

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

ALFRED BERNARD BLUFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000481

APPENDIX

LAURA R. BAER
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General
P.O.Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

RECEIVED

AUG 30 2017

S.C. SUPREME COURT

INDEX

INDEX	i
TRIAL TRANSCRIPT (July 10, 2012)	1
<u>ANDERS</u> BRIEF OF APPELLANT	140
<u>STATE V. BLUFORD</u> , OPINION NO. 2013-UP-454 (S.C. Ct. App. filed 12/11/13)	151
REMITTITUR	153
APPLICATION FOR POST-CONVICTION RELIEF	154
RETURN	169
TRANSCRIPT OF HEARING (Oct. 22, 2015)	175
POST-CONVICTION RELIEF HEARING (Dec. 15, 2015)	198
APPLICANT'S EXHIBIT NO. 1 (Letter dated June 4, 2015)	247
ORDER OF DISMISSAL	255
INDICTMENTS	265

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
 APPLICANT'S EXHIBIT 1 (JUNE 4, 2015 LETTER); APPLICANT'S
 EXHIBIT 2 (PHOTOGRAPH); AND APPLICANT'S EXHIBIT 3
 (PHOTOGRAPH)¹**

**STATE'S TRIAL EXHIBITS NO. 3 – 5
 (SURVEILLANCE VIDEOS)**

¹ Pursuant to Rule 243(f)(3), SCACR, and Rule 210(f), SCACR, transportation of these exhibits is being requested because they contain photographs that do not reasonably lend themselves to accurate reproduction in the Appendix. Because portions of Applicant's Exhibit 1 are documents that could be reproduced, a complete copy is also being included in the Appendix.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
)
ALFRED B. BLUFORD,)
)
DEFENDANT.)
_____)

2010-GS-23-07905 & 07906

TRANSCRIPT OF RECORD

JULY 10, 2012
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE LETITIA H. VERDIN

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

ATTORNEY FOR PLAINTIFF:

L. MARK MOYER, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JAKE ERWIN, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
OPENING STATEMENTS	
MR. MOYER -----	35
MR. ERWIN -----	43
PATRICK STEVEN BARR	
DIRECT BY MR. MOYER -----	44
CROSS BY MR. ERWIN -----	69
REDIRECT BY MR. MOYER -----	74
MICHAEL HAMMETT	
DIRECT BY MR. MOYER -----	75
CLOSING ARGUMENTS	
MR. MOYER -----	97
MR. ERWIN -----	108
CHARGE OF THE COURT -----	115
VERDICT OF THE JURY -----	132
SENTENCE OF THE COURT -----	134
CERTIFICATE OF REPORTER -----	139

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	PHOTO -----	55	56
S-2	PHOTO -----	55	56
S-3	VIDEO - CD -----	58	58
S-4	VIDEO - CD -----	58	58
S-5	VIDEO - CD -----	58	58
S-6	POCKET KNIFE -----	80	81

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
C-1	JURY CHARGE	-----	132

1 **THE COURT:** Is there anything we need to take up
2 pretrial?

3 **MR. ERWIN:** I have one very brief pretrial matter.

4 **THE COURT:** Okay.

5 **MR. ERWIN:** It shouldn't really be too much of an
6 issue.

7 **THE COURT:** Okay. Do you -- let's see. I don't have
8 my law clerk here, but the strikes on this are five and ten.

9 **MR. ERWIN:** That's my understanding, Your Honor.

10 **THE COURT:** All right. Y'all want to do one alternate
11 just in case?

12 **MR. ERWIN:** Sure. One would be fine.

13 **THE COURT:** Okay. And then do you have a witness list
14 or anything ---

15 **MR. MOYER:** Oh, I do, Judge. I'm sorry.

16 **THE COURT:** That's okay.

17 **MR. MOYER:** Both indictments -- I will not go forward
18 on the count of possession of a weapon during a violent
19 crime, just the armed robbery and the assault and battery,
20 first degree.

21 **THE COURT:** All right. So we'll do a verdict form
22 since it's got that on there. We'll do a verdict form.
23 Sir, any witness list you, I mean, I know -- we don't know
24 about your client yet.

25 **MR. ERWIN:** Potentially the client and that'll be it,

1 Your Honor.

2 THE COURT: Okay. All right. Any proposed voir dire
3 from either side?

4 MR. MOYER: I don't have any, Your Honor.

5 THE COURT: Okay.

6 MR. ERWIN: None, Your Honor. Just the normal
7 questions will be fine.

8 THE COURT: All right. And I generally ask if they
9 know anybody in the Solicitor's Office, ---

10 MR. MOYER: Yes.

11 THE COURT: --- that kind of thing. And then I'll ask,
12 you know, if there's any reason they know whatsoever that
13 they could not be fair and impartial. I'll ask that. But,
14 I mean, I'll -- and then if they know everybody else.
15 That's pretty much what I ask. All right.

16 Yes, sir, you got a matter to take up pretrial?

17 MR. ERWIN: Just very briefly, Your Honor. In one of
18 the reports it's mentioned that there was a crack pipe found
19 on Mr. Bluford at this arrest. Now, I know this goes
20 without saying, but that's not relevant to this at all. And
21 I just, you know, just want it to be understood that that's
22 not going to be mentioned in front of the jury.

23 THE COURT: All right.

24 MR. MOYER: That's true, Judge. I've talked to both
25 witnesses. And we don't have any intention of bringing that

1 up.

2 **THE COURT:** Okay. Very good. All right, then.

3 (Whereupon court was in recess at 9:55 am)

4 (Whereupon court resumed at 10:11 am)

5 (Whereupon the jury panel entered the courtroom at
6 10:11 am)

7 **THE COURT:** Thank y'all. Y'all be seated. Well,
8 ladies and gentlemen, I told you we were kind of running on
9 a -- with some tight numbers this week. So you got to see
10 that in action this morning. We couldn't bring part of you
11 up here because we were waiting on another jury to be picked
12 in another courtroom. And I think some of you might have
13 come from that courtroom. And I appreciate your patience
14 with us.

15 Earlier in the week I qualified you as jurors to serve
16 here in Greenville County. Now I need to more particularly
17 qualify you to serve on this particular jury in this
18 particular case.

19 This is the State of South Carolina versus Alfred
20 Bernard Bluford. And I'm going to go through a list of
21 questions. Some of you might have been in here with me
22 yesterday and some of you might have seen in Judge
23 Welmaker's courtroom how this goes. But just in case that
24 some of you haven't seen it, I'll go through it.

25 I've got a list of questions that I'm going to ask you.

1 Most of them are related to whether or not you know anyone
2 involved in the case or know anything about the particular
3 case.

4 If you do, then I'd ask you to stand and then -- and
5 let's talk about it. If you'll tell us your name and juror
6 number, then we'll talk about how you know that person and
7 whether or not you can still be a fair and impartial juror.

8 There are a couple -- there are not very many witnesses
9 in this case. We do not anticipate a long trial by any
10 means in this case. And a couple of these names are
11 somewhat common. So if you think you know someone by that
12 name, if you will stand and let's talk about it. It's just
13 better to be safe than sorry and have to -- have to talk
14 about it later on. All right.

15 As I said, Mr. Bluford is charged with assault and
16 battery in the first degree and armed robbery. Mr. Moyer,
17 I'll ask you to stand and introduce yourself and the folks
18 at your table.

19 **MR. MOYER:** Okay. Thank you, Judge. My name is Mark
20 Moyer. And I'm an assistance solicitor with the Greenville
21 County Solicitor's Office. Seated next to me is Carter
22 Massengill. He's a law clerk in our office. He's helping
23 me. And seated next to him is Michael Hammett. He's a
24 Greenville police officer.

25 **THE COURT:** All right.

1 **MR. MOYER:** Thank you.

2 **THE COURT:** Any member of the jury panel related by
3 blood or marriage or otherwise acquainted with any folks
4 that Mr. Moyer just introduced to you or Mr. Moyer on behalf
5 of the State? And if so, please stand.

6 (No response)

7 **THE COURT:** And none are standing.

8 Any member of the jury panel related by blood or
9 marriage or otherwise acquainted with any member of the
10 Thirteenth Circuit Solicitor's Office? Anyone related by
11 blood or marriage or otherwise acquainted with anyone in the
12 Solicitor's Office here in Greenville and Pickens Counties?
13 And if so, please stand.

14 (No response)

15 **THE COURT:** And none are standing.

16 Mr. Erwin, will you stand and introduce yourself and
17 introduce your client.

18 **MR. ERWIN:** Yes, Your Honor. My name is Jake Erwin.
19 I'm a defense attorney here in Greenville. I'm originally
20 from Spartanburg. And this is Mr. Alfred Bluford.

21 **THE COURT:** All right. Ladies and gentlemen, is anyone
22 in the jury panel ever been represented by Mr. Erwin or have
23 any immediate family member who's been represented by Mr.
24 Erwin? And if so, please stand.

25 (No response)

1 **THE COURT:** And none are standing.

2 Is any member of the jury panel related by blood or
3 marriage or otherwise acquainted with Mr. Erwin or Mr.
4 Bluford, the Defendant in this case? And if so, please
5 stand.

6 (No response)

7 **THE COURT:** And none are standing.

8 I do not know if these witnesses will testify in this
9 case. One of them is Mike Hammett, whom you just met. The
10 other is Steven Barr. Any member of the jury panel related
11 by blood or marriage or otherwise acquainted with Steven
12 Barr? And if so, please stand.

13 (No response)

14 **THE COURT:** And none are standing.

15 If you serve as jurors on this particular case you will
16 hear a lot more about what an indictment is and what an
17 indictment is not. But let me tell you that an indictment
18 merely is the document by which the State charges someone
19 with a crime. It's no evidence in the case whatsoever.

20 However, it does have a brief synopsis of the alleged
21 facts in this case. So it's a good summary for me to read
22 to you so you'll know if you know anything about this case.
23 I'm going to read to you the two charges against Mr. Bluford
24 to see if anyone in the jury panel is at all familiar with
25 any of the facts of this particular case.

(1 The first indictment for assault and battery in the
2 first degree alleges that Alfred Bernard Bluford did in
3 Greenville County on or about the 29th day of July, 2010,
4 offer or attempt to injure Steve Barr with the present
5 ability to do so, and the act was accomplished by means
6 likely to produce death or great bodily injury and/or the
7 act occurred during the commission of a robbery, burglary,
8 kidnapping and/or theft and was in violation of the code of
9 laws of South Carolina.

10 The second indictment for armed robbery alleges that
11 Alfred Bernard Bluford did in Greenville County on or about
12 the 29th day of July, 2010, while armed with a deadly weapon
13 or while alleging either by action or words that he was
14 armed while using representation of a deadly weapon or any
15 object which a person present during the commission of the
16 robbery would reasonably believe to be a deadly weapon, take
17 by means of force or intimidation goods or monies described
18 as beer belonging to Bi-Lo from the person or presence of
19 Steve Barr, this in violation of the code of laws of South
20 Carolina.

(21 Any member of the jury panel know anything about the
22 facts of this particular case? I do not know if there were
23 any media reports or anything like that, but any member of
24 the jury panel believe they have heard anything whatsoever
25 or know anything whatsoever about the facts of this

1 particular case? And if so, please stand.

2 (No response)

3 **THE COURT:** And none are standing.

4 All right, ladies and gentlemen, you've met the
5 attorneys involved in the case, you've heard the names of
6 the potential witnesses, you've met the Defendant, you've
7 heard the allegations that have been raised against the
8 Defendant. Is there any reason that any member of the jury
9 panel knows that he or she could not be a fair and impartial
10 juror in the trial of this particular case? And if so,
11 please stand.

12 (No response)

13 **THE COURT:** And none are standing.

14 Mr. Moyer, any more voir dire from the State?

15 **MR. MOYER:** No voir dire, Your Honor.

16 **THE COURT:** All right. Anything else from the Defense?

17 **MR. ERWIN:** None, Your Honor.

18 **THE COURT:** All right, then.

19 **MR. MOYER:** Could we approach real quickly?

20 **THE COURT:** Certainly.

21 (Whereupon a bench conference was held off the record
22 in the presence of the jury panel, but out of their hearing)

23 **THE COURT:** Mr. Tierney, sir, would you step up here
24 for me, please.

25 **MR. TIERNEY:** Sure.

1 **THE COURT:** It's nothing bad. We just wonder if you
2 know somebody.

3 (Whereupon a bench conference was held on the record in
4 the presence of the jury panel, but out of their hearing)

5 **THE COURT:** What's the law clerk's name?

6 **MR. MOYER:** Carter Massengill.

7 **THE COURT:** His parents, do you know what their names
8 are?

9 **MR. MOYER:** He said they have different last names, but
10 they lived across the street. He said that he knew -- he
11 said you may not recognize him, but his parents knew you and
12 that he knew you a little bit.

13 **MR. TIERNEY:** Massengill. What's his first name?

14 **MR. MOYER:** Carter.

15 **MR. TIERNEY:** I do know Carter. I didn't make any
16 connection, but, yeah, I know Carter.

17 **THE COURT:** Is the fact that he might be assisting Mr.
18 Moyer in the trial of this case, do you feel like you could
19 still be a fair and impartial juror?

20 **MR. TIERNEY:** I think so. I knew him when he was like
21 really small, really young.

22 **THE COURT:** Thank you so much. All right. Any
23 objections?

24 **MR. ERWIN:** No, Your Honor.

25 **THE COURT:** Okay. Five and ten, and one and two with

(1 one alternate.

2 (Whereupon the bench conference was ended)

3 THE COURT: All right, ladies and gentlemen. In just a
4 moment when your name is called, if your name is called,
5 then I'll ask you to come forward, stand sort of in between
6 these tables. The bailiffs will show you exactly where, but
7 turn and face your fellow jurors. Don't face me, face your
8 fellow jurors.

9 The State will then decide -- they will say whether to
10 present you or excuse you. And if you're presented, then
11 the Defense will say whether to excuse you or seat you. And
12 if you are seated, then the bailiff will show you exactly
13 where to sit.

(14 And for the first person who comes up, don't worry
15 about it. I know it's always tough on the first person, but
16 we'll guide you through it. I promise.

17 Let me just say a couple of quick things to you. When
18 you come up here, bring everything you've got with you just
19 in case you do get picked. And then that way you won't have
20 to go back to your seat and get your things.

(21 And then secondly, do not take it personally if you do
22 not get picked for the jury. There are a million different
23 reasons that somebody does not get picked for a jury. I
24 know it probably won't hurt your feelings, but just in case
25 it does I say to you, I practiced law for a while before I

(1 did this, and I can tell you, it was never anything personal
2 whatsoever. All right. Ready?

3 MADAME CLERK: Yes. All right. Juror number 11, Carol
4 Bauer-Lopis.

5 (Whereupon Carol Bauer-Lopis, a white female, came
6 forward)

7 MADAME CLERK: What says the State?

8 MR. MOYER: Please present Ms. Bauer.

9 MADAME CLERK: What says the Defendant?

10 MR. ERWIN: Please excuse Ms. Bauer.

11 MADAME CLERK: All right, ma'am, you may be seated.

(12 You've been excused from this case. Juror 13, James
13 Belcher.

14 THE COURT: And I promise you that you all are chosen
15 at random. We're not just trying to pick people on the very
16 end over there.

17 (Laughter)

18 (Whereupon James Belcher, a white male, came forward)

19 MADAME CLERK: What says the State?

20 MR. MOYER: Please present Mr. Belcher.

21 MADAME CLERK: What says the Defendant?

22 MR. ERWIN: Please seat the juror.

(23 MADAME CLERK: Mr. Belcher, please have a seat in the
24 jury box. Juror 117, John Rainey.

25 (Whereupon John Rainey, a white male, came forward)

1 **MADAME CLERK:** What says the State?

2 **MR. MOYER:** Please present Mr. Rainey.

3 **MADAME CLERK:** What says the Defendant?

4 **MR. ERWIN:** Please seat the juror.

5 **MADAME CLERK:** Mr. Rainey, please have a seat in the

6 jury box. Juror 27, Jami Carroll.

7 (Whereupon Jami Carroll, a white female, came forward)

8 **MADAME CLERK:** What says the State?

9 **MR. MOYER:** Please present Ms. Carroll.

10 **MADAME CLERK:** What says the Defendant?

11 **MR. ERWIN:** Please seat the juror.

12 **MADAME CLERK:** Ma'am, please have a seat in the jury

13 box. Juror 160, Lori Fay.

14 (Whereupon Lori Fay, a white female, came forward)

15 **MADAME CLERK:** What says the ---

16 **MR. MOYER:** Please present Ms. Fay.

17 **MADAME CLERK:** What says the Defendant?

18 **MR. ERWIN:** Please excuse Ms. Fay.

19 **MADAME CLERK:** All right, ma'am, please be seated. You

20 have been excused from this case. Juror 71, Leslie

21 Hollingsworth.

22 (Whereupon Leslie Hollingsworth, a white female, came
23 forward)

24 **MADAME CLERK:** What says the State?

25 **MR. MOYER:** Please present Ms. Hollingsworth.

1 **MADAME CLERK:** What says the Defendant?

2 **MR. ERWIN:** Please excuse Ms. Hollingsworth.

3 **MADAME CLERK:** All right, Ms. Hollingsworth, you may be
4 seated. Juror 59, Mark Gouge.

5 (Whereupon Mark Gouge, a white male, came forward)

6 **MADAME CLERK:** What says the State?

7 **MR. MOYER:** Please present Mr. Gouge.

8 **MADAME CLERK:** What says the Defendant?

9 **MR. ERWIN:** Please excuse the juror.

10 **MADAME CLERK:** Sir, you may be seated. Juror 25,
11 Donald Burke.

12 (Whereupon Donald Burke, a white male, came forward)

13 **MADAME CLERK:** What says the State?

14 **MR. MOYER:** Please excuse the juror.

15 **MADAME CLERK:** All right, sir, you may be seated. You
16 have been excused from this case. Juror 43, Francina Downs.

17 (Whereupon Francina Downs, a black female, came
18 forward)

19 **MADAME CLERK:** What says the State?

20 **MR. MOYER:** Please excuse the juror on this case.

21 **MADAME CLERK:** All right, ma'am, you may be seated.
22 You have been excused from this case. Juror 94, Thomas
23 Moran.

24 (Whereupon Thomas Moran, a white male, came forward)

25 **MADAME CLERK:** What says the State?

1 **MR. MOYER:** Please present Mr. Moran.

2 **MADAME CLERK:** What says the Defendant?

3 **MR. ERWIN:** Please seat the juror.

4 **MADAME CLERK:** All right, sir, please have a seat in
5 the jury box. Juror 15, Jeffrey Bogdanski.

6 (Whereupon Jeffrey Bogdanski, a white male, came
7 forward)

8 **MADAME CLERK:** What says the State?

9 **MR. MOYER:** Please present Mr. Bogdanski.

10 **MADAME CLERK:** What says the Defendant?

11 **MR. ERWIN:** Please excuse the juror.

12 **MADAME CLERK:** All right, sir, please be seated. You
13 have been excused from this case. Juror 110, Reid Polstra.

14 (Whereupon Reid Polstra, a white male, came forward)

15 **MADAME CLERK:** What says the State?

16 **MR. MOYER:** Please present Mr. Polstra.

17 **MADAME CLERK:** What says the Defendant?

18 **MR. ERWIN:** Please seat the juror.

19 **MADAME CLERK:** Sir, have a seat in the jury box,
20 please. Juror 127, Jill Schmidt.

21 (Whereupon Jill Schmidt, a white female, came forward)

22 **MADAME CLERK:** What says the State?

23 **MR. MOYER:** Please present Ms. Schmidt.

24 **MADAME CLERK:** What says the Defendant?

25 **MR. ERWIN:** Please excuse the juror.

1 **MADAME CLERK:** All right, ma'am, you may be seated.

2 Juror 121, Mark Ring.

3 **THE COURT:** Yes, sir, you need to approach?

4 **MR. RING:** Yes, ma'am.

5 **THE COURT:** I would ask the attorneys to approach,
6 please.

7 (Whereupon Mr. Ring, a white male, came forward)

8 (Whereupon a bench conference was held on the record in
9 the presence of the jury panel, but out of their hearing)

10 **MR. RING:** Does Jon Gregory work for the Solicitor's
11 Office?

12 **THE COURT:** He does.

13 **MR. RING:** Okay. I know him. He goes to my church.

14 **THE COURT:** Okay.

15 **MR. RING:** I'm fine.

16 **THE COURT:** You think you could still be ---

17 **MR. RING:** Yeah, I'm fine. But I just -- I didn't know
18 if that was ---

19 **THE COURT:** I'm glad you mentioned it. Can you -- you
20 think you could still be fair and impartial?

21 **MR. RING:** Oh, yeah, if they call me.

22 **MR. ERWIN:** If that's good enough for you, Your Honor,
23 ---

24 **THE COURT:** That's fine. Thank you for letting us
25 know.

1 (Whereupon the bench conference was ended)

2 **MADAME CLERK:** What says the State?

3 **MR. MOYER:** Please present Mr. Ring.

4 **MADAME CLERK:** What says the Defendant?

5 **MR. ERWIN:** Please excuse the juror.

6 **MADAME CLERK:** All right, sir, you may be seated. You
7 have been excused from this case. Juror 31, Mark Cofer.

8 (Whereupon Mark Cofer, a white male, came forward)

9 **MADAME CLERK:** What says the State?

10 **MR. MOYER:** Please present Mr. Cofer.

11 **MADAME CLERK:** What says the Defendant?

12 **MR. ERWIN:** Please excuse the juror.

13 **MADAME CLERK:** All right, sir, please be seated. Juror
14 16, Sandra Bond.

15 (Whereupon Sandra Bond, a white female, came forward)

16 **MADAME CLERK:** What says the State?

17 **MR. MOYER:** Please present Ms. Bond.

18 **MADAME CLERK:** What says the Defendant?

19 **MR. ERWIN:** Please seat Ms. Bond.

20 **MADAME CLERK:** All right, Ms. Bond, please be seated in
21 the jury box. Juror 161, Shunterika Hawkins.

22 (Whereupon Shunterika Hawkins, a black female, came
23 forward)

24 **MR. MOYER:** I'm so sorry. What was that number?

25 **MADAME CLERK:** Shunterika Hawkins, 161.

1 **MR. MOYER:** Okay. Thank you.

2 **MADAME CLERK:** What says the State?

3 **MR. MOYER:** Please excuse the juror in this case.

4 **MADAME CLERK:** All right, ma'am, please be seated. You
5 have been excused from this case. Juror 133, Jonathan
6 Smith.

7 (Whereupon Jonathan Smith, a white male, came forward)

8 **MADAME CLERK:** What says the State?

9 **MR. MOYER:** Please present Mr. Smith.

10 **MADAME CLERK:** What says the Defendant?

11 **MR. ERWIN:** Please excuse the juror.

12 **MADAME CLERK:** All right, sir, please be seated. Juror
13 number 4, Lorenza Ashley.

14 (Whereupon Lorenza Ashley, race unknown, came forward)

15 **MADAME CLERK:** What says the State?

16 **MR. MOYER:** Please present Ms. Ashley.

17 **MADAME CLERK:** What says the Defendant?

18 **MR. ERWIN:** Please seat the juror.

19 **MADAME CLERK:** All right, ma'am, please be seated in
20 the jury box. Juror 134, Donna Cox.

21 (Whereupon Donna Cox, a white female, came forward)

22 **MADAME CLERK:** What says the State?

23 **MR. MOYER:** Please present Ms. Cox.

24 **MADAME CLERK:** What says the Defendant?

25 **MR. ERWIN:** Please seat the juror.

1 **MADAME CLERK:** Ms. Cox, please have a seat in the jury
2 box. Juror 159, James Borkey.

3 (Whereupon James Borkey, a white male, came forward)

4 **MR. MOYER:** I apologize. What was the last name?

5 **MADAME CLERK:** Borkey, B-o-r-k-e-y, 159.

6 **MR. MOYER:** Please present Mr. Borkey.

7 **MADAME CLERK:** Thank you. What says the State -- the
8 Defendant? Pardon me.

9 **MR. ERWIN:** Please seat the juror.

10 **MADAME CLERK:** Sir, have a seat in the jury box,
11 please. Juror 20, Margaret Brightman.

12 (Whereupon Margaret Brightman, a white female, came
13 forward)

14 **MADAME CLERK:** What says the State?

15 **MR. MOYER:** Please present Ms. Brightman.

16 **MADAME CLERK:** What says the Defendant?

17 **MR. ERWIN:** Please excuse Ms. Brightman.

18 **MADAME CLERK:** All right, ma'am, you may be seated.
19 Juror 163, John Knox.

20 (Whereupon John Knox, a white male, came forward)

21 **MADAME CLERK:** What says the State?

22 **MR. MOYER:** Please present Mr. Knox.

23 **MADAME CLERK:** What says the Defendant?

24 **MR. ERWIN:** Please seat the juror.

25 **MADAME CLERK:** Sir, have a seat in the jury box. Juror

1 83, Ricky Logan.

2 (Whereupon Ricky Logan, a black male, came forward)

3 **MADAME CLERK:** What says the State?

4 **MR. MOYER:** Please excuse the juror in this case.

5 **MADAME CLERK:** All right, sir, please be seated. Juror

6 74, Rebecca Huskey.

7 (Whereupon Rebecca Huskey, a white female, came
8 forward)

9 **MADAME CLERK:** What says the State?

10 **MR. MOYER:** Please present Ms. Huskey.

11 **MADAME CLERK:** What says the Defendant?

12 **MR. ERWIN:** Please seat the juror.

13 **MADAME CLERK:** Ms. Huskey, please have a seat in the
14 jury box. Juror 114, Jennifer Prosser.

15 (Whereupon Jennifer Prosser, a white female, came
16 forward)

17 **MADAME CLERK:** What says the State?

18 **THE COURT:** Can the attorneys approach for just a
19 moment?

20 (Whereupon a bench conference was held on the record in
21 the presence of the jury panel, but out of their hearing)

22 **MR. ERWIN:** I just noticed that as well.

23 **THE COURT:** She is a manager -- she's a co-manager at
24 Bi-Lo.

25 **MR. MOYER:** Should we call her up and question her?

1 **THE COURT:** I just feel -- I think that's too close.

2 I'm probably going to cut her loose for cause.

3 **MR. ERWIN:** Thank you, Your Honor.

4 **THE COURT:** All right. Thank you.

5 (Whereupon the bench conference was ended)

6 **THE COURT:** Ms. Prosser, you can be seated. Thank you.

7 **MADAME CLERK:** Juror 123, Barbara Robinson.

8 (Whereupon Barbara Robinson, a black female, came
9 forward)

10 **MADAME CLERK:** What says the State?

11 **MR. MOYER:** Please present Ms. Robinson.

12 **MADAME CLERK:** What says the Defendant?

13 **MR. ERWIN:** Please seat the juror.

14 **MADAME CLERK:** Ms. Robinson, please have a seat in the
15 jury box. For alternate, juror 33, Hannah Coppins.

16 (Whereupon Hannah Coppins, a white female, came
17 forward)

18 **MADAME CLERK:** What says the State?

19 **MR. MOYER:** Please present Ms. Coppins.

20 **MADAME CLERK:** What says the Defendant?

21 **MR. ERWIN:** Please excuse Ms. Coppins.

22 **MADAME CLERK:** All right, ma'am, you may be seated.
23 Juror 135, Caroline Strange.

24 (Whereupon Caroline Strange, a white female, came
25 forward)

1 **MADAME CLERK:** What says the State?

2 **MR. MOYER:** Please present Ms. Strange.

3 **MADAME CLERK:** What says the Defendant?

4 **MR. ERWIN:** Please seat the juror.

5 **MADAME CLERK:** All right, ma'am, please have a seat in
6 the jury box.

7 **THE COURT:** Any matters we need to take up regarding
8 jury selection? From the State?

9 **MR. MOYER:** Not from the State, Your Honor.

10 **THE COURT:** Any from the Defense?

11 **MR. ERWIN:** Your Honor, I do have a challenge.

12 **THE COURT:** Okay.

13 **MR. ERWIN:** And I don't know the appropriate time. I
14 don't know if you want to send the jury out ---

15 **THE COURT:** We'll handle that in just a moment. Ladies
16 and gentlemen, I'm going to ask you to step to your jury
17 deliberation room. Please don't discuss what little you
18 know about this case with anyone. Thank you.

19 (Whereupon the jury exited the courtroom at 10:41 am)

20 **THE COURT:** Will you take the remainder of the jury
21 pool out in the hall for a moment, please.

22 **THE BAILIFF:** Yes, ma'am.

23 (Whereupon the remaining members of the jury pool
24 exited the courtroom at 10:41 am)

25 **THE COURT:** Mr. Erwin.

1 **MR. ERWIN:** Your Honor, I'm just going to -- I'd just
2 like to challenge this jury under Batson.

3 **THE COURT:** Okay.

4 **MR. ERWIN:** And I'll admit, I'm just trying to keep a
5 clean record for the Defendant. So all I'm asking is for
6 the Solicitor to make a, you know, put a non-racially biased
7 reason on the record ---

8 **THE COURT:** And you're talking ---

9 **MR. ERWIN:** Three strikes.

10 **THE COURT:** --- about the three ---

11 **MR. ERWIN:** Yes, ma'am.

12 **THE COURT:** --- African Americans that were struck?

13 **MR. ERWIN:** Yes, ma'am.

14 **THE COURT:** All right. Okay. Yes, sir.

15 **MR. MOYER:** Thank you, Your Honor. May it please the
16 Court. The State struck four jurors, juror number 25,
17 number 43, number 161 and number 83, three African Americans
18 and one white man. Every one the State struck had a
19 criminal record and has been prosecuted. And so --
20 including the white man that was -- that was struck as well.

21 I can give particulars as to the charges, if necessary.
22 We do a background check on jurors. And so I do have all of
23 that information at my disposal.

24 As Your Honor will note, also there's one black African
25 American who was seated on the jury. And she does not have

1 a criminal record.

2 **THE COURT:** All right. Mr. Erwin.

3 **MR. ERWIN:** That's good. If that's good enough for the
4 record, Your Honor, that's good enough for me.

5 **THE COURT:** All right. I think he's set forth a
6 racially neutral reason for striking them and, in fact,
7 struck equally so far as when persons with criminal records
8 came forward. I don't know of any others that had criminal
9 records. Did you seat anyone who had a ---

10 **MR. MOYER:** I did not ---

11 **THE COURT:** --- criminal record?

12 **MR. MOYER:** --- seat anybody with a criminal record or
13 even charged.

14 **THE COURT:** All right then. All right. So your motion
15 to Batson is denied. And the jury's fine. We'll bring this
16 pool back in real quickly and let them go back downstairs.
17 Are y'all ready to start once we ---

18 **MR. MOYER:** Yes, ma'am.

19 (Whereupon the remaining jurors entered the courtroom)

20 **THE COURT:** Ladies and gentlemen, we brought you back
21 in just to let you go. I need -- but the first thing I need
22 for you to do is go back downstairs to your jury assembly
23 room for some further instructions on when you need to call
24 in. I'm not entirely sure when the next time you need to
25 call in will be, but if you will go back down there and

1 check in before you leave. Thank you so much.

2 (Whereupon the remaining jurors exited the courtroom)

3 **THE COURT:** You want to bring our jury panel back in if
4 they're -- Mr. Moyer, are y'all ready to start? I'll give
5 an initial charge that'll take about ten minutes.

6 **MR. MOYER:** Okay.

7 **THE COURT:** And if y'all are ready to start after that
8 -- anybody need a break or anything?

9 **MR. MOYER:** No, Your Honor.

10 **THE COURT:** Anybody need a break?

11 **MADAME CLERK:** No, ma'am.

12 **MADAME COURT REPORTER:** No, ma'am.

13 (Pause)

14 **THE COURT:** Just wait just one minute, one second. I
15 do want to say something, Mr. Moyer. I apologize. Mr.
16 Bluford, can I just -- I want to just mention something to
17 you even though we're very early in this proceeding. I
18 don't know how -- it sounds like this case is going to move
19 along fairly quickly.

20 And so, in other words, we're going to probably finish
21 with the State's case maybe this morning. I don't know.
22 And that means we're going to come to the time where you've
23 got to make the decision whether or not you want to testify
24 in this case.

25 I'm not going to go through the series of questions

1 with you right now. It's just I want you to be prepared on
2 a break to talk to your attorney about that because this
3 whole thing, as I said, may be moving pretty quickly.

4 He'll go over some questions that I'll have for you
5 about your decision to testify. And we'll also hear from
6 the State at a later time about any charges they might use
7 against you if you were to testify. All right?

8 **MR. BLUFORD:** Yes, ma'am.

9 (Whereupon the jury entered the courtroom at 10:49 am)

10 **THE COURT:** I see a few familiar faces from yesterday
11 on the jury in this courtroom that did not actually sit for
12 a case and you've been chosen again. So I am going to bore
13 you for the next couple of minutes going through my
14 preliminary charge just to give you the lay of the land
15 about this case.

