

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Jocelyn J. Newman, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

JOSEPH WADELL DUNBAR, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000019

APPENDIX

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¹ The jury selection was omitted from the original trial transcript prepared, such that it was produced by the court reporter at a later date. *See* App. 351.

² This testimony was omitted from the original trial transcript prepared, such that it was produced by the court reporter at a later date. *See* App. 350 – 351.

³ To avoid redundancy in the Appendix, counsel for Petitioner did not include the transcript pages attached to the *pro se* Response filed on direct appeal. The following pages from the primary trial transcript were attached to the filing: 6-7, 12, 25, 30, 36-38, 41, 44-46; 49, 51, 53, 68-69, 73-74, 76, 96-97, 100-101, 103, 106, 108-109, 114-115, 177, 211-212, 216, 218, 220, 222, 225, 231-232, 261, 271, 276, 321, and 323-325.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

COURT OF GENERAL SESSIONS
2010-GS-43-00543

STATE OF SOUTH CAROLINA

-vs-

JOSEPH WADELL DUNBAR

:
:
:
:
:

TRANSCRIPT OF RECORD
JURY SELECTION

MONDAY, NOVEMBER 7, 2011
SUMTER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE W. JEFFREY YOUNG, JUDGE, AND A JURY.

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

R. KIRK GRIFFIN, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

WILL BRUNSON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

I N D E X

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3 CERTIFICATE OF COURT REPORTER 13

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E X H I B I T S

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13 (No exhibits were introduced during this requested
14 portion of the transcript of record.)

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1 THE COURT: Good morning, ladies and gentlemen. As
2 Mr. Prince said, I'm Jeff Young, and I'm a circuit court
3 judge in the at-large seat. And we are about -- well, I
4 guess I'll go ahead and let you call. We're about to start
5 the case, but I'll let the solicitor call it at this point
6 in time.

7 MR. GRIFFIN: Your Honor, the state calls indictment
8 no. 2010-GS-43-543, The State of South Carolina versus
9 Joseph Wadell Dunbar, Jr.

10 Count 1, burglary in the second degree violent.

11 Count 2, armed robbery.

12 Mr. Dunbar is present in the courtroom with his
13 attorney, Will Brunson.

14 THE COURT: All right. Would you please pass up the
15 indictments.

16 (Pause.)

17 THE COURT: Thank you. All right. Ladies and
18 gentlemen, as I said, we're about to begin the case of The
19 State versus Joseph Wadell Dunbar. And he's charged with
20 armed robbery in the second degree violent -- excuse me --
21 burglary in the second degree violent and armed robbery.

22 Now, ladies and gentlemen, let me remind you, the fact
23 that Mr. Dunbar was arrested, charged, and indicted is in
24 no way an indication that he actually committed the crime.
25 Mr. Dunbar has pled not guilty. So, therefore, the burden

1 is going to be on the state to prove his guilt beyond a
2 reasonable doubt.

3 Now, ladies and gentlemen, I'll remind you that you
4 are still under oath. And there's a number of questions I
5 need to ask you to make sure that we get a jury that is
6 fair and impartial.

7 And, again, one of the reasons that you're under oath
8 at this time is this is such a crucial stage of the trial.
9 Just like a building must have a firm foundation to be
10 strong and protective of those who live in it, so must a
11 jury be strong as the basis for a fair and impartial trial
12 for those who participate, the solicitor for the people,
13 and the defendant who is on trial.

14 Now, your answers to these questions, ladies and
15 gentlemen, are the foundation for which these attorneys
16 will build a jury. They are relying on your truthful
17 answers to help them as they strike an unbiased jury, who
18 will diligently listen to the facts and deliver a just
19 verdict.

20 And, again, ladies and gentlemen, thank you again for
21 your complete truthfulness as I ask you these questions.

22 Now, ladies and gentlemen, the first question is: Has
23 anyone ever been related by blood or marriage or had a
24 close, personal relationship with the defendant, Joseph
25 Dunbar, who is in the gray shirt to my right? If so,

1 please stand.

2 (No response.)

3 THE COURT: All right. Thank you. Now, ladies and
4 gentlemen -- no one's standing.

5 This is a list of the possible witnesses in this case.
6 And after I go over this list -- so listen carefully -- I'm
7 going to ask you if you've ever been related by blood or
8 marriage or had a close, personal relationship with any of
9 these witnesses. The witnesses start off as William Lyons
10 of the Sumter Police Department, Truman Duggin of the
11 Sumter Police Department, Marie Hodge of the Sumter Police
12 Department, Johanna Aleck of the Sumter Police Department,
13 Jim Alsbrook of the Sumter Police Department, Calvin
14 Fulmore of the Sumter Police Department, Stephanie Stanley
15 of The State Law Enforcement Division, Mary Pollard,
16 Maqueda Duncan, Jahmelia W. , Libra Johnson, Shakyra
17 G. , Joanna Marie or Joanna Marie Dunbar.

18 If you all want to turn around so they can see who you
19 are.

20 (Complied.)

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

22 Is there any member of the jury panel who has ever
23 been related by blood or marriage with any people that I
24 called out, including these 5 ladies who just stood up --
25 had any business relationship or basically any relationship

1 with any of these people? If so, please stand at this
2 time.

3 Yes, sir, please state your juror number and name.

4 JUROR: Juror No. 189, Henry Williams.

5 THE COURT: Mr. Diamond?

6 JUROR: Henry Williams.

7 THE COURT: Henry Williams. Yes, sir.

8 JUROR: I know one name that you called.

9 THE COURT: Excuse me.

10 JUROR: I said I am familiar with one of the officer
11 name that you called.

12 THE COURT: And who would that be?

13 JUROR: Calvin Fulmore.

14 THE COURT: Okay. Would the fact that you know Calvin
15 Fulmore make it so that you can't be fair and impartial to
16 both the state and the defense in this case?

17 JUROR: Well, the way I feel about it as far as our
18 law enforcement, we have ---

19 THE COURT: Hold it. Come on down. Come on down
20 here. You're not in trouble.

21 (A bench conference was held off the record in the
22 presence of the jury, but out of the hearing of the jury.)

23 THE COURT: 189 struck for cause.

24 Thank you. Is there anyone else? Yes, ma'am, please
25 stand.

1 JUROR: I'm juror number 36. I'm Liz Compton. I know
2 Jamal Brooks, one of the law officers.

3 THE COURT: Okay. Would the fact that you know --
4 which one was it you knew?

5 JUROR: Jamal Brooks.

6 THE COURT: Jamal Brooks. The fact that you know
7 them, would that make it so that you couldn't be fair and
8 impartial to the state and defense based upon the facts of
9 this case?

10 JUROR: I could be fair and impartial.

11 THE COURT: Thank you.

12 MR. BRUNSON: Your Honor, the juror number please?

13 THE COURT: Ms. Compton, what is your juror number?

14 JUROR: 36.

15 THE COURT: 36. All right.

16 All right. Ladies and gentlemen, the attorneys who
17 will be trying this case are Mr. Kirk Griffin for the
18 solicitor's office, and Mr. Willie Brunson for the
19 defendant.

20 Has any member of the jury panel ever been represented
21 by either of these attorneys who are involved in this or
22 any of the law firms in which they were associated? If so,
23 please stand.

24 (No response.)

25 THE COURT: All right. Thank you. You may be seated.

1 Has any member of the jury panel formed or expressed
2 an opinion about any issue or matter that is involved in
3 this case? Let me go back and read the indictments to make
4 sure you don't.

5 Count 1, burglary in the second degree violent reads
6 that Joseph Wadell Dunbar did in Sumter County on or about
7 January 1st of 2010 enter without consent and with the
8 intent to commit a crime therein a building of Untouchable
9 Cuts located at 516 South Lafayette Drive, and that the
10 defendant, Joseph Wadell Dunbar, did enter the building in
11 the nighttime in violation of section 16-11-312(B) of the
12 South Carolina code.

13 Under count 2 the indictment reads that on or about
14 January 1st of 2010 in Sumter County, South Carolina, the
15 defendant Joseph Wadell Dunbar, Jr., at Untouchable Cuts at
16 516 South Lafayette Drive by use of force, threats, or
17 intimidation and while armed with a deadly weapon or while
18 allegedly either by words or actions that he was armed
19 while using a representation of a deadly weapon or other
20 object which a person present during the commission of the
21 robbery reasonably believed to be a deadly weapon did take
22 and carry away goods and or moneys from the person or
23 immediate possession of Mary Pollard with the intent to
24 permanently deprive the victim of possession thereof in
25 violation of section 16-11-330(A) of the South Carolina

1 code.

2 Now, ladies and gentlemen, as I said the defendant has
3 pled not guilty, and therefore the state has the burden of
4 proving all the allegations contained in these charges of
5 the indictment.

6 But does anybody in the jury panel know anything about
7 this incident that is alleged to have happened on January
8 1st of 2010? Read anything in the newspapers or know
9 anything about it?

10 (No response.)

11 THE COURT: All right. Thank you. Has any member of
12 the jury panel formed or expressed an opinion about any
13 issue or matter involved in this case? If so, please
14 stand.

15 (No response.)

16 THE COURT: Has any member of the jury panel had any
17 -- you or any member of your family been the victim of a
18 violent crime? If so, please stand.

19 (No response.)

20 THE COURT: All right. Thank you. Is there any
21 member of the jury panel who is aware of any bias or
22 prejudice towards either the state or the defendant in this
23 case? If so, please stand.

24 (No response.)

25 THE COURT: All right. Thank you. No one is

1 standing.

2 Is there any member of the jury panel who is also a
3 member of the grand jury which issued the indictment in
4 this case? If so, please stand.

5 (No response.)

6 THE COURT: All right. Thank you. Is there any
7 member of the jury panel who is a member or a contributor
8 to any group which has as its primary concern the promotion
9 of law enforcement or victim's rights? Now, these groups
10 would include but certainly would not be limited to Mothers
11 Against Drunk Drivers, Students Against Drunk Drivers, or
12 Citizens Against Violent Crime? If so, please stand at
13 this time?

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

15 JUROR: 37. I am a member of Mothers Against Drunk
16 Driving.

17 THE COURT: Okay. Would the fact that you're a member
18 of Mothers Against Drunk Drivers make it so that you
19 couldn't be fair and impartial to the state or the
20 defendant in this case?

21 JUROR: No, sir.

22 THE COURT: Okay. Thank you. Yes, Ms. Compton.

23 JUROR: 36. I'm a member of Mothers Against Drunk
24 Drivers, but I can be fair.

25 THE COURT: All right. Thank you.

1 Does any member of the jury panel know of any reason
2 whatsoever why he or she should not serve as a juror in
3 this case, with particular emphasis being placed on your
4 ability to be fair and impartial to both the state and the
5 defendant? If so, please stand.

6 (No response.)

7 THE COURT: All right. Thank you. Does the state
8 have any additional questions it would like for me to ask?

9 MR. GRIFFIN: No, sir.

10 THE COURT: All right. Does the defense have any
11 additional questions?

12 MR. BRUNSON: None from the defense, Your Honor.

13 THE COURT: All right. Ladies and gentlemen, what
14 will happen now is the computer will pick out a random list
15 of names. And then as your name is called, please bring
16 your personal items with you and come up in front of the --
17 I guess right in front of the bar there. Turn around and
18 face General Thomas Sumter. And then the state and the
19 defense will have an opportunity to strike you.

20 Now, ladies and gentlemen, please don't take it
21 personal if you're stricken from the jury. Each of these
22 attorneys have some idea what they think would be the ideal
23 jury based upon the facts and circumstances of this
24 particular case. So, again, please don't take it personal
25 if you get stricken. All right. Thank you.

1 (The jury was empaneled at 11:55 a.m.)

2 THE COURT: Thank you. Ladies and gentlemen, you all
3 have been selected as the jury for this trial. I'm going
4 to let you go for lunch now with instructions to be back
5 here at 3:00 o'clock. We have some pretrial matters that
6 we need to take up, and then we won't start the case until
7 3:00 o'clock.

8 Now, let me remind you because you're on a jury,
9 please do not talk to anyone about this case. Go off and
10 have your lunch. Have a nice lunch. But then come back
11 here at 3:00 o'clock. And hopefully you will not talk to
12 anyone during that time.

13 All right. Ladies and gentlemen -- let me send them
14 back to the jury room for just a minute while I take up one
15 more thing, and then I'll release them from there.

16 (The jury retires to the jury room at 11:57 a.m.)

17 THE COURT: Are there any objections from the state or
18 the defense to the jury that has been drawn and the manner
19 in which it was selected?

20 MR. GRIFFIN: None from the state, Your Honor.

21 THE COURT: Mr. Brunson?

22 MR. BRUNSON: Not in the manner of selection, Your
23 Honor.

24 THE COURT: All right. Thank you.

25 --- End of transcript of record ---

1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of the record of
5 the jury selection and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Circuit
7 Court for Sumter County, South Carolina on the 7th day of
8 November 2011.

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

11

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May 1, 2013

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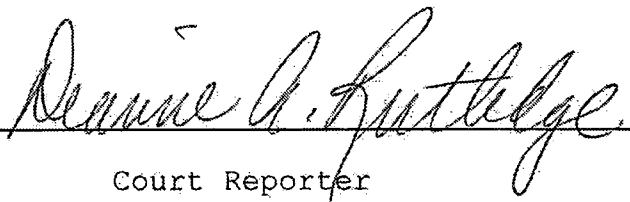
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Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF SUMTER	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 10-GS-43-0543
	)	
Joseph Waddell Dunbar, Jr.,	)	
	)	
Defendant.	)	

TRANSCRIPT OF TRIAL

The within Hearing was held on November 7-9, 2011, before The Honorable William J. Young in the Court of General Sessions for Sumter County, South Carolina; attended by counsel, as follows:

APPEARANCES:

Ryan Kirk Griffin, Solicitor
 3rd CIRCUIT SOLICITORS OFFICE
 141 North Main Street
 Sumter, South Carolina 29150
 Appearing for State of South Carolina

Will Brunson, Esq.
 P O Box 370
 Sumter, South Carolina 29150
 Appearing for Defendant

Transcribed for Margaret Sullivan, Court Reporter

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(None Entered)

INDEX OF COURT'S EXHIBITS

(None Entered)

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1 MR. BRUNSON: We believe that the
2 jury has been tainted by Juror 189.

3 THE COURT: He didn't say anything.

4 MR. BRUNSON: Well, he did.

5 THE COURT: Nobody heard it.

6 Solicitor?

7 SOLICITOR: Judge, in your initial
8 remarks to the jury you would remind them the
9 State has the burden of proof in this case, and
10 Juror Number 89 was set aside for cause, I think
11 the -- with the standard opening remarks to the
12 jury, you could certainly clear up any confusion
13 that may have been created in the jury's mind by
14 any statement that a juror may have made. Your
15 Honor, we certainly -- certainly believe that
16 the State has the burden of proof and that a
17 person cannot be found guilty until a jury
18 decides that the State has met its burden beyond
19 a reasonable doubt. Certainly that would cure
20 any taint that we're talking about based on what
21 that juror may have said, if anyone heard him.
22 At that point, unless a juror comes up and makes
23 an affirmative statement that whatever Juror
24 Number 189 may have some impact on this jury, I
25 think that at this point it's premature and that

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1 Your Honor can take care of the whole burden of
2 proof issue.

3 THE COURT: I may not do that in my
4 opening charge, but the jury is going to go
5 under a new oath that they will swear that they
6 will try this case based on these facts and not
7 on what somebody else may tell them.

8 His statement was so generic that I
9 don't think that it would taint the jury in any
10 way whatsoever.

11 MR. BRUNSON: Yes, sir, I
12 understand your ruling.

13 THE COURT: Your Motion is
14 respectfully denied.

15 MR. BRUNSON: Thank you, Your
16 Honor. The Defendant would also like to make a
17 Motion that the fact witnesses be sequestered.
18 The basis of that Motion, Your Honor, is that we
19 believe that there are some discrepancies in the
20 statements that they have written and I believe
21 that sequestering them would prevent them from
22 altering their statements or tailoring them in
23 any fashion.

24 THE COURT: Any objection to that?

25 SOLICITOR: I would just state for

1 the record that ---

2 THE COURT: The victims and the
3 investigating officer always can be present.

4 SOLICITOR: Yes, sir, and, Your
5 Honor, these people were all present during
6 robbery at the barber shop, they were all
7 present, they all had guns pulled on them. They
8 will each testify that they were in the presence
9 of this robbery and in such a position that
10 these witnesses are all victims, and of course
11 the lead investigation, Detective Lyons, can
12 stay in the courtroom. So, Your Honor, these
13 are -- they are all victims, and I think that
14 they have a right to stay during the entirety
15 of the trial.

16 THE COURT: I agree if they were all
17 present; however, any other witnesses will be
18 kept out/sequestered.

19 SOLICITOR: And, Your Honor, we don't
20 have anybody else in the courtroom other than
21 the victims and Detective Lyons.

22 THE COURT: Respectively denied.

23 MR. BRUNSON: Thank you, Your
24 Honor. The defense would like to make a Motion
25 with regard to the photo lineup.

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1 THE COURT: All right, you may
2 proceed.

3 SOLICITOR: Your Honor, the State
4 calls Mary Pollard to the stand.

5 (WITNESS TAKES STAND)

6 MARY POLLARD, being duly sworn to tell
7 the truth, the whole truth and nothing but the
8 truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR:

11 Q. Ms. Pollard, where do you live?

12 A. Sumter County.

13 Q. How long have you lived in Sumter?

14 A. Seven years.

15 Q. All right. Back on January 1st, 2010, what
16 had you done that day?

17 A. I was in my shop doing Ms. Libra's hair.

18 Q. When you say in your shop, what shop is
19 that?

20 A. Untouchable Cuts.

21 Q. That's a beauty salon?

22 A. Yes, a beauty and barber salon.

23 Q. How long had you been there that day?

24 A. I have been there since 7:00 in the
25 morning.

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1 Q. Was there an incident that happened on
2 January 1st, 2010?

3 A. Yes, sir.

4 Q. What happened?

5 A. I was in my shop and at first -- at first,
6 I was outside talking to my pastor and when I
7 came back into the shop my client, along with my
8 daughter, told me that someone had come into the
9 shop inquiring about the owner.

10 Q. They were asking who the owner was

11 A. (Affirmative nod), who the owner was. They
12 were pretty much looking around the shop.

13 Q. And at that point of the day, what was
14 going on? Were y'all still open or what was ---

15 A. No, we were closed. We were closed.

16 Q. After you came back in, what happened?

17 A. I came back in and when I shut the door
18 behind me, I got a knock on the door. There was
19 a young man standing to the right of the shop.
20 There's like a small pathway right next to the
21 door of the shop -- if I may stand up. He was
22 like (gesturing), 'Can you twist my dreads?' He
23 didn't have long dreads but he had dreads like
24 here, sticking out.

25 Q. Now, you were talking to this person at the

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1 door?

2 A. Yes, sir.

3 Q. How were you able to see them?

4 A. I pulled my curtain back.

5 Q. Is the door a solid door or what is the
6 composition of the door?

7 A. It's a regular wooden door with a small
8 plexiglas/ glass.

9 Q. So you could see through the pane of the
10 door?

11 A. Yes, sir.

12 Q. You said that this individual had short
13 dreads?

14 A. He had on a black hat, kinda rolled up and
15 -- so -- the left side, a little bit of hair was
16 showing out and he asked if I would twist his
17 dreads. At that time, I stated to him that I
18 was not open, that he could come back tomorrow
19 and that I would do it for him.

20 Q. Did you notice anything else about how he
21 physically looked other than the hair, at that
22 point?

23 A. Light skin. He had some small, like, red
24 marks on his chin area, he was wearing gloves at
25 the time.

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1 Q. Now, after you told him that you were
2 closed, what happened next?

3 A. I got a bad feeling and I asked my daughter
4 to pass me my cell phone so that I could call
5 911. I don't know why, but I got a bad feeling.
6 And she was approaching me to bring me my cell
7 phone and we heard a loud noise, just shattered
8 the glass. I stepped back to the right of me,
9 which would be my dryers, and I just heard
10 kicking -- kicking the glass in, kicking the
11 glass in.

12 Q. After you heard this noise, what happened
13 next?

14 A. I -- apparently he'd -- about four or five
15 guys jumped in. Everybody had -- one guy was --
16 everybody was masked, one guy had the gun
17 directly pointed on me to my face, ---

18 Q. Was it a handgun or a long gun?

19 A. It was a handgun.

20 Q. After these individuals came into the shop,
21 what happened next?

22 A. After these individuals came into the shop,
23 they had guns on everyone and -- the one
24 individual that had the gun on me, like I said,
25 at this time everybody was masked, had a mask

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1 on. One individual, I seen, walk around to the
2 barber shop and they was like, 'where the fuck
3 is that, where the fuck is it at?' I reached
4 inside my bra and I gave the individual that was
5 in front of me the money that I had inside my
6 bra. It was like \$1,500, I had my EBT card, my
7 driver's license, and another card -- I can't
8 quite remember now which ---

9 Q. That amount of money, was that -- why did
10 you have that amount on you?

11 A. That was money that I had made the day
12 before. I just hadn't took it off of me. I
13 left my shop earlier that day so -- I left my
14 shop earlier that day to take it home, but then
15 I came right back to the shop and I still had
16 that amount on me.

17 Q. And you had worked that day, as well?

18 A. Yes.

19 Q. Now, the individual that was in front of
20 you holding the gun, did you ever get a look at
21 his face?

22 A. I didn't get a look at his face because he
23 had a mask on.

24 Q. At some point did you?

25 A. Yes, sir.

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1 Q. Tell the judge how he did that.

2 A. He was still pointing the gun on it and he
3 was still saying, 'where the fuck is that, where
4 the fuck is it at', and -- "where the fuck is
5 at, where the fuck is at?" I was like, 'I am
6 peeing on myself, I gave you everything that I
7 had.' I was like, 'There's bags and cell
8 phones' and, you know, things like that over
9 there on the counter, which I pointed to the
10 counter. The other guys grabbed that stuff and
11 left out. He was the only one inside. He took
12 his mask off. He was, like, "I know where the
13 fuck you live. If you say anything, I will kill
14 you." I was just at that moment just stuck.

15 Q. Okay. How far away from you was he at that
16 point?

17 A. In my face.

18 Q. All right. Now, the person that asking you
19 for money, what did he look like?

20 A. He was light-skinned. When he took his
21 mask off, he was real, real red/flushed. Just
22 red. He had the same - and I notice that it was
23 the same kind as the guy who had initially asked
24 me to twist his dreads.

25 Q. Okay. This guy that had the gun on you,

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1 did he have dreads as well?

2 A. No, sir.

3 Q. Did he have -- you said that he was the
4 same guy as the guy who had asked about twisting
5 dreads?

6 A. (No verbal response).

7 Q. So did he have ---

8 A. He had a small afro, not long hair at all.
9 Just kinda small, that you could just
10 (gesturing), like that.

11 Q. He didn't have the long dreads but you
12 could twist his hair?

13 A. Yes, sir.

14 Q. Now, you said that the business was closed.
15 Were the lights on when they came in?

16 A. Yes, sir.

17 Q. Did you have a clear view of the person who
18 pulled the gun on you?

19 A. Yes, sir.

20 Q. Did anything block your view at all?

21 A. No, sir.

22 Q. Now, after this was over, what happened?

23 A. After the incident was over -- well, at the
24 time during the incident, he was still in there?
25 He was, like 'How the fuck you get out of here,

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1 how the fuck do you get out of here?' I was
2 like, 'You have to go out the same way that you
3 came in.' He proceeded right back the door that
4 they came in. I took everybody and went to the
5 back of the shop, which is a gated door but it
6 wasn't locked. We stayed back there and started
7 banging on the door upstairs, for the owner who
8 owns the building.

9 Q. You said the owner who owned the building?

10 A. (Affirmative nod).

11 Q. You rented that shop?

12 A. Yes, sir.

13 Q. Did the police subsequently come?

14 A. Yes, sir.

15 Q. Did you talk with the police officers at
16 that point?

17 A. No, my daughter did.

18 Q. To your knowledge, was a description given
19 of the person who'd pulled the gun on you?

20 A. Repeat that?

21 Q. Did you describe the person that pulled the
22 gun on you, to the police?

23 A. Yes, sir.

24 Q. What did you tell them about this person,
25 about his looks?

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1 A. I told them that he was light-skin, that he
2 had some what appeared to be pimples, marks, red
3 marks on the side of his face, like little
4 dents. I explained what he had on, which was a
5 black ski mask, white gloves, long dark coat.

6 Q. Now, Ms. Pollard, did you have an
7 opportunity to go down to the police station the
8 next day?

9 A. Yes, sir.

10 Q. Who did you speak with when you went to the
11 police station?

12 A. I spoke with Detective Lyons.

13 Q. Now, Ms. Pollard, I am going to show you
14 what has been marked for identification purposes
15 as State's Exhibit 1 and ask you if you
16 recognize this form.

17 SOLICITOR: May I approach, Your
18 Honor?

19 THE COURT: You may.

20 THE WITNESS: (Upon review), yes,
21 I do.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR:

24 Q. Ms. Pollard, have you seen this document
25 before?

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- 1 A. Yes.
- 2 Q. Did you prepare that document?
- 3 A. Yes, sir.
- 4 Q. Looking at the document, the instructions
- 5 on it, did Detective Lyons go over those with
- 6 you?
- 7 A. Yes, sir.
- 8 Q. Okay. Now, he read you these instructions
- 9 before you reviewed the photographs?
- 10 A. Yes, sir.
- 11 Q. Did he tell you that you had to pick
- 12 somebody out?
- 13 A. No, sir.
- 14 Q. Did he suggest anybody, that you pick any
- 15 particular number?
- 16 A. No, sir.
- 17 Q. Did he force you to do this?
- 18 A. No, sir.
- 19 Q. Did he promise you anything if you made a
- 20 selection?
- 21 A. No, sir.
- 22 Q. When you went and met with him, were you
- 23 under the influence of any drugs or alcohol?
- 24 A. No, sir.
- 25 Q. Did you see on that document -- did you

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- 1 make any marks on it?
- 2 A. Yes, sir.
- 3 Q. What marks did you make on it?
- 4 A. My initials by number five, and I signed
- 5 it.
- 6 Q. And what date and time did you sign it?
- 7 A. I don't remember the time.
- 8 Q. Look down on the ---
- 9 A. 1/2/2010.
- 10 Q. So this would have been the day after?
- 11 A. Yes, sir.
- 12 Q. Ms. Pollard, I am going to show you what
- 13 has been marked for identification purposes as
- 14 State's Exhibit 2. Do you recognize this?
- 15 A. Yes, sir.
- 16 Q. You've seen this document before?
- 17 A. Yes, sir.
- 18 Q. And did you make any marks on this
- 19 document?
- 20 A. Yes, sir.
- 21 Q. What did you do on -- what marks did you
- 22 make on the document?
- 23 A. I circled number five and added my
- 24 initials.
- 25 Q. You circled number five and added your

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- 1 initials?
- 2 A. Yes, sir.
- 3 Q. Okay. Why did you initial and circle
- 4 number five?
- 5 A. Because that was the guy.
- 6 Q. That was the guy that did what?
- 7 A. Robbed me.
- 8 Q. That was the guy with the gun?
- 9 A. That knocked on my door and asked me if I
- 10 could twist his dreads.
- 11 Q. Ms. Pollard, do you see the person that is
- 12 number five in the courtroom here today?
- 13 A. Yes, sir.
- 14 Q. Who would that be?
- 15 A. (Indicating).
- 16 Q. What color shirt does he have on?
- 17 A. He has on a gray shirt and black glasses.
- 18 Q. He is seated next to Mr. Brunson?
- 19 A. Yes, sir.
- 20 Q. That's the man that robbed you on January
- 21 1st, 2010?
- 22 A. Yes, sir.
- 23 Q. Any doubt in your mind?
- 24 A. No, sir.
- 25 Q. Any doubt in your mind when you picked him

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1 out of a photo lineup on January 2nd, 2010?

2 A. No, sir.

3 Q. You're a hundred percent sure?

4 A. Yes, sir.

5 THE COURT: Could I see the photo
6 lineup?

7 SOLICITOR: Yes, sir, Your Honor --
8 (tendering).

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR:

11 Q. Ms. Pollard, with that photo identification
12 process, answer any questions that Mr. Brunson
13 may have for you.

14 A. Yes, sir.

15 THE COURT: Mr. Brunson?

16 MR. BRUNSON: May it please the
17 Court, Your Honor?

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. BRUNSON:

21 Q. Ms. Pollard, you testified on direct that
22 you were not in the building initially; correct?

23 A. No, sir.

24 Q. Did you testify that you were talking to
25 someone outside of the building?

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- 1 A. Yes, sir.
- 2 Q. Who was that?
- 3 A. My pastor.
- 4 Q. So you were not in the building when
- 5 someone first came in?
- 6 A. No, sir.
- 7 Q. All right. Who told you that someone had
- 8 entered the building?
- 9 A. My daughter, Jahmelia W. , and Libra.
- 10 Q. Now, you also testified that the person
- 11 that you selected in this photo lineup is the
- 12 person that entered the building?
- 13 A. At the time of the robbery, yes, sir.
- 14 Q. But you testified that they had entered the
- 15 building before, correct?
- 16 A. No. It was someone who entered the
- 17 building but I didn't see the person who'd
- 18 entered the building when I was outside talking
- 19 to my pastor.
- 20 Q. All right. So was it your testimony that
- 21 you looked through the glass and you saw someone
- 22 twisting ---
- 23 A. Yes. Someone knocked on the door and I
- 24 answered it, and he asked he would I twist his
- 25 dreads. I stated to him that I was closed.

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1 Q. So you don't know if that is the same
2 person that walked in the first time or not?

3 A. No, sir.

4 Q. But it is your testimony that that is the
5 person that ultimately removed a mask from his
6 face?

7 A. The person that knocked on the door; yes,
8 sir.

9 MR. BRUNSON: Your Honor, may I
10 see the lineup, sir?

11 THE COURT: You may, (tendering).

12 CROSS EXAMINATION CONTINUED

13 BY MR. BRUNSON:

14 Q. On State's Exhibit 1, there's a name
15 written at the top after the words "Witness";
16 what is that name?

17 A. Mary Pollard.

18 Q. Did you write "Mary Pollard" on that line?

19 A. Yes.

20 Q. That's your handwriting?

21 A. Yes, sir.

22 Q. Okay. And you also signed this document?

23 A. Yes, sir.

24 Q. That is your signature?

25 A. Yes, sir.

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- 1 Q. Are you sure about that?
- 2 A. I'm sure.
- 3 Q. You are sure about writing your name on
- 4 that line?
- 5 A. Not on the top, but the bottom is.
- 6 Q. I'm sorry, I can't hear you. The bottom
- 7 signature is my signature and the initials, but
- 8 the top signature isn't.
- 9 Q. You did not write that?
- 10 A. No, sir.
- 11 Q. Is there an X in box number five?
- 12 A. Yes, sir.
- 13 Q. You put that X in there?
- 14 A. Yes, sir.
- 15 Q. Tell me something. At what point did you
- 16 put the X and the initials, was it before you
- 17 signed or after you signed?
- 18 A. I made the X first.
- 19 Q. All right. So at some point you were given
- 20 this collection of photos?
- 21 A. Yes, sir.
- 22 Q. And it is your testimony that you were
- 23 given this before you signed it?
- 24 A. Yes, sir.
- 25 Q. You're sure about that?

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1 A. Yes, sir.

2 Q. Now, your testimony is -- just tell me in
3 your own words what happened when you met with
4 Detective Lyons.

5 A. I know that -- he had more than one
6 collection of photos that he had.

7 Q. It was more than one collection of photos?

8 A. Yeah, there was two more like this. He
9 said, 'take your time, try to remember' and then
10 he laid them out on the table and I recognized
11 him.

12 Q. And you're saying that there were two other
13 sheets of photographs?

14 A. Yes, but I didn't have to look at them.

15 Q. You were presented with this one first?

16 A. No, I was presented with all of them.

17 Q. But you didn't get a chance to look at the
18 other two?

19 A. Yeah, I looked. I looked over everything
20 but that -- that's -- I'd never forget that
21 face.

22 Q. So you saw that?

23 A. Yes, sir.

24 Q. And where did this meeting occur?

25 A. At the police station.

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- 1 Q. Where?
- 2 A. (No verbal response).
- 3 Q. Where at the police station? Big room?
- 4 Small room?
- 5 A. Big room.
- 6 Q. How many people were in the room?
- 7 A. Me and Detective Lyons.
- 8 Q. Just the two of you?
- 9 A. Yes, sir.
- 10 Q. And your testimony is that you selected
- 11 number five from this page?
- 12 A. Yes, sir.
- 13 Q. And then you signed this document?
- 14 A. Yes, sir.
- 15 Q. Did anybody else sign this document?
- 16 A. No, sir.
- 17 Q. Look at this document, (tendering).
- 18 A. (Reviewing).
- 19 Q. Did anybody sign it in front of you?
- 20 A. Yes, sir.
- 21 Q. Who?
- 22 A. Detective Lyons.
- 23 Q. So at no point did anyone else ever come in
- 24 the room, that you recall?
- 25 A. No, sir.

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1 MR. BRUNSON: Nothing further.

2 THE COURT: Redirect?

3 SOLICITOR: Briefly, Judge.

4 REDIRECT EXAMINATION

5 BY SOLICITOR:

6 Q. Ms. Pollard, Mr. Brunson asked you about
7 the individual that came to the door looking for
8 the owner.

9 A. Yes, sir.

10 Q. You weren't in the store at that time?

11 A. No, sir.

12 Q. You had interaction with who you now know
13 as Joseph Dunbar through the glass?

14 A. Yes, sir.

15 Q. Then you picked him out of this photo
16 lineup?

17 A. Yes, sir.

18 Q. Did Detective Lyons suggest who you should
19 pick out, did he suggest that you pick anybody
20 in particular out?

21 A. No, sir.

22 Q. Did he promise you anything or force you to
23 do this

24 A. No, sir.

25 SOLICITOR: Your Honor, that's all

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1 that we have for Ms. Pollard with regard to this
2 issue.

3 THE COURT: You may step down.

4 (WITNESS STEPS DOWN)

5 THE COURT: Call your next witness.

6 SOLICITOR: The State calls Detective
7 Lyons, William Lyons.

8 (WITNESS TAKES STAND)

9 WILLIAM LYONS, being duly sworn to tell
10 the truth, the whole truth and nothing but the
11 truth, testified, as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. Detective Lyons, where do you work?

15 A. Sumter Police Department.

16 Q. How long have you been with the Police
17 Department?

18 A. Since 2004.

19 Q. In your current employment capacity, what
20 is your job title?

21 A. I'm the senior detective in the violent
22 crimes division, specializing in violent crimes,
23 gang-related crimes, a variety of different
24 violent crimes, even narcotics; it just depends
25 on different things on any given day.

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1 Q. Did you have an occasion to become involved
2 in an investigation of the armed robbery at
3 Untouchable Cuts back in January of 2010?

4 A. I did.

5 Q. All right. How did you become involved?

6 A. I was either on duty that weekend or on
7 call. It was a holiday weekend, so I was off
8 work. A call came out and I was one of the
9 officers that initially responded, but I was not
10 working.

11 Q. All right. Now, Detective, in your
12 capacity as the investigator, you were assigned
13 this case?

14 A. Correct.

15 Q. Upon arriving at the scene, what did you
16 do?

17 A. Prior to getting to the scene we had a
18 description of a black male who'd wanted to
19 enter the business. Traveling up one street
20 behind the barber shop, it's between Lafayette
21 and Red-and-White Street, then the next street
22 over would be Brand Street. Traveling up Brand
23 Street, came into contact with a young black
24 male by the name of Rakeem Dunbar. We stopped,
25 spoke with Mr. Dunbar, patted him down for

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1 weapons. During that pat-down, we received a
2 credit card in his possession that had the
3 defendant's name on it, one Joseph Dunbar.

4 Q. So this individual named Rakeem had a
5 credit card belonging to Joseph Dunbar?

6 A. He did. He had -- after speaking with him,
7 he was eventually brought to the station and
8 questioned about his potential involvement in
9 the crime there at Untouchable Cuts.

10 Q. Now, Detective Lyons, did you have an
11 occasion to get a detailed physical description
12 of one of the perpetrators of the crime?

13 A. We did. We got the description from Ms.
14 Pollard, Ms. Mary Pollard, in regards to one of
15 the robbers. She described him as a short,
16 light-skinned black male. She describe the face
17 as being pimpled or pitted, the face having some
18 distinguishing characteristics around the cheek
19 area. She also said that his hair was not long
20 dreads but braidable, twistable or whatever you
21 have, that he had long enough hair to where it
22 would be manipulated in a twist fashion.

23 Q. Okay. Detective Lyons, based on the
24 description and based on the contact that you
25 had with Rakeem Dunbar and the existence of this

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1 card, did you have occasion to compile a photo
2 lineup?

3 A. I did. After having spoken with Ms.
4 Pollard and after having talked with Mr. Dunbar,
5 -- in fact, he had the defendant's credit card
6 with him and the physical description that Ms.
7 Dunbar (sic) gave me matched that of the
8 defendant.

9 Q. That Ms. Pollard gave you?

10 A. Yeah. I'm sorry. That Ms. Pollard gave
11 me. Matched that of the defendant, Joseph
12 Dunbar.

13 Q. Prior to this robbery taking place, did you
14 have knowledge of Joseph Dunbar?

15 A. I did. And I knew that he matched that
16 description. Therefore, I took a recent jail
17 photo - he had a booking photo from November of
18 2009 for an unlawful weapons charge, so I took
19 that booking photo because I knew that it would
20 be probably the most recent photo of him, unless
21 he'd gotten a new driver's license, so I sent
22 that photo to the State Law Enforcement Division
23 and asked them to compile a six-person photo
24 lineup.

25 Q. So you sent a known photo of Joseph Dunbar

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- 1 to SLED?
- 2 A. I did.
- 3 Q. And did you have any hand in choosing the
- 4 other five photos?
- 5 A. No, sir, I have no idea who they are.
- 6 Q. Tell us a little bit about -- once you
- 7 request a lineup from SLED, how do you get it
- 8 back?
- 9 A. We send it off by e-mail, we send the
- 10 individual's name, date of birth, if they have a
- 11 driver's license number -- or we request they
- 12 view a photo that they already have of the
- 13 individual, i.e., a booking photo from the jail.
- 14 We sent that in e-mail format to them. They
- 15 have a fill in the blank form on the e-mail. We
- 16 send it to them and they, in turn, e-mail it
- 17 back. They will e-mail the photo lineup back to
- 18 us.
- 19 Q. And you did that in this case?
- 20 A. I did.
- 21 Q. Did you have an occasion to have Ms.
- 22 Pollard come back in and meet with you?
- 23 A. She did. She came back in early that
- 24 Saturday morning. That would have been the
- 25 morning after the robbery.

1 Q. The morning after the robbery. Okay. What
2 was the purpose for her visit that morning?

3 A. To present the photo lineup to her and see
4 if she could identify anyone in the lineup as
5 being the robber.

6 Q. I want to show you what has been marked as
7 State's Exhibit 1 for identification,
8 (tendering). Do you recognize that, Detective?

9 A. I do.

10 Q. What is this form, generally.

11 A. Generally it is the witness lineup
12 identification form. It's the form that is used
13 in connection with the photo lineup, which we
14 explain to them the photo lineup, explain to
15 them that the people shown in the form are in no
16 particular order, they are listed from left to
17 right, numbered one through six. On the form
18 that's all the photos that we use on a form, is
19 six. So they're in no particular order and
20 they're no particular number. The numbers are
21 selected randomly, we do not select them. We
22 tell them that if they can identify one or more
23 persons in the lineup that's presented to them,
24 to please mark that with an "X". Then we have
25 them mark with an X and put their initials on it

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1 and sign it.

2 Q. Now, the hand-printed name "Mary Pollard",
3 who wrote that on there? The print?

4 A. I printed her name on there.

5 Q. And you handed the form to her?

6 A. I handed the form to her.

7 Q. And this a form that is used as a standard
8 form used by the Sumter Police Department?

9 A. It is, (affirmative nod).

10 Q. Now, did Ms. Pollard, was she able to pick
11 anybody in particular out in this lineup?

12 A. She did.

13 Q. What number did she pick?

14 A. She selected number five, which is the
15 Defendant.

16 Q. Now, did you promise her anything for
17 making this selection?

18 A. No.

19 Q. Did you threaten her in any way?

20 A. No, sir.

21 Q. Did you tell her that she had to pick
22 someone out?

23 A. No, sir.

24 Q. Did she appear to be under the influence of
25 any drugs or alcohol that morning?

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1 A. No, sir.

2 Q. Detective, I want to show you what has been
3 marked for ID as State's Exhibit 2 and ask if
4 you recognize this?

5 A. I do. It's the six person lineup that was
6 generated by State Law Enforcement Division,
7 includes the defendant in position five.

8 Q. Okay. Who -- to your knowledge, who made
9 the markings on that form, the handwritten
10 marks?

11 A. These markings were made by Ms. Pollard, in
12 my presence.

13 Q. You saw her do that?

14 A. I did.

15 Q. Just to clear anything up, she made the
16 markings on this and then she filled out the
17 corresponding?

18 A. Yes. There would be no need to fill this
19 portion of the form out had she not made the ID
20 on this section.

21 Q. Okay. So to be clear, you showed what's
22 been marked as State's Exhibit 1 first?

23 A. I reviewed what's marked as State's Exhibit
24 1 first, to go over the instructions, and then I
25 present them with the photo lineup.

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1 Q. Right.

2 A. Then if they pick someone from the photo
3 lineup, we finish completing State's Exhibit 1,
4 because there would no point in completing the
5 form if they do not pick anybody out. In other
6 words, if she had not picked anybody there would
7 be no x's in the blocks and there would be no
8 signature on the form.

9 Q. Right. And the signature on State's
10 Exhibit 1, below the box marked number five,
11 whose signatures are on that sheet?

12 A. My signature is in the signature as Officer
13 and Ms. Pollard signed beneath the signature
14 line above the date and time line.

15 Q. How many photo lineups did you show Ms.
16 Pollard?

17 A. I only showed Ms. Pollard one photo lineup.

18 Q. In making the selection of number five, did
19 she hesitate in any way?

20 A. No, sir, she went straight to it.

21 Q. Did she appear unsure at all?

22 A. No, sir.

23 SOLICITOR: Answer any questions that
24 Mr. Brunson might have for you, Detective Lyons.

25 THE WITNESS: Yes, sir.

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1 THE COURT: Mr. Brunson?

2 MR. BRUNSON: Thank you, Your
3 Honor.

4 CROSS EXAMINATION

5 BY MR. BRUNSON:

6 Q. Detective Lyons, just a couple of
7 questions. The date and time line, who filled
8 that out? Was it you or was it Ms. Pollard?

9 A. The date and time line was filled out by
10 myself.

11 Q. Okay. And that's a zero-eight-fifty-two?

12 A. Yes, sir.

13 Q. 8:52 in the morning?

14 A. Yes, sir.

15 Q. Was this photo lineup videoed?

16 A. Was the presentment videoed?

17 Q. Yes, sir.

18 A. No, sir.

19 Q. Was there an audio of the photo lineup?

20 A. No, sir.

21 Q. Was there any other witness present besides
22 you and Ms. Pollard?

23 A. No, sir.

24 Q. How many witness lines on the form?

25 A. Signature lines on the form?

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1 Q. There's a signature line for the officer
2 and a signature line for the witness; correct?

