

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

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SC SUPREME COURT

PERRY B. BUCHANAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001632

APPENDIX

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

PATRICK SCHMECKPEPER
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

1 1
COURT OF GENERAL SESSIONS
2010-GS-32-01522
2010-GS-32-01523

STATE OF SOUTH CAROLINA

vs.

PERRY B. BUCHANAN
DEFENDANT

TRANSCRIPT OF RECORD

April 25-26, 2011
Lexington, South Carolina

B E F O R E:

HON. R. KNOX MCMAHON, Judge and a jury.

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

J. ANGELA GARRICK, ASSISTANT SOLICITOR
COLLEEN E. DIXON, ASSISTANT SOLICITOR
Attorneys for the State

CASEY CORNWELL, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

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1 THE COURT: All right. Solicitor.

2 MS. GARRICK: Thank you, Your Honor. Your
3 Honor, may it please the Court.

4 Your Honor, the State calls Indictment
5 2010-GS-32-1522, the State versus Perry Buchanan, indicted
6 for armed robbery.

7 Indictment 2010-GS-32-1523, the State versus
8 Perry Buchanan, possession of a weapon during the
9 commission of a violent crime.

10 Your Honor, the defendant is present with
11 counsel and ready for trial.

12 THE COURT: All right. Thank you.

13 Ladies and gentlemen of the jury panel, if you'd
14 please give me your complete and undivided attention.
15 Also, if you would please consider yourselves still under
16 oath from the oath that was previously administered to you
17 this morning.

18 We're now going through a process to select a
19 trial jury for the case that has been called for trial.
20 As a part of that process, I'm going to read or publish to
21 you the indictments in this case. I do this because of
22 certain questions that I will have to ask you to qualify
23 you for service on this particular jury.

24 The indictments are not evidence. The
25 indictments are the formal charging documents by which an

1 individual is placed on notice of the charges that have
2 been brought against him or her. They contain mere
3 allegations and in no sense are they considered evidence
4 of any of the allegations contained therein.

5 Mr. Bailiff, would you please shut the back door
6 for me. Thank you. Don't let anyone in or out during
7 this process. Thank you.

8 Again, these are the formal documents by which
9 an individual is placed on notice of the charges that have
10 been brought against him or her.

11 The indictments read -- 2010-GS-32-1522 reads
12 that Perry Bernard Buchanan, along with a co-defendant,
13 did in Lexington County, South Carolina, on or about
14 March 12th of 2010, knowingly and willfully while armed
15 with a deadly weapon, to wit, a box cutter, did
16 feloniously take from the person or presence of Shirley
17 Smith, a Walmart employee at 2401 Augusta Road, West
18 Columbia, South Carolina, by means of force, threats or
19 intimidation, goods being described as a Dell Inspiron
20 desktop computer, with the intent to deprive the owner of
21 the use of such property, in violation of 16-11-330(a) of
22 the Code of Laws of South Carolina, 1976, as amended.

23 And Indictment 2010-GS-32-01523 reads that Perry
24 Bernard Buchanan, along with a co-defendant, did in
25 Lexington County, South Carolina, on or about March 12th,

1 2010, knowingly and willfully visibly display a box cutter
2 during the commission of a violent crime, or attempt to
3 commit a violent crime, to wit, armed robbery, such weapon
4 described as a box cutter, in violation of Section
5 16-23-490 of the Code of Laws of South Carolina.

6 Ladies and gentlemen, those are indictments for
7 armed robbery and possession of a knife during a violent
8 crime.

9 The State in this case is represented by
10 Assistant Solicitors Garrick and Dixon.

11 If you'd please stand and introduce yourselves
12 to the jury panel and any other member of the Solicitor's
13 staff that is going to assist you in the prosecution of
14 this case.

15 MS. GARRICK: Thank you, Your Honor.

16 Good morning. My name is Angela Garrick. This
17 is Colleen Dixon. And we have an investigator who's not
18 in here right now whose name is Bill Smith.

19 THE COURT: The defendant in the case is
20 represented by Mr. Casey Cornwell.

21 Would you please stand and introduce yourself
22 and your client to the jury panel.

23 MR. CORNWELL: My name is Casey Cornwell. I'm
24 an assistant public defender with the Public Defender's
25 office and this is my client, Perry Buchanan.

1 THE COURT: Stand up for me, please,
2 Mr. Buchanan, and face the jury panel.

3 Thank you, Mr. Cornwell. Thank you,
4 Mr. Buchanan.

5 Is any member of the jury panel related by blood
6 or marriage or close personal friends or have any business
7 or professional relationship with either Assistant
8 Solicitors Garrick, Dixon, or Attorney Cornwell? If so,
9 please stand.

10 (No response.)

11 THE COURT: Has any member of the jury panel or
12 any member of your immediate family ever been prosecuted
13 by, or represented by, Assistant Solicitor Garrick, Dixon,
14 or Mr. Cornwell? If so, please stand.

15 (No response.)

16 THE COURT: Is any member of the jury panel
17 related by blood or marriage or close personal friends or
18 have any business or personal relationship with the
19 defendant named in the case, Mr. Perry Bernard Buchanan?
20 If so, please stand.

21 (No response.)

22 THE COURT: The indictments allege an incident
23 that occurred at the Walmart on the 2400 block of Augusta
24 Road. I believe that would be the one near Dreher Road,
25 between Dreher Road and I-26 on No. 1 going back towards

1 Columbia. Allegedly -- is that right, is that the correct
2 one?

3 MS. GARRICK: Yes, sir.

4 THE COURT: It allegedly occurred March 12th of
5 2010. The named victim is Shirley Smith, a Walmart
6 employee.

7 Does any member of the jury panel have any
8 knowledge about the case? If so, please stand.

9 (No response.)

10 THE COURT: Does any member of the jury panel
11 have any bias or prejudice towards the parties or the
12 subject matter involved in the case? If so, please stand.

13 (No response.)

14 THE COURT: Has any member of the jury panel
15 heard or know anything about the case from any source
16 whatsoever? If so, please stand.

17 (No response.)

18 THE COURT: I'm going to call a list of names of
19 potential witnesses in the trial of this case. If any of
20 the witnesses are present, I would ask you to please stand
21 and face the jury panel when your name is called.

22 I would further advise the jury panel that the
23 witnesses are not required to be present during this
24 process. So I may call names and no one stands.

25 The question, of course, is any member of the

1 jury panel related by blood or marriage or close personal
2 friends or have any business or social relationship with
3 any of the individuals whose names I now call? If so,
4 please stand.

5 Shirley Smith, Dean Edgewater (sic), Terrance
6 Boykin, Curtis Williams, Tonya Doby. Those are the first
7 five names.

8 Again, is any member of the jury panel related
9 by blood or marriage or close personal friends with any of
10 those individuals whose names I just called? If so,
11 please stand.

12 (No response.)

13 THE COURT: The next, Investigator Bruce Wade,
14 West Columbia Police Department, standing to my front
15 right.

16 Thank you.

17 Officer Thomas Griffin, West Columbia Police
18 Department; Investigator James P. Sullivan, West Columbia
19 Police Department; Officer Ludwig -- does he or she have a
20 first name?

21 MS. GARRICK: Shawn, Your Honor.

22 THE COURT: Officer Shawn Ludwig, West Columbia
23 Police Department.

24 Any additional potential witnesses from either
25 of the parties, Ms. Garrick?

1 MS. GARRICK: No, Your Honor.

2 THE COURT: Mr. Cornwell?

3 MR. CORNWELL: No, Your Honor. But I need to
4 hand up my voir dire.

5 THE COURT: I can't hear you. I'm sorry.

6 MR. CORNWELL: I need to hand up my voir dire.

7 THE COURT: All right. Yes, sir.

8 Has any member of the jury panel or any member
9 of your immediate family ever been a victim of a theft?
10 If so, please stand.

11 All right. I'll start -- let's see. I better
12 start or I won't finish.

13 This lady right here on the front. Your number
14 and name, please?

15 THE JUROR: No. 60, Renee Greathouse.

16 THE COURT: And you were a victim of a theft?

17 THE JUROR: Yes, sir.

18 THE COURT: And about when? About what time
19 frame?

20 THE JUROR: It's been many years ago.

21 THE COURT: The fact that you're a victim of a
22 theft many years ago, could you still be a fair and
23 impartial juror in the trial of this case for both the
24 State and the defense?

25 THE JUROR: Yes, sir.

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

2 Yes, sir. Your number and name, please?

3 THE JUROR: No. 120, David Mullis. It's been a
4 very long time that I had a theft occur.

5 THE COURT: The fact that that occurred, could
6 you still be a fair and impartial juror for both the State
7 and the defense?

8 THE JUROR: Yes, sir.

9 THE COURT: Thank you.

10 Yes, ma'am, in the purple.

11 THE JUROR: Yes, sir. I was involved with
12 someone taking ATM money from me.

13 THE COURT: All right. And tell me your number
14 and name.

15 THE JUROR: No. 40, Julia Dial.

16 THE COURT: And about what time frame?

17 THE JUROR: It's been a couple of years.

18 THE COURT: A couple of what?

19 THE JUROR: Years.

20 THE COURT: All right. The fact that you were a
21 victim of a theft, could you still be a fair and impartial
22 juror in the trial of this case?

23 THE JUROR: Yes, sir.

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

25 Up against the wall, yes, sir.

1 THE JUROR: No. 145, James Rennick.

2 THE COURT: Time frame?

3 THE JUROR: Two years ago.

4 THE COURT: The fact that you were a victim of a
5 theft, could you still be a fair and impartial juror in
6 the trial of this case for both the State and the defense?

7 THE JUROR: Yes, Your Honor.

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

9 And right behind Mr. Rennick?

10 THE JUROR: 156.

11 THE COURT: All right. Time frame?

12 THE JUROR: Probably eight years, ten years ago.

13 THE COURT: All right. The fact that you were a
14 victim of a theft eight to ten years ago, could you still
15 be a fair and impartial juror in the trial of this case
16 for both the State and the defense?

17 THE JUROR: Yes, sir.

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

19 Yes, sir, in the dark?

20 THE JUROR: No. 42.

21 THE COURT: All right.

22 THE JUROR: I was the victim of a car theft many
23 years ago.

24 THE COURT: The fact that you were a victim of a
25 car theft many years ago, could you still be a fair and

1 impartial juror in the trial of this case for both the
2 State and defense?

3 THE JUROR: Yes, sir.

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

5 Yes, ma'am.

6 THE JUROR: 112, Victoria Medermott.

7 October of 2004 I was a victim of armed robbery.

8 THE COURT: All right. And what area did that
9 occur in, Ms. Medermott?

10 THE JUROR: Richland County. In my home.

11 THE COURT: All right. The fact that you were a
12 victim of an armed robbery in your home?

13 THE JUROR: Yes, sir.

14 THE COURT: Could you still be a fair and
15 impartial juror in the trial of this case for both the
16 State and the defense?

17 THE JUROR: Yes, sir.

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

19 Yes, sir.

20 THE JUROR: A close relative was the victim of a
21 robbery.

22 THE COURT: All right. And tell me your name
23 and number.

24 THE JUROR: James Maddaloni, 104.

25 THE COURT: And you say it was a close relative?

1 THE JUROR: Yes.

2 THE COURT: And the fact that your relative was
3 the victim of such a crime, could you still be a fair and
4 impartial juror in the trial of this case for both the
5 State and the defense?

6 THE JUROR: Yes.

7 THE COURT: All right. Thank you.

8 Yes, ma'am.

9 THE JUROR: No. 30, Marguerite Clarkson. And my
10 home was broken into many years ago.

11 THE COURT: And the fact that you were a victim
12 of your home being broken into, Ms. Clarkson, could you
13 still be a fair and impartial juror in the trial of this
14 case for both the State and the defense?

15 THE JUROR: Yes.

16 THE COURT: All right. And the gentleman in the
17 yellow shirt.

18 THE JUROR: Yes, sir. No. 66, Eric Hampton. I
19 was the victim of a theft at my residence and my vehicle.

20 THE COURT: All right. And the fact that that
21 occurred, could you still be a fair and impartial juror in
22 the trial of this case for both the State and the defense?

23 THE JUROR: Yes, sir.

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

25 Yes, sir, in the dark.

1 THE JUROR: No. 150; Tony Roof. I was
2 burglarized in my car and my dad was also shot in the arm.

3 THE COURT: Give me a time frame.

4 THE JUROR: Mine was about four years ago and my
5 dad was eight years ago.

6 THE COURT: The fact that that occurred both to
7 you and a separate incident to your dad, could you still
8 be a fair and impartial juror in the trial of this case
9 for both the State and the defense?

10 THE JUROR: Yes, sir.

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

12 Yes, sir. Your number and name, please.

13 THE JUROR: Fifty-five, Scott Gifford. My home
14 was broken into approximately 20 years ago.

15 THE COURT: And the fact that that occurred,
16 could you still be a fair and impartial juror in the trial
17 of this case for both the State and the defense?

18 THE JUROR: Yes, sir.

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

20 Yes, sir. Your number and name, please.

21 THE JUROR: No. 161, David Slagle.

22 THE COURT: All right.

23 THE JUROR: And I wasn't really a victim of a
24 theft, but I was assaulted with a deadly weapon back in
25 1992.

1 THE COURT: The fact that that occurred, could
2 you still be a fair and impartial juror in the trial of
3 this case for both the State and the defense?

4 THE JUROR: No, sir.

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

6 Excuse 161 from the trial of this case.

7 Has any member of the jury panel ever been an
8 employee of or are you currently an employee of Walmart?
9 If so, please stand.

10 (No response.)

11 THE COURT: Is any member of the jury panel or
12 any member of your immediate family or close personal
13 friend employed with the West Columbia Police Department?
14 If so, please stand.

15 THE CLERK: There's someone standing, Your
16 Honor.

17 THE COURT: Yes. Your number and name, please.

18 THE JUROR: No. 6. I have a friend at the West
19 Columbia Police Department.

20 THE COURT: All right. And tell me your number
21 and name, please.

22 THE JUROR: No. 6.

23 THE COURT: And how long you all been friends?

24 THE JUROR: About two years.

25 THE COURT: About two years. And what does your

1 friend do at the police department?

2 THE JUROR: Her name is Jackie Brothers and I
3 believe she assists the sheriff.

4 THE COURT: All right. Ms. Brothers?

5 THE JUROR: Yes.

6 THE COURT: The fact that you're a friend of
7 Ms. Brothers, could you still be a fair and impartial
8 juror in the trial of this case for both the State and the
9 defense?

10 THE JUROR: I could.

11 THE COURT: Thank you. You may be seated.
12 Any others?

13 (No response.)

14 THE COURT: Is any member of the jury panel
15 related by blood or marriage or close personal friends
16 with any employee of the Lexington County Solicitor's
17 Office? If so, please stand.

18 (No response.)

19 THE COURT: Thank you. Any additional requested
20 voir dire from the State?

21 MS. GARRICK: No, Your Honor.

22 THE COURT: From the defense?

23 MR. CORNWELL: No, Your Honor.

24 THE COURT: And finally, ladies and gentlemen,
25 does any member of the jury panel know any reason

1 whatsoever why you feel like you could not be a fair and
2 impartial juror in the trial of this case for both the
3 State and the defense? If so, please stand.

4 (No response.)

5 THE COURT: All right. If you'd give us a jury
6 panel, please.

7 And what are the strikes, Solicitor?

8 MS. GARRICK: Five and ten, Your Honor.

9 THE COURT: Is that correct, Mr. Cornwell?

10 MR. CORNWELL: That's my understanding, Your
11 Honor.

12 THE COURT: All right. Thank you.

13 THE CLERK: As I call your name, I want you to
14 come forward through the little gate, come up here in
15 front of this podium and stand just like I am. Make sure
16 you bring your purses, books, whatever you might have with
17 you. I will give you instructions on whether -- at the
18 conclusion of asking questions, I'll give you instructions
19 to either have a seat in the jury box or to return to your
20 seat out there.

21 Begin, Your Honor?

22 THE COURT: Yes, ma'am, please.

23 THE CLERK: No. 17, Vickie Campbell. (White
24 female.)

25 What say you for the State?

1 MS. GARRICK: Please present this juror.

2 THE CLERK: What say for the defense?

3 MR. CORNWELL: Please seat the juror.

4 THE CLERK: Have a seat -- please seat or excuse
5 the juror?

6 MR. CORNWELL: Seat.

7 THE CLERK: Have a seat in the jury box, ma'am.

8 No. 53, Willard Ganes. (White male.)

9 All the way up to the podium. There you go.

10 Thank you, sir.

11 What say you for the State?

12 MS. GARRICK: Please present this juror.

13 THE CLERK: What say for the defense?

14 MR. CORNWELL: Please seat this juror.

15 THE CLERK: Have a seat in the jury box, sir.

16 No. 181, Adrienne Wright. (Black female.)

17 What say you for the State?

18 MS. GARRICK: Please present this juror.

19 THE CLERK: What say for the defense?

20 MR. CORNWELL: Please seat this juror.

21 THE CLERK: Have a seat in the jury box ma'am.

22 No. 182, Amanda Peele. (White female.)

23 What say you for the State?

24 MS. GARRICK: Please present this juror.

25 THE CLERK: What say for the defense?

1 MR. CORNWELL: Please seat this juror.
2 THE CLERK: Have a seat in the jury box, ma'am.
3 No. 6, Nancy Atkinson. (White female.)
4 What say for the State?
5 MS. GARRICK: Please present this juror.
6 THE CLERK: What say for the defense?
7 MR. CORNWELL: Please excuse this juror.
8 THE COURT: Return to your seat, please, ma'am.
9 No. 15, James Bowling. (White male.)
10 What say for the State?
11 MS. GARRICK: Please present this juror.
12 THE CLERK: What say for the defense?
13 MR. CORNWELL: Please excuse this juror.
14 THE CLERK: Please return to your seat, please,
15 sir.
16 No. 105, Ronald Marsh. (White male.)
17 What say for the State?
18 MS. GARRICK: Please present this juror.
19 THE CLERK: What say for the defense?
20 MR. CORNWELL: Please seat this juror.
21 THE CLERK: Have a seat in the jury box, sir.
22 No. 163, Renee Smith. (White female.)
23 What say for the State?
24 MS. GARRICK: Please excuse this juror.
25 THE CLERK: Return to your seat, please, ma'am.

1 No. 8, Dana Bangerter. (White male.)
2 What say for the State?
3 MS. GARRICK: Please present this juror.
4 THE CLERK: What say for the defense?
5 MR. CORNWELL: Please excuse this juror.
6 THE CLERK: Return to your seat, please, sir.
7 No. 156, Bradley Sheppard. (White male.)
8 What say for the State?
9 MS. GARRICK: Please present this juror.
10 THE CLERK: What say for the defense?
11 MR. CORNWELL: Please excuse this juror.
12 THE CLERK: Return to your seat, please, sir.
13 No. 138, Danielle Pough. (Black female.)
14 What say for the State?
15 MS. GARRICK: Please present this juror.
16 THE CLERK: What say for the defense?
17 MR. CORNWELL: Please seat the juror.
18 THE CLERK: Have a seat in the jury box, ma'am.
19 No. 121, Gregory Mundy. (White male.)
20 What say for the State?
21 MS. GARRICK: Please present this juror.
22 THE CLERK: What say for the defense?
23 MR. CORNWELL: Please excuse this juror.
24 THE CLERK: Return to your seat, please, sir.
25 No. 88, Lisa James. (White female.)

1 What say for the State?

2 MS. GARRICK: Please present this juror.

3 THE CLERK: What say for the defense?

4 MR. CORNWELL: Please seat the juror.

5 THE CLERK: Have a seat in the jury box, ma'am.

6 No. 86, Rita Jackson. (Black female.)

7 What say for the State?

8 MS. GARRICK: Please present this juror.

9 THE CLERK: What say for the defense?

10 MR. CORNWELL: Please seat the juror.

11 THE CLERK: Have a seat in the jury box, ma'am.

12 No. 55, Scott Gifford. (White male.)

13 What say for the State?

14 MS. GARRICK: Please present this juror.

15 THE CLERK: What say for the defense?

16 MR. CORNWELL: How many strikes do I have?

17 THE CLERK: Five.

18 MR. CORNWELL: Please excuse this juror.

19 THE CLERK: Return to your seat, please, sir.

20 No. 66, Eric Hampton. (Black male.)

21 THE COURT: What happened to 129?

22 THE CLERK: Oh, I apologize.

23 THE COURT: One twenty-nine should be next.

24 THE CLERK: Yes, sir, I jumped over it.

25 Have a seat, please, sir, for just a minute.

1 I apologize, Your Honor.
2 No. 129, Douglas Noland. (White male.)
3 What say for the State?
4 MS. GARRICK: Please present this juror.
5 THE CLERK: What say for the defense?
6 MR. CORNWELL: Please strike this juror.
7 THE CLERK: Return to your seat, please, sir.
8 THE COURT: Now 66, Eric Hampton. (Black male.)
9 What say for the State?
10 MS. GARRICK: Please present this juror.
11 THE CLERK: What say for the defense?
12 MR. CORNWELL: Please seat the juror.
13 THE CLERK: Please have a seat in the jury box,
14 sir.
15 No. 64, Joy Gunter. (White female.)
16 What say for the State?
17 MS. GARRICK: Please present the juror.
18 THE CLERK: What say for the defense?
19 MR. CORNWELL: Please seat the juror.
20 THE CLERK: Have a seat in the jury box, ma'am.
21 No. 81, Stephanie Hopkins. (White female.)
22 What say for the State?
23 MS. GARRICK: Please present this juror.
24 THE CLERK: What say for the defense?
25 MR. CORNWELL: Please excuse the juror.

1 THE CLERK: Return to your seat, please, ma'am.
2 No. 102; Dennis Lord. (White male.)
3 What say for the State?
4 MS. GARRICK: Please present this juror.
5 THE CLERK: What say for the defense?
6 MR. CORNWELL: Please seat this juror.
7 THE CLERK: Have a seat in the jury box, sir.
8 No. 95, Stacy Keese. (White female.)
9 What say for the State?
10 MS. GARRICK: Please present this juror.
11 THE CLERK: What say for the defense?
12 MR. CORNWELL: Please excuse this juror.
13 THE CLERK: Return to your seat, please, ma'am.
14 No. 40, Julia Dial. (White female.)
15 What say for the State?
16 MS. GARRICK: Please present this juror.
17 THE CLERK: What say for the defense?
18 MR. CORNWELL: Please excuse this juror.
19 THE CLERK: Return to your seat, please, ma'am.
20 No. 155, Heyward Shealy. (White male.)
21 What say for the State?
22 MS. GARRICK: Please present this juror.
23 THE CLERK: What say for the defense?
24 MR. CORNWELL: Please seat this juror.
25 THE CLERK: Have a seat in the jury box, sir.

1 Alternates, Your Honor?

2 THE COURT: One alternate. Strikes are one and
3 two.

4 THE CLERK: Yes, sir.

5 No. 52, Amy Freeman. (White female.)

6 What say for the State?

7 MS. GARRICK: Please present this juror.

8 THE CLERK: What say for the defense?

9 MR. CORNWELL: Please strike this juror.

10 THE CLERK: Return to your seat, please, ma'am.

11 No. 126, Charles Newton. (White male.)

12 What say for the State?

13 MS. GARRICK: Please present this juror.

14 THE CLERK: What say for the defense?

15 MR. CORNWELL: Please strike this juror.

16 THE CLERK: Return to your seat, please, sir.

17 No. 120, David Mullis. (White male.)

18 What say for the State?

19 MS. GARRICK: Please present this juror.

20 THE CLERK: What say for the defense?

21 MR. CORNWELL: Please seat this juror.

22 THE CLERK: Have a seat in the jury box, sir.

23 That's the alternate, Your Honor.

24 THE COURT: All right. Any motions regarding
25 the jury selection process from the State?

1 MS. GARRICK: No, Your Honor.

2 THE COURT: From the defense?

3 MR. CORNWELL: No, Your Honor.

4 (The jury is impaneled at 11:10 a.m.)

5 THE COURT: All right. Ladies and gentlemen
6 that we just selected for the panel for the trial of this
7 case, momentarily I'm going to ask you to step to your
8 jury room with the bailiff.

9 During this brief recess, do not discuss this
10 case with anyone. That includes your fellow jurors or
11 anyone else.

12 If anyone tries to talk with you about the case,
13 please let me know immediately. You would not be
14 authorized to discuss the case until you've heard all the
15 evidence, all the testimony in the case, the closing
16 arguments by the attorneys and the instruction on the law
17 by the Court, and then directed by the Court to begin your
18 deliberations with your fellow jurors in your jury room.

19 This should be just a brief recess. I need to
20 give further instructions to your colleagues out there
21 that have not been fortunate enough to be selected for a
22 juror in the trial of the case. But they're not going to
23 give up hope. There are many cases to be tried this week.

24 But if you would please go with Mr. Knight to
25 your new temporary home, to your jury room.

1 Thank you very much.

2 (The jury left open court at approximately 11:11
3 a.m.)

4 (Whereupon, court proceedings in other cases
5 were held.)

6 THE COURT: All right. Any pretrial matters
7 from the State, Solicitor?

8 MS. GARRICK: None from the State, Your Honor.

9 THE COURT: Defense?

10 MR. CORNWELL: Your Honor, I think we may need
11 to have a Jackson v Denno hearing.

12 THE COURT: All right. Solicitor.

13 MS. GARRICK: Your Honor, we'd call Bruce Wade.

14 THE COURT: All right. If you'd come around and
15 be sworn, please.

16 BRUCE WADE, after being duly sworn, testified as
17 follows:

18 THE CLERK: Have a seat, please, sir. Once
19 you're seated, speak up loud and clear: State your full
20 name, spelling your last.

21 THE WITNESS: My name is Bruce Wade. Last name
22 is W-A-D-E.

23 IN CAMERA DIRECT EXAMINATION

24 BY MS. GARRICK:

25 Q Investigator Wade, where are you employed?

1 A With the West Columbia Police Department.

2 Q And on March 12th of 2010, did you have occasion to
3 meet this defendant, Perry Buchanan?

4 A Yes, ma'am, I did.

5 Q Okay. And can you please tell the Court where you
6 met Mr. Buchanan.

7 A I met him about the 1900 block of Jarvis Klapman
8 Boulevard.

9 Q At that time was Mr. Buchanan in detention?

10 A Yes, ma'am.

11 Q And was Mr. Buchanan subsequently arrested?

12 A Yes, ma'am.

13 Q And when he was arrested, where was he first
14 transported to?

15 A He was transported to the West Columbia Police
16 Department.

17 Q And at the West Columbia Police Department, did you
18 have an occasion to speak with Mr. Buchanan?

19 A Yes, I did.

20 Q Did you -- was Mr. Buchanan free at that time to
21 leave?

22 A No, he was not.

23 Q And he was under arrest?

24 A Yes.

25 Q And did you have another investigator working this

1 case with you or were you alone?

2 A No, I was alone.

3 Q And at the West Columbia Police Department, do you
4 all have video equipment in the interview room there?

5 A No, ma'am.

6 Q And before speaking with Mr. Buchanan, what, if
7 anything, did you advise him?

8 A I advised him of his Miranda rights.

9 Q And did you have paperwork involved in telling
10 Mr. Buchanan what his rights were?

11 A Yes, ma'am, I did.

12 MS. GARRICK: If I may approach the witness,
13 Your Honor.

14 THE COURT: Yes, ma'am.

15 (WHEREUPON, The Court's Exhibit No. 1 was marked
16 for purposes of the record.)

17 BY MS. GARRICK:

18 Q If I can show you what's been marked as Court's
19 Exhibit 1 for ID. Do you recognize that document?

20 A Yes, ma'am, I do.

21 Q What is that document?

22 A A Miranda right form.

23 Q And is that a Miranda right form that you used on
24 March 12th with Mr. Buchanan?

25 A Yes, ma'am.

1 Q And what rights do you advise Mr. Buchanan of?

2 A I advised him of his Constitutional rights.

3 Q And could you please read them off one at a time,
4 please?

5 A Yes.

6 It says: "1) You have the right to remain
7 silent.

8 2) Anything you say can and will be used in
9 court as evidence against you.

10 3) You're entitled to talk to a lawyer now and
11 have him or her present now or at any time during
12 questioning."

13 Three (sic) says: "If you cannot afford a
14 lawyer, one will be appointed to you without cost.

15 5) Do you understand your rights? Yes or no."

16 And No. 6 says: "If you decide to answer
17 questions now without a lawyer present, you will still
18 have the right to stop answering questions at any time.
19 You also have the right to stop answering questions at any
20 time until you talk to a lawyer."

21 Q And did you have Mr. Buchanan initial each of these
22 rights as you went through them?

23 A Yes, I did.

24 Q And did Mr. Buchanan sign saying that he understood
25 these rights?

1 A Yes, he did.

2 Q Did Mr. Buchanan make a waiver in writing of these
3 rights?

4 A Yes, he did.

5 Q And is that document on Court's Exhibit 1?

6 A Yes, ma'am.

7 MS. GARRICK: Your Honor, for purposes of this
8 hearing, I move Court's 1 into evidence.

9 THE COURT: All right. Yes, it's in evidence as
10 Court's 1.

11 MS. GARRICK: Your Honor, that's how the court
12 reporter marked it.

13 THE COURT: All right. Yes, ma'am.

14 BY MS. GARRICK:

15 Q Did you have any reason to believe, based on
16 Mr. Buchanan's appearance and demeanor, that he was under
17 the influence of any type of drugs or alcohol?

18 A No, ma'am.

19 Q Was he able to answer questions about himself?

20 A Yes, ma'am.

21 Q Did you ask him where he lived?

22 A Yes, ma'am, I did.

23 Q Did you ask him his education level?

24 A Yes, ma'am, I did.

25 Q Did he give you what -- appropriate answers?

1 Let me rephrase my question.

2 Did he respond to your questions forthrightly?

3 A Yes, he did.

4 Q And during this interview process, did Mr. Buchanan
5 indicate that he would give you an oral statement?

6 A Yes, he did.

7 Q And did he, in fact, give you an oral statement?

8 A Yes, he did.

9 Q During this oral statement, was anyone else present?

10 A No, ma'am.

11 Q And during this oral statement, did you take notes?

12 A Yes, ma'am, I did.

13 Q Were you taking notes as Mr. Buchanan talked?

14 A Yes, I did.

15 Q And did you bring to court today those notes?

16 A Yes, I did.

17 MS. GARRICK: If I may approach again, Your
18 Honor.

19 THE COURT: Yes, ma'am.

20 (WHEREUPON, The Court's Exhibit No. 2 was marked
21 for purposes of the record.)

22 BY MS. GARRICK:

23 Q If I can show you what's been marked as Court's 2 for
24 ID. Can you recognize this document?

25 A Yes, ma'am.

1 Q What is that?

2 A Notes I took during the interview with Mr. Buchanan.

3 Q And are those notes in your own handwriting?

4 A Yes, ma'am.

5 Q And is it written -- where you say "I," does that
6 mean you or does that mean someone else?

7 A No. Where I said "I," it means Mr. Buchanan. I'm
8 writing what he's saying.

9 Q Okay. And could you -- before he told you this, had
10 you made any threats or promises to Mr. Buchanan to get
11 him to cooperate with the questioning process?

12 A No, ma'am, I didn't.

13 Q Did you threaten him in any manner?

14 A No, ma'am.

15 Q Did you tell him you'd help him out with his charges?

16 A No, ma'am.

17 Q And could you please publish Court's 2 as to the
18 notes you took as Mr. Buchanan was speaking.

19 A Yes, ma'am.

20 At the top it has my case number which is 11 --
21 1006514, and I have "robbery" beside it. The date, I have
22 March 12th, 2010 at 5:59 p.m.

23 I says -- I wrote down, "IO interviewed Perry B.
24 Buchanan at WCPD."

25 Underneath that I have a Social of 250-17-6926.

1 I have a line scribbled out up under that.

2 And under that I wrote down, "I had Tonya Doby
3 pick me up on Two Notch Road and I asked her to take me to
4 West Columbia -- to the West Columbia Walmart. I went in
5 and stole a computer. And when I was leaving out, a lady
6 stopped me and asked me for a receipt. I had a box cutter
7 in my hand and told the lady that 'my shit is paid for.'
8 I pushed the buggy out. She started running. I did not
9 have the box cutter open."

10 Underneath that I put, "I can't write nothing
11 down."

12 Underneath that I said, "Did you pay for the TV?

13 No, I stole it from Walmart."

14 Q Is that the substance of what Mr. Buchanan told you
15 about what had happened at Walmart?

16 A Yes, ma'am, it is.

17 Q After Mr. Buchanan told you that, did you have any
18 other discussion with Mr. Buchanan?

19 A Yes, I did.

20 Q And did you make -- could you tell us about that
21 substance of that conversation?

22 A Yes, ma'am.

23 During the interview, I asked him to give me a
24 written statement and he told me why was I talking to him,
25 why would he be talking to investigators on something

1 simple as a shoplifting. And I explained to him that once
2 he presented a weapon during the shoplifting, it was no
3 longer a shoplifting, that made it an armed robbery, and
4 at that point he told me he couldn't give me a written
5 statement.

6 Q And what, if anything, did you tell him at that
7 point?

8 A I told him, "You already confessed to this crime and
9 I'm going to tell in court what you already told me."

10 Q And did he, in fact, give you a written statement?

11 A No, he didn't.

12 Q Okay. And did you cease the interview at that point?

13 A Yes, I did.

14 MS. GARRICK: Please answer any questions
15 Mr. Cornwell has.

16 THE COURT: All right. Mr. Cornwell.

17 IN CAMERA CROSS-EXAMINATION

18 BY MR. CORNWELL:

19 Q How long did this interview take place?

20 A Roughly an hour.

21 Q About an hour?

22 A Yes, sir.

23 Q And during that time, did you notice anything
24 peculiar health-wise about my client?

25 A No, sir.

1 Q And during that time, did my client request any
2 refreshments like something to drink or anything of that
3 nature?

4 A No, sir.

5 Q Did he express any physical needs or any kind of
6 needs health-wise?

7 A No, sir.

8 Q I have a question about your notes.

9 I notice you got -- specifically just regarding
10 Mr. Buchanan, you have two sets of notes. And this is
11 just maybe more for my clarification than anything, but
12 you've got one page of notes with just time and date
13 notated and another page where there is no time and date
14 notation.

15 A Uh-huh.

16 Q Are those two different times?

17 A Well, the notes, Exhibit 2, these were taken in the
18 interview room. While I was talking to him I was writing
19 down what he was saying. After the interview was over,
20 that's when I wrote the other note.

21 Q These notes were made after the interview?

22 A Yes, sir.

23 Q Were these notes made the same day or was --

24 A Yes, sir, the same day.

25 MR. CORNWELL: Beg the Court's indulgence.

1 THE COURT: Yes, sir.

2 (Pause.)

3 MR. CORNWELL: One more thing.

4 BY MR. CORNWELL:

5 Q How soon after was he arrested did you get an
6 opportunity to question him?

7 A Approximately an hour.

8 Q About an hour?

9 A Yes, sir.

10 Q And he was with you the entire time as far as
11 transportation?

12 A No, sir, I did not transport him.

13 Q All right. Do you know who transported him over
14 there?

15 A I'm not sure.

16 MR. CORNWELL: Okay. No further questions, Your
17 Honor.

18 THE COURT: Redirect, Solicitor?

19 MS. GARRICK: No, Your Honor.

20 THE COURT: Thank you, Detective Wade. You may
21 step down.

22 All right. You may call your next witness,
23 Solicitor.

24 MS. GARRICK: No other witnesses, Your Honor.

25 THE COURT: Thank you.

1 Mr. Cornwell.

2 MR. CORNWELL: Your Honor, under Jackson v Denno
3 I know there are several things that you have to look at.

4 One thing I want to focus on in particular is
5 that he was under custody the entire time he was under
6 arrest.

7 There was no video of the interview. We don't
8 know what happened in the interview room.

9 We would have the -- where the detective -- what
10 I would suggest is that just being under arrest itself and
11 being questioned in that manner, Your Honor, may have
12 contributed somehow to -- any kind of statement may be
13 tainted by that, Your Honor, the duress under that
14 situation.

15 That's what we would base our motion on and we'd
16 ask the Court to find in our favor.

17 THE COURT: All right. Solicitor.

18 MS. GARRICK: Thank you, Your Honor.

19 Your Honor, certainly I think it's clear that
20 Mr. Buchanan was in custody. But I believe that Miranda
21 was given properly, it was given in writing with the
22 defendant's initials besides each writing.

23 The officer has testified that no threats or
24 promises or offers of rewards were made to him, Your
25 Honor, and Court's 1 certainly seems to corroborate what

1 Investigator Wade said.

2 And as far as the substance of the statement,
3 it's says it's been recorded into the notes in Court's
4 Exhibit 2.

5 And I would ask that you find that Miranda was
6 complied with and the statement was voluntarily given.

7 THE COURT: All right. May I see Court's 1 and
8 2?

9 MS. GARRICK: Yes, sir.

10 THE COURT: All right. I have reviewed Court's
11 1 and Court's 2.

12 Court's 1 appears to be a document establishing
13 Miranda rights' warning with the name Perry Buchanan, a
14 particular date of birth, Social Security number, that he
15 finished the tenth grade, and that he can read.

16 As to each of the rights, it appears the
17 initials PB to the left of those rights.

18 Further, on No. 5, "Do you understand these
19 rights?" is circled yes with the initials PB above it.

20 No. 6 appears to -- after No. 6 appears the
21 signature of Perry Buchanan and then thereafter there's a
22 waiver of Miranda rights with the signature Perry
23 Buchanan, 3-12-10, and a witness, Officer Bruce Wade.

24 And further, Court's Exhibit No. 2 appears to be
25 the handwritten notes as the officer testified to.

1 I do find that he was in custody; however, he
2 was properly advised of his Constitutional rights,
3 appeared to understand those rights and freely and
4 voluntarily waive those rights.

5 I've taken in the totality of the circumstances
6 in this regard. Given his age, his educational level, the
7 fact that no threats or promises or coercion was used by
8 the officers, I would find that the statement was given
9 after advice of his Constitutional rights and freely and
10 voluntary.

11 All right. Anything further, Mr. Cornwell?

12 MR. CORNWELL: No, Your Honor.

13 THE COURT: All right. Anything further from
14 the State before we bring in our jury.

15 MS. GARRICK: Your Honor, we just need to bring
16 our witnesses in and hook up a laptop for the first
17 witness.

18 THE COURT: All right.

19 (Pause.)

20 THE COURT: All right. Ready, Solicitor?

21 MS. GARRICK: Yes, Your Honor.

22 THE COURT: Mr. Cornwell, ready?

23 MR. CORNWELL: I am, Your Honor.

24 THE COURT: Thank you. Bring us our jury,
25 please.

1 (The jury came into open court at approximately
2 12:13 p.m.)

3 THE COURT: All right. Madam Clerk, would you
4 swear our jury, please.

5 THE CLERK: Yes, sir, Your Honor.

6 Please stand and raise your right hand.

7 (WHEREUPON, the jury was sworn at 12:14 p.m.)

8 THE CLERK: Is there anyone not able to take the
9 oath administered?

10 (No response.)

11 THE CLERK: The jury is under oath, Your Honor.

12 THE COURT: Thank you. Mr. Mullis?

13 THE JUROR: Yes.

14 THE COURT: If you'll always maintain that seat
15 for me. If you'll just always maintain that seat for me
16 as the alternate.

17 And sooner or later I'll have an election and
18 I'll appoint a foreperson of our jury.

19 I may as well do it now.

20 What's your name, sir?

21 THE JUROR: Dennis Lord.

22 THE COURT: All right. Let's see, that would be
23 Juror No. 102.

24 Perhaps I could appoint you as foreperson of our
25 jury. And if you'd always maintain that seat for me,

1 please.

2 I need to keep up with 13 people and you in that
3 seat, Mr. Foreman, and you, Mr. Mullis, in that seat.

4 I'm sure any of you would be qualified to serve
5 as a fine foreperson, but you see how I chose in this
6 particular election.

7 The others of you, you may sit wherever you like
8 to sit. However, I have found that many times jurors are
9 very territorial. They like to sit in the same seat each
10 and every time.

11 Well, you're welcome to do that. You're welcome
12 to move about. If you sit in the same seat each and every
13 time, I may know your names by the time the trial is over.
14 Once I tell jurors that, many times they'll change seats
15 just to mess with me, I guess you could say.

16 Mr. Foreman, ladies and gentlemen, the case
17 we're about to try is the case of the State versus Perry
18 Bernard Buchanan.

19 What I will now say is intended to serve as an
20 introduction to the trial of this case. These remarks are
21 not a charge or instruction on the law. I will instruct
22 you on the law that applies to this case at the end of the
23 trial before you retire to consider your verdicts. This
24 is merely an explanation of the procedure that we will
25 follow in this trial so that you may better understand

1 what may be happening.

2 Mr. Buchanan, the defendant, is charged by
3 indictments filed in this court with the crimes of armed
4 robbery and possession of a knife during the commission of
5 a violent crime, the elements of which will be explained
6 to you later.

7 Again, ladies and gentlemen, these indictments
8 are simply the charge by which the case or the cases are
9 brought into court and they are not in any sense evidence
10 of any of the allegations they contain.

11 The defendant has pled not guilty to these
12 indictments. The State, therefore, has the burden of
13 proving each and every element of the indictments beyond a
14 reasonable doubt. And it will be your duty, ladies and
15 gentlemen, to decide whether the State meets that burden.

16 Your purpose as jurors is to find and determine
17 the facts. You are the sole judges of the facts. If at
18 any time I make any comment regarding the facts, you must
19 disregard it.

20 You are to determine the facts from the
21 testimony you hear in this courtroom and the other
22 evidence introduced in court. It is up to you to
23 determine any inferences which you feel may properly be
24 drawn from the evidence.

25 It is especially important that you perform your

1 duty of determining the facts diligently and
2 conscientiously. Because ordinarily there is no way to
3 correct an erroneous determination of the facts by a jury.

4 On the other hand, and with equal emphasis, the
5 same law that makes you the judges of the facts makes me
6 the judge of the law. The law as given by the Court is
7 the only law that you may consider. You must accept and
8 follow it even though you may disagree with it.

9 I cannot tell you what the facts are, you cannot
10 disagree with me about what the law is or should be. Your
11 job is to take the law as I give it to you and apply it to
12 the facts as you find them from the testimony of the
13 witnesses testifying under oath from this witness stand
14 and any other evidence introduced.

15 After doing that, you will render your verdicts,
16 true and just verdicts, under the solemn oath that you've
17 just taken as jurors.

18 Until I advise you to begin your deliberations,
19 you must not discuss this case with anyone. That includes
20 your fellow jurors, family, friends, or anyone else.

21 After the case is submitted to you, you must
22 discuss it only in the jury room with your fellow jurors.

23 As you've heard me say before, the attorneys and
24 parties in this case have been advised that they're not to
25 talk with you at all. So if you see one of these

1 individuals involved in the case in your coming and goings
2 and they do not even say hello, they're not being
3 unfriendly, they are merely following the Court's
4 instructions.

