

19 A I heard him first.

20 Q And what -- what if anything else did he say other
21 than, get down?

22 A When he was at the teller line, I heard some kind of
23 banging on the teller line and I heard him say, give me
24 more, give me more.

25 Q Could you see him when he was at the teller line?

1 A I could not see him at the teller line.

2 Q Could you see him as he crossed the lobby?

3 A Yes, ma'am.

4 Q Describe that to me?

5 A When he came through -- when the front door opened, I
6 saw his gun was pointed and he was running through the
7 lobby and said, get down, get down. And then at that
8 point I couldn't see anything else. I could just hear.

9 Q What did you hear after that?

10 A Just banging on the counter and saying give me more,
11 give me more. And Mona was frantic to give him what he
12 was demanding.

13 Q What do you remember about his tone as he's demanding
14 the money?

15 A Loud, and just not really sure like what he was
16 capable of -- I saw the gun. I knew that he knew
17 obviously what he was planning on doing that day. So I
18 was just scared.

19 Q And what did you do as he's up at the counter?

20 A I was at my desk. And I knew that I was the only
21 representative on this side of the teller line, so I had
22 to go, be ready to go lock the door as soon as possible
23 when he exited the building. And so I just -- I waited.
24 I picked up the phone and I dialed 911. I pulled my panic
25 button and I just sat still, just waiting for the next

- 1 step.
- 2 Q And where is your panic button located?
- 3 A Under my desk.
- 4 Q Why would you call 911 and hit the panic button?
- 5 A Just in case my panic button didn't work.
- 6 Q And at some point did the man leave the bank?
- 7 A Yes.
- 8 Q Did you see that?
- 9 A Yes.
- 10 Q Describe that to me?
- 11 A As soon as he ran and went through the first door.
- 12 We have a two door foyer area. When he ran through that
- 13 first door, I grabbed my keys and just ran towards the
- 14 door to lock it, to try to keep him on the outside of the
- 15 banking center.
- 16 Q Why would you lock the door?
- 17 A To prevent him from reentering.
- 18 Q And after he left the bank, did you hear anything?
- 19 A Yes.
- 20 Q What did you hear?
- 21 A There was gunshot in the parking lot and I didn't
- 22 know if it was him, so I was frantically trying to get
- 23 away from the doors and the windows. But there was a
- 24 gunshot in the parking lot.
- 25 Q And at some point after that did law enforcement

1 arrive?

2 A Yes.

3 Q Did you see what was going on outside?

4 A At that time it is our instruction to close the
5 blinds and stay away away from the windows. So I didn't
6 see what was going on outside.

7 Q Thank you, Mrs. Elkins. Please answer any questions
8 that the defense counsel might have.

9 THE COURT: Mr. Hayes.

10 CROSS-EXAMINATION

11 BY MR. HAYES:

12 Q Mrs. Elkins, could you identify the person who robbed
13 the bank?

14 A No.

15 Q Nothing further.

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

17 MS. RINGLER: Thank you. The State calls Tammy
18 Murphy.

19 THE CLERK: Please come forward and place your left
20 hand on the Bible and raise your right.

21 TAMMY MURPHY, after being duly sworn, testified
22 as follows:

23 THE CLERK: Please have a seat in the witness box and
24 state your full name for The Court and spell your last.

25 THE WITNESS: Tammy Murphy. M-U-R-P-H-Y.

DIRECT EXAMINATION

2 BY MS. RINGLER:

3 || Q Thank you. Mrs. Murphy, where do you work?

4 | A Bank of America.

5 Q What do you do there?

6 A I am a teller.

7 Q How long have you worked there?

8 | A Ten years.

9 Q Were you working on April 23, 2009?

10 A Yes, I was.

11 Q Did you take a lunch that day?

12 || A I did.

13 Q About what time did you take a lunch?

14 A Around 12:25, 12:30.

15 Q What did you do as you left the building that day?

16 A I left the building and went and got into my car.

17 Q I am going to show you some photos that have been

18 previously admitted. Is where your car was parked, is

19 || that shown in the photo?

20 A Yes, it is.

21 Q Can you describe where it was?

22 A It was where the red car is there on the screen, and

23 I was backed into the parking space.

24 Q And then what's in this photo?

25 A That is the Bank of America parking lot.

1 Q And which direction are we facing?

2 A We are facing towards the bank.

3 Q Okay. And what's in this photo?

4 A That is the Bank of America.

5 Q And here?

6 A That is the side of the bank going into the
7 drive-thru.

8 Q And then where is that?

9 A That is the mental health -- I believe that's the
10 back of the Mental Health building.

11 Q Is that next to the Bank of America?

12 A It is.

13 Q What building is kind of a far?

14 A That is the bank.

15 Q And then here?

16 A That is the back of the Mental Health building and
17 our drive-thru.

18 Q And here?

19 A The back of the Mental Health Center and the car wash
20 in the distance. That is the car wash. That is the car
21 wash that is there by the bank. That is the back of the
22 BP gas station. That is the BP gas station.

23 Q So as you were sitting in your car, what, if
24 anything, did you notice at that point?

25 A I had gone and got in my car, and I had cranked the

1 car up. And I looked down, and when I looked up I saw
2 Brenda and Jeff were going into the bank and someone went
3 in right behind them.

4 Q And what about -- did you notice anything about this
5 person that went right behind them?

6 A I noticed that he had all black on and I noticed it
7 was hot that day and I thought that was kind of strange
8 that this person would be in all black.

9 Q Do you remember what the weather was like that day?

10 A It was warm and sunny.

11 Q And how was he dressed?

12 A He was dressed in all black.

13 Q Do you remember short sleeves or long sleeves.

14 A It was a long sleeve.

15 Q So this person that was dressed in all black, what
16 did he do?

17 A He ran up the steps right behind Jeff and Brenda when
18 they went in.

19 Q What else do you remember about his appearance?

20 A I just note that I could only see him from the back
21 and it was all black and I just thought it was kind of
22 strange that he would have that on, and he had the hood
23 over his head.

24 Q Was it a sweat shirt thing?

25 A Yes, it was. It was like a hoodie.

1 Q So what did you do at that point?

2 A I thought it was strange that that was happening. So
3 I sat there for a moment to see if anything was going to
4 happen.

5 Q And what did happen?

6 A He ran back out of the bank. And I saw that his face
7 was covered. And I said, Oh my God. We just got robbed.

8 Q Do you remember what his face was covered with?

9 A It was white and it went around here.

10 Q And how much of his face was covered?

11 A I could not see his face. It was all covered.

12 Q And what did you think when you saw him come out?

13 A That we had just been robbed.

14 Q What did he do as he came out of the bank?

15 A He ran down and went in front of the bank and went
16 down beside the Mental Health building.

17 Q What did you see him do at that point?

18 A He ran. And I saw the gunshots -- I heard the
19 gunshots.

20 Q Lets go back. You saw him run down behind the--

21 A The mental health place.

22 Q Was anybody else in the parking lot at this point?

23 A Jim Huff was.

24 Q When did you first notice him?

25 A While I was sitting there waiting to see if this guy

1 was going to come back out, Jim was getting out of his
2 vehicle.

3 Q Do you know Mr. Huff?

4 A Yes, I do.

5 Q So what happened when he pulled into the bank parking
6 lot?

7 A Mr. Huff got out of his car and he was -- had opened
8 his back door to get his jacket, because he was putting it
9 on when the guy ran out. And he saw him and he yelled. I
10 don't remember what he yelled. But he yelled something at
11 him and shot.

12 Q So he arrived in between when he went into the bank
13 and came out?

14 A Yes.

15 Q After he shot what did you do at that point?

16 A I went -- took off in my car.

17 Q You drove in your car?

18 A Yes.

19 Q I am showing you a map at this point that we looked
20 at before. Using the map, can you talk about where the --
21 how did you -- what car were you following?

22 A When I pulled out of the parking lot there was a car
23 that came out from between the mental health building and
24 a car wash, they share a driveway.

25 Q Could you come down and show us that?

1 A (Witness complies)

2 Q If you'll just stand to this side over here. And
3 just again, if you can just point out where you were
4 parked.

5 A I was parked right here.

6 Q Okay. And again describe what happened as the man
7 came out of the bank?

8 A He came out of the bank and he ran this way. I was
9 parked here. I drove out of the bank. The car came out
10 from between the gas station and the car wash and the
11 mental health place here.

12 Q And do you remember what kind of car it was.

13 A It was a red mustang.

14 Q Can you describe how it was driving? How it was
15 traveling?

16 A They pulled out, in front of me, and they went down
17 here. They went this way. And I went straight and came
18 back to the bank.

19 Q Can you describe which direction the car traveled
20 when you saw it come out?

21 A It came out and it went this way.

22 Q What did you do?

23 A I got the license plate number. I went down, turned
24 around in this parking lot and came back to the bank.

25 Q What else do you remember about the car?

1 A It was a shiny red mustang. It had mustang written
2 across the bottom of it and it just caught my eye.

3 Q And you said that you noticed the tag number?

4 A Yes.

5 Q Did you write down the tag number?

6 A I didn't have anything to write on. I recited that
7 license plate number all the way back to the bank.

8 Q Did you give that information to anyone?

9 A Yes, I did. When I got back to the bank they were on
10 the phone with dispatch, and I talked to a lady on
11 dispatch and gave her the license plate number that I had.

12 Q You can please take a seat. Thank you. Please
13 answer any questions that defense counsel might have?

14 THE COURT: Any questions, Mr. Hayes?

15 CROSS-EXAMINATION

16 BY MR. HAYES:

17 Q Mrs. Murphy, how are you doing this afternoon?

18 A Fine.

19 Q Mrs. Murphy, you were talking about seeing some shots
20 being fired. Who was doing the firing?

21 A Mr. Huff.

22 Q Mr. Huff was shooting?

23 A Yes.

24 Q The individual leaving the bank didn't fire any
25 shots?

1 A No.

2 Q Okay. You can't identify the person you saw leaving
3 the bank, can you?

4 A No. I cannot.

5 Q How many people were in that red mustang?

6 A I saw two.

7 Q Two people?

8 A Yes.

9 Q Did you see anybody get in the mustang?

10 A No, I did not.

11 Q Nothing further.

12 THE COURT: Anything on redirect, ma'am?

13 Mrs. Ringler, anything on redirect?

14 MS. RINGLER: Nothing, Your Honor.

15 THE COURT: You may step down. Everybody okay over
16 there? Next witness.

17 MS. RINGLER: Quinton Harmon, Your Honor. He should
18 be outside.

19 MR. GIBBONS: Can we approach, Your Honor.

20 THE COURT: Come forward, please.

21 THE CLERK: Please come forward and place your left
22 hand on the Bible and raise your right.

23 (Whereupon, a bench conference was held.)

24 QUINTON HARMON, after being duly sworn,
25 testified as follows:

1 THE CLERK: Please state your full name for The Court
2 and spell your last.

3 THE WITNESS: Quinton Harmon, H-A-R-M-O-N.

4 THE COURT: I've got some jurors that are cold. How
5 about adjust it please. I've got some that are freezing.
6 Do it lovingly, please. All right. Mrs. Ringler?

7 DIRECT EXAMINATION

8 BY MS. RINGLER:

9 Q Mr. Harmon, are you in school right now?

10 A No, ma'am.

11 Q Are you working?

12 A Yes, ma'am.

13 Q Where do you work?

14 A At Downs Electrical in Augusta, Georgia.

15 Q What do you do there?

16 A Electrician work.

17 Q And did you go to high school?

18 A Yes, ma'am.

19 Q Where did you go to high school?

20 A At North Augusta High School.

21 Q Did you play any sports there?

22 A I played football and basketball.

23 Q And when did you graduate high school?

24 A In 08. 2008.

25 Q And do you know -- do you know T-Money?

1 A Yes, ma'am.

2 Q Do you see him in the courtroom here today?

3 A Yes, ma'am.

4 Q Can you point him out for us?

5 A He is right there.

6 THE COURT: What does he got on?

7 THE WITNESS: A white collar shirt with a black top.

8 Q How do you know that individual?

9 A His cousin introduced me to -- around my
10 neighborhood. His grandmother stayed up the road from me.
11 I knew him from his cousin Donez Williams.

12 Q So his grandma lived in your neighborhood?

13 A Yes, ma'am.

14 Q What name did you call him? What name did you know
15 him as?

16 A T-Money.

17 Q At some point did you learn his real name?

18 A At some point I did.

19 Q What is his real name?

20 A Anthony Martin.

21 Q You said he was staying with his grandmother. Do you
22 remember when you first met him?

23 A I can't remember.

24 Q Was he staying there in April of 2009?

25 A Yes, ma'am.

1 Q And describe your relationship with the defendant?

2 A We was oh --

3 THE COURT: You were what?

4 A We all hung out in the same neighborhood together and
5 you know talked and laughed and joked. Played some
6 basketball in front of my door a couple of times.

7 Q I am handing you what's been previously marked as
8 State's Exhibit 5. Do you recognize it?

9 A Yes, ma'am.

10 Q What is it?

11 A My neighborhood.

12 Q Thank you.

13 MS. RINGLER: At this time the State would move to
14 admit State's Exhibit Number 5 into evidence.

15 MR. HAYES: No objection.

16 (State's Exhibit Number 5 is received into evidence.)

17 MS. RINGLER: The State would ask to publish State's
18 Exhibit Number 5.

19 Q So this is your neighborhood you said. Can you
20 describe where you were living in April of 2009.

21 A Bryant Avenue.

22 Q If you can come on down and point that out to us.
23 Just stand over here to the side?

24 A (Witness complies) Right here.

25 Q Where was the defendant staying in April of 2009?

1 A Edna Street. I don't remember the address. But I
2 know it's on Edna Street.

3 Q Do you remember around where on Edna Street?

4 A Around this area.

5 Q What is the neighborhood -- what is it called?

6 A Belvedere Terrace.

7 Q And where -- what road is Belvedere Terrace off of?

8 A Highway 25.

9 Q And is that near any exit on I-20?

10 A It's like two minutes from the exit five.

11 Q Thank you. Please take the stand again. You said
12 that you would hang out with the defendant. Did you help
13 this defendant rob the Bank of America on Martin Town
14 Road?

15 A Yes, ma'am.

16 Q And who else was involved in that?

17 A Roosevelt Johnson and Dave Dixon.

18 Q What was your role in the robbery?

19 A My role was to go in there and scope it out, to see
20 how many people was in there.

21 Q Were you charged with your role in the robbery?

22 A Yes, ma'am.

23 Q What were you charged with?

24 A With bank robbery.

25 Q Do you know how much that carries?

1 A About 30 years.

2 Q And have you received any kind of plea offer from the
3 solicitor's office?

4 A No, ma'am.

5 Q Are you hoping that by coming forward and admitting
6 what -- admitting what you've done that it will help you?

7 A Yes, ma'am.

8 Q Has anybody threatened you in any way?

9 A No, ma'am.

10 Q Let's talk a little bit about this robbery. When did
11 the idea of robbing the bank first come up?

12 A When Mr. Anthony Martin arrived at my house the day
13 before the robbery.

14 Q And, again, with regard to you testifying today, has
15 anybody promised you anything?

16 A No, ma'am.

17 Q Sorry, let's go back to when the idea of the robbery
18 first came up?

19 A The day before, the Wednesday.

20 Q I'm sorry. Please finish where were you when it--

21 A I was at my house at Bryant Avenue.

22 Q Do you remember about when this occurred?

23 A About I want to say six.

24 Q So?

25 A Six P.M.

1 Q Where were you at your house?

2 A In front of my door.

3 Q Who all was there?

4 A It was me, Anthony Martin and my oldest brother Keon
5 Harmon.

6 Q What if anything did the defendant say at this point.

7 A When he first came up we was talking and just
8 walking. And he come up to me, he was like I want to hit
9 a lick, like rob.

10 Q What does that mean to you, hit a lick?

11 A Like rob.

12 Q What else did he say.

13 A We was just walking and talking about it. But he
14 didn't specifically say the day, what it was, until later
15 on that night.

16 Q What happened later on that night?

17 A Later on that night Roosevelt Johnson and Dave Dixon
18 arrived to my house. I called them to come to my house.
19 Because we always hang out. And Anthony Martin asked me
20 to ask Roosevelt Johnson can he take him somewhere. So we
21 left from my house and went to my cousin's house in
22 Pinecrest.

23 Q Who is your cousin?

24 A Tyewan Johnson.

25 Q Does Tyewan go by a nickname?

- 1 A Tidy.
- 2 Q Who all is at Tidy's house at this point?
- 3 A Me, Anthony Martin, Dave Dixon, Roosevelt Johnson,
- 4 Jacob McKie.
- 5 Q Do you at some point leave Tidy's house?
- 6 A Yes, ma'am.
- 7 Q Where do you go?
- 8 A We left Tidy's house and went to Regency Bank.
- 9 Q Where was this bank?
- 10 A On Martin Town -- well it's like down --
- 11 Q Is it in North Augusta?
- 12 A It's in North Augusta.
- 13 Q What do you do after going to that bank?
- 14 A We went to Bank of America and that's when he says
- 15 this is the spot I want to hit, I want to rob.
- 16 Q And so after going to the Bank of America, where do
- 17 y'all go then?
- 18 A After we left Bank of America we went to this
- 19 neighborhood right beside Bank of America.
- 20 Q What do you do there?
- 21 A Rode around there and then came back out.
- 22 Q And after coming out of the neighborhood, where did
- 23 you go?
- 24 A We all went home.
- 25 Q And what was the purpose of driving around that

1 night?

2 A Just to pick out banks that we was going to rob, the
3 bank that we was going to rob.

4 Q You said at first you didn't know where -- what place
5 you were going to rob. When did you learn that it was
6 going to be a bank.

7 A When we get there to the Bank of America.

8 Q When you get in a car?

9 A Yes, ma'am.

10 Q Let's talk about the day of the robbery, April 23.
11 How did you start that day?

12 A The day of the robbery?

13 Q Uh-huh?

14 A Well, the day of the robbery I had went to my GED
15 class. I was taking GED classes in Barn Village in
16 Augusta, Georgia. And it was about 8 o'clock I was to the
17 class.

18 Q So you talk about graduating in North Augusta. Did
19 you get a degree at this point?

20 A No, ma'am.

21 Q So you were getting the GED degree?

22 A GED.

23 Q So where was your GED class?

24 A In Barn Village in Augusta Georgia.

25 Q Was it in a house or shopping center?

- 1 A A house.
- 2 Q And about what time did you go to the class?
- 3 A About 8 o'clock that morning.
- 4 Q Did you talk to anybody that morning?
- 5 A No, ma'am.
- 6 Q Later on in the day did you talk to anybody?
- 7 A When I was in my GED class I talked to Roosevelt
- 8 Johnson.
- 9 Q And when you were done with your class, did someone
- 10 come and pick you up?
- 11 A Yes, Roosevelt Johnson picked me up.
- 12 Q What kind of car does Roosevelt drive?
- 13 A A red mustang.
- 14 Q Is there anything else you remember about the red
- 15 mustang.
- 16 A Well it was Roosevelt, Dave and and Anthony Martin
- 17 was in there and they came and picked me up from my GED
- 18 class.
- 19 Q And where did you sit in the car?
- 20 A In the back seat.
- 21 Q And where did you go at that point?
- 22 A From there we went to Popeye's on Gordon Highway
- 23 because Anthony Martin needed some gloves.
- 24 Q How did you get the gloves at Popeye's?
- 25 A He went in there and got them in Popeye's.

1 Q Do you remember what kind of gloves they were?

2 A They were clear plastic gloves.

3 Q At this point I am going to show you one of the
4 stills from the bank that had been previously admitted.

5 THE COURT: What number please?

6 Q State's Exhibit 3.

7 THE COURT: Sub title B, A, what?

8 MS. RINGLER: It would be 3-G, Your Honor.

9 THE COURT: All right. You and Mr. Hayes get
10 together after 5 o'clock and get all of those marked
11 correctly please.

12 MR. HAYES: Yes, Your Honor.

13 Q Again, I am showing you what's been previously
14 admitted as State's Exhibit 3. The gloves that you
15 referenced, do you see those in the picture?

16 THE COURT: That's 3-G for the record.

17 Q If you can stand to the side and point those out for
18 the jury?

19 A Right here.

20 Q Thank you. You can take the stand again. After
21 getting the gloves where did you go at that point?

22 A After we get the gloves, we go to Dave Dixon's house.

23 Q Where does David live?

24 A I don't remember the neighborhood. But it's right
25 behind North Augusta Gardens.

- 1 Q David lives in North Augusta?
- 2 A Yes, ma'am.
- 3 Q Who all is at Dave's house?
- 4 A Me, Dave and and Anthony Martin.
- 5 Q And was there anybody else?
- 6 A No, that was it.
- 7 Q Was Roosevelt Johnson there?
- 8 A Yes, ma'am.
- 9 Q And so there is the four of y'all?
- 10 A Yes, ma'am.
- 11 Q What at that point happens?
- 12 A Well, we all sitting in Dave's living room and we was
- 13 just watching TV. So Anthony Martin had asked Dave for a
- 14 bag. So Dave give him a pillow case and he was like, I
- 15 need a shirt. So Dave get him a white t-shirt. So we all
- 16 walked back to the living room, and that's when he tells
- 17 me that to go in the bank and scope it out, and Dave, I
- 18 guess, would be the watch out man, and Roosevelt drive.
- 19 Q Do you remember what the defendant was wearing at
- 20 this point?
- 21 A Some blue jeans and a white t-shirt and some white
- 22 and black Jordans.
- 23 Q Did he have any kind of a bag with him? At some
- 24 point did you notice him with a bag?
- 25 A No, ma'am. I didn't notice the bag until when we got

1 there at the car wash.

2 Q Okay. So at that point he just takes the t-shirt and
3 the pillow case?

4 A Yes, ma'am.

5 Q After he's assigned out the roles, what, if anything,
6 happens then?

7 A After he assigned the roles, we get in the car and
8 heads to Bank of America.

9 Q Where do you go when you arrive at Bank of America?

10 A We get to Bank of America and we parks in the car
11 wash and --

12 Q Where is the car wash?

13 A On Martin Town Road.

14 Q Where is it in relation to the bank?

15 A Ma'am.

16 Q Where is it in relation to the bank?

17 A Right beside the bank.

18 Q Is there anything in between the car wash and the
19 bank?

20 A It's in some kind of building. I don't know the name
21 of the building.

22 Q When you get to the car wash, how do you park?

23 A We parked facing towards the gas station.

24 Q And once you get to the car wash, what do you do
25 then?

1 A When we get to the car wash, Roosevelt gets out of
2 his car and opens the trunk, like he was cleaning the car
3 out.

4 Q Okay.

5 A And him and Dave walk to the store to get something
6 to drink.

7 Q The store. What do you mean by that?

8 A Walks to the BP store.

9 Q What do you do at that point?

10 A Me and Anthoney Martin was sitting in the car. So
11 when everybody got back, he tells me to go in the bank and
12 scope it out and see how many people was in there. So I
13 gets out and go in the bank.

14 Q And so what are you wearing at this point? Do you
15 remember?

16 A My North Augusta senior t-shirt and some blue jeans.

17 Q I'm sorry?

18 A And some blue jeans and some black polo boots.

19 Q What do you do when you get in the bank?

20 A I walked to the bank teller and asked her how much it
21 cost to open up a bank account.

22 Q Why do you do that?

23 A That's what -- I was going in really to look -- to
24 scope the bank out. But I was you know telling her how
25 much it costs to open up a bank account.

1 Q What do you do after she gives you that information.

2 A She said I needed two forms of ID, which I didn't

3 have it. So I left out.

4 Q Did you look around while you were in the bank?

5 A When I walked down I looked around.

6 Q What did you do when you left the bank?

7 A I walked back to the car where everybody was at and

8 tell Anthony Martin how many people was there. I told him

9 it was a few people in there. So we all get in the car

10 and that's when he pulled out a black bookbag and start

11 putting the clothes on that he was going to rob the bank

12 with.

13 Q What clothes did he put on?

14 A Some black jeans -- well some black pants and a black

15 hoodie.

16 Q Did he change out of what he has on or did he put it

17 on over the clothes?

18 A He put the black pants over his jeans that he had on.

19 Q And the black hoodie?

20 A He just put the black hoodie on because he already

21 had a white t-shirt on.

22 Q Did you see the t-shirt that David Dixon had given

23 him.

24 A It was a plain white t-shirt.

25 Q Do you know what he did with that?

- 1 A He put it around his face.
- 2 Q Was he wearing anything on his head?
- 3 A The hoodie when he had put the whole thing on.
- 4 Q Did he have anything else on his head?
- 5 A Not that I know of.
- 6 Q So where is he changing?
- 7 A In the car. In the passenger side.
- 8 Q And so after he changes, what does he do then?
- 9 A When he changes he gets out of the car and heads
10 towards the bank.
- 11 Q At some point did you see a gun?
- 12 A I seen a gun after he was running back from the bank.
- 13 Q So when he's getting out and going in the bank what
14 happens then?
- 15 A He gets out of the car and heads towards the bank and
16 he looked back at us and he just started running towards
17 the bank, and I want to say, maybe a couple of seconds
18 later I heard like gunshots; so --
- 19 Q While he's in the bank, where are you?
- 20 A While he's in the bank, me and Dave are sitting in
21 the back seat. I was on the driver's side and Dave was on
22 the the passenger side.
- 23 Q Where is Roosevelt?
- 24 A Roosevelt was in the driver seat.
- 25 Q This is all in the red mustang?

1 A Yes, ma'am.

2 Q So describe how he leaves -- describe how he heads to
3 the bank?

4 A He's -- he didn't have the shirt on his face when he
5 was walking towards the bank. He put the shirt on his
6 face when he got behind the little building.

7 Q So you can see him behind the building?

8 A Yes, ma'am.

9 Q What does he do after -- what does he do behind the
10 building?

11 A After he looked back at us and he put the shirt over
12 his face and headed towards the bank.

13 Q And can you see the bank from where you are sitting?

14 A No, ma'am.

15 Q When do you see the defendant again?

16 A After I heard the gunshots and I seen him running
17 around the corner from the bank.

18 Q And what does he do when he comes around the corner?

19 A When he comes around the corner he is just running
20 towards the car, and hops in the car and take everything
21 off his face and take the black jacket off as we was
22 pulling off.

23 Q Does he say anything as he gets in the car?

24 A He said, I did it y'all. I did it.

25 Q Does he say anything else?

1 A No, ma'am.

2 Q At that point what is -- Roosevelt is behind the
3 wheel?

4 A Yes, ma'am.

5 Q What did Roosevelt do?

6 A Roosevelt he tell Roosevelt to drive, and Roosevelt
7 peeled off.

8 Q Where does Roosevelt go?

9 A He heads down the side road in North Augusta, where
10 the bank was at.

11 Q So as he comes out of the driveway, does he take a
12 left or right?

13 A He takes a left.

14 Q And where does he go after he takes that left?

15 A He goes down this side road where Regency Bank was
16 at.

17 Q And where do y'all go at that point?

18 A From there we go across 15th Street Bridge -- well we
19 head -- we go towards 15th Street Bridge.

20 Q So you go towards Augusta?

21 A Yes, ma'am.

22 Q And you said that he changes when he gets in the car.
23 Can you talk a little bit about that?

24 A He changes when he get in the car. He was taking the
25 black hoodie off, and the white shirt off his face, and

1 putting on his baseball cap that he had.

2 Q And then you mentioned the gun before. When did you
3 first notice a gun?

4 A When he was running back towards the car.

5 Q Who had the gun?

6 A Anthony Martin.

7 Q What do you remember about the gun?

8 A All I remember was a black gun, black handgun.

9 Q Handgun. What does he do with the gun once he gets
10 in the car?

11 A When he gets in the car, he put the gun inside the
12 black bookbag that he had.

13 Q Did he put anything else in the black bookbag?

14 A The clothes he had on.

15 Q Do you remember -- did you see the pillow case?

16 A Yes. The pillow case had the money in it.

17 Q Describe that?

18 A As we was pulling off, he had the pillow case in
19 front of him and we was -- as we was going towards
20 Georgia, he was handing all of us money.

21 Q Did he hand you money?

22 A Yes, ma'am.

23 Q How much? Do you remember?

24 A About \$300.

25 Q After he handed you the money what does he do with

1 the pillow case?

2 A He keeps the pillow case in front of him.

3 Q So at this point -- where is the gun at this point?

4 A In the black bag.

5 Q So the clothes and the gun are in the black bag and
6 then the money is in the pillow case?

7 A Yes, ma'am.

8 Q So as you -- where are you going when you go towards
9 Augusta?

10 A Well, we was -- we went across the 15th Street Bridge
11 and I seen one of my friends Tommy Wilson coming across
12 the street.

13 Q So did you go somewhere before you saw him?

14 A No, ma'am.

15 Q So you saw a friend walking?

16 A Yes, ma'am.

17 Q What do you do at that point?

18 A We stopped and he hands Thomas Wilson the pillow
19 case, after he takes -- he takes the stuff out of the
20 black bag and put it in the pillow case.

21 Q Okay.

22 A Put the money in the bookbag. And hands Thomas
23 Wilson the pillow case with the clothing in it.

24 Q And so after he hands the clothes to Thomas Wilson,
25 where do y'all go then?

1 A We go to the bus station.

2 Q What happens at the bus station?

3 A When we got to the bus station. He got out with the
4 bookbag to get on the bus, and he was going to catch the
5 bus back to Atlanta.

6 Q Did he tell you that?

7 A Yes, ma'am.

8 Q What does he say exactly?

9 A He says, Roosevelt take me to the bus station because
10 I am going to get on the bus. So when we get to the bus
11 station, he gets out of the car and walks in, and I wanted
12 to say maybe a couple of seconds, he came back out. And
13 he was like, the bus station is going to be down for 90
14 minutes because they were working on the power. So after
15 he couldn't get on the bus, he said let's go to the mall.
16 So we go to Augusta Mall.

17 Q What do you do at the mall?

18 A When we get to Augusta Mall we all get out and he
19 takes the money and is packing it all in his pockets and
20 his shoes. So we get and walk in the mall, and it was
21 just me and him and it was Dave and Roosevelt walking
22 together. So me and him went to one of the clothing
23 stores. He changed -- he go in there and buy clothes and
24 changed his outfit inside of the dressing room.

25 Q Where do you go?

1 A Me and Anthony Martin was together.

2 Q And then David and Roosevelt they go somewhere in
3 another direction?

4 A They go somewhere else.

5 Q Does Anthony Martin make any phone calls at the mall?

6 A After he get his clothes, he go to the shoe store and
7 he bought me some shoes, and we all meets back up and walk
8 upstairs to the food court.

9 Q So when you say, we all. Who?

10 A Me, Dave, and Roosevelt and Anthony Martin.

11 Q Did you buy anything at the mall?

12 A Some shoes.

13 Q So where do y'all meet back up?

14 A At the food court.

15 Q What happens when you get to the food court?

16 A When we get to the food court he asked Roosevelt can
17 I use your phone to call me a ride. So he used
18 Roosevelt's phone to call him a ride. He gets the phone
19 and kind of walks away from us. He wasn't far away from
20 us, but he walked a way from us and started using the
21 phone. So, maybe 20 or 30 minutes later a green Toyota
22 pulled up in front of the mall. So he walks -- him and
23 Roosevelt walks outside and he gets in the car and the car
24 pulled off.

25 Q Did he say where he was going?

1 A He said he was heading back to Atlanta.

2 Q Did you ever see him in the neighborhood again?

3 A No, ma'am.

4 Q At some point did you make a statement to law
5 enforcement?

6 A That Friday I was at home -- well, after we get in
7 the car and everybody go home. On Thursday when Anthony
8 Martin leave, we all go home. And the day after, I was at
9 home watching TV and my little brother come up to me and
10 was like your face in the newspaper. The same shirt that
11 I had on, when I walk to the bank. He was like, your face
12 in the newspaper. So, I was like, I was just sitting home
13 thinking about it, you know, because I knew what I had
14 done. When -- probably later on that night me and a
15 couple of friends went to Augusta Mall, because my friend
16 he wanted to go shopping. So I went with him. So my
17 mother, she called me and she said Quinton you should go
18 to the police department and see what's going on. So I
19 told her I was like I will go.

20 Q At some point did you go --

21 A I knew one of the officers, officer Trip in North
22 Augusta. So I went to his house and I was talking to him
23 and he told me that the detective was at the police
24 department waiting for me. So I go to the police
25 department and he tells me to come in. So I explained

1 what happened.

2 Q And the first statement that you gave, did you fully
3 admit your involvement?

4 A No, ma'am.

5 Q At some point did you admit your involvement, fully
6 admit your involvement?

7 A Yes, ma'am.

8 Q And why are you testifying here today?

9 A Because I knew I was wrong for what I done. And I
10 should have never went on a head and let somebody else
11 come in my life and get me into an involvement like that.

12 Q Are you testifying because you participated in this
13 robbery?

14 A Yes, ma'am.

15 Q And let's talk a little bit about when Roosevelt --
16 excuse me, when Anthony Martin left the mall. What did
17 y'all do at that point?

18 A Well, when he left the mall, Roosevelt -- him and
19 Roosevelt walked outside together, and he pulled up. So
20 Roosevelt came back around with the car to pick me and
21 Dave Dixon up.

22 Q So y'all got back in the red mustang?

23 A Yes, ma'am.

24 Q And then you left the mall?

25 A Yes, ma'am.

1 Q Did Anthony Martin force you to help him rob that
2 bank?

3 A No, ma'am.

4 Q So you chose to help him do it?

5 A Yes, ma'am.

6 Q Thank you. Please answer any questions that defense
7 counsel might have.

8 THE COURT: All right. Ladies and gentlemen, I told
9 you that we'd go until about five. It is five now. Is
10 9:30 too early to start in the morning? Is that a problem
11 with anybody? If y'all would like some refreshments in
12 the morning beside hot coffee. You can have doughnuts or
13 sausage biscuits or fruit. What is your pleasure?

14 THE JUROR: Sausage biscuits.

15 THE COURT: All right. Somebody had to speak up.
16 Get with the Bailiff, he'll know what to do. All right
17 we're going to start right at 9:30. If you want a sausage
18 biscuit, be here a little earlier than that, because we
19 can't bring it out in the courtroom. Y'all please in the
20 morning select a foreperson among the 12 of you. When you
21 go home tonight, please don't discuss the case with
22 anyone. Do not let anybody discuss it with you. Don't go
23 on the internet or whatever and try to research armed
24 robbery or anything else. We'll do all of that in the
25 courtroom. Have a very pleasant evening. We'll start

1 right on time at 9:30 in the morning. Everyone else
2 please remain seated. Y'all have a pleasant, pleasant
3 evening.

4 (Whereupon, the jury exited the courtroom at
5 5 o'clock.)

6 THE COURT: Mrs. Ringler, is this witness on bond?
7 Out on bond?

8 MS. RINGLER: This witness is out on bond, Your
9 Honor.

10 THE COURT: All right. Sir, you're right in the
11 middle of your testimony. Do not discuss it with anyone
12 tonight. Be back at 9 o'clock in the morning. You may
13 step down. Anything for the record before we break for
14 the evening by the state?

15 MS. RINGLER: Nothing by the state, Your Honor.

16 THE COURT: By the defendant?

17 MR. HAYES: No, sir.

18 THE COURT: Ladies and gentlemen, y'all please get
19 those marked, A, B, C, whatever. Defendant is in custody.

20 The following proceedings were held April 27, 2011.
21 Tuesday.

22 (Whereupon, the jury came into open court at
23 approximately 9:31.)

24 THE COURT: Good morning. Enjoy your sausage
25 biscuits.

1 THE JUROR: They were good. Thank you.

2 THE COURT: Did we get us a foreperson?

3 THE FOREPERSON: Yes.

4 THE COURT: You?

5 THE FOREPERSON: Yes.

6 THE COURT: How about switch from my friend from
7 Jackson, South Carolina?

8 THE JUROR: No, sir.

9 THE COURT: Are you from Jackson?

10 MALE SPEAKER: No, sir.

11 THE COURT: I heard some very disturbing things about
12 you. I heard you were a referee for basketball at one
13 time.

14 THE JUROR: Yes, sir. I use to be.

15 THE COURT: And that you always picked on Mr. Weeks.
16 He said I never fouled anybody. That guy always called me
17 out for me.

18 THE JUROR: He always looked down on a lot of people.

19 THE COURT: All right. Mr. Hayes you may begin.

20 MR. HAYES: May it please The Court.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. HAYES:

24 Q Mr. Harmon, you talked to the police on at least two
25 other occasions, right?

1 A Yes, sir.

2 Q And you told your story on both of those occasions
3 and yesterday as well?

4 A Yes, sir.

5 Q On the first time is 4/24 after you saw yourself on
6 the news or they told you they saw you on the news, you
7 went down and talked with them; is that correct?

8 A Yes, sir.

9 Q On that day that you first started talking with them
10 you told them that your girlfriend took you to the bank;
11 correct?

12 A Yes, sir.

13 Q And she picked you up from your GED class and y'all
14 came back after stopping at McDonalds?

15 A Yes, sir.

16 Q And you went in the bank to open an account?

17 A Yes, sir.

18 Q You then saw the red mustang next to the bank?

19 A Yes, sir.

20 Q You told your girlfriend that she could leave and
21 that you were going to meet up with Roosevelt and David?

22 A Yes, sir.

23 Q You also told the police that your girlfriend took
24 you to the mall?

25 A Yes, sir.

- 1 Q That your girlfriend bought you some tennis shoes?
- 2 A Yes, sir.
- 3 Q And that you met up with Roosevelt and David at the
- 4 Augusta Mall?
- 5 A Yes, sir.
- 6 Q Is that correct? At that point Mr. Sherman or
- 7 Investigator Sherman stopped you and said he caught you in
- 8 a lie?
- 9 A Yes, sir.
- 10 Q And that's when he told you, you have a chance to go
- 11 on record first. There is always kinds of programs, but
- 12 they require you to tell the truth.
- 13 A Yes, sir.
- 14 Q Then you started talking about what happened again;
- 15 right?
- 16 A Yes, sir.
- 17 Q You still said that your girlfriend dropped you off?
- 18 A Yes, sir.
- 19 Q At the bank. And you started talking about you took
- 20 it on yourself when you saw the red mustang, that you were
- 21 going to scope the bank?
- 22 A Yes, sir.
- 23 Q You were still going to open an account?
- 24 A Yes, sir.
- 25 Q At that point in time you said you did not know

1 T-Money's real name?

2 A Yes, sir.

3 Q And he indicated to you that there was no T-Money.

4 A It was a nickname.

5 Q But Investigator Sherman indicated to you that there
6 was no T-Money; correct?

7 A Yes, sir.

8 Q That that was a fictitious name and that there was
9 only two people in the car?

10 A Sir.

11 THE COURT: Ask him a question. Hold on. Hold on.
12 Ask him a question.

13 Q And did the officer tell you at that time that there
14 was no T-Money; is that correct?

15 A Yes, sir.

16 Q And that there was only two people in the red
17 mustang?

18 A Yes, sir.

19 Q You also told Investigator Sherman that they called
20 you -- Roosevelt and David Dixon?

21 A Yes, sir.

22 Q And then talking about how monies were appropriated,
23 you first told him that you got in the car because he
24 pointed a gun at you, as you walked up to the car?

25 A Yes, sir.

1 Q That afterwards you asked for some money and you got
2 ten dollars?

3 A No, sir.

4 Q You didn't tell him that?

5 A Ten dollars?

6 Q Yea. The first time. The very first time money was
7 mentioned?

8 A Yes.

9 Q You said you got ten dollars?

10 A Yes, sir.

11 Q The second time was it was not over \$50?

12 A Yes, sir.

13 Q The third time was it was at least \$50?

14 A No, sir. I don't remember that.

15 Q Then right after saying at least \$50, it wasn't
16 hundreds or not hundreds, nothing like that?

17 A Yes, sir.

18 Q And then the last time it was \$300?

19 A Yes, sir.

20 Q Now you said y'all went straight from the bank to the
21 Augusta Mall?

22 A Sir.

23 Q That y'all went straight from the bank to the Augusta
24 Mall? This is the first interview with investigator
25 Sherman?

1 A Yes, sir.

2 Q Didn't you tell him that you couldn't remember what
3 part of the mall you went into?

4 A Yes, sir, at the time.

5 Q Then -- didn't you tell him after that, you exited
6 out of the front of the mall?

7 A Yes, sir.

8 Q He asked you what did you do with the money. You
9 told him you bought some shirts, a pair of jeans?

10 A Did I buy the shirt and pair of jeans? No, sir.

11 Q That's what you told him?

12 A Shoes.

13 THE COURT: Did you tell the police officer? That is
14 his question.

15 THE WITNESS: Yes, sir.

16 Q Didn't you tell the office on 4/24 that you also used
17 some of that money on that day to buy some food?

18 A Yes, sir.

19 Q The second interview would have been on 4/22 and that
20 would have been with the FBI; correct?

21 A Yes, sir.

22 Q In that discussion with the FBI, didn't you tell him
23 David Dixon and Roosevelt Johnson and T-Money were all
24 present?

25 A Yes, sir.

1 Q Didn't you tell him that you were told where Anthony
2 Martin lived?

3 A Sir?

4 Q At that time is when you told Mr. Glenn Dolphin where
5 Anthony Money lived?

6 A Yes.

7 Q Anthony Martin, T-Money, as you were calling him at
8 the time. That y'all planned this outside?

9 A Yes, sir.

10 Q And that you left around 11PM?

11 A Yes, sir.

12 Q At that time you also told him that you were with
13 your girlfriend?

14 A Yes, sir.

15 Q And you saw the red mustang at the car wash?

16 A Yes, sir.

17 Q You told your girlfriend to leave?

18 A Yes, sir.

19 Q And you went into the bank?

20 A Yes, sir.

21 Q You told him that you were going to open up an
22 account, but you couldn't because you didn't have two
23 forms of ID?

24 A Yes, sir.

25 Q And that you also at that time scouted the bank on

1 your own initiative? Was that a yes?

2 A Yes, sir.

3 Q You also told special agent Dolphin that you did not
4 see a gun until Mr. Martin came out of the bank?

5 A Yes, sir.

6 Q You told Mr. -- special agent, Mr. Dolphin, that
7 y'all went over the 13th Street Bridge?

8 A Fifteen Street Bridge.

9 Q Went over the 15th. You also told him that T-Money
10 put on a gray skull cap?

11 A Sir.

12 Q You also said that T-Money had on a gray skull cap?

13 A No, sir.

14 Q No? Didn't you tell special agent Dolphin that
15 T-Money was standing outside the car wearing black pants,
16 black hoodie and black Nike's when you approached the car?

17 A Black -- I mean.

18 Q Black Nike's?

19 A Black pants, black hoodie and some white and black
20 Jordan's.

21 Q You also told Special Agent Dolphin that you did not
22 see any gloves until he came back from the bank?

23 A Yes, sir.

24 Q You also told Special Agent Dolphin that y'all went
25 straight to the mall?

1 A Yes, sir.

2 Q You also told special agent Dolphin that you left the
3 money in the back seat of the mustang?

4 A Yes, sir.

5 Q Now yesterday you told the story for a third time;
6 correct?

7 A Yes, sir.

8 Q And that was here in the courtroom. Yesterday you
9 said you know Mr. Martin?

10 A Yes, sir.

11 Q You also told the court that you know his cousin?

12 A Yes, sir.

13 Q You also told us that you knew that he lived on Edna
14 Street?

15 A Yes, sir.

16 Q You also testified yesterday that the idea came up
17 and was planned the day before?

18 A Yes, sir.

19 Q Yesterday when you said the plan was being formed,
20 you said David Dixon was present, yourself, T-Money,
21 Roosevelt Johnson, and Kenyon?

22 A No, sir.

23 Q What was his name?

24 A Keon.

25 Q Keon was his name?

1 A You asked me if was present. He was not present.

2 Q Okay. You also told us yesterday that you called
3 Roosevelt Johnson for a ride from your GED class?

4 A Yes, sir.

5 Q Yesterday you testify that T-Money had a bag?

6 A Yes, sir.

7 Q And that you noticed it at the car wash?

8 A Yes, sir.

9 Q That you then scoped out the bank and that when you
10 came back, T-Money pulled out the bag and changed clothes
11 in the parking lot of the car wash?

12 A Yes, sir.

13 Q You also testified yesterday that y'all went to
14 Popey's and obtained some gloves?

15 A Yes, sir.

16 Q And yesterday you also testified that y'all saw a
17 Mr. Wilson and a bag was given to him?

18 A Yes, sir.

19 Q All right. Now, from your testimony from yesterday,
20 and your testimony on 4/22 and on 4/24, would you agree
21 that there are some inconsistencies there?

22 A Yes, sir.

23 Q So in one of those occasions you're not telling the
24 truth? At least on one of those occasions?

25 A The one -- my testimony yesterday was the truth.

1 Q All right. Yesterday was the truth -- I beg the
2 court's indulgence. So your girlfriend picking you up
3 from your GED class, that was a lie?

4 A Yes, sir.

5 Q The girlfriend dropping you off at the bank was a
6 lie?

7 A Yes, sir.

8 Q You wanting to open an account at the bank was a lie?

9 A No, sir.

10 Q So you really wanted to open an account at the bank
11 you were about to rob?

12 A No. That was no lie. I mean, it was a lie me
13 opening an account, a bank account at the bank.

14 Q Which one was it?

15 A It was a lie.

16 Q They didn't actually call you, did they?

17 A Sir.

18 Q You said --

19 A No, I called --

20 Q You called them?

21 A Yes, sir.

22 Q So that one was a lie?

23 A That they called me? Yes, sir.

24 Q All right. Then when you told investigator Sherman
25 you got ten dollars, \$50, at least \$50, not hundreds,

1 maybe around \$300, that was a lie?

2 A Yes, sir.

3 Q Was it a lie when you told him that you bought a pair
4 of jeans, a shirt and some food?

5 A Well, I didn't tell him I bought no jeans and a
6 shirt. I told him I bought food.

7 Q You weren't offered any rewards or promises for this
8 testimony, were you?

9 A No, sir.

10 Q You're sure hoping for something; right?

11 A Yes, sir.

12 Q Were you given any kind of benefit?

13 A No, sir.

14 Q Now, after you gave your testimony to Investigator
15 Sherman and Special Agent Dolphin, you bonded out;
16 correct?

17 A Yes, sir.

18 Q Was your bond reduced?

19 A It was 50,000.

20 Q Was it reduced from a higher number?

21 A No, sir.

22 Q So was it a lie when you told him that you saw the
23 gloves after he came back from the bank?

24 A Sir.

25 Q It was a lie when you told him you did not see the

1 gloves until after you came back from the bank?

2 A Was it a lie? Yes, sir.

3 Q Was it a lie when you told him you didn't see the gun
4 until after you came back from the bank?

5 A I didn't see the gun until he got -- he was going
6 towards the bank.

7 Q Okay. So it was a lie when you told him you did not
8 see the gun until he came back from the bank?

9 A Yes, sir.

10 Q Was it a lie when you told him that he pointed the
11 gun at you and told you to get in the car?

12 A Yes, sir.

13 Q You knew you were actually on the video from the
14 bank, didn't you?

15 A Yes, sir.

16 Q So it was a lie when you said you scoped out the bank
17 on your own initially?

18 A Sir.

19 Q It was a lie when you said you scoped the bank on
20 your own initially?

21 A Yes, sir.

22 Q Have you ever had a run in with my client?

23 A No, sir.

24 Q Did you have a run in with Mr. Williams, Adonis
25 Williams, my client's cousin?

1 A No, sir.

2 Q So there was never a situation where y'all were
3 drinking at your house and you felt that Mr. Williams
4 slighted your mother and you wanted to fight him?

5 A No, sir.

6 Q Isn't it true that you were the first person to use
7 the name T-Money?

8 A No, sir.

9 Q Didn't you tell Detective Sherman in your interview
10 T-Money?

11 A Yes, sir.

12 Q And didn't he tell you that was the first time he had
13 heard that name?

14 A Yes, sir.

15 Q Isn't it true that you knew you were caught?

16 A Sir.

17 Q Isn't it true that you knew you were caught?

18 A Caught?

19 Q Caught. When you came in and talked to the police on
20 4/24 because you saw your name on the newspaper?

21 A Yes, sir.

22 MR. HAYES: I beg the court's indulgence.

23 Q You pulled my client into this because you knew you
24 all were caught, didn't you?

25 A Sir.

1 Q You pulled my client into this because you knew you
2 were caught on video, didn't you?

3 A We all was involved with it. I just want to tell the
4 truth.

5 Q Why now? Why do you want to tell the truth now?

6 A I thought -- I mean, I know I was wrong for what I
7 had done and I just wanted to truth up.

8 Q What changed from 4/24 and 4/22 to yesterday?

9 A Yesterday was the real truth.

10 THE COURT: Yesterday was what?

11 THE WITNESS: It was the truth.

12 Q What changed, yesterday, from 4/24 when you first
13 talked to the police and on 4/22 of 2009, the second time
14 you talked to the police, what changed?

15 A About what happened?

16 Q Yes. Did your heart grow a few sizes? What changed?
17 What made you change?

18 A I was afraid. I was scared because I never been
19 through nothing like this.

20 Q When you get scared, do you lie?

21 A I mean, I just didn't come out with the truth right
22 then.

23 Q All right. You just didn't come out with the truth
24 right then?

25 A In the first two statements.

1 Q So the third statement is the truth?

2 A Yes, sir.

3 Q But the first two weren't?

4 A No, sir.

5 Q You're hoping to get some kind of benefit for
6 testifying here today; is that correct?

7 A Yes, sir.

8 MR. HAYES: Nothing further, Your Honor.

9 THE COURT: Redirect, if any.

10 REDIRECT EXAMINATION

11 BY MS. RINGLER:

12 Q Now you spoke a moment ago about a statement that you
13 gave on April 24, 2009?

14 A Yes, ma'am.

15 Q Did the robbery happen on April 23, 2009?

16 A Yes, ma'am.

17 Q So you couldn't have given an interview on April 22,
18 2009 about the robbery, could you?

19 A No, ma'am.

20 MR. HAYES: Twenty-seventh. I'm sorry.

21 Q Could you have given the statement on April 29?

22 A What was the day of the robbery.

23 Q Did you give two interviews?

24 A Yes, ma'am.

25 Q Was one the day after the robbery?

- 1 A Yes, ma'am.
- 2 Q And was one a couple of days after the robbery?
- 3 A Maybe like a week later.
- 4 Q A week later. And for that one, the one that you
- 5 gave to Agent Dolphin, did you try to describe T-Money to
- 6 the investigator?
- 7 A Yes, ma'am.
- 8 Q You didn't know his real name, but you gave him --
- 9 A I gave him the real name the day after the robbery.
- 10 I just ain't know his last name.
- 11 Q So you gave his first name. Did you tell him where
- 12 he was from originally?
- 13 A Yes, ma'am.
- 14 Q Did you describe his haircut?
- 15 A Yes, ma'am.
- 16 Q Do you remember how you described his haircut?
- 17 A A low hair cut.
- 18 Q Did you describe his facial hair?
- 19 A Just a little facial hair.
- 20 Q What kind of facial hair did he have then?
- 21 A On his chin.
- 22 Q And did you describe him being a black male?
- 23 A Yes, ma'am.
- 24 Q Did you try to estimate his age?
- 25 A Yes, ma'am.

1 Q And after the robbery was he still living on Edna
2 Street?

3 A After the robbery?

4 Q Uh-huh?

5 A No. He went back to Atlanta, Georgia.

6 Q Did you know where in Atlanta he had gone to?

7 A No, ma'am.

8 Q And the night before the robbery when y'all were
9 outside your house, this is -- can you describe what it
10 looks like outside your house?

11 A It was maybe about 8 o'clock.

12 Q I guess, I mean more do you have a yard or is it
13 right up against the street?

14 A Yes, ma'am.

15 Q Can you describe that a little bit?

16 A I had a basketball goal in my front yard and my house
17 like sits right at the corner.

18 Q And where were y'all standing in front of your house?

19 A In the middle of the road in front of my house.

20 Q Who all was standing out there in the road?

21 A Me, Anthony Martin and my brother.

22 Q Was your brother standing right next to you or where
23 was he standing?

24 A He was before when we first got up. He was standing
25 like beside us. But he kind of walked you know in the

1 yard to smoke a cigarette.

2 Q Was he standing right next to y'all when you were
3 discussing the robbery?

4 A No, ma'am.

5 Q And did you see this defendant Anthony Martin after
6 the robbery -- did you see him after the robbery?

7 A No, ma'am.

8 Q Did you see him after he left the mall that day?

9 A No, ma'am.

10 Q And yesterday did you admit to helping rob the bank?

11 A Yes, ma'am.

12 Q Thank you. Nothing further, Your Honor.

13 THE COURT: All right. You may step down. Next
14 witness.

15 MS. RINGLER: The state calls Jeffery Jones.

16 THE CLERK: Please come forward and place your left
17 hand on the Bible and raise your right.

18 JEFFERY JONES, after being duly sworn, testified
19 as follows:

20 THE CLERK: Please have a seat in the witness box and
21 state your full name for The Court and spell your last.

22 THE WITNESS: My name is Jeffery R. Jones. J-O-N-E-S

23 DIRECT EXAMINATION

24 BY MS. RINGLER:

25 Q Mr. Jones, where do you work?

- 1 A Circle K.
- 2 Q Where is the Circle K located?
- 3 A Corner of Atomic and Edgefield Road.
- 4 Q What do you do with Circle K?
- 5 A I am the manager with the company.
- 6 Q As manager what does that involve?
- 7 A Doing paperwork, over seeing employees, making
- 8 transactions, deposits daily.
- 9 Q And so the daily deposits, in April of 2009 which
- 10 bank were y'all using?
- 11 A Bank of America.
- 12 Q Which branch did you use?
- 13 A On West Martin Town Road.
- 14 Q And on April 23, 2009 did you go to that branch of
- 15 Bank of America?
- 16 A Yes.
- 17 Q And what were you doing there that day?
- 18 A Just going to make my daily deposit.
- 19 Q When you walked into the bank did somebody else walk
- 20 in with you?
- 21 A When I got to the bank Mrs. Brenda was in front of me
- 22 and we kind of spoke and she was walking up the steps in
- 23 front of me and I came up behind her. Whenever I got to
- 24 the side of the bank, I could see Donna, who is the
- 25 Assistant Manager, I guess, of the bank. She was behind

1 the counter and all of the tellers their eyes just kind of
2 like looked real scared, like something is behind me I
3 guess you could say. So whenever I walked in, like I say
4 Brenda was in front of me and Brenda walked on up to Mona,
5 the teller, and then all of a sudden I heard, Get down,
6 Get down.

7 THE COURT: Hold on a second. Who's got a phone
8 that's trying to dial.

9 FEMALE SPEAKER: I am trying to turn it off. I don't
10 know how to turn it off.

11 THE COURT: Go outside and learn how or you can leave
12 it outside. Keep the door locked back there. Thank you.
13 Go ahead.

14 Q When you were walking in and you saw people's
15 expressions change, where were you in the bank at that
16 point?

17 A I was heading up towards where the tellers are.
18 There is a set of double doors you come through. When I
19 came in through the second set of doors, like I said, then
20 there was like -- expressions changed. I think some
21 screaming like, Oh my God or Oh know or something like
22 that. And so I walked on up the -- I had walked up to the
23 teller line and stopped where it says, wait for the next
24 person. And like I said there was a voice and it just
25 said, Get down. Get down. And at that point I just

1 dropped down on the floor because my back was to the
2 person.

3 Q Do you remember where you ended up dropping to the
4 floor?

5 A Right where -- there is one, two, three -- the third
6 teller, I believe, is Mona's and the window next to it, I
7 was like in front of it. It was vacant and I dropped down
8 on the floor right there.

9 Q Can you describe how you were positioned?

10 A I was laying face down on the floor with my bank
11 deposit like up towards my head like this on the floor
12 (witness demonstrates) and I was facing away from the
13 door. I was facing this way. (Witness demonstrates)

14 Q And at that point what did you hear once you were
15 face down on the ground?

16 A Basically it was, give me the money and then asked
17 for -- asked where the big bills were.

18 Q Do you remember how he spoke?

19 A I vaguely remember you know, the voice or whatever.

20 Q Was he speaking softly or loudly?

21 A It was loud.

22 Q And as you're face down on the floor, what else do
23 you remember hearing at that point?

24 A Whenever I was down, like I said, I just heard
25 whenever the money was being asked for and then it didn't

1 take too long, but then they were exiting out the bank.
 2 And once I could tell that the doors were closing, then I
 3 turned my head towards the door and the person had already
 4 left the bank. Then I heard a couple of gunshots and at
 5 that point, I had jumped up once I knew that they had left
 6 the building, and I ran -- well walked towards Jessica and
 7 told her you know they might want to go ahead and lock the
 8 door. Because the person, since they were gone, you
 9 didn't want them to come back in. We heard the gun shots.
 10 We didn't know what was going on outside. So then they
 11 proceeded to get the keys and lock the bank up.