3 A. That's correct.

4 Q. Now, isn't it procedure to have a photo
5 lineup witnessed?

6 A. Not necessarily procedure. If you have
7 someone there that can witness it, we do; but,
8 again, this was a holiday weekend. I had her
9 coming in on a Saturday morning, met her up
10 there and presented her with the photo lineup.

11 Q. So it was New Year's? In fact, the day
12 after?

13 A. The day after New Year's.

14 Q. So there wasn't a whole lot of people
15 around?

16 A. No.

17 Q. All right. Now, what the reason for have a
18 witness to a photo lineup?

19 A. Just to have anyone else there to initial
20 or sign it, witness her signing it. Or there
21 might not be anybody.

22 Q. So that witness would then be able to
23 verify that the lineup was done properly?

24 A. I'm verifying that it was done properly.

25 Q. But a witness would be able to do that,

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1 too; right?

2 A. Would be a second person.

3 Q. Now, you testified that you got the
4 information about my client form a credit card;
5 correct?

6 A. Yes.

7 Q. Did you place that credit card into
8 evidence?

9 A. I do not remember if we did or not.

10 Q. Okay. So the only way that you got to my
11 client is from a credit card that as in the back
12 pocket of someone walking down the street?

13 A. No.

14 Q. No?

15 A. That's part of it.

16 Q. The first part?

17 A. Also, the person walking down the street
18 was his family member.

19 Q. Okay.

20 A. Therefore, his family member had his ID.

21 At first, I didn't think anything about it.

22 Okay? It wasn't until we discussed what was
23 going on in the business with the victim and Ms.

24 Pollard gave a description and I said, 'that

25 matches the description of Joseph Dunbar'; which

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1 was the gentleman's, that we'd stopped, cousin
2 (sic).

3 Q. All right.

4 A. I had no idea that they were family, had we
5 not stopped Mr. Rakeem Dunbar when he had the
6 credit card on him. He admitted that Joseph
7 Dunbar was his cousin. That's how I knew that
8 they were family.

9 Q. All right. Okay. So the first thing was a
10 description?

11 A. The first thing was -- as far as leading us
12 to Joseph Dunbar, it was a compilation of
13 things.

14 Q. So, I'm trying to figure out, did you get a
15 description before you found the credit card or
16 afterwards?

17 A. No, it was afterwards that I got a
18 description from Ms. Pollard.

19 Q. So you found the credit card first?

20 A. Correct.

21 Q. Then at some point you or another officer
22 had an occasion to interview Ms. Pollard?

23 A. Correct.

24 Q. Who gave the description?

25 A. (Affirmative nod), who gave a description.

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1 Q. Now, what was your answer in regard to the
2 credit card?

3 A. As far as?

4 Q. Is it in evidence?

5 A. I do not remember. We'd have to look at
6 our chain of custody to see. I do not recall it
7 being in evidence.

8 Q. What was the description?

9 A. Of the robber?

10 Q. Correct.

11 A. Light-skinned black with the pits or
12 pimples, what-have-you, facial acne around the
13 cheekbone area, short, lightweight -- not
14 heavysset. Hair, not long braids but hair that
15 could be twistable or braidable, long enough to
16 be able to braid his hair.

17 Q. Is that description not consistent with
18 Rakeem Dunbar?

19 A. No, he's considerably taller than Joseph
20 Dunbar. He's somewhat darker, he had longer
21 braids.

22 Q. All right. Now, you testified that you did
23 not assemble this photo lineup?

24 A. That's correct.

25 Q. Now, the description is a light-skinned

1 male? In your opinion, how many of this six are
2 light skinned?

3 A. Four.

4 Q. All right. So the other two in the lineup
5 clearly -- well, let me rephrase it. So your
6 testimony is that two of them aren't even light-
7 skinned?

8 A. They are not dark-skinned.

9 Q. So you're testifying ---

10 A. They are not dark.

11 Q. So your testimony is that four are light-
12 skinned?

13 A. (Affirmative nod).

14 Q. Now, you said that you got this photo from
15 a November of 2009 booking?

16 A. Correct.

17 Q. Pollard testified that there were two other
18 sets of photos with this one. Is it your
19 testimony that is not true?

20 A. My testimony is that I presented this photo
21 lineup to Ms. Pollard on that date.

22 Q. Just those six?

23 A. That's correct.

24 Q. Tell me about the process for requesting a
25 photo lineup from SLED. Now, you sent a photo

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1 but did you also send a description?

2 A. We have to send a form along with the
3 photo, if we want to use a photo. We still have
4 to fill out the same form, an e-mail form. We
5 fill it out and then we attach the photo that
6 we're requesting them to use. So it's still the
7 same form and we just send that photo along with
8 the form that corresponds to the suspect.

9 Q. Is that form in your police file, a copy of
10 that?

11 A. No, it's a simple e-mail form.

12 Q. Electronic?

13 A. Yes, sir.

14 Q. You did not print out a copy of it?

15 A. No, sir.

16 Q. Do you know if a copy exists other than in
17 electronic form?

18 A. I am not sure if the State Law Enforcement
19 Division would print it out or not. I am not
20 sure.

21 Q. All right. So tell us a little bit more
22 about this form. Does it require a description?

23 A. Our information is at the top, the Sumter
24 Police Department and the official case number.

25 Q. Okay.

1 A. The individual's name, date of birth, race,
2 gender and whether or not they have a South
3 Carolina driver's license. A lot of times we
4 send it where we do not have a SCDL -- if we are
5 using an SCDL, then they compile the photo
6 lineup based on that. In this case, I decided
7 to send this photo along with it. So as far as
8 descriptionwise, it's his name, the date of
9 birth, race and gender and if they have the
10 SCDL.

11 Q. Other specifics?

12 A. Yes, height, weight, things of that sort.

13 Q. Do you know if a DMV photo was provided?

14 A. I do believe that he has a South Carolina
15 driver's license.

16 Q. Did you look at it in making your decision
17 on which photo to send?

18 A. I don't recall. I just recall that he had
19 been booked, and I don't remember -- we just
20 used the photo from his last booking.

21 MR. BRUNSON: Court's indulgence,
22 Your Honor?

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION CONTINUED

25 BY MR. BRUNSON:

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1 Q. One other question. I notice on State's
2 Exhibit 1, proposed one, that there are two
3 different writing utensils being utilized. Is
4 that correct?

5 A. Correct.

6 Q. Any particular reason why -- and -- well,
7 first of all, tell me what the types. One
8 appears to be a marker/pen.

9 A. If you look at the photo lineup, the same
10 marker that was used to write the initials and
11 to circle number five on the photo lineup is the
12 same marker that's used to put it in the box.
13 It's a Sharpie marker.

14 After she completed that, I had her sign it
15 with a pen instead of trying to sign it with the
16 Sharpie. That's the difference for the two.

17 Q. No other significance?

18 A. No. To me, a Sharpie shows up better when
19 you're marking something than trying to use a
20 pen. A pen looks better when you're signing
21 something.

22 MR. BRUNSON: Nothing further.

23 THE COURT: Any redirect?

24 SOLICITOR: Your Honor, we have no
25 redirect. At this time we would offer State's

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1 Exhibits 1 and 2 into evidence.

2 THE COURT: Any objection?

3 MR. BRUNSON: Just an objection at
4 the appropriate time.

5 THE COURT: All right.

6 (SO ENTERED AS STATE'S EXHIBIT 1)

7 (SO ENTERED AS STATE'S EXHIBIT 2)

8 THE COURT: Under the due process
9 clause, evidence of identification of an accused
10 must be excluded if the process to obtain the
11 identification is so unnecessarily suggestive as
12 to give rise to a substantial likelihood that
13 there is a misidentification.

14 The facts that the Court should look to
15 to determine the reliability of the witnesses
16 are the opportunity to view the criminal at the
17 time of the crime, the witness' degree of
18 attention to the accuracy, the witness' level of
19 certainty at the time of the confrontation, and
20 the time between the crime and the
21 confrontation.

22 In this situation, I find that the
23 witnesses had an opportunity to view the
24 criminal at the time of the crime. The
25 testimony was that he took the mask off and that

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1 she would have seen it at the time. Her degree
2 of attention, she was very specific that he was
3 a light-skinned Black male with shorter hair,
4 with facial markings. She was very specific,
5 ends up being pretty accurate.

6 The witness' level of certainty at the
7 time of confrontation. She was very certain at
8 the beginning of that.

9 And there was very little time. I
10 mean, we're talking about from one evening to
11 the next morning when this lineup was presented.

12 I am looking at the lineup. Four of
13 them are very, very similar. The other two are
14 darker but, yet, the hair would fall into the
15 description.

16 So based on -- the key factor here is
17 reliability. I think that being the linchpin,
18 that the photo lineup will come in. Based on
19 that, your in-court identification will be
20 allowed at this point. Thank you.

21 Yes, sir, do you have another Motion?

22 MR. BRUNSON: Your Honor -- no,
23 Your Honor. We just renew our objection.

24 THE COURT: So noted, denied again.

25 MR. BRUNSON: Thank you, Your

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1 Honor.

2 THE COURT: Let's take a few minutes
3 -- are our jurors here?

4 BAILIFF: Yes, sir.

5 THE COURT: All right, I'll give you
6 a minute to change gears. We will bring the
7 jurors in about 3:15.

8 (BRIEF RECESS)

9 (DEFENDANT PRESENT)

10 BAILIFF: All jurors are back in
11 the courtroom, Your Honor.

12 (JURY IN @ 3:17 P.M.)

13 THE COURT: Please swear the jury.

14 (WHEREUPON JURY SWORN)

15 THE COURT: Thank YOU, Ladies and
16 Gentlemen. Mr. Weaver, I've appointed you as
17 foreman of this jury. I will give you further
18 instructions in that regard later.

19 Ladies and Gentlemen, before we begin
20 this trial, I want to tell you that this trial
21 will be probably be different from what you
22 might expect. Most people never have a chance
23 to attend an actual criminal trial or court
24 session as you are today and may think from
25 watching TV, movies or reading books that trials

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1 are always full of high drama, intense drama,
2 riveting circumstances. While all of these
3 things may be true at times, this is a real
4 trial. This is a fundamental part of our
5 discovery (sic) and this trial is not for
6 entertainment purposes. This is a search for
7 the truth in an effort to make sure that justice
8 is done. In making sure that justice is done,
9 it's often slow, deliberate and repetitive; the
10 exact opposite of what you may have seen on
11 television or movies or read in books.

12 This courtroom, Ladies and Gentlemen,
13 is a place of honor that is dedicated to the
14 preservation of our citizens rights through what
15 I truly to be the greatest justice system that
16 has ever been created. The attorneys who are
17 appearing before you are advocates for the
18 parties they represented. But first and
19 foremost, they are officers of this court who
20 are sworn to uphold the integrity and the
21 fairness of our judicial system and to help you,
22 as jurors, in your search for the truth.

23 Ladies and Gentlemen, you should expect
24 them to be professional, competent and ethical
25 in the representation of their client's

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1 interest. Ladies and Gentlemen, remember you
2 just took an oath to listen to the evidence in
3 this case and reach a fair and just verdict.
4 Ladies and Gentlemen, you're expected to be
5 professional, reasonable and ethical as well.

6 Again, thank you for accepting this
7 important responsibility of jury duty and your
8 contribution to our justice system.

9 Is it hot in here, or is it just me?
10 Turn that down a little bit.

11 Now, Ladies and Gentlemen, what I am
12 going to tell you now is intended to serve just
13 as an introduction to the trial of this case.
14 These remarks are not a charge on the law. I
15 will charge you the law that is applicable to
16 this case at the end of the trial. This is
17 merely an explanation of procedures that we will
18 follow during this trial so that you may better
19 understand what's happening.

20 Ladies and Gentlemen, let me tell you
21 upfront that you're not going to be able to take
22 notes during the trial; so, therefore, it's very
23 important that you listen closely throughout the
24 trial.

25 Now, Ladies and Gentlemen, the

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1 defendant is charged by the indictment filed
2 with this court of armed robbery and burglary in
3 the second degree, violent. The elements will
4 be explained to you in greater detail later.

5 Now, Ladies and Gentlemen, as I told
6 you before, the indictment charging the
7 defendant is simply the document by which this
8 case is brought into court and is not in any
9 sense evidence of any of the allegations that
10 are contained in the indictment.

11 The defendant has pled Not Guilty and,
12 therefore, the State has the burden of proving
13 all of the evidence of each charge that's in the
14 indictment beyond a reasonable doubt. It will
15 be your duty, Ladies and Gentlemen, as the jury,
16 to decide whether the State has met that burden.

17 Your purpose, Ladies and Gentlemen, is
18 to determine the facts of this case. You're to
19 determine the facts from the testimony that you
20 hear in this courtroom and other evidence that
21 is introduced here in court. Ladies and
22 Gentlemen, it's up to you to determine which
23 inferences you feel may be properly drawn from
24 the evidence. Ladies and Gentlemen, it is
25 especially important that you do your job

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1 diligently and conscientiously because
2 ordinarily there is no way to correct an
3 erroneous interpretation of facts by a jury.

4 On the other hand, but with equal
5 emphasis, the same law that makes you the judges
6 of the facts makes me the judge of the law. The
7 law as given to you by me is the only law that
8 you may consider. Ladies and Gentlemen, you
9 must accept the law as I give it to you even
10 though you might disagree. I cannot tell you
11 what the facts are and you cannot disagree with
12 me about what the law is or what you believe
13 that the law should be. Your job is to take the
14 law as I give it to you, apply it to the facts
15 as you find them from the testimony and other
16 evidence as presented.

17 After hearing the evidence, you will
18 deliberate and render a true and just verdict
19 under the solemn oath that you just took, Ladies
20 and Gentlemen, as jurors.

21 Now, until I advise you to begin your
22 deliberations at the conclusion of the case you
23 must not discuss the case with anyone, including
24 your fellow jurors, except when authorized to do
25 so by me. You may not use a computer, cellular

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1 phone or other electronic device with
2 communication capabilities while here, in
3 attendance in court or during your
4 deliberations. These decisions may be used when
5 you break for lunch or when we break over the
6 evening, however you're -- you still can't use
7 them to disclose any information about the case.
8 Information about the case would include --
9 certainly would not be limited to information
10 about a party, a witness, an attorney or a court
11 official, any news accounts about the case, any
12 information -- juror research on any topic that
13 may be raised during testimony. So if you hear
14 something here, you can't go back on your
15 computer and Google it to see what you can find
16 out about it. That's strictly prohibited. That
17 would be juror misconduct.

18 Now, Ladies and Gentlemen, after the
19 case is submitted to you, you must discuss it
20 only in the jury room with your fellow jurors.
21 Ladies and Gentlemen, the attorneys and parties
22 in this case are advised that they are not to
23 talk to you. So if you see one of them in the
24 hall and they don't say anything to you, they're
25 not being unfriendly, they're just following my

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1 instructions. As I said, the system is designed
2 that all of the information that you're going to
3 need to reach a verdict should be presented from
4 this witness stand or exhibits that are provided
5 here in the courtroom. So if you hear anything
6 from outside, that would taint that and we don't
7 want to have that happen.

8 Ladies and Gentlemen, it is very
9 important that you keep an open mind and not
10 decide any issue in this case until all the
11 evidence has been presented, the attorneys have
12 made their closing arguments and I have charged
13 you on the law.

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

20 Now, in just a moment the Solicitor
21 will make what is called an opening statement,
22 in which he will explain to you what he believes
23 that the issues are in this case. The attorney
24 for the defendant may also make an opening
25 statement, although he is not required to do so.

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1 What the attorneys tell you during their opening
2 statement is not evidence in this case. It is
3 only their contention as to what they believe
4 that the evidence will show.

5 Ladies and Gentlemen, from time to time
6 throughout this trial you may hear one of the
7 lawyers say something like, 'Your Honor, I
8 believe that we have a question of law' or 'a
9 matter of law to discuss with you.' Or, 'Your
10 Honor, may we approach the bench?'

11 Or sometimes I may find it necessary to
12 excuse you from the courtroom for a short time
13 so that the attorneys and I can discuss a matter
14 of law. Now, the reason that you're going to be
15 excused from this conversation is, as I said,
16 you are the judges of the facts and sometimes
17 when I am discussing matters of law with the
18 attorneys, it may be necessary for me to make
19 some comment as to the facts in connection with
20 making a ruling whether or not a law applies.
21 As I've said, I am not supposed to tell you what
22 the facts are. So I will excuse you from the
23 room while these discussions take place so that
24 nothing that I say could in any way influence
25 you in any way.

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1 Now, Ladies and Gentlemen, also during
2 the trial you may hear one of the attorneys make
3 an objection to certain evidence that is about
4 to be presented. Whether I sustain/grant the
5 objection or overrule/deny the objection should
6 not construed that I favor one side or the
7 other. I do not.

8 Nor should you infer that the objecting
9 party is trying to hide something from you. You
10 know, in this court as in all situations of life
11 there are specific rules that must be followed.
12 The attorneys, as officers of this court, are
13 merely trying to follow the rules of evidence.
14 This court -- in making their objection -- and I
15 am only ruling on what I believe to be the law
16 of the state of South Carolina as to whether
17 that evidence should be admitted.

18 Now, Ladies and Gentlemen, in
19 determining what the true facts are in the case,
20 you must decide whether or not the testimony of
21 a witness is believable. It will be my
22 responsibility to rule as a matter of law
23 whether certain testimony is admissible.
24 However, once the testimony is admitted, whether
25 or not you as jurors decide you want to believe

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1 it is entirely up to you.

2 Now, in deciding whether or not to
3 believe a witness, you have the right to
4 consider the interests of any witness, the bias
5 of any witness, the prejudice of any witness,
6 the opportunity for the witness to have actually
7 observed the matters and things about which the
8 witness testifies and the way that the witness
9 acts on this witness stand.

10 Ladies and Gentlemen, you have a right
11 to consider anything that is in the record that
12 will help you evaluate the testimony of the
13 witness. That means, Ladies and Gentlemen, that
14 it is your responsibility as jurors to pay close
15 attention to the witness, to observe the
16 witness, to listen to the witnesses and to pay
17 close attention to the attorneys and to the
18 court.

19 Ladies and Gentlemen, don't let your
20 minds wander but give strict attention to the
21 testimony so that at the end of all the
22 testimony, after the arguments of counsel, and
23 the charge on the law by me, you will then be in
24 a position to determine what the true facts are,
25 to apply the law to those facts and thus render

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1 a true and just verdict.

2 Mr. Foreman, in addition, it will be
3 your job to preside in the jury room and to be
4 the jury spokesperson here in the courtroom. It
5 will also be your duty to write down the verdict
6 of your fellow jurors. I'll give you more
7 instructions about that at the time.

8 Now, in order to preserve everyone's
9 rights, I will give the attorneys an opportunity
10 to object to anything that I've stated. Does
11 the State have any objection to my opening
12 charge?

13 SOLICITOR: None from the State, Your
14 Honor.

15 THE COURT: Does the defense have any
16 objection?

17 MR. BRUNSON: None from the
18 Defendant, Your Honor.

19 THE COURT: We will now begin the
20 trial. Solicitor?

21 SOLICITOR: Thank you, Your Honor,
22 may it please the court?

23 THE COURT: Yes, sir.

24 SOLICITOR: "Take everything. That's
25 all that we have. Please don't shoot. Please

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1 *don't shoot."*

2 The victim in this case, Mary Pollard,
3 made those statements. She made those
4 statements on January 1st, 2010. She made those
5 statements with a handgun pointed at her face as
6 she was being robbed.

7 To get to that point, we have to go
8 backwards a little bit. On January 1st, 2010,
9 Ms. Pollard worked at her salon, Untouchable
10 Cuts on Lafayette here in Sumter. She worked
11 that day, she had her children at the shop with
12 her, she had a patron at the shop with her after
13 hours, after 7:00 o'clock, after the store had
14 closed.

15 That day an individual came in,
16 described as a young black male wearing red
17 socks and flip-flop shower shoes. He came in
18 the store asking who the owner was. Ms.
19 Pollard, who was the owner and the proprietor of
20 that business was outside the store, and her
21 daughter who was inside the store -- her
22 daughters, Ms. Pollard's daughters, Jahmelia
23 W. and Maqueda Duncan, this young individual
24 was told 'she's not in the store now, you've got
25 to come back tomorrow, we're gonna be closed.'

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1 So he leaves.

2 Ms. Pollard, who had been outside
3 speaking with her pastor, came back in and then
4 there was a knock at the locked door. A man she
5 describes as a young black male, light-skinned,
6 with twisty dreads knocked on the glass door and
7 asked, 'Can I come in? Can you twist my dreads
8 for me?' She said, "We're closed, you'll have
9 to come back tomorrow." Now, this was a
10 different person than had come in asking for the
11 owner.

12 Ms. Pollard will tell you from the
13 stand that we felt uneasy about what had
14 happened. She asked her daughter, Jahmelia,
15 'Go get me my cell phone.' To call law
16 enforcement. A few moments later, she hears a
17 loud crash. The glass door, the locked glass
18 door to her shop is busted out. Four males bust
19 through the door, come in, all armed with
20 weapons -- handguns and long guns. "Where is
21 the money at? Where's the money at?" The guns
22 are drawn on Ms. Pollard, proprietor of the
23 business.

24 A patron, Libra Johnson, -- Libra
25 Johnson's young daughter, Shakyra G. ,

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1 Maqueda Duncan, who is Mary Pollard's daughter,
2 and Jahmelia W. , also Ms. Pollard's daughter.
3 Guns were held on all of these individuals,
4 "Where's the money? Where's the money?"

5 These individuals are all dressed in
6 black, all wearing gloves, all armed.

7 Ms. Pollard had the money she had made
8 that day and the day before tucked in her shirt.
9 She gave up the money. She gave the money to
10 the man directly in front of her, pointing the
11 gun, the man who she pled to "Take everything,
12 that's all we have. Please don't shoot. Please
13 don't shoot."

14 They gathered up some bags of the folks
15 in the store and at that point the man in front
16 of Mary Pollard pulled up the mask that he was
17 wearing and said, "I know where you live and
18 I'll kill you." At that moment she got to look
19 at this individual. She saw a light-skinned
20 male with acne marks on this face, the same
21 individual who had knocked on the door moments
22 earlier asking about getting his hair twisted.

23 All the property scooped up, they run
24 out the door the way that they came in, through
25 the busted glass.

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1 Ladies and Gentlemen, law enforcement
2 was called and that's when the investigation
3 began. You'll hear testimony from the lead
4 detective in this case, Detective William Lyons.
5 He responded to this call.

6 Canvassing the area, looking for people
7 that may have been involved in this situation.
8 You'll hear that he comes into contact with a
9 young man by the name of Rakeem Dunbar, who
10 admittedly is not the defendant on trial here
11 today. Rakeem Dunbar was the same individual
12 who had come in looking for the owner of the
13 business, wearing socks and flip-flops.

14 Rakeem Dunbar had a credit card
15 inscribed with the name "Joseph Dunbar."
16 Detective Lyons takes the description of Joseph
17 Dunbar, a young light-skinned black male,
18 because he finds this individual with Joseph
19 Dunbar's credit card information. He takes that
20 information and starts the investigation. He
21 determines from speaking to these victims here
22 that in fact the light-skinned, young, short
23 Black male was the one who lifted his mask and
24 threatened Mary Pollard.

25 So armed with that information,

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1 Detective Lyons compiles what is called a photo
2 lineup. Ladies and Gentlemen, that's where six
3 photos are put on a sheet of paper and a witness
4 is shown these photos to see if any of these
5 people depicted in any of these photos had
6 anything to do with this crime. Ladies and
7 Gentlemen, Detective Lyons had Mary Pollard, the
8 victim in this case, come to the law enforcement
9 center the next day at 8:52 a.m. to review this
10 photo lineup. Ladies and Gentlemen, Joseph
11 Dunbar's photo was included in that photo
12 lineup. Detective Lyons told Ms. Pollard, 'look
13 at these photos, see if you recognize anybody,
14 if anybody in these photos was involved in what
15 happened last night.' Ladies and Gentlemen, Ms.
16 Pollard picks out number five immediately.
17 *'That's the man, that's the man who pointed the*
18 *gun at me and demanded my money. That's one of*
19 *the men that busted in my shop, my salon*
20 *afterhours, that's one of the men that pointed*
21 *guns at my children and my patrons. I am a*
22 *hundred percent sure that's him.'*

23 Ladies and Gentlemen, you will also
24 hear about the rest of the police investigation.
25 Crime scene witnesses (sic) came out and took

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1 photos. We've got these photos and we'll show
2 them to you, photos of the scene, photos of what
3 happened, how they attempted to get fingerprints
4 and any other identifying information from this
5 crime scene.

6 Ladies and Gentlemen, this case is
7 about what happened to these five people seated
8 on the front row. This case is about how they
9 suffered from having these guns drawn on them,
10 not knowing what these individual would do, and
11 how Mary Pollard would tell you unequivocally,
12 without question, that Joseph Dunbar is the man
13 that pointed a gun at her face, the man who
14 demanded her money, and the man to who she
15 pleaded *"take everything, that's all we have,*
16 *please don't shoot, please don't shoot."*

17 Ladies and Gentlemen, I would submit to
18 you that after you've heard all of the evidence,
19 viewed all of the photographs, all of the
20 testimony from the victims and the witnesses,
21 the State will have proven to you beyond a
22 reasonable doubt that the Defendant, Joseph
23 Dunbar, came into Untouchable Cuts on Lafayette
24 Drive here in the City of Sumter at around 7:00
25 o'clock on New Year's Day 2010, he was dressed

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1 in all black with a mask covering his face, he
2 put a gun in Mary Pollard's face, demanded her
3 money, and showed her his face and threatened
4 her. The State will prove beyond a reasonable
5 doubt that Joseph Dunbar is the man with the gun
6 in Mary Pollard's face, the man who you pleaded
7 "take everything, that's all we have, please
8 don't shoot, please don't shoot." Thank you.

9 THE COURT: Mr. Brunson?

10 MR. BRUNSON: May it please the
11 Court, Your Honor?

12 THE COURT: Yes, sir.

13 MR. BRUNSON: Good afternoon
14 Ladies and Gentlemen of the jury, Mr. Foreman.
15 My name is Will Brunson and I represent Mr.
16 Joseph Dunbar, Jr. He is seated with me today
17 at the defense table. Mr. Dunbar is charged
18 with burglary second and armed robbery.

19 Now, today Mr. Dunbar sits at this
20 table cloaked in a robe of innocence. In other
21 words, he remains innocent until the State has
22 proven that he is guilty of these charges beyond
23 a reasonable doubt. So, in other words, the
24 State has a very heavy burden. They must strip
25 my client of the his robe of innocence. The

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1 only way that the State can do that is by
2 putting forth evidence that tends to show that
3 he is guilty.

4 Well, I submit to you today that the
5 State is not able to meet its burden. I submit
6 to you that the State cannot reach this very
7 high burden because my client has maintained his
8 innocence from the very beginning. He maintains
9 it today and at the conclusion of this trial,
10 after all the evidence has been presented, we
11 are certain that you will come back with the
12 only possible verdict in this case. That's a
13 verdict of Not Guilty.

14 Now, the Solicitor told that the law
15 enforcement officer investigating this case
16 discovered a credit card in somebody's back
17 pocket. That's how the investigation began.
18 I submit to you that you will not see a credit
19 card in evidence today. We will not see any
20 fingerprints that match my client. You will
21 hear talk about DNA evidence, biological
22 evidence that was collected from the scene.
23 That evidence doesn't match my client. You
24 will hear testimony that on the first of January
25 2010, on the south side of Sumter, that there

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1 was a robbery -- fact. You will testimony that
2 this robbery was performed by four or five
3 individuals. I submit to you that those four or
4 five individuals are still on the street,
5 because Mr. Dunbar was not one of them.

6 Now, you'll hear testimony about
7 individuals -- actually you'll hear testimony
8 that there was seven people in the beauty salon
9 that were robbed. You will hear from law
10 enforcement officers. I submit to you that none
11 of these law enforcement officers were there on
12 the scene, but these seven individual were --
13 and out of those seven, and out of these
14 officers, only one witness is going to tell you
15 that my client did it. One out of seven.

16 Well, I'd like to thank -- I'd like to
17 take this opportunity to personally thank you
18 for being part of this process. In fact, jury
19 duty is very important, an extremely important
20 aspect of your civil responsibilities and
21 duties. In fact, the wheels of justice cannot
22 grind, cannot turn without your participation.
23 So I ask you to pay close attention to the
24 facts, listen to the evidence, look at these
25 witnesses when they're on the witness stand and

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1 test the truthfulness of their testimony.

2 At the end of this case, after all the
3 testimony is presented, Your Honor will charge
4 you with the law. He will tell you about this
5 heavy burden that the State's got. He will tell
6 you about a reasonable doubt. That's the burden
7 to which they have to prove my client is guilty.

8 Well, beyond a reasonable doubt -- it's
9 kinda like -- the judge will -- what Your Honor
10 is going to explain to you is that in order to
11 convict him, you have to not have any doubt that
12 he did it.

13 SOLICITOR: Your Honor, that
14 misstates the law.

15 THE COURT: That is not the law.

16 MR. BRUNSON: That is not the law.
17 I will rephrase that. Your Honor -- reasonable
18 doubt is the type of doubt that would cause a
19 reasonable person to hesitate to act. I submit
20 to you that you will hesitate to act in this
21 case. So, again, we thank you for paying
22 attention to this case, all the facts. Again,
23 we're confident that you'll come back with the
24 only possible verdict in this case; Not Guilty.

25 THE COURT: Thank you, Mr. Brunson.

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1 The State may call its first witness.

2 SOLICITOR: Your Honor, the State
3 calls Mary Pollard.

4 (WITNESS TAKES STAND)

5 MARY POLLARD, being duly sworn to tell
6 the truth, the whole truth and nothing but the
7 truth, testified, as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Ms. Pollard, how are you today?

11 A. Fine.

12 Q. Are you nervous?

13 A. Yes.

14 Q. Just listen and answer the questions, okay?

15 A. (Affirmative nod).

16 Q. All right. Ms. Pollard, what do you do for
17 a living?

18 A. Beautician.

19 Q. How long have you been a beautician?

20 A. Ten years.

21 Q. Back on January 1st, 2010, were you working
22 as a beautician?

23 A. Yes, sir.

24 Q. Where were you working?

25 A. Untouchable Cuts Barber & Beauty Salon.

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- 1 Q. Where was that located?
- 2 A. On the south side of Sumter.
- 3 Q. What street?
- 4 A. Lafayette.
- 5 Q. Okay. Now, did you own that business or
- 6 what was the status of the barber stop or salon
- 7 there?
- 8 A. Yes, sir, I owned it.
- 9 Q. Did you own the actual physical property or
- 10 were you renting it from someone?
- 11 A. I was renting, renting from someone.
- 12 Q. Okay. On January 1st, 2010, tell the jury
- 13 what you had done that day.
- 14 A. I got to my business at 7:00 in the
- 15 morning, had two clients, one being Libra, I was
- 16 braiding hair, just doing hair, just doing my
- 17 normal/usual.
- 18 Q. Even though it was a holiday you were
- 19 working?
- 20 A. Yes, sir, I worked.
- 21 Q. Okay. Now, what time did you close that
- 22 day?
- 23 A. I closed at approximately 5:00 o'clock.
- 24 Q. When you closed, was there anybody still in
- 25 the business after you closed to the public?

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1 A. Yes, sir.

2 Q. When you closed, did you lock the door?

3 A. Yes, sir.

4 Q. All right. A little before 7:00 that
5 night, who was in the salon with you?

6 A. It was me, Maqueda Duncan, my daughter,
7 Jahmelia W. my daughter, Myah Pollard, my
8 daughter, Libra, Libra's daughter Shakyra and
9 Libra's daughter Taylor.

10 Q. Taylor and Mia ---

11 A. Myah.

12 Q. Are they -- are they adults, children?

13 A. Children.

14 Q. So they were -- how old were they on this
15 date?

16 A. Myah was ten. I don't remember how old
17 Taylor was.

18 Q. Was she small?

19 A. Yes, she was small.

20 Q. Now, did you remain in the business from
21 5:00 to 7:00? Did you remain inside at all
22 times or did you have occasion to leave the
23 business?

24 A. No, I did not remain in the building. I
25 left earlier that day, around 3:00 o'clock. I

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1 came back to the business around 3:15. At 5:00,
2 around 5:30, my pastor came and I stepped
3 outside of the business. I was still in front
4 of the business but was outside talking to my
5 pastor.

6 Q. And after you got through talking to your
7 pastor, what did you do next?

8 A. I came back inside. I left the door -- at
9 that time my daughter and Libra told me that an
10 individual had came in, was inquiring about who
11 was the owner, pretty much looking around. They
12 told him that they were the only ones here at
13 the time.

14 Q. After your daughters told you that, what
15 happened next?

16 A. Shortly after that I heard a knock on the
17 door. I went to the door -- I have curtains up
18 at my door. I pulled the curtain backed to the
19 right of me and I seen a young man standing
20 there to the side, to the left side, to the
21 right of me, and he asked me would I twist his
22 dreads. At that time I told him that my
23 business was closed, that he could come back
24 tomorrow and that I would do it for him. Then I
25 stepped away from the door.

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1 Q. You did this with the door open or closed?

2 A. Closed.

3 Q. How could you see anything about him with
4 the door closed?

5 A. The door is made of glass, more glass than
6 wood, and in my front on my porch I have a light
7 like right there.

8 Q. So the entry door to the business has a
9 wood frame and majority glass?

10 A. Yes, not a solid door.

11 Q. After this encounter at the front door,
12 what happened after that?

13 A. I stepped away from the door and I told my
14 daughter Jahmelia -- I didn't feel right, and I
15 was asking her to pass me my cell phone. As she
16 proceeded to pass me my cell phone, a loud boom
17 like. I stepped back to the right of me, which
18 is where my dryers was and kinda stood along
19 that wall. Jahmelia backed back into my TV
20 room. I just started hearing just the glass
21 shattering, kicking, guys jumping, they just
22 jumped through the door. They was like -- one
23 guy got directly on me, had the gun in my face.
24 The other guys were kinda scattered with the
25 guns all over Maqueda and Jahmelia and Libra --

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1 on everybody that was in the shop. The one guy
2 stayed on me, he was like, 'Where the fuck is
3 at, where the fuck is at?'

4 At that time I reached inside of my bra
5 area and I gave him -- which I had fifteen
6 hundred dollars, EBT card, my Medicaid card and
7 my license. I just gave him all that at one
8 time.

9 He kept like, 'Where the fuck is at,
10 where the fuck is at?' I was like -- I have a
11 counter, a long counter -- I was like,
12 'everything is over there, we don't have
13 anything, you can take everything.'

14 He still proceeded with the gun is my
15 face and I was, like, 'Look, I am peeing on
16 myself. I am peeing.'

17 Q. You actually were -- went to the bathroom
18 on yourself?

19 A. (Affirmative nod).

20 Q. Did you say anything else to him?

21 A. I was like, 'Please don't shoot, don't
22 shoot, take everything, take everything you
23 want', I gave him everything. And (emotional)
24 he was like -- the other guys snatched up the
25 stuff and they ran out the door, and then -- he

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1 was like 'how the fuck you get out of here?' I
2 said, 'you gotta go out the same way that you
3 came in.'

4 When they left the business, I have a
5 locked back door, that had a gate on it. I told
6 everybody to come with me and let's just go to
7 the back.

8 Q. The individual that had the gun on you, did
9 you get a look at his face?

10 A. Yes. At the time he asked me how the fuck
11 to get out of there, he took his mask off.

12 Q. When he pulled his mask off, what did you
13 see?

14 A. I saw his face.

15 Q. What did ---

16 A. And when I saw his face, my mind was like
17 'that's the same guy that knocked on the door
18 just not too long ago.' To myself. I didn't
19 say that out loud.

20 Q. That was in your mind at the time?

21 A. Yeah.

22 Q. Okay. What -- how would you describe the
23 person who took the mask off?

24 A. When he took his mask off, his face was
25 red, real red like if you're hot, a red person.

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1 I noticed this on his face.

2 Q. When you say "this" on his face, what are
3 you talking about?

4 A. Pimples, red marks, like little dents in
5 his face.

6 Q. Was he light-skinned or dark-skin?

7 A. He was light skin.

8 Q. But, for example, would he have been
9 lighter or darker than Ms. Johnson here?

10 A. Lighter.

11 Q. When he took the mask off, did he say
12 anything to you?

13 A. He said, *"I know where the fuck you live*
14 *at. If you say anything, I know where the fuck*
15 *you live. I come kill you. I know the fuck you*
16 *live at."* Just kept repeating that.

17 Q. All right. Now, after everybody left,
18 after everything was over, what happened then?

19 A. After everything was over, like I stated, I
20 took everybody to the back, which was a gated
21 door, closed the door, we stood -- and I
22 proceeded to bang on the door, which is the
23 owner of the building, he lives upstairs. I was
24 banging, banging, banging. At that time, which
25 somebody came from down--, -- from upstairs

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1 downstairs. They let us in. We ran upstairs
2 and we started screaming. You know, we were
3 real, real frantic so we couldn't get it out,
4 you know, what had happened. I was like, 'Call
5 the police, please call the cops, call the cops,
6 call the cops.' So they called the cops and
7 after that we kind of like calmed down.

8 The police came. We were still kinda
9 shaken up when we, you know, talked with the
10 officers.

11 Q. Did you have an occasion to speak with the
12 officers about what happened?

13 A. No, I didn't speak with anybody until I got
14 to the precinct.

15 Q. That's what I am getting at. Did you have
16 an opportunity to tell law enforcement what
17 happened to you that night?

18 A. Yeah, I had an opportunity when I got to
19 the precinct.

20 Q. They had you write down the statement that
21 you gave?

22 A. Um-humm.

23 Q. You said that the man had light-skin,
24 pimples, red face. Did you give this
25 description to the police?

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1 A. Yes, sir. I gave it in writing.

2 Q. So you wrote it down, told them your
3 description of who you saw?

4 A. Yes.

5 Q. Okay. Now, when you made this statement,
6 did law enforcement tell you what to write?

7 A. No. Actually I was like -- I didn't want
8 to see anything but I wasn't going to forget
9 this face. I remember his face. I remember his
10 face. That's why they were, like, 'write it
11 down.' I was, like, 'I just need to see
12 something. I remember his face. I would never
13 forget that face, ever.'

14 Q. Okay. Now, when you made this statement to
15 law enforcement, when was that done?

16 A. That was done when we was, uh, writing down
17 the statement.

18 Q. Okay. What time of day was that?

19 A. That was in the night time.

20 Q. It was ---

21 A. It was that same day.

22 Q. The same day as the robbery?

23 A. Yes.

24 Q. Now, when your business was broken into,
25 was it daylight or nighttime?

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1 A. It was nightttime.

2 Q. Nightttime?

3 A. Yes, sir.

4 Q. And your door, your door -- was it open,
5 closed, or locked?

6 A. It was locked.

7 Q. Now, Ms. Pollard, after you wrote this
8 statement, did law enforcement write this
9 statement -- did you tell somebody and they
10 wrote it or did you write it in your own
11 handwriting?

12 A. I wrote it in my own handwriting.

13 Q. After you went to the precinct and made
14 your statement, what did you do next?

15 A. I went home.

16 Q. Did you have occasion to go back to the law
17 enforcement station?

18 A. The next day.

19 Q. Okay.

20 A. The next morning.

21 Q. Did you initiate this contact or did they
22 have you come in?

23 A. They had me come in.

24 Q. Okay. Did they tell you what the purpose
25 of this trip to the law enforcement was going to

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1 be?

2 A. Yes, sir.

3 Q. What was that purpose?

4 A. To do a photo lineup.

5 Q. Ms. Pollard, I am going to show you what
6 has been marked for identification purposes at
7 this time State's Exhibit 1 and ask if you
8 recognize this document?

9 A. Yes, sir.

10 Q. Tell the jury what that is?

11 A. This is the document that you sign as
12 you're taking the photo lineup.

13 Q. Okay. And this was something that the law
14 enforcement officer gave you?

15 A. Yes, sir.

16 Q. Who did you meet with at the law
17 enforcement center?

18 A. Detective Lyons.

19 Q. And did he go over this document with you?

20 A. Yes, sir.

21 Q. Did he give you instructions, did he read
22 off the instructions about what he wanted you to
23 do?

24 A. Yes, sir.

25 Q. He told you that if you'd previously seen

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1 one or more persons in this lineup to place an X
2 in the appropriate square corresponding to the
3 number of the person in the lineup.

4 A. Yes, sir.

5 Q. To place an X in the appropriate box?

6 A. (Affirmative nod).

7 Q. Then to sign -- when finished, to sign your
8 name and put the date and time?

9 A. Yes, sir.

10 Q. And when completed to give the sheet to the
11 officer, Detective Lyons?

12 A. Yes, sir.

13 Q. Okay. Now, let's go back a little bit to
14 the incident. You stated that the individual
15 who had the gun on you, how close was he to you?

16 A. Close.

17 Q. The gun was in your face?

18 A. Yes.

19 Q. Was there anything between the two of you
20 to obstruct your view at all?

21 A. No.

22 Q. Even though your business was closed, were
23 the lights on?

24 A. Yes, sir.

25 Q. Had you had anything to drink that day?

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- 1 A. No, sir.
- 2 Q. Had you had any drugs that day?
- 3 A. No, sir.
- 4 Q. How long would you say that this whole
5 encounter took?
- 6 A. Seemed like forever.
- 7 Q. What were you focused on when the gun was
8 in your face?
- 9 A. The gun, my kids.
- 10 Q. Did you have a good look at the physical
11 characteristics of his face?
- 12 A. Yes.
- 13 Q. Was the individual that had the gun on you,
14 was he short or tall?
- 15 A. Short.
- 16 Q. And you have already testified that he had
17 light skin?
- 18 A. Yes, sir.
- 19 Q. And pimple marks on this face?
- 20 A. Yes.
- 21 Q. You believe that he was the same person
22 that's come to the door, asked about twisting
23 his dreads?
- 24 A. Yes, he was.
- 25 Q. Okay. All right. Now, going back to the

1 lineup procedure, Detective Lyons went over that
2 form with you; correct?

3 A. Yes, sir.

4 Q. Did he force you to pick anybody?

5 A. No, sir.

6 Q. Did he promise you anything in exchanging
7 for picking somebody out?

8 A. No, sir.

9 Q. Did he suggest that you pick out anybody in
10 particular of the photos that you saw?

11 A. No, sir.

12 Q. Okay. I am going to show you what has been
13 marked as State's Exhibit 2 for identification
14 purposes and ask if you recognize this item.

15 A. (Upon review, affirmative nod).

16 Q. Tell the jury what that is?

17 A. This is a photo lineup of six people.

18 Q. Okay. Did Detective Lyons hand you that
19 form?

20 A. Yes, sir.

21 Q. Were you able to review the six photos on
22 that piece of paper?

23 A. Yes, sir.

24 Q. Did you pick out anybody in particular?

25 A. Yes, sir.

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- 1 Q. Which person?
- 2 A. Number five.
- 3 Q. Number five?
- 4 A. (Affirmative nod).
- 5 Q. Now, I see that there's some handwritten
- 6 markings on that form. Whose writing is that?
- 7 A. Mine.
- 8 Q. Who made that circle around number five?
- 9 A. Me.
- 10 Q. And who put the initials on that form?
- 11 A. Me.
- 12 Q. I am going to hand you back what has been
- 13 marked for identification as State's Exhibit 1.
- 14 Did you make any marks on that form?
- 15 A. Yes, sir.
- 16 Q. Tell the jury what you did on that form.
- 17 A. After I did the photo lineup, I made an X
- 18 in the box on the form. I put my initials by it
- 19 and I signed it.
- 20 Q. So you made the marks on State's 1 for
- 21 identification after you looked at the
- 22 photographs?
- 23 A. Yes, sir.
- 24 Q. And after you marked the box number five
- 25 and signed it ---

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1 MR. BRUNSON: Your Honor, leading.