16 What I will say to you now is not intended to serve as
17 a charge on the law. You will be instructed on the law by
18 me at the end of this case before you retire to consider
19 your verdict. This is merely an explanation of the
20 procedure that we will follow so you can better understand
21 what is going on in this case.

22 The Defendant is charged by two indictments filed in
23 this court with the crimes of assault and battery in the
24 first degree and armed robbery, the elements of which will
25 be explained to you later. As I said to you during

1 qualification, an indictment is simply the document by which
2 someone is charged and brought into court. And it is not in
3 any sense evidence of any allegations it contains.

4 The Defendant has pled not guilty to these indictments.
5 And the State, therefore, has the burden of proving each and
6 every element of the indictment beyond a reasonable doubt.
7 It will be your duty to determine whether the State has met
8 that burden.

9 Your purpose as jurors is to find and determine the
10 facts. And you are the sole judges of the facts. If at any
11 time I make any comment regarding the facts in this case, I
12 ask you to disregard it. The law does not allow me to have
13 an opinion on the facts of this case, and I do not.

14 You are to determine the facts from the testimony you
15 hear and other evidence introduced in court. It is up to
16 you to determine what inferences are to be drawn from that
17 evidence and testimony. It's especially important that you
18 perform your task of determining the facts diligently
19 because ordinarily there is no way to correct an erroneous
20 determination of facts by a jury.

21 As I said, you are the judges of the facts. And by the
22 same token, I am the judge of the law. The law as I give it
23 to you must be the only law that you follow and consider.
24 You must accept it and follow it even though you may not
25 disagree [sic] with it. You may have a different idea about

1 what the law is or what the law should be, but you must only
2 follow the law as I give it to you. You will apply the
3 facts to that law and then render your verdict.

4 Until I advise you to begin your deliberations you must
5 not discuss this case with anyone. And I went over this at
6 length with the folks yesterday, but I want to be sure that
7 I've said it fully.

8 Sometimes folks are surprised to know that they cannot
9 discuss the case with their fellow jurors as the case is
10 progressing. However, the reason you cannot discuss it with
11 your fellow jurors as the case is progressing is we want you
12 to have a full picture before you begin discussing it with
13 anyone. And we do not want you to be influenced by anyone.
14 Do not discuss this case.

15 We do not anticipate that this will be an overnight
16 case. In other words, a case that you will come back
17 tomorrow or another day and hear more testimony and
18 evidence, but please do not discuss this case with anyone,
19 friends, family, anyone like that. And certainly everyone
20 in this case is -- has been instructed and they understand
21 they are not to discuss this case with you in any form or
22 fashion.

23 I told you yesterday that we were fortunate to have two
24 excellent attorneys that were going to try a case with us
25 yesterday. We are equally fortunate today to have two of

(1 the best attorneys to try this case.

2 And there is no way that any -- that either of them or
3 anyone from their offices would try to approach you about
4 this case. But if anyone were to, identify yourself as a
5 juror and immediately let one of the bailiffs know about
6 this, and they will let me know about it. And I assure you,
7 I will take care of it. When you see them and they're being
8 unfriendly, don't speak a word to you in the hall, it's just
9 because that's what they have to do, okay?

10 During this trial don't watch any TV reports, if there
11 are any, about this case or read any newspaper articles, if
12 there are any, about this case. I had to admit to some of
13 you yesterday candidly, I have no idea what a tweet is, but
14 you cannot tweet about this case, you cannot put anything
15 about a -- anything about it on your Facebook page, you
16 cannot blog about it while this case is ongoing.

17 It's important that you keep an open mind and listen to
18 all the testimony and all the evidence before you make your
19 decision. It's your solemn responsibility to determine the
20 guilt or innocence of the Defendant.

21 You must base your decision on the testimony and
22 evidence. That's going to necessarily require that you
23 decide the credibility of certain witnesses. You will
24 determine credibility or believability of witnesses in the
(25 same way you do in your daily life, and that is you look at

1 someone's demeanor on the stand, you listen to how their
2 story might match up with other witnesses and how it matches
3 up with the evidence in this case. And you determine -- you
4 are the sole ones who determine the believability of any
5 witness.

6 You can believe part of a witness' testimony or all of
7 it or you can disregard part of it or all of it. You can
8 believe one witness over many witnesses or many witnesses
9 over one witness. You are to determine the credibility of
10 those witnesses yourself.

11 In just a moment the Solicitor is going to make what is
12 called an opening statement in which the Solicitor will tell
13 you what he believes the issues in this case to be. The
14 attorney for the Defendant may also make an opening
15 statement if he chooses to do so, but he is not required to
16 do so. What the attorneys tell you during these opening
17 statements is not evidence in this case, it's only their
18 contention as to what the issues are.

19 Now, from time to time you may hear the attorneys say
20 that they need to approach to discuss a matter of law with
21 me or that we need to excuse you to your jury room for a
22 brief time to discuss a matter of law. And I just want to
23 explain what that's all about.

24 We are not trying to hide the ball from you in any way.
25 We do not have any secrets. However, I told you earlier

1 that the law does not allow me to have any opinion on the
2 facts of this case. And sometimes when I rule on a matter
3 of law I must make a comment on the facts of the case.

4 And so in order to not influence you in any way, then
5 we'll either -- if it's something we can take up quickly,
6 we'll take it up at the bench very quickly. If not, I'll
7 ask you to step to your jury room, but we will try to keep
8 any delays for you at a minimum. All right.

9 Now, Ms. Robinson, I'm going to appoint you as
10 Foreperson of this jury. You are in the exact, correct
11 seat. If you'll just stay there throughout the trial, then
12 that's perfect.

13 Your responsibilities will be as follows; you will
14 lead the discussions in the jury room. No one's opinion is
15 anymore important than another's opinion because your
16 verdict must be a unanimous one.

17 So everyone's opinion is equally important. But I need
18 someone to lead those discussions. And, Ms. Robinson, I'm
19 going to appoint you to do that. Also, you will be the
20 person who will sign and date the verdict form once you have
21 -- you and the other jurors have come to your verdict.

22 Now, Ms. Strange, you are our alternate in this case.
23 That means you will stay with us throughout the duration of
24 this trial. You will listen to the testimony and the
25 evidence just as if you were one of these twelve jurors.

OPENING STATEMENTS - MR. MOYER

35

1 If it turns out that I had to remove a juror for any
2 reason or there was some unforeseen emergency and you had to
3 step in the shoes of one of the jurors, then you would be
4 prepared to do so just as if you'd been a juror all along.
5 If we get to the end of the trial and we have not needed you
6 to step in anyone's shoes before the jury begins their
7 deliberation, I'll excuse you.

8 And as I said, I will give you further instructions on
9 the law and further instructions on your deliberations at
10 the end of this trial, after the presentation of all the
11 witnesses and evidence and after the closing arguments of
12 the attorneys. Any objection to my initial charge from the
13 State?

14 **MR. MOYER:** No, Your Honor.

15 **THE COURT:** Any from the Defense?

16 **MR. ERWIN:** None, Your Honor.

17 **THE COURT:** All right, ladies and gentlemen, we're now
18 ready to begin with opening statements. Mr. Moyer.

19 **MR. MOYER:** Thank you, Your Honor. May it please ---

20 **THE COURT:** Oh, ---

21 **MR. MOYER:** Okay.

22 **THE COURT:** --- I almost forgot a very important thing.
23 You go right ahead.

24 **MADAME CLERK:** Please stand and raise your right hand
25 for the oath in this case. And the proper response is I

OPENING STATEMENTS - MR. MOYER

36

1 will.

2 You shall well and truly try the case 2010-GS-23-7905,
3 the State versus Alfred Bernard Bluford, who is indicted for
4 assault and battery, first degree, and 7906 for armed
5 robbery and a true verdict rendered according to the law and
6 the evidence so help you God. I will?.

7 **THE JURY:** I will.

8 **MADAME CLERK:** Thank you. Please be seated.

9 **THE COURT:** Thank you. Mr. Moyer, I'm sorry.

10 **MR. MOYER:** No problem. Thank you, Your Honor.

11 **THE COURT:** Thank you.

12 **MR. MOYER:** May it please the Court. Madame Forelady,
13 ladies and gentlemen of the jury, once again, my name is
14 Mark Moyer. I am an assistant solicitor. I work for
15 Greenville County.

16 A solicitor is what just about every other State calls
17 a D.A. or a district attorney. And my job is the same as a
18 D.A. in another State, we just call them solicitors in South
19 Carolina. It is my job to represent the State of South
20 Carolina, the people in South Carolina in criminal
21 prosecutions. That's what we're doing here today.

22 Now, you've heard the indictments, the charges that are
23 before the -- before you all. The Defendant's charged with
24 armed robbery and is charged of assault and battery, first
25 degree. What this case is really about though is somebody

OPENING STATEMENTS - MR. MOYER

37

1 who gets caught in the act and then is desperate and will do
2 whatever it takes to get away. And because of that, what
3 started out as a shoplifting turned into an armed robbery.

4 Now, you will hear, ladies and gentlemen, from two
5 witnesses in this case who are going to tell you what they
6 saw and what they know. You're going to hear from Mr.
7 Steven Barr, who is an employee of Bi-Lo. And you're going
8 to hear from Officer Hammett, who works for the Greenville
9 Police Department. But most importantly, you're going to
10 see what happened, ladies and gentlemen. This was caught on
11 video. And so that's going to be the main evidence for you
12 today.

13 Now, this case is going to be short, as you heard.
14 Unless I am really misjudging this, I believe we will -- the
15 State will put in all the evidence that we're going to
16 present before lunch, probably break for lunch and come back
17 and wrap it up right after lunch is what I anticipate.

18 Now, what you're going to see is a series of four
19 videos that capture different angles of what happened. And
20 you're going to hear, ladies and gentlemen, that it happened
21 at the Bi-Lo on South Pleasantburg that is actually now
22 closed, the intersection of South Pleasantburg and Faris
23 right next to Greenville Tech. You're going to hear that
24 the incident happened there. It was about 9:00 on July the
25 29th of 2010.

OPENING STATEMENTS - MR. MOYER

38

(1 And you're going to hear that on that date this
2 Defendant went into the store and he attempted to steal two
3 cases of beer. What you're going to see is that he walks up
4 with a shopping cart to the check-out lane closest to the
5 exit. And when he gets there, instead of getting in line
6 you're going to see that he takes out the two cases of beer
7 and puts them on the ground.

8 He stands there for a moment and then he takes two more
9 items out of the shopping cart and goes way down to another
10 register. And you're going to see that he goes in, he pays
11 for these two items and instead of continuing on he backs up
12 back into the store and goes back over to the line where he
13 set the beer.

(14 You're going to see that somebody had actually put
15 something on top of his beer by that point. He takes --
16 picks that up and puts it on the ground, picks up the beer
17 and goes to leave the store. Walks past the check-out
18 lines, goes with the couple of items that he did buy, I
19 believe some cereal and a small item of milk, picks up the
20 beer and is leaving the store.

(21 Well, you're going to hear that Mr. Barr was in the
22 back room in the office, he was actually eating dinner. And
23 he has the video screen displayed in front of him. He
24 noticed what was happening. And he hurries out there and
25 calls for the Defendant to stop.

OPENING STATEMENTS - MR. MOYER

39

(1 And you're going to hear the Defendant is just about --
2 very close to the door and he does stop. He puts the beer
3 down and Mr. Barr has a confrontation with him, a discussion
4 about what happened. And it's Mr. Barr's intention to take
5 him to the back office and hold him there until the police
6 arrive to arrest him.

7 But you're going to hear that this Defendant did not
8 want to be apprehended and that at that time he begins to
9 try to evade Mr. Barr. He attempts to get around him. He
10 makes -- for a period of time he tries to get around Mr.
11 Barr to get out of the store. You're going to see, Mr. Barr
12 keeps moving in front of him to hold him back.

(13 You're going to see and hear that it escalated and that
14 the Defendant, when he could see that he was not going to be
15 able to get out of the store in this manner, reaches to his
16 back pocket and he pulls out a knife. He pulls out a pocket
17 knife.

18 Now, Mr. Barr is unsure what exactly is in his hand at
19 this point, but he can sense and he can see that the
20 situation is escalating and the Defendant is becoming more
21 aggressive. So at that time he grabs him and attempts to
22 take him back to the office. And there's a bit of a
23 scuffle.

(24 And, Mr. Barr, who, as you can see, is much bigger than
25 the Defendant, is getting him back towards the office when

OPENING STATEMENTS - MR. MOYER

40

1 the Defendant becomes even more aggressive and begins waving
2 the knife around and slashing. You're going to hear that
3 Mr. Barr actually gets nicked on the finger. He gets cut
4 with the knife.

5 At that time he is sure of what the Defendant has in
6 his hands, he backs away. Mr. Barr's a lot bigger than the
7 Defendant, however, a knife is an equalizer. And he's not
8 going to take that risk.

9 Well, at that time the Defendant leaves the store. Mr.
10 Barr follows him a safe distance to see where he goes,
11 follows him out of the store. And just at that time Officer
12 Hammett is pulling up.

13 And that part is the only part that is not on video,
14 but you're going to hear that Officer Hammett pulls up just
15 as the Defendant is leaving the store. The Defendant is
16 identified to him. And Officer Hammett arrests him, finds a
17 pocket knife in his pocket.

18 Now, that is essentially an overview of the evidence
19 that you're going to hear. I want to make -- finish my
20 remarks by making just a couple of comments about the law.

21 There are two charges; assault and battery, first
22 degree, and armed robbery. Assault and battery, first
23 degree, is a statutory crime in South Carolina. And under
24 the law in order to be guilty you have to injure somebody
25 while in the commission of either a robbery, burglary,

OPENING STATEMENTS - MR. MOYER

41

1 kidnapping or a theft, any kind of stealing.

2 So, obviously, the burglary and the kidnapping don't
3 apply in this case. But if you injure somebody while trying
4 to steal something or trying to rob somebody, then you're
5 guilty of assault and battery, first degree. Or even if you
6 try to injure or hurt somebody under that circumstance and
7 don't actually hurt them.

8 The second crime is armed robbery. The definition of
9 armed robbery is the taking of goods, or property or a theft
10 from the person of another using force or intimidation and
11 while armed with a deadly weapon. A deadly weapon is
12 defined by statute, which you will hear at the end of the
13 case, and it's fairly broad. The statute covers a pistol,
14 it has a dirk, slingshot, brass knuckles or any other deadly
15 weapon under the statute. So if you commit a robbery and
16 you have -- and you're armed with an instrument of that
17 kind, then you're guilty of armed robbery.

18 I want to finish up by making two remarks about armed
19 robbery that are unique to this case. And one is called the
20 continuing offense theory. You can put that aside. But
21 essentially what it means is there's no requirement under
22 the law that you have to take -- actually take the property
23 using the weapon.

24 A classic example or a thought of an armed robbery is
25 someone goes in a convenience store, points a gun at the

OPENING STATEMENTS - MR. MOYER

42

1 clerk and says, give me your money. And so they actually
2 get the money by use of the weapon. But under the law an
3 armed -- a robbery covers the whole incident from the taking
4 of the property until you escape.

5 So at any time during that period from when you take
6 the property, while you're trying to leave or even if you
7 abandon the property and try to escape, if at any time
8 during that period you use a weapon against another person,
9 force or intimidation, then that's enough to escalate that
10 theft from what might be a shoplifting or larceny up to
11 armed robbery. And you'll hear more about this at the end
12 of the case.

13 A final remark I want to make is there's no requirement
14 under the law how far you have to take that property. In
15 other words, if you steal something, in order for it to be
16 theft, you don't have to get it home. You don't have to get
17 it out of the door. You don't have to get it to your car.
18 The slightest removal of property, if I take this and see
19 somebody coming, once that -- the slightest removal takes
20 place, then that larceny has been committed.

21 That's all I'm going to say now about the law and about
22 the facts. As I said, the case is going to be relatively
23 quickly. All I ask of you at this time is just to listen
24 closely, use your common sense and your good judgment to
25 weigh the evidence. Then at the end of this case, just do

OPENING STATEMENTS - MR. ERWIN

43

1 justice. Thank you.

2 THE COURT: Thank you. Mr. Erwin.

3 MR. ERWIN: Thank you, Your Honor. I'm going to be
4 very, very brief. I'm just going to give you a couple of
5 things that I want you to keep in mind while you're
6 listening to the evidence in this case.

7 The first thing is about burden of proof. Now, at the
8 end of the day today we're going to go into detail about
9 what burden of proof means and the presumption of innocence
10 and, you know, beyond a reasonable doubt and all that stuff.

11 But what it means right now is that you're probably not
12 going to hear very much from me today, at least not until
13 the end. And the reason is that the Government, the State
14 over here, it is on them to prove each and every element of
15 the offenses that they're alleging. Each and every one they
16 have to prove beyond a reasonable doubt. So please keep
17 that in mind when you're listening.

18 Number two, Mr. Moyer's right, this is all about the
19 video. It's all there. And I think you're going to see two
20 things in the video. I think you're going to see that this
21 is a shoplifting and that it is over at a certain point. It
22 stops. This is not a robbery.

23 And I think you're also going to see that one person
24 was assaulted in this. There was an assault. One person
25 walks up. And that was Mr. Bluford. So y'all pay

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

44

1 attention, and I know you're going to do the right thing.

2 THE COURT: All right. Thank you, sir.

3 MR. MOYER: Thank you, Your Honor.

4 THE COURT: Mr. Moyer.

5 MR. MOYER: May it please the Court. The State would
6 call Steven Barr to the stand.

7 MADAME CLERK: Sir, if you'll come forward. Please
8 pause at the end of the bench, place your left hand on the
9 Bible -- left hand on the Bible and raise your right hand.

10 Patrick Steven Barr,
11 being duly sworn testified as follows:

12 MADAME CLERK: Thank you. Please be seated.

13 **Direct Examination by Mr. Moyer:**

14 Q. All right, Mr. Barr. Would you, please, state your
15 full name.

16 A. It's Patrick Steven Barr.

17 Q. You go by Steven?

18 A. I go by Steve.

19 Q. Okay, by Steve. And how old are you?

20 A. Forty-three.

21 Q. How far did you go in school?

22 A. Actually, just graduated with my master's degree.

23 Q. Okay. Where did you get your undergraduate degree?

24 A. My undergrad? USC.

25 Q. Okay. And when did you get -- when did you graduate?

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

45

- 1 A. That was back in '91.
- 2 Q. Okay. And then you -- later in life you decided to
- 3 move on to get a master's?
- 4 A. Yes, sir.
- 5 Q. And where did you get your master's degree, you said?
- 6 A. From Southern Wesleyan University.
- 7 Q. And what was that in?
- 8 A. It's an MBA, in business.
- 9 Q. And you just got that in May of this year, you said?
- 10 A. Yes, sir. May 5th.
- 11 Q. Now, you work for Bi-Lo, Corporation?
- 12 A. Yes, sir.
- 13 Q. And how long have you been working there?
- 14 A. A little over twenty-seven years now.
- 15 Q. How old were you when you started working at Bi-Lo?
- 16 A. I started when I was sixteen.
- 17 Q. So you were in high school?
- 18 A. Yes, sir.
- 19 Q. And you just continued on ---
- 20 A. On and off while I was in college and stuff, yeah.
- 21 Q. So you worked through college and high school and then
- 22 continued on there after you graduated from college?
- 23 A. Yes, sir.
- 24 Q. Now, what is your position right now?
- 25 A. Right now I'm Store Director, which is basically a

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

46

1 store manager.

2 Q. Does that -- what are your duties as Store Manager,
3 Store Director?

4 A. Basically -- basically run the store overall with my
5 employees, over all the departments, I guess they would say
6 the top person in the store just in regards to making --
7 attempts to meet budgets, sales, controlling the stock loss,
8 which is protecting our assets, stuff like that.

9 Q. Okay. So as Store Director, does that mean you're the
10 top person at that store?

11 A. Yes, sir.

12 Q. Now, is that what you were doing in July of 2010?

13 A. Yes, sir.

14 Q. And what store were you working at then?

15 A. That was actually store number -- we call them by
16 numbers. And it was 272. It was on South Pleasantburg, 494
17 South Pleasantburg right there at Greenville Tech.

18 Q. At the intersection of Faris?

19 A. Yes.

20 Q. Is that store still in operation?

21 A. No. It actually closed about eight or ten months ago.

22 Q. Okay. What store are you working in now?

23 A. I'm now at a store in Easley.

24 Q. How many different Bi-Lo stores have you worked in in
25 the upstate over the years?

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

47

1 A. Probably twenty-five.

2 Q. Okay.

3 A. Yes.

4 Q. Does that cover most of them?

5 A. Probably, yeah most of them. There's probably four or
6 five in the upstate that I haven't worked in.

7 Q. Okay.

8 A. Some that's closed.

9 Q. Now, the location you mentioned where this happened, is
10 that in Greenville County?

11 A. Yes.

12 Q. And that was the store on 494 South Pleasantburg?

13 A. Yes.

14 Q. Okay. All right. Now, the incident that we're here in
15 court about today, do you recall the date that was?

16 A. I believe it was July the 29th of 2010.

17 Q. Okay. And just to be sure, you said I believe, would
18 it refresh your memory if you had a chance to look at your
19 statement?

20 A. Yes, sir.

21 Q. And you gave a statement the day that the incident took
22 place?

23 A. Yes, sir.

24 Q. Do you recognize what I've just handed you?

25 A. That's my statement.

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

48

1 Q. Okay. And by taking a look at that does that refresh
2 your memory as to the date?

3 A. Yes, sir. I put on there July 29th.

4 Q. Okay. Of 2010?

5 A. Yes.

6 Q. About what time of day was it when this happened?

7 A. It was around 9:00 pm.

8 Q. So it was dark?

9 A. Yes, sir.

10 Q. Now, where were you when you noticed what was taking
11 place and what were you doing?

12 A. I was actually sitting in my office trying to eat my
13 supper because in the business you've got to take a break
14 when you can. So I was eating my supper.

15 And I have video of the whole store. At that time we
16 had about thirty-two cameras in that store. So I put the
17 camera on the -- that would show the registers at the front
18 end. And while I was sitting there I witnessed one of the
19 customers coming up and then sat the beer down. So kind of
20 threw a little thing in my head to keep an eye on it.

21 Q. Okay. Now, this person who put that beer down and who
22 you later had the interaction with, do you recognize him?
23 Is he in the courtroom today?

24 A. Yes, sir.

25 Q. And would you point him out for the jury?

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

49

1 A. Mr. Bluford there.

2 (Whereupon the witness pointed to the Defendant)

3 Q. Okay.

4 MR. MOYER: Just for the record, I'd ask the record to
5 reflect that the witness did point out the Defendant.

6 THE COURT: It will so reflect.

7 Q. And so you saw him place the beer down and then you
8 continued watching the monitor?

9 A. Yes. Actually, at that time my bookkeeper was at the
10 service center, which was closest to the register. I called
11 her on the phone and asked her to keep an eye on that beer
12 because it kind of looked like something was going on. So
13 she knew about it. And then, you know, as I was watching
14 it, that's when I noticed him coming back over and grabbing
15 the beer.

16 Q. Okay. So you saw him -- you saw him walk away from the
17 beer then to another register?

18 A. Yeah, I -- yeah, I watched him walk away from it after
19 he sat it down, then come back to it.

20 Q. Okay. Do you remember what kind of beer it was?

21 A. I believe it was Bud Light.

22 Q. Okay. And ---

23 A. Yeah, it was Bud Light.

24 Q. And were they a six pack or was it a larger ---

25 A. It was suitcases. The twenty-four packs.

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

50

1 Q. Twenty-four pack. Do you remember how much that costs?

2 A. They were around, I think, about fifteen, sixteen
3 ninety-nine apiece.

4 Q. Okay. And there were two, you said?

5 A. Yes, two of them.

6 Q. Now, so what did you do when you saw the Defendant pick
7 up those cases of beer and start to leave the store?

8 A. I -- as soon as I saw him walking back towards the beer
9 and reached down to pick them up, that's when I come out of
10 the office and was going to approach him at the front -- by
11 the time he got to the front door.

12 Q. Okay. And did you confront him?

13 A. Yes, sir.

14 Q. And what did you say, if anything, to him?

15 A. I just -- actually, he was almost out the door and I
16 kind of hollered to him and said, sir, I need to speak to
17 you. And he stopped and actually come over to me.

18 Q. Okay. And what did he do when he came over to you?

19 A. He said, what's up? And I asked him, you know, I said,
20 sir, I need to talk to you about not paying for the beer
21 that you're attempting to leave the store with.

22 Q. Okay. Now, you said you were close to the door at that
23 time?

24 A. Yes, sir.

25 Q. And had he gone past any points of sale?

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

51

1 A. Yes, sir, he'd gone by all points of sale. He was
2 probably five feet from going out the door.

3 Q. Okay. So when you asked -- when you told him what you
4 said you told him, what was his response?

5 A. He basically said that he thought it was paid for and
6 said he thought his wife might have paid for it or
7 something. And I told him that nobody paid for it and that
8 he was attempting to leave the store without paying for it.
9 And I asked him to step in my office so we could further
10 discuss it.

11 Q. Okay. Now, you -- so you said something about how his
12 wife had paid for it?

13 A. Yes, sir.

14 Q. Now, did you see any women with him?

15 A. No, sir. Nobody ---

16 Q. During ---

17 A. --- was with him.

18 Q. I'm sorry?

19 A. No one was with him.

20 Q. Okay. And from the moment this instant began until --
21 until the end, until the police arrived and arrested him did
22 any other person approach you and indicate that he or she
23 was with the Defendant?

24 A. No, sir.

25 Q. No one, as far as you know or could observe, he was

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

52

1 completely alone?

2 A. Yes. And he was completely alone.

3 Q. Okay. All right. Now, getting back to what you were
4 talking about, you said you told him he needed to come back
5 to your office. And what happened at that time?

6 A. He actually started to walk with me to the office. And
7 then all of a sudden he just started basically going crazy,
8 turning around saying he wasn't going anywhere. And I asked
9 him to step in. I said we can do this calmly. And he just
10 started getting irate and everything, then trying to walk
11 back towards the door.

12 And I was just kind of dancing with him trying to block
13 his way because we had already actually called the City
14 Police. And I knew it wouldn't take them long to get there.

15 Q. Did you call the police?

16 A. My bookkeeper did.

17 Q. Okay. You had instructed her to do so?

18 A. Yes, sir, as I was coming out of the office.

19 Q. So you knew the police were on the way?

20 A. Right.

21 Q. Okay.

22 A. Yes.

23 Q. So where were -- we'll see in the video in a moment,
24 but tell the jury where you were when you were having what
25 you described as a little almost dance with him?

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

53

1 A. Well, we were actually in two different areas. One --
2 the first area was right near the door.~ And then the other
3 was maybe between my service center and the register at a
4 display there that we had there.

5 Q. Okay. And so he was attempting to get by you. And
6 what did you do when he attempted to get by you?

7 A. I just basically danced with him a little bit if you
8 want to bluntly -- just kind of dancing back and forth kind
9 of block him from walking past me, I mean, because, I mean,
10 let's face it, I'm a little bit bigger than he was at that
11 time, you know. So I was just kind of blocking him.

12 And then as things kept going and kept -- him getting
13 more irate, he did some kind of push on me or something like
14 that. And then at that time I just basically defended
15 myself and kind of got him in a full Nelson kind of thing
16 from behind and was trying to carry him off the front end to
17 get him -- get him out of the public eye.

18 Q. Okay. Now, did you notice anything in his hand?

19 A. When it all began I actually thought he -- his keys
20 were in his hand. But as I was carrying him across over to
21 the office I noticed that it was a knife sticking out of his
22 hand. And that's basically when I dropped him to the floor.

23 Q. Okay. And then ---

24 A. And backed away.

25 Q. I'm sorry. I spoke over you. What did you say?

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

54

1 A. I said when I dropped him on the floor I was trying to
2 hold him down a little bit. He was -- he was swinging a
3 knife. So I backed off and let him go.

4 Q. Okay. Now, you suffered an injury from this?

5 A. Yes.

6 Q. And what was that?

7 A. He had sliced the top of one of my fingers.

8 Q. Okay. And was it severe or ---

9 A. No. I didn't have to have any stitches, but if you
10 look real fine you can still see a little bit of scar.

11 Q. Okay. Do you know at what point during this
12 altercation, this incident, that that -- that you were
13 actually cut with the knife?

14 A. No.

15 Q. Okay. So it could have been when you were at the door
16 or it could have been when you'd gotten back over towards
17 the office?

18 A. Yes, it could have been either one 'cause I didn't even
19 know anything was going on. My bookkeeper just said that
20 she saw blood on my shirt.

21 Q. Okay. And then you looked and found the source of the
22 blood?

23 A. Yes.

24 Q. And just so the record's clear, which finger was it?

25 A. Honestly, I don't really remember. But I think it was

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

55

1 this finger here, my left hand.

2 Q. Okay. Now, do you remember if photographs were taken
3 of the cut?

4 A. Yes, it was.

5 (Whereupon State's exhibits 1 and 2 were marked for
6 identification)

7 Q. I'm going to ask if you'd take a look at what has been
8 marked as State's exhibits numbers 1 and 2. And can you
9 just take a look at them and see if you recognize those
10 photographs?

11 A. Yes.

12 Q. And when were those photographs taken?

13 A. The night of the incident. And it's dated 7/29/2010.

14 Q. And what is depicted in those two photographs?

15 A. Where I'd been sliced on the top of my ring finger.

16 Q. Top of your ring finger on which hand, left or right?

17 A. Left hand.

18 Q. Okay. And are they true and accurate representations
19 of the way you looked and the way your hand looked on that
20 day?

21 A. Yes.

22 MR. MOYER: Your Honor, at this time we'd move to have
23 State's exhibits 1 and 2 entered into evidence.

24 THE COURT: Any objection?

25 MR. ERWIN: Without objection, Your Honor.

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

56

1 **THE COURT:** All right. Then State's 1 and 2 are
2 admitted.

3 (Whereupon State's exhibits 1 and 2 were admitted into
4 evidence)

5 Q. Okay. So what happened after you noticed the -- after
6 you noticed the knife and you backed away, what did the
7 Defendant do at that time?

8 A. At that time, I mean, he was -- he was still irate and
9 basically as he was walking towards the front of the store,
10 I mean, back towards the exit door, I was kind of at a
11 distance, maybe three to five feet from him. He was
12 swinging his knife on and off trying to keep me away.

13 And basically what I was doing at that time, I was
14 basically going to let him leave the store, but I knew the
15 police would be there. I was just kind of slowing him down
16 as much as I could until they got there.

17 Q. Okay. And then did you -- how far did you follow him?

18 A. Well, once we got right near the door I kind of backed
19 away and he walked out the front door. And as he was
20 stepping off the curb I stepped outside the door. And
21 that's when the officer pulled up in front of the store.

22 Q. Okay. And did you -- what did you do when -- first
23 off, let me back up. Do you see the officer who arrived?

24 A. Yes. He's right there.

25 Q. Is it Officer Hammett ---

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

57

1 A. Yes, sir.

2 Q. --- seated back here? And what did you do when you saw
3 Officer Hammett?

4 A. I just pointed at the suspect and said, that's him
5 right there.

6 Q. Okay. And did you see Officer Hammett take him into
7 custody?

8 A. Yes, I did.

9 Q. All right. Now, you're aware of the videos that were
10 collected by law enforcement?

11 A. Yes, sir.

12 Q. And did you actually copy the videos?

13 A. Yes, sir. I burned them onto the CD for them that
14 night.

15 Q. Okay. Did you actually watch them that night?

16 A. I didn't watch the video. I mean, I watched it as it
17 was, you know, as I was finding the evidence on the -- on
18 the video.

19 Q. Okay. And then you've gone back though and watched the
20 videos that were given to the police?

21 A. Yes.

22 Q. And you watched all four of those videos plus the
23 images of the -- the still images that were taken off?

24 A. Yes, sir.

25 Q. Are they all true and accurate representations of what

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

58

1 happened that night?

2 A. Yes.

3 Q. Are there any deletions, additions, changes in any way
4 made to those videos since you saw it?

5 A. No.

6 **MR. MOYER:** Your Honor, at this time -- well.

7 (Whereupon State's exhibits 3, 4 and 5 were marked for
8 identification)

9 **MR. MOYER:** Your Honor, at this time I'd move to have
10 State's exhibits numbers 3, 4 and 5 entered into evidence.

11 **THE COURT:** Any objection?

12 **MR. ERWIN:** Without objection.

13 **THE COURT:** All right, then. They are so admitted.

14 (Whereupon State's exhibits 3, 4 and 5 were admitted
15 into evidence)

16 Q. Let me ask you, if you would, to step down here so you
17 can see.

18 (Whereupon the witness left the witness stand)

19 Q. Okay. If you would, tell the jury which video we're
20 looking at right now.

21 A. This is the video that basically shows the back side of
22 our registers as customers are going up to the register.