12 Q Thank you. Please answer any questions that defense
 13 counsel might have.

14 THE COURT: Mr. Hayes.

15 CROSS-EXAMINATION

16 BY MR. HAYES:

17 Q Can you identify my client as the person who came
 18 into the bank?

19 A No, sir. My back was turned the whole time.

20 MR. HAYES: Nothing further, Your Honor.

21 THE COURT: You may step down. You may be excused
 22 from the subpoena?

23 MS. RINGLER: Yes, Your Honor.

24 THE COURT: All right, you're excused. Next witness.

25 MS. RINGLER: Brenda Hawes.

1 THE COURT: Mrs. Hawes, come around and place your
2 left hand on the Bible and raise your right, please.

3 BRENDA HAWES, after being duly sworn, testified
4 as follows:

5 THE CLERK: Please have a seat in the witness box and
6 state your full name for The Court and spell your last.

7 THE WITNESS: My name is Brenda Yvonne Hawes.
8 H-A-W-E-S.

9 DIRECT EXAMINATION

10 BY MS. RINGLER:

11 Q Thank you, Mrs. Hawes. Where do you work?

12 A At Crystals on Martin Town Road in North Augusta.

13 Q What do you do there?

14 A I am the general manager.

15 Q What do you do as general manager?

16 A I run the whole restaurant, take care of about 20 or
17 30 employees, manage three shifts. It's a 24 hour
18 restaurant. Scheduling bank deposits, paperwork,
19 administrative duties, everything.

20 Q Which bank do you use as part of the deposits?

21 A Bank of America.

22 Q Which branch do you use?

23 A It's the one on Martin Town West at the other end of
24 Martin Town Road.

25 Q Is that in North Augusta?

1 A Yes.

2 Q Is North Augusta in Aiken County?

3 A I think it's part of Aiken County.

4 Q Did you go to the Bank of America on Martin Town Road
5 on April 23, 2009?

6 A Yes, I did.

7 Q What brought you there?

8 A Well, I had went by my job earlier that day and I had
9 to cash a payroll check for my son and I went by there to
10 do that.

11 Q And who else was there when you showed up at the
12 bank?

13 A It was a gentleman from Circle K, I don't know his
14 name, but we were entering the bank at the same time. He
15 opened the door for me and we went in together. We were
16 the only two customers at that time.

17 Q And when you walked into the bank, where did you go?

18 A I went to Mona's teller and I walked up to the
19 counter and I placed the check on the counter. I spoke to
20 her. I placed the check on the counter and I guess it
21 wasn't even just a few seconds I put the check down in
22 front of Mona and I heard this voice saying, Get down, get
23 down. Give me all your money right now. You know and I
24 looked to my left. It was this person standing there with
25 this gun.

1 Q Can you describe the person to me?

2 A All I remember seeing is all black and I just kept my
3 eye on this gun he had.

4 Q Do you remember if it was a male or female?

5 A It was a male. I could determine that by his voice.
6 It was a male.

7 Q And was he taller or shorter than you?

8 A Well I kind of liked look up. So I am only 5 feet
9 two, so he was taller than me.

10 Q How close were you standing to him at that point?

11 A Almost at arm's length, you know. Probably two arm's
12 length, maybe not that much.

13 Q So when you were standing up there at the counter and
14 he's right next to you, what happens then?

15 A He just kept talking so harsh and intimidating. I
16 guess I kind of like threw my arms up in the air like
17 this. (witness demonstrates) And he just kept saying,
18 give me all the money right now. Get down. When I looked
19 over, I just kept looking at that gun. I never really took
20 my eyes really off that gun. So I was standing by the
21 teller's door how they go in, but I couldn't get the door
22 open. So I stood there for a minute or so and I looked
23 down and I saw the white guy, he had already got on the
24 floor and I looked and I saw his bank bag. And I'm like,
25 oh he didn't even see his bank bag. He had a bank bag

1 full of money. And Mona -- I looked at Mona at that point
2 and Mona was just terrified. She was like. She panicked.
3 I am getting scared, because I'm thinking you know I am so
4 close to him, he is going to grab me. So he kept asking
5 her to give me all your money right now. Give me all your
6 money. She was like -- she didn't understand like what he
7 was saying you know for a minute. Oh my God he is going
8 to kill us. That's what I am saying to myself, you know.
9 So I eased down on the floor myself, you know.

10 Q That was after you couldn't hide behind the--

11 A Well, I couldn't get in there. Right. So I am
12 thinking I couldn't get in there so I better ease down on
13 the floor, you know. Because I just didn't want him to
14 shoot.

15 Q And so after you're down on the floor what happens
16 then?

17 A He was still talking to Mona and he had a bag. I
18 remember the bag. Because it is similar to the bags that
19 I use at work. When we go get money, coins, we put them
20 in this cloth type bag.

21 Q Do you remember what color? Was it light or dark?

22 A I think it was kind of like beige, tannish, those
23 color bags, called bank bags. They're cloth like type of
24 bags. And I guess Mona proceeded and I don't know what
25 she gave him, but then he went out the door.

1 Q So can you describe how he left the bank?

2 A In a hurry. He left fast in a hurry. I mean, it
3 seemed like he was nervous. But like I said, I would
4 never forget his voice. It was very harsh, intimidating.
5 To this day I can't even go in the bank unless I am
6 looking every time the door opens, thinking somebody is
7 going to come behind me with a gun. You know, he just
8 kept talking harsh. You know, he didn't have a care for
9 anybody. He didn't care, you know. When he came in there
10 that was his attitude. Get down. That was the first
11 thing I heard. Get down, give me all your money. Before
12 I even looked at him, I heard his voice. He came in
13 harshly talking you mow.

14 Q And you said you were focused on that gun?

15 A Yea. Because when I turned and I looked and I there
16 the gun was.

17 Q Do you remember -- what do you remember about the
18 gun?

19 A I don't know what kind. It looks like the kind the
20 police officers have, it was black. Similar to those
21 types of guns. I kept looking. I remember that. But
22 what kind of name. I don't know.

23 Q You said he was wearing all black. Could you see his
24 face?

25 A No.

1 Q Were you able to tell what race he might have been?

2 A He was black.

3 Q So you are able to tell he was a black male?

4 A Uh-huh.

5 Q Thank you. Please answer any questions that defense
6 counsel might have.

7 CROSS-EXAMINATION

8 BY MR. HAYES:

9 Q Good morning, Mrs. Hawes.

10 A Good morning. How are you?

11 Q Could you identify my client as the individual who
12 was standing arms length from you in the bank?

13 A No.

14 MR. HAYES: Nothing further, Your Honor.

15 THE COURT: Thank you. You may step down. Next
16 witness.

17 MS. RINGLER: Anthony Costello.

18 THE CLERK: Place your left hand on the Bible and
19 raise your right.

20 ANTHONLY COSTELLO, after being duly sworn,
21 testified as follows:

22 THE CLERK: Please have a seat in the witness box,
23 state your full name for The Court and spell your last.

24 THE WITNESS: Anthonly Costello, C-O-S-T-E-L-L-O.

25 DIRECT EXAMINATION

1 BY MS. RINGLER:

2 Q Mr. Costello, where do you work?

3 A A and H electric.

4 Q What kind of work do you do?

5 A Electrical contractor.

6 Q And as an electrical contractor what does that
7 entail?

8 A Redoing electrical services, rewiring buildings like
9 we're in now.

10 Q Where were you working in 2009?

11 A The greyhound bus station.

12 Q I'm sorry. What company were you working for at that
13 point?

14 A A and H Electric.

15 Q What type of work did you do for A and H Electric?

16 A I was the owner.

17 Q And did you do similar work?

18 A Yes. I would go out with the guys and do some of the
19 work.

20 Q And do you know where the bus station is in down town
21 Augusta?

22 A Yes. There is only one.

23 Q There is only one. Who operates that bus stop?

24 A Southeastern Stage Coach.

25 Q Did you do any electrical work on that bus station in

1 2009?

2 A Yes, ma'am.

3 Q Do you remember -- do you bill for that work?

4 A I billed for it on the 24th of April.

5 Q Do you know when you did the work?

6 A I believe it's the 23rd. I usually bill the next day
7 because I am a small business man.

8 Q What kind of work did you do that day on the 23rd?

9 A A lady the first of April hit the main service
10 feeding Southeastern Stage Coach. So we had to take the
11 power off the building and rerun the conduit and put the
12 wire back in for the main power. So Southeastern Stage
13 Coach did not have any power that day.

14 Q So as part of your work the power was out?

15 A Yes.

16 Q Do you remember approximately how long the power was
17 out?

18 A We approximately took the power off about 10:30,
19 elevenish.

20 Q How long was the power out ?

21 A I'd say about 6 o'clock. Then Georgia power showed
22 up about seven. It was about dark when they got it back
23 on. Right when the next bus came.

24 Q This was the power to the bus station?

25 A Yes.

1 Q Thank you. Please answer any questions that defense
2 counsel might have.

3 THE COURT: Any questions?

4 MR. HAYES: No, Your Honor.

5 THE COURT: He may step down. He is excused from his
6 subpoena. Next witness please.

7 MS. RINGLER: Marquet Widener. She is outside.

8 THE COURT: Send somebody out there for me.

9 THE CLERK: Please place your left hand on the Bible
10 and raise your right.

11 MARQUET WIDENER, after being duly sworn,
12 testified as follows:

13 THE CLERK: Please have a seat in the witness box.
14 State your full name for The Court and spell your last.

15 THE COURT: Turn around.

16 THE WITNESS: Marquet Widener, W-I-D-E-N-E-R.

17 DIRECT EXAMINATION

18 BY MS. RINGLER:

19 Q Mr. Widener, where do you live?

20 A In Belvedere Terrace.

21 Q How long have you lived there?

22 A All my life.

23 Q Do you know Quinton Harmon?

24 A Yes, I do.

25 Q How do you know him?

- 1 A He is my neighbor.
- 2 Q Do you know Anthony Martin?
- 3 A Not personally, no.
- 4 Q Did you meet him while you were living there?
- 5 A Yes.
- 6 Q In Belvedere Terrace?
- 7 A I seen him. Yes.
- 8 Q Do you know T-Money?
- 9 A Huh-uh.
- 10 Q But do you know --
- 11 A Anthony Martin.
- 12 Q Do you see him in the courtroom here today?
- 13 A Yea, right there.
- 14 Q What is he wearing?
- 15 A A white shirt, black tie.
- 16 Q Where was he living in 2009?
- 17 A Where was he living?
- 18 Q Was he living in Belvedere Terrace in 2009?
- 19 A I assume. I mean, I guess. I seen him there.
- 20 Q You saw him in Belvedere Terrace?
- 21 A Uh-huh.
- 22 Q Where did you see him?
- 23 A On the top street coming from --
- 24 Q Did you see him at Quinton Harmon's house?
- 25 A A couple of times.

1 Q Did you ever go up to Anthony Martin?

2 A Yea, I spoke to him, yes.

3 Q Did you borrow a cigarette?

4 A Yea.

5 Q Do you remember when the Bank of America on Martin
6 Town Road was robbed?

7 A Yes.

8 Q Did you see Anthony Martin again in your neighborhood
9 after that?

10 A No.

11 Q Thank you. Please answer any questions that defense
12 counsel might have.

13 THE COURT: Any questions on that?

14 CROSS-EXAMINATION

15 BY MR. HAYES:

16 Q Mr. Widener, you said you don't personally know him?

17 A No. I don't personally know him.

18 Q You don't know exactly where he lives either?

19 A Not exactly.

20 Q Did you see him every day?

21 A No.

22 Q So you just saw him some days?

23 A Yes.

24 Q Did you -- do you know exactly when he stopped living
25 there?

1 A (Witness shakes head.)

2 Q No?

3 A No.

4 MR. HAYES: Nothing further, Your Honor.

5 THE COURT: Anything on redirect?

6 MS. RINGLER: Nothing further, Your Honor.

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

8 MS. RINGLER: Roosevelt Johnson.

9 THE CLERK: Please come forward and place your left
10 hand on the Bible and raise your right.

11 ROOSEVELT JOHNSON, after being duly sworn,
12 testified as follows:

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

15 THE WITNESS: My name is Roosevelt Johnson.

16 DIRECT EXAMINATION

17 BY MS. RINGLER:

18 Q And where do you work?

19 A Currently unemployed.

20 Q Are you going to school?

21 A Yes, ma'am.

22 Q Where are you going to school?

23 A Aiken Technical College.

24 Q What are you studying there?

25 A Information technology.

- 1 Q Where are you in your degree right now?
- 2 A I'm working on my last semester.
- 3 Q Did you -- where did you go to high school?
- 4 A North Augusta High School.
- 5 Q Did you play any sports there?
- 6 A Yes, ma'am.
- 7 Q What kind of sports do you play?
- 8 A I played football for four years.
- 9 Q And do you know Quinton Harmon?
- 10 A Yes, ma'am.
- 11 Q How do you know Quinton?
- 12 A From school, North Augusta High School.
- 13 Q Do you know T-Money?
- 14 A Yes, ma'am.
- 15 Q Do you see him here in the courtroom today?
- 16 A Yes, ma'am.
- 17 Q Can you please point him out for me?
- 18 A He's over there.
- 19 Q Can you describe what he's wearing?
- 20 A He is wearing white button down t-shirt with what
- 21 looks like a black tie.
- 22 Q How do you know T-Money?
- 23 A From the neighborhood, Belvedere Terrace.
- 24 Q Is that the name you knew him by?
- 25 A T-Money. Yes, ma'am.

1 Q How do you know him from Belvedere Terrace?

2 A I met him one day when I was with Quinton at his
3 house.

4 Q When was that approximately?

5 A I'm not sure what day it was, but it was sometime in
6 2009.

7 Q Would you hang out at Quinton's house from time to
8 time?

9 A Yes, ma'am.

10 Q Did you help T-Money, that defendant, rob the Bank of
11 America on Martin Town Road?

12 A Yes, ma'am.

13 Q And who all was involved in that?

14 A Myself, Dave Dixon, Quinton Harmon and T-Money.

15 Q What was your role in the robbery?

16 A To drive.

17 Q What kind of car do you have?

18 A A mustang, Ford Mustang, 2005.

19 Q What color?

20 A Red.

21 Q And were you charged for your role in the robbery?

22 A Yes, ma'am.

23 Q What were you charged with?

24 A Bank robbery.

25 Q How much does bank robbery carry?

1 A I'm not sure.

2 Q And have you received any kind of plea offer from the
3 solicitor's office?

4 A No, ma'am.

5 Q Any kind of promises?

6 A No, ma'am.

7 Q Any kind of assurances?

8 A No, ma'am.

9 Q Are you hoping by coming forward and admitting what
10 you've done that it will help you out?

11 A Yes, ma'am.

12 Q When did the idea of robbing the bank first come up?

13 A The night before.

14 Q Where were y'all?

15 A We were at Quinton's house and we left Quinton's
16 house to go to Tidy's house.

17 Q Who all was if front of Quinton's house?

18 A Myself, Quinton Harmon, Dave Dixon and T-Money and
19 Brandon McKie and Tidy.

20 Q And where was everybody?

21 A Outside of Tidy's house.

22 Q When y'all were talking about the bank, who was all
23 was right there?

24 A We all were there.

25 THE COURT: Speak up, please.

1 THE WITNESS: Yes, sir.

2 Q After you were at Quinton's house where did y'all go?

3 A After we were at Quinton's house we drove up the road
4 to pick up Brandon McKie and then we drove over to Tidy's
5 house.

6 Q And when you were at Tidy's house, did you leave
7 there?

8 A Yes, ma'am.

9 Q Where did you go when you left Tidy's house?

10 A We left to drive around and we were looking at banks.

11 Q And when you were in front of Quinton's house and the
12 idea first comes up, how does it come up to rob the bank?

13 A It was brought up by T-Money to rob a bank.

14 Q Do you remember what he said?

15 A He said that he was thinking about robbing a bank and
16 he wanted to know if we would help him.

17 Q And when you're at Tidy's house and y'all leave,
18 where do you go?

19 A First we go to the Wachovia Bank on Georgia Avenue
20 and then we go to the Regions Bank on the street behind
21 Georgia Avenue. I am not sure what street that is. Then
22 we go to Bank of America on Martin Town Road.

23 Q Are these banks all in North Augusta?

24 A Yes, ma'am.

25 Q And you mentioned Tidy. Is that a nickname?

- 1 A Yes, ma'am.
- 2 Q What is his real name?
- 3 A Tyewan.
- 4 Q Let's talk a little bit about the day of the robbery,
5 April 23. How did you start your day?
- 6 A I woke up and I got a phone call from Quinton asking
7 if we were going to go through with the robbery and I
8 said, yes. He said, okay he'll call me back later. Then
9 I went to Dave's house for a minute. After that I got
10 another call from Quinton saying he needed me to pick him
11 up, but first he had to go pick up T-Money from Belvedere
12 Terrace.
- 13 Q Do you remember where he was staying then?
- 14 A Quinton.
- 15 Q I'm sorry. T-Money?
- 16 A No, ma'am.
- 17 Q But it was in Belvedere Terrace?
- 18 A Yes, ma'am.
- 19 Q Where did you pick him up?
- 20 A On the street in Belvedere Terrace.
- 21 Q After you picked him up, did you make any other
22 stops?
- 23 A Yes, ma'am.
- 24 Q Where did you stop?
- 25 A We stopped at one of the houses in Belvedere Terrace

1 where he went inside to get a bag.

2 Q So did you stay in the car or did you go in the
3 house?

4 A I stayed in the car.

5 Q So the only person that went in the house was
6 T-Money?

7 A Yes, ma'am.

8 Q And what happened when he came back out of the house?

9 A He had a bag in his hand and then we left to go get
10 Quinton.

11 Q Where did you get Quinton?

12 A From Barton Village.

13 Q Where is that?

14 A In Augusta.

15 Q So when you're in Augusta, do you make any other
16 stops?

17 A On our way back we stopped at Popey's to pick up some
18 rubber gloves.

19 Q After getting the gloves, where did y'all go then?

20 A To Dave's house.

21 Q What happened at Dave's house?

22 A At Dave's house we were talking about the robbery and
23 he -- T-Money brought up the car wash as a good spot to
24 sit the car and he got a pillow case and a shirt to cover
25 his face.

1 Q Where did he get the pillow case and the t-shirt?

2 A From Dave's house.

3 Q Did David give it to him?

4 A Yes, ma'am.

5 Q And you mentioned the black backpack. What did he do
6 with the black backpack?

7 A That was still in the car at the time we were in
8 Dave's house.

9 Q So he takes the t-shirt and pillow case. Do you
10 remember what he did with them?

11 A He tied the shirt around his face and he pulled it
12 around his neck while we were riding and the pillow case
13 he had in his hand.

14 Q So putting the t-shirt on, that didn't happen at
15 Dave's house?

16 A It did.

17 Q I'm sorry. Can you talk a little bit -- describe
18 what happens at David's house?

19 A He tied the shirt around his neck and pulled it down
20 so it wouldn't be seen while we were riding.

21 Q Okay. And so did you talk about anything else when
22 you were at David's house?

23 A No, ma'am.

24 Q What do you do after you leave David's house?

25 A We go to the car wash.

1 Q Can you describe where you parked at the car wash?

2 A We parked at the car wash in the stall at the very
3 back of the car wash.

4 Q Which way were you facing?

5 A Towards the BP Gas Station.

6 Q And what did you do when you got to the car wash?

7 A I got out and I went into the BP Gas Station to get
8 myself a drink. And, Quinton, he went into the bank to
9 see what was going on inside of the bank. How many people
10 were in the bank.

11 Q I am handing you what's been previously marked as
12 State's Exhibit 4. Do you recognize it?

13 A Yes, ma'am.

14 Q What is it?

15 A It's the video of me walking into the BP Gas Station.

16 Q Have you watched the video?

17 A Yes, ma'am.

18 THE COURT: Video of him walking where?

19 THE WITNESS: Into the BP gas station.

20 THE COURT: Into the BP gas station.

21 THE COURT: Speak up. We can't hear you.

22 Q Does it truly and accurately depict what happened in
23 the BP Gas Station?

24 A Yes, ma'am.

25 MS. RINGLER: Your Honor, at this time the State

1 would move to admit State's Exhibit No. four.

2 MR. HAYES: No objection.

3 (State's Exhibit Number 4 is received into evidence.)

4 MS. RINGLER: We'd like to publish that to the jury.

5 THE COURT: Very well. Move along.

6 MR. GIBBONS: Can we approach while they're getting
7 that ready?

8 (Whereupon, a bench conference was held.)

9 THE COURT: All right. Step down there so you can
10 tell them what's going on. Step right over there.

11 Q When you see -- I know it's going quick. But when
12 you see yourself on the video, if you can point yourself
13 out.

14 (Video is played for the jury)

15 A Right there.

16 Q That's you right there at the counter?

17 A Yes, ma'am.

18 Q What are you doing there?

19 A Buying myself a drink.

20 Q Thank you. You can please be seated.

21 THE COURT: That was quick.

22 Q So while you're buying the drink at the BP station,
23 what is everybody else doing?

24 A Standing around the car.

25 Q And can you describe where everybody is at that

1 point?

2 A No. As I'm walking back towards the car, I see Dave.
3 he is cleaning some trash out of the car. T-Money is
4 standing at the back passenger side of the car and Quinton
5 is standing behind the car.

6 Q Do you remember what T-Money was wearing at that
7 point?

8 A He was wearing some boots and some dark jeans, a
9 black jacket and a skull cap.

10 Q Was he wearing the black jacket the whole time he was
11 with you?

12 A Yes, ma'am.

13 Q Did he change at any point?

14 A After the robbery.

15 Q After the robbery he changed. Did you ever see what
16 was in the black bookbag?

17 A On his way to the bank, he pulled out the gun that he
18 used in the robbery.

19 Q He pulled -- where did he pull the gun out of?

20 A The bag that he got out of the house that we stopped
21 at in Belvedere Terrace.

22 Q Can you describe the gun that he pulled out of the
23 backpack?

24 A All I know is that it was black.

25 Q So after he pulls the gun out of the backpack, what

1 does he do then?

2 A He goes towards the bank.

3 Q Can you describe that for me?

4 A He walked behind the building, next to the bank and
5 goes towards the bank and me myself -- myself, Quinton and
6 Dave get back into the car.

7 Q And did you move the car? Where is the car parked at
8 this time?

9 A It is still parked in the stall.

10 Q And what can you see when you're at the car?

11 A I can't see anything.

12 Q Did you see him go behind the building?

13 A He went behind the building and then before we got
14 back in the car.

15 Q So did you see T-Money again?

16 A Yes. I saw him when he was running back towards the
17 car.

18 Q Describe that for me?

19 A When he was running back towards the car. I heard
20 two pops and he got into the passenger seat.

21 THE COURT: You heard what?

22 THE WITNESS: Two pops.

23 THE COURT: Two pops?

24 A Yes, sir.

25 Q What do you mean by pops?

- 1 A It sounded like gunshots, maybe.
- 2 Q What happens when he gets to the car?
- 3 A He gets into the passenger seat and he says, drive.
- 4 So we drive down this street behind Georgia Avenue. I am
- 5 not sure what the name of the street is.
- 6 Q And where do you go at that point?
- 7 A At that point we are going towards the bus stop in
- 8 Augusta.
- 9 Q Did you go to the bus stop in Augusta?
- 10 A Yes, ma'am.
- 11 Q What happens there?
- 12 A He tries to buy a bus ticket to Atlanta, but the
- 13 station was down for a power outage.
- 14 Q How do you know he is trying to go to Atlanta?
- 15 A Because he said he was trying to go to Atlanta.
- 16 Q Do you see anybody -- do you run into anybody around
- 17 the area of the bus stop?
- 18 A Yes, ma'am. Thomas Wilson.
- 19 Q Do you stop and speak to him?
- 20 A Yes, ma'am.
- 21 Q What happens then?
- 22 A That's when he -- at this point he had changed out of
- 23 the clothes that he was in at the robbery and he handed
- 24 him the --
- 25 Q By he, who do you mean?

1 A T-Money.

2 Q When does T-Money change?

3 A After he gets back into the car on the way to the bus
4 station.

5 Q And what does he change out of or into?

6 A I can't remember what clothes he had on after the
7 robbery, but he changed out of the boots, the jeans, and
8 the jacket.

9 Q And what does he do with the boots, jeans and shoes?

10 A He hands them out of the window to Thomas Wilson to
11 get rid of.

12 Q And do you go anywhere else after the bus stop?

13 A Yes. We go to the Augusta mall.

14 Q What happens at the mall?

15 A At the mall he makes -- T-Money makes a phonecall and
16 a little while later a girl picks him up.

17 Q Do y'all walk around the mall at all?

18 A Yes, ma'am.

19 Q And who does what at the mall?

20 A We separated. I walked with Dave and T-Money walked
21 with Quinton.

22 Q At some point did y'all meet back up?

23 A Yes, ma'am.

24 Q And you said that at some point T-Money was picked
25 up. What did he say about that?

1 A He said he was trying to get to Atlanta and I guess
2 he called a girl to take him to Atlanta.

3 Q And did a car show up?

4 A Yes, ma'am.

5 Q Did you see the car?

6 A Yes, ma'am.

7 Q What did T-Money do when the car showed up?

8 A He got into the car and the girl gave me a ride to my
9 car, which was on the other side of the mall.

10 Q When you got to your car, what did you do?

11 A I got in my car. I drove back around to the other
12 side of the mall and pickup Quinton and Dave.

13 Q What did the girl and T-Money do?

14 A They drove away.

15 Q Did you see T-Money after that?

16 A No, ma'am.

17 Q Let's talk a little bit about in the car ride going
18 from the bank to the bus stop. You said that T-Money
19 changed. Did anything else happen then in the car?

20 A We divvied up the money.

21 Q Talk about that a little bit?

22 A I was driving so I wasn't really paying attention to
23 how the money was being separated. But they were handing
24 me money and they were handing money to each other in the
25 other seats.

1 Q How much money did you get?

2 A I don't know, maybe \$400.

3 Q And did you see -- where was the money?

4 A It was in a pillow case.

5 Q Do you know where the pillow case came from?

6 A It came from Dave's house.

7 Q It was the pillow case that David had given him
8 earlier?

9 A Yes, ma'am.

10 Q You talked a little bit about the t-shirt that David
11 gave him. What does he do with that?

12 A It was given to Thomas Wilson.

13 Q But prior to the bank you said it was tied around his
14 neck?

15 A Yes.

16 Q At some point did he do something else with it?

17 A He pulled it up over his face before heading towards
18 the bank.

19 Q Do you remember what color the t-shirt was?

20 A It was white.

21 Q And just to clarify what type of bag did T-Money come
22 out of the house with?

23 A It was sort of a small back bag.

24 Q Do you remember what color?

25 A No, ma'am.

1 Q Do you remember if it was light or dark?

2 A It was dark.

3 Q And at some point did you speak to law enforcement
4 about your involvement in this case?

5 A Yes, ma'am.

6 Q Were you -- did you fully admit to your involvement
7 when you first spoke to law enforcement?

8 A No, ma'am.

9 Q Did you help rob the bank?

10 A Yes, ma'am.

11 Q Did anybody force you to rob the bank?

12 A No, ma'am.

13 Q Did anybody threaten you to rob the bank?

14 A No, ma'am.

15 Q What was your role again?

16 A To drive.

17 Q Thank you. Please answer any questions that defense
18 counsel might have.

19 THE COURT: All right. Mr. Hayes

20 MR. HAYES: May it please The Court.

21 CROSS-EXAMINATION

22 BY MR. HAYES:

23 Q Mr. Johnson, the solicitor asked you, were you
24 promised anything?

25 A No, sir.

1 Q You said, no. She then asked you what you were
2 charged with and you told her bank robbery; correct?

3 A Correct.

4 Q But you don't know how long you're looking at?

5 A No, sir.

6 Q What that charge carries?

7 A No, sir.

8 Q Thirty years is what it carries. That's the maximum
9 punishment?

10 THE COURT: Is that a question?

11 MR. HAYES: I'm sorry, Your Honor.

12 Q Do you realize it carries 30 years as a maximum
13 punishment.

14 A Yes, sir.

15 Q You've spoke with the FBI, Special Agent Glenn
16 Dolphin on 4/29; is that correct?

17 A Yes, sir.

18 Q In your statement to them you told Special Agent
19 Glenn Dolphin that you met with T-Money, Quinton Harmon
20 and David Dixon on April 22?

21 A Yes, sir.

22 Q There you said that T-Money brought up the subject of
23 robbing a bank; correct?

24 A Correct.

25 Q And that's exactly how he said it? He wants to rob a

1 bank?

2 A Yes, sir.

3 Q You said he appointed you the job of driving;
4 correct?

5 A Correct.

6 Q And that was on the night before; correct?

7 A Correct.

8 Q You also told special agent Dolphin that Quinton
9 Harmon called you around 9 or 10 o'clock to come pick him
10 up from his GED class; is that correct?

11 A Correct.

12 Q You also told him that you picked up David Dixon at
13 his home; that he picked T-Money up on the street in
14 Belvedere Terrace; is that correct?

15 A Correct.

16 Q You also told him that when he got in the passenger
17 side portion of the mustang, you noticed that he was
18 carrying a black bag; correct? Or a bag. I'm sorry. A
19 bag?

20 A Correct. Yes, sir.

21 Q You told Special Agent Dolphin that you were given
22 seven dollars; correct?

23 A Huh?

24 Q You told him that you were given seven dollars,
25 correct?

1 A Seven dollars for gas, yes, sir.

2 Q For gas?

3 A Yes, sir.

4 Q You also told him that there were three of you. So
5 who is the three of you?

6 A Myself, Dave and T-Money.

7 Q Stopped at Greg's gas plus on Edgefield Road in North
8 Augusta?

9 A Yes.

10 Q That's a different gas station than the one we just
11 watched the video of; right?

12 A Right.

13 Q You then told him that y'all stopped at a house in
14 North Augusta; correct? After you left the gas station?

15 A No.

16 Q Would it refresh your memory to look at your
17 statement?

18 THE COURT: Well he's answered all of your questions.
19 If you want to show it to him, you can.

20 Q Do you recognize this?

21 A Yes, sir.

22 Q Now do you remember now? Does that help you?

23 A We didn't stop at a house after the gas station.

24 Q So you did not stop at a house after you left the gas
25 station?

- 1 A No.
- 2 Q But does it state that in your statement?
- 3 MS. RINGLER: I would object, Your Honor, as to it
- 4 being characterize as a statement. It is actually a
- 5 summary. A report being written up by the officer.
- 6 THE COURT: Is that a statement?
- 7 Q Is that what you told the officer?
- 8 A We stopped at the house before the gas station.
- 9 Q Now you told Special Agent Dolphin that he pulled out
- 10 the pistol. Were you the only one in the car able to see
- 11 it?
- 12 A I'm not sure.
- 13 Q How did he pull it out?
- 14 A It was low. But I'm not sure if anybody else could
- 15 see it.
- 16 Q You were the driver; right?
- 17 A Yes.
- 18 Q Where was he sitting at this time?
- 19 A Passenger seat.
- 20 Q Where was everybody else?
- 21 A In the back seat.
- 22 Q Didn't you tell Special Agent Dolphin that you were
- 23 certain that both Harmon and Dixon could have seen the
- 24 weapon?
- 25 A No, sir.

1 Q Say it one more time for me? What was your answer?

2 A No, sir.

3 Q You told Special Agent Dolphin that you went into the
4 gas station and purchased a drink?

5 A Yes, sir.

6 Q After you arrived at the car wash?

7 A Yes, sir.

8 Q All right. Mr. Johnson, didn't you tell Special
9 Agent Dolphin that the three of you waited at the car --
10 in the car?

11 A In the car, yes, sir.

12 Q Didn't you tell Special Agent Dolphin when you left,
13 T-Money placed the gun in the floor board and began
14 changing his clothes?

15 A I'm sorry?

16 Q Didn't you tell Special Agent Dolphin, that he placed
17 the gun in the floor board and began changing his clothes?

18 A On the floor?

19 Q Yes, sir.

20 A Yes, sir.

21 Q Didn't you tell him he changed all of the clothes he
22 was wearing during the bank robbery and put them in a bag?

23 A During the bank robbery?

24 Q All of the clothes that he wore during the bank
25 robbery, that he was changing out of them as you were

1 leaving the bank, and putting them in the bag?

2 A Yes, sir.

3 Q Didn't you tell special agent Dolphin that he gave
4 each of you \$400, and he kept the remainder?

5 A I am not sure how much the others got. I know I got
6 \$400.

7 Q And that he kept the bag with him?

8 A Yes, sir.

9 Q He kept the bag with him after that?

10 A Yes, sir.

11 Q That y'all then went to the bus station?

12 A Yes, sir.

13 Q You told special agent Dolphin that he took the bag
14 of clothing that he had worn during the robbery with him
15 inside of the bus terminal?

16 A Yes, sir.

17 Q And then you told Special Agent Dolphin that when he
18 returned to the car, he no longer had the bag with him,
19 didn't you?

20 A That's what I said, sir. That's what I recall at the
21 time.

22 Q I'm sorry can you speak up?

23 A That's what I said at that time. But I couldn't
24 remember at the time.

25 Q The day after or on the 29th of April you couldn't

1 remember?

2 A No, sir.

3 Q But you remember now?

4 A Yes, sir.

5 Q Who was the first person you told about Wilson?

6 A About who?

7 Q And with the clothing, about giving him the clothing?

8 A Who was the first person I told?

9 Q Yes, sir?

10 A My lawyer.

11 THE COURT: Speak up please.

12 Q When was this?

13 A I'm not. I don't recall.

14 Q So the day -- a few days after the robbery talking
15 with the special agent and the FBI, you did not remember?

16 A No, sir.

17 Q But you remembered sometime later and told your
18 lawyer about it?

19 A Yes, sir.

20 Q And you remember today?

21 A Yes, sir.

22 Q Did you talk to -- did you talk with David Dixon and
23 Quinton Harmon after the robbery?

24 A No, sir.

25 Q You never talked to them after the robbery?

1 A Well, I have talked to them. But I have never talked
2 to them about the robbery.

3 Q Did you talk to them before you were arrested?

4 A Yes, sir.

5 Q The red mustang is yours; correct?

6 A Yes, sir.

7 Q The day of the robbery you were pulled over on two
8 occasions, were you not?

9 A Yes, sir.

10 Q The first time you were pulled over it was you and
11 David Dixon in Aiken County?

12 A Correct.

13 Q And the officer searched the vehicle?

14 A Correct.

15 Q Did they find anything?

16 A No.

17 Q They actually let you go; correct?

18 A Yes.

19 Q Was my client with you?

20 A Sir.

21 Q Was my client in the car with you at the time?

22 A When I got pulled over? No, sir.

23 Q Later on that evening you were in, I believe it was
24 Richmond County, Augusta and you were pulled over again,
25 weren't you?

1 A Correct.

2 Q And at that time they called in officers from Aiken
3 County to come talk with you?

4 A Right.

5 Q At that time you were with David Dixon; is that
6 correct?

7 A No, sir. I was with Marquis Marshall.

8 Q Was my client with you?

9 A No, sir.

10 Q Didn't you tell Special Agent Dolphin that you didn't
11 keep any of the money?

12 A Sir.

13 Q Didn't you tell Special Agent Dolphin that you didn't
14 keep any of the money?

15 A Correct.

16 Q That you give it away because you didn't want to get
17 caught with it?

18 A Correct.

19 Q You testified that you know T-Money through Quinton?

20 A Correct.

21 Q You're saying T-Money is my client, Anthony Martin?

22 A Correct.

23 Q And that y'all are from the same neighborhood?

24 A That's where I know him from.

25 Q Sir?

1 A That's where I know him from.

2 Q Now you testified a little while ago that the night
3 before you were at Quinton's house?

4 A Correct.

5 Q And you're saying T-Money is present, Mr. McKie was
6 present, David was present, and Mr. Harmon was present?

7 A Correct.

8 Q And that's when y'all discussed -- or that's when the
9 plan was hatched for a bank robbery?

10 A Right.

11 Q That you left and then you drove around looking at
12 banks?

13 A Correct.

14 Q What kind of haircut did you have in 2009?

15 A The same hair style.

16 THE COURT: Sir, I am going to ask you one more time.
17 Please speak up. Nobody can hear you.

18 THE WITNESS: I'm sorry.

19 A I had the same hair style. Dreads.

20 MR. HAYES: I beg the court's indulgence. Nothing
21 further.

22 THE COURT: All right, anything on redirect?

23 MS. RINGLER: Yes, Your Honor.

24 REDIRECT EXAMINATION

25

1 BY MS. RINGLER:

2 Q Now you mentioned that you talked to them before you
3 were arrested. Did you, David, Quinton, all get together
4 and come up with some elaborate story about T-Money?

5 A No, ma'am.

6 Q Did you discuss what you did?

7 A No, ma'am.

8 Q So what did you mean when you said you talked to them
9 before you were arrested?

10 A Talked to them like friends talk.

11 Q And then also the defense attorney asked you about
12 being stopped. When was that?

13 A That would be the very same day. April.

14 Q Was it after you went to the mall?

15 A Yes, ma'am.

16 Q Did you see T-Money after you were at the mall?

17 A No, ma'am.

18 MS. RINGLER: Thank you. Nothing further, Your
19 Honor.

20 THE COURT: All right. You may step down. All
21 right, Mr. Foreman.

22 THE FOREPERSON: Yes, sir.

23 THE COURT: Let's take our morning break. Please
24 don't discuss the case. Don't start deliberating. We'll
25 start back in about 10 minutes. Everybody else remain

1 seated. Remain seated, please.

2 (Whereupon, the jury exited the courtroom at 10:09.)

3 THE COURT: Anything for the record before we break?

4 MS. RINGLER: Nothing from the state, Your Honor.

5 THE COURT: By the defendant?

6 MR. HAYES: Nothing Your Honor.

7 (Whereupon, the jury came into open court at
8 approximately 11:19.)

9 THE COURT: All right. Ma'am, you may proceed.

10 MS. RINGLER: Thank you, Your Honor. The state calls
11 Patricia Christopher.

12 THE COURT: Thank you, ma'am. Please place your
13 left hand on the Bible and raise your right.

14 PATRICIA CHRISTOPHER, after being duly sworn,
15 testified as follows:

16 THE CLERK: Please have a seat in the jury box and
17 state your full name for The Court and spell your last.

18 THE WITNESS: Patricia Christopher.

19 DIRECT EXAMINATION

20 BY MS. RINGLER:

21 Q Mrs. Christopher, do you remember when the Bank of
22 America on Martin Town Road was robbed?

23 A Yes.

24 Q Where were you that day?

25 A At the car wash.

1 Q What were you doing at the car wash?

2 A Washing my car.

3 Q And where is the car wash in relation to the bank?

4 A Two buildings over.

5 Q What do you remember about that day?

6 A I was at the car wash and I heard fire crackers, I
7 thought. I assumed. A red car zoomed out and I was
8 yelling at him slow down because the kids were popping
9 fire crackers. Well, no such luck. Two or three seconds
10 later it was Sheriffs everywhere. And one of the Sheriffs
11 asked me if I seen that red mustang. And I was like, yea,
12 I told him to slow down. Well, so he made me park my car.
13 He asked me to park my car and go into the bank.

14 Q Let's talk a little bit about that red mustang that
15 you saw.

16 MR. HAYES: Judge, we have no objection to that being
17 entered.

18 (State's Exhibit Number 7 is received into evidence.)

19 Q I am handing you what's been marked as state's
20 exhibit 7. Does that look like the car that you saw?

21 A Very much so. But the stripe I believe was white.

22 MS. RINGLER: Your Honor, at this time the State
23 would move to admit State's Exhibit 7 into evidence?

24 THE COURT: Without objection.

25 Q Can you please stand down in front of the jury. I

1 know you said that the stripe might have been a little
2 different. But how about the windows?

3 A No. It was more to the windows. It was either
4 tinted or had a little lip around the edges of it. The
5 back window was a lot smaller.

6 Q The back window was a lot smaller than that was?

7 A Yes.

8 Q Was it a two door car like that one is?

9 A Yes.

10 Q Thank you. Please have a seat. Now when you saw the
11 car drive by, what did you see?

12 A Two young black males in the front.

13 Q Could you see -- could you tell whether or not there
14 was anybody in the back seat?

15 A No, ma'am.

16 Q Why is that?

17 A It was going too fast and actually I didn't pay any
18 attention to the back seat. I was yelling at the ones in
19 the front to slow down because of the children. But I
20 didn't see nothing towards the back way.

21 Q Please answer any questions the defense might have.

22 THE COURT: Mr. Hayes, any questions?

23 CROSS-EXAMINATION

24 BY MR. HAYES:

25 Q Mrs. Christopher, did you tell the police when you

1 gave your statement that there were two individuals in the
2 car?

3 A Yes.

4 MR. HAYES: Beg the court's indulgence. Nothing
5 further, Your Honor.

6 THE COURT: Thank you. You may step down. Next
7 witness.

8 MS. RINGLER: Thank you, Your Honor. The State calls
9 David Dixon.

10 THE COURT: Sir, please come up and place your your
11 left hand on the Bible and raise your right.

12 DAVID DIXSON, after being duly sworn, testified
13 as follows:

14 THE WITNESS: My name is David Dixon. D-I-X-O-N.

15 DIRECT EXAMINATION

16 BY MS. RINGLER:

17 Q Do you work?

18 A No, ma'am.

19 Q Are you in school right now?

20 A No, ma'am.

21 Q What are you doing right now?

22 A Looking for a job at the moment.

23 Q When did you work last?

24 A It's a paper plant called Quadgraphic.

25 Q Did you go to high school?

1 A Yes, ma'am.

2 Q Where did you go?

3 A I went to Wagener Salley for my first two years of
4 high school and then I transferred to Augusta in the
5 middle of my 11th grade.

6 Q Did you play any sports in high school?

7 A Yes, ma'am, I played football.

8 Q Do you know Quinton Harmon?

9 A Yes, ma'am.

10 Q How do you know him?

11 A We went to school together and played football
12 together.

13 Q Roosevelt Johnson, how do you know him?

14 A We went to school together and played football
15 together.

16 Q Do you know T-Money?

17 A I know -- yes, ma'am. I know of him. I don't know
18 him know him, but I know him.

19 Q Have you spoken to him?

20 A No, ma'am.

21 Q T-Money?

22 A No, ma'am.

23 Q Do you know Anthony Martin?

24 A No, ma'am. You said do I know Anthony Martin?

25 Q Uh-huh?

- 1 A No, ma'am.
- 2 Q Did you rob a bank on April 23, 2009?
- 3 A Did I?
- 4 Q Yes?
- 5 A Yes, ma'am.
- 6 Q Who all?
- 7 A Me Roosevelt, Quinton and T-Money.
- 8 Q Do you see T-Money in the courtroom here today?
- 9 A Yes, ma'am.
- 10 Q What is he wearing?
- 11 A White shirt, black tie.
- 12 Q And how do you know T-Money?
- 13 A Through Quinton and Roosevelt.
- 14 Q How did you meet him through Quinton?
- 15 A Outside one night in front of Quinton's house. We
- 16 talked a little bit about robbing the bank.
- 17 Q What was your role in the bank robbery?
- 18 A To be a look out.
- 19 Q And were you charged for your role in the bank
- 20 robbery?
- 21 A Yes, ma'am.
- 22 Q What were you charged with?
- 23 A Conspiracy to commit a bank robbery and bank robbery.
- 24 Q Do you know how much that carries?
- 25 A I think 30 years.

1 Q Do you have any kind of plea agreement with the
2 solicitor's office?

3 A No, ma'am.

4 Q Any promises?

5 A No, ma'am.

6 Q Any assurances?

7 A No, ma'am.

8 Q Are you testifying here today because you think it
9 might help you?

10 A No, ma'am. I am just here just to speak on my part
11 on what I did.

12 Q When did the idea of robbing the bank first come up?

13 A The night before it actually happened.

14 Q And where was that?

15 A In front of Quinton's house.

16 Q Who all was there?

17 A Me, Quinton, T-Money, Roosevelt and Jacob.

18 Q How did it come up?

19 A T-Money had walked up, after I met him or whatever,
20 and like he needed to get some money.

21 Q Was that the first time you ever met him?

22 A Yes, ma'am.

23 Q Had you heard about him before?

24 A Yes, ma'am.

25 Q So when he first comes up what happens then?

1 A I shake his hand. I meet him or whatever, and then
2 we just started talking.

3 Q And how does the bank come up?

4 A He just walked up really and was like I am going to
5 rob a bank.

6 Q And what happens then?

7 A That's when me, him, Quinton, Roosevelt and Jay, we
8 all hopped into the red mustang and rode to Tidy's house.

9 Q And I am handing you what's been previously admitted
10 as State's Exhibit 7. Do you recognize it?

11 A Yes, ma'am.

12 Q What is it?

13 A The red mustang.

14 Q Is that what Roosevelt's mustang looks like?

15 A Yes, ma'am.

16 Q So you're in the red mustang. Where do you go?

17 A To Tidy's house.

18 Q What happens at Tidy's house?

19 A We get into two separate cars, a black blazer and a
20 red mustang. We just split up. Roosevelt Quinton and
21 T-Money got into the red mustang. Me, Tidy and Jake, we
22 got into the black blazer.

23 Q Where do you go at that point?

24 A We drove down town North Augusta to two banks.

25 Q Which Banks?

- 1 A Regions and Wachovia.
- 2 Q Do you go by the Bank of America that night?
- 3 A Yes, ma'am.
- 4 Q When does that happen?
- 5 A The last place that we go.
- 6 Q What do you do at the Bank of America?
- 7 A I guess just scope it out really. I wasn't in the
- 8 red mustang. They left before we did.
- 9 Q The car that you were in, did you go to the Bank of
- 10 America also?
- 11 A We went to like the daycare center or something like
- 12 that like right behind the Bank.
- 13 Q And what do you do after going to the bank?
- 14 A Went back to Tidy's house.
- 15 Q And then -- let's talk a little bit about the day of
- 16 the 23rd. How do you start that day?
- 17 A I wake up and I get a phonecall from Roosevelt.
- 18 Q What happens after the phonecall?
- 19 A That's when Roosevelt came and pick me up and went
- 20 and got Quinton.
- 21 Q You went and got? -- after he picked you up, where
- 22 did you go?
- 23 A To Belvedere Terrace.
- 24 Q And what happens in Belvedeer terrace.
- 25 A Pick up T-Money.

- 1 Q And after you pick up T-Money, do you make any more
2 stops?
- 3 A At Jake's house.
- 4 Q Did you go into Jake's house?
- 5 A No, ma'am.
- 6 Q Where is Jake's house?
- 7 A Right on the main street of Belvedere Terrace.
- 8 Q Is it near where T-Money was staying?
- 9 A I'm not sure where he was staying.
- 10 Q But in that same neighborhood?
- 11 A Yes, ma'am.
- 12 Q Did you -- so who all goes into Jake's house?
- 13 A T-Money.
- 14 Q And where are you and Roosevelt at that point?
- 15 A Outside waiting on him to come back to the car.
- 16 Q In the red mustang?
- 17 A Yes, ma'am.
- 18 Q What happens when he comes out of the house?
- 19 A Just came back to the car with his bookbag or
20 whatever.
- 21 Q Do you remember what the bag looked like?
- 22 A A black bookbag.
- 23 Q Does he get back into the car?
- 24 A Yes, ma'am.
- 25 Q And where do y'all go then?

1 A To Barton Village to pick up Quinton.

2 Q Where is Barton village?

3 A In Augusta off of Barton Chapel.

4 Q And after you pick up Quinton, did y'all make any
5 other stops in Augusta?

6 A We stopped at some stores and a Popeye's.

7 Q What happens at Popeye's?

8 A I think he got latex gloves.

9 Q And after getting the gloves, where did y'all go
10 next?

11 A To my house.

12 Q What happens at your house?

13 A We came up with the plan.

14 Q Describe the plan to me?

15 A Really it was like just what we was going to do. I
16 was the look out. Quinton was the look out. Roosevelt was
17 the driver and we was going to go in and we just got -- I
18 was told to watch out, make sure no polices or nothing
19 came.

20 Q Okay. What else does T-Money say about what was
21 going to happen? Does he -- do you give him anything at
22 your house?

23 A Yes, ma'am.

24 Q What do you give him?

25 A A white t-shirt and a pillow case.

1 Q What kind of pillow case?

2 A Like a tan kind of, kind of like my khaki's.

3 Q What kind of t-shirt?

4 A A regular white t-shirt.

5 Q Do you know what he did with the t-shirt and pillow
6 case?

7 A Right then?

8 Q At the house, yea?

9 A He had the t-shirt on.

10 Q Can you describe how he had the t-shirt on?

11 A Just like throw it across his shoulder.

12 Q And after you leave your house -- do you leave your
13 house?

14 A Yes, ma'am.

15 Q Where do you go at that point?

16 A We went to the car wash like right by BP on Martin
17 Town Road.

18 Q Where is that in relation to the Bank?

19 A It's right in the parking lot between the doctor's
20 office and the car wash and the bank.

21 Q So it's the bank, doctors office?

22 A And the car wash.

23 Q And the BP?

24 A Yes, ma'am.

25 Q And how do you park when you're at the car wash?

1 A Facing the store. Like towards -- kind of towards
2 the end of the car wash like in -- if we parked there you
3 would be able to see like the back of the bank.

4 THE COURT: What do you want him to look at,
5 Mrs. Ringler?

6 MS. RINGLER: Your Honor, just a picture of the car
7 wash to describe it a little more.

8 THE COURT: Show him that one.

9 Q I am showing you State's 1-0. Would that be helpful
10 in showing the jury where you were parked?

11 A Kind of.

12 THE COURT: Just step down and show the jury where
13 you were parked?

14 A In between these two right here.

15 Q Is that one of the stalls?

16 A Yes, ma'am.

17 Q Again which way was the car pointed?

18 A Towards the store.

19 Q As we're looking at the photo, you'd see the back end
20 of the car?

21 A Yes, ma'am.

22 Q So after you're parked in the car wash, what do you
23 do at that point.

24 A I hop out and walk to the trashcan just to look at
25 the traffic to make sure it wasn't police cars or nothing

1 coming around.

2 Q So what do you do after being at the -- looking
3 around at the trashcan?

4 A I walked back to the car.

5 Q And where is everybody else at this point?

6 A Towards the end of -- towards the back of the car
7 wash area, like right behind the car.

8 Q Where is everybody standing?

9 A At the end like of the car wash area. It is like
10 kind of towards the wall. They are just right there
11 huddled up.

12 Q Does Roosevelt leave at some point?

13 A Yes, ma'am. He went to the store around the same
14 time I went to the trashcan.

15 Q You saw him walk to the store?

16 A Yes, ma'am.

17 Q What happens when he comes back?

18 A That's when they got huddled up real quick and
19 everybody hopped in the car, except T-Money.

20 Q Okay. What was T-Money wearing when y'all picked him
21 up?

22 A He had on a fitted cap, a wife beater and some black
23 pants.

24 THE COURT: A white what?

25 THE WITNESS: A wife beater.

1 THE COURT: Go ahead.

2 Q At some point does he change?

3 A Yes, ma'am.

4 Q Does he change before the robbery?

5 A Yes, ma'am.

6 Q Describe that for me?

7 A He had on a black hoodie, a gray wool looking cap and
8 he had the white shirt over his face.

9 Q Can you describe how he had the white shirt over his
10 face?

11 A Just tied up right here. Kind of like, you know,
12 like an Arab person, like in the desert to cover up the
13 dust from their face.

14 Q So his face was covered with the t-shirt?

15 A Yes.

16 Q And where does he put on the black hoodie?

17 A In the area of the car wash where the car was parked.

18 Q And after he puts on the hoodie and the mask, what
19 happens then?

20 A He put his hood on. Then he go to the bank.

21 Q Did Quinton leave at some point?

22 A Yes, ma'am. He left before I walked to the store.

23 Q So where does Quinton go?

24 A To the bank.

25 Q And when he came back out, did he say anything?

1 A He was like everything is straight. That's what I
2 heard. Everything was straight.

3 Q What did you take that to mean?

4 A Everything is cool like. It is good. Everything is
5 green light.

6 Q So after Quinton comes back what does T-Money do at
7 that point?

8 A He started getting ready then. That's when he
9 started changing and stuff.

10 Q At any point did you see a gun?

11 A No, ma'am.

12 Q Did you see a gun after the robbery?

13 A Yes, ma'am.

14 Q So before the robbery you watched him change and then
15 what happens then?

16 A Meaning?

17 Q After he changes and gets ready, what does he do
18 then?

19 A That's when he left.

20 Q Where did he go?

21 A To the bank.

22 Q Can you describe the way that he went to the bank?

23 A Like he got to the back of the doctors office, waited
24 for a second and then he just jogged over there.

25 Q And what did you, Quinton and Roosevelt do at this

1 point?

2 A Get in the car.

3 Q At some point did he come back to the car?

4 A Yes, ma'am.

5 Q T-Money. Describe that to me?

6 A As we was getting in the car or whatever, just
7 sitting there. We heard gunshots and then a few seconds
8 later he just jumped in the car and he was like; go, go,
9 go, go, go.

10 Q And y'all were already in the car at that point?

11 A Yes, ma'am.

12 Q Where does he hop in the car?

13 A In the front passenger.

14 Q Where do y'all go at that point?

15 A We head out and get on I think it's Knocks Avenue.

16 Q Do you make a left as you come out of the bank?

17 A Make a left and then a quick right at the light.

18 Q Where do y'all go at that point?

19 A To the bus station.

20 Q And while y'all are in the car on the way to the bus
21 stop or bus station, what happens?

22 A We start splitting up money.

23 Q How much money did you get?

24 A Like 300 some change.

25 Q Does T-Money do anything else in the car?

1 A Before the bus station.

2 Q Before the bus station?

3 A As we're leaving he starts to change or whatever,
4 getting back into what he had on. He had a red hat, white
5 shirt and different kind of shoes.

6 Q So he changed his shoes. The pants he was wearing
7 did he put those over his clothes or change out of them or
8 how does that happen?

9 A I think he just stripped. I'm not sure. I am not
10 sure.

11 Q But you remember him changing his pants or he had
12 different pants on?

13 A I am not sure.

14 Q But you remember the hoodie?

15 A Yes, ma'am.

16 Q Let's talk a little bit about that bag that you saw
17 earlier. Did you see it again?

18 A After we got to Georgia I did.

19 Q Okay. The clothes that he put on, where did those
20 come from? Could you tell?

21 A No, ma'am.

22 Q And then the pillow case that you gave him, did you
23 see that again?

24 A Yes, ma'am.

25 Q When did you see it?

1 A As he was handing it out of the window to hand it to
2 Thomas.

3 Q Did you see it before then?

4 A The pillow case?

5 Q Uh-huh?

6 A No, ma'am. It was right on the floor in front of
7 them.

8 Q Where was the money when he came out of the bank?

9 A Inside of the pillow case.

10 Q Inside of the pillow case?

11 A Yes, ma'am.

12 Q And he had it the whole time?

13 A Yes, ma'am.

14 Q And he took the money out of the pillow case to give
15 to you?

16 A Yes, ma'am.

17 Q Did he change before or after he gave out the money?

18 A He had already changed.

19 Q And then he gave out the money?

20 A Yes, ma'am.

21 Q Has anything else happened before y'all get to the
22 bus stop?

23 A Not that I remember.

24 Q Do you see anybody that you know around the bus
25 station?

- 1 A After we leave the bus station.
- 2 Q What happens at the bus station?
- 3 A T-Money goes in to try to get a bus ticket to go to
- 4 Atlanta.
- 5 Q How do you know that's where he was trying to go?
- 6 A That's what he told us.
- 7 Q And when he gets back to the car what happens then?
- 8 A When he gets back to the car the bus station was shut
- 9 down or something temporarily. So we just went to the
- 10 mall.
- 11 Q Did you see anybody else?
- 12 A Thomas.
- 13 Q And who is Thomas?
- 14 A He is just a dude I went to school with.
- 15 Q What happens when y'all see Thomas?
- 16 A T-Money handed him the pillow case.
- 17 Q What was in the pillow case?
- 18 A I'm not sure.
- 19 Q Did you see the money again?
- 20 A No, ma'am.
- 21 Q Do you know where -- did he still have the black bag?
- 22 A Yes, ma'am it was in front of him.
- 23 Q And before you said you saw a gun after the robbery.
- 24 When did you see the gun?
- 25 A When he got back in the car.