5 During the trial, do not read, listen to, or
6 watch any news reports about the case should there be any.
7 This includes anything that may be in the newspaper or on
8 the Internet, radio or television. You must not consider
9 anything you may have read about or heard about the case
10 outside of the courtroom, whether before or during the
11 trial.

12 Ladies and gentlemen, it is important that you
13 keep an open mind and decide -- and not decide any issue
14 in the case until you've heard all the evidence, the
15 parties have made their closing arguments, and I have
16 instructed you on the law.

17 It is your solemn responsibility to determine
18 the guilt or the innocence of the defendant and your
19 verdict must be based solely on the evidence as it is
20 presented to you in this trial and on the law as I
21 instruct you during and at the close of the trial.

22 In just a moment, the solicitor will make what
23 is called an opening statement in which the solicitor will
24 explain to you the issues in the case, or at least what
25 the solicitor thinks the issues are in the case.

1 Mr. Cornwell, the attorney for the defendant,
2 may also make an opening statement, although he is not
3 required to do so.

4 What the attorneys tell you during their opening
5 statements is not evidence in the case, it is only their
6 contention as to what the issues are.

7 The evidence in the case will be presented to
8 you by the testimony of the sworn witnesses from this
9 witness stand and/or by any exhibits that may be made part
10 of the record.

11 From time to time during the trial you may hear
12 one of the attorneys say something like, "Your Honor, I
13 believe we have a question of law or a matter of law to
14 discuss with you," or, "Your Honor, may we approach the
15 bench," or sometimes I myself might find it necessary to
16 excuse you from the courtroom for a short while so the
17 attorneys and I can discuss a matter of law.

18 The reason for this is because you are the
19 judges of the facts in the case and sometimes when I am
20 discussing matters of law with the attorneys, it may be
21 necessary for me to make some comment as to the facts in
22 connection with ruling whether a particular law applies or
23 not. I am not supposed to tell you what I think the facts
24 are, so I will excuse you from the courtroom while these
25 discussions take place so that in no way will you be

1 influenced by anything I might say or do in connection
2 with the facts.

3 In determining what the true facts are, ladies
4 and gentlemen, in using your good judgment and your common
5 sense, you must decide whether or not the testimony of the
6 witnesses is believable. It will be my responsibility to
7 rule as a matter of law as to whether certain testimony is
8 admissible at all or not, but once the testimony is
9 admitted, whether or not you believe it is solely for you
10 to determine.

11 In deciding whether to believe a witness, you
12 have the right to consider the interest of any witness,
13 the bias of any witness, the prejudice of any witness, the
14 opportunity for the witness to have seen the matters and
15 things about which the witness may testify, and the way
16 the witness acts on the witness stand.

17 You have the right to consider anything that is
18 in the record that will help you evaluate the testimony of
19 the witness. That means it will be your duty to pay close
20 attention to these witnesses, to observe them, to listen
21 to the witnesses, to pay close attention to the attorneys
22 and to the Court.

23 Don't let your thoughts wander but give strict
24 attention to the testimony in this case so that at the end
25 of all the testimony, after the closing arguments and the

1 instruction on the law by the Court, you will then be in a
2 position to determine what the true facts are and to apply
3 the law to those facts and thus render true and just
4 verdicts.

5 It will be your added duty, Mr. Foreman, to
6 preside in the jury room and be the jury spokesperson here
7 in court. It will also be your duty to write the verdict,
8 but I will give you further instructions about that at the
9 conclusion of the case.

10 Just a few other administrative issues.

11 There is a speaker system in this courtroom;
12 however, those of you further away from the witness stand,
13 if you cannot hear a particular witness, just raise your
14 hand, get my attention, the attention of one of the
15 bailiffs, and we'll certainly have the witness speak up.

16 I don't know what evidence, documents or such
17 like that may be presented, if any. Many times when
18 documents are presented, they may be handed to the
19 foreperson and then passed among the jury while you're out
20 here in the courtroom in your jury box.

21 You may look at those items all you wish. Keep
22 in mind that if I allow it into evidence, you will also
23 have those documents with you in the jury room at the time
24 of your deliberations.

25 By saying that, I'm not limiting you from

1 looking at it however much you want to look at it out here
2 in the courtroom, but just realize that's not the only
3 opportunity you will get to view those items, if any may
4 be presented.

5 Also breaks. Really, that boils down to what
6 I'm in charge of, taking breaks. And I have just a real
7 simple rule. When I want to take a break, we take a
8 break. Well, it's not some type of judicial marathon.
9 It's not like judicial boot camp or anything like that.
10 If at any time you need a break, any of you, just please
11 raise your hand. You all will take y'all's break, we will
12 take our break.

13 If you sit out here too long, your thoughts get
14 to wandering, you're not focused, please raise your hand,
15 take a break. You want to make sure you keep yourself
16 mentally sharp, focused on the evidence, the questions,
17 the answers, so you'll be able to return those true and
18 just verdicts.

19 From time to time -- I tell you this because
20 other jurors on other juries have brought it to my
21 attention -- from time to time you'll see me on my
22 computer. I don't answer emails, I don't read emails, I
23 don't focus on anything but the trial. I will do some
24 research from time to time if I think I see something
25 coming around the curve. So that's the only reason you

1 may see me on my computer from time to time.

2 All right. Any objections to anything I've told
3 the jury from the State?

4 MS. GARRICK: No, Your Honor.

5 THE COURT: From the defense?

6 MR. CORNWELL: No, Your Honor.

7 THE COURT: All right. We will now begin the
8 trial.

9 Solicitor, you may address the jury.

10 MS. DIXON: Thank you, Your Honor. May it
11 please the Court.

12 THE COURT: Yes, ma'am.

13 MS. DIXON: Ladies and gentlemen, sometimes one
14 detail can change the whole picture. Is it sunny outside
15 or is it raining? Is someone smiling or are they crying?
16 Is their hand empty or is it holding a weapon?

17 The State will prove today, ladies and
18 gentlemen, that on March 12th, 2010, that the defendant,
19 Mr. Buchanan, went into the Walmart in West Columbia and
20 he took a computer, didn't pay for it and attempted to
21 walk out of the store.

22 One of the Walmart employees that will be
23 testifying before you today, Ms. Smith, tried to stop the
24 defendant. "I need to see your receipt." He didn't have
25 a receipt to show her. Ms. Smith is going to tell you at

1 that point the defendant pulled out a box cutter and he
2 threatened her with that box cutter. She backed off. The
3 police were called.

4 You're going to hear from West Columbia Police
5 Department, they're going to tell you that they stopped
6 the defendant not far from the Walmart, that the computer
7 was in his car, and that they recovered a box cutter from
8 his car matching the description that Ms. Smith had given.
9 They're going to tell that you the clothes the defendant
10 was wearing matched the description Ms. Smith had given.

11 But we're going to go further than that, ladies
12 and gentlemen. We're going to show you the surveillance
13 video from the Walmart. You're going to see it for
14 yourself.

15 Now, being a surveillance video, it's not the
16 clearest, it's not close up, it's kind of far away, so
17 we're not relying only on that. You're going to have
18 Ms. Smith's testimony. You've going to have the video.
19 You've going to have the evidence, the clothing and the
20 box cutter that was recovered. And then you're going to
21 hear from Investigator Wade with West Columbia, and he's
22 going to tell you that he interviewed the defendant and
23 the defendant admitted that he had a box cutter in his
24 hand. That's what this case is about, ladies and
25 gentlemen.

1 The defendant is charged with armed robbery.
2 He's charged with taking that computer and using a weapon
3 to do it. And he used a weapon with Ms. Smith. She's
4 going to tell that you.

5 And he's charged with possession of a weapon
6 during a violent crime. That box cutter, that's the
7 weapon.

8 That's the evidence the State is going to show
9 you. You're going to hear the testimony, you're going to
10 see the video. And at the end of the day, ladies and
11 gentlemen, you're going to find that the defendant is
12 guilty of armed robbery and possession of a weapon during
13 a violent crime.

14 Thank you.

15 THE COURT: Thank you very much, Solicitor.
16 Mr. Cornwell.

17 MR. CORNWELL: May it please the Court.

18 Why? The State intends to show you a lot of
19 stuff. You know, they are right, Mr. Perry went into
20 Walmart on that day and he took a computer and he didn't
21 pay for it, and he confessed to the same.

22 The Solicitor's also right, one detail could
23 change the whole thing, because if it wasn't for that one
24 detail, we wouldn't be here today, because Mr. Perry says
25 that he did not have a box cutter. Mr. Perry also says

1 that he didn't tell Mr. Wade that he had a box cutter that
2 day. Mr. Perry's going to get on the stand and tell you
3 that. No, he doesn't have to; they have to prove that
4 that happened.

5 What you're going to see, you're going to see a
6 video. Yes, you are. You're going to see a video of the
7 entire confrontation between Ms. Smith and my client,
8 Mr. Perry Buchanan.

9 What you see in that video, of course we have
10 different interpretations. That's why we're here today.

11 You're going to hear testimony from Ms. Smith.
12 You're going to hear testimony from the officers involved.

13 But the main thing, the most important testimony
14 you'll hear today is probably going to be from Ms. Smith
15 because she's the person who actually encountered my
16 client.

17 She's going to make statements about what
18 happened that day. The investigator's going to make
19 statements about what happened that day. It's our
20 position that in this case, the video simply doesn't show
21 what they talk about.

22 Usually in cases like this, as a defense
23 attorney I can tell you that video is not our friend at
24 all. You've seen the shows, cops busting on TV, people
25 doing stupid stuff on video, and to be honest with you,

1 95 percent of the time that's exactly how it happens to
2 me. I can only speak from experience.

3 I saw this video and I believe that man. That
4 video --

5 MS. DIXON: Your Honor, objection.

6 THE COURT: All right. Ladies and gentlemen,
7 the issue of credibility is an issue to be determined by
8 the jury and the jury alone. It's not to be determined by
9 any of the attorneys or not to be determined by the Court.
10 You are the judges of the credibility or the believability
11 of the witnesses in the case.

12 Thank you, Mr. Cornwell, Solicitor. You may
13 continue.

14 MR. CORNWELL: May it please the Court.

15 And I'm glad that the judge clarified that
16 because I was going to say, I'm sure that you'll be
17 convinced after viewing this video and hearing all the
18 facts and evidence, hearing all the testimony, if you look
19 at this video, you're not going to see a man with a blade
20 in his hand. You're not going to see a man swinging a
21 blade at a person. You're not going to see a man
22 assaulting anybody.

23 You're going to see a shoplifter trying to get
24 out of Walmart with his recently stolen purchase.

25 You're not going to see him make any kind of

1 aggressive maneuvers towards the cashier at all.
2 Everything he does in the video is to avoid the
3 confrontation. He tries to get around her. He tries to
4 maneuver his cart so that she can't look in it. He tries
5 everything in his power to not be in that situation.

6 You know why? Because as a person who shoplifts
7 this item, he knew he had to get out of there quick. He
8 doesn't have time to pull out knives on people. Don't you
9 think if he was robbing the place and he had a weapon that
10 we'd see it?

11 This is my client, Perry Buchanan. He's not
12 guilty, and I think you'll agree with me when you see that
13 video.

14 Thank you.

15 THE COURT: Thank you, Mr. Cornwell.

16 Solicitor, you may call your first witness.

17 MS. DIXON: Thank you, Your Honor.

18 The State calls Shirley Smith.

19 THE COURT: Ms. Smith, would you mind -- Ms.
20 Smith, I'm sorry, would you go step back?

21 All right. I'm going to ask the jury to step
22 out momentarily to your jury room. Do not discuss the
23 case during this brief recess.

24 Madam Clerk, would you deliver this message to
25 the particular juror -- you may go with your bailiff --

1 and allow that call to be made.

2 (The jury left open court at approximately 12:35
3 p.m.)

4 THE COURT: I apologize, Solicitor,
5 Mr. Cornwell. I received a note from the Clerk's office
6 that one of the jurors, Mr. Hampton, needed to call home
7 and it appeared that it was something that needed to be
8 done as soon as possible. I apologize to Ms. Smith. And
9 we'll wait and see where we go from there.

10 MS. DIXON: Yes, sir.

11 THE COURT: All right. We'll just be on standby
12 until we hear back from our jury. Because we may start
13 back before lunch. Let me see how I have to deal with
14 him, all right?

15 Thank you.

16 MS. GARRICK: Yes, sir.

17 MR. CORNWELL: Thank you.

18 (A break was taken.)

19 THE COURT: I talked with Mr. Hampton. It's
20 some concerns about his work, not his work ethic, but his
21 work because he works for himself so he's going to work
22 after court and he's going to stay with us right now. Of
23 course, that being said, Solicitor, I assume Ms. Smith is
24 not going to be up there 15 minutes.

25 MS. DIXON: No, sir. She'll probably be up

1 there. She's probably our longest witness.

2 THE COURT: All right. Well, I hate for her to
3 have to face a break, but perhaps it would be prudent --
4 either way we're not going to finish by 1 o'clock -- if
5 we'd just take our recess now.

6 MS. DIXON: Okay.

7 THE COURT: I'll bring the jury back out, send
8 them to lunch, and we'll just start back fresh this
9 afternoon.

10 All right. Bring us our jury, please.

11 (The jury came into open court at approximately
12 12:43 p.m.)

13 THE COURT: All right. Welcome back, ladies and
14 gentlemen. I apologize for that brief delay. However,
15 given the hour, I do not think we'll finish this witness
16 by 1 o'clock, which is normally my lunch, the time I
17 normally break for lunch. So I think now would be a good
18 time to take our luncheon recess.

19 Please remember that you shall not discuss this
20 case with anyone; that includes your fellow jurors, lunch
21 mates, family, friends, or anyone else. If anyone tries
22 to talk with you about the case, please let me know
23 immediately.

24 Do not read, watch, or listen to any news
25 reports about the case should there be any.

1 You may not use a computer, cellular phone, or
2 other electronic device with communication capabilities
3 while in attendance at trial or during deliberations. You
4 may use these devices during your lunch breaks, but you
5 may not use them to obtain or disclose prohibited
6 information.

7 Prohibited information is information about a
8 party or a witness or an attorney or a court officer, news
9 accounts of the case, information collected through your
10 research on any topics raised or testimony offered by any
11 witness or information collected through your research on
12 any other topic that you might think would be helpful in
13 deciding the case.

14 Basically you can't do any investigation on the
15 Internet or any investigation on your own.

16 Please remember to keep an open mind about the
17 case. Do not begin your deliberations until you're
18 instructed to do so by the Court.

19 I would ask you to please be back at 2:15. If
20 you'd please be back in your jury room at 2:15.

21 You're now excused. I hope you all have a
22 pleasant lunch.

23 Thank you very much.

24 (The jury left open court at approximately 12:47
25 p.m.)

1 THE COURT: Anything further, Solicitor?

2 MS. GARRICK: No, Your Honor.

3 THE COURT: Mr. Cornwell?

4 MR. CORNWELL: No, Your Honor.

5 THE COURT: All right. 2:15. Thank you very
6 much.

7 MR. CORNWELL: Thank you.

8 MS. GARRICK: Thank you, Your Honor.

9 (A lunch break was taken.)

10 (WHEREUPON, State's Exhibits Nos. 1 through 10
11 were pre-marked for identification only.)

12 THE COURT: All right. Anything from the State
13 before we bring in our jury, Solicitor?

14 MS. GARRICK: No, sir, Your Honor.

15 THE COURT: From the defense?

16 MR. CORNWELL: No, Your Honor.

17 THE COURT: All right.

18 (The jury came into open court at approximately
19 2:19 p.m.)

20 THE COURT: All right. Welcome back. I hope
21 you all had a pleasant lunch.

22 Solicitor, you may now call your first witness.

23 MS. DIXON: Thank you, Your Honor.

24 The State calls Shirley Smith.

25 THE COURT: All right. Ms. Smith, if you'd come

1 around, please, and be sworn.

2 THE CLERK: Raise your right hand.

3 SHIRLEY SMITH, after being duly sworn, testified
4 as follows:

5 THE CLERK: Have a seat, please, ma'am. Ma'am,
6 once you're seated, need you to speak up loud and clear
7 stating your full name and spelling your last on the
8 record, please.

9 THE WITNESS: My name is Shirley Ann Smith. And
10 my last name is spelled S-M-I-T-H.

11 DIRECT EXAMINATION

12 BY MS. DIXON:

13 Q Ms. Shirley, where do you work?

14 A I work at Walmart in West Columbia, South Carolina.

15 Q And how long have you worked there?

16 A Going on eight years.

17 Q What do you do at Walmart?

18 A I work in five different departments. I cashier.

19 Q And what are those five departments that you work in?

20 A I work in the Garden Center, Celebrations,
21 Stationery, Fabrics and Crafts, and Clearance.

22 Q So were you working on March 12th of 2010?

23 A Yes, ma'am.

24 Q And can you tell me where you were stationed that
25 day?

1 A That day I was working the cash register in the
2 garden center.

3 Q Explain for the jury, for those of the jury who
4 haven't been to the West Columbia Walmart, how is the
5 garden center set up?

6 A You have -- as you come in from the store, you have a
7 garden center and then you go out the first door and
8 you've got a patio room one and a patio room two, but when
9 you go out the first door, you can go straight out the
10 second door.

11 Q Okay. So if I understand right, there's an inside of
12 the garden center and then the patio area?

13 A Yes, ma'am.

14 Q And where are the cash registers located?

15 A They're located in the inside, in the -- as you come
16 out the inside of the store, on the first -- I call it the
17 first room.

18 Q Okay. And about how far from the door between the
19 inside garden center and the patio area are those cash
20 registers?

21 A Which door? You talking about the first door?

22 Q The door between the garden center and the patio
23 area.

24 A Okay. The cash registers are -- like if this is the
25 door, the cash registers are right here.

1 Q Okay. And you say -- how many feet would you say?

2 A I would say probably five feet.

3 Q Okay. So it's pretty close?

4 A It's close.

5 Q Okay. And from your position at the cash register,
6 are you able to see people coming and going through that
7 door?

8 A You can see people coming and going. I do believe I
9 was on the first register, which is 71. I can see people
10 coming from the inside the store out this way and people
11 coming from the left side of me.

12 Q Okay. And while you were working that cash register
13 on March 12th of 2010, did you notice anything unusual?

14 A Yes, ma'am.

15 Q And what was that?

16 A I noticed to my left -- I was running the register
17 and I noticed to the left, I saw a buggy coming with a
18 large electronic item in it.

19 Q And what did you do then?

20 A I excused myself from the customers because I knew I
21 had sent Mr. Williams outside to get two propane tanks and
22 I knew I should check the receipt. So I excused my
23 customer so that I could go and ask for a receipt.

24 Q Okay. You said that you had sent Mr. Williams
25 outside. Who's Mr. Williams?

1 A Mr. Curtis Williams sitting in the blue shirt.

2 Q And what was he doing that day?

3 A He was the door greeter at the second outside door.

4 Q And what was his job as the door greeter?

5 A He was supposed to greet the customers and check
6 receipts.

7 Q Okay. So at that point Mr. Williams wasn't stationed
8 there to check the receipts and you did what?

9 A I checked the receipt. I went to check the receipt
10 myself because I knew that he was busy doing something.

11 Q Okay. Can you describe for me the person that was
12 pushing that buggy with the large electronic device in it?

13 A He was a darker male and he was taller than me. And
14 he had a black and white cap on. He had a black jacket on
15 with some design on it.

16 Q Okay. And where did he go with the buggy?

17 A He passed on the left side of me. I caught him out
18 of my vision. He passed on the left side. And he was
19 going to exit the first door when I excused myself from
20 the customers to go ask him for the receipt.

21 Q And did you ask him for the receipt?

22 A Yes, ma'am, I did.

23 Q What was his response?

24 A His response was, "I got it, they got it," and I knew
25 that -- I asked him again, but that's -- "I still need to

1 see your receipt."

2 Q Did he show you a receipt?

3 A No, ma'am.

4 Q Okay. The second time you said you asked him, "I
5 still need to see your receipt."

6 A Yes, ma'am.

7 Q What happened then?

8 A Well, they -- he started saying, "Well, you can't
9 touch my buggy, you can't touch me." And at that point I
10 stepped back a little bit and I says, "I'm not going to
11 touch you and I'm not going to touch your buggy, but you
12 can't leave with the merchandise without showing a
13 receipt."

14 Q Okay. At this point when you all are having this
15 conversation, where are you located?

16 A Just outside of the first door in the patio.

17 Q Okay. So it's still a covered area; is that right?

18 A Yes, ma'am.

19 Q Okay. You say, "I'm not going to touch you, I'm not
20 going to touch your buggy, show me your receipt." What
21 happens then?

22 A Well, then he tries to get around me and I would step
23 back in front of the cart making sure I didn't touch
24 either one. And it was like going around and, you know, I
25 would step -- he would try to get around me and I'd step

1 back in front of him.

2 Q Okay. At some point did he say anything else?

3 A When he saw that I wasn't relinquishing, he reached
4 down -- he reached out, it looked like his jacket; and he
5 pulled out a yellow box cutter and he brought it out
6 down -- may I stand up?

7 THE COURT: Yes, ma'am, you may stand up.

8 THE WITNESS: He brought it out the jacket
9 pocket and he -- the customers in my line were behind me.
10 So he had it down here where no one could see it and the
11 blade was out. And he says, "Is this worth you getting
12 all cut up over?"

13 BY MS. DIXON:

14 Q Okay. Now, you said it's a yellow box cutter. About
15 how far away from him were you at this point?

16 A Not very far.

17 Q Were you able to clearly see what he had in his hand?

18 A Yes, ma'am.

19 Q And did it frighten you?

20 A Yes, ma'am.

21 Q Okay. You see him holding this yellow box cutter.

22 A Yes, ma'am.

23 Q He makes that statement to you. What happened next,
24 Ms. Shirley?

25 A I was sort of in shock. I couldn't believe it. And

1 I looked to him and I says, "Well, you still can't leave
2 the store without showing a receipt."

3 Q Okay. And at this point he's got a box cutter, you
4 tell him he's still not leaving. What happens next?

5 A The box cutter came up a little further. At that
6 point I guess he didn't like that, so he brought it up
7 from there up a little bit higher and he said about "Is
8 this worth you getting cut up over?" And at that point,
9 you know, everything's sort of frozen and you just --
10 people react differently. I just sort of stepped back and
11 I just walked -- I got out of the way and I went to the
12 phone and called for a member of management immediately.

13 Q And you did that using the phone system in the
14 Walmart?

15 A We have a phone out in the garden center. I just
16 made a page for a member of management immediately.

17 Q And did someone from management come to the garden
18 center?

19 A The first person I saw was Dean Edgeworth.. He -- I
20 excused myself again from the customers and I walked up to
21 Dean and I told him, I said, "He's got an electronic -- a
22 TV or electronic item and he pulled a blade on me."

23 Q Okay. After you walked away from this man who had
24 the box cutter, did you see him again that day?

25 A Yes, ma'am, I did.

1 Q Okay. And tell me about that.

2 A I went -- it was on 12th Street and I went and
3 identified him.

4 Q Okay. So after you spoke with Dean at Walmart, did
5 the police come to Walmart that day?

6 A Yes, ma'am.

7 Q Did you talk with an investigator?

8 A Investigator Wade.

9 Q Okay. And how did you get to 12th Street?

10 A I rode with Investigator Wade.

11 Q Okay. When you got to 12th Street, who, if anyone,
12 did you see there?

13 A I saw Mr. Buchanan.

14 Q What was he wearing?

15 A At the -- at the moment he didn't have the cap on and
16 I do believe he had the black jacket on. And I asked
17 Detective Wade, I said, "Did you find the cap?" because it
18 was a black and white cap. And he radioed and he asked
19 them. And I says, "Would you please get him to put the
20 cap on?" and they did.

21 And after I identified him, I said, "Detective
22 Wade, did you all find the blade with the yellow handle?"
23 And the officers come to the car window and they told him
24 yes, they had found the blade.

25 Q And how sure are you that the person you identified

1 that day is the person that pulled the box cutter on you.
2 in Walmart?

3 A A hundred percent.

4 Q Can you identify him here in court today?

5 A He's sitting over there by his attorney.

6 MS. DIXON: Your Honor, let the record reflect
7 that the witness has identified the defendant.

8 THE COURT: So reflected, yes, ma'am.

9 BY MS. DIXON:

10 Q Ms. Shirley, I want to ask you -- I'll hand you this
11 and see if you can identify it for me. Do you recognize
12 this hat?

13 A Am I supposed to touch it?

14 Q Yes, you can.

15 A Yes, that's it. That's the cap.

16 Q This is the hat that the defendant was wearing that
17 day?

18 A It was black and white.

19 Q Okay. I'm going to ask you if you recognize this.

20 A Yes, I do. Because if you look, it's got the inside
21 design that I could see.

22 MS. DIXON: Your Honor, for the record, these
23 have been marked as State's Exhibits 7 and 8 for
24 identification. The hat is No. 7 and the jacket is No. 8.

25 THE COURT: All right.

1 BY MS. DIXON:

2 Q Ms. Shirley, was this the hat and the jacket that the
3 defendant was wearing the day he pulled the box cutter on
4 you?

5 A Yes, ma'am.

6 Q Ms. Shirley, I'm going to show you something else.
7 This has been marked as State's Exhibit 6 for
8 identification. Do you recognize this item?

9 A The blade cutter.

10 Q And is this similar to the one that he pulled on you
11 that day?

12 A Yes, ma'am. The blade was sticking out.

13 MS. DIXON: Okay. And this is again State's
14 Exhibit 6 for identification.

15 BY MS. DIXON:

16 Q Ms. Shirley, are you aware, does Walmart have
17 security video in the store?

18 A Yes, ma'am, they do.

19 Q And does that include the garden center?

20 A Yes, ma'am.

21 Q I've got a disc here that we've pre-marked as State's
22 Exhibit 3 for identification. Do you recognize this disc?

23 A Yes, I do.

24 Q And how do you recognize it?

25 A It's got my initials on it.

1 Q Have you watched what's on this disc?

2 A Yes, ma'am.

3 Q And is this an accurate representation of what
4 happened that day?

5 A Yes, ma'am.

6 MS. DIXON: Your Honor, at this time we'd move
7 State's Exhibit 3 into evidence, the security video.

8 THE COURT: Mr. Cornwell?

9 MR. CORNWELL: No objections, Your Honor.

10 THE COURT: State's 3 in evidence without
11 objection.

12 MS. DIXON: Thank you, Your Honor.

13 If I could have the Court's indulgence for just
14 a minute. I'd like to publish it to the jury.

15 THE COURT: Yes, ma'am.

16 (WHEREUPON, State's Exhibit No. 3 was admitted
17 into evidence.)

18 (Pause.)

19 (WHEREUPON, State's Exhibit No. 3, the DVD, was
20 published for the jury but not transcribed.)

21 BY MS. DIXON:

22 Q All right. Ms. Shirley, I've got a number of
23 different videos. I'm going to show you the first one,
24 and if you could, describe to the jury what they're seeing
25 on this video.

1 THE COURT: Do you want the lights dimmed,
2 Solicitor?

3 MS. DIXON: It would help, Your Honor.

4 THE COURT: All right. Mr. Knight.

5 BY MS. DIXON:

6 Q All right. Ms. Shirley, can you tell us where this
7 camera is located?

8 A At the first door going out in the patio.

9 Q Okay. And so is this the interior of the Walmart?

10 A That's the inside where the registers are.

11 Q And what's that up at the top of the screen?

12 A The two registers.

13 Q Okay. I'm going to play it, Ms. Shirley, and if you
14 could, just tell the jury what they're seeing as this
15 video plays.

16 A That's Mr. Buchanan with the electronic item. That's
17 me coming to ask him for the receipt.

18 Q And so did you follow him out that door?

19 A Yes, ma'am.

20 Q All right. Ms. Shirley, before I play this one, can
21 you explain to the jury what they're seeing here?

22 A That's the patio. This way would be the first door.
23 That's the aisle that leaves out to the door out to the
24 outside.

25 Q Okay. When you say "this way," just to make it

1 clear, is it the left side of the screen or the right side
2 of the screen that goes to the inside of the store?

3 A The left side. The left side comes inside to the
4 cash registers.

5 Q And the right side would go where?

6 A Outside.

7 Q Ms. Shirley, I'm going to play this through one time
8 and just let the jury watch it. So if you could just
9 explain to them what's happening while they watch the
10 video.

11 A That's Mr. Buchanan with the merchandise. That's me
12 asking him for his receipt. And he's telling me, "They've
13 got it, I've got it," and I'm telling him I still need to
14 see a receipt. And we go around and around and I'm trying
15 to block him from getting out with the merchandise. And
16 there -- okay. That -- at the moment, can you back up?

17 Q Yes, ma'am. Tell me when you need me to stop it.

18 A Okay. And when I get around and to the buggy, there
19 he pulled something out of his pocket. After he swirled
20 that buggy around he pulled something out of the pocket.

21 Q Is that right here?

22 A Yes. Uh-huh.

23 Q I'm going to continue to play.

24 A And as you see I've got my hands on my hip and he's
25 already there. When you saw him, he swung his arm around

1 and he had the blade and at that point he was saying
2 twice, "Is this worth you getting cut up over?"

3 Q All right. Ms. Shirley, it's kind of hard to see so
4 I'm going to try and back it up for the jury and stop it
5 in the right place.

6 A Uh-huh. It was the right hand. And we were already
7 talking when you see he raised that right hand up and he
8 had the blade in it there.

9 Q And so which hand did he have the box cutter in?

10 A The right hand.

11 There he swung it out. You'd have to back up
12 it's so fast.

13 Q It's kind of hard to see on the video?

14 A Oh, yes, ma'am.

15 Q Do you remember it pretty well?

16 A I remember he pulled that blade out low and then he
17 pulled it up and each time he told me, "Is this worth you
18 getting cut up over?"

19 Q All right. Ms. Shirley, I'm going to continue to
20 play this through the end of the video. So if anything
21 else important comes up, you just let me know.

22 A At that point he had swung around and he had the
23 blade in his hand and at that point I had gave up. I knew
24 it was beyond me so I left and went inside for help.
25 There goes T.J.

1 Q And who's T.J., Ms. Shirley?

2 A He was another employee.

3 Q Okay. Was he working in the garden center that day?

4 A He must have been taking a break in the swing.

5 Earlier you saw him running in the store because I had

6 hollered at him, I said, "T.J." He had his earphones on

7 and he was sitting in the swing. I says, "Go call

8 security." So he went there and he was calling the

9 fitting room. I says, "T.J., give me the phone." So I

10 called for a member of management immediately.

11 Q I'm going to show you one more video, Ms. Shirley, if
12 you'll just bear with me.

13 And can you tell us real quick what this is a
14 view of?

15 A That's a view of the first patio. That's where the
16 area is, that's the entrance into the inside of the garden
17 center.

18 Q Okay. And that door at the top, where does that go?

19 A The door you see visibly is outside.

20 Q Can you identify the people at the bottom of the
21 screen, Ms. Shirley?

22 A To the left is me and to the right is Mr. Buchanan.

23 Q At this point does Mr. Buchanan have the box cutter
24 in his hand?

25 A If we go on -- can you back it up?

1 Yes, there it is. He's got it.

2 May I stand up?

3 THE COURT: Yes, ma'am.

4 THE WITNESS: He's standing there and he's got
5 his -- there's an object like this and he's got his hand
6 in the middle of it, it looks like, and that was the box
7 cutter, and it was yellow.

8 BY MS. DIXON:

9 Q So that light object in his right hand?

10 A That's in his right hand.

11 Q Is that the box cutter?

12 A Because this is his left and he's got the box cutter
13 like that.

14 Q And that's the box cutter that you saw?

15 A Yes. He never put it away. It was out ever since he
16 made the first comment.

17 Q Ms. Shirley, the electronic device that he had in his
18 cart, do you know what that was?

19 A At the time I thought it was a TV because it was a
20 big enough box to be a TV, but I knew it was a TV or
21 electronic device, but I found out it was an \$848
22 computer.

23 Q Ms. Shirley, I'm going to show you a couple of
24 pictures. The first is marked State's Exhibit 2 for
25 identification. Can you identify that for me?

1 A Yes. That's Mr. Buchanan and that's the computer in
2 the cart.

3 Q And is this a still that came off of the video we
4 just watched?

5 A Yes, ma'am.

6 Q Okay. And I'm going to ask you to identify State's
7 Exhibit 1, please.

8 A Yes. Identify it? That's the blade, the box cutter
9 with the extended blade. And that's the computer and
10 that's Mr. Buchanan.

11 Q And is this a close-up of this still?

12 A Yes, ma'am.

13 MS. GARRICK: Your Honor, at this point we'd
14 move State's Exhibits 1 and 2 into evidence.

15 THE COURT: Mr. Cornwell?

16 MR. CORNWELL: No objections, Your Honor.

17 THE COURT: State's 1 and 2's in evidence
18 without objection.

19 (WHEREUPON, State's Exhibits Nos. 1 and 2 were
20 admitted into evidence.)

21 MS. DIXON: Thank you, Your Honor.

22 Ms. Shirley, I think at this point that's all
23 the questions I have for you. If you'd answer any
24 questions Mr. Cornwell has.

25 THE COURT: Thank you, Solicitor.

1 Mr. Cornwell.

2 MR. CORNWELL: If it please the Court, Your
3 Honor.

4 CROSS-EXAMINATION

5 BY MR. CORNWELL:

6 Q Do you remember approximately what time it was when
7 this altercation took place?

8 A The precise time?

9 Q Yes, ma'am.

10 A Not the precise time, but the day I do. It's
11 March the 12th of 2010.

12 Q All right. Now, after this happened, did you have an
13 opportunity to -- you were interviewed by Mr. Wade you
14 said?

15 A Yes, I was interviewed by Mr. Wade, Detective Wade.

16 Q And about how long after the incident did that take
17 place?

18 A That Mr. Wade interviewed me?

19 Q Yes.

20 A Not long.

21 Q Did you say about an hour or so?

22 A Well, after it happened, I went and identified and
23 then I went back, and then Mr. Wade -- I went to the West
24 Columbia Police Department and talked with Mr. Wade.

25 Q All right. When you were talking with Mr. Wade, did

1 you have an opportunity to view the box cutters?

2 A No, I never saw the box cutters when I was talking
3 with Mr. Wade.

4 Q And earlier you testified that you had asked him
5 about the box cutters when they took you to the -- pick up
6 the client, pick up Mr. Buchanan?

7 A When I went to 12th Street, I identified
8 Mr. Buchanan. And I asked him -- after I had already
9 identified Mr. Buchanan, I asked him, I said, "Well, did
10 you get the yellow blade?" That's when he asked the
11 officers and they came to his car window and told him yes,
12 they had found -- got the blade.

13 Q And did you see the blades at that time?

14 A No, I was not shown the blades.

15 Q Okay. Now, you had an opportunity to speak with Mr.
16 Wade at the West Columbia Police Department. Did you have
17 an opportunity to view the video then?

18 A No, I don't think I viewed the video at that time.

19 Q Did you see it beforehand?

20 A No.

21 Q When did you get a chance to view the video?

22 A I viewed the video -- it was just recently.

23 Q So you're telling me you've never seen the video
24 before recently?

25 A It was just recently. I never saw the video.

1 The only time is when they came -- I was at the
2 cash register and they came and got me from the back and
3 took me to the little TV room. The security people were
4 watching it, but I didn't get to see it.

5 Q Was this before or after your interview with Mr.
6 Wade?

7 A That's where I met Detective Wade for the first time.

8 Q And they were already viewing the video?

9 A The security people were scanning the video.

10 Q Okay. Now, in the video and in your testimony and in
11 your statement you mention the fact that you were afraid
12 for your life.

13 A Yes, sir. It scared me. I was sort of -- like I
14 said, I was in shock. I didn't believe -- you know, you
15 never believe something like that, at the moment this
16 isn't happening, you know. That's how I felt.

17 Q Now, also on your statement it said that you had seen
18 Mr. Buchanan before. Could you kind of enlighten us on
19 that?

20 A You want me to go --

21 MS. DIXON: Your Honor, if we may approach for
22 one moment.

23 THE COURT: Yes, ma'am.

24 (A bench conference was held with the judge and
25 attorneys in the presence of the jury but out of the

1 hearing of the jury.)

2 THE COURT: Thank you, Solicitor.

3 Thank you, Mr. Cornwell. You may ask your next
4 question.

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

7 THE COURT: Yes, sir.

8 (Pause.)

9 BY MR. CORNWELL:

10 Q Earlier you testified that during this altercation,
11 my client had his back to the camera and -- is that
12 correct?

13 A In what part?

14 Q The part where he pulls the blade, allegedly pulls
15 the blade out on you, you said that he had his back to the
16 camera?

17 A What it seemed to be -- can I stand up and show you?

18 Q That's fine.

19 THE COURT: Yes, ma'am, you can stand up.

20 THE WITNESS: Okay. When he pulled the blade,
21 he was out this way and he pulled the blade out of his
22 jacket pocket and he came around. So it was like he was
23 halfway like this. The first time he had -- the first
24 time I saw the blade, and then the second time I saw it,
25 he had pulled it up, pulled it out like this.

1 BY MR. CORNWELL:

2 Q And in your statement, did you make mention of any of
3 this?

4 A About the blade?

5 Q About the manner in which the blade was pulled out.

6 A I made mention that he had pulled the box cutter and
7 that he had threatened to cut me up. And then I mentioned
8 that the box cutter, he pulled it a little bit higher up
9 and he said again, "Is this worth you getting cut up
10 over?" And when I went to -- I said this -- you know, I
11 gave up, he had -- when he turned around, he swung it --
12 he had it still in his hand.

13 Q Now, did you say he pulled it higher up or did you
14 say he swung at you?

15 A To me, like I said, it was like I was in shock and
16 it -- when he pulled the blade down and the knife -- the
17 box cutter, it was down low and the blade was sticking out
18 and he made the first threat about cutting me up. Then
19 the second time, the blade was more visible because he
20 held it -- instead of being low, it came upward and he
21 threatened me again.

22 Q When you came out for the first encounter with
23 Mr. Buchanan in the patio, did you notice anything in his
24 hands at all or was the blade the first thing you saw?

25 A When Mr. Buchanan came by my cash register and when

1 he passed by, I noticed that there was a big object, an
2 electronic device in his cart, and I noticed him as he
3 went by, and just instinctively I knew that Mr. Williams
4 was outside doing -- getting the tanks, so I said to
5 myself, I need to check this.

6 Q And maybe I wasn't clear.

7 A Okay.

8 Q I'm talking specifically when you encountered him in
9 the patio, the encounter we see on the JamCam in
10 particular --

11 A Uh-huh.

12 Q -- did you notice anything in his hands before?

13 A When I came in contact with Mr. Buchanan in the
14 patio, when I asked for the receipt, that's -- when I
15 first asked for the receipt he was telling me, "They got
16 it, I got it," the blade came out right -- it was after
17 that.

18 Q How soon after you got to the patio would you say
19 that happened?

20 A To me, being, you know, something like that, you're
21 sort of -- when they won't give you a receipt right away
22 and they start making excuses, it seems like it's a little
23 bit more time, but it all was bam, bam, bam. It was all
24 fast and all together.

25 Q Now, you said that there was a swipe or he swiped

1 this blade at you and you pointed out on the video where
2 this swing took place. Could you kind of refresh our
3 memory as to when that happened? I'm playing the video
4 right now.

5 A Right there.

6 Q All right.

7 A Okay. It was before Terrance, T.J., walked off. All
8 that happened in a brief short time span.

9 Q Now you mentioned T.J. Is that his name, Terrance?

10 A Terrance Boykin.

11 Q All right. You mentioned his name. And in your
12 statement you said that you saw T.J. in the swing and
13 said, "T.J., call security." And this is after he swung
14 the blade at you?

15 A He had already pulled the blade out and made the
16 statement that, "Is this worth you getting cut up over?"
17 He had done everything. And when I looked over -- when I
18 had gave up and was going to walk off, I looked over and
19 then saw T.J. in the swing. That's when I had already
20 just -- this is it, you know, and I backed up and to walk
21 off.

22 Q So when T.J. left is when you told him to call
23 security?

24 A When I looked over and saw T.J. in the swing, I
25 hollered at T.J. and I said, "T.J., call security."

1 There he had his arm up and I walked off.
2 That's when he swung around and he had that blade still in
3 his hand.

4 There you see the arm extended. He had his back
5 to my customers at the register.

6 Q Are you saying right here he has a blade in his hand
7 or just noting his position?

8 A He had probably -- at that time when he put -- he had
9 to pull it out. He pulled it out of his pocket and I
10 walked around a little bit more to the front of him. I
11 noticed -- I saw the blade when I was right -- we were
12 sort of face-to-face.

13 Q Now, just kind of going back to this portion of the
14 video, right when you called T.J.

15 A You want me to tell you when I called T.J.? I've
16 already told him because there he goes.

17 Q I notice Mr. Buchanan kind of leaning back. It
18 doesn't look like he's really doing anything at that
19 point.

20 A He's already done it at that point.

21 Q Are you saying that right before then is when he
22 pulled the blade out?

23 A The blade was out. He had already pulled it out and
24 it stayed out.

25 Q So he never put the blade back in?

1 A He never put the blade back up.

2 Q Did T.J. see the blade?

3 A I never asked T.J. about that.

4 MR. CORNWELL: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 (Pause.)

7 BY MR. CORNWELL:

8 Q I notice in your statement also that you said you
9 walked off and that's when he ran off?

10 A Repeat that.

11 Q In your statement, you said that you walked off once
12 you saw the blade and he took off.

13 A After he had already pulled the blade low and then
14 higher and made the two statements, after the second time
15 he pulled it up higher and made the statement I gave up
16 and I -- at that time I went back there, back to the
17 registers, got on the phone and called for management.

18 Q And so are you saying that after you tried to stop
19 him twice that's when you went back to management, or are
20 you saying that the video is not showing what's happening?

21 A When you see me walking back there, walking back
22 inside the store, I had gave up because I knew it was
23 beyond me and I went back in and called for management.

24 MR. CORNWELL: No further questions, Your Honor.

25 THE COURT: Thank you.

1 Redirect, Solicitor?

2 MS. DIXON: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. DIXON:

5 Q Ms. Shirley, since you saw the box cutter in the
6 defendant's hand on March 12th, when is the next time
7 that you saw that box cutter?

8 A The next time I saw the box cutter was here this
9 year. It was this month.

10 Q Okay. When you told West Columbia Police Department,
11 when you were speaking with Investigator Wade the day of
12 the incident, how did you describe the box cutter to him?

13 A I told him it was an older-type box cutter and that
14 it was yellow or gold in color.

15 Q And was that before or after you went to West
16 Columbia to identify the defendant?

17 A I told him -- I told everybody the description of the
18 box cutter before I even talked with Detective Wade. The
19 first person that I saw that I described it to was Dean
20 Edgeworth. When he came after I called for management,
21 he's the first person I saw coming toward me and I said,
22 "He's got a TV or electronic device and he pulled a blade
23 on me."