2 THE COURT: Sustained. Rephrase your
3 question.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR:

6 Q. You selected number five; correct?

7 A. Yes, sir.

8 Q. What did you then?

9 A. After I selected number five, I circled
10 number five, put my initials. I went to the
11 other paper, x-ed the box, put my initials and
12 took the pen and signed my name.

13 Q. When you made this identification of photo
14 number five, did you hesitate at all?

15 A. No.

16 Q. How sure were you?

17 A. A hundred percent.

18 Q. Do you see the person depicted in photo
19 number five in the courtroom today?

20 A. Yes, sir.

21 Q. Who is that?

22 A. The young man with the gray shirt and black
23 glasses.

24 Q. Seated by Mr. Brunson?

25 A. Yes, sir.

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1 Q. Is that the man that robbed you that night?

2 A. Yes, sir.

3 Q. Is that the man that broke into your
4 business when it was closed that night?

5 A. Yes, sir.

6 SOLICITOR: Your Honor, at this time
7 -- I'd ask the Court's indulgence. We've got
8 some photographs that we'd like to offer and
9 it's going to take a minute or two to get this
10 overhead (projector) set up.

11 THE COURT: Why don't we take five
12 minutes? We've been here about an hour, so
13 we'll take a quick break. Just a ten-minute
14 break, Ladies and Gentlemen of the jury, so that
15 you can get a drink of water or something.
16 Please do not discuss anything about the case
17 amongst each other. Thank you.

18 (JURY EXITS COURTROOM)

19 (BRIEF RECESS)

20 (DEFENDANT PRESENT)

21 (JURY ENTERS COURTROOM)

22 THE COURT: You may proceed,
23 Solicitor.

24 SOLICITOR: Your Honor, at this time
25 we would ask the court's permission to have the

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1 witness ---

2 THE COURT: She may step down.

3 Ma'am, you're going to need to speak up because
4 there is not going to be a microphone there.

5 SOLICITOR: Come on down, Ms.
6 Pollard. Stand right here. Remember to speak
7 up so that the court reporter can take down
8 everything that you say.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR:

11 Q. I am going to show you some photographs at
12 this time.

13 SOLICITOR: Your Honor, this is --
14 these have all been agreed upon, again, by
15 stipulation between the State and the defense.

16 THE COURT: Is that correct, Mr.
17 Brunson?

18 MR. BRUNSON: That's correct.

19 THE COURT: So these pictures are in
20 evidence?

21 SOLICITOR: Yes, sir.

22 THE COURT: Very well. All right.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR:

25 Q. Ms. Pollard, this is State's Exhibit 3.

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1 Can you identify what is depicted in this
2 photograph?

3 A. The first door of my shop.

4 Q. This is the way that it appears as you are
5 walking in, is that correct?

6 A. Yes, sir.

7 Q. Obviously explain to the jury what happened
8 as a result of this. What does this depict?

9 A. Broken glass, which the individuals came
10 through. This shows how I pack the trash up
11 when I -- I was already closed, and I usually
12 set my trash outside the door when I close and
13 then I take it when I leave. That door is
14 locked.

15 Q. These curtains, would they have normally
16 been pulled or open?

17 A. They would have been pulled if I was open
18 and they're normally closed when I'm closed.

19 Q. So when you close the store you'd pull the
20 curtains?

21 A. Yes, sir.

22 THE COURT: Can the jurors see those
23 exhibits?

24 SOLICITOR: Yes, sir.

25 DIRECT EXAMINATION CONTINUED

1 BY SOLICITOR:

2 Q. I show you what has been marked as State's
3 Exhibit 4. Do you recognize what that is?

4 A. Yes, the front door.

5 Q. And what is that?

6 A. Curtain.

7 Q. So would that be inside or outside of your
8 shop?

9 A. That's inside.

10 Q. Ms. Pollard, this is State's Exhibit 5.
11 Tell the jury where this would be in the
12 orientation of the shop?

13 A. This is inside of the shop, which would be
14 the doors that you come through.

15 Q. The doors that we just saw?

16 A. Yeah, the door that -- this is the
17 shattered door, which would be to the right.

18 Q. What is over here in this part of the
19 picture?

20 A. Dryers. Then coming this way is dryers as
21 well.

22 Q. Those would be the hair dryers?

23 A. Hair dryers.

24 Q. This is State's Exhibit 6. Tell the jury
25 where this is coming from?

1 A. This is still inside of the shop. This
2 would be the first door. This would be the wall
3 where the dryers are. Other this way would be
4 the TV room. Going this way would be the barber
5 shop and these are sitting areas.

6 Q. Now, when the robbery happened, in this
7 picture can you tell us where you would have
8 been -- does this picture show where you would
9 have been?

10 A. Yes, sir. I was right here along this
11 wall, right this way.

12 Q. Where is your -- where do you do hair?

13 A. I do hair right here, the first station.

14 Q. Where the green stool is?

15 A. No. Right here.

16 Q. Right here?

17 A. (Affirmative nod).

18 Q. State's Exhibit 7, tell the jury what this
19 shows.

20 A. This shows inside the shop after the
21 robbery. This is -- one of the guys snatched a
22 chair, threw it down. This gate right here is
23 the back door, the back door to the shop. This
24 is like -- well, this right here, the gate right
25 here. It has another door, a door plus the

1 gate.

2 Q. Now, you mentioned on direct that after it
3 was over that you got everybody and went
4 somewhere?

5 A. We went towards this direction, which would
6 be the back door.

7 Q. And the robbers went?

8 A. Back out this door, through the broken
9 glass.

10 Q. Ms. Pollard, what does photo show -- sorry
11 -- this would be --

12 SOLICITOR: Your Honor, this would e
13 State's Exhibit 9.

14 THE COURT: All right.

15 THE WITNESS: This would be my
16 work station. This is the stool that I sit in,
17 the dryers along that wall.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR:

20 Q. Now, the -- your counter there, what does
21 this photo show, if anything?

22 A. It shows my products and everything --
23 everything is knocked down because -- Libra had
24 her pocketbook, I had my pocketbook up there, so
25 when the individual snatched at the stuff some

1 of this stuff kinda got knocked down. This is
2 where I usually keep all of my products and this
3 is my drawer.

4 Q. Do you remember if your drawer was open or
5 would it have been ---

6 A. It was closed.

7 Q. State's Exhibit 10, which direction would
8 this have been taken from?

9 A. This is towards the back of the door. This
10 side is where I work. This is my other counter
11 space for my other client (sic) was working.
12 This is the back door that we left by.

13 SOLICITOR: That is number eleven,
14 Your Honor.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR:

17 Q. Tell the jury what this depicts.

18 A. This is the broken glass door. This shows
19 that the business was locked. This is showing
20 the inside of the shop.

21 Q. So when the lock is turned in that position
22 ---

23 A. It's locked. When it is locked, it is
24 turned this way.

25 Q. This is State's Exhibit 12. What is this a

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1 photo of, Ms. Pollard?

2 A. This is a photo of my work station. This
3 is, uh, a stool, like a kid's stool sitting up
4 in the chair. It shows my work station. This
5 is the trash can over here. These are some
6 items that I got knocked on the ground.

7 Q. That happened during the ---

8 A. During the robbery.

9 Q. State's Exhibit 13, what does this show?

10 A. This is the barber shop.

11 Q. Now, this isn't -- is this part of your
12 business?

13 A. Yes.

14 Q. Who would have been in this part of the
15 shop when the robbery occurred?

16 A. Malqueda, my daughter, and Taylor, Libra's
17 daughter.

18 Q. Did any of the robbers go into this part of
19 this shop?

20 A. Yes, sir.

21 Q. Is this a separate room from the salon?

22 A. Yes, sir.

23 Q. Ms. Pollard, what does this show?

24 A. This is the TV room and this is my
25 daughters.

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1 Q. Again, based on the orientation of how the
2 salon is set up, could they have heard what
3 happened from that spot?

4 A. Yes, sir, it's right by the door.

5 Q. State's Exhibit 14. Ms. Pollard, you can
6 resume the witness stand, please.

7 A. (Complies).

8 Q. Ms. Pollard, you stated that there were at
9 least three other individuals that came in the
10 store, the shop that night?

11 A. Yes, sir.

12 Q. Did you get a look at any of their faces?

13 A. No, sir. They have masks on.

14 Q. Did they have anything, any other distinct
15 clothing on at that time?

16 A. Just masks and black clothing.

17 Q. Did they have anything on their hands?

18 A. Yes, gloves.

19 Q. Okay. Now, did anybody show you their
20 face?

21 A. Yes, sir.

22 Q. Who showed you his face?

23 A. (Indicating Defendant).

24 Q. Say who you're pointing to.

25 A. Joseph Dunbar.

1 Q. Okay. And did you get a look at any of the
2 other individuals who participated, did you get
3 a look at any of their faces?

4 A. No, sir.

5 Q. Is there any question in your mind that
6 Joseph Dunbar was the man who robbed you?

7 A. No, sir.

8 Q. When you identified him in that lineup, how
9 sure were you?

10 A. A hundred percent.

11 Q. How sure are you today?

12 A. The same.

13 SOLICITOR: Court's indulgence, Your
14 Honor?

15 THE COURT: Yes, sir.

16 SOLICITOR: Answer any questions that
17 Mr. Brunson may have for you.

18 THE COURT: Mr. Brunson?

19 MR. BRUNSON: Your Honor, may we
20 approach?

21 THE COURT: You may.

22 (OFF RECORD BENCH CONFERENCE)

23 MR. BRUNSON: May it please the
24 court, Your Honor?

25 THE COURT: Yes, sir.

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1 CROSS EXAMINATION

2 BY MR. BRUNSON:

3 Q. Ms. Pollard, ---

4 A. Yes, sir.

5 Q. --- how old are you?

6 A. Thirty-six.

7 Q. You are not from South Carolina, are you?

8 A. No, sir.

9 Q. In fact you're from New York?

10 A. Yes, sir.

11 Q. When did you move to South Carolina?

12 A. In 2003.

13 Q. 2003.

14 A. (No verbal response).

15 Q. All right.

16 A. 2002.

17 Q. Pardon me?

18 A. (No verbal response).

19 Q. It could be 2002?

20 A. 2002 or 2003.

21 Q. Now, this business that you operate, it's a
22 salon?

23 A. Yes, sir.

24 Q. How many employees did you have?

25 A. I had at the time -- five.

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1 Q. How many were there at the time of this
2 incident?

3 A. None.

4 Q. Okay. What are your hours of operation?

5 A. We don't have set hours.

6 Q. This morning you testified that you'd
7 arrived at 7:00. Was that normal or not?

8 A. Yes, sir.

9 Q. And you testified that you closed at 5:00.
10 Was that normal or not?

11 A. No.

12 Q. Tell me about it.

13 A. I usually stay in the shop until 2:00 or
14 3:00 in the morning. I have a lot of nighttime
15 clients that work other shifts. If I have early
16 morning clients, I open my shop as early as 5:00
17 or 6:00 in the morning. I work all day.

18 Q. You testified that you were outside talking
19 to someone around 5:00 o'clock, is that right?

20 A. My pastor.

21 Q. So you talked to your pastor before you
22 closed that day?

23 A. No, I was closed.

24 Q. So you had already locked the door and
25 everything?

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1 A. Yes.

2 Q. What time did you talk to your pastor?

3 A. It was around 5:00, I want to say it was
4 between 5:15 and 5:30.

5 Q. And you spoke to him outside?

6 A. Yes. It was a lady.

7 Q. Her. Sorry. How long did that
8 conversation last?

9 A. I am not too sure.

10 Q. Estimate.

11 A. I am not too sure.

12 SOLICITOR: Your Honor, he is calling
13 or speculation.

14 THE COURT: That'd be speculation.
15 She said that she didn't know.

16 CROSS EXAMINATION CONTINUED

17 BY MR. BRUNSON:

18 Q. You closed at around 5:00, you were outside
19 talking to your pastor, and then -- well, was it
20 daytime or nighttime?

21 A. It was partially -- day and night, it
22 wasn't quite dark yet.

23 Q. Okay.

24 A. It was dark.

25 Q. So when you were out talking with the

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1 pastor, you could see structures like
2 surrounding buildings or houses or trees?

3 A. Yes, sir.

4 Q. So it was not nighttime yet?

5 A. It was nighttime.

6 Q. Well, let me rephrase my question. It
7 wasn't dark to the point where you couldn't see
8 structures?

9 A. No.

10 Q. How many guys entered the building?

11 A. I would say about four.

12 Q. Okay. About four?

13 A. I remember four.

14 Q. You remember four?

15 A. Yes, sir.

16 Q. Could it be three?

17 A. No, sir.

18 Q. Could it be six?

19 A. No, sir.

20 Q. Could it be five?

21 A. There's a possibility.

22 Q. So four or five?

23 A. Yes, sir.

24 Q. How long did they stay inside the building?

25 A. It seemed like forever.

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1 Q. Okay. Now, your testimony is that one of
2 the guys pulled off his mask?

3 A. Yes, sir.

4 Q. Now, the person that pulled off his mask,
5 it wasn't my client; was it?

6 A. Yes, it was, sir.

7 Q. All right, let me ask you this -- this
8 wasn't -- let me ask you this, have you ever had
9 another beauty salon in Sumter?

10 A. No, sir.

11 Q. This is the only one that you have ever
12 worked in?

13 A. No, sir.

14 Q. Okay. Which beauty salon have you worked
15 in prior to this?

16 A. I worked in the Mane Attractions beauty
17 salon.

18 Q. Where is that located?

19 A. That's located on Main Street, Hampton and
20 Main.

21 Q. All right. And did you work with Reanna
22 Johnson at that business?

23 A. Yes, sir.

24 Q. You know Reanna Johnson, isn't that
25 correct?

1 A. Yes, sir.

2 Q. In fact, you are Reanna Johnson's baby's
3 godmother; isn't that true?

4 A. No, sir.

5 Q. Are you aware that she has a child?

6 A. Yes, sir, she has two.

7 Q. Okay. Aren't you aware that my client is
8 Reanna Johnson's child's father?

9 A. I am aware of it now.

10 Q. Isn't it true that you know multiple
11 Dunbars?

12 A. (No verbal response).

13 Q. Multiple meaning more than one?

14 A. Yes, sir.

15 Q. You know Joanna Dunbar, don't you?

16 A. I don't know.

17 Q. Well, tell me which Dunbars that you know.

18 A. I know Dee. I call her "Dee", I don't know
19 her name.

20 Q. Dee Dunbar.

21 A. And I know, um, Derrick. I think that's
22 right.

23 Q. Dexter?

24 A. Dexter, yes. He boxed with my son.

25 Q. So you know Dexter Dunbar, you know Dee

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- 1 Dunbar, you know Reanna Johnson, ---
- 2 A. Yes, sir.
- 3 Q. You know Janice Dunbar, too; don't you?
- 4 A. No, I don't know her.
- 5 Q. Isn't it true that Joanna Dunbar was a
- 6 customer of yours?
- 7 A. I don't know all my customers by name.
- 8 Q. All right. Isn't it true that you knew Mr.
- 9 Joseph Dunbar prior to January 1st, 2010?
- 10 A. No, sir.
- 11 Q. Okay. Now, you testified earlier that you
- 12 knew Reanna Johnson, his baby's mother?
- 13 A. Yes, sir.
- 14 Q. And you knew that she had a child?
- 15 A. Yes, sir.
- 16 Q. And you knew that he is the child's father?
- 17 You know that he is the child's father?
- 18 A. Now I know.
- 19 Q. Were you at the hospital when this child
- 20 delivered?
- 21 A. No, sir.
- 22 Q. And if anybody said you were, they're not
- 23 telling the truth?
- 24 A. They're not telling the truth.
- 25 Q. And you knew Dexter Dunbar was my client's

1 cousin, didn't you?

2 A. No, I did not, sir.

3 Q. You said that Dexter boxed with your son?

4 A. Yes, sir. He didn't actually box with him.

5 That was a friend of his and they used to go to

6 the boxing practice, but they actually are not

7 boxers.

8 Q. You spoke with law enforcement on the night

9 of the incident, January 1, 2010?

10 A. Yes, sir.

11 Q. And you wrote a statement, correct?

12 A. Yes, sir.

13 Q. You did not state in the statement that

14 Joseph Dunbar robbed you, did you?

15 A. I didn't state his name.

16 Q. You did not?

17 A. No, sir.

18 Q. In fact, you've never told law enforcement

19 that Joseph Dunbar robbed you?

20 A. Not his name; no, sir.

21 Q. All right. Who was the shampoo girl at

22 Mane Attractions when you worked there?

23 A. Reanna.

24 Q. Your testimony is that you never met Joseph

25 Dunbar prior to -- that you'd never met him,

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1 period?

2 A. No, sir.

3 Q. Didn't know that he was Reanna's baby's
4 father?

5 A. No, sir.

6 Q. What other Dunbars do you know?

7 A. Those are the only two.

8 Q. Is it your testimony that this is the first
9 time you ever saw Joseph Dunbar?

10 A. For me, today, the first time?

11 Q. Right.

12 A. No.

13 Q. When was the first time?

14 A. When he knocked on my door.

15 Q. January 1?

16 A. Yes, sir.

17 Q. All right. Now, --

18 MR. BRUNSON: Court's indulgence,
19 Your Honor.

20 THE COURT: Yes, sir.

21 MR. BRUNSON: Nothing further,
22 Your Honor.

23 THE COURT: Any redirect?

24 SOLICITOR: Very briefly, Your Honor.

25 REDIRECT EXAMINATION

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1 BY SOLICITOR:

2 Q. Ms. Pollard, you know some other folks
3 named Dunbar?

4 A. Just two.

5 Q. Out of all the Dunbars that you know, which
6 one robbed you with a gun in your face?

7 A. Joseph Dunbar.

8 SOLICITOR: No further questions.

9 THE COURT: You may step down.

10 (WITNESS STEPS DOWN)

11 THE COURT: Let me see the attorneys
12 just a minute.

13 (OFF RECORD BENCH CONFERENCE)

14 THE COURT: All right, Ladies and
15 Gentlemen, this seems to be an appropriate time
16 for us to break for the evening. So I am going
17 to dismiss you for the evening. Let me remind
18 you that you are not to watch anything on TV --
19 please don't read any news, research anything
20 online.

21 Ladies and Gentlemen, have a nice
22 evening. I hope that you have a pleasant
23 night's rest and we will see you in the morning.
24 If you could, be back here just a little before
25 9:30 so that we can start right at 9:30. Thank

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1 you, Ladies and Gentlemen.

2 (JURY EXITS COURTROOM)

3 THE COURT: Anything from the State
4 before we recess?

5 SOLICITOR: No, sir, Your Honor.

6 MR. BRUNSON: Nothing from the
7 defendant, Your Honor, although we would ask
8 that the witness not be released in case we ---

9 SOLICITOR: She's going to be here.

10 THE COURT: She'll be here.

11 MR. BRUNSON: Thank you.

12 THE COURT: Court is adjourned until
13 9:30 tomorrow.

14 (COURT IN RECESS)

15 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 NOVEMBER 8, 2010 9:30 A.M.

2

3 (DEFENDANT PRESENT)

4 THE COURT: Good morning. Is there
5 anything before we bring in the jury?

6 MR. BRUNSON: Yes, Your Honor. I
7 would like to make a Motion at the appropriate
8 time to suppress the introduction of any
9 evidence regarding an anonymous tip. The basis
10 of the Motion being that -- Kirk and I discussed
11 this earlier. I asked him -- rather, if he had
12 a copy of it. He doesn't have it. I think,
13 Your Honor, anything about a tip would be
14 hearsay, not within any exception.

15 THE COURT: Mr. Griffin?

16 SOLICITOR: Your Honor, number one,
17 I would like to -- that testimony would come
18 through Detective Lyons. He's going to be my
19 last witness. I would like, number one, to ask
20 you to reserve ruling on that until before he
21 testifies.

22 Number two, at this point, Your Honor,
23 I would argue that the tip wouldn't be offered
24 for truth ---

25 THE COURT: But as to why they did

1 what ---

2 SOLICITOR: (Affirmative nod), as to
3 why the did what they did, Your Honor; why they
4 would have notified the U.S. Marshals in the
5 state of Florida. The basis of the tip was
6 that Joseph Dunbar had fled from Sumter to
7 Florida, so we would be offering it for why
8 that ---

9 THE COURT: But if you put it in
10 those contexts, that he fled, doesn't that look
11 very prejudicial -- of course, fleeing would be
12 a consider of a knowledge of guilt.

13 SOLICITOR: Yes, Your Honor.

14 THE COURT: Guilty of knowledge.

15 SOLICITOR: Yes, Your Honor. That
16 would be the basis for why we would offer the
17 evidence that U.S. Marshals -- and we've got
18 the officer that actually went to Florida to
19 retrieve Mr. Dunbar, who will testify after
20 Detective Lyons. So ---

21 THE COURT: There was an
22 extradition, wasn't there?

23 MR. BRUNSON: There was.

24 THE COURT: He had to be extradited
25 back up here?

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1 MR. BRUNSON: And he waived.

2 SOLICITOR: And, Your Honor, I would
3 concede that any mention of extradition would
4 perhaps be more prejudicial than probative, but
5 certainly why law enforcement focused their
6 efforts on looking for Mr. Dunbar after the
7 warrant was issued in the State of Florida.
8 I would submit that we're offering that for the
9 basis of law enforcement action, not for the
10 truth of -- I mean, it turned out that ---

11 THE COURT: I would certainly think
12 that he could answer to 'why did you do it'
13 with 'because we got a tip.' That's not
14 hearsay. We ask that type question, 'why did
15 you do what you do', 'we got a tip.'

16 SOLICITOR: And, Your Honor, ---

17 THE COURT: You're not saying what
18 was stated, just that you received a tip. We
19 do that all the time.

20 SOLICITOR: Your Honor, -- and we
21 would couch it in that phrase, that, uh, ---

22 THE COURT: I wouldn't allow a tip
23 that says "Mr. Dunbar was the one who
24 perpetrated this crime." That would be,
25 fairly, hearsay.

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1 SOLICITOR: Right.

2 THE COURT: But 'why did you do what
3 you did', 'we had a tip', I don't think that's
4 hearsay at all.

5 MR. BRUNSON: So it depends on how
6 it's ---

7 THE COURT: Very much so. Yeah.

8 MR. BRUNSON: So you deny my
9 Motion at this point?

10 THE COURT: I am going to reserve
11 and see how it is couched.

12 MR. BRUNSON: Yes, sir.

13 THE COURT: If it's couched in the
14 right way, they can say why they did what they
15 did without saying what the verbiage was.

16 MR. BRUNSON: Yes, sir. If it
17 please the court, my second, Your Honor, was
18 that, uh, -- I know that we've got some fairly
19 young witnesses that are going to take the
20 stand. Your Honor, we ---

21 THE COURT: Do you want me to do an
22 in-camera meeting with the kids to see if
23 they're -- outside the presence of the jury?

24 MR. BRUNSON: I think it's
25 appropriate.

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1 THE COURT: How old are these girls?

2 SOLICITOR: Your Honor, the next
3 witness is Jahmelia W. . She's seventeen
4 years old.

5 THE COURT: She's good.

6 SOLICITOR: And, Your Honor, Shakyra
7 G. is fourteen years old, and -- just for
8 the record and for the court's information, she
9 appears to understand the gravity of what
10 testifying in court means, she appears to be
11 old enough to understand ---

12 THE COURT: If she's fourteen, I
13 think she's old enough. I've done that before
14 with six and seven year olds, but ---

15 MR. BRUNSON: Yes, sir.

16 THE COURT: What grade is she in?

17 SOLICITOR: She's in the eighth
18 grade, Your Honor.

19 THE COURT: Eighth grade. I've got
20 a thirteen, a fifteen and a seventeen in my
21 household and they could all testify to the
22 truth. They know what the meaning of an oath
23 is.

24 MR. BRUNSON: Yes, sir. Would
25 they understand that they can't make an in-

1 court ID?

2 THE COURT: That's going to be up to
3 Mr. Griffin to explain to them that they can't
4 do that, that the person who can make the in-
5 court ID is ---

6 MR. BRUNSON: Yes, sir. And,
7 finally, Your Honor, one other ---

8 THE COURT: But, again, be careful
9 -- let me caution you that if you open the door
10 to that, that they can testify all that they
11 want to.

12 MR. BRUNSON: I understand that
13 it's a fairly tight line.

14 THE COURT: Yes, sir.

15 MR. BRUNSON: Your Honor, finally,
16 the other issue is that the defendant intends
17 to subpoena rebuttal witnesses.

18 THE COURT: Okay.

19 MR. BRUNSON: Actually have
20 prepared the subpoenas but haven't issued them
21 yet.

22 THE COURT: Okay.

23 MR. BRUNSON: I was wondering from
24 a standpoint of timing if Your Honor would
25 approve the subpoenas to be issued for 9:00

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1 o'clock in the morning?

2 THE COURT: Why weren't -- why
3 didn't we do this yesterday?

4 MR. BRUNSON: Well, Your Honor,
5 she was the last witness to testify. I didn't
6 ---

7 THE COURT: Oh, okay.

8 MR. BRUNSON: --- know we were
9 going to need them.

10 THE COURT: You think you will be
11 finished with your case today?

12 SOLICITOR: Your Honor, I think that
13 there's a pretty good likelihood that we will
14 get through this afternoon, potentially
15 tomorrow; but depending on the length of the
16 cross-examination, I think we'll get close this
17 afternoon.

18 THE COURT: Are they local
19 witnesses?

20 MR. BRUNSON: Yes, Your Honor.
21 No, one ---

22 THE COURT: Now we may have a
23 problem because you didn't announce them
24 yesterday.

25 MR. BRUNSON: They're rebuttal

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1 witnesses.

2 THE COURT: I don't care. You knew
3 the possibility of that. Now I've got a jury
4 who has been asked questions and if I get a
5 juror who knows one of your witnesses, that's a
6 bad thing. Why weren't they brought up
7 yesterday?

8 MR. BRUNSON: Well, I didn't know
9 that she was going to deny knowing them. She
10 denied on the stand that she knew four people.
11 I am advised by my client that she knows them.
12 I didn't know that she was going to say that.
13 So I couldn't give the court prior notice.
14 They're rebuttal witnesses, Your Honor.

15 THE COURT: I generally like lawyers
16 to put up anybody that they -- seems like you'd
17 had to have thought that -- you didn't (sic)
18 take her deposition, so you did know how she
19 was going to testify. You would have had to
20 have known that she might say that she didn't
21 know any of them.

22 SOLICITOR: And, Your Honor, to go
23 into that point, if she had known this
24 individual, uh, circumstances or reasons that
25 she had told Detective Lyons, he wouldn't have

1 gone through the motions of putting together a
2 photo lineup of -- if she knew this man prior
3 to the incident that happened in her salon,
4 certainly she would have said, 'Joseph Dunbar
5 did this. I got a good look at him. I know
6 him.' The evidence in the case, the evidence
7 that has been presented goes to the fact that
8 she didn't know him. Her actions corroborate
9 what she's telling on the stand, that she did
10 not know him. Why else would they have gone
11 through this whole lineup procedure.

12 MR. BRUNSON: And, Your Honor,
13 that's exactly why my rebuttal witnesses are so
14 important, because it goes directly to her
15 truthfulness.

16 THE COURT: All right. Well, I'm
17 not going to -- because of that -- I'm not
18 going to grant a mistrial. If one of these
19 witnesses (sic) say that they know your guy
20 and they don't like him, you're going to have
21 to ---

22 MR. BRUNSON: One of the
23 witnesses?

24 THE COURT: If one of the jurors
25 knows this person and knows that he is "a

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1 creep", or something like that, they're staying
2 on the jury. I am not going to dismiss them
3 from the jury because of that.

4 MR. BRUNSON: Yes, sir.

5 THE COURT: That is a risk that you
6 take, because I could have asked that whole
7 panel out there whether they knew these people.
8 They -- you know how to prepare a case. You
9 have the ones that you know are going to be
10 witnesses and then you have your potential
11 witnesses, and then you have your other tier as
12 to whenever things fall apart where you are
13 going to go. So, I mean, we like to ask all of
14 those names rather than just the ones that
15 you're sure of.

16 MR. BRUNSON: I understand.

17 SOLICITOR: And, Your Honor, we
18 would just ask if maybe at the lunch break we
19 could get the names of these witnesses.

20 THE COURT: Well, you're going to
21 have to get the names.

22 SOLICITOR: Yes, sir.

23 THE COURT: Because you are going to
24 have to run a criminal background on them.

25 SOLICITOR: Yes, sir. That's what

1 we are looking for.

2 THE COURT: Anything else?

3 SOLICITOR: Nothing from the State,
4 Your Honor.

5 MR. BRUNSON: Nothing else, Your
6 Honor.

7 THE COURT: Let's move our jury in.

8 (JURY ENTERS COURTROOM)

9 THE COURT: Good morning, Ladies and
10 Gentlemen. I hope that you all had a pleasant
11 evening rest. It certainly was a pretty night
12 last night. I took a long walk with my dog and
13 that moon, you could see -- it was a spotlight.

14 All right, we are into day two of this
15 trial. I am going to be keep track of the time
16 and we'll try not to go too long, we'll go for
17 about an hour, an hour and a half, and then we
18 will take a break. We will probably break
19 around 12:30 or 1:00, and I'll try to you out
20 of here before it gets dark. It's amazing once
21 we change to daylight savings time how -- it
22 seems like it gets dark much earlier.

23 Is the State ready to proceed?

24 SOLICITOR: Yes, Your Honor.

25 THE COURT: Is the Defense ready to

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1 proceed?

2 MR. BRUNSON: Yes, Your Honor.

3 THE COURT: All right. You may call
4 your next witness.

5 SOLICITOR: The State calls Jahmelia
6 W. to the stand.

7 (WITNESS TAKES STAND)

8 JAHMELIA W. , being duly sworn to
9 tell the truth, the whole truth and nothing but
10 the truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. Jahmelia, how old are you?

14 A. Seventeen.

15 Q. Who is your mother?

16 A. Mary Pollard.

17 Q. Where do you go to school now?

18 A. Sumter High School.

19 Q. Okay. Jahmelia, what were you doing on
20 January 1st, 2010?

21 A. Watching TV in the TV room at the shop.

22 Q. In the TV room at the shop?

23 A. Yes, sir.

24 Q. When you say "shop", what do you mean?

25 A. Untouchable Cuts.

1 THE COURT: You are going to need to
2 speak into the microphone just a little bit
3 louder. It's important to hear what you have
4 to say.

5 THE WITNESS: Yes, sir.
6 Untouchable Cuts.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR:

9 Q. And Untouchable Cuts is -- who ran that
10 business?

11 A. My mother.

12 Q. Did anything out of the ordinary happen
13 that day at the salon?

14 A. Yes, sir.

15 Q. Okay. Tell me what happened?

16 A. There was a robbery. It started, I guess,
17 around 6:00 or so.

18 Q. Talking about that, what was the first
19 thing that you remember that was a little out
20 of the ordinary that day?

21 A. Well, uh, when I was walking TV, a boy
22 had walked in. He was dark-skinned and he had
23 braids down his back, he was like skinny, and
24 -- he came in looking around the shop, asking
25 who the owner was. He was talking to Ms. Libra

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1 and when she ---

2 Q. Let me stop you right there. Ms. Libra,
3 who is Ms. Libra?

4 A. Ms. Libra Johnson, the client.

5 Q. All right. She was a client that day?

6 A. Yes, sir.

7 Q. Now, you say that this boy came in. What
8 type of clothing was he wearing?

9 A. I remember he had on red socks and these
10 Nike-looking slippers.

11 Q. When you say slippers, what do you mean by
12 that?

13 A. With the toes cut out, where to you could
14 see his toes, like.

15 Q. Were they flip-flops?

16 A. Yes, sir.

17 Q. And so he came in the shop?

18 A. Yes, sir.

19 Q. Who was he looking for?

20 A. He was looking for the owner, my mother.

21 Q. Did he ever talk to your mother? Do
22 you ---

23 A. No, sir.

24 Q. --- know? Did he ever talk to Ms. Libra
25 Johnson?

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- 1 A. Yes, sir.
- 2 Q. What did he do after he talked with Ms.
- 3 Johnson?
- 4 A. He just gone on looking around, and after
- 5 he looked around he looked at me and I looked
- 6 at him, because I remember his face from
- 7 somewhere and I thought, 'he looks familiar.'
- 8 Then after he looked around, he walked out.
- 9 Q. Do you say that he looked familiar, ---
- 10 A. (Affirmative nod).
- 11 Q. --- do you know where you may have
- 12 recognized him from?
- 13 A. Yes, sir.
- 14 Q. Okay. Where is that?
- 15 A. Middle school.
- 16 Q. Where did you go to middle school?
- 17 A. Chestnut Hills Middle School.
- 18 Q. Do you know -- the first boy, with the red
- 19 socks and flip-flops, do you know his name?
- 20 A. Rakeem, Ricky.
- 21 Q. Do you know his last name?
- 22 A. I think it was Dunbar.
- 23 Q. After he looked around, what did he do
- 24 then?
- 25 A. He just walked out.

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1 Q. Afer that happened, what happened next?

2 A. My mother came inside and she locked the
3 door, to make sure that the curtain was
4 closing. She started on Ms. Libra's hair and
5 she was talking, then somebody knocked on the
6 window. She went to the window ---

7 Q. You say window?

8 A. The door, glass on the door. She moved the
9 curtain back and she was talking to somebody,
10 but I couldn't really hear her because I was
11 watching TV. Then she went back to the spot
12 she was, like, 'Jahm?' And I said, 'Yes, sir.'
13 And she was, like, 'bring my phone 'cause
14 something don't see right.' So I was like
15 'okay', and I was walking a little slowly to
16 her and went I was a little past the window
17 bust.

18 Q. The window, when you saw window you mean?

19 A. The door glass. It bust.

20 Q. What happened after the glass in the door
21 busted?

22 A. I jumped back in, with the phone still in
23 my hand, and I ran back into the TV room, back
24 in between the -- besides -- like the corner of
25 the TV room.

1 Q. And what do you remember happening after
2 that?

3 A. I remember a lot of boys yelling, my mother
4 now screaming, and one boy came in here -- came
5 into the room where me and my sister was and
6 started grabbing us and pulling us out of our
7 spots.

8 Q. Did they lead you anywhere?

9 A. Inside the beauty salon.

10 Q. Now, the people that came in the salon, do
11 you remember how they were dressed?

12 A. Yeah, had on black.

13 Q. Had on black.

14 A. All of 'em, and some of them were skinny
15 and tall.

16 Q. Did they have any weapons on them?

17 A. Yes, sir.

18 Q. What kind?

19 A. The one that I remember had a long shotgun,
20 I guess it was, and he pointed it at my face.
21 I just remember the other one with a shotgun.

22 Q. Do you remember what any of the -- of the
23 people that came into the shop, do you remember
24 anything that they may have said?

25 A. No, all I remember they saying, 'get out'

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1 and they was grabbing us. I really didn't
2 understanding what they were saying because
3 they were yelling a lot and it was all a bunch
4 of shrugging.

5 Q. Now, what did you see, if anything, your
6 mother do?

7 A. I seen her past the man some money and her
8 saying, *"Please don't shoot, please don't*
9 *shoot."* She was explaining that her kids and
10 everything was there, *"please don't shoot."*

11 Q. Now, did you see anybody take off their
12 mask?

13 A. Yes, sir.

14 Q. Did that person say anything?

15 A. Yeah, but I don't remember.

16 Q. Now, did anybody -- you said the person
17 that took you out of the room had a long gun?

18 A. Yes, sir.

19 Q. How did you feel?

20 A. Scared for my life.

21 Q. After your mother gave the money, what did
22 these individuals do?

23 A. The rest of the boys grabbed the stuff off
24 the counter and ran out. The other boy was
25 throwing things around.

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1 Q. How did they leave the salon?

2 A. They ran out the door they broke in.

3 Q. So the same way that they came in, they
4 went out?

5 A. Yes, sir.

6 Q. Did your mother appear to be frightened?

7 A. Yes, sir.

8 Q. How did you know that she was scared?

9 A. Because her eyes, and then I see her like
10 wet up so I know that she was terrified.

11 Q. When you say "wet up", she used the
12 bathroom?

13 A. Yes, sir.

14 SOLICITOR: Court's indulgence, Your
15 Honor.

16 THE COURT: Yes, sir.

17 SOLICITOR: Jahmelia, answer any
18 questions that Mr. Brunson may have for you.

19 THE COURT: Mr. Brunson?

20 MR. BRUNSON: May it please the
21 Court, Your Honor?

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION

24 BY MR. BRUNSON:

25 Q. Good morning, Jahmelia.

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1 A. Good morning.

2 Q. You testified that you were in the TV room.

3 Is that correct?

4 A. Yes, sir.

5 Q. I want to show you what's marked State's

6 Exhibit 14.

7 MR. BRUNSON: May I approach the
8 witness, Your Honor?

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION CONTINUED

11 MR. BRUNSON:

12 Q. Take a look at that for me. When you're
13 done looking at it, just kinda look up at me.

14 A. (Complies). S

15 Q. Do you recognize that?

16 A. Yes, sir.

17 Q. What is that?

18 A. The TV room in the shop.

19 Q. Now, the TV room is a separate room;
20 correct?

21 A. Yes, sir.

22 Q. Was the TV on?

23 A. Yes, sir.

24 Q. What were you watching?

25 A. Law & Order.

1 Q. Okay. Who was in there with you?

2 A. My little sister.

3 Q. All right. And does that show the TV?

4 A. Yes, sir.

5 Q. So that TV was on Law & Order?

6 A. Yes, sir.

7 Q. Now, if you're in the TV room, you can't
8 tell over in the shop, can you?

9 A. I can.

10 Q. How?

11 A. Because it don't have a door. It's open.

12 Q. All right. Now, let me ask you a question.
13 You testified that this boy that came in had
14 went to school with you?

15 A. Yes, sir.

16 Q. My client never went to school with you,
17 did he?

18 A. No, sir.

19 Q. Are there any windows in the TV room?

20 A. No, sir.

21 Q. Did you know whether it was daytime or
22 nighttime?

23 A. It was nighttime.

24 Q. How could you tell?

25 A. Because from the TV room you can see out

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1 the door a little bit.

2 Q. And you said that the guys were skinny and
3 tall?

4 A. Um-humm.

5 MR. BRUNSON: Court's indulgence.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION CONTINUED

8 BY MR. BRUNSON:

9 Q. Did any of the robbers have -- you said --
10 what were they wearing?

11 A. I remember that they had on black and I
12 remember that one came in the room and he was
13 real tall and skinny.

14 Q. What was he wearing?

15 A. He had on black.

16 Q. Did any of them have on red socks?

17 A. No.

18 MR. BRUNSON: Nothing further.

19 THE COURT: Mr. Griffin.

20 REDIRECT EXAMINATION

21 BY SOLICITOR:

22 Q. Jahmelia, Mr. Brunson asked you about the
23 guys being skinny and tall. Were all of them
24 skinny and tall?

25 A. I just remember one was real skinny and

1 tall.

2 Q. Is that the one that came and approached
3 you?

4 A. Yes, sir.

5 Q. Is it fair to say that you were focused on
6 him?

7 A. Yes, sir.

8 SOLICITOR: Nothing further, Your
9 Honor.

10 THE COURT: Any recross?

11 MR. BRUNSON: None, Your Honor.

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

14 SOLICITOR: Judge, may we approach?

15 (OFF RECORD BENCH CONFERENCE)

16 MR. BRUNSON: Your Honor, may I
17 beg the court's indulgence for a moment.

18 THE COURT: Yes, sir.

19 MR. BRUNSON: (Sidebar with
20 Defendant). Thank you.

21 THE COURT: Call your next witness,
22 Solicitor.

23 SOLICITOR: The State would call
24 ShakyraG.

25 (WITNESS TAKES STAND)

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1 SHAKYRA G. , being duly sworn to
2 tell the truth, the whole truth and nothing but
3 the truth, testified, as follows:
4 DIRECT EXAMINATION
5 BY SOLICITOR:
6 Q. Shakyra, how old are you?
7 A. Fourteen.
8 Q. Where do you go to school?
9 A. Oak Crest Middle School.
10 Q. All right. Who is your mother?
11 A. Libra Johnson.
12 Q. On January 1st, 2010, who were you with?
13 A. My mother.
14 Q. Where were y'all?
15 A. We was in the beauty salon.
16 Q. Where was the beauty salon?
17 A. Lafayette, on the south side.
18 Q. What was -- what were y'all doing there?
19 A. Getting our hair done.
20 Q. What happened that day?
21 A. We got robbed.
22 Q. What's the first thing that you remember
23 that was out of the ordinary?
24 A. A tall skinny dark-complexion dude came in
25 the store.

1 Q. Did you notice anything about what he was
2 wearing?

3 A. Yes, sir. He had on a black hoodie, black
4 shorts, long red socks and shower shoes with a
5 Nike sign on them.

6 Q. Did you actually talk with him?

7 A. No, my mother did.

8 Q. Okay. Did you hear what he asked your
9 mother?

10 A. Yes, sir.

11 Q. What did he ask?

12 A. Are we the owner, was the owner there.

13 Q. Did he ever talk with the owner, that you
14 know of?

15 A. No, sir.

16 Q. After he talked with your mother, what did
17 he do?

18 A. He looked around and he left.

19 Q. After the boy with the red socks left, what
20 happened after that?

21 A. Ms. Mary Pollard said 'I have a bad
22 feeling' and she told her daughter to bring her
23 the phone. But before she could reach the
24 phone, the glass bust.

25 Q. Now, between the glass busting and Mary

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1 Pollard saying that she had a bad feeling, did
2 anybody else come to the salon?
3 A. No, sir.
4 Q. There was a boy that came to the door?
5 A. That was -- yes, there was a boy that come
6 to the door.
7 Q. Did Ms. Pollard talk to him?
8 A. Yes, sir.
9 Q. What happened after that?
10 A. He asked if she could twist his braids.
11 She said she was sorry that she was closed but
12 said, 'you can come back tomorrow and I can do
13 it.' After that, the boy stepped away from the
14 door.
15 Q. What happened after that?
16 A. Ms. Mary said that feel right but before
17 her daughter could give her the phone, the
18 glass broken.
19 Q. After the glass broke, what happened?
20 A. Screaming and they were kicking through the
21 door, trying to get in, jumped through the
22 door. My mom said, "*Shakyrá, come mere, come*
23 *mere.*" So I ran with her and we ran to the
24 corner of the counter and then a tall -- one
25 like tall and one that seemed like short/medium

1 sized boy came at us with a long double
2 barreled gun and pointed it at me and my mom.
3 He said, "*Where's the money? Where's the*
4 *money?*"

5 Q. Now, did they take anything from you or
6 your mother?

7 A. Yes. My mom's wallet.

8 Q. After it was over, what did you do?

9 A. I screamed. My mom was crying, I was
10 crying. Ms. Mary opened the gated back door
11 and we all ran up to, uh, upstairs.