1 Q Can you describe the gun to me?

2 A It was like a black slide kind of gun.

3 Q Was it a handgun?

4 A Yes, ma'am.

5 Q So after the bus station you went to the mall. What
6 did y'all do at the mall?

7 A We walked around. Quinton and T-Money they went
8 walking around together and me and Roosevelt we was
9 together walking around.

10 Q At some point did y'all meet back up?

11 A Yes, ma'am.

12 Q Where was that?

13 A In food court area.

14 Q What happened in the food court area?

15 A That's when T-Money used Roosevelt's phone to call a
16 ride.

17 Q Did anybody show up?

18 A Yes, ma'am.

19 Q What did T-Money do then?

20 A That's when he and Roosevelt walked outside and a car
21 came and pick them up.

22 Q And what did you and Quinton and Roosevelt do at that
23 point?

24 A It was just me and Quinton then. Me and Quinton we
25 was still in the mall and him and Roosevelt had walked

1 outside or whatever so Roosevelt could take him back to
2 the car and get his stuff.

3 Q Did Roosevelt come back?

4 A In the car yes, ma'am.

5 Q So he came back and picked y'all up?

6 A Yes, ma'am.

7 Q Did you see T-Money again after that?

8 A No, ma'am.

9 Q Did anybody threaten you to help rob the bank?

10 A No, ma'am.

11 Q Did anybody force you to rob the bank?

12 A No, ma'am.

13 Q What was your role again in the robbery?

14 A To be a look out.

15 Q Thank you. Please answer any questions that the
16 defense counsel might have.

17 THE COURT: Mr. Hayes.

18 CROSS-EXAMINATION

19 BY MR. HAYES:

20 Q Mr. Dixon, how are you doing today?

21 A All right. How are you doing, sir?

22 Q You testified that there were two vehicles?

23 A Two, yes, sir.

24 Q There were two vehicles after you talked about
25 robbing the bank?

- 1 A Yes, sir.
- 2 Q And then Jacob McKie?
- 3 A Yes, sir.
- 4 Q Quinton Harmon?
- 5 A Yes, sir.
- 6 Q Roosevelt Johnson?
- 7 A Yes, sir.
- 8 Q Yourself?
- 9 A Yes, sir.
- 10 Q And you said two other people?
- 11 A Yes, sir, Tidy.
- 12 Q Tidy?
- 13 A Yes, sir.
- 14 Q Who is the sixth person?
- 15 A T-Money.
- 16 Q And then y'all rode around looking at banks?
- 17 A Yes, sir.
- 18 Q Did you tell the police this?
- 19 A Did I? No, sir.
- 20 Q You said after that you went back to Tiny's house --
- 21 or Tidy?
- 22 A Yes, sir.
- 23 Q You said you gave Mr. Martin, you're claiming, a
- 24 t-shirt at your house?
- 25 A And a pillow case.

1 Q And a pillow case. You just testified that he put
2 the t-shirt over his shoulder at your house?

3 A Yes, sir.

4 Q You testified that he put that t-shirt over his face
5 after y'all were at the car wash?

6 A Yes, sir.

7 Q You said y'all afterwards left the bank and you
8 headed towards Georgia?

9 A Yes, sir.

10 Q And you saw a Mr. Wilson?

11 A Yes, sir.

12 Q And Mr. Wilson was given the pillow case?

13 A Yes, sir.

14 Q But you don't know what was in it?

15 A No, sir.

16 Q And your testimony is that Mr. Martin still had a
17 black bag after this?

18 A Yes, sir.

19 Q And this is after he went into the bus station?

20 A Yes, sir.

21 Q And came back out?

22 A Yes, sir.

23 Q Then y'all left from the bus station to the mall;
24 correct?

25 A Yes, sir.

1 Q And your testimony is that Mr. Johnson's cellphone
2 was used?

3 A Yes, sir.

4 MR. HAYES: I beg the court's indulgence. Nothing
5 further, Your Honor.

6 THE COURT: Redirect, if any?

7 MS. RINGLER: None from the state, Your Honor.

8 THE COURT: All right. You may step down. Next
9 witness.

10 MS. RINGLER: Tyewan Johnson.

11 THE CLERK: Place your left hand on the Bible and
12 raise your right.

13 TYEWAN JOHNSON, after being duly sworn,
14 testified as follows:

15 THE CLERK: Have a seat in the witness box. State
16 your full name for The Court and spell your last.

17 THE WITNESS: Tyewan Johnson. Witness in this case.

18 DIRECT EXAMINATION

19 BY MS. RINGLER:

20 Q Can you please spell your last name for the court
21 reporter?

22 A Johnson.

23 Q Do you go by a nickname?

24 A Tidy. Tidy.

25 Q Is that something -- how long have you had that

- 1 nickname?
- 2 A Since I was little.
- 3 Q Do you know Quinton Harmon?
- 4 A Yes, ma'am.
- 5 Q How do you know Quinton?
- 6 A He is my cousin.
- 7 Q Do you know Roosevelt Johnson?
- 8 A Yes, ma'am.
- 9 Q How do you know him?
- 10 A He's a friend.
- 11 Q And David Dixon?
- 12 A He is a friend, too.
- 13 Q And were you convicted of shoplifting in 2010?
- 14 A 2010? Oh, yea, yea. Yes, ma'am.
- 15 Q Are you in school right now?
- 16 A Starting back in July.
- 17 Q Where are you going to school?
- 18 A California.
- 19 Q What are you doing in California?
- 20 A Playing football.
- 21 Q Which school?
- 22 A California Desert.
- 23 Q What position do you play?
- 24 A Running back.
- 25 Q Did you play in high school?

- 1 A Yes, ma'am.
- 2 Q Where did you play?
- 3 A North Augusta High.
- 4 Q Did you do pretty well there?
- 5 A Yes, ma'am. I did pretty good.
- 6 Q Do you know T-Money?
- 7 A I know of him. Yea.
- 8 Q Do you see him in the courtroom here today?
- 9 A Yea. That man right there. In the white and black
- 10 tie.
- 11 Q Can you describe what he is wearing, you said neck
- 12 tie, what else does he have on.
- 13 A White collar with the black tie.
- 14 Q Do you remember when the Bank of America on Martin
- 15 Town Road was robbed?
- 16 A Huh.
- 17 Q Do you remember when the Bank of America on Martin
- 18 Town Road was robbed?
- 19 A I don't remember the date. But I remember it.
- 20 Q Do you remember the night before?
- 21 A Yes, ma'am.
- 22 Q Where were you the night before?
- 23 A At my house.
- 24 Q Did you go to Quinton's house that night?
- 25 A Yea. I had stopped by there.

1 Q When you stopped by who all did you see in front of
2 Quinton's house?

3 A T-Money, David Dixon, Roosevelt and my cousin
4 Quinton.

5 Q Did it look like they were talking?

6 A It look like a little group meeting, whatever.

7 Q Does Quinton have a basketball court?

8 A Yea in the front yard where we play at.

9 Q Where were they standing at this point when you saw
10 them talking?

11 A They was in the front yard.

12 Q Did you see -- when you stopped by, what did you do
13 after that?

14 A I just spoke.

15 Q What did y'all talk about?

16 A We was just talking, chilling.

17 Q Okay. Did you go back to your house?

18 A No, I stayed there for a couple of minutes and then I
19 went back to my house.

20 Q Who all was at your house?

21 A Just my mama and my sisters. Two sisters.

22 Q Did you see T-Money again that night.

23 A No, I ain't seen him again that night.

24 Q Did anybody come by your house that night?

25 A Well they came back, Roosevelt and them they came

1 back to my house.

2 Q Who all came to your house?

3 A Roosevelt Johnson and David Dixon.

4 Q Then after the bank robbery did you see T-Money ever
5 again?

6 A No, I ain't seen him after that.

7 Q Did you rob the Bank of America on Martin Town Road?

8 A Did I rob the bank?

9 Q Yes.

10 A No, ma'am.

11 Q Thank you. Answer any questions defense counsel may
12 have.

13 THE COURT: Any questions, Mr. Hayes?

14 CROSS-EXAMINATION

15 BY MR. HAYES:

16 Q Mr. Johnson, what kind of car do you drive?

17 A A silver Suzuki.

18 Q What color?

19 A Silver.

20 Q You said you played football at North Augusta. You
21 played football with Quinton Harmon and Roosevelt?

22 A And David.

23 Q And David?

24 A He played, too.

25 Q So you know them well?

1 A Yes.

2 MR. HAYES: Beg the court's indulgence.

3 Q On the night before the robbery, you said you went
4 over to Quinton's house and talked with him?

5 A I ain't really talked. We had spoke. I ain't talked
6 with him.

7 Q Speaking is talking?

8 A Speaking, yea.

9 Q So you had a conversation with them?

10 A Yes.

11 Q Now did you go anywhere with them?

12 A No, sir.

13 Q You didn't go anywhere with them?

14 A Huh-uh.

15 Q You didn't ride around in the car with anybody?

16 A No. I went back home.

17 Q All right. You went back home. Was anybody with you
18 in that car?

19 A No, it was just me. I went back to my house.

20 Q So by yourself you went back to your house. You
21 didn't go ride around looking at banks?

22 A No, I ain't looked at no banks.

23 Q Did you hear anybody talking about banks?

24 A I had no knowledge of a bank robbery.

25 Q I'm sorry. I didn't hear you?

1 A I had no knowledge of no bank robbery.

2 Q So if somebody said that you were in the car riding
3 around with them, the night before, that's wrong?

4 A Yes, sir.

5 Q Nothing further, Your Honor.

6 THE COURT: All right. Anything on redirect?

7 MS. RINGLER: Nothing on redirect, Your Honor.

8 THE COURT: You may step down. You're free to go.

9 Next witness.

10 THE CLERK: Come on down sir, place your left hand on
11 the Bible and raise your right.

12 KENYON HARMON, after being duly sworn, testified
13 as follows:

14 THE WITNESS: My name is Kenyon Harmon. Keon Lamar
15 Harmon. My last name is H-A-R-M-O-N.

16 DIRECT EXAMINATION

17 BY MS. RINGLER:

18 Q Are you related to Quinton Harmon?

19 A Yes, ma'am.

20 Q How?

21 A That's my brother.

22 Q Do you know Roosevelt Johnson?

23 A Yes, ma'am.

24 Q Do you know David Dixon?

25 A Yes, ma'am.

- 1 Q Do you know T-Money?
- 2 A Yes, ma'am.
- 3 Q Do you see T-Money in the courtroom here today?
- 4 A Yes, ma'am.
- 5 Q Can you point him out for me?
- 6 A He is right there.
- 7 Q What is he wearing today?
- 8 A A black tie, or navy blue and a white shirt, button
- 9 up.
- 10 Q Do you remember the day that the Bank of America was
- 11 robbed on Martin Town Road?
- 12 A I don't remember the exact day.
- 13 Q Do you remember when that happened?
- 14 A Yes, ma'am.
- 15 Q Where were you the night before the bank robbery?
- 16 A I wasn't around. But -- was it that night or that
- 17 day?
- 18 Q The day before the bank robbery? Were you at home
- 19 that day?
- 20 A Yes, ma'am.
- 21 Q Did you see T-Money the day before the bank robbery?
- 22 A Yes, ma'am.
- 23 Q Where did you see him?
- 24 A We was on the porch. Me and my brother and T-Money.
- 25 Q Do you remember about what time that was?

1 A No, ma'am.

2 Q Was it morning or afternoon or later on in the day?

3 A It was like I'd say probably maybe around about six
4 or seven.

5 Q And who all was in front of your house?

6 A Just -- it was nobody. It was just us three.

7 Q So T-Money, did you see Roosevelt that night?

8 A No, ma'am.

9 Q At some point did you leave?

10 A Yes, ma'am. I left.

11 Q And when you left was T-Money still there?

12 A I really don't remember like everything, but I don't
13 remember if he was there or not. But I know I had left.
14 I don't know if he left right behind me or whatever.

15 Q But you did see him there?

16 A Yes, ma'am, I did see him there.

17 Q Did you see him again after the bank robbery?

18 A Not after. No, ma'am.

19 MS. RINGLER: Please answer any questions that the
20 defense counsel might have.

21 THE COURT: Mr. Hayes, anything?

22 CROSS-EXAMINATION

23 BY MR. HAYES:

24 Q Mr. Harmon, you're Quinton's brother; correct?

25 A Yes, sir.

1 Q So you don't remember the exact date when the robbery
2 happened?

3 A No, sir.

4 Q But you know the robbery happened?

5 A Yes, sir. I don't know like exactly what day.

6 Q You said you were on the porch at your house?

7 A Yes, sir.

8 Q You said that three of you, just to clarify, that's
9 you, right?

10 A Yes, sir.

11 Q You're saying Mr. Martin; correct?

12 A Yes, sir.

13 Q And your brother?

14 A Yes, sir.

15 Q Quinton Harmon?

16 A Yes, sir.

17 MR. HAYES: I beg the court's indulgence.

18 Q Did you hear them discussing a bank robbery while you
19 were on your porch?

20 A Yes, sir.

21 Q You did? And it was just you and Mr. Harmon and
22 you're saying Mr. Martin?

23 A Yes, sir.

24 MR. HAYES: Nothing further, Your Honor.

25 THE COURT: Mrs. Ringler, any redirect?

1 MS. RINGLER: Nothing further from the state, Your
2 Honor.

3 THE COURT: Thank you. You may step down. You're
4 free to go. Next witness.

5 MS. RINGLER: Jasmine Harmon.

6 THE COURT: Mr. Foreman, ladies and gentlemen we're
7 going to stop at about 20, 25 after. Are y'all hungry?
8 Real hungry? I am going to buy your lunch. How about
9 that?

10 THE JUROR: Thank you, sir.

11 THE COURT: No, not --

12 THE JUROR: I want a steak. I am a little man, but I
13 eat big.

14 THE COURT: I am going to let you walk up to the
15 Bowery. We got you a room set up up there. Will that
16 suit everybody?

17 (All Nodded affirmatively)

18 THE CLERK: Place your left hand on the Bible and
19 raise your right.

20 JASMINE HARMON, after being duly sworn,
21 testified as follows:

22 THE CLERK: Have a seat in the witness box and state
23 your full name for the court and spell your last.

24 THE WITNESS: Jasmine Harmon, H-A-R-M-O-N.

25 DIRECT EXAMINATION

1 BY MS. RINGLER:

2 Q Mrs. Harmon, are you related to Quinton Harmon?

3 A Yes, ma'am, that's my brother.

4 Q Do you know Roosevelt Johnson?

5 A Yes, ma'am.

6 Q And David Dixon?

7 A Yes, ma'am.

8 Q Do you know T-Money?

9 A Yes, ma'am. I don't know him personally, but I know
10 him as somebody in the neighborhood.

11 Q Do you see T-Money in the courtroom today?

12 A Yes, ma'am, I do.

13 Q Can you point him out for me?

14 A He's right there.

15 Q Can you describe what he's wearing?

16 A He has on a white shirt with a black tie.

17 Q Do you remember when the Bank of America was robbed?

18 A Yes, ma'am.

19 Q Do you remember the night before?

20 A Yes, ma'am.

21 Q Where were you the night before?

22 A I was at home the night before and they was gathered
23 around my house. I don't remember who all it was because
24 I don't get into all that, but I remember seeing him.

25 THE COURT: Seeing who? I'm sorry.

1 THE WITNESS: Seeing T-Money.

2 Q Where do you live?

3 A Bryant Avenue.

4 Q Is that in Belvedere Terrace?

5 A Yes, ma'am.

6 Q Who all lived at that house?

7 A My brother Quinton Harmon, Keon Harmon and my brother
8 Jamez Harmon, Chris Harmon and my mom and my son.

9 Q And the night before the bank robbery you said you
10 saw T-Money. Where did you see him?

11 A The night before? My mom she thought my brother had
12 left out the door that night. When everything died down
13 it was late that night.

14 Q How about earlier in the day. Did you see him
15 earlier that day?

16 A Yes, ma'am, I see him earlier that day.

17 Q Where did you see him. He was inside of the house
18 earlier in the day, just mingling around, just talking
19 with my brothers, just like a friend in the neighborhood.
20 My mom is friends with everybody. She's not knowing that,
21 you know, she is just friendly to everybody and she -- my
22 mama was communicating with him, too, not knowing that it
23 was like this. But she did.

24 Q Would Quinton hang out with T-Money?

25 A Did he hang out with him on a daily basis?

1 Q Did they play basketball?

2 A Yes, they play basketball around the neighborhood and
3 stuff like that.

4 Q He was at your house that day. At some point was he
5 out in front of your house?

6 A Uh-huh.

7 Q And was it just him or did you see a couple of
8 people?

9 A It was my brothers and -- it was a couple of people
10 out there. I can't remember exactly who it was, but it
11 was a couple of them out there.

12 Q Okay. But you remember your brother and T-Money
13 outside?

14 A Uh-huh.

15 Q Could you hear what they were talking about?

16 A No, ma'am.

17 Q At some point did they leave?

18 A Yea. They left.

19 Q At some point did Quinton come back?

20 A Uh-huh.

21 Q Did you see T-Money after that?

22 A Yea -- that -- he. I didn't see him when my brother
23 came back, when my brother approached the yard. But as we
24 went to bed and stuff my mom thought somebody exited the
25 house -- she's in a wheelchair. So she can't get up and

1 see for herself. She thought somebody exited the house.

2 MR. HAYES: Objection hearsay, Your Honor.

3 THE COURT: Don't talk about what your mama thought.

4 Q At some point did you look around the house?

5 A Yes, ma'am, I did.

6 Q What did you see at that point?

7 A She asked me to lock the door. I seen someone laying
8 on the floor, I thought it was my brother. Not knowing
9 that my brother did walk out of the house or something. I
10 didn't know if he did or not, I was a half asleep. I
11 walked back to my bed and went back to bed.

12 Q That morning did you figure out who it was sleeping
13 in the living room?

14 A Yes, ma'am. We acknowledge who that was and he
15 acknowledged who he was.

16 Q Who was it sleeping in the living room?

17 A T-Money.

18 Q Where did he -- did you see him after that?

19 A Yes, ma'am. He peeked out the door after my mom
20 acknowledged somebody was in there. He said it's me in
21 here. My mama was like, get out the house. That's when
22 he left and I saw him on the front porch.

23 Q At some point did he leave the house?

24 A Yes, ma'am. He left. But I don't know where they
25 went after that. I haven't seen them.

1 Q Have you seen him since that day?

2 A No, ma'am.

3 Q Have you seen him since the bank robbery?

4 A No, ma'am.

5 Q Please answer any questions that defense counsel has.

6 THE COURT: Mr. Hayes, any questions? Investigator
7 Grant, would you please go out there and get those people
8 that are standing right there at that door to move out in
9 the hall please.

10 CROSS-EXAMINATION

11 BY MR. HAYES:

12 Q When was the first time that you told about T-Money
13 being in your house?

14 A I didn't acknowledge he was in the house that night,
15 but that morning we knew who he was.

16 Q Who did you tell?

17 A My mom.

18 Q Your mom?

19 A My mom was yelling and she was upset. So, yea I told
20 my mom.

21 Q Did you ever tell the police?

22 A Yea. They asked who was in the house. I didn't go
23 to, you know, make a statement or anything. But as they
24 were questioning, yes, I did.

25 Q When was that?

1 A I can't remember exactly when it was, but it was when
2 they started investigating everything.

3 Q You said you don't know him well?

4 A No, sir, I don't.

5 Q Is that correct? Would T-Money be somebody that your
6 brother was always playing basketball with, always hanging
7 out with?

8 A No, sir.

9 Q Who would your brother be hanging out with?

10 A Well he played football. He hung out with a lot of
11 his football friends and other than that really nobody and
12 his family.

13 Q You say football friends, you mean David Dixon?

14 A They were best friends.

15 Q You mean Roosevelt Johnson?

16 A Yes, sir.

17 MR. HAYES: Nothing further, Your Honor.

18 THE COURT: Anything on redirect?

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

20 THE COURT: All right. You may step down. Next
21 witness.

22 MS. RINGLER: Jacob McKie.

23 THE CLERK: Please come forward and place your left
24 hand on the Bible and raise your right.

25 JACOB MCKIE, after being duly sworn, testified

1 as follows:

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

4 THE WITNESS: My name is Jacob McKie. It is
5 M-C-K-I-E.

6 DIRECT EXAMINATION

7 BY MS. RINGLER:

8 Q Mr. McKie, do you work?

9 A Yes, ma'am.

10 Q Where do you work?

11 A John Deere.

12 Q What do you do for them?

13 A Like assembly line.

14 Q How long have you worked there?

15 A Since October.

16 Q In 2009 were you living in Belvedere Terrace?

17 A Yes, ma'am.

18 Q Where in Belvedere Terrace were you living?

19 A Edna street.

20 Q Do you know Quinton Harmon.

21 A Yea, I know him.

22 Q How do you know him?

23 A He is my cousin.

24 Q Did he also live in Belvedere Terrace?

25 A Yes, ma'am.

- 1 Q Do you know T-Money?
- 2 A Yes, I know him.
- 3 Q Do you see him in the courtroom here today?
- 4 A Yes, ma'am.
- 5 Q Can you point him out to me?
- 6 A Indicates.
- 7 Q Describe what he is wearing?
- 8 A White shirt with a black tie.
- 9 Q How tall are you Mr. McKie?
- 10 A Like 5'3; 5'4, something like that.
- 11 Q Do you remember when the Bank of America was robbed?
- 12 A 2008?
- 13 Q Do you remember when the Martin Town Road Bank of
- 14 America was robbed?
- 15 A Yea.
- 16 Q Did you see -- was T-Money living in the neighborhood
- 17 at that time before then?
- 18 A No. I don't think so.
- 19 Q Did you see T-Money the morning of the bank robbery?
- 20 A I seen him that morning.
- 21 Q When did you see him?
- 22 A It was like early. Like probably about eight or
- 23 nine, something like that.
- 24 Q Did he come to your house?
- 25 A Yea. He came.

1 Q What did he do when he came to your house?

2 A I mean, basically he just asked me like did I have
3 like this little pellet gun or whatever. So I told him
4 yea. He never told me what he was going to use it for.
5 He just asked me did I have it.

6 Q Did he ever see you with the pellet gun before?

7 A He probably saw me outside playing with it.

8 Q What would you do with it?

9 A Just shoot at squirrels and stuff like that.

10 Q So he knew that you had one?

11 A (Witness nods head.)

12 Q Did you give him the pellet gun?

13 A Yea, I gave it to him.

14 Q Can describe the gun?

15 A It was small and black.

16 Q Did it look like a handgun?

17 A Sort of. Yea.

18 Q After you gave it to him did he say anything else?

19 A No.

20 Q What did you do at that point?

21 A Who me?

22 Q T-Money, what did he do at that point?

23 A Oh he just left.

24 Q Did you ever get the gun back?

25 A No.

1 Q Did you ever see T-Money again?

2 A No, I ain't seen him.

3 Q Did you rob the Bank of America on Martin Town Road?

4 A No.

5 THE COURT: All right. Answer any questions that
6 Mr. Hayes may have.

7 CROSS-EXAMINATION

8 BY MR. HAYES:

9 Q Mr. McKie, you're saying that you loaned your pellet
10 gun to a person you really don't know?

11 A Yea, basically.

12 Q Were you the night before the -- before the robbery
13 were you at Quinton Harmon's house?

14 A Yea, I was there.

15 Q Were you also in the vehicles with him when they went
16 riding around?

17 A No, I was just with one person.

18 Q Who were you with?

19 A My cousin, Tidy.

20 Q Tidy?

21 A Yea. He had brung me back home.

22 Q Tidy took you home?

23 A Yea. He took me home.

24 Q So you and Tidy didn't ride around --

25 A No, I had to go to work.

1 THE COURT: Hold on a second. Let him finish his
2 question before you answer.

3 Q So you and Tidy didn't ride around with everybody
4 else in a black blazer and a red mustang?

5 A Huh-uh.

6 THE COURT: Is that a yes or no.

7 THE WITNESS: No.

8 THE COURT: Thank you. I don't understand that and
9 all of that other stuff.

10 Q If somebody testified to that.

11 MS. RINGLER: Objection, Your Honor.

12 THE COURT: You can't pit witnesses. Sustained.

13 Q Did you ever see your pellet gun again?

14 A No, I ain't see it.

15 MR. HAYES: Nothing further, Your Honor.

16 MS. RINGLER: Real quick redirect, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. RINGLER:

19 Q You said that you saw T-Money the night before?

20 A No, I ain't seen him the night before.

21 Q Who did you see the night before? The night before
22 the bank robbery, where were you?

23 A I was at home.

24 Q Did you go over to Quinton's house?

25 A It was like later on that night I had went down

1 there.

2 Q Did you see Quinton then?

3 A Yes, I seen him.

4 Q Did you see T-Money?

5 A Yea, I seen him.

6 Q Where were they?

7 A They was outside.

8 Q Did you recognize anybody else that was outside?

9 A I ain't stick around that long.

10 Q Was it just the two of them or were there other
11 people there?

12 A It probably was a few more.

13 Q And at that point you went home?

14 A Yea, I went home.

15 THE COURT: All right. You're excused. You may
16 leave. Next witness.

17 MS. RINGLER: Wesley Hunter.

18 MR. HAYES: Your Honor, may we approach?

19 (Whereupon, a bench conference was held.)

20 THE COURT: Next witness.

21 MS. RINGLER: Christopher Poythress.

22 THE CLERK: Place your left hand on the Bible and
23 raise your right.

24 CHRISTOPHER POYTHRESS, being

25 first duly sworn, testifies as follows:

1 THE CLERK: Have a seat in the witness box and state
2 your full name for the court and spell your last.

3 THE WITNESS: Christopher Poythress. Last name
4 P-O-Y-T-H-R-E-S-S.

5 DIRECT EXAMINATION

6 BY MS. RINGLER:

7 Q Officer Poythress. Are you all right?

8 A Yes.

9 Q Where do you work?

10 A Dekalb County Police Department in Atlanta Georgia.

11 Q In Atlanta. What do you do there?

12 A I am a police officer.

13 Q As part of your job what does that entail?

14 A Answer 911 calls and first responder.

15 Q And on April 13, 2010 did you go to an apartment
16 complex in Meadow Glenn Village Lane?

17 A Yes.

18 Q What brought you there?

19 A I got a 911 call in reference to a wanted person that
20 needed to be located.

21 Q And when you went there what did you do when you got
22 there?

23 A When I got there I went to apartment apartment

24 S. I mean, I went down and knocked on the door. In

25 reference to my dispatch call the radio advised me that I

1 needed to look for someone by the name of Anthony Martin.

2 She provided the date of birth as well.

3 Q Did you find Anthony Martin that day?

4 A That day he was not there. No one answered the door
5 of the apartment.

6 Q Did you go back the next day?

7 A I went back the next day to do a follow up. I went
8 to the apartment again no one was not there.

9 Q What did you do at that point?

10 A At that point I went to the leasing office to see if
11 I could get a description of the guy to see if he lived
12 there. I talked to leasing agent by the name of Espenoza.

13 Q Based on the information that Espenoza gave you, did
14 you -- did that direct your attention to anyone?

15 A Yes. He told me that Anthony Martin does stay on the
16 property and he advised he saw him earlier leaving the
17 property, walking up Pleasantdale towards 85.

18 Q And did you -- were you able to find him at some
19 point?

20 A Yes. He gave me a description of the clothes he was
21 wearing, blue jeans, black jacket with a front and back
22 with a black baseball cap. When I was leaving the
23 apartment complex, I actually saw him walking back towards
24 the apartment complex.

25 Q Did you stop him at that time?

1 A Yes. When I went past him just to make sure it was
2 him, fit the description of him, he actually entered back
3 into the apartment complex. I turned back around and
4 that's when I stopped him.

5 Q When you stopped him what happened then?

6 A I stopped him I asked him, I said --

7 MR. HAYES: Objection, Your Honor.

8 THE COURT: Hold on.

9 MR. HAYES: I'd like to renew my objection earlier.

10 THE COURT: Well she just asked him what did he do
11 when he stopped him.

12 MR. HAYES: Right. I believe that would be what we
13 talked about in pretrial.

14 THE COURT: Overruled.

15 Q What happened when you stopped him?

16 A When I stopped him I asked him what was the purpose
17 to be on the property. He advised me that he lives on the
18 property. After that I asked him for his name and his
19 date of birth and if he had any ID on him. He told me
20 didn't have any ID. So I asked him again, I said, what
21 are you doing on the property again and he told me he was
22 going to visit his sister.

23 Q Did he at some point give you a name?

24 A Shortly after that I asked him since he didn't have a
25 ID. I asked him to give me his name and date of birth and

1 he gave me Troy Brown with a birthday of .

2 Q At some point were you able to identify who this
3 person was?

4 A Later on we identified who he was. My Sergeant came
5 on the scene and I advised him of, you know, why I stopped
6 him in reference to the call. And so my sergeant said
7 that he would go to the precinct to see if he could get a
8 photo of the Anthony Martin subject. When he returned
9 with the color photo, it matched the gentleman that I
10 stopped.

11 Q And were you able to confirm who that person was?

12 A Yes.

13 Q And so who was it that you stopped that day?

14 A I did stop Anthony Martin that day.

15 Q So he give you a fake name?

16 A False name and date of birth.

17 Q And the date of birth was also false?

18 A Correct.

19 Q And the information he gave you about what he was
20 doing in the complex?

21 A That wasn't true as well.

22 Q That wasn't true either?

23 A Right.

24 Q Was that conflicting?

25 A It was conflicting because he told me he lived on the

1 property. Then he said after that he was going to visit
2 his sister at that apartment.

3 Q Were you wearing your uniform that day?

4 A Yes, I was.

5 Q Were you driving a marked patrol car that day?

6 A Yes, I was.

7 Q You were on duty?

8 A Yes, I was.

9 Q Please answer any questions that defense counsel
10 might have.

11 MR. HAYES: None, Your Honor.

12 THE COURT: You may step down. May he be excused?

13 MS. RINGLER: Yes, Your Honor.

14 THE COURT: Mr. Foreman, ladies and gentlemen, we're
15 going to break for lunch. I have made arrangements at the
16 Bowery for them to receive you. They have a little
17 private room back there or private table. Enjoy your
18 lunch. Be reasonable in what you order. They got a
19 reasonable lunch menu. Enjoy it. Mrs. Barbara, are you
20 going with them?

21 THE BAILIFF: Yes.

22 THE COURT: Anybody have any problems walking? It's
23 about two and a half blocks. It is pretty outside. You
24 have problems walking.

25 THE JUROR: No I'm fine. I like to walk.

1 THE COURT: Are you still referring basketball games.

2 THE JUROR: Last year I done the upwards Basketball
3 and then I coached, officiated it.

4 THE COURT: That's enough. That is mighty admirable.
5 We'll start back at 2 o'clock, which means when you get
6 back from lunch if it's not 2 o'clock yet, you're
7 certainly welcome to stay outside and enjoy the fresh air
8 and sunshine. Just be ready to go at 2 o'clock.
9 Everybody else remain seated. Don't discuss the case and
10 don't start any deliberations.

11 (Whereupon, the jury exited the courtroom at 12:25.)

12 THE COURT: All right. Anything for the record
13 before we break for lunch by the state?

14 MS. RINGLER: Nothing from the state, Your Honor.

15 THE COURT: By the defendant?

16 MR. HAYES: Nothing by the defendant.

17 THE COURT: All right, we will stand at ease until 2
18 o'clock.)

19 (Whereupon, a lunch break was taken.).

20 WESLEY HUNTER, being duly sworn
21 testified as follows:

22 THE COURT: All right. The Court recognizes he is a
23 probation officer here in Aiken County. What do you
24 propose to ask this witness during the trial, ma'am?

25 MS. RINGLER: Your Honor, we certainly would not ask

1 about his occupation. We would just ask in this Spring of
2 2009 -- well first I would ask him do you know Anthony
3 Martin and ask him to point him out in the courtroom; and
4 then ask him in the spring of 2009 did you go to
5 Mr. Martin's residence and where was that; and we
6 anticipate his answer would be Edna street. I'll ask was
7 he living with his grandmother. Did you speak with him.
8 What did he tell you about his residence. I anticipate he
9 would say, he told me he was living there. And did you
10 have an appointment with him sometime after that; and he
11 would give me the date for that appointment. Did he show
12 for that appointment? No. Did you go out to his
13 residence then after that? Yes. Was he living there at
14 that time? No.

15 THE COURT: Well the problem with all of that is he
16 is obviously a probation agent for Aiken County and I
17 don't know how we get through all of this without people
18 knowing that and that's going to be prejudicial to the
19 defendant for --

20 MS. RINGLER: I just would not ask --

21 THE COURT: -- for his past record.

22 MR. GIBBONS: Your Honor, a similar case happened in
23 our Circuit several years ago, State versus Roy Hook.
24 Mr. Ness was the lawyer.

25 THE COURT: I know all about Roy Hook.

1 MR. GIBBONS: They called the probation agent to
2 testify to what he had told them. When he was picked up
3 and the court's threw it back and said they're not allowed
4 to testify one way or the other because there is no right
5 to remain silent in front of the probation agent. Our
6 position would be that he's in a classification that he
7 would not be allow to testify. And, in addition, there's
8 already been ample testimony from a number of sources that
9 he was there and then he was gone.

10 MS. RINGLER: I would just -- he wasn't under arrest
11 when he made the statement about his residency. I think
12 he was also--

13 THE COURT: Well he was on probation, though, wasn't
14 he?

15 MS. RINGLER: He was on probation when he made the
16 representation that that was his residence.

17 THE COURT: Well, I am going to deny it. I am going
18 to rule number one, that it's cumulative. Number two, it
19 is more prejudicial than probative and number three, based
20 on the argument, there is sufficient evidence. You're
21 protected for the record, ma'am. Anything else before I
22 bring the jury in?

23 MS. RINGLER: Nothing Your Honor.

24 MR. HAYES: Nothing from the defense, Your Honor.

25

1 (Whereupon, the jury came into open court at
2 approximately 2:06.)

3 THE COURT: All right. I got you lunch, but the deal
4 is you can't go to sleep. I had a ham sandwich my wife
5 made me this morning. She's so sweet. Next witness.

6 MRS. YOUNG: The state calls Detective Luke Sherman.

7 THE CLERK: Place your left hand on the Bible and
8 raise your right.

9 LUKE SHERMAN, after being duly sworn, testified
10 as follows:

11 THE CLERK: Please have a seat in the witness box and
12 state your full name for the court and spell your last.

13 THE WITNESS: Detective Luke Sherman, S-H-E-R-M-A-N.

14 DIRECT EXAMINATION

15 BY MRS. YOUNG:

16 Q Are you a detective with North Augusta Department of
17 Public Safety?

18 A Yes, I am.

19 Q How long have you been employed?

20 A Eight years.

21 Q Eight years detective or eight years total?

22 A Eight years total and three years as a detective.

23 Q Are you the investigating officer for this bank
24 robbery here in North Augusta?

25 A Yes, I am.

1 Q How did you first become involved back in April of
2 2009?

3 A I was called to the scene in reference to a bank
4 robbery at West Martin Town Road in North Augusta.

5 Q What did you determine upon your arrival at the bank?

6 A That the bank had been robbed, at which point I made
7 entry and spoke to the witnesses inside.

8 Q And without going into what everybody said, did you
9 get a gem description of what had happened inside of the
10 bank?

11 A Yes.

12 Q What was that?

13 A A black male entered the bank wearing all black with
14 a hoodie, wearing gloves, pointed a gun, demanded money
15 and received money. Received \$12,000 to be exact.

16 Q And was there -- I'm sorry?

17 A And then left the bank.

18 Q And regarding what happened inside of the bank were
19 you able to determine which teller was the victim of the
20 actual robbery?

21 A Yes.

22 Q Who was that?

23 A Mona Floyd.

24 Q Okay. And regarding the robbery, were you able to
25 determine anything unusual about the money location and

1 how that had happened?

2 A Yes, it was a little strange, but she had just
3 received money from the vault, that was about to go in her
4 drawer, when the suspect entered and the money was already
5 there. That's why there was not a dye pack placed with
6 the money. So she just gave him the money right off the
7 counter.

8 Q It was basically just sitting right there on the
9 counter, she hadn't had a chance to put it up yet?

10 A Yes, perfect timing for the suspect.

11 Q Did you do anything with regard to the bank
12 surveillance video?

13 A Yes, I viewed the bank surveillance video from that
14 offense.

15 Q Okay. Were you able to determine anything specific
16 from the bank surveillance video once you viewed it.

17 A Yes, speaking with employees there they said a
18 subject came in minutes prior and was acting suspicious.
19 We were able to see that subject on the video, which is
20 what we later released to the media as a person of
21 interest in the Bank robbery.

22 Q And that would have been not the actual bank robber
23 but some other individuals?

24 A Yes, and the bank robber was viewed wearing all black
25 and gloves in the video with the gun.

1 Q And what was the, if you know, guestimate a time
2 period of when the suspicious person came in, in relation
3 to the bank robber?

4 A Several minutes before the suspicious person came in.
5 Several minutes after he left, the bank robber came in.

6 Q Would it be fair to say within 10 minutes all of this
7 happened?

8 A Less than 10.

9 Q Regarding the suspicious person, did that turn out to
10 be Quinton Harmon?

11 A That did turn out to be Quinton Harmon.

12 Q Did you do anything with his image regarding the
13 media and trying to determine other information regarding
14 the robbery.

15 A It was released to the media which is how he was
16 identified.

17 Q Going a little bit further on the robbery itself,
18 what happened once the robber ran outside of the bank?

19 A As the robber left the scene, through my
20 investigation, it was determined that Mr. Huff was in the
21 parking lot and was -- was also a state constable and
22 asked the suspect to stop, at which point he didn't, and
23 Mr. Huff did fire two shots at him, but he did not strike
24 him.

25 Q And you've been in the courtroom throughout the

1 trial, correct?

2 A Yes.

3 Q And you've heard lots of people talk about shooting
4 in the parking lot?

5 A Correct.

6 Q Were you able to determine anything with regard to
7 who may have shot?

8 A The shell casings that I recovered were consistent
9 with the firearm that Mr. Huff had fired from.

10 Q And it was just two shell casings?

11 A Two shell casings located in the parking lot.

12 Q No other--

13 A No other shell casings.

14 Q Did you attempt to discover any other physical
15 evidence at the scene?

16 A Yes, Aiken County Forensics was called to process the
17 scene, but they were not able to obtain any finger prints
18 or anything of evidentiary value.

19 Q Did you do anything else, calling any other
20 divisions?

21 A The Aiken County Bloodhound team also responded to
22 see if they might be able to track, since the person was
23 seen leaving on foot, at first they did not come up with
24 anything.

25 Q Did you get any additional information or things that

1 might have been leads regarding how the suspects left?

2 A There was a lead of a possible red mustang that could
3 have been possibly involved and there was a tag number
4 associated with that mustang, but it turned out it was one
5 number off.

6 Q Did you later discover anything else during your
7 investigation regarding that mustang possibly being
8 stopped?

9 A Yes. I later learned that some officers had stopped
10 a mustang matching that description where the tag number
11 was one letter off than what the bank teller provided us
12 at the time.

13 Q Do you know where that stop took place?

14 A I believe it was on Bunavista Avenue.

15 Q And there was one?

16 A And the same vehicle was stopped again in Richmond
17 County, I later learned.

18 Q And those stops didn't lead to anything?

19 A Not at that time. The information was relayed to us
20 and we followed up on that information at a later point.

21 Q And what was the next thing you did with regard to
22 this investigation?

23 A I found information from officer Trip, who works in
24 our department, that after releasing Quinton's picture on
25 the news and identifying him, he showed up at Officer

1 Trip's house and stated he wanted to come talk to us about
2 what had happened.

3 Q Did he in fact do that?

4 A Yes. He met me at North Augusta Police Headquarters
5 and I conducted a video interview with him.

6 Q When was that in connection with the robbery?

7 A I believe the next day.

8 Q Was it a quick interview, a long interview.

9 A It was a lengthy interview. It started out with him
10 telling a story that just didn't make sense to myself and
11 Lieutenant Count, that was also in the room. And as the
12 interview went on we noticed inconsistencies with his
13 story and called him on it and at which point he started
14 to change his history and what I believe is telling the
15 truth at that point.

16 Q At the time you began interviewing Mr. Harmon, did
17 you know how many people were involved or all of those
18 details of that?

19 A No, we did not.

20 Q You said he eventually gave you a story that you felt
21 was truthful.

22 A Yes, we did.

23 Q Can you summarize what that was?

24 A After -- when I believe he started telling me the
25 truth, he admitted other people that were involved in the

1 robbery. He implemented Roosevelt Johnson as being the
2 get away driver. David Dixon is a look out and a subject
3 that he knew as Anthony or T-Money was the actual gunman
4 who went into the Bank and robbed it. It was his job to
5 go inside the bank and scope it out and see what was going
6 on inside of the bank.

7 Q Is that consistent with what you viewed on the bank
8 surveillance video?

9 A That was consistent with that.

10 Q You say this is the next day after the robbery?

11 A I believe so.

12 Q You interviewed Mr. Harmon?

13 A I believe so.

14 Q What did you do after you interviewed him as a result
15 of that?

16 A He was immediately arrested and warrants were
17 obtained for the bank robbery. They were later served on
18 him and we also attempted to talk to Roosevelt Johnson
19 also.

20 Q And what happened with that?

21 A I went to his house originally and made contact with
22 Mr. Johnson and his parents were there also and he advised
23 he was at the mall during the time of the incident. I
24 informed him that I would need him to come to police
25 headquarters to give a further interview and statement on

1 the matter, at which point he stated he wanted his
2 attorney.

3 Q And did you observe anything of evidentiary value at
4 Mr. Johnson's residence?

5 A Yes, I did. There was a red mustang parked in the
6 driveway and it appeared it had just been washed. I took
7 photographs of it.

8 Q Do you know where in time you interviewed
9 Mr. Johnson, compared to your initial interview with
10 Mr. Harmon?

11 A It was before Mr. Harmon's interview actually.

12 Q And you stated that you got arrest warrants for
13 Quinton Harmon, the first person that you spoke with about
14 this?

15 A I think actually I talked to Mr. Johnson before I
16 talked to Mr. Harmon, with reference to his mustang being
17 involved.

18 Q But Mr. Quinton Harmon was the first person to give
19 you the story of what happened?

20 A Correct.

21 Q And he's the first person that brought --

22 A Mr. Johnson later came and talked with his attorney
23 and gave me a full confession as well.

24 Q And going back to when you interviewed Quinton Harmon
25 you stated he was immediately arrested?

1 A Yes. He was detained until I could get the warrant,
2 which was served on him the next day.

3 Q So he was not released back into.

4 A No. He went straight to Aiken County Detention
5 Center.

6 Q Do you have any information about how long he was in
7 the detention center.

8 A Mr. Harmon was arrested on the 25th. He was released
9 on May 11th.

10 Q And you stated that Mr. Johnson at some point came
11 and spoke with you?

12 A Yes, after he got out of jail.

13 Q And do you know what date he was arrested?

14 A He was arrested on the 25th. He turned himself in
15 and he was released on the 26th.

16 Q And he came and gave you a statement at some point in
17 time?

18 A That's correct.

19 Q And what did he tell you, summarizing it?

20 A His statement was consistent with Quinton's about how
21 they all met up the day before and talked about a bank
22 robbery, and basically each of their parts and each role
23 they had. He was to be the get away driver. Mr. Dixon
24 was look out. Quinton was to scope the bank and T-Money,
25 Mr. Anthony Martin, was going to be the bank robber.

1 Q And both Mr. Quinton Harmon and Roosevelt Johnson
2 indicated that the same parties were involved.

3 A Yes.

4 Q Did Mr. Johnson Roosevelt have any more information
5 about the identity of Mr. Martin?

6 A He only knew him as Anthony also.

7 Q And did he give you any additional details about what
8 happened on the day of the robbery that Mr. Harmon had not
9 told you, that you were able to follow up independently?

10 A He did give me information that after the robbery
11 occurred that they had tried to go to the bus station,
12 down town Augusta; so that Mr. Martin could get a bus
13 ticket to get out of town, but the power was out at the
14 bus station. So I don't know if he told me the power was
15 out, but I later found out that the power was out. That's
16 why he was not able to obtain a ticket.

17 Q You went down there personally and spoke with the
18 manager and also to see if they had surveillance videos so
19 we might learn the identity of T-Money at the time. They
20 informed me that the power was actually out that day so
21 the video surveillance was not working.

22 Q Other wise they would have had --

23 A Other wise they would have had video surveillance of
24 him attempting to buy the bus ticket.

25 Q Regarding surveillance videos, while we're on that

1 topic, were you able to obtain any other surveillance
2 videos that were of use to you in this case.

3 A Yes. During the initial investigation of the bank
4 the day of the robbery detective Nelson, that works with
5 me, was able to go to the BP gas station and obtain video
6 and later after viewing the video Mr. Johnson was observed
7 buying some sort of drink right before the robbery
8 occurred, which put him in the area.

9 Q Did you use that in terms of part of your interview
10 with him?

11 A Yes, I did. I did talk to him about it. He agreed
12 he did go in there and buy a drink.

13 Q How did you determine -- ultimately determine the
14 identity of Anthony Martin?

15 A We received information through Quinton since he
16 lived in the same neighborhood as him that his grandmother
17 lived on Edna Street at some point. During the
18 investigation I found out that his grandmothers name is
19 Dora McKenny and through that information I attempted to
20 contact her, but she wasn't home. Further investigation I
21 was able to find that she had a daughter named Alba Fumbah
22 who lived in Snelville Georgia, at which point I sent
23 Deputies from Gwinnett County up there and they actually
24 spoke with Mrs. McKenny, who gave information of Anthony
25 Marquise Martin and his date of birth and all of his

1 physical descriptions, which was relayed back to me.

2 Q And that was gotten from Mrs. McKenny, his
3 grandmother?

4 A Yes.

5 Q She was the first one that gave you his full name.

6 A She gave it to the deputies in Gwinnett County and
7 they relayed it to me.

8 Q What other information was relayed to you in that?

9 A Date of birth and his physical description. And I
10 also contacted Detective Elkins with Gwinnett county and
11 he was able to provide me with a photo of him, which was
12 shown to Mr. Johnson and Mr. Harmon who identified that
13 subject as T-Money.

14 Q And will you tell us a little more information about
15 you said that you used a photo and showed it to
16 Mr. Quinton Harmon and Roosevelt Johnson. Describe how
17 you did that?

18 A When I was interviewing there was a full sized page
19 photo of just Mr. Martin, no name or anything like that,
20 and I actually, during the interview, I showed them the
21 photo. I asked them, is this T-Money, and they said, yes,
22 that is T-Money, Anthony.

23 Q And do you know when it was that you were actually
24 finally able to determine Mr. Martin's identity in
25 relation to the initial bank robbery?

1 A As soon as they told me that, that's when I knew.

2 Q And do you know where -- you said this bank is
3 located, it's obviously North Augusta, that is your
4 jurisdiction. What county is that?

5 A It's Aiken County.

6 Q Please answer any questions of defense counsel.

7 CROSS-EXAMINATION

8 BY MR. GIBBONS:

9 Q Sir, you are the leading investigator on this case?

10 A Yes, sir.

11 Q And so any tests to be done, interviews to be done,
12 any investigation to be done would be at your direction;
13 correct?

14 A I would be involved or informed about it.

15 Q Now when you were taking these statements early on in
16 this investigation, was it mentioned to you that somebody
17 borrowed a cellphone and used it to call somebody's
18 girlfriend?

19 A I don't recall exactly.

20 Q I think they said that Mr -- that the defendant in
21 this case borrowed somebody's cellphone to call his
22 girlfriend to come pick him up?

23 A Somebody was to come pick him up I believe so.

24 Q You took their statements, didn't you?

25 A Yes.

1 Q And a phone was mentioned as being borrowed and used
2 to call?

3 A I believe so.

4 Q Did you ever do any checking on that phone or that
5 phone number to see if a call was made during that period
6 of time?

7 A I checked a phone number that was given to me, but it
8 did not come back to Mr. Martin.

9 Q So did you check it to see if it belonged to anyone
10 of the defendants?

11 A It belonged to Jacob McKie's brother, who had given
12 the phone to him -- to Mr. Martin, T money.

13 Q I guess what I am asking you is, it was mentioned in
14 the statements they give you about the things that were
15 going on that night, that T-Money borrowed somebody's
16 phone and called his girlfriend to come pick him up?

17 A Uh-huh.

18 Q Correct?

19 A That's what you're stating.

20 Q That's what the statement you took said; correct?

21 A I don't recall exactly.

22 Q All right. Anyway, did you ever follow up on a phone
23 number?

24 A I did.

25 Q Did you ever get the records from the phone company

1 to see whose calls went out and what times and where?

2 A No.

3 Q Why not?

4 A I asked for subscriber information because at the
5 time I didn't know if the number was a good number or not.

6 Q But you could have gotten phone records if you had a
7 phone number?

8 A I could have.

9 Q But you didn't in this case?

10 A No.

11 Q All right. Now there were statements early on that
12 the group went to the mall. Several places at the mall;
13 correct?

14 A Correct.

15 Q Did you make attempts to go to the mall and see if
16 anyone had seen them together.

17 A I contacted the security department out there, but
18 they informed me that the stores that they would have
19 possibly gone into did not have video surveillance.

20 Q And there is no video of the mall in general?

21 A No. No video --

22 Q No video of the mall--

23 A No. That's what they told me.

24 Q Sir. That is what they told you.

25 A No. That's what the security department told me.

1 Q All right. The car that was involved you said it
2 looked like it had been washed. Were any attempts made to
3 fingerprint that car to see who might have been in that
4 car?

5 A No.

6 Q Why was that not done?

7 A I believe the windshield wipers were up and it looked
8 like it had just been freshly washed. In my opinion, in
9 their attempt they probably cleaned the car up to wipe any
10 fingerprints out of it.

11 Q But you could have checked?

12 A I could have checked.

13 Q Now, you've been here in the courtroom and you've
14 heard the statement that there was some looking around at
15 different banks the night before. Is that the first that
16 you've heard of that?

17 A I believe so. Yes.

18 Q So when you were taking these statements from these
19 witnesses that say they were involved with this thing,
20 about driving around to this bank, that bank and finally
21 settling on the bank that actually got robbed, that's the
22 first you heard about that during that trial?

23 A They had talked about looking at banks, but I believe
24 that was the day of is when -- Quinton told me that that's
25 going to be the bank and they were riding back to Mr.

1 Dixon's house.

2 Q All right. So that's different from what they told
3 you when you were getting your written statements?

4 A Correct.

5 Q Now, I believe one of the witnesses today pulled two
6 other names into this situation. They said there were
7 actually two cars driving around with six people looking
8 for banks?

9 A On my initial investigation I wasn't aware of that.

10 Q That wasn't part of the original story that you were
11 given?

12 A No.

13 Q Now as far as what we have or what the evidence shows
14 on the pictures that have been introduced. There is a
15 video that shows Mr. Harmon in the bank, correct?

16 A Correct.

17 Q There is no question that was him?

18 A Correct.

19 Q No mask on, nothing like that?

20 A Correct.

21 Q There is a tag number that eventually led to the red
22 mustang?

23 A Correct.

24 Q That belonged to one of the co-defendants?

25 A Correct.

1 Q No doubt he was there and involved?

2 A Correct.

3 Q And was there also a video at the BP station?

4 A Yes.

5 Q And that was also Mr. Roosevelt?

6 A That was correct, Mr. Johnson.

7 Q So he is on video and so is Mr. Harmon?

8 A Yes.

9 Q So they're definitely tied into this thing; correct?

10 A Correct.

11 Q Now, had you heard the first of the investigation
12 about them going to Popeye's and getting gloves?

13 A No.

14 Q That was not mentioned to you?

15 A No.

16 Q If they had mentioned that back then, could you have
17 checked Popeye's?

18 A I could've.

19 Q Do they have video?

20 A I'm not aware.

21 Q But you could have checked it if you had known about
22 it?

23 A That would have been a lead.

24 Q But that's the first we've heard about that here at
25 trial, as far as investigation goes?

1 A Correct.

2 Q Now you've also heard testimony about the bus station
3 stop?

4 A Correct.

5 Q When you took the original statements was there any
6 mention of a Mr. Wilson?

7 A No.

8 Q Did they mention anybody being handed clothes at the
9 bus stop when you first talked to them?

10 A No.

11 Q When was the first you heard about that?

12 A I believe it was just prior to trial, his name came
13 up.

14 Q Just prior to trial. Do you have any information on
15 this guy? Have you ever heard of this guy?

16 A Just the name. We weren't able to locate him before
17 trial to confirm that story.

18 Q Is that a piece of information that you would have
19 liked to have had at the beginning of the investigation?

20 A Of course.

21 Q Now you said the first one you started off saying
22 Harmon was the first one. Then you corrected and said
23 Johnson was actually the first one you talked to?

24 A Yes.

25 Q When you talked to him, had he already been arrested?

1 A No.

2 Q And he gave you, I think you said he wasn't very
3 forthcoming at first?

4 A No.

5 Q Did he mention Mr. T-Money at your first interview
6 with him?

7 A No, he just stated he was at the mall and after that
8 he wanted to return.

9 Q So you kept questioning him and questioning him.
10 After he got an attorney he came forward and told you what
11 we heard here this week; correct?

12 A He met with me at headquarters with his attorney and
13 provided a full statement.

14 Q So after the attorney he gave you the statement we've
15 heard?

16 A Yes.

17 Q Now as far as the other person that gave you a
18 statement, Mr. Johnson?

19 A Roosevelt.

20 Q I am sorry, Mr. Harmon was the second one; correct?

21 A Correct.

22 Q Did he give you a statement before his attorney was
23 present or after?

24 A He met with me and gave a confession the first time I
25 talked to him.

1 Q The first time you talked to him did you get the same
2 story he testified about this in trial?

3 A I don't recall every single detail about it, but it
4 was consistent.

5 Q Did he start out to be consistent or did he have to
6 come along to be consistent at the end?

7 A He had to come along.

8 Q So he wasn't telling you straight, in your opinion,
9 when you started out either?

10 A They rarely do.

11 Q And is it your testimony that you only interviewed
12 the two of them at the start of this investigation?

13 A Correct. Mr. Dixon retained an attorney and never
14 spoke to me after that point.

15 Q Did he ever give a statement?

16 A He never gave a statement to me. And Mr. Martin also
17 with his attorney present didn't want to provide a
18 statement.

19 Q Now, based on the investigations you've done and all
20 the tests that you've run, is there anything forensically
21 linking this defendant to this crime?

22 A No forensics.

23 Q And is there any testimony other than the
24 co-defendants that directly link this defendant with this
25 crime?

1 A Just the co-defendants.

2 Q And as you said before, when they first met with you
3 they weren't telling you the truth, were they?

4 A No.

5 MR. GIBBONS: Nothing further, Your Honor.

6 THE COURT: Redirect, if any?

7 MRS. YOUNG: Nothing, Your Honor.

8 THE COURT: All right. You may step down. Next
9 witness.

10 MS. RINGLER: Paul Grant.

11 THE COURT: All right, Mr. Grant.

12 THE CLERK: Place your left hand on the Bible and
13 raise your right.

14 PAUL GRANT, after being duly sworn, testified as
15 follows:

16 THE CLERK: Have a seat in the witness box. Please
17 state your full name for the court and spell your last.

18 THE WITNESS: Paul Grant. G-R-A-N-T.

19 DIRECT EXAMINATION

20 BY MS. RINGLER:

21 Q Investigator Grant, where do you work?

22 A Aiken County Solicitor's Office.

23 Q Did you work somewhere before then?

24 A I did.

25 Q Where did you work before?

1 A Thirty-eight years with the State Law Enforcement
2 Division.

3 Q What did you do for SLED?

4 A I started off as an investigator and agent with the
5 agency and when I retired I was a captain over the lower
6 23 counties of the state.

7 Q And how long have you been with the solicitor's
8 office?

9 A Since February.

10 Q And as part of your -- in the course of your work
11 with the solicitor's office are you familiar with the
12 Popeye's in Augusta?

13 A I am.

14 Q At some point did you go to Popeye's?

15 A Yes, I did.

16 Q At that point did you obtain -- did you ask them
17 about the type of gloves that they use there?

18 A Yes, I did.

19 Q Did you obtain a sample of the gloves that they use?

20 A I did. I got a pair of them.

21 (State's Exhibit Number 8 is marked for
22 identification.)

23 Q I am handing you what's been marked as State's
24 Exhibit 8 do you recognize them?

25 A I do.

1 Q What are they?

2 A They are vinyl latex gloves that I got from Popeye's.
3 The reason I know that is I wrote Popeye's on there when I
4 picked them up.

5 MS. RINGLER: At this time the State would move to
6 admit State's Exhibit 8.

7 MR. HAYES: No objection

8 (State's Exhibit Number 8 is received into evidence.)