24 Q Okay. When is the first time you described it as
25 yellow?

1 My question is this. Did you tell Investigator
2 Wade that it was a yellow box cutter before or after you
3 identified the defendant?

4 A I told him it was a yellow box cutter before -- let
5 me see.

6 Like I said, I told everybody that it was a
7 yellow box cutter before I had an interview with Detective
8 Wade. And then -- because also when I went to identify
9 Mr. Buchanan, I asked him after I had identified him, I
10 said, "Detective Wade, did you all find a yellow box
11 cutter?"

12 Q Now, Mr. Cornwell had asked you a question about T.J,
13 somebody you used to work with. During this altercation,
14 how far away from Mr. Buchanan were you?

15 A Not far.

16 Q Okay. And how far away from Mr. Buchanan was T.J.?

17 A Not far.

18 Q Okay. Was T.J. further than you?

19 A I was -- excuse me. I was standing right here. T.J.
20 was in the swing about where he was sitting.

21 Q Is it safe to say, Ms. Smith, that you were closer
22 than T.J. was?

23 A Right.

24 Q Okay. I know that we've watched the video probably a
25 dozen times now and it's hard to see on there. But,

1 Ms. Smith, how sure are you that Mr. Buchanan had a box
2 cutter on March 12th of 2010?

3 A I'm one hundred percent sure, and I tell you that
4 with my life. He had a box cutter and the blade was out
5 and it was yellow.

6 MS. DIXON: Thank you.

7 THE COURT: Recross, Mr. Cornwell?

8 MR. CORNWELL: One second, Your Honor.

9 RECROSS-EXAMINATION

10 Q After this altercation, you went right back to work
11 ringing up customers?

12 A I'm a dedicated employee at Walmart, they're my
13 customers. I was shaken visibly and, you know, they knew
14 something was wrong because they stood back there and
15 watched it and I tried to go back.

16 When the altercation happened, I went and called
17 for a member of management immediately and I was -- yes, I
18 went back to checking out my customers because I knew Dean
19 Edgeworth -- that security and everybody else was handling
20 it.

21 MR. CORNWELL: Okay. No further questions, Your
22 Honor.

23 THE COURT: Thank you.

24 Thank you very much, Ms. Smith. You may step
25 down.

1 All right. Solicitor, you may call your next
2 witness.

3 MS. GARRICK: Your Honor, we'd call Curtis
4 Williams.

5 THE COURT: All right. If you'd come around for
6 us and be sworn, please, Mr. Williams.

7 CURTIS WILLIAMS, after being duly sworn,
8 testified as follows:

9 THE CLERK: Once you're seated, you need to
10 speak up loud and clear. State your full name, spelling
11 your last, please.

12 THE WITNESS: My name is Curtis Lee Williams,
13 Jr. W-I-L-L-I-A-M-S.

14 DIRECT EXAMINATION

15 BY MS. GARRICK:

16 Q Good afternoon, Curtis. How are you?

17 A All right.

18 Q Where do you work?

19 A West Columbia Walmart.

20 Q And how long have you worked at that Walmart?

21 A About two years.

22 Q And are you still currently employed at Walmart?

23 A Yes.

24 Q And do you know Ms. Shirley?

25 A Yes.

1 Q And did you know Terrance Boykin?

2 A Yes.

3 Q Do you know if Terrance still works at Walmart?

4 A No, he doesn't.

5 Q Were you working March 12th of 2010?

6 A Yes, ma'am.

7 Q Do you remember if all these events happened in the
8 morning or the afternoon?

9 A I believe it was, like, in the afternoon.

10 Q Okay. And what kind of -- what did your duties
11 consist of or what were you doing on that March 12th day,
12 where were you stationed?

13 A I was working the door and assisting customers on the
14 floor.

15 Q And when you say you were working the door, Walmart
16 has several different doors. What area were you working
17 in?

18 A The Garden Center's outside patio door.

19 Q Okay. And what, if anything, unusual happened that
20 afternoon?

21 A Well, I was down by the propane tank when I heard
22 yelling and then Terrance Boykin ran to the door and said
23 a customer has stolen an item and that's when I was -- I
24 saw the guy come across the parking lot.

25 Q Let me stop you there. When you say you saw the guy,

1 what caught your attention about him?

2 A Well, when he left the front doors on the outside
3 patio, he ran -- like he jumped on the back of the buggy
4 because it's like a downslope and he was like trying to
5 get to his vehicle quickly.

6 Q Could you describe what kind of clothes the man had
7 on?

8 A It was a black hoodie and a black hat.

9 Q And did you see any kind of altercation that
10 Ms. Shirley went through?

11 A No, ma'am.

12 Q So what first caught your attention was Terrance
13 yelling?

14 A No. I saw the customer go out running across the
15 parking lot first.

16 Q And did you see anything in the buggy?

17 A Yes. I saw a white and a green box.

18 Q And did you see where this customer went with the
19 buggy?

20 A He got into a red truck behind a van.

21 Q Okay. Can you describe what kind of vehicle it was?

22 A It was a Nissan XTerra.

23 MS. GARRICK: If I may approach the witness,
24 Your Honor.

25 THE COURT: Yes, ma'am.

1 BY MS. GARRICK:

2 Q If I could show you what's been marked as State's
3 Exhibit 4 for ID. Can you recognize this vehicle?

4 A Yes.

5 Q Can you tell us what -- is this the vehicle you saw
6 the man get into?

7 A Yes, ma'am.

8 Q And do you know which way it went out of the parking
9 lot?

10 A It circled on the back wall near the Hardee's and
11 turned to go out and made a right-hand turn at the light.

12 Q And as it turned right at the light, would it be
13 going towards Columbia or away from Columbia?

14 A Towards Columbia.

15 Q And who's the next person you talked to there as far
16 as Walmart employees?

17 A I talked to Terrance to try to figure out what
18 happened.

19 Q And did you have occasion to talk to Dean about what
20 happened?

21 A Yeah. When he came out there I told him that
22 Terrance had said someone had stole an item and I said I
23 saw him run across the parking lot and jump into a red
24 truck.

25 Q And were you there when Dean was calling law

1 enforcement?

2 A I wasn't there.

3 MS. GARRICK: Beg the Court's indulgence one
4 moment.

5 (Pause.)

6 MS. GARRICK: Please answer any questions
7 defense may have.

8 THE COURT: Thank you, Solicitor.

9 Mr. Cornwell.

10 MR. CORNWELL: May it please the Court.

11 CROSS-EXAMINATION

12 BY MR. CORNWELL:

13 Q Mr. Williams, did you see the incident between
14 Ms. Smith and my client?

15 A No, sir.

16 Q You didn't observe any altercation at all?

17 A No, sir.

18 Q Could you tell from your viewpoint who was driving
19 the red XTerra?

20 A I didn't know who was driving, but he left the
21 parking lot pretty fast.

22 Q Did you see him actually get in the vehicle?

23 A Yeah.

24 Q And did he get in on the passenger's side?

25 A No.

1 Q He got in the back seat?

2 A Oh, the way he came around the back side, I saw him
3 when he threw it in, and that was it.

4 Q So you didn't actually see him get in the vehicle?

5 A No, because I was walking towards the building.

6 MR. CORNWELL: Okay. No further questions.

7 THE COURT: Thank you, Mr. Cornwell.

8 Redirect, Solicitor?

9 MS. GARRICK: No, Your Honor.

10 THE COURT: Thank you very much, Mr. Williams:
11 You may step down.

12 All right. Solicitor, you may call your next
13 witness.

14 MS. DIXON: Thank you, Your Honor. The State
15 calls Dean Edgeworth to the stand.

16 THE COURT: All right. If you'd come around and
17 be sworn, please.

18 DEAN EDGEWORTH, after being duly sworn,
19 testified as follows:

20 THE CLERK: Once you're seated, speak up loud
21 and clear, stating your full name and spelling your last
22 for the record.

23 THE WITNESS: Dean Michael Edgeworth,
24 E-G-D-E-W-O-R-T-H.

25

DIRECT EXAMINATION

BY MS. DIXON:

Q Dean, where do you work?

A I work at West Columbia Walmart.

Q And what do you do there?

A I am their asset protection.

Q How long have you worked at the West Columbia Walmart?

A Two years.

Q Tell the jury what asset protection does.

A Our basic job is to protect Walmart's assets from shoplifting.

THE COURT: Could you speak up a little bit for me and slow down a little bit for me, please?

THE WITNESS: I ensure the stop of theft from all, from internals and externals.

BY MS. DIXON:

Q And tell me what a typical day in asset protection at Walmart is like.

A All we do pretty much is walk around and see if we can catch somebody shoplifting.

Q Okay. Were you working on March 12 of 2010?

A Yes, ma'am.

Q Okay. Tell me how you became aware that there was a situation in the Garden Center.

1 A I was walking around the sporting goods section
2 through toys and I heard a page over the intercom that
3 they needed management and loss prevention to the Garden
4 Center immediately.

5 Q Could you tell who was making that page?

6 A Ms. Shirley.

7 Q How long have you known Ms. Shirley?

8 A Ever since I started working at that store, about two
9 years.

10 Q Okay. Can you describe for the jury, how did
11 Ms. Shirley's voice sound on that page?

12 A Crackled. She sounded nervous. She sounded like
13 something had extremely upset her.

14 Q Once you heard that page, Dean, what did you do?

15 A I ran out there.

16 Q Okay. About how long do you think it took you to get
17 to the Garden Center?

18 A Two seconds.

19 Q When you got to the Garden Center, what, if anything,
20 did you see?

21 A I was told by Ms. Shirley that he --

22 MR. CORNWELL: Objection, Your Honor. It's
23 hearsay.

24 THE COURT: All right. That would be hearsay,
25 Solicitor.

1 BY MS. DIXON:

2 Q Dean, when you first saw Ms. Shirley, how did she
3 seem to you?

4 A She seemed upset.

5 Q Did she seem excited?

6 A She seemed like excited, upset, that something had,
7 like, startled her.

8 Q Did she seem agitated at all?

9 A Not agitated. Just startled.

10 Q Was she speaking quickly?

11 A Yes, she was speaking quickly, nervously, and trying
12 to explain to me what was going on.

13 Q And what, if anything, did Ms. Shirley say to you?

14 A She --

15 MR. CORNWELL: Objection, Your Honor. Hearsay.

16 THE COURT: Solicitor?

17 MS. DIXON: Your Honor, I believe that the
18 witness has described Ms. Shirley's demeanor and it would
19 fall under the excited utterance exception to hearsay.

20 MR. CORNWELL: Your Honor, I'm not sure if we
21 got any definitive idea --

22 THE COURT: I can't hear you.

23 MR. CORNWELL: I'm not sure if we got any
24 definitive idea of how soon he talked to Ms. Shirley after
25 the call.

1 MS. DIXON: I'm sorry, Your Honor.

2 THE COURT: All right. You can ask that
3 question, Solicitor.

4 BY MS. DIXON:

5 Q Dean, do you know about how long it took you between
6 the time you got the page and the time you spoke to
7 Ms. Shirley?

8 A It took me all of probably ten seconds. Because I
9 was already right there entering the Garden Center by the
10 time the page went over the system.

11 Q So it was a short period of time?

12 A Extremely.

13 THE COURT: All right. Mr. Cornwell, do you
14 still have an objection?

15 MR. CORNWELL: No, Your Honor.

16 THE COURT: All right. Thank you.

17 You may proceed, Solicitor.

18 MS. DIXON: Thank you, Your Honor.

19 BY MS. DIXON:

20 Q Dean, what, if anything, did Ms. Shirley say to you?

21 A All I recall is the fact that she looked at me and
22 said he tried to run out with a TV or electronic device
23 and that he had a blade.

24 Q She said he had a blade?

25 A He had a blade. And that's when I ran outside.

1 Q And when you ran outside, what, if anything, did you
2 see?

3 A I was told by Curtis Williams and Terrance Boykin
4 that they had jumped in a red Nissan XTerra and they
5 pointed the vehicle out to me.

6 Q Okay. Was the vehicle still in the parking lot?

7 A Yes, ma'am.

8 Q Okay. Did you see where the vehicle went?

9 A It was starting to roll away and that's when I picked
10 up my phone and dialed West Columbia Police Department and
11 I was explaining to them how they were going. They turned
12 left towards the light at a slow pace and they turned
13 right into West Columbia.

14 Q Okay. They turned right onto which street?

15 A Augusta Highway.

16 Q Okay. And that heads towards Columbia or away from
17 Columbia?

18 A Towards.

19 Q Okay. Dean, I'm going to show you a CD and ask if
20 you recognize it.

21 A Yes.

22 Q Okay. And can you tell me, have you seen the
23 contents of this DVD?

24 A Yes.

25 Q And what's on here?

1 A It's him driving away in the Nissan XTerra.

2 Q Okay. Is this security video from Walmart?

3 A Yes, ma'am.

4 Q And did the West Columbia Police Department ask you
5 to pull this video?

6 A Yes, ma'am.

7 Q Have you had an opportunity to view this?

8 A Then or?

9 Q At some point prior to right now?

10 A Yes, ma'am.

11 MS. DIXON: Your Honor, at this time I'd ask to
12 publish the last portion of this video.

13 THE COURT: Yes, ma'am.

14 (WHEREUPON, State's Exhibit No. 3, the DVD, was
15 published for the jury but not transcribed.)

16 BY MS. DIXON:

17 Q Can you describe for the jury, Dean, what is this
18 video of?

19 A That is a shot of our parking lot right up there at
20 the traffic light.

21 Q Okay. And can you tell me, at the top of the screen,
22 which road is that?

23 A That is Augusta Road.

24 Q Okay. I'm going to play this video for you and if
25 you could, when you see the defendant's vehicle enter the

1 screen, will you tell me so I can stop it?

2 A Yes. There is the defendant's vehicle right there.

3 Q Okay. And is that the vehicle on the left side of
4 the screen?

5 A Yes.

6 Q Okay. And can you tell me which part of the store is
7 located on that left side?

8 A The Garden Center.

9 Q Okay. Can you describe for the jury what the
10 defendant's vehicle is doing right now?

11 A He's turning left towards the top of the parking lot
12 where the traffic light is at. And then he's going to
13 reach up there at the traffic light and turn right.

14 Q Okay. So he took a right onto Augusta Road?

15 A Yes, ma'am.

16 Q And did you see that happen?

17 A Did I see it? Yes, ma'am, I saw it happen.

18 MS. DIXON: Dean, that's all the questions I
19 have for you right now. Answer any questions Mr. Cornwell
20 has.

21 THE COURT: Thank you, Solicitor.

22 Mr. Cornwell.

23 MR. CORNWELL: May it please the Court, Your
24 Honor.

25

1 CROSS-EXAMINATION

2 BY MR. CORNWELL:

3 Q Mr. Edgeworth, you didn't get to see the altercation,
4 did you?

5 A Only on camera.

6 Q And did you have an opportunity to speak with
7 Ms. Smith afterwards?

8 A After the fact?

9 Q Yes.

10 A I spoke with her several times after the fact.

11 Q And you gave a statement to law enforcement also, a
12 written statement?

13 A Right.

14 Q And did you tell them what you heard from Ms. Smith
15 about the incident?

16 A I don't recall.

17 Q Would this statement help refresh your memory?

18 A Sure.

19 Q Do you now recall what you said, if anything, about
20 the blade in your statement?

21 A That Ms. Shirley had told me that "He pulled a blade
22 on me."

23 MR. CORNWELL: Okay. No further questions.

24 THE COURT: Redirect, Solicitor?

25 MS. DIXON: No, Your Honor.

1 THE COURT: Thank you very much, sir. You may
2 step down.

3 All right. You may call your next witness.

4 MS. GARRICK: Your Honor, we call Officer Thomas
5 Griffin.

6 THE COURT: All right. If you'd come around and
7 be sworn, please.

8 THOMAS GRIFFIN, after being duly sworn,
9 testified as follows:

10 THE CLERK: Once you're seated, speak up loud
11 and clear, stating your full name and spelling your last,
12 please.

13 THE WITNESS: Thomas Wessinger Griffin,
14 G-R-I-F-F-I-N.

15 DIRECT EXAMINATION

16 BY MS. GARRICK:

17 Q Officer Griffin, where are you employed?

18 A City of West Columbia.

19 Q And how long have you been working for the West
20 Columbia Police Department?

21 A A little over three years.

22 Q And what is your rank?

23 A I'm currently a corporal, which is a road supervisor
24 for the shift.

25 Q Okay. And what kind of duties did you do with the

1 police department?

2 A Traffic enforcement, normal calls of duty, calls of
3 service to the public.

4 Q And were you working on March 12 of 2010?

5 A Yes, ma'am.

6 Q And did you have a reason to go towards the Walmart
7 there on Augusta Road?

8 A Yes, ma'am.

9 Q Can you tell us the nature of the call?

10 A It came out through dispatch. Dispatch advised us
11 that someone had shoplifted from the Walmart using a
12 bladed object.

13 Q And where were you when you received this call?

14 A I was around -- I was near headquarters, which is the
15 1200 block of Klapman, right where 12th and Klapman meet.

16 Q And where did you go from there?

17 A I headed towards Walmart, which was headed towards
18 Lexington.

19 Q Okay. And are you on -- you were on Jarvis Klapman?

20 A Yes, ma'am.

21 Q And is that Walmart that's on Augusta Road, is that
22 in West Columbia?

23 A Yes, ma'am.

24 Q Is that within the county of Lexington?

25 A Yes, ma'am, it is.

1 Q And did you know -- did you have any information
2 about the suspect?

3 A It was given out that it was two black males
4 possibly, so yes, ma'am.

5 Q Did you have information about a particular type of
6 car?

7 A We were told it was a red XTerra.

8 Q What is the distance -- all right. Let me ask you
9 this. Did you see a red XTerra on Augusta Road?

10 A I saw it at approximately the 19 -- 1800 block of
11 Jarvis Klapman, which if you're coming from Augusta Road
12 to the city of Columbia, there is a split where you can go
13 right to Augusta Road or you can go left to Jarvis
14 Klapman. I observed that vehicle in the 1900 block of
15 Jarvis Klapman.

16 Q It was coming toward you or away from you?

17 A Towards me.

18 Q Where you saw that vehicle, what is the distance from
19 where that vehicle as you saw it and the Walmart on
20 Augusta Road?

21 A Approximately one mile.

22 Q Okay. And did I ask you to drive that distance in
23 preparation for court today?

24 A Yes, ma'am.

25 Q Now, how long generally would it take you to get from

1 that Walmart location to the area on Jarvis Klapman where
2 you saw the XTerra?

3 A The night that I drove it for you, which was no
4 traffic involved, it took right at three minutes.

5 Q Do you know about what time this call went out?

6 A I know it was around 4:40, 4:45. I know it was right
7 when 5 o'clock traffic was starting.

8 Q And do you have an estimate on how long it was from
9 when you got the call to when you saw the car?

10 A Less than ten minutes.

11 MS. GARRICK: If I may approach the witness,
12 Your Honor.

13 THE COURT: Yes, ma'am.

14 BY MS. GARRICK:

15 Q And when you saw this red XTerra, did you perform a
16 traffic stop?

17 A Yes, ma'am, I did.

18 Q If I could show you State's Exhibit 4. Do you
19 recognize this photograph?

20 A Yes, ma'am.

21 Q Is that the car you pulled over on Jarvis Klapman?

22 A Yes, ma'am, it is.

23 MS. GARRICK: Your Honor, I'd move State's 4
24 into evidence.

25 THE COURT: Any objections?

1 MR.. CORNWELL: No objections, Your Honor.

2 THE COURT: All right. State's 4 is in evidence
3 without objection.

4 (WHEREUPON, STATE'S Exhibit No. 4 was admitted
5 into evidence.)

6 BY MS. GARRICK:

7 Q When you made the traffic stop on that vehicle, who
8 did you find within the vehicle?

9 A I found Mr. Buchanan in the passenger's side and
10 there was a driver as well.

11 Q Okay. Do you know the -- do you recall the name of
12 the driver?

13 A I believe it was -- it was a female. It was a black
14 female. Her name was Ms. Doby, I believe. I have to
15 double-check my paperwork.

16 Yes, ma'am, Tonya Doby was the driver of the
17 vehicle.

18 Q And do you recall how Mr. Buchanan was dressed when
19 you made the traffic stop?

20 A Yes, ma'am. He was wearing a black hat and a black
21 hooded sweatshirt.

22 Q And what, if anything, else did you see within the
23 vehicle?

24 A At the time -- just making the initial approach to
25 the vehicle? I just observed both subjects just sitting

1 in the vehicle.

2 Q Okay. And did you get them out of the car?

3 A Yes, ma'am, we did.

4 Q Did you place them in detention?

5 A Yes, ma'am, they were both placed in handcuffs due to
6 a weapon being involved in the offense.

7 Q And did you have other officers there assisting you?

8 A I did. Corporal Vinkemulder was on the stop with me
9 as well.

10 Q And is Corporal Vinkemulder -- how do you --

11 A Vinkemulder.

12 Q Is he still at West Columbia Police Department?

13 A No, ma'am. He's currently a police officer down in
14 Florida right now.

15 Q After you got them out of the car, did you observe
16 anything else related to this case?

17 A Yes, ma'am. Once we had them out of the car, we --
18 considering that a weapon was involved in the incident, we
19 conducted a protective sweep, which is just for officer
20 safety as well, of the vehicle. Inside the vehicle, the
21 passenger's side door, there was a black and
22 yellow-colored box cutter and then underneath the
23 passenger seat was a yellow box cutter as well.

24 Q If I may show you what's been marked as State's
25 Exhibit 5.

1 A Yes, ma'am.

2 Q Can you recognize that item?

3 A Yes, ma'am. This one was found in the passenger's
4 side door.

5 Q If I could show you what's been marked as State's
6 Exhibit 6.

7 A That was found underneath the front passenger's seat
8 where Mr. Buchanan was seated.

9 Q And what was done with those two items there?

10 A They were placed in those evidence bags and I turned
11 them over to Investigator Wade.

12 Q If I could show you State's 7. Do you recognize
13 this?

14 A Yes, ma'am.

15 Q What was this?

16 A That's the black and white hat that Mr. Buchanan was
17 wearing.

18 Q State's 8?

19 A That's the jacket that Mr. Buchanan was wearing as
20 well.

21 Q Were you present when these were collected?

22 A Yes, ma'am, I was.

23 Q Did you see anything else within the vehicle related
24 to Walmart?

25 A There was a computer box located in the back of the

1 vehicle.

2 Q Did you interview Mr. Buchanan in any way?

3 A No, ma'am, I did not.

4 Q Did you interview Ms. Shirley Smith?

5 A No, ma'am, I did not.

6 Q Did you go back to the Walmart for any reason?

7 A No, ma'am. I had no contact with Walmart after that.

8 Q Do you recall the investigator on this case,

9 Investigator Wade?

10 A Yes, ma'am.

11 Q Do you remember when you first saw him?

12 A I remember he had brought Ms. Shirley -- he had said
13 he -- he went to the Walmart to make contact with her.

14 When he got with her, he brought her up to where the
15 actual traffic stop was just so that she could ID

16 Mr. Buchanan.

17 Q And did you have anything to do with that ID process?

18 A Other than standing beside Mr. Buchanan, at one time
19 Ms. Shirley asked that his hat be placed on his head and I
20 placed his hat on his head.

21 Q Did you have any contact with Ms. Shirley or any
22 conversation with Ms. Shirley?

23 A No, ma'am. She was in the vehicle the entire time.

24 Q Did you tell Investigator Wade anything about the
25 weapon or do you recall telling him anything about --

1 A I don't recall. If he were to ask, I informed him
2 that there were two box cutters in the vehicle.

3 MS. GARRICK: Beg the Court's indulgence one
4 moment.

5 (Pause.)

6 MS. GARRICK: Please answer any questions
7 defense may have.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Thank you, Solicitor.

10 Mr. Cornwell.

11 MR. CORNWELL: If it please the Court, Your
12 Honor.

13 CROSS-EXAMINATION

14 BY MR. CORNWELL:

15 Q Did you have the opportunity to ascertain who owned
16 this vehicle?

17 A No, sir.

18 Q Who was the driver?

19 A Tonya Doby.

20 Q Did you get any evidence as to whether or not my
21 client owned the vehicle?

22 A No, sir.

23 Q You said you stopped this vehicle. Was there an
24 extended chase or anything or was it just a simple traffic
25 stop?

1 A No, sir, it was a traffic stop. There was no chase
2 involved.

3 Q All right. And did you find any other merchandise in
4 the vehicle?

5 A Other than the computer, no, sir.

6 Q Okay. Were you the one who actually put my client
7 under arrest at that time?

8 A Corporal Vinkemulder actually put him in handcuffs.
9 I put Ms. Doby in handcuffs.

10 MR. CORNWELL: Okay. Thank you. No further
11 questions.

12 THE COURT: Redirect, Solicitor?

13 MS. GARRICK: Just briefly.

14 REDIRECT EXAMINATION

15 BY MS. GARRICK:

16 Q Which seat was Mr. Buchanan in?

17 A Mr. Buchanan was located in the front passenger's
18 seat.

19 Q And the knives -- or both box cutters, I'm sorry, was
20 down on the passenger's side of the car?

21 A Yes, ma'am, they were.

22 MS. GARRICK: That's all.

23 THE COURT: Recross, Mr. Cornwell?

24 MR. CORNWELL: No, Your Honor.

25 THE COURT: Thank you very much, Officer. You

1 may step down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Why don't we take a brief recess,
4 Solicitor, Mr. Cornwell.

5 Mr. Foreman, ladies and gentlemen, we'll take us
6 about a 15-minute recess.

7 Please remember, during this recess, do not
8 discuss this case with anyone, including your fellow
9 jurors. Remember to keep an open mind and do not begin
10 your deliberations until you're instructed to do so by the
11 Court.

12 You may now go with your bailiff. Thank you
13 very much.

14 (The jury left open court at approximately 3:26
15 p.m.)

16 THE COURT: How many more witnesses do you have,
17 Solicitor?

18 MS. GARRICK: Your Honor, we have Detective
19 Wade, which we've just got to view the defendant's
20 statements and stuff, and then Investigator Sullivan to
21 enter the items into evidence, and that's all.

22 THE COURT: All right. We'll take about a
23 15-minute recess. Thank you very much.

24 (A break was taken.)

25 THE COURT: Anything before we bring out our

1 jury from the State?

2 MS. DIXON: Nothing from the State, Your Honor.

3 THE COURT: Defense?

4 MR. CORNWELL: Nothing, Your Honor.

5 (The jury came into open court at approximately
6 3:44 p.m.)

7 THE COURT: Welcome back. Ladies and gentlemen,
8 we'll continue with the trial of the case by the
9 presentation of evidence and testimony by the State in its
10 case in chief.

11 Solicitor, you may call your next witness.

12 MS. GARRICK: Thank you, Your Honor.

13 Your Honor, we would call Investigator Bruce
14 Wade.

15 THE COURT: All right. If you'd come around and
16 be sworn for us, please.

17 BRUCE WADE, after being duly sworn, testified as
18 follows:

19 THE CLERK: Sir, if you'd have a seat. Once
20 you're seated, speak up loud and clear, stating your full
21 name and spelling your last.

22 THE WITNESS: My name is Bruce Wade, W-A-D-E.

23 DIRECT EXAMINATION

24 BY MS. GARRICK:

25 Q Investigator Wade, where are you employed?

1 A With the West Columbia Police Department.

2 Q And how long have you been employed with them?

3 A About five years.

4 Q And is that your total work in law enforcement?

5 A No, ma'am, 13 years.

6 Q And your title, "investigator," what does that mean
7 you get to do?

8 A I pretty much investigate major cases considered
9 felonies.

10 Q And how long have you been in investigations?

11 A For about five years. I've actually been with West
12 Columbia like five years, eight months, but I've been in
13 investigations for like five years in West Columbia.

14 Q And were you working March 12th of 2010?

15 A Yes, ma'am.

16 Q And were you called to go to the Walmart there on
17 Augusta Road?

18 A Yes, ma'am.

19 Q Is that within the jurisdiction of West Columbia
20 Police Department?

21 A Yes, ma'am.

22 Q And what was the nature of the call?

23 A It was a call of a shoplifter who had a bladed weapon
24 on him.

25 Q And do you recall, where did you go first?

1 A I went to the loss prevention office at Walmart.

2 Q And do you know how long between the calls to when
3 you arrived at Walmart?

4 A Approximately 20 minutes.

5 Q And when you got to the loss prevention office, who
6 did you meet?

7 A I met with Dean Edgewater (sic) and Ms. Shirley.

8 Q Did you have an opportunity to interview Ms. Shirley?

9 A Yes, I did.

10 Q And what was Ms. Shirley's demeanor there in the
11 office?

12 A In the office she seemed to be nervous and kind of
13 upset, but that was pretty much it.

14 Q Was she able to talk with you about the event?

15 A She did.

16 Q Was she able to describe for you the clothing that
17 the individual was wearing?

18 A She did.

19 Q And when was the first time you heard anything about
20 a yellow blade?

21 A In the loss prevention office. She told me that the
22 suspect had a yellow older box cutter-type knife.

23 Q And at that point were you aware of what the other
24 officers for West Columbia were doing?

25 A I knew they had conducted a traffic stop, but I

1 hadn't been to the traffic stop yet.

2 Q And about how long do you think you stayed there in
3 the loss prevention office?

4 A About 10 to 15 minutes.

5 Q Did you view the video?

6 A I did.

7 Q And did you show that video to Ms. Shirley?

8 A No, I didn't.

9 Q After you viewed the video, where did you go?

10 A After I viewed the video, I went back to the traffic
11 stop with Ms. Shirley.

12 Q And what were your intentions in taking Ms. Shirley
13 with you? What were you going to do?

14 A I wanted her to be able to sit in my vehicle and look
15 at the suspect and tell if that was him or not and she
16 could tell me if that was the right person or not.

17 Q And did you do that?

18 A Yes.

19 Q And did you take her so she could see the person in
20 custody?

21 A Yes, ma'am.

22 Q And who was the person in custody?

23 A Mr. Buchanan.

24 Q The defendant that's present in the courtroom?

25 A Yes, ma'am.

1 Q And did you -- what instructions did you give
2 Ms. Shirley about asking her if she could identify the
3 armed robber?

4 A I told her we was going to do a drive-by with the
5 suspect that they had stopped and I asked her would she be
6 able to tell me if this was the correct person or not.

7 And when we got there, I stopped, she actually
8 looked out and she said she wasn't sure -- at first she
9 said, "Is that the guy standing up beside the car?"

10 I said, "Yes."

11 She said, "Could you have the officers put his
12 hat on?"

13 And at that time I came across my radio and told
14 the officers, "Could you put the hat on?"

15 And when they put the hat on she said, "Yeah,
16 that's the same guy."

17 Q How quickly was she able to identify him once his hat
18 was on?

19 A Immediately.

20 Q Had she given you a description of the clothing?

21 A Yes, she did.

22 Q And did you, in fact -- did you yourself look in the
23 XTerra there?

24 A Yes, I did.

25 Q And --

1 A Not at that particular time I didn't, not while she
2 was in the vehicle with me. Once I dropped her back off
3 at Walmart, I came back to the scene of the vehicle.

4 Q Then let's go on a timeline.

5 After she identified the person, what happened
6 then?

7 A I took her back to the Walmart.

8 Q Do you remember any discussion there on Jarvis
9 Klapman about the box cutter?

10 A She did ask me -- she did ask me, she said, "Do you
11 know if they found the yellow box cutter in the car?"

12 Q And did you know that, the answer to that question?

13 A No, I didn't know the answer until I called on the
14 radio and asked the officer to come over to the car.

15 And when he came over to the car, I asked him, I
16 said, "Look, did you all find a box cutter in the car?"

17 They said, "Yes, we found two."

18 Q And did you yourself see them then?

19 A No, I didn't.

20 Q Did you show them to Ms. Shirley?

21 A No.

22 Q After you left there with Ms. Shirley, where did you
23 go?

24 A Back to the Walmart.

25 Q Okay. What did you do there at the Walmart?

1 A I dropped her off and told her that I would get back
2 with her later on that afternoon to get a written
3 statement from her.

4 Q And where did you go?

5 A I went back to the actual traffic stop.

6 Q Okay. And from there where did you go?

7 A From there I took photos of the vehicle, pretty much
8 took the computer out of the vehicle, and I had them take
9 Ms. Doby, which was the driver of the car, along with
10 Mr. Buchanan to the West Columbia Police Department for an
11 interview.

12 Q And where did the computer go?

13 A I released it to Mr. Dean Edgeworth.

14 Q Did you take it back to Walmart or do you recall how
15 you got it back there?

16 A I'm not sure. I just remember signing it back over
17 to him.

18 Q And when you went to the West Columbia Police
19 Department, did you have an opportunity to speak to
20 Mr. Buchanan?

21 A Yes, ma'am.

22 Q And was Mr. Buchanan placed under arrest?

23 A Yes, ma'am.

24 Q He was not free to go?

25 A No, ma'am.

1 Q And did you begin an interview process with
2 Mr. Buchanan?

3 A I did.

4 Q And what was the first thing you're required to do
5 when interviewing someone you've arrested?

6 A Advise them of their Miranda rights.

7 Q And did you, in fact, do that?

8 A Yes.

9 Q And did you have any other witness with you there?

10 A No, I didn't.

11 Q Were there any other detectives working -- this would
12 have been the night shift by now, right?

13 A Yes, ma'am.

14 Q Were any other detectives there?

15 A No, ma'am.

16 Q Do you have any video equipment there in the office?

17 A No, ma'am, we don't.

18 Q And did you give him his rights in writing?

19 A Yes, ma'am, I did.

20 Q Did you have him initial each one of his rights?

21 A Yes, ma'am.

22 Q If I can show you State's 9 for ID. Do you recognize
23 this form?

24 A Yes, ma'am.

25 Q What is that?

1 A West Columbia Miranda Rights form.

2 Q Is that the Miranda rights you gave the defendant?

3 A Yes, ma'am.

4 Q And did he initial each one of those rights?

5 A Yes, ma'am.

6 Q And did he sign a waiver of those rights?

7 A Yes, ma'am, he did.

8 Q And agree to speak with you?

9 A Yes.

10 MS. GARRICK: Your Honor, I move State's 4 (sic)
11 into evidence.

12 MR. CORNWELL: Your Honor, I would just renew my
13 prior objections.

14 THE COURT: All right. Subject to previous
15 objection, State's 4 -- excuse me, State's 9 --

16 MS. GARRICK: You are correct, State's 9.

17 THE COURT: -- State's 9 is in evidence without
18 objection.

19 No. Subject to previous objection, State's 9 is
20 in evidence.

21 MS. GARRICK: Your Honor, may I publish it?

22 THE COURT: Yes, ma'am.

23 (WHEREUPON, STATE'S Exhibit No. 9, previously
24 marked as Court's Exhibit No. 1, was admitted into
25 evidence.)

1 BY MS. GARRICK:

2 Q If I may show you what's been marked State's Exhibit
3 10 for ID. Do you recognize that document?

4 A Yes, ma'am.

5 Q What is that document?

6 A Notes that I took when I was in the interview with
7 Mr. Buchanan.

8 Q Mr. Buchanan agreed to speak with you?

9 A Yes, he did..

10 Q And he gave you a verbal statement?

11 A Yes, he did.

12 Q And that document -- when were you writing that
13 document?

14 A As he was speaking to me.

15 Q And if it says the word "I," who is it referring to?

16 A Mr. Buchanan.

17 Q And is that an accurate reflection of what
18 Mr. Buchanan said that evening on March 12th of 2010?

19 A Yes, ma'am.

20 MS. GARRICK: Your Honor, I'd move State's 10
21 into evidence.

22 MR. CORNWELL: Your Honor, I'd just renew my
23 prior objection.

24 THE COURT: All right. Subject to previous
25 objection, State's 10 is in evidence.

1 (WHEREUPON, STATE'S Exhibit No. 10, previously
2 marked as Court's Exhibit No. 2, was admitted into
3 evidence.)

4 BY MS. GARRICK:

5 Q Investigator Wade, could you please publish what
6 Mr. Buchanan's words were as you recorded them in that
7 document?

8 A Yes, ma'am, I can.

9 At the top I have my case number and I have
10 armed robbery -- no, I have "robbery" at the top and I've
11 got date, 3-12-2010 at 5:59 p.m.

12 I put down I.O., which would be me, interviewed
13 Perry B. Buchanan at the WCPD, which would be West
14 Columbia Police Department. Then I've written his Social
15 Security number down, 250-17-6926. And after that I
16 started taking notes.

17 I put -- I wrote down, "I had Tonya Doby pick me
18 up on Two Notch Road and I asked her to take me to West
19 Columbia Walmart. I went in and stole a computer and when
20 I was leaving out, the lady stopped me and asked me for a
21 receipt. I had a box cutter in my hand and I told the
22 lady, 'My shit paid for.' I pushed the buggy out and she
23 started running. I didn't have the box cutter open."

24 After that -- at that point I asked Mr. Buchanan
25 to give me a written statement on the facts that we went

1 over and he told me -- he asked me basically what was he
2 being charged with. And I explained to him that it was
3 going to be armed robbery. It wasn't just a shoplifting,
4 that a shoplifting -- when you present a weapon, it
5 changes actually from a misdemeanor to a felony; it
6 becomes an armed robbery at that point.

7 And I asked him for a written statement. He
8 told me he couldn't write anything down. And I did write
9 that down in my notes, that he said, "I couldn't write
10 anything down." And I asked him, "Did you pay for the
11 TV?" He said, "No, I stole it from Walmart."

12 Q And did you tell him that you had taken notes of his
13 confession?

14 A Yes, I did.

15 When he told me that he couldn't write anything
16 down, I told him basically "you already confessed to it."
17 I said, "And whatever you told me, I'm going to use it in
18 court." I said, "The stuff that you told me, I can use it
19 in court."

20 Q And are you aware, did you make any other charges in
21 regards to this case?

22 A Yes, Ms. Doby was charged with the same charges he
23 was charged with.

24 Q And do you know the status of her case?

25 A It's still pending trial.

1 Q After you finished interviewing Mr. Buchanan, did you
2 collect any other evidence in this case?

3 A I did.

4 Q Do you recall what evidence you collected?

5 A I collected his hat and his hoodie.

6 Q I'm going to show you State's 7. Do you recognize
7 this?

8 A Yes, ma'am.

9 Q And State's 8, do you recognize this?

10 A Yes, ma'am.

11 Q Do you remember where you got these from?

12 A In the West Columbia interview room.

13 Q And where have they been since that time?

14 A In the West Columbia evidence locker.

15 Q And they were brought to court today by you all?

16 A Yes, ma'am.

17 MS. GARRICK: Your Honor, I move State's 7 and 8
18 evidence.

19 THE COURT: Mr. Cornwell.

20 MR. CORNWELL: No objection, Your Honor.

21 THE COURT: State's 7 and 8 is in evidence
22 without objection.

23 (WHEREUPON, STATE'S Exhibits Nos. 7 and 8 were
24 admitted into evidence.)

25 BY MS. GARRICK:

1 Q Did you receive any other items in evidence in
2 regards to this case?

3 A Yes. I received those two box cutters.

4 Q If I can show you what's been marked as State's 5.

5 A Yes.

6 Q Do you recognize that?

7 A Yes.

8 Q Where did you -- did you ever have possession of
9 that?

10 A Yes, I did.

11 Q Who did you receive possession from?

12 A I received it from Officer Griffin.

13 Q And what did you do with it after you received it?

14 A Logged it into West Columbia evidence.

15 Q And brought it to court today?

16 A Yes.

17 Q State's 6.

18 MR. CORNWELL: No objection, Your Honor.

19 MS. GARRICK: He said no objection. I haven't
20 moved it in yet, State's 5, but I will.

21 Your Honor, I move State's 5 into evidence.

22 THE COURT: State's 5 is in evidence without
23 objection.

24 (WHEREUPON, STATE'S Exhibit No. 5 was admitted
25 into evidence.)

1 BY MS. GARRICK:

2 Q Do you recognize State's 6?

3 A Yes, ma'am, I do.

4 Q And where did you see that item?

5 A I also received it from Officer Griffin.

6 Q And brought it to court today?

7 A Yes, ma'am.

8 MS. GARRICK: Your Honor, I move State's 6 into
9 evidence.

10 MR. CORNWELL: No objection.

11 THE COURT: State's 6 is in evidence without
12 objection.

13 (WHEREUPON, STATE'S Exhibit No. 6 was admitted
14 into evidence.)

15 BY MS. GARRICK:

16 Q In regards to this case, did you have an opportunity
17 to take a statement from Ms. Smith?

18 A Yes, I did.

19 Q And did you interview the other witnesses?

20 A Yes, I did.

21 Q Did you interview Dean Edgeworth?

22 A I did.

23 Q Curtis Williams?

24 A Yes.

25 Q Was it done on that day, March 12th?

1 A Let me look at my notes.

2 I know I interviewed Ms. Smith that particular
3 day. And Mr. Curtis Williams was also interviewed. All
4 of them were interviewed that day.

5 Q Did you have an opportunity to meet T.J., Terrance
6 Boykin?

7 A I did talk with him.

8 Q Did you take a statement from him?

9 A No, I didn't.

10 Q Is there any reason why not?

11 A He didn't have any more to add to it than Ms. Smith,
12 Mr. Edgeworth and Mr. Williams told me.

13 Q And since that time did I ask you to look for
14 Terrance Boykin?

15 A You did.

16 Q And have you been able to find him?

17 A I haven't made contact with him.

18 Q He doesn't work for Walmart?

19 A No, he don't.

20 MS. GARRICK: Beg the Court's indulgence one
21 moment.

22 (Pause.)

23 BY MS. GARRICK:

24 Q Is armed robbery considered a violent crime?

25 A Yes.

1 Q And a box cutter, the box cutter, No. 5 and No. 6,
2 does that have a blade on it, sir?

3 A Yes, ma'am.

4 Q A blade that's capable of cutting?

5 A Yes, ma'am.

6 MS. GARRICK: Just one moment, Your Honor.

7 (Pause.)

8 MS. GARRICK: Investigator, please answer
9 defense questions.

10 THE COURT: Thank you, Solicitor.

11 Mr. Cornwell.

12 MR. CORNWELL: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. CORNWELL:

15 Q Mr. Wade, you arrived on the scene at approximately 5
16 o'clock according to investigative report?

17 A That's correct.

18 Q And also according to the investigative report, it
19 says that you had an opportunity to view the video at that
20 time?

21 A That's correct.

22 Q And also you said you had an opportunity to see the
23 altercation and everything that happened on that video?

24 A I viewed the video, yes, sir.

25 Q All right. Did you see the video from all the

1 different angles that they had available?

2 A I'm not sure.

3 Q You're not sure?

4 A No.

5 Q Also, at 5 o'clock, according to your investigative
6 report, it says that after you viewed the video, that you
7 went to Klapman Boulevard where the officers had the
8 vehicle stopped?

9 A Yes, sir, I did go to Klapman Boulevard.

10 Q All right. And you got to observe what was inside
11 that car when you were there?

12 A After dropping Ms. Shirley back off at the store I
13 went back and observed what was in the car. But when I
14 had Ms. Shirley in the car I never did exit my vehicle.