12 Q. Shakyra, I am going to show you what has
13 been marked as State's Exhibit 10. Do you
14 recognize that picture?

15 A. Yes, sir.

16 Q. Do you see the door in that photograph?

17 A. Yes, sir.

18 Q. Is that the door that you left through,
19 that you went upstairs?

20 A. Yes, sir.

21 Q. After it was over, you went through that
22 door, and what did you do then?

23 A. Someone called 911. Everybody was panicked
24 and we were all crying.

25 Q. Did you have an opportunity to speak with

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- 1 law enforcement after the event.
- 2 A. Yes, sir.
- 3 Q. Okay. Did you go anywhere -- or where did
4 you go when you left the salon that night?
- 5 A. The police station.
- 6 Q. Did you talk with any officers, or what
7 happened?
- 8 A. When we got there, we went straight to the
9 back room. It was like -- not a whole lot big
10 but a medium-size room, with a long table.
11 They gave us each paper and they said -- we
12 can't talk, we couldn't communicate, but just
13 give what we saw, what we heard.
- 14 Q. So they gave you a sheet of paper. Did you
15 make a statement?
- 16 A. Yes, sir.
- 17 Q. Did you write it?
- 18 A. Yes, sir.
- 19 Q. Did law enforcement officers tell you
20 anything to say?
- 21 A. No, sir.
- 22 Q. Did any of the other victims of the crime
23 tell you want to write?
- 24 A. No, sir.
- 25 Q. Did you have an opportunity to talk with

1 any of them, to talk about what happened, while
2 you were at the police station?

3 A. No, sir.

4 Q. When did you write the statement compared
5 to when the robbery happened?

6 A. It was right after the robbery, we got in
7 the car and went down to the police station and
8 I gave a statement.

9 Q. So you went straight to the police station?

10 A. (Affirmative nod).

11 SOLICITOR: Please answer any
12 questions that Mr. Brunson may have for you.

13 THE COURT: Mr. Brunson?

14 MR. BRUNSON: Thank you, Your
15 Honor.

16 CROSS EXAMINATION

17 BY MR. BRUNSON:

18 Q. Good morning, Shakyra.

19 A. Good morning.

20 Q. How old did you say you were?

21 A. Fourteen.

22 Q. Fourteen?

23 A. (Affirmative nod).

24 Q. Okay. You said that y'all were in a shop
25 on the south side; is that right?

1 A. Yes, sir.

2 Q. Now, when you were in there, you testified
3 that a tall skinny dude -- was he a light-
4 skinned dude?

5 A. No, sir.

6 Q. Dark-skinned dude?

7 A. Yes, sir.

8 Q. And then you testified that a tall, medium-
9 sized boy had a long gun on you?

10 A. Yes, sir.

11 Q. And you wrote that statement right after it
12 happened; didn't you?

13 A. Yes, ma'am.

14 Q. You think your memory is better right after
15 it happened or years later?

16 A. Years later.

17 Q. Your memory is better than right after?

18 A. Because everybody is all tear'ed up,
19 frantic and no one could get their mind
20 straight.

21 Q. Okay. Well, let me ask you this, in your
22 statement you never said to the police that
23 anybody took their mask off; did you?

24 A. No, sir.

25 Q. Never said you saw a face?

1 A. No, sir.

2 MR. BRUNSON: Nothing further.

3 THE COURT: Redirect?

4 SOLICITOR: No, Judge.

5 THE COURT: Thank you. You may
6 speak down.

7 (WITNESS STEPS DOWN)

8 SOLICITOR: State calls Libra
9 Johnson.

10 (WITNESS TAKES STAND)

11 LIBRA JOHNSON, being duly sworn to
12 tell the truth, the whole truth and nothing but
13 the truth, testified, as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR:

16 Q. Ms. Johnson, by whom are you employed?

17 A. Air Force.

18 Q. How long have you been with Air Force?

19 A. Sixteen years.

20 Q. Ms. Johnson, where were you on January 1st,
21 2010?

22 A. At Ms. Mary Pollard's beauty salon.

23 Q. What were you doing there?

24 A. I was arranging for me and my daughters to
25 get our hair done.

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1 Q. Can you pull that microphone up a little
2 bit?

3 A. (Complies).

4 Q. You said you and your daughters, who were
5 your daughters?

6 A. Shakyra G. and Taylor Johnson.

7 Q. How old is Taylor?

8 A. Taylor at the time was eight and Shakyra
9 was thirteen.

10 Q. Okay. What happened that day?

11 A. I remember I was sitting in the chair, a
12 young black male came in the shop, I just
13 remember him having the red socks with the
14 shower shoes - not the kind that goes between
15 your toes but the kind with the flap-over.
16 He asked if I worked there, if I was the owner.
17 I mentioned to him no, that I wasn't. Maya
18 mentioned that her mom was outside. He just
19 looked around, left. That was him.

20 Then Ms. Mary came back into the shop. She
21 proceeded to try to finish up doing my braids
22 and then it sounded like a knock or somebody
23 trying to get in the door. So she pulled back
24 the curtain to see who it is. They must have
25 asked her something about getting their hair

1 done. She said just 'I'm closed, come back
2 tomorrow.'

3 The next thing I know, the glass
4 shattered all over the floor. I just remember,
5 uh, about three -- about three guys just coming
6 in, dressed all in black. You could hear
7 screaming, people asking 'where the fuck it's
8 at?'

9 Q. What did you think that they meant by that?

10 MR. BRUNSON: Objection, Your
11 Honor.

12 THE COURT: Sustained. Requires
13 speculation.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR:

16 Q. Did you give anybody anything in response
17 to what was said?

18 A. After that, I just remember ending up on
19 the floor with Shakyra. I remember seeing Ms.
20 Mary in the corner by the dryer. I'm on the
21 floor with Shakyra, and I just remember just
22 two holes of a long gun being pointed at me.
23 Asking where the stuff was. I pointed to my
24 wallet in my coat. They just swooped up
25 everything and just left.

1 Q. Now, you said that you were on the floor of
2 the shop.

3 A. Yes, sir.

4 Q. I am going to show you what has been marked
5 as State's Exhibit 7. Could you point to the
6 jury and say whereabouts you would have been
7 inside the shop?

8 A. I was back here behind this counter, with
9 my back towards -- we're back towards where
10 that back gate was, but it was shut. We're
11 like up against this corner, back down in the
12 corner like that 'cause they were standing over
13 us with the long gun.

14 Q. In this picture, where would Ms. Pollard
15 would have been?

16 A. Ms. Pollard would have been back here in
17 this corner.

18 Q. In the corner up near the door?

19 A. Yes, sir, by the dryers.

20 Q. After the robbery was over, what did y'all
21 do?

22 A. After the robbery was over, Ms. Mary opened
23 that back gate -- there was a room back there.
24 I kept saying -- I was trying to turn on the
25 light, 'where the light?' And she was saying

1 'there is no light back here.' Then I just
2 heard this banging on the door and she was
3 saying there was people upstairs. When they
4 finally opened the door, somebody from upstairs
5 finally opened the door, we all just shot/ran
6 up the stairs to that door/apartment up the
7 stairs.

8 Q. Okay. Now, did you have an opportunity to
9 speak with any members of law enforcement after
10 the robbery?

11 A. Yes, sir.

12 Q. How did that come about?

13 A. Just letting them know what happened.
14 Mainly was telling them about the guy with the
15 red socks.

16 Q. Okay. Where did you speak with law
17 enforcement?

18 A. At the crime area.

19 Q. Did you ever have an opportunity to go to
20 the police station?

21 A. Yes, sir.

22 Q. What happened when you got to the police
23 station?

24 A. Got to the police station, we were taken
25 (sic) back into this room with a bunch of

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1 tables. They gave us a sheet of paper and we
2 were told just to write what happened. We
3 wrote down what happened.

4 Q. Did any law enforcement members tell you
5 what to write?

6 A. No, sir.

7 Q. Did you have an opportunity to talk with
8 the other victims about what happened while you
9 were at the police station?

10 A. No, sir.

11 Q. Did you write the statement in your own
12 handwriting?

13 A. Yes, sir.

14 Q. How much time passed between the robbery
15 and when you wrote the statement?

16 A. About thirty minutes.

17 Q. Did you go anywhere between leaving the
18 salon and arriving at the police station?

19 A. No, sir.

20 Q. You had an opportunity to look at or to get
21 a good look at the individual who was having
22 the altercation with Ms. Pollard?

23 A. Yes, sir.

24 Q. But you were -- where were you in relation?

25 A. In the far back corner.

1 Q. Obviously Ms. Pollard was closer to him
2 than you were?

3 A. Yes, sir.

4 Q. And, again, Ms. Johnson, you mentioned that
5 you had two daughters there: Shakyra, who is
6 present today and the other -- the other
7 daughter was how old?

8 A. She was eight.

9 Q. Is it fair to say that she was scared?

10 A. Yes, sir.

11 MR. BRUNSON: I object.

12 THE COURT: Sustained. Well, ---

13 SOLICITOR: Your Honor, I think a
14 parent can certainly tell when their child is
15 scared or ---

16 THE COURT: Yeah. Overruled. How
17 did she appear?

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR:

20 Q. How did she appear to you?

21 A. Scared.

22 SOLICITOR: Court's indulgence, Your
23 Honor -- answer any questions that Mr. Brunson
24 may have for you.

25 THE COURT: Mr. Brunson.

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1 MR. BRUNSON: Thank you, Your
2 Honor.

3 CROSS EXAMINATION

4 BY MR. BRUNSON:

5 Q. Good morning, Ms. Johnson.

6 A. Good morning.

7 Q. I believe that you were looking at a photo
8 on direct examination; is that correct?

9 A. Yes..

10 MR. BRUNSON: May I approach the
11 witness, Your Honor?

12 THE COURT: Yes.

13 CROSS EXAMINATION CONTINUED

14 BY MR. BRUNSON:

15 Q. Is this the photo that you were looking at?

16 A. Yes, sir.

17 Q. Forgive me for being redundant, but I
18 didn't see what you were pointing to. Can you
19 show me where you said that you were in this
20 photo?

21 A. This gate right here was -- we were around
22 back, up against this ---

23 Q. This wall?

24 A. Yes, sir.

25 Q. And I believe that you described where you

1 remember Mary Pollard went?

2 A. She was over here.

3 Q. Over where?

4 A. Over here (indicating in photograph).

5 Q. That's State's Exhibit 7. So she was in
6 close proximity to the hair dryers?

7 A. Yes, sir.

8 Q. You testified that a guy with red socks
9 came in?

10 A. Yes, sir.

11 Q. Did one of the robbers wear red socks?

12 A. No, sir, all of them had on all black.

13 Q. Thank you. And you testified that you gave
14 a statement to law enforcement?

15 A. Yes.

16 Q. Right after the incident?

17 A. (No verbal response).

18 Q. Isn't that right?

19 A. Yes, sir.

20 Q. Isn't it true that you never mentioned that
21 somebody took off a mask during your statement?

22 A. That's correct, sir.

23 Q. Isn't it true that you never mentioned
24 seeing a face in your statement?

25 A. Yes, sir.

1 MR. BRUNSON: Nothing further.

2 THE COURT: Any redirect?

3 SOLICITOR: No, sir.

4 THE COURT: Thank you, you may step
5 down.

6 (WITNESS STEPS DOWN)

7 THE COURT: We will take just a
8 brief recess. Please go to your jury room. Do
9 not discuss the case. We will be with you
10 shortly.

11 (JURY EXITS COURTROOM)

12 (BRIEF RECESS)

13 (DEFENDANT READY)

14 THE COURT: Bring in the jury.

15 (JURY ENTERS COURTROOM)

16 THE COURT: All right. The State
17 may call it's next witness.

18 SOLICITOR: Your Honor, the State
19 calls Lieutenant Truman Duggin.

20 (WITNESS TAKES STAND)

21 TRUMAN DUGGIN, being duly sworn to
22 tell the truth, the whole truth and nothing but
23 the truth, testified, as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR:

1 Q. Lt. Duggin, where do you work?

2 A. Sumter Police Department, in the
3 Investigative Services section.

4 Q. How long have you been with the police
5 department?

6 A. I've been full-time for eighteen years, and
7 during my last five years with the Air Force I
8 was a reserve officer; so twenty-three years of
9 being with the department.

10 Q. Now, Lt. Duggin, you stated that you work
11 with the investigative services division. Tell
12 the jury what ISD does?

13 A. We have -- ISD is the investigative
14 services. That's where the detectives work out
15 of and, basically, the crime scene unit,
16 forensic, folks going out and proceeding crime
17 scenes, processing fingerprints, collecting
18 evidence, running the AFIS computer, the
19 Automated Fingerprint Identification System,
20 computer system, polygraph, processing evidence
21 and storage of evidence.

22 Q. Are you in charge of that division of
23 investigative services?

24 A. Yes, I am the supervisor of that section.

25 Q. How long have you been the supervisor for

1 that section?

2 A. Seven, eight years.

3 Q. Lt. Duggin, did you have an occasion to
4 become involved with a crime scene --

5 Untouchable Cuts on Lafayette here in Sumter?

6 A. Yes, sir, I did.

7 Q. Tell the jury how you became involved with
8 this case?

9 A. Being crime scene, we're pretty much on
10 call 24/7. I received a call on July (sic) 1st,
11 2010, that there had been ---

12 Q. Investigator, let me stop you there. You
13 said July.

14 A. Excuse me. Yes. January 1st.

15 Q. Okay.

16 A. I received a call from our dispatch about
17 that I was needed at a burglary and armed
18 robbery that had occurred on South Lafayette at
19 the barber shop.

20 Q. Okay. You mentioned the crime scene
21 processing. Tell the jury in general what
22 crime scene processing is.

23 A. Initially when a call comes out, a patrol
24 officer will respond. Something of this
25 nature, the supervisor on the shift will also

1 go and make the determination whether a
2 detective is needed. They determine if it is
3 going to be investigated, if the need a
4 detective to come out and do interviews or if
5 it is something that is beyond their capacity
6 and then they'll call crime scene to come out
7 and evaluate the actual scene, make a
8 determination of what we can do as crime scene
9 investigators to collect evidence.

10 Q. Now, upon arriving on this particular
11 scene, what did you do first?

12 A. Well, my first -- upon arrival -- was to
13 get a briefing. I received that from Sargent
14 Wren (phonetic). He was the supervisor on the
15 scene. He gave me a briefing, a walk-through
16 of the crime scene. The scene had already been
17 secured once ---

18 Q. Let me stop you right there. What does
19 securing the scene mean?

20 A. Securing the scene would be making sure
21 that the victims are okay. If they need any
22 type of help such as EMS or something that
23 nature, to get that in action. Then clearing
24 the building, making it safe. When we arrive
25 first, when patrol arrives they're going into

1 an unknown. They have a building there. To
2 them it is still, I'm saying "unsafe" until
3 they make it safe. So they have to go in and
4 determine that no one else is in there.

5 So the building had been rendered safe,
6 no suspects were in the building. I got my
7 tour of the crime scene, then I started my
8 photography and photographed the crime scene.

9 Q. Lt. Duggin, these are already in evidence.
10 I'm just going to show you one, State's Exhibit
11 10. Does that appear to be a photograph that
12 you took?

13 A. On State's Exhibit 10. Yes, sir. This
14 will be a photo that I took on my arrival.

15 Q. Now, Lt. Duggin, with regard to processing
16 the scene, is it in important in which order
17 that you do things?

18 A. Yes, sir. One would be -- if you do
19 something out of order, you may destroy
20 something before you get a chance to observe
21 it.

22 One would be footwear. You look for signs
23 of footwear on the floor, for instance; or
24 coming into the scene, you look for footwear,
25 process that, collect it, or at least safeguard

1 it.

2 Other things that may be damaged, moved or
3 destroyed during the process. Normally it's
4 photographed, you look for the obvious.

5 We get a DNA sample, process for
6 fingerprints. In this case, I used black
7 powder.

8 Q. So in this case, what was the first thing
9 that you did after securing the scene?

10 A. After securing the scene, I collected some
11 items that, from what I could determine, the
12 suspect may have touched. I collected these.
13 It was basically some cardboard items. DNA on
14 the doorknob. We have no way of knowing if
15 there is any DNA on the doorknob ourselves in
16 the field, so we have to take a sample and send
17 it to our State Law Enforcement Division for
18 analysis. So that was collected.

19 Q. Lt. Duggin, did you take photographs before
20 you started collecting items?

21 A. Yes. Photographs were taken first before
22 anything. The photographs of the scene as it
23 was on my arrival.

24 Q. All right. Now, you mentioned dusting for
25 fingerprints. Tell the jury in general how

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1 that is done.

2 A. Usually black powder, a very, very fine
3 powder and brush. We look for areas where we
4 believe that the suspect(s) may have touched.
5 We apply this powder. If there is a
6 fingerprint there, the powder will stick to it
7 and we will be able to see it.

8 Q. What is the consistency of the powder?

9 A. It's a very, very fine black dust.

10 Q. Would it be more fine or less fine than,
11 say, baby powder?

12 A. It's almost equivalent to baby powder.

13 Q. And did you in fact use the fingerprint
14 identification powder on this scene?

15 A. Yes, I did. Being the type business that
16 it is, there's a lot of oils and grease, stuff
17 of this nature for hair, uh, it wasn't an ideal
18 process -- since that's what it is attracted
19 to, oils and things of that nature. It just
20 globbed up -- when we were processing like a
21 countertop, if there was any oils from the
22 items that were used in the shop, we'd end up
23 with just a big black spot versus the
24 fingerprints. There were no fingerprints on
25 the items that I dusted that were clean/clear

1 fingerprints.

2 Q. Lt. Duggin, I am going to show you what has
3 been marked for identification as State's
4 Exhibit 19 and ask you if you recognize this
5 item?

6 A. State's Exhibit 19 is a gel lift of latent
7 prints that were on an item that was processed
8 at the law enforcement center laboratory.

9 Q. Now, explain to the jury how you would
10 create or collect this gel lift.

11 A. Given that there were items that I could
12 take from the crime scene to the lab, the lab
13 is a better environment for processing. We can
14 do more things in the laboratory than we can in
15 the field.

16 So the items that I thought the subject
17 might have touched, items on the floor that
18 looked like they might have been handled or
19 moved, I brought them into the law enforcement
20 center and processed them using a SuperGlue
21 fuming technique. It is very widely used. You
22 take the item and put it in a tank, you heat up
23 SuperGlue, you add water and the SuperGlue will
24 show the fingerprint. It basically becomes a
25 permanent print, becomes kind of a white color.

1 Then I apply black powder to it, so that we can
2 see it, get contrast, and instead of
3 fingerprint tape we use a gel lift. It works
4 better if you're working with cardboards and
5 paper. The tape will actually tear the paper
6 This is very, very gentle, if you will. It's
7 not very sticky at all.

8 Q. Okay. State's Exhibit 19 for identifica-
9 tion is a gel lift collected from items at the
10 scene at Untouchable Cuts?

11 A. That's correct.

12 Q. And on the back of that item, is there any
13 notation -- identifying notations?

14 A. Yes, sir. It has the case number assigned
15 to the incident for the item that it was taken
16 from. We displayed the date that I did this,
17 "January 2nd, 2010 (at the lab)", and then my
18 initials.

19 Q. After you would have evaluated that gel
20 lift, what would you have done with that item?

21 A. We have an AFIS, that's the Automated
22 Fingerprint Identification System. Their
23 expertise is in fingerprints. We have
24 computers that enter fingerprints into, if
25 they're of sufficient quality to where we can

1 do an identification through the State
2 fingerprint data base. So if she is not
3 available, I'm certified to also operate the
4 AFIS. So I take my latent prints to her, she
5 does an examination and makes sure.

6 Q. So after you created the gel lift, it goes
7 to another person within the police department?

8 A. That's correct. Normally I just hand carry
9 it over and we enter it. I watch over her
10 shoulder as she does it.

11 Q. Are these items -- after they are analyzed
12 and evaluated, are they kept in a secure
13 location?

14 A. That's correct. They go back into -- are
15 entered back into evidence, where they are in a
16 controlled, secure environment.

17 Q. All right. Lt. Duggin, I am going to show
18 you what has been marked for identification as
19 State's Exhibit 20. Do you recognize that
20 object?

21 A. (Upon review), yes, State's Exhibit 20, I
22 recognize it.

23 Q. How do you recognize it?

24 A. It has the case number, the dates, the item
25 that I took the gel lift and it has my

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1 initials.

2 Q. Is this -- is State's Exhibit 20 for
3 identification, is it similar to State's
4 Exhibit 19?

5 A. Yes, it's similar.

6 Q. And tell the jury just briefly what it is?

7 A. It's from another piece of cardboard
8 display, it's a piece of processed cardboard
9 and these is the gel lifts of the latent prints
10 that were developed.

11 Q. And after this was developed, what was done
12 with this item?

13 A. This item went to our latent station, to
14 Miss Hodge, where she worked the latent print.

15 Q. Again, after it would have been analyzed
16 and evaluated, would it have been kept in a
17 secure facility?

18 A. Yes, it would be put in Evidence.

19 Q. The same location for State's Exhibit 19?

20 A. Yes, sir.

21 Q. Detective Duggin, I show you what has been
22 marked for identification as State's Exhibit 21
23 and ask if you recognize this item?

24 A. State's Exhibit 21 is a piece of cardboard
25 that I brought back from the crime scene and

1 processed in the lab.

2 Q. So that item was taken from the scene and
3 evaluated upon bringing it to the law
4 enforcement center?

5 A. Yes, sir. I processed it the same way,
6 with SuperGlue fuming and then with black
7 powder.

8 Q. After it was processed, where would this
9 item have gone?

10 A. This item here went to Ms. Hodge for entry
11 into AFIS for examination and then it would
12 have been turned into evidence, sent to the
13 Evidence room.

14 Q. That same secure facility?

15 A. Yes, sir, it is a secure facility.

16 Q. Lieutenant Duggin, I'm going to show you
17 what's been marked for identification as
18 State's Exhibit 22 and ask you if recognize
19 that item?

20 A. (Upon review), yes, sir. State's Exhibit
21 22 is a piece of cardboard that I seized from
22 the crime scene and brought back into the
23 laboratory for processing.

24 Q. All right. After it was processed, where
25 would it have gone?

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1 A. This particular item, instead of a
2 fingerprint it has a footwear impression. The
3 footwear impression shows up under processing
4 and I can see the design in the shoe print. It
5 went straight into evidence.

6 Q. Now, when you're evaluating shoe print
7 impressions, you've got the shoe print on this
8 card, what do you need in order to do a
9 comparison?

10 A. We need the shoe.

11 Q. Explain to the jury.

12 A. I have -- on this item, State's Exhibit 22,
13 a circular pattern, which is common with Nike
14 Air Force One shoes. So it would be just like
15 comparing a fingerprint. Before I could say
16 that it was this shoe in particular, I would
17 have to have the shoe, make a test print and
18 compare this with the actual shoe in question.

19 Q. And --

20 A. You have to have a shoe so that you can
21 make a match.

22 Q. Were any shoes recovered during the
23 processing of this scene or the subsequent
24 investigation?

25 A. No, sir. There was no shoe found.

1 Q. Lieutenant Duggin, you also mentioned in
2 part of the crime scene processing looking for
3 DNA. Can you explain to the jury how a
4 processed crime scene -- how that would look
5 for DNA?

6 A. Yes. Normally what most people are
7 familiar with when we're talking about DNA,
8 they think about blood, saliva, semen, bodily
9 fluids, things of this nature that have that --
10 those individual cells that makes you who you
11 are. Genetic fingerprint, if you will.

12 Of course, you immediately look for the
13 obvious. The door was the point of entry, the
14 glass was broken. So I was looking very
15 closely at this glass at the point of entry for
16 possibly some blood or hair or something of
17 this nature. Didn't find any.

18 So the next logical place would be the
19 doorknob. I tested the doorknob. I took a
20 sample from the doorknob for what is known as
21 touch DNA.

22 DNA analyses have advanced by leaps and
23 bounds over the years. Where it used to take a
24 drop of blood, now it only takes a pinpoint or
25 a speck of blood to do a DNA analysis. They've

1 got it down to where we can use touch DNA.

2 If you take your hand and it's -- it's
3 better if it is a rough object, where you have
4 a little friction, you could leave some cells
5 behind. These cells can be collected and turn
6 into our State Law Enforcement Division, to
7 their DNA lab, where they can be analyzed.

8 Q. Now, you mentioned that DNA could be found
9 in a person's hair. Could you see any hair at
10 this crime scene?

11 A. No, sir. Well, there was plenty of hair.
12 It's a barber shop, beauty salon. But what'd
13 be looking for, for the hair in this particular
14 incident, was at the door where maybe as they
15 were going in or out they got a little too
16 close to some glass or to the edge.

17 Q. Now, did you notice any blood or bodily
18 fluids on the floor or the door of this
19 business?

20 A. No, sir, I didn't. That's probably what
21 we'd call a touch DNA swab.

22 Q. Lieutenant Duggin, I'm going to show you
23 what has been marked for identification
24 purposes as State's Exhibit 23 and ask you if
25 you recognize this item?

1 A. State's Exhibit 23 is the envelope that
2 would have basically a Q-tip swab from the
3 doorknob. This is our package that we sent to
4 SLED.

5 Q. You mentioned this Q-tip swab. Is this a
6 swab that is specifically designed for evidence
7 collection?

8 A. Yes. They're sterile Q-tips, they're --
9 it's basically a Q-tip but it's kept in a
10 sterile environment. They're in a little paper
11 packet. We have to use distilled water that
12 comes with our kits to collect those.

13 Q. Why is that important?

14 A. So that we don't bring a contamination from
15 the outside to the Q-tip. Like I said, it's
16 very, very sensitive. So it doesn't take but
17 just a very, very small sample for DNA
18 analysis.

19 Q. Lieutenant Duggin, the item in State's
20 Exhibit 23 for identification, again, what is
21 that?

22 A. It is a Q-tip that I took a sample from the
23 doorknob, a DNA sample.

24 Q. Lieutenant Duggin, I am now going to show
25 you what has been marked -- what is State's

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1 Exhibit 11. Do you recognize this?

2 A. Yes, sir. State's Exhibit 11 is the
3 doorknob where I took the sample.

4 Q. And when you say took the sample, ---

5 A. I took the Q-tip and I put distilled water
6 on the Q-tip and I swabbed or rubbed the Q-tip
7 around the doorknob. So if there was any kind
8 of bodily cells or things of that type, I'd
9 recover them.

10 Q. Upon swabbing the doorknob, when that is
11 complete, what do you do with that object?

12 A. It's turned into evidence for eventual
13 transfer to the State Law Enforcement Division?

14 Q. Okay, and when you put these items into
15 evidence, does -- do these doorknob or do the
16 touch swabs have to be refrigerated or kept in
17 any special way?

18 A. The requirements now are that they have to
19 be maintained at room temperature, and that's
20 where it was housed.

21 Q. That would have been maintained in a safe,
22 secure location until it was transported?

23 A. Yes, sir.

24 Q. All right. Lieutenant Duggin, I am going
25 to show you State's Exhibit 24 ---

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1 THE COURT: Your Honor, this is
2 coming in by stipulation.

3 THE COURT: Is that correct?

4 MR. BRUNSON: That is correct,
5 Your Honor.

6 THE COURT: All right. Admitted
7 into evidence without objection.

8 (SO ENTERED AS STATE'S EXHIBIT 24)

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR:

11 Q. Lieutenant Duggin, are you familiar with
12 those forms?

13 A. Yes, sir. State's Exhibit 24, I'm familiar
14 with.

15 Q. Can you tell the jury briefly what this
16 form is?

17 A. This is a report that we get back from the
18 State Law Enforcement Division, this one coming
19 from the DNA lab. They have a number of
20 different laboratories. They forward this to
21 us after analysis.

22 Q. Okay. Now, when -- to your knowledge, when
23 these reports come back, what do they show?

24 A. They can show a number of things. One
25 could be that there was a DNA sample and there

1 was a DNA profile that was developed, and
2 entered into the data base with no identifiers,
3 no one identified. It could come back that a
4 DNA profile was developed with a match from the
5 DNA data base, so that we have identification.

6 Or, in this instance the analysis on the
7 swab was performed and no DNA profile was
8 developed.

9 Q. So the swab that you took from the
10 doorknob, according to that document which is
11 in evidence, SLED could not create a DNA
12 profile for anyone based on what you sent?

13 A. That's correct.

14 Q. All right. Lieutenant Duggin, going back
15 to the fingerprints that were collected, to
16 your knowledge was the Defendant's fingerprints
17 located at the scene?

18 A. No, sir.

19 Q. Based on your experience, what would be
20 some reasons that there may or may not be
21 fingerprints recovered?

22 A. Fingerprints are -- when they are left
23 behind, it's -- people don't always leave
24 fingerprints, I guess is the best way to put
25 it.

1 The weather has a lot to do with it. This
2 being January, the cold, you don't perspire as
3 much. That's what fingerprints are made of:
4 perspiration, water, oils and dirt. It's cast
5 off whenever you touch something. So the
6 temperature outside could have an effect on it.

7 The type surfaces that are being touched
8 could have an effect on it. A rough, grainy
9 surface is not a very good surface for leaving
10 a fingerprint; compared to a piece of glass,
11 for instance.

12 MR. BRUNSON: Your Honor, ---

13 THE COURT: Yes, sir?

14 MR. BRUNSON: --- I object. Mr.
15 Duggin has not been qualified as an expert and
16 he's giving opinion testimony.

17 SOLICITOR: Your Honor, this is
18 based on his experience. This isn't based on
19 an analysis of anything but his eighteen years
20 as an officer collecting fingerprints.
21 Certainly he can testify as to the types of
22 surface and the reasons that fingerprints may
23 or may not be left behind. This is not
24 opinion. This is based on what he knows.

25 THE COURT: Overruled. You may

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1 proceed.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR:

4 Q. Go ahead.

5 A. So the surface would have a lot -- a
6 tendency to -- whether fingerprints are going
7 to adhere to -- whether fingerprints are going
8 to be left or not.

9 And also the environment outside. If it's
10 an outside-type situation, whether it's raining
11 or things of that nature.

12 Then, again, if the subject has been
13 wearing gloves or had something over his hands.
14 We've seen everything from gloves to people
15 putting glue on their fingers to hide
16 fingerprints. So it could be something just as
17 simple as a glove.

18 SOLICITOR: Answer any questions
19 that Mr. Brunson may have for you.

20 THE COURT: Mr. Brunson.

21 MR. BRUNSON: Thank you, Your
22 Honor.

23 CROSS EXAMINATION

24 BY MR. BRUNSON:

25 Q. Lieutenant, did you collect any video

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1 evidence?

2 A. No, sir.

3 Q. So there were no cameras in the salon?

4 A. Not that I am aware of.

5 Q. None of the prints that you collected came
6 back to my client; is that right?

7 A. That's correct.

8 Q. The gel lift didn't match any sneaker
9 belonging to my client; isn't that right?

10 A. I've never -- I don't know about the shoe,
11 as far as being a comparison. A shoe was never
12 submitted to me to be compared.

13 Q. So you didn't match it with my client's
14 shoe, then?

15 A. I didn't ---

16 Q. You didn't match it to any shoe?

17 A. Didn't match it to any shoe. That's
18 correct.

19 Q. All right. In fact, you were never even
20 given one for comparison?

21 A. That's correct.

22 Q. And then in the collection of DNA,
23 deoxyribonucleic acid; is that correct?

24 A. Yes, sir.

25 Q. And State's Exhibit 24 that's already in

1 evidence is the result of that; correct?

2 A. Yes, sir.

3 Q. And on that first page, what is that
4 result? Can you read from that page?

5 A. State's Exhibit 24, the results, (reading:
6 "No DNA profile was developed from item one."
7 Item one being a swab from the doorknob.

8 Q. Isn't it true, Lieutenant Duggin, that you
9 have no evidence linking my client from your --
10 your crime scene investigation?

11 A. From the crime scene investigation, that's
12 correct.

13 MR. BRUNSON: Nothing further,
14 Your Honor.

15 THE COURT: Yes, sir. Mr. Griffin?

16 REDIRECT EXAMINATION

17 BY SOLICITOR:

18 Q. Lieutenant Duggin, evidence collect from a
19 crime scene processing, what type of evidence
20 do you recall?

21 A. Trace evidence.

22 Q. Trace?

23 A. Physical evidence, (affirmative nod).

24 Q. Forensic evidence?

25 A. Forensic evidence, (affirmative nod).

1 Q. In a crime scene that's what you're looking
2 for, correct?

3 A. That's correct.

4 Q. So your processing of the scene, ultimately
5 there was no evidence of that type collected;
6 is that correct?

7 A. There was no forensic evidence collected.
8 Correct.

9 SOLICITOR: Any recross?

10 MR. BRUNSON: None, Your Honor.

11 THE COURT: Thank you.

12 (WITNESS STEPS DOWN)

13 THE COURT: Any objection to
14 Lieutenant Duggin being excused?

15 SOLICITOR: None from the State,
16 Your Honor.

17 MR. BRUNSON: None from the
18 defense.

19 THE COURT: Thank you. If any of
20 the jurors want to stand up for a minute before
21 we call our next witness.

22 You may call your next witness.

23 SOLICITOR: Your Honor, the State
24 calls Marie Hodge.

25 (WITNESS TAKES STAND)

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1 MARIE HODGE, being duly sworn to tell
2 the truth, the whole truth and nothing but the
3 truth, testified, as follows:

4 DIRECT EXAMINATION

5 BY SOLICITOR:

6 Q. Ms. Hodge, by whom are you employed?

7 A. The Sumter City Police Department.

8 Q. How long have you been with the Police
9 Department?

10 A. Thirty-eight years.

11 Q. Now, Ms. Hodge, what is your job title and
12 duties with the Police Department?

13 A. I am the AFIS examiner. AFIS stands for
14 Automated Fingerprint Identification System.
15 My duties are to examine latent fingerprints
16 that are lifted a crime scene, put them in to
17 the AFIS system and see if we can get
18 identification.

19 Q. What does the word "latent" mean?

20 A. Latent means a fingerprint that is lifted
21 from a crime scene that you can't see with the
22 naked eye.

23 Q. So a latent print wouldn't be obvious to
24 someone?

25 A. Correct. It's not obvious.

1 Q. How long have you been in the capacity as
2 the AFIS fingerprint examiner?

3 A. I've been the AFIS fingerprint examiner
4 since 2005. Prior to that my fingerprint
5 experience started in 1968 when I went to work
6 for the identification division of the FBI. I
7 worked up there for approximately two years. I
8 started with the Sumter Police Department in
9 1973 and was in charge of the fingerprint
10 identification records. It just progressed
11 thru the years to dealing with fingerprints of
12 victims and things like that.

13 Q. How does one -- what type of training does
14 one receive to become an AFIS examiner?

15 A. To become an AFIS examiner, we have to go
16 through training over at the State Law
17 Enforcement Division. We're tested on
18 fingerprint identification and pattern
19 recognition. We have to be certified through
20 the State Law Enforcement Division before we
21 can operate the AFIS system in South Carolina.

22 Q. Are you certified through SLED as an AFIS
23 examiner?

24 A. Yes.

25 Q. How long have been certified?

1 A. Since 2005. We had to do that before we
2 could get our operating system.

3 Q. Ms. Hodge, is it fair to say you've
4 examined fingerprints as a daily -- daily, in
5 your job duties?

6 A. Yes.

7 Q. Okay. How many fingerprints would you
8 estimate that you've examined during the course
9 of your career?

10 A. I think to-date, right now I've got right
11 at sixteen hundred cases that we've done. It
12 averages about two latent fingerprints per
13 case. Some have been more than that. So in
14 the thousands.

15 Q. Have you ever testified in a court of law
16 in this state with regard to fingerprint
17 identification examination?

18 A. Yes, I have.

19 Q. How many times?

20 A. Four.

21 Q. Have you been qualified as an expert
22 witness in those cases?

23 A. Yes, I have.

24 SOLICITOR: Your Honor, at this time
25 we would offer Ms. Hodge as an expert in the

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1 field of fingerprint identification and
2 examination.

3 THE COURT: Any objection?

4 MR. BRUNSON: Without objection.

5 THE COURT: Ladies and Gentlemen,
6 she's been offered and accepted as an expert in
7 fingerprints identification.

8 Let me tell you, first of all, that
9 normally witnesses cannot testify to opinions.
10 They can only testify to what they saw, heard,
11 smelled, tasted or felt. However, when
12 somebody has the level of schooling and
13 experience, we allow then to testify, to make
14 an opinion concerning something.

15 Now, although I will allow her to
16 testify in this matter, whether you as jurors
17 decide to accept her testimony is totally up to
18 you. You can give it the amount of weight that
19 you deem -- that you think is appropriate. You
20 can treat this just like any other piece of
21 evidence that is admitted and give it the
22 weight that it deserves.

23 You may proceed.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR:

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1 Q. Ms. Hodge, did you have an occasion to
2 examine any fingerprints that were collected
3 from the scene of an armed robbery at
4 Lafayette, Untouchable Cuts?

5 A. Yes, I did.

6 Q. Briefly tell the jury about what you
7 examined in this case.

8 A. I've got my worksheet. There were several
9 things that were submitted to me: two gel lifts
10 and one piece of cardboard. The fingerprint
11 images on those items were examined by me to
12 determine whether they were of a quality to
13 even be examined in the AFIS system. Of the
14 latent images that I viewed on those items
15 there were only two images that were good
16 enough to be put into the AFIS system. I
17 believe that those were marked. Of the two
18 images that were put into the AFIS system, I
19 did not get an identification on either one.

20 Q. Okay. Ms. Hodge, I am going to show you
21 what has been marked for identification as
22 State's Exhibit 20. Would you view that and
23 tell me if you recognize it?

24 A. Yes, this is what's called a gel lift.
25 It's got my initials over here in the corner

1 ane the date that I did the examination.

2 A gel lift is a lift that is actually --
3 it's a thicker piece. When you put this
4 particular lift over the fingerprint and lift
5 it up, then the fingerprint is actually
6 reversed. In other words, something that looks
7 like it is going this way (gesturing) is
8 actually going this way. So when we put it
9 into the computer, we actually have to reverse
10 the image so that it will be correct.

11 I labeled two different areas on this as
12 Image 2.1 and 2.2.

13 Q. Okay. Those images, were they the ones
14 that were potentially suitable for
15 identification?

16 A. They were suitable to be put into the
17 computer, yes, but there was no identification
18 made.

19 Q. Okay. Now, when you say suitable, what
20 does that mean?

21 A. To be put into the AFIS system, it has to
22 be of enough quality that the computer is able
23 to make a determination or make a comparison
24 with other fingerprints that may be on file.
25 So you have to have a certain number of

1 identification points.

2 In other words, fingerprints are made up of
3 what we call "ridges", friction ridge. In
4 those ridges there are different -- in other
5 words, you might have one ridge and it splits
6 apart at one point. That one point where it
7 splits apart is called a bifurcation. You
8 might have another ridge next to it that comes
9 up and just suddenly stops. That's an ending
10 ridge.

11 You have to have at least eight or nine of
12 those points of identification to be able to
13 put the fingerprint into the system so that the
14 system can work. If you don't have enough of
15 those points, then the system not going to work
16 and it's not going to be able to bring you
17 anything back. You might have a lot of ridges
18 but they might not be points in those ridges;
19 so, therefore, you wouldn't be able to put that
20 into the system even though you could make an
21 identification from that print.

22 Q. And these two images that were deemed
23 suitable to present for identification, did you
24 receive anything based on the analysis that
25 would point to anyone in particular?

1 A. No, I did not.

2 Q. Now, Ms. Hodge, I am going to show you what
3 has been marked as State's Exhibit 19 for
4 identification. Do you recognize that
5 document?

6 A. This was the other gel lift. There were no
7 images on this particular lift that were
8 suitable for anything.

9 Q. Okay. So based on State's Exhibit 19,
10 there were no images of anybody's fingerprints
11 to compare?

12 A. No. Basically what you'd call smudges. A
13 lot of times if you've got too much moisture on
14 your fingers, you might -- you're leaving a
15 fingerprint but there's nothing there but just
16 smudges. You can't get the detail that you
17 need, so you couldn't identify them.

18 Q. Ms. Hodge, is it fair to say that based on
19 your education, training and experience that it
20 would be more or less likely to find suitable
21 fingerprints in a public place?

22 A. You would -- well, it's kinda hard to say.
23 It depends on what kind of surface you're
24 looking at.

25 Q. Right.

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1 A. Okay. Naturally a countertop or something
2 that there's going to be multiple prints,
3 prints over prints over prints. So you'd be
4 less likely to find something that's
5 identifiable, because there's just so much
6 there and it's going to be smudged. So it just
7 depends on what type of surface and what you're
8 looking at.

9 THE COURT: Hold on just a second.
10 Ladies and Gentlemen of the jury, I know that
11 you of you listen pretty well with your eyes
12 closed but it's important that you keep your
13 eyes open, so -- I'm sure you all are listening
14 carefully but you need to keep your eyes open.

15 SOLICITOR: Thank you, Your Honor.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR:

18 Q. Ms. Hodge, based on your education,
19 training and experience, would the presence of
20 chemicals or oils have any bearing on the
21 suitability of fingerprints to be -- would that
22 have any effect on fingerprints?

23 A. I wouldn't be certified as an expert as far
24 as processing. I would think not, but I
25 couldn't offer a good opinion on that because

1 I'm not certified as an expert in that area.

2 Q. Okay. All right. So if you've got a place
3 like a barber shop, a counter that multiple
4 people would come in contact with, would it be
5 more likely or less likely that you would
6 receive suitable prints for analysis?

7 A. As I stated, with multiple prints -- with
8 that many people at one counter, there would be
9 prints over prints over prints. I would think
10 that it would be less likely to get a good,
11 identifiable print off of that particular
12 surface because of the number of people that
13 have touched it.

14 Q. Ms. Hodge, I am going to show you what has
15 been marked for identification as State's
16 Exhibit 21 and ask if you recognize this item?

17 A. Yes. This is a piece of cardboard that was
18 submitted. Also, I did get one identifiable
19 print that was good enough to be processed
20 through the AFIS system. It's also marked with
21 my initials and the date of the examination.

22 Q. Okay. With regard to this item, was the
23 suitable print able to be matched to any print
24 in the AFIS system?

25 A. No, it was not.

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1 Q. Even though the print was suitable for
2 analysis, what could be some reasons that it
3 may not have been identifiable through the AFIS
4 system?

5 A. There may not have been enough there on the
6 -- it depends on the quality of the prints that
7 are in the system, you know. Sometimes those
8 prints are not of the best quality. So it's
9 not to say that those prints aren't there.
10 Sometimes there's a good identifiable latent
11 print but the prints that might be in the
12 system might not be good, or that particular
13 finger may not be of good enough detail for
14 identification. We have had that to happen.

15 Q. So based on your experience, is the AFIS
16 system -- like you see on television, where you
17 feed something in and it pops up with the 'this
18 belongs to this person.'

19 A. No, it's not like that. I call it my
20 C.S.I. machine but it doesn't quite look
21 exactly like or work exactly like that.

22 The -- any kind of fingerprint analysis
23 system, based on computer, is not really
24 looking at a picture. It's looking at what the
25 operator plots. So it's more of a mathematical

1 thing. It'll give you the best reasonable
2 proximity of the points that you plot. So if
3 I've got nine points and they are like here,
4 here, here, here and here, the system is going
5 to search all of the fingerprints that are out
6 there in the system and it's going to bring me
7 back the ones that are closest to that
8 configuration of plots or points. Then it is
9 up to the operator to look at those, one at a
10 time, side by side, with the latent image --
11 and we do this on the computer, you go back and
12 forth, back and forth, to make sure that it is
13 a match. So even though I didn't get a match,
14 I still had to examine each one of these images
15 compared with the top forty respondents. So we
16 had to go through thirty possible fingerprints
17 to make sure that we did or did not have a
18 match.

19 Q. So each certified AFIS examiner makes the
20 determination as to whether the prints are
21 matches. Is that correct?

22 A. Yes. We go through an AC method. It's an
23 analyses comparison, evaluate and verify.
24 That's the methodology that most every -- most
25 every fingerprint examiner uses.