23 And in just a moment you'll see Mr. Bluford coming off of
24 one of the aisles up to the back side of this register here.

25 Q. Now, is this the video that you were -- the camera you

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

59

1 were watching in your office while you were eating lunch?

2 A. Yes.

3 Q. Or dinner?

4 A. Yes.

5 Q. Now, do you see Mr. Bluford?

6 A. Yes. He's in that yellow, black and white striped
7 shirt.

8 Q. Is this him right here with the white hat?

9 A. Yes.

10 Q. Okay. And what just happened there?

11 A. That's where he took the beer off the bottom of the
12 buggy and sat it -- sat it at the register, behind the
13 register.

14 Q. And what -- what is happening at this point?

15 A. One of my other cashiers called some people down to --
16 so that she could check them out down there at another
17 register.

18 Q. Okay. And that's when he walks away from the beer?

19 A. Yes.

20 Q. And he took a couple of -- do you know what the items
21 are that he took down there and did pay for?

22 A. He actually did pay for -- I believe it was a half
23 gallon of milk and a box of frosted flakes cereal.

24 Q. Now, this is where we see somebody put some -- some
25 water on top of that beer. Is there any connection to that

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

60

(1 person or that water or anything to this case?

2 A. Not that I know of.

3 Q. Okay. You never spoke to that woman or she never spoke
4 to you?

5 A. No, sir.

6 Q. You don't know who she is?

7 A. No, sir.

8 Q. Fast-forward it just a little bit. Okay. Now, who is
9 -- what do we see happening right here?

10 A. That's where Mr. Bluford come out of the back side of
11 the register after paying for something, heading back
12 towards the beer.

(13 Q. Okay. And you're watching this as it takes place?

14 A. Yes.

15 Q. Is this about when you come out of your office?

16 A. When I see him stop there, I believe that's when I
17 started coming out of the office.

18 Q. Okay. And the two cases of beer is gone. And then
19 that's when you come out of your office?

20 A. Yes, sir.

21 Q. Okay. One moment please as we move on to the next
22 video. Okay. Now, this angle that we're looking at now,
23 where -- where is that?

(24 A. This is the camera that's above the exit door facing
25 across the front of our registers after -- after the

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

61

1 customer exits the register.

2 Q. Now, I'm going to use this arrow to point this out.

3 Can you see where I'm pointing the arrow?

4 A. Yes.

5 Q. Is that a register over here?

6 A. That's register number one, yes.

7 Q. Okay. And is that the -- is that the register which

8 the Defendant had placed the beer from which he comes

9 walking?

10 A. Yes, on the back side of it.

11 Q. Okay. Tell us when you see the Defendant again.

12 A. That's ---

13 Q. Were you ---

14 A. --- him.

15 Q. --- observing him?

16 A. Yes, that's him.

17 Q. Okay. And that picks up where the last camera took --

18 left off ---

19 A. Yes.

20 Q. --- with the Defendant walking out? Is that when you

21 had called him over?

22 A. Yes, sir.

23 Q. I'm going to fast-forward. And several minutes goes by

24 now until we see the Defendant get on this -- on this video.

25 What is taking place during that time you don't see the

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

62

1 Defendant?

2 A. At that time I was trying to talk to him, trying to
3 discuss with him what we, you know, what our options were
4 and stuff like that, asking him to step back to my office so
5 we could further discuss it. And then that's when he was --
6 he was trying to attempt to leave the store again.

7 And, actually, he kind of tried to avoid me. If you
8 see right there in the middle there's a display that was run
9 down through there. And he attempted to go back around it
10 up by the registers again to get out of the store.

11 Q. Is this the display you're talking about?

12 A. Yes.

13 Q. So he comes from up this way?

14 A. Yes, sir.

15 Q. And you walk down below? Is that correct?

16 A. Yes.

17 Q. Okay. Is that you ---

18 A. Yes.

19 Q. --- in the white shirt? And is this where -- what
20 you've kind of described as a little bit of a dance? Is
21 this kind of what that ---

22 A. Yes, sir.

23 Q. --- was taking place?

24 A. Yes, sir.

25 Q. Now, we noticed the -- did you -- looking at the videos

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

63

1 when you had the law enforcement -- did you notice him
2 reaching into his back pocket there in that last frame?

3 A. Yes, sir, I did.

4 Q. Okay. Now, do you see something in his hand right
5 here?

6 A. Yes, sir.

7 Q. And did you notice that at the time?

8 A. I noticed it, but I actually thought it was his keys,
9 but it ended up being -- being a knife.

10 Q. Okay. So at first -- you noticed something in his hand
11 though?

12 A. Yes.

13 Q. And you weren't quite sure what it was?

14 A. Right. I mean, even -- even as you're watching the
15 video, I mean, I turned my back to him, and if I'd -- if I'd
16 known it was a knife, I'd never turned my back to him.

17 So ...

18 Q. You talking about right there?

19 A. Yes, sir.

20 Q. Okay. That's when you grabbed him?

21 A. Right there is where he -- he kind of pushed me or
22 shoved me or something. And I decided to grab him.

23 Q. And that frame right there, is that the frame you're
24 talking about where he kind of pushed you?

25 A. Yes. I mean, it looked like he was ready to hit me or

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

64

1 something the way he was standing.

2 Q. All right. Okay. Now, what is -- what is being shown
3 at this angle?

4 A. This is a video of the entrance and exit door that's
5 kind of opposite of the other video that you saw earlier.
6 This way is -- if we have suspects coming in the store and
7 we ever need to identify them, we can see them on -- a
8 picture of their face here.

9 Q. Okay. And so that's showing the exit to the store?

10 A. Yes. That's the exit door that he was attempting to go
11 out.

12 Q. So the very last video that we saw, was that coming
13 from the opposite direction, essentially on top of where
14 this door is right here?

15 A. Yes.

16 Q. And so now we're kind of looking from the other
17 direction?

18 A. Right.

19 Q. Now, that display that we pointed out in the last
20 video, is that what this is over here?

21 A. Yes, sir.

22 Q. Okay. You're coming from -- is this where the office
23 area is over here on the top right hand corner?

24 A. Yes, sir. That's actually our service center area.

25 And my office was behind that.

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

65

1 Q. Is this the Defendant shown in the -- in the picture
2 right now next to the door?

3 A. Yes, sir.

4 Q. These are the cases of beer?

5 A. Yes, sir.

6 Q. And had you called him -- had you called out to him at
7 this point?

8 A. I think it was -- as I got to the corner of the service
9 center, there is where I called out to him.

10 Q. Okay. And that's when he came over to you?

11 A. Yes.

12 Q. And what's taking place right there? It looks like you
13 have your arm ---

14 A. I just pointed, you know, I was kind of pointing
15 towards my office asking him to come to the office and, you
16 know, as you do as you're following somebody, you just kind
17 of guide them that way.

18 Q. Okay. And at first he's going with you, it appears?

19 A. Yes. And then he starts arguing.

20 Q. You can see a little bit of movement over here
21 occasionally on this right hand side. Is that where you're
22 behind the display case here?

23 A. Yes, sir.

24 Q. Is that where you were talking to him?

25 A. Yes, sir.

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

66

1 Q. Okay. That's your arm right here ---

2 A. Yes.

3 Q. --- we just saw? All right. Now, we see you both
4 again there?

5 A. Yes.

6 Q. He's trying to get by you?

7 A. Yes.

8 Q. Do you remember what y'all were talking about at this
9 time?

10 A. I believe -- as usual, I mean, I usually tell the
11 customers they don't need to be leaving. You know, the
12 police has already been called. You need to stay here. We
13 need to talk about what was going on.

14 Q. Okay. And that's -- that's when you were taking him
15 back to your office?

16 A. Yes, sir.

17 Q. Okay. Let's stop it at this point because the final
18 video shows what takes place back there, is that correct?

19 A. Yes.

20 Q. Okay. What is displayed in the picture that we're
21 looking at now?

22 A. This is a camera for our service center. It covered
23 that whole area. As you can see, there were -- a Western
24 Union and registers were. And at the service center, then
25 it shows across the front-end of the store there.

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

67

1 Q. Okay. And do we see where -- the location where the
2 beer was left?

3 A. It was -- as you can see where the buggy is sitting in
4 the middle of the aisle there, ---

5 Q. Okay.

6 A. --- it was in front of there was where the beer was.

7 Q. Was it where I'm moving the arrow right around ---

8 A. Yes.

9 Q. --- right there? Okay. Do you see the Defendant at
10 this point?

11 A. Yes. I see him coming back towards the beer.

12 Q. When he picks up the beer. And who is that -- is that
13 you right there?

14 A. Yes, sir.

15 Q. Fast-forward now. Okay. Please tell us what we're
16 observing right now.

17 A. That's where I was attempting to bring him back to the
18 office after the little confrontation we had on the front-
19 end. I was trying to bring him around the back side of the
20 service center to my office there. And right about now is
21 where I noticed that he actually had a knife in his hand.
22 So I just dropped him in the floor.

23 Q. Okay. Those are his hands up in the air right here?

24 A. Yes.

25 Q. This is where you dropped him on the floor?

PATRICK STEVEN BARR - DIRECT EXAMINATION BY MR. MOYER

68

1 A. Yes. I was telling him he needed to stay down at that
2 time. And he was -- started swinging the knife. So I
3 backed off.

4 Q. Okay. Now, he's off camera at this point. What was he
5 doing?

6 A. Probably still being irate.

7 Q. Okay. Notice his hand is extended at this point. You
8 mentioned about him moving the knife, is that ---

9 A. Yes, he did it numerous times. Right there was one of
10 the times he did it.

11 Q. So then you walked -- that's when you walked back with
12 him and followed him til he leaves the store?

13 A. Yes.

14 Q. All right. Thank you. You can take your seat again.

15 (Whereupon the witness returned to the witness stand)

16 **MR. MOYER:** One moment, please.

17 (Pause)

18 Q. Okay. Please answer any questions the Defense may
19 have.

20 **THE COURT:** Let's -- I tell you what, let's -- we might
21 be at a good point for a break. Let's take about a ten
22 minute break, all right? Please don't discuss this case
23 with anyone.

24 (Whereupon the jury exited the courtroom at 11:45 am)

25 **THE COURT:** All right. Let's be in recess for ten

PATRICK STEVEN BARR - CROSS EXAMINATION BY MR. ERWIN

69

1 minutes. And, sir, you can't discuss your testimony with
2 anyone while we're on break, but you're welcome to step down
3 if you'd like to.

4 A. Okay.

5 (Whereupon court was in recess at 11:46 am)

6 (Whereupon court resumed at 12:01 pm)

7 MR. MOYER: We're ready, Your Honor.

8 THE COURT: All right. Okay. Go ahead.

9 (Whereupon the jury entered the courtroom at 12:03 pm)

10 THE COURT: And if y'all are like me, I like to always
11 know when I'm going to get to go eat. And so we're going to
12 work til about 1:00, okay? All right. Yes, sir.

13 MR. ERWIN: Thank you, Your Honor.

14 **Cross Examination by Mr. Erwin:**

15 Q. Now, Mr. Barr, when you came from behind where your
16 office is, behind the service center, and approached Mr.
17 Bluford, when you called out to him the first thing he did
18 was come towards you, right?

19 A. Yes, sir.

20 Q. Okay. Then the next thing he did was set the beer
21 down, right?

22 A. Yeah, I -- yeah, yeah.

23 Q. Okay. And that beer stayed right there, didn't it?

24 A. Yes.

25 Q. It never left the store?

PATRICK STEVEN BARR - CROSS EXAMINATION BY MR. ERWIN

70

1 A. No, but it did -- it passed the point of sale.

2 Q. Sure it did. But did he ever make a move to go back
3 and get it?

4 A. I really can't say.

5 Q. Okay. As far as you know that beer remained in the
6 store?

7 A. It did -- it did remain.

8 Q. Okay. Now, a few minutes ago the Solicitor showed you
9 a copy of the statement that you made to police that night.
10 Do you still have that up there with you?

11 A. No.

12 Q. Okay.

13 **MR. ERWIN:** Permission to approach, Your Honor?

14 **THE COURT:** Certainly.

15 Q. I've got a copy of it here for you. Take a look at
16 that for a second. Now, other than the markings that I've
17 made on it, is that your statement that you made to the
18 police that night?

19 A. Yes.

20 Q. Okay. Do you remember writing that yourself?

21 A. Yes.

22 Q. And I'm going to read down here from at the bottom.
23 And you tell me if I'm reading this correctly, okay? It
24 says I have read or had read to me the above statement of
25 one pages and it is true and correct as best I can recall.

PATRICK STEVEN BARR - CROSS EXAMINATION BY MR. ERWIN

71

1 Is that right?

2 A. Yes.

3 Q. Okay. So I'm going to go back through the part that
4 you wrote and read you a couple of parts of it. And you
5 follow along with me and tell me if -- tell me if I'm
6 reading this correctly, okay? Okay.

7 I asked him to step into my office so we could discuss,
8 and he refused. He then attempted to leave again, and I
9 stopped him. He then kind of pushed me, and I then grabbed
10 him from behind. I then noticed that he had something in
11 his hands, which I thought were keys. Is that right?

12 A. Yes.

13 Q. Okay. We'll go through one more part of this.

14 **MR. MOYER:** Your Honor, I have an objection to him
15 reading from the statement without it being in evidence. I
16 don't object to it coming into evidence if he so chooses to
17 put it in there, but I'm not quite sure of the nature of the
18 question.

19 **THE COURT:** Sir, are we -- are you going to ask a
20 question from it or what's -- where you going with this?
21 You want to introduce it?

22 **MR. ERWIN:** Your Honor, I'm not introducing it.

23 **THE COURT:** Okay.

24 **MR. ERWIN:** It's just a prior inconsistent statement.

25 I'm just ---

PATRICK STEVEN BARR - CROSS EXAMINATION BY MR. ERWIN

72

1 MR. MOYER: Again, I don't think he's laid the
2 foundation for a prior inconsistent statement.

3 THE COURT: All right. You need to lock it in and
4 advise him of when he made the statement and that kind of
5 thing.

6 MR. ERWIN: I'll do it, Your Honor.

7 THE COURT: Okay.

8 MR. ERWIN: I apologize.

9 THE COURT: No, that's no problem.

10 Cross Examination by Mr. Erwin Continued:

11 Q. Okay. Mr. Barr, do you remember when you made this
12 statement?

13 A. Yes, I do.

14 Q. Okay. Do you remember the date? Was it July 29th,
15 2010?

16 A. Yes.

17 Q. This was shortly after this incident, correct?

18 A. Yes.

19 Q. And you wrote this for the police officers as they were
20 investigating what had just happened, right?

21 A. Yes.

22 Q. And, you know, this is -- this is the statement you
23 wrote and you signed it, right?

24 A. This is more or less a -- it ain't as detailed as you
25 going to see it -- that you see on video, ---

PATRICK STEVEN BARR - CROSS EXAMINATION BY MR. ERWIN

73

1 Q. Sure.

2 A. --- but it is a brief statement, yes.

3 Q. Okay.

4 MR. ERWIN: Now, Your Honor, I'd like to proceed -- I'm
5 going to ask now ---

6 THE COURT: Have you locked him in to what you believe
7 is inconsistent in his testimony? In other words, what
8 you're driving at that is inconsistent in his statement.

9 MR. ERWIN: I have.

10 THE COURT: Okay.

11 MR. ERWIN: Or I will, Your Honor.

12 THE COURT: Okay.

13 MR. ERWIN: Okay.

14 Q. A minute ago you told the Solicitor that you noticed
15 what was in his hand before you grabbed him. Not what it
16 was, but that there was something in his hand.

17 A. I said I saw something in his hand.

18 Q. Okay. Now, this statement says you grabbed him and
19 then you noticed something was in his hand, correct?

20 A. Like I said, it is a brief statement. When I grabbed
21 him trying to carry him back to the office, that's when I
22 noticed he had it in his hand -- had a knife in his hand.

23 Q. Okay.

24 MR. ERWIN: No further questions for Mr. Barr.

25 THE COURT: All right. Any redirect?

PATRICK STEVEN BARR - REDIRECT EXAMINATION BY MR. MOYER

74

1 **MR. MOYER:** Just one brief matter.

2 Redirect Examination by Mr. Moyer:

3 Q. Now, you were asked about the Defendant putting down
4 the beer. And he did sit the beer down, is that not true?

5 A. Yes.

6 Q. Did he ever -- did he put down the things that he had
7 purchased when you approached him?

8 A. No.

9 Q. So the little bag that had the cereal and the milk, he
10 kept that in his hand?

11 A. Yes.

12 Q. And he actually had bought that?

13 A. Yes.

14 MR. MOYER: Nothing further.

15 THE COURT: Anything else, Mr. Erwin?

16 MR. ERWIN: No, Your Honor.

17 THE COURT: All right, sir. You can step down.

18 A. Thank you.

19 **MR. MOYER:** The State would call Officer Hammett to the
20 stand.

21 **MADAME CLERK:** Please place your left hand on the Bible
22 and raise your right hand.

23 Michael Hammett, being
24 duly sworn testified as follows:

25 **MADAME CLERK:** Thank you. Please be seated. Please

MICHAEL HAMMETT - DIRECT EXAMINATION BY MR. MOYER

75

1 state your name for the record.

2 MR. HAMMETT: Michael Hammett.

3 Direct Examination by Mr. Moyer:

4 Q. Okay. Officer Hammett, where are you employed?

5 A. I'm employed with the Greenville City Police
6 Department.

7 Q. How long have you -- how long have you been in law
8 enforcement?

9 A. Almost thirteen years.

10 Q. And where -- where all have you worked?

11 A. I was an MP in the Marine Corps. I worked in North
12 Carolina, near Wilmington, North Carolina for a little bit
13 over a year and then with the City of Greenville.

14 Q. When did you start with the City of Greenville?

15 A. In 2002.

16 Q. Okay. What is your position with the City of
17 Greenville Police Department?

18 A. I'm a K-9 handler.

19 Q. Okay. How long have you been a K-9 handler?

20 A. A little bit over two years.

21 Q. And were you in -- well, let me ask you, what was your
22 position in July of 2010?

23 A. I was a K-9 handler.

24 Q. Does that involve -- do your duties involve more than
25 just dealing with K-9s?

MICHAEL HAMMETT - DIRECT EXAMINATION BY MR. MOYER

76

1 A. We answer K-9 related calls. And if they give out a
2 call for service, usually involving a dog or a high priority
3 call, we'll go do that.

4 Q. Okay. Now, this case didn't involve a dog, did it?

5 A. No, sir, it didn't.

6 Q. Okay. How did you get involved in this case?

7 A. When they BOLO'd out that there was a disturbance at
8 the Bi-Lo on 494 South Pleasantburg Drive, said it involved
9 weapons, as soon as they gave the radio call out, I happened
10 to be right in front of the driveway and turned in. And as
11 soon as I pulled up to ---

12 Q. Okay. Well, we'll get to that in just a minute. So
13 you were just closest to that location?

14 A. Yeah, I just happened to be right in front of it.

15 Q. And you said a BOLO. What does BOLO mean?

16 A. Be on the look-out.

17 Q. Be on the look-out, okay. And that came out of your
18 radio?

19 A. Yes, sir.

20 Q. Okay. And what time did the -- did the BOLO go out and
21 did you arrive?

22 A. The call came out at 9:10.

23 Q. 9:10. And how long did it take you to get there?

24 A. 9:10.

25 Q. Okay. So you were there pretty quickly then?

MICHAEL HAMMETT - DIRECT EXAMINATION BY MR. MOYER

77

1 A. Yes, sir.

2 Q. Okay. Now, what was the nature of the call when it
3 went out on the radio?

4 A. They said it was a disturbance involving weapons.

5 Q. So that was all the information you had at that point?

6 A. Yes, sir.

7 Q. Okay. Now, tell us what happened when you turned into
8 the parking lot of the Bi-Lo.

9 A. I pulled in and stopped right in front of the store.
10 Mr. Bluford was actually exiting, walking in front of my
11 patrol car. And ---

12 Q. Well, where? Where in the parking lot?

13 A. Right ---

14 Q. How close to the front door, I guess, of the Bi-Lo?

15 A. He walked out the front door off the cement going into
16 the parking lot.

17 Q. Okay. So you saw him walking out of the Bi-Lo?

18 A. Yes, sir, I did.

19 Q. And then did you see anybody else walking out of the
20 Bi-Lo?

21 A. Yes, sir, I did.

22 Q. Who did you see walking out of the Bi-Lo?

23 A. I saw the Store Manager, Mr. Barr.

24 Q. Mr. Barr who just testified?

25 A. Yes, sir.

MICHAEL HAMMETT - DIRECT EXAMINATION BY MR. MOYER

78

1 Q. Okay. And so what did you do when you saw this taking
2 place?

3 A. I got out of my patrol car and Mr. Barr started
4 pointing at the Defendant, Mr. Bluford. And he was like, he
5 tried to steal, he tried to steal, when I grabbed -- or --
6 when I grabbed him, he pulled a knife on me.

7 Q. Okay.

8 A. So I ---

9 Q. How was Mr. Barr acting?

10 A. Out of breath. You know, he was, you know, he was
11 like, there he is, you know.

12 Q. Kind of breathing hard?

13 A. Yes, sir.

14 Q. Okay. And so what did you do? When Mr. Barr pointed
15 him out to you, what did you do?

16 A. I went over to Mr. Bluford, and he was backing away
17 from me. And I grabbed his arm real quick and put his arm
18 behind his back and took out my handcuffs and started
19 putting my handcuffs on him. He was like, what are you
20 arresting me for? What are you arresting me for? I said,
21 sir, you ain't under arrest right now. I said, I'm just
22 detaining you until I can figure out what's going on.

23 Q. And so you took him into custody at that time?

24 A. Yes, sir, I did.

25 Q. How -- what was Mr. Bluford's physical manifestation,

MICHAEL HAMMETT - DIRECT EXAMINATION BY MR. MOYER

79

1 for lack of a better word, or how was he acting?

2 A. He was real amped up. He was sweating profusely. I
3 just remember sweat dripping all down his head, you know,
4 just real high strung.

5 Q. And this was -- what was the date?

6 A. This was July 29th of 2010.

7 Q. So almost two years ago?

8 A. Yes, sir.

9 Q. It was -- was it dark out?

10 A. Yes, sir, it was.

11 Q. Okay. Are there lights in that parking lot?

12 A. Yes, sir, there is.

13 Q. And you didn't have any trouble seeing anything that
14 was taking place?

15 A. No, sir, I did not.

16 Q. Okay. And so now when you -- when you took the
17 Defendant into custody, did you do a pat-down?

18 A. Yes, sir, I did.

19 Q. And what is -- is that a normal procedure for officers
20 when you take someone into custody?

21 A. It is. And I definitely wanted to do it with him
22 because I already knew that there was a weapon involved and
23 the fact that Mr. Barr was saying about him pulling a knife.

24 Q. Okay.

25 A. Just for my safety, I just wanted to pat him down to

MICHAEL HAMMETT - DIRECT EXAMINATION BY MR. MOYER

1 make sure.

2 Q. Okay. And did you find anything?

3 A. I did.

4 Q. Okay. And did you take it into custody?

5 A. Yes, sir.

6 (Whereupon State's exhibit 6 was marked for
7 identification)

8 Q. Do you remember where you found this item that you took
9 into your possession?

10 A. It was in his pocket.

11 Q. In one of his pockets?

12 A. Yes, sir.

13 Q. All right. Let me ask you, if you would, take a look
14 at what's been marked as State's exhibit number 6, which is
15 a small envelope with -- I'd ask you to look at the
16 contents. It's not in evidence yet, so, if you would, look
17 -- don't show it to the jury at this point. Do you
18 recognize what's in that envelope?

19 A. I do.

20 Q. And what is that?

21 A. It's a pocket knife.

22 Q. Okay. And you say a pocket knife. Can you be more
23 specific?

24 A. It's a pocket knife I retrieved from the Defendant the
25 night of the incident.

MICHAEL HAMMETT - DIRECT EXAMINATION BY MR. MOYER

81

1 Q. Okay. In essentially the same condition now as it was
2 when you took it into your possession back ---

3 A. Yes, sir.

4 Q. --- on July 29th, 2010?

5 A. Yes.

6 MR. MOYER: At this time we'd move to have State's
7 exhibit number 6 entered into evidence.

8 THE COURT: Any ---

9 MR. ERWIN: Without objection.

10 THE COURT: --- objection? All right, then. And it is
11 to be so admitted.

12 (Whereupon State's exhibit 6 was admitted into
13 evidence)

14 Q. Let me ask you now to take -- take that -- the contents
15 of that envelope out and show it to the jury. Okay. And
16 what is that?

17 A. It's a Klein's tool pocket knife.

18 Q. Okay. And does it -- so it's a folding kind of knife?

19 A. Yes, sir.

20 Q. Can you open the blade?

21 (Whereupon the witness opened the knife)

22 Q. Okay. All right. Let me ask you if you'd close it and
23 put it back into the envelope.

24 (Whereupon the witness closed the knife and put it back
25 into the envelope)

MICHAEL HAMMETT - DIRECT EXAMINATION BY MR. MOYER

82

1 Q. Thank you.

2 MR. MOYER: One moment, please.

3 (Pause)

4 Q. Okay. Please answer any questions the Defense may
5 have.

6 A. Yes, sir.

7 THE COURT: All right. Mr. Erwin.

8 MR. ERWIN: No questions from me, Your Honor.

9 THE COURT: All right. Sir, you can step down.

10 A. Thank you, Your Honor.

11 MR. MOYER: Your Honor, at this time the State rests.

12 THE COURT: All right. Ladies and gentlemen, if you
13 will step to your jury room for just a moment, we have a
14 matter of law we need to take up.

15 (Whereupon the jury exited the courtroom at 12:17 pm)

16 THE COURT: All right. Mr. Erwin.

17 MR. ERWIN: Yes, Your Honor. I've got a motion for
18 directed verdict on -- you want to address the armed robbery
19 first?

20 THE COURT: Yes, sir.

21 MR. ERWIN: Mr. Moyer in his opening talked about the
22 theory of continuing -- the continuing event. And, you
23 know, Your Honor, it's our contention that this is a
24 shoplifting that is over.

25 And I've read the case law on this continuing event.

1 And I'm sure you're familiar with it. I've actually got
2 this State v. Moore. If you'd like a copy of it, I've got
3 one.

4 **THE COURT:** All right.

5 **MR. ERWIN:** I think there's a distinction here. And
6 it's a pretty important distinction in that the merchandise
7 does not go with Mr. Bluford. The merchandise is left.
8 It's abandoned. It's over.

9 You know, the asportation, which is an essential
10 element of the armed robbery, ends. And I understand that's
11 exactly what the theory of continuation, you know, what that
12 addresses. But in every single one of these cases on that
13 theory, the merchandise goes with the defendant.

14 You know, it's, you know, in Moore we've got someone
15 takes merchandise from a Wal-Mart, is approached in the
16 parking lot, pulls a gun, heads off with the merchandise
17 with them. In every single one of these cases, that's what
18 happens.

19 And this is essentially different because there's no
20 more attempted asportation. The asportation is not
21 continuing, it's over. And so, Your Honor, I move to have
22 the armed robbery dismissed or at least reduced to, you
23 know, shoplifting or larceny.

24 **THE COURT:** Okay.

25 **MR. ERWIN:** It's a completely, you know, it's a

1 completely different situation here.

2 THE COURT: All right. Mr. Moyer.

3 MR. MOYER: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Yes, sir.

6 MR. MOYER: And I agree with Mr. Erwin, State v. Moore
7 is the case, I think, is essential to this particular case.
8 I do have some jury instructions that I will pass to Your
9 Honor to instruct when we get to that stage. But I think,
10 in fact, I'm convinced that State v. Moore covers the
11 situation that is before the Court.

12 Just to quote a few lines from State v. Moore; the
13 Court of Appeals held that a robbery has occurred not only
14 if the perpetrator uses force or intimidation to take
15 possession of the property, but also if force or
16 intimidation is used to retain possession immediately after
17 the taking, or to carry away the property or to facilitate
18 escape.

19 Another quote from the case is the robber need not be
20 armed at all times during the robbery in order to be guilty
21 of the armed robbery. He is guilty if he arms himself or
22 becomes armed with a deadly weapon at any time during the
23 progress of the taking or while the robbery is being
24 perpetrated. The crime of robbery is not completed the
25 moment the stolen property is in the possession of the

1 robber, but may be deemed to continue during their attempt
2 to escape.

3 And the final point I will make is the Court of Appeals
4 uses as its rationale for its holding a law from 67 Am. Jur.
5 2d, Robbery, section 27. And the Court quotes that section.
6 And the section says this; the use of force or intimidation
7 in retaining the property generally, or in effecting the
8 retention of the property in an escape attempt, and this is
9 key, or even merely as a means of escaping after the
10 property has been abandoned supply the elements of force or
11 intimidation necessary to make the offense a robbery.

12 So essentially what the Court is saying is that the
13 robbery begins when the person takes -- or the incident
14 begins when the person takes the property until the person
15 has completed the escape. And so whether he's attempting to
16 escape with or without the property, that incident is still
17 ongoing.

18 And so any attempt -- if you use force or intimidation
19 or any use of a weapon during that entire incident would
20 elevate the charge from a shoplifting, a larceny or whatever
21 to armed robbery. And so for those reasons, Your Honor,
22 we'd argue that the armed robbery should go before the jury.

23 **THE COURT:** All right. Anything in response?

24 **MR. ERWIN:** Your Honor, I'd just say, you know, I agree
25 with Mr. Moyer about, you know, the quote from the -- well,

(1 both the quotes that he brought up, but most importantly I
2 think the one from the Court of Appeals about, you know,
3 effecting escape or, ---

4 **THE COURT:** Um-hum (affirmative).

5 **MR. ERWIN:** --- something like that. And, you know, I
6 agree that they said that.

7 I think what's unsaid is with the merchandise. And the
8 reason I think that is because every single case on point,
9 that's what happened. And, you know, that's what we've got
10 to rely on.

11 **THE COURT:** All right. Well, I think in the light most
12 favorable to the State, I think the State has produced some
13 evidence that the jury could reasonably infer that this
14 escape was -- that the armed robbery and the pulling the
15 knife was to effectuate the escape.

16 I think the Court of Appeals might not have said with
17 the merchandise. And the fact that they didn't say with the
18 merchandise, I can infer that that's what they meant. But I
19 appreciate your argument. And that's an interesting
20 argument on that. I did not -- I did not see that argument
21 coming. So that's a good argument. I'm going to deny your
22 motion on those grounds.

23 Now, on the assault and battery.

24 **MR. ERWIN:** As to the assault and battery, Your Honor,
(25 first of all there's been no specific evidence about the

(1 nature of this weapon as a deadly weapon. That's asking the
2 jury to speculate on that fact. And that's exactly what
3 this kind of motion is supposed to avoid.

4 Secondly, Your Honor, again, the idea that this assault
5 occurred in the course of a robbery, I obviously disagree
6 with. And that's on my argument that I just made a minute
7 ago. I understand you're going to rule similarly, but for
8 the record I'd like to, you know, renew my objection to that
9 and say that it applies to the assault as well.

10 **THE COURT:** All right. And your objection to that is
11 so noted. And for the reasons I've previously stated, I'm
12 going to deny your motion as to assault and battery also.
13 All right.

14 Are there any offenses that you intend to use against
15 the Defendant for impeachment if he were to testify?

16 **MR. MOYER:** There are, Your Honor. And I'm just going
17 back ten years. 2002, he has convictions in South Carolina
18 for two counts of fraud check. 2004, -- and that was in
19 2002. 2004 for fraud check. 2005 for fraud check. 2009
20 for habitual traffic offender.

21 He also has convictions from North Carolina in 2005 for
22 two counts of larceny, possession of stolen goods, obtaining
23 goods by false pretenses. And then -- and those would be
24 the offenses within the past ten years, Your Honor.

(25 **THE COURT:** All right.

1 **MR. MOYER:** That the State would intend to ...

2 **THE COURT:** All right. Mr. Erwin, have you discussed
3 with your client whether or not he intends to testify?

4 **MR. ERWIN:** We have talked about it, Your Honor.

5 **THE COURT:** Do you feel like you need any more time to
6 discuss it with him?

7 **MR. ERWIN:** I don't. I will leave it to Mr. Bluford,
8 if he wants to talk about it some more, but I think all our
9 conversations up til now have been pretty solid on what the
10 plan is, ---

11 **THE COURT:** Okay.

12 **MR. ERWIN:** --- what his plan is.

13 **THE COURT:** Mr. Bluford, will you stand and raise your
14 right hand for me, please. Will you stand up for me?

15 **MR. BLUFORD:** Yes, ma'am.