15 Q Okay. It says in your investigative report that
16 inside the vehicle there was a brand new Dell Inspiron
17 desktop box on the back seat. Are you saying you didn't
18 see that?

19 A Yes, I seen it. I collected it.

20 Q And also in your investigative report they said that
21 this happened at 5 o'clock, during the 5 o'clock hour?

22 A Uh-huh.

23 Q All right. You had an opportunity to speak to
24 Mr. Buchanan you stated also?

25 A I spoke with Mr. Buchanan in an interview room, yes,

1 sir.

2 Q According to your investigative report, that happened
3 at 5:59, just about an hour after you went by Jarvis
4 Klapman?

5 A Yes, sir.

6 Q And you took an oral statement from him?

7 A Yes, sir, I did.

8 Q During the course of that statement, did you ask him
9 specifically if he was armed?

10 A I recall asking him -- I told him I wanted to talk
11 about what happened at Walmart today, and from there,
12 that's when he started telling me the facts of what
13 happened.

14 Q Are you saying he volunteered information to you
15 basically?

16 A Yes, he did.

17 Q I notice in your report that you didn't mention any
18 kind of description of the box cutter that you allege he
19 said he had?

20 A Uh-huh.

21 Q Do you recall if he described it at all?

22 A Not to my knowledge he didn't. He just told me it
23 wasn't open.

24 Q And all this happened around 6 o'clock, 5:59?

25 A Roughly.

1 Q All right. You also took a statement from Ms. Doby
2 about 20 minutes, a half hour later, or how long?

3 A I didn't get a statement from her. I actually gave
4 her the opportunity to.

5 Q Sorry about that. And shortly after they were
6 transported to Lexington County?

7 A Yes, sir.

8 Q All right. According to your investigative report,
9 at 7:14 you interviewed Shirley Ann Smith at West Columbia
10 Police Department?

11 A Yes, sir.

12 Q Now, was it after that that you took her back to the
13 scene with the XTerra?

14 A No. In the 5 o'clock hour, between 5 and 6 p.m., at
15 some point I took Ms. Shirley from Walmart to the traffic
16 stop. And after she identified Mr. Buchanan as the
17 suspect, I took her back to the store and dropped her off.
18 After that I returned back to the vehicle.

19 Q I was kind of confused because your timeline in the
20 investigative report seems to indicate that you had no
21 contact with Ms. Smith until 7:14.

22 A I talked to Ms. Smith. I just didn't put that in
23 my -- for some reason I left it out of the investigative
24 report, but I do have it in my notes.

25 Q You mentioned that you'd been in law enforcement for

1 13 years?

2 A Yes, sir.

3 Q And as part of law enforcement, as far as your
4 career, as far as an officer's duties, you have to fill
5 out these investigative reports, right?

6 A Yes, sir.

7 Q You put in all the important details. Everything
8 that's important to the prosecution of this case should be
9 in the investigative report; isn't that correct?

10 A For the most part.

11 Q Why isn't that detail in there?

12 A Just something that I didn't put in there. I
13 didn't -- it's not like I tried to hide it. I took her to
14 the thing. That's not that I tried to hide anything.

15 Q Getting back to your investigative report, you said
16 you had an opportunity to speak with Ms. Smith. Did you
17 notice anything about her statement that maybe didn't add
18 up to you?

19 A No, sir.

20 Q She said that the blade was yellow or gold; is that
21 correct?

22 A From what -- from the way I was taking when she was
23 saying "blade," she meant the actual box cutter itself.

24 Q Okay. And she said it was an older box cutter that
25 was yellow or gold?

1 A That's correct.

2 Q When you had an opportunity to talk to her, she's
3 saying that my client communicated a threat to her?

4 A I asked her was she in fear for her life and she told
5 me yes.

6 Q Okay. And you had an opportunity to speak to my
7 client. Did he say he offered or threatened to do harm to
8 her?

9 A I'm not sure. I'm not sure if he -- I read to you
10 what he said but I'm not sure if he said that he actually
11 threatened her. I know he told me the box cutter was
12 closed.

13 MR. CORNWELL: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 (Pause.)

16 BY MR. CORNWELL:

17 Q So you took Ms. Smith to the crime scene at around --
18 not the crime scene -- to the vehicle around 5 o'clock?

19 A In the 5 o'clock hour, yes, sir.

20 Q And you had an opportunity to identify what was on
21 the side of the red XTerra? I'm just going by your
22 investigative report. Is that correct?

23 A In the 5 o'clock hour -- once I dropped Ms. Smith
24 back off at the Walmart, I did return back to the traffic
25 stop. I took photos of the car and what was inside the

1 car.

2 Q Okay. When did you view the video?

3 A When I originally arrived at Walmart to talk
4 Ms. Shirley.

5 Q Okay. Did you ever find the flat screen TV or was
6 she simply mistaken about that?

7 A I never found a flat screen TV. There was a computer
8 in the car.

9 Q Okay. Did you ever have an opportunity to speak with
10 Ms. Doby again?

11 A Since her primary interview?

12 Q Yes.

13 A No, I haven't talked to her.

14 Q All right. Did you talk to Mr. Edgewater (sic)? Did
15 he give any indication that he knew or had -- knew how
16 this blade looked?

17 A Not to my knowledge.

18 Q Not to your knowledge?

19 A Unh-unh.

20 Q Did he indicate to you that it was a particular color
21 or anything like that?

22 A Not to my knowledge.

23 Q Did he even indicate if he knew that it was a box
24 cutter or not, this blade that he saw?

25 A He told me -- "blade" is what I remember him telling

1 me is a blade.

2 MR. CORNWELL: Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 (Pause.)

5 BY MR. CORNWELL:

6 Q Have the yellow box cutters you confiscated, have
7 they ever been dusted for fingerprints or anything like
8 that?

9 A I'm not sure. I log it into evidence and then we
10 have a -- it's over with the evidence custodian at that
11 particular time.

12 Q And you said there was no video of the interview with
13 you and my client?

14 A We don't have video systems in our interview room.

15 Q And there's no audio recording either?

16 A No, sir, not unless we actually bring a tape recorder
17 in there with us, which is not common practice with us.

18 MR. CORNWELL: No further questions, Your Honor.

19 THE COURT: Thank you, Mr. Cornwell.

20 Any redirect, Solicitor?

21 MS. GARRICK: No, Your Honor.

22 THE COURT: Thank you very much, Detective Wade.

23 You may step down.

24 All right. You may call your next witness.

25 MS. GARRICK: Your Honor, the State rests.

1 THE COURT: All right. Thank you very much.

2 MR. CORNWELL: Your Honor, may we approach?

3 THE COURT: Yes, sir.

4 (A bench conference was held with the judge and
5 attorneys in the presence of the jury but out of the
6 hearing of the jury.)

7 THE COURT: All right. Mr. Foreman, ladies and
8 gentlemen, at this stage I must confer with the attorneys
9 momentarily outside of your presence. I'm going to ask
10 you to please step to your jury room. Do not discuss the
11 case during this brief recess.

12 Thank you very much. You may now go with your
13 bailiff.

14 (The jury left open court at approximately 4:09
15 p.m.)

16 THE COURT: All right. You have motions,
17 Mr. Cornwell?

18 MR. CORNWELL: Your Honor, I would make a motion
19 for a summary judgment at this time. Your Honor, the
20 State has presented no evidence by which a reasonable jury
21 can find my client guilty. I'd ask for a directed
22 verdict, Your Honor.

23 THE COURT: All right. Thank you.

24 Viewing the evidence in the light most favorable
25 to the non-moving party for the existence and not the

1 weight of the evidence, I find there is substantial direct
2 and substantial circumstantial evidence from which a jury
3 could return a verdict of guilty on both counts.
4 Defendant's motion for directed verdict is denied.

5 Do I need to interview your client in regards to
6 his right to testify or not to testify?

7 MR. CORNWELL: Your Honor, I've spoken with my
8 client about his right to get on the stand and speak in
9 his defense, Your Honor, but he does wish to give up that
10 right.

11 THE COURT: Thank you.

12 All right. And you have a witness,
13 Mr. Cornwell?

14 MR. CORNWELL: Yes, Your Honor, we do have a
15 witness. We have a piece of evidence that we want to put
16 in and we have a witness as far as the chain goes. It's
17 basically a piece of personal property from when my client
18 was arrested and we believe that that's the object he had
19 in his hand.

20 THE COURT: All right. Anything further before
21 we bring in our jury from the State?

22 MS. GARRICK: Your Honor, in an abundance of
23 caution, at some point will you have the defendant himself
24 under oath waive his right to testify?

25 THE COURT: I'm sorry?

1 MS. GARRICK: At some point will you have the
2 defendant himself under oath acknowledge to you that he is
3 not going to testify, he is freely giving that up?

4 THE COURT: I will.

5 MS. GARRICK: Thank you.

6 THE COURT: Well, I may as well do that now
7 before we bring the jury out.

8 Come around, please, Mr. Buchanan.

9 MR. CORNWELL: One moment, Your Honor.

10 THE CLERK: Raise your right hand, sir.

11 PERRY BUCHANAN, after being duly sworn,
12 testified as follows:

13 THE COURT: Tell me your full name.

14 THE DEFENDANT: Perry Bernard Buchanan.

15 THE COURT: I need to go over some things with
16 you at this point, Mr. Buchanan. I do this with everyone
17 who's on trial. I need your responses to be under oath.
18 That's why I had the Clerk place you under oath. Do you
19 understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How old are you?

22 THE DEFENDANT: Fifty years old, sir.

23 THE COURT: Speak up a little bit for me.

24 THE DEFENDANT: Fifty.

25 THE COURT: How far did you go in school?

1 THE DEFENDANT: Tenth grade.

2 THE COURT: I'm sorry?

3 THE DEFENDANT: Tenth grade.

4 THE COURT: What type of work did you do before
5 you were incarcerated?

6 THE DEFENDANT: Well, I do landscaping. I have
7 done some plumbing, auto body repair.

8 THE COURT: All right. We've reached the stage
9 of the trial where the State has rested and your side, the
10 defense, now has the opportunity to present evidence for
11 the jury to consider.

12 Do you understand where we're at in the trial,
13 Mr. Buchanan?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: In that regard, your side, the
16 defense, may call witnesses to testify. If you choose to
17 testify yourself, you may do so. Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: No one can force you to testify.
20 You have an absolute right to remain silent. And if you
21 choose not to testify, I will tell this jury that they
22 cannot hold your silence against you in any way. I will
23 tell them they are not to even discuss that in the jury
24 room. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: If your side offers no evidence at
2 all, in other words, if neither you nor anyone on your
3 behalf testifies or offers any exhibits, then your
4 attorney will get to make the last argument to the jury.
5 Otherwise, the prosecutor gets to make the last argument.
6 Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Does Mr. Buchanan have a criminal
9 record that would subject him to impeachment under Rule
10 609?

11 MS. GARRICK: Yes, Your Honor.

12 THE COURT: All right. And what would that be?

13 MS. GARRICK: Your Honor, he has a 2000 ABHAN
14 conviction and possession of crack cocaine, resisting
15 arrest, strong arm robbery, shoplifting, failure to stop
16 for a blue light. He has a 2002 third or subsequent
17 property offense. He has a 2001 bribes. A 2001
18 shoplifting. A 2008 attempted armed robbery. A
19 shoplifting in 2005.

20 Your Honor, that's the bulk of it within the
21 last ten years.

22 THE COURT: All right. The 2000, explain that
23 one to me, Solicitor.

24 MS. GARRICK: Your Honor, it was a ten-year
25 conviction for ABHAN.

1 THE COURT: All right. When was he released
2 from confinement?

3 MS. GARRICK: Your Honor, I do not have that
4 date. It was an out-of-state conviction from Georgia.

5 THE COURT: What about the possession of crack
6 cocaine?

7 MS. GARRICK: Your Honor, those were all at the
8 same time out of Georgia.

9 He got three years on that possession of crack.

10 THE COURT: Resisting arrest?

11 MS. GARRICK: A fined amount on the same
12 incident date, same conviction date from 2000, Your Honor.

13 THE COURT: And what was that?

14 MS. GARRICK: It was a fine, a fine.

15 THE COURT: And then strong arm robbery?

16 MS. GARRICK: The conviction date was the same
17 offense date, 3-29 of 2000. Your Honor, I just have a
18 conviction.

19 THE COURT: And then failure to stop for a blue
20 light?

21 MS. GARRICK: Same thing, Your Honor.

22 THE COURT: And your record indicates he got a
23 ten-year active sentence?

24 MS. GARRICK: Yes, sir.

25 THE COURT: For assault and battery of a high

1 and aggravated nature?

2 MS. GARRICK: Yes, sir.

3 THE COURT: All right. And then the '02
4 property offense third, what was his sentence there?

5 MS. GARRICK: Beg the Court's indulgence. I
6 apologize.

7 (Pause.)

8 MS. GARRICK: Five years. Five years, Your
9 Honor.

10 THE COURT: And that's in South Carolina?

11 MS. GARRICK: No, sir, Georgia.

12 THE COURT: Georgia. And in '01 did you say
13 bribes?

14 MS. GARRICK: Yes, sir. It has conviction but
15 it does not give his sentence and my intention would be
16 because it's dishonest --

17 THE COURT: And then an '01 shoplifting?

18 MS. GARRICK: Yes, sir.

19 THE COURT: And what was his sentence there?

20 MS. GARRICK: Your Honor, it was a magistrate's
21 level, but once again --

22 THE COURT: And in '08 attempted armed robbery?

23 MS. GARRICK: Yes, sir.

24 THE COURT: And what was his sentence there?

25 MS. GARRICK: Three years, Your Honor.

1 THE COURT: And then the '05 shoplifting?

2 MS. GARRICK: Yes, sir.

3 THE COURT: All right. Mr. Cornwell, do you
4 have a position on any of these charges?

5 MR. CORNWELL: My rap sheet only goes up to
6 1999, Your Honor. And my client indicated to me that the
7 2000 ABHAN was a proffer. He said he hadn't resided in
8 Georgia --

9 THE DEFENDANT: -- since '85.

10 THE COURT: I can't hear.

11 THE DEFENDANT: I caught a -- I was in
12 Georgia -- I haven't been in Georgia since 1985. They
13 saying I had a conviction just in 2000. I left -- I maxed
14 out of Georgia in 1985 for the case that I had up there.
15 I haven't been to Georgia since then.

16 THE COURT: What was that case?

17 THE DEFENDANT: That was an assault and battery
18 of a high and aggravated nature, sir. I caught that
19 sentence in '78 and I maxed out in '85. I haven't been
20 back to Georgia since then. And I was locked up in
21 Wateree Institution in 2004 all the way to 2005 -- I mean
22 2006. I maxed out and my mother died a year later.

23 THE COURT: Do you have certified convictions,
24 Solicitor, on the 2000 charges?

25 MS. GARRICK: No, sir. The only certified

1 conviction I have is the one from Columbia, Richland
2 County, which is the 2-14- 08, which is the attempted
3 armed robbery. And, Your Honor, that's connected to the
4 Notice of Intent to Seek Life Without Parole that was
5 served on Mr. Buchanan 8-7.

6 THE COURT: The '02 property offense third, is
7 that shoplifting?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And the '01 bribes --

10 THE DEFENDANT: That was -- if I'm not mistaken,
11 that was part of the same case where the officer said that
12 I offered him something, but they ran it all in together.

13 I'm really not -- I really can't remember that
14 case that clearly, but it was all together. It was a
15 shoplifting and some kind of way that the bribe came in --
16 I don't know how, but it did -- and I pleaded guilty to
17 all those up under one deal.

18 THE COURT: All right. I will rule that the
19 2000 offenses are not admissible.

20 I rule that you can ask him about three
21 shoplifting convictions. He's got one in '02, one in '01,
22 and one in '05. That's three shoplifting convictions.

23 He has the bribery or bribes in '01.

24 And then as to the attempted armed robbery, I
25 would rule that you can ask him if he has a felony

1 conviction in 2008 in Richland County.

2 MS. GARRICK: Yes, sir.

3 THE COURT: Do you want to be heard on any of
4 those, Mr. Cornwell?

5 MR. CORNWELL: No, Your Honor.

6 THE COURT: All right. So if you take the stand
7 then, Mr. Buchanan, the prosecutor can ask you if you have
8 been convicted of certain offenses in the past. I've
9 ruled that those offenses the prosecutor can ask you about
10 is a 2001 shoplifting, a 2002 shoplifting, a 2005
11 shoplifting, a 2001 bribes, and a 2008 felony conviction.
12 They can't ask you about the details, but they can ask you
13 if you have those convictions if you testify.

14 I will then tell the jury that they can only
15 consider that evidence against you, if they consider it at
16 all, as it goes to the issue of your believability or your
17 credibility and for no other purpose. Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: The decision about whether you
20 testify or not is your decision to make and yours alone.
21 I expect that you'll confer with your attorney and perhaps
22 others with whom you value their opinions on important
23 decisions, but the decision about whether you testify or
24 not is your call to make, your decision. Do you
25 understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has anyone exercised any undue
3 influence over you to get you to choose to testify or not
4 to testify?

5 THE DEFENDANT: No, sir.

6 THE COURT: Today are you under the influence of
7 any drugs, alcohol, medication or anything that negatively
8 affects your thinking ability?

9 THE DEFENDANT: No, sir.

10 THE COURT: Whatever decision you've made about
11 whether to testify or not to testify, is it your decision
12 made of your own free will and accord?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions you would
15 like to ask me about your decision to testify or not to
16 testify?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you made your decision?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And what is your decision?

21 THE DEFENDANT: I won't testify.

22 THE COURT: Say it again?

23 THE DEFENDANT: I would not testify.

24 THE COURT: You will not testify. And that is
25 your decision made of your own free will and accord?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Thank you.

3 I find that the defendant understands his right
4 to testify or not to testify and that he has made his
5 decision not to testify freely, knowingly, and
6 voluntarily.

7 You may return to your seat, Mr. Buchanan.

8 All right. Anything further before we bring in
9 our jury?

10 MS. GARRICK: No, sir.

11 MR. CORNWELL: No, Your Honor.

12 THE COURT: Bring us our jury, please.

13 (The jury came into open court at approximately
14 4:27 p.m.)

15 THE COURT: All right. Welcome back, ladies and
16 gentlemen.

17 As you recall, the State has rested. You've
18 heard all the evidence and all the testimony you are going
19 to hear from the State in its case in chief. The
20 defendant now may present evidence and testimony if he
21 chooses to do so.

22 The State is the party that has the burden of
23 proving its case beyond a reasonable doubt.

24 A criminal defendant in South Carolina is always
25 presumed to be innocent regardless of the serious nature

1 of whatever they may be charged with. However, they may
2 present evidence and testimony if they choose to do so and
3 never required to do so. A person does not have to prove
4 himself or herself innocent.

5 With that being said, we will turn our attention
6 to Mr. Cornwell and ask Mr. Cornwell, does the defendant
7 intend to offer any witnesses?

8 MR. CORNWELL: Yes, Your Honor. We'd like to
9 call one witness to the stand.

10 THE COURT: All right. You may call your first
11 witness.

12 SHANNON O'CAIN, after being duly sworn,
13 testified as follows:

14 THE CLERK: Have a seat. Once you're seated,
15 state your full name on the record spelling your last.

16 THE WITNESS: Shannon M. O'Cain, O- apostrophe
17 C-A-I-N.

18 THE COURT: All right. Mr. Cornwell.

19 DIRECT EXAMINATION

20 BY MR. CORNWELL:

21 Q Ms. O'Cain, how are you?

22 Could you tell the jury where you work at.

23 A I work for the Lexington County Public Defender's
24 Office.

25 Q And do you recall me asking you to pick up something

1 from the jail for us?

2 A Yes.

3 Q Is this the property release form signed by my
4 client?

5 A Correct. Yes.

6 Q Is this the bag that you got from the jail as a
7 result of this signed property release form?

8 A Yes.

9 Q Did you open this bag in my way?

10 A No.

11 Q Did you tamper with it in any way?

12 A No.

13 Q Are you the only individual between the time you got
14 it from the jail and you gave it to me that handled this?

15 A Yes.

16 Q Could you tell me what the contents of these bags
17 are?

18 A Sunglasses, cell phone, some shoe strings and some
19 loose change.

20 MR. CORNWELL: Your Honor, I would like to
21 introduce these into evidence as the personal effects of
22 Mr. Buchanan when he was arrested, Your Honor.

23 THE COURT: All right. Solicitor.

24 MS. GARRICK: No objection, Your Honor.

25 THE COURT: All right. That would be Defense 1?

1 MR. CORNWELL: Yes.

2 THE COURT: Without objection.

3 (WHEREUPON, Defendant's Exhibit No. 1 was marked
4 for identification and received into evidence.)

5 MR. CORNWELL: No further questions.

6 THE COURT: Thank you.

7 Solicitor?

8 MS. GARRICK: No questions, Your Honor.

9 THE COURT: Thank you very much, Ms. O'Cain.
10 You may step down.

11 All right. Mr. Cornwell, you may call your next
12 witness.

13 MR. CORNWELL: That's it for the defense, Your
14 Honor.

15 THE COURT: All right. The defense rests,
16 correct?

17 MR. CORNWELL: The defense rests, Your Honor.

18 THE COURT: All right. Any evidence or
19 testimony in reply?

20 MS. GARRICK: No, Your Honor.

21 THE COURT: All right. Thank you very much.

22 Mr. Foreman, ladies and gentlemen of the jury,
23 you've now heard all the evidence and all the testimony
24 you're going to hear in the trial of this case.

25 The procedure we follow now, we're at the point

1 of the closing arguments by the attorneys. I think that
2 will take us well beyond the 5 o'clock hour so we're going
3 to take our evening recess and start back fresh in the
4 morning.

5 I remind you during this recess you're not to
6 discuss this case with anyone. That includes your family,
7 friends, or anyone else.

8 Do not read, listen to, or watch any news
9 reports about the case should there be any.

10 Do not use your computer or cellular phone or
11 any other electronic device with communication
12 capabilities to obtain information that is prohibited,
13 which includes but is not limited to the following:
14 information about a party, a witness, an attorney, or a
15 court officer; news accounts of the case; information
16 through your own research on any topics raised or
17 testimony offered by any witness; or information collected
18 through your research on any other topic that you might
19 think would be helpful in deciding the case.

20 Please remember, you decide this case based on
21 the evidence and the testimony that you heard from the
22 witnesses testifying under oath from this witness stand,
23 the inferences that you find may properly be drawn from
24 the evidence, and any exhibits or documents placed into
25 evidence, and the law as I tell you the law is. Do not do

1 any investigation on the Internet or on your own.

2 With that being said, I'm going to excuse you
3 for your evening recess. I would ask you to please be
4 back promptly at 9:30 in the morning. Please be back
5 promptly at 9:30.

6 You're now excused. I hope you all have a
7 pleasant evening.

8 Thank you very much.

9 (The jury left open court at approximately 4:34
10 p.m.)

11 THE COURT: All right. Anything further from
12 the State?

13 MS. GARRICK: No, Your Honor.

14 THE COURT: Defense?

15 MR. CORNWELL: Not at this time, Your Honor.

16 THE COURT: Any specific requests to charge?

17 MR. CORNWELL: Your Honor, may we -- I can bring
18 you some in the morning, Your Honor, if that's acceptable?

19 THE COURT: All right. You can email them to my
20 law clerk if you'd like.

21 MR. CORNWELL: Thank you.

22 THE COURT: Solicitor?

23 MS. GARRICK: Nothing specific, Your Honor.

24 THE COURT: All right. Thank you very much.

25 Court will be in recess until 9:30 in the

1 morning.

2 (The proceedings were concluded for the day to
3 be reconvened on April 26, 2011.)

4 THE COURT: All right. Anything from the State?

5 MS. GARRICK: Your Honor, just briefly. We will
6 waive opening on the law. And also, after Mr. Cornwell
7 finishes, we're going to need one minute to change laptops
8 because Mr. Cornwell is going to use his laptop and we'll
9 need to put ours up there.

10 THE COURT: All right.

11 MS. GARRICK: And State's Exhibit 6, if I may
12 approach, Your Honor, I'd ask to remove this item from the
13 bag for closing. This is the box cutter.

14 THE COURT: All right. You may do so.

15 Anything further, Solicitor?

16 MS. GARRICK: No, sir, Your Honor.

17 THE COURT: Mr. Cornwell?

18 MR. CORNWELL: Your Honor, similarly, I would
19 ask to remove an item from Defense Exhibit No. 1. It's a
20 cell phone.

21 THE COURT: All right. Yes, sir, you may.

22 Any specific requests to charge?

23 MR. CORNWELL: I emailed some to your law clerk,
24 Your Honor, and defense has a copy -- the State has a copy
25 also.

1 THE COURT: All right. The reasonable doubt
2 charge is what I charge.

3 I also charge Manning. So I charge both Manning
4 and Victor versus Nebraska.

5 The non-testifying, I charge that.

6 Lesser included offense, Solicitor?

7 MS. GARRICK: Your Honor, I guess it would be
8 strong arm.

9 THE COURT: All right. And I was planning on
10 charging that.

11 MR. CORNWELL: Thank you.

12 THE COURT: I just charge it as robbery. Some
13 people call it strong arm, some people call it common law.
14 You all call it what you want.

15 I charge this basic charge on confession.

16 All right. May we have our jury.

17 THE BAILIFF: Your Honor, we're still missing
18 one.

19 THE COURT: All right. Thank you.

20 (Pause.)

21 THE BAILIFF: Your Honor, we have all our
22 jurors.

23 THE COURT: All right. Bring us our jury,
24 please.

25

1 (The jury came into open court at approximately
2 9:33 a.m.)

3 THE COURT: Good morning, ladies and gentlemen
4 of the jury panel. Welcome back.

5 As you recall, the State rested, the defense
6 rested. You've heard all the evidence and all the
7 testimony you're going to hear from the parties in the
8 trial of this case.

9 We're now at the point of the closing arguments
10 by the attorneys. They're different from the opening
11 statements. They are true arguments. The attorneys may
12 argue the facts, the inferences to be drawn from the facts
13 and the law.

14 The procedure we follow is Mr. Cornwell will
15 present the closing argument on behalf of Mr. Buchanan
16 first. Thereafter, the Solicitor will present the closing
17 argument on behalf of the State, the State being the party
18 that has the burden of proving the case beyond a
19 reasonable doubt.

20 After the closing arguments of the attorneys, I
21 will then charge or instruct you on the law that applies
22 to the facts of this case. You will then retire for your
23 deliberations to determine what the facts are, apply them
24 to the law as I have explained it to you, and reach those
25 true and just verdicts.

1 I would ask you to please give the attorneys
2 your complete and undivided attention during their closing
3 arguments as you have done throughout the course of this
4 trial.

5 With that being said, Mr. Cornwell.

6 MR. CORNWELL: May it please the Court, Your
7 Honor.

8 Ladies and gentlemen of the jury, you've heard a
9 lot in this last day and, I guess, a couple hours of here.
10 You've heard from the State, heard their opening argument.
11 You've heard their witnesses take the stand. You've heard
12 all the direct, you've heard all the testimony that's got
13 to be heard in this case. It's time for you to decide
14 whether or not you believe that the State has met its
15 burden of proof, whether or not it's proof beyond a
16 reasonable doubt that my client went to a store, took some
17 merchandise, didn't pay for it, and also wielded a weapon
18 in the process.

19 It is definitely our position, as I told you
20 before, that Perry Buchanan went into the store, he took
21 merchandise, he didn't pay for it. And actually he's been
22 willing to admit that since the day he was caught.

23 Was that wrong? Of course it was wrong.
24 Everybody knows you pay for what you want.

25 Was Perry Buchanan wrong? Yes, he was wrong.

1 Which is why when the officer took him down to West
2 Columbia Police Department to talk to him, he tried to
3 come clean. He told him, "I took this thing. I took it
4 and didn't pay for it at the Walmart." But that's it.
5 Where we differ is the issue of the weapon.

6 They had him dead to rights on the shoplifting.
7 They had him. He gave it to them. He confessed to
8 shoplifting. But we don't agree that there was a knife
9 involved in this at all.

10 The testimony of Ms. Shirley Ann Smith and the
11 video does not match. You've had an opportunity to see
12 this video a thousand times probably by now, and you've
13 got the whole DVD of this incident in evidence. You're
14 going to have an opportunity to look at it again if you
15 want to. But I'm going to put you through it again so
16 that we can see exactly what happened on this video.

17 (DVD played.)

18 MR. CORNWELL: Look closely. We're coming up on
19 the part of the video where Ms. Shirley Ann Smith said my
20 client pulled a knife, that he put his hand in his pocket
21 and pulled something out and then he wielded a knife.

22 Only problem is, look at this video:

23 Mr. Buchanan's hands don't leave his pockets. It's after
24 the moment she said that he presented a knife to her.

25 This is it. She said he waved the knife at her

1 at this point and then she takes off.

2 Her testimony points to this part of the video
3 as the part where he pulls the knife on her. In her
4 statement she said that when he pulled the knife on her
5 she didn't stick around. She knew it was beyond her, and
6 she left. Yet in the video she lingers around for a few
7 seconds, stands there and strikes a pose.

8 I ask you to use your common sense and your
9 understanding. All of you have been on this earth for
10 enough years to realize and understand human nature.
11 Nobody's going to stand there and strike a Superman pose
12 if somebody has a knife. They're not even trained to do
13 that. They're told not to fight back. They're told to go
14 call loss prevention. They're told to call the
15 authorities.

16 When I questioned her on this and I said -- kind
17 of insinuating that, you know, she wasn't acting like a
18 person who was in fear of their life, she responded by
19 saying, "Well, I'm a proud employee of Walmart. I've been
20 for eight years." Come on. Really?

21 Some people may ask, well, what does she have to
22 gain by making a story up about a knife? What does she
23 have to gain? The respect and admiration of her
24 colleagues, props from Walmart possibly. Seven years,
25 eight years now it is she's been working for Walmart as a

1 cashier. Maybe it's to raise her stock in the eyes of the
2 company. I don't know. But those are all possible
3 motivations for her to not be telling the truth during
4 this time.

5 What's another motivation? Pride. Pride comes
6 before destruction, and the haughty spirit before a fall.

7 We see here someone who has given a story and
8 now they're in so deep and entrenched, human nature is to
9 dig in.

10 It's a sad truth that we don't like to admit
11 mistakes. We don't like to admit when we are wrong. We
12 don't like to admit that. So what do we do? It's human
13 nature to dig in. Once you've made your story up, you
14 just dig in and stick to it.

15 When I questioned her on the stand, you saw how
16 flustered she got. You saw that in regards to the video.
17 Every time I questioned her about the video, where he
18 could have pulled the knife, another thing you notice is
19 that his back was conveniently to the camera everytime an
20 incident occurred where she said she saw the knife.

21 Let's talk about that, the times where she said
22 she saw the knife.

23 If you recall, I was playing this same video
24 clip and in direct exam when the prosecutor was asking her
25 about when she saw the knife, it was around this time when

1 he put his hands down in his pocket. She said he pulled
2 his hand out of his pocket and had a knife, which we just
3 saw that he had his hand in his pocket the whole time. He
4 didn't pull his hand out where you could see it. And when
5 he did pull his hand out, there was nothing in his hand.

6 I'm going to let you see it. As a matter of
7 fact, I can put this in slow motion for you.

8 Here we are coming up on the moment when he
9 supposedly pulls a knife on her. You can see it clearly
10 in slow motion.

11 (DVD played.)

12 MR. CORNWELL: He puts his hand in his pocket,
13 hand's still in his pocket, hand's still in his pocket,
14 hand's still in his pocket. The right hand's still in the
15 pocket, left hand on the grocery cart.

16 Now he pulls his hand out. What's he doing?
17 Gesturing, telling her to back up, as you heard her say,
18 "keep away from my cart." What's he doing? He's not
19 swinging a blade. If anything, he's trying to get around
20 her. That's not the body language of a person with a
21 weapon who is using it willingly and aggressively. That is
22 the body language of a person that's trying to get around
23 somebody.

24 Also, you have seen the video footage where the
25 prosecution tries to say that, aha, well, his back may

1 have been to the camera this whole time that we say that
2 he had a weapon and you may not be able to see the knife
3 when she says that he pulled the blade out on her, but we
4 do have this one part of the video that shows him holding
5 something in his hand, and it's the knife, it's the
6 weapon.

7 You've seen this video before. You've seen this
8 still that I'm referring to, which is basically where they
9 take a shot of a frame of a video and it's basically a
10 photograph, and you can see clearly right there, there
11 appears to be something in his hand. That's what they
12 focus on. It's a white amorphous blob in his hand. That
13 is what they want you to believe is a weapon. This is
14 what they bring to court and say is the weapon he had in
15 his hand.

16 I'm not a man with a big ego. I can admit I
17 have little hands, okay? It almost covers this entire
18 blade. You look at that video. Whatever it is you see in
19 his hand is not only not covered by his hand, but it juts
20 out this end and this end far more than this thing does.
21 My hand almost covers this and Mr. Perry's hand is bigger
22 than mine. If he had this in his hand, you wouldn't see
23 as much of that exposed to the camera.

24 But it does appear he had something in his hand.
25 At some point in the video it does appear he had something

1 in his hand. What could it be?

2 This is a frame of Mr. Perry leaving Walmart
3 right before he goes into the patio center, exactly before
4 you see the encounter between him and Ms. Shirley Ann
5 Smith, seconds before. Mr. Perry walks into the garden
6 center wielding a very, very dangerous cellular device in
7 his hand. What is that? Huh? You can see it clearly as
8 I can. As a matter of fact, it's the only time you can
9 see clearly the contents of Mr. Perry's hand at every
10 angle in this entire video, and we clearly see that it's a
11 cell phone, this cell phone that he had on him that day,
12 this cell phone that he had on him in his right hand as he
13 walked into the garden center.

14 And I had some questions, too. You know, I've
15 looked at this video many times, as I'm pretty sure the
16 Solicitor's office did. As a matter of fact, I know they
17 have. And the one thing that stuck out to me was that
18 there was nothing I saw that could match the description
19 of what was actually in his hand, or what appeared to be
20 in his hand, as he turned around at the end of the video,
21 the angle that we showed you many times, the above-head
22 shot here. And I've been wracking my brain trying to
23 figure out, you know, what could that be? What could this
24 white object be? Because it's clearly not yellow. We can
25 see yellow from far away.

1 Look at that. Look at that. See how bright
2 yellow shows up? Yellow, yellow, yellow. The blade's
3 yellow.

4 I don't see yellow in Mr. Perry's hand. All I
5 see is white. So I've been asking myself, wracking my
6 brain, what could cause this. Glow from a cell phone
7 screen?

8 Enough of the video. You've seen the video.
9 Let's talk about Ms. Smith.

10 Ms. Smith said on the stand -- and no one doubts
11 her loyalty to Walmart. I mean, eight years at any job,
12 especially in this economy, is an outstanding achievement.
13 I'm just saying. But I had an opportunity to speak with
14 Ms. Smith on the stand and cross-examine her and I asked
15 her specific questions about what happened because I had
16 seen that video many times. And in her statement she
17 claims that Mr. Buchanan swung a blade on her, not once,
18 he swung around with the blade and then she said he made
19 it clear and she knew it was beyond her when he swung
20 around again. We don't see that. It never happens in the
21 video. You've seen it. At no point does he swing at
22 anybody. The only time he even makes a swinging motion is
23 when he's turned around, turned his shopping cart around
24 to run away from her.

25 She got flustered on the stand, which is

1 understandable. I mean it's the first time she's ever
2 been pressed on these issues.

3 Talk about a foggy memory. She couldn't
4 remember something. I asked her and she couldn't
5 remember. Hey, I mean, this is a question of perception.
6 She didn't even know that it was a computer in the grocery
7 cart after standing out there for a good minute and a half
8 trying to keep the man from taking the cart out and had an
9 opportunity to look at the contents of the cart and look
10 at him and stop him. She thought it was a flat screen TV.

11 And that's whose memory we're going to rely on?
12 That's whose senses of perception we're going to rely on
13 to pinpoint something that she said was hidden and small
14 and tucked away and he was principally moving this knife
15 when she couldn't see the big thing right in front of her?

16 I had an opportunity to speak with Bruce Wade.
17 You saw him on the stand.

18 I've been working in Lexington County since
19 2007, and Bruce Wade is a good cop. He's a good man.
20 People make mistakes. And he is a man. A man with all
21 the flaws that we have, all the faults that we have. The
22 only difference between you and I is that every morning he
23 goes to work, he puts on that badge, he puts on the
24 uniform, and he's taken an oath to serve and protect, an
25 oath he takes very seriously.

1 A lot of people ask what motivation, would he
2 have to even attempt to fabricate or manufacture or
3 whatever. He has to produce.

4 You've got to understand. I have to deal with
5 Mr. Perry Buchanan as a person. I have to treat him as a
6 human being. I have to listen to what he says and I have
7 to take into account different things, his state of mind,
8 and I have to care about what he says to me and about his
9 case and what happens to him. Because to everybody else
10 in this courtroom, the jury excluded hopefully, he's just
11 a number. He's a perp. He's a suspect. They don't care
12 what happens to him. He's not one of the people that
13 Bruce Wade has been serving and protecting. He has
14 committed a crime.

15 But that's what our justice system is for.
16 Because even if you're accused of a crime, every person
17 deserves to see the system work correctly for them.

18 You heard me question Mr. Wade. I questioned
19 him specifically because I had my suspicions that
20 something wasn't right about the testimony or the
21 statement of Ms. Smith. I just -- it just did not fit.

22 He was questioned on direct by the solicitor,
23 and on direct, I don't know if it was a mistake, I don't
24 know if it was an oversight, I don't know if it was on
25 purpose, but on direct it appeared as if he had not went

1 to the crime scene before he talked to Ms. Smith. It
2 appeared that Ms. Smith hadn't been to the crime scene --
3 or not the crime scene, I'm sorry -- the location of the
4 XTerra, the red XTerra on Jarvis Klapman before she was
5 interviewed.

6 But on cross when I referred to his
7 investigative report with his timeline on it, it was clear
8 that Ms. Smith had been to Jarvis Klapman Boulevard at 5
9 o'clock. She got to see the red XTerra, and in that red
10 XTerra were these yellow box cutters. And in that red
11 XTerra was the stolen merchandise.

12 Mr. Wade says that he saw the merchandise, the
13 merchandise was in there, but somehow, you know, they
14 avoided seeing the weapon. They avoided seeing those box
15 cutters. Ms. Smith didn't see any of that. Bruce Wade
16 didn't see that either. This idea of a box cutter just
17 spontaneously came from Ms. Smith because that's what she
18 actually saw. That's what they want you to believe. But
19 the fact remains that she was exposed to this thing
20 beforehand. It's our position that the idea was planted
21 in her mind.

22 I talked to Ms. Smith on that stand and I asked
23 her, Before you talked to Bruce Wade, you know, did you
24 talk to anybody else about this box cutter? Did you tell
25 them, you know, describe to anybody else how this box

1 cutter looked? Because to be honest with you, when you
2 look at the statements and you talk to the witnesses, she
3 never mentions or describes this thing as a box cutter
4 until her statement with Bruce Wade which is after she had
5 been to the red XTerra where the box cutter was.

6 So she says, "Yes, as a matter of fact, the
7 first person I talked to was Dean Edgeworth. I told him
8 that the suspect had a box cutter, it was a yellow box
9 cutter."

10 Well, Dean Edgeworth gets on the stand and I
11 asked him directly, I said, "Did Ms. Smith tell you about
12 the blade? Yes. Did she describe it to you? No." Let
13 him read his statement. He didn't write a description in
14 his statement. He said "blade." He didn't write a
15 description of a box cutter. Nobody said "box cutter."
16 "Box cutter" doesn't come up until after Mr. Wade and
17 Ms. Smith talked, after they'd been to where the box
18 cutter is. After.

19 Let's talk about the oral confession. Of course
20 we don't agree that my client confessed to having a box
21 cutter. Of course we don't. That is just not true.

22 You guys heard a lot of things today and
23 yesterday. You're going to have an opportunity to review
24 all the evidence in this case. You're going to have an
25 opportunity to sit back there and make a decision based on

1 the evidence that you've seen.

2 A lot of times decisions can be boiled down to a
3 simple explanation, sometimes they can't. But I know one
4 of the things you're going to have to do when you go back
5 there in that jury room is decide whether or not you
6 believe what you see or what you hear. Because when you
7 look at that video, you don't see anything. What you hear
8 is suspect.

9 They say a picture is worth a thousand words.
10 How much is a video? Huh?

11 I'm not asking you to reach here. I'm asking
12 you to look at the video and just see what I see. See
13 what's there.

14 A man's life is in your hands today, his
15 freedom, and they want you to convict him based on that,
16 based on that blurry, grainy picture.

17 The video is important. It is. The evidence is
18 important. But this still of him holding some kind of
19 blurry white thing in his hand that we don't even know
20 what it is, that's not enough. It's simply not enough
21 that blurry photographs and grainy video footage could
22 prove anything.

23 We'd have pet Sasquatches. We'd be riding to
24 work in UFOs. There'd be a Loch Ness monster in the
25 California aquarium. But there's not. You know why?

1 Because grainy video footage and blurry photographs have
2 not proven a thing. In the history of human existence has
3 anything ever been proven by bad pictures? No. And the
4 State can't prove their case based on that either.

5 So I'm asking you when you go back there, you
6 remember that my client is not guilty. He's innocent.
7 They have to prove his guilt beyond a reasonable doubt,
8 beyond a blurry photograph, beyond the garbled testimony
9 of a -- the flustered testimony of a person at Walmart who
10 was there and thought she might have saw somebody but
11 can't identify what's in his grocery cart. Beyond the
12 testimony of even Bruce Wade because he can't get his
13 timeline straight.

14 Everywhere you look, everything you hear is
15 suspect, but what you see in that video is not.

16 Look at the video plainly how it is. Don't try
17 to make stuff up. Don't try to manufacture stuff. Don't
18 try to make something be there when it's not. Just look
19 at it clearly. You'll see there was no swing. You'll see
20 there was no lunge. You'll see he didn't act like he had
21 a weapon. You'll see that.

22 You won't hear somebody come up here with faulty
23 memory or a foggy recollection try to convince you of what
24 they thought they saw with their words. Believe what you
25 see, what you see clearly. Find Perry Buchanan not

1 guilty, not because I say so, because he is.

2 Thank you.

3 THE COURT: Thank you, Mr. Cornwell.

4 Solicitor.

5 MS. GARRICK: Thank you, Your Honor. May it
6 please the Court.

7 THE COURT: Yes, ma'am.

8 MS. GARRICK: Mr. Cornwell.

9 Good morning, ladies and gentlemen.

10 We all have a job to do today. Judge McMahon
11 has presided over this trial. He's in charge of
12 determining admissibility of evidence and today he's going
13 to tell you the law that's involved in this case, and
14 that's his job.

15 What you just heard is Mr. Cornwell doing his
16 job. His job is to be an advocate for his client. His
17 job is to try to persuade you to look at the evidence in
18 the light more favorable to his client.