1 The first thing you do is analyze the
2 latent print to see if it's of good enough
3 quality to even compare. Once you've analyzed
4 it and you think it's of good enough quality,
5 then you put it into the system. But you've
6 got to mark the points of identification so
7 that the AFIS system will have something to
8 compare to. If that makes sense.

9 Q. So you did that with the two prints in this
10 case?

11 A. Yes.

12 Q. And there results were?

13 A. The results were that we did not have any
14 identification with prints in the AFIS system.

15 SOLICITOR: Answer any questions
16 that Mr. Brunson may have for you.

17 THE COURT: Mr. Brunson.

18 MR. BRUNSON: Thank you, Your
19 Honor.

20 CROSS EXAMINATION

21 BY MR. BRUNSON:

22 Q. Good morning, Ms. Hodge.

23 A. Good morning.

24 Q. You've been referring to State's Exhibit 20
25 and State's Exhibit 19, isn't that correct?

1 A. Yes, sir, and this.

2 Q. And State's Exhibit 21.

3 A. (Affirmative nod).

4 Q. I believe that you testified that you
5 obtained fingerprints that had enough ID
6 points; is that correct?

7 A. Yes, to be entered into the AFIS system.

8 Q. And you entered them?

9 A. Yes, sir.

10 Q. All right. Where was one of the -- where
11 were the prints from?

12 A. This particular print was lifted from the
13 weave display.

14 Q. That is State's what?

15 A. This is -- I can't read that. State's
16 Exhibit 20.

17 Q. All right.

18 A. There were no images on State's Exhibit 19
19 that were of good enough quality.

20 Q. Okay.

21 A. There was one on this, State's Exhibit 21,
22 and this is front a cutting from a cardboard
23 box and on the back it says "Vanessa's Fashion
24 Hair, Fifth Avenue Collection."

25 Q. So you had a readable print from State's

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1 Exhibit 20?

2 A. (Affirmative nod).

3 Q. And State's Exhibit 21, is that correct?

4 A. Correct.

5 Q. And neither of those prints matched my
6 client, Mr. Joseph Dunbar?

7 A. To my knowledge, no.

8 Q. In fact, you have no other evidence to
9 offer that leads to my client's responsibility
10 for a robbery?

11 A. No, sir.

12 MR. BRUNSON: Nothing further.

13 THE COURT: Mr. Griffin?

14 SOLICITOR: No redirect, Your Honor.

15 THE COURT: You may step down.

16 (WITNESS STEPS DOWN)

17 THE COURT: Next.

18 SOLICITOR: The State calls Jim

19 Alsbrook to the stand.

20 (WITNESS TAKES STAND)

21 JAMES ALSBROOK, being duly sworn to
22 tell the truth, the whole truth and nothing but
23 the truth, testified, as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR:

1 Q. Mr. Alsbrook, by whom are you employed?

2 A. Sumter City Police Department.

3 Q. How long have you been with the Police
4 Department?

5 A. Five years, six months.

6 Q. What is your title with the Police
7 Department?

8 A. Evidence technician.

9 Q. How long have you been the evidence
10 technician?

11 A. Five years, six months.

12 Q. In your capacity as evidence technician,
13 generally what are your day to day duties?

14 A. Every day when we come into work, we check
15 the evidence lockers to see if there's been
16 anything placed within them.

17 There are only four currently who have
18 authorization to go into an evidence locker to
19 retrieve any items that have been placed with
20 them.

21 We verify that the chain of custody is with
22 the item, that there is a copy of the incident
23 report, and that the item actually meet or
24 matches the chain of custody.

25 We take all of those items back to the

1 office area. I sign the chain of custody
2 showing receipt of the items, log them into the
3 computer, then store them for court purposes or
4 other processing needs.

5 Q. You say that you store the items for court
6 purposes. Where are they stored?

7 A. There is an area behind my desk that is
8 controlled -- right now only four people have
9 access to it currently, we all have keys and
10 codes to get into the office area. They are
11 stored either in files or boxes for the
12 appropriate -- tagged for the necessary item.

13 Q. These four people that have access to this
14 area, are they all employees of the Police
15 Department?

16 A. Three are officers: Lieutenant Duggin who
17 testified earlier, Patrolman Tyler (phonetic),
18 and Patrolman Allen.

19 Q. And then yourself?

20 A. Myself, (affirmative nod).

21 Q. Now, this location where the evidence is
22 kept, it's, to your knowledge, secure?

23 A. It is.

24 Q. All right. Mr. Alsbrook, I am going to
25 show you some items of evidence and ask if you

1 recognize them, the first being State's Exhibit
2 19 for identification purposes. Do you
3 recognize that?

4 A. (Upon review), yes, sir. I do.

5 Q. What is that?

6 A. It is called a white gel lift. It's one of
7 the items that was turned into Evidence by
8 Truman Duggin.

9 Q. Did anybody else have access to this item
10 before it came into your possession?

11 A. After the Lieutenant turned into Evidence,
12 I signed for it, then the item was transferred
13 to Ms. Hodge for her examination and then
14 returned back to Evidence.

15 Q. When was it returned back to Evidence?

16 A. January 14th, 2010.

17 Q. Since then has it been in your continuous
18 care, custody and control?

19 A. It has.

20 Q. Did you bring it to court here this
21 morning?

22 A. I did.

23 Q. To your knowledge, has anybody tampered
24 with it or done anything to this item of
25 evidence from the time that it was turned back

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1 into you until today?

2 A. No, sir.

3 SOLICITOR: Your Honor, we would
4 offer State's Exhibit 19.

5 THE COURT: Any objection?

6 MR. BRUNSON: No objection.

7 THE COURT: Without objection,
8 State's Exhibit 19 is admitted into evidence.

9 (SO ENTERED AS STATE'S EXHIBIT 19)

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR:

12 Q. Mr. Alsbrook, I am going to show you
13 State's Exhibit 20 for identification and ask
14 if you recognize this.

15 A. Yes, sir, I do.

16 Q. What is that?

17 A. It is the second white gel lift that was
18 turned into Evidence by Lieutenant Duggin.

19 Q. Okay. After it was turned into Evidence,
20 did anybody sign it out?

21 A. Just as I stated earlier with the first
22 item, to Ms. Hodge, who then returned it back
23 to me.

24 Q. When did she return it back to you?

25 A. January 14th, 2010.

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1 Q. And since it was returned to you, has it
2 been in your continuous care, custody and
3 control?

4 A. Yes, sir.

5 Q. Has anybody tampered with it or removed it,
6 to your knowledge?

7 A. No, sir.

8 Q. Did you bring it to court with you this
9 morning?

10 A. I did.

11 Q SOLICITOR: Your Honor, we would
12 offer State's Exhibit 20.

13 THE COURT: Any objection to State's
14 evidence?

15 MR. BRUNSON: Without of the jury,
16 Your Honor.

17 THE COURT: Without objection,
18 State's Exhibit 20 is admitted into evidence.

19 (SO ENTERED AS STATE'S EXHIBIT 20)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR:

22 Q. Mr. Alsbrook, I am going to show you what
23 has been marked for identification as State's
24 Exhibit 21. Do you recognize that item?

25 A. Yes, sir, I do.

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1 Q. What is that?

2 A. State's Exhibit 21 matches a piece of
3 cardboard that was turned into Evidence.

4 Q. When was that turned into Evidence?

5 A. 2 January, 2010.

6 Q. By?

7 A. Truman Duggin.

8 Q. Did anybody retrieve that item after it was
9 put into Evidence?

10 A. As the first two items, Ms. Hodge signed
11 them out for her purposes and then returned
12 them to me on January 14th, 2010.

13 Q. Since January 14th, 2010, has it been in
14 your continuous care, custody and control?

15 A. It has.

16 Q. Has anybody tampered it or removed it, to
17 your knowledge?

18 A. No, sir.

19 Q. Did you bring it to court with you this
20 morning?

21 A. I did.

22 SOLICITOR: Your Honor, we would
23 offer State's Exhibit 21.

24 THE COURT: Any objection to State's
25 Exhibit 21?

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1 MR. BRUNSON: Without objection,
2 Your Honor.

3 THE COURT: All right. Without
4 objection, it is admitted into evidence.

5 (SO ENTERED AS STATE'S EXHIBIT 21)

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR:

8 Q. I am going to show you what has been marked
9 for identification as State's Exhibit 22. I
10 asked if you recognize this item.

11 A. Yes, sir.

12 Q. What is that?

13 A. State's Exhibit 22 is a piece of cardboard
14 showing a footwear impression.

15 Q. When was it turned into evidence?

16 A. The same. January 2, 2010.

17 Q. And did anybody removed it from Evidence?

18 A. It was turned over to Ms. Hodge, and she
19 turned it back into Evidence on 14 January.

20 Q. Since January 14, 2010, has it been in your
21 continuous care, custody and control?

22 A. It has.

23 Q. Has anybody removed that are tampered with
24 it anyway?

25 A. No.

1 Q. Did you bring it with you to court with you
2 this morning?

3 A. I did.

4 SOLICITOR: Your Honor, we would
5 offer State's Exhibit 22.

6 THE COURT: Any objection to State's
7 Exhibit 22?

8 MR. BRUNSON: May the Defendant
9 examine State's Exhibit 22?

10 THE COURT: Certainly.

11 SOLICITOR: (Tenders).

12 MR. BRUNSON: (Upon review), no
13 objection.

14 THE COURT: Without objection,
15 State's Exhibit is in evidence.

16 (SO ENTERED AS STATE'S EXHIBIT 22)

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR:

19 Q. Mr. Alsbrook, I am going to show you what
20 as been marked as State's Exhibit 23 for
21 identification and ask you if you recognize
22 this item?

23 A. Yes, sir.

24 Q. What is that item?

25 A. That would be the DNA swab that Lieutenant

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1 Duggin turned into Evidence, requesting it to
2 go to SLED for analysis.

3 Q. When something is turned in with a request
4 to be analyzed at SLED, what do you do?

5 A. The process provided is that I have to go
6 to SLED, to enter the item as a submission that
7 will be turned into them. I transport the item
8 to SLED. They log it into their computer
9 system, and they give me a written receipt
10 showing acceptance of the item. I place that
11 in the file. Then at some given point either
12 myself or one of the other Evidence personnel
13 will go to SLED, retrieve the item and return
14 to the Evidence locker.

15 Q. When did you take this item to SLED?

16 A. January 6th, 2010.

17 Q. And when did you -- or did you retrieve it
18 from SLED at any point in time?

19 A. I presume so. I don't have the date with
20 me, but generally -- we have the item.

21 Q. Did you bring it to court with you this
22 morning?

23 A. I did.

24 Q. Where did you locate it this morning?

25 A. (No verbal response).

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1 Q. Where was the item when you got it this
2 morning?

3 A. It was in my Evidence room.

4 Q. To your knowledge has anybody tampered with
5 it in any way?

6 A. No, sir, it's still contained in the heat-
7 sealed pouch and it appears to be sealed.

8 SOLICITOR: Your Honor, we would
9 offer State's Exhibit 23.

10 THE COURT: Any objection?

11 MR. BRUNSON: May the Defendant
12 examine it?

13 THE COURT: He certainly may.

14 SOLICITOR: (Tenders).

15 MR. BRUNSON: (Upon review), no
16 objection.

17 THE COURT: Without objection,
18 State's Exhibit 23 is entered.

19 (SO ENTERED AS STATE'S EXHIBIT 23)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR:

22 Q. Mr. Alsbrook, please answer any questions
23 that Mr. Brunson may have for you.

24 THE COURT: Mr Brunson.

25 MR. BRUNSON: Thank you, Your

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1 Honor.

2 CROSS EXAMINATION

3 BY MR. BRUNSON:

4 Q. Good morning, Mr. Alsbrook.

5 A. Good morning, sir.

6 Q. He testified that you're the evidence
7 technician.

8 A. Correct.

9 Q. Are you an officer of the law?

10 A. I am not commissioned, no, sir.

11 Q. Are you the senior evidence technician? Or
12 are you a supervisor over the office?

13 A. No, sir, Truman Duggin is the supervisor.
14 I'm second in the Evidence department.

15 Q. Okay. I believe that you testified that
16 your office obtained evidence in this case?

17 A. Yes.

18 Q. Are you aware of the result of any tests
19 that were performed on this evidence?

20 A. I have the results of SLED.

21 Q. Okay. Do you have any physical evidence
22 that tends to show that my client committed a
23 robbery?

24 SOLICITOR: Your Honor, he's just
25 the custodian.

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1 THE COURT: He's just the custodian.
2 He doesn't analyze it.

3 MR. BRUNSON: Yes, sir.

4 THE COURT: He can't answer it.

5 MR. BRUNSON: Okay.

6 CROSS EXAMINATION CONTINUED

7 BY MR. BRUNSON:

8 Q. So, Mr. Alsbrook, your job then is just to
9 collect the evidence?

10 SOLICITOR: Your Honor, he's the
11 custodian. He receives the evidence but he
12 doesn't ---

13 THE COURT: He just holds it. He
14 doesn't analyze it, he doesn't collect it.
15 Correct?

16 THE WITNESS: Yes, sir.

17 MR. BRUNSON: Yes, sir.

18 THE COURT: Once somebody else has
19 collected it, he holds it.

20 MR. BRUNSON: Yes, sir, Your
21 Honor. All right. I'll rephrase it.

22 CROSS EXAMINATION CONTINUED

23 BY MR. BRUNSON:

24 Q. You receive evidence from other members of
25 law enforcement and hold it?

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1 A. Yes.

2 Q. And you sometimes take it for processing,
3 deliver it to be processed?

4 A. To SLED, (affirmative nod). If that's a
5 question, -- yes, sir.

6 Q. Yeah. And after it is processed, do you
7 get it back?

8 A. Yes.

9 Q. And hold it in your custody?

10 A. Correct.

11 Q. And you testified that there's nothing to
12 suggest that this evidence was tampered with;
13 correct?

14 A. There's nothing, to my knowledge.

15 MR. BRUNSON: Right. Nothing
16 further.

17 THE COURT: Any redirect?

18 SOLICITOR: No, sir, Judge.

19 THE COURT: Thank you. You may step
20 down.

21 (WITNESS STEPS DOWN)

22 THE COURT: Let me see the attorneys
23 for a minute.

24 (OFF RECORD BENCH CONFERENCE)

25 THE COURT: You may call your next

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1 witness.

2 SOLICITOR: The State calls
3 Detective William Lyons.

4 (WITNESS TAKES STAND)

5 WILLIAM LYONS, being duly sworn to
6 tell the truth, the whole truth and nothing but
7 the truth, testified, as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Detective Lyons, by whom are you employed?

11 A. The City of Sumter Police Department.

12 Q. How long have you been with the Police
13 Department?

14 A. Since 2004.

15 Q. All right. Detective Lyons, what is your
16 job title?

17 A. Senior Detective in the Violent Crimes
18 Division.

19 Q. Being in the violent crimes division, what
20 type of crimes do you usually investigate?

21 A. We investigate crimes against persons, such
22 as: homicides, robbery, armed robberies,
23 shootings, domestic disputes, a wide variety of
24 different types of violent crimes.

25 Q. How long have you been with the

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1 investigative services division?

2 A. Four years.

3 Q. Detective Lyons, were you on duty on
4 January 10st, 2010?

5 A. Yes, I was.

6 Q. Did you have occasion to respond to any
7 calls that day?

8 A. I did. I responded to an armed robbery
9 call at South Lafayette, at the Untouchable
10 Cuts beauty salon/barber shop.

11 Q. How, generally, is a detective made aware
12 of a situation in which they may have to be
13 involved?

14 A. We're made aware in a variety of ways. If
15 it is a business, we may respond to an alarm,
16 respond with patrol units.

17 If it's on a weekend, we have a detective
18 that is on-call twenty-four hours a day, seven
19 days a week, three hundred sixty-five days out
20 of the year. We also have a duty detective
21 that works from 2:00 to 10:00 Tuesday through
22 Saturday.

23 On this particular day, this was over a
24 holiday weekend, I was on call. I -- the call
25 came in -- I'd been out working that day

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1 already, so I was actually already out, so I
2 didn't have to get called by the supervisor.
3 I just went ahead and responded to the scene.
4 Q. And in your capacity as an investigator,
5 what is the first thing that you did on
6 receiving this call?

7 A. Responded to the scene. I was given some
8 descriptions of the individuals thought to be
9 involved in the robbery: black males dressed in
10 all black clothing. The initial description
11 came out over the radio.

12 While responding, I noticed a young man
13 walking on Brand (phonetic) Street. I stopped
14 and spoke with him and the gentleman identified
15 himself as Rakeem Dunbar. The gentleman had on
16 red socks, black Nike -- I call them athletic
17 flip-flops. Not between the toes type flip-
18 flops. Black clothing.

19 He identified himself. I did a quick field
20 interview to determine where he was going,
21 where he had been coming from, did a pat-down
22 for weapons. During that pat-down, I
23 discovered a credit card in his possession that
24 had Joseph Dunbar's name on it. I didn't think
25 anything of it at the time. I gave the

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1 gentleman back the credit card.

2 He was initially transported to the station
3 for further questioning and at that point I
4 proceeded ahead on to the scene, where I met
5 Lieutenant Duggin and some of the other
6 officers that had arrived at the scene.

7 Q. At that point, had you received any
8 specific descriptions other than the dark
9 clothing, that it was males in the business?

10 A. No. The only description that I'd gotten
11 previously was what had come out on the radio,
12 that it was multiple black males that had
13 entered the business and robbed it at gunpoint,
14 all dressed in dark clothing. We hadn't talked
15 at anyone at the business to receive any kind
16 of specific description of any of the
17 individuals. We didn't get that until after
18 they were interviewed and had given their
19 statements.

20 Q. Just generally, this individual, Rakeem
21 Dunbar, what -- give us a physical description
22 of him.

23 A. He's a taller black male. I think at the
24 time that we interviewed him that he was around
25 the age of fourteen or fifteen years of age.

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1 Hew as a juvenile at the time. Tall, dark-
2 complexion, longer dreads -- not quite to the
3 shoulder, but longer length hair.

4 Q. Okay. Detective Lyons, upon arriving at
5 the scene at Untouchable Cuts, what did you do?

6 A. Spoke with some of the victims that were
7 there. Lieutenant Duggin and the other crime
8 scene officers arrived on scene. I stayed
9 there for a short period of time, didn't do any
10 processing, then I went back to the station
11 where I interviewed Mr. Rakeem Dunbar.

12 Q. Okay. Did you subsequently have an
13 occasion to speak with the victims in this
14 case?

15 A. Yeah, it was after Mr. Dunbar had been
16 released to a family member, I believe his
17 parents, father and mother. The victims, Ms.
18 Pollard and some of the others that inside the
19 business, had come to the law enforcement
20 center along with one of our other Detectives,
21 Detective Allen, where they had subsequently
22 given their statements about what had happened.

23 After reviewing the statements and speaking
24 with Ms. Pollard, I got the description of the
25 gentleman that had the gun on her. He was

1 described as a light-skinned black male, short
2 -- the main characteristic that stood out to me
3 when she was giving the description was the
4 facial acne or, for lack of a better term,
5 pimples or pits that were in his face. The
6 fact that he had hair that wasn't dreads length
7 but it was twistable or braidable; however you
8 want to say it, he had enough hair to where it
9 could be manipulated and made to look like
10 twists or braids.

11 Q. So, Detective Lyons, based on your contact
12 with Rakeem Dunbar, based on the description
13 that you received from Ms. Pollard, what did
14 you do then?

15 A. After I spoke with Ms. Pollard and had that
16 description, I thought back to my interview
17 with Rakeem Dunbar and the fact that he had
18 Joseph Dunbar's credit card with him. Right
19 offhand, I knew what Joseph Dunbar looked like,
20 so he immediately became a person of interest
21 to me in the case because he fit -- he fit the
22 physical description, almost to a T, at that
23 time, back in January of 2010. So based on
24 that information, after talking with Ms.
25 Pollard, going back to my interview with Mr.

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1 Rakeem Dunbar, I decided to obtain a photo
2 lineup of Mr. Joseph Dunbar.

3 Q. Okay. Now, going back to the interview
4 with Rakeem Dunbar, did he make any admissions
5 to you that he -- that you can remember?

6 A. He did admit that he had been inside
7 Untouchable Cuts, which would have been
8 consistent with the information that the
9 victims gave. He matched the physical
10 description of the individual that came in and
11 inquired about the owner, with the red socks
12 and the white Nike flip-flops/bedroom-type
13 shoes.

14 Q. All right. So Detective Lyons, at this
15 point, after received the description from the
16 victims, what did you do next?

17 A. As I stated, I put together a request for
18 the State Law Enforcement Division to put
19 together a six-person lineup for me. We don't
20 typically do our own lineups. I obtained a
21 photograph of Mr. Dunbar and sent that
22 photograph, along with his name, date of birth,
23 case number, the crime that we were
24 investigating. I sent that information to the
25 State Law Enforcement Division and they, in

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1 turn, generated a six person photo lineup for
2 us.

3 Q. All right. So you didn't have any hand in
4 preparing the lineup other than sending a
5 picture of your suspect at that -- or someone
6 that you thought should be included in the
7 lineup?

8 A. Correct.

9 Q. All right. At that point when you
10 requested the six person photo lineup, had
11 anybody given you the name of Joseph Dunbar?

12 A. No, they hadn't.

13 Q. Ms. Pollard, did she tell you that Joseph
14 Dunbar did it?

15 A. No, she didn't.

16 Q. Did any of the other victims give you the
17 name of Joseph Dunbar?

18 A. No, they didn't.

19 Q. So explain to the jury your basis for
20 including Mr. Dunbar in the lineup?

21 A. The reason I put -- that I requested a
22 photo lineup that included Mr. Joseph Dunbar
23 was based on my initial stop of Rakeem Dunbar.
24 He had Mr. Dunbar's, Mr. Joseph Dunbar's credit
25 card and, like I said, at the time when I first

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1 stopped him and interviewed him it didn't seem
2 important because I -- I hadn't developed
3 Joseph Dunbar as a suspect.

4 Talking with Ms. Mary Pollard and the other
5 ladies, Ms. Pollard gave me that description of
6 a light-skinned black male with the pits, acne
7 on the face and the hair, I immediately thought
8 back to, 'well, okay, Rakeem Dunbar had Joseph
9 Dunbar's credit card on him' and Joseph Dunbar
10 matched that description almost to a T. So I
11 decided to get a photo lineup of Mr. Joseph
12 Dunbar.

13 Had I been given the name, there would have
14 been no need for me to obtain a photo lineup.
15 Had Ms. Pollard, or any one of the other
16 victims that were present that day said 'Joseph
17 Dunbar is the one that robbed me,' there would
18 have been no need for a photo lineup. I would
19 just have obtained the arrest warrant for him
20 without the necessity of a photo lineup.

21 The photo lineup was based on my contact
22 with Rakeem Dunbar and my conversations with
23 Ms. Pollard and the other victims. I developed
24 him as a suspect and put him in a photo lineup.

25 Q. All right. Now, Detective Lyons, did you

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1 have occasion to ask any of the victims to come
2 to the law enforcement center after you decided
3 to have this lineup compiled?

4 A. I did. I had Ms. Pollard come to the law
5 enforcement center on January 2nd, around 8:50
6 that morning, to look at the photo lineup that
7 I had gotten back from the State Law
8 Enforcement Division.

9 Q. Okay. Detective, I am going to show you
10 what has been marked for identification as
11 State's Exhibit 1. I will actually show you
12 two documents, State's Exhibit 1 and State's
13 Exhibit 2 for identification. Do you recognize
14 these documents?

15 A. I do. State's Exhibit 1 is what we call
16 our witness lineup identification form.
17 State's Exhibit 2 is actually the photo lineup
18 itself.

19 Q. Okay. Now, when you were going to present
20 a witness the photo lineup, tell the jury a
21 little bit about the procedure.

22 A. Bring them in, there's instructions on it
23 -- we tell them that, 'We have a photo lineup
24 that we would like for you to look at. There
25 are going to be six photographs in the lineup,

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1 three on the top and three on the bottom. They
2 are in no particular order.'

3 There are six spots on there, so we've got
4 to put six pictures. That's just the way that
5 we have always done our lineups. They are
6 numbered one through six in no particular
7 order. They are not suggestive.

8 We tell them to look at the photo lineup
9 and if they see anybody in there that they
10 recognize, we ask them to mark it on the photo
11 lineup; which we have them do, we have them
12 mark the photo lineup. Then if they mark a
13 number, to circle the number on the photo
14 lineup. Then, in turn, we ask them to mark the
15 same box that correspondence with it on the
16 witness identification form. Then we have them
17 sign the witness identification form. The
18 officer signs it and it's dated and they give
19 the time as well.

20 Q. All right. Now, Detective Lyons, on
21 State's Exhibit 1 for identification, did you
22 go over the instructions with Ms. Pollard?

23 A. I did.

24 Q. Okay. After you have the instructions on
25 the form, what happened next?

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1 A. I told her the instructions that were on
2 the form, advised her. Then I put the lineup
3 out for her to look at. She immediately picked
4 number five.

5 Q. You say immediately. Was there any
6 hesitation at all?

7 A. No, it was almost as soon as the paper
8 touched the table, she went to number five.

9 Q. Now, the notation on State's Exhibit 2 for
10 identification, whose handwriting is that, to
11 your knowledge?

12 A. That's Ms. Pollard's handwriting.

13 Q. Did she make that notation on the paper in
14 your presence?

15 A. Yes, she did.

16 Q. Which number did she circle?

17 A. She circled number five.

18 Q. What initial are by number five?

19 A. "M.P."

20 Q. Now, did you suggest that she pick out any
21 of those photos in any way?

22 A. No, I did not.

23 Q. Did you promise her anything if she made a
24 choice of any particular person? And

25 A. No, I did not.

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1 Q. Did you tell her that she had to pick out
2 someone?

3 A. No, I did not.

4 Q. Now, did she had the opportunity to talk
5 with any the other witnesses before, during or
6 after the lineup in your presence?

7 A. No.

8 Q. How certain was she of this individual?

9 A. Like I said, as soon as I laid the lineup
10 down, she immediately went to number five and
11 circled it. So -- she was not -- you know,
12 based on her reactions, I'd say that she was
13 more than a hundred percent certain, just based
14 on the sheer fact that as soon as it hit the
15 table she marked it.

16 Q. To your knowledge had she ever -- did she
17 tell you that she had ever seen anybody in this
18 lineup before you showed her these six
19 photographs?

20 A. No, she hadn't.

21 Q. Okay. To your knowledge, Detective Lyons,
22 was she -- did she appear to be under the
23 influence of any alcohol or drugs when she made
24 this identification?

25 A. No, she wasn't.

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1 SOLICITOR: Your Honor, at this time
2 we would offer State's Exhibit 1 and State's
3 Exhibit 2 into evidence.

4 THE COURT: Mr. Brunson?

5 MR. BRUNSON: Your Honor, the
6 defense would like to renew the objections.

7 THE COURT: Subject to your
8 objections, which have been overruled, they are
9 admitted.

10 SOLICITOR: Thank you, Your Honor.

11 (SO ENTERED AS STATE'S EXHIBIT 1)

12 (SO ENTERED AS STATE'S EXHIBIT 2)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR:

15 Q. All right. Detective Lyons, after the
16 identification, what did you do next?

17 A. After Ms. Pollard had identified the
18 defendant from the photo lineup and filled out
19 the corresponding witness lineup form, she
20 left. At that point in time, I obtained an
21 arrest warrant for Joseph Dunbar for the
22 robbery at Untouchable Cuts.

23 Q. Okay. Detective, the person whose picture
24 is number five on State's Exhibit 2, do you see
25 him in the courtroom here today?

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1 A. I do.

2 Q. Where is he?

3 A. He is seated next to Mr. Will Brunson, his
4 attorney. One Joseph Dunbar.

5 Q. All right. After the arrest warrant for
6 Mr. Dunbar was completed, what happened?

7 A. We began our efforts to try to locate Mr.
8 Dunbar. During our investigation and in trying
9 to get Mr. Dunbar located, we received info
10 that he may be in another state, that he may be
11 in the state of Florida.

12 Therefore, we turned our efforts to trying
13 to investigate whether or not he had any
14 connections in the state of Florida. We were
15 able to determine that he did have some family
16 members that lived in the state of Florida,
17 based on records that we obtained.

18 Given the addresses that we had, I
19 contacted the United States Marshal Service,
20 Fugitive Task Force. Officers from their task
21 force were able to subsequently locate Mr.
22 Dunbar in a family member's home in the state
23 of Florida.

24 Q. Okay. Now, was Mr. Dunbar subsequently
25 returned to the state of South Carolina?

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1 A. He was.

2 Q. How did that occur, to your knowledge?

3 A. I believe, if my memory serves me
4 correctly, he was taken into custody on January
5 8th. I am not sure what his extradition date
6 was back to South Carolina, but normally when a
7 defendant is arrested out of state they have to
8 either waive extradition or the State has to
9 obtain what is called a Governor's warrant in
10 order to return him to the state. Mr. Dunbar
11 waived his extradition. We sent officers down
12 and he was subsequently brought back to our
13 facility.

14 Q. Okay. When he was brought back to South
15 Carolina, what was done there?

16 A. He was brought by the Sumter Police
17 Department, the officers that were transported
18 -- that were given his arrest warrant. He was
19 subsequently booked into the Sumter detention
20 center.

21 Q. Okay. Now, Detective Lyons, as the lead
22 detective on this case, did you have any role
23 in the crime scene processing or anything like
24 that?

25 A. No, I did not.

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1 Q. Why would you not have done that?

2 A. Because when we call our crime scene
3 technicians out, I allow them to do the
4 processing.

5 Q. There are things when we respond to
6 something as detectives on call and we may
7 process it ourselves, if it is something small.
8 But in this case Lieutenant Duggin was
9 available, as well as Detective Allen, and I
10 would ask them for their expertise in crime
11 scene processing.

12 Q. So what were you most interested in as the
13 person in charge of this investigation after it
14 was assigned to you?

15 A. At that point, after it was -- after it was
16 assigned to me?

17 Q. Well, as you ---

18 A. The biggest part for me was when I
19 responded, helping to try to determine who was
20 responsible for doing this. In talking with
21 witnesses, talking to the victims, putting
22 together the information as we received it and
23 in talking with the crime scene folks, my job
24 was to try to take care of everything, put it
25 together in order to develop a suspect.

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1 Q. And you didn't seize this credit card from
2 Rakeem Dunbar at the time that you spoke to
3 him, did you?

4 A. No, I did not.

5 Q. Why didn't you do that?

6 A. Like I said, at the time I made contact
7 with him while I was initially responding to
8 the scene. He was like two blocks from the
9 scene when I made contact with him. In that
10 initial contact, like I said, he had it on him
11 but at that point I didn't have the
12 descriptions from Ms. Pollard and them to be
13 able to determine that Joseph Dunbar might be a
14 suspect as I interviewed Mr. Rakeem Dunbar.
15 He was essentially taken to the police station
16 and later a more detailed interview was
17 conducted, at which time we learned that he was
18 the one that went into the store and asked
19 about who the owner was. He was released after
20 that.

21 It was after that that I spoke with Ms.
22 Pollard and then determined that Joseph Dunbar
23 was a suspect in this case. So at the time
24 that I spoke to Rakeem Dunbar, I didn't know
25 that Joseph Dunbar was going to be a suspect,

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1 so I had no real reason to take it. They're
2 family members. He -- they're family members,
3 so there would be no reason for him not (sic)
4 to have -- property that belonged to each
5 other's family on him.

6 Q. Now, getting back to identifying Joseph
7 Dunbar as a suspect, again, explain to the jury
8 how did you come up with that?

9 A. It was based on the corroboration of having
10 spoken with Rakeem Dunbar, determining that he
11 was the gentleman that was in the store; the
12 fact that he had Mr. Dunbar's, the defendant's,
13 ID on him; coupled with the fact that Ms.
14 Pollard and then gave a description that I was
15 familiar with, that to me matched the
16 description of one Joseph Dunbar. That led me
17 to obtain the photo lineup of Mr. Dunbar.

18 Q. Now, when Ms. Pollard made the
19 identification and circled the number five, did
20 she say 'that's Joseph Dunbar.'

21 A. No, she didn't. She just, 'that's the
22 person who robbed me.'

23 SOLICITOR: Answer any questions
24 that Mr. Brunson may have for you.

25 THE COURT: Mr. Brunson.

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1 MR. BRUNSON: Thank you, Your
2 Honor.

3 CROSS EXAMINATION

4 BY MR. BRUNSON:

5 Q. Detective Lyons, you weren't the first
6 officer on the scene, were you?

7 A. No, I was not.

8 Q. In fact, the first officer on the scene
9 wrote a report; didn't he?

10 A. He may not be the first officer.

11 Q. Well, there was an incident report
12 prepared; is that correct?

13 A. There was an incident reporter prepared,
14 that's correct.

15 Q. And I presume that incident report was
16 prepared after certain people were talked to?

17 A. It should be.

18 Q. Isn't it true that there is nothing in the
19 incident report that says anybody took off a
20 mask?

21 SOLICITOR: Your Honor, I am going
22 to object. He didn't prepare this.

23 THE COURT: Sustained.

24 MR. BRUNSON: Well, Your Honor, he
25 -- well, let me ask another question.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. BRUNSON:

3 Q. What does it mean to be the lead detective
4 on a case?

5 A. It's my responsibility to investigate the
6 case, put together the case file to be sent to
7 the Solicitor's Office, draw up any arrest
8 warrants, obtain any documents or statements or
9 whatever is necessary to complete the entire
10 case file.

11 Q. Did you in your collection collect an
12 incident report?

13 A. I did.

14 Q. Do you recall the contents of it?

15 SOLICITOR: Your Honor, ---

16 THE COURT: Approach.

17 (OFF RECORD SIDEBAR)

18 THE COURT: I understand that the
19 objection is withdrawn, is that correct,
20 Solicitor?

21 SOLICITOR: That's correct, Your
22 Honor.

23 THE COURT: All right.

24 CROSS EXAMINATION CONTINUED

25 BY MR. BRUNSON:

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- 1 Q. Detective Lyons, I believe that you
2 indicated that you were the lead investigator
3 on this case?
4 A. Correct.
5 Q. As lead investigator, you collected all
6 that law enforcement had done?
7 A. Correct.
8 Q. And you testified that an incident report
9 was prepared by an officer.
10 A. Correct.
11 Q. Not you, but an officer that responded to
12 the scene?
13 A. Correct.
14 Q. And that you reviewed that incident report?
15 A. Yes, a copy of it.
16 Q. You read it?
17 A. Yes.
18 Q. My question is, did anybody -- did the
19 incident report say that someone took off a
20 mask?
21 A. Does the actual incident report say it?
22 Q. Yes.
23 A. No, it does not.
24 Q. Okay.
25 A. That would be because the initial officers

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1 that respond to a scene do not necessarily get
2 all the information from the victims of
3 witnesses. They get enough information needed
4 to generate a report.

5 Q. Okay.

6 A. That report simply, per se, doesn't ---

7 Q. But you were not there when these officers
8 talked to the witnesses, were you?

9 A. I was there, but -- I was there when the
10 officer was on the scene, but I was not
11 standing there when he spoke to the witnesses,
12 no.

13 Q. Okay. So you don't know what the witnesses
14 told the officer, do you?

15 A. No, I do not.

16 Q. Nothing in that incident report said
17 someone took off a mask?

18 A. To my knowledge, no.

19 Q. Okay. Now, you testified that you came in
20 contact with a one Rakeem Dunbar. Correct?

21 A. That's correct.

22 Q. How long after the call, or the dispatch,
23 did you contact Mr. Dunbar?

24 A. As I said, I was out when the call came
25 out, so I made contact with him while

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1. responding to the scene.

2 Q. Okay. Approximately how much time ---

3 A. I don't know how much time went by or how
4 much time it took me to get from Point A to
5 Point B. It's not like I was -- it was not
6 like an hour later.

7 Q. It was within ---

8 A. --- a short period of time.

9 Q. Less than thirty minutes?

10 A. That would be fair to say.

11 Q. Now, when you encountered Mr. Rakeem
12 Dunbar, he had red socks on?

13 A. He did.

14 Q. And Nike flip-flaps (sic)?

15 A. That's correct.

16 Q. Did any of the victims say that a robber
17 had on red socks?

18 A. No, they did not.

19 Q. Did any of the victims say that the robber
20 had on Nike flip-flops?

21 A. No, they did not.

22 Q. In fact, -- (pause). You testified on
23 direct that Mary Pollard described one of her
24 robbers as being light-skinned and that he had
25 acne -- you said acne or dents in his face.

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1 A. True.

2 Q. And what else?

3 A. In regard to the description?

4 Q. Yes.

5 A. The acne on his face, shorter light-skinned
6 black male, with hair that was not dreaded but
7 twistable, braidable, long enough to be
8 twisted.

9 Q. Not dreaded?

10 A. Not dreaded.

11 Q. All right. I believe that you testified
12 that my client waived extradition, is that what
13 you said?

14 A. I did.

15 Q. That means that he voluntarily came back or
16 submitted himself to this jurisdiction?

17 A. That's correct.

18 Q. Now, as lead detective on the case, do you
19 have any fingerprints from the scene that
20 belong to my client?

21 A. I did not collect anything, to my
22 knowledge, that -- I did not collect anything.
23 Well, I will take that back. There were
24 fingerprints that were collected, but at this
25 point they have not been returned yet.

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1 Q. Okay. So you did not collect any
2 fingerprints that belong to my client from the
3 scene?

4 A. I did not. No, sir.

5 Q. In fact, there aren't any in your file that
6 belong to my client?

7 A. No, sir.

8 Q. In fact, there isn't any DNA evidence in
9 your file that belongs -- that was collected
10 that belongs to my client, from the scene?

11 A. That's correct.

12 Q. There is no footprint of shoe in your files
13 that suggests or that came from my client, from
14 the scene?

15 A. No, sir, we do not have any of your
16 client's shoes.

17 Q. But you found a shoe print and you made an
18 imprint from it; is that correct?

19 A. That's correct.

20 Q. But you have no evidence that that imprint
21 matched a shoe belonging to my client?

22 A. We don't have any evidence that it matches
23 anybody's shoes at this point. At that point
24 we have not been given a shoe nor have we
25 located a shoe that matches it. So I can't say

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1 whether or not the shoe belongs to your client
2 or whether it doesn't belong to your client.
3 All I can tell you is that we have the image of
4 a shoe and that it is unknown as to who it
5 belongs to.

6 Q. Exactly. You mentioned that you have a
7 credit card that was found in Rakeem's back
8 pocket.

9 A. Yes.

10 Q. You don't have that credit card in your
11 file today either, do you?

12 A. Like I said, at the time that I interviewed
13 Rakeem Dunbar, he had the credit card on him.
14 I had not developed Joseph Dunbar as a suspect.
15 Mr. Dunbar was already released from our
16 custody at the time that I developed Joseph
17 Dunbar as a suspect. So when I interviewed
18 him, I saw no need to take the credit card out
19 of his pocket. They were family members. So,
20 no, I do not have the credit card.

21 Q. Detective, how many people were robbed that
22 evening?

23 A. I would say that everybody in that business
24 was robbed.

25 Q. How many was that?

1 A. Two, four, five and then I believe that
2 there were two other young children, that have
3 not testified because of their age.

4 Q. Seven?

5 A. Seven, (affirmative nod).

6 Q. Out of those seven people, one person
7 identified my client; isn't that right?

8 A. That's Mary Pollard who positively
9 identified your client in a photo lineup.

10 Q. Law enforcement did not recover a single
11 strand of evidence, physically, evidence that
12 tends to show that my client did anything;
13 isn't that correct? Physical evidence?

14 A. Ms. Pollard's statement. Are you talking
15 about physical, like in touch?

16 Q. Physical, (affirmative nod).

17 A. No, the evidence that we recovered is not
18 physical.

19 MR. BRUNSON: Court's indulgence?

20 THE COURT: Yes, sir.

21 MR. BRUNSON: Nothing further,
22 Your Honor.

23 THE COURT: Mr. Griffin, redirect?

24 SOLICITOR: No redirect, Your Honor.

25 THE COURT: All right. Thank you.

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1 You may step down.

2 (WITNESS STEPS DOWN)

3 SOLICITOR: Your Honor, the State
4 rests.

5 THE COURT: Ladies and Gentlemen of
6 the jury, I am going to give you an early
7 break. We have some matters of law that we
8 need to take up at this time. You may go back
9 in your jury room, take a smoke break. Do not
10 discuss the case and we will be with you
11 shortly. Thank you.

12 (JURY EXITS COURTROOM)

13 THE COURT: Mr. Brunson, do you have
14 any motions to make?

15 MR. BRUNSON: Yes, Your Honor.

16 THE COURT: All right.

17 MR. BRUNSON: Your Honor, the
18 defendant would like to move for a directed
19 verdict at this time. That motion is based on
20 -- the defendant contends that the State has
21 not met its burden and that they have not
22 provided evidence that my client is guilty of
23 arm robbery or use of a weapon.

24 THE COURT: Mr. Griffin?

25 SOLICITOR: Your Honor, going to the

1 armed robbery first, all the witnesses said
2 that the individuals that came in the store had
3 handguns and long guns.

4 There is testimony that property was
5 taken directly from Mary Pollard, in the
6 presence of the other victims that were present
7 at the scene that night.

8 Your Honor, it was a locked business,
9 in the nighttime.

10 There was testimony that Joseph Dunbar
11 came in with the intent to commit a crime and
12 actually committed a crime, of armed robbery,
13 while in the business.

14 We've got the identification of Mr.
15 Dunbar from Mary Pollard.

16 Your Honor, all of those facts, taken
17 collectively, is certainly more than enough to
18 send this case to a jury. We've got eyewitness
19 identification. The description that she gave
20 matches Mr. Dunbar. Certainly these are issues
21 for the jury.

22 With regards to elements of the
23 offenses, I believe that testimony from the
24 stand, that each and every element of the two
25 offenses charged in the indictment, that there

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1 is evidence to show the existence of these
2 elements. We would submit that the case be
3 sent to the jury based on the testimony and
4 evidence that has been presented.

5 THE COURT: Thank you. Your Motion
6 for directed verdict -- the Court has listened
7 to the evidence and, in the light most
8 favorable to the nonmoving party, at this time
9 it certainly may have presented sufficient
10 evidence to take it to the jury. Whether the
11 jury would convict or not is a different
12 matter. Certainly there is sufficient evidence
13 of each of the elements necessary for these
14 crimes and therefore the Motion is respectfully
15 denied.

16 Have you talked to your client about
17 whether he wants to testify?

18 MR. BRUNSON: I have, Your Honor.

19 THE COURT: Let me go over a litany
20 of questions and then I will give you a chance
21 to talk with him. Please place the defendant
22 under oath.

23 (WHEREUPON DEFENDANT SWORN)

24 THE COURT: You are Joseph Waddell
25 Dunbar?

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1 DEFENDANT: Yes, sir.

2 THE COURT: Mr. Dunbar, at this time
3 I am going to explain to you certain of your
4 rights. If you do not understand anything that
5 I say, please let me know. If you want me to
6 explain anything in greater detail, I will be
7 happy to. Do you understand that?

8 DEFENDANT: Yes, sir.

9 THE COURT: We have now reached the
10 stage of the trial where you have the right to
11 claim the protections given to you by the fifth
12 amendment of the Constitution of the United
13 States, which says in part that no person shall
14 be compelled, in any criminal case, to be a
15 witness against himself. Now, this means that
16 you cannot be required to testify in this case.
17 You do have the right to testify on your
18 behalf; however, no one can make you testify.
19 This is a personal right that no one can waive,
20 except for you.