16 **THE COURT:** I just want the court reporter to be able
17 to see you. Do you swear to tell the truth, the whole truth
18 and nothing but the truth under penalty of perjury?

19 **MR. BLUFORD:** I do.

20 **THE COURT:** Okay. You can put your hand down. Sir,
21 have you had an opportunity to discuss with your attorney
22 whether or not you want to testify in the trial of this
23 case?

24 **MR. BLUFORD:** I have.

25 **THE COURT:** Have you had enough time to discuss that

1 with him?

2 MR. BLUFORD: Yes.

3 THE COURT: Do you feel like you've understood his
4 conversations with you?

5 MR. BLUFORD: I do.

6 THE COURT: Has anybody forced you to make this
7 decision here today? I mean, forced you to decide today
8 about whether or not you'll testify?

9 MR. BLUFORD: No.

10 THE COURT: Has anybody promised you anything to get
11 you to testify or not testify?

12 MR. BLUFORD: No, ma'am.

13 THE COURT: Are you under the influence of drugs or
14 alcohol here today?

15 MR. BLUFORD: No, ma'am.

16 THE COURT: You understand that you have an absolute
17 right to remain silent in this trial, at any trial? In
18 fact, I will tell the jury that they are not to infer
19 anything by the fact that you did not testify, and, in fact,
20 that they cannot even discuss it, bring it up whatsoever in
21 the jury room. Do you understand that?

22 MR. BLUFORD: Yes, ma'am.

23 THE COURT: By the same token this is your one chance
24 to tell your story. And you have a right to testify and
25 tell your story. You understand that your one opportunity

1 is today? You understand that?

2 MR. BLUFORD: Yes, ma'am.

3 THE COURT: And what is your decision? Will you
4 testify or not?

5 (Whereupon Mr. Bluford was consulting with his
6 attorney)

7 MR. BLUFORD: We've decided to not testify.

8 THE COURT: Okay. All right. Anything else you want
9 me to question him about, Mr. Erwin?

10 MR. ERWIN: No, Your Honor. I believe that does it.

11 THE COURT: All right. Anything else from the State?

12 MR. MOYER: No, Your Honor.

13 THE COURT: All right, then. Very well. Mr. Erwin,
14 you want me to bring back in the jury and you rest in front
15 of the jury?

16 MR. ERWIN: Sure.

17 THE COURT: Okay. We'll do that. And then we'll break
18 for lunch, come back let's say -- y'all's closing arguments
19 aren't going to be real long, are they? Either side?

20 MR. MOYER: No.

21 MR. ERWIN: (Negative nod).

22 THE COURT: Y'all want to come back at two from lunch
23 and we'll do closings and my charge, just the standard
24 charge?

25 MR. MOYER: (Affirmative nod).

1 **MR. ERWIN:** (Affirmative nod).

2 **THE COURT:** Now, we'll bring them back, let them go to
3 lunch and then we'll talk about charges ---

4 **MR. MOYER:** Okay.

5 **THE COURT:** --- in just a few minutes. Okay. As y'all
6 might have noticed, I'm without my law clerk today. So if
7 y'all have any case cites or anything that -- any of these
8 cases that you might want a charge from, I'd love a cite so
9 I can look them up.

10 (Whereupon the jury entered the courtroom at 12:29 pm)

11 **THE COURT:** All right. Mr. Erwin.

12 **MR. ERWIN:** Your Honor, the Defense also rests.

13 **THE COURT:** All right, then. Very well. Ladies and
14 gentlemen, I -- we've come to the time for lunch for you all
15 a little earlier than I had anticipated. What I'm going to
16 ask you to do is be back in your jury room about -- maybe
17 about five until two. At that time we will hear closing
18 arguments from the attorneys in this case. And then I will
19 charge you on the law. And then the case will be in your
20 hands to decide from that point.

21 I will ask you once again, I know I sound like a broken
22 record, but I will ask you not to discuss this case or do
23 any independent research over the lunch hour. But I do hope
24 you have a very good lunch. Thank you.

25 (Whereupon the jury exited the courtroom at 12:30 pm)

1 **THE COURT:** All right. So far as the charge in this
2 case, does the State have any proposed jury charges?

3 **MR. MOYER:** I do, Your Honor. I've handed up three
4 different set -- different documents.

5 I'll start with the one that has four different
6 enumerations on it. That one just has language basically
7 from State v. Moore about the continuing offense theory of
8 armed robbery, particularly number four that talks about
9 escape even after the property has been abandoned. I would
10 ask that Your Honor instruct the jury on that.

11 **THE COURT:** All right. Mr. Erwin, have you had an
12 opportunity to look at these?

13 **MR. ERWIN:** I have just now, Your Honor.

14 **THE COURT:** Okay.

15 **MR. ERWIN:** Give me just a few more seconds. I'm going
16 to read over it ---

17 **THE COURT:** Okay.

18 **MR. ERWIN:** --- one more time.

19 **THE COURT:** And I'll tell you this, if you need some
20 additional time to look at it, then we could maybe plan to
21 be back maybe a quarter til two, something like that.

22 **MR. ERWIN:** I would prefer that, Your Honor.

23 **THE COURT:** Okay.

24 **MR. ERWIN:** And if you're okay with that, and the
25 State's okay with that, that's what I'd like to do.

1 **THE COURT:** All right. Then we'll be back -- plan to
2 be back at a quarter til two just to firm these things up.

3 Mr. Moyer, I hate to ask you this, but if you have
4 these charges in electronic form, do you mind e-mailing them
5 to me?

6 **MR. MOYER:** Sure. I'd be happy to.

7 **THE COURT:** I appreciate it. That would be really
8 helpful to me. And please don't e-mail them to my law clerk
9 as you know -- I guess you know he's not here.

10 **MR. MOYER:** Okay. Can I make sure I have ---

11 **THE COURT:** Sure.

12 **MR. MOYER:** I'm not quite sure of the distinction
13 between your address and ---

14 **THE COURT:** It's lverdinj@sccourts.org.

15 **MR. MOYER:** I'm so sorry.

16 **THE COURT:** That's fine, lverdinj@sccourts.org. And,
17 Mr. Erwin, if there's anything you want to e-mail to me over
18 the lunch hour too while I'm working on these charges, I'd
19 be certainly welcome to see that.

20 **MR. ERWIN:** Sure.

21 **THE COURT:** All right. All right, then. Well, we'll
22 be back here at a quarter til -- a quarter until two, if I
23 can say it. Thank you.

24 **MR. ERWIN:** Thank you, Your Honor.

25 (Whereupon court was in recess at 12:33 pm)

1 (Whereupon court resumed at 1:53 pm)

2 THE COURT: Thank y'all. Y'all be seated. All right.
3 Mr. Erwin, when we broke I asked you if you had any
4 objections to the State's proposed charges.

5 MR. ERWIN: And I do, Your Honor.

6 THE COURT: Okay.

7 MR. ERWIN: Starting with this first page with the four
8 quotes from case law.

9 THE COURT: Sure.

10 MR. ERWIN: My objection is, first, in a very general
11 sense, this much, you know, this deep and this much case law
12 going to the jury to me feels very much like we're asking
13 them to -- to be professionals, we're asking them to be
14 lawyers. And that's beyond what the jury is supposed to do.

15 You know, it's just -- it's just too -- it's too much
16 legalese, Your Honor. And I think it complicates things.
17 And I think the jury, you know, I think the charge for armed
18 robbery is written to be simple and understood by a jury.
19 And I think that that can stand on its own.

20 And in the alternative, Your Honor, ---

21 THE COURT: Um-hum (affirmative).

22 MR. ERWIN: --- you know, I also think that these four
23 things are very duplicitous. It's very much the same thing
24 over and over. I'd ask if you're not going to throw, you
25 know, if you -- if he thinks it's appropriate to send this

1 to the jury, I'd ask for just maybe one of these to go as
2 opposed to four.

3 **THE COURT:** My thought was number four to go to the
4 jury when I was looking at it. And I think -- I think it
5 can -- I think it can stand alone and it seems to encompass
6 what you're getting at.

7 **MR. MOYER:** (Affirmative nod).

8 **THE COURT:** All right. Now, what about the one that
9 starts with the elements of robbery and armed robbery
10 including asportation of the property?

11 **MR. ERWIN:** Other than sort of the same objection I had
12 at first, I really don't have anything new on that one.

13 **THE COURT:** Okay.

14 **MR. MOYER:** And, Judge, that's not really related to
15 this language per say, but just -- and it may very well be
16 part of the standard, but just as long as -- I would ask
17 that it would be some charge to the jury about what
18 asportation means. That just ---

19 **THE COURT:** Okay.

20 **MR. MOYER:** --- the, you know, the mere taking of the
21 property is enough to meet that element of the crime.

22 **THE COURT:** All right. And then about this citizen's
23 arrest.

24 **MR. ERWIN:** It appears to be straight from the statute
25 to me, Your Honor.

1 **THE COURT:** Okay.

2 **MR. ERWIN:** I don't really have any objection.

3 **THE COURT:** Okay. All right. On the first one with
4 the four sections, I'll charge four, number four. On one
5 and two, the one with one and two about asportation, I'll
6 charge one and two. And on the citizen's arrest, I'll
7 charge that in total. All right. Give me one minute to
8 send this to my law clerk, who is now back.

9 **MR. ERWIN:** And, Your Honor, ---

10 **THE COURT:** Yes, sir.

11 **MR. ERWIN:** --- I would propose that the lesser
12 included offense of strong arm robbery be charged to the
13 jury as well. Just -- and just the standard charge on that
14 one is fine with me.

15 **THE COURT:** Any objection?

16 **MR. MOYER:** I don't object to strong arm robbery being
17 charged. I would ask that during the charge that that be --
18 just a mention that the principal -- I just hope it's clear
19 for the jury that the same principal would apply to common
20 law robbery as it would apply to armed robbery as far as the
21 continuing offense theory of the -- of the ---

22 **THE COURT:** Okay.

23 **MR. MOYER:** The only difference really would be whether
24 or not they consider the knife a deadly weapon or not. I
25 think that's really what it would come down to. But I think

CLOSING ARGUMENTS - MR. MOYER

97

1 everything else would be the same.

2 THE COURT: All right. Anything else we need to take
3 up before we bring the jury back in?

4 MR. MOYER: I don't believe so from the State, Your
5 Honor.

6 MR. ERWIN: No, Your Honor.

7 THE COURT: All right, then. All right. Let's go
8 ahead and bring the jury back in. I have been sending my
9 jury charge back to the jury, but I certainly would hear
10 from either of you with any objection to that. Anything
11 from the State?

12 MR. MOYER: No objection.

13 THE COURT: Any objection from the Defense?

14 MR. ERWIN: None from here, Your Honor.

15 THE COURT: All right. I give an instruction on how to
16 deal with a written charge in the jury room.

17 (Whereupon the jury entered the courtroom at 2:01 pm)

18 THE COURT: All right, ladies and gentlemen, we're now
19 ready to hear closing arguments from the attorneys. Mr.
20 Moyer.

21 MR. MOYER: Thank you, Your Honor. May it please the
22 Court.

23 THE COURT: Yes.

24 MR. MOYER: Good afternoon, Madame Forelady, ladies and
25 gentlemen of the jury. My closing remarks are going to be

CLOSING ARGUMENTS - MR. MOYER

98

1 very short. As we've all noticed now, the trial was very
2 short. So it's not like I have much to remind you of
3 because you just got done listening to the two witnesses who
4 testified and saw the video. But I want to make a few
5 points about the law and about the evidence that you heard
6 in this case.

7 The way I'm going to do this is I'm going to ask you to
8 analyze this case and your decision based on the law, what
9 we call elements of these laws. Elements are sort of like
10 stepping stones. Every crime is comprised of elements, a
11 number of elements or parts of the charge that makes -- that
12 lead up to making the decision that this crime has been
13 committed.

14 So let's start off with the assault and battery charge,
15 which I think that this will be the charge that you will be
16 able to most quickly set aside and decide on. Essentially
17 the elements of assault and battery, first degree, are, one,
18 that you injure another person, and, two, that this injury
19 occurs during the commission of a robbery, burglary,
20 kidnapping or theft. That's one part of assault and
21 battery, first degree.

22 Assault and battery, first degree, also covers attempts
23 to injure. So if you attempt to injure somebody and it
24 occurs during the commission of a burglary, kidnapping,
25 robbery, or theft, then that makes up the elements of this

CLOSING ARGUMENTS - MR. MOYER

99

1 charge. And you would be guilty of assault and battery,
2 first degree.

3 Now, I want to make just a couple of points about this
4 law. And first off is that the law does not require a
5 deadly weapon. Assault and battery, first degree, does not
6 require any weapon at all. And armed robbery, as we'll get
7 to in a moment, does. But this assault and battery charge
8 does not. It requires injury or attempt to injure while
9 committing one of these crimes. So any injury whatsoever or
10 any attempt to injure is enough.

11 So let's talk about this crime. Did this happen?
12 Well, I don't think there's any question that Mr. Barr was
13 injured. There are photographs documenting the cut that
14 happened to his finger.

15 And I don't think there's any question that this
16 happened during one of the crimes that are enumerated in
17 this statute. Obviously, burglary and kidnapping don't
18 apply, but either one of the other two do, a robbery or a
19 theft.

20 So even if this had not escalated to what it did, which
21 is an armed robbery, even if you try to punch somebody
22 during the commission of any kind of theft, it would be
23 assault and battery, first degree. So like I said, I think
24 that is the charge that you will be able to decide on and
25 move on the most quickly.

CLOSING ARGUMENTS - MR. MOYER

100

1 And then you will move on to the armed robbery charge.

2 And the elements of armed robbery are the taking of property
3 of another with force or intimidation while armed with a
4 deadly weapon. And, in fact, you can even have a
5 representation of a deadly weapon in order to be guilty of
6 armed robbery. For example, somebody could go into a
7 convenience store with a fake gun. That would be enough to
8 trigger the element of a deadly weapon.

9 So let's talk about just a couple of points about armed
10 robbery. First thing, as I mentioned in my opening
11 statement to you all, there's no set distance that the
12 property has to be taken in order to meet the element of
13 taking the property of another. If you just attempt, if you
14 just -- under the law, the slightest removal of the property
15 at all is enough to meet that standard.

16 You don't have to get the property all the way home.
17 You don't have to get it out to the parking lot into your
18 car. You don't even have to get out the door. If you
19 remove the property with the intent to steal it, you pick it
20 up, and then for whatever reason you drop it or you see the
21 police coming and you throw it, you committed that offense.
22 So the slightest removal is enough.

23 Another point about armed robbery that I would bring up
24 with you all at this point is that it doesn't matter that
25 the property, in this case the beer, was left in the store.

CLOSING ARGUMENTS - MR. MOYER

101

1 As you've heard and as you have seen, when Mr. Barr called
2 the Defendant over to him, the Defendant took a few steps
3 and set the beer down. Never attempted to get that beer
4 back. And I would argue to you because he didn't have the
5 chance to because the only thing on his mind was getting out
6 of the store.

7 But the fact that it was left there does not change the
8 analysis of this case at all. You can't undo what you have
9 done. It would be like someone trying to commit a burglary,
10 thinking nobody was home, in the middle of the day, say,
11 breaks into the door and all of a sudden there's somebody in
12 the house. You back away and leave. You can't undo what
13 has been done.

14 When the Defendant picked up the beer and stepped past
15 the last point of sale and started to go out that store,
16 that element of taking the property can be checked off the
17 list. It's done.

18 And I will point out to you at this point that I think
19 actually it's significant that the Defendant did put that
20 down. Because think about it, why did he put that beer
21 down? Because he knew it was stolen. It was guilty
22 knowledge.

23 Think about what he did not put down; the few items
24 that he had just bought. You can see in the video how he
25 kept that little bag that had the cereal and the half -- or

CLOSING ARGUMENTS - MR. MOYER

102

1 the little container of milk. He kept that in his hand.

2 Why did he keep that in his hand? Because he knew that
3 what he was doing was wrong. He was stealing the beer. And
4 so when Mr. Barr called him, he put the beer down. He's
5 committed that. He's violated the law. He's -- that
6 fulfills the element of the taking of the property. You
7 don't get a do-over.

8 Another point I would mention to you about armed
9 robbery is that it does not matter that the Defendant did
10 not use the knife to actually take the property. And I've
11 talked about this in my opening a little bit, but let me go
12 over it again with you just briefly now.

13 It's something that we call a continuing offense
14 theory. Her Honor is going to instruct you on this aspect
15 of the law. But if you use a weapon at any time during the
16 course of a theft, then that meets the element of having a
17 weapon during -- during a theft, which would make it an
18 armed robbery.

19 In other words, if -- the classic example like I used
20 in my opening, a guy walks into the convenience store with a
21 gun and says, give me money out of the cash register. And
22 the clerk gives him the money based on the gun. That, of
23 course, would be armed robbery.

24 However, it is also armed robbery if you take property
25 and then, say, somebody's trying to take that property away

CLOSING ARGUMENTS - MR. MOYER

103

1 from you and you use a weapon to keep that person from
2 taking that property away from you. It's still armed
3 robbery even though you didn't use the weapon to take the
4 property.

5 Going on farther, it continues to be an armed robbery
6 until the person has completely escaped, is completely gone.
7 So if it's used during the commission of the escape, during
8 the attempt to escape, while the person is trying to flee,
9 even if they've left the property, it is still armed
10 robbery.

11 That offense, I picture it as just one long continuous
12 offense from the moment the property is taken until the
13 moment the person is either out of there or arrested by the
14 police. It's one arch. And if that weapon comes out and it
15 is used in a violent way at any time during the crime, it
16 makes it armed robbery.

17 And the final point I will make to you is that -- is
18 regarding the actual weapon itself that is used. In order
19 to be an armed robbery he has to take the property, use
20 force or intimidation and you have to have a deadly weapon.
21 And so you're going to have to make the decision, ladies and
22 gentlemen, about whether this knife is a deadly weapon.
23 It's locked up in this container right now, but you can see
24 it very clearly. That's a decision you're going to have to
25 make.

CLOSING ARGUMENTS - MR. MOYER

104

1 And what I would point out to you at this time is it is
2 not -- the issue isn't was that weapon used as a deadly
3 weapon? Did the person try to kill Mr. Barr? Did he
4 attempt to do serious bodily harm? That's not the issue.
5 The issue is could it have been used to do so? Is it
6 something that could be used?

7 Now, as I mentioned also in my opening, the statute is
8 very broad. And the statute actually says it is -- the
9 statute of armed robbery talks about being armed with a
10 pistol, a dirk, which is like a large knife, slingshot,
11 brass knuckles.

12 So, ladies and gentlemen, I would argue to you that if
13 a slingshot or brass knuckles is enough to elevate a robbery
14 to armed robbery, then a knife certainly is too. It could
15 have been used. Imagine the damage that could be done with
16 a knife of that -- of that kind. Could it be used that way?

17 But it's your decision. And if you look at that knife
18 and you decide, well, no, you -- we don't believe that is a
19 deadly weapon, you will also have the option of finding the
20 Defendant guilty of the lesser included offense. And that's
21 called common law robbery.

22 So if you look at that knife and decide that it could
23 have been used as -- to inflict serious bodily injury, then
24 you should find him guilty of armed robbery. If you look at
25 that knife and say, well, I'm not convinced it could have

CLOSING ARGUMENTS - MR. MOYER

105

1 been, then you could find the Defendant guilty of robbery,
2 common law robbery instead of armed robbery.

3 I want to take just a moment -- I'm not going to show
4 the videos to you again, but there were some stills, some
5 still photographs that were taken off that video that show
6 the Defendant actually using that knife. And I want to just
7 take a moment at this time to show that to you.

8 That is, as you recall, is where the Defendant had
9 taken -- picked up the beer and was trying to walk out of
10 the store right before Mr. Barr called him over there. That
11 is after Mr. Barr had actually confronted the Defendant.
12 And this is not now in order.

13 Let me start with this. This is right before Mr. Barr
14 called the Defendant over to him. When he saw -- when Mr.
15 Barr saw the Defendant leaving the grocery store, he told
16 him to stop.

17 Remember the Defendant walked over. There was a short
18 -- there was a short altercation where Mr. Barr was
19 attempting to take the Defendant back to the office. The
20 Defendant evaded him and he ended up back at the front. And
21 that's where Mr. Barr is standing in front of the Defendant
22 keeping him from leaving the store.

23 And, ladies and gentlemen, I would argue to you that if
24 you look at this point you can see the Defendant reaching
25 back towards his back pocket. And if you look at the next

CLOSING ARGUMENTS - MR. MOYER

106

1 frame you can see his arm really reaching for that back
2 pocket.

3 And I would contend to you that this is when he pulled
4 out the knife because up until this point you could not see
5 it in his hand, but now you can. And you can clearly see
6 here in his right hand this implement. You can again see it
7 in his right hand as he's holding it away.

8 Once again, if you look down here at his right hand you
9 can see the knife in his hand. And that's when Mr. Barr
10 takes him and attempts to take him to the back office. So
11 he clearly was armed while he was trying to escape.

12 Now, ladies and gentlemen, in closing let me just
13 remark -- make these final remarks. At the beginning -- at
14 the outset in my opening I told you that at the end of this
15 case I would be asking you to do justice. And, ladies and
16 gentlemen, doing justice in a case like this is to hold the
17 person responsible who committed this crime, to hold -- as a
18 society we need to hold people responsible who commit acts
19 like this.

20 This Defendant not only was stealing property, but he
21 assaulted somebody. He simply was not going to get away.
22 He simply decided that he was not going to be put away, he
23 was not going to be apprehended.

24 He knew the police were on the way. He knew the reason
25 that he was being taken to that back office was so that the

CLOSING ARGUMENTS - MR. MOYER

107

(1 police were going to arrive and he could be turned over to
2 the police. And in his mind he decided he was not going to
3 -- that was not going to happen to him. And he decided he
4 was going to do whatever it took.

5 And he started off by just trying to get by Mr. Barr,
6 just trying to get around him. He actually started off
7 before that by making up a story about he thought his wife
8 had paid for the beer, which is obviously crazy when you
9 know -- when you notice that there was nobody even around in
10 where he had left the beer.

(11 When that didn't work he thought, well, he was going to
12 try to get around him, he was going to try to just run by
13 him. When that didn't work he decided he was going to pull
14 a knife. He was going to do whatever it took.

15 And if the police officer hadn't arrived when he did,
16 he would have gotten away. He would have gotten out. And
17 he would have gotten in his vehicle if he had drove or run
18 away or whatever his decision was going to be.

(19 Mr. Barr did nothing wrong. Mr. Barr was acting
20 completely within his rights by trying to apprehend the
21 Defendant. Under the law, a citizen, any person, if you see
22 either a felony or a theft taking place, you have every
23 right to arrest that person. It's called citizen's arrest.
24 And if it's at night, as you will hear Her Honor instruct
25 you, you can even hold that person under terms of violence.

CLOSING ARGUMENTS - MR. ERWIN

108

1 Mr. Barr had every right to do what he did. He was
2 attempting to keep this Defendant from leaving. He was
3 attempting -- he was attempting to hold this man responsible
4 for what he did on July the 29th of 2010. And, ladies and
5 gentlemen, I ask you to do the same and to hold this Defense
6 -- this Defendant responsible for the crime that he
7 committed and find him guilty of armed robbery and assault
8 and battery, first degree. Thank you.

9 **THE COURT:** Thank you, Mr. Moyer. Mr. Erwin.

10 **MR. ERWIN:** Thank you, Your Honor. If you would, Your
11 Honor, give me a second to get set up ---

12 **THE COURT:** Certainly.

13 (Pause)

14 **MR. ERWIN:** Okay. Ladies and gentlemen, I apologize
15 for the wait there. What I have right here is the
16 indictment. This was read to you by the Judge at the
17 beginning of this. And this isn't evidence. I have to be
18 clear about that.

19 But what it does is document -- it does tell us what
20 Mr. Bluford was charged with and why he was charged with
21 that crime. And Mr. Moyer talks about elements of crimes
22 and, you know, breaking it down into blocks. So I'm going
23 to do a little bit of that too. And I'm actually going to
24 start with the armed robbery. I think it's important that
25 we go through it.

CLOSING ARGUMENTS - MR. ERWIN

109

1 So, first, this is a little legal mumbo jumbo, but I am
2 going to read what the indictment says to you, okay? It
3 says that Alfred Bernard Bluford did in Greenville County on
4 or about the 29th day of July, 2010 while armed with a
5 deadly weapon or while alleging either by action or words he
6 was armed while using a representation of a deadly weapon or
7 any object which a person present during the commission of
8 the robbery would reasonably believe to be a deadly weapon,
9 take by means of force or intimidation goods or monies
10 described as beer belonging to Bi-Lo from the presence --
11 person or presence of Steve Barr.

12 Now, that's a mouthful. But if we take it piece by
13 piece, it makes sense. Let's start with the easy one,
14 deadly weapon. Ladies and gentlemen, this is our deadly
15 weapon here. One second.

16 This is going to go back into the jury room with you.
17 And, guys, I invite you to take a look at this very closely.
18 The tip is broken off. You've got big chunks taken out of
19 it here. There's no edge whatsoever on this thing.

20 This is what the State, this is what the Government is
21 telling you is a deadly weapon. Please take a look at this
22 back in the jury room. Please use your common sense and
23 decide whether this is a deadly weapon.

24 Now, the next thing we have, take, take, take. This
25 beer, this beer was taken. It was taken, right? Well, it

CLOSING ARGUMENTS - MR. ERWIN

110

1 really wasn't. It stayed in the store. Mr. Bluford never
2 -- never got away with this beer. It's, you know, what did
3 he say, it's thirty-five dollars worth of beer? Two cases
4 left right there.

5 Now, maybe this was a shoplifting. Maybe there was a
6 theft going on, you know. I think having seen the video it
7 would be ridiculous for me to stand up here and tell you
8 that that's not what was happening. But that stopped. That
9 stopped when Mr. Barr came out from the back and told Mr.
10 Bluford to stop. And you know what he did? He stopped, put
11 the beer down, never touched it again. The theft is over at
12 that point. It's done.

13 Now, take by means of force or intimidation. Force or
14 intimidation comes later. And I argue that there's --
15 there's intimidation coming on -- going on here. There's
16 intimidation coming from Mr. Barr.

17 Now, he comes out from the back, you saw. What's the
18 first thing he does? He gets this close, he's pointing his
19 finger, his face is red. And you see how big of a guy he
20 is. Mr. Bluford over here is not a big guy. He's
21 terrified. And he does not resort to our deadly weapon here
22 til after Mr. Barr grabs him.

23 Now, Mr. Moyer showed you pictures of Alfred reaching
24 into his back pocket and coming out to here with something
25 in his hands. Now, this video, you know, as far as video

CLOSING ARGUMENTS - MR. ERWIN

111

1 technology has come, it's still not as good as the human
2 eye. Now, y'all look at those pictures, and if you can tell
3 me beyond a reasonable doubt that's a knife, well, better
4 eyesight than I have.

5 You know, Mr. Barr, who was there, who was standing
6 three feet from him, first of all, told you that he didn't
7 even notice there was something in Alfred's hand until after
8 he grabbed him. And he didn't say -- he couldn't tell what
9 it was. He said multiple times today that he thought there
10 were keys in his hands.

11 Now, we talked about the burden of proof a little bit
12 at the beginning of this. And I'm going to get back to that
13 in a minute. But keep in mind that the State has to prove
14 each element of this.

15 Now, the next thing we're going to talk about, the
16 assault and battery. And like I said at the beginning, it's
17 all on the video. It's all on the video. So let's take a
18 moment, let's watch one of these videos again, okay? Can
19 y'all see okay on this side?

20 **THE JURY:** (Affirmative nods).

21 **MR. ERWIN:** How about I come over here? Okay. Here
22 comes Mr. Bluford and here comes Mr. Barr. And there goes
23 the beer. And there it stays.

24 Now, immediately Mr. Barr has his hand on his back,
25 around his waist, pulling him back to the office. Also

CLOSING ARGUMENTS - MR. ERWIN

112

(1 notice for a second that Mr. Barr does not have a manager
2 tag on his shirt. He doesn't have -- he's just got a white)
3 button down shirt like mine. No tie. Nothing to identify
4 that he's the manager of this store.

5 As far as Mr. Bluford knows, this is just a really big
6 guy getting in his face. And he reacts like anybody would
7 and tries to get away. Tries to peacefully get away. He
8 tries to walk.

9 Now, let's watch for a second what's about to happen.
10 He's trying to walk away. He's trying to get out of there.
11 Mr. Barr is not letting him. There he goes again. Here's
12 the finger in his face. The finger in his face, two inches
(13 from his eyes.

14 Now, this is about where the Government lawyer wants
15 you to believe that there is a knife that has been pulled.
16 I have yet to see one where, you know, from this angle you
17 should be able to see that if that's what's happening.

18 Now, look at this. Mr. Bluford is naked in the store.
19 Everything's showing. I would argue, ladies and gentlemen,
20 that goes well above and beyond a citizen's arrest. I mean,
21 he's just mauling this guy.

(22 And at a certain point he snaps. And there's, you
23 know, there's no denying that our deadly weapon here gets
24 pulled at some point. And, ladies and gentlemen, I would
25 argue that it gets pulled for one purpose and one purpose

CLOSING ARGUMENTS - MR. ERWIN

113

1 only, and that is to get Mr. Barr away from him to allow him
2 to leave.

3 He's not trying to hurt anybody. He's not trying to
4 assault anybody. He's not trying to cut, stab or kill
5 anybody. He was trying to get Mr. Barr off of him. And he
6 does. And as soon as he's able to, he calmly leaves the
7 store.

8 Now, the second thing I wanted you to keep in mind when
9 I talked to you at the beginning today -- well, the first
10 was, it's all in the video. The second was burden of proof.

11 Now, each and every element of these crimes has to be
12 proven beyond a reasonable doubt by the State. Now, you've
13 probably heard that phrase reasonable doubt. You've
14 probably heard it before on Law and Order, CSI or something
15 like that. But let's talk about what that really means,
16 okay?

17 Imagine, if you will, a football field. Now, in this
18 situation the State has the ball. And they've got to prove
19 on each and every element that they're right. They've got
20 to score a touchdown. Now, in football if they get to mid-
21 field, fifty percent convinced, you don't get any points for
22 that. That's what we call clear and convincing evidence.

23 In other courts, sometimes civil trials and things like
24 that, that's the standard of proof, you'll get points at
25 mid-field. Well, here in criminal law you do not get points

CLOSING ARGUMENTS - MR. ERWIN

114

1 at mid-field.

2 Now, let's say you get past there and we're in the red
3 zone. We're down past fifty percent, somewhere on this side
4 of the field. In football, just like here today, you do not
5 get points for that.

6 Now, there's other courts, family court where, for
7 example, if they were going to take your kids from you, say
8 that you're not suitable to be a parent, take your kids from
9 you, the burden of proof they would have to get is
10 preponderance of the evidence. Excuse me, no. That one is
11 called clear and convincing.

12 And that's what they have to do to take your kids away
13 from you. It's a pretty high standard. They have to go in
14 this court, in criminal court, right here, they have to go
15 all the way down the field, all the way down here into the
16 end zone to get any points here. And if they haven't gotten
17 there on any of these, you have to find him not guilty.

18 Now, there's several elements they have to meet for
19 each one of these crimes. You know, we've talked about
20 this, the deadly weapon, the taking, the use of force to
21 take. If they fail on one of those, you have to find him
22 not guilty on assault and battery. If they don't score a
23 touchdown on one of those, you have to find him not guilty
24 of assault and battery.

25 Now, likewise, for the other charge, the armed robbery,

CHARGE OF THE COURT

115

1 the deadly weapon, the use of force, the taking, if they're
2 not -- if they haven't scored on all three of those, you
3 have to find him guilty of armed -- you have to find him not
4 guilty of armed robbery. Ladies and gentlemen, it's your
5 duty to do so.

6 And I know that having seen the video and having heard
7 the testimony today you're going to be able to find that Mr.
8 Bluford may be guilty of something, but he's not guilty of
9 what they've charged him with. So I'm going to ask you to
10 find him not guilty of these. Good luck.

11 **THE COURT:** All right, ladies and gentlemen, we're
12 going to take a brief break. And I'll call you back in to
13 charge you on the law. Please don't discuss the case with
14 anyone. We're not to deliberations quite yet.

15 (Whereupon the jury exited the courtroom at 2:33 pm)

16 **THE COURT:** All right. Let's break for just one
17 second. My clerk is bringing me a final version of the
18 charge.

19 (Whereupon court was in recess at 2:34 pm)

20 (Whereupon court resumed at 2:36 pm)

21 **THE COURT:** All right. We can bring the jury back in.