9 Q Thank you. Please answer any questions that defense
10 counsel might have.

11 THE COURT: Cross, if any.

12 CROSS-EXAMINATION

13 BY MR. HAYES:

14 Q Investigator, in your history in going around to
15 investigate different issues, is it common practice for
16 Popeye's or any other restaurant to hand out their gloves
17 or materials?

18 A I didn't have any problem getting a pair that day
19 when I went over there.

20 Q Were they on the menu?

21 A No, they weren't on the menu. I just asked them for
22 them.

23 Q Did you ask them if they knew any of the
24 co-defendants?

25 A No, I did not. I just asked them how long have they

1 been having those gloves. She said as long as we've been
2 here. I said how long is that? She said, a couple of
3 years.

4 Q That's the same type of gloves you find in other
5 restaurants?

6 A Yes.

7 Q Nothing further.

8 THE COURT: All right. You may step down. Next
9 witness.

10 MS. RINGLER: Your Honor, the state rests at this
11 time.

12 THE COURT: Mr. Foreman, that concludes the State's
13 testimony and evidence. I have to spend a few minutes
14 with the lawyers to get a road map of where we're going.
15 Y'all step back in the jury room. Don't discuss the case.
16 Don't deliberate. We won't be long.

17 (Whereupon, the jury exited the courtroom at 2:32.)

18 THE COURT: Any motions by the state?

19 MS. RINGLER: None by the state, Your Honor.

20 THE COURT: By the defendant.

21 MR. HAYES: We have a directed verdict motion. At
22 this time we would state taking the evidence in the most
23 favorable to the non-moving party that there is no
24 evidence that a reasonable jury at this time could
25 conclude that Mr. Martin had any involvement in the armed

1 robbery.

2 THE COURT: Very well. Respectfully denied. There
3 is ample evidence in the record from all of the
4 co-defendants who have all identified him as being the
5 person who robbed the bank. Plus there is a substantial
6 amount of circumstantial evidence which, if believed,
7 could certainly -- it's in the record; so it needs to go
8 to the jury for them to decide. I have to be concerned
9 with the existence of evidence and not the weight of it.
10 And certainly the evidence exists. The jury will have to
11 give it whatever weight, if any, they determine it needs.

12 All right. What is y'all's pleasure on your defense?
13 How many witnesses you got?

14 MR. HAYES: I believe three, Your Honor.

15 THE COURT: All right. Mr. Martin how about stand up
16 for me, please. Raise your right hand.

17 ANTHONY MARTIN, after being duly sworn,
18 testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q You can sit down. Mr. Martin, we've reached the
22 stage of the trial now where you can present your own
23 defense. In other words, you can call witnesses on your
24 behalf. You can have relevant exhibits introduced into
25 the trial of the case, and you can also testify in your

1 own defense. You have -- like everyone else that's ever
2 been accused of a crime, you have the constitutional
3 protection of -- you cannot be compelled to testify in a
4 case against you. You have the right to remain silent.
5 That's what the constitution of the United States says.
6 If you decide not to testify, I will tell that jury that
7 they cannot hold the fact that you didn't testify against
8 you in any manner whatsoever. And I will tell them that
9 it is not proper, they must not, they cannot discuss your
10 failure to testify when they deliberate your guilt or
11 innocence. I will tell the foreperson that is one of his
12 duties that is if anybody says anything about it, he has
13 to stop them immediately. They can't discuss the fact
14 that you didn't testify. That's your decision. Your
15 decision only. However if you do testify, obviously
16 you'll be subjected, like any other witness, to cross
17 examination by the state. Does he have a record that
18 would?

19 MS. RINGLER: Yes, Your honor.

20 Q And also you have a record -- prior record that could
21 possibly be used against you for impeachment or to attack
22 your credibility. The record is what and when?

23 MS. RINGLER: Your Honor, he has a 2008 possession of
24 less than 1 gram of crack cocaine. He has a burglary
25 conviction from 2003 out of Georgia. He has a possession

1 of less than 1 gram of marijuana, willful obstruction from
2 law enforcement both from 2005. He has a DUI from 2006.
3 A giving false name, address, birth date to law
4 enforcement from 2006. Manufacture, sell, dispense,
5 distribute cocaine from 2006. Purchase, possession,
6 manufacture, distribute or sale of marijuana from 2006. A
7 driving while license suspended from 2006. Possession of
8 controlled substance from 2007. Giving false name,
9 address, birth date to law enforcement from 2010, and that
10 would be his record, Your Honor.

11 THE COURT: You agree with that, Mr. Gibbons, that's
12 the record?

13 MR. HAYES: I agree with it, Your Honor. I would ask
14 the --

15 THE COURT: My question is do you agree that's his
16 record?

17 MR. HAYES: Yes, sir.

18 THE COURT: Do you agree that those are all may be
19 used for impeachment?

20 MR. HAYES: No, sir, not all of them.

21 THE COURT: Which ones would not.

22 MR. HAYES: I would argue against the marijuana, Your
23 Honor, the DUI, the DUS. They do not carry more than a
24 year and they do not go towards truthfulness or
25 credibility.

1 MS. RINGLER: Your Honor, I believe the marijuana
2 charge does have that. I have the statute from Georgia.
3 I'll pull that now.

4 Q Mr. Martin, you've heard that you have a substantial
5 prior record. If I rule that your record is more
6 probative than prejudicial regarding impeachment. In
7 other words, they can use it strictly for attacking your
8 credibility. The jury could hear your prior record if you
9 testify. So you'll be subjected to being cross examined
10 then. Also under our rules some of those convictions some
11 would be allowed to made known to the jury for purposes of
12 impeachment or to attacking your credibility. Do you
13 understand that?

14 A Yes, sir.

15 Q The decision, obviously to testify, weighing all of
16 that in there, obviously you can talk to your lawyer
17 before you make that decision. But we need to know here
18 shortly because we're getting ready to start the defense.
19 What is your pleasure? Do you want to talk to them a
20 second.

21 A That would be a negative, sir.

22 Q What is a negative?

23 A No. I do not want to talk to the court or the jury.

24 MR. GIBBONS: He does not want to testify.

25 Q My question to you, though, is do you need a little

1 time to talk to your lawyer. You okay?

2 A I don't need no time, sir.

3 Q Your decision is that you will not testify.

4 A Yes, sir.

5 Q With that decision at the conclusion of the case I
6 will inform the jury that they can't -- just like I told
7 you a while ago. You will hear my instructions on that.
8 It is pretty lengthy. Okay.

9 A Yes, sir.

10 Q Any questions you need to ask me?

11 A No, sir.

12 THE COURT: Y'all need a second. Ladies, do y'all
13 need a bathroom break?

14 MR. HAYES: I'm ready, Your Honor.

15 MS. RINGLER: Yes, Your Honor.

16 (Whereupon, the jury came into open court at
17 approximately 2:41.)

18 THE COURT: All right. Mr. Foreman, ladies and
19 gentlemen, at this time we'll hear testimony from the
20 defense witnesses. After that the state may have some
21 reply testimony, I'm not sure if they do or don't. But we
22 should be at the position to conclude the testimony. I
23 don't think it'll be real long on the defense side.

24 Mr. Gibbons, Mr. Hayes, you may call your first witness.

25 MR. HAYES: The defense would call Dora McKenny.

Dora McKenney - Direct - Mr. Hayes

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1 THE COURT: No. You have to go out and get her. My
2 bailiffs can't hear. Ma'am, come up here, please.

3 THE CLERK: Please come forward and place your left
4 hand on the Bible and raise your right.

5 DORA L. MCKENNEY, after being duly sworn,
6 testified as follows:

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

9 THE WITNESS: Dora L. McKenny. M-C-K-E-N-N-E-Y.

10 DIRECT EXAMINATION

11 BY MR. HAYES:

12 Q How are you doing this afternoon, Mrs. McKenney?

13 A Good.

14 Q Mrs. McKenney, how do you know Mr. Martin?

15 A He is my grandson.

16 Q Being that he is your grandson, would you tell a fib
17 or a lie?

18 A No.

19 Q To protect him?

20 A No.

21 Q Did Mr. Martin ever at any time live with you?

22 A Yes.

23 Q Do you know when?

24 A On two occasions when he was a young boy and again
25 after becoming a young man he came in January of '09.

1 Q What was he doing when he was living with you in
2 January of 2009?

3 A Going to school.

4 Q Do you know where he was going to school?

5 A To Augusta Tech.

6 Q After -- how long did he stay with you?

7 A Around the third of January until about Easter
8 Sunday.

9 Q Easter Sunday?

10 A Of '09.

11 Q Do you know when Easter Sunday was?

12 A I don't remember exactly. I just know it was Easter
13 Sunday.

14 Q If I told you it was April 12 of 2009?

15 A That sounds --

16 Q Would that sound correct to you?

17 A (Witness nods head.)

18 Q What happened on Easter Sunday?

19 A His mother came to get him.

20 Q And what happened -- where did they go?

21 A Back to Snelville.

22 Q Back to Snelville. Where is Snelville?

23 A In Georgia.

24 Q After that did you see him again?

25 A I went to visit about a week or so later.

1 Q And that's where?

2 A Snelville, Georgia.

3 Q At any time after Easter Sunday did you see your
4 grandson in Aiken County?

5 A No.

6 MR. HAYES: Nothing further, Your Honor. Please
7 answer any questions Mrs. Ringler may have for you.

8 THE COURT: Cross examine Mrs. Ringler or Mrs. Beth
9 Ann Young.

10 CROSS-EXAMINATION

11 BY MS. RINGLER:

12 Q Mrs. McKenney, you live on Edna Street, don't you?

13 A Correct.

14 Q What is your address?

15 A .

16 Q On Edna Street. And that's in Belvedere Terrace,
17 isn't it?

18 A Belvedere, yes.

19 Q How long have you lived in Belvedere Terrace?

20 A About three and a half years.

21 Q And that's where you were living in 2009; right, is
22 Belvedere Terrace?

23 A Yes.

24 Q And you know Quinton Harmon, don't you?

25 A Yes, I do.

1 Q He lives in that neighborhood, too, doesn't he?

2 A Around the corner.

3 Q When your grandson was staying with you, he hung out
4 with Quinton Harmon, didn't he.

5 A I seen him.

6 Q And they played basketball together?

7 A I don't know if they played basketball together, but
8 I seen them together.

9 Q But they hung out?

10 A I really don't know if they just hung out.

11 Q But you saw them together?

12 A (Witness nods head.)

13 Q And you said he was at school at Augusta Tech?

14 A Augusta Tech.

15 Q But the semester wasn't over then when he left?

16 A Yes, it was ---the new semester had begun.

17 Q The new semester had begun by the time he left?

18 A Uh-huh.

19 Q Nothing further. Thank you.

20 MR. HAYES: None, Your Honor.

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

22 Next witness. Be careful stepping down.

23 MR. HAYES: The defense would call Alba Fumbah.

24 THE COURT: Ma'am, you're welcome to stay or you're
25 welcome to leave, whatever your pleasure.

1 THE CLERK: Please come forward and place your left
2 hand on the Bible and raise your right.

3 ALBA FUMBAH, after being duly sworn, testified
4 as follows:

5 THE CLERK: Have a seat in the witness box and state
6 your name for the court and spell your last.

7 THE WITNESS: My name is Alba Fumbah. The last name
8 is F-U-M-B-A-H.

9 DIRECT EXAMINATION

10 BY MR. HAYES:

11 Q How are you doing this afternoon?

12 A I am doing good.

13 Q How do you know Anthony Martin?

14 A He is my son.

15 Q Would you tell a lie or a fib to protect your son?

16 A No.

17 Q In 2009 was your son living with you?

18 A Yes.

19 Q Was he living with you in January of 2009?

20 A He moved out in January.

21 Q Where did he move to?

22 A To my mom's house.

23 Q When he moved out how long did he stay gone? How
24 long did he stay moved out?

25 A He moved back in on Easter Sunday, 2009.

1 Q On easter. Are you sure it was Easter Sunday?

2 A Yes.

3 Q How do you know it was Easter Sunday?

4 A I know easter. I mean --

5 Q How did he get back to Atlanta?

6 A I picked him up.

7 Q Do you remember April 23, 2009?

8 A Yes.

9 Q What did you do on the 23rd of April of 2009?

10 A I woke up. I have three younger kids. I got ready
11 for school and then I woke Anthony up and got ready to go
12 look for work and I dropped him off on Lawrenceville
13 Highway and Jimmy Carter.

14 Q What was he doing?

15 A The area where I live is not on the bus route. So I
16 took him over there so he can catch the bus and look for
17 work.

18 Q Is that a routine that you were in?

19 A It is.

20 Q How long did you continue this routine from when to
21 when?

22 A We started Monday after Easter Sunday and it lasted
23 up until I think Snelville police came to my house.

24 Q And they were asking about your son?

25 A Uh-huh.

1 Q Do you know at any time whether Mr. Martin left
2 Atlanta and came back to Aiken County?

3 A No.

4 Q Thank you. Nothing further. Please answer any
5 questions that Mrs. Ringler may have for you.

6 CROSS-EXAMINATION

7 BY MS. RINGLER:

8 Q Now, Mrs. Fumbah, you said that you dropped him off
9 so he could look for work. So he was unemployed at that
10 time?

11 A Yes.

12 Q When he moved back he was unemployed?

13 A Right.

14 Q And you also said that the police came out and talked
15 to you. But you didn't give them this information when
16 they came out to your residence, did you? You didn't tell
17 them everything that you've testified here today?

18 A They did not talk to me. I was in school at the
19 time.

20 Q But your son was arrested over a year ago; is that
21 correct?

22 A Yes.

23 Q And in that year plus time, you never once contacted
24 law enforcement to give them this information, did you?

25 A I did not.

1 Q And after your son was arrested he was incarcerated
2 here in Aiken, wasn't he?

3 A Correct.

4 Q And while he was incarcerated, prior to this trial,
5 you visited him three times, didn't you?

6 A More than that.

7 Q And so on each time on at least three occasions, you
8 had opportunity to speak with him before you testified
9 here today, didn't you?

10 A Yes.

11 Q And that's your son sitting over there, isn't it?

12 A It is.

13 Q And you love him, don't you?

14 A I do.

15 Q You wouldn't want anything bad to happen to him,
16 would you?

17 A I wouldn't.

18 MS. RINGLER: Nothing further from the state, Your
19 Honor.

20 THE COURT: Redirect if any.

21 REDIRECT EXAMINATION

22 BY MR. HAYES:

23 Q Mrs. Fumbah, would you lie to protect your son?

24 A I wouldn't.

25 THE COURT: Thank you. You may step down. You're

1 welcome to stay or welcome to leave. Next witness.

2 MR. HAYES: The defense would rest, Your Honor.

3 THE COURT: Anything in reply by the state?

4 MS. RINGLER: Nothing from the state, Your Honor.

5 THE COURT: Thank you. Let me see y'all up here a
6 second.

7 (Whereupon, a bench conference was held.)

8 THE COURT: Mr. Foreman, ladies and gentlemen, here
9 is where we are. We have concluded all of the testimony.
10 What is left is that the lawyers have the right to make a
11 closing argument. That's not testimony, but that's
12 obviously the argument for their respective positions. We
13 have about 10 minutes worth of work I need to do with them
14 before they start arguing. I have to go over my jury
15 charge with them to make sure we're all on the same page.
16 Lawyers -- that's what I was asking them over there how
17 long their arguments were. Sometimes they tell you one
18 thing and it might be shorter or longer. Hardly ever do
19 they hit it on the head. It's hard to estimate. But with
20 a trial like this probably let's say 20 to 30 minutes per
21 side. That takes us to 4 o'clock. My instructions to you
22 probably 10 or 15 minutes. So that takes us to 4:15.
23 Here is my question. We can keep on pushing or we can
24 come back in the morning and finish it up. I'll do
25 whatever y'all want to do. You want to go back and take a

1 quick stretch and then when you find out what you want to
2 do, how about knock on the door and I'll ask you to come
3 back out as the foreperson you tell me. If we come back
4 in the morning, we'll start at 9:30. I'll have you some
5 sausage and we'll get right into it. And what we do is if
6 it got into the lunch time, with your deliberations
7 instead of sending you out for lunch, I would order some
8 sandwiches in from the Bowery. So you would not be
9 interrupted, you could go straight through. I don't know
10 if any of you have things to do at 5 o'clock. If you got
11 the thing about 4:15 or a it little after. I don't know
12 if any of you have family situations or job situations or
13 children or husband or wives that you have to worry around
14 5 o'clock. So that is something else you need to
15 consider. If you want to stay as late tonight as you want
16 to, I'll stay with you. I am flexible. I want to make
17 sure your needs are met. If y'all would just go back and
18 discuss that. We'll get you back in. I will tell you
19 this, though, if you come back tomorrow and obviously we'd
20 finish tomorrow, y'all will be finish for the rest of the
21 week. You will not have to come back on the other jury
22 panel.

23 (Whereupon, the jury exited the courtroom at 2:59.)

24 THE COURT: All right. Any objection to that little
25 request by the state?

1 MS. RINGLER: None by the state, Your Honor.

2 THE COURT: By the defendant?

3 MR. HAYES: No, sir.

4 THE COURT: All right, let's just sit here, I am sure
5 they are going to let us know something here shortly.
6 Let's make use of this time while we're waiting. The
7 verdict form will simply be, we find the defendant not
8 guilty of armed robbery, not guilty of conspiracy or
9 guilty. It is just two simple verdicts on that.

10 I will charge my regular charge duty of judge and
11 jury, reasonable doubt, credibility of witnesses,
12 presumption of innocence, failure of the defendant to
13 testify, armed robbery, criminal conspiracy. What am I
14 leaving out? Mrs. Ringler, anything else you want? I may
15 have left something out on my general charge.

16 MS. RINGLER: I know that you've been giving both
17 definitions for reasonable doubt. I just want to make
18 sure.

19 THE COURT: Well sometimes I just do kind of doubt
20 because a reasonable person hesitates and sometimes I get
21 a little verbose and give the other one. I'll do both of
22 them.

23 MS. RINGLER: Thank you, Your Honor.

24 THE COURT: Do we need to do any kind of charge on
25 flight?

1 MS. RINGLER: The caselaw actually says that we get
2 to argue it, but we don't get a charge.

3 MR. HAYES: I would ask Your Honor about alibi.

4 THE COURT: You got a charge?

5 MR. HAYES: I do.

6 THE COURT: Anything else?

7 MR. HAYES: Your Honor, at this time the defense
8 would renew their directed verdict motion.

9 THE COURT: Respectfully denied for the same reasons.

10 THE BAILIFF: They'll come back tomorrow.

11 THE COURT: Just tell them to hang tight for a
12 second.

13 MS. RINGLER: Your Honor, I did have one question. I
14 believe that there is -- that you might have a standard
15 charge for alibi. Would it be possible to get a copy of
16 that just to compare it to this one?

17 THE COURT: That's what I am looking for. Let me
18 deal with the jury so they can get on out.

19 MS. RINGLER: Thank you, Your Honor.

20 THE COURT: Ask them to come on back in, please.

21 (Whereupon, the jury came into open court at
22 approximately 3:03.)

23 THE COURT: Your decision to start back at 9:30?

24 THE FOREPERSON: Yes, sir.

25 THE COURT: Sausage biscuits or doughnuts?

1 THE FOREPERSON: We want sausage biscuits or
2 doughnuts?

3 THE JUROR: Or both.

4 THE COURT: If you could just do me a special favor.
5 I want chocolate and jelly and all of that on top of them.
6 One big old huge doughnut for this lady back here.

7 THE JUROR: Chocolate with custard filled, please.

8 THE COURT: We did that last week and we had one
9 custard filled doughnut. All right, we'll start at sharp
10 9:30 -- 9:30 in the morning. So if you want your sausage
11 and your doughnuts be here earlier. Please do not discuss
12 the case tonight. Don't deliberate. Don't do any kind of
13 internet or encyclopedia research. Have a wonderful
14 evening. I have enjoyed working with y'all. I'll see you
15 tomorrow morning bright and early. The rest remain
16 seated.

17 (Whereupon, the jury exited the courtroom at 3:05.)

18 THE COURT: Mrs. Ringler, here is my alibi charge if
19 you'll make a copy for you and Mr. Hayes. Hand it back to
20 me in just a little while. Get one of your able
21 assistants.

22 MS. RINGLER: I will.

23 THE COURT: We'll stand at ease until 9:30 on this
24 trial.

25 (Whereupon, a break was taken.).

1 (Whereupon, on April 27, 2011 the following
2 proceedings were held:)

3 THE COURT: Is the state ready to proceed?

4 MS. RINGLER: Yes, Your Honor.

5 THE COURT: Is the defense ready to proceed?

6 MR. HAYES: Yes, Your Honor.

7 THE COURT: Are you going to waive opening, ma'am?

8 MS. RINGLER: Yes, Your Honor.

9 THE COURT: Bring the jury in, please.

10 (Whereupon, the jury came into open court at
11 approximately 9:33.)

12 THE COURT: You don't know the effort that I went to
13 get that.

14 THE JUROR: Thank you.

15 THE COURT: I had to go all of the way to the
16 treasurer of Aiken County. Mr. Whittle, they all thank
17 you for the doughnuts. All right, ladies and gentlemen,
18 as I told you yesterday what we have left are the final
19 arguments. The state is waiving their opening. The
20 defense will start with his argument followed by the
21 state. At which time they conclude, I will charge or
22 instruct you on the general law and the law specifically
23 dealing with this case. So please pay close attention. I
24 am glad to see everybody brought their coats today. If
25 you get uncomfortable raise your hand. Mr. Hayes?

1 MR. HAYES: May it please the court.

2 CLOSING STATEMENT

3 MR. HAYES: Ladies and gentlemen, as I told you in
4 the very beginning I asked you to pay attention and I want
5 to thank y'all for that. Y'all paid very close attention.
6 I also told you that I wasn't going to argue there was not
7 a robbery. Very clearly there was a robbery. You've
8 heard from about everybody that was in the bank. There is
9 video. There is photographs. There is an individual on
10 those photographs, what he done, robbing the bank. I
11 agree with the state on that. I agree with every witness.

12 The one question, the only question that I have
13 concerns with, is that we're saying it was not Mr. Martin.
14 There's absolutely no physical evidence of fingerprints,
15 no DNA, no hair. That's not always the case. In some
16 cases there is some. Sometimes there is not.

17 But there is absolutely nothing other than three
18 individuals who are admitted liars and thieves who got up
19 here on the stand and told you, yes, I planned a robbery
20 to rob a bank. Yes, I shared in the ill gotten proceeds
21 willingly, and I willingly participated in a bank robbery.
22 Those three individuals also are best of friends. They
23 told you they came from a close neighborhood. They had
24 known each other for a very long time. They went to high
25 school together. When they were in high school they also

1 participated in playing football together. They go home,
2 they see each other. They go home, they see each other's
3 families. These three individuals would not be three
4 individuals that would rat each other out. They would
5 find somebody else to point blame to. They don't want to
6 have to answer to each other's families in the end when
7 they said, well why did you tell?

8 It is a whole lot easier to put it on somebody who is
9 not there. Somebody that was an outsider from the
10 neighborhood; that is only there for a short period of
11 time and then now is gone. You also have to ask yourself,
12 what do the witnesses have in common? That list I just
13 gave you. What do they have to gain? They have
14 everything to gain. Mr. Harmon sat out there and told
15 you. Yea, I am up here to save myself, to do everything I
16 can. He also said I want to clear my conscience.

17 Let's talk about those three witnesses. The first
18 person that was interviewed by the police, as the
19 investigator told you, was Roosevelt Johnson. Roosevelt
20 knew he was caught. Roosevelt is on video at the BP gas
21 station next door to the bank around same time the robbery
22 is happening buying himself a drink. He is caught. He is
23 on video. There is no denying that. He owns a red
24 mustang. One number off on the license plate of what the
25 bank employee, who followed the mustang, gave the police.

1 He also then was pulled over not once, but twice that
2 afternoon in that mustang. He knew he was caught. What
3 does he got to do now? He's got to figure out what is he
4 going to tell them. He gets up and starts talking with
5 the police. The investigator told you, he wasn't telling
6 the truth. Later he started coming around, the story of
7 all, it is I believe closer to the truth. I can handle
8 it.

9 Next day, Quinton Harmon, he either saw himself on
10 the news or a family member called him and said, Hey man
11 you're on the news. You're wanted for a bank robbery.
12 You better do something. So what does he do? He goes up
13 to the police department in North Augusta. After he talks
14 with a neighbor or a friend who is also a policeman from
15 North Augusta and says what should I do?

16 He goes in to the bank and scopes it out. He's on
17 camera. He's caught. There is no wiggle room. You're
18 busted. You got to figure out something real quick. So
19 he is in there and he's trying to help himself out. He
20 starts telling lies. The officer told him, it wasn't
21 adding up. The time line wasn't right. It wasn't making
22 any sense. It was a lengthy interview. Yeah, it was
23 somewhat lengthy. But by the end of it, he was getting
24 around to telling me something I believe that was
25 truthful. It doesn't mean it is the whole truth. It

1 doesn't mean it's all truth. How do we know it's the
2 truth?

3 Then he gets up on the stand, new facts. Who is
4 Wilson? Investigator says, he's never heard of Wilson
5 before. Who is this man, this mystery man? When was the
6 first time you heard of him? Today. Right before trial.
7 Can you look into it? No. Can you verify any of it? No.
8 Why did that information come out on the day of trial?

9 Popeye's. Have you ever heard this before, the
10 gloves? No. Could you have looked into it or do you know
11 anything about it? Yes. New facts that came out on the
12 stand. The investigator tells you, I never heard that
13 before. He is the one investigating the crime. Who came
14 up with those facts?

15 Number three, David Dixon. He never gave a statement
16 to the police. I have no written statement or interview
17 from him to compare to what he said on the stand.
18 However, he gets up on the stand and two new names pop up.
19 Tidy was there. What is -- that's the only one I can
20 remember right off the top of my head. But he also throws
21 in a new vehicle, a Blazer. The day before we all went
22 riding around. We went looking at banks, three different
23 banks, Regions, I believe it was, Wachovia and Bank of
24 America, all right there in North Augusta. Oh, yea, we
25 knew what we were doing. Then after he gets off the

1 stand, Tidy. We heard his name a lot. For a guy that
2 says he only showed up, saw him there and then went home,
3 but I talked to him. What did you talk about? Nothing.
4 Were you in the car? Did you go looking at banks? No.
5 His name came up, I'd say a little bit too often just to
6 be a coincidence.

7 Now, from the timeline when the bank was robbed to
8 the time everybody was picked up, there is plenty of time,
9 I submit to you, for them to get together and start trying
10 to figure out what are we going to do. They left Aiken
11 and said they went to Augusta. The officers followed up
12 and there was no video or anything to be gotten from the
13 bus station. They also -- he says he followed up with the
14 mall and says there is no video to be gotten there.

15 Ladies and gentlemen, I don't know of any store, not even
16 the mom and pop store, that doesn't have a video at least
17 on a cash register. I think we may have had a lazy
18 security guard over in Augusta who didn't want to pull the
19 tapes.

20 What do they all say? Everyone of them was asked, do
21 you know Anthony Martin? I know of him from the
22 neighborhood. Don't know him well. Quinton Harmon's
23 sister got up on the stand and told you he spent the night
24 at the house. That's funny. Quinton didn't say nothing
25 about that. It's funny everybody else is saying they

1 picked him up. Wouldn't that have been a very important
2 thing to get straight? Where was he?

3 Now I pose this question to you. If you're going to
4 rob a bank, do you really need four people? It is really
5 a two man job. One to drive. One to do the robbing. Why
6 do you need four? You got two witnesses that have nothing
7 to gain or lose. One was the bank employee and one was
8 the lady that was washing the car, minding her business.
9 The bank employee was the one that was coming out, going
10 to lunch, when she saw the robbery happen. And then she
11 followed the red mustang and got the license plate.
12 Remember I asked her, how many people did you see in that
13 car? Two. She had no reason to lie. She has nothing to
14 gain.

15 The lady washing the car, I asked her how many people
16 did you see? I only saw two. She said she wasn't looking
17 hard, but she was telling them to slow down, remember?
18 She thought they were going too fast in the parking lot
19 and that they were shooting fire crackers. Later she
20 found out they weren't fire crackers and they were going
21 fast for a reason. She says two. She has no dog in the
22 fight per se. She tells you what she saw.

23 What about phone records? The officer got on the
24 stand as well as Roosevelt and others saying that oh,
25 T-Money used Roosevelt's phone to call a girl. Who is the

1 girl? She's never been found. No phone numbers were ever
2 confirmed going to any woman. A number was given to the
3 officer, oh, this is T-Money's cellphone. You can call
4 him. Well we hit pay dirt. This will make it easy. What
5 did they find out? The phone number came back to Daquez
6 McKie. Not T-Money. It's not Anthony Martin. You heard
7 Quinton Harmon's statement, I asked him, officer, when you
8 were being talked to, told you he didn't even believe you.
9 The officer himself said, you're lying to me. There is no
10 T-Money. That was even in the initial investigation.

11 Now, you got three people from the same neighborhood
12 admitted liars, admitted thieves. They know each other
13 very well, grew up together, played football together,
14 know each other's families. They know each other's names.
15 And asked who did this with you? Everyone of them says
16 T-Money. I don't know his real name. All I know is
17 T-Money. Really? How many of you would rob a bank with
18 somebody you don't even know their name? Or plan or agree
19 to rob a bank for somebody and not even know their name.

20 And then when they ask about how much did you get?
21 Three hundred, 400. Originally it was 10 and then it was
22 a pair of new shoes. I bought some clothes. I bought
23 some food. How much did you get? Really. There was
24 \$12,000. Zero has been recovered. Where did it go? I
25 don't think they got 400. I don't think they got 300. I

1 can go buy. It is a high dollar item and you're going to
2 have to rely on it. You go up to this person. They're
3 starting to tell you, man I got new brakes, new tires, I
4 got transmission redone. It is running like a top, never
5 had any problems out of the motor. I changed the oil
6 every 3,000 miles. Oh, yea, I am a liar and and a theif
7 and let me tell you about all the power windows and the
8 options. You're going to say, Whoa, wait a minute. I am
9 about to give you a lot of money and rely on what you're
10 telling me on this vehicle. You are going to hesitate.
11 You might even say, Thank you. I'll think about it. I'll
12 come back later. Some might say, I'm sorry, I've heard
13 enough. But I'll go somewhere else. But that little bit
14 that will cause you to Whoa, that hesitation to act,
15 that's reasonable doubt. If y'all encounter that, you
16 have to find it in favor of the defendant. The judge is
17 going to instruct you on the law.

18 Ladies and gentlemen, you've got a hard task. You
19 have to decide. I don't envy you that. That's probably
20 the hardest task in this courtroom. You have no forensic
21 evidence. You're being asked to rely on liar's and
22 thief's testimony. Aiken County deserves better.
23 Mr. Martin deserves better.

24 CLOSING STATEMENT

25 MS. RINGLER: You're here today because of a real

1 crime, not a TV show, not a movie. And you heard from
2 real people, not actors. People who live and work in this
3 community and you heard and saw the fear that these
4 customers and tellers went through. You saw Mona on the
5 stand and how she still remembers what that defendant said
6 to her, Bitch put the money in the bag. And you saw her
7 shaking on that stand. Her voice quivering. She was
8 terrified, two years later, to even talk about what she
9 went through. And you heard from the other customers in
10 the bank. You heard from Brenda Hawes who still remembers
11 that voice, that booming deep, scary voice yelling for
12 everyone to get down, get down. And she tried to hide.
13 She tried to get behind that counter, to hide behind the
14 door, but she couldn't. The door wouldn't open. So all
15 she could do was cower on the floor and wait for it to be
16 over. Wait for that man, who came into the bank with a
17 gun, to leave and hope he wasn't going to hurt her. Hope
18 he wasn't going to shoot someone in that bank. Those
19 people were terrified.

20 You also heard from people, firsthand account what
21 happened to the other men that were involved. They got on
22 the stand, under oath, and admitted to committing a bank
23 robbery. And you heard from the defense. But, yes, we
24 have constitutional protections. That, we, the state,
25 could not force those men to do that. They took the stand

1 with no promises, no assurances, no plea offer, to tell
2 you what happened.

3 Now let's take a minute to go through what we've
4 heard over the last two days. We do know that there was a
5 bank robbery and we know how it happened. The night
6 before Anthony Martin, the defendant, Quinton Harmon,
7 David Dixon and Roosevelt Johnson met up in front of
8 Quinton's house. They were out on the street and it was
9 there that that defendant brought up the idea of
10 committing a robbery. He wanted to hit a lick.

11 It was there that they went to Tidy's house, got in
12 the cars, and drove around North Augusta looking for
13 banks. They went to more than one bank. But they all
14 went to Bank of America. They scoped it out. That was
15 the place they were going to rob the next day. The next
16 day they all group up. Roosevelt goes around and picks up
17 David. He picks up T-Money. And then they make a stop in
18 Belvedere Terrace so that T-Money can go to Jacob McKie's
19 house and get the gun. And Jacob McKie took that stand
20 under oath admitted to giving that defendant a pellet gun,
21 a black gun that looked like a handgun. When you look at
22 the video and hear the testimony, everyone describes a
23 black gun. That was the own one thing that they certainly
24 all remember because that is where their attention was,
25 they were focused on that gun. They were terrified of

1 that gun and what that man was going to do with that gun
2 in that bank that day.

3 And so after picking up the gun, they go and pick up
4 Quinton. They go to David's house, where David gives that
5 defendant a t-shirt that he uses to cover up his face and
6 a pillow case that he uses to take the money. They then
7 go to the bank. They pull in and park in that car wash.
8 Quinton Harmon goes in and scopes out the bank and he
9 comes back and tells them there is not a lot of people in
10 the bank. No security guards, it looks good.

11 Roosevelt goes and gets a drink, comes back and he
12 waits in his car. He is the driver. He stays with his
13 red mustang. And David Dixon goes and looks for police on
14 Martin Town Road to try to make sure that the coast is
15 clear for T-Money to go in and commit the robbery.

16 Altogether there was a plan. There was a conspiracy.
17 And together they worked to commit this robbery. At that
18 point T-Money goes behind the bank -- excuse me, behind
19 the Hartzog Center, the mental health building there, and
20 then he goes in and robs that bank. He comes out. He
21 gets back into the car. They pull out. Go down Martin
22 Town Road and go to Augusta.

23 It is then that they go to the bus stop so that that
24 man can buy a bus ticket to Atlanta. But the power is
25 out. So instead they took him to Atlanta -- they take him

1 to the mall so that a friend can come pick him up and take
2 him to Atlanta. And because of all of this that defendant
3 has been charged with armed robbery and conspiracy.

4 And armed robbery, as we said in the beginning, and
5 as the judge will instruct you, is the robbery committed
6 with a deadly weapon or an object, a reasonable person
7 would believe, is a deadly weapon. And every person in
8 that bank believed that was a gun and are terrified of
9 that gun.

10 Also he's been charged with conspiracy, which is an
11 agreement between two or more people. We've heard quite a
12 bit of testimony about the agreement, about the plan.
13 About everybody's role, what each person did, in order to
14 successfully complete this bank robbery. And everything
15 points to Anthony Martin. You heard from the three other
16 bank robbers that helped him do this, David Dixon, Quinton
17 Harmon and Roosevelt Johnson and they all said the fourth
18 man was Anthony Martin.

19 You also heard from Kenyon and Jasmine, who all saw
20 the planning, the meeting in front of Quinton's house.
21 They all saw him in front of that. And Marquet Widener
22 and Tidy both say that they know this man. That they saw
23 him in the neighborhood of Belvedere Terrace and never saw
24 him after the robbery. Kenyon and Jasmine Harmon never
25 saw him again after the robbery in the neighborhood. And

1 Jacob McKie, again, admits to giving him the gun and never
2 sees him in the neighborhood again after the robbery. And
3 you also heard from office Poythress who found the
4 defendant in Atlanta. And when he came up to him in his
5 uniform and squad car, that defendant gave him a fake
6 name, fake date of birth and tried to mislead him about
7 what he was doing in that apartment complex.

8 And yes, you've heard from the co-defendants. And
9 they certainly didn't sound rehearsed. It didn't sound
10 like a plan that they all got together and you did not
11 hear three identical versions of what happened. That was
12 not some plan that they got together and came up with. It
13 was not rehearsed. Instead these are three men who are
14 trying to remember -- not trying -- but remembering
15 something that happened two years ago. And they certainly
16 remember that that is the fourth man, each person's role,
17 what they did, they remember what happened. They're going
18 off memory. They're not rehearsing some speech.

19 And the defense also said that they're trying to
20 protect each other to save each other. But Quinton gives
21 up his friends right away. He says it was Roosevelt, it
22 was David and it was T-Money. He doesn't protect his
23 boys. He says he was involved in this bank robbery. And
24 the defense tries to say two people. But you heard David
25 Dixon under oath admit to committing bank robbery. Why is

1 a man going to admit to that? There were four men
2 involved.

3 You heard from three of them and that man was the
4 fourth. And why make up a fourth man? As we've said
5 those three men took the stand and admitted to bank
6 robbery. They're in it up to their eyeballs. They've
7 admitted under oath to committing a very serious crime.
8 So why a fourth man? It doesn't benefit them at all? It
9 doesn't help them. Again, they have no assurances and
10 no promises. They've taken the stand and admitted to
11 committing bank robbery.

12 And this idea about Tidy, that's just wild
13 speculation. There's been no evidence to implicate him at
14 all. That is just throwing up -- trying to see if
15 something hits. There's been no evidence that Tidy had
16 anything to do with this. But we do have evidence that
17 corroborates what these co-defendants have told you. We
18 heard from Anthony Costello that the power was out at the
19 bus stop on April 23 from about 8:30 until that evening,
20 at least until 6 o'clock, probably not until 8 o'clock
21 when the power was turned back on. So we know that those
22 three co-defendants went to the bus stop because how else
23 would they have known that the power was out? Why would
24 those three men go to the bus stop. They all live in
25 North Augusta. None of them skipped town. They were all

1 found in North Augusta. They go to the bus stop because
2 of the fourth man, because of that man; so he can get back
3 to Atlanta. There is no other reason for those men to go
4 to the bus stop that day. And, again, we know that they
5 went there, because how else would they know that the
6 power was out that day.

7 And, again, you heard from Tidy who confirms those
8 men, that they were in front of Quinton's house the night
9 before. And you heard from Tammy Murphy and Patricia
10 Christopher who talks about the red mustang and Roosevelt
11 admits, yes, that's my red mustang. I was the driver.
12 That confirms what he said is that was his role in the
13 robbery and we also say saw the video, yes, I went and got
14 a drink as we were waiting and preparing.

15 And you heard again from Jacob McKie, and the
16 co-defendants talk about stopping off at the house so
17 T-Money can go in and they see him come become out of the
18 house. And Jacob said that morning, yea, that morning he
19 stopped by and I gave him my gun when he asked for it.
20 Again you heard from Kenyon and Jasmine who see these men
21 out in front of his house, the night before, when they
22 were planning this and discussing this when that defendant
23 brought up the idea of committing a robbery.

24 And there has been some discussion of an alibi and --
25 but we didn't hear about this alibi until today. Until

1 yesterday. That defendant's mother admitted that she
2 never went to law enforcement with that information.
3 Information that could have been corroborated. Police
4 could have gone to Augusta Tech and confirmed that he was
5 in school. Police could have gone and confirmed that he
6 was interviewing for jobs. But because they didn't have
7 that information, they weren't able to corroborate that
8 information.

9 And the story that he came to North Augusta, and went
10 to school for three months, and then leaves to go back to
11 live with his mother to be unemployed. I mean, that just
12 doesn't make sense. That's what we ask you to use today.
13 Use your common sense. What makes sense? That it was
14 four men and three of them admitted and said there was a
15 fourth man involved or -- use your common sense. That's
16 what makes sense, because that's the truth.

17 And you're the judges of credibility and you've seen
18 the co-defendants. You've heard their story -- their
19 testimony and you're in a position to determine who is
20 telling the truth. And for three men to take that stand
21 and admit to committing that crime, they admitted to
22 committing that crime under oath.

23 The defense asked where did all of that money go?
24 Well that money went to Atlanta, because T-Money took the
25 money and ran. He had his friend come pick him up and

1 take him to Atlanta. When the police tried to approach
2 him and tried to talk to him at that apartment complex.
3 He lied about his name. He lied about his date of birth.
4 He evaded law enforcement. He gave misleading
5 information. So now you have the opportunity to play your
6 part and the state asks that you go back into that room
7 and deliberate and find this defendant guilty.

8 JURY CHARGE

9 THE COURT: Mr. Foreman, and ladies and gentlemen,
10 let me remind you the fact that the defendant is charged
11 in two indictments one is criminal conspiracy and the
12 other is armed robbery. Let me remind you the fact that
13 he has been arrested, charged and indicted is not evidence
14 in the case and cannot be considered by you as evidence of
15 guilt in this case. Nor does it create any inference or
16 presumption of guilt. These indictments are simply the
17 charging documents, simply the written instrument which
18 contains the charges. It is the formal document by which
19 this case is brought into the courtroom.

20 The indictments in this case allege two offenses
21 against the defendant. The charges are criminal
22 conspiracy and armed robbery. Each indictment charges a
23 separate and distinct offense. You must decide each
24 indictment separately and a part on the evidence and the
25 law applicable to it, uninfluenced by your decision as to

1 any other indictment. So you'll be asked to write a
2 separate verdict of guilty or not guilty as to each
3 indictment. I'll give you the verdict forms in just a few
4 minutes and explain to you how to write that out.

5 In this case the defendant has plead not guilty to
6 the indictments. And that plea of not guilty puts the
7 burden on the State of South Carolina to prove the
8 defendant guilty beyond a reasonable doubt. A person
9 charged with committing a criminal offense in our state is
10 never required to prove himself innocent. I instruct you
11 that it is an important rule or constitutional rule of law
12 that a defendant in a criminal trial, no matter how
13 serious the charges may be, will always be presumed to be
14 innocent of the crime for which the indictments were
15 issued, unless guilt has been proven by evidence
16 satisfying you of that guilt beyond a reasonable doubt.

17 The presumption of innocence does not end when you
18 begin your deliberations, but it stays with the
19 defendant throughout the trial until you reach a verdict
20 of guilt based on evidence satisfying you of that guilt
21 beyond a reasonable doubt. The presumption of innocence
22 is not a mere legal theory. It's not just a legal phrase.
23 It is a substantial constitutional right to which every
24 defendant is entitled, unless you the jury are satisfied
25 from the evidence, of the defendant's guilt beyond a

1 reasonable doubt.

2 Reasonable doubt has been defined a number of times
3 by our South Carolina Supreme Court. Basically there are
4 two definitions, both meaning the same thing. Our courts
5 have defined reasonable doubt. It is the kind of doubt
6 that would cause a reasonable person to hesitate to act.
7 The kind of doubt that would cause a reasonable person to
8 hesitate to act. Proof beyond a reasonable doubt is proof
9 that leaves you firmly convinced of the defendant's guilt.
10 There are very few things in this world that we know with
11 absolute certainty and in criminal cases a law does not
12 require proof that over comes every possible doubt. But
13 based on your consideration of the evidence you are firmly
14 convinced that the defendant is guilty of the crimes
15 charged, then you must find him guilty. If on the other
16 hand you think there is a real possibility that he is not
17 guilty, you must give him the benefit of the doubt and
18 find him not guilty.

19 Ladies and gentlemen, as I told you at the beginning
20 of the case you and I have had certain duties to perform
21 during the trial of the case. As the judge it is my
22 responsibility to preside over the case and to instruct or
23 charge you on the law. So I ask you once again to please
24 accept the law as I give it to you. My duty is to charge
25 you the law. I am the judge of the law in this case. You

1 are the judges of the facts in the case. And I have
2 absolutely no right to invade your duties. So if at any
3 time during the trial of the case I have smiled, frowned,
4 took my glasses off, closed my eyes, sighed, anything that
5 you think I have an opinion about the facts, I do not.
6 The law does not allow me to have opinions about the facts
7 in the cases. So don't think I have any opinion about
8 these facts. That is your sole duty to judge and
9 determine what the true facts are in the case.

10 And as I told you in the beginning of the case, and
11 this case was like all cases I try, you will hear
12 different versions of the facts. You will hear out right
13 just different facts. So it's up to you to determine what
14 the true facts are in the case. And obviously to
15 determine that, or in making that determination, you must
16 decide the credibility of the witnesses who have testified
17 in the case.

18 Credibility simply means believability. It becomes
19 your duty as jurors to analyze and to evaluate the
20 evidence and determine which evidence convinces you of its
21 truth. In determining the credibility or believability of
22 the witnesses who have testified in the case. You have
23 the right to believe one witness over several, several
24 over one. You can disregard everything a witness says.
25 You can believe everything he says. You can believe a

1 part, and disregard the remaining part of it. You have
2 the right to determine who was telling the truth and what
3 the true facts are. You may consider whether any witness
4 has exhibited to you any interest, bias, prejudice or
5 other motive in this case and you may consider the
6 appearance and manner of the witness while on the witness
7 stand.

8 In other words, Mr. Foreman, ladies and gentlemen of
9 the jury, in performing your task as jurors in determining
10 what the true facts are in the case, as I told you in the
11 beginning, use your every day common sense. You deal with
12 your wives, husband's, children, fellow employees. You
13 know how to tell when somebody is telling the truth. So
14 you judge the credibility of the witnesses. Once you've
15 judged that credibility and determine what the true facts
16 are, then you apply those facts to the law as I give it to
17 you, and you'll be in a position to render a true and just
18 verdict.

19 I charge you and emphasize that the fact the
20 defendant did not testify in this case is not -- is not --
21 a factor to be considered by you in any way in your
22 deliberation and in your consideration on the question of
23 the guilt or innocence of the defendant. It must not be
24 considered by you in any manner whatsoever. A defendant
25 has a constitutional right to remain silent and the

1 assertion of this constitutional right must not be
2 considered by you in your deliberations. I repeat, under
3 your oath you are to draw no conclusion whatsoever from
4 the fact that the defendant in this case did not testify.
5 The fact that he did not testify should not even be
6 discussed in the jury room while you deliberate his guilt
7 or innocence.

8 The burden of proof as I have stated to you is on the
9 state. The defendant is not required to prove his
10 innocence. The burden of proof remains on the state to
11 prove guilt beyond a reasonable doubt. So Mr. Foreman,
12 one of your main duties in heading up the deliberations is
13 to make sure that no one discussed the fact that he did
14 not testify and no inferences should be drawn from the
15 fact that he did not testify.

16 In this case we're dealing with two separate
17 indictments. Let me tell you about the two that we're
18 talking about, armed robbery first. What I just went
19 through with you, being the presumption of innocence,
20 burden of proof, credibility of witnesses, duty of judge
21 and jury, failure of the defendant to testify, that is
22 general constitutional criminal law that we charge in all
23 criminal cases, all over the state.

24 Now let me turn our attention to the two indictments
25 in this case. You use that general law and this is the

1 specific law dealing with the two indictments. Armed
2 robbery, as the defendant is charged with armed robbery,
3 that's codified in section 16-11-330 of our code of laws.
4 In order to prove this offense the state must prove beyond
5 a reasonable doubt that the defendant took personal
6 property from the person or presence of another person.
7 That's the first thing they must prove beyond a reasonable
8 doubt, that he took personal property from another person.
9 Property is obviously in this case the allegations are
10 money, that's personal property. Property in the presence
11 of a person is in the presence of a person, if it's in the
12 person's reach inspection, observation or control. So
13 that the person could, if not overcome with the violence
14 or prevented by fear can take possession of the property.
15 So the first thing they must prove beyond a reasonable
16 doubt that he took personal property from the person or
17 presence of another person.

18 The state must then further prove beyond a reasonable
19 doubt that the defendant carried the property away,
20 intending to permanently deprive the owner of the property
21 and to keep the property for his own use. The slightest
22 removal of the property or the complete possession of the
23 property, even for an instance by the defendant, is
24 sufficient to show a taking and carrying away of the
25 property. Then the taking and carrying away of the

1 property must have been done with violence or by putting
2 the owner of the property in fear of violence.

3 And finally the state must prove beyond a reasonable
4 doubt that the defendant was armed with a deadly weapon
5 during the robbery. Deadly weapon is defined as any
6 article, instrument, which is likely to cause death or
7 create bodily harm, whether or not the instrument has been
8 used as a deadly weapon depends on the facts and
9 circumstances of each case. And a pistol is an example of
10 a deadly weapon. Whether a pellet gun is a deadly weapon,
11 has been used as a a deadly weapon as defined by our
12 courts is a factual question for you to determine. A toy
13 gun or pellet gun which has the appearance of or is
14 believed to be a real gun is a deadly weapon. That also
15 is a factual question for you to determine.

16 So armed robbery is a, when you think about it, is a
17 pretty common sense crime the state has to prove beyond a
18 reasonable doubt that the defendant took personal property
19 from a person of another. They must prove that he carried
20 the property away intending to permanently deprive the
21 owner of his or her ownership. The taking and carrying
22 away must have been done by putting the owner of the
23 property in fear of violence and that the defendant was
24 armed with a deadly weapon, or with a weapon which would
25 have caused fear in a person of ordinary reasonable

1 sensibilities.

2 The other indictment is conspiracy. That's codified
3 in section 16-17-410. The defendant is charged with
4 criminal conspiracy. The state must prove beyond a
5 reasonable doubt that the defendant combined with one or
6 more persons for the purpose of committing an unlawful act
7 or of committing a lawful act by unlawful means. There
8 must be a mutual understanding, agreement or common
9 intention and plan, mere passive knowledge of or consent
10 to the criminal conduct of another is not enough to make a
11 person a conspirator. They must be guilty, knowledge and
12 participation. The mere fact that the defendant may have
13 associated with another person or met with another person
14 and discussed common aims an interest does not necessarily
15 establish proof of the existence of a conspiracy, or that
16 the defendant was involved in a conspiracy.

17 On the other hand, it's not necessary that the
18 agreement be a formal one, that it be in writing, that
19 people, persons held a meeting an expressly stated the
20 terms of the common plan, or that the agreement be stated
21 in words between them. The agreement of a criminal
22 conspiracy may come into being through an implied mutual
23 understanding with willful, intentional and knowing
24 adoption by two or more persons of a common plan is
25 sufficient.

1 Conspiracy may be shown by circumstantial evidence
2 and conduct of the parties. In order to convict the
3 defendant of conspiracy the state must prove beyond a
4 reasonable doubt, not only that the defendant knew of the
5 unlawful conduct, but that the defendant agreed to combine
6 with the other persons for the purposes of accomplishing
7 the unlawful conduct.

8 In these cases the defendant has raised the defense
9 of alibi. In order to establish an alibi it must be shown
10 that the defendant was at another specified place at the
11 time the crime was committed, and that it was therefore
12 impossible for him to have been at the scene of the crime.
13 Mere denial or presence at the scene of the crime does not
14 constitute an alibi. There is no burden on the defendant
15 to prove an alibi.

16 The burden is on the state to prove beyond a
17 reasonable doubt that the defendant was actually present
18 at the scene and actually participated in the crime and
19 was not somewhere else. In other words, the state has the
20 burden of disproving the defendant's alibi defense.

21 Mr. Foreman, ladies and gentlemen of the jury, as I
22 said, you must consider or look at both indictments
23 separate and a part from the others. One is armed
24 robbery. One is criminal conspiracy. The indictments
25 will not go back into the jury room with you. But I've

1 got a verdict form. One is for armed robbery. One is for
2 criminal conspiracy. Your verdict must be unanimous. It
3 must be based on the evidence that y'all have heard here
4 in the courtroom, applying that evidence to the facts --
5 to the law as I've given it to you. You have no friends
6 to reward. No enemies to punish. Please go back and make
7 a reasoned evaluation of the evidence, determine what's
8 true and apply it to the law as I give it to you, and then
9 you have completed your job.

10 The verdict form is simple. We got one for criminal
11 conspiracy and one for armed robbery. The verdict is
12 either not guilty or guilty, whichever one it is you
13 check, sign your name, and when you've completed that,
14 just knock on the door and we'll receive your verdict back
15 in the courtroom. In just a few minutes we'll gather all
16 of the exhibits and I'll send them back in the jury room
17 for you to look at. If you need to look at anything on
18 the videos, just let us know and we'll make arrangements
19 for that to be done.

20 Sometimes during deliberations jurors have questions.
21 If you do have a question about something, please write it
22 out on a piece of paper, knock on the door and the bailiff
23 will give it to me. I'll do everything I can to answer
24 it. Sometimes I can't answer it. If I can't, I'll tell
25 you why. I'll ask you now to return to jury room.. Do

1 not start deliberating. I have to gather exhibits and
2 make sure I haven't left anything out. That'll take about
3 three minutes. I'll go back with all the exhibits and the
4 verdict form and you may start your deliberations. Send
5 the doughnuts in there with the alternates.

6 (Whereupon, the jury exited the courtroom at 10:24.)

7 THE COURT: All right. Any requested additions,
8 deletions, objections or other comments concerning the
9 charge by the state?

10 MRS. YOUNG: Just briefly, Your Honor, with regard to
11 the charge on the armed robbery the state respectfully
12 requests that you might do a clarification that includes
13 the language for which he's indicted, regarding using a
14 representation of a deadly weapon or an object which a
15 person present reasonably believed to be a deadly weapon.
16 Obviously we never recovered the gun. There's been
17 testimony that there was a pellet gun that was given to
18 him. We don't know one way or the other. But since the
19 statute does contemplate a representation of a deadly
20 weapon and they might not find a pellet gun to be deadly,
21 we would ask you to include that to be part of your
22 charge.

23 THE COURT: You got the statute?

24 MRS. YOUNG: I can get it.

25 THE COURT: Sixteen what?

1 MRS. YOUNG: 16--11--330.

2 THE COURT: Anything else?

3 MRS. YOUNG: Your Honor, we would and I'm sorry I
4 didn't ask for this yesterday. But, I thought it might be
5 in your standard charges but we would ask for a charge on
6 circumstantial evidence, concerning the fact that some of
7 the evidence that the jury can consider, other than direct
8 testimony of the co-defendants, is the circumstances
9 including allegations that the defendant was no longer
10 present as part of his participation. We would ask for a
11 charge on that.

12 THE COURT: Well, now your office told me -- that's
13 flight?

14 MRS. YOUNG: No. Just the circumstantial evidence
15 charge that it's as good as direct evidence and that they
16 can consider things of that nature in their deliberations.

17 THE COURT: Anything by the defense?

18 MR. HAYES: No, Your Honor.

19 THE COURT: What is it 16-11-330?

20 MRS. YOUNG: Yes, sir Your Honor.

21 THE COURT: All right. Bring the jury back in,
22 please.

23 (Whereupon, the jury came into open court at
24 approximately 10:26.)

25 THE COURT: All right. Mr. Foreman, ladies and

1 gentlemen, let me make sure you understand this. In
2 trials there are two types of evidence which are generally
3 presented. One, we call direct evidence, and the other we
4 call circumstantial evidence. Direct evidence is the
5 testimony of a person who claims to have actual knowledge
6 of a fact, such as an eye witness. Direct evidence is you
7 know I come in and I tell you exactly what I saw. I saw
8 the two cars running together. That's direct evidence.

9 Circumstantial evidence is also recognized and that
10 is evidence -- it's proof of a chain of facts and
11 circumstances indicating the existence of a fact. It is
12 evidence which immediately establishes collateral facts in
13 which the main fact may be inferred. Circumstantial
14 evidence is based on inference and not on personal
15 knowledge or observation. Now the law makes absolutely no
16 distinction between the weight or value to be given to
17 either direct or circumstantial evidence. You should
18 weigh all of the evidence in the case and after weighing
19 all the evidence make a determination of credibility of
20 the witnesses. A lot of times we'll give an example of
21 direct evidence, is if you walk outside and it's pouring
22 down rain, you get soaking wet. You can come in here and
23 testify to me directly it was raining. I got wet, soaked.
24 That's direct evidence. You were an eye witness to the
25 rain. If you walk outside and the streets got mud puddles

1 everywhere, the skies are gray and it's lightning and
2 thundering, but it's not raining. You can infer that it
3 has just rained from the circumstances of the gray skies
4 and the mud puddles that sort of thing. That's
5 circumstantial evidence. Two types of evidence. Give it
6 the same weight if any you think it deserves.

7 In the statute on armed robbery, let me make sure I
8 get one thing clear. The statute reads that in order to
9 prove someone has committed the offense of armed robbery,
10 it's in section 16-11-330. The state must prove beyond a
11 reasonable doubt that a person has to commit a robbery
12 while armed with a pistol, dirk, those sorts of things or
13 other deadly weapon or while alleging either by action or
14 words he is armed while using a representation of a deadly
15 weapon or any object, which a person present during the
16 commission of the robbery reasonably believed to be a
17 deadly weapon. So that's a little different language
18 saying basically the same thing that I said, but I was
19 reading straight out of the statute. All right. I'll let
20 you go back to your jury room. You should be getting all
21 of this in just a second and you can start deliberating.