19 And I'm a prosecutor and I have a job and my
20 duty is to seek justice.

21 You all took a juror's oath and your oath was
22 that you would base your verdicts on the evidence and the
23 law, the evidence that comes from the witness stand, what
24 you heard, the items of evidence that you'll have in your
25 jury room, and then the law that Judge McMahon is going to

1 tell you about at the close of the case. That's your job.

2 And, ladies and gentlemen, your job is to
3 actually figure out what happened. And I would argue to
4 you that it's a pretty straightforward matter. This isn't
5 a big mystery. This isn't a whodunit.

6 Certainly Mr. Buchanan is guilty of taking that
7 computer from Walmart without paying for it. So he's
8 guilty of a crime. But you all have to decide what crime
9 is he guilty of. Is he guilty of armed robbery or is he
10 guilty of something lesser? That's what this trial has
11 been about, ladies and gentlemen.

12 And ask yourselves this: On March 12th, 2010,
13 none of us were there, right? So who is the best person
14 that can tell us what Mr. Buchanan did on that day?
15 Shirley Smith. She was the one who was there. She was
16 the one who lived this and experienced this. She's the
17 one who saw Mr. Buchanan as he tried to push that buggy
18 out with a big electronic item in it. She's the one that
19 confronted Mr. Buchanan. She had a conversation with him.

20 She saw what she saw. She said she saw a yellow
21 or gold older blade, a box cutter. And she's identified
22 this item, ladies and gentlemen, this item right here.

23 And the defense in their closing just now has
24 said that she's not been truthful. She's not been
25 truthful on March 12th, 2010, and that she must have

1 lied yesterday under oath. That's the defense's argument,
2 ladies and gentlemen.

3 Ms. Smith's not on trial. How offensive.

4 You get to decide the believability and the
5 credibility of the witnesses. You get to decide who do
6 you believe. And, ladies and gentlemen, you do that by
7 using your common sense.

8 When you took that juror's oath, it didn't mean
9 that you had to leave your common sense out there. You
10 brought it with you. So use that. Use that as you
11 evaluate what Ms. Smith did tell us, what she said
12 March 12th to her co-workers. Remember, she told them "he
13 had a blade, he pulled a blade on me."

14 And I disagree with Mr. Cornwell in how I
15 remember the testimony. I don't believe she told Dean
16 that it was yellow. I believe she said it was just a
17 blade. But she said she told Detective Wade that it was a
18 yellow or gold-handled older box cutter.

19 And Ms.. Shirley and Detective Wade told you that
20 she had not seen the box cutters or even reviewed the
21 video until I think she said a couple of months ago or
22 about a month ago when we were getting ready for this
23 trial.

24 Ladies and gentlemen, you have to judge her
25 credibility. Did she appear to be honest and forthright?

1 Did she try and give you details and explain to you what
2 she went through on March 12th?

3 Why would she lie? Do you think she enjoys
4 coming here into court, missing work all these days,
5 having to face Mr. Buchanan, having to be subject to
6 cross-examination, having to come and meet with us
7 numerous times to talk about what happened? Does that
8 make any sense at all? There's no benefit to her lying.

9 She said it March 12th. She told everyone then.
10 And then she told you all yesterday. Please think about
11 that.

12 Let's talk a little bit about the video.
13 Certainly as Ms. Dixon told you all at the beginning, it's
14 not the best security video there is. It's not, you know,
15 what you see on all the fancy TV shows now with NCIS and
16 CSI. I mean, it's not perfect, but it's what we have.
17 It's the best we have.

18 And certainly, ladies and gentlemen, we viewed
19 it numerous times, 30, 40, 50 times probably, and each
20 time you can see something a little bit different. So I'd
21 ask you, and I'd urge you, to please look at it more than
22 once. Look at all the different camera angles and look at
23 it slowly and look at it over and over and see whether the
24 video tracked what Ms. Smith said. And I'd argue that it
25 does.

1 She told you about the confrontation. And she
2 told you how they went round and round the buggy. She
3 told you that his back was to the camera numerous times.

4 She tells you he goes in his pocket and he pulls
5 out something and it's down low and that she sees it and
6 that he says to her not once but twice, "Is it worth
7 getting cut over?" and that the second time when he does
8 that, he raises it up. She didn't say he stabbed at her
9 or he lunged at her. Those words didn't come out of her
10 mouth. She said he raised it, he swung it towards her.
11 Look and see if it's on the video, and I submit you'll see
12 it. You'll see it.

13 Now what about this cell phone? The cell phone.
14 Look at this camera angle. This is as he goes out the
15 first door and at the top of the screen is Ms. Shirley.
16 Those are her feet there and then you see her walk behind
17 him.

18 Ms. Shirley never talked about anything silver.
19 She didn't talk about anything silver in his hand. She
20 didn't see this. This was behind her. This happened
21 before the confrontation. And Mr. Cornwell says, oh, but
22 this -- that you see it in the still. Let's talk about
23 that for a minute.

24 What's that, ladies and gentlemen? A cell
25 phone's a lot smaller than this blade. Come on. There's

1 an item that is shown on that screen there, a silver
2 blade. Ms. Shirley told you what it was. She said,
3 "That's the box cutter. That's what I saw." She's a
4 buggy-length away from him. She said it then; she said it
5 yesterday.

6 But, ladies and gentlemen, maybe if this video
7 with that shot there, if that's all you had to base your
8 decision on, if that's supposed to be proof beyond any
9 reasonable doubt it's a box cutter, maybe you wouldn't
10 have the proof you needed.

11 But guess what? It's not just about this video
12 and that still. You have more than that to consider. You
13 have what she told you, what she said she saw. She said
14 it March 12th, she says it a year later, and she's told
15 you what it was.

16 But you have even more than that. Within ten
17 minutes, West Columbia Police Department, good police
18 work, they stopped that red XTerra. And what did they
19 find? Mr. Buchanan, a big old stolen computer, and not
20 one but two box cutters, yellow. And where are they in
21 that car? Right by Mr. Buchanan. One at his feet, one in
22 the door. You've got that.

23 Defense says, oh, it's just fabricated, it's
24 planted in her mind. Come on. Use that common sense.
25 What else are they going to say? What else can the

1 defense say to explain away the evidence?

2 Bruce Wade. What did he do in this case? He
3 did a good job. He went up, collected witnesses, had them
4 write statements, met with the victim, had her write a
5 statement. He told you that she told him even before they
6 knew for sure that the box cutters had been recovered that
7 it was a yellow blade.

8 He collected the evidence, the clothes that she
9 had described in detail. She even told them, and told you
10 all, there was something on the inside design of the
11 jacket. Look in the hood. It's there. The hat matches.

12 Detective Wade collects the clothes, collects
13 the box cutters, and once again, Detective Wade and
14 Ms. Shirley say they didn't know for sure that the blades
15 had been collected until after she had identified them.

16 Ms. Shirley has to ask Detective Wade, "Did they
17 get the blade? Did they get the box cutter?" He was
18 like, "I don't know." He radios the road guy -- remember
19 Officer Griffin -- to find out, "Did you find the blade?"
20 That's when they find out there's two blades. Ms. Shirley
21 says, "I didn't see them until we got ready for court. I
22 didn't see them that day." Credibility and believability.

23 What else do you have to consider to help you
24 make your decision? What Detective Wade told you. The
25 most important part, I would argue, of his job that day,

1 and that is interviewing the man who was arrested,
2 interviewing Mr. Buchanan.

3 Detective Wade gives him his Miranda warnings,
4 follows the letter of the law, has him initial it, waiving
5 all his rights. Mr. Buchanan talks to him.

6 Would have been nice if there was audio and
7 video equipment in West Columbia, but there's not. So
8 there's not.

9 So Detective Wade, as Mr. Buchanan is talking
10 and giving this statement to him, he's writing it down. I
11 mean, you can tell. It's jotted down. You know, it's not
12 some fancy report for court. These are Detective Wade's
13 notes in State's Exhibit 10 where he writes what
14 Mr. Buchanan told him. And he writes it in first person.
15 It's Mr. Buchanan speaking.

16 "I had Toby go and he picked me up," blah, blah,
17 blah. "I had a box cutter in my hand and told the lady,
18 'My shit's paid for.' I pushed the buggy, she started
19 running. I didn't have the box cutter open." Don't want
20 to tell that little detail.

21 And then when Detective Wade let's him know for
22 sure, Hey, Mr. Buchanan, this is armed robbery. You know,
23 this isn't some little shoplifting, this is armed robbery.
24 Mr. Buchanan says, "I can't write nothing down." That
25 makes sense. Self-preservation's kicking in. He doesn't

1 want to write it down. Detective Wade tells him, "Okay.
2 You've already confessed. I've documented it. I'm going
3 to tell the Court," and he did.

4 The defense wants you to ignore that. Of course
5 they do. That's damaging evidence.

6 So it's not just the video, ladies and
7 gentlemen. It's all this other evidence.

8 You don't have to be convinced beyond each and
9 every doubt. It's proof beyond any reasonable doubt. And
10 Judge McMahon's going to explain that to you. Because
11 think about it. There's no way 12 people can be convinced
12 of something beyond a shadow of a doubt. That's an
13 impossible burden. And that's not the burden the State
14 has.

15 Ladies and gentlemen, the only one with anything
16 to gain today is Mr. Buchanan. He's the one that is on
17 trial. He's the one who will benefit if your verdict is
18 guilty of something lesser than armed robbery.

19 Ladies and gentlemen, you're going to be given a
20 choice of whether he's guilty or not guilty. And I think
21 we can all agree he is guilty of a crime, but the question
22 is what crime. Your choice is going to be between armed
23 robbery and strong armed robbery or common law robbery.
24 Why reward Mr. Buchanan with a lesser charge?

25 Ladies and gentlemen, your verdict should hold

1 him accountable for the actions and the decisions that he
2 took and what he did on March 12th of 2010.

3 Think about what he did, ladies and gentlemen.
4 Five o'clock in the afternoon, March 12th, 2010, down at
5 our Walmart right down the road, he decides, I'm going to
6 go get me a computer. So he goes into Walmart, he loads
7 up approximately a \$900 computer, puts it in a buggy and
8 tries to walk out of the garden center where he's
9 confronted by Ms. Shirley, who's simply doing her job
10 trying to check receipts.

11 And what does he do? He tries to intimidate
12 her, tries to get around her, and then he pulls this box
13 cutter, a deadly weapon, and he tells her not once but
14 twice, "Is it worth getting cut over?"

15 Don't you think as scared as she must have been
16 she's paying pretty close attention, she's focusing on the
17 person who's threatening her and the item that is
18 frightening her?

19 Ladies and gentlemen, Mr. Buchanan should have
20 learned as a small child that actions have consequences.

21 Ms. Dixon told you at the beginning of this case
22 that a detail can change the picture, and that's true. If
23 Mr. Buchanan had just gone into Walmart and concealed some
24 clothing or items or even tried to just sneak out with
25 that computer, it would have been a shoplifting. If he

1 had tried to get out with the computer in that buggy by
2 just intimidating Ms. Shirley or pushing past her in the
3 buggy using force or intimidation, that would be strong
4 armed robbery, ladies and gentlemen. But when he
5 presented this that he told Detective Wade he had in his
6 hand, when he presented a box cutter, that changed the
7 picture. That made the crime an armed robbery. It made
8 him in possession of a weapon during the commission of a
9 violent crime.

10 I would urge you to deliberate, take your time,
11 think about this. Look at all of the evidence together,
12 not just the video, everything else you've heard and all
13 these other items.

14 Ladies and gentlemen, there are few things you
15 can know with absolute certainty, but if you are firmly
16 convinced, then you must convict.

17 Ladies and gentlemen, Mr. Buchanan on
18 March 12th, 2010, when he presented this blade to
19 Ms. Shirley, he committed an armed robbery, and we would
20 ask that you find him guilty of that and the other
21 indictment.

22 Thank you.

23 THE COURT: Thank you, Solicitor.

24 Mr. Foreman, ladies and gentlemen of the jury,
25 if you'd please give me your complete and undivided

1 attention.

2 I'm now going to charge you or instruct you on
3 the law that applies to the facts of this case.

4 The procedure I follow is I cover the general
5 criminal law that applies to all criminal offenses in
6 South Carolina; thereafter I will cover the charge in the
7 particular indictments: Armed robbery, the lesser
8 included offense of robbery, and possession of a weapon, a
9 knife, during the commission of a violent crime. And
10 finally, I will cover the form of the verdict.

11 I generally give you the caption of the
12 paragraph I'm fixing to cover, and when I change from one
13 topic to the next, I will generally alert you to that
14 change. If you'd please give me your complete and
15 undivided attention.

16 The charge, arrest, indictments are not
17 evidence. The indictments charge the defendant with armed
18 robbery and possession of a weapon during the commission
19 of a violent crime. I remind you, the fact that this
20 defendant was arrested, charged, and indicted in this case
21 is not evidence and cannot be considered by you as
22 evidence of guilt in this case, nor does it create any
23 presumption or inference of guilt. These documents, these
24 indictments are simply the formal written instruments
25 which contain the charges made against the defendant. It

1 is the formal documents by which the case is brought into
2 court.

3 Multiple charges. The indictments in this case
4 allege different offenses. The charges are: The first
5 indictment, armed robbery or the lesser included offense
6 of robbery; the second indictment, possession of a weapon
7 during the commission of a violent crime.

8 Each indictment charges a separate and distinct
9 offense. You must decide each indictment separately on
10 the evidence and the law that applies to it, uninfluenced
11 by your decision as to any other indictment.

12 You will be asked to write a separate verdict as
13 to each indictment.

14 Presumption of innocence. The defendant has
15 pled not guilty to these indictments and that plea puts
16 the burden on the State to prove the defendant guilty. A
17 person charged with committing a criminal offense in South
18 Carolina is never required to prove himself innocent.

19 I charge you that it is an important rule of the
20 law that a defendant in a criminal trial, no matter what
21 the seriousness of the charge may be, will always be
22 presumed to be innocent of the crime for which the
23 indictment was issued unless guilt has been proven by
24 evidence satisfying you of that guilt beyond a reasonable
25 doubt.

1 This presumption of innocence does not end when
2 you begin your deliberations, but it accompanies the
3 defendant throughout the trial until you reach a verdict
4 of guilt based on evidence satisfying you of that guilt
5 beyond a reasonable doubt.

6 The presumption of innocence has been said to be
7 like a robe of righteousness placed about the shoulders of
8 a defendant which remains with the defendant until it has
9 been stripped from the defendant by evidence satisfying
10 you of the defendant's guilt beyond a reasonable doubt.

11 The presumption of innocence is not a mere legal
12 theory. It is not just a legal phrase. It is a
13 substantial right to which every defendant is entitled
14 unless you, the jury, are satisfied from the evidence of
15 the defendant's guilt beyond a reasonable doubt.

16 Reasonable doubt. What is a reasonable doubt in
17 the law? A reasonable doubt is the kind of doubt that
18 would cause a reasonable person to hesitate to act. The
19 State has the burden of proving the defendant guilty
20 beyond a reasonable doubt.

21 Some of you in the past may have served as
22 jurors in civil cases where you were told that it is only
23 necessary to prove that a fact is more likely true than
24 not true, such as by the greater weight or the
25 preponderance of the evidence.

1 In criminal cases, the State's proof must be
2 more powerful than that. It must be proof beyond a
3 reasonable doubt.

4 Proof beyond a reasonable doubt is proof that
5 leaves you firmly convinced of the defendant's guilt.

6 There are very few things in this world that we
7 know with absolute certainty, and in criminal cases, the
8 law does not require proof that overcomes every possible
9 doubt. If based on your consideration of the evidence you
10 are firmly convinced that the defendant is guilty of the
11 crimes charged, you must find the defendant guilty.

12 If, on the other hand, you think there is a real
13 possibility that the defendant is not guilty, you must
14 give the defendant the benefit of the doubt and find him
15 not guilty.

16 Duties of trial jury and trial judge. I remind
17 you that during this trial, you and I have certain duties
18 to perform. As the trial judge, it's my responsibility to
19 preside over the trial and I also have the duty to rule on
20 the admissibility of the evidence that has been offered
21 during this trial.

22 You are to consider only the competent evidence
23 before you. You are to consider only the testimony which
24 has been presented from the witness stand and any exhibits
25 which have been made part of the record in this case.

1 I also have the duty to charge you the law that
2 applies to this case. As the presiding judge, I am the
3 sole judge of the law of this case and it is your duty as
4 jurors to accept and apply the law as I now state it to
5 you. If you already have any idea as to what the law is,
6 or what the law ought to be, and it does not agree with
7 what I now tell you the law is, you must abandon your idea
8 because you are sworn to follow the law and apply the law
9 exactly as I state it to you.

10 In every case tried in this courtroom before a
11 jury, the jury becomes the sole and exclusive judges of
12 the facts in a case. A trial judge cannot intimate,
13 state, comment on, or make any statement to a trial jury
14 about the facts in a case.

15 Since you, the jury, are the sole judge of the
16 facts in this case, you are not to infer from what I have
17 said during the progress of this trial in ruling upon the
18 admissibility of evidence or otherwise, or anything that I
19 now say during this course of instruction to you, that I
20 have any opinion about the facts in this case. The law
21 does not allow me to have an opinion about the facts in
22 this case. That is a matter solely for you, the jury, to
23 determine. As jurors, it is your duty to determine the
24 effect, the value, the weight, and the truth of the
25 evidence that has been presented during this trial.

1 Direct and circumstantial evidence. There are
2 two types of evidence generally presented during a trial:
3 direct evidence, circumstantial evidence.

4 Direct evidence is the testimony of a person who
5 claims to have actual knowledge of a fact, such as an eye
6 witness or an ear witness. It is evidence which
7 immediately establishes the main fact to be proved.

8 Circumstantial evidence is proof of a chain of
9 facts and circumstances indicating the existence of a
10 fact. It is evidence which immediately establishes a
11 collateral fact from which the main fact may be inferred.
12 Circumstantial evidence is based on inference and not on
13 personal knowledge or observation.

14 The law, our law, makes absolutely no
15 distinction between the weight or value to be given to
16 either direct or circumstantial evidence, nor is there a
17 greater degree of certainty required of circumstantial
18 evidence than of direct evidence. You should weigh all of
19 the evidence in the case. After weighing all of the
20 evidence, if you're not convinced of the guilt of the
21 defendant beyond a reasonable doubt, you must find the
22 defendant not guilty.

23 Credibility of the witness. Necessarily, you,
24 the jury, must determine the credibility of the witnesses
25 who have testified in this case. Credibility simply means

1 believability, who are you going to believe. It becomes
2 your duty as jurors to analyze and to evaluate the
3 evidence and determine which evidence convinces you of its
4 truth.

5 In determining the believability of witnesses
6 who have testified in this case, you may believe one
7 witness over several or several over one. You may believe
8 a part of the testimony of a witness and reject the
9 remaining part of the testimony of that same witness.

10 You may believe the testimony of a witness in
11 its entirety or reject the testimony of a witness in its
12 entirety. You may consider whether any witness has
13 exhibited to you any interest, any bias, prejudice or
14 other motive in this case. You may also consider the
15 demeanor, the manner, the appearance of the witness while
16 testifying on the witness stand.

17 Statement of the defendant. A statement alleged
18 to have been made by the defendant has been admitted into
19 evidence in this case. While the Court has determined
20 that the statement is admissible, I instruct you that you,
21 the jury, make the ultimate decision of whether or not the
22 defendant made the statement.

23 If the defendant did make the statement, you
24 must determine whether the statement was made by the
25 defendant voluntarily of his own free will. This means

1 that the statement was not caused by pressure, force,
2 fear, threats, coercion, intimidation, or by hope or
3 promise of leniency or reward of any kind.

4 In determining whether the statement was
5 voluntary, you should consider both the characteristics of
6 the defendant and the details of the questioning. Some of
7 the factors that you must consider are: The age of the
8 defendant; the defendant's education or lack of education;
9 the defendant's mental ability or capacity; the
10 defendant's I.Q. or intelligence; the defendant's
11 background and environment; the place and length of
12 detention; the nature of the questioning; and the advice
13 or lack thereof to the defendant of his Constitutional
14 rights, including but not limited to: the right to remain
15 silent, that any statement could be used against him in a
16 court of law, the right to have a lawyer present, that if
17 he could not afford a lawyer, a lawyer would be appointed
18 to represent him without any cost, and that he could stop
19 making a statement at any time. You must carefully
20 consider all of the surrounding circumstances before you
21 give any weight to any alleged statement.

22 The State has the burden of proving beyond a
23 reasonable doubt that the alleged statement was voluntary.
24 If you determine it was, you may give the statement any
25 further consideration that you deem proper. You must

1 decide what weight, if any, should be given to the alleged
2 statement.

3 If you determine that the alleged statement was
4 not the free and voluntary statement of the defendant, you
5 should not consider the statement at all.

6 I instruct you and emphasize, the fact that the
7 defendant did not testify is not a factor to be considered
8 by you in any way in your deliberations and in your
9 consideration on the guilt or innocence of the defendant.
10 It must not be considered by you in any manner whatsoever.

11 A defendant has the constitutional right to
12 remain silent, and the assertion of this right must not be
13 considered by you in your deliberations. I repeat: Under
14 your oath, you are to draw no conclusions whatsoever from
15 the fact that the defendant in this case did not testify.
16 The fact that this defendant did not testify should not
17 even be discussed in the jury room.

18 The burden of proof, as I have stated to you, is
19 on the State. The defendant is not required to prove his
20 innocence. The burden of proof remains on the State to
21 prove guilt beyond a reasonable doubt.

22 Ladies and gentlemen, that covers the general
23 criminal law that applies to all criminal cases in South
24 Carolina. I'm now going to charge you the specific
25 offenses charged in the indictments. If you would please

1 continue to give me your complete and undivided attention.

2 Armed robbery. The defendant is charged with
3 armed robbery. In order to prove this offense, the State
4 must first prove beyond a reasonable doubt that the
5 defendant took personal property from the person or
6 presence of another.

7 Property is in the presence of a person if it is
8 within the person's reach, inspection, observation or
9 control so that the person could, if not overcome with
10 violence or prevented by fear, keep possession of the
11 property.

12 The State must also prove beyond a reasonable
13 doubt that the defendant carried the property away,
14 intending to permanently deprive the owner of the property
15 and to keep the property for the defendant's own use. The
16 slightest removal of the property or the complete
17 possession of the property, even for an instance, by a
18 defendant is sufficient to show a taking and carrying away
19 of the property. The taking and carrying away of the
20 property must have been done with violence or by putting
21 the person from whom the property was taken in fear of
22 violence.

23 Finally, the State must prove beyond a
24 reasonable doubt that the defendant was armed with a
25 deadly weapon during the robbery. A deadly weapon is any

1 article, instrument, or substance which is likely to cause
2 death or great bodily harm.

3 Whether an instrument has been used as a deadly
4 weapon depends on the facts and circumstances of each
5 case. The following are examples of instruments which may
6 be deadly weapons: A pistol, a shotgun, a rifle, a dirk,
7 a dagger, a knife, a slingshot, metal knuckles, a razor,
8 gasoline, a fire bomb, a Molotov cocktail.

9 If you find that the State has failed to prove
10 that the defendant was armed with a deadly weapon, you may
11 then consider whether the State has proved beyond a
12 reasonable doubt that the defendant committed robbery.

13 So you have the greater offense of armed
14 robbery, the lesser offense of robbery. Included within
15 that offense of armed robbery is that lesser offense of
16 robbery.

17 In order to prove robbery, the State must prove
18 beyond a reasonable doubt all of the elements that I have
19 just explained to you except that the defendant was armed
20 with a deadly weapon. That is the charge on armed robbery
21 and the lesser included offense of robbery.

22 The other indictment charges possession of a
23 weapon during the commission of or attempt to commit a
24 violent crime. The defendant is charged with possession
25 of a weapon during the commission of or attempt to commit

1 a violent crime. The State must prove beyond a reasonable
2 doubt that the defendant visibly displayed a knife during
3 the commission of a violent crime.

4 A knife means an instrument or a tool with a
5 sharp cutting blade, whether or not fastened to a handle,
6 which can be used to inflict a cut, a slash, or a wound.

7 In order to find the defendant guilty of
8 possession of a weapon during the commission of a violent
9 crime, you must first find the defendant guilty of either
10 committing a violent crime or attempting to commit a
11 violent crime. I charge you that armed robbery is a
12 violent crime.

13 That covers the charge in the indictment and,
14 finally, I assure you, ladies and gentlemen, the end is in
15 sight. I'm going to cover the form of the verdict.

16 Ladies and gentlemen, you cannot allow
17 yourselves to be governed by sympathy, by prejudice,
18 passion, by public opinion, or any other arbitrary factor.
19 Both the State and the defendant have the right to expect
20 that each of you will carefully and impartially consider
21 all of the evidence in this case and that you will follow
22 the law as I have explained to you.

23 Mr. Foreman, you will have along with all the
24 items that have been introduced into evidence this verdict
25 form in the jury room with you during your deliberations.

1 It's got the caption of the case and then has a number
2 Roman Numeral, I guess, I and Roman Numeral II. If after
3 your deliberations, your determination of the facts in the
4 case, applying those to the law as I have explained it to
5 you, if you find that the State has met its burden of
6 proof beyond a reasonable doubt as to armed robbery and
7 that verdict is unanimous --- all 12 of you must agree --
8 this says indictment number as to armed robbery, we, the
9 jury, by unanimous consent, find the defendant guilty of
10 armed robbery. I would ask you to check to the left of
11 "guilty of armed robbery" and circle both your checkmark
12 and those words "guilty of armed robbery."

13 If after your view of the evidence you determine
14 that the State has not met its burden of proof as to the
15 crime of armed robbery but has met its burden of proof
16 beyond a reasonable doubt as to the crime of robbery and
17 that is a unanimous decision by the jury, I would ask you
18 to check to the left of those words "guilty of robbery,"
19 circle both your checkmark and those three words.

20 If you find that the State has failed to prove
21 its case beyond a reasonable doubt as to armed robbery or
22 robbery, you would find the defendant not guilty. If
23 that's a unanimous decision, check to the left of the two
24 words "not guilty," circle both the checkmark and the two
25 words "not guilty."

1 Mr. Foreman, only if you find the defendant
2 guilty of armed robbery would there be a need to consider
3 the second offense of possession of a weapon during the
4 commission of a violent crime.

5 If you have found the defendant guilty of armed
6 robbery, you would then go to the second indictment,
7 again, we, the jury, by unanimous consent find the
8 defendant guilty or not guilty as to that.

9 Once the jury has reached its verdicts and those
10 verdicts are unanimous, if you would sign -- there's a
11 place where you -- today's date and location.

12 Again, ladies and gentlemen, your verdicts must
13 be unanimous ones.

14 As to these possible verdicts, Mr. Foreman,
15 ladies and gentlemen, there is no significance whatsoever
16 in the order in which I have listed them on the form or in
17 the order in which I explained them to you. It is simply
18 that one must be stated first.

19 Once the jury has reached its verdicts,
20 unanimous verdicts, and you have signed and dated the
21 form, if you would please knock on the jury room door,
22 inform the bailiff that you have reached a verdict, at
23 that time we will receive you back into the courtroom.

24 I'm going to ask you, Mr. Foreman, ladies and
25 gentlemen, momentarily to step to the jury room with your

1 bailiff. If I do not have to bring you out for further
2 instructions, our alternate would come out -- everyone
3 else looks well, healthy today -- then we would deliver
4 the verdict form. All the items of evidence --
5 Mr. Bailiff, will you take care of that noise out there
6 for me, please -- we will then deliver the verdict form,
7 all the items of evidence, and you will be informed by the
8 Clerk to begin your deliberations.

9 With that, if you have any questions during the
10 course of your deliberations, if you'd please write out a
11 note for me, knock on the jury room door. I assure you
12 we're not going to slip off and leave you all held captive
13 back there in any manner.

14 Laptop. You need a laptop for the video. Can
15 somebody operate the laptop? I'm sure there's a lot of
16 techies on there. All right. We'll see about a laptop
17 for you in that regard so you'll have that.

18 All right. If you'll go with your bailiff.

19 Thank you very much for your attention.

20 (The jury left open court at approximately 10:47
21 a.m.)

22 THE COURT: Any exceptions, Solicitor?

23 MS. GARRICK: No, Your Honor.

24 THE COURT: Mr. Cornwell?

25 MR. CORNWELL: No, Your Honor.

1 THE COURT: If you all would look at the form of
2 verdict.

3 And I take it, since I told them the only time
4 they have to deliberate on the indictment for the
5 possession of a weapon is if they find Mr. Buchanan guilty
6 of armed robbery, so should they return a verdict of
7 guilty of robbery or not guilty, I will then just
8 judicially dismiss that in that regard. You see what I'm
9 saying?

10 MR. CORNWELL: Yes, sir.

11 MS. GARRICK: I'm sorry?

12 THE COURT: I would judicially dismiss the
13 indictment for the weapon if they come back with a
14 robbery.

15 MS. GARRICK: Yes, Your Honor, absolutely.

16 THE COURT: There's no need for them to
17 deliberate on that.

18 MS. GARRICK: Yes, sir, absolutely.

19 THE COURT: It would be judicially -- it would
20 not be a proper verdict anyway.

21 MS. GARRICK: That's right.

22 THE COURT: All right. You all check your --
23 what about a laptop, Solicitor and Mr. Cornwell?

24 MS. GARRICK: Your Honor, we need to try, I
25 think it's compatible to that, but I don't feel

1 comfortable sending my laptop back.

2 THE COURT: No. That's fine. It doesn't matter
3 to me.

4 MS. DIXON: Your Honor, we just have stuff about
5 the case on our laptop.

6 THE COURT: I don't have a laptop. That's all
7 I'm saying. I'm not sending mine. But yes, that's fine
8 with me, Solicitor, if that will work, if it's compatible.

9 (WHEREUPON, the jury began deliberations at
10 approximately 10:52 a.m.)

11 (A break was taken.)

12 (Deliberations ceased and proceedings resumed at
13 or about 12:10 p.m.)

14 THE COURT: I received this note from the jury.

15 "We just found out one juror was victim of armed
16 robbery about 15 years ago. Does this disqualify this
17 juror? Juror states it will not affect their decision."

18 Do you have any position on that matter,
19 Solicitor?

20 MS. GARRICK: No, Your Honor.

21 THE COURT: Mr. Cornwell?

22 MR. CORNWELL: Do we know what juror number?

23 THE COURT: I do not.

24 MR. CORNWELL: Okay. Because I remember one of
25 the jurors did -- I marked down as having been a victim of

1 theft, but it was awhile ago. So I think they may have
2 said that when they were questioned about it.

3 THE COURT: I'm open to suggestions. I mean the
4 note obviously indicates that the juror states it will not
5 affect their decision. I'm selling it like I bought it.

6 MR. CORNWELL: I have no issues with it, Your
7 Honor.

8 THE COURT: All right. With that being said,
9 I'm going to advise them to continue their deliberations.

10 MR. CORNWELL: Thank you, Your Honor.

11 MS. GARRICK: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (WHEREUPON, jury deliberations resumed at
14 approximately 12:12 p.m.)

15 (A break was taken.)

16 THE COURT: Bring us our jury.

17 (The jury came into open court at approximately
18 12:16 p.m.)

19 THE COURT: All right. Our jury is back present
20 in the courtroom.

21 Do you have that note? Would you hand that to
22 me, Mr. Bailiff? I need to mark that as a Court's
23 exhibit. Thank you.

24 (WHEREUPON, The Court's Exhibit No. 3 was marked
25 for purposes of the record.)

1 THE COURT: All right. It's my understanding
2 you all wanted to take a break. That's fine. How long a
3 break? Oh, just a ten, fifteen-minute break? All right.
4 That will be fine. I didn't know if you wanted to go to
5 lunch and come back, I just wasn't sure. That will be
6 fine. You can take a 15-minute break.

7 Just please remember, do not discuss the case
8 during that recess. If anyone tries to talk with you,
9 please let me know immediately.

10 Do not do any research on the Internet or
11 independent during that time.

12 When all 12 return, you may start your
13 deliberations back.

14 THE FOREMAN: We would like clarification on
15 something.

16 THE COURT: All right. Yes, sir.

17 THE FOREMAN: Should I come up and ask you?

18 THE COURT: You can ask me right here on the
19 record unless you want to go write me out a note. I know
20 you know how to write them. But if you don't feel
21 comfortable asking me in open court, I'd ask you to return
22 and write out a note or you can ask me --

23 THE FOREMAN: I'll write you a note shortly.

24 THE COURT: All right. Why don't you write the
25 note out, give it to the bailiff, and let me respond to it

1 before you all take your break? Will that be all right?

2 THE FOREMAN: Yes, sir.

3 THE COURT: Is that all right?

4 THE FOREMAN: Yes, sir.

5 THE COURT: All right. Just return to your jury
6 room. Thank you very much.

7 (The jury left open court at approximately 12:18
8 p.m.)

9 (A break was taken.)

10 (Proceedings resumed at or about 12:23 p.m.)

11 THE COURT: They just wanted clarification on
12 possession of a weapon during the crime.

13 "Does that mean the weapon used or not? Intent
14 of use or just on person?"

15 I'm just going to recharge them that part of my
16 charge.

17 MS. GARRICK: Yes, sir.

18 THE COURT: All right. You can bring them in.

19 (Deliberations ceased and the jury came into
20 open court at approximately 12:24 p.m.)

21 THE COURT: All right. I believe before you
22 take your break I'm going to recharge you on just this one
23 section.

24 There's a statute in South Carolina entitled
25 possession of weapon during the commission of or attempt

1 to commit a violent crime under Section 16-23-490.

2 The defendant is charged with possession of a
3 weapon during the commission of or attempt to commit a
4 violent crime. The State must prove beyond a reasonable
5 doubt the defendant visibly displayed a knife during the
6 commission of a violent crime. A knife means an
7 instrument or tool with a sharp cutting blade, whether or
8 not fastened to a handle, which can be used to inflict a
9 cut, a slash, or wound.

10 In order to find the defendant guilty of
11 possession of a weapon during the commission of a violent
12 crime, you must first find the defendant guilty of either
13 committing a violent crime or attempting to commit a
14 violent crime. Armed robbery is a violent crime.

15 If that is not responsive to your question, like
16 I say, I know you know how to write out notes. Upon your
17 return if you'll write me out another note, I will
18 certainly respond.

19 So we'll say you all take a 15-minute break.
20 Let's be back at quarter to 1. You won't have that
21 clock -- it's probably fast or slow -- and if you get back
22 early you may begin your deliberations.

23 Thank you very much.

24 (The jury left open court at approximately 12:26
25 p.m.)

1 THE COURT: All right. Any exceptions?

2 MS. GARRICK: No, Your Honor.

3 THE COURT: From the defense?

4 MR. CORNWELL: No, Your Honor.

5 THE COURT: All right. We'll be awaiting the
6 jury's return and verdict.

7 (WHEREUPON, The Court's Exhibit No. 4 was marked
8 for purposes of the record.)

9 (A break was taken.)

10 (Proceedings resumed at or about 1:04 p.m.)

11 THE COURT: Bring the jury in.

12 (The jury came into open court at approximately
13 1:04 p.m.)

14 THE COURT: All right. Madam Clerk.

15 THE CLERK: Mr. Foreman, have you reached your
16 verdict?

17 THE FOREMAN: Yes, we have.

18 THE COURT: Please pass them up by the bailiff.

19 THE COURT: All right. Thank you very much.

20 Madam Clerk, you may publish the verdict.

21 THE CLERK: Indictment No. 2010-GS-32-1522,

22 State versus Perry Buchanan, as to armed robbery: We, the
23 jury, by unanimous consent find the defendant guilty of
24 robbery.

25 Indictment No. 2010-GS-32-1523, as to possession

1 of a weapon during the commission of a violent crime: We,
2 the jury, by unanimous consent find the defendant not
3 guilty.

4 And it is so signed by Foreperson Dennis Lord.

5 THE COURT: Thank you.

6 Oh, go right ahead, Madam Clerk.

7 THE CLERK: Yes, sir.

8 Mr. Foreman, ladies and gentlemen of the jury,
9 if this is your verdicts, please indicate each of you by
10 raising your right hand, please.

11 All hands raised, Your Honor.

12 THE COURT: Thank you very much, Madam Clerk.

13 Anything additional for the jury from the State?

14 MS. GARRICK: No, Your Honor.

15 THE COURT: From the defense?

16 MR. CORNWELL: Your Honor, I'm not sure if I
17 heard. What was the verdict on the armed robbery?

18 THE CLERK: Robbery.

19 MR. CORNWELL: Oh, it was a guilty on the
20 robbery. Okay.

21 THE COURT: Anything further for the jury from
22 the defense?

23 MR. CORNWELL: No, Your Honor.

24 THE COURT: Thank you very much.

25 Mr. Foreman, ladies and gentlemen of the jury,

1 thank you very much for your service during the trial of
2 this case. Without your participation -- I realize it's
3 not voluntary, but without your participation, we would
4 not be able to be about the very important business of
5 administering your criminal justice system.

6 The good news is as far as court's concerned,
7 you can take the afternoon off. Now, probably to many of
8 you all that has nothing to do with taking the afternoon
9 off. I'm sure many of you have to return to your work.
10 But I'm going to ask you to please call back your juror
11 information number after 10 o'clock in the morning.

12 Call back at 10 o'clock did you say?

13 THE CLERK: Yes, sir, at 10.

14 THE COURT: At 10 o'clock in the morning if
15 you'd please call back.

16 You'll now be known as the balance of the panel.
17 So you may be subject to being recalled for another case
18 this week.

19 All right. Any questions in that regard?

20 THE BAILIFF: Judge, if they will leave their
21 buttons on the corner on their way out, I'd appreciate it.

22 THE COURT: Thank you very much. It's been my
23 pleasure and privilege to be with you all this week.
24 Thank you very much. Please call back at 10 in the
25 morning.

1 Mr. Foreperson, will you meet the Clerk out in
2 the hallway momentarily? Thank you.

3 (The jury was excused and left open court at
4 approximately 1:08 p.m.)

5 THE COURT: All right. Do you have any motions,
6 Mr. Cornwell?

7 MR. CORNWELL: Your Honor, at this time I guess
8 traditionally we'd make the motion to set aside the
9 verdict and find my client not guilty, Your Honor.

10 THE COURT: All right. I would respectfully
11 deny that motion.

12 Any others?

13 MR. CORNWELL: No, Your Honor.

14 THE COURT: Any reason sentencing cannot be
15 imposed at this time?

16 MR. CORNWELL: No, Your Honor.

17 THE COURT: All right. Thank you.

18 Madam Solicitor, do you have anything prior to
19 sentencing?

20 MS. GARRICK: Yes, Your Honor. May I approach?
21 I do have a sentence sheet for strong arm robbery, common
22 law robbery.

23 THE COURT: All right. I still have my notes as
24 far as his prior record's concerned, Solicitor.

25 MS. GARRICK: Your Honor, there has been -- I've

1 done some more research on his prior record and there are
2 many, many more convictions that -- as far as sentencing I
3 would bring to the Court's attention.

4 As before, we were talking about an impeachment
5 situation, but I would like to give you a more full record
6 of his prior convictions.

7 THE COURT: All right.

8 MS. GARRICK: Your Honor, as far as his Georgia
9 convictions, I would bring to the Court's attention that
10 he was convicted in 1978 for three counts of armed robbery
11 and received a 15-year sentence.

12 Your Honor, his rap sheet is one of the most
13 difficult ones to read. I've been doing this a long time
14 and it's very difficult to read.

15 To the best of my knowledge if I could start
16 over with just his South Carolina convictions, and that's
17 to give him the benefit of those out-of-state Georgia
18 convictions that were very difficult, Your Honor, I can
19 confirm or I believe his record in South Carolina to be a
20 March 1992 possession of marijuana, resisting arrest, and
21 malicious injury where he received fines.

22 September of '93, possession of crack cocaine.
23 He got a three-year sentence.

24 In April of '95, he was convicted out of
25 Columbia, which is Richland County, for an ABHAN and a

1 strong arm robbery. He got five years suspended to ten
2 months, credit for time served.

3 THE COURT: Hold on just a minute.

4 Sheriff, will you make sure nobody comes back in
5 this door, please? I have that door locked when I'm
6 conducting court and I don't know why people are coming in
7 and out of it. Thank you.

8 You may continue, Solicitor. I'm at '95,
9 aggravated assault and battery and strong arm robbery?

10 MS. GARRICK: Yes, sir. He got five years
11 suspended to ten months, credit for time served, and five
12 years probation.

13 In April of '96, he was convicted of a
14 shoplifting where he paid a fine. In 1996, it looks like
15 he had a probation or parole revocation and he did four
16 years.

17 December of '98, he has a failure to stop for a
18 blue light. The sentence was three years suspended to
19 time served and one year probation.

20 November of '99, he was convicted of a
21 shoplifting third or greater. This is out of Irmo. He
22 got two years suspended to five years probation and drug
23 court was ordered.

24 January of '02, out of Richland County, he has a
25 shoplifting third or subsequent, five years. In June of

1 '02, convicted of shoplifting, simple assault. He paid a
2 fine.

3 If you go back and insert August of '01 was
4 another shoplifting where he paid a fine.

5 February of '05, a shoplifting. A conviction is
6 noted but no disposition. August of '05, failure to stop
7 for a blue light, three years.

8 February of '08, Your Honor, he had been
9 indicted for armed robbery out of Richland County. He
10 pled guilty to attempted armed robbery. He got a
11 three-year sentence.

12 Your Honor, that is the conviction that we had
13 relied upon to serve the life without parole notice on him
14 should he have been convicted of the armed robbery here.
15 Because we had served that notice, we were able to get
16 copies of that indictment, that warrant, that sentence
17 sheet, and we had to have those documents, as you know, to
18 serve that life without parole notice.

19 Your Honor, I would just ask the Court, or I
20 would like to tell the Court that that attempted armed
21 robbery that he pled guilty to out of Richland County in
22 February of '08, that that was where he pulled and
23 presented a knife on a clerk at Burlington Coat Factory as
24 he was stealing merchandise from the business.

25 Your Honor, based on his history with the

1 criminal justice system, based upon the nature of this
2 offense, Your Honor, I am asking for you to consider
3 giving him a 15-year sentence. And Investigator Wade
4 would like to address you. And we do not have any further
5 victim impact.

6 THE COURT: All right. And 15 years, that's the
7 sentencing range?

8 MS. GARRICK: Yes, sir.

9 THE COURT: Thank you.

10 All right. Detective Wade, I'll be glad to hear
11 from you.

12 INVESTIGATOR WADE: Yes, Your Honor. I would
13 also like to ask for the 15 years also due to the fact of
14 his rap sheet and how many man hours we put into this and
15 how we had to inconvenience the victim so much in this.
16 That's pretty much what I had to say, Your Honor.