22 (Whereupon the jury entered the courtroom at 2:39 pm)

23 **THE COURT:** Ladies and gentlemen, I'll just tell you,
24 I've got my charge on the law to give to you. And I read it
25 from my written charge for two reasons. And, first of all,

CHARGE OF THE COURT

116

(1 that's because I want to get it right and make sure I don't
2 forget anything. But, secondly, because I'm going to give
3 you -- I want to do it verbatim because I'm going to give
4 you a written copy of this charge in your jury deliberation
5 room to help you and aid you in your deliberations. I'll
6 give you a charge towards the end on how you should use this
7 written charge in your jury deliberation room.

8 Madame Foreperson, ladies and gentlemen of the jury,
9 you have seen and heard the evidence presented as well as
10 the arguments of counsel. It now, therefore, becomes my
11 duty and obligation to instruct you on the law that is
12 applicable in this case. It will then be your duty and
(13 obligation to begin your deliberations through which process
14 you will decide the facts, apply the law as instructed by me
15 and render fair and impartial decisions.

16 It is your exclusive duty to determine what the facts
17 are. You do that based upon your own common sense,
18 examination and evaluation of the testimony and other
19 evidence received during the trial of this case. You twelve
20 jurors alone will decide what weight, value and effect that
21 is to be given to any particular testimony or other evidence
22 received.

23 Your ultimate goal is to simply reach the truth in this
24 matter. And by doing so you will have fulfilled your
(25 obligation as jurors to give both the State and the

CHARGE OF THE COURT

117

1 Defendant a fair and impartial trial based upon the evidence
2 presented and the law applicable to this case.

3 In this case the State of South Carolina through the
4 Circuit Solicitor has charged the Defendant with the
5 criminal offenses known as armed robbery and assault and
6 battery in the first degree. The allegations charging the
7 Defendant with these crimes are set forth in the indictments
8 that have been previously explained to you.

9 The indictments are not evidence in this case and may
10 not be considered by you as evidence against the Defendant.
11 Each indictment charges a separate and distinct offense.
12 You must decide each indictment separately on the evidence
13 and the law applicable to it uninfluenced by your decision
14 as to any other indictment. The Defendant may be convicted
15 or acquitted on any or all of these offenses charged.
16 You'll be asked to write a separate verdict of guilty or not
17 guilty on the verdict form.

18 As to the charges set forth in the indictments the
19 Defendant has entered a plea of not guilty. That plea of
20 not guilty has therefore placed upon the State the burden of
21 proving the allegations that are set forth in the
22 indictments. The burden of proving each of the essential
23 elements of the crimes charged and therefore the burden of
24 proving the guilt of the Defendant to the satisfaction of
25 you twelve jurors beyond a reasonable doubt before a verdict

CHARGE OF THE COURT

118

1 of guilty could be returned as to the indictments.

2 The burden is never upon a defendant to prove that he
3 is not guilty or to prove that he is innocent because in
4 some cases that may not be possible. The burden is always
5 upon the State because they have made the allegations to
6 prove the Defendant guilty beyond a reasonable doubt.

7 You are further instructed that it is a vital,
8 important and cardinal rule of law that every defendant in a
9 criminal trial, no matter how serious the offense might be
10 for which he stands charged, shall always be presumed
11 innocent of that charge. And that presumption of innocence
12 shall be with the Defendant from the moment of his arrest
13 and even throughout the course of the actual trial.

14 The presumption of innocence shall be with the
15 Defendant even as you go into the jury room to begin your
16 deliberations. And that presumption of innocence shall be
17 with him there and be with him forever unless you twelve
18 jurors determine that he is no longer entitled to that
19 presumption of innocence. It is only if, unless and until
20 you are satisfied of the Defendant's guilt beyond a
21 reasonable doubt that he would no longer be entitled to the
22 presumption of innocence.

23 I remind you that during this trial you and I have
24 certain duties to perform. As the trial Judge it has been
25 my responsibility to preside over the trial of this case.

CHARGE OF THE COURT

119

1 And I also have the duty to rule on the admissibility of the
2 evidence offered during this trial.

3 You are to consider only the competent evidence before
4 you. If there was any testimony ordered stricken from the
5 record in this case during this trial, you must disregard
6 that testimony. You are to consider only the testimony
7 which has been presented from this witness stand and any
8 exhibits which have been made a part of the record in the
9 case along with any stipulations that may have been made.

10 I have the additional duty to charge you on the law
11 applicable to this case. As the presiding Judge I am the
12 sole judge of the law in this case. And it is your duty as
13 jurors to accept and apply the law as I now state it to you.
14 If you already have any idea as to what the law is or what
15 the law ought to be, and it does not agree with what I tell
16 you now the law is, you must abandon this idea because you
17 were sworn to accept the law and apply the law exactly as I
18 state it to you.

19 In every case tried in this court before a jury the
20 jury becomes the sole and exclusive judge of the facts in a
21 case. A trial judge cannot comment in any way about the
22 facts of the case.

23 Since you, the jury, are the sole judge of the facts in
24 this case you are not to infer from what I might have said
25 during the progress of this trial in ruling upon the

CHARGE OF THE COURT

120

1 admissibility of evidence or otherwise or anything that I
2 say now during the course of this instruction to you that I
3 have any opinion about the facts in this case. I do not.

4 The law does not allow me to have an opinion about the
5 facts in this case. This is a matter solely for you, the
6 jury, to determine. As jurors it is your duty to determine
7 the effect, value, weight and truth of the evidence
8 presented during this trial.

9 The State has the burden of proving the Defendant
10 guilty beyond a reasonable doubt. Some of you may have
11 served as jurors in civil cases where you were told that it
12 is only necessary to prove that a fact is more likely true
13 than not true such as by the greater weight or preponderance
14 of the evidence.

15 In criminal cases the State's proof must be more
16 powerful than that. It must be beyond a reasonable doubt.
17 Proof beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the Defendant's guilt. There are very
19 few things in this world that we know with absolute
20 certainty. And in criminal cases the law does not require
21 proof that overcomes every possible doubt.

22 If, based on your consideration of the evidence, you
23 are firmly convinced the Defendant is guilty of the crimes
24 charged, you must find the Defendant guilty. If, on the
25 other hand, you think there is a real possibility that the

CHARGE OF THE COURT

121

1 Defendant is not guilty, you must give the Defendant the
2 benefit of the doubt and find him not guilty.

3 There are two types of evidence which are generally
4 presented during a trial, direct evidence and circumstantial
5 evidence. Direct evidence is the testimony of a person who
6 claims to have actual knowledge of a fact such as an
7 eyewitness. It is evidence which immediately establishes
8 the main fact to be proved.

9 Circumstantial evidence is proof of a chain of facts
10 and circumstances indicating the existence of a fact. It is
11 evidence which immediately establishes collateral facts from
12 which the main fact may be inferred. Circumstantial
13 evidence is based on inference and not on personal knowledge
14 or observation.

15 The law makes absolutely no distinction between the
16 weight or value to be given to either direct or
17 circumstantial evidence. Nor is a greater degree of
18 certainty required of circumstantial evidence than of direct
19 evidence.

20 You should weigh all of the evidence in this case.
21 After weighing all of the evidence if you are not convinced
22 of the guilt of the Defendant beyond a reasonable doubt, you
23 must find the Defendant not guilty.

24 Necessarily, you must determine the credibility of
25 witnesses who have testified in this case. Credibility

CHARGE OF THE COURT

122

1 simply means believability. It becomes your duty as jurors
2 to analyze and to evaluate the evidence and determine which
3 evidence convinces you of its truth.

4 In determining the believability of the witnesses who
5 have testified in this case you may believe one witness over
6 several witnesses or several witnesses over one witness.
7 You may believe a part of the testimony of a witness and
8 reject the remaining part of the testimony of that same
9 witness.

10 You may believe the testimony of a witness in its
11 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, bias, prejudice or other
14 motive in this case.

15 You may also consider the appearance and manner of a
16 witness while on the witness stand. In other words, you are
17 to judge a witness' credibility in the same way you would
18 judge a person's credibility in your daily life.

19 I instruct you and emphasize that the fact the
20 Defendant did not testify is not a factor to be considered
21 by you in any way in your deliberation and in your
22 consideration on the question of the guilt or innocence of
23 the Defendant. It must not be considered by you in any
24 manner whatsoever.

25 A defendant has the Constitutional right to remain

CHARGE OF THE COURT

123

(1 silent. And the assertion of this right must not be
2 considered by you in your deliberations. Under your oath
3 you are to draw absolutely no conclusion whatsoever from the
4 fact that the Defendant did not testify in this case.

5 The fact that the Defendant did not testify should not
6 even be discussed in the jury room. The burden of proof, as
7 I have stated to you, is on the State. The Defendant is not
8 required to prove his innocence. The burden of proof
9 remains on the State to prove guilt beyond a reasonable
10 doubt.

11 In order to establish criminal liability, criminal
12 intent is required. For example, the mental state required
(13 to be proven by the State for a particular crime might be
14 purpose, intent, knowledge, recklessness or criminal
15 negligence.

16 Criminal intent must be proven by the State beyond a
17 reasonable doubt. Criminal intent is always a matter that
18 must be determined by the jury from the circumstances
19 surrounding the situation.

20 There is no way to prove criminal intent to a
21 mathematical certainty. So the law says that criminal
22 intent may be inferred from the circumstances shown to have
23 existed. This is how you make a determination of whether or
24 not the element requiring intent was present. It is not
(25 necessary to establish intent by direct evidence, but intent

CHARGE OF THE COURT

124

1 may be established by inference in the same way as any other
2 fact, by taking into consideration the acts of the parties
3 and all the facts and circumstances of the case.

4 Criminal intent is a mental state of conscious wrong-
5 doing. It is up to you to determine what the Defendant
6 intended to do based on the circumstances shown to have
7 existed. Criminal intent can arise from action or failure
8 to act. It may arise from negligence, recklessness or an
9 indifference to duty or the consequences that is considered
10 by law to be the equivalent of criminal intent.

11 Upon view of a felony committed, certain information
12 that a felony has been committed or a view of a larceny
13 committed any person may arrest the felon or thief and take
14 him to a judge or magistrate to be dealt with according to
15 the law. A citizen may arrest a person in the nighttime by
16 efficient means as the darkness and the probability of
17 escape render necessary even if the life of the person
18 should be taken when the person has (a) committed a felony,
19 (b) has entered a dwelling, house without express or implied
20 permission, (c) has broken or is breaking into an outhouse
21 with view to plunder, (d) has in his possession stolen
22 property or (b), excuse me, or (e) being under circumstances
23 which raise just suspicion of his design to steal or commit
24 some felony, flees when he is held.

25 The Defendant is charged with armed robbery. In order

CHARGE OF THE COURT

125

1 to prove this offense the State must first prove beyond a
2 reasonable doubt that the Defendant took personal property
3 from the person or presence of another person. Property is
4 in the presence of a person if it is within the person's
5 reach, inspection, observation or control so that the person
6 could, if not overcome with violence or prevented by fear,
7 keep possession of the property.

8 The State must also prove beyond a reasonable doubt
9 that the Defendant carried the property away intending to
10 permanently deprive the owner of the property and to keep
11 the property for the Defendant's own use. The elements of
12 robbery and armed robbery include asportation of the
13 property. The slightest removal of the property or the
14 complete possession of the property, even for an instant, by
15 the Defendant is sufficient to show a taking and carrying
16 away of the property. A person is guilty of armed robbery
17 and not merely of an attempt if he moves the stolen goods a
18 short distance and the crime is ongoing until the thief has
19 reached a place of temporary safety.

20 The taking and carrying away of the property must have
21 been done with violence or by putting the owner of the
22 property in fear of violence. The use of force or
23 intimidation in retaining the property generally or
24 infecting retention of the property in an escape attempt or
25 even merely as a means of escaping after the property has

CHARGE OF THE COURT

126

1 been abandoned supply the element of force or intimidation
2 necessary to make the offense of robbery.

3 Finally, the State must prove beyond a reasonable doubt
4 the Defendant was armed with a deadly weapon during the
5 robbery. A deadly weapon is any article, instrument or
6 substance which is likely to cause death or great bodily
7 harm. Whether an instrument has been used as a deadly
8 weapon depends on the facts and circumstances of each case.
9 The following are examples of instruments which may be
10 deadly weapons; a pistol, a shotgun, a rifle, a dirk, a
11 dagger, a knife, a slingshot, metal knuckles, a razor,
12 gasoline, a fire bomb or Molotov cocktail and lighter fluid.

13 If you find that the State has not proven armed robbery
14 beyond a reasonable doubt you must then consider whether the
15 State has proven beyond a reasonable doubt that the
16 Defendant is guilty of strong arm robbery. Strong arm
17 robbery contains all of the elements of armed robbery except
18 for the use of a deadly weapon.

19 Robbery is defined as the unlawful taking of money,
20 goods or other personal property of any value from the
21 person of another or in his presence by violence or by
22 putting such person in fear. Robbery is larceny from the
23 person or immediate presence of another by violence,
24 intimidation or by putting such person in fear.

25 A thing is in the presence of a person in respect to a

CHARGE OF THE COURT

127

(1 robbery which is so within his reach, inspection,
2 observation or control that he could, if not overcome by
3 violence or prevented by fear, retain his possession of it.
4 Robbery is basically larceny compounded or aggravated by
5 intimidation or force used in the taking of property from
6 the person or in the presence of another.

7 Larceny is the felonious taking and carrying away of
8 the goods of another against the owner's will or without his
9 consent with the intent to appropriate them to one's own use
10 and to permanently deprive the owner of possession of his
11 property. There are five elements the State must establish
12 beyond a reasonable doubt to prove larceny. Each of these
(13 elements must be present to make out the crime of strong arm
14 robbery.

15 The elements of larceny are a taking, the act of
16 carrying the property away. This is called asportation in
17 the law. Asportation is the act of carrying away of the
18 personal property of another without the consent or against
19 the will of the owner and with the intent to steal.

20 The asportation of stolen property is an indispensable
21 element of larceny and can be established by the slightest
22 removal of the property with felonious intent. The
23 Defendant must intend to permanently deprive the owner of
24 possession by converting the property to his own use.

(25 In addition to the elements of larceny the crime of

CHARGE OF THE COURT

128

(1 robbery requires two additional elements; one, the property
2 must be taken from the person or immediate presence of
3 another or -- and, two, the taking must be accomplished by
4 violence, intimidation or putting the person in fear. This
5 violence must be actual personal violence or the threat of
6 it, the use of force or intimidation in retaining the
7 property generally or infecting retention of the property in
8 an escape attempt or even merely as a means of escaping
9 after the property has been abandoned supply the element of
10 force or intimidation necessary to make the offense of
11 robbery.

(12 Generally, the element of force in the offense of
13 robbery may be actual or constructive. Actual force implies
14 physical violence. Constructive force includes all
15 demonstrations of force, menaces and other means by which
16 the person robbed is put in fear sufficient to overcome the
17 free exercise of a person's will or prevent resistance to
18 the taking.

19 No matter how slight the cause creating the fear is or
20 by what other circumstances the taking is accomplished, if
21 the transaction is accompanied by circumstances of terror
22 such as threatening by word or gesture as in common
23 experience or likely to create an apprehension of fear and
24 induce a person to give up the property, the victim is
(25 placed in fear. The degree of force used is immaterial so

CHARGE OF THE COURT

129

(1 long as such force or threat of force is actually sufficient
2 to overcome the victim's resistance.

3 A person is guilty of the crime of strong arm robbery
4 and not merely of an attempt if he moves the stolen goods a
5 short distance and the crime is ongoing until the thief has
6 reached a place of temporary safety.

7 The Defendant is also charged with assault and battery
8 in the first degree. A person commits the offense of
9 assault and battery in the first degree if the person
10 unlawfully (a) injures another person and the act occurred
11 during the commission of a robbery, burglary, kidnapping or
12 theft or (b) offers or attempts to injure another person
(13 with the present ability to do so and the act is, one,
14 accomplished by means likely to produce death or great
15 bodily injury or, two, occurred during the commission of a
16 robbery, burglary, kidnapping or theft.

17 Great bodily injury means bodily injury which causes a
18 substantial risk of death or which causes serious permanent
19 disfigurement or protracted loss or impairment of function
20 of a bodily member or organ.

21 I will give you a copy of these instructions in written
22 form. During your deliberations you may refer to the
23 instructions to guide your decision-making. You must not
24 consider the instructions as a whole and not follow some and
(25 ignore others. Please return the instructions to the court

CHARGE OF THE COURT

130

1 at the time your verdict is rendered.

2 Ladies and gentlemen, your verdict must be a unanimous
3 one. Madame Foreperson, when the jury agrees on a verdict
4 you will write the verdict on the verdict form and sign and
5 date it. Then knock on the jury room door and inform the
6 bailiff that you've reached a verdict. At that time we'll
7 receive you back into the courtroom.

8 You will see that the verdict form is set up so you
9 will consider the offense of armed robbery. Only answer
10 question (b) if you find the Defendant not guilty of armed
11 robbery. You will go on to consider the lesser included
12 offense of strong arm robbery.

13 And then finally, irrespective of your verdict on armed
14 robbery and strong arm robbery you will consider his guilt
15 or innocence on assault and battery in the first degree.
16 All right. And then you will sign and date the jury verdict
17 form. All right.

18 Now, if you will go to your jury deliberation room, but
19 do not begin deliberating until we have sent back all the
20 exhibits to you. I have a matter of law I need to take up
21 with the attorneys. And we will be with you very shortly.
22 Thank you so much for your service.

23 (Whereupon the jury exited the courtroom at 3:00 pm)

24 **THE COURT:** Any objection on the charge on the law from
25 the State?

1 **MR. MOYER:** No, Your Honor.

2 **THE COURT:** Any from the Defense?

3 **MR. ERWIN:** Just renewing my original objection.

4 **THE COURT:** All right. And they are so noted. All
5 right.

6 I'm going to initial each page of this charge. And
7 then I staple them together. I make it a Court's exhibit
8 after deliberations are over. And we've taken out all^a of
9 the cites to the law in this. So it's a -- it's a clean
10 copy.

11 Will you all just make sure we've got all the exhibits
12 together.

13 (Pause)

14 **THE COURT:** Y'all want to take a look at the verdict
15 form before it goes back? That's the one thing y'all
16 haven't seen.

17 (Pause)

18 **THE COURT:** Yes, sir.

19 **MR. ERWIN:** Your Honor, I just want to renew my
20 directed verdict motion and all of the motions, all other
21 objections that have been made throughout the course.

22 **THE COURT:** All right. And they are so noted for the
23 record. And your motion's denied.

24 **MR. ERWIN:** Thank you, Your Honor.

25 **THE COURT:** All right. You can give that to him. All

VERDICT OF THE JURY

132

1 right. Go ahead and let them start deliberating. Y'all
2 both did a great job. I know it's a short trial, but you
3 did a great job. All right.

4 **MR. MOYER:** Alternate.

5 **THE COURT:** Oh, yeah. I forget about the alternate.
6 I'll go let her go. We'll be in recess pending a verdict.

7 (Whereupon the jury began deliberations at 3:03 pm)

8 (Whereupon court was in recess at 3:03 pm)

9 (Whereupon court resumed at 3:55 pm)

10 **THE COURT:** All right. Are we ready to bring the jury
11 back in? Anything from the State before we bring them back
12 in? Anything from the State before we bring them back in?

13 **MR. MOYER:** Oh, I'm so sorry ---

14 **THE COURT:** That's okay.

15 **MR. MOYER:** Yes, I'm ready, Your Honor.

16 **THE COURT:** Anything from the Defense?

17 **MR. ERWIN:** No, Your Honor.

18 **THE COURT:** Okay. And we'll mark the jury charge as
19 Court's exhibit number 1.

20 (Whereupon Court's exhibit 1 was marked)

21 (Whereupon the jury entered the courtroom at 3:57 pm)

22 **THE COURT:** Madame Foreperson, it's my understanding
23 that the jury's reached a verdict. Is that correct?

24 **MADAME FORELADY:** That's correct.

25 **THE COURT:** All right. I'll ask you to hand the

VERDICT OF THE JURY

133

1 bailiff the verdict form, please. All right. The verdict
2 form appears to be in order.

3 **MADAME CLERK:** Your Honor, in the case of 2010-GS-23-
4 7905 and 7906, the State of South Carolina versus Alfred
5 Bernard Bluford, as to the charge of armed robbery, we, the
6 jury, unanimously find the Defendant guilty of armed
7 robbery.

8 As to the charge of assault and battery in the first
9 degree, we, the jury, unanimously find the Defendant guilty
10 of assault and battery in the first degree.

11 This is signed by Ms. Robinson, our Forelady. Ladies
12 and gentlemen, of the jury, if you agree this is your
13 verdicts will you, please, raise your right hand.

14 (Whereupon all jurors raised their right hand)

15 **MADAME CLERK:** Thank you.

16 **THE COURT:** All right. Anything from the State before
17 the jury panel's released?

18 **MR. MOYER:** No, Your Honor.

19 **THE COURT:** Anything from the Defense?

20 **MR. ERWIN:** No, Your Honor.

21 **THE COURT:** All right. All right. Ladies and
22 gentlemen, we thank you so much for your service. If you'll
23 step to your jury deliberation room, I'm going to go over
24 there and speak with you briefly.

25 (Whereupon the jury exited the courtroom at 3:58 pm)

SENTENCE OF THE COURT

134

1 **THE COURT:** All right. I'll be right back. I'm just
2 going to let them go.

3 (Whereupon court was in recess at 3:59 pm)

4 (Whereupon court resumed at 4:00 pm)

5 **THE COURT:** All right. Are we ready to move to
6 sentencing?

7 **MR. MOYER:** We're ready.

8 **THE COURT:** All right, then.

9 **MR. ERWIN:** Your Honor, briefly before we move ---

10 **THE COURT:** Oh, yes, sir.

11 **MR. ERWIN:** Just to clean up the record a little bit,
12 Your Honor, I'd move for a judgment notwithstanding the
13 verdict based on, you know, the same grounds of my directed
14 verdict motion, renewed directed verdict motion just -- and
15 also want to renew all motions, all objections that have
16 been made up to this point.

17 **THE COURT:** All right. And your motions are
18 respectfully denied, but noted for the record. All right.
19 Mr. Moyer.

20 **MR. MOYER:** Thank you, Your Honor.

21 **THE COURT:** I probably don't need to hear anymore about
22 the facts ---

23 **MR. MOYER:** Right.

24 **THE COURT:** --- unless it's something new.

25 **MR. MOYER:** Nothing else about the facts. His criminal

SENTENCE OF THE COURT

135

1 record?

2 **THE COURT:** Yes, sir.

3 **MR. MOYER:** In South Carolina in 1965, assault and
4 battery, 1986, obtaining money under false pretenses, eleven
5 counts, 1990, twenty-nine counts of swindling, 1993, breach
6 of trust, two counts of that, 1995, swindling, 2002, two
7 counts of fraud check, 2004, fraud check, 2005, fraud check,
8 2009, habitual traffic offender.

9 In Ohio he was convicted of six counts of passing bad
10 checks in 1975. In Florida in 1982 he was convicted of
11 postal fraud. In Georgia in 2001 he was convicted of DUS,
12 possession of controlled substance and theft by taking. In
13 North Carolina he was convicted in 1995 of six counts of
14 obtaining property falsely, 2004, obtaining property falsely
15 times eight, 2005, larceny times two, possession of stolen
16 goods and obtaining goods by false pretenses.

17 And he also has a -- the only other thing I wanted to
18 add to the facts that was obviously kept out, and I think
19 Your Honor did hear, he had a crack pipe in his pocket when
20 he was arrested.

21 **THE COURT:** All right.

22 **MR. MOYER:** And I don't believe Mr. Barr wishes to
23 address the Court.

24 **THE COURT:** All right. Yes, sir.

25 **MR. ERWIN:** Thank you, Your Honor. A few things to

SENTENCE OF THE COURT

136

1 offer. First of all, Mr. Bluford is sixty-six years old.
2 He's been incarcerated continuously since this -- this
3 arrest violated his probation. He did go down the road, but
4 he has been incarcerated, you know, since the day of this in
5 -- July 29th, 2010. I ask that, you know, that time -- he
6 be given credit for that time.

7 Understanding that the minimum amount on armed robbery
8 is what it is, a sixty-six year old man, that's a --
9 essentially a life sentence for him. He's, you know, I
10 would like to offer in mitigation not in any sort of, you
11 know, avoiding responsibility for this, but in mitigation
12 that, you know, the amount of property attempted to be taken
13 was not much.

14 The amount of actual harm -- obviously there's
15 psychological and all that stuff, but the amount of actual
16 harm to the victim was not that much, you know, a small cut
17 on his hand. I understand there is larger purposes to these
18 punishments, but I just want to make sure you keep that in
19 mind for mitigation.

20 Your Honor, I'd ask you to consider the minimum
21 sentence because it is just a lot of time for a man of his
22 age.

23 **THE COURT:** All right. Mr. Bluford, anything you'd
24 like to say?

25 **MR. BLUFORD:** I'm sorry for the -- the way things have

SENTENCE OF THE COURT

137

1 come out here today. I didn't purposely do any harm to Mr.
2 Barr or anybody. It was a misunderstanding.

3 I was over in that shopping center to get Chinese food.
4 I live quite a ways from there. And I had come all the way
5 over there just to get Chinese food at a quarter of nine.
6 And I was rushed.

7 And so things started precipitating and things just
8 really got kind of out of hand there, but I didn't go over
9 there with any malice to commit a crime. I left my lights
10 on, my TV on and my door open. And I haven't gotten back in
11 two years.

12 So I didn't go to do any wrong. It's just a -- this
13 was actually a -- just a mistake ---

14 **THE COURT:** All right.

15 **MR. BLUFORD:** --- that happened in the way it came out,
16 but I didn't go to rob nobody.

17 **THE COURT:** I see. Well, I do have to take into
18 consideration your age. And I am going to take that into
19 consideration.

20 I sentence you to twelve years, give you credit for
21 seven hundred and eleven days time served. And on the
22 assault and battery, concurrent, ten years with seven
23 hundred and eleven days credit for time served. Best of
24 luck to you.

25 **MR. ERWIN:** Thank you, Your Honor.

2 THE COURT: Thank you.

3 (Hearing ended at 4:06 pm)

4 (End of requested transcript of record)

1

Certificate of Reporter

2

3

4

5

6

7

8

9

10

11

12

13

14

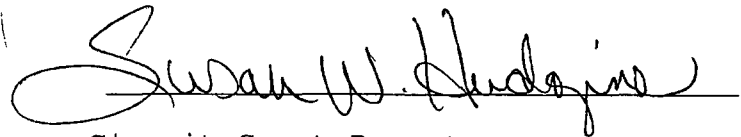
15

16

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth 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 evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 10th day of July 2012.

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

October 27, 2012

A handwritten signature in cursive script, reading "Susan W. Hudgins", written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Letitia H. Verdin, Family Court Judge

THE STATE,

RESPONDENT,

V.

ALFRED B. BLUFORD,

APPELLANT

Appellate Case No. 2012-212488

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief 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

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	
Trial counsel erred in denying appellant's motion for a directed verdict on the offense of armed robbery charged against him because the element of asportation was not proved in the case as the property in question was not taken or carried away, but rather abandoned by appellant.....	5
CONCLUSION	7
PETITION TO BE RELIEVED AS COUNSEL	8

TABLE OF AUTHORITIES

Cases

<u>Jackson v. Virginia</u> , 443 U.S. 307 (1979).....	7
<u>State v. Al-Amin</u> , 353 SC 405, 578 S.E. 2d 32 (Ct. App. 2003)	6
<u>State v. Bullard</u> , 348 SC 611, 560 S.E. 2d 436 (2002).....	6
<u>State v. Keith</u> , 283 S.C. 597, 325 S.E. 2d 325 (1985).....	6
<u>State v. Mitchell</u> , 382 SC 1, 675 S.E. 2d 435 (2009)	6
<u>State v. Moore</u> , 374 SC 468, 649 S.E. 2d 84 (2008).....	6, 7

Statutes

S.C. Code Ann §16-11-330 (A)	6
------------------------------------	---

Constitutional Provisions

S.C. Const. art. I, §3.....	7
U. S. Const. amend. XIV	7

STATEMENT OF ISSUE ON APPEAL

Trial counsel erred in denying appellant's motion for a directed verdict on the offense of armed robbery charged against him because the element of asportation was not proved in the case as the property in question was not taken or carried away, but rather abandoned by appellant.

STATEMENT OF THE CASE

Appellant Alfred B. Bluford was convicted of armed robbery and assault and battery (first degree) per a jury trial held at the July 2012 term of the Greenville County General Sessions Court before Judge Letitia H. Verdin. Appellant received an aggregate twelve-year prison sentence for his convictions. Jake Erwin represented appellant at trial.

Appellant appealed his trial court convictions. This brief follows.

ARGUMENT

Trial counsel erred in denying appellant's motion for a directed verdict on the offense of armed robbery charged against him because the element of asportation was not proved in the case as the property in question was not taken or carried away, but rather abandoned by appellant.

The trial in this case consisted of the testimony of two witnesses: Bi-Lo Store Manager Patrick Barr and Police Officer Michael Hammett. Appellant did not testify at trial and presented no witnesses in his defense.

Store Manager Barr testified that he was watching the store videotapes around 9:00 p.m. on July 29, 2012, when he saw a customer, later identified as the appellant, bring a pack of beer to the sales counter. Barr testified that he then saw appellant depart from that line, migrate to another line, and finally return to the original line, and commence walking past the point of sale with beer in his possession without paying for the beer. Barr stated he left his office and went to the lobby of the store to confront appellant. Barr stated that appellant claimed that his wife was paying for the beer. Barr stated that he tried to block appellant from leaving and at one point had appellant on the floor, but that he backed away when appellant started swinging a knife. Barr's left ring finger was cut in the melee. Barr added that when appellant stepped outside of the store, police officer Michael Hammett stopped, detained, and cuffed appellant. R. 44, l. 10-68, l. 13; R. 74, l. 23-p. 81, l. 21.

At the close of the state's case in chief, appellant's counsel moved for a directed verdict on the ground that the state failed to prove the asportation element of armed robbery because appellant never left the store with the beer, but rather abandoned the beer (the beer did not leave the store with appellant), and then engaged in a struggle with Barr. R. 83, l. 5-23, R. 85, l. 24-p. 86, l. 10. The court denied the directed verdict motion. R. 86, lines 11-22.

Armed robbery is robbery while armed with a deadly weapon. S.C. Code Ann §16-11-330 (A).¹ Robbery, which is the lesser offense of armed robbery, is defined as “the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another presence by violence or by putting such a person in fear. State v. Al-Amin, 353 SC 405, 578 S.E. 2d 32 (Ct. App. 2003). Also, larceny, which is the lesser offense of robbery, is the felonious taking and carrying away of the goods of another against the owner’s will or without his consent. State v. Mitchell, 382 SC 1, 675 S.E. 2d 435 (2009). Note that asportation is central to armed robbery and robbery because it (asportation) is the taking or carrying away of the goods or monies from the victim. State v. Mitchell, supra; State v. Bullard, 348 SC 611, 560 S.E. 2d 436 (2002).

No asportation occurred in this case because appellant did not take or carry away the beer from the store. Rather, appellant abandoned the beer after Barr engaged him in a fight. The beer never left the Bi-Lo store. Hence, there was no taking or carrying away of the property in this instance and thus no asportation was established in this case.

This case is distinguishable from the continuous offense theory applicable to armed robbery cases per State v. Keith, 283 S.C. 597, 325 S.E. 2d 325 (1985) and its progeny.² Under the continuous offense theory, the robber need not be armed at all times during the robbery in order to be guilty of armed robbery, but rather he is guilty if he arms himself or becomes armed with a deadly weapon at anytime during the progress of “the taking” or while the robbery is being perpetrated or during the escape or attempt to escape. This theory presupposes that the asportation

¹ Armed robbery occurs when a person commits robbery while either armed with a deadly weapon or alleging to be armed by the representation of a deadly weapon. S.C. Code Ann §16-11-330 (2003).

² State v. Moore, 374 SC 468, 649 S.E. 2d 84 (2008); and State v. Mitchell, 382 SC 1, 675 S.E. 2d 435 (2009).

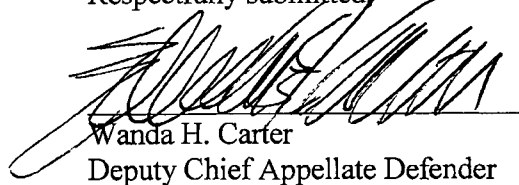
element of “the taking” exists. Here, there was insufficient proof of asportation as an element of the offense of armed robbery charged against him.

A case should only be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2008). Here, there was insufficient proof of the element of asportation in connection with the offense of armed robbery offense charged against appellant. Thus, the court erred in denying appellant’s motion for a directed verdict on the offense of armed robbery charged against him. Appellant’s armed robbery conviction violated due process as guaranteed under the Fourteenth Amendment to the United States Constitution and Article 1, §3 of the South Carolina Constitution because per Jackson v. Virginia, 443 U.S. 307 (1979), because every element of the offense charged, i.e. asportation, was not proved beyond a reasonable doubt in the case.