22 (Whereupon, the jury exited the courtroom at 10:31.)

23 THE COURT: Any exceptions to the modification of the
24 charge by the state?

25 MRS. YOUNG: No, sir. Thank you, Your Honor.

1 THE COURT: Any additional request by the State?

2 MRS. YOUNG: No additional requests.

3 THE COURT: Any additional requests et cetera by the
4 defense, any exceptions to my modified charge?

5 MR. HAYES: No, Your Honor.

6 THE COURT: Y'all please come forward and make sure
7 we have all the evidence. Check the verdict form. Let
8 the record reflect that both the defense counsel and the
9 solicitor have reviewed all of the evidence and they are
10 in agreement as to the evidence and the verdict forms.
11 Correct State?

12 MS. RINGLER: Yes, Your Honor.

13 THE COURT: Correct defense?

14 MR. HAYES: Yes Your Honor.

15 (WHEREUPON, the jury began their deliberations at
16 10:35)

17 (Whereupon, a break was taken.)

18 THE COURT: All right. Back on the record with the
19 Anthony Martin case. The jury sent us a request to hear
20 testimony from three witnesses. Present in the courtroom
21 are the defendant and everyone else involved in the case.
22 Bring the jury in please.

23 (Whereupon, the jury came into open court at
24 approximately 11:31.)

25 THE COURT: All right. Mr. Foreman, ladies and

1 gentlemen, I understand you wanted to hear the replay of
2 three witnesses testimony. You sent those names out to
3 us.

4 THE FOREPERSON: Yes, sir.

5 THE COURT: Sister of one -- sister of one of the
6 witnesses and the mom and the grandmom.

7 THE FOREPERSON: Yes, sir.

8 (Whereupon, The testimony of Jasmine Harmon, Dora
9 McKinney and Alma Fumbah was replayed for the jury)

10 THE COURT: Anything else?

11 THE FOREPERSON: Nothing at this moment.

12 (Whereupon, the jury exited the courtroom at 11:49
13 for further deliberations.)

14 THE COURT: I am going to ask the foreman about
15 lunch. Any objections?

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

17 MR. HAYES: None Your Honor.

18 (Whereupon, a break was taken.).

19 THE COURT: All right. Ladies and gentlemen, I have
20 no earthly idea what the verdict is. Y'all please,
21 please be able to handle your emotions. If you
22 can't, I am going to ask you to step out now. Is the
23 state ready to receive the verdict?

24 MS. RINGLER: Yes, Your Honor.

25 THE COURT: Mr. Hayes, is the defense ready to

1 receive the verdict?

2 MR. HAYES: Yes, Your Honor.

3 THE COURT: Bring the jury in, please.

4 (WHEREUPON, the jury returned to open court with the
5 verdict at 1:40)

6 THE COURT: Mr. Foreman, y'all reached a verdict?

7 THE FOREPERSON: Yes, sir.

8 THE COURT: If you would hand it to the bailiff
9 please.

10 THE CLERK: The State of South Carolina versus
11 Anthony Marquise Martin indictment 2010-GS-02-1087. As to
12 the offense of criminal conspiracy, we the jury find the
13 defendant guilty. We unanimously agree, David white
14 April 27, 2010. We have the state of South Carolina
15 versus Anthony Marquise Martin, indictment number
16 2010-GS-02-666, as to the offense of armed robbery, we the
17 jury find the defendant guilty. We unanimously agree,
18 David White, April 27, 2010.

19 THE COURT: Let me hold those verdict forms, please.
20 Mr. Foreman, I assume that we meant 2011.

21 THE FOREPERSON: I let the bailiff know, yes.

22 THE COURT: I am going to change it to 2011. That's
23 the only mistake she's made with me in a year. Isn't that
24 something.

25 THE CLERK: Ladies and gentlemen of the jury, if this

1 is still your verdict would you please indicate by raising
2 of your right hand? All hands are raised, Your Honor.
3 Thank you. You may put them down.

4 THE COURT: Anything from the jury before I dismiss
5 them by the State?

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

7 THE COURT: By the defendant?

8 MR. HAYES: No, Your Honor.

9 THE COURT: Do you want me to poll them?

10 MR. HAYES: I believe they just all raised their
11 hands, Your Honor. I don't believe it will be necessary.

12 THE COURT: Very well. Mr. Foreman, ladies and
13 gentlemen, your alternates, they were very interested in
14 the case. I can't thank you enough. You paid super
15 attention and you see how the system works. I think it's
16 the best system in the world. When you're accused of
17 something you have 12 citizens from your community who
18 make the decision, instead of some dictator on the street
19 out there to do it. We can't run the system without
20 y'all. How many pending cases have we got? It would
21 scare you. I run criminal court probably three to four
22 times more than I do civil court. And it seems like every
23 time we think we're getting caught up, we get right back
24 on the backside of it. But we move a lot of cases but we
25 can't move any of them if we don't have jurors ready,

1 willing and able to serve. So on behalf of the judiciary
2 and the citizens of Aiken I thank you. Y'all have done a
3 wonderful job.

4 Unfortunately, I can't send you enough money. The
5 county only pays a little bit. But you'll be getting a
6 check in the mail. If anyone needs a work excuse, just
7 wait right back here. I'll get one of the clerks to run.
8 Anybody need one? We need a couple. So just wait back
9 here in the jury room for me please ma'am. So I am going
10 to excuse you. You now have an exemption for three years
11 and your balance of the week is finished. Thank you very,
12 very, very much.

13 (Whereupon, the jury exited the courtroom at 1:43.)

14 THE COURT: Anything from the State?

15 MR. HAYES: We would move for a new trial, Your Honor
16 on all reasons previously stated in our directed verdict
17 motions.

18 THE COURT: Well respectfully denied. Obviously it
19 was as the system is designed to do. We had conflicting
20 testimony. We had some testimony that contradicted
21 others. Some testimony was absolutely night and day
22 apart. But we had 12 jurors who were the finders of the
23 facts and they found the facts as they saw it to be and
24 applied it to the law as I gave it and rendered a verdict
25 that I will respect. So respectfully denied. If you will

1 get some sentence sheets ready.

2 (Whereupon, a break was taken.)

3 ANTHONY M. MARTIN, after being duly sworn,
4 testified as follows:

5 THE COURT: Mrs. Ringler?

6 MS. RINGLER: Thank you, Your Honor.

7 MRS. YOUNG: We have State versus Anthony Martin.
8 His prior record is 2003 burglary. A 2005 willful
9 obstruction of law enforcement and less than 1 ounce of
10 marijuana. A 2006 giving false name, address and date of
11 birth to law enforcement. PWID cocaine. Also PWID
12 marijuana. A 2006 DUS. 2008 possession of crack cocaine.
13 2010 giving false name, address and date of birth to law
14 enforcement. We have a letter from one victim and I
15 believe the other victim, Mrs. Hawes would like to address
16 the court as well.

17 THE COURT: Let me read it. Mrs. Mona Floyd. Which
18 one is Mrs. Floyd?

19 MS. RINGLER: She had to leave town. That's why she
20 wrote the letter. She was the actual teller who was
21 robbed.

22 THE COURT: Show that to Mr. Hayes, please. Yes,
23 ma'am, your name?

24 MRS. HAWES: My name is Brenda Hawes. How are you
25 doing? Good. I just wanted to say that -- I won't say

1 this is a good day.

2 THE COURT: Help me now. You are?

3 MRS. HAWES: I was the customer that was at the bank.

4 THE COURT: You were the customer that was in there
5 with the other gentlemen.

6 MRS. HAWES: Yes. We are the only two in there. I
7 guess I was having a really good day that particular day.
8 I go in that bank at least five times a week. And for
9 someone to come in there and I guess -- what I am trying
10 to say is just come in and put your life at a stand point,
11 that's a bad feeling. Because those people at that bank
12 were just doing their job. Like I said, they were just
13 like family. They know me on a first name basis. And in
14 my widest dreams I never would have imagined that I would
15 get caught up in a robbery. And to be so -- standing so
16 close to this guy, there was nothing I could do. And all
17 you could think about is your life is in his hands. You
18 know what do you do? This is it, you know. And one thing
19 I would never forget even though we're here and whatever
20 happens to him, it will never change what he did to us.
21 It's going to always be there, the fear when you go to a
22 bank, you know, you're looking around every time the door
23 open or closes. You know, for him to come in there and
24 think that he can demand you to get down and you know talk
25 to you with this intimidating language. See, I will never

1 forget his voice. I probably didn't see his face. But
2 his voice, some things you just don't forget. So, to him
3 I said, well I guess he's lucky this time. But not only
4 did he cause pain to myself and the other tellers, he
5 caused pain to his mother, his grandmother and most of
6 all, to himself. Because what he did he got nothing.
7 Nothing for it. It wasn't even worth it. Because when
8 you plan stuff you have an opportunity to change plans.
9 You have an opportunity to say, okay, wait a minute, this
10 is the wrong thing to do or this is the right thing to do.
11 So at that point in time I feel like, you can say, no.
12 You could have changed your mind. But it didn't happen
13 that way. So we would have to -- life will go on and we
14 will be okay in time. But for him I say, well, guess
15 what? Was it worth it? You didn't know me. I didn't
16 know you. Who gave you the right to think that you can
17 intimidate me like that? You don't know if I had family,
18 a little child, which I do have one. You know, but you
19 didn't care. It didn't matter because all you was
20 thinking about is what you wanted to do. It didn't matter
21 who it hurt. But like I say, you know, he left two, his
22 parents, his mom and his grandmother. Those are the ones
23 he got to think about now that they can't do anything for
24 him. So when he's there by himself at night he can think,
25 wait a minute, this is the pain I caused my mama, the one

1 that gave birth to me. You know I forgive him. I don't
2 have any animosity towards him. I want him to know this.
3 I forgive him. But I pray that you get your life together
4 one day. Because next time you might not be so lucky.
5 You know at least we can talk to you because you could
6 have been in the ground. There are only two places to go
7 jail or hell. There is no in between stops, son? So you
8 might want to think about that. Okay. That's all I have
9 to say.

10 THE COURT: Pretty powerful what you had to say. I
11 wish more young people could hear that stuff. Anything
12 else, Mrs. Ringler?

13 MS. RINGLER: Nothing further from the State.

14 THE COURT: Mr. Hayes?

15 MR. HAYES: May it please the court, Your Honor. We
16 stand here convicted. There is not a whole lot you can
17 say to mitigate that. A jury of his peers listened to the
18 evidence and came back with a verdict of guilty. I would
19 like to tell you a little bit about Mr. Martin.

20 Mr. Martin was helping his stepfather who drives a
21 truck loading and unloading the merchandise off the truck,
22 when he could, while he was working for -- looking for
23 jobs. Prior to that he had worked some in the fast food
24 industry. He attended high school at Lakeside and Shiloh
25 High in Atlanta. He did not graduate. He did make it to

1 the 11th grade however he did obtain his GED in 2003.

2 He started working on a welding class here at Augusta
3 Tech. But did not finish and withdrew from class in 2009.
4 He does have one child that lives in Michigan. Your
5 Honor, he also had some issues with drugs. He's been in
6 our county jail for 422 days. I'm not sure how long he
7 was in Atlanta after being picked up. I would ask the
8 court to give him credit for the time that he waited to be
9 extradited back to South Carolina. His mother and his
10 grandmother have been by his side the whole time and
11 they're here. My understanding is they both would like to
12 address Your Honor at the appropriate time.

13 THE COURT: Whichever one wants to come forward. Mom
14 or grandmother. Either one of you want to say anything?

15 THE MOTHER: I'd like to say, Your Honor, I believe
16 in my heart and my mind that he didn't do this. But I'm
17 not here to address that right now. I know that he is not
18 the perfect child. He have done some things in his life
19 and I know that life is not fair. You know some things
20 you do you get away with it. Some things you do, you
21 don't get away with it.

22 THE COURT: Does that mean it's not fair when you
23 don't get away with it?

24 THE MOTHER: No. I'm not saying that.

25 THE COURT: Here is what is bothering me about this.

1 I watched you. I watched your mother.

2 THE MOTHER: Uh-huh.

3 THE COURT: And I believe what the jury found. I sit
4 up here day in and day out listening to this stuff.
5 Here's four young men that were all educated to some
6 degree. Planned this thing in one afternoon. I mean,
7 maybe they were just smoking something or drinking
8 something or just acting crazy. But surely after you
9 spend a night and sleep on it and you wake up the next and
10 say, my God you think I was going to do that. And then go
11 ahead and do it. That's what gets me. Most people wake
12 up the next morning and say, whoa, whoa I need to slow
13 down. They went ahead and carried it out. That's what
14 bothers me. I got two boys and I know, it's tough trying
15 to raise them, trying to do what's right. No matter what
16 they do, you love them. My wife loves our boys more than
17 -- you know mothers have a totally different kind of love
18 than dads, I think. You brought them into the world. You
19 gave birth to them. You love them more than anything
20 there is. And you hate to see them make mistakes. Your
21 son has just made a horrible mistake, horrible mistake.
22 Put these people's lives at risk. Takes a gun, goes in
23 and sticks it in somebody's face. I don't know what's
24 going on with the young people. It is tragic. I see it
25 day in and day out. It's just tragic. Some things I've

1 seen this week up here. Just tragic. Guns, killing each
2 other with just the drop of a hat or less than that.
3 Planning an easy bank robbery that you know you can't get
4 away with stuff like that. I don't know why you'd do it.
5 But I do know that you love him more than anything in the
6 world. You're his mom and my heart goes out to you.

7 THE MOTHER: I also would like to say that he's not a
8 bad kid. He's very loving and kind.

9 THE COURT: I believe so.

10 THE MOTHER: Those are remarks and things that I get
11 from school teachers, that he's pleasant, you know.

12 THE COURT: I don't disagree with that at all. I
13 believe you.

14 THE MOTHER: And I also want to say that he wasn't
15 given the best opportunity in life. He grew up without a
16 father. I had him -- I had his sister at 15. Him at 17.

17 THE COURT: How old were you when you had him.

18 THE MOTHER: Seventeen. And I also struggled with
19 drugs and from the age of 19 to 23 I was in and out of
20 jail. But I turned my life around. And right now I am a
21 registered nurse. I gave my life to God and I have been
22 trying to do the best I can with him.

23 THE COURT: I know.

24 THE MOTHER: So he has that same caring you know
25 spirit that comes from me. He'll give you the shirt off

1 his back. And I just pray to God that he can have another
2 opportunity like I did.

3 THE COURT: Thank you. Grandmom, you want to say
4 anything?

5 GRANDPARENT: Yes.

6 THE COURT: Yes, ma'am.

7 GRANDPARENT: Yes. I have raised Anthony Martin and
8 he hasn't been the ideal grandson. He has had his
9 problems. But he has no major problem with me. He lived
10 with me from two to 14. I had no major problem with him.
11 He respected my rules and regulations. When he came back
12 to stay with me this time, I was glad to have him. He was
13 a great help to me. I was alone. He helped me inside and
14 out the house. I had no problems with him out all night.
15 I had no problems with him getting drunk and all of those
16 other kind of problems. He respected me. He always knew
17 the rules of the house and he abided by them. So he is a
18 good boy. And, Your Honor, I would be lying if I said I'm
19 not convinced. I am not convinced --

20 THE COURT: I understand that.

21 GRANDPARENT: But he is a good boy.

22 THE COURT: Thank you. Thank you. And I have two
23 grandchildren, too. Two boys and two granddaughters so I
24 know how both of you feel. Thank you, ma'am. Anthony,
25 anything you want to say?

1 THE DEFENDANT: Yes, sir, not much, though. First
2 I'd like to correct what my lawyer said about 120 days in
3 Aiken County. It's actually been about 15 months.

4 MR. HAYES: 420.

5 THE DEFENDANT: Oh okay. Second, I'd like to say I
6 I'm sorry for what happened to the victims. You know I
7 have been a victim of robbery, too. So I do know how it
8 feels, a couple of times. And I just hope and pray that
9 they can sleep better, you know, what I'm saying with
10 their beliefs, I guess. And I am -- I do thank Aiken
11 County. I know Aiken County convicted an innocent man.

12 THE COURT: Well I think our system of justice is the
13 best in the world. And I have listened to all the
14 testimony and all the evidence and I certainly agree with
15 the jury. All right. Mr. Martin as to indictment
16 2010-GS-02-666 the indictment for armed robbery the
17 sentence of this court is that you be sentenced to the
18 State Department of Corrections for a period of 20 years.
19 As to the criminal conspiracy sentence is that you be
20 committed to the State Department of Corrections for five
21 years. They'll run concurrently. I'll give you credit
22 for your time served. Good luck to you.

23 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

24

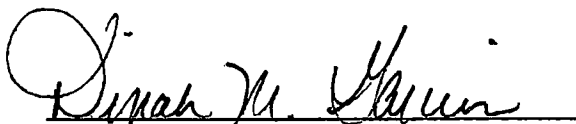
25

C E R T I F I C A T E

I, the undersigned Dinah M. Garvin, Official Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record reported by Lisa Davenport, Court Reporter of Record in Aiken County, of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Aiken County, South Carolina on the 25th-27th days of April, 2011.

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

October 4, 2011

A handwritten signature in cursive script, reading "Dinah M. Garvin", is written over a horizontal line.

Transcribed by Dinah M. Garvin,
Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY MARTIN,

APPELLANT

APPELLATE CASE NO. 2011-192066

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
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

Did the trial court err in denying Martin's motion to suppress evidence of flight when he gave a false name and identifying information to police when he was stopped in Atlanta because he knew he was in violation of probation, and the state did not prove that Martin had knowledge that he was being sought for the bank robbery; therefore there was no nexus between the false information and the bank robbery?

STATEMENT OF THE CASE

On April 19, 2010 the Aiken County Grand Jury indicted Anthony Marquese Martin on the charge of armed robbery (AR). On June 21, 2010, the Grand Jury indicted Martin on the charge of criminal conspiracy to commit the armed robbery. On April 25-27, 2011, Martin proceeded to trial before the Honorable Doyet A. Early, III, and a jury. Martin was represented by C. David Hayes and Degrant Gibbons. The state was represented by Suzanna M. Ringler and Elizabeth B. Young. The jury returned verdicts of guilty on both charges as indicted. Judge Early sentenced Martin to twenty years on the AR and five years on the conspiracy to run concurrently. R, 269, ll. 12 – 22. Martin's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying Martin's motion to suppress evidence of flight when he gave a false name and identifying information to police when he was stopped in Atlanta because he knew he was in violation of probation, and the state did not prove that Martin had knowledge that he was being sought for the bank robbery; therefore there was no nexus between the false information and the bank robbery.

On April 23, 2009, the Bank of America in Aiken County was robbed of approximately \$12,000 by a masked man with a gun. R. 12, ll. 1 – 15; R. 16, ll. 1 – 14; R. 21, ll. 2 – 19; R. 24, ll. 6 – 25; R. 33, ll. 6 – 17. None of the people in the bank could identify the robber since his face was covered. R. 30, ll. 9 – 25; R. 36, ll. 10 – 15; R. 37, ll. 1 – 10; R. 44, ll. 1 – 11; R. 87, ll. 22 – 25; R. 88, ll. 1 – 25; R. 91, ll. 15 – 20; R. 92, ll. 1 – 25; R. 97, ll. 1 – 14.

The day before, on April 22, 2009, Quinton Harmon was at home when his friend, T-Money whom he later identified as Anthony Martin, came to his house. Martin was staying with his grandmother who lived in Harmon's neighborhood. R. 45, ll. 1 – 25; r. 46, ll. 1 – 25.

Harmon's testimony was that Martin brought up the idea of robbing a bank. R. 49, ll. 1 – 25; R. 50, ll. 1 – 15. Later that evening, Harmon called two other friends, Roosevelt Johnson and David Dixon, to come to his house when they planned the robbery. They rode around looking at banks to choose the one to rob. Martin chose the Bank of America. R. 50, ll. 16 – 25; R. 51, ll. 1 – 25; R. 52, ll. 1 – 9.

Each of the four had a role to play in the robbery. Harmon was to go into the bank first to "scope" it out; Dave Dixon was the lookout; and Roosevelt Johnson was to drive the getaway car which was his red Mustang. R. 55, ll. 1 – 18; R. 59, ll. 1 – 25; R. 60, ll. 1 – 8.

The next day, they went to the bank and followed through with their plans. Martin went into the bank. When Martin returned to the car, he said: "I did it, y'all!" R. 56, ll. 9 - R. 60, ll. 25.

They drove to the bus station where Martin tried to buy a bus ticket to Atlanta, but the power was out. They divided the money on the way. They then drove to the mall where Martin called a person to come get him which they did. None of them saw Martin after that. Harmon's testimony was that Martin said he was going to Atlanta. R. 62, ll. 1 - 25; R. 64, ll. 1 - 25; R. 65, ll. 1 - 25; R. 66, ll. 1 - 3.

Roosevelt Johnson and David Dixon testified at trial as well. Their testimony was basically the same as Harmon's with a few minor differences. R. 103, ll. 15 - R. 130, ll. 19; R. 134, ll. 14 - R. 155, ll. 9.

The next day, Harmon's picture from the bank video was in the media as a person of interest. He went and talked to the police and gave a statement. R. 66, ll. 6 - 25. All three admitted they helped rob the bank and were charged with bank robbery. R. 48, ll. 11 - 24; R. 105, ll. 7 - 24; R. 136, ll. 2 - 25.

Detective Luke Sherman of the North Augusta Public Safety Department testified that he investigated the April 23, 2009 robbery of Bank of America. The dye bag had not been placed in the money taken from the bank. They were not able to collect any fingerprints nor any forensic evidence. They called the Aiken County Bloodhound Team but the dogs were not able to track the person. They obtained the picture of Harmon from the bank video and sent it to the media as a person of interest. He was the one who interviewed Harmon. R. 186, ll. 13 - 25; R. 187, ll. 1 - 25; R. 188, ll. 1 - 25; R. 189, ll. 1 - 25; R. 190, ll. 1 - 24; R. 191, ll. 21 - 25; R. 192, ll. 1 - 25; R. 193, ll. 1 - 19.

Officer Christopher Poythress of the Dekalb County Police Department in Atlanta testified that on April 13, 2010, he received a call in reference to a wanted person by the name of Anthony Martin. He was given his date of birth (DOB) as well. R. 178, ll. 1 – 25; R. 179, ll. 1 – 2. He went to an apartment complex in Atlanta and knocked on the door of apartment He received no answer. He tried the next day with no luck. The leasing agent gave him a description of Martin. The officer saw Martin coming into the complex and stopped him. R. 178, ll. 15 – 25; R. 179, ll. 3 – 25; R. 180, ll. 1 – 6.

When the officer asked Martin his name, Martin told him his name was Troy Brown and gave him a false DOB. Martin told him at first that he lived in the complex, and then said he was visiting his sister there. R. 180, ll. 6 – 25; R. 181, ll. 1 – 25; R. 182, ll. 1 – 10. Officer Poythress confirmed it was Martin after his sergeant obtained a photo of Martin which matched Martin. R. 181, ll. 2 – 23.

During pretrial, the state told the court that they planned to introduce evidence of flight based on the fact that Martin provided a false name, false DOB, and gave misleading information as to why he was at the apartment complex. The solicitor also wanted to introduce supporting evidence that Martin was on probation and left probation without providing notice to his agent and without transferring his probation to Georgia. R. 7, ll. 20 – 25; R. 8, ll. 1 – 21.

Defense counsel argued that his motion was two fold. Martin was convicted of providing false information to the police in Dekalb County. Counsel argued that should not be admitted pursuant to rule 404, SCRE. The judge said they would not have to say he was convicted but only what he did. R. 8, ll. 21 – 25; R. 9, ll. 1 – 13.

Defense counsel then argued that the state would have to prove each “link of the chain of inferences leading to the conclusion” of evidence of flight. He argued that Martin

was picked up almost a year after the crime. Counsel argued that there was no evidence that Martin knew that the investigation of the bank robbery was taking place or that the police in Dekalb County were seeking him for armed robbery in Aiken County. R. 9, ll. 14 – 25; R. 10, ll. 1 – 22.

The judge denied defense counsel's motion to suppress any evidence of flight. R. 10, ll. 23 – 24. The judge denied the state's motion to introduce evidence regarding Martin's probation. R. 184, ll. 1 – 25; R. 185, ll. 1 – 24.

When the state introduced the evidence of the false information that Martin provided to the Atlanta police, defense counsel objected based on his pretrial motion. R. 180, ll. 1 – 14.

In her closing argument, the solicitor argued:

The defense asked where did all of that money go? Well, that money went to Atlanta because T-Money took the money and ran. He had his friend come pick him up and take him to Atlanta. When the police tried to approach him and tried to talk to him at that apartment complex, he lied about his name. He lied about his date of birth. He evaded law enforcement. He gave misleading information.

R. 241, ll. 23 – 25; R. 242, ll. 1 – 5.

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Supreme Court declined to hold that flight alone was substantial circumstantial evidence of a defendant's guilt.

In State v. Crawford, 362 S.C. 627, 608 S.E.2d 886 (Ct. App. 2005), the Court of Appeals held that flight from prosecution was admissible as evidence of guilt.

In State v. Orozco, 392 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011), the Court of Appeals wrote that the critical factor to the admissibility of evidence of flight was whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities. The Court cited the case of State v. Pagan, 369 S.C.

201, 209, 631 S.E.2d 262, 266 (2006), which held that flight evidence was relevant when there was a nexus between the flight and the offense charged.

In Martin's case, there was no evidence presented that he knew he was being sought by the authorities for the bank robbery in Aiken County. None of the co-defendants testified that they told Martin the authorities knew of their involvement. There was no evidence that Martin knew about the picture of Harmon in the media as the testimony was that he left for Atlanta right after the robbery. The solicitor said he was on probation so the evidence was that he reasonably thought he was being sought by probation for a different offense not related to the robbery.

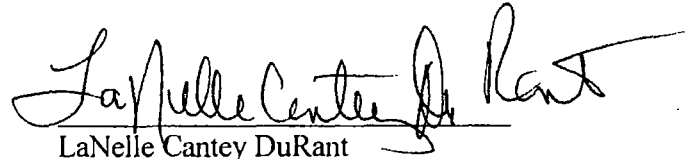
The state did not present sufficient evidence that Martin knew he was being sought for the bank robbery. The evidence of flight should not have been admitted. The evidence was prejudicial to Martin because the only evidence against him was the testimony of the three alleged co-defendants who had motivation to lie in order to help themselves since they all had a thirty year charge pending of bank robbery.¹

¹ The DOC website indicates none of the co-defendants are currently incarcerated there.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in cursive script, reading "LaNelle Cantey DuRant". The signature is written in black ink and is positioned above the printed name and title.

LaNelle Cantey DuRant
Appellate Defender

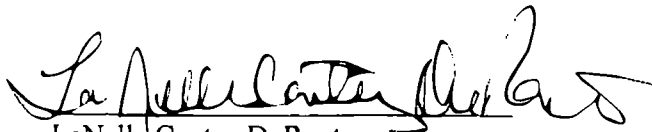
ATTORNEY FOR APPELLANT

This 6th day of December, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 6, 2012

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY MARTIN,

APPELLANT

CERTIFICATE OF SERVICE

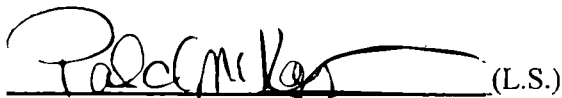
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark Farthing, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 6th day of December, 2012.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of December, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2011-192066

THE STATE,

Respondent,

VS.

ANTHONY MARQUESE MARTIN,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse his discretion in admitting evidence establishing Appellant fled to Atlanta and subsequently provided false information to a law enforcement officer after the bank robbery because that evidence supported a logical inference Appellant undertook those actions to avoid detection and arrest for his crimes and, thus, constituted evidence of his guilty knowledge and intent. However, even if the trial judge did err in admitting the evidence, any error was entirely harmless in light of the cumulative and insignificant nature of that evidence when considered in relation to the other evidence presented during trial, which included the testimony of all three of Appellant's accomplices identifying him as the person who committed the bank robbery

STATEMENT OF THE CASE

In April of 2010, Appellant Anthony Marquese Martin was arrested in Atlanta, Georgia, following an investigation into the armed robbery of a North Augusta branch of Bank of America in April of 2009. Shortly after Appellant was arrested, the Aiken County grand jury indicted him for one count of armed robbery. In June of 2010, the Aiken County grand jury additionally indicted Appellant for one count of criminal conspiracy. On April 25, 2011, a jury trial was commenced in the Aiken County court of general sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. The trial judge sentenced Appellant to concurrent terms of imprisonment of twenty years for armed robbery and five years for criminal conspiracy. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

At around 12:00 p.m. on April 23, 2009, Mona Floyd, a teller at a Bank of America branch in North Augusta, South Carolina, was working at her counter when a man entered the bank. (R. pp. 16-17; p. 19). The man approached her at the counter, asked a few questions about different types of accounts, looked around the bank, and then left after only a minute or two. (R. pp. 19-20). After the man left, Floyd requested more money to handle the needs of any customers who might come in and received \$12,000 in cash from the vault. (R. pp. 20-21). A few minutes later, another man entered the bank, ordered everyone inside to get onto the floor, pointed a gun, threw a pillow case at Floyd, and stated: "Put the money in the bag, [b]itch." (R. pp. 22-24; p. 31; p. 33; p. 93). Floyd put the money from the vault into the man's pillow case, and the robber, who was wearing a dark hoodie and something over his face, demanded more money in larger denominations. (R. pp. 23-24; p. 33; p. 90; p. 94). In response, Floyd tried to remove the smaller denominations from the pillow case, but the robber grabbed it and fled. (R. p. 23; p. 35; pp. 90-91). Floyd then triggered an alarm, and another bank employee called 911 to report the robbery. (R. p. 25; pp. 34-35).

Meanwhile, Tammy Murphy, another teller at the Bank of America branch, was getting into her car in the parking lot when she observed a man wearing black hooded clothing and something over his face run out of the bank. (R. pp. 37-40). Murphy realized the man just robbed the bank, and she saw a customer in the parking lot yell at the robber and then fire shots at him when the robber did not stop. (R. pp. 40-41; p. 189). Patricia Christopher, who was at a car wash next to the bank, heard the gunshots, believed the sound was from firecrackers, and then observed a red Ford Mustang quickly

leaving the area.¹ (R. p. 56; pp. 131-132). Christopher saw two men in the front seats of the car, but she was unable to see if anyone was in the rear seats because the vehicle was moving too rapidly. (R. p. 133).

Shortly thereafter, Detective Luke Sherman of the North Augusta Department of Public Safety responded to the scene of the robbery and spoke with the witnesses inside of the bank. (R. pp. 186-187). He learned a black male wearing all black clothing, a hoodie, and gloves entered the bank, pointed a gun, demanded money, and absconded with \$12,000 in cash. (R. p. 187). The detective further learned a person behaving in a suspicious manner came into the bank shortly before the robbery and a red Ford Mustang was observed leaving the scene. (R. p. 188; p. 191). Detective Sherman then obtained a photograph of the suspicious person and released it to the media. (R. p. 188).

Subsequently, Detective Sherman went to the home of Roosevelt Johnson, who owned a red Ford Mustang and was stopped by law enforcement officers on two separate occasions on the day of the crime, and attempted to speak to him about the robbery. (R. pp. 193-194). However, Johnson claimed he was at the mall during the relevant time frame and requested to speak with an attorney. (R. pp. 193-194). Detective Sherman then left Johnson's home but saw a red Ford Mustang that appeared to have been recently washed in Johnson's driveway. (R. p. 194).

On the day after the robbery, Quinton Harmon, the suspicious man who entered the bank shortly before the robbery, learned his photograph was printed in the newspaper in connection to the robbery. (R. p. 66). In response, Harmon spoke with a friend in law enforcement and then went to the police headquarters to discuss the robbery. (R. pp. 66-

¹ Murphy also observed the red Ford Mustang, and she was able to obtain the vehicle's license plate number. (R. pp. 42-43; p. 191).

67; p. 70; pp. 191-192). At the police headquarters, Harmon met with Detective Sherman and initially claimed he was brought to the bank by his girlfriend in order to open an account. (R. pp. 66-67; pp. 70-71; p. 192). However, Detective Sherman called Harmon's attention to some inconsistencies in his version of events, and Harmon confessed to being involved in the robbery. (R. pp. 71-74; p. 192). Additionally, Harmon implicated Johnson, David Dixon, and a man who went by "T-Money" in the crime. (R. pp. 192-193). Thereafter, Harmon, Johnson, and Dixon were all arrested and charged for their roles in robbing the bank. (R. p. 48; p. 105; p. 136; p. 193).

During the course of the investigation into the incident, Detective Sherman learned "T-Money" attempted to purchase a bus ticket to Atlanta immediately after the robbery but his grandmother still lived near Harmon. (R. pp. 196-197). Through that information, Detective Sherman discovered the mother of "T-Money" lived in Snellville, Georgia. (R. p. 197). In response, he asked officers in Georgia to go to the mother's home, and they were able to obtain Appellant Anthony Marquese Martin's name and date of birth from Appellant's grandmother, who was at Appellant's mother's home. (R. pp. 197-198). Detective Sherman then acquired a photograph of Appellant and showed it to Harmon and Johnson. (R. p. 198). Both of the men identified Appellant as "T-Money." (R. p. 198).

Thereafter, on April 13, 2010, Officer Christopher Poythress of the DeKalb County Police Department in Atlanta, Georgia, was notified Appellant might be staying at an apartment complex in the area. (R. p. 178). Officer Poythress went to the apartment complex looking for Appellant, did not get a response when he knocked on the door to the apartment Appellant was believed to be staying at, and left for the day. (R. pp. 178-179). However, Officer Poythress returned the next day, spoke with an

employee at the apartment complex, confirmed Appellant stayed there, and learned Appellant was seen earlier walking up a nearby street. (R. p. 179). The officer then observed Appellant walking back towards the apartment complex and stopped him. (R. pp. 179-180). After stopping him, Officer Poythress asked Appellant what he was doing at the apartment complex, and Appellant claimed to live there. (R. p. 180). The officer then asked Appellant for his name, date of birth, and identification. (R. pp. 180-181). Appellant claimed his name was "Troy Brown" and provided a false date of birth. (R. pp. 180-181). The officer then again asked Appellant what he was doing at the apartment complex, and Appellant offered a different explanation than he originally provided, claiming he was there to visit his sister. (R. pp. 180-181). In response, Officer Poythress detained Appellant until his identity could be verified, used a photograph of Appellant to confirm his identity, and discovered Appellant had provided a false name and date of birth. (R. p. 181). Appellant was subsequently arrested, transported to South Carolina, and indicted for armed robbery and criminal conspiracy, and he proceeded to trial. (R. p. 6; pp. 270-273).

At the outset of trial, the solicitor noted she intended to introduce testimony and evidence establishing Appellant fled to Atlanta after the robbery and provided false information to law enforcement officers in Atlanta several months later when they went to arrest him. (R. pp. 7-8). The solicitor further asserted she intended to introduce evidence establishing Appellant was on probation at the time of the robbery and fled to Georgia without providing notice and without transferring his probation. (R. p. 8). In response, Appellant objected to the admission of any evidence related to his flight to Georgia. (R. pp. 8-9). Initially, Appellant argued he was convicted of giving a false name and information to the officer in Georgia and, therefore, that particular evidence

was inadmissible character evidence. (R. pp. 7-8). Furthermore, Appellant argued the flight evidence itself was inadmissible because there was no evidence establishing that he knew the investigation into the robbery was taking place or the police in Georgia were seeking him in connection to the robbery. (R. pp. 9-10). However, Appellant acknowledged he was alleged to have fled to Georgia on the same day as the robbery. (R. p. 9). After considering the arguments of counsel, the trial judge denied the motion to exclude the evidence.² (R. p. 10).

Thereafter, during trial, Appellant's accomplices testified about their involvement in the robbery and implicated Appellant as the mastermind of the crime. (R. pp. 48-49; p. 105; p. 107; p. 136; p. 138). Harmon testified Appellant approached him the day before the robbery and told him he wanted to "hit a lick," which meant commit a robbery. (R. pp. 49-50). Harmon stated they subsequently met up with Johnson and Dixon along with several other people and determined which bank they were going to rob. (R. pp. 50-52). The next day, Harmon indicated Johnson picked him up, and Appellant and Dixon were already in Johnson's red Ford Mustang. (R. pp. 52-53). He testified they then went to a Popeye's restaurant, and Appellant went inside and returned with some clear plastic gloves.³ (R. pp. 53-54). Harmon stated they then went to Dixon's house, Appellant got a pillow case and a white t-shirt from Dixon, and Appellant assigned each of them a role in the robbery. (R. pp. 55-56). Harmon indicated his role was to go into the bank before the robbery and determine how many people were inside. (R. pp. 55-56). Thereafter, Harmon testified they went to a car wash next to the bank, he went into the bank to

² However, during trial, the trial judge declined to allow the solicitor to admit any testimony related to the fact Appellant was on probation at the time of the robbery because the trial judge concluded such evidence was unduly prejudicial, cumulative, and unnecessary. (R. pp. 183-185).

³ The surveillance footage of the robbery showed the robber was wearing clear plastic gloves. (R. p. 54).

determine how many people were inside, and he spoke with a teller about opening a bank account. (R. pp. 56-58). After he returned from the bank, Harmon stated Appellant changed into all black clothing, put the white t-shirt he got from Dixon over his face, and then went into the bank. (R. pp. 58-59). A few seconds later, Harmon indicated they heard gunshots and saw Appellant running back to the car with a black handgun. (R. pp. 59-62). Harmon testified Appellant jumped into the car, told them he did it, and ordered Johnson to drive. (R. pp. 60-61). As they were driving away from the bank, Harmon stated Appellant divided the money between them, put his share into the backpack, transferred the other items from his backpack into the pillow case, and gave it to a friend they encountered on the street. (R. pp. 62-63). Harmon testified they then went to a bus station because Appellant stated he was going to go to Atlanta, the bus station was closed because the power was off, and they went to the mall and stayed there until Appellant was able to obtain a ride away from the area.⁴ (R. pp. 64-66). As Appellant was leaving the mall, Harmon indicated Appellant again stated he was going to Atlanta. (R. pp. 65-66). Harmon testified he then left the mall with Johnson and Roosevelt and was subsequently arrested for the robbery. (R. pp. 66-67).

Following Harmon's testimony, Johnson and Dixon testified about the planning and execution of the robbery in a substantially similar manner to Harmon and confirmed Appellant stated he was going to Atlanta after the crime. (R. pp. 106-119; pp. 137-152). In addition to the testimony of Appellant's accomplices, Detective Sherman testified about his investigation into the robbery and his discovery of Appellant's identity, and Officer Poythress recounted the details of his encounter with Appellant in Atlanta during

⁴ During trial, Anthony Costello, an electrical contractor, testified he was working on the Greyhound bus station on April 23, 2009, and the power was out at the station from around 10:30 a.m. or 11:00 a.m. until 6:00 p.m. or 7:00 p.m. (R. pp. 98-99).

which Appellant provided a false name and date of birth.⁵ (R. pp. 178-182; p. 186; pp. 196-198). Additionally, Jacob McKie, Harmon's cousin, confirmed Appellant was present at Harmon's house on the night before the robbery and stated he provided Appellant with a pellet gun that looked like a black handgun on the morning of the robbery. (R. pp. 172-174; pp. 176-177). McKie further testified the pellet gun was never returned to him and he did not see Appellant in the area again after the robbery. (R. pp. 174-175). Furthermore, Harmon's brother testified he overheard Appellant discussing the bank robbery with Harmon on the day before the incident, and Harmon's sister stated Appellant attempted to sleep at their home on the night before the robbery until he was forced to leave by her mother.⁶ (R. pp. 161-162; p. 164; pp. 166-167; p. 169).

Subsequently, during her closing argument, the solicitor briefly mentioned Appellant's flight to Atlanta and attempt to deceive the arresting officer subsequent to the robbery, stating:

The defense asked where did all of that money go? Well that money went to Atlanta, because T-Money took the money and ran. He had his friend come pick him up and take him to Atlanta. When the police tried to approach him and tried to talk to him at that apartment complex[, h]e lied about his name. He lied about his date of birth. He evaded law enforcement. He gave misleading information.

(R. pp. 241-242). Thereafter, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 259). The trial judge then sentenced Appellant to an aggregate term of imprisonment of twenty years. (R. p. 269).

⁵ During Officer Poythress' testimony, Appellant renewed his earlier objection, and the trial judge overruled the objection. (R. p. 180).

⁶ Like the other witnesses, neither Harmon's sister nor brother saw Appellant in the neighborhood again after the robbery. (R. p. 163; p. 170).

ARGUMENT

The trial judge did not abuse his discretion in admitting evidence establishing Appellant fled to Atlanta and subsequently provided false information to a law enforcement officer after the bank robbery because that evidence supported a logical inference Appellant undertook those actions to avoid detection and arrest for his crimes and, thus, constituted evidence of his guilty knowledge and intent. However, even if the trial judge did err in admitting the evidence, any error was entirely harmless in light of the cumulative and insignificant nature of that evidence when considered in relation to the other evidence presented during trial, which included the testimony of all three of Appellant's accomplices identifying him as the person who committed the bank robbery.

Appellant contends the trial judge abused his discretion in admitting evidence of his flight following the bank robbery. Appellant appears to maintain the evidence was inadmissible because the State failed to sufficiently establish he knew he was being sought for his involvement in the bank robbery when he provided a false name and date of birth to a police officer in Atlanta prior to his arrest. To the contrary, the trial judge properly admitted the evidence establishing Appellant fled to Atlanta immediately after the bank robbery and subsequently provided false information to a police officer who detained him because Appellant's flight and evasive conduct supported a logical inference he undertook those actions to avoid detection and arrest for his commission of the bank robbery. Accordingly, the evidence of Appellant's flight and other guilty conduct was admissible as evidence of Appellant's guilty knowledge and intent during his trial on the charges related to the bank robbery. Furthermore, even if the trial judge did err in admitting the evidence, any error was entirely harmless in light of the cumulative and insignificant nature of the evidence when considered in relation to the other evidence presented during trial. The trial judge did not abuse his discretion in admitting the evidence related to Appellant's flight and other guilty conduct, and any

error that could have resulted from the admission of that evidence was entirely harmless. Appellant's convictions should be affirmed.

A. Admissibility of Evidence of Appellant's Flight Following the Robbery and Untruthful Statements to Law Enforcement

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

"[A]ny guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt." State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011). When a defendant makes false or conflicting statements or attempts to flee, those actions constitute evidence of guilty knowledge and intent. State v. Thompson, 278 S.C. 1, 10, 292 S.E.2d 581, 587 (1982), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); see State v. Al-Amin, 353 S.C. 405, 413, 578 S.E.2d 32, 36 (Ct. App. 2003) (recognizing attempts to run away have always been regarded as some evidence of guilty knowledge and intent). "Flight, when

unexplained, is admissible as indicating consciousness of guilt, for it is not to be supposed that one who is innocent and conscious of that fact would flee.” State v. Crawford, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005).

“The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by authorities.” State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999). “It is sufficient that circumstances justify an inference that the accused’s actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose.” State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005). “Evidence of flight should be excluded when the flight is **clearly** linked to a separate offense for which the defendant is not on trial.” State v. Robinson, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004) (emphasis added). Evidence of flight and attempts to evade arrest are circumstances which should go to the jury. State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006).

In the case sub judice, Appellant appears to be contending the trial judge erred in admitting evidence he provided a false name and date of birth to a police officer who stopped him in Atlanta after he fled there immediately after the bank robbery.⁷ In support of that contention, Appellant maintains there was no evidence presented during trial establishing he knew law enforcement officers were looking for him in connection to the

⁷ Notably, in the body of his appellate brief, Appellant’s argument on appeal appears to focus solely on the evidence of flight. (App. Br. pp. 8-9). However, Appellant’s false statements to the police officer in Atlanta were not evidence of flight. Instead, those statements were evidence of evasive and guilty conduct designed to prevent the police officer from learning his true identity. Significantly, when the testimony related to Appellant’s actual flight to Atlanta was introduced during trial, Appellant did not raise any objection to the testimony. See State v. Burton, 326 S.C. 605, 613, 486 S.E.2d 762, 766 (Ct. App. 1997) (“This testimony was admitted without objection. Because Burton failed to object, he is barred from raising this issue on appeal.”). Accordingly, any issue regarding the admission of evidence of Appellant’s flight to Atlanta is not properly preserved for appellate review. See State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996) (“A ruling in limine is not final; unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review.”).

robbery because “he left for Atlanta right after the robbery.” (App. Br. p. 9). Appellant’s contentions are entirely without merit, and the trial judge did not abuse his discretion in admitting the evidence of Appellant’s guilty conduct after the robbery.

As Appellant was fleeing from the scene of the bank robbery he just committed, a man attempted to stop him and fired shots at him in an effort to prevent his escape. Appellant then returned to the getaway car and asked the getaway driver to take him to a bus station because he was going to Atlanta. When he discovered the bus station was temporarily closed, Appellant went to the mall with his accomplices until he was able to arrange transportation for himself to Atlanta. Due to the large quantity of money stolen in the bank robbery, the fact the crime was witnessed by numerous people, and the fact a citizen fired shots at Appellant in an effort to stop him, Appellant unquestionably knew law enforcement would be notified of and investigate the bank robbery, and that knowledge was the logical reason Appellant rapidly left the area after the crime. Based on the fact Appellant fled to Atlanta as soon as he possibly could after committing the bank robbery, Appellant’s flight from the area where the robbery occurred supported an obvious inference that his sudden flight was designed to enable him to avoid being connected to and apprehended for the crime. See Walker, 366 S.C. at 656, 623 S.E.2d at 128 (“[I]t can be inferred from his sudden disappearance that Walker was either expecting the police to arrest him or he was planning his escape.”). Therefore, the evidence of Appellant’s flight to Atlanta was clearly admissible as evidence of his guilty knowledge and intent in regards to the bank robbery. See Al-Amin, 353 S.C. at 413, 578 S.E.2d at 36 (“Flight from prosecution is admissible as evidence of guilt.”).

Furthermore, when Appellant was subsequently approached by a police officer in Atlanta several months after he became a fugitive, Appellant refused to provide his actual

name or date of birth and, instead, provided false information to the officer in a clear attempt to prevent the officer from discovering his true identity. See Thompson, 278 S.C. at 10-11, 292 S.E.2d at 587 (“The statements were introduced to prove appellant attempted to avoid apprehension.”). Based on the fact Appellant fled to Atlanta after the robbery to avoid detection and arrest, Appellant’s act of providing false information to the officer in Atlanta supported an obvious inference that Appellant was aware the officer’s discovery of his true identity could lead to his arrest for the bank robbery, which was the exact result Appellant had previously sought to avoid by fleeing.⁸ See Pagan, 369 S.C. at 209, 631 S.E.2d at 266 (“It is sufficient that circumstances justify an inference that the defendant’s actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose.”). Therefore, the evidence related to Appellant’s false statements to the police officer in Atlanta possessed a clear nexus to the bank robbery for which Appellant was on trial, and the trial judge did not abuse his discretion in admitting that evidence. See Town of Hartsville v. Munger, 93 S.C. 527, 529, 77 S.E. 219, 219 (1913) (“False and conflicting statements and attempts to run away have always been regarded as some evidence of guilty knowledge and intent.”); see also Robinson, 360 S.C. at 196, 600 S.E.2d at 104 (“Objectively viewed, there is a sufficient nexus between Robinson’s flight and the

⁸ On appeal, Appellant asserts: “The solicitor said he was on probation so the evidence was that he reasonably thought he was being sought by probation for a different offense not related to the robbery.” (App. Br. p. 9). However, the mere fact that Appellant could have made false statements to the police officer for another reason did not negate the reasonableness or logicalness of the inference that Appellant made the false statements to avoid arrest for the bank robbery he had committed. See Pagan, 369 S.C. at 209, 631 S.E.2d at 266 (“Flight or evasion of arrest is a circumstance to go to the jury.”). Significantly, nothing prevented Appellant from presenting to the jury an alternative theory as to why he made the false statements during trial. See Robinson, 360 S.C. at 196, 600 S.E.2d at 104 (“We reject Robinson’s claim that his statement of why he fled from police is dispositive on the question of admissibility. Objectively viewed, there is a sufficient nexus between Robinson’s flight and the armed robbery charge to affirm the admission of the flight evidence. Furthermore, he was allowed to present to the jury his alternative explanation of his flight, without referencing the murder investigation.”).

armed robbery charge to affirm the admission of the flight evidence.”); see, e.g., United States v. Lucas, 62 F. App’x 53, 58 (4th Cir. 2003) (“Evidence of flight is problematic only when the circumstances are such that a consciousness of guilt cannot be inferred with confidence from the fact of flight, as when it is not clear that the defendant actually fled, or when he fled in response to an investigation of an unrelated crime, or when it is not clear that he was aware when he fled that he was about to be charged with a crime. In this case, there was no evidence that Lucas became a fugitive for any reason other than to avoid prosecution. Therefore, we conclude that the district court did not err in admitting evidence of the incident in Rhode Island [where Lucas provided a false name to a police officer investigating a traffic accident several months after Lucas fled].”).

Appellant’s evasive actions after he committed the bank robbery constituted clear evidence of his guilty knowledge and intent. See State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (“As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt.”). As such, the trial judge did not abuse his broad discretion in admitting the evidence during Appellant’s trial on the charges stemming from his robbery of the bank. See Walker, 366 S.C. at 656, 623 S.E.2d at 128 (“In South Carolina, a defendant’s flight is admissible evidence. Thus, the trial judge in the instant case did not abuse his discretion by allowing evidence of Walker’s flight.”); see also Al-Amin, 353 S.C. at 413, 578 S.E.2d at 36 (“Flight from prosecution is admissible as evidence of guilt.”). Therefore, Appellant’s convictions should be affirmed.

B. Harmlessness of Any Error in the Admission of the Evidence

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597

(1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) (“No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.”). “When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

In the case at bar, even assuming the trial judge erred in admitting the evidence related to Appellant’s provision of false information to the police officer in Atlanta, any error was entirely harmless in light of the insignificant and cumulative nature of that evidence in relation to the other evidence presented during trial. Initially, notwithstanding the inference of guilty knowledge that could have been drawn from Appellant’s act of making the false statements to the officer, Appellant’s guilty knowledge and intent was also established through the testimony regarding his immediate flight to Atlanta after the robbery, which was introduced during trial without objection, and the testimony regarding his sudden absence from his neighborhood after the robbery, which was presented by numerous witnesses. Such other evidence of guilty knowledge and intent rendered the evidence related to Appellant’s false statements to the officer in

Atlanta cumulative. See State v. Oglesby, 384 S.C. 289, 293, 681 S.E.2d 620, 622 (Ct. App. 2009) (“[T]he admission of improper evidence is deemed harmless if it is merely cumulative to other evidence.”). As a result, any error in the admission of the challenged evidence was harmless.

Furthermore, notwithstanding the cumulative nature of the evidence, the challenged evidence was insignificant when considered in relation to the other evidence presented during trial. Most damagingly, Appellant’s three accomplices in the robbery all identified Appellant as the mastermind behind crime and as the person who actually went into the bank with the gun and committed the robbery. Additionally, other witnesses confirmed Appellant was discussing the bank robbery on the night before the crime and borrowed a pellet gun matching the description of the weapon used during the robbery on the day of the incident. When considering that evidence coupled with the other unchallenged evidence of Appellant’s flight and guilty knowledge, any error in the admission of the evidence of Appellant’s false statements to the law enforcement officer in Atlanta was insignificant and entirely harmless. See Haselden, 353 S.C. at 196, 577 S.E.2d at 448 (finding the erroneous admission of evidence was harmless where its impact was minimal in the context of the entire record); see also State v. Forney, 321 S.C. 353, 358, 468 S.E.2d 641, 644 (1996) (“Evidence of the expressed threat to kill Beth Ann is of minimal impact in the context of the properly admitted evidence of appellant’s use of a deadly weapon during the North Carolina armed robbery. Accordingly, even if evidence of the expressed threat was improper, its impact was minimal in the context of the entire record and any error is harmless beyond a reasonable doubt.”).

In light of the cumulative nature of the challenged evidence and its insignificance in relation to the other evidence presented during trial, the admission of the challenged

evidence during Appellant's trial was entirely harmless. Appellant's conviction should not be reversed based on an alleged error that was too insubstantial to affect the results of his trial. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) (“[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result.”). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

BY: _____

A handwritten signature in dark ink, appearing to read 'Mark R. Farthing', written over a horizontal line.

Mark R. Farthing
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 19, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2011-192066

THE STATE,

Respondent,

vs.

ANTHONY MARQUESE MARTIN,

Appellant.

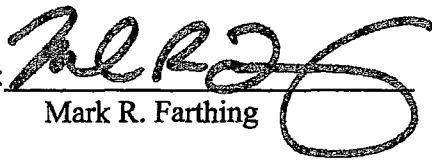
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

BY:


Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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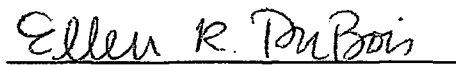
Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 19th day of November, 2012.


ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Anthony Martin, Appellant.

Appellate Case No. 2011-192066

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 5125
Heard April 3, 2013 – Filed May 1, 2013

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia, for Respondent.

CURETON, A.J.: Anthony Martin appeals his convictions for armed robbery and conspiracy to commit armed robbery, arguing the trial court erred in denying his motion to suppress evidence of flight. We affirm.

FACTS

On April 23, 2009, a masked gunman robbed the Bank of America in Aiken of \$12,000. Several months later, Martin was arrested in Atlanta, Georgia. When a

police officer stopped him, Martin gave a false name and date of birth. After confirming his identity with a photograph, the officer arrested him and charged him with giving false information to a law enforcement officer. Martin was later transferred to South Carolina, where he was indicted for armed robbery and conspiracy to commit armed robbery.

I. Motion to Suppress

Immediately prior to trial, Martin moved to suppress evidence of his arrest for giving false information. First, he argued the evidence was of a previous conviction and would constitute improper character evidence under Rule 404 of the South Carolina Rules of Evidence. Second, he contended the false-information incident occurred nearly a year after the robbery, and he had no reason to believe the Georgia authorities were seeking him in connection with the South Carolina robbery. The trial court denied his motion but noted the Georgia authorities could not testify Martin was convicted of giving false information to law enforcement.

II. Trial

At trial, the State presented evidence that Martin, Quinton Harmon, David Dixon, and Roosevelt Johnson had planned and executed the robbery. Harmon had scouted the bank, Dixon had acted as lookout, Martin had entered the bank and demanded money, and Johnson had driven the getaway car.

Eyewitnesses testified bank employees and two customers were present when a man wearing a dark hoodie and a mask that covered his face entered the bank. Witnesses could not identify the man, who ran into the lobby pointing a gun and ordered the employees and customers to get down on the floor. One employee pulled the silent alarm and dialed 911. Another employee, watching from the parking lot as the man ran out of the bank, provided police with a description and the license plate number of the getaway car.

Harmon, Johnson, and Dixon testified they knew Martin as "T-Money." All three men admitted robbing the bank. According to the men, Martin proposed a robbery the day before the incident, and they scouted possible targets the same evening. On the day of the robbery, Johnson picked up the other three men in his red 2005 Mustang. They stopped at a local fast-food restaurant, where Martin obtained a pair of gloves, then traveled to Dixon's home, where Dixon gave Martin a pillowcase and white t-shirt.

Later, the men drove to a car wash near the bank. Harmon went into the bank to "scope it out" and asked the teller questions about opening accounts. According to the men, after Harmon returned to the car and delivered his report, Martin pulled black pants and a black hooded jacket on over his other clothing and wrapped Dixon's white t-shirt around his face. He carried a black handgun.¹ Harmon, Dixon, and Johnson waited in the car while Martin robbed the bank. When he returned, Martin jumped into the car and told Johnson to drive.

As Johnson drove toward Augusta, Georgia, Martin stripped off the black clothing and handed \$300 or \$400 to each of the other men. Indicating he meant to board a bus for Atlanta, Martin directed Johnson to drive to the bus station in Augusta. However, Martin was unable to buy a ticket due to a power outage. The men drove to the local mall, where Martin called a friend to pick him up. The other three men left the mall in Johnson's car.