21 Now, if you decide to testify you will
22 be subject to the same rules that governs other
23 witnesses. You may be examined and cross-
24 examine on any relevant issue in this case.

25 In addition, if you had any

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1 convictions involving dishonesty or false
2 statements or for crime(s) punishable by
3 imprisonment for more than one year, and this
4 court determines that the probative value of
5 admitting this evidence outweighs the
6 prejudicial effect on you, then the solicitor
7 will be able to introduce your record to attack
8 your credibility.

9 If you decide to testify, the decision
10 on your part must be made freely, voluntarily
11 and intelligently with knowledge of the
12 protections given to you by the Fifth Amendment
13 of the Constitution of the United States and
14 the consequences of that decision to testify.

15 Now, if you decide not to testify, I
16 will instruct the jury that they cannot give
17 the fact that you did not testify any
18 consideration whatsoever. I would tell them
19 that there is to be absolutely no prejudice to
20 you because you did not testify.

21 It is left entirely up to you whether
22 or not you want to testify. You may talk to
23 your attorney, or your family members, to make
24 a decision but the decision is entirely left up
25 to you. Do you understand what I have I

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1 explained to you?

2 DEFENDANT: Yes, sir.

3 THE COURT: Do you have any
4 questions about why I explained to you?

5 DEFENDANT: No, sir.

6 THE COURT: Mr. Weeks (sic), I will
7 give you a few minutes to discuss with your
8 client whether or not he wants to testify.

9 MR. BRUNSON: Yes, sir. Thank
10 you.

11 THE COURT: Why don't we take a ten-
12 minute recess and then we will come back.

13 I'm sorry, I called you Mr. Weeks, Mr.
14 Brunson.

15 MR. BRUNSON: That's fine.

16 (BRIEF RECESS)

17 (DEFENDANT PRESENT)

18 THE COURT: Have you had an
19 opportunity to talk to your attorney whether
20 you want testify, Mr. Dunbar? Have you had an
21 opportunity to speak with your attorney?

22 DEFENDANT: Yes, sir.

23 THE COURT: Do you wish to testify?

24 DEFENDANT: Yes, sir.

25 THE COURT: You do?

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1 MR. BRUNSON: Your Honor, he and I
2 have discussed this and we have a witness
3 problem. Is it okay if he reserves that
4 decision until ---

5 THE COURT: Yeah. I'll ask him
6 again right before he testifies.

7 MR. BRUNSON: Yes, sir. Thank
8 you.

9 THE COURT: If he wants to. Of
10 course he doesn't have to.

11 MR. BRUNSON: Your Honor, one more
12 before the jury comes back?

13 THE COURT: Yes, sir.

14 MR. BRUNSON: Your Honor, I did
15 not serve my subpoena on a witness.

16 THE COURT: All right. And the
17 witness has indicated that he needs a subpoena
18 before he will appear.

19 THE COURT: You know, that's stuff
20 that should have been handled before the trial.

21 MR. BRUNSON: Yes, sir.

22 THE COURT: We're right in the
23 middle of trial. I've got twelve people,
24 thirteen people, sitting in a room down there.
25 He either needs to show or not show. I cannot

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1 send an officer out at this point to go fetch
2 him. To do -- I mean, do you have another
3 witness, he can testify?

4 MR. BRUNSON: I do, Your Honor.

5 THE COURT: If you can get him up
6 here and you have a subpoena -- we'll have one
7 waiting for him if he needs to come up here. I
8 mean, a subpoena should have been served on him
9 yesterday, or Monday.

10 MR. BRUNSON: Well, he was a
11 rebuttal witness, Your Honor.

12 THE COURT: Do what?

13 MR. BRUNSON: He's the rebuttal
14 witness, Your Honor.

15 THE COURT: You don't have rebuttal.
16 They have rebuttal. You don't have rebuttal.
17 You have a witness. It's your opportunity to
18 try your case.

19 MR. BRUNSON: Yes, sir, I under-
20 stand.

21 THE COURT: This is your case in
22 chief.

23 MR. BRUNSON: I understand that,
24 Your Honor. But that witness is in rebuttal to
25 the first witness presented by the State.

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1 SOLICITOR: Your Honor, isn't that
2 what the -- if the defendant puts up a witness
3 -- I would assume that to be the goal of any
4 defense witness. I ---

5 THE COURT: A rebuttal witness is
6 after you -- they get to rebut your testimony.
7 Yours is just testimony.

8 MR. BRUNSON: Yes, sir.

9 THE COURT: I mean, you need to
10 start your case. If you want to have somebody
11 from your office bring it up here, that's fine.

12 We need to get moving on this case. I
13 will give you five more minutes to get that in
14 order. If you want to pay a deputy to go down
15 and give it to him, you can do that. But you
16 need to call a witness within the next five or
17 ten minutes.

18 MR. BRUNSON: Yes, sir.

19 THE COURT: Whether it be your
20 client or someone else. But we're not sending
21 another witness to go get him. We've already
22 wasted a half hour doing that, at your request,
23 and I'm not waiting much longer.

24 MR. BRUNSON: I understand, Your
25 Honor.

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1 THE COURT: Thank you. Tell the
2 jury that we're sorry but they need to take
3 another smoke break, drink another Coca-Cola
4 and we will be with them in five minutes.

5 (BRIEF RECESS)

6 (DEFENDANT PRESENT)

7 THE COURT: Are we ready?

8 MR. BRUNSON: Yes, sir.

9 THE COURT: State ready?

10 SOLICITOR: Yes, Your Honor.

11 THE COURT: Bring in the jury.

12 (JURY ENTERS COURTROOM)

13 THE COURT: Thank you. Is the
14 defense ready to present your case?

15 MR. BRUNSON: Defense is ready,
16 Your Honor.

17 THE COURT: Call your first witness.

18 MR. BRUNSON: The defense calls
19 Joanna Dunbar.

20 (WITNESS TAKES STAND)

21 THE COURT: Let me see the attorneys
22 for one second.

23 (OFF RECORD BENCH CONFERENCE)

24 JOANNA DUNBAR, being duly sworn to
25 tell the truth, the whole truth and nothing but

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1 the truth, testified, as follows:

2 DIRECT EXAMINATION

3 BY MR. BRUNSON:

4 Q. Good afternoon, Ms. Dunbar.

5 A. Hello.

6 Q. Ms. Dunbar, how old are you?

7 A. Twenty-one.

8 Q. Where you currently reside?

9 A. Boynton Beach, Florida.

10 Q. How are you acquainted with the defendant
11 in this case?

12 A. He's my brother.

13 Q. Okay. Did you have - have you ever lived
14 in South Carolina?

15 A. Yes, sir.

16 Q. When did you live in South Carolina?

17 A. I moved to when I was fourteen, in two
18 thousand and four and that your until two
19 thousand and eight, in September.

20 Q. Now, did Joseph live with you here in South
21 Carolina?

22 A. Yes, sir.

23 Q. Thank you, -- so you moved here when you
24 were fourteen?

25 A. Yes, sir.

1 Q. Do you know Ms. Mary Pollard?

2 A. Yes, sir.

3 Q. How long have you known Ms. Mary Pollard?

4 A. I met her when I was sixteen, turning
5 seventeen. So I would about four years, four
6 or five years.

7 Q. Okay. And is the -- is the Ms. Mary
8 Pollard that you know, is she in the courtroom
9 today?

10 A. Yes, sir.

11 Q. Where is she and what is she wearing?

12 A. She's over there, the one next to the one
13 in the purple shirt with the twists in her
14 hair.

15 Q. What color is her shirt?

16 A. I can't really see.

17 Q. Now, can you describe for the jury how you
18 came to meet Ms. Mary Pollard?

19 A. I was skipping school one day. I went to
20 Sumter High. I skipped school to get my hair
21 done. I had a friend tell me about a shop
22 called Mane Attractions. I went there and she
23 did my hair. That's when I first met her.

24 Q. Okay. The first time you had ever seen
25 her?

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1 A. Yes, sir.

2 Q. But she did your hair?

3 A. Yes, sir.

4 Q. And has she done your hair anytime after
5 that?

6 A. Yes, sir.

7 Q. Approximately how many times has she done
8 your hair?

9 A. Four times.

10 Q. Four times?

11 A. Yes, sir.

12 Q. Does she know who you are?

13 A. Yes, sir.

14 Q. How do you know that she knew you when you
15 were sixteen?

16 A. Well, when I first met her -- like I said,
17 I was at her shop. We talked. I had blond
18 hair at that time, so I look a lot different
19 now. She died it like a cranberry reddish
20 color, so -- she was telling me that she was
21 New York. I was telling her that I was from
22 Florida. So we talked, you know, hairdresser
23 and client. That's how we built the
24 relationship then. I told her my name. I
25 didn't give her my whole name but I told her

1 that my name was Joanna. She told me that her
2 name was Mary. That's how the relationship
3 started.

4 Q. Okay. Did she -- do you know any of her
5 children?

6 A. I know her son.

7 Q. And -- okay. You know him from where?

8 A. Her son and my cousin Dexter, and a boy
9 named Paul, -- well, I've got three brothers
10 who boxed -- Joseph, Michael, Timmy -- and they
11 all hung up Octopus (phonetic) Gym.

12 Q. What is the Octopus Gym?

13 A. Well, that's where people go if you want to
14 box. They do tournaments, championships,
15 things like that. Some people just went there
16 to hang out. You know, just like a hangout
17 spot.

18 Q. Okay. All right. But they also trained
19 boxers there, is that what you said?

20 A. Yes, sir.

21 Q. So was your brother, Joseph, into the
22 boxing part?

23 A. Yes, sir.

24 Q. And you mentioned her son was there.

25 A. Yes, sir.

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1 Q. Did he box, as well?

2 A. I don't recall him, like, doing tournaments
3 and championships and things like that, but he
4 was there and used to hang out -- he used to
5 dance, so he used to dance a lot, too.

6 Q. All right. Have you ever -- well, does
7 Joseph have any children that you know about?

8 A. Yes, sir.

9 Q. Tell me about them, how many?

10 A. He has two girls.

11 Q. How many - is there any other way that you
12 know Mrs. Mary Pollard?

13 A. Yes, sir, she was the godmother of his
14 first born, Arianna (phonetic).

15 Q. Okay. How do you know that?

16 A. When I came up here to visit his baby
17 mother -- her name is Reanna. I came to visit
18 her and I asked her if I could be the godmom,
19 just joking, and she told me that ---

20 SOLICITOR: Objection, Your Honor.

21 THE COURT: Sustained.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. BRUNSON:

24 Q. Don't tell us what someone else said.

25 A. Okay.

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1 Q. Let me ask you this, have you ever -- well,
2 do you know whether or not Ms. Pollard has ever
3 seen your brother before January 2010?

4 A. Yes, sir.

5 Q. How do you know that?

6 A. At the Octopus Gym, like I said, everybody
7 was there to hang out. Her son liked to dance
8 and I've got a cousin that loves to dance also,
9 so he hung out with a guy named Paul. All of
10 them was there dancing. My brothers -- like I
11 said, I have three. One day I came to pick
12 them up and when I was picking them up, I --
13 I'd never met her son through her. I met her
14 son through my cousin, Dex. When I came to
15 pick them up and they were like, 'Mary's here'
16 and ---

17 Q. Don't tell me what anybody said.

18 A. Okay. I'm sorry. Well, Mary -- I peeked
19 my head in and told -- well, I found out that
20 that was New York's mother, and I said, 'Oh, I
21 didn't know that.' All of them was in Octopus
22 Gym. I didn't hang out there.

23 Q. Okay. Was Joseph there that day?

24 A. Yes, sir.

25 Q. In your testimony is that Mary was there,

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1 as well?

2 A. Yes, sir.

3 Q. How long did Joseph box at the Octopus?

4 A. We moved to west side -- I was sixteen, so
5 2006. I want to say that he started boxing
6 within that year because -- either it was 2006
7 or going into 2007, so he's been boxing from
8 that point in time up until he was eighteen.

9 Q. Mary's son boxed with Joseph?

10 A. Like I said before, all three of my
11 brothers, including my cousin, and I had a
12 couple of other friends that I know, they were
13 considered boxers; such as you register, you
14 box, you go to tournaments and championship.

15 New York was just there. Like I said,
16 I've never seen him in a tournament or a
17 championship but he was there. So I guess it
18 was either to hang out with my cousin, because
19 they both liked to dance.

20 Q. So you mentioned that Joseph has a daughter
21 from Reanna, or that they have a daughter
22 together?

23 A. Yes, sir.

24 Q. Do you know where she worked, Reanna?

25 A. Yes, sir.

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1 Q. Where at?

2 A. Mane/Dominick's (phonetic).

3 Q. Did she ever work with Mary?

4 A. The hair salon that I knew of was Mane
5 Attractions.

6 Q. Right.

7 A. But like I said before, she moved to a
8 different hair salon, so I couldn't verify what
9 hair salon that it was. But I do recall Reanna
10 working at a hair salon with someone named
11 Mary, but I don't recall which hair salon that
12 it was.

13 Q. So you don't know?

14 A. Yes, sir.

15 Q. All right. But you do know that Mary was
16 the godmother of Joseph's daughter?

17 A. His firstborn. Yes, sir.

18 Q. Thank you.

19 THE COURT: Mr. Griffin?

20 SOLICITOR: Yes, sir, Your Honor.

21 CROSS EXAMINATION

22 BY SOLICITOR:

23 Q. Ms. Dunbar, you're a resident of Florida
24 now?

25 A. Yes, sir.

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1 Q. Boynton Beach, Florida?

2 A. Yes, sir.

3 Q. That's in Palm Beach County?

4 A. Yes, sir.

5 Q. Okay. Now, you're aware that Joseph was
6 captured by the sheriff's department in Palm
7 Beach County, Florida; right?

8 A. I heard, but not -- not something that I
9 was witness to.

10 Q. You weren't -- you were living there back
11 in January of 2010, right?

12 A. Yes, sir.

13 Q. And you knew that he had been held in
14 custody by their sheriff's department, right?

15 A. Like I said, once again it's something that
16 I heard but not something that I witnessed.

17 Q. Okay. Now, Joseph was released to the City
18 of Sumter Police Department officer on January
19 21st, correct?

20 A. (No verbal response).

21 Q. Do you know?

22 A. I don't know.

23 Q. Okay. You didn't go to see him while he
24 was in their custody?

25 A. In whose custody?

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- 1 Q. The Palm Beach Sheriff Department's
2 custody?
- 3 A. I never seen him. Like I said, I heard
4 that he was in custody but I never got to see
5 him.
- 6 Q. You never went and inquired about whether
7 he was there or not, your own brother?
- 8 A. Was he -- are you asking me did I go up
9 there to see if he was in jail?
- 10 Q. Yeah.
- 11 A. Like I said, I heard that he was in jail
12 but I never visited him. I don't even know
13 where they took him, so I couldn't tell you
14 anything about that.
- 15 Q. So he was living in Sumter at the time,
16 right? In January of 2010?
- 17 A. Yes, sir.
- 18 Q. Right?
- 19 A. (Affirmative nod).
- 20 Q. He ends up in Florida, in the same county
21 where you live; right?
- 22 A. Yes, sir.
- 23 Q. And you all didn't get together?
- 24 A. No, sir. I work two jobs and I'm in
25 school, so it's kinda hard for the family that

1 I have there to get with me let alone somebody
2 out of state.

3 Q. Okay. But even though he is from out of
4 state, he is family; right?

5 A. He is family.

6 Q. Now, tell me about the day at Octopus Gym
7 that you say Mary Pollard would have known
8 Joseph.

9 A. Like I said before, the Octopus Gym was
10 sort of like a hangout spot. I came there to
11 pick up my three brothers because I didn't hang
12 out there. I remember them telling me that New
13 York was in there and that Mary was there, and
14 that that was her son. I told them that I
15 didn't know that. I was like, 'Oh, hi' and
16 that was all ---

17 Q. You're basing this on what somebody told
18 you?

19 A. Well, I seen her. Of course I know how she
20 looks, she did my hair. But as far as knowing
21 that New York was her son, no, I didn't know
22 that. I didn't meet New York through her.

23 Q. You didn't see her -- you didn't see Mary
24 and Joseph together that day?

25 A. Yes, sir, they were together.

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1 Q. What day was it?

2 A. I don't recall that. It was a long time
3 ago.

4 Q. Okay. Now, you're aware that Joseph was
5 arrested for this armed robbery at Mary's
6 salon, weren't you?

7 A. No, sir.

8 Q. You didn't know that?

9 A. No, sir.

10 Q. You're here today, right?

11 A. Yes, sir.

12 Q. When did you find out that he had been
13 arrested?

14 A. I actually found out after he'd spent
15 almost a year in jail, that he was arrested.

16 Q. Okay. But you knew that he was in Florida
17 in January? You had got word about that?

18 A. Yes, sir.

19 Q. You knew that he may have been at the Palm
20 Beach County jail awaiting transport to Sumter?

21 A. I'd heard but I couldn't tell you any
22 details. I didn't hear all that. I just heard
23 that he was in jail. I can't tell you what it
24 was for.

25 Q. But you heard that he was in jail back at

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1 that time, you knew that he'd spent almost a
2 year in jail on this pending charge, -- your
3 testimony, right?

4 A. No, you're mixing it up. After he was
5 already released out on bond while he was here,
6 still in Sumter County, is when I knew that he
7 was in jail. That was almost a year later.
8 But he wasn't in jail when I found out.

9 Q. Did you know that Mary Pollard was the
10 victim in this case?

11 A. No, sir, I knew nothing of her or the case
12 or any of that whole situation.

13 Q. You just knew that he had been arrested?

14 A. I knew that he was arrested in the state of
15 Florida. I knew nothing of South Carolina.

16 Q. Okay. Yet -- if you didn't know who the
17 victim was, how did you know that your
18 testimony would be relevant to this case?

19 A. I really don't know the question you're
20 asking me. You'll have to explain that.

21 Q. If Mary -- if you didn't know that Mary
22 Pollard was the victim, -- you testified you
23 didn't know that, correct?

24 A. I didn't know she was the victim to what?

25 Q. Of the armed robbery that your brother is

1 charged with and the burglary that your brother
2 is charged with?

3 A. Is that the charge for the state of
4 Florida?

5 Q. That is the charge that he's on trial for,
6 the charges that we're here for today, this
7 trial.

8 A. Yes, sir.

9 Q. You didn't know that Mary Pollard was the
10 victim, correct?

11 A. It depends on what you're asking me. Did I
12 know beforehand that he was arrested for a
13 crime that Mary was the victim or did I know
14 after.

15 Q. Okay. You know that your brother is on
16 trial for armed robbery and burglary?

17 A. As far as today, yes, sir. That's why I am
18 here.

19 Q. And you didn't know that Mary Pollard was
20 the victim until you showed up for the trial?
21 Right?

22 A. No, sir. No, sir, I am not saying that.

23 Q. Well, if you didn't know all this, how did
24 you know that you were going to be important --
25 important issues for this trial?

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1 A. That's what I'm trying to get you to
2 understand. I don't ---

3 Q. Explain it to me. I'm all ears.

4 A. I don't understand what you're asking me,
5 so I can't explain.

6 Q. Okay. You knew that your brother was
7 arrested, correct?

8 A. Yes.

9 Q. You knew that he was arrested on South
10 Carolina charges?

11 A. No, sir. I knew that he was arrested in
12 the state of Florida. That's what I am trying
13 to get you to understand.

14 Q. Okay. Have you talked with him between the
15 time that he was arrested in Florida and today?

16 A. That time that he was arrested in Florida
17 was, like I said, almost over a year ago. So,
18 yes, sir.

19 Q. Okay. How did you decide that you were
20 going to be a witness in this case?

21 A. After he was released on bond, I was told
22 what happened. From my knowledge, I was told
23 that she never knew us. That's when I decided
24 to be a witness, because I knew for a fact that
25 she knew us.

1 Q. Okay.

2 A. As far as the charges go, I don't know.

3 Q. So some point between January of 2010 and

4 before this trial started, you found out that

5 Mary Pollard was the victim; is that right?

6 That's is what you just said, right?

7 A. Yes, sir.

8 Q. Okay. You know where the law enforcement

9 center is in Sumter, don't you?

10 A. I am pretty sure that I could find it, but

11 I'm not real familiar with it. No.

12 Q. But you found the courthouse here today,

13 right?

14 A. No, sir, somebody actually drove here and I

15 rode with him.

16 Q. If you wanted -- think about this with me.

17 If you were in a town that you didn't know

18 anything about, you were on a trip and you had

19 something happen that you needed the police,

20 you'd know how to get ahold of them; wouldn't

21 you?

22 A. Yes, sir.

23 Q. So if you wanted to go tell the police what

24 you knew about a case in Sumter, you could have

25 found the Police Department; right?

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1 A. If I was here. Yes, sir.

2 Q. Now, you have never told any law enforce-
3 ment officer that you had any information about
4 this case, correct? Until today?

5 A. I never talked to law enforcement about
6 this case.

7 Q. Now your brother is facing charges, from
8 January to now, and your testimony is that he
9 was in jail for it, awaiting bond, -- correct?

10 A. No, sir. He was in jail. That's what I am
11 trying to let you know, like in -- in Florida,
12 I can't tell you what he was in jail for.
13 That's what I am trying to let you know.

14 Q. But you knew that he had been arrested,
15 right?

16 A. Yes, sir, but he could have been arrested
17 for anything. I didn't know.

18 Q. Okay. All right. Now, you don't want to
19 see anything bad happen to your brother, do
20 you?

21 A. I wouldn't want to see anything bad happen
22 to anybody.

23 Q. Okay. But especially not to somebody who
24 is a family member, right?

25 A. (No verbal response).

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- 1 Q. I man, you love him. Don't you?
- 2 A. Oh, yes, sir, I do love him.
- 3 Q. But you've never told anybody -- law
- 4 enforcement or otherwise -- that the victim in
- 5 this case had a prior relationship with anybody
- 6 in your family. Correct?
- 7 A. No one ever asked me.
- 8 Q. But you never took it upon yourself to make
- 9 anybody aware that, didn't you?
- 10 A. I wouldn't know how. I mean, what was I
- 11 supposed to do? The only person that ever
- 12 contacted me with the lawyer.
- 13 Q. But you just testified that you know how to
- 14 get in touch with police, right?
- 15 A. Yes, sir. I am pretty sure that I dialed
- 16 911 that I would get the Sumter County police.
- 17 Q. You've got family here, don't you?
- 18 A. No, sir, they don't live here anymore. I
- 19 have a few, but not close family.
- 20 Q. Well, you -- you know how to use directory
- 21 assistance, don't you?
- 22 A. Oh, yes, sir.
- 23 Q. So you could have called directory
- 24 assistance and asked for the Sumter Police
- 25 Department's phone number, right?

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1 A. I probably could have.

2 Q. All right. You didn't think that was an
3 important piece of information?

4 A. Like I said, once I found out that he had
5 the charges, he had already spent time in jail
6 without bond. So I didn't know if they were
7 still pursuing.

8 Q. Now, you were not in Sumter on January 1,
9 2010; were you?

10 A. No, sir.

11 Q. Okay. So you cannot make any statements
12 about what happened then, can you?

13 A. No, sir.

14 Q. You don't have any basis to contradict
15 anything that Mary Pollard said happened to her
16 that day, do you?

17 A. No, sir.

18 Q. You don't have any basis to contradict
19 anything that Libra Johnson said happened to
20 her that day, do you?

21 A. No, sir.

22 Q. You don't have any basis to contradict
23 anything that Maqueda Duncan said happened to
24 her that day, do you?

25 A. No, sir.

1 Q. You don't have any basis to contradict
2 anything that Shakyra G. said happened to
3 her that day, do you?

4 A. No, sir.

5 Q. And you don't have any basis to contradict
6 anything that Jahmelia W. said happened to
7 her that day, do you?

8 A. No, sir.

9 Q. You don't have any basis to contradict
10 anything that Detective Lyons says happened, do
11 you?

12 A. No, sir.

13 Q. Okay. All that you can say for us today is
14 that you believe that Mary Pollard knew your
15 brother, right?

16 A. I knew she knew my brother.

17 Q. And you knew that he had been arrested
18 back in January?

19 A. (No verbal response).

20 Q. Correct?

21 A. In the state of Florida?

22 Q. You knew that he had been arrested?

23 A. In the state of Florida?

24 Q. I am just asking whether you knew that he
25 had been arrested?

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1 A. In the state of Florida, I heard that he
2 had been arrested.

3 Q. And you knew that he was facing charges?

4 A. No, all I -- I wasn't even around when he
5 got arrested, so I couldn't tell you anything
6 about that.

7 Q. Okay. And this is the first time, other
8 than talking with Mr. Brunson, that you've told
9 anybody this information about these two people
10 maybe knowing each other?

11 A. It depends. As far as law enforcement and
12 the attorneys or lawyers or people in general?

13 Q. Anybody.

14 A. Oh, yes, sir. I've told people.

15 Q. Now, don't you think -- now, bear with you.
16 The folks that made these charges, don't you
17 think that they would want to know something
18 like that? That piece of information?

19 A. Yes, sir, but I would assume that they
20 would ask.

21 Q. Well, you just said that you were in the
22 state of Florida; right?

23 A. Yes, sir.

24 Q. How would they know what you knew?

25 A. Well, I am pretty sure that my brother knew

1 that we knew her. Because, like I said, he met
2 her through me, so I am pretty sure that was
3 something that was brought up.

4 Q. I mean, -- what I'm saying is, if law
5 enforcement didn't know that you were going to
6 be a witness in the case, how would they know
7 anything that you know unless you tell them?

8 A. Oh, sir, it was known that I was a witness
9 in the case for a while. This isn't the first
10 time that this came up, so I don't who deals
11 with that information but I -- I wouldn't know
12 how they would get it.

13 Q. But would you agree with me that law
14 enforcement's role is gather witnesses in a
15 criminal investigation; right?

16 A. I couldn't answer that. I wouldn't know
17 what they knew.

18 Q. Okay. Think about this with me, if
19 somebody stole your car, how would the police
20 know that that happened without you telling
21 them?

22 A. If I don't tell them? Maybe a witness.

23 Q. Okay. Assuming that there were no
24 witnesses other than you left your car parked
25 in a vacant parking lot and when you came out

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1 of the building it was gone?

2 A. Then I would have to tell them.

3 Q. Okay. So you have some knowledge regarding
4 a victim in the case and how would law
5 enforcement know that you had that knowledge
6 without you telling them?

7 A. Well, being that it wasn't a case that
8 would involve me, I would assume that they
9 would ask the people that's involved.

10 Q. So that's -- that's what I am asking. If
11 they don't know of your existence, how would
12 they know that you're involved?

13 A. They had to know of my existence because
14 that's how I got involved.

15 Q. You're not here at the request of law
16 enforcement, are you?

17 A. Law enforcement as far as an officer?

18 Q. Yeah. You're not ---

19 A. No, sir, not as far as an officer, no.

20 Q. So you're here as a defense witness,
21 testifying for your brother?

22 A. Yes, sir.

23 Q. I guess my point is, you didn't tell law
24 enforcement this information. How would they
25 have known it?

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1 MR. BRUNSON: Objection, asked and
2 answered.

3 THE COURT: Asked and answered.
4 Sustained.

5 CROSS EXAMINATION CONTINUED

6 BY SOLICITOR:

7 Q. You don't - again, you love your brother
8 and don't want to see anything bad happen to
9 him; right?

10 A. I love him. I wouldn't want to see
11 anything bad happen to anybody.

12 SOLICITOR: Court's indulgence, Your
13 Honor.

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION CONTINUED

16 BY SOLICITOR:

17 Q. Ms. Dunbar, who lives at Mahogany
18 Drive in Boynton Beach, Florida?

19 A. Mahogany, I did.

20 Q. You stay there, too?

21 A. No, sir, but it was in my name.

22 Q. It was in your name?

23 A. (No verbal response).

24 Q. Are you aware that's where Joseph Dunbar
25 was arrested?

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1 A. I've heard but I didn't witness it.

2 Q. In a place that was in your name but that
3 you didn't stay there?

4 A. Yes, sir.

5 SOLICITOR: Nothing further, Your
6 Honor.

7 THE COURT: Redirect?

8 MR. BRUNSON: Very shortly.

9 REDIRECT EXAMINATION

10 BY MR. BRUNSON:

11 Q. Did you know that Mary Pollard would deny
12 knowing Joseph?

13 A. No, sir.

14 MR. BRUNSON: Nothing further.

15 THE COURT: Recross?

16 SOLICITOR: No, sir, Your Honor.

17 THE COURT: Thank you, you may step
18 down.

19 (WITNESS STEPS DOWN)

20 THE COURT: Mr. Brunson?

21 MR. BRUNSON: That's the
22 defendant's case, Your Honor.

23 THE COURT: Let me see the attorneys
24 for just a second.

25 (OFF RECORD BENCH CONFERENCE)

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1 THE COURT: Ladies and Gentlemen, I
2 am going to send you back to the jury room for
3 just a short break. Please do not discuss
4 anything about the case. Thank you. This will
5 be a very short break.

6 (JURY EXITS COURTROOM)

7 THE COURT: All right. You take five
8 minutes to talk about it and then if there are
9 any Motions, we will put them on the record.

10 (BRIEF RECESS)

11 (DEFENDANT PRESENT)

12 THE COURT: Mr. Brunson, although
13 you've rested, if -- your client wanted to
14 testify, and I need to hear from him if he does
15 not want to testify.

16 MR. BRUNSON: Yes, sir.

17 THE COURT: Mr. Dunbar, do you wish
18 to testify in this case?

19 DEFENDANT: No, sir.

20 THE COURT: All right. Do you
21 intend to call rebuttal witnesses?

22 SOLICITOR: No, sir, Your Honor.

23 THE COURT: Any Motions?

24 MR. BRUNSON: Yes, Your Honor.

25 The defense at this time would like to move for

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1 a directed verdict.

2 THE COURT: All right.

3 MR. BRUNSON: Based on that the
4 State has failed to prove its case, in light of
5 our witness' testimony.

6 THE COURT: Solicitor?

7 SOLICITOR: Your Honor, we would
8 submit the same grounds for submitting this
9 case to the jury that we submitted the first
10 time that Mr. Brunson made a Motion at the end
11 of the State's case. We feel that certainly
12 there is enough evidence to let the jury
13 decide.

14 THE COURT: I am going to respect-
15 fully deny your Motion. We are going to need
16 to have a charge conference tomorrow morning.
17 Please make sure that Sam has your e-mail -- he
18 will send you a draft of the charge.

19 Now I will bring the jury out. I've
20 got a short hearing at 9:30 that will go to
21 about 10:00 at the latest, a probable cause
22 hearing on sexually violent predator case.
23 Let's say that we have a charge conference for
24 about ten minutes at ten o'clock and as soon as
25 we finish that charge conference be prepared to

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1 argue and charge. You will open and close, and
2 you will ---

3 SOLICITOR: Yes, sir.

4 THE COURT: All right, bring the
5 jury out.

6 (JURY ENTERS COURTROOM)

7 THE COURT: Now, Ladies and
8 Gentlemen, that is all the testimony that you
9 all are going to hear in this case.

10 At this time, I am going to send you
11 home for the evening with the instruction that
12 you be back here right about ten o'clock
13 tomorrow morning, when you will hear the
14 closing arguments of the attorneys and I will
15 charge you on the law and then you will begin
16 your deliberations in this matter.

17 Please do not discuss this case with
18 anyone, do not read anything in any news or
19 listen to anything like that. Keep what you've
20 heard here to yourself and then tomorrow
21 morning, you will be permitted to discuss it
22 among each other when you are in your
23 deliberations.

24 Ladies and Gentlemen, have a nice
25 evening. Get a good rest tonight and I'll see

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1 you back here right about ten o'clock. Thank
2 you.

3 (JURY EXITS COURTROOM)

4 THE COURT: Court is adjourned until
5 9:30 tomorrow morning.

6 My charges are pretty standard.

7 SOLICITOR: Your Honor, I am going
8 to release the children to go back to school.
9 There is no sense in them sitting up here
10 unless they just want to hear the verdict in
11 the morning.

12 THE COURT: That will be up to the
13 parents. We are not making them stay here.

14 SOLICITOR: No, sir.

15 (COURT IN RECESS)

16 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 THE COURT: Good morning, Ladies and
2 Gentlemen. As I told you yesterday, you have
3 heard all of the evidence that is going to be
4 presented in this trial. Now is the time for
5 the attorneys to give you their summation and

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1 then I will charge you on the law that is
2 applicable to the case. Is the state ready?

3 SOLICITOR: Yes, sir, Your Honor.

4 THE COURT: You may proceed.

5 SOLICITOR: Ladies and Gentlemen, as
6 the judge told you, now is the time for the
7 lawyers in the case to make their summation --
8 or closing arguments, as they are commonly
9 called.

10 As the State, what we would do is talk
11 to you a little bit first about the law, what
12 we have to prove to you. After I do my part of
13 the closing argument regarding the law, I am
14 going to sit down and Mr. Brunson will be
15 allowed to make his closing argument. Then I
16 will get back and talk to you about the facts
17 of the case and give you my final closing
18 argument. But at this time, the law requires
19 that we talk a little bit about the law and
20 what the State has to prove.

21 Now, in this case, the defendant,
22 Joseph Dunbar, is facing two criminal charges.
23 The first being armed robbery and the second
24 being a burglary in the second degree, violent.

25 Now, let's talk a little bit about

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1 what each of these charges mean and what the
2 elements of each is. Armed robbery is what you
3 think it is. That a person is robbed by
4 another individual who is armed with a deadly
5 weapon. The statute defines a deadly weapon as
6 a pistol.

7 Ladies and Gentlemen, that is what the
8 State alleges happened in this case. Mr.
9 Dunbar came in, armed with a pistol, and robbed
10 Ms. Pollard of money.

11 Burglary in the second degree is a
12 little different. Burglary deals with not so
13 much property as possession of a building. The
14 judge will charge you in his charge on the law
15 that burglary in the second degree is a person
16 entering the building of another without
17 consent and with the intent to commit a crime
18 while inside the building. What makes this
19 case a burglary second, violent, is that the
20 defendant entered the building without consent,
21 with the intent to commit a crime therein, in
22 the nighttime.

23 In my final portion of the closing
24 argument, we will talk about all of the
25 elements of these offenses. We will talk about

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1 the elements and compare them to what you heard
2 from the witness stand. We will talk about the
3 types of evidence that was presented to you
4 here in this case. We will talk about the
5 difference between direct evidence -- what
6 somebody saw, what somebody heard, what
7 somebody observed -- versus circumstantial
8 evidence.

9 Circumstantial evidence is the type of
10 evidence that you may not see, or have heard,
11 but from which you could draw an inference of
12 what a situation is. For example, if you walk
13 out of this room into the hallway - there are
14 no windows in the this room, we walk out in the
15 hallway and you see somebody shaking off an
16 umbrella, you saw the water fall from that
17 umbrella, you could infer that that person is
18 coming in from outside, that it must be
19 raining. You did not see any of that, but you
20 can make an inference from what you saw
21 circumstantially. That is circumstantial
22 evidence.

23 We will talk about the credibility of
24 witnesses. "Credibility" is just a fancy word
25 for believability. Ladies and Gentlemen, as

1 the trier of the facts, the judge is going to
2 charge you that it is your sole duty to find
3 the facts in this case. It is going to be your
4 job to determine which witnesses were credible,
5 which witnesses that you believe.

6 Ladies and Gentlemen, the law is
7 certainly important in a criminal case because
8 the State has to prove the elements of the
9 offenses. How do we do that? We do that by
10 presenting evidence. We do that by introducing
11 exhibits this for you to take back into the
12 jury room to look at.

13 Ladies and Gentlemen, a trial ends
14 with a jury reaching a verdict. A verdict --
15 the word "verdict" comes from a Latin word
16 which means to "speak the truth." Ladies and
17 Gentlemen, that is what a trial is all about.
18 It is to find the truth. That is the jury's
19 sole role.

20 In a criminal trial, after everything
21 has been presented, the lawyers have made their
22 closing argument, the judge charges you on the
23 law and then you deliberate. During your
24 deliberations, you're charged with finding the
25 truth. Ladies and Gentlemen, in a few moments

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1 I am going to sit down and allow Mr. Brunson to
2 make his closing argument. Then I am going to
3 get back up and talk to you about the evidence,
4 talk with you about the evidence compared with
5 the elements of the criminal offenses charged.
6 When everything is over, I'm going to ask you
7 to back to the jury room and find the truth.

8 Please listen to my colleague, Mr.
9 Brunson, as he makes his closing argument, and
10 I'll be back for you in about fifteen or twenty
11 minutes after that. We will talk about the
12 truth.

13 THE COURT: Mr. Brunson.

14 MR. BRUNSON: Thank you, Your
15 Honor. May it please the court?

16 THE COURT: Yes, sir.

17 MR. BRUNSON: Good morning, Ladies
18 and Gentlemen of the jury, Mister Foreman.

19 I first want to thank you for paying
20 close attention as this is a very serious
21 matter. As indicated by the State, my client,
22 Mr. Joseph Dunbar, Jr., faces some very serious
23 offenses. Now, because this is serious, Mr.
24 Dunbar's future hangs in the balance. Your job
25 as jurors, the finders of the facts, is of

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1 course to determine what the truth is.

2 Now, at the beginning of this trial,
3 we did opening statements. In my opening
4 statement, I told you several things. I told
5 you that at the end of this trial that we are
6 confident that you will come back with a
7 verdict of Not Guilty. Well, I submit to you,
8 you are now at the end. I am still confident
9 of that you will come back with a verdict of
10 Not Guilty.

11 Now, all the dust has settled. All
12 the smoke has cleared. What remains is the
13 truth. The truth, simply put, is that the
14 State has not met its burden in this case; that
15 the state has not met its burden in this case.

16 Let's review the evidence. We heard
17 testimony that an armed robbery occurred on the
18 south side of town. That's a horrible thing.
19 We heard testimony that seven people were in
20 the shop when the robbery occurred. However,
21 we only heard from five of the seven people
22 that were witnesses and victims. Out of those
23 five, only one person said to you that my
24 client did it. Only one. Two of the witnesses
25 gave statements and they never even said that

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1 anybody took off a mask. Two more took the
2 stand and they said that 'yeah, somebody took
3 off his mask', it was a light skinned guy, a
4 light skinned man, a light skinned dude. They
5 talked about it as if the robber was not in the
6 room with them: a guy, a man, a dude. None the
7 witnesses said "that guy" (indicating
8 defendant). They talked about it as if the
9 robber wasn't in the room. Well, I submit to
10 you that they did it that way because the
11 robber isn't in the room. He wasn't in the
12 room in the beginning and he isn't in the room
13 now.

14 We heard from four members of law
15 enforcement. Not a single one of them offered
16 physical evidence to say or to suggest that my
17 client did anything. Not a single one of them
18 offered a shred of evidence to even prove that
19 my client was there.

20 Now, in the beginning I told you that
21 it all boiled down to the credibility of one
22 witness, and I maintain that is their case.
23 That one witness was Ms. Mary Pollard. As you
24 delve into the evidence and review what we have
25 heard, let's begin with her testimony.

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1 Well, Ms. Mary Pollard took the stand
2 and she testified that she is thirty-six, we
3 said that she is from New York City.

4 She testified that she worked at a
5 salon prior to this salon, she said that she
6 worked at a salon called Mane Attractions.
7 Well, she said that she never knew my client
8 before January 1. She said that she'd never
9 even seen him before January 1. Well, I submit
10 to you that the evidence suggests something
11 different.

12 Now, at Mane Attraction, where she
13 said that she worked, she said that she worked
14 with a Reanna Johnson. She testified from the
15 stand that Reanna has a child from my client.
16 She testified to that.

17 She testified that she didn't know
18 Joanna Dunbar, who is my client's sister.
19 Well, we heard from Joanna Dunbar. Joanna
20 Dunbar offered what the State has characterized
21 as "direct evidence." She took the stand and
22 she testified. I submit to you that her
23 testimony is not been rebutted by any other
24 testimony.

25 Now, we heard that Mary Pollard has a

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1 son that boxed at the Octopus. We also heard
2 testimony that Joseph boxed at The Octopus
3 also. Not only that, we heard testimony that
4 his cousin Dexter boxed at The Octopus. Well,
5 Ms. Mary Pollard testified that she knew
6 Dexter, I believe that she said, -- let's see,
7 she knew Dexter because he boxed with her son.

8 Now, I submit to you that Ms. Mary
9 Pollard may not be believable.

10 She said that she didn't know Joanna
11 at all. Well, what did Joanna say? Joanna
12 took the stand and testified that she first met
13 Ms. Pollard when she was sixteen. In fact, she
14 said that she skipped school, went to Mane
15 Attractions Beauty Salon and had her hair dyed.
16 Who dyed it? Ms. Pollard. Well, Joanna is
17 Joseph's sister. She testified that she -- I
18 think that she said that she had it dyed from
19 blond to red. She said that she's also been to
20 that shop and that Mary has done her hair more
21 than one time after that, that she is Mary's
22 client. Mary claims to not know her.

23 Well, what else did we hear? We heard
24 testimony that not only has Mary been in the
25 same room with my client but we heard testimony

1 that they hung out at The Octopus all the time,
2 they boxed together. We heard direct evidence
3 from this stand that Mary has been in the same
4 room at the same time with Joseph Dunbar, the
5 defendant in this case. With Dexter Dunbar,
6 his cousin; with Joanna Dunbar, his sister; and
7 Mary Pollard's own son -- direct evidence from
8 the stand that's not been refuted.

9 Now, why didn't Mary Pollard tell the
10 police that Joseph Dunbar did it? Why didn't
11 Mary Pollard tell the police, 'yeah, I seen the
12 guy before, but I can't remember his name.'
13 No. What did she do? She said nothing about
14 anything about Joseph Dunbar. She waits until
15 the next day when presented with a photo lineup
16 and says, 'that guy.' Not a guy that 'I've
17 seen before', not a guy named Joseph Dunbar,
18 not a guy who boxed at The Octopus 'with my
19 son', not a guy 'whose sister's hair I have
20 done'; not a guy whose 'cousin hangs out with
21 my son'; this guy -- (tapping photo lineup).
22 "I've never seen him before. That's him." In
23 fact, she did that the very next day.

24 Now, why did no one else pick him out
25 of a photo lineup? Why did no one else stand

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1 up and say that he did it? Why did only her
2 kids and her say that the man took off the
3 mask? Why didn't the other two patron ever
4 mention anybody taking off a mask? Why would
5 anybody take off the mask -- after you commit
6 an armed robbery, after you've got the money?

7 Well, are these coincidences? I
8 submit to you that they are not. What these
9 are, what these questions are, are the things
10 that reasonable doubt is made of. Building
11 blocks. What are you constructing? You are
12 construing doubt, the same type of doubt that
13 the State has the burden or disproving --
14 beyond a reasonable doubt. I submit to you
15 that the State has failed.

16 Well, let's just look at Mary Pollard
17 as an example. Let's look at her. She said
18 that the man who came in the shop was a light-
19 skinned black male with dents in his face.
20 Dents from acne. The Defendant has no dents.

21 Mary said that she was outside talking
22 to the preacher right before this incident, she
23 didn't say that it was dark. She said that it
24 was light enough to see across the street. She
25 said that she could see the houses, that she

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1 could see the trees, that she could see her
2 surroundings. I submit that she could see
3 these things because it was not dark. The
4 State must prove that these events happened in
5 the nighttime. They can't do it. That's the
6 only evidence that we have from someone who was
7 outside.

8 I submit to you that Mrs. Pollard, the
9 only person in this entire case that says that
10 my client did this, is not believable.