17 THE COURT: All right. Thank you very much.

18 Anything further, Solicitor?

19 MS. GARRICK: No, Your Honor.

20 THE COURT: All right. Mr. Cornwell, if you and
21 your client would come around, please.

22 I will be glad to hear from you, Mr. Cornwell.

23 MR. CORNWELL: May it please the Court, Your
24 Honor.

25 As you've probably heard already, my client is

1 50 years old. He's a resident of Lexington County and --
2 Richland County, I'm sorry, Your Honor -- and one of the
3 first things he tells me, whenever, whatever sentence is
4 handed down, whatever happens to him today, Your Honor,
5 this is done.

6 And I know he's probably had the same thoughts
7 before when he got in trouble before and it's a thought
8 that I'm sure all my clients have when they get in
9 trouble, but I've spoken with Mr. Perry Buchanan. I went
10 to jail to see him at Lexington County and one of the
11 first things he told me is, you know, Listen, I need to do
12 something about my drug problem. This is a guy who back
13 in 1978 got convicted of armed robbery, spent a good deal
14 of time in jail, got out of jail and tried to put the
15 pieces of his life back together because of a decision he
16 made when he was 17.

17 Unfortunately, Mr. Buchanan kind of fell to the
18 temptation of drugs, Your Honor, and that's been in his
19 life for a long time now. And if you look at his rap
20 sheet, you look at the kind of charges he's been getting,
21 it's so stereotypical of somebody who has an addiction
22 issue, mostly shopliftings and stuff of that nature, Your
23 Honor.

24 And that's not an excuse in any way. I know the
25 Court, any judge has heard the same old story and sad song

1 before, and that's probably how they look at it. A lot of
2 what happens at that point is what the defendant chooses
3 to do with it.

4 And in that regard, Your Honor, he has been in
5 contact with several agencies that kind of specialize in
6 drug treatment. He's been in contact with the program
7 down in Charleston, South Carolina Strong. He's been in
8 contact with Troy up in North Carolina which is a very
9 similar program, it's a two-year program. I think they're
10 all based on that program out of San Francisco, Your
11 Honor. And Hope Haven, Your Honor, is another program
12 he's talked to me about, and he's been in contact with
13 those individuals.

14 Mr. Buchanan has no illusions about what could
15 happen to him today. He knows very well that he just was
16 found guilty of a strong arm robbery. He knows very well
17 he has an extensive criminal record, Your Honor. We're
18 asking for any leniency you can extend in this case, Your
19 Honor.

20 This is a man who actually tried to come clean.
21 He was arrested, tried to come clean about what he'd done.

22 Your Honor, this was never a situation where he
23 was denying he didn't take anything from the store, Your
24 Honor. It was just an issue of whether or not he had a
25 weapon, and I think the jury saw it our way.

1 Had Mr. Perry Buchanan had an opportunity to
2 plead straight up to a strong arm robbery before, he
3 probably would have accepted that offer, Your Honor. But
4 that's just not the nature of the machine and the nature
5 of our negotiations, Your Honor.

6 We're here today because he was found guilty by
7 a jury of his peers of a crime that he did commit, a crime
8 he would have freely admitted to, Your Honor.

9 We'd ask that you consider a probationary
10 sentence. We know that in all unlikelihood that that's
11 not going to happen, but we would ask you to consider that
12 and allow him to go and participate in one of these drug
13 programs.

14 We've also discussed the programs available to
15 him while incarcerated, which is ATU, Your Honor. I'm not
16 sure what the status of that program is, but just the fact
17 that he would even broach that subject and talk about it
18 shows to me that he's a person who's dedicated about
19 getting this problem behind him.

20 He saw what could have happened today as a
21 result of his inability to get ahold of his drug issues,
22 Your Honor. He could have been in jail for the rest of
23 his life. And that's definitely not something that
24 Mr. Buchanan wants. It's not something he wants for
25 himself, it's not something he wants to put his family

1 through. He doesn't want to continue doing these things,
2 Your Honor. He doesn't want that. And so he has made the
3 conscious decision to address that issue, Your Honor.

4 And it's not just drugs. He made decisions. He
5 had a chance to say no or not do these things, and he
6 understands that, Your Honor. He's up here owning up to
7 what he did. He's up here admitting his guilt. He's up
8 here throwing himself on the mercy of the Court and asking
9 from you whatever leniency you can extend in this matter,
10 Your Honor.

11 THE COURT: Thank you, Mr. Cornwell.

12 Mr. Buchanan, anything you'd like to say?

13 THE DEFENDANT: Yes, sir.

14 First, I would like to apologize to Walmart,
15 Mrs. Shirley Smith, and the Court for wasting you all's
16 time being up here with this foolishness which, like I
17 say, I'm 50 years old, I know I have an extensive record.
18 I have a long extensive drug problem.

19 With me coming out of the system, Your Honor,
20 with no family and the reentry program is very badly
21 broken, you know what I'm saying? When you come to --
22 when you get out, no place to stay, no job, I mean it's
23 just so much.

24 You know, I'm not making excuses for what I did.
25 I mean I know it's the chance you'll probably give me, you

1 know, 15 years today, but I've been trying to own up to
2 this situation for the last 13 months and two weeks. And
3 I'm very sorry I did this, but I mean, even if I go to
4 prison today for 15 years and I get out, I mean, it's the
5 same thing. I mean, I'm being released, no place to stay,
6 no job, no family. I never had an opportunity to get in
7 one of these programs, you know what I'm saying?

8 THE COURT: Never had an opportunity to what?

9 THE DEFENDANT: To get in one of these programs,
10 to try to get on my feet. So basically, I mean, I just
11 went back to what I know. I mean, walking the street, no
12 place to stay, no job. I mean, like I say, I'm not trying
13 to make excuses, you know what I'm saying, but I would
14 like to apologize again to the victim, Ms. Smith, Walmart,
15 and to the Court, and just hope you could show some type
16 of leniency on me today, Your Honor.

17 MR. CORNWELL: And, Your Honor, I forgot to
18 mention, he's been in jail, according to my calculations,
19 for about 410 days, Your Honor, just for the Court's
20 knowledge.

21 THE COURT: All right. Thank you.

22 Anything further, Mr. Buchanan?

23 THE DEFENDANT: That's it, Your Honor.

24 THE COURT: Well, Mr. Buchanan, I'm not without
25 empathy, but there's some things I can't fix. There's

1 some things, I don't know, there's probably plenty of
2 talented people with a lot more talent than I have in this
3 courtroom, if I have any at all, that maybe could fix
4 those type of issues, but, you know, that train kind of
5 left the tracks so long ago that it's almost a distant
6 memory. It's not even in our vision anymore.

7 You know, if you're motivated by needing money
8 to get drugs, if it's a drug addiction, I wish I had that
9 answer. I think the jury showed mercy, quite frankly.
10 And, of course, you know, they followed the law. The
11 State has the burden of proving this case beyond a
12 reasonable doubt.

13 All right. 2010-GS-32-01522, Perry Bernard
14 Buchanan, common law robbery, the defendant's committed to
15 the State Department of Corrections for a determinate term
16 of 15 years. He shall be given credit for all time
17 served.

18 How much did you say that was, Mr. Cornwell?

19 MR. CORNWELL: About 410 days.

20 THE COURT: Four hundred and ten days?

21 MR. CORNWELL: Yes, Your Honor.

22 THE COURT: Good luck to you, Mr. Buchanan.

23 MS. GARRICK: Your Honor, will you sign the
24 appropriate paperwork on the possession of a weapon during
25 the commission of a violent crime to judicially dismiss

1 that one?

2 THE COURT: They indicated not guilty.

3 MS. GARRICK: I thought that they weren't going
4 to do that.

5 THE COURT: I thought they were not either,
6 Solicitor, but they did that on that form.

7 Thank you very much. Good luck to you, Ms.
8 Smith.

9 (The proceedings were concluded.)

10 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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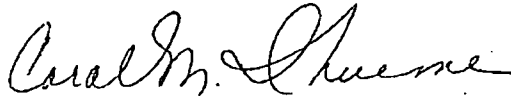
1 CERTIFICATE OF REPORTER

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3
4 STATE OF SOUTH CAROLINA)5 COUNTY OF LEXINGTON)
6
7

8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, South Carolina, on the 25th and 26th
15 days of April, 2011.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19 February 3, 2012
20

21 
22

23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

STATE OF SOUTH CAROLINA

- YS -

TRANSCRIPT OF RECORD

PERRY BERNARD BUCHANAN,

10-GS-32-1522

Defendant.

September 22, 2011
Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX MCMAHON, Judge.

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

J. ANGELA GARRICK, Asst. Solicitor
Attorney for the State

CASEY D. CORNWELL, Asst. Public Defender
Attorney for the Defendant

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 September 22, 2011.)

3 THE COURT: Let me take up Mr. Cornwell's case
4 with Mr. Buchanan.

5 MS. GARRICK: Your Honor, this is a motion for
6 reconsideration filed by Mr. Cornwell on behalf of
7 Mr. Buchanan

8 THE COURT: Yes, sir. Do you have a motion,
9 Mr. Cornwell?

10 MR. CORNWELL: Your Honor, we had a motion to
11 reconsider filed on Perry Buchanan's behalf. After
12 speaking with my client, he tells me he wishes to
13 withdraw this motion.

14 THE COURT: Thank you, Mr. Cornwell.
15 You are Perry Buchanan?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Buchanan, I have pending
18 before me a notice of motion and motion to reconsider
19 the sentence that I imposed on you 26 April of 2011. Do
20 you wish to withdraw this motion?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: You do not want to go forward?

23 THE DEFENDANT: No, sir.

24 THE COURT: You are doing this freely and
25 voluntarily?

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THE DEFENDANT: Yes, I am.

THE COURT: Thank you very much. The motion
is withdrawn.

MR. CORNWELL: Thank you, Your Honor.

MS. GARRICK: Thank you, sir.

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for Lexington County. South Carolina on the 22nd day of September, 2011.

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

November 17, 2011

L Coconut Pantsari

Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PERRY BERNARD BUCHANAN,

APPELLANT

ANDERS BRIEF OF APPELLANT

BREEN RICHARD STEVENS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether trial court reversibly erred by admitting evidence of Appellant's statement to law enforcement where it was taken while Appellant was in custody, and where it was involuntarily made under circumstances of intimidation and deception due to Appellant's belief that he was under arrest for shoplifting rather than armed robbery while being interrogated at the police station?

STATEMENT OF THE CASE

Appellant Perry Bernard Buchanan was indicted by the Lexington County grand jury on June 7, 2010 for armed robbery, and of possession of a weapon during the commission of a violent crime. R. 4, lines 4-9; R.226 His case proceeded to trial before the Honorable R. Knox McMahon, and a jury. Appellant was represented by Casey Cornwell (Counsel), while the state was represented by J. Angela Garrick and Colleen E. Dickson. R. 1.

The jury found Appellant guilty of the lesser included offense of strong armed robbery, and not guilty of possession of a weapon during the commission of a violent crime. R. 204, line 21—R. 205, line 12. The trial court sentenced Appellant to fifteen years incarceration.¹ R. 217, lines 13-17; R.228.

¹ A post-trial motions hearing was also held on September 22, 2011, based upon Appellant's motion to reconsider his sentence. However, Appellant withdrew the motion at the hearing. R.220.

STATEMENT OF THE FACTS

Appellant was riding as a passenger in a Nissan XTerra on Jarvis Klapman Boulevard when the vehicle was stopped by police at approximately 4:40 pm to 5:00 pm on March 12, 2010, for suspicion of shoplifting from a nearby Walmart. R. 104, line 4—R. 107, line 9. Appellant and the driver, Tonya Doby, were handcuffed, and later taken to the West Columbia Police Department for interrogation. R. 28, lines 7-16; R. 108, ln. 4-6.; R. 120, lines 8-11. As acknowledged by investigator Bruce Wade (Wade) of the West Columbia Police Department, Appellant was under arrest and not free to go. R. 120, lines 22-25.

At the station, Wade Mirandized Appellant in the interrogation room with a written waiver form, which Appellant initialed and signed. R. 29, line 3—R. 31, line 4; R. 121, line 4—R. 122, line 9. Appellant purportedly gave an oral statement to Wade at approximately 5:59 pm confessing that he stole a computer from Walmart, and had an unopened box cutter in his hand. R. 33, line 2—R. 34, line 13; he R. 123, line 10—R. 125, line 11. When he attempted to get Appellant to give a written statement, Appellant asked Wade "why would he be talking to investigators on something simple as a shoplifting." R. 4, line 23—R. 35, line 1. Wade "explained to him that once he presented a weapon during the shoplifting, it was no longer a shoplifting, that made it an armed robbery, and at that point [Appellants] told me he couldn't give me a written statement." R. 35, lines 1-5. According to Wade, the interrogation occurred over a period of approximately one hour. R. at 5, lines 19-22.

Counsel objected to the introduction of Appellant's confession at the pretrial Jackson v. Denno² hearing, and contemporaneously during trial itself. R. 17, lines 6-11; R.

² 378 U.S. 368, 84 S.Ct. 1774 (1964).

38, lines 2-16; R. 122, lines 10-15; R. 123, lines 22-25. Specifically, Counsel asserted the following:

[U]nder Jackson v. Denno I know there are several things that you have to look at.

One thing that I want to focus on in particular is that he was under custody the entire time he was under arrest.

.....

[W]hat I would suggest is that just being under arrest itself and being questioned in that manner, Your Honor, may have contributed somehow—any kind of statement may be tainted by that, Your Honor, the duress under that situation.

That's what we would base our motion on and we'd ask the Court to find in our favor.

R. 38, lines 2-16. In response, the State conceded that Appellant was in custody, but argued that the statement was voluntarily given. R. 38, line 19—R. 39, line 6.

The trial court found that Appellant was in custody, but freely and voluntarily waives his constitutional rights after he was advised of them. R. 40, lines 1-10. As a result, the State not only elicited testimony from Wade regarding Appellant's oral confession, but also introduced Wade's personal written notes regarding Appellant's oral confession and published them to the jury. R. 122, lines 10-25; R. 123, line 20—R. 125, line 11.

The jury found Appellant guilty of the lesser included offense of strong armed robbery, and acquitted of possession of a weapon during the commission of a violent offense. R. 24, line 21—R. 25, line 11. Trial court imposed a sentence of 15 years incarceration. R. 217, lines 13-17. This appeal follows.

ARGUMENT

The trial court reversibly erred by admitting evidence of Appellant's statement to law enforcement where it was taken while Appellant was in custody, and where it was involuntarily made under circumstances of intimidation and deception due to Appellant's belief that he was under arrest for shoplifting rather than armed robbery while being interrogated at the police station.

Given the totality of the circumstances surrounding Appellant's statement, his confession was obtained in custody of police, and under circumstances of intimidation and deception, and without the full awareness of the nature and consequences of the rights being abandoned. Therefore, Appellant's waiver of his Miranda rights was not knowing or voluntary, and the confession should have been suppressed.

Additionally, Appellant was prejudiced by the trial court's erroneous admission of his confession due to the State's repeated use of it throughout the trial. As a result, Appellant respectfully requests reversal of his conviction, and remand for a new trial.

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." Jackson v. Denno, 378 U.S. 368, 378, 84 S.Ct. 1774, 1781 (1964). Additionally, "[e]ven absent the accused's invocation of the right to remain silent, the accused's statement during a custodial interrogation is inadmissible at trial unless the prosecution can establish that the accused in fact knowingly and voluntarily waived [Miranda] rights when making the statement." State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 400 (Ct. App. 2010). Therefore, "[i]n order to introduce a confession arising from custodial interrogation, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken

in compliance with Miranda v. Arizona, 84 U.S. 368, 84 S.Ct. 1774, 16 L.Ed.2d 694 (1964).” Id. 390 S.C. at 512, 702 S.E.2d at 400.

The United States Supreme Court specified two distinct dimensions of inquiry regarding the waiver of Miranda rights: (1) that the waiver was “voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception;” and (2) that the waiver was “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” Id. 390 S.C. at 513, 702 S.E.2d at 401 (quoting Berghuis v. Thompkins, ___ U.S. ___, 130 S.Ct. 2250, 2260 (2010)). Whether these dimensions of inquiry are satisfied is distilled to the test of whether the defendant’s will was overborne by the totality of the circumstances surrounding the confession. Id.

In the case at bar, Appellant was questionably interrogated while in the custody of law enforcement at the police station. The State admitted as much to the trial court when the prosecutor said, “certainly I think it’s clear that Mr. Buchanan was in custody.” R. 38, lines 19-20. Therefore, Appellant’s statement arose from a custodial interrogation.

Furthermore, Appellant is waiver of Miranda rights was not made freely and voluntarily. First, Appellant was handcuffed, arrested, and involuntarily take into the interrogation room of the police station where he was interrogated for approximately one hour. Under these intimidating circumstances, and while under the impression he was arrested for shoplifting, Appellant eventually made an oral statement to Wade regarding the incident at Walmart. However, once he revealed that she would actually be charged with armed robbery, Appellant immediately refused to cooperate. Therefore, Appellant’s

confession was not voluntary in the sense that it was the product of free and deliberate choice; rather, it was the result of both intimidation and deception.

Additionally, Appellant comments to Wade readily indicate that he was not aware of the nature or consequences of the rights being abandoned at the time he gave the oral confession. Specifically, Wade testified to the following at Denno hearing:

A. During the interview, I asked him to give me a written statement and he told me why was I talking to him, why would he be talking to investigators on something simple as a shoplifting. And I explained to him that once he presented a weapon during the shoplifting, it was no longer a shoplifting, that made it an armed robbery, and at that point he told me he couldn't give me a written statement.

.....

Q. And what, if anything, did you tell him at that point?

A. I told him, "You already confessed to this crime and I'm going to tell in court what you already told me."

Q. And did he, in fact, give you a written statement?

A. No, he didn't.

R. 34, line 23—R. 35, line 11. This, is readily apparent from Wade's own comments that Appellant's waiver of his Miranda rights was not made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon them. Accordingly, Appellant's statement during a custodial interrogation was inadmissible because he did not in fact knowingly and voluntarily waive his Miranda rights when making the statement.

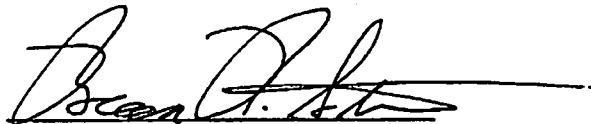
Moreover, Appellant was prejudiced by the improper admission of his confession. See, e.g., Arizona v. Fulminante, 499 U.S. 279, 295, 111 S.Ct. 1246, 1257 (1991) (holding admission of involuntary confessions is a trial error, and a federal constitutional error is

reversible if the error was harmless beyond a reasonable doubt). Here, the State repeatedly exploited this constitutional error and compounded its prejudicial effect to Appellant by reminding the jury of Appellant's oral confession in opening statements, in trial testimony, and in closing argument. R. 51, lines 20-5; R. 123, line 1—R. 125, line 19; R. 179, line 3—R. 180, line 3. Literally, from beginning to end, the jury was inundated with the knowledge of Appellant's confession. As a result, the error cannot be deemed harmless beyond a reasonable doubt. Therefore, Appellant respectfully requests reversal of his conviction, and remand for new trial.

CONCLUSION

For the foregoing reasons, Appellant Perry Buchanan respectfully requests reversal of his conviction, and remand for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen R. Stevens", with a long horizontal flourish extending to the right.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of September, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PERRY BERNARD BUCHANAN,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Perry Bernard Buchanan states:

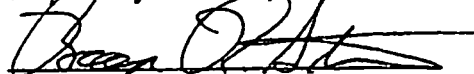
1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on April 25-27, 2011, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Perry Bernard Buchanan.

Respectfully submitted,



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of September, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PERRY BERNARD BUCHANAN,

APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment;
- (2) Trial transcript (April 25-26), pp. 1-219;
- (3) Post-trial motion hearing transcript (September 22, 2011), pp. 1-5;
- (4) State's Exhibit No. 10 (Notes 3-12-10);
- (5) Sentence sheet.

I certify that this designation contains no matter which is irrelevant to this appeal.

September 14th, 2012.



Breen Richard Stevens
Appellate Defender

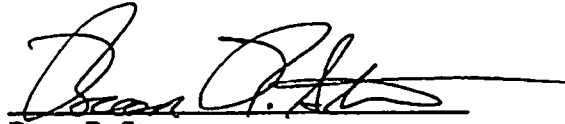
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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."

September 14, 2012

A handwritten signature in black ink, appearing to read "Breen R. Stevens", written over a horizontal line.

Breen R. Stevens
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

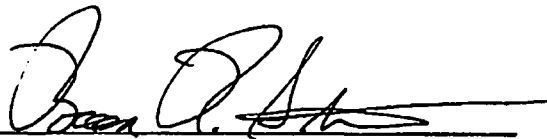
V.

PERRY BERNARD BUCHANAN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of appellant and Record on Appeal have been served on Perry Bernard Buchanan, #281305 at Kirkland Correctional Institution, this 13th day of September, 2012.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of September, 2012.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: _____.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Perry Bernard Buchanan, Appellant.

Appellate Case No. 2011-200586

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2013-UP-319
Submitted June 3, 2013 – Filed July 17, 2013

APPEAL DISMISSED

Appellate Defender Breen Richard Stevens, of Columbia;
and Perry Bernard Buchanan, pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.¹

HUFF, WILLIAMS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FILED
FORM 5

ORIGINAL

STATE OF SOUTH CAROLINA 2013 OCT 24 AM 11:11

COUNTY OF Lexington

BETH A. GARRIGUE
CLERK OF COURT
LEXINGTON, SC

IN THE COURT OF COMMON PLEAS

Perry B. Buchanan

Full name and prison number (if any) of Applicant.

281305

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2013 CP 3203673

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Vateree Correctional Inst., Reubert, S.C.
2. Name and location of Court which imposed sentence Lexington Court of GS
3. Name(s) of co-defendant(s) (if any) TONYA DOBY
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-32-1522
 - (b) Armed Robbery / Strong Arm Robbery
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 26, 2011
 - (b) Fifteen (15) years

A TRUE COPY
JAC
Lex. Co. C.C.P., G.S. & F.C.
Revised 3/2003

- (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. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted June 3, 2013 - Filed July 17, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Lack of Jurisdiction on the circuit court LED
 (b) Ineffective Assistance of Counsel / Appellate Counsel
 (c) Violation of Due Process / Abuse of Discretion 7/11/04 A 0:17

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Attached

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
 (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. DIRECT APPEAL

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. SC. COURT OF APPEALS

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. APPEAL DISMISSED / REMITTITUR

ii. _____

iii. _____

FILED

iv. _____

(d) the date of each such disposition:

i. Submitted JUNE 3, 2013 - Filed July 17, 2013 A 0:17

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: NO

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. ALL OF THE GROUNDS IN SECTION (10)

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. SC. COURT OF APPEALS

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) STATEMENT/MIRANDA(b) CHAIN OF CUSTODY(c) DID NOT FIND THESE'S ERROR'S UNTIL AFTER MY APPEAL WAS FILE

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? NO

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OCT 24 A 0:17

DETHA GARRICK
CLERK OF COURT
LEXINGTON

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- CASEY D. CORNWELL - Public DEFENDER ^{FIFTEENTH JUDICIAL CIRCUIT} LEXINGTON
 - DAVID M. MAULDIN - Public DEFENDER LEXINGTON
 - BREEN R. STEVENS / APPELLANT DEFENDER
- (b) the proceedings at which each such attorney represented you:
- MR. CORNWELL AT TRIAL 4-26-11
 - MR. MAULDIN AT MOTION TO RECONSIDER 9-22-11
 - MR. BREEN R. STEVENS APPEAL

19. State clearly the relief you seek in filing this application:

VACATE SENTENCE AND CONVICTION

20. Are you now under sentence from any other court that you have not challenged?

NO

① section (10)

FILED

Court lacked subject matter jurisdiction

2013 OCT 24 A 0:17

appellant contends that the trail court lacked ~~subject matter~~ jurisdiction. In allowing him to be convicted of the lesser included offense of Armed Robbery, when the evidence of the lesser was not factually sustainable under any view of the evidence.

A criminal defendant is entitled to be tried only on indicted offense, a defendant must ^{be} convicted, if convicted at all, of the particular offense charge in the bill indictment.

Appellant submits to this court that the evidence that was presented to the jury was insufficient and that the court erred, in failing to direct a verdict in his favor.

Perry Buchanan

FILED

2013 OCT 24 A 0:17

Ineffective assistance of counsel/appellant counsel SETH A. CARRIST
CLERK OF COURT
LEXINGTON, KY

My lawyer was ineffective- in failing to investigate, and to surpress evidence that has major discrepancis, that could have effected the out come of the trial, he also fail to make an standing objection or motion in open court, to ask the court for the case to be dimissed for lack of evidence, so it could be further reviewed ~~In~~ the upper courts,

Appellant counsel was ineffective- in failing to investigate after it was brought to his attention, he still fail to

acknowlegde these errors after I gave him the infromation.

Perry Buchanan

③
③

violation of due process

FILED

the court was in error in denying appellant motion for a directed verdict due to insufficient evidence. the due process clause protects the accused a conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he or she is charge . petitioner submits to this court that this is an "error" in law and a "clear" error on the trial court. there was not any substantial circumstantial evidence proven beyond a reasonable doubt at trial that the petitioner committed a robbery of any kind.

petitioner further submits that the only thing proven beyond a reasonable doubt was "shoplifting" which the court fail to charge to the jury.

abuse of discretion

Appellant contends that by failing to grant motion for a directed verdict, and convicting him of a un-indicted offense. the ruling amounted to substantial miscarriage of justice.

Perry Buchanan

ORIGINAL

STATE OF SOUTH CAROLINA

FILED

VERIFICATION

County of LEXINGTON

2013 OCT 24 A 11

I, _____, 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.

Perry Buchanan

SWORN to and subscribed before me this 22
day of October, 2013.

Manuel Wils (L.S.)
Notary Public

My Commission Expires: 3/8/2020

2013CP3203673

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

FILED
2013 OCT 24 A D 18

I, _____, 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.

Perry Buchanan
Applicant

SWORN or affirmed to and subscribed before me this
22 day of October, 2013

Manuel W.
Notary Public

My Commission Expires: 3/8/2020

ORIGINAL

2013 CP 3203673

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
Perry B. Buchanan,	)	Case No. 2013-CP-32-3673
S.C.D.C. No. 281305,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief October 24, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the June 2010 term of the Lexington County Grand Jury for Robbery while Armed with a Deadly Weapon (2010-GS-32-1522). Applicant was represented by Casey D. Cornwell, Esq. On April 25-16, 2011, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon, where he was convicted of Armed Robbery and found not guilty of Possession of a Weapon during Commission of a Violent Crime. Judge McMahon sentenced Applicant to fifteen years imprisonment for Armed Robbery.

A Notice of Appeal was filed and perfected on Applicant's behalf. Following briefing, the South Carolina Court of Appeals affirmed his convictions and sentences by unpublished opinion. State v. Perry Bernard Buchanan, 2013-UP-319 (S.C. Ct. App. July 17, 2013). The Remittitur was sent on August 9, 2013.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Lack of Subject Matter Jurisdiction
2. Ineffective Assistance of Counsel
3. Ineffective Assistance of Appellate Counsel
4. Violation of Due Process/Abuse of Discretion

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.

Respondent submits that the Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In this case, Applicant was indicted by the Lexington County grand jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it

is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). Applicant here cannot show any irregularity, because the indictments in question are sufficient on their face. Therefore, Respondent would move for summary judgment on this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

IV.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625, citing *Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the

record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Therefore, Respondent requests an evidentiary hearing on this allegation also.

VI.

Applicant further alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

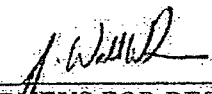
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

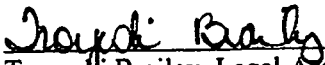
Dec 17th, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE ELEVENTH CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2013-CP-32-3673
	)	
PERRY B. BUCHANAN, # 281305	)	
	)	
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:

Aimee Zmroczek, Esq.
Post Office Box 11961
Columbia, SC 29211

DATED this 17th day of December, 2013


Troyeshi Brailey, Legal Assistant
For Respondent

Court of Common Pleas

Transcript of Record
13-CP-32-3673

April 17, 2014
Lexington, South Carolina

The Honorable William P. Keesley, Judge.

Aimee Zmroczek, Esquire
Attorney for the Applicant

Walt Whitmire, Esquire
Attorney for the Respondent

Stacy L. Sheppard, RPR
Circuit Court Reporter

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1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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4	A-2	Life Without Parole Notice	12	12
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1 (The following proceedings were held on
2 April 17, 2014.)

3 **MR. WHITMIRE:** Your Honor, Respondent now calls
4 Perry Buchanan v. State of South Carolina, case
5 number 2013-CP-32-3673.

6 Mr. Buchanan was indicted for armed robbery.
7 He was represented by Mr. Casey Cornwell. On April
8 25th, 2011, the State called its case for trial.
9 Mr. Buchanan was served notice for the State's
10 intent to seek life without the possibility of
11 parole, provided he was convicted, for armed
12 robbery. The jury returned a conviction for common
13 law robbery and acquitted him on the weapons charge
14 that was also -- what he was also indicted for and
15 for armed robbery. He was sentenced to 15 years
16 imprisonment by Judge McMahon.

17 A timely notice of appeal was filed on his
18 behalf and perfected pursuant to Anders v. State --
19 well, Anders v. California. The Court of Appeals
20 affirmed his conviction and sentence in an
21 unpublished opinion filed July 17th of 2013. A
22 remittitur soon followed in August.

23 Mr. Buchanan has filed a timely notice of -- a
24 notice application for post-conviction relief. His
25 attorney has also -- actually, you have not --

1 strike that, Your Honor.

2 Ms. Zmroczek is present and ready to proceed.
3 I just ask Ms. Zmroczek to put his allegations he is
4 pursuing today on the record.

5 **THE COURT:** Yes, ma'am.

6 **MS. ZMROCZEK:** Thank you, Your Honor. This
7 morning Mr. Buchanan would like to proceed on
8 several of his allegations. The first, Your
9 Honor -- let me pull his application just so I make
10 sure I read them correctly.

11 Your Honor, the first allegation that he is
12 raising is a subject matter jurisdiction allegation,
13 and it has to deal with the -- he claims that the
14 indictment wasn't filed pursuant to Rule 3(c) prior
15 to trial.

16 The second allegation, Your Honor, that he is
17 wanting to move forward on was an ineffective
18 assistance of counsel for failing to request a
19 shoplifting charge, failing to object to the judge's
20 charges and failing to investigate the claim,
21 including failing to send certain items to be tested
22 at SLED.

23 And he also, Your Honor, has a claim -- he
24 wanted me to make sure that he understood -- that I
25 put on the record that -- the abuse of discretion

1 claim from the judge, and I explained to him that
2 that would fall under the failing to object to the
3 charges. And, Your Honor, he believes that these
4 are all a violation of his due process rights.

5 **MR. WHITMIRE:** May it please the Court. Your
6 Honor, the Respondent would make a motion for
7 summary judgment on the allegation that the trial
8 court lacked subject matter jurisdiction. Pursuant
9 to Gentry v. State, an indictment is notice
10 document. Any minor defect is waived when the State
11 calls its case.

12 If Your Honor is not inclined to grant that
13 now, the evidence will show he was aware that he was
14 -- had been charged with armed robbery, indicted and
15 had an arrest warrant served on him.

16 **THE COURT:** Motion for summary judgment is
17 denied.

18 Call your witness.

19 **MS. ZMROCZEK:** Thank you, Your Honor. At this
20 time, I call Perry Buchanan.

21 **THE COURT:** Come up, please.

22 PERRY B. BUCHANAN,

23 having been duly sworn, testified as follows:

24 **THE CLERK:** If you'll have a seat and state
25 your name for the record, please.

1 **THE WITNESS:** Perry Buchanan.

2 DIRECT EXAMINATION

3 BY MS. ZMROCZEK:

4 **Q** Mr. Buchanan, where are you currently housed?

5 **A** Evans Correctional Institution.

6 **Q** When were you arrested for your charge in
7 Lexington County?

8 **A** 2010, March the 12th.

9 **Q** When did you -- when you were arrested, where
10 did you go?

11 **A** Lexington County Detention Center.

12 **Q** How long did you remain there?

13 **A** Thirteen months and some odd days.

14 **Q** Did you get out before any trial?

15 **A** No, I did not.

16 **Q** What were you charged with?

17 **A** Armed robbery and possession of a weapon during
18 commission of a violent crime.

19 **Q** Armed robbery and then -- was it two charges?

20 **A** Yes, two indictments.

21 **Q** Did you have more charges than that?

22 **A** Yes, I did. I had criminal conspiracy, I think
23 that was it, but I never knew what happened to that
24 charge.

25 **Q** Were you try -- what charges were you tried on?

1 **A** Just on armed robbery with a deadly weapon and
2 possession of a weapon during commission of a
3 violent crime.

4 **Q** Did you ever -- how many times did you meet
5 with your attorney?

6 **A** Mr. Cornwell came to see me probably two or
7 three times.

8 **Q** Did you review the discovery with him?

9 **A** Well, no, not really. He just -- he came down
10 and spoke to me on some things and gave me -- he
11 gave me my discovery, but a lot of things in there
12 that I wasn't aware should have been there, a lot of
13 defects was in there that I didn't know anything
14 about till four years --

15 **Q** Did you ever --

16 **A** -- up till now.

17 **Q** What did you discuss with him that you were
18 concerned with that was in the discovery?

19 **A** Well, basically, the issues that I have now, I
20 didn't know these issues then about the sufficiency
21 of the indictments, forensic analysis, I mean --
22 fingerprints. Anything to connect me to this
23 weapon, I don't have, and I'm pretty sure the State
24 don't have either because it wasn't anything to
25 connect me to this weapon at all.

1 **Q** When you were arrested and he provided you the
2 discovery and it said that you were charged with
3 armed robbery with a weapon and there wasn't -- was
4 there a weapon listed in the evidence?

5 **A** Yes, it was.

6 **Q** Did you ask that it be tested?

7 **A** Well, I told him that I never had a weapon.
8 And he told me that -- well, they had called me up
9 to the courtroom and tried to get me to -- he tried
10 to get me to accept a guilty plea for 8 to 15 years
11 for attempted armed robbery. And I told him, I
12 said, Man, I can't do that because I didn't have a
13 weapon. I said, You must be hadn't -- didn't look
14 at the surveillance tape. He said, Yeah, I watched
15 the surveillance tape and, you know, I think this is
16 the best deal you can get.

17 So after I said that I wanted to view the tape
18 with him, he came back about two weeks later and
19 said that, Well, Mr. Buchanan, I got to give you
20 credit; the tape back up everything you says. It
21 doesn't show you being aggressive. It doesn't show
22 you with a weapon. He said, It's no way the State
23 could get a conviction for armed robbery.

24 Matter of fact, he said he don't think the
25 Solicitor's Office was going to pursue an armed

1 robbery, said I might have to sit a while. So I
2 said, Okay, I don't have a problem with that.

3 Q I'm going to hand you two documents and ask if
4 you can identify these?

5 A Yes. This is the West Columbia Police Receipt
6 of Property.

7 Q So the list of evidence, items in evidence;
8 correct?

9 A Yes.

10 Q And what's the other document?

11 A This is a letter that I wrote to SLED
12 headquarters concerning the indictments and the
13 warrant numbers concerning these cases about this
14 weapon. And they wrote me -- under the Freedom of
15 Information Act. And they wrote me back said that
16 there was nothing submitted to their laboratory for
17 testing connected to these cases. There's nothing
18 in their data banks.

19 MS. ZMROCZEK: Your Honor, at this time, I'd
20 like to submit these into evidence as Applicant's
21 Exhibit 1.

22 THE COURT: Any object --

23 MR. WHITMIRE: Objection on foundation
24 currently, just Applicant' hasn't testified who wrote
25 the letters and when he received them.

1 **THE COURT:** Do you wish to be heard?

2 BY MS. ZMROCZEK:

3 **Q** When did you -- Mr. Buchanan, when did you
4 write SLED under the Freedom of Information Act?

5 **A** I wrote them -- it was around December of 2013.

6 **Q** Did they respond to you?

7 **A** Yes, they did.

8 **Q** When did they respond to you?

9 **A** January -- I got this letter January, around
10 the 10th.

11 **Q** So they mailed you the letter -- that letter in
12 your hand --

13 **A** Matter of fact, I got the envelope right here
14 and I can tell you exactly when I received it. I
15 received this letter from SLED headquarters January
16 the 9th.

17 **MS. ZMROCZEK:** Your Honor, at this time, we'd
18 like to submit them into evidence.

19 **THE COURT:** Any objection?

20 **MR. WHITMIRE:** Provided he just names who sent
21 him the release, that's all.

22 **MS. ZMROCZEK:** We'll include the -- even though
23 I don't have a copy of it, we'll include the
24 envelope.

25 **THE COURT:** Mark it in evidence.

1 **MR. WHITMIRE:** Objection withdrawn.

2 (Applicant's Exhibit Number 1, letter and
3 receipt of property, marked and admitted into
4 evidence.)

5 BY MS. ZMROCZEK:

6 **Q** Were any plea offers -- Mr. Buchanan, were any
7 plea offers extended to you other than the attempted
8 armed robbery?

9 **A** No. After I turned that down, it was nothing
10 else. It was just they was going to seek a life
11 sentence on me without the possibility of parole if
12 I was convicted.

13 **Q** Did you receive a notice of that?

14 **A** Yes, I did.

15 **Q** Is this the notice that you received?

16 **A** This is it.

17 **MS. ZMROCZEK:** Your Honor, at this time, we
18 would like to put...

19 **MR. WHITMIRE:** No objection.

20 **THE COURT:** Mark it in evidence, please.

21 (Applicant's Exhibit Number 2, life without
22 parole notice, marked and admitted into evidence.)

23 BY MS. ZMROCZEK:

24 **Q** When you received that notice that they were
25 intending to seek life without the possibility of

1 parole, did you have any discussions with your
2 attorney, Mr. Cornwell?

3 **A** Yes. Mr. Cornwell -- well, basically, he just
4 told me that he didn't want to see me get a life
5 sentence, and this -- asked me was I ready to go
6 forward with this case, if not, you know, he was
7 just basically telling me if I was found guilty, you
8 know, I would receive life without parole, and
9 basically, that was about it.

10 **Q** Did you ask him to seek any other plea
11 negotiations on your behalf?

12 **A** Yes. I asked him could he ask the Solicitor
13 about shoplifting because basically that's what the
14 case was and I was willing to plea to shoplifting.
15 And he came back and told me she said -- that they
16 said, no; said that I didn't shoplift; said
17 shoplifting went out the window once I pulled the
18 weapon on the witness.

19 **Q** Did your case go to trial?

20 **A** Yes, it did.

21 **Q** When your case went to trial, were there any
22 discussions that you had with your attorney about
23 testifying?

24 **A** Yes. And I -- I was really advised that it was
25 my best interest not to testify, so I did not.

1 **Q** Had you given a statement in this case?

2 **A** I gave a statement to the investigator about
3 shoplifting, but some kind of way, he twisted my
4 words around and said that I had a weapon, but it
5 was not open, which the jury found me not guilty on
6 that, so.

7 **Q** My next question was, what was the outcome of
8 your trial?

9 **A** Well, I was found not guilty for possession of
10 a weapon during the commission of a violent crime
11 and guilty for robbery, the lesser-included offense
12 of armed robbery.

13 **Q** Mr. Buchanan, tell the Judge why your issue --
14 what your issue is with the result of the verdict?

15 **A** Well, results -- my issue is that it was only
16 one act testified to. The only evidence presented
17 to the jury or presented to the jury and testified
18 to by the -- by the only witness is that I pulled a
19 weapon and didn't swang {sic} it at her once, but I
20 swung it at her twice and -- which the surveillance
21 tape contradict everything that the witness said,
22 and the result of that was a not guilty verdict for
23 the weapon.

24 So my issue is how can I get convicted of the
25 greater offense when -- I mean, of the

1 lesser-included offense when there never was a
2 greater, you know? It never was a weapon in this
3 case -- it never was a weapon proven connecting me.
4 There was no connection to a weapon in my hands at
5 all. It was -- the surveillance tape didn't show me
6 with a weapon, no fingerprints or DNA was taken, you
7 know, to say that I had a weapon.

8 **Q** Did you ask Mr. Cornwell to call any witnesses
9 on your behalf?

10 **A** I don't know if it was me asking about Terrance
11 Boykin, but for some reason, they couldn't find him.
12 They say he didn't work at the store no more.
13 Because the lady said that I had a weapon, but he
14 was the only other one there that could visually see
15 this. And they testified that he didn't work at the
16 store no more, so he --

17 **Q** Did you ask Mr. Cornwell to object to or to ask
18 the judge specifically to give the jury any other
19 charges?

20 **A** I remember speaking with Mr. Cornwell telling
21 him that, when the verdicts was read, that, Man,
22 something just ain't right. I said, How can I be
23 convicted of the lesser offense when I was found not
24 guilty? And the weapon is what made the case on
25 armed robbery, so how can I be found guilty of the

1 lesser-included offense?

2 So he was telling me to just calm down and you
3 have to address that in the appellate issue --
4 appeals issue process.

5 **Q** What charge would you want the jury to have?

6 **A** I wanted the jury to have larceny or either
7 shoplifting.

8 **MR. WHITMIRE:** Objection.

9 **THE COURT:** Wait a second.

10 **MR. WHITMIRE:** Calls for a legal conclusion;
11 it's not properly qualified.

12 **THE COURT:** Overruled.

13 Go ahead. You wanted larceny or what?

14 **THE WITNESS:** Larceny or either shoplifting,
15 because, Your Honor, basically, that's all I did.
16 I -- and I tried to admit, and Mr. Cornwell can
17 verify this. He told the Solicitor these exact
18 words, that my client admitting to shoplifting.

19 But in the Solicitor's own words, in the
20 transcript, page 84, says that, Well, if
21 Mr. Buchanan would have came to this store and tried
22 to sneak out with this computer, it would have been
23 shoplifting. So if Mr. Buchanan would have tried to
24 push past Ms. Smith in this buggy with this computer
25 by using force or intimidation, it would be strong

1 arm robbery or common law robbery, but he didn't do
2 that. What he did was pull a weapon, so that made
3 this case an armed robbery.

4 MS. ZMROCZEK:

5 Q And that was page 184 of the transcript?

6 A 184 of the transcript.

7 Q Mr. Buchanan, you also stated that you felt
8 that Mr. Cornwell did not raise issues regarding the
9 jurisdiction regarding the lack of filing of the
10 indictment?

11 A Yes. Well -- yes. Rule 3(c) of the South
12 Carolina Rules of Criminal Procedure says that a
13 Solicitor should take action on a warrant, one, by
14 preparing an indictment for presentment to the grand
15 jury which the indictment shall be filed.

16 Now, I understand that Gentry says that the
17 sufficiency of the indictment shall be challenged
18 before a jury is sworn in. I agree with Gentry,
19 okay. But if you look at transcript in the record,
20 I was represented by Mr. Cornwell and he should have
21 challenged these indictments, so that's my ground on
22 that.