CONCLUSION

Based on the foregoing argument, appellant requests that his burglary conviction be reversed and a directed verdict of acquittal entered.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of February, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Greenville County

 Letitia H. Verdin, Family Court Judge

THE STATE,

RESPONDENT,

V.

ALFRED B. BLUFORD,

APPELLANT

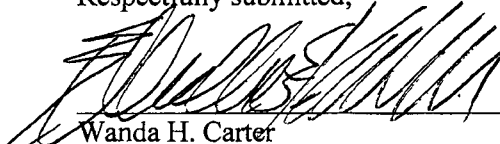
 PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alfred B. Bluford states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Letitia H. Verdin, which was held on July 10, 2012, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Alfred B. Bluford.

Respectfully submitted,



 Wanda H. Carter

 Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of February, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Letitia H. Verdin, Family Court Judge

THE STATE,

RESPONDENT,

V.

ALFRED B. BLUFORD,

APPELLANT

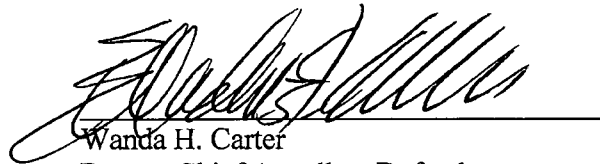
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript

I certify that this designation contains no matter which is irrelevant to this appeal.

February 26th, 2013



Wanda H. Carter
Deputy Chief 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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Letitia H. Verdin, Family Court Judge

THE STATE,

RESPONDENT,

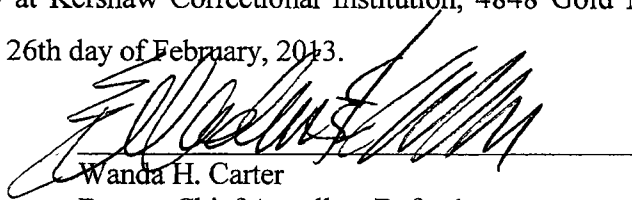
V.

ALFRED B. BLUFORD,

APPELLANT

CERTIFICATE OF SERVICE

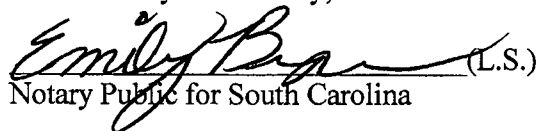
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Alfred B. Bluford, #220219 at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 26th day of February, 2013.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 26th day of February, 2013.



(L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.

**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.

Alfred B. Bluford, Appellant.

Appellate Case No. 2012-212488

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

Unpublished Opinion No. 2013-UP-454
Submitted November 1, 2013 – Filed December 11, 2013

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia; and Alfred B. Bluford, 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.¹

APPEAL DISMISSED.

HUFF, GEATHERS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

December 30, 2013

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Alfred B. Bluford
Lower Court Case No. 2010GS2307906, 2010GS2307905
Appellate Case No. 2012-212488

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alfred B. Bluford
Salley W. Elliott, Esquire
Wanda H. Carter, Esquire
Alan McCrory Wilson, Esquire

DEC 31 2013

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)Alfred Bernard Bl. Ford 22019)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-23-02562

APPLICATION FOR

POST-CONVICTION RELIEF

ENTERED COMPUTER

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Kershaw Correctional, SA64, Kershaw, S.C., 29067
2. Name and location of Court which imposed sentence General Sessions Greenville Si
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-23-7905
 - (b) 2013-GS-23-7906
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10-27-12
 - (b) 10-27-12

- (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 - Direct Appeal
- ii. S.C. Court of Appeals - Anders Brief
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. Dismissed
- iii. _____
- (c) the date of each such result:
- i. 2-26-13
- ii. 12-13-13
- 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) Ineffective Assistance of Council
 (b) Lack of Jurisdiction
 (c) Charged with Felony instead of Misdemeanor

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Please see Attachment
 (b) _____
 (c) _____

x 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? _____

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. Anders Brief
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. S.C. Court of Appeals
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. Dismissed
 ii. _____
 iii. _____

- iv. _____
- x (d) the date of each such disposition:
- i. 2-26-13
- ii. 12-13-13
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NONE KNOWN
- ii. _____
- iii. _____
- iv. _____

- x 14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. N/A
- 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) Issues listed have to be addressed
- (b) through Post-Conviction Relief process
- (c) per statute

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. DAN FARNSWORTH Sr.
 - ii. Jake Irwin
 - iii. Wanda Carter
- (b) the proceedings at which each such attorney represented you:
- i. DAN FARNSWORTH Sr. - Initial Public Defender - 22 months
 - ii. Jake Irwin - 2nd Public Defender - 2 months
 - iii. Wanda Carter - Direct Appeal and Anders Brief

19. State clearly the relief you seek in filing this application:

To have current charges dismissed -

x 20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

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.

Alfred B. Bluford

SWORN to and subscribed before me this 1
day of May, 2014.

Catharine A. Connor (L.S.)
Notary Public

My Commission Expires: ~~My Commission Expires 12/31, 2018~~

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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.

Alfred B. Bluford
Applicant

SWORN or affirmed to and subscribed before me this
1 day of May, 2014.

Catherine A. Comer
Notary Public

My Commission Expires: ~~My Commission Expires December 22, 2018~~

Attachment 1-A

11) State concisely And in the same order the facts which support each of the grounds set out in (10).

A) My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.

My defense attorney failed to effectively Challenge the arrest and seizure of applicant. See State v James McAttee 333 S.C. 615, 511.

My defense failed to give me his complete loyalty.

My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case. He only had my case for (2) months while the case was (2) years old. My Original Attorney Mr. Don Farnsworth he was abruptly removed as my attorney after having been assigned for approx. 20 months.

My defense attorney neglected the necessary investigation and the preparation of my case.

I had no witnesses even while there were multiple witnesses on the Videos (2) and employees that worked at the Bile Supermarket during business hours.

My defense failed to serve my case in good faith. My defense attorney did not do the necessary legal research.

My defense attorney did not conscientiously gather any information to protect my rights.

State v Moore 374 S.C. 468, 648 S.E. 2d 84 (2008)

State v. Al-Amin 353 S.C. 405, 578 S.E. 2d 32 (2003)

State v. Mitchell 382 S.C. 1, 675 S.E. 2d 435 (2009)

State v Bullard 348 S.C. 611, 560 S.E. 2d 436 (2002)

No asportation occurred in this case because appellant did not take or carry away the beer from the store, he abandoned the beer ~~for~~ prior to being assaulted by a civilian. Hence, there was no taking or carrying away of property in this instance and thus no asportation was established in this case. The (2) video's will confirm these facts.

State v Keith 283 S.C. 597, 325 S.E. 2d 325 (1985)

Again there was insufficient proof of asportation as an element of armed robbery charged against appellee.

Appellee's armed robbery conviction violated due process as guaranteed under the Fourteenth Amendment to United States Constitution and Article I, § 3 of S.C. Constitution because per Jackson v Virginia 443 U.S. 307 1979, because every element of the offense charged, i.e., asportation, was NOT proved beyond a reasonable doubt in the case.

My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.

My defense never properly consulted with me or kept me informed with what was going on as far as my case was concerned. I was denied permission to view the (2) videos played partially during my trial. I never saw it and my defense attorney was aware of its existence.

I was not properly informed and was persuaded not to get on the witness stand by my defense attorney.

Evidence was not complete; Rule 702 Testimony by experts if scientific, technical, or other specialized knowledge will assist to determine a fact or issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify there to in the form of an opinion or other mode.

Sir Retired S.C. Supreme Court Judge E.C. Burnett viewed my entire legal concerns but my defense attorney failed and refused to contact or subpoena Judge Burnett or Mr. Don Fornoworth Sr. my original defense attorney.

U.S. v Thompson, 130, F-3d, 676, 5th Circuit
 Once tapes recordings are admitted defendant can
 seek to impeach them by such means as showing
 the tapes do not recount, Entire Event, That
 the tapes have (Altered). Tapes Untrustworthy
 or Contradictory.

My take was re-copied to the extent that
 it was then unclear as to if I had a knife
 in my hands or my car keys, upon leaving
 the cashier from purchasing milk and cereal.

Mandate for effective assistance of trial
 Counsel, as pursuant to the holdings.

In Strickland vs. Washington

South Carolina Rules Professional Conduct Rule 407

1. Must do a sufficient investigation, Review
 all evidence, Any Physical, Police reports and
 Victims Statements.

2. Discuss the entire case with Client

3. Obtain any potential alibi, witnesses for Client
 or any person who could aid the defense in establishing
 relevant facts. Counsel should seek out these potential
 witnesses. Interview them and obtain any valuable
 knowledge that may provide relevant to the defense
 of the accused.

4, Counsel is required to be forthright with his client on ALL aspects of the case and NOT hold back any relevant factors or underscore the state case against the accused.

State v Dukes S.C. 405, 27, S.E. 905, 62 1987.

A person has NO right under section to arrest without a warrant for simple larceny.

It is a error to charge a jury as to right of arrest without distinguishing a larceny that is a misdemeanor from a larceny that is a felony.

The beer in focus was less than \$40 dollars and a misdemeanor

Rule,

407 1.1 Competence

407 1.1(5) Thoroughness and preparation

407 1, 2(A) Scope of representation and allocation of authority between client and lawyer.

407 1.2(3) Comments

407 1.3 Diligence

407 1.3 Comments

407 1.4 Communication Comment (3) (5)

407 Lawyer responsibility (4) (5) (6) (7) (8) (9) (12)

407 4.1 Comment (1)

407 Lawyer Responsibility (1) - (6)

407 1, 3(5) To prevent neglect of client matters in the event of a practitioners death or disability, it is the better practice and the duty of diligence may require that each lawyer to review clients files, notify each client of the lawyers death or disability, whether there is need for immediate protective action.

407 1.4 The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Withholding information (7) A lawyer may not

Withhold information to serve the lawyer's own interest or convenience or the interest or convenience of another person.

Rule 1.4 Comments (3) To reasonable Consult with the Client about means (ALL) to be used to accomplish Client's objectives.

Perhaps no professional shortcoming is more widely resented than, Procrastination. To put off repeatedly. To keep postponing something supposed to be done. A Client's interest often can be adversely affected by the passage of time or the change of conditions. In extreme instances, as when a lawyer overlooks a statute of limitation, the Client's legal position may be Destroyed. Even when the Client's interest are not affected in substance, however unreasonable delay to act with reasonable promptness, not to prejudice the lawyer's Client.

Sir, Here the Belo Supermarket was closed down and witnesses, evidence scattered to cover up the track of my innocence.

Alfred B. Bluford #220219

SA, 64

4848 Goldmine Hwy.

Kershaw, S.C. 29067



Mr. Paul B. Wickensimer
ATTR: Clerk of Court

Greenville County Court
305 E. North Street

Greenville, S.C.
29601

LEGAL

CA/ 2012-3085

#20143062

169

ATTORNEY GENERAL'S OFFICE
RECEIVED 5-20-14
ADMINISTRATIVE INSTRUCTIONS
☒ FILE ☒ OPEN ☐ END
____ HAVE ____ COPIES MADE
☒ WRITE TO _____
☒ ORDER _____ TRANSCRIPT
☒ PEN RECORDS _____ CLERK RECORDS
☒ OTHER get CA file

Ken
5/21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-2562
COUNTY OF GREENVILLE	)	
	)	
Alfred Bernard Bluford,	)	
S.C.D.C. No. 220219,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed May 7, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the March 2011 term of General Sessions for first-degree assault and battery (2010-GS-23-7905), armed robbery (2010-GS-23-7906, count 1), and possession of a weapon during commission of a violent crime (2010-GS-23-7906, count 2). Jake Erwin, Esquire represented the Applicant.

After the State called the case to trial on the charges of first-degree assault and battery and armed robbery, the Applicant was found guilty. On July 10, 2012, the Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of 10 years for first-degree assault and battery and 12 years for armed robbery.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense

perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Bluford, Op. No. 2013-UP-454 (S.C. Ct. App. filed Dec. 11, 2013). The Remittitur was sent on December 30, 2013.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. Failed to conscientiously discharge his professional responsibilities.
 - b. Failed to effectively challenge the arrest and seizure.
 - c. Failed to give the Applicant his complete loyalty.
 - d. Failed to have the Applicant's best interest at heart. Counsel represented the Applicant 2 months when he his prior attorney had the case 20 months.
 - e. Neglected the necessary investigation and preparation of the case.
 - f. Failed to have witnesses at trial.
 - g. Failed to serve the case in good faith.
 - h. Failed to do necessary research.
 - i. Failed to conscientiously gather information to protect the Applicant's rights. No asportation occurred so the armed robbery conviction violated due process.
 - j. Failed to advise of all right or take any actions necessary to preserve them.
 - k. Failed to consult with the Applicant about the case. Was not allowed to watch the two videos before trial. Was persuaded not to testify at trial.
 - l. Failed to subpoena the Honorable E.C. Burnett, III or Daniel Farnsworth, Sr., Esquire.
2. Lack of jurisdiction.
3. "Charged with felony instead of misdemeanor."

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A

reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant alleges a lack of jurisdiction. This allegation is without merit and the trial judge had subject matter jurisdiction in this case. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently appries the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The Respondent further notes that indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.

Respectfully submitted,

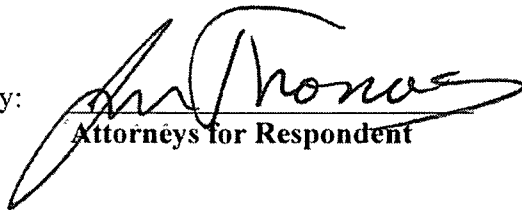
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for Respondent

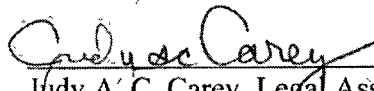
October 21, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2014-CP-23-2562
	)	
ALFRED BERNARD BLUFORD, 220219	)	
	)	
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:

**Alfred Bernard Bluford, 220219
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw SC 29067**

DATED this 21st day of October, 2014.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE)

Alfred Bluford,)
)
 Applicant,)
)
 v.) Case No. 14-CP-23-2562
)
 State of South Carolina)

TRANSCRIPT OF HEARING

The within HEARING in the above-captioned matter was held on October 22, 2015, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, East North Street, Greenville, South Carolina; attended by counsel as follows.

APPEARANCES

Caroline Horlbeck, Esq.
 Appearing for Applicant

Karen Ratigan, Esq.
 OFFICE OF ATTORNEY GENERAL
 ...Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 29616
dgarrison@sccourts.org

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

2

1 THE COURT: All right, I'll be glad to
2 hear from you.

3 MS. RATIGAN: This is the case of Alfred
4 Bluford versus the State of South Carolina.
5 Docket number ---

6 APPLICANT: Excuse me. I'm sorry for
7 interrupting, but -- excuse me.

8 THE COURT: Well, you interrupted her.

9 DEFENDANT: Excuse me.

10 THE COURT: You interrupted her. Let
11 me, the docket number is 2014-CP-23-2562.
12 I'll hear from her and then I'll be glad to
13 hear from you.

14 DEFENDANT: Yes. Again, excuse me.

15 MS. RATIGAN: This is the case of Alfred
16 Bluford versus the State. The docket number
17 is 2014-CP-23-2562.

18 Mr. Bluford was indicted for first degree
19 assault and battery, armed robbery, and
20 possession of a weapon during the commission
21 of a violent crime.

22 He was represented on these charges by
23 Mr. Erwin. The case was brought to trial on
24 the charges of first degree assault and
25 battery and armed robbery, and Mr. Bluford

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravelly

3

1 was found guilty.

2 On July 10th of 2012, Judge Verdin
3 sentenced him to concurrent terms of ten (10)
4 years for the assault and battery and twelve
5 (12) for the armed robbery.

6 The case was appealed. It was perfected
7 in the nature of an *Anders* brief in the Court
8 of Appeals. That court dismissed the matter
9 in December of 2013.

10 His application was timely filed. The
11 State's is ready to proceed. However, I've
12 been advised by counsel that she believes
13 that Mr. Bluford might have a Motion to make
14 at this time.

15 THE COURT: All right. Now I'll be
16 happy to hear from your attorney. She may
17 turn it over to you but that's -- we've got
18 to go by the Rules here. I promise you that
19 I will listen to you.

20 APPLICANT: All right.

21 THE COURT: Ms. Horlbeck?

22 MS. HORLBECK: Your Honor, in
23 accordance with Mr. Bluford's instructions,
24 I subpoenaed, some time ago, the manager's
25 personnel records. I think we started that

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

4

1 process probably back in the Spring, I think
2 in May. Of course the day before this
3 hearing is when I get a message from someone
4 with BiLo telling me to call them about his
5 personnel record. I just got this message
6 yesterday. I called back this morning and
7 have not -- just left a message for them to
8 call me back. So playing phone tag.

9 From the message that I got, there's
10 something about that the records or his
11 manager's records being in storage, that they
12 have to get it out of storage, that kind of
13 thing.

14 So I've done whatever I -- I've done
15 everything that I can do to get that revved
16 up, to get the records. I just don't have
17 them yet. So that's where we are on that
18 issue.

19 Mr. Bluford also has a witness -- and
20 this whole thing happened in a BiLo that
21 closed two years prior to the trial, so I
22 think this BiLo has been closed for about
23 four or five years at this point.

24 So in order to try to find this mystery
25 witness, I had to subpoena BiLo for the names

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

5

1 of the employees that worked at that BiLo on
2 Pleasantburg and Faris. They sent me back a
3 list of one hundred and eleven names. They
4 sent me this list probably at the very
5 beginning of October. Within three days of
6 receiving that list, we'd mailed out a
7 hundred and eleven letters to all of the
8 employees' address listed in what BiLo sent
9 me. We've got responses from about, I think,
10 twenty; maybe a little bit more. My
11 paralegal has been sick this week, so I've
12 been trying to get her to check on it. She
13 is back today.

14 No one who has -- none of the employees
15 who have responded have any additional
16 information. They either were not working
17 that night, they didn't see anything or they
18 have no recollection of -- most of them don't
19 have -- none of them have any recollection of
20 the event and none of them seemed to have
21 been working that night. So I've not been
22 able to locate this mystery witness.

23 On the video, Mr. Bluford described the
24 mystery witness as someone who actually
25 stepped in and assisted him when the manager

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravelly

6

1 and Mr. Bluford got into a scuffle.

2 There's some video showing somebody
3 actually assisting in the scuffle. It does
4 show a fellow kind of standing there for a
5 few seconds. It shows -- it's cut off and
6 you can't see his face. Mr. Bluford is upset
7 about not being able to send him a still
8 picture. He wanted me to take a picture with
9 my -- well, first of all we're not able to
10 print a still photo off of those videos.
11 Whatever the Solicitor does with that, they
12 make it so that you can't print anything off
13 of those videos. Mr. Bluford maintains that
14 I should have taken a picture with my phone.
15 You know, I guess I could have. I don't know
16 what it's going to do.

17 I had Mr. Bluford look at the video again
18 this morning. He refused to watch the
19 majority of it, but he did watch it long
20 enough to look at the mystery witness and he
21 is unable to tell me who this person is. So
22 far, I've not been able to find any BiLo
23 employees who can identify this person.

24 There's also an issue regarding DNA
25 testing. Mr. Bluford wants me -- I guess

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

7

1 that he be tested. I made that Motion in
2 front of Judge Miller probably in the Spring
3 when this case was scheduled in front of him.
4 I've made a Motion for funding to do the DNA
5 testing. Judge Miller denied that request.

6 Mr. Bluford has informed me that the
7 Innocence Project has accepted his case. I
8 don't know anything about that. I did call
9 the Innocence Project to find out whether or
10 not they've accepted his case. Number one,
11 even though I explained that I am Mr.
12 Bluford's attorney, they were reluctant to
13 speak with me, that they are not allowed to
14 give information out over the phone. They
15 explained to me that if they had accepted Mr.
16 Bluford's case that they would tell him, mail
17 him a letter. They haven't mailed me
18 anything, so ---

19 THE COURT: I am not familiar with
20 the Innocence Project. They are the ones
21 that go back and get DNA ---

22 MS. HORLBECK: Yes.

23 THE COURT: Okay.

24 MS. HORLBECK: I think. I don't
25 really know a lot about what they ---

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

8

1 THE COURT: The name sounds
2 familiar but I am not familiar with exactly
3 what it is.

4 MS. HORLBECK: Mr. Bluford states
5 that he has received a letter from the
6 Innocence Project saying that they have
7 accepted his case. I haven't seen it, so I
8 will let him address that issue.

9 That's where we are, Judge.

10 I've done everything that I possibly
11 can do with this case. Done everything that
12 I can. It's just like moving a huge 'animal'
13 to get BiLo to respond when I want them to.
14 You know, I -- I feel kind of fortunate that
15 I've been able to get as much response from
16 them as I have. I will certainly continue to
17 push BiLo for that manager's records, but I
18 don't have them today.

19 THE COURT: Mr. Bluford, I'll be
20 glad to hear from you.

21 APPLICANT: Thank you, sir.

22 THE COURT: Bluford, right?

23 APPLICANT: Yes, sir. I would
24 like to make a Motion that this attorney be
25 removed because of the simple fact that she

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

9

1 has not been responsive in a timely manner in
2 terms of assisting me.

3 She tried to show me some videos
4 today. I've been living this case for five
5 years. I was not able to see -- the DA
6 doesn't want me to find any witnesses. They
7 don't want me to find out who this person of
8 interest is that stopped this incident, that
9 stopped this man, made this man stop choking
10 me at the BiLo.

11 I told her, my attorney, that I need to
12 find this individual because -- I told her,
13 'put this man on social media because someone
14 knows this man.' 'Does anybody know this man
15 that robbed the store?'

16 But -- I got this man on video but I
17 can't get no help. I can't get nobody to
18 show me the videos. She tried to show me the
19 videos. It is part of the transcript that
20 there are three videos, and I've not seen a
21 one.

22 I asked Judge E.C. Barnett, Supreme Court
23 Judge, a minister friend of mine, 'Would you
24 please go see these tapes?' He said 'yes, I
25 can see them, they can't stop me from seeing

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

10

1 them.'

2 So he can down, along with Dan
3 Farnsworth, Sr., a law school friend in
4 school. He came down with his friend and saw
5 these tapes. I've not seen them in their
6 totality yet, not in five years.

7 He came back to me the following week and
8 said, 'Mr. Bluford, I saw those tapes, along
9 with Dan. I saw that you were assaulted.'
10 He said, 'Mr. Bluford, you are not guilty of
11 this crime that they have you charged with.'

12 So I've been trying to get him as an
13 expert to ---

14 THE COURT: You're going to get Judge
15 Burnett as an expert?

16 APPLICANT: Well, I am -- and Dan
17 Farnsworth.

18 THE COURT: That will be interesting.

19 APPLICANT: They -- she was supposed to
20 do. She say, 'I ain't going to subpoena no
21 judge, I ain't going to subpoena no judge.'

22 So they don't want to let me have no
23 witnesses. They don't want to let me have
24 this man's -- if this man had robbed a store
25 or did something in that neighborhood, they

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

11

1 would have had it up on all the *Google*,
2 social media and everything else. 'If anybody
3 know this man, please call 911.'

4 I got a guy here that could set me free.
5 If I was guilty of this, Your Honor, I would
6 not be wasting the court's time.

7 THE COURT: Now, what about the
8 Innocence Project. What ---

9 APPLICANT: I got all them -- I
10 couldn't get it because I was shifting. I
11 wrote the Innocent Project about my case.
12 They wrote me back, told me that they would
13 accept it. They sent me the first stage.
14 It's a two-stage process.

15 They sent me the first stage. The
16 first stage they want you to come -- and I've
17 got that first stage here with me. Barry
18 Scheck -- remember with the O.J. Simpson
19 trial? The Dream Team? Well, anyway, he was
20 the lawyer that -- maybe y'all remember the
21 O.J. Simpson trial back in the day. I wrote
22 him. I said, 'Sir, I am innocent of this
23 crime.' He sent me this letter saying, 'I
24 will accept your case, Mr. Bluford.' He said
25 he would accept my case. He said, 'if you

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

12

1 get a PCR right now and your lawyer wants
2 help with the DNA, I'll pay for it.' It's
3 right here in writing.

4 THE COURT: Is that something that
5 I could look at?

6 APPLICANT: Yes, sir, you sure
7 can.

8 THE COURT: I thought the only
9 thing good that came out of the O.J. Simpson
10 trial was the Kardashians.

11 APPLICANT: Well, that was the
12 back in the day. Barry Scheck was the guy
13 that did the cross-examination.

14 THE COURT: Okay.

15 APPLICANT: You know, he did kind
16 of a Rambo type of thing on the courts.

17 But, uh, those people -- and I'm got
18 a second thing but I wasn't able to bring it
19 up today because they were shipping me here.

20 These people have agreed to pay for
21 the DNA. This DNA will set me free because
22 it'll show that the man lied. He said right
23 here in this transcript, Your Honor, that I
24 cut him. That's what they got right there in
25 the transcript, that I cut him. I got it

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

13

1 highlighted, that I cut this man. I didn't
2 put my hand on this man.

3 THE COURT: Well, we're not --
4 well, let me ---

5 MS. HORLBECK: Your Honor, if I
6 could just correct a couple of things.

7 THE COURT: Yes.

8 MS. HORLBECK: Mr. Bluford
9 explained to me that ---

10 THE COURT: All right. I am going
11 to let her talk for a couple of minutes and
12 then I will hear back from you. Okay?

13 APPLICANT: Yes.

14 MS. HORLBECK: He explained to me
15 that he'd seen the tapes at trial. I'd just
16 got the tapes, had to borrow them from
17 defense counsel since the last time this
18 thing was scheduled, and I tried to show
19 those to Mr. Bluford this morning. He
20 watched part of it and refused to watch the
21 rest of it.

22 I did speak with Judge Burnett. He
23 explained to me that he didn't know anything
24 about the case. I didn't feel that that
25 would be a very good witness to subpoena.

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravelly

14

1 I also spoke to Dan Farnsworth. I
2 don't want to get too much into detail about
3 what he said, but I didn't feel that he would
4 be a helpful witness for us to put on the
5 stand.

6 So that's why I have not subpoenaed
7 these two to testify. I think that it would
8 be malpractice to put either one of them on
9 the stand.

10 THE COURT: Well, let me ask you
11 this. This Innocence Project, -- like I
12 said, I am not that -- this looks like a
13 legitimate letter but I'm not that familiar
14 with it or what they can do. But if I were
15 to -- I don't know how this works, but if I
16 were to grant his request to get another
17 attorney, would they appoint one for him?

18 MS. RATIGAN: Your Honor, ---

19 THE COURT: I know that there is
20 a system where they have under normal -- that
21 for regular trials they won't appoint
22 somebody.

23 MS. RATIGAN: Right. Well,
24 Your Honor, I've been in this case -- this is
25 actually the third time that it's been ---

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

15

1 THE COURT: I think I heard, I
2 think that we had a Motion.

3 MS. RATIGAN: Yes, Judge. It
4 was in April, June and now again. We -- it
5 strikes me that Mr. Bluford is not really
6 satisfied with anyone's efforts in this case.

7 As Ms. Horlbeck has detailed all the
8 things that she has done for him, he is still
9 unsatisfied. I don't really know that
10 switching attorneys is really going to get us
11 anywhere. I think it's just going to further
12 delay things. It has already been delayed
13 for most of the calendar year.

14 I don't know if he would be entitled
15 to a new lawyer at this point or if he would
16 have to go *pro se*. As far as a PCR, I'm not
17 sure. Indigent Defense would handle that.

18 But we'd be inclined to go forward
19 today. Or if he wants to fire Ms. Horlbeck,
20 then he would have to go *pro se* either today
21 or at the next term of court.

22 THE COURT: Well, the only thing
23 that -- I mean, there are some kinds of DNA
24 testing, though, that -- that's my only
25 thought, that is my only ---

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

16

1 MS. RATIGAN: Well, actually that
2 has been taken out of the purview of the PCR
3 at this point, Judge. I don't recall the
4 fancy formal name for it but there's a DNA
5 testing Act where you petition in General
6 Sessions for it -- you petition in General
7 Sessions to have DNA tested. So our view DNA
8 testing for a PCR has been kinda taken out in
9 -- in General Sessions because of that Act.
10 Again, I can't remember the actual name of it
11 but it's an application filled out by the
12 Solicitor's office and then they're entitled
13 to have a DNA test, but we don't really see
14 that here.

15 THE COURT: Well, that is some-
16 thing that would still be available if ---

17 MS. HORLBECK: And, Judge, I
18 don't know what the letter is. I haven't
19 been shown the letter. But if there is any
20 chance for him to have that testing done, I
21 would ask if you'd give him that opportunity.

22 I know that there are Motions done
23 in PCR cases, so it certainly can be done.
24 I hear what Ms. Ratigan is saying but DNA
25 testing is done in the PCR realm. If that's

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravelly

17

1 what he wants and he -- if his case has in
2 fact been accepted by the Innocence Project,
3 then -- I'll be happy to kind of contact --
4 if I could have a copy of the letter so that
5 I know who to contact, I'll try to find out a
6 little bit more information about whether
7 they'll appoint an attorney, an attorney to
8 represent him, that kind of thing. I just
9 haven't been shown the letter, so I don't
10 know what I am dealing with.

11 THE COURT: Well, you know, here's
12 kind of my thoughts on this, Ms. Ratigan. If
13 he didn't have that letter, we would
14 absolutely be going forward this morning.
15 You know? But -- and I'm not that familiar
16 with the Innocence Project but I -- I
17 remember we've had this before, because I
18 remember about the BiLo and stuff like that.
19 I'm sort of amazed that you sent out over a
20 hundred letter trying to find employees.

21 MS. HORLBECK: Yes, sir.

22 THE COURT: And I realize that
23 this is delaying it further, uh, but I -- I'm
24 going to -- when is the next term of hearings
25 in Greenville?

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravelly

18

1 MS. RATIGAN: I think it's the
2 December ---

3 THE COURT: Well, I feel like I
4 have to continue it to then but -- but
5 there's to be no further continuances. At
6 that point it's to go forward in December
7 without some substantial showing of
8 something. If in December it comes up and
9 the Innocence Project still hasn't contacted
10 anybody, or anything like that, that doesn't
11 matter. It's going forward in December.
12 With or without an attorney, there's to be no
13 continuance unless ---

14 MS. RATIGAN: I will do the Order,
15 Judge. I believe right now that you're
16 actually scheduled to hear the cases in
17 December.

18 THE COURT: Okay.

19 MS. RATIGAN: So at this point it
20 should be coming back before you, but I'll do
21 an Order just laying out ---

22 THE COURT: Okay. I'm sorry. I
23 just -- like I said, with that letter there,
24 I think that's -- okay. Anything further,
25 Mr. Bluford?

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

19

1 APPLICANT: (No verbal response).

2 THE COURT: Do you understand, Mr.
3 Bluford? We can't just let this ---

4 APPLICANT: Yes, sir. I
5 appreciate your time, Your Honor, and
6 everything. See, they don't want me to have
7 no witnesses. This has been the gist of this
8 whole thing, they don't want me to have no
9 witnesses. The witness would set me free. I
10 appreciate it, sir. I know you're not ---

11 THE COURT: Well, I will say ---

12 APPLICANT: You know what I'm
13 saying, Your Honor? I sent her this
14 information. She said she's mailed all this
15 out, she waiting on a reply. Now she's
16 saying she ain't got it.

17 This man, Your Honor, this man lied
18 on the witness stand.

19 MS. HROLBECK: I would like to
20 see that letter and he's struggling with me
21 about that. Otherwise, I don't know who to
22 contact. I've got a letter but it was not a
23 letter of acceptance.

24 APPLICANT: All right, I ---

25 MS. HORLBECK: It was something

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

20

1 different.

2 THE COURT: Anything else?

3 MS. HORLBECK: That would ---

4 THE COURT: All right, we're doing
5 it in December.

6 MS. HORLBECK: --- help me. I
7 just want it on the record that he will not
) 8 give me this letter.

9 APPLICANT: You got -- Judge, are
10 you dismissing this lawyer?

11 THE COURT: No, I'm not dismissing
12 your lawyer. The problem is, that's just
13 going to delay it.

14 MS. HORLBECK: Can the court
15 order him to let me take a look at this
16 letter?

17 THE COURT: Can she look at the
18 letter?

19 APPLICANT: Your Honor, I already
20 gave her this letter. I sent this letter
21 four months ago.

22 THE COURT: We're going forward in
23 December. If you want to assist her, then
24 you can show it to her now. If not, then --
25 but I'm not relieving her and we are going

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

21

1 forward in December. So you can show it to
2 her now or you can be obstructive about it.
3 Up to you.