11 Now, Joanna Dunbar's testimony has
12 gone unchallenged. She said that Mary Pollard
13 knows Joseph Dunbar. The solicitor asked her -
14 the solicitor said, 'You don't want to see
15 something bad happen to your brother, do you?'
16 She said, 'I don't want anything bad to happen
17 to anyone.'

18 In fact, she said that she wasn't that
19 close to her brother. She said that she had
20 not visited him when he was in Palm Beach
21 County jail on these charges. Why would she
22 come to court and not be truthful?

23 That's another one of those building
24 blocks that I talked to you about earlier.
25 Joanna testified and her testimony was not

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1 contradicted.

2 Who else did we hear from? We heard
3 from Jahmalia, the fourteen year old. It is
4 horrible that she was subjected to this.
5 However, she told us what happened. She never
6 told law enforcement that my client did it.
7 She never told us that my client did it. What
8 did she say? She said a light skinned boy.
9 And she said a tall, skinny boy. She talked
10 about it as if this light skinned boy wasn't
11 even in the room; because he isn't.

12 We heard from Shakyra, she took the
13 stand. Well, she verified that Ms. Mary
14 Pollard worked at Mane Attractions. The same
15 place that Joanna said that Mary did her hair.
16 This same place where she did Joanna's hair
17 multiple times. The same Joanna that she
18 claims that she doesn't know.

19 Well, what else did Shakyra tell us?
20 She said that it was a dude in her mom's face.
21 A dude. She said a guy took off his mask. She
22 said a light skinned man, some light skinned
23 boy. She characterized his hair is not being
24 that long. She never said that my client did
25 it. She said that she saw his face, that she

1 saw the robber's face but she never pointed to
2 my client.

3 Now, to further prove my point that
4 the State has not reached it's burden and to
5 show that this case is filled with reasonable
6 doubt, if I have a bucket right here in the
7 courtroom and I put all the reasonable doubt
8 from this case in that bucket, then you would
9 have a whole bucket of reasonable doubt. The
10 case is riddled with reasonable doubt. It is
11 riddled with reasonable doubt.

12 Let's look at some more testimony. We
13 heard from Libra Johnson. Well, Libra was a
14 member of the Armed Services. In fact, she
15 testified in her uniform. She has served our
16 country. She was in this place when it was
17 robbed. That is horrible. Libra never said
18 that my client did this. Libra never told the
19 police that anybody took off a mask. She gave
20 a statement and never said anything about that.

21 We heard from her daughter, Shakyra,
22 and she never said that my client did it. She
23 testified from that stand and she never said
24 anybody took off a mask.

25 In fact, no one ever said that they

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1 heard anybody say, 'I know you. I know where
2 you live. I will kill you.' These two
3 witnesses never said that even heard that.
4 They were in the same room. Of all five of
5 these witnesses, only one could say that my
6 client did it; the same one that said that she
7 didn't know my client.

8 This is the stuff that reasonable
9 doubt is made of. These are the building
10 blocks of a burglary not solved.

11 Well, who else did we hear from? We
12 heard from law enforcement, members of the
13 Sumter City Police Department. Well, we heard
14 from Lieutenant Duncan first. Lieutenant
15 Duncan testified that he responded to the
16 scene. Lieutenant Duncan testified that he
17 collected photos. He didn't collect any video,
18 there were no cameras that show my client. He
19 collected fingerprints, none of which came back
20 to my client. He collected a shoe print, which
21 did not match any shoes of my client. He's got
22 over twenty-three years of experience, he sat
23 on that stand and told you -- and at the end of
24 my questioning, he said 'No' that he doesn't
25 have any evidence against my client. He

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1 collected nothing. What is that? It is
2 another block, another building block of
3 reasonable doubt.

4 We heard from Mary (sic) Hodge. In
5 fact, Mary Hodge testified that she has been
6 doing this since nineteen sixty-eight. Marie
7 Hodge was certified as an expert in this case.
8 Fingerprint analysis. Marie Hodge said, 'oh,
9 yeah, Lieutenant Duncan collected some good
10 fingerprints, which had good identification
11 point, that I was able to enter into our
12 system.' But then she testified that none of
13 the fingerprints -- they didn't match my
14 client. In fact, she had no evidence that my
15 client did it either.

16 Then we heard from Jim Alsbrook with
17 the Sumter Police Department. Well, he is the
18 evidence technician:

19 'Mr. Alsbrook, did anyone tamper with
20 the evidence?

21 Oh, no, no one tampered with it. This
22 evidence was secured, it is always secured.

23 Did you deliver it to SLED?

24 Did they test it?

25 Did everything go all right?

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1 Yes.

2 Well, do you have any information that
3 my client did this?'

4 And he said, 'That's not my job, I
5 just hold the evidence and send it for
6 processing to make sure that it is not tampered
7 with.'

8 Again, another witness who had no
9 evidence against my client, that my client
10 committed this crime.

11 Finally, you heard from Detective
12 Lyons. In fact, Detective Lyons is the senior
13 detective of law enforcement. He is the senior
14 detective over violent crime. He testified
15 that a call came in and he was already out.

16 Detective Lyons said that he saw Rakeem
17 Dunbar on the street and he stopped him and
18 talked to him. He said that Rakeem had on red
19 socks. We later learned that Rakeem said that
20 he had been in the shop, that he had asked if
21 someone could do his hair and they said, 'we're
22 closed, come back tomorrow.'

23 He had on red socks and Nike flip-
24 flops. Not one of the witnesses said that one
25 of the robbers had on red socks. No one said

1 that. They were asked *'did one of the robbers*
2 *have on Nike's and flip-flops?'* They never
3 said that.

4 *'Did you see the guy with red socks*
5 *and Nike flip-flops before the robbery took*
6 *place?*

7 Yes.'

8 *'Detective Lyons, did you see a guy*
9 *wearing flip-flops and red socks after the*
10 *robbery?*

11 Yes. He was walking down the street.'

12 This man had nothing to do with this
13 robbery, but he happened to have a credit card
14 in his back pocket, according to Detective
15 Lyons. In all this evidence, I don't see a
16 card that was collected. But the card had my
17 client's name on it, so this guy that had
18 nothing to do with the robbery had a credit
19 card with my client's name on it, so 'this guy
20 must be a suspect.' I tell you, I will submit
21 to you that that is proof of nothing.

22 As it turned out, from Detective
23 Lyon's own testimony, my client was in Florida
24 when they arrested him. That's where he was
25 when he was arrested. He testified that the

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1 guy here had a low afro cut, not dreads, but a
2 low afro. That could be anyone.

3 Reasonable doubt. State must prove
4 that my client is guilty beyond any reasonable
5 doubt. This case is full of reasonable doubt.
6 My client began this trial, we all began this
7 trial and my client was presumed innocent in
8 the beginning and the job belongs to the State
9 to prove that he is guilty. I submit to you
10 that the State has not done that.

11 If you take all the facts and all of
12 the evidence in this case that tends to prove
13 that my client did it and line it up, right
14 here, and all the facts, that they say prove
15 that he did it, and line those up right here,
16 the State has not met its burden.

17 Only one person in this case offered
18 anything that tends to show that my client did
19 it. I submit to you that they are saying that
20 one person that they're saying that - well, we
21 have one witness, who testified totally
22 different from what that one person said. Is
23 that person believable? She said that she
24 doesn't know him. My witness said that she
25 does.

1 Your Honor is going to charge you with
2 the law. He may give you a copy of the charge,
3 I don't know. When you get it, you be able to
4 go to the jury room and deliberate. You are
5 the fact finders. When you review all the
6 evidence, when you have reviewed all the
7 testimony, and when you look at that, I am
8 confident that you will come back with the only
9 possible verdict in this case, and that's a
10 verdict of Not Guilty for my client.

11 Again, I thank you for serving as
12 jurors. I believe that you will find the truth
13 and that you'll come back with the only
14 possible solution, which is that there is too
15 much reasonable doubt in this case to convict
16 this young man of either of these charges.
17 Thank you.

18 THE COURT: Mr. Griffin.

19 SOLICITOR: Ladies and Gentlemen,
20 it is rare that the defense lawyer and a
21 prosecutor agree much of anything in closing
22 arguments in a criminal case, but there is one
23 thing that I agree with Mr. Brunson about.
24 This case is about the truth and it is about
25 credibility. It's about which witness that you

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1 believe.

2 If you believe Mary Pollard, a woman
3 who was operating her business on January 1st,
4 2010. If you believe that her salon was robbed
5 that day.

6 If you believe that Rakeem Dunbar, the
7 boy in the red socks and flip-flops came in
8 looking for the owner. If you believe the
9 witnesses that had said that.

10 If you believe it when Detective Lyons
11 corroborates those statements by speaking with
12 Rakeem Dunbar. He admits to Detective Lyons
13 that he was in the salon, that he was asking
14 for the owner. He admitted that to Detective
15 Lyons. That tends to lend credibility to what
16 these five victims say.

17 If you believe her when she says a
18 light-skinned black male with acne on his face,
19 hair that could be twisted, puts a gun in her
20 face, demands her money, says *'you better not
21 tell, I will kill all of y'all, I know where
22 you stay'* after he pulls his mask up.

23 If you believe that she didn't know
24 his name. If she had known him, why wouldn't
25 she have told the detectives, 'Joseph Dunbar

1 did this to me'? His name does not come up in
2 this case until Detective Lyons puts it all
3 together. 'I know a light-skinned black male,
4 young guy, with acne on his face. It's the
5 same guy whose credit card was in Rakeem
6 Dunbar's pocket.' The man who is in -- the boy
7 who was in the salon, looking for the owner.

8 Why would they be looking for the
9 owner? The owner has got the money.

10 Detective Lyons decides to create this
11 photo lineup. Mary Pollard never gave the name
12 'Joseph Dunbar.' Joseph Dunbar's name isn't on
13 this photo lineup. But his picture is, and she
14 picks him out -- the very next day. If she
15 knew him before, why go through all that? Why
16 not just say *'he did this to me, I know he did*
17 *it, I know him.'* Because she didn't know him.

18 Now, the defense would have you
19 believe that Mary Pollard had this relationship
20 or knew of Joseph Dunbar because she may have
21 done his sister's, Joanne's, hair at one time.

22 Now let's talk about Joanna Dunbar.
23 She is the victim's (sic) sister, who lives in
24 Florida where he was arrested. She admitted to
25 you that she -- that her name was on the

1 residence where he was arrested. Why was he in
2 Florida? Ladies and Gentlemen, I will submit
3 to you that he was in Florida to get away. She
4 said, 'I never saw him while he in Florida',
5 even though she admitted that was the residence
6 that he was at, that was where he was arrested.

7 Let's talk about her testimony. Did
8 she really know anything? Did she know
9 anything other than 'well, Mary Pollard did my
10 hair one time' and 'we hung out at the Octopus
11 Gym. Ladies and Gentlemen, y'all are from
12 Sumter. Is the Octopus gym a hangout where
13 people go to dance, where grown people go?
14 It's a boxing gym.

15 Her testimony is convenient. It's
16 convenient to give the defense a theory for why
17 Mary would have picked Joseph Dunbar out of a
18 lineup.

19 She didn't talk to law enforcement in
20 the almost two yeas since this thing happened.
21 'Hey, you've got the wrong guy. They know each
22 other.' No. You saw her on the stand. Were
23 her answers direct? Remember, she didn't have
24 any trouble understanding the questions that
25 the defense was asking her but many of the

1 questions that I asked her, 'I don't understand
2 that, I don't understand that. I don't
3 understand. Think about when I was asking her,
4 'Well, if you had this information that was
5 important to your brother's case, did you try
6 to get ahold of anybody in law enforcement?'
7 She used to live in Sumter.

8 'Do you know how to dial 411 and get
9 the number for the Sumter Police Department?

10 Well, I don't know. I guess I could
11 have. I didn't know it was that important.'

12 She knew to be testifying for him.
13 She found her way to the courthouse. It's
14 convenient, it gives a theory.

15 Do you believe her? Ladies and
16 Gentlemen, and I submit to you that her
17 testimony wasn't rebutted because it is
18 incredible. Do you believe anything that she
19 said?

20 She couldn't tell you when these two
21 folks may have seen each other at the Octopus
22 Gym. Just because Mary Pollard may have
23 colored her hair once or twice doesn't mean
24 that Ms. Pollard knows her brother. It's
25 convenient. It gives a theory.

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1 Was it convenient for Mary Pollard to
2 be robbed at gunpoint? Was it convenient for
3 her children to be placed in that situation?
4 If she knew Joseph Dunbar, she would have told
5 law enforcement. *'He did it to me, I know*
6 *him.'* They didn't know each other. That's why
7 she had to pick him out of a lineup; which she
8 did with a hundred percent certainty, according
9 to Detective Lyons. As soon as she looked at
10 the photograph, *'That's the man right there.*
11 *That's him.'*

12 Now, Mr. Brunson made a point to say
13 Ms. Pollard is the only one who can say that
14 this event happened at night. The fact that it
15 was at night is important because one of the
16 elements of burglary second degree, violent, is
17 that this occurred in the evening.

18 Ladies and Gentlemen, I have heard the
19 expression that a picture tells a thousand
20 words in the past. I want to point you to a
21 picture. You heard the crime scene folks
22 testify that they were called shortly after
23 7:00 o'clock in the evening. They came out --
24 and what's the first thing that they do? They
25 secure the scene, make sure that nothing can

1 harm anybody, that nothing is still in the
2 building, that no perpetrators. They secure
3 the scene, get all the victims and witnesses
4 out. Then they took photographs. Well, look
5 at this picture. Look at the clock on the
6 wall. It's 8:00 o'clock. That tells you that
7 this thing happened in the nighttime. It
8 corroborates, backs up, supports what Mary
9 Pollard said happened.

10 *'It's a smoke screen. She was outside*
11 *talking, she could see things. This really*
12 *didn't happen at night. So you don't need to*
13 *believe anything else that she said.'*

14 That (displaying photograph) can't be
15 rebutted, that photo right there.

16 Now, a lot has been made of the lack
17 of forensic evidence. I am not going to stand
18 up in front of you and say that we have any.
19 Law enforcement certainly tried to collect it.

20 But you heard the description of these
21 individuals who, along with Joseph Dunbar,
22 committed this robbery and burglary -- dressed
23 in all black, wearing gloves on their hands,
24 with masks. If you've got gloves on, if a
25 person has got gloves on, they're not going to

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1 leave fingerprints. You heard Lieutenant
2 Duggin testify that fingerprints come from the
3 oils from your fingers. If you've got gloves,
4 you're not going to leave any fingerprints.

5 You heard them testify that a public
6 place, with hair, chemicals and things that
7 would be on smooth surfaces, that you would be
8 less likely to get prints.

9 I am not going to stand up here and
10 tell you that we have any, because we don't.

11 Think about it, Ladies and Gentlemen,
12 if law enforcement knew at the time when the
13 crime scene processing was done and when
14 Detective Lyons got involved in the
15 investigation, why would they have gone through
16 all these trouble if she knew who did it? It
17 corroborates, backs up, confirms the witness'
18 testimony. They were looking for who did this,
19 until Ms. Pollard was shown this lineup. They
20 were doing their standard police work that they
21 would do in any scene, looking for clues,
22 trying to find out who did it, even thought
23 they have been told that the robbers who were
24 with Joseph Dunbar that night had on gloves.

25 I would submit you that the credible

1 witnesses in this case are the victims. The
2 victims who begged for their lives, "please
3 don't shoot, please don't shoot, take
4 everything we've got, this is it, please don't
5 shoot." The witness who was threatened, 'if
6 you tell, I'm going to come back and kill you,
7 I know where you stay.'

8 Why would the man take his mask off?
9 I am sure that's a question that you're going
10 to ask yourselves when you deliberate. Well,
11 Ladies and Gentlemen, I would submit to you
12 that he took his mask off to show Ms. Pollard,
13 'I am serious. I will come back and harm you
14 if you tell anybody.'

15 Ladies and Gentlemen, when you look at
16 this evidence, you've got the one person who
17 was closest to Joseph Dunbar that night inside
18 that salon, with a handgun pointed at her face,
19 clear line of sight, -- she gave an accurate
20 description. Look at this photo, look at Mr.
21 Dunbar, think about the description that she
22 gave: a light-skinned black guy, with hair
23 that could be twisted. Ladies and Gentlemen,
24 it is up to you to determine but I would submit
25 to you that this looks like his hair has been

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1 twisted in this photograph. You'll have this
2 back there with you. You can look at it as
3 close as you want. It looks like his hair is
4 twisted, to me. That corroborates the
5 description that she gave.

6 She testified that the lights were on
7 the building, that she got a good look at him,
8 an accurate description relayed to Detective
9 Lyons. He makes a photo lineup. She picks him
10 out immediately with a hundred percent
11 certainty, 'no question in my mind.'

12 'Where you sure then?

13 Yes, sir, Mr. Griffin.

14 Are you sure now?

15 Absolutely.'

16 Credible witnesses.

17 On the other hand, we've got Joanna
18 Dunbar, the defendant's sister. He was located
19 in Florida, a week after this robbery occurred,
20 at a residence that her name is on but 'I don't
21 stay there. My dad stays there, but I don't
22 stay there.' Is that believable? Do you
23 believe that?

24 Was her testimony shaded to assist her
25 brother? I asked her, 'You don't want to see

1 *anything bad happen to him?' 'No, I don't, but*
2 *I really hadn't had any contact with him*
3 *between now and then. I am not real close to*
4 *him.'* She's close enough to him to be inside
5 this courtroom today. She's close enough to be
6 interested enough in what happens to him.

7 So, do you believe what she said on
8 the stand? It's been almost two years, 'Well,
9 *I really haven't had any contact with him.'*
10 But when it's convenient for Joseph, she's in
11 here with her testimony, and she's back today.
12 What does that tell you? Does that make you
13 believe or disbelieve what she told you?

14 The only thing that she could said
15 was, 'Well, I was in the salon, so they had to
16 know each other. And there was this one thing
17 when we were at the Octopus Gym' and they may
18 have been in the same room.

19 Do you believe that? Do you really
20 believe it? Based on the way that she acted on
21 the stand? The judge is going to tell you that
22 you can judge someone's credibility by viewing
23 their demeanor. Each of you watched as she
24 testified, listened to what she said, how she
25 was evasive, 'I don't understand, I don't

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1 *know.'*

2 The one thing that she knows is that
3 she got her hair done once or twice -- I think
4 she said maybe four times -- by Ms. Pollard.

5 Ladies and Gentlemen, I submit to you
6 that that doesn't mean anything with regard to
7 whether Ms. Pollard knew Joseph Dunbar. The
8 credible evidence suggests that she did not, or
9 else why would this have been done? Joseph
10 Dunbar becomes a suspect after this photo
11 lineup was done - not based on what she said,
12 not based on Ms. Pollard giving law enforcement
13 the name of Joseph Dunbar, but just the
14 opposite.

15 Law enforcement, investigating this
16 case and presenting the photo lineup to Ms.
17 Pollard, Ladies and Gentlemen, I submit to you
18 that the evidence -- credible evidence -- shows
19 that they didn't know each other.

20 The credible evidence -- photographs
21 -- corroborate exactly what these victims say
22 happened:

23 The glass door was kicked in.

24 Individuals came in looking for money.

25 Corroborated by the fact that Rakeem

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1 Dunbar came in looking for the owner, looking
2 for the person who had money. And who did
3 Joseph Dunbar go to? Mary Pollard, the owner.
4 He knew right where to go to, to where the
5 money would be. Over a thousand dollars in
6 money that she'd made from doing hair that day
7 and the day before.

8 The light-skinned black male with acne
9 on his face and hair that could be twisted. He
10 knew right where to go. Put a gun on Ms.
11 Pollard, steal her money, scare her enough that
12 it caused her to use the bathroom on herself.
13 Scared her enough to beg, *"take everything,*
14 *that's all that we have, please don't shoot,*
15 *please don't shoot."*

16 Ladies and Gentlemen, I submit to you
17 that that's the credible evidence in this case
18 -- not a family member with coming in, *'well,*
19 *they met one time'* and *'I didn't know how to*
20 *tell anybody this, but I knew how to get here*
21 *today to testify'* when it's convenient.

22 This case comes down to the truth. It
23 comes down to credibility. It's the jury's job
24 in the American criminal justice system, as the
25 finders of the facts, to determine the truth.

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1 That's all that we ask of you jurors here
2 today.

3 Remember what you heard from that
4 witness stand. Think about how these witnesses
5 testified. Think about how they testified they
6 were when all this went down, that Ms. Pollard
7 was at the front of the salon, up by the dryer,
8 and that the other adult witness, Libra
9 Johnson, -- remember what she said, *'I was back*
10 *here by this gate in the back of the salon.'*
11 Ladies and Gentlemen, I submit to you that it
12 is entirely reasonable that she wouldn't have
13 been able to identify the person who robbed Ms.
14 Pollard. She was in the back of the salon,
15 with a gun on her, trying to protect her
16 daughter. Ladies and Gentlemen, I submit to
17 you that it is entirely reasonable that she
18 would be focused on her own problems at that
19 moment in time, not the man that was across the
20 store -- across the salon with Ms. Pollard.
21 Credible evidence, believable.

22 Is what the defense presented to you
23 yesterday, yet unrebutted, I submit, any
24 credible evidence? Is it believable? That's
25 your job as jurors to determine.

1 Now, we lawyers can make our
2 arguments, submit what we think that evidence
3 tends to show but ultimately it comes down to
4 you jurors.

5 Take the evidence, exhibits that have
6 been entered in this case, take those back with
7 you and look at them. The pictures
8 corroborate, they show anything that tends to
9 back up the witnesses' testimony. Judge the
10 demeanor of these witnesses, how they
11 testified, how certain they were of what
12 happened.

13 Now, Ladies and Gentlemen, just
14 determine what you think the truth is. Render
15 your verdict, seek the truth. Ladies and
16 Gentlemen, I submit to you that the State has
17 submitted to you, through evidence, testimony,
18 exhibits, the truth in this case. This man
19 (indicating Defendant), Joseph Dunbar, robbed
20 Mary Pollard at gunpoint, broke into her locked
21 business in the nighttime with the intent --
22 not just the intent, but committed the crime of
23 armed robbery while in that building. Ladies
24 and Gentlemen, I would submit to you that
25 that's the truth. That's what we ask you to

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1 find and render a Guilty verdict.

2 THE COURT: Thank you. Are you all
3 okay, can you all go a half hour or so?
4 (Affirmative nods from various jurors, (No
5 verbal response). Please secure the courtroom.

6 All right, Ladies and Gentlemen, all
7 of the testimony and other evidence that will
8 be presented in this case has now been
9 presented. Now it is the time in the case
10 where I will charge you on the law that is to
11 be applied to this case.

12 I remind you that during this trial
13 that you and I have certain duties to perform.
14 As the trial judge, it is my responsibility to
15 preside over the trial in this case and I also
16 have to rule on the admissibility of evidence
17 that has been offered during this trial. You
18 are to consider only the competent evidence
19 that has been presented here in court. If
20 there was any testimony ordered stricken from
21 the record during this trial, you are to
22 disregard that testimony. You are to consider
23 only the testimony which has been presented
24 from this witness stand and any exhibits which
25 have been made a part of the record in this

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1 case, and any stipulations of counsel.

2 I have the additional duty to charge
3 you on the law that is applicable to this case.
4 As the presiding judge, I am the sole judge of
5 the law. It is your duty as jurors to accept
6 and apply the law as I now state it to you. If
7 you have an idea as to what the law is or what
8 you think that the law ought to be and it does
9 not agree with what I tell you that the law is,
10 you must abandon that idea because, Ladies and
11 Gentlemen, you are to accept the law and apply
12 the law exactly as I state to you.

13 In every case that is tried before a
14 jury, the jury becomes the sole and exclusive
15 judges of the facts in the case. A trial judge
16 may not suggest, intimate, comment, make any
17 statement to a trial jury about the facts in
18 the case. You are the jury, you are the sole
19 judges of the facts. You are not to infer from
20 what I've said during the progress of this
21 trial, or by any ruling on the admissibility of
22 any evidence, or otherwise, anything that I
23 have said during the course of these
24 instructions to you that I have any opinion
25 about the facts in this case. The law does not

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1 allow me to have opinions about the facts in
2 this case. This is a matter solely for you,
3 the jury, to determine. It is your duty to
4 determine the effect, the value, the weight and
5 the truth of the evidence that has been
6 presented during this trial.

7 Now, Ladies and Gentlemen, the
8 indictment charges the defendant with various
9 things. I will remind you that the fact that
10 the defendant was arrested, charged and
11 indicted in this case is not evidence in this
12 case and cannot be considered by you as
13 evidence of guilt in this case. Nor does it
14 create any presumption or inference of guilt.
15 The indictment is simply a written instrument
16 that contains the charges made against the
17 defendant; that is, a document by which this
18 case is brought into court.

19 You, Ladies and Gentlemen, the
20 indictment in this case, Indictment 10-GS-42-
21 543 alleged two different offenses against the
22 defendant. The charges are robbery while armed
23 with a deadly weapon, more notably recognized
24 as armed robbery, and burglary in the second
25 degree. The indictment charges separate and

1 distinct offenses and you must decide each
2 charge separately on the evidence and the law
3 applicable uninfluenced by your decision as to
4 the other charge.

5 The defendant may be convicted or
6 acquitted on any or both offenses that are
7 charged. You will be asked to write a separate
8 verdict of Guilty or Not Guilty for each
9 charge.

10 Now, Ladies and Gentlemen, the
11 defendant has pled not guilty to the charges
12 contained in the indictment. That places the
13 burden on the State to prove the Defendant
14 guilty. A person charged of a crime in South
15 Carolina is never required to prove themselves
16 innocent. This is an important rule of law.

17 A defendant in a criminal trial, no
18 matter how serious the crime may be, will
19 always be presumed to be innocent of the crime
20 for which an indictment was issued unless guilt
21 has been proven by evidence satisfying you of
22 that guilt beyond a reasonable doubt.

23 This presumption of innocence does not
24 end when you begin your deliberations but
25 accompanies the defendant throughout the trial

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1 until you reach a verdict of guilt beyond a
2 reasonable doubt. The presumption of innocence
3 is like a robe of righteousness that is placed
4 about the shoulders of a defendant and it
5 remains with the defendant until it has been
6 stripped from the defendant by evidence
7 satisfies you of the defendant's guilt beyond
8 any reasonable doubt.

9 The presumption of innocence is not
10 a mere legal theory, it is not a mere legal
11 phrase but it is a substantial right that every
12 defendant is entitled to unless you, the jury,
13 are satisfied by evidence of the defendant's
14 guilt beyond a reasonable doubt.

15 Now, that begs the question of what is
16 reasonable doubt. The State has the burden of
17 proving the defendant guilty beyond a
18 reasonable doubt. Now, some of you may have
19 served as jurors on civil cases where it was
20 only necessary to prove the facts were more
21 likely true than not, such as by the greater
22 weight or the preponderance of the evidence.
23 In criminal cases, however, the State's proof
24 must be more powerful than that. It must be
25 beyond a reasonable doubt. Now, truth beyond

1 a reasonable doubt is proof that leaves you
2 firmly convinced of a defendant's guilt. There
3 are very few things in this world that we know
4 with absolute certainty. In criminal cases,
5 the law does not require proof that overcomes
6 every possible doubt.

7 If based upon the consideration of the
8 evidence you are firmly convinced that the
9 defendant is guilty of the crimes charged, then
10 you must find the defendant guilty.

11 If, on the other hand, you may think
12 that there is a real possibility the defendant
13 is not guilty, you must give the defendant the
14 benefit of the doubt and find the defendant not
15 guilty.

16 Now, Ladies and Gentlemen, there are
17 two types of evidence which is generally
18 presented during a trial: direct evidence and
19 circumstantial evidence.

20 Direct evidence is the testimony of a
21 person who claims to have actual knowledge of
22 the facts, such as an eyewitness. It is
23 evidence that immediately establishes the main
24 facts be proven.

25 Circumstantial evidence is proof of a

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1 chain of facts or circumstances indicating the
2 existence of a fact. It is evidence which
3 immediately establishes collateral facts which
4 -- from which the main facts may inferred.

5 Circumstantial evidence is based on inference
6 and not on personal knowledge or observation.

7 The law makes absolutely no difference
8 between the weight or value to be given to
9 either direct or to circumstantial evidence.
10 Nor is a greater degree of certainty required
11 for circumstantial evidence than that for
12 direct evidence.

13 Ladies and Gentlemen, you should weigh
14 all of the evidence in this case and if after
15 weighing all the evidence you are not convinced
16 of the guilt of the defendant beyond a
17 reasonable doubt, you must find the defendant
18 not guilty.

19 Now, Ladies and Gentlemen, I instruct
20 you and I emphasize the fact that the defendant
21 did not testify is not a fact to be considered
22 by you in any way in your deliberations or your
23 consideration of the guilt or innocence of the
24 defendant. It must not be considered by you in
25 any way whatsoever. A defendant has the

1 Constitutional right to remain silent. The
2 assertion of this right must not be considered
3 by you in your deliberations. I repeat, under
4 your oath, you are to draw no conclusion
5 whatsoever from the fact that the defendant did
6 not testify in this case. The fact that the
7 defendant did not testify should not even be
8 discussed in the jury room.

9 The burden, as I have stated, is on
10 the State to prove guilt and the defendant is
11 not required to prove his innocence. The
12 burden of proof remains on the State to prove
13 guilt beyond a reasonable doubt.

14 Now, Ladies and Gentlemen, you must
15 determine the credibility of witnesses who have
16 testified in this case. Credibility simply
17 means believability. It is your duty as jurors
18 to analyze and evaluate the evidence and
19 determine which evidence convinces you of its
20 truth. In determining the believability of
21 witnesses who have testified in this case, you
22 may believe one witness over several witnesses,
23 or several witnesses over one witness. You may
24 believe a part of the testimony of a witness
25 and reject the remaining part of the testimony

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1 of that same witness. You may believe the
2 testimony of a witness in its entirety or
3 reject the witness of a testimony of a witness
4 in its entirety. You may consider whether the
5 witness may have any interest or bias,
6 prejudice or other motive in this case. You
7 may also consider the appearance and manner of
8 a witness while on the witness stand.

9 Ladies and Gentlemen, the rules of
10 evidence ordinarily do not permit witnesses to
11 testify to opinions or to conclusions. An
12 exception to this rule exists for witnesses who
13 we call expert witnesses, a witness who by
14 education and experience has developed an
15 expertise in some art, science, profession or
16 calling, who may state an opinion to relevant
17 and material matters to which the witness
18 claims to be an expert. They may also state a
19 reason for the opinion.

20 You may consider any expert opinion(s)
21 received into evidence in this case just like
22 any other evidence and give it the weight that
23 you think that it deserves. If you think that
24 the opinion of an expert is not based on
25 sufficient education and experience, or if you

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1 conclude that the reasons given in support of
2 the testimony are not found, or that the
3 opinion is outweighed by other evidence, you
4 may disregard that opinion in its entirety.
5 And an expert witness' testimony is to be given
6 no greater weight than any other simply because
7 the witness is an expert. You are not required
8 to accept the expert's opinion, even though it
9 is not contradicted.

10 Now, Ladies and Gentlemen, an issue in
11 this case is the identification of the
12 defendant as the person who committed the
13 crimes as charged. The State has the burden of
14 proving identity beyond a reasonable doubt.
15 You must be satisfied beyond a reasonable doubt
16 of the accuracy of the identification of the
17 defendant before you may convict the defendant.

18 Identification testimony is an
19 expression of belief or impression by a witness
20 and you must determine the accuracy of the
21 identification of the defendant. You must
22 consider the believability of each identifica-
23 tion witness the same way as any other witness.
24 You may consider whether a witness had an
25 adequate opportunity to observe the defendant

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1 at the crime scene. That will include such
2 things as how long or how short a period of
3 time the witness had to observe, how far or how
4 close the witness was, the lighting conditions,
5 and whether the witness had a chance to see or
6 to know the person in the past.

7 Once again, I instruct you that the
8 burden of proof is on the State to prove every
9 element of the crimes charged. This
10 specifically includes the burden of proving
11 beyond a reasonable doubt the identification of
12 the Defendant as the person who committed the
13 crimes. If you have reasonable doubt as to the
14 accuracy of the identification, you must find
15 the defendant not guilty.

16 Ladies and Gentlemen, the defendant is
17 charged with robbery while armed with a deadly
18 weapon under Section 16-11-330(a) of the South
19 Carolina code of laws. In order to prove this
20 offense, the State must first prove beyond a
21 reasonable doubt that the defendant took
22 personal property from the person or presence
23 of another person. Property is the presence of
24 a person if it is in a person's reach,
25 inspection, observation or control such that

1 the person could, if not overcome by violence
2 or by fear, keep possession of the property.

3 The State must also prove beyond a
4 reasonable doubt that the defendant took such
5 property away intending to permanently deprive
6 the owner of the property and keep the property
7 for the defendant's own use. The slightest
8 removal of the property by a defendant or the
9 complete possession of the property, even for
10 an instant, by the defendant is sufficient to
11 show the taking and carrying away of property.
12 The taking and carrying away of property must
13 have been done with violence or by putting the
14 owner in fear of violence.

15 The State must prove beyond a
16 reasonable doubt that the defendant was armed
17 with a deadly weapon during the robbery. A
18 deadly weapon is a weapon that is likely to
19 cause death or great bodily harm. Whether an
20 instrument is used as a deadly weapon depends
21 on the facts and circumstances of each case.
22 A pistol is an example of an instrument that
23 may be used as a deadly weapon. A gun may be
24 a deadly weapon, even if it is not operable.

25 Ladies and Gentlemen, the defendant is

1 also charged with burglary in the second degree
2 under Section 16-11-312(b) of the South
3 Carolina code of laws. The State must prove
4 beyond a reasonable doubt that the defendant
5 entered a building in the nighttime without the
6 consent, with the intent to commit a crime in
7 the building. Nighttime is time between sunset
8 and sunrise, during which there is not enough
9 daylight to recognize a person's face except by
10 artificial lighting. A building can be any
11 structure where people are assembled. The
12 State must prove beyond a reasonable doubt that
13 when entering, while in the building, the
14 defendant was armed with a deadly weapon,
15 threatened to use a deadly weapon, or displayed
16 a deadly weapon.

17 Again, a deadly weapon is a weapon
18 that is likely to cause great -- death or great
19 bodily harm. Whether an instrument has been
20 used as a deadly weapon depends on the facts
21 and circumstances in each case. As I said, a
22 pistol is an example of a deadly weapon. A gun
23 may be a deadly weapon even if it is not
24 operable.

25

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1 Now, Ladies and Gentlemen, there are
2 two possible verdicts that you may arrive at in
3 this case. One is for robbery while armed with
4 a deadly weapon and the other is for burglary
5 in the second degree.

6 Under indictment 10-GS-43-0543,
7 robbery while armed with a deadly weapon, your
8 verdict would have to be Not Guilty or Guilty.

9 As to the charge of burglary in the
10 second degree, Not Guilty or Guilty.

11 Now, Ladies and Gentlemen, there is no
12 significance whatsoever to the order in which I
13 stated guilty or not guilty as possible
14 verdict. It is simply that one must be stated
15 first.

16 Now, Ladies and Gentlemen, your
17 verdict must be a unanimous verdict. All
18 twelve of you must agree on the verdict. Your
19 decision must not be based on sympathy,
20 passion, prejudice, emotion, or any other
21 consideration. That is not evidence in this
22 case.

23 Mr. Foreman, when the jury has reached
24 a decision on the verdict, you would then check
25 the appropriate box here and then you will sign

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1 your name. Then please knock on the jury room
2 door and the bailiff will -- just let them know
3 that you have reached a verdict and they will
4 tell us, and then you will be received back
5 here in the courtroom for publication of your
6 verdict.

7 Now, Ladies and Gentlemen, I am going
8 to send you back with the verdict form and a
9 copy of everything that I have just stated to
10 you. Ladies and Gentlemen, go back to the jury
11 room but please do not begin your deliberations
12 until you are instructed to do so. There are
13 some matters that I need to take up with the
14 attorneys. Thank you, Ladies and Gentlemen.

15 (JURY EXITS COURTROOM)

16 THE COURT: Any objection from the
17 State to the jury charge?

18 SOLICITOR: No, sir.

19 THE COURT: From the defense?

20 MR. BRUNSON: None from the
21 defense.

22 THE COURT: All right. Here is the
23 verdict form, my charge and you can gather the
24 evidence and get it back to them.

25 BAILIFF: What about the

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1 alternate?

2 THE COURT: She needs to be
3 separated from the others. Just put her in
4 another room and I'll be in to talk with her.

5 (COUNSEL REVIEW/APPROVE EXHIBITS)

6 (JURY IN DELIBERATION)

7 (RECESS)

8 (NOTIFIED OF VERDICT)

9 (DEFENDANT PRESENT)

10 THE COURT: I understand that the
11 jury does have a verdict. Let me remind
12 everyone in the courtroom that the jury is
13 entitled to their decision and any uproar --
14 either way -- will not be tolerated by this
15 court.

16 If there is anyone who thinks that
17 they cannot keep their emotions in check when
18 the verdict is read, no matter how it goes,
19 needs to leave at this time. Otherwise, I will
20 hold anyone who expresses emotion in contempt
21 of court.

22 Bring in the alternate, I need to
23 release her.

24 (ALTERNATE JUROR ENTERS COURTROOM)

25 THE COURT: Ma'am, the jury has

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1 reached a verdict, so your job has been
2 completed. Thank you for your service. You're
3 welcome to sit in here and watch and see if
4 they did what you would have done. Then -- all
5 right? Thank you.

6 (ALTERNATE JUROR EXCUSED)

7 THE COURT: Now bring the jury in.

8 (JURY ENTERS COURTROOM)

9 THE COURT: Mister Foreman, I
10 understand that the jury has reached a verdict.

11 FOREMAN: Yes, sir, we have.

12 THE COURT: Is it unanimous?

13 FOREMAN: Yes, sir, it is.

14 THE COURT: Please pass the verdict
15 form.

16 FOREMAN: (Complies).

17 THE COURT: The Defendant will
18 please stand.

19 DEFENDANT: (Complies).

20 THE COURT: Publish the verdict.

21 CLERK: State of South Carolina,
22 County of Sumter, in the Court of General
23 Sessions, Docket Number 2010-GS-43-0543, the
24 State of South Carolina versus Joseph Waddell
25 Dunbar, Jr., as to the charge of robbery while

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1 armed with a deadly weapon, "We, the jury,
2 unanimously find the Defendant guilty."
3 As to the charge of burglary in the second
4 degree, "We, the jury, unanimously find the
5 Defendant guilty." Signed Robert Weaver,
6 Foreman, November 9th, 2011.

7 Ladies and Gentlemen of the jury, if
8 this is your verdict so say you all by raising
9 your right hand - (unanimous response by
10 jurors).

11 THE COURT: Does the State wish for
12 the jury to be polled?

13 SOLICITOR: No, sir, Your Honor.

14 THE COURT: Does the defense request
15 that the jury be polled?

16 MR. BRUNSON: The defense does
17 request that the jury be polled.

18 THE COURT: Please poll the jurors.

19 CLERK: Ladies and Gentlemen, when I
20 call your number, please stand.

21 Number 106, Dedria Mathis. Is this
22 your verdict and still your verdict?

23 JUROR NUMBER 106: Yes, sir.

24 CLERK: Number 166, Terence Squires,
25 is this your verdict and still your verdict?

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1 JUROR NUMBER 166: (Affirmative
2 nod).

3 CLERK: Thank you.

4 THE COURT: I need for you to say
5 out loud ---

6 JUROR NUMBER 166: Yes, sir. I'm
7 sorry.

8 THE COURT: The court reporter has
9 to be able to hear you.

10 JUROR NUMBER 166: Yes, ma'am.

11 THE COURT: Thank you.

12 CLERK: Number 120, Paris Mickens, is
13 this your verdict and still your verdict?

14 JUROR NUMBER 120: Yes.

15 CLERK: Number 8, William Bennett, is
16 this your verdict and still your verdict?

17 JUROR NUMBER 8: Yes.

18 CLERK: Number 68, Joseph Gober, is
19 this your verdict and still your verdict?

20 JUROR NUMBER 68: Yes, it is.

21 CLERK: Number 85, James Johnson, is
22 this your verdict and still your verdict?

23 JUROR NUMBER 85: Yes, it is.

24 CLERK: Number 145, Bobby Ray, is
25 this your verdict and still your verdict?

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1 JUROR NUMBER 145: Yes, sir.

2 CLERK: Number 28, Joe Carrington, is
3 this your verdict and still your verdict?

4 JUROR NUMBER 28: Yes.

5 CLERK: Number 179, Robert Weaver, is
6 this your verdict and still your verdict?

7 JUROR NUMBER 179: Yes, sir.

8 CLERK: Number 172, Susan Thibault,
9 is this your verdict and still your verdict?

10 JUROR NUMBER 172: Yes.

11 CLERK: Number 82, Eric Jackson, is
12 this your verdict and still your verdict?

13 JUROR NUMBER 82: It is.

14 CLERK: Number 21, Edward Buddin,
15 Jr., is this your verdict and still your
16 verdict?

17 JUROR NUMBER 21: Yes, it is.

18 CLERK: The jury has been polled and
19 the verdict stands, Your Honor.

20 THE COURT: Thank you. The verdict
21 does stand. Ladies and Gentlemen, let me take
22 this opportunity to thank you for your service
23 this week. You know, I know all of you all had
24 something better that you thought you wanted to
25 do rather than be here in court, but let me

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1 assure you that there is nothing more important
2 going on in this town than what is happening in
3 these courtrooms right now. We, as Americans,
4 come together and determine whether someone is
5 guilty or innocent in a criminal trial. It's
6 not like other places where they just appoint
7 somebody to determine that. We don't do that.
8 So please don't feel that your time has been
9 wasted up here. You did an important job for
10 the State and the County and I really
11 appreciate what you did. I would tell you that
12 no matter what your verdict would have been,
13 you came to the verdict as you swore that you
14 would.

15 Now, Ladies and Gentlemen, remember
16 every time that you walked out of here that I
17 told that you couldn't say anything to anybody.
18 That rule is now lifted. You may speak to
19 anybody that you want to for as long as what
20 to, or as little as you want to. So if
21 somebody persists in wanting to talk to you and
22 you don't want to speak to them, if you would
23 just let one of the bailiffs know, then I will
24 make sure that's not a problem for you.

25 Again, let me remind you that you're

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1 going to be paid, a very paltry amount but the
2 service that you gave to our county was great.

3 We are checking to see how many jurors
4 that we are going to have coming back this
5 afternoon. It looks like we have enough, so
6 you all will be dismissed. That includes the
7 alternate back there. So your service is
8 finished. Let me remind you again that this
9 satisfies your service on the jury, so if
10 you're picked within the next three years you
11 just let them know that you served this week.

12 Ladies and Gentlemen, let me have the
13 opportunity, if I can, to shake your hands as
14 you're leaving. Thank you for your service
15 here today.

16 Now, I'm going to sentence the
17 Defendant at 12:30. If you want to sit in the
18 courtroom and see what sentence that I impose
19 on him, you're welcome to do that. Those of
20 you who want to go ahead and leave, you're
21 welcome to do that as well. Thank you again,
22 Ladies and Gentlemen, for your service.

23 (JURY EXCUSED)

24 THE COURT: Court will be in recess
25 until 12:30 to give the attorneys an

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1 opportunity to get the sentencing sheets.

2 (BRIEF RECESS)

3 (DEFENDANT PRESENT)

4 THE COURT: Mr. Griffin, what is the
5 defendant's criminal history.

6 SOLICITOR: Your Honor, going back
7 to his juvenile record, he's got an assault on
8 a police officer while resisting arrest, a
9 shoplifting as a juvenile. Your Honor, he's
10 also got a resisting arrest as an adult for
11 which he received probation. Your Honor, those
12 are his prior criminal convictions.