23 Q Are there any other issues that we haven't
24 raised?

25 A Yes. The forensics analysis, Mr. Cornwell

1 should have -- he should have raised those issues
2 because that was the only connection, you know, the
3 State could come up with to connect me to this
4 weapon. And up until this day, I still don't have
5 the reports or the chain of custody forms or
6 anything concerning that matter.

7 **THE WITNESS:** I mean, if there's any kind of
8 way -- excuse me, Your Honor -- if you could ask the
9 Attorney General's Office to please give me a copy
10 of that because I haven't had it in for four years.

11 **MR. WHITMIRE:** Objection; nonresponsive.

12 **THE COURT:** A copy of what?

13 **THE WITNESS:** A copy of my forensic analysis
14 and chain of custody forms.

15 BY MS. ZMROCZEK:

16 **Q** You understand that the only thing that we have
17 from SLED is a letter saying that there was nothing
18 sent, so there is no chain of custody --

19 **A** Oh, I thought maybe they probably had it. My
20 bad.

21 **Q** That's okay. But your point was that he failed
22 to investigate --

23 **A** He failed to investigate and suppress that
24 issue. These indictments should have been
25 suppressed, I mean, because they was in violation of

1 South Carolina Rules of Criminal Procedure and the
2 South Carolina Code of Law 14-17-530 paragraph 2.
3 And I think -- well, I don't think, I know if
4 Mr. Cornwell would have pointed these errors out to
5 the court, you know, the outcome would have been
6 different, and by him not, made him ineffective, and
7 by him being ineffective, prejudiced my case.

8 Q And, again, it's your testimony that you told
9 him that you never had a weapon and that you were
10 guilty of shoplifting?

11 A Yes.

12 MS. ZMROCZEK: I have no further questions at
13 this time.

14 THE COURT: Cross?

15 MR. WHITMIRE: Beg the Court's indulgence.

16 (Pause.)

17 MR. WHITMIRE: Your Honor, may me and
18 Ms. Zmroczek and this officer approach on a
19 different matter really quickly?

20 THE COURT: It's unrelated to this --

21 MR. WHITMIRE: Unrelated.

22 THE COURT: Sure.

23 MR. WHITMIRE: Scheduling issue.

24 (Whereupon, a bench conference was held off
25 the record.)

1 **THE COURT:** Do you have any cross-examination
2 of this witness?

3 **MR. WHITMIRE:** Yes, Your Honor. May it please
4 the Court.

5 **THE COURT:** Yes.

6 CROSS-EXAMINATION

7 BY MR. WHITMIRE:

8 **Q** Mr. Buchanan, did you go over the State's
9 evidence with Mr. Cornwell in anticipation -- well,
10 prior to trial?

11 **A** Best of my knowledge, I did.

12 **Q** Was Mr. Cornwell your first attorney on this
13 case?

14 **A** Yeah. Yes.

15 **Q** Did you review your statement you gave to the
16 officer regarding this case?

17 **A** I reviewed the statement that I was allegedly
18 gave, but I didn't get -- the one that he gave, I
19 didn't give.

20 **Q** And according to the officer, you told him you
21 had the box cutter in your hand when you were
22 leaving the Wal-Mart, according to the officer?

23 **A** Yes.

24 **Q** And did Mr. Cornwell challenge the
25 voluntariness and sufficiency of that statement

1 prior to trial?

2 **A** Not to my knowledge.

3 **MR. WHITMIRE:** Your Honor, the record will
4 reflect the Denno hearing.

5 **Q** Second of all, you were arrested close to the
6 scene, weren't you?

7 **A** About a mile and a half or so down the road.

8 **Q** Didn't the police recover box cutters from the
9 vehicle you were in?

10 **A** Yes, that I was in, but I wasn't driving and
11 didn't own.

12 **Q** And the Wal-Mart employee testified against you
13 at trial; is that correct?

14 **A** Yes, she did.

15 **Q** The victim, Shirley Smith?

16 **A** Yes.

17 **MR. WHITMIRE:** Your Honor, that's page 73.

18 **Q** And Ms. Smith testified she tried to check your
19 receipt and you pulled the box cutter on her?

20 **A** I got the page where exactly -- exactly what
21 she said:

22 Yes, sir. She stopped me and she said, Show me
23 a receipt -- let's see -- said, Show me a receipt
24 for the merchandise, sir. You're not leaving the
25 store.

1 **Q** So you had a brief encounter or exchange with
2 Ms. Smith; is that correct? According to her?

3 **A** According to her.

4 **Q** You're claiming you never talked to her?

5 **A** I never said a word to her. The only thing I
6 did say to her was that my merchandise is paid for.

7 **Q** Didn't the loss prevention employee at Wal-Mart
8 testify at your trial?

9 **A** Yes.

10 **Q** There was a video -- surveillance video with
11 you; is that correct?

12 **A** Yes, sir.

13 **Q** Did Mr. Cornwell use that to your advantage at
14 your trial?

15 **A** Yes. I mean, the surveillance tape showed
16 exactly what happened regardless if it was
17 Mr. Cornwell or anybody else. It showed me not
18 having a weapon, showed me not being aggressive,
19 showed me not doing anything in an aggressive
20 manner.

21 **Q** And the surveillance tape was pretty grainy,
22 was it not?

23 **A** Nah, it wasn't grainy. It was plain as day.
24 You could see it real good.

25 **Q** Mr. Cornwell submitted some evidence to show

1 that you had a cell phone in your hand; is that
2 correct?

3 **A** Exactly.

4 **Q** Did y'all talk about trying to come up with a
5 strategy prior to trial?

6 **A** Come up with a strategy?

7 **Q** Uh-huh. To get off on the armed robbery
8 charges?

9 **A** It wasn't no strategy. They was trying to give
10 me a life sent -- they was trying to give me a life
11 sentence for armed robbery. I was on trial. My
12 life was in the rings on this here. It wasn't no
13 strategy. It was just...

14 **Q** Did you receive a life sentence?

15 **A** No, I did not.

16 **Q** Why didn't you receive a life sentence?

17 **A** Because it wasn't an armed robbery, but if I
18 would have been convicted of armed robbery, I would
19 have got a life sentence.

20 **Q** Because of Mr. Cornwell's efforts?

21 **A** No. I would have got a life sentence because
22 of --

23 **Q** What I'm asking you is you didn't get a life
24 sentence because of Mr. Cornwell's efforts; is that
25 correct?

1 **A** No. He was my attorney. No, I did not. I did
2 not get a life sentence because of his efforts,
3 true.

4 **Q** And you're alleging that Mr. Cornwell should
5 have investigated Terrance Boykin?

6 **A** I'm alleging that Mr. Cornwell could have
7 investigated a lot of more things beside Mr. Boykin.
8 Yeah, he could have -- he could have tried to --

9 **Q** And specifically --

10 **A** Yes.

11 **Q** -- didn't Mr. Cornwell point that out to the
12 jury, the State didn't produce Mr. Boykin?

13 **A** Yes, he did.

14 **Q** Mr. Boykin was no longer working for Wal-Mart
15 at that point, was he?

16 **A** That's what they say.

17 **MR. WHITMIRE:** Beg the Court's indulgence.

18 **THE COURT:** Yes.

19 (Pause.)

20 **BY MR. WHITMIRE:**

21 **Q** Was your arrest warrant served on you after
22 your arrest?

23 **A** I don't remember how many days after I was in
24 Lexington County I received these warrants.

25 **Q** You were charged for armed robbery?

1 **A** Yes, I was.

2 **Q** Later indicted for armed robbery?

3 **A** Yes, I was.

4 **Q** Mr. Cornwell go over this charge with you?

5 **A** He just read it -- he read off the indictment
6 to me, but never once let me know about the
7 sufficiency of the indictment, the defects the
8 indictments had. He never once let me know that.

9 **Q** Were you aware that you were being tried for
10 armed robbery?

11 **A** Yes.

12 **Q** And possession of a weapon during a deadly
13 offense -- I'm sorry -- possession of a weapon,
14 deadly weapon?

15 **A** Yes, I was aware of that.

16 **MR. WHITMIRE:** Beg the Court's indulgence.

17 **Q** Just a few more questions for you today.

18 **A** Take your time.

19 **Q** Thanks.

20 **A** I've been waiting four years.

21 **MR. WHITMIRE:** No further questions, Your
22 Honor.

23 Thank you, Mr. Buchanan.

24 **THE COURT:** Redirect?

25 **MS. ZMROCZEK:** I just have a few.

1 REDIRECT EXAMINATION

2 BY MS. ZMROCZEK:

3 Q Mr. Buchanan, Mr. Whitmire asked you about the
4 Jackson v. Denno hearing, which was the
5 voluntariness of your statement. I believe that
6 Mr. Cornwell's cross began on page 35 of the
7 transcript. Do you recognize these documents?

8 A This is my Miranda form, rights form, and the
9 alleged statement that I was supposed to have gave.

10 Q And the handwritten notes of the officer?

11 A Yes, ma'am.

12 MS. ZMROCZEK: Your Honor, at this time, we'd
13 like to submit these into evidence.

14 THE COURT: Any objection?

15 MR. WHITMIRE: None, Your Honor.

16 THE COURT: Mark that in evidence, please.

17 (Applicant's Exhibit Number 3, Miranda
18 rights, statement and officer notes, marked and
19 admitted into evidence.)

20 BY MS. ZMROCZEK:

21 Q Mr. Buchanan, at that time that you gave that
22 statement, what did you admit to the officer?

23 A I admitted to Investigator Wade that I stole
24 the computer.

25 Q You admitted to shoplifting?

1 **A** I admitted to shoplifting.

2 **Q** Did Mr. Wade testify during the trial?

3 **A** Yes, he did.

4 **Q** Did he tell the jury that you admitted to
5 shoplifting?

6 **A** No. He told the jury that I admitted to having
7 a weapon. He changed the whole -- what I said and
8 what he said was two totally different things.

9 **Q** Was the statement, wherein you admitted to
10 shoplifting, provided to the jury?

11 **A** I asked him, I said --

12 **Q** You asked who?

13 **A** Investigator Wade. I was trying to admit to
14 the shoplifting and -- so I said, Well, why am I
15 talking to you, you're an investigator, for
16 something as simple as a shoplifting? He told me,
17 he said, Well, once you pull a weapon, the
18 shoplifting goes out the --

19 **Q** My question is this: Did you ask Mr. -- did
20 you ask Mr. Cornwell to make sure that he --
21 testified that you admitted to shoplifting on the
22 stand?

23 **A** I told Mr. Cornwell this, but I don't remember
24 him --

25 **Q** You told him, but you don't remember him asking

1 the question?

2 **A** No, I don't.

3 **Q** Was that statement ever provided in evidence
4 and submitted to the jury?

5 **A** No, not about me -- well, Mr. Cornwell did say
6 that my client is not innocent; he's guilty; he's
7 guilty of shoplifting, and he's tried to admit to
8 shoplifting. He did speak on that.

9 **Q** But did he ask the charge be given to the jury?

10 **A** I don't --

11 **Q** Was there a charge given to the jury on
12 shoplifting?

13 **A** No, it wasn't.

14 **MS. ZMROCZEK:** That's all the questions I have.

15 **THE COURT:** How was he charged shoplifting in
16 an armed robbery case?

17 **THE WITNESS:** Your Honor --

18 **THE COURT:** No, I'm not asking you; I'm asking
19 your attorney.

20 **MS. ZMROCZEK:** Your Honor, his issue with me is
21 that he -- not as a lesser included, but as a
22 separate charge is what he asked Mr. Cornwell to
23 charge in this.

24 **THE COURT:** Mr. Cornwell can't draw an
25 indictment.

1 All right. I understand.

2 MS. ZMROCZEK: Thank you.

3 THE COURT: All right. Recross?

4 MR. WHITMIRE: None, Your Honor.

5 THE COURT: Did you have anything you wanted to
6 say on that?

7 THE WITNESS: Well, Your Honor, basically, it's
8 that, you know, I know I did something wrong, I
9 stole a computer, and I'm not trying to, you know,
10 to get out of that. I stole a computer. But what I
11 didn't do, I did not pull no weapon on this lady.
12 She testified to only one act that happened. She
13 said that I pulled a weapon on her and swung it at
14 her not once but twice. The surveillance tape
15 contradict everything this lady said. She perjured
16 herself on the stand. I don't see how the State can
17 get rewarded for not proving their case beyond a
18 reasonable doubt.

19 MR. WHITMIRE: Objection; relevance.

20 THE COURT: I asked him what he -- overruled.
21 Had you finished?

22 THE WITNESS: That's -- I would just like to
23 say that for the lesser-included offense, factually,
24 it's no evidence to support the lesser-included
25 offense in this case.

1 **THE COURT:** I understand that. You're saying
2 there's no evidence to support that it was obtained
3 by force or intimidation if there's no proof that
4 there was a weapon involved.

5 **THE WITNESS:** Judge McMahon gave the jury all
6 the way, you either find him guilty of armed robbery
7 or the lesser-included offense of armed robbery, and
8 that's all the jury had to go on.

9 **THE COURT:** No, they had a not guilty option.

10 **THE WITNESS:** Well, they did. They found me
11 not guilty for the weapon. It wasn't an armed
12 robbery. I mean, I wasn't indicted for common law
13 robbery or nothing else, Your Honor. I didn't make
14 a deal for none of this here. I mean, it was just a
15 shoplifting. And even today, if I could get the
16 shoplifting instead of the, you know, I wouldn't
17 even be going through this here. You know, like I
18 said, I know I was wrong. I --

19 **THE COURT:** You'd be maxed out by now.

20 **THE WITNESS:** Yeah, that's true, but, you know,
21 I mean -- but I've got 15 years, Mr. Keesley, for
22 something that I didn't do. And the lesser-included
23 offense of armed robbery never happened. I never
24 pulled a weapon on this lady. This lady, she
25 perjured herself on the stand. The whole case was,

1 was...

2 **THE COURT:** All right. Do y'all have any other
3 questions in light of the Court's questions?

4 **MS. ZMROCZEK:** I don't. Thank you.

5 **THE COURT:** Does the State have any questions
6 in light of the Court's questions?

7 **MR. WHITMIRE:** No, Your Honor.

8 **THE COURT:** Thank you, sir. You may step down.

9 All right. Does the Applicant have any other
10 evidence to present?

11 **MS. ZMROCZEK:** No, Your Honor, not at this
12 time.

13 **THE COURT:** Does the State have any evidence to
14 present?

15 **MR. WHITMIRE:** Respondent calls Mr. Cornwell.

16 **THE COURT:** Come around, please.

17 CASEY CORNWELL,
18 having been duly sworn, testified as follows:

19 **THE CLERK:** Have a seat and state your name,
20 please.

21 DIRECT EXAMINATION

22 BY MR. WHITMIRE:

23 **Q** Good afternoon, Mr. Cornwell.

24 **A** How are you?

25 **Q** Doing well. Mr. Cornwell, you were a public

1 defender in Lexington County?

2 **A** Yes.

3 **Q** How long?

4 **A** About four years.

5 **Q** York?

6 **A** About a year.

7 **Q** Currently do -- do you do a good deal of
8 post-conviction relief work?

9 **A** Yes, I do.

10 **Q** Do you recall representing Mr. Buchanan in this
11 case?

12 **A** I do.

13 **Q** Were you the first attorney on this case?

14 **A** I was lead attorney on this case.

15 **Q** Now, what were the circumstances of his arrest?

16 **A** From what I can recall, he was basically
17 arrested for what I thought was a shoplifting. They
18 accused him of taking a computer. The main witness,
19 I think, was a Wal-Mart Loss Prevention lady. She
20 says that Mr. Buchanan pulled a knife on her and
21 threatened her with it while he was trying to get
22 away with the computer, and I -- that was the basis
23 for the State's armed robbery charges.

24 **Q** And when you say knife, do you mean box cutter?

25 **A** Yes, box cutter. I'm sorry. Yes. I think she

1 testified she -- her statement said a yellow and
2 black box cutter I think.

3 Q Do you recall if the box cutter that was
4 relevant was retractable or had a retractable blade?

5 A I can't recall at this time, no.

6 Q Did your client give a statement?

7 A I think they alleged he gave an oral statement
8 of some kind.

9 Q Did you review it with him?

10 A Yeah. We went over the statement and
11 everything.

12 Q I believe he has testified that he wanted to
13 enter a guilty plea to larceny. Do you recall the
14 guilty plea negotiations in this case?

15 A I tried to get him -- because of his record, I
16 think they were trying to give him a property
17 enhancement of some kind offense and that would have
18 been a 10-year offense if they gave him a
19 shoplifting with a property enhancement. And I
20 think I tried to get him something along those lines
21 and that was the best I could get, you know, as far
22 as them to even consider, but they were pretty
23 gung-ho about proceeding on the charges as they
24 were. They weren't really gung-ho about negotiating
25 too much with Mr. Buchanan as far as getting

1 anything less than a -- actually what he ended up
2 getting found guilty of, which was, I think, a
3 strong arm or a common law robbery.

4 Q The State offered him strong arm?

5 A I had discussed that with them at some time and
6 there seemed to be some interest in that, but we
7 actually ended up getting that as a result of a
8 trial instead of a plea.

9 Q And were you going for a strong arm case at
10 trial?

11 A I was going for a lesser-included offense, you
12 know, anything I could get that was less than that,
13 because they were looking to LWOP him or, you know,
14 trying to use the lingo here, you know, life without
15 parole notice had been served. So, I mean, I was
16 looking for anything that would get him out of that.

17 Q Had that notice been served?

18 A From what I can remember, I think it had been.

19 Q Did you investigate his prior convictions for
20 that notice?

21 A Yes.

22 Q Did you discuss the difference between larceny
23 and robbery?

24 A I can't remember the exact details of what we
25 discussed, but, you know, I know we discussed the

1 difference between armed robbery, common law robbery
2 and things of that nature, but I can't remember if
3 we specifically discussed the difference between
4 robbery and larceny.

5 Q Had a chance to independently review the video?

6 A Yes.

7 Q Discussed that with your client?

8 A Yes.

9 Q Briefly describe the video. I know it's
10 mentioned and played numerous times at trial.

11 A The video, from what I can remember, shows
12 Mr. Buchanan in the store. They show him on the
13 phone in the store. They show him leaving the store
14 with merchandise. They show him have a brief
15 encounter with the loss prevention lady, and then he
16 runs out of the store with the merchandise, so -- he
17 pushes the -- he's pushing the cart out of the store
18 running.

19 Q Is the focal point at trial that encounter he
20 has with I believe --

21 A Right, right. They focused a lot on that
22 encounter, that's correct.

23 Q And what was your strategy to show his version
24 of the facts regarding that encounter?

25 A I wanted to show that he didn't have a weapon,

1 that the object in his hand was the phone and that
2 the video clearly showed that this was a cell phone
3 in his hand and not a weapon of any kind. And it
4 was our strategy to come clean about the fact that,
5 yes, we took these items, but this was not an armed
6 robbery. This was a, you know, this is a taking of
7 some kind, but not an armed robbery. It's more
8 along the lines of strong arm or larceny, something
9 like that.

10 **Q** And in Mr. Buchanan's statement, he admits to
11 having a confrontation with Ms. Smith?

12 **A** Right.

13 **Q** Based on all the evidence, was larceny
14 appropriate?

15 **A** You know, based on the evidence that was
16 presented, what he was convicted of is probably what
17 was appropriate, you know, in my opinion. At one
18 point, we were talking plea negotiations, that's
19 kind of what we were talking about, strong arm as a
20 possibility, and that was what -- if they were going
21 to give us or make a offer on anything, that's
22 probably what it would have been was for a strong
23 arm, which I thought would have been the most
24 appropriate thing, that's what they could have
25 proven, you know, at trial and that's what I thought

1 they proved; the jury thought so, too.

2 **Q** Ms. Smith, the victim, she gave an out-of-court
3 identification of your client that same day of the
4 offense?

5 **A** Yes. Her testimony was, I think she -- they
6 gave her -- they drove her by the -- after they
7 arrested her {sic}.

8 **Q** And knowing all this, do you recall your jury
9 conference for -- charge conference with Judge
10 McMahon?

11 **A** No, I don't recall right now, not right off the
12 top of my head.

13 **MR. WHITMIRE:** Beg the Court's indulgence.

14 **THE COURT:** Sure.

15 (Pause.)

16 **MR. WHITMIRE:** May I approach, Your Honor?

17 **THE COURT:** Yes. The witness or me?

18 **MR. WHITMIRE:** The witness.

19 **THE COURT:** Okay.

20 BY MR. WHITMIRE:

21 **Q** Mr. Cornwell, I'm showing you a copy of the
22 transcript from the lower proceeding, which is a
23 court record in this matter, page 156. Can you
24 briefly review your discussions with Judge McMahon?

25 **A** (Witness complies.)

1 **Q** What charge did you ask for on the lesser --
2 for a lesser-included offense?

3 **A** Asked for strong arm or...

4 **Q** Was there any discussion regarding grand
5 larceny, petit larceny or shoplifting or anything to
6 that effect?

7 **A** No. It just talks about common law robbery,
8 strong arm robbery.

9 **Q** Would the facts have supported a charge on
10 shoplifting or larceny based on -- just generally
11 based on your recollection of the trial and review
12 of the transcript?

13 **A** I mean, just based on what I remember of the
14 facts, strong arm popped in my mind, that's
15 immediately what I thought of, which is why I
16 requested that.

17 **Q** Could requesting two lesser-included charges
18 potentially create a confusion?

19 **A** I guess it could have. You know, I'm not the
20 jury, so, you know, I couldn't really say that.

21 **Q** Generally, when you're strategizing and
22 determining which jury charges you're going to
23 request, how -- what goes into play in making your
24 request for a lesser-included offense?

25 **A** In this case, because the charges were armed

1 robbery and I thought it was so clear that, you
2 know, listen, there was a -- an altercation of some
3 kind and the whole thing was on video where this
4 woman confronted him and there was some kind of
5 contact, but in our opinion, clearly was no weapon,
6 I thought that strong arm was the best way to go
7 with that because I didn't want to confuse the issue
8 and have more than one jury charge in a sense. And
9 that's kind of where I say, you know, I'm not a jury
10 and I don't want to get in their minds or whatever,
11 but at the same time, you know, if you have a clear
12 choice, one or the other, you know, I think it was
13 more clear the choice between strong arm and armed
14 robbery in this case.

15 Q And was that a theory of the case you presented
16 to the jury in the opening statement?

17 A Right, right.

18 Q Were you ultimately successful in your defense
19 strategy?

20 A Yes. That's what we ended up -- he ended up
21 getting convicted of the strong arm robbery from
22 what I recall.

23 Q A few other questions regarding some of
24 Mr. Buchanan's other allegations. Did he ask you to
25 investigate any witnesses prior to trial?

1 **A** It's hard for me to recall, specifically, if he
2 asked me any specific witness to investigate.

3 **Q** Did he ask you to look into any forensic
4 matters or at least bring them up in your
5 consultations?

6 **A** Not that I can remember, no.

7 **Q** And was Mr. Buchanan aware the State was going
8 to call his case to trial for armed robbery?

9 **A** Yes.

10 **Q** Throughout the course of representation, did he
11 ever indicate that he was not aware he was being
12 charged with armed robbery?

13 **A** No, he -- that never happened.

14 **Q** And if there was a defect in the indictment,
15 what would you have done?

16 **A** I would have moved to have it corrected,
17 whatever, you know, took the necessary steps to
18 correct that.

19 **Q** If the indictment was squashed, what typically
20 happens prior to trial?

21 **A** Well, if it's a case where it's like a
22 scrivener's error or something, you know, the judge
23 would allow them to correct that. You know, at the
24 most, they would probably get a continuance or
25 something.

1 **Q** Reindictment?

2 **A** Reindictment, yes.

3 **MR. WHITMIRE:** No further questions. Thank
4 you, Mr. Cornwell.

5 **THE COURT:** Cross?

6 **MS. ZMROCZEK:** Thank you. I just have a few.

7 CROSS-EXAMINATION

8 BY MS. ZMROCZEK:

9 **Q** Good morning, Mr. Cornwell.

10 **A** Hello.

11 **Q** Is this the video? You keep referring to the
12 video that --

13 **A** Yes.

14 **Q** This was the video that was submitted to the
15 jury?

16 **A** Yes, I'm assuming. I haven't watched --

17 **Q** It was provided to me by you; correct?

18 **A** Right.

19 **MS. ZMROCZEK:** Your Honor, at this time, we'd
20 like to move the video into evidence.

21 **MR. WHITMIRE:** No objection.

22 **THE COURT:** Mark it in evidence, please.

23 (Applicant's Exhibit Number 4, video, marked
24 and admitted into evidence.)

25 BY MS. ZMROCZEK:

1 **Q** Mr. Cornwell, you testified that you -- I don't
2 know if you answered the question or not, but I
3 believe Mr. Whitmire asked the question, Would the
4 charge of larceny have been appropriate in this
5 case?

6 **A** That's kind of hard to ask {sic}. I don't know
7 what -- I guess I don't know what you're asking me
8 about that, if I think he got -- if a jury would
9 have convicted him of that over what he got
10 convicted of or do I think he -- it's appropriate to
11 charge him with that? I mean, if it's the second
12 one, then, yeah, I mean, you know, I think that the
13 facts could probably fit a larceny charge in this
14 case, you know, but -- I mean, I can't really recall
15 the first one.

16 **Q** Okay. And you stated that you -- but you felt
17 that -- but you did not ask for a larceny charge.
18 You did ask for a strong arm robbery charge?

19 **A** No. I asked for strong arm robbery and I
20 didn't ask for larceny because I thought a strong
21 arm was more realistic, and I didn't want to, you
22 know, this wasn't a situation where I wanted to
23 shoot for the moon, you know, in case I missed the
24 whole thing.

25 **Q** When you -- and you said that you asked for the

1 charge of strong arm robbery because you thought it
2 was appropriate. Do you recall cross-examining the
3 only witness, Ms. Smith, when she was on the stand?

4 A Right.

5 Q And do you recall her saying at any time -- and
6 if it'll help to review her testimony, do you have
7 the transcript?

8 A I do have the transcript.

9 Q Beginning on page 64.

10 A Okay.

11 Q Do you recall her, at any time, stating that
12 she felt intimidated or threatened other than
13 because of the box cutter?

14 A I'm not...

15 Q In other words, while you're reading that --
16 I'll ask it this way. Sorry. It's an inartful
17 question. Did you ask her or did she ever say, He
18 yelled at me, threatened, intimidated me, or did the
19 intimidation simply come from the box cutter?

20 A From what I understand, I think the box cutter
21 was the source of the intimidation.

22 Q The box cutter was the only source of
23 intimidation?

24 A Right.

25 Q And that's -- and he was not found guilty of

1 the weapon -- of being in possession of a weapon
2 during the commission of a violent crime; correct?

3 **A** That's correct.

4 **Q** When the jury came back with the not guilty of
5 the possession of a weapon, but guilty of the strong
6 arm or common law robbery, did you make any motions
7 at that time to have the verdict set aside?

8 **A** No. I think I did, at the end of the trial,
9 have -- make a motion to, you know, the general
10 motion we usually make at the end of the trial,
11 which is for the judge to set aside the ruling of
12 the jury, and that got denied.

13 **Q** Because during the Solicitor's closing, I
14 believe on page 181, she talks about how he was
15 guilty of shoplifting if he didn't have the knife;
16 correct -- or the box cutter; correct?

17 **A** I have to refer to the record on that. I can't
18 really back that up. I'm looking at 181. You said
19 181?

20 **Q** Yes. I'm sorry.

21 **A** I'll defer to the record on that.

22 **Q** So when she -- she was saying that he's guilty
23 or he should be found guilty because of the box
24 cutter not because of any intimidation; correct?

25 **A** That's what it says, that's correct.

1 Q So a charge of larceny would have actually been
2 appropriate for the jury based -- especially based
3 on his -- on their finding of not guilty on the
4 weapon; correct?

5 A Well, I mean, you're asking me -- I'm not sure
6 what you're asking me here.

7 Q I believe you stated it was trial strategy to
8 ask for strong arm instead of larceny?

9 A Are you saying that because they didn't convict
10 him on the -- they found him not guilty of not
11 having a weapon, so I should have moved to -- well,
12 I did not do that. And when they came back with not
13 guilty on the weapon, I did not think to do that.

14 Q That was my question. I'm sorry. But you
15 admit now that that may have been appropriate?

16 A I can't say. I cannot say.

17 Q And he was served the notice, the LWOP, life
18 without parole notice on this charge; correct?

19 A Yes.

20 Q Did you feel like the Solicitor's Office was
21 trying to push him into a lesser plea?

22 A Oh, yeah. That was definitely what they were
23 trying to do.

24 Q Now reviewing the facts and now that you've had
25 a chance to review the testimony in the transcript,

1 do you agree that larceny was probably the
2 appropriate offense for this charge?

3 **A** I probably would have pushed harder, I guess,
4 for larceny if I thought I could have got it in plea
5 negotiations. You know, I was just kind of, you
6 know, when you're negotiating pleas, you kind of
7 shoot -- balance between what's realistic and
8 what's, you know, what's possible, you know. And I
9 knew that attempted armed robbery would be possible.
10 They'd possibly give me an attempted in plea
11 negotiations, but I knew larceny and the shoplifting
12 route was definitely not going to happen. So, I
13 mean, that was kind of my tactic on that in
14 negotiating.

15 **MS. ZMROCZEK:** I have no further questions.

16 **THE COURT:** Redirect?

17 **MR. WHITMIRE:** Just a few follow up.

18 REDIRECT EXAMINATION

19 BY MR. WHITMIRE:

20 **Q** You tried this case the best of your ability
21 based on the information you had at the time?

22 **A** Yes.

23 **Q** And, again, what would have happened had the
24 jury come back with an armed robbery conviction to
25 your client?

1 **A** He would have been looking at life without
2 parole.

3 **Q** Was that discretionary in sentencing?

4 **A** No. They'd served notice. I mean, it was --
5 that was it.

6 **Q** And the video showed an altercation, I believe,
7 between the victim and your client?

8 **A** There was an altercation, yes.

9 **Q** Based on all that information, you formulated
10 your trial strategy?

11 **A** Yes.

12 **MR. WHITMIRE:** No further questions, Your
13 Honor.

14 Thank you, Mr. Cornwell.

15 **THE COURT:** Recross?

16 **MS. ZMROCZEK:** I don't have anything, Your
17 Honor.

18 **THE COURT:** Thank you, sir. You may step down.

19 **THE WITNESS:** Thank you, Your Honor.

20 **MR. WHITMIRE:** I just ask that Mr. Cornwell be
21 excused.

22 **THE COURT:** You're free to go. Thank you.

23 **MR. WHITMIRE:** Your Honor, Respondent rests.

24 (Pause.)

25 **THE COURT:** Any argument?

1 **MS. ZMROCZEK:** Thank you, Your Honor.

2 **THE COURT:** Or any reply first? Any reply
3 evidence?

4 **MS. ZMROCZEK:** I'm sorry?

5 **THE COURT:** Do you have anything in reply?

6 **MS. ZMROCZEK:** I don't, Your Honor.

7 **THE COURT:** Argument?

8 **MS. ZMROCZEK:** Thank you, Your Honor.

9 Mr. Buchanan believes that, especially in light
10 of Mr. Cornwell's testimony, that larceny should
11 have been a charge and was an appropriate charge,
12 that he has been prejudiced, Your Honor. The reason
13 is, as you have the sentencing sheet in front of
14 you, he was found not guilty of possession of a
15 weapon during the commission of a violent crime.

16 Your Honor, that possession of the weapon was
17 the basis for the indictment of the armed robbery
18 and for the trial. The testimony on the record and
19 in the record in front of you from the trial states
20 that that was the only intimidation or fear.

21 Strong arm robbery, as Your Honor is aware, the
22 element is -- one of the elements is that they felt
23 in fear or intimidation and that that violence must
24 be perceived, that's why we put the video in. You
25 can read through the testimony, especially when

1 Mr. Cornwell cross-examined and when Ms. Garrick
2 examined, directly examined the witness, that she
3 stated that it was the box cutter that put her in
4 fear.

5 Your Honor, when the jury returned a verdict of
6 not guilty on that weapon, at that point,
7 Mr. Cornwell should have made a motion to set the
8 jury's verdict aside based on their factual findings
9 and requested that he be either sentenced to a
10 larceny charge or have a mistrial so that he could
11 request that larceny charge.

12 Your Honor, he feels like that prejudiced him,
13 Mr. Cornwell's failure to do so. And, Your Honor,
14 that's the basis for his arguments on the failing to
15 investigate the box cutter, failing to question the
16 indictments, all comes back to whether or not he had
17 a box cutter and just his failure to make any
18 motions after the jury returned their verdict.

19 **MR. WHITMIRE:** May it please the Court.

20 **THE COURT:** Yes.

21 **MR. WHITMIRE:** Beginning with where opposing
22 counsel just left off on failure to investigate, the
23 evidence shows box cutters were retrieved in the
24 vehicle with -- that Mr. Buchanan was arrested in
25 right after the offense. Furthermore, he gave a

1 statement in which he said he did not have the
2 extended knife part of the box cutter open during
3 the time of the offense to the police officer. The
4 voluntariness or the weight of that was presented to
5 the jury. Mr. Cornwell did his best to challenge it
6 in a Denno hearing.

7 The whole purpose of Ms. Smith, the victim in
8 this case, the Wal-Mart employee, her purpose in
9 working was to work a cash register and check for
10 receipts, at which point, there was an altercation
11 when he tried to leave the store with a CPU. He did
12 not enter the store, steal it and just leave; he had
13 an altercation. The video ended up showing this
14 altercation.

15 Mr. Cornwell, the whole purpose of his trial
16 strategy was to show that Mr. Buchanan did not
17 commit this offense while armed with a deadly
18 weapon. However, in order for the victim to leave
19 and move out of the way, he showed force or
20 intimidation. The jury ultimately determined that
21 he did not do this while armed with a deadly weapon.
22 And as a result of Mr. Cornwell's incredible and
23 diligent practice, he's not serving life without
24 parole and will get out within ten years, more than
25 likely, depending on whatever the SCDC sheet says.

1 Specifically just addressing the law in whether
2 larceny was even warranted as a charge, State
3 Al-Amin, 353 S.C. 405, speaks significantly on the
4 difference between the two sets of offenses. Common
5 law offense of robbery is essentially the commission
6 of larceny with force.

7 Regardless on whether, in fact, it was
8 warranted or could have been requested,
9 meritoriously requested, our Court of Appeals
10 recently, Your Honor, a few weeks ago in Ted E.
11 Abney v. State, opinion number 5207, filed March
12 19th, 2012, per advance sheets, determined that it's
13 a matter of valid trial strategy to include or
14 exclude certain lesser-included offenses based on
15 your case.

16 Here, we have Mr. Cornwell presenting the case
17 that this was, in fact, a robbery, there was an
18 altercation, that altercation caused the victim to
19 step aside and let him leave Wal-Mart. The jury
20 ultimately found he did not do this while armed with
21 a deadly weapon. It was an incredible job by
22 Mr. Cornwell. His effectiveness speaks for itself
23 and so does the transcript, Your Honor.

24 **THE COURT:** All right.

25 **MS. ZMROCZEK:** And, Your Honor, simply in

1 redirect, we would argue that if you read
2 Mr. Cornwell's closing, he does not argue force or
3 intimidation; he argues shoplifting. And I do
4 believe that he stated on the stand that maybe he
5 should have made a motion for the lesser included at
6 that time.

7 Your Honor, again, and the only -- the
8 prejudice that we would show is that obviously it's
9 a significant difference in time. To be convicted
10 of what he admitted to, which was the larceny, would
11 be a significant reduction in the sentence that he's
12 serving because he did receive a 15-year sentence.

13 **THE COURT:** Thank you.

14 I have to read through everything. I don't
15 read all of this before the hearings because I never
16 know what hearings are going to be continued and how
17 many times applicants are going to withdraw. We had
18 two withdrawals this morning. So I've got to read
19 through this record. Now, I've skimmed it.

20 I read the Solicitor's closing argument. I
21 didn't read it exactly like what was represented in
22 the Applicant's testimony as far as the distinction
23 between threat and the threat only being the weapon.
24 I understand the logic of what is being asserted. I
25 understand why it's being asserted.

1 I cannot substitute myself for the jurors. As
2 far as there being any force, threat or intimidation
3 aside from the possession of a box cutter, like on
4 page -- just an example, on page 81 of the
5 transcript where the witness is being
6 cross-examined, she said -- this is the employee --
7 she's being asked on page 81 line five about the
8 manner in which the blade was pulled out, and her
9 statement was, I made mention that he had pulled a
10 box cutter. And the box cutter he pulled a little
11 bit higher up and he said again, is this worth you
12 getting cut up over -- that's not what I meant to
13 read. I'm sorry. Hold on a second.

14 I'm sorry. It is.

15 I made mention that he had pulled the box
16 cutter and that he had threatened to cut me up.

17 I have to allow leniency, and I'm not saying
18 whether I will or I won't, I want to see this video
19 too, but I have to allow leniency for the jury to be
20 able to give the defendant the benefit of the
21 reasonable doubt if the State failed to prove beyond
22 a reasonable doubt that the object in the
23 defendant's hand was a knife or a box cutter, but
24 they had no reasonable doubt that he used force,
25 threats, intimidation or placing the victim in fear

1 and therefore were able to find him guilty of strong
2 arm robbery.

3 Now, again, I go back to what I started out
4 prefacing my comments. I understand that, on its
5 face, it looks like the jury didn't find him guilty
6 of possessing the weapon. It may be a really fine
7 line, but I don't know that we have inconsistent
8 verdicts like we used to.

9 I understand the argument about larceny.

10 The second thing I want to say is I skimmed
11 through Judge McMahon's charge to the jury and he
12 told the jury not to find a verdict on the charge of
13 possession of a weapon during -- a knife during the
14 commission of a violent crime unless they found him
15 guilty of armed robbery. And there's an exchange
16 between the attorneys after the verdict comes in
17 where one of them says, I thought they were not
18 supposed to fill that part out, and the judge said,
19 I didn't think they would either. This is when the
20 Solicitor was asking the judge if he was going to
21 issue an order dismissing the indictment for a
22 possession of the knife during a violent crime.

23 I don't know, based on the fact that the judge
24 gave the instructions as he did, if the jury was
25 told that strong arm robbery is a violent crime. I

1 haven't read through all of that. If strong arm
2 robbery was not told to the jury to be a violent
3 crime, it's possession of a knife during the
4 commission of a violent crime. It's two elements.
5 Again, it may be a very fine line, but I do have to
6 give great deference to the jury.

7 Yes.

8 **MS. ZMROCZEK:** Thank you. And just, Your
9 Honor, for the record, Mr. Buchanan understands, I
10 just wanted to place this on the record, that should
11 the Court grant his PCR, that he still would be
12 facing the life without parole --

13 **THE COURT:** Facing life without parole.

14 **MR. WHITMIRE:** I don't --

15 **THE COURT:** Is that wrong? No, he was acquitted
16 of -- he was acquitted.

17 **MS. ZMROCZEK:** Oh, yeah, he was acquitted of
18 that, but I -- we had had some discussion about
19 that, Your Honor, and I just wanted to make sure
20 that the Court knew that --

21 **THE COURT:** I'm sorry. He was acquitted.

22 **MS. ZMROCZEK:** -- that since he was acquitted
23 of that, that it would just come back on the --

24 **MR. WHITMIRE:** I don't want to say anything
25 that would implicate double jeopardy or cause him

1 concern; I'm pretty certain double jeopardy would
2 kick in and he could not be recharged with burglary
3 first degree -- I mean, not burglary, armed robbery.

4 And, Your Honor, the discrepancy part of the
5 issue, you know, the jury -- it's a box cutter, it's
6 not a gun, it's not a long blade. A lot of it turns
7 on what type of box cutter it is. It's something
8 that's used commonly in warehouse storage. And we
9 also have a grainy video. I think that partially
10 shows the verdicts in this case.

11 We would go back to trial strategy and the
12 level of deference the U.S. Supreme Court gave trial
13 counsel -- to trial counsel and trial strategy. We
14 have a case where the officer takes a statement from
15 the defendant; he admits to having the box cutter in
16 his hand. We have an employee from Wal-Mart whose
17 job it is to check people out to make certain they
18 paid for their merchandise testifying against him in
19 the manner she does. And we have a grainy video,
20 along with the actual object found in the car with
21 him at his arrest. Based on this information,
22 counsel formulated a strategy to do his best to keep
23 him from spending the rest of his life in prison and
24 he was ultimately successful.

25 **THE COURT:** I understand. I'll notify you of a

1 decision in writing. Thank you very much.

2 **MS. ZMROCZEK:** Thank you.

3 **MR. WHITMIRE:** Thank you, Your Honor.

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END OF PROCEEDINGS

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 17th of April, 2014.

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

September 15, 2015

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

January 6, 2014

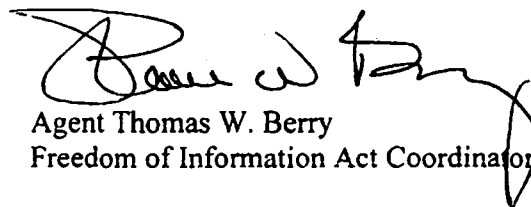
Mr. Perry Buchanan, #281305
Evans Correctional Institution
Waxhaw Unit R-127B
610 Highway 9 West
Bennettsville, SC 29512

RE: FOIA 2013-937
Request for Laboratory Reports

Dear Mr. Buchanan:

We received your letter on December 27, 2013. A thorough search of our database with the information you provided reveals that no evidence from this case was submitted to the SLED Forensic Laboratory for analysis. You may wish to contact the arresting agency for any information they have concerning this matter.

Sincerely,



Agent Thomas W. Berry
Freedom of Information Act Coordinator

TWB/mcp



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
 STATE)
 vs.)
 PERRY BERNARD BUCHANAN)

FILED
 2011 APR -7 A 9:15
 BETH A. COOPER
 CLERK OF COURT
 LEXINGTON, SC

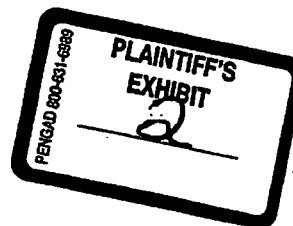
IN THE COURT OF GENERAL SESSIONS
 ELEVENTH JUDICIAL CIRCUIT
 NOTICE OF INTENTION TO SEEK A
 SENTENCE OF LIFE WITHOUT PAROLE
 2010-SS-32-1522 ARMED ROBBERY

TO: BERNARD BUCHANAN, DEFENDANT
 CASEY CORNWELL, ATTORNEY FOR THE DEFENDANT

PLEASE TAKE NOTICE that upon any conviction of the above-entitled action to be scheduled as soon as the court may hear it a date at least ten (10) days hence, the State will seek a sentence of life imprisonment without the possibility of parole, pursuant to South Carolina Code of Laws, Section 17-25-45 (1995), as amended. The State intends to rely upon any one of the following prior convictions and any such other convictions as the State may discover to statutorily enhance punishment:

Armed Robbery – Warrant # K-196445
 Richland County
 Conviction Date: 2-14-08


 J. Angela Garrick
 Assistant Solicitor
 11th Judicial Circuit



Lexington, South Carolina
 This 7th day of April, 2011

A TRUE COPY

Miranda Rights Warning

Date 3/12/10
 Time 6:00 PM
 Case # 1006514

I, PERRY Buchanan, live at HOME LESS
 My phone number is 444 0816

My date of birth is 11/29/60, and my Social Security Number is PB

I have finished the 10 grade in school and I can / cannot read.