4 APPLICANT: She's got the letter.
5 She's not trying to help me.

6 CLERK: I can make a copy of it
7 right here.

8 APPLICANT: Okay, let her make a
9 copy. She's had this letter for four months.
10 She ain't trying to help me. This is
11 something just in front of you, Judge. She's
12 not trying to -- I sent her this information
13 four months ago. This ain't nothing but a
14 smoke screen.

15 MS. HORLBECK: I have received a
16 letter. I just want to make sure that this
17 is the same letter.

18 APPLICANT: You got it.

19 MS. HORLBECK: Judge, I also have
20 a Motion for the funding of postage that I
21 spent.

22 APPLICANT: That's not ---

23 THE COURT: All right, Mr.
24 Bluford, we'll see you in December.

25 APPLICANT: All right. Bless you.

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-2562
Hearing of October 22, 2015
Before The Honorable Perry H. Gravely

22

1 Have a blessed day. Thank you all so much.

2 Sorry for the confusion, Judge.

3 (HEARING CONCLUDED)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the post-conviction relief hearing held in the within action heard on October 22, 2015, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison
Deborah Garrison

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Alfred Bluford,	)	
	)	
Applicant,	)	
v	)	Case No 14-CP-23-2562
	)	
State of South Carolina	)	

TRANSCRIPT OF HEARING

The within HEARING in the above-captioned matter was held December 15th, 2015, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

Caroline Horlbeck, Esq.
...Appearing for Applicant

Karen Ratigan, Esq.
OFFICE OF ATTORNEY GENERAL
... Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

INDEX

Testimony of Alfred Bluford

Direct Examination by Ms. Horlbeck	12
------------------------------------	----

Testimony of Jake Erwin

Direct Examination by State	35
-----------------------------	----

Cross Examination by Ms. Horlbeck	43
-----------------------------------	----

Closing Arguments of Counsel	46
------------------------------	----

Ruling of the Court	48
---------------------	----

Certificate of Court Reporter	49
-------------------------------	----

INDEX OF APPLICANT'S EXHIBITS

1	6/4/15 Letter	20
---	---------------	----

2	Photograph	31
---	------------	----

3	Photograph	31
---	------------	----

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Before The Honorable Perry H. Gravely

3

1 THE COURT: All right. Are we
2 ready to proceed?

3 MS. RATIGAN: Yes, Your Honor. May
4 it please the Court?

5 THE COURT: Yes.

6 MS. RATIGAN: This is the case of
7 Alfred Bluford versus the State of South
8 Carolina. Docket number is 2014-CP-23-2562.

9 Mr. Bluford was indicted for first degree
10 assault and battery, armed robbery, and
11 possession of a weapon during the commission
12 of a violent crime.

13 He was represented on these charges by
14 Mr. Erwin. The case was brought to trial on
15 the charges of first degree assault and
16 battery and armed robbery and Mr. Bluford was
17 found guilty.

18 On July 10th of 2012, Judge Verdin
19 sentenced him to concurrent terms of ten (10)
20 years for the assault and battery and twelve
21 (12) for armed robbery.

22 He did file an appeal. It was perfected
23 in the nature of an Anders brief and the
24 Court of Appeals dismissed the matter in
25 December of 2013. His application was timely

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Before The Honorable Perry H. Gravely

4

1 filed. The State's ready proceed.

2 I would note that this matter came before
3 Your Honor back in October. At that time Mr.
4 Bluford, through counsel, moved for a
5 continuance to further investigate some
6 information she received.

7 And also Mr. Bluford was requested -- the
8 Innocence Project became involved in the
9 case. I objected because it was the third
10 time it had been called for trial. Your
11 Honor signed an order of continuance and
12 stated that the motion for continuance is
13 granted. However it also states this case
14 will be rescheduled for the December 14th, or
15 18th, 2015 term of court and must go forward
16 at that time.

17 So saying that, the State is ready to
18 proceed at this time, Your Honor.

19 THE COURT: All right.

20 MS. HORLBECK: I'm just going to
21 provide a brief update on where we are in the
22 Innocence Project, Judge. Both myself and my
23 paralegal called the number on the letter
24 provided me by Mr. Bluford. And we've
25 called, between the two of us, probably about

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Before The Honorable Perry H. Gravely

5

1 four times. And also have gotten on the
2 computer to search for Mr. Bluford's name
3 under all the filters.

4 When we have called, we have asked about
5 the status of the case and we have
6 consistently heard that they will tell us
7 nothing on the status of this case. And they
8 won't even provide us anything in writing
9 saying that they don't know the status of the
10 case.

11 All they would tell us is that Mr.
12 Bluford himself needs to contact the
13 Innocence Project directly and that they will
14 give him the information about the status on
15 his case. So we have -- we wrote Mr. Bluford
16 a letter asking -- it was dated November the
17 18th, advising him that he needed to contact
18 the Innocence Project personally and ask them
19 for an update on his case. I think he's done
20 that. I don't believe he's received any
21 response, Judge.

22 We also subpoenaed the personnel records
23 of the victim, Mr. Barr. We subpoenaed those
24 items from Bi-Lo. Bi-Lo has not provided
25 those documents and we would ask the Court to

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Before The Honorable Perry H. Gravely

6

1 Order Bi-Lo to produce those things.

2 THE COURT: Okay. So has there
3 been any response, Mr. Bluford on the
4 Innocence Project?

5 APPLICANT: Can I speak?

6 MS. HORLBECK: Stand up.

7 THE COURT: Yes.

8 APPLICANT: Can I speak?

9 MS. HORLBECK: Right.

10 APPLICANT: Yes, sir, Your Honor.
11 Your Honor, this is, uh, this is a little
12 fuzzy here. I had contacted -- I did -- I
13 wrote -- I have written on two occasions and
14 what this -- I also wrote Judge Beatty. I
15 don't know if you want to see this or not,
16 Justice Donald Beatty, South Carolina Supreme
17 Court. I want to share this with you. This
18 is very pertinent here.

19 But I'm just not getting any compliance
20 with my attorney, sir. And I know this
21 attorney is capable in her assistance but I'm
22 not getting any kind of help from her.

23 For six years, I'd not seen this photo.
24 There's two pieces of evidence that's very
25 critical.

1 THE COURT: Well, hold on just a
2 minute. I don't want to get into the actual
3 case at this point. That was just as far as
4 any timing of going forward. I mean, I want
5 to, you know, keep it to that issue right at
6 this moment.

7 APPLICANT: Yes, sir. Yes, sir.
8 I was sent -- I don't want to irritate the
9 Court here.

10 THE COURT: No, I'm fine. And I'm
11 going to listen to you but I just want to
12 keep it to the issue of going forward this
13 morning. That was kind of what was -- one of
14 the things was the Innocence Project. I know
15 you raised before.

16 APPLICANT: Yes, sir. The
17 Innocence Project had agreed and I have a
18 copy of it. You had told us to get the --
19 get it to my attorney. It has a name on here
20 to contact. I had written them giving them
21 permission to work with them. They had
22 requested the fact that they need DNA
23 assistance that says on here. I have a copy
24 of it, sir. It says on there that they would
25 help. Get in contact with this person on

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Before The Honorable Perry H. Gravely

8

1 here. I don't know if that's important but
2 you can see that right there. Contact that
3 person, it'll work.

4 But now here's what Ms. Horlbeck's
5 attorney office did. What they did was they
6 contacted the lady. This is their response.
7 They have this on the 12th. They contacted
8 some lady up there.

9 And it says very clearly who you
10 need to talk to. It says very clearly who
11 you need to talk to to get this information.
12 I need DNA assistance through y'all.

13 The records from the Bi-Lo is
14 secondary. If I get DNA or a witness,
15 witness identified, then I'll go home. I'm
16 innocent of this charge. I could go home.
17 But this is what she sent me from the
18 program. She sent me this thing.

19 THE COURT: All right. --

20 APPLICANT: This is the copy they
21 sent me, she sent me. And the cameras are
22 all color. It's thirty-two cameras according
23 to my transcript here. She sent me a black
24 and white photo that I could not see. I
25 lightened it up a little bit so I could see

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Before The Honorable Perry H. Gravely

9

1 it, and then I sent it to SLED.

2 So SLED is not looking into this
3 matter to try to identify this person.

4 I called SLED. I got addresses and
5 the names of the person I talked to at SLED.
6 I talked to Reginald Ward at SLED to try to
7 get in touch -- to try to identify this
8 person. If I could find the person or DNA,
9 sir, I could go home.

10 THE COURT: Well, first of all,
11 I'm looking at your letter that you have
12 provided of the Innocence Project date June
13 the 4th, 2015. And it does not say that they
14 have agreed to accept your case. They said
15 that they have evaluated from one of -- the
16 first. You have still got three other levels
17 to go through and asked for additional
18 information. They have not agreed to
19 represent you, have not agreed to take your
20 case, but that you've just gone through the
21 first step of four.

22 APPLICANT: Okay, sir. So if you
23 look on that back page back there where I got
24 it highlighted.

25 THE COURT: Yes.

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Before The Honorable Perry H. Gravelly

10

1 APPLICANT: It said that they
2 would help with DNA under limited
3 circumstances, sir. And that has to be
4 requested. That was not requested, sir.

5 THE COURT: Well, it looks like
6 you also have to go through three other
7 stages even before they get to that level.
8 So I don't -- I mean, I've reviewed this and
9 we'll be glad to ---

10 You want to make a copy of this for
11 an exhibit.

12 COURT REPORTER: Yes, sir.

13 APPLICANT: It's taken me six
14 years to get a copy of this individual, this
15 person -- this individual of interest. It's
16 taken me six years to see that.

17 The prosecutor didn't have it and made no
18 attempt to either go down to the police
19 department to run it. But if that person had
20 broke into their house, they'd have it
21 everywhere, Your Honor. There's no one to
22 try to help me here. There's no attempt to
23 try to help me locate this witness here.

24 And Judge Donald Beatty sent this *Brady*
25 violation. So he sent that to me and I'd

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Before The Honorable Perry H. Gravely

11

1 like for you to see that.

2 THE COURT: All right. Be glad to

3 ---

4 APPLICANT: Please take a second
5 and look at that if you would, please? I
6 highlighted those things that aren't in
7 compliance with us, which came from the South
8 Carolina Supreme Court.

9 THE COURT: This looks like it's
10 a transcript from a speech that Judge Beatty
11 has given.

12 APPLICANT: Yes, sir. It is.
13 That's exactly what's happened in my case.
14 It is a speech.

15 THE COURT: Well, I'm not sure
16 that that's relevant to anything in this.

17 APPLICANT: All right, sir. I
18 wanted you to see that, sir.

19 THE COURT: That looks like a
20 speech that he ---

21 APPLICANT: It is.

22 THE COURT: That Judge Beatty gave
23 to the State Solicitor's Conference. And I
24 think all of them are quite aware of it.

25 APPLICANT: Okay.

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

12

1 THE COURT: All right. I'm going to
2 deny your request for a continuance. We're
3 going to go forward.

4 APPLICANT: All right.

5 THE COURT: Ms. Horlbeck.

6 MS. HORLBECK: Your Honor, I call
7 Mr. Bluford to the stand.

8 COURT REPORTER: Mark all of these
9 collectively as Applicant's 1?

10 (SO MARKED AS APPLICANT'S EXHIBIT 1)

11 (WITNESS TAKES STAND)

12 THE COURT: And Mr. Bluford, I
13 have marked as Exhibit -- I guess that should
14 be State's Exhibit -- Well, Plaintiff's
15 Exhibit 1 is the Innocence Project letter.

16 APPLICANT: Thank you.

17 ALFRED BLUFORD, having been duly sworn to
18 tell the truth, and nothing but the truth,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MS. HORLBECK:

22 Q. All right. Mr. Bluford, where are
23 you currently incarcerated?

24 A. I'm in Kershaw Correctional Center
25 in Kershaw South Carolina.

1 Q. All right. What sentence are you
2 serving?

3 A. I'm serving a twelve-year and a ten-
4 year concurrent sentence for attempted murder
5 and armed robbery, I think.

6 Q. All right. And you had a trial on
7 those charges?

8 A. I did.

9 Q. Who represented you at your trial?

10 A. Dan Farnsworth represented me for
11 two years. And then I was switched out an
12 attorney and given Jake Erwin and in thirty
13 days I was in court.

14 Q. All right. You said Mr. Erwin
15 represented you for how long?

16 A. About thirty days prior to court --
17 prior to my case.

18 Q. All right. During his representa-
19 tion, were you out on the street or were you
20 incarcerated?

21 A. I was incarcerated for over two
22 years in the Greenville County jail.

23 Q. All right. Did Mr. Erwin come to
24 visit you and discuss your case with you at
25 the jail?

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

1 A. On two occasions.

2 Q. All right. And did ---

3 A. Right before I came to court.

4 Q. Prior to your trial, did you have
5 the opportunity to review any discovery?

6 A. No.

7 Q. All right. Did Mr. Erwin review
8 discovery with you?

9 A. No.

10 Q. Did he provide you a copy of
11 discovery?

12 A. No.

13 Q. Did you ask for a copy of discovery?

14 A. Yes.

15 Q. Okay. All right. So did you and
16 Mr. Erwin or any of your -- or Mr.
17 Farnsworth, had you ever discussed the facts
18 of the case and the basis for the charges
19 that the State had against you?

20 A. Yes, sir. I did. I met with Mr.
21 Farnsworth because he was with me for two
22 years. And he came back with a plea in two
23 years for common law robbery from the D.A.
24 And he also offered me a plea of time served
25 and two-year's probation.

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

15

1 Q. All right.

2 A. But stated that I'm innocent and I
3 should turn it down.

4 Q. And who told you that?

5 A. Dan Farnsworth.

6 Q. All right. Did the State ever make
7 you an offer when Mr. Erwin represented you?

8 A. No.

9 Q. All right. So that case was off --
10 but you turned it down and the case was
11 always a trial; correct?

12 A. Well, I turned it down when he give
13 it to me, those two separate offers.

14 Q. Right. And the case was scheduled
15 for trial?

16 A. Well, it was always scheduled for
17 trial since day one; yes, ma'am.

18 Q. All right. All right. And did you
19 and Mr. Erwin discuss your trial strategy?

20 A. Well, yeah. We did a little bit.
21 You know, refused me of witnesses. Refused
22 to let me have any witnesses.

23 Q. How did Mr. Erwin refuse for you to
24 have any, to subpoena any witnesses for you?

25 A. He just plain said -- he said he

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

1 wasn't going to bring in any witnesses. He
2 was going to decide what witnesses would come
3 forward. He would use the DNA evidence. He
4 said that he just wouldn't make any kind of
5 offer.

6 Q. Okay. What witnesses did you want
7 Mr. Erwin to subpoena?

8 A. I wanted him to subpoena Judge E.C.
9 Burnett and Dan Farnsworth, Sr. And I also
10 wanted the person of interest that's on the
11 tape in Bi-Lo. He's on thirty-two taped
12 videos in Bi-Lo. I wanted that individual
13 found because that individual was on thirty-
14 two cameras. Also, I want DNA on the knife
15 because the man perjured himself on the
16 witness stand, said I cut him.

17 Q. Right?

18 A. And he lied.

19 Q. All right. Well, let's start with
20 Justice E.C. Burnett. What was Justice
21 Burnett, what information was he going to add
22 to this? Was he present when any of this
23 allegedly happened?

24 A. No. He would be more of a technical
25 witness. He went and saw the tapes because

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

17

1 for two years I could not even see any tapes.
2 They didn't show me any kind of -- you know,
3 they kept saying the machine is tore up. And
4 so they didn't show me anything. And I told
5 Mr. Burnett about the situation. He said,
6 well, I can go see it. They can't deny me.
7 So he went after two years and he went and
8 saw the tape and came back and reported to me
9 what he saw. He said Mr. Bluford, you were
10 assaulted, but there's a little darkness
11 around your case. And then Dan Farnsworth
12 had told me the exact same thing, that you
13 were assaulted. That you're not guilty of
14 this crime, but there is a little darkness
15 around. He wouldn't explain to me what
16 darkness he had in mind. He did say that
17 point blank and I wanted the judge to hear
18 that.

19 Q. Okay. And did you ask Mr. Erwin to
20 speak to Justice Burnett?

21 A. I did. I asked him to subpoena him
22 and he refused.

23 Q. All right. And to your knowledge do
24 you know if Mr. Erwin did speak to Justice
25 Burnett?

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

1 A. I don't know what -- I don't know if
2 he did or not. He said he would decide what
3 witnesses we have. So, I don't know.

4 Q. So did Mr. Erwin ever discuss the
5 results of the discussion ---

6 A. No.

7 Q. --- between himself and Justice
8 Burnett?

9 A. No, he didn't.

10 Q. All right. And ultimately at your
11 trial, Justice Burnett was not subpoenaed,
12 was not a witness in your case; correct?

13 A. No. He was just a technical
14 witness.

15 Q. But he didn't testify in your trial
16 is what I'm getting at; correct?

17 A. Who?

18 Q. Justice Burnett.

19 A. No, he never got in touch with him.

20 Q. All right. All right. And moving
21 on to Mr. Farnsworth, what did you expect Mr.
22 Farnsworth to testify about in your trial,
23 why did you want him as a witness?

24 A. I wanted him as a technical witness
25 because he knew the mechanics of the case, he

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

19

1 knew all about the case.

2 Q. Uh-huh.

3 A. Had done investigative -- or sent me
4 his investigator. He had done a lot of work
5 on the case for over two years.

6 Q. All right. Do you know if Mr. Erwin
7 ever spoke to Mr. Farnsworth?

8 A. I don't know if he did or not.

9 Q. Did Mr. Erwin ever discuss with you
10 the results of any discussion between himself
11 and Mr. Farnsworth?

12 A. No.

13 Q. All right. And Mr. Farnsworth, was
14 he ever subpoenaed to testify?

15 A. No, not really, I don't think he was
16 subpoenaed.

17 Q. All right. Okay. Now, you also
18 asked Mr. Ewin to identify a person of
19 interest who appeared on the videotape;
20 correct?

21 A. I did.

22 Q. All right.

23 MS. HORLBECK: If I could have
24 this marked for identification.

25 (SO MARKED AS APPLICANT'S EXHIBIT 2)

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

1 (SO MARKED AS APPLICANT'S EXHIBIT 3)

2 DIRECT EXAMINATION CONTINUED

3 BY MS. HORLBECK:

4 Q. All right. Mr. Bluford, I'm handing
5 you Petitioner's Exhibits 2 and 3, just ask
6 that you take a look at those.

7 A. (Upon review).

8 Q. Do those photos contain the person
9 that you're talking about?

10 A. It does.

11 Q. All right. Do you know that
12 person's name? Just, do you know who that
13 is?

14 A. No, I don't. I know that this
15 person intervened into my case. He became
16 directly involved in it. Assisted the person
17 who put me down and choking me and dragging
18 me naked through the store. And he stayed in
19 that store about an hour because I waited out
20 in the front in the police car. So he's on
21 at least thirty cameras in that store and he
22 should have been tried to be located, this
23 individual. This individual's very, very
24 crucial to my defense.

25 Q. All right. And did you ask Mr.

1 Erwin to try to find this person in those
2 pictures?

3 A. I did.

4 Q. All right. And let me just kind of
5 get a little bit more description. The
6 person you're talking about is. It's not the
7 big guy standing in front of you is it?

8 A. That's the manager. It's this guy
9 here (indicating).

10 Q. In Petitioner's 3, it's actually the
11 man pictured on the left; is that correct?

12 A. It's this man here. I don't know
13 who that is there, but I don't see this man
14 here.

15 Q. So Petitioner's 3 is not relevant;
16 is that what you're saying?

17 A. I don't know that it's not relevant.
18 I'm just simply saying that I can't ---

19 Q. Well, how about just answer my
20 question. In Petitioner's 3, we're back on
21 Petitioner's 3. The person standing in front
22 of you, that's the manager; correct?

23 A. Yeah. That is.

24 Q. All right. And there's an unknown
25 person to the left?

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

1 A. Yes.

2 Q. Okay. On Petitioner's 2, the person
3 you're talking about is a man on the left;
4 correct?

5 A. That's correct. Yes, ma'am.

6 Q. And you asked Mr. Erwin to
7 investigate the identity of that person;
8 is that correct?

9 A. I did.

10 Q. All right. And what investigation,
11 to your knowledge, did Mr. Erwin do?

12 A. None at all, ma'am.

13 Q. All right. Now, was the Bi-Lo -- do
14 you know if the Bi-Lo when this allegedly
15 happened, was that place -- was that store
16 open at the time of your trial?

17 A. No, ma'am. At the time of my trial,
18 it had closed.

19 Q. Okay.

20 A. I don't know for some reason -- I
21 don't know -- after my attorney got switched
22 out from -- the attorneys got switched out, I
23 just lost all, you know, communication with
24 what was going on about the case.

25 Q. And what efforts to your knowledge

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

23

1 did Mr. Erwin make to try to go find the
2 witnesses or introduce previous store
3 employees? Did, you know, Mr. Erwin -- was
4 he able to do that to your knowledge?

5 A. No. I don't think that he did.

6 Q. Okay.

7 A. I don't recall anything Mr. Erwin
8 told me in terms of trying to assist me in
9 locating or finding the person who made the
10 9-1-1 call, I asked him for that. Let's get
11 the 9-1-1 call because it started out as a
12 shoplifting.

13 Q. Uh-huh.

14 A. And I did all I could to talk to Mr.
15 Erwin, but I didn't get any kind of
16 assistance from him.

17 Q. All right. And how do you think the
18 absence of these witnesses impacted your
19 trial?

20 A. Enormously, because I didn't have
21 any witnesses. This individual perjured
22 himself. Their witness perjured himself on
23 the witness stand. And there was no cross-
24 examination of that. This man has lied on
25 the witness stand and the D.A. don't want

1 that brought forth.

2 Q. All right. But just give me as much
3 detail as you can. How do you think that
4 your case was negatively impacted by the
5 absence of these witnesses?

6 A. Well, it was negatively impacted
7 because there was no going through the facts
8 of the case. You know, there was no proper
9 cross-examination to the facts. You know,
10 like 'when did he cut you?' You know, the
11 D.A. lying on that instead of using the
12 camera to show that I had cut the man and I
13 had keys in my hand.

14 Q. Uh-huh.

15 A. He stopped the camera and said
16 something. And said, 'this is Mr. Bluford,
17 this is what happened.' That's not what
18 happened at all.

19 Q. All right. And other than these
20 names, were there any other witnesses that
21 you asked Mr. Erwin to subpoena?

22 A. I did. I wanted the cashier, the
23 first cashier. There was a cashier, a black
24 gentleman at the first cash register, and
25 also the customer service clerk who made the

1 phone call and who was very much there during
2 -- she's in the transcripts, I think on Page
3 40.

4 Q. All right. Did Mr. Erwin interview
5 the customer service clerk or the cashier?

6 A. No, ma'am, not at all.

7 Q. Were you able to provide Mr. Erwin
8 the names of any of these Bi-Lo employees
9 that you wanted subpoenaed?

10 A. I did provide one name to Mr. Erwin.

11 Q. Uh-huh.

12 A. Deanne Tyler who worked -- was
13 assistant manager at a previous Bi-Lo for
14 about five years.

15 Q. Uh-huh.

16 A. And he said that he couldn't contact
17 her. You know, but she worked with me. She
18 made me aware of the fact that he had a
19 history of outrage around potential
20 shoplifting situations. And he had been
21 reprimanded for his violent outbursts. On
22 one occasion it was said that he followed a
23 man for six blocks over some Tylenol. And
24 that Bi-Lo had reprimanded him that he was
25 not to make arrests in terms of misdemeanors,

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

26

1 which was State versus James McAtee. And so
2 he had been warned and it's supposed to be in
3 his record according to Ms. Tyler.

4 Q. All right. And did you ask Mr.
5 Erwin to obtain Mr. Barr's -- that's the
6 manager's name, right?

7 A. Yes. Steven Barr.

8 Q. Did you ask Mr. Erwin to obtain or
9 subpoena Mr. Barr's personnel records?

10 A. I did.

11 Q. All right. And was that done to
12 your knowledge?

13 A. No, ma'am.

14 Q. Okay. How do you think the absence
15 of those records would negatively impacted
16 the outcome of your case?

17 A. Well, it doesn't give us any
18 rebuttal. It doesn't give us any proper
19 recitation of what was happening, what had
20 happened with this case. This is a case of
21 rage where I was assaulted and drug naked
22 through a store, a public store. And that
23 would have been highlighted had I had a
24 competent attorney.

25 Q. Okay. All right. You also put in

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

27

1 your petition that you wanted Mr. Erwin to
2 challenge your arrest and your seizure; is
3 that correct or am I misstating that?

4 A. I don't know what -- what do you
5 mean, challenge my arrest and my seizure?

6 Q. Did you also present an allegation
7 that you wanted Mr. Erwin to challenge your
8 arrest and your seizure by the police and by
9 Mr. Barr, the manager?

10 A. I don't recall that.

11 Q. Okay. So that's not an allegation
12 that you're presenting today?

13 A. Well, I don't know. I mean, I don't
14 know that -- I mean, for assault and battery
15 and attempted murder, I shouldn't have been
16 arrested for that.

17 Q. Okay.

18 A. There might have been some other
19 crime here that might warrant some arrest or
20 investigation, but not attempted murder and
21 armed robbery.

22 Q. All right. What other allegations
23 of ineffective assistance of counsel did you
24 want to present today?

25 A. Well, just the witness tampering,

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

28

1 selective prosecution, these are the things
2 that need to be highlighted. You know, these
3 witnesses need to be located and brought
4 forth and ---

5 Q. What do you mean witness tampering,
6 by whom? Who are you alleging tampered with
7 the witnesses?

8 A. Well, okay. I'm trying to think
9 here. Let me see here. There is an exhibit
10 form ---

11 APPLICANT: Can I stand up for a
12 second? Is that okay? I can't reach it.

13 THE COURT: Yeah.

14 APPLICANT: I don't want to be
15 disrespectful to the Court, Your Honor.
16 Could you ask our question one more time,
17 please?

18 DIRECT EXAMINATION CONTINUED

19 BY MS. HORLBECK:

20 Q. You had mentioned witness tampering.
21 I just wanted to hear more about that.

22 A. I did. I did, yeah. There was
23 witnessing tampering in terms of selected the
24 witness in here from the prosecutor's office
25 and a denial of me having witnesses from my

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

29

1 own attorney's office.

2 Q. Uh-huh.

3 A. You know, they just don't want me to
4 have any witnesses.

5 Q. All right. That's what I'm saying
6 though, what evidence of witness tamper by
7 the State?

8 A. Well, the failure to contact,
9 failure to locate witnesses, failure to try
10 to find out who this person of interest is,
11 failure to prove perjury on the witness of
12 the State.

13 Q. Okay. We've already been over the
14 fact that Mr. Erwin did not subpoena or
15 investigate any of the witnesses. Did you
16 also want him to object to the State's
17 witness tampering; is that what you're
18 saying?

19 A. I did, yes.

20 Q. All right. What objection did you
21 want Mr. Erwin to make?

22 A. Well, the D.A. brought out -- I
23 don't see one portion of the CDs. On the
24 exhibit there is -- there are six exhibits in
25 this case. There are six exhibits. And the

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

30

1 CDs. The CDs have been burned so bad you
2 can't even tell who they are. I asked him to
3 check that because these are these are third
4 or fourth generation burns of the CDs that
5 came out of Bi-Lo. There are thirty-two
6 cameras according to the transcripts. The
7 burnt the CDs so bad -- as we speak because
8 they tampered with that. They put red on the
9 knife. The knife they showed the jury, they
10 painted red on the blade.

11 Q. Well, let me just stop you right
12 there. Specifically state what objection you
13 wanted Mr. Erwin to make into the State's
14 witness tampering. And then we'll get into
15 some of these other ones.

16 A. Okay. I just wanted him to
17 challenge the fact -- he could have
18 challenged that knife situation.

19 Q. Uh-huh.

20 A. He could have challenged the clarity
21 on those CDs. The two CD -- one CD that I'd
22 never seen.

23 Q. Uh-huh.

24 A. And so the D.A. used it in the case
25 and he would stop and tell a lie about what

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

31

1 was going on right there. I got no cross-
2 examination. He said the reason he didn't
3 cross-examine because he was saving his for
4 the end in closing. So, I don't know about
5 what he was doing.

6 Q. Okay.

7 MS. HORLBECK: Before I forget,
8 I want to move those two pictures into
9 evidence. I know this is a little out of
10 order, but I totally forgot. And if I don't
11 say anything about it now, I will forget.

12 THE COURT: Those are in without
13 any objection?

14 MS. RATIGAN: No objection, Your
15 Honor.

16 THE COURT: All right. Those are
17 in without objection.

18 (SO ENTERED AS APPLICANT'S EXHIBIT 2)

19 (SO ENTERED AS APPLICANT'S EXHIBIT 3)

20 DIRECT EXAMINATION CONTINUED

21 BY MS. HORLBECK:

22 Q. All right. Mr. Bluford, you also
23 mentioned you had an issue regarding DNA.
24 Explain to the Court that issue?

25 A. Well, according to the transcripts

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

32

1 and the exhibit here, listed exhibit in the
2 transcripts, it's a copy. It says I've got
3 six exhibits that's in the transcripts here,
4 and shows two photos. Those photos are
5 showing where this man, the -- the witness
6 for the State had been cut, okay? He said
7 but he didn't go to the doctor. It wasn't
8 bad enough to go to the doctor so there's
9 medical records of it. But he showed that to
10 the jury. And then there's three CDs. I've
11 only seen one CD even to this point. And the
12 CDs that I did see have just been burned out.
13 And it says that in the transcript that he
14 had recopied or somebody had burned them.
15 And then there's the pocket knife, which is
16 the last one. The pocket knife would have to
17 have the DNA on it if I cut this man. This
18 pocket knife wouldn't cut butter. It's a
19 little two, three-inch pocket knife. And he
20 took that knife, opened it up, showed it to
21 the jury with something red on it, put it in
22 a Tupperware box, put the Ziploc on it and
23 then went back and sat down. I never got to
24 see it. I could only see it from across the
25 room.

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

33

1 Q. All right. Did you and Mr. Erwin
2 talk about the red on the knife?

3 A. I told him that something was red on
4 the knife and he didn't respond.

5 Q. All right. Did you ask Mr. Erwin to
6 have that substance on the end of the knife
7 tested?

8 A. I just asked him to do the DNA, for
9 DNA.

10 Q. You ask that it be DNA tested?

11 A. Yes.

12 Q. All right. And to your knowledge did
13 Mr. Erwin request funding for DNA testing?

14 A. Not to my knowledge.

15 Q. All right. How do you think that
16 negatively impacted your case, the failure to
17 do DNA testing?

18 A. It made me look like I did it. It
19 made me look like I cut this man with that
20 knife.

21 Q. What would DNA testing have added to
22 your case? How would that have changed the
23 outcome of your case if that DNA had been
24 tested?

25 A. It would have proved that Mr. -- the

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Applicant - Direct Examination

34

1 witness perjured himself on the witness
2 stand. In the transcript he says that I cut
3 him with that knife. That I waved that knife
4 and slashed him. And the DNA -- with it not
5 being any DNA on that knife, he had to be
6 lying, which he is lying.

7 Q. So you said there's something red on
8 the end of the knife but your argument is
9 it's not blood?

10 A. I don't know what it is. I've never
11 seen that pocket knife.

12 Q. But it's not Mr. Barr's blood?

13 A. No. It's not anybody's blood. That
14 knife wouldn't cut blood. Wouldn't cut
15 anything. It's just a piece of plastic that
16 I used to work on my bike.

17 Q. Okay. All right. Any other
18 allegations that you want to make today?

19 A. No, ma'am.

20 Q. Okay. We've covered everything in
21 your position that you brought up?

22 A. Oh, yeah. Like I said, I want to
23 state that I have already sent this to SLED
24 for the -- hope that SLED intervene and look
25 at this tampering with this evidence on these

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Jake Erwin - Direct Examination

35

1 photos and these videos and also on this
2 knife. I haven't had a response back from
3 them yet.

4 Q. All right. Please answer any
5 questions that Ms. Ratigan may have.

6 MS. RATIGAN: I don't have any
7 questions for this witness.

8 THE COURT: All right. Thank you.
9 You may step down.

10 APPLICANT: Thank you, sir.

11 (WITNESS STEPS DOWN)

12 THE COURT: All right. Anything
13 else?

14 MS. HORLBECK: No, Your Honor.

15 MS. RATIGAN: Your Honor, the State
16 would call Mr. Erwin.

17 (WITNESS TAKES STAND)

18 JAKE ERWIN, having been duly sworn to
19 tell the truth, and nothing but the truth,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MS. RATIGAN:

23 Q. Mr. Erwin, do you recall
24 representing Mr. Bluford on these charges?

25 A. Yes, ma'am, I do.

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Jake Erwin - Direct Examination

36

1 Q. Were you appointed to the public
2 defender's office?

3 A. I was.

4 Q. Were you Mr. Bluford's first
5 attorney?

6 A. I wasn't. Dan Farnsworth, Sr. was.

7 Q. Do you recall approximately how long
8 you would have had the case before the trial?

9 A. Yeah. I don't remember for sure but
10 thirty days sounds about right. It was not
11 long before trial. And Dan, Sr. had a
12 medical issue. He had a minor stroke and was
13 in the hospital. And the case was already
14 close to being up for trial. So they shifted
15 his stuff that was ready for trial around so
16 there would be attorneys ready to try those
17 cases. And this is just one that I drew.