After the police published a photograph of Harmon taken from the bank's security camera shortly before the robbery, Harmon contacted them. He gave a statement that led to his arrest and to the issuance of arrest warrants for Johnson, Dixon, and Martin. Later, Johnson named the same four men in his statement to the police.² Officers identified Martin's grandmother and obtained from her Martin's full name, date of birth, and physical description. An officer in Gwinnett County, Georgia, provided them with a photograph of a person Johnson and Harmon confirmed was the man they knew as T-Money.

Officer Christopher Poythress of the DeKalb County Police Department testified that on April 13, 2010, he was sent to locate a wanted person at an apartment complex in Atlanta, Georgia. His dispatcher provided the name Anthony Martin, a date of birth, and an address. Finding no one at home, Officer Poythress contacted the leasing office and confirmed Martin stayed at the apartment. As the officer was leaving the complex, he stopped a man fitting the description he received from the leasing agent. Officer Poythress recalled the man denied having any identification but gave the name Troy Brown and a birthdate of The man first claimed to live on the property but then stated he was there to visit

¹ Jacob McKie testified he loaned Martin a small, black pellet gun on the morning of the robbery.

² The police spoke with Johnson first, but in that initial discussion, Johnson claimed to have been at the mall during the robbery.

his sister. Later, after receiving a color photograph of Martin, Officer Poythress confirmed Martin was the man he had stopped.³

In his defense, Martin presented testimony from his mother and grandmother. According to his grandmother, Martin lived with her in South Carolina until Easter Sunday, which was April 12, 2009, when his mother took him back home to Snellville, Georgia. His mother recalled waking him up in Snellville on the day of the robbery and dropping him off near a bus stop so he could look for work.

In its closing argument, the State summarized the testimony, noting Martin had given Officer Poythress "a fake name [and a] fake date of birth and tried to mislead him about what he was doing in that apartment complex." The State concluded its argument by capitalizing on Martin's departure for Atlanta:

The defense asked where did all of that money go? Well[,] that money went to Atlanta, because T-Money took the money and ran. He had his friend come pick him up and take him to Atlanta. When the police tried to approach him and tried to talk to him at that apartment complex. He lied about his name. He lied about his date of birth. He evaded law enforcement. He gave misleading information. So now you have the opportunity to play your part[,] and the [S]tate asks that you go back into that room and deliberate and find this defendant guilty.

The jury convicted Martin of both offenses. He received concurrent sentences of twenty years' imprisonment for armed robbery and five years' imprisonment for criminal conspiracy. This appeal followed.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only and is bound by the factual findings of the circuit court unless clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are

³ It is important to note that Officer Poythress never testified Martin was arrested for giving false information or that he was convicted of that crime.

controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

LAW/ANALYSIS

Martin asserts the trial court erred in refusing to suppress evidence that he gave Officer Poythress false identifying information, because no nexus existed between the false information and the bank robbery. We agree, but we find the error was harmless.

"As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." *State v. McDowell*, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976). This general rule applies to evidence of particular acts, including flight. *State v. Orozco*, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011), *cert. granted* (Oct. 17, 2012). Our supreme court has identified the "critical factor to the admissibility of evidence of flight" as "whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities . . . [and his] actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose." *State v. Pagan*, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006). In addition, this court has held evidence of "unexplained" flight

is admissible as indicating consciousness of guilt, for it is not to be supposed that one who is innocent and conscious of that fact would flee. However, we have further noted that [t]he critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities. Flight evidence is relevant when there is a nexus between the flight and the offense charged. It is sufficient that circumstances justify an inference that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose. Where the circumstances fail to show the necessary nexus between a defendant's flight and the current offense for which he is on trial, the flight evidence is not relevant and should not be admitted.

Orozco, 392 S.C. at 220, 708 S.E.2d at 231 (citations and internal quotation marks omitted). This court has also recognized that South Carolina's rule echoes the federal rule:

[T]he relevance of flight evidence is premised on a nexus between the flight *and the offense charged*. See, e.g., *United States v. Beahm*, 664 F.2d 414, 419-20 (4th Cir. 1981) (finding evidence of flight inadmissible where a defendant flees "after 'commencement of an investigation' unrelated to the crime charged, or of which the defendant was unaware"); *United States v. Foutz*, 540 F.2d 733, 740 (4th Cir. 1976) (stating that evidence of flight should be excluded where defendant flees while being investigated for another crime).

State v. Robinson, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004).

Decisions concerning the admission of flight evidence are subject to a harmless error analysis. *Pagan*, 369 S.C. at 212, 631 S.E.2d at 267. Generally, appellate courts do not set aside a conviction based upon harmless error. *Id.* An error "is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. Thus, an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." *Id.* (citation and internal quotation marks omitted).

I. Totality Test and Nexus Requirement

The State correctly distinguishes between evidence of flight, on the one hand, and the evidence challenged in this appeal, which concerned Martin's dishonest answers to Officer Poythress's questions. However, because flight is merely one form of evasive conduct, we find the totality test used to determine the admissibility of flight evidence is equally useful in determining the admissibility of evidence of other types of evasive conduct.

A court assessing evidence of flight must determine whether "the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities." *Id.* at 209, 631 S.E.2d at 266. This test requires the existence of a nexus between the flight and the offense charged. See, e.g., *Robinson*, 360 S.C. at 195, 600 S.E.2d at 104 (recognizing the nexus requirement).

An alternate explanation for the flight may affect the admissibility of the evidence. *See Orozco*, 392 S.C. at 220, 708 S.E.2d at 231 (noting evidence of "unexplained" flight "is admissible as indicating consciousness of guilt, for it is not to be supposed that one who is innocent and conscious of that fact would flee"). This totality test and its components assist the trial court in determining the relevance of evidence of evasive conduct, as well as in weighing the probative value of that evidence against its prejudicial effect. *See* Rule 401, SCRE ("Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . .").

In the federal courts, "[t]he chain of inferences leading from evidence of flight to consciousness of guilt must lead to consciousness of guilt of the crime charged." *United States v. Porter*, 821 F.2d 968, 976 (4th Cir. 1987). Moreover,

To establish this causal chain, there must be evidence that the defendant fled or attempted to flee and that supports inferences that (1) the defendant's flight was the product of consciousness of guilt, and (2) his consciousness of guilt was in relation to the crime with which he was ultimately charged and on which the evidence is offered.

United States v. Obi, 239 F.3d 662, 665 (4th Cir. 2001). An inference that guilty knowledge motivated the accused to flee "would be completely unfounded where a defendant fle[d] after commencement of an investigation unrelated to the crime charged, or of which the defendant was unaware." *Beahm*, 664 F.2d at 419-20 (internal quotation marks omitted). In *Beahm*, the trial court instructed the jury it could infer guilt from evidence of the accused's flight, which occurred three weeks after the crime but on the same day the accused received a note from an FBI agent requesting that the accused contact him. *Id.* at 416, 420. The appellate court found the instruction to be error because "[i]n essence, the jury was allowed to draw an inference of ultimate guilt from flight based upon an inference that defendant felt guilty after receiving a note from the FBI." *Id.* at 420. The appellate court held evidence must "sturdily support[]" each inference linking the accused's flight to the offense charged. *Id.* Nonetheless, it reversed based upon "[t]he government's failure to substantiate adequately the inference that [Beahm] was aware he was wanted for the crime." *Id.*

Although the general rule covers "any guilty act, conduct, or statements on the part of the accused," the body of law that has developed around this inference of a guilty conscience has primarily concerned flight. *McDowell*, 266 S.C. at 515, 224 S.E.2d at 892. The rationale underlying the admissibility of flight evidence, that "it is not to be supposed that one who is innocent and conscious of that fact would flee," applies to other forms of evasive conduct as well. *See Orozco*, 392 S.C. at 220, 708 S.E.2d at 231. The courts should not suppose a person who knew he was innocent but under suspicion would disguise himself, hide from the police, or lie to officers investigating the crime of which he is suspected. Accordingly, we find the test for determining the admissibility of evidence concerning flight also applies to evidence of evasive conduct.

II. Error

Under the totality test, the State failed to establish a nexus between the robbery of the Bank of America in Aiken and Martin's deceitful answers. The robbery took place in South Carolina on April 23, 2009. Nearly a year later, Officer Poythress, an officer for DeKalb County, Georgia, approached Martin at an apartment complex in Atlanta and asked him about his identity and his business at the apartment complex. Although the officer was uniformed and drove a marked police car, he did not indicate his reason for stopping Martin. Thus, Martin's dishonesty to Officer Poythress was both temporally and geographically remote from the robbery. No evidence indicated the police had previously contacted Martin, he had received a warning about the investigation, or Martin had made statements to others about being sought for the robbery. As in *Beahm*, the State failed to present evidence Martin knew the police suspected him of the Bank of America robbery.

Martin also argues that because he was on probation, he was entitled to an inference his evasive conduct was attributable to his efforts to avoid arrest for violating his probation. We note that, while the State asserted at the suppression hearing that Martin skipped town without telling his probation officer and "[d]id not transfer it back to Atlanta," Martin did not make that argument as the basis for suppressing evidence of his evasive conduct. Thus, he is not entitled to argue such an inference on appeal. *See State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding an appellant may not argue one ground to the trial court and another ground on appeal). Notwithstanding, without an inference that Martin's guilty knowledge of the bank robbery led to his dishonesty with Officer Poythress, the State failed to establish a nexus between the 2009 bank robbery and Martin's

2010 lies to the police. Consequently, the trial court erred in admitting evidence of Martin's attempt to avoid arrest.

III. Prejudice

Nonetheless, we find the trial court's admission of the challenged evidence was harmless. While it is true the eyewitnesses in the bank could not identify the gunman and no forensic evidence linked Martin to the robbery, the State presented ample competent evidence of Martin's guilt. *See Pagan*, 369 S.C. at 212, 631 S.E.2d at 267 (stating "an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached"). Harmon, Johnson, and Dixon testified consistently that Martin had served as the mastermind and the gunman in the robbery for which each of them faced a charge of bank robbery and a possible prison sentence of thirty years. Eyewitness descriptions of the gunman's attire and pillowcase-style money bag comported with the co-conspirators' descriptions of the clothing and bag Martin carried on the day of the robbery. Furthermore, Jacob McKie, a disinterested party, recalled loaning Martin a small, black pellet gun the night before the robbery. In view of this evidence, Officer Poythress's testimony likely had no effect on the jury's determination of guilt. Therefore, any error the trial court committed in admitting the challenged evidence was harmless.

CONCLUSION

We find the test previously articulated for determining the admissibility of evidence of flight applies to evidence of other forms of evasive conduct. In applying this test to the evidence against Martin, we find the State failed to establish a nexus between the April 2009 robbery of the Bank of America in Aiken and Martin's provision of false identifying information to a Georgia police officer the following year. As a result, insufficient evidence was presented to support an inference Martin lied to the officer to avoid prosecution for the Bank of America robbery. However, in view of the evidence presented of Martin's guilt, we find any error in admitting this evidence was harmless beyond a reasonable doubt. Accordingly, the decision of the trial court is

AFFIRMED.

WILLIAMS and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ANTHONY MARTIN,

APPELLANT

APPELLATE CASE NO. 2011-192066

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

Opinion No. 5125

PETITION FOR REHEARING

The Court of Appeals affirmed the above named appellant's conviction and sentence on May 1, 2013. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, appellant submits the following:

Martin argued on appeal that the trial court erred in denying his motion to suppress evidence of flight when he gave a false name and identifying information to police when he was stopped in Atlanta because he knew he was in violation of probation, and the state did not prove that Martin

had knowledge that he was being sought for the bank robbery; therefore there was no nexus between the false information and the bank robbery.

The Court of Appeals held that under the totality test for determining the admissibility of evidence of flight, the state failed to establish a nexus between the April 2009 robbery of the Bank of America in Aiken and Martin's provision of false identifying information to a Georgia police officer the following year. However, the Court found that in view of the evidence of Martin's guilt, any error in admitting this evidence of flight was harmless beyond a reasonable doubt. Thus, the Court affirmed Martin's conviction.

ISSUE: On April 23, 2009, the Bank of America in Aiken County was robbed of approximately \$12,000 by a masked man with a gun. R. 12, ll. 1 – 15; R. 16, ll. 1 – 14; R. 21, ll. 2 – 19; R. 24, ll. 6 – 25; R. 33, ll. 6 – 17. None of the people in the bank could identify the robber since his face was covered. R. 30, ll. 9 – 25; R. 36, ll. 10 – 15; R. 37, ll. 1 – 10; R. 44, ll. 1 – 11; R. 87, ll. 22 – 25; R. 88, ll. 1 – 25; R. 91, ll. 15 – 20; R. 92, ll. 1 – 25; R. 97, ll. 1 – 14.

The day before, on April 22, 2009, Quinton Harmon was at home when his friend, T-Money whom he later identified as Anthony Martin, came to his house. Martin was staying with his grandmother who lived in Harmon's neighborhood. R. 45, ll. 1 – 25; r. 46, ll. 1 – 25.

Harmon's testimony was that Martin brought up the idea of robbing a bank. R. 49, ll. 1 – 25; R. 50, ll. 1 – 15. Later that evening, Harmon called two other friends, Roosevelt Johnson and David Dixon, to come to his house when they planned the robbery. They rode around looking at banks to choose the one to rob. Martin chose the Bank of America. R. 50, ll. 16 – 25; R. 51, ll. 1 – 25; R. 52, ll. 1 – 9.

Each of the four had a role to play in the robbery. Harmon was to go into the bank first to “scope” it out; Dave Dixon was the lookout; and Roosevelt Johnson was to drive the getaway car which was his red Mustang. R. 55, ll. 1 – 18; R. 59, ll. 1- 25; R. 60, ll. 1-8.

The next day, they went to the bank and followed through with their plans. Martin went into the bank. When Martin returned to the car, he said: “I did it, y’all!” R. 56, ll. 9 - R. 60, ll. 25.

They drove to the bus station where Martin tried to buy a bus ticket to Atlanta, but the power was out. They divided the money on the way. They then drove to the mall where Martin called a person to come get him which they did. None of them saw Martin after that. Harmon’s testimony was that Martin said he was going to Atlanta. R. 62, ll. 1 – 25; R. 64, ll. 1 – 25; R. 65, ll. 1 – 25; R. 66, ll. 1 – 3.

Roosevelt Johnson and David Dixon testified at trial as well. Their testimony was basically the same as Harmon’s with a few minor differences. R. 103, ll. 15 – R. 130, ll. 19; R. 134, ll. 14 – R. 155, ll. 9.

The next day, Harmon’s picture from the bank video was in the media as a person of interest. He went and talked to the police and gave a statement. R. 66, ll. 6 – 25. All three admitted they helped rob the bank and were charged with bank robbery. R. 48, ll. 11 – 24; R. 105, ll. 7 – 24; R. 136, ll. 2 – 25.

Detective Luke Sherman of the North Augusta Public Safety Department testified that he investigated the April 23, 2009 robbery of Bank of America. The dye bag had not been placed in the money taken from the bank. They were not able to collect any fingerprints nor any forensic evidence. They called the Aiken County Bloodhound Team but the dogs were not able to track the person. They obtained the picture of Harmon from the bank video and sent it to the media as a person of interest. He was the one who interviewed Harmon. R. 186, ll. 13 – 25; R. 187, ll. 1 – 25;

R. 188, ll. 1 – 25; R. 189, ll. 1 – 25; R. 190, ll. 1 – 24; R. 191, ll. 21 – 25; R. 192, ll. 1 – 25; R. 193, ll. 1 – 19.

Officer Christopher Poythress of the Dekalb County Police Department in Atlanta testified that on April 13, 2010, he received a call in reference to a wanted person by the name of Anthony Martin. He was given his date of birth (DOB) as well. R. 178, ll. 1 – 25; R. 179, ll. 1 – 2. He went to an apartment complex in Atlanta and knocked on the door of apartment . He received no answer. He tried the next day with no luck. The leasing agent gave him a description of Martin. The officer saw Martin coming into the complex and stopped him. R. 178, ll. 15 – 25; R. 179, ll. 3 – 25; R. 180, ll. 1 – 6.

When the officer asked Martin his name, Martin told him his name was Troy Brown and gave him a false DOB. Martin told him at first that he lived in the complex, and then said he was visiting his sister there. R. 180, ll. 6 – 25; R. 181, ll. 1 – 25; R. 182, ll. 1 – 10. Officer Poythress confirmed it was Martin after his sergeant obtained a photo of Martin which matched Martin. R. 181, ll. 2 – 23.

The Court cited the case of State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006), which held that flight evidence was relevant when there was a nexus between the flight and the offense charged.

In Martin's case, there was no evidence presented that he knew he was being sought by the authorities for the bank robbery in Aiken County. None of the co-defendants testified that they told Martin the authorities knew of their involvement. There was no evidence that Martin knew about the picture of Harmon in the media as the testimony was that he left for Atlanta right after the robbery. The solicitor said he was on probation so the evidence was that he reasonably thought he was being sought by probation for a different offense not related to the robbery.

The evidence of flight was prejudicial to Martin because the only evidence against him was the testimony of the three alleged co-defendants who had motivation to lie in order to help themselves since they all had a thirty year charge pending of bank robbery.¹

The Court of Appeals wrote that “a court assessing evidence of flight must determine whether the “totality of the evidence creates an inference that the defendant had knowledge that he was being sought by authorities.” This test requires a nexus between the flight and the offense charged. The court therefore ruled correctly that the state did not establish a nexus between Martin’s alleged flight and the bank robbery.

However, the Court relied on State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) for the rule that decisions concerning the admission of flight evidence are subject to a harmless error analysis. The Court wrote that an error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. The court continued to write from Pagan , Id. that an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.

The Court of Appeals misapprehended the harmless error issue.

The evidence was not reliable against Martin. The three co-defendants were biased as none of them are currently in the Department of Corrections according to the DOC website. They benefitted from testifying against Martin. Harmon and Johnson testified that they hoped to benefit from their testimony, and Dixon said he just wanted to admit what he done. R. 49, ll. 5 -7; R. 105, ll. 15 – 106, ll. 11; R. 136, ll. 17. The robber wore a mask so no witness identified Martin as the robber. He had an alibi as his mother and grandmother testified that he was in Georgia at his mother’s home.

¹ The DOC website indicates none of the co-defendants are currently incarcerated there.

In State v. Morris, 289 S.C. 294, 345 S.E.2d 477 (1986), the Supreme Court wrote that they recognized that where a trial court error is harmless beyond a reasonable doubt, it does not constitute grounds for reversible error. The Court continued to write, however, that “it is a doctrine which should be employed guardedly on a case by case basis.”

In Chaffee v. State and Ferrell v. State, 294 S.C. 88, 362 S.E.2d 875 (1987), the Supreme Court reversed the capital case because the Court found that it was error to deny the defendants the right to present evidence of adaptability to prison life and was unconstitutional. The Court also held that where the prosecutor alluded to the danger the defendant would pose if sentenced to prison, the error was not harmless.

In Martin’s case, the solicitor used the inadmissible evidence to argue guilt:

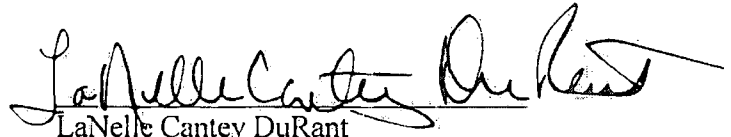
The defense asked where did all of that money go? Well, that money went to Atlanta because T-Money took the money and ran. He had his friend come pick him up and take him to Atlanta. When the police tried to approach him and tried to talk to him at that apartment complex, he lied about his name. He lied about his date of birth. He evaded law enforcement. He gave misleading information.

R. 241, ll. 23 – 25; R. 242, ll. 1 – 5.

Therefore, the error of the admission of flight evidence affected the outcome of the trial and was not harmless.

WHEREFORE, we respectfully request the Court of Appeals to reconsider its decision that the error was harmless.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

This 16th day of May, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY MARTIN,

APPELLANT

APPELLATE CASE NO. 2011-192066

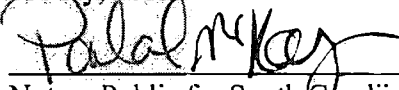
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of May, 2013.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 16th day
of May, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2011-192066

THE STATE,

Respondent,

vs.

ANTHONY MARQUESE MARTIN,

Appellant.

RESPONDENT'S PETITION FOR REHEARING

On May 1, 2013, this Court issued a published opinion in which it affirmed Appellant Anthony Marquese Martin's convictions for armed robbery and criminal conspiracy. State v. Martin, Op. No. 5125 (S.C. Ct. App. filed May 1, 2013). Pursuant to Rule 221(a), SCACR, Respondent ("the State") respectfully petitions for rehearing on the following points the State believes were misapprehended or overlooked by this Court.

Admissibility of the Evidence Regarding Appellant's Untruthful Statements to Law Enforcement Prior to His Arrest

The State respectfully submits this Court overlooked or misapprehended its argument regarding the admissibility of the testimony establishing Appellant provided a false name and made false statements to Officer Christopher Poythress of the DeKalb County Police Department in Atlanta, Georgia, prior to his arrest for the bank robbery. In affirming Appellant's convictions and sentence, this Court concluded the trial judge erred in admitting the testimony related to

Appellant's provision of false statements to Officer Poythress after finding the totality of the circumstances failed to establish a sufficient nexus between the bank robbery and Appellant's guilty conduct but found any error to have been harmless in light of the other evidence presented during trial. Respectfully, the State believes this Court misapprehended the law in regards to the admissibility of guilty conduct evidence, failed to apply the highly deferential standard of review to be applied to evidentiary rulings, and may have overlooked the significant public policy ramifications of its decision. For those reasons, the State asks this Court to reconsider its decision finding error on the part of the trial judge, vacate the portion of its opinion holding that an error occurred, and affirm Appellant's convictions after finding the trial judge properly admitted the testimony regarding Appellant's untruthful statements to Officer Poythress.

Significantly, trial judges have "considerable latitude in ruling on the admissibility of evidence[.]" State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995); see State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009) ("The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion."). On appeal, deference is due to a trial judge's decision to admit evidence. State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010). As a result, a trial judge's decision on evidentiary matters will not be disturbed absent a clear abuse of the trial judge's broad discretion.¹ State v. Crocker, 366 S.C. 394, 408, 621 S.E.2d 890, 897 (Ct. App. 2005); see State v. Washington, 323 S.C. 106, 110, 473 S.E.2d 479, 481 (Ct. App. 1996) ("The admission of evidence is within the sound discretion of the trial court and its ruling will not be disturbed on appeal absent a clear abuse of that discretion.").

¹ In discussing the heavy burden an appellant must carry in order to establish an abuse of discretion on the part of a trial judge in regards to the admission or exclusion of evidence, the Seventh Circuit Court of Appeals has instructed: "Appellants who challenge evidentiary rulings of the district court are like rich men who wish to enter the Kingdom; their prospects compare with those of camels who wish to pass through the eye of a needle." United States v. Glecier, 923 F.2d 496, 503 (7th Cir. 1991).

In regards to evidence of flight or guilty conduct, courts in South Carolina have consistently recognized that “any guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt” and is a circumstance that should be submitted for the jury to consider. State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011); see State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) (“Flight or evasion of arrest is a circumstance to go to the jury.”). Evidence of flight and other guilty conduct is admissible because a defendant’s act of making false or conflicting statements or attempting to flee supports an inference of guilty knowledge and intent on the part of the defendant. State v. Thompson, 278 S.C. 1, 10, 292 S.E.2d 581, 587 (1982), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); see State v. Al-Amin, 353 S.C. 405, 413, 578 S.E.2d 32, 36 (Ct. App. 2003) (recognizing attempts to run away have always been regarded as some evidence of guilty knowledge and intent). Such an inference is appropriate because “it is not to be supposed that one who is innocent and conscious of that fact would flee.” State v. Crawford, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005); see also State v. Freely, 105 S.C. 243, 250, 89 S.E. 643, 645 (1916) (“The flight of one charged with crime has always been held to be some evidence tending to prove guilt. Solomon wrote as a proverb the ‘wicked flee when no man pursueth;’ and Shakespeare made guilty Hamlet to soliloquize that ‘conscience does make cowards of us all.’ ”).

In determining whether evidence of flight or other guilty conduct is admissible, the critical consideration is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by authorities. State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999). Flight or other guilty conduct evidence is relevant so long as there is a nexus between the flight and the offense charged. Pagan, 369 S.C. at 209, 631

S.E.2d at 266. Importantly though, “[i]t is sufficient that circumstances justify **an inference** that the accused’s actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose.” State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005) (emphasis). Thus, evidence of flight or other guilty conduct is admissible where the totality of the circumstances supports an inference that the evidence is connected to the charged offense and should only be excluded where the evidence is clearly linked to another offense in such a manner that an inference of guilt in regards to the charged offense could not legitimately be supported by the evidence. See State v. Robinson, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004) (“Evidence of flight should be excluded when the flight is **clearly** linked to a separate offense for which the defendant is not on trial.” (emphasis added)); see, e.g., United States v. Lucas, 62 F. App’x 53, 58 (4th Cir. 2003) (“Evidence of flight is problematic only when the circumstances are such that a consciousness of guilt cannot be inferred with confidence from the fact of flight, as when it is not clear that the defendant actually fled, or when he fled in response to an investigation of an unrelated crime, or when it is not clear that he was aware when he fled that he was about to be charged with a crime.”).

In the case sub judice, the totality of the circumstances surrounding Appellant’s flight and the other guilty conduct evidence established a logical nexus between the bank robbery and Appellant’s flight and false statements to the law enforcement officer in Atlanta. When objectively viewed as required, the flight and guilty conduct evidence supported an inference of guilty knowledge and intent on Appellant’s part and was not “clearly linked” to some other criminal offense or explanation for the guilty conduct. See Robinson, 360 S.C. at 195, 600 S.E.2d at 104 (“Evidence of flight should be excluded when the flight is clearly linked to a separate offense for which the defendant is not on trial.”). As a result, the circumstances of

Appellant's case warranted the submission of the flight and guilty conduct evidence to the jury, and any alternative inferences that could have been drawn from that evidence inconsistent with guilty knowledge and intent merely went the weight as opposed to the admissibility of the evidence.² Cf. State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 613 (1999) (finding the existence of another possible explanation for Beckham's flight that did not support an inference of guilty knowledge and intent "does not make the evidence of flight inadmissible" and, instead, "merely goes to its weight"). Accordingly, the trial judge did not abuse his broad discretion in admitting the evidence of Appellant's guilty conduct after the robbery.

Viewing the totality of the circumstances in an objective manner, the testimony and evidence presented during trial initially established Appellant immediately fled after committing the bank robbery and travelled to Atlanta shortly after the crime in an effort to evade arrest. See Robinson, 360 S.C. at 196, 600 S.E.2d at 104 ("In reviewing a challenge to the admissibility of [flight] evidence, the inquiry must be an objective one."). Appellant's rapid flight to Atlanta after committing an open, unconcealed criminal offense that resulted in the theft of a large quantity of money from a bank and was observed by numerous witnesses, including one who shot at Appellant as he fled from the bank, supported an obvious inference that the motivation for Appellant's flight was his knowledge of his guilt for the bank robbery and desire to avoid

² In arguing the guilty conduct evidence should not have been admitted, Appellant contended in his appellate brief and during oral argument that his actions in Atlanta might have resulted from him reasonably thinking "he was being sought by probation for a different offense not related to the robbery." (App. Br. p. 9). Notwithstanding the fact that the existence of a potential alternative explanation for the guilty conduct is only relevant in regards to the weight as opposed to the admissibility of that evidence, Appellant's act of absconding to Georgia immediately after the bank robbery without notifying his probation agent strongly supports the obvious inference his flight and subsequent actions were motivated by his desire to avoid being apprehended for the bank robbery even if it meant he would be in violation of the conditions of his probation. See State v. Jackson, 384 S.C. 29, 39, 681 S.E.2d 17, 22 (Ct. App. 2009) (finding that where "more than one reasonable inference may be drawn" from the evidence, "th[o]se inferences must be resolved by the jury, not the court"); see also United States v. Kalish, 690 F.2d 1144, 1155 (5th Cir. 1982) ("That the immediate cause of Kalish's arrest was an unrelated offense does not destroy the permissible inference that Kalish was attempting to avoid being brought to trial for the MR. JAKE operation."). Significantly, the logical inference of guilt to drawn from Appellant's willingness to violate the terms of his probation was the precise reason the solicitor sought to introduce such testimony during trial. (R. pp. 183-185).

prosecution for that crime. Thus, the circumstances surrounding Appellant's flight established a clear nexus existed between the crime and the flight evidence. Cf. Walker, 366 S.C. at 656, 623 S.E.2d at 128 ("[I]t can be inferred from his sudden disappearance that Walker was either expecting the police to arrest him or he was planning his escape."). For that reason, the evidence of Appellant's flight to Atlanta was clearly admissible as evidence of his guilty knowledge and intent in regards to the bank robbery, and this Court does not appear to have reached a conclusion to the contrary in its opinion affirming Appellant's conviction.³ See Al-Amin, 353 S.C. at 413, 578 S.E.2d at 36 ("Flight from prosecution is admissible as evidence of guilt.").

However, although this Court does not appear to have found the nexus between Appellant's flight to Atlanta and bank robbery to be insufficient to warrant the admission of that evidence during trial, this Court did determine the trial judge abused his discretion in finding a sufficient nexus existed between the bank robbery and Appellant's subsequent guilty conduct in Atlanta after he fled there to avoid apprehension for that crime. Respectfully, this Court's determination in that respect was inconsistent with the controlling precedent regarding the standard for admitting flight and other guilty conduct evidence and with the deferential standard of review to be applied to trial judge's discretionary decisions on the admission or exclusion of evidence. Critically, just as Appellant's flight to Atlanta immediately after the crime supported an inference his "actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose[,]" Appellant's actions in providing false statements to a law enforcement officer in Atlanta supported an obvious inference he was motivated to do so to continue to avoid apprehension for the same crime that led him to flee to Atlanta in the first place. Walker, 366 S.C. at 655, 623 S.E.2d at 128; see Thompson, 278 S.C. at

³ Notably, Appellant did not object to the testimony regarding his immediate flight to Atlanta after the bank robbery during trial, and Appellant conceded during oral argument that he was not challenging the admission of that testimony on appeal. (R. pp. 64-66; pp. 115-117; p. 150).

10-11, 292 S.E.2d at 587 (“The statements were introduced to prove appellant attempted to avoid apprehension.”); see also Wright v. State, 319 Ga. App. 723, 729, 738 S.E.2d 310, 317-318 (Ga. Ct. App. 2013) (finding no abuse of discretion in the admission of testimony establishing Wright provided a false name to a police officer when the officer was arresting him four months after the incident for which he was subsequently tried because “Wright’s giving law enforcement a false name when arrested (four months) *after* the Thatcher incident allowed for a reasonable inference that Wright was attempting to elude capture therefor” (*italics in original*)). As a result, the guilty conduct evidence was admissible, and any issue regarding the strength of the inference of guilt was solely a matter of weight for the jury to resolve.⁴ See Pagan, 369 S.C. at 209, 631 S.E.2d at 266 (“It is sufficient that circumstances justify an inference that the defendant’s actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose.”); see also State v. Gerald, 261 S.C. 392, 395, 200 S.E.2d 243, 244 (1973) (“When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.”); State v. Vanderhorst, 257 S.C. 114, 117, 184 S.E.2d 540, 541 (1971) (“When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.”).

In reaching a conclusion to the contrary, this Court determined the evidence regarding Appellant’s evasive and deceitful behavior in Atlanta was inadmissible and the nexus between the guilty conduct evidence and the bank robbery was insufficient due to the temporal and geographic remoteness of the guilty conduct to the bank robbery. However, the fact Appellant

⁴ Although not binding upon the Court, it is notable that this Court recently rejected an appellate contention that flight evidence was inadmissible because the State failed to prove the defendant was aware he was being sought by authorities. See State v. Brown, 2012-UP-71 (S.C. Ct. App. filed Feb. 8, 2012) (finding the trial judge did not err in admitting evidence of Brown’s flight and citing to State v. Crawford, 362 S.C. 627, 636, 608 S.E.2d 886, 891 (Ct. App. 2005), for the proposition that flight evidence is admissible where the “circumstances justify an inference that the accused’s actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose”).

was able to avoid apprehension for a period of months by fleeing to Atlanta did not diminish the logical inference that his flight and subsequent efforts to keep his true identity concealed from law enforcement officers were motivated by the exact same factors that led him to flee to Atlanta immediately after the crime – his knowledge of his guilt for a bank robbery that law enforcement officers unquestionably were aware had been committed and his desire to avoid prosecution for that crime. Thus, neither the fact that time elapsed between the commission of the bank robbery and Appellant’s eventual arrest nor the fact that Appellant was able to distance himself from the scene of the crime rendered evidence of Appellant’s flight and subsequent efforts to evade capture inadmissible. See State v. Hand, 107 Ohio St. 3d 378, 402, 840 N.E.2d 151, 180 (Ohio 2006) (“Hand also argues that joinder was not justified, because more than nine months elapsed between the murders (January 15, 2002) and the escape attempt (October 30, 2002, through November 26, 2002). However, admissibility of evidence of flight **does not depend upon how much time passes between the offense and the defendant’s flight.**” (emphasis added)); see also Jordan v. United States, 324 F.2d 178, 178 (5th Cir. 1963) (“[Jordan] first urges that it was error to admit testimony that when he was arrested, about eight months after the offense, he gave a fictitious name. The evidence was admissible both as justifying an inference of guilt by hiding under an assumed name and as proof of identity.”); Straight v. State, 397 So. 2d 903 (Fla. 1981) (finding testimony that Straight fired shots at police officers who approached him in California was admissible as guilty conduct evidence in his trial for a murder committed in Florida).

Significantly, this Court’s decision to the contrary could have serious public policy ramifications by encouraging criminals to more carefully plan their crimes and quickly escape before an investigation into the crime can begin and progress. In effect, the exclusion of flight or other guilty conduct evidence at trial based on the fact that a criminal was able to successfully

escape and temporarily avoid apprehension after a crime would create an incentive for criminals to flee and try to mislead law enforcement officers and would reward criminals' evasive actions by allowing those who flee the fastest and the farthest to take whatever steps they wish to conceal their identities, undermine the efforts of law enforcement officers trying to solve crimes, and avoid prosecution and punishment without the risk of having their evasive and guilty conduct used to prove their guilt if they are unsuccessful in their efforts to avoid arrest. Such a reward or incentive is manifestly unjust and should not be permitted.

In Appellant's case, the testimony and evidence presented during trial established Appellant immediately fled to Atlanta after committing a bank robbery with full awareness the crime had been discovered as it was witnessed by numerous people and shots were fired at him as he ran to his accomplices' vehicle to escape. See State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) ("As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt."). Furthermore, the testimony and evidence established Appellant provided false information to a law enforcement officer in Atlanta a number of months after he successfully fled there to avoid apprehension for the bank robbery. See Town of Hartsville v. Munger, 93 S.C. 527, 529, 77 S.E. 219, 219 (1913) ("False and conflicting statements and attempts to run away have always been regarded as some evidence of guilty knowledge and intent."); see also United States v. Simpson, 910 F.2d 154, 158-159 (4th Cir. 1990) ("Appellant's Jamaican citizenship may show a manifestation of his consciousness of guilt when he lied about his true identity. . . . There is nothing unfair about showing that appellant . . . lied about his identity when caught with the gun in his possession."). Under those circumstances, there was a clear nexus between Appellant's flight and the bank robbery and a clear nexus between Appellant's flight after the bank robbery and subsequent

guilty conduct, and that guilty conduct supported a logical and obvious inference that Appellant's evasive behavior was designed to enable him to avoid apprehension for the crime that motivated him to flee to Atlanta. See Crawford, 362 S.C. at 636, 608 S.E.2d at 891 ("It is sufficient that circumstances justify an inference that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose."). Accordingly, the trial judge did not abuse his broad discretion in admitting the guilty conduct evidence, and it was for the jury to decide what weight to assign to that evidence. See State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005) ("Flight or evasion of arrest is an issue for the jury to consider.").

For the foregoing reasons, the State respectfully believes this Court misapprehended the relevant law regarding the admissibility of evidence of guilty conduct on the part of the accused, overlooked the standard of review to be applied when reviewing decisions regarding the admission or exclusion of evidence, and overlooked the public policy dangers of its decision. See Walker, 366 S.C. at 655, 623 S.E.2d at 128 ("It is sufficient that circumstances justify an inference that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose."); Robinson, 360 S.C. at 195, 600 S.E.2d at 104 ("Evidence of flight **should be excluded when the flight is clearly linked to a separate offense** for which the defendant is not on trial." (emphasis added)); see also Crocker, 366 S.C. at 408, 621 S.E.2d at 897 (" 'The admission or exclusion of evidence is a matter within the sound discretion of the trial court and absent clear abuse, will not be disturbed on appeal.' " (citation omitted)). As a result, the State respectfully asks this Court to reconsider its decision in light of the controlling South Carolina precedent regarding guilty conduct evidence and in light of the deferential standard of review to be applied when reviewing trial

judges' decisions on evidentiary matters, vacate the portion of its opinion where it found the testimony regarding Appellant's false statements to the law enforcement officer in Georgia to be inadmissible, and affirm Appellant's conviction after finding the trial judge properly admitted the relevant and probative evidence of Appellant's guilty conduct.⁵

Conclusion

Based on the foregoing coupled with the arguments raised in the Final Brief of Respondent and during oral argument, Respondent respectfully requests that the panel reconsider this matter, vacate a portion of its opinion, and affirm Appellant's conviction and sentence after finding the trial judge properly admitted the evidence related to Appellant's provision of false statements to the law enforcement officer in Georgia prior to his arrest.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

By: 
Mark R. Farthing

⁵ Notwithstanding this Court's holding regarding the admissibility of the testimony regarding Appellant making false statements to Officer Poythress prior to his arrest, the State believes this Court correctly determined any error would have been harmless in light of the insignificance of the challenged evidence when considered in relation to the other competent evidence of Appellant's guilt presented during trial, which included testimony from all of Appellant's accomplices implicating him in the bank robbery and testimony establishing Appellant fled to Atlanta immediately after he committed the crime. See *State v. Bryant*, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."); *State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding the erroneous admission of evidence was harmless where its impact was minimal in the context of the entire record); see also *State v. Forney*, 321 S.C. 353, 358, 468 S.E.2d 641, 644 (1996) ("Evidence of the expressed threat to kill Beth Ann is of minimal impact in the context of the properly admitted evidence of appellant's use of a deadly weapon during the North Carolina armed robbery. Accordingly, even if evidence of the expressed threat was improper, its impact was minimal in the context of the entire record and any error is harmless beyond a reasonable doubt.").

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

May 16, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2011-192066

THE STATE,

Respondent,

vs.

ANTHONY MARQUESE MARTIN,

Appellant.

PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within Respondent's Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 16th day of May, 2013.


ANGELA S. BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State, Respondent,

v.

Anthony Martin, Appellant.

Appellate Case No. 2011-192066

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ORDER

After careful consideration of Appellant's and Respondent's petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

H. B. Wa J.

O. A. Q. J.

Jasper M. Curators A.J.

Columbia, South Carolina

cc:

LaNelle Cantey DuRant

Mark Reynolds Farthing

FILED

June 20, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Doyet A. Early, III, Circuit Court Judge

Opinion No. 5125 (S.C. Ct. App. filed 5/1/2013)

10-GS-02-666

THE STATE,

RESPONDENT/PETITIONER,

V.

ANTHONY MARTIN,

PETITIONER/RESPONDENT

APPELLATE CASE NO. 2013-001572

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 6/20/2013.

QUESTION PRESENTED

Whether the Court of Appeals correctly held that the trial court's error in admitting evidence of flight when Martin gave a false name and identifying information to police when he was stopped in Atlanta in April 2010 because the state failed to establish a nexus between the April 2009 Bank of America robbery and Martin's provision of false name information to police in Atlanta was harmless?

STATEMENT OF THE CASE

On April 19, 2010 the Aiken County Grand Jury indicted Anthony Marquese Martin on the charge of armed robbery (AR). On June 21, 2010, the Grand Jury indicted Martin on the charge of criminal conspiracy to commit the armed robbery. On April 25-27, 2011, Martin proceeded to trial before the Honorable Doyet A. Early, III, and a jury. Martin was represented by C. David Hayes and Degrant Gibbons. The state was represented by Suzanna M. Ringler and Elizabeth B. Young. The jury returned verdicts of guilty on both charges as indicted. Judge Early sentenced Martin to twenty years on the AR and five years on the conspiracy, to run concurrently. App. 273, ll. 12 – 22.

Martin filed an appeal which was perfected by the Division of Appellate Defense of the Commission on Indigent Defense. After oral argument, the Court of Appeals published an opinion affirming Martin's convictions and sentences. State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (Ct. App. filed May 1, 2013). App. 318 – 326.

Martin and the state filed petitions for rehearing. Both were denied on June 20, 2013. App. 348. The state filed a petition for a writ of certiorari in the Supreme Court on August 6, 2013. This is Mr. Martin's petition for a writ of certiorari.

ARGUMENT

The Court of Appeals erred in holding that the trial court's error in admitting evidence of flight when Martin gave a false name and identifying information to police when he was stopped in Atlanta in April 2010 because the state failed to establish a nexus between the April 2009 Bank of America robbery and Martin's provision of false information to police in Atlanta was harmless.

On April 23, 2009, the Bank of America in Aiken County was robbed of approximately \$12,000 by a masked man with a gun. R. 12, ll. 1 – 15; R. 16, ll. 1 – 14; R. 21, ll. 2 – 19; R. 24, ll. 6 – 25; R. 33, ll. 6 – 17. None of the people in the bank could identify the robber since his face was covered. R. 30, ll. 9 – 25; R. 36, ll. 10 – 15; R. 37, ll. 1 – 10; R. 44, ll. 1 – 11; R. 87, ll. 22 – 25; R. 88, ll. 1 – 25; R. 91, ll. 15 – 20; R. 92, ll. 1 – 25; R. 97, ll. 1 – 14.

The day before, on April 22, 2009, Quinton Harmon was at home when his friend, T-Money whom he later identified as Anthony Martin, came to his house. Martin was staying with his grandmother who lived in Harmon's neighborhood. R. 45, ll. 1 – 25; r. 46, ll. 1 – 25.

Harmon claimed that Martin brought up the idea of robbing a bank. R. 49, ll. 1 – 25; R. 50, ll. 1 – 15. Later that evening, Harmon called two other friends, Roosevelt Johnson and David Dixon, to come to his house where they planned the robbery. They rode around looking at banks to choose the one to rob. Martin chose the Bank of America. R. 50, ll. 16 – 25; R. 51, ll. 1 – 25; R. 52, ll. 1 – 9.

Each of the four had a role to play in the robbery. Harmon was to go into the bank first to "scope" it out; Dave Dixon was the lookout; and Roosevelt Johnson was to drive the getaway car which was his red Mustang. Allegedly, Martin was to do the actual robbery. R. 55, ll. 1 – 18; R. 59, ll. 1-25; R. 60, ll. 1-8.

The next day, they went to the bank and followed through with their plans. Martin went into the bank. When Martin returned to the car, he said: "I did it, y'all!" R. 56, ll. 9 - R. 60, ll. 25.

They drove to the bus station where Martin tried to buy a bus ticket to Atlanta, but the power was out. They divided the money on the way. They then drove to the mall where Martin called someone who picked him up. None of them saw Martin after that. Harmon alleged that Martin said he was going to Atlanta. R. 62, ll. 1 - 25; R. 64, ll. 1 - 25; R. 65, ll. 1 - 25; R. 66, ll. 1 - 3.

Roosevelt Johnson and David Dixon testified at trial as well. Their testimony was basically the same as Harmon's with a few minor differences. R. 103, ll. 15 - R. 130, ll. 19; R. 134, ll. 14 - R. 155, ll. 9.

The day after the robbery, Harmon's picture from the bank video was in the media as a person of interest. He went and talked to the police and gave a statement. R. 66, ll. 6 - 25. All three admitted they helped rob the bank and were charged with bank robbery. R. 48, ll. 11 - 24; R. 105, ll. 7 - 24; R. 136, ll. 2 - 25.

Detective Luke Sherman of the North Augusta Public Safety Department testified that he investigated the April 23, 2009 robbery of Bank of America. The dye bag had not been placed in the money taken from the bank. They were not able to collect any fingerprints nor any forensic evidence. The Bloodhound Team was not able to track anyone. They obtained the picture of Harmon from the bank video and sent it to the media as a person of interest. Sherman was the one who interviewed Harmon. R. 186, ll. 13 - 25; R. 187, ll. 1 - 25; R. 188, ll. 1 - 25; R. 189, ll. 1 - 25; R. 190, ll. 1 - 24; R. 191, ll. 21 - 25; R. 192, ll. 1 - 25; R. 193, ll. 1 - 19.

Officer Christopher Poythress of the Dekalb County Police Department in Atlanta testified that on April 13, 2010, almost a year after the robbery, he received a call in reference to a wanted

person by the name of Anthony Martin. He was given his date of birth (DOB) as well. R. 178, ll. 1 – 25; R. 179, ll. 1 – 2. He went to an apartment complex in Atlanta and knocked on the door of apartment He received no answer. He tried the next day with no luck. The leasing agent gave him a description of Martin. The officer saw Martin coming into the complex and stopped him. R. 178, ll. 15 – 25; R. 179, ll. 3 – 25; R. 180, ll. 1 – 6.

When the officer asked Martin his name, Martin told him his name was Troy Brown and gave him a false DOB. Martin told him at first that he lived in the complex, and then said he was visiting his sister there. R. 180, ll. 6 – 25; R. 181, ll. 1 – 25; R. 182, ll. 1 – 10. Officer Poythress confirmed it was Martin after his sergeant obtained a photo of Martin which matched Martin. R. 181, ll. 2 – 23.

During pretrial, the state told the court that they planned to introduce evidence of flight based on the fact that Martin provided a false name, false DOB, and gave misleading information as to why he was at the apartment complex. The solicitor also wanted to introduce supporting evidence that Martin was on probation and left probation without providing notice to his agent and without transferring his probation to Georgia. R. 7, ll. 20 – 25; R. 8, ll. 1 – 21.

Defense counsel argued that his motion was two fold. Martin was convicted of providing false information to the police in Dekalb County. Counsel argued that should not be admitted pursuant to rule 404, SCRE. The judge said they would not have to say he was convicted but only what he did. R. 8, ll. 21 – 25; R. 9, ll. 1 – 13.

Defense counsel then argued that the state would have to prove each “link of the chain of inferences leading to the conclusion” of evidence of flight. He argued that Martin was picked up almost a year after the crime. Counsel argued that there was no evidence that Martin knew that the

investigation of the bank robbery was taking place or that the police in Dekalb County were seeking him for armed robbery in Aiken County. R. 9, ll. 14 – 25; R. 10, ll. 1 – 22.

The judge denied defense counsel's motion to suppress any evidence of flight. R. 10, ll. 23 – 24. The judge denied the state's motion to introduce evidence regarding Martin's probation. R. 184, ll. 1 – 25; R. 185, ll. 1 – 24.

When the state introduced the evidence of the false information that Martin provided to the Atlanta police, defense counsel objected based on his pretrial motion. R. 180, ll. 1 – 14.

In her closing argument, the solicitor argued:

The defense asked where did all of that money go? Well, that money went to Atlanta because T-Money took the money and ran. He had his friend come pick him up and take him to Atlanta. When the police tried to approach him and tried to talk to him at that apartment complex, he lied about his name. He lied about his date of birth. He evaded law enforcement. He gave misleading information.

R. 241, ll. 23 – 25; R. 242, ll. 1 – 5.

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Supreme Court declined to hold that flight alone was substantial circumstantial evidence of a defendant's guilt.

In State v. Crawford, 362 S.C. 627, 608 S.E.2d 886 (Ct. App. 2005), the Court of Appeals held that flight from prosecution was admissible as evidence of guilt.

In State v. Orozco, 392 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011), the Court of Appeals wrote that the critical factor to the admissibility of evidence of flight was whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities. The Court cited the case of State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006), which held that flight evidence was relevant when there was a nexus between the flight and the offense charged.

In Martin's case, there was no evidence presented that he knew he was being sought by the authorities for the bank robbery in Aiken County. None of the co-defendants testified that they told Martin the authorities knew of their involvement. There was no evidence that Martin knew about the picture of Harmon in the media as the testimony was that he left for Atlanta right after the robbery. The solicitor said he was on probation so the evidence was that he reasonably thought he was being sought by probation for a different offense not related to the robbery.

The Court of Appeals correctly held that under the totality test for determining the admissibility of evidence of flight, the state failed to establish a nexus between the April 2009 robbery of the Bank of America in Aiken and Martin's provision of false identifying information to a Georgia police officer the following year.

However, the Court erred in finding that in view of the evidence of Martin's guilt, any error in admitting this evidence of flight was harmless beyond a reasonable doubt. Thus, the Court affirmed Martin's conviction. This was in error. The Court misapprehended the harmless error.

The Court relied on State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) for the rule that decisions concerning the admission of flight evidence are subject to a harmless error analysis. The Court wrote that an error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. The court continued to write from Pagan , Id. that an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.

The Court of Appeals misapprehended the harmless error issue.

Pagan can be distinguished because the defendant was arrested and released on bond. He subsequently sped away in a car when police chased him. The defendant later that night told a witness Lambert that he ran because he was accused of killing a girl. The eyewitness to the murder

was not charged with a crime. The Supreme Court ruled that evidence of flight was not admissible but the error was harmless.

The evidence was not reliable against Martin. The three co-defendants were biased as they were charge with this serious crime but, none of them are currently in the Department of Corrections according to the DOC website. They benefitted from testifying against Martin. Harmon and Johnson testified that they hoped to benefit from their testimony, and Dixon said he just wanted to admit what he done. R. 49, ll. 5 -7; R. 105, ll. 15 – 106, ll. 11; R. 136, ll. 17. The robber wore a mask so no witness identified Martin as the robber. He had an alibi as his mother and grandmother testified that he was in Georgia at his mother's home.

In State v. Morris, 289 S.C. 294, 345 S.E.2d 477 (1986), the Supreme Court wrote that they recognized that where a trial court error is harmless beyond a reasonable doubt, it does not constitute grounds for reversible error. The Court continued to write, however, that “it is a doctrine which should be employed guardedly on a case by case basis.”

In Chaffee v. State and Ferrell v. State, 294 S.C. 88, 362 S.E.2d 875 (1987), the Supreme Court reversed the capital case because the Court found that it was error to deny the defendants the right to present evidence of adaptability to prison life and was unconstitutional. The Court also held that where the prosecutor alluded in closing argument to the danger the defendant would pose if sentenced to prison, the error was not harmless.

In Martin's case, the solicitor used the inadmissible evidence to argue guilt:

The defense asked where did all of that money go? Well, that money went to Atlanta because T-Money took the money and ran. He had his friend come pick him up and take him to Atlanta. When the police tried to approach him and tried to talk to him at that apartment complex, he lied about his name. He lied about his date of birth. He evaded law enforcement. He gave misleading information.

R. 241, ll. 23 – 25; R. 242, ll. 1 – 5.

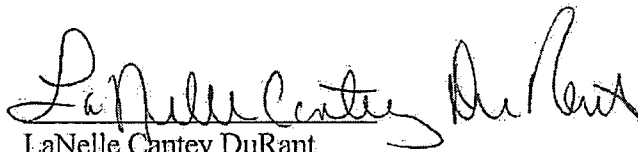
Therefore, the error of the admission of flight evidence affected the outcome of the trial and was not harmless. The Court of Appeals did not address why the solicitor's hard hitting argument based on erroneously admitted evidence did not, beyond a reasonable doubt, contribute to the verdict. The evidence was prejudicial to Martin because the only evidence against him was the testimony of the three alleged co-defendants who had motivation to lie in order to help themselves since they all had a thirty year charge pending of bank robbery.¹

¹ The DOC website indicates none of the co-defendants are currently incarcerated there.

CONCLUSION

Based on the above, certiorari should be granted, and the convictions and sentences should be reversed, and the case remanded for a new trial.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER.

This 18th day of September, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 5125 (S.C. Ct. App. filed 5/1/2013)
10-GS-02-666

THE STATE,

RESPONDENT/PETITIONER,

V.

ANTHONY MARTIN,

PETITIONER/RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari, in this case has been served on Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and the S.C. Court of Appeals, this 18th day of September, 2013.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of September, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2013-001572

THE STATE,

Respondent/Petitioner,

vs.

ANTHONY MARQUESE MARTIN,

Petitioner/Respondent.

**RETURN TO PETITIONER/RESPONDENT'S
PETITION FOR WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT/PETITIONER

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STATEMENT OF ISSUE ON CERTIORARI

The Court of Appeals correctly determined any error resulting from the admission of the testimony establishing Martin provided a false name and other false information to a law enforcement officer in the city that Martin fled to after committing a bank robbery was harmless because the other evidence presented during trial, which included the testimony of all three of Martin's accomplices identifying him as the person who committed the bank robbery and other testimony establishing Martin immediately fled to Atlanta and was absent from his neighborhood after the crime, conclusively established Martin's guilt for the offenses of armed robbery and criminal conspiracy.

STATEMENT OF THE CASE

Procedural History

In April of 2010, Petitioner/Respondent Anthony Marquese Martin was arrested in Atlanta, Georgia, following an investigation into the armed robbery of a North Augusta branch of Bank of America in April of 2009. Shortly after Martin was arrested, the Aiken County grand jury indicted him for one count of armed robbery. In June of 2010, the Aiken County grand jury additionally indicted Martin for one count of criminal conspiracy. On April 25, 2011, a jury trial was commenced in the Aiken County court of general sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. At the conclusion of trial, the jury convicted Martin as indicted. Following the verdict, the trial judge sentenced Martin to concurrent terms of imprisonment of twenty years for armed robbery and five years for criminal conspiracy. Martin then timely filed and perfected an appeal.

Subsequently, following oral argument, the Court of Appeals issued a published opinion unanimously affirming Martin's convictions.¹ State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (Ct. App. 2013). Both Martin and the State petitioned the Court of Appeals for rehearing, and the petitions were denied. The State then filed a petition for a writ of certiorari in the Supreme Court, and Martin subsequently filed his own petition for a writ of certiorari along with a return to the State's petition.

Factual History

At around 12:00 p.m. on April 23, 2009, Mona Floyd, a teller at a Bank of America branch in North Augusta, South Carolina, was working at her counter when a man entered the bank. (R. pp. 16-17; p. 19). The man approached her at the counter,

¹ This opinion was filed on May 1, 2013, as Opinion No. 5125.

asked a few questions about different types of accounts, looked around the bank, and then left after only a minute or two. (R. pp. 19-20). After the man left, Floyd requested more money to handle the needs of any customers who might come in and received \$12,000 in cash from the vault. (R. pp. 20-21). A few minutes later, another man entered the bank, ordered everyone inside to get onto the floor, pointed a gun, threw a pillow case at Floyd, and stated: "Put the money in the bag, [b]itch." (R. pp. 22-24; p. 31; p. 33; p. 93). Floyd put the money from the vault into the man's pillow case, and the robber, who was wearing a dark hoodie and something over his face, demanded more money in larger denominations. (R. pp. 23-24; p. 33; p. 90; p. 94). In response, Floyd tried to remove the smaller denominations from the pillow case, but the robber grabbed it and fled. (R. p. 23; p. 35; pp. 90-91). Floyd then triggered an alarm, and another bank employee called 911 to report the robbery. (R. p. 25; pp. 34-35).

Meanwhile, Tammy Murphy, another teller at the Bank of America branch, was getting into her car in the parking lot when she observed a man wearing black hooded clothing and something over his face run out of the bank. (R. pp. 37-40). Murphy realized the man just robbed the bank, and she saw a customer in the parking lot yell at the robber and then fire shots at him when the robber did not stop. (R. pp. 40-41; p. 189). Patricia Christopher, who was at a car wash next to the bank, heard the gunshots, believed the sound was from firecrackers, and then observed a red Ford Mustang quickly leaving the area.² (R. p. 56; pp. 131-132). Christopher saw two men in the front seats of the car, but she was unable to see if anyone was in the rear seats because the vehicle was moving too rapidly. (R. p. 133).

² Murphy also observed the red Ford Mustang, and she was able to obtain the vehicle's license plate number. (R. pp. 42-43; p. 191).

Shortly thereafter, Detective Luke Sherman of the North Augusta Department of Public Safety responded to the scene of the robbery and spoke with the witnesses inside of the bank. (R. pp. 186-187). He learned a black male wearing all black clothing, a hoodie, and gloves entered the bank, pointed a gun, demanded money, and absconded with \$12,000 in cash. (R. p. 187). The detective further learned a person behaving in a suspicious manner came into the bank shortly before the robbery and a red Ford Mustang was observed leaving the scene. (R. p. 188; p. 191). Detective Sherman then obtained a photograph of the suspicious person and released it to the media. (R. p. 188).