THE CONSTITUTION REQUIRES THAT YOU BE INFORMED THAT:

- PB 1) You have the right to remain silent.
- PB 2) Anything you say can and will be used in court as evidence against you.
- PB 3) You are entitled to talk to a lawyer now and to have him present now or at any time during questioning.
- PB 4) If you cannot afford a lawyer, one will be appointed for you without cost.
- PB 5) DO YOU UNDERSTAND THESE RIGHTS? YES / NO
- PB 6) If you decide to answer questions now without a lawyer present, you will still have the right to stop answering questions at any time. You also have the right to stop answering questions at any time until you talk to a lawyer.



Perry Buchanan
 Signature of Suspect

WAIVER OF MIRANDA RIGHTS

AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I UNDERSTAND AND NOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

Blaine Wade
 Witness Signature

Witness Signature

Perry Buchanan
 Signature of Suspect

Date

Case Number: _____

Date and TimeNotes

3-12-10

I/O advised Perry Buchanan of his Miranda Rights. He tells me what happened. I then tell him I need to take a statement from him. He says you're a detective why would you be talking to me about a shoplifting. I explain that during a shoplifting if someone is assaulted it's no longer a shoplifting it becomes a strong Armed Robbery. However if they present a weapon it becomes a Armed Robbery. He asks me what is he being charged with and I tell him Armed Robbery. He then tells me I can't write anything down. I can't give you a statement. I told him you already confessed. I'm going to say what you just told me in court. He said again I can't write anything down. The interview was then ended.

Number: 1006514 / Robbery

Date and Time: Notes

3/12/10 5:59 PM I/O interviewed Perry B. Buchanan @ Wc

~~REDACTED~~

I had Tony Dobie pick me up on
2nd St Rd and asked her to take
me to West Cola Walmart. I went in
stole a ~~TV~~ computer and when I
was leaving out the lady stopped
me and asked for a receipt. I had
a box cutter in my hand and told the
lady my chit paid for. I push
the buggy out and she started running.
I did not have the box cutter open.

I cant write nothing down.

Did you pay for the TV: No I stole
it from walmart

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 PERRY B. BUCHANAN # 81305
 VS
 STATE OF SOUTH CAROLINA

Applicant
 Respondent

COURT OF COMMON PLEAS

CASE NO. 2013-CP-32-03673

FILED

2014 MAY 13 SA (E) MOTION TO ALTER OR AMEND

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

FILED
 CLERK OF COURT
 LEXINGTON, SC

AND WHERE THE APPLICANT, PRO-SE IN THE ABOVE-CAPTIONED POST CONVICTION
 RELIEF MATTER, MOVING PRO-SE UNDER SECTION 40-5-80. THE APPLICANT
 RECEIVED A COPY OF THE MEMORANDUM ORDER AT ~~THE~~ EVANS C.I
 MAIL ROOM ON MAY 2, 2014. FOLLOWING A HEARING ON APRIL 17, 2014,
 ASKING THIS COURT TO AMEND HIS ORDER ON CASE NO 2013-CP-32003673.
 I'M FILING THIS RULE 59 (E) MOTION, TO ALTER OR AMEND WITHIN THE 10 DAYS
 ALLOW, MAKING THIS MOTION TIMELY FILED. IN SUPPORT OF THIS REQUEST, THE
 APPLICANT WOULD SHOW UNTO THIS COURT THE FOLLOWING: APPLICANT RAISED,
 LACK OF SUBJECT MATTER JURISDICTION. APPLICANT TESTIFY AT PCR HEARING
 THAT THE INDICTMENTS WERE NOT IN COMPLIANCE WITH S.C. RULE'S OF
 CRIMINAL PROCEDURE, RULE 3(C), WHICH SAY THE SOLICITOR SHALL TAKE
 ACTION ON THE WARRANT BY (1) PREPARING AN INDICTMENT FOR PRESENTMENT
 TO THE GRAND JURY, WHICH THE INDICTMENTS SHALL BE FILED WITH THE
CLERK OF COURTS, AND THEN PRESENTED TO THE GRAND JURY. ALSO S.C.
 CODE OF LAW, SECTION 14-17-530 (2). ON BILL OF INDICTMENTS, SAY ALL
 DOCUMENTS MUST BE Clocked STAMPED AND FILED WITH THE CLERK OF
 COURTS, AS REQUIRE BY THE RULES AND THE LAW'S OF THIS STATE. SEE
 APPLICANT'S INDICTMENTS THAT WAS PUT INTO EXHIBITS ON HIS BEHALF, WITH THE
 COURT REPORTER, BY ATTORNEY AIMEE J. ZMROZCEK, AT THE PCR HEARING
 ON ABOVE DATE. APPLICANT SUBMITS, ON THE FACE OR BODY OF INDICTMENTS
 DOCKET NO. 2010-GS-3201522 AND 3201523, WAS NOT Clocked STAMPED OR
 FILED WITH THE CLERK OF COURTS, BEFORE BEING PRESENTED TO THE GRAND
 JURY. THE INDICTMENTS WERE INVALID AND IT DEPRIVE, THE COURT OF
 JURISDICTION. TRIAL COUNSEL WAS INEFFECTIVE FOR NOT POINTING THESE

ERRORS OUT TO THE COURT, THE INDICTMENTS WERE IN DIRECT VIOLATION OF SC. RULES OF CRIMINAL PROCEDURE, RULE 3(C). ALSO SC. CODE OF LAW. 14-17-530 (2).

TRIAL COUNSEL SHOULD HAVE CHALLENGED THE SUFFICIENCY OF THE INDICTMENTS. APPLICANT FURTHER, STATES THAT HE AGREES WITH GENTRY. THAT THE SUFFICIENCY OF THE INDICTMENTS SHOULD HAVE BEEN CHALLENGED BEFORE A JURY WAS SWORN IN.

APPLICANT POINTS OUT TO THE COURT, THAT HE WAS REPRESENTED BY COUNSEL, CASEY CORNWELL, HE SHOULD HAVE CHALLENGED THE DEFECTS OF THESE INDICTMENTS.

APPLICANT SUBMITS, THAT THE INVALID INDICTMENT WAS VERY ESSENTIAL TO HIS CASE, WITHOUT THE INDICTMENTS, THERE IS NO CASE, AND THE APPLICANT WOULD HAVE NEVER BEEN CONVICTED TO 15 YEARS. THE INDICTMENTS SHOULD HAVE NEVER CAME TO LIFE. APPLICANT SUBMITS, THAT TRIAL COUNSEL EVEN TESTIFY AT THE PCR PROCEEDING, THAT HE FAIL TO SUPPRESS OR OBJECT TO THE INVALID INDICTMENTS. BY HIS OWN WORDS, HE WAS INEFFECTIVE, AND HIS ERRORS PREJUDICED MY CASE.

SEE: HILL V. LOCKHART, 474, U.S. 52, 106, S. CT. 366 (1985).

SEE: STRICKLAND V. WASHINGTON, 466 U.S. 668, 104, S. CT. 2052 (1984).

ALSO SEES THE 4th, 5th, 6th, 8th, 14th, AMENDMENT TO THE U.S. CONSTITUTION

SEE: ARTICLE 1 § 3, 10, 11, 14, 15, OF THE SC. CONSTITUTION.

ARGUMENT(2)

INEFFECTIVE ASSISTANCE OF COUNSEL

SOLICITOR PROSECUTED APPLICANT WITHOUT DISCLOSURE OF VALID FORENSIC ANALYSIS REPORT OR A CERTIFIED CHAIN OF CUSTODY

RULE 5, SCRCRIMP, STATE IN RELEVANT PART THAT: UPON REQUEST OF A DEFENDANT OR HIS ATTORNEY, THE SOLICITOR SHALL PERMIT THE DEFENDANT TO INSPECT AND COPY ANY RESULTS OR REPORTS OF SCIENTIFIC TEST.... WHICH ARE MATERIAL TO THE PREPARATION OF THE DEFENSE OR ARE INTENDED FOR USE BY THE SOLICITOR AS EVIDENCE IN CHIEF AT TRIAL.... MOREOVER, RULE 6, SCRCRIMP, STATE'S IN RELEVANT PART THAT; IN CRIMINAL PROSECUTION ANY REPORT OF FORENSIC ANALYSIS AND CERTIFIED OR SWORN STATEMENT ESTABLISHING PHYSICAL CUSTODY OR CONTROL OF EVIDENCE SHALL BE MADE AVAILABLE TO THE DEFENDANT OR HIS ATTORNEY AT THE PRELIMINARY HEARING OR IF NO HEARING IS HELD, NOT LATER THAN ELEVEN (11) DAYS PRIOR TO THE TRIAL OF THE CASE, ... CONVERSELY, IN APPLICANT'S CASE, THE SOLICITOR FAILED TO PROVIDE THE APPLICANT WITH ANY COPIES OF FORENSIC ANALYSIS REPORT OR CHAIN OF CUSTODY FOR THE ALLEGED WEAPON.

- ① APPLICANT SUBMITS, THAT TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBTAINING, AND INVESTIGATING THE VALIDITY OF THE WEAPON IN QUESTION, INDICTMENTS DOCKET NO. 2013-GS-3201522 AND 3201523, WHICH WAS THE MOST SIGNIFICANT PART OF THIS CASE. APPLICANT SUBMITS, SOLICITOR'S NEVER PRODUCE TO THE DEFENDANT OR ATTORNEY, THE PROPER CHAIN OF CUSTODY FORMS, FOR THE PURPOSE OF ESTABLISHING A CHAIN OF PHYSICAL CUSTODY, AND THE REASON BEING, WAS THAT CHAIN OF CUSTODY WAS BROKEN. THIS EVIDENCE WAS ESSENTIAL TO ESTABLISH A CLAIM OR DEFENSE, BY COUNSEL BEING INEFFECTIVE, APPLICANT WAS DEPRIVE OF A FAIR TRIAL. SEE: STATE V. JOSEPH, 491 J.E. 2d CT. 280 (SC. APP. 1997) 280-281 I.D. 283, 284 I.D. ALSO SEE →

BRADY V. MARYLAND, 373 U.S. 83, 83 S. CT. 1194 (1963). THE COURT HELD THAT THE SOLICITOR'S SUPPRESSION OF EVIDENCE FAVORABLE TO THE ACCUSED VIOLATED DUE PROCESS WHERE EVIDENCE IS MATERIAL TO EITHER GUILT OR PUNISHMENT. SEE: STATE V. GATHERS, 369 SE. 2D. 140 (SC. 1988) WHEN SOLICITOR KNOWS SOMETHING IS WRONG WITH THE EVIDENCE, THE JUDICIAL PROCESS IS MERELY AS LEGAL SUBTERFUGE FOR WRONGFULLY DEPRIVING A DEFENDANT OF HIS LIBERTY. MOONEY V. HOOGAN, 294 U.S. 103, 55 S. CT. 340 (1934).

- ① Applicant submits, That it's without a doubt That THE FORENSIC ANALYSIS AND CHAIN OF CUSTODY WERE MATERIAL TO HIS CASE, AS IT WAS NEEDED FOR APPLICANT DEFENSE AND WAS THE ^{SOLE} ~~SOLE~~ EVIDENCE UPON WHICH HE WAS TRIED. THIS ALSO IS A RULE 5.6. VIOLATION, OF SCRIMP.

Applicant submits, THAT THE COURT ACKNOWLEDGE COUNSEL INEFFECTIVE ASSISTANCE, SAYING THE TRANSCRIPT REVEALS THAT THE ATTORNEY USED THE LACK OF FORENSIC IN THE APPLICANT'S FAVOR.

Applicant submits, THAT THE LACK OF FORENSIC WAS NOT IN HIS FAVOR, BECAUSE ~~IT~~ IT NEVER EXISTED. APPLICANT SUBMITS, THAT HE WROTE S. C. LAW ENFORCEMENT DIVISION UNDER THE FREEDOM OF INFORMATION ACT. ON DECEMBER 27, 2013, AND AGENT THOMAS W. BERRY, RESPONDED BACK, THAT A THOROUGH SEARCH OF THERE DATABASE REVEALS THAT NO EVIDENCE FROM THIS CASE WAS SUBMITTED TO SLED FORENSIC LABORATORY FOR ANALYSIS, ON JANUARY 6, 2014. THIS DOCUMENT ALSO WAS PUT INTO EXHIBITS, BY ATTORNEY AIMEE J. ZMROCEK. APPLICANT SUBMITS, THAT THE SOLICITOR WITH HELD THIS INFORMATION, THE PROSECUTOR KNEW THAT THIS INFORMATION, WOULD TEND TO NEGATE THE GUILT OF THE ACCUSED, AND COMMITTED MIS CONDUCT. BRADY V. MARYLAND 373, U.S. 83, 83, S. CT. 1194 (1963). THE COURT HELD THAT THE SOLICITORS SUPPRESSION OF EVIDENCE FAVORABLE TO THE ACCUSED VIOLATED DUE PROCESS WHERE EVIDENCE IS MATERIAL TO EITHER GUILT OR PUNISHMENT (4).

Applicant submits. That Trial Counsel, Testify At PCR Hearing That he made these errors, it in record by counsel own words, That his performance was deficient, and the deficiency prejudiced my case. see: STRICKLAND V. WASHINGTON, 104, S.C.T. 2052 (1984); Also: KERRIGAN V. STATE, 406 S.E. 2d. 160 (S.C. 1991).

ARGUMENT (3)

DUE PROCESS OF LAW

Applicant submits, That all of the errors pointed out in this motion. And all of the party's that involve violated his due process of law. The solicitor committing mis conduct by presenting invalid indictment to the grand jury without them being clocked stamped and filed with the clerk of courts, and suppressing information that was favorable to the accuse...

Trial Counsel for not pointing these errors out to the courts, making him ineffective.

The court for allowing, these violations to take place in his court.

They all violated my 4th, 5th, 6th, 8th, 14th, Amendment to the U.S.

Constitution. Also see: ARTICLE 133. 10, 11, 14, 15, OF THE S.C.

Constitution.

ARGUMENT (4)

IMPROPRIETIES IN JUDGE'S CHARGE

Trial Court was in error, in submitting an unconstitutional charge on the law of armed robbery. ON T.R. P. 194, LINE 7-12, THE RECORD WILL REFLECT THE FOLLOWING: "IN ORDER TO FIND THE DEFENDANT GUILTY OF POSS. OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, YOU MUST FIRST FIND

(5).

THE DEFENDANT GUILTY OF EITHER COMMITTING A VIOLENT CRIME OR ATTEMPTING TO COMMIT A VIOLENT CRIME. I CHARGE YOU THAT ARMED ROBBERY IS A VIOLENT CRIME."

APPLICANT SUBMITS, THAT THIS RECHARGE ON LAW IS UNCONSTITUTIONAL AND CONSTRUCTIVELY AMENDS THE INDICTMENTS. APPLICANT WAS NEVER INDICTED OF ATTEMPTING TO COMMIT ARMED ROBBERY WHICH IS 16-11-330 (A). SEE: INDICTMENTS

THIS ERROR IS PREJUDICIAL AND AN ERROR OF LAW. APPLICANT IS ENTITLED TO RELIEF. IN STATE V. WESTON, 367 S.C. 279, 292, 624, S.E. 2D 641 (2006). THE SC. SUPREME HELD THAT WHEN THE STATE FAIL TO PRODUCE EVIDENCE OF THE OFFENSE CHARGED THE DEFENDANT IS ENTITLED TO A DIRECTED VERDICT.

FURTHER, IN STATE V. DICKEY, 394, S.C. 491, 716, S.E. 2D 97 (2011), THE STATE HELD THAT WHEN THE CIRCUIT COURT SUBMITS AN UNCONSTITUTIONAL OR AN INCOMPLETE CHARGE ON THE LAW, THE JURY IS RENDERED INOPERATIVE.

IN THIS MOTION THERE HAS BEEN SEVERAL SHOWING OF ERROR'S AND CONSTITUTIONAL VIOLATIONS. THE CONSTITUTION IS IN NO DOUBT INTENDED TO PROVIDE PROCEDURES FOR A FAIR TRIAL, I WAS COMPLETELY DENIED A FUNDAMENTAL FAIR TRIAL, THAT IS PROTECTED IN OUR BILL OF RIGHTS.

APPLICANT HAS ESTABLISH THAT, COUNSEL SHOULD HAVE CHALLENGED THE SUFFICIENCY OF THE INDICTMENTS, THAT WAS NOT FILED WITH THE CLERK OF COURT, BEFORE BEING PRESENTED TO THE GRAND JURY, WHICH IS IN VIOLATION WITH SCR(CRIM) RULE 3 (C). AND S.C. CODE OF LAW 14-17-530(2): MAKING HIM INEFFECTIVE.

APPLICANT, HAS ESTABLISH THAT THE STATE HAS NEVER PROVE A CONNECTION TO THE ALLEGED WEAPON, COUNSEL HAS FAILED, IN OBTAINING A FORENSIC ANALYSIS REPORT OR CHAIN OF CUSTODY, MAKING HIM INEFFECTIVE.

COUNSEL ALSO FAIL TO POINT OUT TO THE COURT, THAT SOLICITOR WAS SUPPRESSING THIS INFORMATION, BECAUSE THE CHAIN OF PHYSICAL CUSTODY WAS BROKEN, AND THERE WAS NO PROOF OF CONNECTION TO THE WEAPON, BECAUSE THEY NEVER SUBMITTED IT TO SLED FORENSIC LABORATORY FOR ANALYSIS MAKING ^{him} INEFFECTIVE. ALL OF THE PARTIES INVOLVE PLAY A PART IN VIOLATING MY DUE PROCESS OF LAW, AND DEPRIVING ME OF A FAIR TRIAL.

APPLICANT, REQUESTS THAT THE COURT SHOW AND CITE OPPOSITION CASE LAWS TO THE ONE'S THAT HAS BEEN RAISED IN THIS MOTION. ALSO I WOULD LIKE TO PRESEVED THESE'S ISSUES FOR APPELLATE REVIEW. I WISH NOT TO WAVE ANY OF THEM.

CONCLUSION

IN ALL GOOD CONSCIENCE, BASED ON THE FOREGOING FACTS/ARGUMENTS, I WOULD ASK THIS COURT NOT TO JUST "BLINK" AT THE CLEAR CONSTITUTIONAL VIOLATION/FACTS IN THIS MOTION, AND IT BE SIGNIFICANT TO VACATE MY SENTENCE OR GRANT ME A NEW TRIAL. AT THIS TIME I WOULD LIKE TO THANK THE COURT FOR YOUR TIME IN THIS MATTER.

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 PERRY B. BUCHANAN #281305-
 VS. Applicant
 STATE OF SOUTH CAROLINA
 Respondent

COURT OF COMMON PLEAS
 CASE NO 2013-CP-32-03673

CERTIFICATE OF SERVICE

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

MAY 13 A 9:10

FILED

THE ABOVE NAMED APPLICANT, PERRY BUCHANAN #281305, DOUBT HERE BY
 CERTIFY THAT A TRUE AND CORRECT COPY OF THIS RULE 59 (E)
 MOTION IS ENCLOSED, ALONG WITH CERTIFICATE OF SERVICE, HAS BEEN
 SENT TO THE LISTED INDIVIDUAL INDICATING THE SAME. SENT BY
 U.S. MAIL POSTAGE PREPAID AND ADDRESSED TO THE
 INDIVIDUAL'S AS FOLLOWS:

BETH A. CARRIGG, CLERK
 LEXINGTON COUNTY JUDICIAL CENTER
 205 EAST MAIN ST.
 LEXINGTON, SC 29072

WILLIAM P. KEESLEY, JUDGE
 LEXINGTON COUNTY JUDICIAL CENTER
 205 EAST MAIN ST.
 LEXINGTON SC 29072

ALAN WILSON
 ATTORNEY GENERAL
 P.O. BOX 11549
 COLUMBIA, SC

DANIEL SHEAROUNE, CLERK
 SC SUPREME COURT
 P.O. BOX 11330
 COLUMBIA, SC 29211

SIGNATURE Perry Buchanan

Notary to and subscribed before me
 on 24th day of May 2014
S. Outlaw
 (Notary Public of South Carolina)
 My Commission Expires 2/24

TO:

MAY 7, 2014

BETHA, CARRIGG, CLERK
 LEXINGTON COUNTY
 JUDICIAL CENTER
 205 EAST MAIN ST.
 LEXINGTON, S.C. 29072

281305
 PERRY BUCHANAN
 EVANS CI
 610 HWY 9 WEST
 BENNETTSVILLE, SC
 29612

DEAR MS. CARRIGG

I RECEIVED A COPY OF THE MEMORANDUM ORDER
 ON MAY 2, 2014, AT EVANS CI MAIL ROOM.
 I'M FILING THIS RULE 59(E) MOTION TO ALTER OR AMEND,
 WITHIN THE 10 DAYS ALLOW, MAKING THIS MOTION TIMELY
 FILED. PLEASE SEND ME A Clocked STAMP FILED, COPY
 OF THIS MOTION.

THANK YOU VERY
 MUCH

Perry Buchanan

sworn to and subscribed before me

the 24 day of May

S. Oullon

(Notary Public of South Carolina)

My Commission Expires 2/24/15

BETHA A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

2014 MAY 13 A 9:10

FILED

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

Perry B. Buchanan,
S.C.D.C. No. 281305,)

Case No. 2013-CP-32-3673

2015 JAN -8 A 8:57

Applicant,)

LETHA A. CARRIGG
CLERK OF COURT
LEXINGTON SC

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

*WPH
#1*

This matter reaches the Court by way of an Application for Post-Conviction Relief (PCR) filed on October 24, 2013. Respondent subsequently filed its responsive pleadings. A hearing was convened at the Lexington County Courthouse on April 17, 2014. Applicant was present and was represented by Aimee Zmroczek, Esq., and Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General. Applicant testified on his behalf and counsel testified.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the June 2010 term of the Lexington County Grand Jury for armed robbery (2010-GS-32-1522) and possession of a weapon during the commission of a violent offense (2010-GS-32-1523). Applicant was represented by Casey D. Cornwell, Esq. The State filed its notice to seek a life without the possibility of parole 'LWOP' prison sentence on April 7, 2011. The State called its case to trial on April 25, 2011 before the Honorable R. Knox McMahon. Applicant was

convicted for the lesser-included offense of common law robbery and the weapons charge. Judge McMahon sentenced Applicant to a term of fifteen (15) years imprisonment.

A Notice of Appeal was filed and perfected on Applicant's behalf. Following briefing, the South Carolina Court of Appeals affirmed his conviction and sentence by unpublished opinion. State v. Perry Bernard Buchanan, 2013-UP-319 (S.C. Ct. App. July 17, 2013). The Remittitur was sent on August 9, 2013.

At the PCR hearing, Applicant proceeded on the following allegations of Ineffective Assistance of Counsel:

- WPH
#2
1. Failure to move to dismiss the charges at the outset of the representation;
 2. Failure to investigate the State's lack of inculpatory evidence that Applicant committed armed robbery;
 3. Failure to interview and present an alleged beneficial witness 'Terrance Boykin' at trial;
 4. Failure to request a jury charge on the lesser-included offense of shoplifting;
 5. Failure to object to the trial judge's alleged improper jury charge.

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his recollections of his case and counsel's representation. He stated that counsel conducted two pre-trial consultations with him and noted that counsel spoke with me on "some things." Applicant failed to clarify further. Applicant stated that the State did not possess evidence that connected him to the use of a weapon during the commission of the offense. He stated that he had suspicions that the State was not in full compliance with counsel's discovery motion. He expressed the sentiment to counsel. He stated that since his imprisonment, he has made inquiries with various Freedom of Information of Act 'FOIA' inquiries with various State agencies on the matter. Applicant presented several exhibits

in support of his attack on counsel's representation for allegedly failing to investigate the lack of inculpatory forensic evidence regarding the armed robbery charge.¹

Applicant testified that he desired that counsel negotiate a plea agreement on the lesser-included offense of shoplifting. Counsel discussed the case with him prior to trial. The discussions included Applicant's Fifth Amendment right to testify or not. Applicant last opined that he now thinks counsel's performance was inadequate for failing to request a jury charge on shoplifting. He stated that he never denied his guilt on the shoplifting charge. He opined that counsel should have objected to the trial judge's jury charge. The basis of the allegation was not articulated further.

Wm #3 Counsel testified to his conduct during the course of the representation. Counsel investigated Applicant's case, independently evaluated the strength of the State's evidence, and formulated a defense theory of the case. He noted the State lacked direct, inculpatory forensic evidence such as fingerprints. The State's discovery disclosures offered nothing that would be of great benefit, and the lack of forensic evidence was not material to Applicant's defense. Subsequent to the termination of plea negotiations, the State informed him of its notice to seek an LWOP sentence. Based on his experience, counsel formulated a trial strategy to attack the State's case on armed robbery. He stated the trial strategy was never in question because it placed Applicant in a position to avoid a mandatory LWOP prison sentence. Counsel waived on whether a request to charge on shoplifting was merited; yet, counsel stated that he made all tactical decisions within the ambit of his sole objective of preventing Applicant from getting convicted of armed robbery and receiving a mandatory LWOP term of imprisonment. He distinguished what was realistic from what was possible in the manner he presented Applicant's case at trial.

¹ Applicant's Exhibits included return correspondence from his personal FOIA requests.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

WPK
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The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony

accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, the court rejects all the grounds asserted by the applicant. The bulk of the PCR hearing dealt with the fact that the applicant was charged with armed robbery and possession of a knife during the commission of a violent crime. The applicant was facing LWOP, if he were convicted of armed robbery. Counsel was trying to avoid the LWOP, and he succeeded in his efforts by convincing the jury that the applicant should be found not guilty of armed robbery. The jury convicted the applicant of the lesser-included offense of common law robbery, which is also known as strong arm robbery. The jury had been instructed by the trial judge not to consider the possession of a knife charge, unless the jury convicted the applicant of armed robbery. Nonetheless, the jury found the defendant not guilty on that charge.

The burden of proof is upon the applicant to establish the assertions in this application by the greater weight or preponderance of the evidence. Most of Applicant's assertions as to his other grounds appear to be either based on a misunderstanding of the law or they are simply broad accusations. Applicant has to prove not only ineffective assistance of counsel, but he also must prove that the deficiency resulted in prejudice to him. He has not.

This record demonstrates that the applicant's counsel did an outstanding job of representing his client. There is no evidence of deficient performance and no proof of prejudice resulting from ineffective assistance, as required by Strickland. There is no proof that the court

lacked jurisdiction. All claims raised by the applicant have been reviewed, and they are all denied.

A.

Applicant has failed to meet his burden to prove counsel was ineffective for failing to request a jury charge on the lesser-included offense of shoplifting. “[R]efusing to ask for a charge on a lesser included offense could be a reasonable trial strategy. Abney v. State, 408 S.C. 41, 46-47, 757 S.E.2d 544, 547 (Ct. App. 2014), reh’g denied (Apr. 24, 2014). “The trial court is required to charge a jury on a lesser included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed.” State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). “However, the trial court should refuse to charge on a lesser included offense when there is no evidence that the defendant committed the lesser rather than the greater offense.” State v. Smith, 315 S.C. 547, 549, 446 S.E.2d 411, 413 (1994).

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This Court finds counsel’s testimony on the matter more credible than Applicant’s testimony. Applicant failed to present credible testimony that he took issue or notified counsel of his current issues regarding counsel’s trial strategy. Regardless, this Court finds that Applicant’s primary argument is a logical one. Applicant admits that he stole a computer from Walmart. He admits that an employee confronted him as he was attempting to remove the item from the store. He admits that he was shoplifting or attempting to commit larceny. He denies that he was armed with any weapon. The entire incident was captured on security video, which was played for the jury. Applicant maintains that the only evidence that the theft was accomplished by threats, coercion, or placing the victim in fear arose by virtue of the allegation that he was armed with a knife (a box cutter). He believes that the jury found him not guilty of possessing a knife during

the commission of a violent crime, therefore he cannot be convicted of the strong armed robbery charge. This Court finds that contention speculative and unpersuasive.

First, even if one were to accept that the jury had no evidence of threats, coercion, or placing the victim in fear, except for the evidence about the box cutter, the rule of inconsistent verdicts was abolished in South Carolina. See State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). A jury is allowed to be lenient towards a defendant, and the verdict of the jury is entitled to great deference. As stated in Alexander:

The rule that a criminal defendant is entitled to a new trial when the jury reaches inconsistent verdicts in his case has been under tremendous attack. The United States Supreme [303 S.C. 383] Court, in United States v. Powell, 469 U.S. 57, 105 S.Ct. 471, 83 L.Ed.2d 461 (1984) reaffirmed its ruling in Dunn v. United States, 284 U.S. 390, 52 S.Ct. 189, 76 L.Ed. 356 (1932) overruled on other grounds, Sealfon v. United States, 332 U.S. 575, 68 S.Ct. 237, 92 L.Ed. 180 (1948) that a defendant convicted by a jury on one count cannot attack the conviction because it was inconsistent with the verdict of acquittal on another count.

WPC
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Id. The Powell court reasoned that a jury might merely be lenient towards a defendant when it refuses to convict him of all counts. United States v. Powell, 469 U.S. 57, 65, 105 S.Ct. 470, 476-477 (1984). Further, the Court noted that the government has no recourse to attack the inconsistency by arguing on appeal for conviction on all counts. Id. See also Hess v. Medlock, 820 F.2d 1368 (4th Cir.1987); see also United States v. Scheper III, 520 F.2d 1355 (4th Cir. 1975) (both rejecting rule against inconsistent verdicts). Our sister state of Georgia recently abolished its rule prohibiting inconsistent verdicts in criminal cases. Milam v. State, 255 Ga. 560, 341 S.E.2d 216 (1986).

Second, this Court finds Applicant failed to prove counsel's representation here constituted prejudice even absent this Court's consideration of counsel's valid trial strategy on the matter. This Court rejects the assertion that there is no evidence of threats, apart from the

presence of the box cutter. While it may be a thin distinction, there are sections of the transcript where the victim's testimony and other evidence, including the video, can be interpreted to support a determination the larceny was accomplished by threats, coercion, or intimidation apart from the possession of a knife. (Trial Transcript pp.61-69).

Third, S.C. Code § 16-1-60 defines violent crimes. As the judge instructed, the only way to find the defendant guilty of possessing a knife during the commission of a violent crime would be if the defendant were first found guilty of armed robbery. Strong arm robbery is not classified as a violent crime. So, there are two elements. Having found the applicant not guilty of armed robbery, the jury was precluded from finding him guilty of possessing a knife during its commission.

WML
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Applicant asserts that the attorney should have sought to have the jury find him guilty only of larceny or shoplifting. This court does not believe that shoplifting is a lesser-included offense of Armed Robbery. As for seeking a lesser-included offense of larceny, counsel stated valid strategic reasons for not seeking such an option. His focus was on saving his client from serving LWOP, and he was successful. Therefore, this allegation is denied and dismissed.

B.

This Court finds Applicant's allegation that counsel was ineffective for failing to investigate and present the State's lack of forensic evidence at trial to be wholly without merit. The challenges to the lack of forensic evidence are not supported by a showing of what a forensic examination would have shown or how that would have helped the Applicant. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records.)

This Court finds that the transcript reveals that the attorney used the lack of forensics in the applicant's favor. (Trial Transcript.p.134; p.151;p.163; p.169-70).

This Court finds Applicant's allegation that counsel was ineffective for not presenting Boykin as a trial witness is speculative and readily disposable. "[The South Carolina Supreme Court] has repeatedly held a PCR applicant **must produce the testimony** of a favorable witness **or otherwise offer the testimony in accordance with the rules of evidence** at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis added). Applicant failed to present testimony from Boykin at the PCR hearing. Further comment on the matter is unnecessary. Therefore, these two allegations are denied and dismissed.

Wm
#9
This Court finds that the Applicant's allegation that counsel was ineffective for failing to object to the trial judge's jury charge is without merit. There were references to improprieties in the judge's charge. Again, aside from the blanket assertion, the court was provided no specifics to evaluate how the charge was improper. The court sees nothing sufficient to support a grant of PCR in the judge's charge or the failure to object to any issue related to it. Therefore, these three allegations are denied and dismissed.

C.

Last, this Court finds Applicant's allegation that counsel was ineffective for failing to move to dismiss Applicant's charges at the outset of the representation is wholly without merit. "The indictment is a notice document. A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn." State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). "Criminal rule requiring solicitor to act within 90 days after receipt of an arrest warrant from the Clerk of Court is administrative and nonjurisdictional, and thus failure

of solicitor to act on warrant within 90 days does not within itself invalidate warrant or prevent subsequent prosecution." Rule 3 SCRCrimP; State v. Edwards 374 S.C. 543, 649 S.E.2d 112 (2007). This Court finds Applicant's allegation itself is facially not credible. Applicant asserts deficiencies and defects in the indictments, yet no specifics were provided to the court as to how the applicant feels the indictments are deficient or defective. No deficiency or defect appears on the faces of the indictments. No evidence was produced to show that the filing of the indictments violates the South Carolina Rules of Criminal Procedure. Regardless, Applicant failed to present any credible evidence to suggest he was not on notice of the charges he faced. Therefore, this allegation is denied and dismissed.

D.

WMC
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Except as discussed above, this Court finds that the Applicant affirmatively abandoned the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

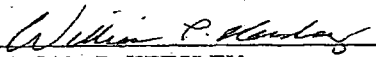
application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court cautions the Applicant that he must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this ^{7th} day of September, 2014. *JANUARY, 2015*


WILLIAM P. KEESLEY
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Perry Buchanan, #281305)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

ORIGINAL

MOTION TO RECONSIDER

NOW COMES, Applicant, Perry Buchanan, by and through his undersigned counsel, and moves pursuant to Rule 59(e), SCRCP for an order altering or amending the court's prior order filed on January 8, 2015, denying Applicant's claim and dismissing with prejudice. While the court has ruled in the State's favor, the Applicant submits this motion to ensure that he has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000).

Specifically all allegations submitted in the memoranda by Applicant regarding:

1. Failure to move to dismiss the charges at the outset;
2. Failure to investigate the State's lack of inculpatory evidence;
3. Failure to interview witness for the defense;
4. Failure to request a jury charge on the lesser-included offense of shoplifting; and
5. Failure to object to Judge's improper jury charge.

THEREFORE, counsel requests the Order be reconsidered for the above listed

FILED
2015 MAR -11 A 11:04
BETH A. CHAMBERLAIN
CLERK OF COURT
LEXINGTON, SC

specific reasons and issues not specifically listed above but raised during the trial of this matter.

Respectfully Submitted,



Aimee J. Zmroczek, Esq. #77936

A.J.Z. Law Firm, LLC

2003 Lincoln Street

P.O. Box 11961

Columbia, S C 29211

(803) 400-1918 telephone

(803) 405-8005 fax

ajzlawfirm@gmail.com

Counsel for Applicant

Lexington, South Carolina.

Dated: February 28, 2015

BELE A. OAHING
CLERK OF COURT
LEXINGTON, SC

2015 MAR -4 A 11:04

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Perry B. Buchanan,
S.C.D.C. No. 281305,

Applicant,

v.

State of South Carolina,

Respondent.

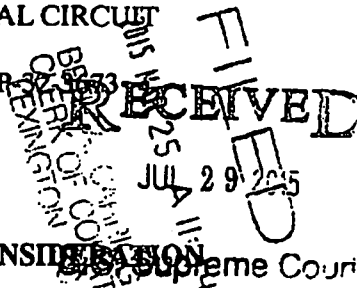
IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

Case No. 2013-CR-281305

ORDER ON RECONSIDERATION

ORIGINAL



On September 9, 2014, this court entered an order denying the Application for Post-Conviction Relief (PCR) filed on October 24, 2013. The applicant filed a motion to have the court reconsider and to alter or amend the order. Having reconsidered the matter, the motion is denied. The prior order is reaffirmed in its entirety as to all issues.

The parties were notified that the court would decide the motion on written submissions. Both attorneys filed documents, and the submission by the applicant's attorney attached to it an argument that was drafted by the applicant himself.

Applicant's attorney indicates that the testimony of trial counsel at the PCR hearing did not support a determination that a valid trial strategy was being pursued. The court disagrees. The applicant was facing a sentence of imprisonment for life without parole (LWOP). The trial attorney gave valid and convincing reasons why he adopted the strategy that he did.

Applicant's attorney also asserts that the evidence in the PCR hearing shows that the trial attorney's failure to investigate certain issues and failure to obtain DNA testing fell below applicable standards. Again, the court disagrees, for the reasons stated in the prior order.

The applicant feels that shoplifting is a lesser-included offense of armed robbery. He believes that the jury in his case should have been given the option to find him guilty of shoplifting. He also does not believe that there was any evidence of strong-arm robbery, and that it was error to submit that to the jury. Those issues and the applicant's position were addressed in the prior order, and the court sees no reason to change the ruling. The order included the following explanation, in addition to other reasons for denial of PCR.

Applicant admits that he stole a computer from Walmart. He admits that an employee confronted him as he was attempting to remove the item from the store. He admits that he was shoplifting or attempting to commit larceny. He denies that he was armed with any weapon. The entire incident was captured on security video, which was played for the jury. Applicant maintains that the only evidence that the theft was accomplished by threats, coercion, or placing the victim in fear arose by virtue of the allegation that he was armed with a knife (a box cutter). He believes that the jury found him not guilty of possessing a knife during the commission of a violent crime, therefore he cannot be convicted of the strong armed robbery charge. This Court finds that contention speculative and unpersuasive.

First, even if one were to accept that the jury had no evidence of threats, coercion, or placing the victim in fear, except for the evidence about the box cutter, the rule of inconsistent verdicts was abolished in South Carolina. See State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). A jury is allowed to be lenient towards a defendant, and the verdict of the jury is entitled to great deference. . . .

Second, this Court finds Applicant failed to prove counsel's representation here constituted prejudice even absent this Court's consideration of counsel's valid trial strategy on the matter. This Court rejects the assertion that there is no evidence of threats, apart from the presence of the box cutter. While it may be a thin distinction, there are sections of the transcript where the victim's testimony and other evidence, including the video, can be interpreted to support a determination the larceny was accomplished by threats, coercion, or intimidation apart from the possession of a knife. (Trial Transcript pp.61-69).

Third, S.C. Code § 16-1-60 defines violent crimes. As the judge instructed, the only way to find the defendant guilty of possessing a knife during the commission of a violent crime would be if the defendant were first found guilty of armed robbery. Strong arm robbery is not classified as a violent crime. So, there are two elements. Having found the applicant not guilty of armed robbery, the jury was precluded from finding him guilty of possessing a knife during its commission.

Applicant asserts that the attorney should have sought to have the jury find him guilty only of larceny or shoplifting. This court does not believe that

ORIGINAL

shoplifting is a lesser-included offense of Armed Robbery. As for seeking a lesser-included offense of larceny, counsel stated valid strategic reasons for not seeking such an option. His focus was on saving his client from serving LWOP, and he was successful. Therefore, this allegation is denied and dismissed.

Having reconsidered all issues raised, the motion to alter or amend the judgment is denied.

THEREFORE, IT IS ORDERED that the motion under Rule 59(e), SCRCR, is denied. The applicant is cautioned that he must file and serve a notice of intent to appeal within thirty (30) days in order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCR; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for procedures after notice has been timely filed.

#3 IT IS FURTHER ORDERED that the Application for Post-Conviction Relief is denied and dismissed with prejudice, and the applicant is remanded to the custody of respondent

AND IT IS SO ORDERED this 23rd day of March, 2015.

Lexington, South Carolina

William P. Keesley
WILLIAM P. KEESLEY
Presiding Judge
Eleventh Judicial Circuit

FILED
2015 MAR 25 AM 11:14
CLERK OF COURT
LEXINGTON, SC

WITNESSES

West Columbia Police Department

I Taylor

Law Enforcement Case #: 1006514

JAG

ARREST WARRANT NUMBER

J033578

DOCKET NO. 2010GSS3201522

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2010

THE STATE
vs.

Perry Bernard Buchanan

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 6/7/13

VERDICT

GUILTY of Robbery

CDR #: 0139

Indictment for

ROBBERY WHILE ARMED WITH A
DEADLY WEAPON

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date: 14/26/11

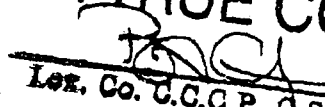
David Sanford

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	ROBBERY WHILE ARMED WITH A DEADLY
COUNTY OF LEXINGTON	)	WEAPON
	)	

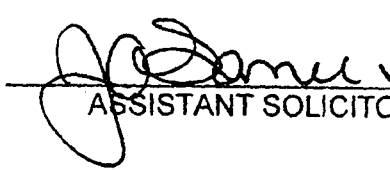
§ 16-11-0330(A)

At a Court of General Sessions, convened on JUNE 2010, the Grand Jurors of Lexington County present upon their oath:

That **Perry Bernard Buchanan along with co-defendant** did in Lexington County, South Carolina on or about March 12, 2010 knowingly and willfully while armed with a deadly weapon to wit: a box cutter, did feloniously take from the person or presence of Shirley Smith a Wal-Mart employee at 2401 Augusta Road, West Columbia, SC, by means of force, threats or intimidation goods being described as a Dell Inspiron desktop computer with the intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

351

COUNTY OF Lexington
 STATE VS.
Perry Bernard Buchanan
 AKA: _____
 Race: _____ Sex: M Age: 50
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Columbia, SC 29223-4609
 DL#: 008729342 SID#: _____

INDICTMENT/CASE#: 2010GS3201522
 A/W#: J033578
 Date of Offense: 3/12/2010
 S.C. Code §: 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Robbery / Common law robbery, strong arm robbery

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Garnick, J. Angela

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
 and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment
 of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 410 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ — plus 20% fee: \$ —

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

Fine:	\$
14-1-206 (Assessments 107.5 %)	\$
14-1-211(A)(1) (Conv. Surcharge)	\$100
14-1-211(A)(2) (DUI Surcharge)	\$100
56-5-2995 (DUI Assessment)	\$12
56-1-286 (DUI Breath Test)	\$25
reviso 47.9 (Public Def/Prob)	\$500
14-1-212 (Law Enforce. Funding)	\$25
14-1-213 (Drug Court Surcharge)	\$150
50-21-114 (BUI Breath Test Fee)	\$50
56-5-2942(J) (Vehicle Assessment)	\$40/ea
reviso 90.5 (SCCA Surcharge)	\$5
% to County (if paid in installments)	\$
OTAL	\$130

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal consecutive weekly/monthly
 pmts. of \$ — beginning _____

\$ — paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

lerk of Court/ Deputy Clerk

ourt Reporter:

CCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

12145
26 April 11