18 Q. So by the time you would have been
19 on the case, discovery would have already
20 been received?

21 A. Oh, yeah.

22 Q. And was Mr. Bluford at the jail?

23 A. He was.

24 Q. Did you have meetings with him at
25 the jail?

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Jake Erwin - Direct Examination

37

1 A. I did.

2 Q. Do you recall how many times you
3 would have met with him prior to trial?

4 A. Two to three.

5 Q. Okay. Would you have reviewed
6 discovery with him?

7 A. Yes, ma'am.

8 Q. Would that have included the video
9 from Bi-Lo?

10 A. It would have.

11 Q. Okay. Would you have reviewed with
12 him the elements of the charges?

13 A. I would have.

14 Q. The sentence ranges?

15 A. Yes.

16 Q. Would you have talked to him about
17 his version of what happened that day?

18 A. Yes, ma'am.

19 Q. Did he give you any witness names?

20 A. The only -- well, okay. So he gave
21 me some names to contact. The only one that
22 I would truly say was a witness was the
23 Deanne Tyler name that he gave me. We
24 attempted to contact her. My investigator
25 went to the address we had for her and that

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Jake Erwin - Direct Examination

38

1 was a dead-end. She didn't live there
2 anymore and we didn't really have anything
3 else to go on as far as finding her. He gave
4 me Mr. -- or Justice E.C. Burnett. I did
5 have a conversation on the phone and over
6 email with Former Justice about the case in
7 general. But I wouldn't necessarily say that
8 was a witness in any way.

9 Q. And do you recall the substance of
10 the conversation now with Justice Burnett?

11 A. Yeah. I mean, he knew Mr. Bluford.
12 I can't remember how he knew him. But they
13 knew each other. And he talked about the
14 case just in general. And, you know, he
15 wished us the best of luck and asked me to
16 let him know what happened.

17 But, you know, he wasn't a witness and he
18 wasn't going to testify. He was busy the
19 week of the trial so there wasn't any way for
20 him to come observe the trial or anything
21 like that. He was certainly interested in
22 the outcome and he asks that I let him know
23 what happened, and I did.

24 But as far as being involved in the
25 actual testimony or involved in actually

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Jake Erwin - Direct Examination

39

1 trying the case, he was not going to do that.

2 Q. Did Justice Burnett ever tell you
3 that he had gone to view the video?

4 A. No. I'd never heard him say
5 anything like that. Not to say it didn't
6 happen but, you know, I didn't hear that from
7 Justice Burnett.

8 Q. Were you able to talk to Mr.
9 Farnsworth about the case or was he pretty
10 much incapacitated?

11 A. No. He actually -- Dan had gotten
12 out of the hospital and I think about a week
13 or two before the trial, he actually came by
14 the courthouse. And he didn't come in
15 because he didn't want everyone that works in
16 our office to make a big deal out of him. I
17 don't know if you know Dan, but he didn't
18 want anybody to make a big deal out of the
19 fact that he had been sick. So he asked me
20 to come out to his car. And I brought the
21 file out there and we sat in his car in the
22 parking lot for, I don't know, an hour or
23 hour and a half, and went over the case. You
24 know, from soup to nuts, we talked about
25 everything. You know, we talked about

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Jake Erwin - Direct Examination

40

1 strategy. We talked about, you know, cross-
2 examination. We talked about closing. We
3 talked about everything in the trial. And
4 he's a lot more senior than I am. He gave me
5 a lot of advice, most of which I followed.
6 And, yeah, I mean, we had a lot of chance to
7 talk about the case.

8 Q. Were you aware of any plea offers
9 that had been made in the case?

10 A. Yeah. And from Mr. Bluford and from
11 Mr. Farnsworth, my understanding was that
12 there was essentially a time-served offer
13 that had been made. I don't know exactly the
14 mechanics of what he was going to plead to or
15 how -- what exactly the recommendation. But
16 the bottom line was that it was a time-served
17 offer.

18 Q. Uh-huh.

19 A. That had been made before the case
20 was on the docket, and that Mr. Bluford
21 turned down.

22 Q. While you had the case, did the
23 State make any offers?

24 A. I don't think so. The whole time I
25 had the case it would have probably been on

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Jake Erwin - Direct Examination

41

1 the trial docket the whole time. The policy
2 of the solicitor's office here is they do not
3 negotiate once the case has been posted on
4 the trial docket. I don't think there was
5 much time where I was on the case that it
6 wasn't on the trial docket.

7 Q. Did Mr. Bluford ever ask you to get
8 the victim's personnel records?

9 A. You know, that's probably something
10 that we talked about. I don't specifically
11 remember him asking me that. I don't
12 specifically remember him not asking that,
13 though.

14 Q. Is that something that you pursued,
15 trying to get the victims records from Bi-Lo?

16 A. You know, I don't have any notes or
17 paperwork that would indicate that that's
18 something that I did.

19 Q. In reviewing the video from Bi-Lo,
20 in your opinion did it pretty clearly portray
21 what happened that day?

22 A. Yes. I mean, that's sort of the
23 bottom line here is that the entire incident
24 was on video. And the jury was able to see
25 that video. From where I was sitting, it

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Jake Erwin - Direct Examination

42

1 didn't seem like witnesses, in addition to
2 that video, would have anything to add to or
3 take away from. I mean, the incident itself,
4 the jury saw it.

5 Q. In your opinion, was there anything
6 you saw on the video that would have helped
7 your defense?

8 A. Well, yeah. I mean, I argued it.
9 Like -- I actually agree with Mr. Bluford
10 that he was assaulted in that case. I don't
11 think that this was an armed robbery. I
12 don't think that it was an assault and
13 battery where Mr. Bluford was at fault. I
14 thought that the store manager assaulted him.
15 I argued that to the jury. And, you know, to
16 this day I don't believe that he should have
17 been convicted, but the fact of the matter is
18 he was.

19 Q. Would it be fair to say that was
20 your trial strategy?

21 A. Oh, yeah.

22 Q. Okay. Now, Mr. Bluford has stated
23 that during the trial Mr. Moyer showed the
24 blade to the jury and that there was red on
25 the blade. Do you recall that?

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Jake Erwin - Cross Examination

43

1 A. I don't. I remember the knife
2 because a big part of my argument, especially
3 for the assault and battery charge, was that
4 that was not a deadly weapon. It was, like
5 he said a little plastic broken thing that
6 you couldn't even cut anybody with if you
7 wanted to. I don't remember there being
8 anything red on the knife. I don't remember
9 there being any sort of show about that.

10 Q. Did you ever consider DNA testing in
11 the case?

12 A. Well, no, because -- well, like I
13 said, the incident is on the video. And that
14 was what the jury needed to evaluate. I
15 didn't see how muddying the waters with DNA
16 testing -- I mean, there's just no way to be
17 able to change what the jury saw in that
18 case, which is they saw the entire incident.

19 MS. RATIGAN: That's all I have, You
20 Honor.

21 THE COURT: Ms. Horlbeck.

22 CROSS-EXAMINATION

23 BY MS. HORLBECK:

24 Q. Regarding Mr. Barr's personnel
25 records, you said that was probably something

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Jake Erwin - Cross Examination

44

1 you talked about. Do you remember?

2 A. I really don't. I don't remember
3 what exactly we talked about with that or
4 what -- other than I don't have any paperwork
5 that says I did into it. So I probably
6 didn't.

7 Q. Okay. All right. So nothing. You
8 never tried to subpoena that; did you?

9 A. I don't think so.

10 Q. All right. Do you think that would
11 have added to your defense?

12 A. No.

13 Q. Okay.

14 A. Mr. Barr was, by his conduct in the
15 video and then also just physically -- I
16 mean, he's a big scary looking dude. I
17 didn't think that his personnel record could
18 speak any louder than the video itself. And
19 just sort of his physical presence in the
20 courtroom spoke to his propensity to be, you
21 know, a violent dude, I guess. I don't know.

22 Q. Okay. And you had said that you
23 agree that Mr. Bluford had been assaulted?

24 A. Yeah.

25 Q. All right. Tell me a little bit

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Testimony of Jake Erwin - Cross Examination

45

1 about that. Why you believe that? Why you
2 argued it?

3 A. All right. So the video -- it's
4 ridiculous. Mr. Bluford -- I don't know
5 whether -- you know, and it's not for me to
6 say whether he was trying to shoplift or not
7 at the time. But he was doing something that
8 the manager of the store was interested in
9 talking to him about.

10 From my view of the video, this guy who
11 is much larger than Mr. Bluford and much
12 angrier than Mr. Bluford came up to him and
13 assaulted him. He threw him down on the
14 ground. He's talking about being drug the
15 store naked. That happened. His pants came
16 off and he dragged the guy around the store
17 and he was beating on him.

18 And, you know, Mr. Bluford jumped up and
19 defended himself and ran out of the store. I
20 don't think there was anything criminal about
21 anything that Mr. Bluford did in that
22 situation. And I argued it to the jury just
23 like I'm arguing it to you right now.

24 And I genuinely believe that that is what
25 happened in this case. But unfortunately,

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Closing Remarks by Counsel

46

1 the jury didn't agree with me.

2 Q. Okay.

3 MS. HORLBECK: I have nothing
4 further.

5 MS. RATIGAN: I have no further
6 questions, Judge.

7 THE COURT: All right.

8 MS. RATIGAN: And the State would
9 rest at this time.

10 THE COURT: All right. Anything
11 else?

12 MS. HORLBECK: Judge, just so --
13 we still don't have those personnel records
14 from Bi-Lo, we would that the -- we do
15 believe that those are relevant. And we
16 think that any evidence of reprimands or
17 disciplinary actions taken against Mr. Barr
18 would be relevant in this case, especially
19 given Mr. Barr's size. And the testimony
20 from counsel that Mr. Barr was an angry
21 gentleman. Those items have not been
22 produced by Bi-Lo. We would ask that the
23 Court order Bi-Lo to produce those and leave
24 the record open.

25 THE COURT: Well, you know, the

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Closing Remarks by Counsel

47

1 problem I have with that is one, I mean,
2 you're looking at a video here. The
3 personnel records aren't going to change what
4 the video -- in reviewing the transcript he
5 comes across like Mr. Erwin says. Because in
6 the transcript it talked -- you know, in the
7 direct examination of Mr. Barr, Mr. Moyer's
8 asking him to explain what's going on. And
9 even in his version of what's going on makes
10 it sound like that he just threw Mr. Bluford
11 down. I mean, that's what it sounds like.
12 So I don't know how the personnel records
13 would have changed that. You know, I think
14 there may be an issue of whether those could
15 be even admissible or not. I mean, clearly
16 that was before the jury and for whatever
17 reason, I mean, the jury, you know, found him
18 guilty and as a result, you know, a very
19 healthy sentence. But I don't believe that
20 it was a result of ineffective assistance of
21 counsel. I don't see how the DNA would
22 change that either. I mean, I -- I mean, I
23 sympathize with the petitioner's situation
24 here. But I believe as far as the standard
25 that I have to consider at the PCR that he's

Alfred Bluford v State of South Carolina
Case Number 14-CP-23-1562
Post-conviction Relief Hearing of December 15, 2015
Ruling of The Court

48

1 failed to meet his burden as far as
2 showing that this was a result of ineffective
3 assistance of counsel. And so I regretfully
4 deny his petition.

5 MS. RATIGAN: Thank you, Your Honor.

6 (COURT IN RECESS)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I further certify that I am neither kin nor
counsel to any of the parties and have no interest
in the outcome of this action.

Abraham Garrison

Greenville, South Carolina

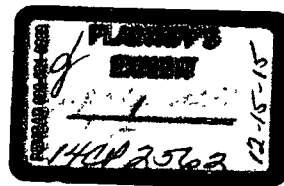


Barry C. Scheck, Esq.
Peter J. Neufeld, Esq.
Directors

Maddy deLone, Esq.
Executive Director

Innocence Project
40 Worth Street, Suite 701
New York, NY 10013
Tel 212 364.5340
Fax 212 364 5341

www.innocenceproject.org



June 4, 2015

Alfred B. Bluford
220219
Kershaw Correctional Inst.
4848 Goldmine HWY
Kershaw, SC 29067

Dear Mr. Bluford

We hope this letter finds you well. Enclosed you will find two documents: The **Innocence Project Case Evaluation Authorization Form** and the **Innocence Project Questionnaire**.

You are receiving these documents because you wrote to us or someone wrote to us on your behalf, and we would like to know more about your story and your case. When we evaluate cases, we are looking to see if DNA testing can prove innocence. That means looking at the facts; the physical evidence; and the circumstances of investigation, arrest, and conviction.

If you complete and return these materials, you will be in the second stage of our evaluation. We have four stages of evaluation at the Innocence Project. Unfortunately, all of them take longer than we would like them to because of the thousands of requests we receive every year. We will let you know if your case progresses and check in with you periodically if it doesn't.

Below is an explanation of the documents so you can know what to expect when you fill them out. We are asking for a lot of information, but we understand that you might not remember all the details. Some of the questions we ask are very technical or scientific. You might not have access to the documents that would have this information. That's all right. If you don't have the information or don't know an answer, it is fine to answer "I don't know." If you don't understand a question, please let us know that, too.

CASE EVALUATION AUTHORIZATION FORM

This form should be signed and dated by the defendant in the case. It authorizes us to contact people who might be involved in your case if we need to get more information or documents. For example, if you have written to other organizations, we might need to contact them to see if they can assist you sooner than we can. If you are represented, we might need to talk to your attorney. We need your authorization to do these things. *Please don't forget to sign the authorization form.*

INNOCENCE PROJECT QUESTIONNAIRE

The questionnaire is broken up into different sections, spread out over 10 pages. You might not have enough room to answer some of these questions. There is room on the back page for you to complete your answer if you can't fit your answer in the space given. If you need more room than that, you can use other paper to answer the question. If you do that, please be sure to let us know which question(s) you are answering.

The first page includes the **Case Information** section and asks for the basic information about you and your case, like dates, locations, charges and convictions, sentencing. The second page asks about your claims and about the victim(s) and co-defendant(s) in your case. If there were no co-defendants in your case, you can leave that section blank.

Bluford
-Page 2-

The third page is the start of the **Facts** section. To the best of your ability or memory, please try to fill out each of the portions of the Facts section. The questions about facts are separated by the source of the facts. That is because we look for the facts from several points of view: the prosecution, the defense, the victim, the investigation, and the facts according to you.

On the fourth page, you'll find the start of the **Physical Evidence** section. This section is also broken up into different portions, but this time by the source of evidence collection. We would like to know what evidence was collected and where it came from. For example, if there was a shoe collected, we'd like to know if it came from a victim, from you or a co-defendant, the scene of the crime, or some other place. The questions are broken up that way. If you don't know where a piece of physical evidence came from, there's a portion for "any other physical evidence." There's also a separate portion for evidence that was introduced at trial, if you went to trial.

The sixth page starts the **Testing** section. This section asks you about any testing that may have been done in your case. It is a technical and scientific section. We realize you may not know about everything that was tested or the results of all of the testing. If you don't know the answer to a question in this section, please write "I don't know."

Pages 8 and 9 are the **Case Materials** section. This section asks you about documents and contact information for people involved in your case. The Case Materials section lets us know what documents you have access to, in case we need to request them from you in the future. We understand that you may not have all of the information requested in this section, like the exact dates of a filing or decision.

Page 10 is the **Additional Information** section. This section can include answers to questions you didn't have room for, but it can also include parts of your story that aren't covered by the questions in the questionnaire.

- If you have laboratory reports, please send us a copy.

- If you have motions, briefs, and/or opinions that contain a Statement Of Facts, please send us a copy. Do not send any other documents with your completed questionnaire. We will send you another letter if we need more information or documents.

Please do let us know if your address changes; or if you retain or are assigned an attorney. Have your attorney(s) contact us directly if your attorney(s) needs assistance with DNA matters. We ask that you otherwise do not call or ask anyone to call about the status of your case. We will write to you as soon as possible after we have read your questionnaire.

Thank you for your continued patience.

Sincerely,



Huy Dao
Case Director

Enclosure

NOTE: The Questionnaire and Authorization Form does not create a client-attorney relationship. The Innocence Project will endeavor not to use or reveal the information you provide except in certain limited circumstances, including those described in the Authorization Form.

INNOCENCE PROJECT

Barry C. Scheck, Esq.
Peter J. Neufeld, Esq.
Directors

Maddy deLone, Esq.
Executive Director

Innocence Project
40 Worth Street, Suite 701
New York, NY 10013
Tel 212 364 5340
Fax 212 364 5341

www.innocenceproject.org

INNOCENCE PROJECT CASE EVALUATION AUTHORIZATION FORM

This document authorizes and directs any persons or government agencies including, but not limited to, police, prosecution, sheriff, probation, and parole officers and officials, to release to the Innocence Project and any attorney, staff member, student, or volunteer working under its purview, any and all documents and other materials in their possession pertaining to me or my case.

This document authorizes and directs attorneys who have previously represented me, or from whom I have sought legal advice, and their agents, to release to the Innocence Project and any attorney, staff member, student, or volunteer working under its purview, any documents pertaining to me or my case and to disclose to the Innocence Project any confidential information or privileged communications

This document authorizes any attorney, staff member, student, or volunteer working with the Innocence Project to communicate with any persons or government agencies having information relevant to the evaluation of my case, including, but not limited to, attorneys who have previously represented me or from whom I have sought legal advice, as well as police, prosecution, sheriff, corrections, probation, and parole officers and officials. This document further authorizes the Innocence Project to examine, receive, and/or photocopy any and all documents pertaining to me or my case that are in the possession of such persons or agencies.

This document authorizes any attorney, staff member, student, or volunteer working with the Innocence Project to communicate with any persons or organizations, including, but not limited to, members of the Innocence Network regarding the evaluation, progress, and/or status of my request for legal assistance

In all other respects, my interactions with the Innocence Project will remain confidential

This document serves as authorization for the Innocence Project's evaluation purposes only. This document serves as authorization for the Innocence Project for ten (10) years from this date. I understand that the Innocence Project does not represent me.

DATED: _____
(Month/Day/Year)

SIGNATURE: _____

YOUR NAME: _____
(Please print name)

ADDRESS: _____

CAROLINE M. HORLBECK
ATTORNEY AT LAW

251

101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601
horlbecklawfirm@gmail.com

(864) 315-9919
Fax(864) 232-4756

Received
on 12/8/15
Tuesday
←

December 3, 2015

Mr. Alfred Bluford (SCDC ID# 220219)
Kershaw Correctional Institution
4848 Goldmine Hwy
Kershaw, SC 29067

Re: Your PCR Hearing

Dear Mr. Bluford,

Your PCR Hearing has been scheduled for Tuesday, December 15, 2015 at 9:30 am in the Greenville County Courthouse. If you have any questions please feel free to call my office at (864) 315-9919 or write me anytime.

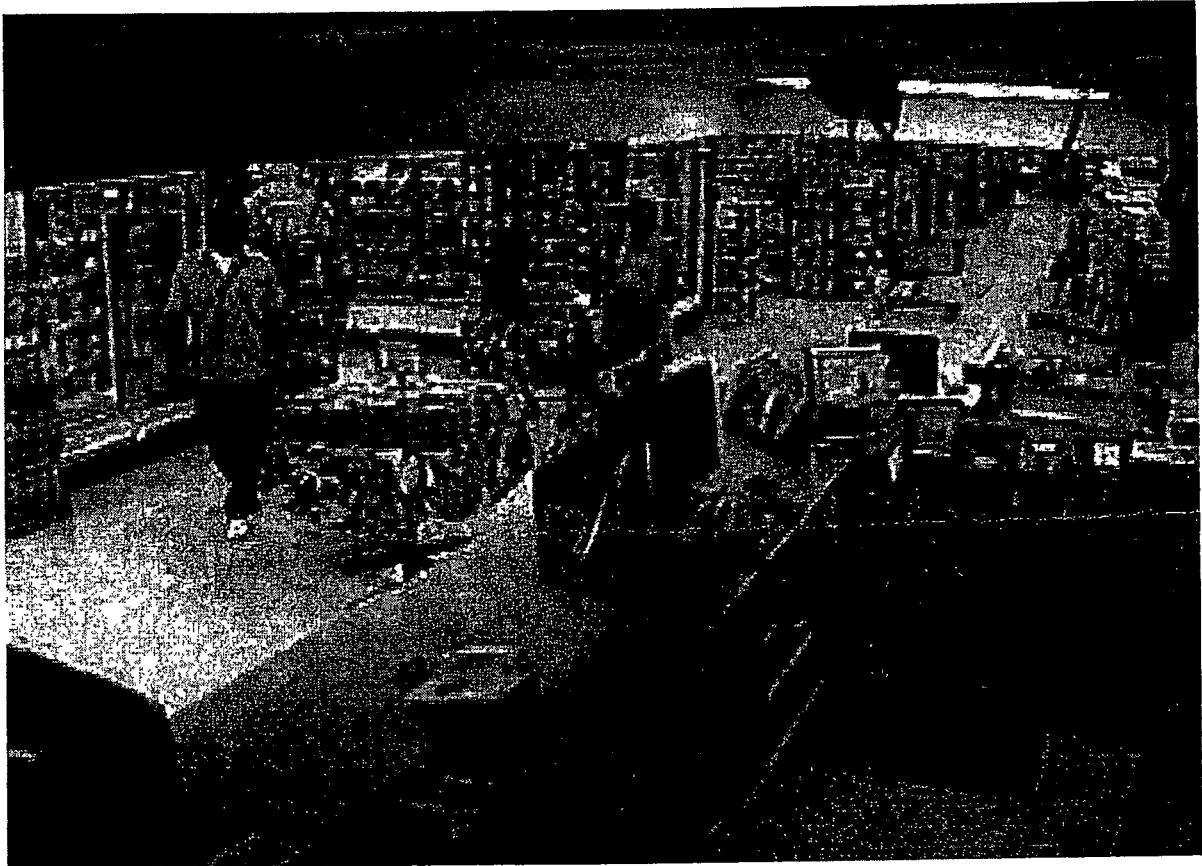
Yours very truly,

Caroline M. Horlbeck
Caroline M. Horlbeck

CMH/aaf

252

I made these (2) copies





CAROLINE M. HORLBECK
ATTORNEY AT LAW

101 WHITSETT ST.
GREENVILLE, SOUTH CAROLINA 29601
horlbecklawfirm@gmail.com

(864) 315-9919
Fax(864) 232-4756

November 10, 2015

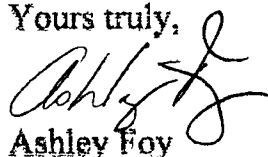
Alfred Bluford (SCDC ID# 00220219)
Kershaw Correctional Institution
4848 Goldmine Hwy
Kershaw, SC 29067

Re: Your Case

Dear Mr. Bluford,

Enclosed please find the pictures you requested regarding the BI-LO surveillance footage. Please advise if you know the identity of this person is or information on how we could contact them it would be greatly appreciated so that we may subpoena them. Thank you.

Yours truly,



Ashley Foy
Paralegal to Caroline Horlbeck

Enclosure



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-2562
COUNTY OF GREENVILLE	)	
	)	
Alfred Bernard Bluford,	)	
S.C.D.C. No. 220219,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	ENTERED COMPUTER
	)	
Respondent.	)	
_____	)	

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL E. WICKENS
2016 FEB 2 PM 2 08

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 7, 2014. The Respondent made its return on October 21, 2014. An evidentiary hearing was held on December 15, 2014 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.¹

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Jake Erwin, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibits 1-3.²

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted

¹ The Applicant requested a continuance at the start of the hearing, arguing his PCR attorney had not obtained records or verified certain information. This Court denied this motion, noting the matter had already been continued three times at the Applicant's request and that an order of continuance filed November 5, 2015 directed the matter must be heard during this term of court.

² This Court denied PCR counsel's request to hold the record open in order to obtain additional records.

PHZ

at the March 2011 term of the Greenville County Grand Jury for first-degree assault and battery (2010-GS-23-7905), armed robbery (2010-GS-23-7906, count 1), and possession of a weapon during commission of a violent crime (2010-GS-23-7906, count 2). He was represented by Jake Erwin, Esquire.

After the State called the case to trial on the charges of first-degree assault and battery and armed robbery, the Applicant was found guilty. On July 10, 2012, the Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of 10 years for first-degree assault and battery and 12 years for armed robbery.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders³ brief. The Court of Appeals dismissed the appeal. State v. Bluford, Op. No. 2013-UP-454 (S.C. Ct. App. filed Dec. 11, 2013). The remittitur was sent on December 30, 2013.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. Failed to conscientiously discharge his professional responsibilities.
 - b. Failed to effectively challenge the arrest and seizure.
 - c. Failed to give the Applicant his complete loyalty.
 - d. Failed to have the Applicant's best interest at heart. Counsel represented the Applicant 2 months when he his prior attorney had the case 20 months.
 - e. Neglected the necessary investigation and preparation of the case.
 - f. Failed to have witnesses at trial.
 - g. Failed to serve the case in good faith.
 - h. Failed to do necessary research.

³ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

pat

- i. Failed to conscientiously gather information to protect the Applicant's rights. No asportation occurred so the armed robbery conviction violated due process.
 - j. Failed to advise of all right or take any actions necessary to preserve them.
 - k. Failed to consult with the Applicant about the case. Was not allowed to watch the two videos before trial. Was persuaded not to testify at trial.
 - l. Failed to subpoena the Honorable E.C. Burnett, III or Daniel Farnsworth, Sr., Esquire.
- 2. Lack of jurisdiction.
 - 3. "Charged with felony instead of misdemeanor."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the

result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated his original attorney had his case for two years but trial counsel only handled his case for thirty days before the trial. The Applicant stated he had two meetings with trial counsel at the jail but that they did not review the discovery materials. The Applicant stated this case was always scheduled for trial. The Applicant stated trial counsel would not pursue DNA evidence to prove there was no blood on the knife. The Applicant stated trial counsel failed to or call potential witnesses for trial (former Supreme Court justice E.C. Burnett, III, his first trial attorney, and a person of interest in the surveillance video). The Applicant stated Burnett and his first trial attorney would have been “technical” witnesses. The Applicant stated trial counsel should have found the man in the video (because he tried to intervene in the incident) but admitted he did not know this person’s identity. The Applicant stated he also wanted trial counsel to interview the cashier and customer service clerk but counsel did not do so. The Applicant stated trial counsel did not contact Deanne Tyler (the victim’s former co-worker). The Applicant stated trial counsel also failed to subpoena the victim’s personnel records.

Trial counsel confirmed he was the second attorney on this case and explained it was because the first attorney had medical issues. Trial counsel testified the case was already close to trial when he became involved and that discovery had already been received. Trial counsel testified he met with the Applicant 2-3 times at the jail and that they reviewed: the discovery materials, the video, the elements of the charges, the sentence ranges, and the Applicant’s

version of events. Trial counsel testified he did not consider DNA testing because the incident was on video and a DNA test would not change what the jury saw. Trial counsel that Applicant insisted that he call retired Justice Burnett as a witness, but trial counsel did not see any basis for calling him as a witness. Trial counsel testified he discussed this case with the Applicant's first trial attorney for 1-1.5 hours. Trial counsel testified he attempted to contact Deanne Tyler but could not find her. Trial counsel testified he could not recall whether the Applicant asked him to obtain the victim's personnel records but that they would not have added to the defense because of the video.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately meet with him to review his case. Trial counsel testified he reviewed the discovery materials (including the video) with the Applicant. Trial counsel testified they also discussed the elements of the charges, sentencing ranges, and the Applicant's version of events. This Court finds trial counsel's testimony is credible. This Court finds the Applicant has failed to articulate how additional meetings with trial counsel would have impacted his case. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial). This Court finds trial counsel was prepared for the Applicant's trial (and that his trial preparation included discussions with the first attorney) and that the Applicant has failed to demonstrate his brief representation (when compared to his first attorney) rendered his performance deficient. See Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Harris v. State, 377 S.C. 66, 75, 659

S.E.2d 140, 145 (2008)) (“The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.”).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not interview and subpoena potential witnesses. The Applicant argued trial counsel should have contacted and/or subpoenaed the following: former Supreme Court justice E.C. Burnett, III, his first attorney, a person of interest in the video, the cashier and customer service clerk from the store, and Deanne Tyler. The Applicant, however, did not provide names for the person of interest, cashier, and customer service clerk. Trial counsel testified he spoke to Burnett and the Applicant’s first attorney but indicated that they were not to be witnesses. Trial counsel testified he was unable to locate Tyler. This Court finds trial counsel’s testimony is credible. This Court finds the Applicant failed to meet his burden of proof because, as these alleged witnesses did not testify at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (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.”) (emphasis in original). Regarding the individual the Applicant described as a person of interest in the surveillance video, this Court finds trial counsel committed no error in not investigating further. Trial counsel testified the video of the incident was clear and he did not think witnesses would add to it. Trial counsel also testified his trial strategy was to argue the video showed the Applicant was the one who was assaulted. This Court finds trial counsel’s testimony is credible and that he articulated a valid reason why additional witnesses – such as this anonymous person of interest – were unnecessary. While the law requires that defense

attorneys conduct a reasonable investigation, the law does not require attorneys interview “every potential witness” when they can articulate reasonable grounds not to do so. See Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64-65 (2011).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested a DNA test on the knife. The Applicant failed to present either a DNA report or expert testimony to support his theory that there was no blood on the knife. In the absence of such, the Applicant cannot meet his burden of proof. See, e.g., Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, “any finding of prejudice is merely speculative”). Regardless, this Court finds such evidence would not have changed the outcome of this case, as the jury viewed the clear video evidence and found the Applicant was guilty.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have obtained the victim’s personnel records. Trial counsel testified he did not believe these records would have aided the defense case because of the clear video evidence. This Court agrees. The Applicant has failed to demonstrate the victim’s personnel records would have had an impact upon the defense case. See Jackson, 329 S.C. at 349-50, 495 S.E.2d at 770 (finding applicant failed to prove prejudice from counsel’s failure to investigate criminal backgrounds of victims and witnesses when he failed to substantiate at the PCR hearing that the victims and witnesses had criminal records). While the Applicant alleged the victim was the aggressor in the incident, whether or not the victim had prior incidents in his personnel file would not have changed the clear video evidence in this case.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under

prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.



IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29th day of January, 2016.

Perry H. Gravely
Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2302562

ENTERED COMPUTER

Alfred B Bluford vs. South Carolina State Of

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter.

PRESIDING JUDGE - Perry H Gravely

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Caroline M. W. Horlbeck 101 Whitsett Street
Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
ASSAULT AND BATTERY FIRST DEGREE**

MAR 15 2011

At a Court of General Sessions, convened on _____, _____, _____, the Grand Jurors of Greenville County present upon their oath:

That ALFRED BERNARD BLUFORD did in Greenville County, on or about the 29th day of July, 2010, offer or attempt to injure STEVE BARR with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury and/or the act occurred during the commission of a robbery, burglary, kidnapping and/or theft This is in violation of § 16-03-0600(C) of the Common Law of the State of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

WITNESSES

Timothy Wade Calhoun

Greenville Police Department

7/29/2010

C. R. Black

ARREST WARRANT NUMBER

M383675

ACTION OF GRAND JURY

TRUE BILL

Bobby L. Lamm

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-007905

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2011

7-10-12

THE STATE

vs.

ALFRED BERNARD BLUFORD

Indictment for

3412

ASSAULT AND BATTERY FIRST DEGREE

VIOLATION § 16-03-0600(C)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 ARMED ROBBERY and POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME

MAR 15 2011

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

COUNT I - ARMED ROBBERY

That ALFRED BERNARD BLUFORD did in Greenville County, on or about the 29th day of July, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: beer, belonging to Bi-Lo, from the person or presence of STEVE BARR. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT II - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That ALFRED BERNARD BLUFORD did in Greenville County, on or about the 29th day of July, 2010, possess or visibly display a knife during the commission or attempted commission of a violent crime, to wit: kidnapping. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

WITNESSES

Timothy Wade Calhoun

Greenville Police Department

7/29/2010

C. L. Beach

ARREST WARRANT NUMBER

M383674 and M383676

ACTION OF GRAND JURY

TRIE BE

B. L. Daum

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-007906

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2011

7-10-12

THE STATE

vs.

ALFRED BERNARD BLUFORD

Indictment for

0139 and 0549

ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490