Subsequently, Detective Sherman went to the home of Roosevelt Johnson, who owned a red Ford Mustang and was stopped by law enforcement officers on two separate occasions on the day of the crime, and attempted to speak to him about the robbery. (R. pp. 193-194). However, Johnson claimed he was at the mall during the relevant time frame and requested to speak with an attorney. (R. pp. 193-194). Detective Sherman then left Johnson's home but saw a red Ford Mustang that appeared to have been recently washed in Johnson's driveway. (R. p. 194).

On the day after the robbery, Quinton Harmon, the suspicious man who entered the bank shortly before the robbery, learned his photograph was printed in the newspaper in connection to the robbery. (R. p. 66). In response, Harmon spoke with a friend in law enforcement and then went to the police headquarters to discuss the robbery. (R. pp. 66-67; p. 70; pp. 191-192). At the police headquarters, Harmon met with Detective Sherman and initially claimed he was brought to the bank by his girlfriend in order to open an account. (R. pp. 66-67; pp. 70-71; p. 192). However, Detective Sherman called Harmon's attention to some inconsistencies in his version of events, and Harmon confessed to being involved in the robbery. (R. pp. 71-74; p. 192). Additionally,

Harmon implicated Johnson, David Dixon, and a man who went by "T-Money" in the crime. (R. pp. 192-193). Thereafter, Harmon, Johnson, and Dixon were all arrested and charged for their roles in robbing the bank. (R. p. 48; p. 105; p. 136; p. 193).

During the course of the investigation into the incident, Detective Sherman learned "T-Money" attempted to purchase a bus ticket to Atlanta immediately after the robbery but his grandmother still lived near Harmon. (R. pp. 196-197). Through that information, Detective Sherman discovered the mother of "T-Money" lived in Snellville, Georgia. (R. p. 197). In response, he asked officers in Georgia to go to the mother's home, and they were able to obtain Petitioner/Respondent Anthony Marquese Martin's name and date of birth from Martin's grandmother, who was at Martin's mother's home. (R. pp. 197-198). Detective Sherman then acquired a photograph of Martin and showed it to Harmon and Johnson. (R. p. 198). Both of the men identified Martin as "T-Money." (R. p. 198).

Thereafter, on April 13, 2010, Officer Christopher Poythress of the DeKalb County Police Department in Atlanta, Georgia, was notified Martin might be staying at an apartment complex in the area. (R. p. 178). Officer Poythress went to the apartment complex looking for Martin, did not get a response when he knocked on the door to the apartment that Martin was believed to be staying at, and left for the day. (R. pp. 178-179). However, Officer Poythress returned the next day, spoke with an employee at the apartment complex, confirmed Martin stayed there, and learned Martin was seen earlier walking up a nearby street. (R. p. 179). The officer then observed Martin walking back towards the apartment complex and stopped him. (R. pp. 179-180). After stopping him, Officer Poythress asked Martin what he was doing at the apartment complex, and Martin claimed to live there. (R. p. 180). The officer then asked Martin for his name, date of

birth, and identification. (R. pp. 180-181). Martin responded that his name was "Troy Brown" and provided a false date of birth. (R. pp. 180-181). The officer then again asked Martin what he was doing at the apartment complex, and Martin offered a different explanation than he originally provided, claiming he was there to visit his sister. (R. pp. 180-181). In response, Officer Poythress detained Martin until his identity could be verified, used a photograph of Martin to confirm his identity, and discovered Martin had provided a false name and date of birth. (R. p. 181). Martin was subsequently arrested, transported to South Carolina, and indicted for armed robbery and criminal conspiracy, and he proceeded to trial. (R. p. 6; pp. 270-273).

At the outset of trial, the solicitor noted she intended to introduce testimony and evidence establishing Martin fled to Atlanta after the robbery and provided false information to law enforcement officers in Atlanta several months later when they went to arrest him. (R. pp. 7-8). The solicitor further asserted she intended to introduce evidence establishing Martin was on probation at the time of the robbery and fled to Georgia without providing notice and without transferring his probation. (R. p. 8). In response, Martin objected to the admission of any evidence related to his flight to Georgia. (R. pp. 8-9). Initially, Martin argued he was convicted of giving a false name and information to the officer in Georgia and, therefore, that particular evidence was inadmissible character evidence. (R. pp. 7-8). Furthermore, Martin argued the flight evidence itself was inadmissible because there was no evidence establishing that he knew the investigation into the robbery was taking place or the police in Georgia were seeking him in connection to the robbery. (R. pp. 9-10). However, Martin acknowledged he was alleged to have fled to Georgia on the same day as the robbery. (R. p. 9). After

considering the arguments of counsel, the trial judge denied the motion to exclude the evidence.³ (R. p. 10).

Thereafter, during trial, Martin's accomplices testified about their involvement in the robbery and implicated Martin as the mastermind of the crime. (R. pp. 48-49; p. 105; p. 107; p. 136; p. 138). Harmon testified Martin approached him the day before the robbery and told him he wanted to "hit a lick," which meant commit a robbery. (R. pp. 49-50). Harmon stated they subsequently met up with Johnson and Dixon along with several other people and determined which bank they were going to rob. (R. pp. 50-52). The next day, Harmon indicated Johnson picked him up, and Martin and Dixon were already in Johnson's red Ford Mustang. (R. pp. 52-53). He testified they then went to a Popeye's restaurant, and Martin went inside and returned with some clear plastic gloves.⁴ (R. pp. 53-54). Harmon stated they then went to Dixon's house, Martin got a pillow case and a white t-shirt from Dixon, and Martin assigned each of them a role in the robbery. (R. pp. 55-56). Harmon indicated his role was to go into the bank before the robbery and determine how many people were inside. (R. pp. 55-56). Thereafter, Harmon testified they went to a car wash next to the bank, he went into the bank to determine how many people were inside, and he spoke with a teller about opening a bank account. (R. pp. 56-58). After he returned from the bank, Harmon stated Martin changed into all black clothing, put the white t-shirt he got from Dixon over his face, and then went into the bank. (R. pp. 58-59). A few seconds later, Harmon indicated they heard gunshots and saw Martin running back to the car with a black handgun. (R. pp. 59-62). Harmon

³ However, during trial, the trial judge declined to allow the solicitor to admit any testimony related to the fact that Martin was on probation at the time of the robbery because the trial judge concluded such evidence was unduly prejudicial, cumulative, and unnecessary. (R. pp. 183-185).

⁴ The surveillance footage of the robbery showed the robber was wearing clear plastic gloves. (R. p. 54).

testified Martin jumped into the car, told them he did it, and ordered Johnson to drive. (R. pp. 60-61). As they were driving away from the bank, Harmon stated Martin divided the money between them, put his share into the backpack, transferred the other items from his backpack into the pillow case, and gave it to a friend they encountered on the street. (R. pp. 62-63). Harmon testified they then went to a bus station because Martin stated he was going to go to Atlanta, the bus station was closed because the power was off, and they went to the mall and stayed there until Martin was able to obtain a ride away from the area.⁵ (R. pp. 64-66). As Martin was leaving the mall, Harmon indicated Martin again stated he was going to Atlanta. (R. pp. 65-66). Harmon testified he then left the mall with Johnson and Roosevelt and was subsequently arrested for the robbery. (R. pp. 66-67).

Following Harmon's testimony, Johnson and Dixon testified about the planning and execution of the robbery in a substantially similar manner to Harmon and confirmed Martin stated he was going to Atlanta after the crime. (R. pp. 106-119; pp. 137-152). In addition to the testimony of Martin's accomplices, Detective Sherman testified about his investigation into the robbery and his discovery of Martin's identity, and Officer Poythress recounted the details of his encounter with Martin in Atlanta during which Martin provided a false name and date of birth.⁶ (R. pp. 178-182; p. 186; pp. 196-198). Additionally, Jacob McKie, Harmon's cousin, confirmed Martin was present at Harmon's house on the night before the robbery and stated he provided Martin with a pellet gun that looked like a black handgun on the morning of the robbery. (R. pp. 172-174; pp. 176-

⁵ During trial, Anthony Costello, an electrical contractor, testified he was working on the Greyhound bus station on April 23, 2009, and the power was out at the station from around 10:30 a.m. or 11:00 a.m. until 6:00 p.m. or 7:00 p.m. (R. pp. 98-99).

⁶ During Officer Poythress' testimony, Martin's defense counsel renewed his earlier objection, and the trial judge overruled the objection. (R. p. 180).

177). McKie further testified the pellet gun was never returned to him and he did not see Martin in the area again after the robbery. (R. pp. 174-175). Furthermore, Harmon's brother testified he overheard Martin discussing the bank robbery with Harmon on the day before the incident, and Harmon's sister stated Martin attempted to sleep at their home on the night before the robbery until he was forced to leave by her mother.⁷ (R. pp. 161-162; p. 164; pp. 166-167; p. 169).

Subsequently, during her closing argument, the solicitor briefly mentioned Martin's flight to Atlanta and attempt to deceive the arresting officer subsequent to the robbery, stating:

The defense asked where did all of that money go? Well that money went to Atlanta, because T-Money took the money and ran. He had his friend come pick him up and take him to Atlanta. When the police tried to approach him and tried to talk to him at that apartment complex[, h]e lied about his name. He lied about his date of birth. He evaded law enforcement. He gave misleading information.

(R. pp. 241-242). Thereafter, at the conclusion of trial, the jury convicted Martin as indicted. (R. p. 259). The trial judge then sentenced Martin to an aggregate term of imprisonment of twenty years, and Martin appealed his convictions. (R. p. 269).

On appeal, the Court of Appeals affirmed Martin's convictions after determining that the trial judge erred in refusing to suppress the evidence related to Martin's provision of false information to Officer Poythress in Georgia but that any error resulting from the admission of the evidence was harmless. State v. Martin, 403 S.C. 19, 26, 742 S.E.2d 42, 46 (Ct. App. 2013). In finding that the trial judge abused his discretion in admitting the evidence of Martin's guilty conduct, the Court of Appeals found the State "failed to establish a nexus between the robbery of the Bank of America in Aiken and Martin's

⁷ Like the other witnesses, neither Harmon's sister nor brother saw Martin in the neighborhood again after the robbery. (R. p. 163; p. 170).

deceitful answers” to Officer Poythress’ questions in Georgia. Id. at 30, 742 S.E.2d at 47. In reaching that conclusion, the Court of Appeals noted Martin’s guilty conduct was “temporally and geographically remote” from the bank robbery and no evidence was presented establishing that the police previously contacted Martin, that Martin had received a warning about the investigation, or that Martin had made statements to others about being sought for the robbery. Id. at 30, 742 S.E.2d at 48. For those reasons, the Court of Appeals determined “the State failed to present evidence Martin knew the police suspected him of the Bank of America robbery.” Id. Thereafter, the Court of Appeals considered the other evidence presented during trial, including the testimony of Martin’s accomplices implicating him in the bank robbery, and determined that any error in the admission of the challenged evidence was harmless. Id. at 31, 742 S.E.2d at 48.

ARGUMENT

The Court of Appeals correctly determined any error resulting from the admission of the testimony establishing Martin provided a false name and other false information to a law enforcement officer in the city that Martin fled to after committing a bank robbery was harmless because the other evidence presented during trial, which included the testimony of all three of Martin's accomplices identifying him as the person who committed the bank robbery and other testimony establishing Martin immediately fled to Atlanta and was absent from his neighborhood after the crime, conclusively established Martin's guilt for the offenses of armed robbery and criminal conspiracy.

Martin contends the Court of Appeals erred in finding any error in the admission of the testimony regarding his evasive and untruthful conduct in Atlanta after the bank robbery was harmless beyond a reasonable doubt. Martin maintains the alleged error was not harmless because the other evidence presented during trial was unreliable and the admission of the "flight evidence" allegedly affected the outcome of his trial. To the contrary, the evidence and testimony presented during trial, which included the testimony of all three of Martin's accomplices identifying him as the person who committed the bank robbery and other testimony establishing Martin immediately fled to Atlanta and was absent from his neighborhood after the crime, rendered the challenged evidence merely cumulative and entirely insignificant when considered in relation to the case as a whole. Thus, even assuming the trial judge erred in admitting the testimony regarding Martin's untruthful statements to the officer in Atlanta, the other testimony and evidence presented during trial rendered any error in the admission of that testimony entirely harmless beyond a reasonable doubt. Notwithstanding the fact that the Court of Appeals incorrectly determined the trial judge erred in admitting the testimony regarding Martin's provision of false information to the police officer in Atlanta, the Court of Appeals properly affirmed Martin's convictions after determining any error in the admission of that testimony was harmless. Martin's petition for a writ of certiorari should be denied.

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006); see State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) (“Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless.”). An error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) (“No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.”). “When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); see United States v. Hastings, 461 U.S. 499, 509 (1983) (“[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]”).

In the case sub judice, notwithstanding the fact that the Court of Appeals incorrectly concluded the trial judge erred in admitting the evidence related to Martin’s provision of false information to the police officer in Atlanta, the Court of Appeals

correctly determined the alleged error was entirely harmless due to the insignificant and cumulative nature of that evidence in relation to the other evidence presented during trial. Initially, even ignoring the inference of guilty knowledge that could have been drawn from Martin's act of making the false statements to the officer, Martin's guilty knowledge and intent was nonetheless established through the testimony regarding his immediate flight to Atlanta after the robbery, which was introduced during trial without objection, and the testimony regarding his sudden absence from his neighborhood after the robbery, which was presented by numerous witnesses. See State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) ("Flight or evasion of arrest is a circumstance to go to the jury."); State v. Walker, 366 S.C. 643, 656, 623 S.E.2d 122, 128 (Ct. App. 2005) ("[I]t can be inferred from his sudden disappearance that Walker was either expecting the police to arrest him or he was planning his escape."). Such other evidence of guilty knowledge and intent rendered the evidence related to Martin's false statements to the officer in Atlanta merely cumulative. See State v. Oglesby, 384 S.C. 289, 293, 681 S.E.2d 620, 622 (Ct. App. 2009) ("[T]he admission of improper evidence is deemed harmless if it is merely cumulative to other evidence."). As a result, any error in the admission of the challenged testimony establishing Martin's guilty knowledge and intent was harmless.

Furthermore, notwithstanding the cumulative nature of the guilty conduct evidence, the challenged evidence was also insignificant when considered in relation to the other evidence presented during trial. Most damagingly, Martin's three accomplices in the robbery all identified Martin as the mastermind behind crime and as the person who actually went into the bank with the gun and committed the robbery. Additionally, other witnesses confirmed Martin discussed the bank robbery on the night before the

crime and borrowed a pellet gun matching the description of the weapon used during the robbery on the day of the incident. When considering that evidence coupled with the other unchallenged evidence of Marin's flight and guilty knowledge, any error in the admission of the evidence of Martin's false statements to the law enforcement officer in Atlanta was insignificant and entirely harmless. See Haselden, 353 S.C. at 196, 577 S.E.2d at 448 (finding the erroneous admission of evidence was harmless where its impact was minimal in the context of the entire record); see also State v. Forney, 321 S.C. 353, 358, 468 S.E.2d 641, 644 (1996) ("Evidence of the expressed threat to kill Beth Ann is of minimal impact in the context of the properly admitted evidence of appellant's use of a deadly weapon during the North Carolina armed robbery. Accordingly, even if evidence of the expressed threat was improper, its impact was minimal in the context of the entire record and any error is harmless beyond a reasonable doubt.").

In light of the cumulative nature of the challenged evidence and its insignificance in relation to the other evidence presented during trial, the admission of the challenged evidence could not have impacted the ultimate outcome of Martin's trial. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."); see also Pagan, 369 S.C. at 212, 631 S.E.2d at 267 ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."). Regardless of the disputed correctness of its decision on the admissibility of the evidence regarding Martin's provision of false information to the officer in Atlanta, the Court of Appeals correctly determined the admission of the challenged evidence was entirely harmless and did not warrant the reversal of Martin's convictions. Martin's petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that Martin's petition for a writ of certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT/PETITIONER

September 19, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2013-001572

THE STATE,

Respondent/Petitioner,

vs.

ANTHONY MARQUESE MARTIN,

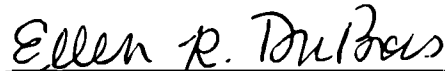
Petitioner/Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to
Petitioner/Respondent's Petition for Writ of Certiorari on Petitioner/Respondent by
depositing two copies of the same in the United States mail, postage prepaid, addressed
to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 19th day of September, 2013.



ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

STATE OF SOUTH CAROLINA
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RESPONDENT/PETITIONER'S PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT/PETITIONER

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APPELLATE COUNSEL

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STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err in holding that the trial judge abused his discretion by admitting evidence establishing Martin provided a false name and other false information to a law enforcement officer in the city that Martin fled to after committing a bank robbery where that evidence supported a logical inference that Martin undertook those evasive actions to avoid detection and arrest for the bank robbery and, thus, constituted admissible evidence of Martin's guilty knowledge and intent?

STATEMENT OF THE CASE

Procedural History

In April of 2010, Petitioner/Respondent Anthony Marquese Martin was arrested in Atlanta, Georgia, following an investigation into the armed robbery of a North Augusta branch of Bank of America in April of 2009. Shortly after Martin was arrested, the Aiken County grand jury indicted him for one count of armed robbery. In June of 2010, the Aiken County grand jury additionally indicted Martin for one count of criminal conspiracy. On April 25, 2011, a jury trial was commenced in the Aiken County court of general sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. At the conclusion of trial, the jury convicted Martin as indicted. Following the verdict, the trial judge sentenced Martin to concurrent terms of imprisonment of twenty years for armed robbery and five years for criminal conspiracy. Martin then timely filed and perfected an appeal.

Subsequently, following oral argument, the Court of Appeals issued a published opinion unanimously affirming Martin's convictions.¹ State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (Ct. App. 2013). Both Martin and the State petitioned the Court of Appeals for rehearing, and the petitions were denied. The State then filed this petition for a writ of certiorari in the Supreme Court.

Factual History

At around 12:00 p.m. on April 23, 2009, Mona Floyd, a teller at a Bank of America branch in North Augusta, South Carolina, was working at her counter when a man entered the bank. (R. pp. 16-17; p. 19). The man approached her at the counter, asked a few questions about different types of accounts, looked around the bank, and then

¹ This opinion was filed on May 1, 2013, as Opinion No. 5125.

left after only a minute or two. (R. pp. 19-20). After the man left, Floyd requested more money to handle the needs of any customers who might come in and received \$12,000 in cash from the vault. (R. pp. 20-21). A few minutes later, another man entered the bank, ordered everyone inside to get onto the floor, pointed a gun, threw a pillow case at Floyd, and stated: "Put the money in the bag, [b]itch." (R. pp. 22-24; p. 31; p. 33; p. 93). Floyd put the money from the vault into the man's pillow case, and the robber, who was wearing a dark hoodie and something over his face, demanded more money in larger denominations. (R. pp. 23-24; p. 33; p. 90; p. 94). In response, Floyd tried to remove the smaller denominations from the pillow case, but the robber grabbed it and fled. (R. p. 23; p. 35; pp. 90-91). Floyd then triggered an alarm, and another bank employee called 911 to report the robbery. (R. p. 25; pp. 34-35).

Meanwhile, Tammy Murphy, another teller at the Bank of America branch, was getting into her car in the parking lot when she observed a man wearing black hooded clothing and something over his face run out of the bank. (R. pp. 37-40). Murphy realized the man just robbed the bank, and she saw a customer in the parking lot yell at the robber and then fire shots at him when the robber did not stop. (R. pp. 40-41; p. 189). Patricia Christopher, who was at a car wash next to the bank, heard the gunshots, believed the sound was from firecrackers, and then observed a red Ford Mustang quickly leaving the area.² (R. p. 56; pp. 131-132). Christopher saw two men in the front seats of the car, but she was unable to see if anyone was in the rear seats because the vehicle was moving too rapidly. (R. p. 133).

² Murphy also observed the red Ford Mustang, and she was able to obtain the vehicle's license plate number. (R. pp. 42-43; p. 191).

Shortly thereafter, Detective Luke Sherman of the North Augusta Department of Public Safety responded to the scene of the robbery and spoke with the witnesses inside of the bank. (R. pp. 186-187). He learned a black male wearing all black clothing, a hoodie, and gloves entered the bank, pointed a gun, demanded money, and absconded with \$12,000 in cash. (R. p. 187). The detective further learned a person behaving in a suspicious manner came into the bank shortly before the robbery and a red Ford Mustang was observed leaving the scene. (R. p. 188; p. 191). Detective Sherman then obtained a photograph of the suspicious person and released it to the media. (R. p. 188).

Subsequently, Detective Sherman went to the home of Roosevelt Johnson, who owned a red Ford Mustang and was stopped by law enforcement officers on two separate occasions on the day of the crime, and attempted to speak to him about the robbery. (R. pp. 193-194). However, Johnson claimed he was at the mall during the relevant time frame and requested to speak with an attorney. (R. pp. 193-194). Detective Sherman then left Johnson's home but saw a red Ford Mustang that appeared to have been recently washed in Johnson's driveway. (R. p. 194).

On the day after the robbery, Quinton Harmon, the suspicious man who entered the bank shortly before the robbery, learned his photograph was printed in the newspaper in connection to the robbery. (R. p. 66). In response, Harmon spoke with a friend in law enforcement and then went to the police headquarters to discuss the robbery. (R. pp. 66-67; p. 70; pp. 191-192). At the police headquarters, Harmon met with Detective Sherman and initially claimed he was brought to the bank by his girlfriend in order to open an account. (R. pp. 66-67; pp. 70-71; p. 192). However, Detective Sherman called Harmon's attention to some inconsistencies in his version of events, and Harmon confessed to being involved in the robbery. (R. pp. 71-74; p. 192). Additionally,

Harmon implicated Johnson, David Dixon, and a man who went by "T-Money" in the crime. (R. pp. 192-193). Thereafter, Harmon, Johnson, and Dixon were all arrested and charged for their roles in robbing the bank. (R. p. 48; p. 105; p. 136; p. 193).

During the course of the investigation into the incident, Detective Sherman learned "T-Money" attempted to purchase a bus ticket to Atlanta immediately after the robbery but his grandmother still lived near Harmon. (R. pp. 196-197). Through that information, Detective Sherman discovered the mother of "T-Money" lived in Snellville, Georgia. (R. p. 197). In response, he asked officers in Georgia to go to the mother's home, and they were able to obtain Petitioner/Respondent Anthony Marquese Martin's name and date of birth from Martin's grandmother, who was at Martin's mother's home. (R. pp. 197-198). Detective Sherman then acquired a photograph of Martin and showed it to Harmon and Johnson. (R. p. 198). Both of the men identified Martin as "T-Money." (R. p. 198).

Thereafter, on April 13, 2010, Officer Christopher Poythress of the DeKalb County Police Department in Atlanta, Georgia, was notified Martin might be staying at an apartment complex in the area. (R. p. 178). Officer Poythress went to the apartment complex looking for Martin, did not get a response when he knocked on the door to the apartment that Martin was believed to be staying at, and left for the day. (R. pp. 178-179). However, Officer Poythress returned the next day, spoke with an employee at the apartment complex, confirmed Martin stayed there, and learned Martin was seen earlier walking up a nearby street. (R. p. 179). The officer then observed Martin walking back towards the apartment complex and stopped him. (R. pp. 179-180). After stopping him, Officer Poythress asked Martin what he was doing at the apartment complex, and Martin claimed to live there. (R. p. 180). The officer then asked Martin for his name, date of

birth, and identification. (R. pp. 180-181). Martin responded that his name was “Troy Brown” and provided a false date of birth. (R. pp. 180-181). The officer then again asked Martin what he was doing at the apartment complex, and Martin offered a different explanation than he originally provided, claiming he was there to visit his sister. (R. pp. 180-181). In response, Officer Poythress detained Martin until his identity could be verified, used a photograph of Martin to confirm his identity, and discovered Martin had provided a false name and date of birth. (R. p. 181). Martin was subsequently arrested, transported to South Carolina, and indicted for armed robbery and criminal conspiracy, and he proceeded to trial. (R. p. 6; pp. 270-273).

At the outset of trial, the solicitor noted she intended to introduce testimony and evidence establishing Martin fled to Atlanta after the robbery and provided false information to law enforcement officers in Atlanta several months later when they went to arrest him. (R. pp. 7-8). The solicitor further asserted she intended to introduce evidence establishing Martin was on probation at the time of the robbery and fled to Georgia without providing notice and without transferring his probation. (R. p. 8). In response, Martin objected to the admission of any evidence related to his flight to Georgia. (R. pp. 8-9). Initially, Martin argued he was convicted of giving a false name and information to the officer in Georgia and, therefore, that particular evidence was inadmissible character evidence. (R. pp. 7-8). Furthermore, Martin argued the flight evidence itself was inadmissible because there was no evidence establishing that he knew the investigation into the robbery was taking place or the police in Georgia were seeking him in connection to the robbery. (R. pp. 9-10). However, Martin acknowledged he was alleged to have fled to Georgia on the same day as the robbery. (R. p. 9). After

considering the arguments of counsel, the trial judge denied the motion to exclude the evidence.³ (R. p. 10).

Thereafter, during trial, Martin's accomplices testified about their involvement in the robbery and implicated Martin as the mastermind of the crime. (R. pp. 48-49; p. 105; p. 107; p. 136; p. 138). Harmon testified Martin approached him the day before the robbery and told him he wanted to "hit a lick," which meant commit a robbery. (R. pp. 49-50). Harmon stated they subsequently met up with Johnson and Dixon along with several other people and determined which bank they were going to rob. (R. pp. 50-52). The next day, Harmon indicated Johnson picked him up, and Martin and Dixon were already in Johnson's red Ford Mustang. (R. pp. 52-53). He testified they then went to a Popeye's restaurant, and Martin went inside and returned with some clear plastic gloves.⁴ (R. pp. 53-54). Harmon stated they then went to Dixon's house, Martin got a pillow case and a white t-shirt from Dixon, and Martin assigned each of them a role in the robbery. (R. pp. 55-56). Harmon indicated his role was to go into the bank before the robbery and determine how many people were inside. (R. pp. 55-56). Thereafter, Harmon testified they went to a car wash next to the bank, he went into the bank to determine how many people were inside, and he spoke with a teller about opening a bank account. (R. pp. 56-58). After he returned from the bank, Harmon stated Martin changed into all black clothing, put the white t-shirt he got from Dixon over his face, and then went into the bank. (R. pp. 58-59). A few seconds later, Harmon indicated they heard gunshots and saw Martin running back to the car with a black handgun. (R. pp. 59-62). Harmon

³ However, during trial, the trial judge declined to allow the solicitor to admit any testimony related to the fact that Martin was on probation at the time of the robbery because the trial judge concluded such evidence was unduly prejudicial, cumulative, and unnecessary. (R. pp. 183-185).

⁴ The surveillance footage of the robbery showed the robber was wearing clear plastic gloves. (R. p. 54).

testified Martin jumped into the car, told them he did it, and ordered Johnson to drive. (R. pp. 60-61). As they were driving away from the bank, Harmon stated Martin divided the money between them, put his share into the backpack, transferred the other items from his backpack into the pillow case, and gave it to a friend they encountered on the street. (R. pp. 62-63). Harmon testified they then went to a bus station because Martin stated he was going to go to Atlanta, the bus station was closed because the power was off, and they went to the mall and stayed there until Martin was able to obtain a ride away from the area.⁵ (R. pp. 64-66). As Martin was leaving the mall, Harmon indicated Martin again stated he was going to Atlanta. (R. pp. 65-66). Harmon testified he then left the mall with Johnson and Roosevelt and was subsequently arrested for the robbery. (R. pp. 66-67).

Following Harmon's testimony, Johnson and Dixon testified about the planning and execution of the robbery in a substantially similar manner to Harmon and confirmed Martin stated he was going to Atlanta after the crime. (R. pp. 106-119; pp. 137-152). In addition to the testimony of Martin's accomplices, Detective Sherman testified about his investigation into the robbery and his discovery of Martin's identity, and Officer Poythress recounted the details of his encounter with Martin in Atlanta during which Martin provided a false name and date of birth.⁶ (R. pp. 178-182; p. 186; pp. 196-198). Additionally, Jacob McKie, Harmon's cousin, confirmed Martin was present at Harmon's house on the night before the robbery and stated he provided Martin with a pellet gun that looked like a black handgun on the morning of the robbery. (R. pp. 172-174; pp. 176-

⁵ During trial, Anthony Costello, an electrical contractor, testified he was working on the Greyhound bus station on April 23, 2009, and the power was out at the station from around 10:30 a.m. or 11:00 a.m. until 6:00 p.m. or 7:00 p.m. (R. pp. 98-99).

⁶ During Officer Poythress' testimony, Martin's defense counsel renewed his earlier objection, and the trial judge overruled the objection. (R. p. 180).

177). McKie further testified the pellet gun was never returned to him and he did not see Martin in the area again after the robbery. (R. pp. 174-175). Furthermore, Harmon's brother testified he overheard Martin discussing the bank robbery with Harmon on the day before the incident, and Harmon's sister stated Martin attempted to sleep at their home on the night before the robbery until he was forced to leave by her mother.⁷ (R. pp. 161-162; p. 164; pp. 166-167; p. 169).

Subsequently, during her closing argument, the solicitor briefly mentioned Martin's flight to Atlanta and attempt to deceive the arresting officer subsequent to the robbery, stating:

The defense asked where did all of that money go? Well that money went to Atlanta, because T-Money took the money and ran. He had his friend come pick him up and take him to Atlanta. When the police tried to approach him and tried to talk to him at that apartment complex[, h]e lied about his name. He lied about his date of birth. He evaded law enforcement. He gave misleading information.

(R. pp. 241-242). Thereafter, at the conclusion of trial, the jury convicted Martin as indicted. (R. p. 259). The trial judge then sentenced Martin to an aggregate term of imprisonment of twenty years, and Martin appealed his convictions. (R. p. 269).

On appeal, the Court of Appeals affirmed Martin's convictions after determining that the trial judge erred in refusing to suppress the evidence related to Martin's provision of false information to Officer Poythress in Georgia but that any error resulting from the admission of the evidence was harmless. State v. Martin, 403 S.C. 19, 26, 742 S.E.2d 42, 46 (Ct. App. 2013). In finding that the trial judge abused his discretion in admitting the evidence of Martin's guilty conduct, the Court of Appeals found the State "failed to establish a nexus between the robbery of the Bank of America in Aiken and Martin's

⁷ Like the other witnesses, neither Harmon's sister nor brother saw Martin in the neighborhood again after the robbery. (R. p. 163; p. 170).

deceitful answers” to Officer Poythress’ questions in Georgia. Id. at 30, 742 S.E.2d at 47. In reaching that conclusion, the Court of Appeals noted Martin’s guilty conduct was “temporally and geographically remote” from the bank robbery and no evidence was presented establishing that the police previously contacted Martin, that Martin had received a warning about the investigation, or that Martin had made statements to others about being sought for the robbery. Id. at 30, 742 S.E.2d at 48. For those reasons, the Court of Appeals determined “the State failed to present evidence Martin knew the police suspected him of the Bank of America robbery.” Id. Thereafter, the Court of Appeals considered the other evidence presented during trial, including the testimony of Martin’s accomplices implicating him in the bank robbery, and determined that any error in the admission of the challenged evidence was harmless. Id. at 31, 742 S.E.2d at 48.

ARGUMENT

Did the Court of Appeals err in holding that the trial judge abused his discretion by admitting evidence establishing Martin provided a false name and other false information to a law enforcement officer in the city that Martin fled to after committing a bank robbery where that evidence supported a logical inference that Martin undertook those evasive actions to avoid detection and arrest for the bank robbery and, thus, constituted admissible evidence of Martin's guilty knowledge and intent?

In its published decision affirming Martin's convictions, the Court of Appeals held that the trial judge erred in admitting evidence of Martin's act of providing false information to a law enforcement officer in Atlanta subsequent to the bank robbery. In reaching that conclusion, the Court of Appeals erroneously determined that there was an insufficient nexus between the bank robbery in South Carolina and Martin's evasive conduct in Georgia a number of months later. Contrary to the decision of the Court of Appeals, the trial judge did not abuse his discretion in admitting the evidence establishing that Martin fled to Atlanta immediately after committing the bank robbery and subsequently provided false information to a law enforcement officer that stopped him there because that evidence supported an obvious and logical inference that Martin engaged in those actions due to his awareness of his own wrongdoing in committing the bank robbery and desire to avoid apprehension and prosecution for that crime. Based on the inference of guilt that could be drawn from the guilty conduct evidence, the trial judge properly admitted that evidence during trial and allowed the jury to decide what inference, if any, to draw from it, and the Court of Appeals erred in reaching a conclusion to the contrary. The State's petition for a writ of certiorari should be granted, and the published decision of the Court of Appeals should be reversed to the extent that it holds that the trial judge committed an error in admitting the guilty conduct evidence.

The reception or exclusion of evidence is a matter left largely to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980). On appeal, appellate courts give “great deference” to trial judges when reviewing evidentiary rulings. State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010); see State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) (“[D]eference is due to the trial court’s admission of the evidence.”). Moreover, an appellate court will not reverse a trial judge’s decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge’s broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) (“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.”); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) (“A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.”). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Regarding evidence of flight or guilty conduct, courts in South Carolina have consistently recognized that “any guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt” and is a circumstance that should be submitted for the jury to consider. State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011); see State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) (“Flight or evasion of arrest is a circumstance to go to the jury.”). Evidence of flight and other guilty conduct is admissible because a defendant’s act of making false or

conflicting statements or attempting to flee after committing a crime supports an inference of guilty knowledge and intent on the part of the defendant. State v. Thompson, 278 S.C. 1, 10, 292 S.E.2d 581, 587 (1982), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); see State v. Al-Amin, 353 S.C. 405, 413, 578 S.E.2d 32, 36 (Ct. App. 2003) (recognizing attempts to run away have always been regarded as some evidence of guilty knowledge and intent); see also Marshall v. State, 85 Md. App. 320, 324, 583 A.2d 1109, 1111 (Md. Ct. Spec. App. 1991) (“Interference with police investigation is recognized as conduct which may evidence a consciousness of guilt.”). Such an inference is appropriate because “it is not to be supposed that one who is innocent and conscious of that fact would flee.” State v. Crawford, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005); see also State v. Freely, 105 S.C. 243, 250, 89 S.E. 643, 645 (1916) (“The flight of one charged with crime has always been held to be some evidence tending to prove guilt. Solomon wrote as a proverb the ‘wicked flee when no man pursueth;’ and Shakespeare made guilty Hamlet to soliloquize that ‘conscience does make cowards of us all.’ ”).

In determining whether evidence of flight or other guilty conduct is admissible, the critical consideration is whether the totality of the evidence supports an inference that the defendant had knowledge that he was being sought by authorities. State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999). Flight or other guilty conduct evidence is relevant so long as there is a nexus between the flight and the offense charged. Pagan, 369 S.C. at 209, 631 S.E.2d at 266. Importantly though, “[i]t is sufficient that circumstances justify **an inference** that the accused’s actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose.” State v. Walker, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005)

(emphasis). Thus, evidence of flight or other guilty conduct is admissible where the totality of the circumstances supports an inference that the evidence is connected to the charged offense and should only be excluded where the evidence is clearly linked to another offense in such a manner that an inference of guilt regarding the charged offense could not legitimately be supported by the evidence. See State v. Robinson, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004) (“Evidence of flight should be excluded when the flight is **clearly** linked to a separate offense for which the defendant is not on trial.” (emphasis added)); see, e.g., United States v. Lucas, 62 F. App’x 53, 58 (4th Cir. 2003) (“Evidence of flight is problematic **only** when the circumstances are such that a consciousness of guilt cannot be inferred with confidence from the fact of flight, as when it is not clear that the defendant actually fled, or when he fled in response to an investigation of an unrelated crime, or when it is not clear that he was aware when he fled that he was about to be charged with a crime.” (emphasis added)).

In the case sub judice, the Court of Appeals held that the trial judge erred in admitting the testimony concerning Martin’s act of making false statements to the law enforcement officer in Atlanta subsequent to the bank robbery. However, the evidence of Martin’s flight to Atlanta after the robbery and subsequent guilty conduct during his interactions with Officer Poythress supported an inference of guilty knowledge and intent on Martin’s part and was not “clearly linked” to some other criminal offense or explanation for the guilty conduct. See Robinson, 360 S.C. at 195, 600 S.E.2d at 104 (“Evidence of flight should be excluded when the flight is clearly linked to a separate offense for which the defendant is not on trial.”). As a result, the circumstances of Martin’s case warranted the submission of the flight and guilty conduct evidence to the jury, and any alternative inferences that could have been drawn from that evidence

inconsistent with guilty knowledge and intent merely went the weight as opposed to the admissibility of the evidence. Cf. Beckham, 334 S.C. at 315, 513 S.E.2d at 613 (finding the existence of another possible explanation for Beckham's flight that did not support an inference of guilty knowledge and intent "does not make the evidence of flight inadmissible" and, instead, "merely goes to its weight"). Accordingly, the trial judge did not abuse his broad discretion in admitting the evidence of Martin's guilty conduct after the robbery, and the Court of Appeals erred in reaching a conclusion to the contrary.

Viewing the totality of the circumstances in an objective manner as required, the testimony and evidence presented during trial initially established Martin immediately fled after committing the bank robbery and travelled to Atlanta shortly after the crime in an effort to evade apprehension and arrest. See Robinson, 360 S.C. at 196, 600 S.E.2d at 104 ("In reviewing a challenge to the admissibility of [flight] evidence, the inquiry must be an objective one."). Martin's rapid flight to Atlanta after committing an audacious and unconcealed criminal offense that resulted in the theft of a large quantity of money from a bank and that was observed by numerous witnesses, including one who shot at Martin as he fled from the bank, supported an obvious inference that the motivation for Martin's flight was his knowledge of his guilt for the bank robbery and desire to avoid prosecution for that crime. Thus, the circumstances surrounding Martin's flight established that a clear nexus existed between the crime and the flight evidence. Cf. Walker, 366 S.C. at 656, 623 S.E.2d at 128 ("[I]t can be inferred from his sudden disappearance that Walker was either expecting the police to arrest him or he was planning his escape."). Resultantly, the evidence of Martin's flight to Atlanta was clearly admissible as evidence

of his guilty knowledge and intent in regard to the bank robbery.⁸ See Al-Amin, 353 S.C. at 413, 578 S.E.2d at 36 (“Flight from prosecution is admissible as evidence of guilt.”).

Likewise, just as Martin’s flight to Atlanta immediately after the crime supported an inference his “actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose[,]” Martin’s actions in providing false information to a law enforcement officer in Atlanta supported an obvious inference he was motivated to do so to **continue to avoid apprehension** for the same crime that led him to flee to Atlanta in the first place. Walker, 366 S.C. at 655, 623 S.E.2d at 128; see Thompson, 278 S.C. at 10-11, 292 S.E.2d at 587 (“The statements were introduced to prove appellant attempted to avoid apprehension.”); see also Wright v. State, 319 Ga. App. 723, 729, 738 S.E.2d 310, 317-318 (Ga. Ct. App. 2013) (finding no abuse of discretion in the admission of testimony establishing Wright provided a false name to a police officer when the officer was arresting him four months after the incident for which he was subsequently tried because “Wright’s giving law enforcement a false name when arrested (four months) *after* the Thatcher incident allowed for a reasonable inference that Wright was attempting to elude capture therefor” (italics in original)). As a result, the evidence of Martin’s guilty conduct during his interactions with Officer Poythress was admissible as evidence of Martin’s guilt, and any issue regarding the strength of the inference of guilt to be drawn from that evidence was solely a matter of weight for the jury to resolve. See Pagan, 369 S.C. at 209, 631 S.E.2d at 266 (“It is sufficient that circumstances justify an inference that the defendant’s actions were motivated as a result of his belief that police officers were aware of his wrongdoing and

⁸ Notably, Martin did not object to the testimony regarding his immediate flight to Atlanta after the bank robbery during trial, and Martin’s appellate counsel conceded during oral argument before the Court of Appeals that Martin was not challenging the admission of that testimony. (R. pp. 64-66; pp. 115-117; p. 150).

were seeking him for that purpose.”); see also State v. Gerald, 261 S.C. 392, 395, 200 S.E.2d 243, 244 (1973) (“When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.”); State v. Vanderhorst, 257 S.C. 114, 117, 184 S.E.2d 540, 541 (1971) (“When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.”); see, e.g., Kansas v. Ventris, 556 U.S. 586, 594, n. * (2009) (“Our legal system . . . is built on the premise that it is the province of the jury to weigh the credibility of competing witnesses[.]”).

In reaching a conclusion to the contrary, the Court of Appeals determined the evidence regarding Martin’s evasive and deceitful behavior in Atlanta was inadmissible because the nexus between the guilty conduct evidence and the bank robbery was allegedly insufficient due to the temporal and geographic remoteness of the guilty conduct to the bank robbery. Martin, 403 S.C. at 30, 742 S.E.2d at 48. However, the fact that Martin was able to avoid apprehension for a period of months by fleeing to Atlanta did **not** diminish the logical inference that his flight and his subsequent efforts to keep his true identity concealed from law enforcement officers were motivated by the exact same factors that led him to flee to Atlanta immediately after the crime – his knowledge of his guilt for a bank robbery that law enforcement officers unquestionably were aware had been committed and his desire to avoid apprehension and prosecution for that crime. Thus, neither the fact that time elapsed between the commission of the bank robbery and Martin’s eventual arrest nor the fact that Martin was able to distance himself from the scene of the crime rendered evidence of Martin’s flight and subsequent efforts to evade capture inadmissible. See State v. Hand, 107 Ohio St. 3d 378, 402, 840 N.E.2d 151, 180 (Ohio 2006) (“Hand also argues that joinder was not justified, because more than nine

months elapsed between the murders (January 15, 2002) and the escape attempt (October 30, 2002, through November 26, 2002). However, admissibility of evidence of flight **does not depend upon how much time passes between the offense and the defendant's flight.**" (emphasis added)); see also *Jordan v. United States*, 324 F.2d 178, 178 (5th Cir. 1963) ("[Jordan] first urges that it was error to admit testimony that when he was arrested, about eight months after the offense, he gave a fictitious name. The evidence was admissible both as justifying an inference of guilt by hiding under an assumed name and as proof of identity."); *Straight v. State*, 397 So. 2d 903, 908 (Fla. 1981) (finding testimony that Straight fired shots at police officers who approached him in California was admissible as guilty conduct evidence in his trial for a murder committed in Florida).

Additionally, the Court of Appeals determined the trial judge erred in admitting the evidence of Martin's evasive conduct due to the fact that there was allegedly no evidence establishing Martin was aware the police suspected him of the bank robbery when he lied to Officer Poythress. *Martin*, 403 S.C. at 30, 742 S.E.2d at 48. However, that conclusion ignored the logical and natural inferences to be drawn from Martin's own evasive actions. Significantly, instead of remaining in the area where he was residing, Martin left South Carolina entirely and fled to Atlanta as quickly as he could after committing the bank robbery. Thereafter, when approached by a law enforcement officer in Atlanta, Martin lied to him about his identity, his date of birth, and his reason for being at the location where the law enforcement officer stopped him. Critically, Martin's actions were not consistent with the actions of someone innocent of wrongdoing. See id. at 29-30, 742 S.E.2d at 47 ("[C]ourts should not suppose a person who knew he was innocent but under suspicion would disguise himself, hide from the police, or lie to

officers investigating the crime of which he is suspected.” (emphasis added)). Instead, Martin’s actions supported a clear and logical inference that he lied to the law enforcement officer in order to avoid being apprehended and arrested for the bank robbery he had committed earlier. See Town of Hartsville v. Munger, 93 S.C. 527, 529, 77 S.E. 219, 219 (1913) (“False and conflicting statements and attempts to run away have always been regarded as some evidence of guilty knowledge and intent.”); see also United States v. Simpson, 910 F.2d 154, 158-159 (4th Cir. 1990) (“Appellant’s Jamaican citizenship may show a manifestation of his consciousness of guilt when he lied about his true identity. . . . There is nothing unfair about showing that appellant . . . lied about his identity when caught with the gun in his possession.”). Therefore, the trial judge properly admitted the evidence and allowed the jury to decide whether to draw such an inference of guilt from Martin’s actions.⁹ See Walker, 366 S.C. at 655, 623 S.E.2d at 128 (“Flight or evasion of arrest is an issue for the jury to consider.”).

⁹ In finding that the nexus between Martin’s evasive actions and the bank robbery was insufficient to warrant the admission of the evidence of that guilty conduct, the Court of Appeals relied heavily on the decision of the Fourth Circuit Court of Appeals in United States v. Beahm, 664 F.2d 414 (4th Cir. 1981). In that case, Beahm molested two boys in Virginia and then left the area on a blue motorcycle. Id. at 415. Following the incident, one of the boys reported it to his father, and the father drove the boy around the area to look for the perpetrator of the sexual abuse until they spotted the blue motorcycle that Beahm had driven off on and took down the license plate information from that vehicle. Id. Three weeks later, an FBI agent determined Beahm’s identity by using the license plate information and left a note asking Beahm to contact him on the door of Beahm’s residence. Id. at 415-416. Later that day, Beahm discovered the note, threw it away, packed a bag, withdrew money from a joint bank account he shared with his girlfriend, and left for Florida without notifying his girlfriend. Id. at 416. Thereafter, he returned to Virginia only upon the insistence of his girlfriend and was arrested, indicted, and convicted of two counts of taking indecent liberties with children on a United States military installation. Id. at 415. Following the trial, Beahm appealed, arguing the trial judge erred in instructing the jury that it was allowed to consider his flight immediately after the commencement of an investigation into the crimes in determining his guilt or innocence. Id. at 419. Subsequently, the Fourth Circuit Court of Appeals reversed Beahm’s convictions in a sharply-divided decision. Id. at 420. In finding error, two judges of the court determined the trial judge’s jury instructions were erroneous because the government failed to “substantiate adequately the inference that the defendant was aware he was wanted for the crime” in light of the fact that nothing in the note left by the FBI agent suggested Beahm was going to be arrested or was even suspected of a crime. Id. at 420. However, in dissent, one judge of the three-judge panel indicated he found no error in the trial judge’s jury instructions based on the logical and obvious inference that could be drawn from Beahm’s evasive actions, noting: “If these facts are not sufficient to support an inference by a jury ‘that defendant aware he was wanted for the crime,’ I find it hard to easily imagine a set of facts which would support such an inference.”

Significantly, if permitted to stand without alteration, the published decision of the Court of Appeals in Martin's case could have serious public policy ramifications by encouraging criminals to more carefully plan their crimes, quickly escape before investigations into the crimes can begin and progress, and do whatever they can to prevent the investigations from justly leading to their arrests. That is true because the exclusion of flight or other guilty conduct evidence at trial based on the fact that a criminal was able to successfully escape and temporarily avoid apprehension after a crime would create an incentive for criminals to flee and try to mislead law enforcement officers and would reward those evasive actions by allowing criminals who flee the fastest and the farthest to take whatever steps they wish to conceal their identities, undermine the efforts of law enforcement officers trying to solve crimes, and avoid prosecution and punishment without risking their evasive and guilty conduct being used to prove their guilt if they are unsuccessful in their efforts to avoid arrest. In effect, the

Id. at 422. Initially, unlike the majority in Beahm and the Court of Appeals in Martin's case, South Carolina courts traditionally have left the issue of resolving which inference to draw from guilty conduct evidence to the jury so long as an inference of guilt can logically and reasonably be drawn from the facts and circumstances of a particular case. See Walker, 366 S.C. at 655, 623 S.E.2d at 128 ("It is sufficient that circumstances justify an inference that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose."); see also Beckham, 334 S.C. at 315, 513 S.E.2d at 613 (finding the existence of another possible explanation for Beckham's flight that did not support an inference of guilty knowledge and intent did not impact the admissibility of the evidence); see, e.g., State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) ("It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts."). Furthermore, unlike in Beahm's case, courts in South Carolina are not permitted to instruct juries on inferring guilt from evidence of flight or other guilty conduct, and no such instruction was presented to the jury in Martin's case. See State v. Grant, 275 S.C. 404, 408, 272 S.E.2d 169, 171 (1980) ("The charge on flight oftentimes has the potential for creating more problems than solutions. While we no longer sanction this charge by the judge, we recognize that evidence of flight remains proper. We also recognize that it is oftentimes appropriate for counsel to argue to the jury the inferences growing out of flight. However, we believe that the 'law of flight' in a judge's charge places undue emphasis upon that part of circumstantial evidence and it should not be charged hereafter."); see also Cheeks, 401 S.C. at 328, 737 S.E.2d at 484 ("[I]t is well-settled that while evidence that a criminal defendant evaded arrest or absconded from the jurisdiction may be admissible as evidence of guilt, and may be argued to the jury as such, it is improper to charge the jury on this evidentiary inference because such a charge places 'undue emphasis' on that piece of circumstantial evidence."). For those reasons, the Court of Appeals' reliance on the decision in Beahm was misplaced, and the Court of Appeals erred in finding the trial judge abused his discretion in admitting the evidence related to Martin's efforts to mislead a law enforcement officer investigating the crime for which Martin was charged. See Pagan, 369 S.C. at 209, 631 S.E.2d at 266 ("Flight or evasion of arrest is a circumstance to go to the jury.").

Court of Appeals determined that Martin was free to lie to law enforcement officers investigating the bank robbery and to do whatever he could to avoid apprehension for that crime without having to face the presentation of evidence of his evasive actions or the obvious inferences to be drawn from that conduct during trial due to the time that elapsed after the bank robbery, the distance that he was able travel after the crime, the possibility that other explanations for his conduct might have existed, and the fact that the officers did not notify him in advance that he was suspected of committing the crime. Pursuant to Court of Appeals' findings and had the other evidence of Martin's guilt not rendered the alleged error in the admission of the guilty conduct evidence harmless, Martin would have been able to engage in evasive actions and avoid prosecution entirely if they were successful while still avoiding the consequence of the evidence of his guilty conduct being used to prove his guilt if his attempts to mislead the officer proved to be unsuccessful. Such a result is manifestly unjust and would simply reward Martin's efforts to interfere with the investigation into the bank robbery, and the decision of the Court of Appeals should not be permitted to stand to the extent that it could allow or encourage such a result. See State v. Jackson, 384 S.C. 29, 39, 681 S.E.2d 17, 22 (Ct. App. 2009) (finding that where "more than one reasonable inference may be drawn" from the evidence, "th[o]se inferences must be resolved by the jury, not the court"); see also United States v. Kalish, 690 F.2d 1144, 1155 (5th Cir. 1982) ("That the immediate cause of Kalish's arrest was an unrelated offense does not destroy the permissible inference that Kalish was attempting to avoid being brought to trial for the MR. JAKE operation.").

In Martin's case, the testimony and evidence presented during trial established Martin immediately fled to Atlanta after committing a bank robbery with full awareness that the crime had been discovered as it was witnessed by numerous people and shots

were fired at him as he ran to his accomplices' vehicle to escape. See State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) ("As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt."). Furthermore, the testimony and evidence established Martin provided false information to a law enforcement officer in Atlanta a number of months after he successfully fled there to avoid apprehension for the bank robbery. See Munger, 93 S.C. at 529, 77 S.E. at 219 ("False and conflicting statements and attempts to run away have always been regarded as some evidence of guilty knowledge and intent."). Under those circumstances, there was a clear nexus between Martin's flight and the bank robbery and a clear nexus between Martin's flight after the bank robbery and subsequent guilty conduct, and that guilty conduct supported a logical and obvious inference that Martin's evasive behavior was designed to enable him to avoid apprehension for the crime that motivated him to flee to Atlanta. See Crawford, 362 S.C. at 636, 608 S.E.2d at 891 ("It is sufficient that circumstances justify an inference that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose."). Accordingly, the trial judge did not abuse his broad discretion in admitting the guilty conduct evidence, and it was for the jury to decide what weight to assign to that evidence. See State v. Portee, 122 S.C. 298, 309, 115 S.E. 238, 242 (1922) ("The testimony was susceptible of more than one inference, and therefore was properly submitted to the jury."). For those reasons, the Court of Appeals erroneously concluded that the trial judge erred in admitting evidence that has historically been recognized in South Carolina as both admissible and probative of guilt. The State's petition for a writ of certiorari should be granted, and the published decision

of the Court of Appeals should be reversed to the extent that it holds that the trial judge erred.¹⁰

¹⁰ Notwithstanding the Court of Appeals' erroneous determination concerning the admissibility of the testimony regarding Martin making false statements to Officer Poythress prior to his arrest, the Court of Appeals correctly determined any error in the admission of the guilty conduct evidence would have been harmless in light of the insignificance of the challenged evidence when considered in relation to the other competent evidence of Martin's guilt presented during trial, which included testimony from all of Martin's accomplices implicating him in the bank robbery and testimony establishing that Martin fled to Atlanta immediately after he committed the crime. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding the erroneous admission of evidence was harmless where its impact was minimal in the context of the entire record); see also State v. Forney, 321 S.C. 353, 358, 468 S.E.2d 641, 644 (1996) ("Evidence of the expressed threat to kill Beth Ann is of minimal impact in the context of the properly admitted evidence of appellant's use of a deadly weapon during the North Carolina armed robbery. Accordingly, even if evidence of the expressed threat was improper, its impact was minimal in the context of the entire record and any error is harmless beyond a reasonable doubt.").

CONCLUSION

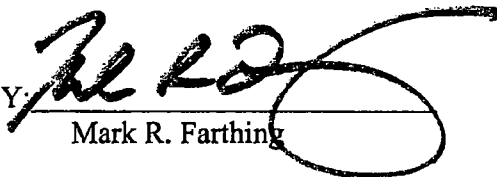
For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted. In requesting this relief, counsel for Respondent/Petitioner certifies a petition for rehearing was made and finally ruled upon by the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

BY:

A handwritten signature in black ink, appearing to read "MR Farthing", written over a horizontal line.

Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT/PETITIONER

August 6, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Doyet A. Early, III, Circuit Court Judge

Opinion No. 5125 (S.C. Ct. App. filed 5/1/2013)

10-GS-02-666

THE STATE,

RESPONDENT/PETITIONER,

V.

ANTHONY MARTIN,

PETITIONER/RESPONDENT

APPELLATE CASE NO. 2013-001572

RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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CERTIFICATE OF COUNSEL

Counsel for respondent certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 6/20/2013.

QUESTION PRESENTED

Did the Court of Appeals err in holding that the trial judge abused his discretion by admitting evidence establishing that Martin provided a false name and other false information to a law enforcement officer when he was stopped in Atlanta in April 2010 because the state failed to establish a nexus between the April 2009 robbery of the Bank of America in Aiken and Martin's provision of false identifying information?

STATEMENT OF THE CASE

On April 19, 2010 the Aiken County Grand Jury indicted Anthony Marquese Martin on the charge of armed robbery (AR). On June 21, 2010, the Grand Jury indicted Martin on the charge of criminal conspiracy to commit the armed robbery. On April 25-27, 2011, Martin proceeded to trial before the Honorable Doyet A. Early, III, and a jury. Martin was represented by C. David Hayes and Degrant Gibbons. The state was represented by Suzanna M. Ringler and Elizabeth B. Young. The jury returned verdicts of guilty on both charges as indicted. Judge Early sentenced Martin to twenty years on the AR and five years on the conspiracy to run concurrently. App. 273, ll. 12 – 22.

Martin filed an appeal which was perfected by the Division of Appellate Defense of the Commission on Indigent Defense. After oral argument, the Court of Appeals published an opinion affirming Martin's convictions and sentences. State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (Ct. App. filed May 1, 2013). App. 318 – 326.

Martin and the state filed petitions for rehearing. Both were denied on June 20, 2013. App. 348. The state filed a petition for a writ of certiorari in the Supreme Court on August 6, 2013. Martin filed a petition for a writ of certiorari on September 18, 2013. This is Martin's return to the state's petition for a writ of certiorari.

ARGUMENT

The Court of Appeals was correct in holding that the trial judge abused his discretion by admitting evidence establishing that Martin provided a false name and other false information to a law enforcement officer when he was stopped in Atlanta in April 2010 because the state failed to establish a nexus between the April 2009 robbery of the Bank of America in Aiken and Martin's provision of false identifying information.

On April 23, 2009, the Bank of America in Aiken County was robbed of approximately \$12,000 by a masked man with a gun. R. 12, ll. 1 – 15; R. 16, ll. 1 – 14; R. 21, ll. 2 – 19; R. 24, ll. 6 – 25; R. 33, ll. 6 – 17. None of the people in the bank could identify the robber since his face was covered. R. 30, ll. 9 – 25; R. 36, ll. 10 – 15; R. 37, ll. 1 – 10; R. 44, ll. 1 – 11; R. 87, ll. 22 – 25; R. 88, ll. 1 – 25; R. 91, ll. 15 – 20; R. 92, ll. 1 – 25; R. 97, ll. 1 – 14.

The day before, on April 22, 2009, Quinton Harmon was at home when his friend, T-Money whom he later identified as Anthony Martin, came to his house. Martin was staying with his grandmother who lived in Harmon's neighborhood. R. 45, ll. 1 – 25; r. 46, ll. 1 – 25.

Harmon alleged that Martin brought up the idea of robbing a bank. R. 49, ll. 1 – 25; R. 50, ll. 1 – 15. Later that evening, Harmon called two other friends, Roosevelt Johnson and David Dixon, to come to his house when they planned the robbery. They rode around looking at banks to choose the one to rob. Martin chose the Bank of America. R. 50, ll. 16 – 25; R. 51, ll. 1 – 25; R. 52, ll. 1 – 9.

Each of the four had a role to play in the robbery. Harmon was to go into the bank first to "scope" it out; Dave Dixon was the lookout; and Roosevelt Johnson was to drive the getaway car which was his red Mustang. R. 55, ll. 1 – 18; R. 59, ll. 1- 25; R. 60, ll. 1-8.

The next day, they went to the bank and followed through with their plans. Martin went into the bank. When Martin returned to the car, he said: "I did it, y'all!" R. 56, ll. 9 - R. 60, ll. 25.

They drove to the bus station where Martin tried to buy a bus ticket to Atlanta, but the power was out. They divided the money on the way. They then drove to the mall where Martin called someone who picked him up. None of them saw Martin after that. Harmon claimed that Martin said he was going to Atlanta. R. 62, ll. 1 - 25; R. 64, ll. 1 - 25; R. 65, ll. 1 - 25; R. 66, ll. 1 - 3.

Roosevelt Johnson and David Dixon testified at trial as well. Their testimony was basically the same as Harmon's with a few minor differences. R. 103, ll. 15 - R. 130, ll. 19; R. 134, ll. 14 - R. 155, ll. 9.

The next day, Harmon's picture from the bank video was in the media as a person of interest. He went and talked to the police and gave a statement. R. 66, ll. 6 - 25. All three admitted they helped rob the bank and were charged with bank robbery. R. 48, ll. 11 - 24; R. 105, ll. 7 - 24; R. 136, ll. 2 - 25.

Detective Luke Sherman of the North Augusta Public Safety Department testified that he investigated the April 23, 2009 robbery of Bank of America. The dye bag had not been placed in the money taken from the bank. They were not able to collect any fingerprints nor any forensic evidence. They called the Aiken County Bloodhound Team but the dogs were not able to track the person. They obtained the picture of Harmon from the bank video and sent it to the media as a person of interest. He was the one who interviewed Harmon. R. 186, ll. 13 - 25; R. 187, ll. 1 - 25; R. 188, ll. 1 - 25; R. 189, ll. 1 - 25; R. 190, ll. 1 - 24; R. 191, ll. 21 - 25; R. 192, ll. 1 - 25; R. 193, ll. 1 - 19. Thus, the conviction depended entirely on the credibility of armed robbers, aside from the "flight" evidence.

Officer Christopher Poythress of the Dekalb County Police Department in Atlanta testified that on April 13, 2010, he received a call in reference to a wanted person by the name of Anthony Martin. He was given his date of birth (DOB) as well. R. 178, ll. 1 – 25; R. 179, ll. 1 – 2. He went to an apartment complex in Atlanta and knocked on the door of apartment He received no answer. He tried the next day with no luck. The leasing agent gave him a description of Martin. The officer saw Martin coming into the complex and stopped him. R. 178, ll. 15 – 25; R. 179, ll. 3 – 25; R. 180, ll. 1 – 6.

When the officer asked Martin his name, Martin told him his name was Troy Brown and gave him a false DOB. Martin told him at first that he lived in the complex, and then said he was visiting his sister there. R. 180, ll. 6 – 25; R. 181, ll. 1 – 25; R. 182, ll. 1 – 10. Officer Poythress confirmed it was Martin after his sergeant obtained a photo of Martin which matched Martin. R. 181, ll. 2 – 23.

During pretrial, the state told the court that they planned to introduce evidence of flight based on the fact that Martin provided a false name, false DOB, and gave misleading information as to why he was at the apartment complex. The solicitor also wanted to introduce supporting evidence that Martin was on probation and left probation without providing notice to his agent and without transferring his probation to Georgia. R. 7, ll. 20 – 25; R. 8, ll. 1 – 21.

Defense counsel argued that his motion was two fold. Martin was convicted of providing false information to the police in Dekalb County. Counsel argued that should not be admitted pursuant to rule 404, SCRE. The judge said they would not have to say he was convicted but only what he did. R. 8, ll. 21 – 25; R. 9, ll. 1 – 13.

Defense counsel then argued that the state would have to prove each “link of the chain of inferences leading to the conclusion” of evidence of flight. He argued that Martin was picked up

almost a year after the crime. Counsel noted that there was no evidence that Martin knew that the investigation of the bank robbery was taking place or that the police in Dekalb County were seeking him for armed robbery in Aiken County. R. 9, ll. 14 – 25; R. 10, ll. 1 – 22.

The judge denied defense counsel's motion to suppress any evidence of flight. R. 10, ll. 23 – 24. The judge denied the state's motion to introduce evidence regarding Martin's probation. R. 184, ll. 1 – 25; R. 185, ll. 1 – 24.

When the state introduced the evidence of the false information that Martin provided to the Atlanta police, defense counsel objected based on his pretrial motion. R. 180, ll. 1 – 14.

In her closing argument, the solicitor argued:

The defense asked where did all of that money go? Well, that money went to Atlanta because T-Money took the money and ran. He had his friend come pick him up and take him to Atlanta. When the police tried to approach him and tried to talk to him at that apartment complex, he lied about his name. He lied about his date of birth. He evaded law enforcement. He gave misleading information.

R. 241, ll. 23 – 25; R. 242, ll. 1 – 5.

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Supreme Court declined to hold that flight alone was substantial circumstantial evidence of a defendant's guilt.

In State v. Crawford, 362 S.C. 627, 608 S.E.2d 886 (Ct. App. 2005), the Court of Appeals held that flight from prosecution was admissible as evidence of guilt.

In State v. Orozco, 392 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011), the Court of Appeals wrote that the critical factor to the admissibility of evidence of flight was whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities. The Court cited the case of State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266

(2006), which held that flight evidence was relevant when there was a nexus between the flight and the offense charged.

In Martin's case, there was no evidence presented that he knew he was being sought by the authorities for the bank robbery in Aiken County. None of the co-defendants testified that they told Martin the authorities knew of their involvement. There was no evidence that Martin knew about the picture of Harmon in the media as the testimony was that he left for Atlanta right after the robbery. The solicitor said he was on probation so the evidence was that he reasonably thought he was being sought by probation for a different offense not related to the robbery.

The state did not present sufficient evidence that Martin knew he was being sought for the bank robbery. The evidence of flight should not have been admitted. The evidence was prejudicial to Martin because the only evidence against him was the testimony of the three alleged co-defendants who had motivation to lie in order to help themselves since they all had a thirty year charge pending of bank robbery.¹

The state argues in their petition that the Court of Appeals' reliance on the Fourth Circuit case of United State v. Beahm, 664 F.2d 414, 419-20 (4th Cir. 1981), was misplaced. However, the Fourth Circuit clearly said in Beahm that the government failed "to substantiate adequately the inference that the defendant was aware he was wanted for the crime" because the note left by the FBI agent on Beahm's door said nothing about the crime or arrest. This supports Martin's case in that there was no evidence he knew he was being sought by law enforcement for the bank robbery a year after the robbery.

The state also argues that this decision by the Court of Appeals will encourage "criminals" to plan their crimes more carefully and thus have serious public policy ramifications. If a year has

passed since the commission of a crime, the state will need to go to greater lengths to prove a nexus if the evidence is similar to that in Martin's case. The robber wore a mask, and there was no forensic evidence of the Bank of America robbery. The only evidence was that of three co-defendants who had motive to lie.

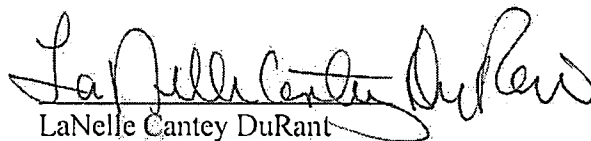
The Court of Appeals correctly held that under the totality test for determining the admissibility of evidence of flight, the state failed to establish a nexus between the April 2009 robbery of the Bank of America in Aiken and Martin's provision of false identifying information to a Georgia police officer almost a year later.

¹ The DOC website indicates none of the co-defendants are currently incarcerated there.

CONCLUSION

Based on the above, the state's petition for a writ of certiorari should be denied.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER.

This 18th day of September, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

 Certiorari to Aiken County

Doyet A. Early, III, Circuit Court Judge

 Opinion No. 5125 (S.C. Ct. App. filed 5/1/2013)
 10-GS-02-666

THE STATE,

RESPONDENT/PETITIONER,

V.

ANTHONY MARTIN,

PETITIONER/RESPONDENT

 CERTIFICATE OF SERVICE

I certify that a true copy of the return to the state's petition for writ of certiorari in this case has been served on Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and the S.C. Court of Appeals, this 18th day of September, 2013.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of September, 2013.

 (L.S.)
 Notary Public for South Carolina
 My Commission Expires: July 3, 2023.

The Supreme Court of South Carolina

The State, Respondent/Petitioner,

v.

Anthony Martin, Petitioner/Respondent.

Appellate Case No. 2013-001572

Lower Court Case No. 2010-GS-02-00666

ORDER

Petitioner/respondent and respondent/petitioner seek writs of certiorari to review the Court of Appeals' opinion in *State v. Martin*, 403 S.C. 19, 742 S.E.2d 42 (Ct. App. 2013). The petitions are denied.


C.J.
FOR THE COURT

Columbia, South Carolina

July 25, 2014

cc:

The Honorable Jenny Abbot Kitchings

The Honorable Liz Godard

LaNelle Cantey DuRant, Esquire

Mark Reynolds Farthing, Esquire

RECEIVED
JUL 25 2014
SC OFFICE OF
APPELLATE DEFENSE



CLOSING LETTER SENT
ON 07.29.14

443

Attorney initials _____

Assistant initials RL

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
www.sccourts.org

July 30, 2014

The Honorable Liz Godard
PO Box 583
Aiken SC 29802-0583

REMITTITUR

Re: The State v. Martin, Anthony
Lower Court Case No. 2010GS0200666
Appellate Case No. 2011-192066

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen.

DEPUTY CLERK

Enclosure

cc: LaNelle Cantey DuRant, Esquire
Mark Reynolds Farthing, Esquire
Alan McCrory Wilson, Esquire

RECEIVED

AUG - 1 2014

SC OFFICE OF
APPELLATE DEFENSE

FORM 5

2015-CP-02-00649
2010-GS-02-0666, 01087

Filed March 16, 2015

Lij Leland

C.C.B. & G.S. - Aiken County
Clerk of Court: Lij Leland
Deputy Clerk: [Signature]
Trial Judge: D. Early
Trial Atty.: David Hayes
Court Reporter: Lisa Davenport
Sec: PCR Petitioner
General Sessions
Appointed Atty.
Solicitor
Atty. Gen.

STATE OF SOUTH CAROLINA)

COUNTY OF Aiken)Anthony Marquise Martin,
Full name and prison number (if any) of Applicant.
SDC No. 345836,)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (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 ckr 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, exerse 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 thfees 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 South Carolina Department of Correction at Perry Correctional Institution
2. Name and location of Court which imposed sentence Aiken General Sessions Court
3. Name(s) of co-defendant(s) (if any) Quinton Harmon, Roosevelt Johnson, David Dixon
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-02-666 (Armed (Bank) Robbery)
 - (b) 2010-GS-02-1087 (Criminal Conspiracy)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 27, 2011 (20 years for armed robbery)
 - (b) April 27, 2011 (5 years for Criminal Conspiracy)

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal was denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 25, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2013-001572; State v. Martin, 403 S.C. 19, 742 S.E.2d 422 Ct. App. 2013.
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial Counsel
- (b) Ineffective Assistance of Trial Counsel
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed to object to Constructive amendment of armed robbery indictment.
- (b) Counsel failed to object to Solicitor's improper closing argument.
- (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? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) EXCLUSIVE PCR Grounds
- (b) II
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (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? N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. C. David Hayes,
- ii. Degrant Gibbons
- iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Trial
- iii. _____

19. State clearly the relief you seek in filing this application:

Reversal and Vacation of Sentences and Convictions

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
 County of Aiken)

VERIFICATION

Anthony Marquise Martin
 I, Anthony Marquise Martin, 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.

Anthony Martin 345836

SWORN to and subscribed before me this 10
 day of March, 2015

Tamara Conwell (L.S.)
 Notary Public

My Commission Expires: My Commission Expires
~~September 25, 2014~~

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Anthony Marquise Martin
I, Anthony Marquise Martin, 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.

Anthony Marquise Martin 345836
Applicant

SWORN or affirmed to and subscribed before me this

10 day of March, 2015.

Tamara Powell
Notary Public

My Commission Expires: My Commission Expires
September 25, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR AIKEN COUNTY
Athony M. Martin,	)	
SCDC No. _____,	)	MEMORANDUM OF LAW
Applicant,	)	IN SUPPORT OF APPLICATION
v.	)	POST-CONVICTION RELIEF
The State,	)	
Respondent	)	

COME NOW, the applicant, above named, presents the Memorandum of Law in support of Application for post-Conviction Relief and would show the following unto the Honorable Court.

STATEMENT OF THE CASE

The applicant was indicted by the Aiken County grand jury during the April 2010 term of General Sessions Court for armed (Bank) robbery (2010-GS-02-666), possession of a firearm during commission of a violent crime (2010-GS-02-667), and Criminal Conspiracy (2010-GS-02-1087). He was represented by C. David Hayes, Esq., and DeGrant Gibbons, Esq. The State was represented by Suzanna M. Ringler and Elizabeth B. Young, Solicitors for Aiken County. On April 25-27, 2011, he went to trial before the Honorable Doyet A. Earlhy, III, Judge and a jury. The jury found him guilty of armed robbery and Criminal Conspiracy. The Judge sentenced him to twenty (20) years for armed robbery and five (5) years for Criminal Conspiracy. all sentences to run concurrently.

ARGUMENT

The applicant was denied the right to effective assistance of trial Counsel by Counsel's failure to object to a constructive amendment of his indictment and charge and failure to move for a verdict in arrest of judgment and entry of a judgment of acquittal based on the Court's lack of jurisdiction to convict and sentence him for an unindicted armed robbery of the Bank of America Employee(s).

To establish a claim of ineffective assistance of trial Counsel, a post-conviction relief (PCR) applicant must show that Counsel's representation fell below an objective standard of reasonableness and, but for Counsel's error, there is a reasonable probability that the results at trial would have been different; a reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Edmond v. State, 534 S.E2d 682 (S.C. 2000).

In support of his claim, the applicant submit that he was charged, in relevant part, with "armed (Bank) robbery" in an indictment which alleged the offense as follows:

That ANTHONY MARQUESE MARTIN, A.K.A. "T-Money", along with others, did in Aiken County, South Carolina on or about April 23, 2009, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, feloniously take from the person or presence of Mona Floyd by means of force or intimidation goods or monies of Bank of America. Such goods being described as follows: Twelve Thousand and No/100 dollars (\$12,000), all in violation of §16-11-330 Code of Law of South Carolina, as amended. See indictment.

Conversely, prior to the trial of the case, the Judge informed the Jury panel that the allegation in appli-

Cant's armed robbery indictment alleged the following armed robbery offense:

Court: It is alleged that here in Aiken County back on April 23 of this year 2009 that this defendant Anthony Marquise Martin, he is also known as T-Money, along with others, while armed with a deadly weapon, took by force or intimidation monies from employees of Bank of America"

Tr. p. 15, L. 7-12.

At the close of the presentation of evidence and arguments, the Judge instructed the Jury that it must "accept the law as he charged it." Tr. p. 272, L. 19-25. The Judge then charged the Jury on the law of applicant's armed robbery offense as follows:

Court: Armed robbery, as defendant is charged with armed robbery that's codified in section 16-11-330 of our Code of Laws. In order to prove this offense the State must prove beyond a reasonable doubt that the defendant took "personal property" from the person or person of another person. That's the first thing they must prove beyond a reasonable doubt, that he took personal property from another person. Personal property is obviously in this case the allegation is money, "that's personal property!"... So the first thing they (State) must prove beyond a reasonable doubt that he (defendant) "took personal property from the person or presence of another person".

The State must then further prove beyond a reasonable doubt that the defendant carried the property away, intending to keep the property for his own use.

Tr. p. 276, L. 1-25

So armed robbery, when you think about it, is a pretty common sense

Crime the State has to prove beyond a reasonable doubt that the defendant "took personal property from a person of another"... and carried it away intending to permanently deprive the owner of "his or her" ownership.

Tr. p. 277, L. 16-25.

The applicant contends that the Judge's Jury Charge that That he "took personal property" from the Bank of America Employees Constructively amended his armed robbery indictment which actually charged that he "took money from the Bank of America" during an armed robbery. A Constructive amendment occurs when a Judge, during his instruction to the Jury, broaden the possible basis for conviction beyond those presented by the grand Jury. See, e.g., U.S. v. Floresca, 38 F.3d 706 (4th Cir. 1994), Citing Strone v. United States, 361 U.S. 212 (1960).

In Strone, the Court held that after an indictment has been presented its charge may not be broadened through an amendment except by grand Jury itself. The offense proved at Strone's trial was not fully contained in his indictment. The Court held that "although the trial court did not permit a formal amendment of Strone's indictment the effect of what it did (convicted him on different evidence from that found by grand Jury) was the same". 361 U.S. 217-218.

Likewise, it is well-settled law in South Carolina that a Criminal defendant is entitled to be tried only on the indicted offense, and if convicted he must be convicted of the "particular offense charged in the bill of indictment". See State v. Ellison, 386 S.E.2d 596 (S.C. App. 2003), accord In re Winship, 90 S.Ct. 1068 (1970), holding that "lest there be any doubt about the Constitutional Statute of 'reasonable doubt' standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of 'every fact' necessary to constitute the crime for which he is charged".

Here, Contrary to the decisions in Ellison and

Winship, the applicant contends that the Judge's Jury instruction constructively amended his "Bank Robbery" indictment to specifically convict him of "robbing the Bank of America employee(s) for personal property" instead of his indicted offense of "Robbing the Bank of America" for which he was actually indicted for by the grand Jury. see, e.g., Wilson v. Lindler, 995 F.2d 1256 (4th Cir. 1993).

As a result, the applicant contends that he was denied the right to effective assistance of trial Counsel by Counsel's failure to move for issuance of an order by the Court to grant a post-trial motion for a verdict in arrest of judgment and entry of a judgment of acquittal based on the Court's lack of jurisdiction to convict and sentence him for an "unindicted armed robbery of Bank of America's Employee(s)". See, e.g., State v. Taylor, 558 S.E.2d 917 (S.C.App. 2000); State v. Smith, 447 S.E.2d 175 (S.C. 1993); State v. Brown, 23 S.E.2d 38 (1942).

The applicant was denied the right to effective assistance of trial Counsel by Counsel's failure to object to Solicitor's Closing argument that appealed to the passion and prejudice of the Jury.

During Closing argument, the Solicitor improperly appealed to the passion and prejudice of the Jury as follows:

Solicitor: You're here today because of a crime, not a TV show, not a movie. And you heard from real people, not actors. People who live and work in this community and you heard and saw the fear that these customers and tellers went through. You saw Mona (teller) on the stand and how she still remember what that defendant said to her, "Bitch put the money in the bag". And you saw her shaking on the stand.

Her voice quivering. She was terrified, two years later, to talk about what she went through. You heard from Brenda Howes (customer) who still remembers that voice, that booming, deep, scary voice yelling for everyone to get down, get down. And she tried to hide. She tried to get behind the counter, to hide behind the door, but she couldn't. The door wouldn't open. So all she could do was cower on the floor and wait for it to be over. Wait for that man (defendant) who came into the bank with a gun, to leave and hope he wasn't going to shoot in the bank. Those people were terrified.

Tr. p. 261, L. 1 - p. 262, L. 19.

The Solicitor's statements in closing were clearly made to arouse the passion and prejudice of the jury. An argument of this nature addressed to the jury tends to completely destroy and nullify all sense of the jury's impartiality and encourages them to convict a defendant to ensure the safety of the community. See State v. McDaniel, 462 S.E.2d 882 (S.C. App. 1995).

Thus, the proper course to be pursued when a solicitor makes an improper argument is for the defense counsel to immediately object, have a record made of the statement complained of, and request for a distinct ruling thereon by the judge. See State v. Black, 462 S.E.2d 311 (S.C. App. 1995). Here, counsel's failure to object to the solicitor's improper argument for a ruling thereon by the judge was ineffective assistance that was per se prejudicial. Edmond, Supra.

CONCLUSION

WHEREFORE, for the foregoing reason, the Honorable Court should reverse applicant's conviction for a new trial.

This 10 day of March, 2015

151 Anthony M. Martin 345836
Anthony M. Martin
Perry Correctional Inst.
430 Oaklawn Road - 24A/124
Pelzer, S.C. 29669

RECEIVED

MAR 10 2015

P.C.I. MAILROOM

Date: March 10, 2015

Clerk of Court,
For Aiken County
Aiken County Court House
P.O. Box 583
Aiken, S.C. 29802

Re: Post-Conviction Application

Dear Clerk:

Enclosed please find my original Post-Conviction Application and Memorandum of Law in support of same for filing with your office. I have also enclosed a self-addressed envelope for your return to me clocked-stamped copies of these documents for my records.

Sincerely,

1/s/ Anthony M. Martin 345836
Anthony M. Martin *
Perry Correctional Inst.
430 Oaklawn Road-QWA/124
Pelzer, S.C. 29669

cc: IM's file

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Anthony Martin, #345836,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

C/A NO: 2015-CP-02-649

AMENDMENT TO PCR APPLICATION

FILED

5.16.16

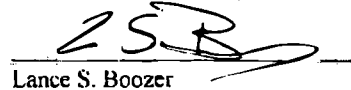
C.C.P. & O.S.

May 19, 2016

The Applicant, at his request and through appointed counsel below, makes the following additional claims and amendments to his prior application for post-conviction relief filed March 23, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Counsel failed to investigate telephone records to establish alibi defense.
 - (b) Counsel failed to call additional alibi witnesses at trial.
 - (c) Counsel failed to request a curative instruction regarding Detective Poythress' testimony that Applicant did not want to provide a statement.
 - (d) Counsel failed to object to Solicitor's improper closing argument.

Respectfully submitted,



Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

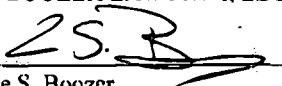
Columbia, South Carolina
May 12, 2016

AFFIDAVIT OF SERVICE

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior PCR Application upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Julie Coleman
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
May 12, 2016

FILED 5.16.16

Eric Gadard
C.C.P. & G.S.

Anita Thompson
CLERK

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Anthony Marquise Martin, #345836,	)	2015-CP-02-00649
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 16, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the April 2010 term of the Aiken County Grand Jury for armed robbery (2012-GS-02-00666) and criminal conspiracy (2010-GS-02-01087). David Hayes, Esquire represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. On April 27, 2011, Applicant was found guilty as indicted. Judge Early sentenced Applicant to twenty year term of imprisonment for armed robbery and five year term of imprisonment for criminal conspiracy with all sentences running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Anthony Martin, Op. No. 5125 (Ct. App. 2013). The Remittitur was issued on July 30, 2014.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. Counsel failed to object to constructive amendment or armed robbery indictment.
 - b. Counsel failed to object to solicitor's improper closing argument.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged 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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

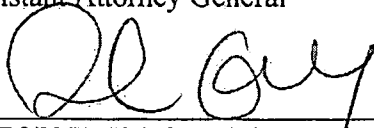
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

April 15, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2015-CP-02-00649
	)	
ANTHONY M. MARTIN, #345836,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this the 15th day of April, 2015.


 Caroline Collins, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2015-CP-02-00649

3
4
5 ANTHONY MARQUISE MARTIN,
Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9
10 Post-Conviction Relief Hearing

11 Heard on Tuesday, September 20, 2016

12 Aiken, South Carolina

13
14 BEFORE:

15 THE HONORABLE ROBERT E. HOOD

16
17
18 APPEARANCES:

19 Counsel on Behalf of the Applicant:
Lance S. Boozer, Esq.

20
21 Counsel on Behalf of the Respondent, State of SC:
Julie A. Coleman, Esq.

22
23 Cheri L. Young, RPR
Circuit Court Reporter
24 P O Box 5232
Aiken, SC 29803-5232
25

EXAMINATION INDEX

ANTHONY MARQUISE MARTIN

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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED)

1 ON TUESDAY, SEPTEMBER 20, 2016 AT 9:55 A.M.:

2 MS. COLEMAN: Anthony Martin.

3 THE COURT: Everybody ready?

4 MS. COLEMAN: Yes.

5 THE COURT: We're on the record in
6 2015-CP02-649, Anthony Marquise Martin against the
7 State of South Carolina. The State is present and
8 represented by Ms. Coleman. And are you
9 Mr. Martin?

10 THE APPLICANT: Yes, sir.

11 THE COURT: Good morning. How are you?

12 THE APPLICANT: I'm all right. Yourself?

13 THE COURT: Great, thanks. Where did you
14 come in from?

15 THE APPLICANT: Perry.

16 THE COURT: Perry.

17 THE APPLICANT: By way of Aiken.

18 THE COURT: By way of Aiken. Okay. Great.
19 Mr. Martin is present and represented by Lance
20 Boozer. Is everyone ready to proceed?

21 MS. COLEMAN: Yes, Your Honor.

22 THE COURT: All right. Mr. Boozer -- or,
23 Ms. Coleman, why don't you give us the highlights
24 and then we'll jump into it?

25 MS. COLEMAN: Sure.

1 The Applicant is presently confined in the
2 South Carolina Department of Corrections pursuant
3 to orders of commitment of the Aiken County Clerk
4 of Court. Applicant was true-bill indicted at the
5 April 2010 Term of the Aiken County Grand Jury for
6 armed robbery and criminal conspiracy. David
7 Hayes, Esquire, represented the Applicant.

8 The Applicant proceeded to a jury trial
9 before the Honorable Doyet A. Early the Third. On
10 April 27, 2011, Applicant was found guilty as
11 indicted. Judge Early sentenced the Applicant to a
12 20-year term of imprisonment for armed robbery and
13 a five-year term of imprisonment for criminal
14 conspiracy with all sentences to run concurrently.

15 A timely notice of appeal was filed on
16 Applicant's behalf. The South Carolina Court of
17 Appeals affirmed Applicant's conviction and
18 sentence. The remittitur was issued on July 30th,
19 2014.

20 The Applicant filed a timely application for
21 post-conviction relief on March 16th, 2015,
22 alleging that he was being held in custody
23 unlawfully for the following reasons: In effective
24 assistance of trial counsel.

25 Applicant subsequently submitted an amendment

1 which was filed on May 12th of 2016, which you
2 should have in your packet.

3 THE COURT: I do.

4 MS. COLEMAN: Okay. Alleging four further
5 grounds of ineffective assistance of counsel.

6 The State filed its return on April 15th of
7 2015. And he is present today and represented by
8 Mr. Lance Boozer.

9 THE COURT: All right. Mr. Boozer, are you
10 ready to go forward?

11 MR. BOOZER: I am, Your Honor. And before we
12 begin, I do have just one short preliminary matter.

13 THE COURT: Okay.

14 MR. BOOZER: Judge, Mr. Martin indicated that
15 he had sent to me a letter a couple of weeks ago.
16 I've even spoken with his mom about it, I think it
17 was Thursday or Friday of last week. I did not
18 receive the letter in the office but he's presented
19 to me a time-stamped copy from the mail room at
20 Perry with two allegations that he wants to amend
21 on his application. They're really one and the
22 same.

23 I've conferred with counsel for the State and
24 I don't believe she has any objection to the
25 amendment that we present to Your Honor.

1 THE COURT: Ms. Coleman?

2 MS. COLEMAN: The State has no objection.

3 THE COURT: Okay.

4 MR. BOOZER: And, Judge, just for the record,
5 that would be counsel failed to utilize State's
6 witnesses effectively and failed to put forth an
7 alibi defense as it relates to actual witnesses
8 that were called on his behalf.

9 THE COURT: All right. So Mr. Martin --

10 THE APPLICANT: Yes, sir.

11 THE COURT: -- you sent this letter to your
12 attorney a few weeks ago; is that correct?

13 THE APPLICANT: Yes, sir.

14 THE COURT: Asking that your application be
15 amended?

16 THE APPLICANT: Yes, sir.

17 THE COURT: And for whatever reason, we all
18 understand how the mail works in the Department of
19 Corrections, that it didn't make it to your
20 attorney. Do you understand that today we are
21 allowing those additional allegations to go forward
22 and to be heard?

23 THE APPLICANT: Yes, sir.

24 THE COURT: Okay. All right. Mr. Boozer?

25 MR. BOOZER: Thank you, Your Honor.

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 We'd go ahead and call Mr. Martin to the
2 stand.

3 THE COURT: Come on up, Mr. Martin.

4 ANTHONY MARQUISE MARTIN, having been duly
5 sworn, was examined and testified as follows:

6 THE CLERK: Please take a seat in the witness
7 stand and state your full name for the Court.

8 DIRECT EXAMINATION

9 BY MR. BOOZER:

10 Q. Mr. Martin, how are you doing today?

11 A. I'm all right.

12 Q. Good. Okay. Do you know what it is that
13 you're here doing today?

14 A. Yes, sir. My citizen conviction is in
15 violation of the Fifth, Sixth and the 14th
16 Amendment of the United States Constitution. I was
17 denied the right to ineffective {sic} assistance of
18 counsel. I was denied the right of due process.

19 And I was also denied the right of presentment to
20 {sic} indictment of the grand jury, and denied the
21 right to be informed of the nature of the crime,
22 nature of the crime.

23 Q. And you, obviously you filed an application
24 for post-conviction relief?

25 A. Yes, sir.

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 Q. And we're here today to have a hearing on
2 your allegations in that application?

3 A. Yes, sir.

4 Q. Okay. Do you understand that the relief that
5 this Court can give to you is fairly limited; do
6 you understand that?

7 A. Yes, sir.

8 Q. All right. Do you know if this Court agrees
9 with you and grants your application for post-
10 conviction relief that the only thing that this
11 Court can do is basically send it back to day one,
12 to have a new trial on your original charges?

13 A. Yes, sir.

14 Q. And you understand that this Court can't
15 reduce your sentence or cut your time or make you
16 parole eligible or anything like that?

17 A. Yes, sir.

18 Q. And knowing that, you still want to go
19 forward with it?

20 A. Yes, sir.

21 Q. Okay. Who was your lawyer for your trial?

22 A. Mr. David Hayes.

23 Q. All right. Was Mr. Hayes, was he appointed
24 or was he retained?

25 A. He was appointed.

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 Q. Do you recall when you were first arrested on
2 these charges?

3 A. I was first arrested 2010, of January.

4 Q. All right. Do you recall when you first got
5 appointed Mr. Hayes as your lawyer?

6 A. It wasn't long after that. I was waiting in
7 the DeKalb County Jail in Atlanta to be indicted --
8 extradited to South Carolina. And once I got
9 extradited to South Carolina it be around March
10 1st, and he was appointed probably a couple weeks
11 after that.

12 Q. Do you know how many times you probably met
13 with Mr. Hayes before your trial or spoke to him?

14 A. I met with him a few times. I'd say about,
15 about -- I'd been in the county jail about 14
16 months, so I'll say at least about five times I
17 seen him. And I talked to him on the phone
18 numerous times, probably 10.

19 Q. Okay. In your discussions with him and in
20 your meetings with him, what would you two discuss?

21 A. Well, at first we was discussing a plea that
22 the State had been offering. And I turned it down
23 every time.

24 Q. What was that plea offer; do you recall?

25 A. 10 to 20, armed robbery.

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 Q. And you said you turned that down?

2 A. Yes, sir.

3 Q. Why did you turn it down?

4 A. Because I knew I didn't commit the crime.

5 Q. All right. Keep going. What else did y'all
6 talk about?

7 A. Eventually he came with another plea, zero to
8 20. It wasn't armed robbery but entering bank with
9 intent to steal. I also turned that down.

10 And not long after that since he was aware
11 that I wouldn't be taking any pleas, he was trying
12 to get it ready for the trial. And he had wanted
13 to get some alibi witnesses together and I gave him
14 a couple of phone numbers to call since I wasn't
15 able to call because they didn't have any minutes
16 on the phone. And I gave him a few phone numbers,
17 about five. And, I don't know which ones but he
18 say some of them didn't answer and he left messages
19 for some of them, and waited on a reply and he
20 never got a reply.

21 Q. Now is that -- does that have to do with one
22 of your allegations in your PCR application?

23 A. Actually it did have something to do with it,
24 but I was unable to obtain the witnesses so the
25 witnesses never got a chance to come here and

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 testify.

2 Q. You're talking about today?

3 A. Yes, sir.

4 Q. Okay. And you understand that we've
5 attempted to do that?

6 A. Yes, sir.

7 Q. Okay. And it's your decision to go forward
8 without any further attempts --

9 A. Yes, sir.

10 Q. -- to get those witnesses?

11 A. Yes.

12 Q. Okay. Now, besides that, what else were
13 y'all doing to prepare for your trial?

14 A. He wanted to get some witnesses from Aiken
15 County. And I told him about a few witnesses which
16 is my next-door neighbor and some neighbors down
17 the street. They was going to rebut the State's
18 witness allegation about me being in the
19 neighborhood prior to bank robbery.

20 And he basically told me since the allegation
21 was, since my claim was -- I wanted to call the
22 witnesses to testify that I went back to Atlanta a
23 couple weeks before the bank robbery and was never
24 seen in the neighborhood again. And his feeling
25 was, he actually told me it doesn't matter where

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 you was before the bank robbery because you could
2 have came back. And he said we need to find out
3 witnesses that could have placed you at a certain
4 time of the bank robbery.

5 Q. Did he ever give you an opinion on your case
6 or what he thought about your chances at trial?

7 A. Well, he kept on saying the last bank robber
8 got 28 years and that's probably what you're going
9 to end up getting if you go to trial.

10 Q. Let's go through your allegations. I know
11 your first allegation that you alleged in your
12 original application, you've alleged that your
13 lawyer failed to object to the indictment
14 amendment.

15 A. Yes, sir.

16 Q. Is that -- explain to the Court what you mean
17 by that allegation.

18 A. Well, the judge's opening remarks to the jury
19 was that I was alleged to have took money from Bank
20 of America employees. And in his instructions to
21 the jury, his charge, he charged the jury that the
22 allegation was the bank teller was robbed for
23 personal property.

24 And he used language such as depriving the
25 owner of his or her ownership and the elements

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 which is basically supplement, supplemental
2 instruction. And he failed to rule for a verdict
3 in arrest of judgment, in a entry of judgment, you
4 know, acquittal, a post-trial verdict, a post-trial
5 motion. Sorry.

6 Q. Okay. And your lawyer didn't take any of
7 those actions that you thought would have assisted
8 in your case?

9 A. Yes, sir.

10 Q. All right. Now, you've also alleged that the
11 solicitor made some improper closing statements.
12 If you would, explain to the Court what you feel
13 like your lawyer should have done and what those
14 statements were by the solicitor.

15 A. Well, that just tied into my other argument
16 about the lawyer failed to object to the
17 detective's improper comments of his reference to
18 me invoking my Fifth Amendment right to remain
19 silent.

20 And, see, that right there was really the
21 solicitor alluding to it because the only way it
22 could be prejudiced if it was repeated or alluded
23 to and the solicitor alluded to it in the closing
24 argument, simultaneously tying it to my exculpatory
25 story, and my exculpatory story was implausible and

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 the evidence wasn't overwhelming.

2 So that pretty much was tied into the same
3 argument.

4 Q. And let's go ahead and skip over to that
5 allegation so we keep them together since they're
6 related.

7 A. Okay.

8 Q. You've alleged that your lawyer was
9 ineffective for failing to object to certain
10 statements or testimony by one of the detectives --

11 A. Yes, sir.

12 Q. -- and not requesting any curative
13 instruction?

14 A. Yes, sir.

15 Q. Is that what you're talking about right now?

16 A. Yes, sir.

17 Q. And, Your Honor, just for the Court's
18 information I'm looking over at page 229 of the
19 transcript.

20 THE COURT: All right. I'm there.

21 BY MR. BOOZER:

22 Q. And specifically, Mr. Martin, do you recall
23 where there's some -- there's a question, and I
24 think this is actually made by your lawyer maybe,
25 where he's questioning the detective. Where he

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 asked: Did he ever give a statement. The answer
2 was: He never gave a statement to me. Mr. Martin,
3 also with his attorney present, didn't want to
4 provide a statement.

5 A. Yes, sir.

6 Q. Is that what you feel like was an improper
7 comment on your right to remain silent?

8 A. Yes, sir, because the jury could have
9 convicted me just because I invoked my Fifth
10 Amendment right.

11 Q. All right. Was anything done with regard to
12 that statement as far as either a request for a
13 curative instruction or let the jury disregard what
14 they heard or a motion for a mistrial, was that
15 ever done?

16 A. No. Request for curative wasn't never
17 requested, and the judge never offered.

18 Q. Do you think that this hurt your case?

19 A. Yes, sir. Prejudicial.

20 Q. All right, Mr. Martin. Another allegation
21 you have, I think, has to go back to what you
22 referred to or going back to the closing argument.
23 And I think you made reference it related to the
24 detective's testimony.

25 Do you have an allegation about him using the

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 statement made by the bank teller?

2 A. Oh, yes, sir.

3 Q. Explain that to the Court.

4 A. I believe the bank teller actually perjured
5 her testimony and the lawyer failed to cross-
6 examine her effectively because she came up with
7 fictitious testimony that was actually different
8 from her statements initially gave to the
9 detectives. And she commented about the bank
10 robber coming in and telling her to "Put the money
11 in a bag, bitch."

12 And she -- and the statements -- it was never
13 stated that in the statements, her statements or
14 any other, the witness statements who witnessed the
15 crime. And the solicitor just ran with it in the
16 closing argument and just kept on repeating it, and
17 I believe that was prejudicial.

18 Q. And are you referring to page 262 of the
19 record where the solicitor refers to the witness
20 saying, on page 262 at line four, "You saw Mona on
21 the stand and how she still remembers what the
22 Defendant said to her, "Bitch, put the money in the
23 bag"?

24 A. Yes. Yes, sir. I am referring to that.

25 Q. Okay. And was any objection made by your

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 attorney?

2 A. No, sir.

3 Q. Did you feel like there should have been an
4 objection made at that point?

5 A. Yes, sir.

6 Q. And did your lawyer ever cross-examine her as
7 far as whether that was consistent with her
8 statement that she had given to the police?

9 A. No, he never did that.

10 Q. Okay. And do you think that those inactions
11 by your lawyer prejudiced your trial?

12 A. Yes, sir.

13 Q. All right. You also have alleged today by
14 amendment that your lawyer failed to utilize
15 witnesses effectively and failed to put forward an
16 alibi defense.

17 A. Yes, sir.

18 Q. Explain those allegations to the Court.

19 A. Well, my mother and my grandmama was my only
20 alibi witnesses. And I felt that he supposed to
21 made the times specific in his question, in his
22 questioning to the witnesses. And their testimony,
23 they never specified any times like they should
24 have. And I have statements from them that specify
25 times and he never specify any time.

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1 Q. And we'll get into that with your lawyer.

2 But your mother testified beginning on page 243 of
3 the transcript. Do you recall that?

4 A. 243?

5 Q. Yes, sir.

6 A. Yeah.

7 Q. Okay. And specifically on page 244, what was
8 the purpose of your mom testifying?

9 A. The purpose of my mother testifying was to
10 place me in Atlanta at the time of the bank robbery
11 or a little bit prior to it.

12 Q. When was it alleged the bank robbery
13 occurred?

14 A. The exact time was 12:20, about 12:20.

15 Q. And where did they allege that the robbery
16 occurred?

17 A. In North Augusta.

18 Q. In South Carolina?

19 A. Yes, sir.

20 Q. All right. And so, what was it your mom --
21 from your understanding of calling her as a
22 witness, what was her purpose?

23 A. Her purpose was to give me an alibi of the
24 time of the bank robbery which occurred at 12:20.
25 In her statement she actually, she supposed to

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 testify that she dropped me off in Atlanta at 11:30
2 or 11:15.

3 Q. And do you recall your lawyer actually
4 calling her as a witness for your trial?

5 A. Yes, sir.

6 Q. And she testified?

7 A. Yes, sir.

8 Q. All right. And are you referring to on page
9 244 where your lawyer asked your mother: What did
10 you do on the 23rd of April of 2009. She says: I
11 woke up. I have three younger kids I got ready for
12 school, and then I woke Anthony up and got ready to
13 go look for work and I dropped him off on
14 Lawrenceville Highway and Jimmy Carter.

15 A. Yes, sir.

16 Q. Did your lawyer ask her: What time did you
17 drop him off?

18 A. No, sir.

19 Q. Okay. Was the jury ever able to hear that
20 you were dropped off at a particular time on that
21 day?

22 A. No, sir.

23 Q. And, was it your understanding -- what was
24 your understanding of what time your mother dropped
25 you off?

ANTHONY MARQUISE MARTIN - DIRECT BY BOOZER

1 A. Well --

2 Q. What time did your mom drop you off?

3 A. Well, the reason -- she dropped me off around
4 11:15, 11:30. But I wanted to make it specific
5 because from Atlanta to North Augusta is only a
6 hundred miles. So, if she testified and said she
7 dropped me off in the morning and the jurors
8 actually believed it, well, they probably said it's
9 a big window of opportunity for me to drive back to
10 South Carolina.

11 Q. Do you feel like your lawyer should have
12 asked your mom what time she was dropped off --

13 A. Yes, sir.

14 Q. -- or, excuse me, what time she dropped you
15 off?

16 A. Yes, sir.

17 Q. Okay. With regard to the amendments that
18 we've made on the record today, is there anything
19 else with regard to those two amendments that you
20 wish to tell the Court about?

21 A. I think that about sums it up.

22 Q. Okay. Are there any other allegations?
23 You've made an allegation about some telephone
24 records. Is that something that you're pursuing
25 today, or if you want to explain that to the Court?

ANTHONY MARQUISE MARTIN - CROSS BY COLEMAN

1 A. No, sir. I actually got in contact with them
2 and, through family members and they said that it
3 wasn't able to go back that far.

4 Q. Okay. Mr. Martin, other than what you
5 testified to today and about your allegations, is
6 there anything else that you want to bring to this
7 Court's attention about your PCR application or any
8 other complaints about things you've alleged
9 today? This is your one day to do it. Is there
10 anything else that you haven't told the Court?

11 A. I think that's about it.

12 MR. BOOZER: Okay. Thank you, Mr. Martin.
13 That's all the questions I have right now.

14 THE APPLICANT: All right.

15 THE COURT: Stay right there.

16 CROSS-EXAMINATION

17 BY MS. COLEMAN:

18 Q. I've got a few questions for you.

19 A. Oh. Yes, ma'am.

20 Q. How are you this morning?

21 A. I'm all right.

22 Q. Good.

23 Mr. Martin, you testified that you met with
24 your trial counsel about five times before the
25 trial; is that correct?

ANTHONY MARQUISE MARTIN - CROSS BY COLEMAN

1 A. Yes, ma'am.

2 Q. And you spoke on the phone about 10 times?

3 A. Yes, sir -- ma'am.

4 Q. Okay. Do you recall reviewing discovery with
5 your attorney, the State's evidence against you?

6 A. Yes, ma'am.

7 Q. Do you recall discussing possible defenses
8 with your attorney?

9 A. Yes, ma'am.

10 Q. Did you provide your attorney with the names
11 of the alibi witnesses that you wanted him to
12 present?

13 A. Yes, ma'am.

14 Q. Okay. Did you give your attorney any leads
15 or potential witnesses to investigate?

16 A. Yes, ma'am.

17 Q. Other than -- okay. You testified that a
18 couple different plea offers were given to you; is
19 that right?

20 A. Yes, ma'am.

21 Q. Was it your decision to proceed to trial
22 instead of accepting the offer?

23 A. Yes.

24 Q. You also testified that your mother testified
25 at the trial, right?

1 A. Yes.

2 Q. And she was presented as an alibi witness to
3 place you in Atlanta during the time of the trial?

4 A. Yes.

5 Q. Isn't it true that your grandmother also
6 testified?

7 A. Yes.

8 Q. And she also said that you were in Atlanta at
9 the time, correct?

10 A. Yes.

11 Q. Okay. And you do not have any alibi
12 witnesses here today, correct?

13 A. No, ma'am.

14 Q. Okay. Thank you. No further questions.

15 THE COURT: Redirect?

16 MR. BOOZER: No redirect, Your Honor.

17 THE COURT: Now you may step down.

18 THE APPLICANT: Yes, sir.

19 THE COURT: Thank you very much.

20 Mr. Boozer?

21 MR. BOOZER: No further witnesses on behalf
22 of the Applicant.

23 THE COURT: Okay. Ms. Coleman?

24 MS. COLEMAN: The State calls David Hayes.

25 THE COURT: All right. Mr. Hayes, please

C DAVID HAYES - DIRECT BY COLEMAN

1 come forward.

2 C. DAVID HAYES, having been duly sworn, was
3 examined and testified as follows:

4 THE CLERK: Please have a seat in the witness
5 stand and state your full name for Court.

6 THE WITNESS: Charles David Hayes, H-A-Y-E-S.

7 DIRECT EXAMINATION

8 BY MS. COLEMAN:

9 Q. Good morning, Mr. Hayes. How are you?

10 A. Good morning.

11 Q. How long have you been practicing law?

12 A. Seven years.

13 Q. And do you recall whether you were appointed
14 or retained in this case?

15 A. I was appointed.

16 Q. How many times did you meet with the
17 Applicant prior to the trial?

18 A. I stopped counting at 15 --

19 Q. Okay.

20 A. -- prior to court this morning.

21 Q. Did the Applicant cooperate during the course
22 of your representation?

23 A. Yes.

24 Q. Did you file any Brady or Rule Five motions?

25 A. I did.

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1 Q. And did you review the discovery material
2 with the Applicant?

3 A. I did. I believe there was several times.

4 Q. Okay. Prior to the trial did you discuss
5 with the Applicant the elements of the charges and
6 what the State was required to prove?

7 A. Yes.

8 Q. Did you discuss the Applicant's version of
9 the facts?

10 A. I did.

11 Q. Did you discuss possible defenses with the
12 Applicant?

13 A. Actually more than once. We were discussing
14 alibi and once I told him that alibi was falling
15 through or I didn't think it was as strong as it
16 could be because we could not get cooperation with
17 his mother to give me the names that he claimed
18 were in the cell phone and phone numbers, he wanted
19 to find a different defense.

20 Q. Okay. And what other defense did he ask you
21 to pursue?

22 A. I told him there was none. Reasonable doubt
23 was his best shot at that point.

24 Q. What kind of investigation did you do in this
25 case?

C DAVID HAYES - DIRECT BY COLEMAN

1 A. I -- the names that he did give me, I tried
2 to find. I talked to some. Some didn't cooperate.
3 His mother, his grandmother. I had my investigator
4 go over the file as well and he wrote up a small
5 synopsis.

6 Q. Okay. Did you have ample time to prepare for
7 trial?

8 A. Yes.

9 Q. And can you generally tell us what your trial
10 strategy was in this case?

11 A. He was adamant as to the alibi. The only
12 witnesses that we had as to alibi was his mother
13 and grandmother. And then to throw doubt as to
14 whether he was present or not because one of the
15 witnesses testified that when she saw the red
16 Mustang leave the bank there was only three people
17 in it. They had had three co-defendants testify
18 against him. And my theory in closing, I believe,
19 was that my client was not present. The other
20 three did the robbery and put him as involved to
21 pass blame.

22 Q. Okay. And you did cross-examine the
23 witnesses on their discrepancies in the story
24 regarding the mustang?

25 A. Yes. I think if I remember right, Judge

C DAVID HAYES - DIRECT BY COLEMAN

1 Early called me out for pitting witnesses.

2 Q. Okay. And you testified that the mother and
3 grandmother did present their testimony as alibi
4 witnesses, correct?

5 A. Yes.

6 Q. Okay. Is there a reason why they -- excuse
7 me just a moment.

8 Okay. Let's look at the allegation about the
9 improper closing argument by the solicitor. What
10 is your general strategy as far as objecting goes
11 during closing arguments?

12 A. If I would hear it I would object during a
13 closing.

14 Q. Okay.

15 A. It's always easier to hindsight 20-20 and
16 look back.

17 Q. Right. At the time did you think that these
18 things were objectionable?

19 A. I did not object, no.

20 Q. Okay. And as far as the comment about, in
21 the closing argument about the quote of the,
22 "Bitch, put the money in the bag," did you find
23 that objectionable for any reason?

24 A. If she had testified that's what was said
25 beforehand, no. She was just restating what was

C DAVID HAYES - DIRECT BY COLEMAN

1 testified to.

2 Q. And did she testify to that when she was on
3 the stand?

4 A. I don't recall. I'd have to look back
5 through the transcript.

6 Q. If the transcript said that she did, would
7 you agree that --

8 A. If it's in black and white, yes.

9 Q. Okay. Did you cross-examine this witness on
10 the fact that she could not identify the robber in
11 this case?

12 A. Which witness?

13 Q. This was the bank teller, the original --

14 A. Mona?

15 Q. Yes. Mona Floyd.

16 A. I did cross-examine her.

17 Q. Okay. And do you recall cross-examining her
18 on the fact that the bank robber in this case was
19 wearing a mask and she was unable to identify who
20 he was?

21 A. Can you point me to a line and page?

22 Q. Sure. It starts on page 48, I believe.

23 A. Yeah. It starts on 48.

24 Q. Okay.

25 A. Quinton Harmon came in, tried to actually

C DAVID HAYES - DIRECT BY COLEMAN

1 open an account but didn't have an ID.

2 Q. Right.

3 A. And he was wearing a North Augusta High
4 School shirt. She said, yeah.

5 Q. Sorry. I don't have the exact line.

6 A. Started questioning her on page 49 line 23
7 about the shirt. She said she didn't know either.
8 She didn't remember the back of it. Front of it,
9 she said it had a high school logo on.

10 Q. Look at page 51 line nine, please. Would you
11 read that out loud?

12 A. Can you identify the person that robbed you.
13 The answer on line 10: No.

14 Q. Okay. So was this something that you cross-
15 examined her on?

16 A. Yes.

17 Q. And did you believe that pointing out the
18 fact that she could not identify the bank robber
19 might have been more helpful than comparing her
20 statements about whether or not he said, "Bitch,
21 put the money in the bag"?

22 A. I went through what was -- my plan was that
23 he wasn't in the car, and if she couldn't identify
24 who did it then I could pass blame to Quinton
25 Harmon or the other individuals.

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1 Q. Okay. So her exact statement on what she
2 said or what the bank robber said to her you didn't
3 find objectionable at the time?

4 A. No.

5 Q. Okay. As far as the jury instructions go
6 about personal property, the Applicant has alleged
7 that you failed to object and this was -- let's see
8 if I can find the page. I apologize. I'm on page
9 276 of the transcript in the jury instructions.

10 A. 276.

11 Q. And this is where Judge Early is discussing
12 that the State must prove beyond a reasonable doubt
13 that the Defendant took personal property. Did you
14 find this objectionable at the time?

15 A. No.

16 Q. Okay. Sorry to flip back. Page 229, the
17 statement by Investigator Poythress,
18 P-O-Y-T-H-R-E-S-S. The Applicant has alleged that
19 Investigator Poythress testified about how the
20 Applicant refused to give a statement and that this
21 was improper. Did you object to that at the time?

22 A. I did not.

23 Q. Did you find it objectionable at the time?

24 A. If I did it was not my witness and I've
25 already been chewed out once for objecting to

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1 somebody else's witness.

2 Q. Okay. And in closing arguments, or, excuse
3 me. In the jury instructions, on page 274, did
4 Judge Early testify -- did he instruct the jury
5 that they could not use the defendant's choice to
6 remain silent against him in this case?

7 I'm sorry. I've got you flipping through the
8 transcript.

9 A. 274?

10 Q. 274, starting at line 19, I believe.

11 A. He does go over his charge that he exercised
12 his right to remain silent and it cannot be
13 considered against him.

14 Q. Okay. Do you believe that this jury
15 instruction might have cured any error made by the
16 testimony that he didn't give a statement?

17 A. I'm sorry. One more time for me.

18 Q. Do you believe that this jury charge that
19 they could not use his right to remain silent
20 against him, do you believe that that cured any
21 error that might have been made by the
22 investigator's testimony that he chose not to give
23 a statement?

24 A. Yeah. I mean, it's -- he's clearly telling
25 them they cannot consider it against him.

C DAVID HAYES - CROSS BY BOOZER

1 Q. Just in general, what are your opinions about
2 this case, about the strength of the case, and the
3 strategies that you had to use?

4 A. There was four cooperating co-defendants
5 saying he did it. My whole time was that you're
6 going to be convicted. We scratched. We clawed.
7 We got the best defense we could put together and
8 we swung. And he chose the trial versus the
9 offers.

10 Q. Okay. And how would you describe the State's
11 evidence against the Applicant?

12 A. A plethora.

13 Q. Would you describe it as overwhelming?

14 A. Yes.

15 MS. COLEMAN: No further questions. Thank
16 you.

17 THE COURT: Mr. Boozer?

18 MR. BOOZER: Thank you, Your Honor.

19 THE COURT: Hold on a second. The witness
20 has requested some water.

21 (Pause.)

22 THE COURT: I apologize, Mr. Boozer.

23 MR. BOOZER: Not a problem. Thank you, Your
24 Honor.

25

C DAVID HAYES - CROSS BY BOOZER

CROSS-EXAMINATION

BY MR. BOOZER:

Q. Mr. Hayes, do you recall -- well, I guess, let me ask you this. Do you recall who Alba or Ms. Alba Fumbah was?

A. That's his mother.

Q. Okay. And she obviously, she was called as a witness at the trial?

A. Yes.

Q. What was her purpose in testifying?

A. She was testifying that he was in Atlanta at the time of the robbery.

Q. Okay. Do you recall --

A. Or actually that day.

Q. Do you recall when it was alleged that the robbery occurred?

A. I cannot remember.

Q. If the transcript reflects and indictments and whatnot that they're alleging it happened somewhere right around noon in Aiken County, would you agree with that?

A. Yeah.

Q. Okay. Would you agree with me that as far as establishing a time line it's important and with an alibi defense, it's important to have the exact

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1 times to where if there is a time associated with
2 someone saying he's where he is, that you got to
3 have the exact time so it matches up with when the
4 robbery was?

5 A. I agree.

6 Q. Okay. Do you recall independently
7 Ms. Fumbah's testimony?

8 A. No, but I did read over it this morning after
9 I talked with you.

10 Q. And if I might, I'll just direct you to --
11 her testimony begins on page 243. And specifically
12 I'm looking at 244. If you would just take a
13 moment and review that to yourself. I'll ask you a
14 couple questions.

15 A. (Complying.) Okay.

16 Q. All right. To your knowledge and based on
17 your -- well, let me ask you this. Did you
18 interview Ms. Fumbah before she testified?

19 A. I met with her several times.

20 Q. Okay. And where was Ms. Fumbah living at the
21 time?

22 A. She was living in Atlanta.

23 Q. And was -- where was Mr. Martin living at
24 that time?

25 A. He was between his mother and his

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1 grandmother's.

2 Q. Okay. And was his defense that he was back
3 in Atlanta?

4 A. Correct.

5 Q. All right.

6 A. Snellville to be exact.

7 Q. And that is some -- that's a significant
8 distance away from either where the robbery
9 occurred or Aiken County?

10 A. Yes.

11 Q. And in reviewing Ms. Fumbah's testimony, it
12 appears that she indicates that on the 23rd of
13 April 2009, which is the day of the robbery, she
14 had woken up, has three other kids she got ready
15 for school and woke Anthony up and got ready to go
16 look for work. And I dropped him off on
17 Lawrenceville Highway and Jimmy Carter.

18 Was that kind of consistent with your
19 understanding of what she was going to testify to?

20 A. I can't remember.

21 Q. All right. But, she's indicating that at
22 some time on the day of the robbery she's dropped
23 Anthony off somewhere in Atlanta?

24 A. That's correct.

25 Q. And he was going to go look for work?