13 THE COURT: Is that correct, Mr.
14 Brunson?

15 MR. BRUNSON: That's correct, Your
16 Honor.

17 THE COURT: Would any of the victims
18 like to say anything?

19 SOLICITOR: Your Honor, I believe
20 that Ms. Pollard would like to make a
21 statement.

22 THE COURT: Ms. Pollard?

23 SOLICITOR: Yes, Your Honor. For me
24 and my daughters and Ms. Libra, she asked me to
25 speak for her and also her daughter, we forgive

1 him because that's who we are. I am very known
2 in the community, everybody knows me, everybody
3 knows my children. We're just sad that we're
4 here today, you know, on this occasion. But we
5 do want to let him know that we forgive him
6 because that's -- you know, not only what God
7 wants us to do but because that's who we are.
8 That's it. We are just sad right now.

9 THE COURT: Thank you. Mr. Dunbar,
10 you have been tried by a jury of your peers..
11 They listened to the evidence and they
12 unanimously found you guilty of robbery while
13 armed with a deadly weapon and burglary in the
14 second degree, violent. Would you or your
15 attorney like to say anything at this time
16 before I pass sentence upon you?

17 MR. BRUNSON: Your Honor, if it
18 please the court, I would like to say that
19 Joseph Dunbar, Jr., is twenty years of age.
20 Your Honor, he is relatively young.

21 He did not finish high school. He
22 went back and got his GED in 2008. Your Honor,
23 he enrolled in Central Carolina in 2009.

24 He only had one adult conviction,
25 although he hasn't had a long time to

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1 accumulate charges.

2 Your Honor, I believe that there is
3 hope for this young man in the future. I
4 understand that Your Honor is going to sentence
5 him. We'd ask the court to have mercy on him
6 upon sentencing.

7 Your Honor, on behalf of the
8 defendant, we would like to apologize to the
9 court -- and I think he would like to apologize
10 at the appropriate time.

11 THE COURT: Mr. Dunbar, would you
12 like to say anything to the court at this time?

13 DEFENDANT: Yes, sir. I'm sorry for
14 what happened, Your Honor. I don't know what
15 else to say. I'm just sorry that you all had
16 to go through a crime like that.

17 I just want to say that I got two --
18 two little girls at home. One of them I ain't
19 never meet. I just wonder if you would just
20 let me get home in time before it's too late
21 for me to have a say-so in their life. That's
22 it.

23 THE COURT: You know, this was an
24 extremely cowardly act. Although this was not
25 a home that was invaded, this was an invasion

1 of where these people worked and where they
2 felt secure. These guys came in, and you went
3 in there with them, with loaded gun or guns,
4 pointing them at women and children. I can't
5 think of a more cowardly act.

6 You were bad that night, yeah, you
7 were bad. You actually showed your face
8 because you were intimidating her as to whether
9 she should do anything.

10 I find you to be unrepentant. I find
11 you to be a danger to our community and
12 therefore, although they give me the option of
13 sentencing you down to ten years up to thirty,
14 I am sentencing you to the maximum. I am
15 sentencing you to thirty (30) years on the
16 armed robbery charge. Yeah, you crashed into
17 these people's house -- not their house but
18 where they worked -- and where they carried on
19 their day to day life, so I am giving you
20 thirty years. On the burglary charge, I am
21 giving you fifteen (15) years.

22 So you can be bad when you want -- you
23 thought that you were bad that night, so you
24 can be bad -- you can find out how bad you are.

25 They will run concurrently since they

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1 happened at the same time. Thank you.

2 DEFENDANT: I been bad?

3 (DEFENDANT IN CUSTODY)

4 THE COURT: I would like to tell the
5 attorneys and everyone involved, thank you for
6 your professionalism. You've certainly upheld
7 your Civility Oath and I thank you.

8 (TRIAL CONCLUDED)

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1 CERTIFICATE OF REPORTER

2

3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9th Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true,
7 accurate and complete transcript of the hearing
8 held before The Honorable W. Jeffrey Young on
9 November 7-9, 2011, as prepared from the audio
10 notes of Margaret Sullivan;

11 I further certify that I am neither kin nor
12 counsel to any of the parties and have no
13 interest in the outcome of this action.

14

15



16

Deborah Garrison

17

Circuit Court Reporter

18

9th Judicial Circuit

19

20

21

22

23 Charleston, South Carolina

24 August 20, 2012

State of South Carolina)
)
County of Sumter)

The State of South Carolina, Testimony of Maqueda Duncan
Plaintiffs 2010-GS-43-543

vs.

Joseph Dunbar,
Defendant

November 7-9, 2011
Sumter, S.C.

Before the Honorable W. Jeffrey Young, Judge.

A-P-P-E-A-R-A-N-C-E-S

Mr. R. Kirk Griffin,
Assistant Solicitor for the State

Mr. Willie H. Brunson,
Attorney for the defendant

Margaret T. Sullivan
Court Reporter

1 MR. GRIFFIN: the State calls Maqueda Duncan to
2 the stand.

3 Maqueda Duncan, Being first duly
4 sworn, testified as follows:

5 THE BAILIFF: State your full name and
6 spell your last name for the record.

7 A Maqueda Duncan. D-U-N-C-A-N.

8 DIRECT EXAMINATION by Mr. Griffin:

9 Q Maqueda, how old are you?

10 A 18.

11 Q And who is your mother?

12 A Mary Pollard.

13 Q Maqueda, on January 1st, 2010, where were
14 you?

15 A In my mother's shop, Untouchable Cuts, on
16 Lafayette on the south side.

17 Q And to your knowledge, is that within
18 Sumter County?

19 A Yes, sir.

20 Q What happened that day?

21 A My mother got robbed.

22 Q And as you stated, you were present at the
23 store?

24 A Yes, sir.

25 Q Where were you when this event happened?

1 A I was located in the barber shop part of
2 the shop. Doing Libra's daughter Taylor's hair.

3 Q Libra's daughter Taylor. About how old
4 was she at the time?

5 A 8.

6 Q Now the barber part of the shop, is that a
7 separate area?

8 A Yes, sir.

9 Q I am doing to show you State's Exhibit
10 No. 16, and ask you if you if you recognize that.

11 A Yes, sir.

12 Q What is that?

13 A The barber shop.

14 Q I am also going to show you State's
15 Exhibit No. 13. Do you recognize that portion?

16 A Yes.

17 Q And what is that?

18 A The barber shop.

19 Q And that's where you were?

20 A Yes, sir.

21 Q Now, Maqueda, what did you see or hear
22 that day?

23 A When I was -- my back was turned to the
24 door that you walk in to get to the barber shop
25 from the salon part. And I just heard a big like

1 blast. I just heard glass. So I peeked over to
2 see what like, what was going on. And I seen a
3 whole bunch dudes scattered around. And then I
4 went back in the shop. And the barber shop has
5 bars. Like bars to the windows and the door. So
6 the barber shop was locked. So I'm like, I can't
7 get out this way.

8 So I went back into the salon area. And I
9 walked in Libra's door to walk to the TV room, and
10 be hiding in the corner. And we sat there. And
11 then I heard somebody say well, somebody is still
12 around here. So I was like, oh, my gosh. So I
13 turned, like I was just -- I had looked behind me.
14 And I sat in front of her in the corner. And a
15 tall dude came in there with a little handgun.
16 And he said, he said, get up. And he had the gun
17 pointed in my face. He was like get up. And
18 Libra's daughter was crying.

19 And we got out of our spot or whatever,
20 and walked towards the salon. And he was like,
21 shut her the fuck up. Shut her the fuck up. And
22 I was like, I can't do that, she is scared. So we
23 stand -- we walked inside the salon. And we
24 walked inside the salon. So I told my mother,
25 there was a dude with a gun in my mother's face.

1 So I tell her, I said, mom, did you give him the
2 money. She said, yes, I gave him everything I
3 got. So then it just was like, slow. Like
4 everything was in slow motion to me after that. I
5 didn't hear anything. It was just so much slow
6 motion. And the dude, the boy that was in my
7 mother's face, he was like yelling. Where the
8 fuck is that. Where the fuck is that. Like and
9 I'm like mom what is he looking for.

10 Q Is before you mom gave him the money?

11 A Yes.

12 Q Now the guy asking her where it was, did
13 you notice anything particular about him?

14 A What I notice was his face after he took
15 his mask off. That's what I noticed.

16 Q Okay. What was his complexion?

17 A Light skin.

18 Q And the light skinned boy was the one your
19 mother gave the money to?

20 A Yes, sir.

21 Q After this happened, did the other
22 individuals take anything?

23 A Yes. They were standing around. So after
24 she gave him the money, they grabbed like our
25 purses off the counter, and they ran out the door.

1 And he was the only one in there. Like stayed in
2 there after everybody else left.

3 Q So they grabbed the items. Ran out. And
4 left the light skinned man---

5 A Yes.

6 Q ---in there?

7 A Yes.

8 Q Now did you see anybody in red socks and
9 flip-flops come in the store?

10 A No.

11 Q Why would that be?

12 A Because I was in the barber shop part.
13 My back was turned towards the door, so I couldn't
14 see nobody. I didn't see anybody.

15 Q Okay. And was it uncommon to have people
16 walk in the store just off the street?

17 A No.

18 Q Did you notice anyone come to the door.
19 And talk to your mother through the glass door?

20 A No.

21 Q Okay. Why is that?

22 A Because I was in barber shop. I didn't
23 know anything that was going on until I heard the
24 glass.

25 Q And, Maqueda, you -- did you ever go to

1 the law enforcement center after the incident?

2 A Yes, we went to the police station.

3 Q Okay. And when you got to the police
4 station, what did you do?

5 A We went to the back. We went to the back
6 with a lady. And we had to fill out a statement,
7 a report---

8 Q Okay.

9 A ---of what happened.

10 Q Now did you do that?

11 A Yes, sir.

12 Q And did you write it in your own
13 handwriting?

14 A Yes, sir.

15 Q How close in time was that statement to
16 when the robbery happened?

17 A It was not even -- it was like 30 minutes
18 after. Like 30 minutes we reported it to the
19 station after this incident.

20 Q Did you go anywhere between leaving the
21 salon and going to the police station?

22 A No. We went straight to the police
23 station.

24 Q And did any law enforcement officer tell
25 you what write?

1 A No.

2 Q Did they gave you any information that
3 they---

4 A No.

5 Q ---that you needed to put in the statement
6 statement.

7 A No.

8 Q So what you wrote that day is what you
9 remember.

10 A Yes.

11 MR. GRIFFIN: Maqueda, answer any
12 questions Mr. Brunson may have for you.

13 THE COURT: Mr. Brunson.

14 Cross Examination by Mr. Brunson:

15 Q Good morning.

16 A Good morning.

17 Q Did your mother ever work in a different
18 shop?

19 A Yes, sir.

20 Q What's the name of that shop?

21 A Main Attractions.

22 Q Did you work in there also?

23 A No.

24 Q Okay. Main Attractions. And what street
25 is that?

1 A Main and Hampton.

2 Q Pardon me?

3 A Main. North Main and Hampton. Main
4 Street.

5 Q You said that there was a guy that
6 participated in the robbery that took off his
7 mask.

8 A Uh-huh. (Affirmative.)

9 Q You said a light skinned man. Did you
10 ever -- well you said you wrote a statement. In
11 your statement, did you give the police a name?

12 A No.

13 Q In fact you just said a light skinned boy;
14 isn't that correct?

15 A Yes.

16 MR. BRUNSON: Nothing further.

17 MR. GRIFFIN: No redirect Your Honor?

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

19 -----End of Requested Transcript of Record---o

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25

C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the General Sessions Court on November 8, 2011, in Sumter County, Sumter, South Carolina.

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

7/2/13
DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/21



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender
 Wanda H. Carter, Deputy Chief Appellate Defender

July 1, 2013

RECEIVED

JUL 01 2013

SC Court of Appeals

Ms. Margaret T. Sullivan
 Circuit Court Reporter
 504 Henderson Street
 Sumter, SC 29150-3167

RE: State v. Joseph Wadell Dunbar, Appellate Case No. 2011-203386
 10-GS-43-00543, Sumter County, Judge Wm Jeffrey Young

Dear Ms. Sullivan:

Pursuant to our e-mail correspondence on June 27, 2013, I understand that you will type the testimony of Maqueda Duncan that was omitted from the original trial transcript provided to Appellate Defense. The trial was held on November 7, 2011, before the Honorable William J. Young in Sumter County. I have asked the Court to hold the direct appeal in abeyance until I receive a copy of this testimony. I appreciate your assistance in this matter.

Sincerely,

Kathrine H. Hudgins
 Appellate Defender

cc: S.C. Court of Appeals
 Attorney General's Office

ORIGINAL



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

July 1, 2013

RECEIVED

JUL 01 2013

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Joseph Wadell Dunbar, Appellate Case No. 2011-203386

Dear Ms. Kitching:

The initial brief of appellant and designation of matter in the above case are due to be served and filed July 5, 2013. I have confirmed with court reporter Margaret Sullivan that State's witness Maqueda Duncan's testimony was not included in the original transcript provided to Appellate Defense. I requested the omitted witness testimony transcript today and ask that the time limits be held in abeyance pending receipt of that transcript. This is the second request to hold the case in abeyance. The first request involved jury selection and that transcript has been provided. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH:dlw

cc: Attorney General's Office
Joseph Wadell Dunbar

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH WADELL DUNBAR,

APPELLANT

APPELLATE CASE NO. 2011-203386

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting in evidence an unduly suggestive photo line-up that was inherently unreliable and conducive to irreparable mistaken identification?

STATEMENT OF THE CASE

In May of 2010, the Sumter County Grand Jury indicted Dunbar, in a two count indictment, for burglary second degree and armed robbery, indictment #2010-GS-43-0543. On November 7, 2011, Dunbar proceeded to jury trial before the Honorable William J. Young. Attorney Will Brunson represented Dunbar at trial. Attorney Ryan Kirk Griffin prosecuted the case on behalf of the State. The jury returned verdicts of guilty and Judge Young sentenced Dunbar to thirty (30) years for armed robbery and fifteen (15) years concurrent for burglary second degree. A timely notice of intent to appeal was served on November 17, 2011. This appeal follows.

ARGUMENT

The trial court erred in admitting in evidence an unduly suggestive photo line-up that was inherently unreliable and conducive to irreparable mistaken identification.

The jury found Appellant guilty of the burglary and robbery of Untouchable Cuts, a beauty/barber shop owned by Mary Pollard. Detective William Lyons of the Sumter Police Department developed Appellant as a suspect and asked the South Carolina Law Enforcement Division [SLED] to compile a six person photo line-up. (R. p. 43, line 3 – p. 31 lines 1-20). Detective Lyons showed the photo line-up to Mary Pollard who identified Appellant as one of the men who entered her shop and robbed her. (R. pp. 44 – 48).

Prior to trial Appellant moved to suppress the photo line-up. (R. p. 20, lines 23-25). The court held a hearing pursuant to Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972). (R. pp. 20-58). The trial court found the identification reliable stating, “I am looking at the lineup. Four of them are very similar. The other are two are darker but, yet, the hair would fall into the description. So based on – the key factor here is reliability. I think that being the linchpin, that the photo lineup will come in. Based on that, your in-court identification will be allowed at this point.” (R. p. 59, lines 12-20). Appellant renewed the objection when the State moved to admit the photo line-up in front of the jury. (R. p. 223, lines 1-12). The judge erred in admitting the photo line-up.

“A criminal defendant may be deprived of due process of law by an identification procedure arranged by police which is unnecessarily suggestive and conducive to irreparable mistaken identification.” State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable

misidentification. Manson v. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977)

The United States Supreme Court has developed a two-prong inquiry to determine the admissibility of an out-of-court identification. Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972). First, a court must ascertain whether the identification process was unduly suggestive. State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000). The court must next decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Id.

In State v. Liverman, 727 S.E.2d 422, 426 (2012) the South Carolina Supreme Court wrote:

In Neil v. Biggers, the United States Supreme Court set forth a two-pronged inquiry to determine whether due process requires suppression of an eyewitness identification. Due process requires courts to assess, on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Biggers, 409 U.S. at 198, 93 S.Ct. 375. Under the totality of the circumstances, the factors to be considered in assessing the reliability of an otherwise unduly suggestive identification procedure are: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Manson v. Brathwaite, 432 U.S. 98, 114, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977) (citing Biggers, 409 U.S. at 199–200, 93 S.Ct. 375).

First, the trial court should have determined that the identification process was unduly suggestive. According to Detective Lyons, Mary Pollard described one of the

men as, "Light skinned black with pits or pimples, what-have-you, facial acne around his cheekbone area, short, light weight – not heavyset. Hair, not long braids but hair that could be twistable or braidable, long enough to braid his hair." (R. p. 53, lines 11-16). Detective Lyons admitted that only four of the six men in the photo line-up were light skinned. (R. p. 54, lines 1-12). In ruling the trial court noted that four of the photos were similar but that two were darker. (R. p. 59, lines 12-20). The content of the photo line-up rendered it unduly suggestive.

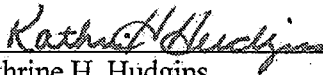
Given the unduly suggestive identification procedure, the identification was not so reliable that no substantial likelihood of misidentification existed. Although the trial court considered the reliability factors, (R. p. 58, line 22 – p. 59, lines 1-11), he considered those factors without finding that the content of the line-up was unduly suggestive. The trial court erred.

The error in admitting the line-up was not harmless. The State's sole evidence placing Appellant at the scene was the identification made by Mary Pollard. Based on the totality of the circumstances surrounding the suggestive identification procedure, there is a substantial likelihood that appellant was irreparably misidentified and the identification is unreliable as a matter of law.

CONCLUSION

Based on the above argument, Mr. Dunbar's convictions and sentences should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of August, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH WADELL DUNBAR,

APPELLANT

APPELLATE CASE NO. 2011-203386

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Wadell Dunbar states:

1. She is 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 William Jeffrey Young, which was held on November 9, 2011, 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 Joseph Wadell Dunbar.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of August, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.,

JOSEPH WADELL DUNBAR,

APPELLANT

APPELLATE CASE NO. 2011-203386

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments and sentencing sheets;
- (2) Jury Selection transcript transcribed by Court Reporter Diane A. Rutledge;
- (3) Trial transcript transcribed by Deborah Garrison;
- (4) Trial testimony of Maqueda Duncan transcribed by Margaret T. Sullivan (inadvertently omitted from original trial transcript);
- (5) State's Exhibit #1 – Photo;
- (6) State's Exhibit #2 – Photo Line-up. (To be transported as copy too dark).

I certify that this designation contains no matter which is irrelevant to this appeal.

August 2nd, 2013


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 2, 2013



Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
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Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH WADELL DUNBAR,

APPELLANT

APPELLATE CASE NO. 2011-203386

CERTIFICATE OF SERVICE

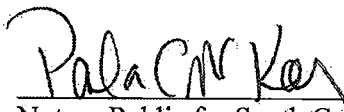
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Joseph Wadell Dunbar, #348569 at Lee Correctional Institution, * this 30th day of July, 2013.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me:
this 2nd day of August, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

SOUTH CAROLINA
COURT OF APPEALS

Case No.10-GS-43-0543

Joseph Waddell Dunbar, Jr.
Appellant in proper person

Vs.

State of South Carolina
Respondent

An Appeal of a Final Judgment
From the
Honorable William J. Young in the
Court of General Sessions
In and for Sumter County of the
State of South Carolina

Initial Brief of Appellant
Joseph Waddell Dunbar, Jr.
Proper person

RECEIVED
SEP 24 2013

SC Court of Appeals

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STATEMENT OF THE CASE

This is an appeal arising out of a Final Judgment issued in the Sumter Municipal Court. Sumter county in and for the State of South Carolina v. Joseph Waddell Dunbar, Jr. Case No: 10-GS-43-O543 hearing of November 7-9 2011 before The Honorable William J. Young back in January 1, 2010 there was alleged armed robbery occurred on the south side of town in sumter county in South Carolina. According to victim's statement Ms. Mary pollard she got to her business at 7:00 am.in the morning she had two clients and she closed at approximately at 5:00 pm. And around 5:30 her pastor came andshe stepped outside of her business. She was still in front of the business but was outside talking to her pastor. then she came back in side. She left the door at that time her daughter and libra told her that an individual had came in was asking for the owner. They told him that they were the only ones there at the time.the individual was later I.D. as Reekem Dunbar he had on red socks the cousin of Joseph Dunbar Jr. and right after that she heard a knock on the door. She went to the door she had curtains up at her door. She pulled the curtain backed to the right of her and she seen a young man standing there to the side, to the left side, to right of her and he asked her would she twist his dreads. At that time she told him that her business was closed, that he could come back tomorrow and that she would do it for him then she stepped away from the door. And she told her daughter jahmelia she didn't feel right, she asked her to pass her the cell phone. As she pass the cell phone, a loud boom like. She stepped back to the right which is where her dryers was and stood along the wall. Jahmelia backed back in to the TV. Room. Glass shattering, kicking, guys jumping, through the glass door. One guy had the gun in her face. The other guys had gun on maqueda and jahmelia and libra on everybody that was in the shop. The one guy had a gun on her he ask where the fuck is it at. Then she reached inside of her bra and gave him **fifteen hundred dollars, EBT CARD AND HER MEDICAID card and license.** she told the guy she had a long counter, and everything is over there,you can take everything. And she peed on her self. The other guys snatched stuff and ran out the door, the gunmen said how the fuck you get out of here? She said the same way that you came in. when they left the business, she left out of a back door, which was a gated door Ms. Mary pollard started to bang on the door, which the owner of the building he lives upstairs. They let them in they ran up stairs she told them to call the police the police came. The police took them to the precinct to make a statement on **January 1, 2010 all the victims maid a**

report the same day and time. Then they went home. and the next day detective Lyons had Just Ms. Pollard come in for a **photo lineup** it was just her and detective Lyons. No witness to the photo lineup. On January 2, 2010. The photo lineup not videoed or audio detective Lyons said that he had knowledge of JOSEPH DUNBR PRIOR TO THE robbery taking place, he put Joseph Dunbar in a robbery because of a credit card in a 14 year old child pocket walking down the street who had nothing to do with the robbery he said he knew that he match that description so he took a jail photo from November of (2009) year later with 6 man lineup 2 darker MS. POLLARD STATED that the gun man had hair that can be twisted win The US. Marshals picked MR. JOSEPH DUNBAR UP FROM FLORIDA his photo from there will show he did not have hair that can twist. He never had a nother lineup I wonder why. The judge gave MR. DUNBAR 30 YEARS AND 15 YEARS WITH A TAITED JURY AND ALLEGED VICTIM That has EBT, card that is for people that cant work so if she is making \$1500.00 in a day to get and EBT Card you cant make over \$700 in month. If you say she made that every 2 days she has to be making 22,500 dollars a month. And she is taking food out of some poor childrens mouth and medical? Miss Justus.

STATEMENT OF ISSUES ON APPEAL

- 1.) JUDGES NOT IMPARTIAL
- 2.) TAINTED JURY
- 3.) JURY EYES CLOSED
- 4.) PHOTO LINEUP
- 5.) VICTIMS CONFLICTING STATEMENT
- 6.) CONSTITUTIONAL ERROR
- 7.) EIGHTH AMENDMENT
- 8.) SIXTH AMENDMENT
- 9.EFFECTIVE ASSISTANCE OF COUNSEL
- 10.) FIFTH AMENDMENT
- 11.) DOUBLE JEOPARDY
- 12.) NINTH AND TENTH AMENDMENTS
- 13.) FOURTEENTH AMENDMENT
- 14.PREJUDICAL STATEMENT

ARUMENT

ISSUE FACTS

“page (5.) lines 1-14.MR. BRUNSON: WE BELIEVE THAT THE JURY HAS BEEN TAINTED BY JUROR 189. THE COURT: He didn’t say anything. MR. BRUNSON: Well, he did. THE COURT: Nobody heard it. Solicitor? Solicitor: Judge, in your initial remarks to the jury you would remind them the state has the burden of proof in this case, and juror number 89 was set aside for cause, I think the --with the standard opening remarks to the jury, you could certainly clear up any confusion that may have been created in the jury’s mind by any statement that a juror may have made. page(6.)line 3. THE COURT: I may not do that in my opening charge,page (6.) lines 13-14THE COURT: Your Motion is respectfully denied.”

If the jury’s recommendation is tainted then the trial court’s sentencing decision, which took in to account that recommendation is also tainted

MANN V. DUGGER 844 F. 2d at 1452-1453

RILEY V. WAIN WRIGHT, 517 SO 2d, at 659 if the jury’s recommendation,

CONSTITUTIONAL ERROR

The sentencing Judge serves as the ultimate fact finder. If the judge was not impartial there would be a violation of due process. The law is well

established that a fundamental tenet of due process is a fair and impartial

tribunal. MARSHALL V. JERRICO, INC., 446 U.S. 238, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980)

ISSUE

page 321 lines 4-16 **The Court: Mr. Griffin, what is the defendant's**

criminal history. Solicitor: your honor, going back to his juvenile record,

he's got an assault on a police officer while resisting arrest, a shoplifting

as juvenile. Your honor, he's also got a resisting arrest as an adult for

which he received probation. Your honor, those are his prior criminal

convictions. The Court: is that correct, Mr. Brunson? That's correct,

your honor. Page 323 lines 23-25 THE COURT: you know, this was an

extremely cowardly act. Although this was not a home that was invaded,

this was an invasion-page 324 lines-1-25 of where these people worked

and where they felt secure. These guys come in, and you went in there

with them, with loaded gun or guns, pointing them at women and

children. I can't think of a more cowardly act. You were bad that night,

yeah, you were bad. You actually showed your face because you were

intimidating her as to whether she should do anything. I find you to be

unrepentant. I find you to be a danger to our community and therefore,

although they give me the option of sentencing you down to ten years up to thirty, I am sentencing you to the maximum. I am sentencing you to

thirty (30) years on armed robbery charge. Yeah, you crashed into these people's house-- not their house but where they worked-- and where they carried on their day to day life, so I am giving you thirty years. On the burglary charge, I am giving you fifteen (15) years. so you can be bad when you want--you thought that you were bad that night, so you are. They will run concurrently since they- page 325 line 1. Happened at the same time. Thank you

5th AMENDMENT RIGHT TO GRAND JURY, NO DOUBLE JEOPARDY, FREEDOM FROM SELF INCRIMINATION, DUE PROCESS AND JUST COMPENSATION? What is double jeopardy? The fifth amendment provides that "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." double jeopardy means that a person is placed in jeopardy of punishment for a crime twice. It prohibits a second prosecution after a person has been acquitted or convicted. It also prohibits multiple punishments for the same offense. The U.S. Supreme Court has declared that double jeopardy clause is designed "to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense." the U.S. Supreme Court's decision in BROWN V. OHIO (1978) PROVIDES an excellent illustration of the double jeopardy clause in action. County prosecutors initially charged Nathaniel brown with joyriding. He pled guilty and served 30 days in jail. upon his release, prosecutors charged him with the more serious crime of auto theft. The Supreme Court applied the BLOCKBURGER test-derived from BLOCKBURGER V. UNITED STATES(1932):The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of an additional fact which the other does not." applying this test, the court determined that joyriding and auto theft constituted the same offense.

14TH AMENDMENT CITIZENSHIP, RIGHT OF EQUAL PROTECTION AND DUE PROCESS? procedural due are notice and the right to a fair hearing.

COUNSAL
 ISSUE EFFECTIVE ASSISTANCE OF
 STRICKLAND V. WASHINGTON, the
 defendants trial attorney failed to subpoena key alibi witness crucial to the
 defense of the case

Page 231 lines 14-15 Mr. Brunson: your honor, I did not serve my subpoena on a witness. Page 232 lines 4-9 Mr. Brunson The Court: if you can get him up here and you have a subpoena-- we'll have one waiting for him if he needs to come up here. I mean, a subpoena should have been served on him yesterday, or Monday.

page 271 lines 14 -19 WE HEARD FROM FOUR MEM BERS OF LAW ENFORCEMENT. NOT A SINGLE ONE OF THEM OFFERED A SHRED OF EVIDENCE TO EVEN PROVE THAT MY CLIENT WAS THERE. page 276 8-10 I submit to you that Mrs. Pollard, the only person in this entire case that says that my client did this, is not believable.

Page 53 lines 14-19 LADIES AND GENTLEMEN, IT IS VERY IMPORTANT THAT YOU KEEP AN OPEN MIND AND NOT DECIDE ANY ISSUE IN THIS CASE UNTIL ALL THE EVIDENCE HAS BEEN PRESENTED, THE ATTORNEYS HAVE MADE THEIR CLOSING ARGUMENTS AND I HAVE CHARGED YOU ON THE LAW.

PAGE 114 LINE 24-25 The Court: If one of the jurors knows this person and knows that he is "a- page 115 lines 1-3 -creep", or something that, they're staying on the jury. I am not going to dismiss them from the jury because of that.

constitutional error a man life is on the line.

6th AMENDMENT PROVIDES: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district

Page 177 lines 9-14. **The Court: hold on just a second. Ladies and gentlemen of the jury, I know that you listen pretty well with your eyes closed but it 's important that you keep your eyes open, so-- I'm sure you all are listening carefully but you need to keep your eyes open.**

TAINTED JURY THE JURY IS SLEEPING.

page 261 line 1 a directed verdict. Page 261 lines 14-15 **THE COURT: I am going to respect-fully deny your motion.**

ISSUE impartial

page 6 line 16 -17 **Mr. Brunson Thank you your honor.**

The Defendant would also like to make a motion that the fact witnesses be sequestered.

ISSUE impartial

page 7 lines 22-25 **THE COURTS: Respectively denied.**

MR. BRUNSON: Thank you, your Honor.

The defense would like to make a motion with regard to the photo lineup.

ISSUE victim conflicting statement's
 page 12 lines 6-7 "MS. POLLARD: "It was like \$1,500, I had my EBT card, my drivers license, and another card."

lines 11-12 "That was money that I had made the day before."

Lines 20-23 Q. "Did you ever get a look at his face?"
I didn't get a look at his face because he had a mask on."

page 100 line 25 Q.)so you know Dexter Dunbar, you know Dee-

page 101 lines 1-2 - Dunbar you know Reanna Johnson, --- A.)yes, sir.

page 103 lines 6-10 Q.) what other Dunbar do you know?

A.) those are the only two .

Q.)is it your testimony that this is the first time you ever saw Joseph Dunbar? A.) for me, today, the first time.

DAVIS V. STATE 694 so 2d 113,22 Fla L. weekly D1344 Fla App 4. Dist, May 28, 1997 (No. 96-1610) victims prior consistent statement describing intruder to police officer required reversal in burglary prosecution: victim trial testimony about intruder's pants varied, defendant lived in area and was accustomed to riding bicycle in early morning and in evening, and it was reasonable to presume that police officer's testimony about victims description influenced jury in resolving conflicting

page 45 lines 3-4MR. BRUNSON:“ Just an objection at the appropriate time.”

page 45 lines 8-24THE COURTS: Under the due process cause, evidence of identification of an accused must be excluded if the process to obtain the identification is so unnecessarily suggestive as to give rise to a substantial likelihood that there is a misidentification. The facts that the court should look to to determine the reliability of the witnesses are the opportunity to view the criminal at the time of the crime, the witness' degree of attention to the accuracy, the witness' level of certainty at the time of the confrontation, and the time between the crime and the confrontation.

In this situation, I find that the witnesses had an opportunity to view the criminal at the time of the crime. The testimony was that he took the mask off and that- page 46 lines 1-25-she would have seen it at the time. Her degree of attention, she was very specific that he was a

light-skinned black male with shorter hair, with facial markings. She was very specific, ends up being pretty accurate. The witness' level of certainty at the time of confrontation. She was very certain at the beginning of that. And there was very little time. I mean, we're talking about from one evening to the next morning when this lineup was presented. I am looking at the lineup. Four of them are very, very similar. The other two are darker but, yet, the hair would fall into the description. So based on--the key factor here is reliability. I think that being the linchpin, that the photo lineup will be allowed at this point. Thank you. Yes, sir, do you have another motion?

MR. BRUNSON: your honor--no, your honor. We just renew our objection. THE COURT: so noted, denied again.

Lyons did this in he's lineup

pollard

page 25 lines 6-9 "Q.) how many people were in the room?

A.) me and detective Lyons. Q.) Just the two of you.

A.)yes, sir. Page 25, line 17-25 Q. look at this

document,(tendering). **A.)(reviewing). Q.)did anybody sign it in front of you?**

A.)Yes, sir. Q.)who? A.)Detective Lyons. Q.)so at no point did anyone else ever come in the room, that you recall? A.)no sir.

Lyons

page 36 lines 15-25 Q.) was this photo lineup videoed? **A.)was the**

presentment videoed? Q.)yes, Sir A.) no, sir. Q.)was there an audio

of the photo lineup? A.)no sir.

Q.)was there any other witness

present besides you and

Ms. Pollard? A.)no, sir. Q.) how many

witness lines

on the form? A.)signature lines on the form? page 37

lines 1-3Q.)there is a signature line for the officer and a signature line for the witness; correct? **A.) that's correct.**

page. 38 lines 10-25 Q.) okay. So the only way that you got to my

client is from a credit card that as in the back pocket of someone

walking down the street? A.)no. Q.)no. A.)that's part of it.

Q.)the first part of it. A.)also, the person walking down the street was his family member.

Page 41 lines 14-16 Q.)now, you said that you got this photo from a November of 2009 booking? A.)correct.

Page 41 lines 17-23 Q.)pollard testified that there were two other sets of photos with this one. Is it your testimony that is not true?

A.)my testimony is that I presented this photo lineup to

Ms. Pollard on that date. Q.)Just those six? A.)that's correct.

Page 44 lines 1-5 Q.)one other question. I notice on state's exhibit 1, proposed one, that there are two different writing utensils being utilized. Is that correct? A.)correct. Page 30 lines 13-24 Q.)prior to this robbery taking place, did you have knowledge of Joseph Dunbar? A.) **I did. And I knew that he matched that description. Therefore, I took a recent jail photo- he had a booking photo from November of 2009 for an unlawful weapons charge, so I took that booking photo**

because I knew that it would be probably the most recent photo of

Prejudicial statement Gottschalk v. Gottschalk

him, unless he'd gotten a new driver's license, so I sent that photo to the state law enforcement division and asked them to compile a six-

person
photo lineup. Page 216 lines 18-23 Q.) isn't it true that there

is nothing in the incident report that says anybody took off a

mask?
Solicitor: your honor, I am going to object. He didn't prepare

this. The Court: Sustained. Page 211 lines 5-11 Q.) all right. After the

arrest warrant for Mr. Dunbar was completed, what happened?

A.) we began our efforts to try to locate Mr. Dunbar. during our

investigation and in trying to get Mr. Dunbar located, we received info that he may be in another state, that he may be in the state of Florida. Page 212 lines 3-13 A.) I believe, if my memory serves me correctly, he was taken into custody on January 8th. I am not sure what his extradition date was back to south Carolina, but normally when a defendant is arrested out of state they have to obtain what is called a governor's warrant in order to return him to the state.

Mr. Dunbar waived his extradition. We sent officers down and he was subsequently brought back to our facility.

17.

ISSUE page 49 20-24

THE COURTS: 'Ladies and gentleman, let me tell you upfront that your, not going to be able to take notes during the trial; so, therefore, it's very important that you listen closely throughout the trial. "

ISSUE page 51 lines 4-16 'On the other hand, but with equal emphasis, the same law that makes you the judges of the facts

makes me the judge of the law. The law as given to you by me is the only law that you may consider." 'Ladies and Gentlemen, you must accept the law as I give it to you even though you might disagree."

'I cannot tell you what the facts are and you can not disagree with me about what the law is or what you believe that the law should be.' 'Your job is to take the law as I give it to you, apply it to the facts as you find them from the testimony and other evidence as presented.'

**ISSUE page 69 lines 8,11,14-17, 23. victim
A.) Yes, sir, I owned it. I was renting, renting from someone.**

I got to my business at 7:00 in the morning, had two clients, one

being Libra, I was braiding hair, just doing hair, just doing my

normal/ usual. I closed at approximately 5:00 o'clock.

Page 97 lines 18-24 Q.)you closed at around 5:00, you were outside

talking to your pastor and then-- well, was it daytime or nighttime?

A.)it was partially-- day and night, it wasn't quite dark yet. Q.)okay A.)it was dark.

victim ISSUE page 73 4-8 'At that time I reached inside of my bra area and I gave him-- which I had **fifteen hundred dollars, EBT card, my Medicaid card and my license.** I just gave him all that at one time."

page 96 lines 13-17

A.)I usually stay in the shop until 2:00 or **3:00 in the morning. I have a lot of nighttime clients that work other shifts. If I have early morning clients, I open my shop as early as 5:00 or 6:00 in the morning. I work all day.**

page 68 lines 16-25 Q. all right. Ms. Pollard, what do you do for a living? A.)**beautician.** Q.)how long have you been a beautician?

A.)**ten years.** Q.)back on January 1st, 2010, were you working as a beautician? A.)**yes, sir.** Q.)where were you working? A.)**untouchable cuts barber & beauty salon.**

19.

ISSUE

page 74 lines 24-25

victim conflicting

When he took his mask off, his face was red, real red like if your hot, a red person.

ISSUE page 76 13-22

victim conflicting

MS. POLLARD: 'No, I didn't speak with anybody until I got to the precinct.' that's what I am getting at. Did you have an opportunity to tell law enforcement what happened to you that night? Yeah I had an opportunity when I got to the precinct. They had you write down the statement that you gave? Um-humm.

ISSUE page 106 lines 7-9 11-25

MR. BRUNSON:

Yes, your Honor,

I would like to make a motion at the appropriate time to suppress the introduction of any evidence regarding an anonymous tip.

The basis of the motion being that--kirk and I discussed this earlier.

I asked him--rather, if he had a copy of it. I think, your honor, anything about a tip would be hearsay, not within any exception.

THE COURTS: MR. GRIFFIN? SOLICITOR: Your honor number one, I would like to-- that testimony would come through detective Lyons. He's going to be my last witnesses. I would

like, number one, to ask you to reserve ruling on that u before he testifies. Number two at this point your honor, I would argue that the tip wouldn't be offered for truth-- THE COURTS: But as to why they did what--- SOLICITOR(Affirmative nod) , as to why the did what they did, your honor; why they would have notified the u.s. Marshals in the state of florida. The basis of the tip was that joseph dunbar had fled from sumter to florida, so we would be offering it for why that--- THE COURTS: But if you put it those contexts, that he fled doesn't that **look very prejudicial-- of course**, fleeing would be a consider of a knowledge of guilt. SOICITOR: yes, your honor. THE COURTS: Guilty of knowledge. SOLICITOR: Yes, your honor. That would be the basis for why we would offer the evidence that the u.s Marshals--and we,ve got the officer that actually went to florida to retrieve MR. DUNBAR, who will testify after detective Lyons. So-- THE COURTS: There was

an extradition, wasn't there? MR. BRUNSON There was. THE COURTS: He had to be extradited back up here?

21.

Page 108 1-25 impartial

MR. BRUNSON And he waived. SOLICITOR: And ,
your honor, I would concede that any mention of
extradition would perhaps be more prejudicial than
probative, but certainly why law enforcement

focused their efforts on looking for MR. DUNBAR after
the warrant was issued in the state of florida. I would
submit that were offering that for the basis of law
enforcement action, not for the truth of-- I

mean, it turns out that--- THE COURTS: I certainly think
that he could answer to ' why did you do it' with '
because we got a tip.'

SOLICITOR: And, your honor,-- THE COURTS: Your
not saying what was stated, just that you received a tip.
We do that all the time.

SOLICITOR: Your honor,-- and we would couch it in
that pharse,

that, uh,-- THE COURTS: I wouldn't allow a tip that
says 'MR.

DUNBAR was the one who perpetrated this crime,'That
would be'

fairly, hearsay. Page 109 1-15 SOLICITOR: Right.
THE COURT:

But why did you do what you did'
'we had a tip' I don't think that is

hearsay at all.

MR. BRUNSON: So it depends on how its-- THE

COURT: Very much so. Yeah. MR. BRUNSON So you deny my motion at this point? THE COURTS; I am going to reserve and see how it is couched. MR. BRUNSON: Yes, sir. THE COURT: If its

couched in the right way, they can say why they did what they did without saying what the verbiage was. page 177

THE COURT: Hold

on just a second. Ladies and gentlemen of the jury, I know that you of you listen pretty well with your eyes closed bit its important that you keep your eyes open, so im sure you all are listening carefully but you need to keep your eyes open.

ISSUE page 222 lines 1-25 impartial

Okay. So you did not collect any fingerprints that belong to my client from the scene? DETECTIVE LYONS: I did not, no sir. MR. BRUNSON: In fact, there arent any in file that belong to my client?

DETECTIVE LYONS: No, sir, MR. BRUNSON: In fact there isn't any DNA evidence in your file that belongs-- that was collected that

belongs to my client, from the scene? DETECTIVE LYONS: **That's**

correct. MR. BRUNSON: There is no footprint of shoe in your files

that suggest or that came from my client, from the scene?

DETECTIVE LYONS: No sir we do not have any of
your clients

shoes. MR. BRUNSON:

But you found a shoe print and you made

an imprint from it, is that correct. DETECTIVE LYONS:
That's

correct.

MR BRUNSON: But you have no evidence that that
imprint

matched a shoe belonging to my client?

DETECTIVE LYONS: We

don't have any
evidence that it matches anybody's shoes at this point.

At that point we have not been given a shoe nor nor have
we located a shoe that matches it.

ISSUE page 225 17-23

impartial

MR. BRUNSON: Your honor, the defendant would like to
move for

a **directed verdict** at this time.

That motion is based on the defendant contends that the
state has not met its burden and that they have not
provided evidence that my client is guilty of arm robbery
or use of a weapon.

Page 218 lines 1-4 18-23Q. DETECTIVE LYONS, I BELIEVE THAT YOU INDICATED THAT YOU WERE THE LEAD INVESTIGATOR ON THIS CASE? A.)CORRECT.

Q.)MY QUESTION IS, DID ANYBODY--DIDTHE INCIDENT REPORT SAY THAT SOMEONE TOOK OFF A MASK? A.) DOES THE ACTUAL INCIDENT REPORT SAY IT? Q.) YES. A.) NO, IT DOES NOT.

Page 220 lines 11-21 Q.NOW, WHEN YOU ENCOUNTERED MR. RAKEEM DUNBAR, HE HAD RED SOCKS ON ?A.)HE DID. Q.)AND NIKE FLIP-FLIPS (SIC)? A.)THAT 'S CORRECT. Q.)DID ANY OF THE VICTIMS SAY THAT A ROBBER HAD ON RED SOCKS? A.)NO, THEY DID NOT. Q.)DID ANY OF THE VICTIMS SAY THAT THE ROBBER HAD ON NIKE FLIP-FLOPS? A.)NO,THEY DID NOT.

STATE V. GIBSON,so 3d--,38 F.L.W. D343(2d DcA2/1312013The defendant was charged with a shop lifting robbery following a struggle with a store security officer.an leo used a license plate trace to locate aphoto of defendant, and the employee identified the defendant. The court found that the photo lineup was impermissibly suggestive be cause the officer told the employee that the officer's research had located some one who resembled the perpetrator, which the court found to suggest to the witness that the perpetrators photo would be in the photo pack. Further, the defendants photo was the only photo of a person aged 35-45, while the others in the lineup were younger. The court suppressed both the out of court identification and the in court identification. Regarding the out of court identification the court up held, 25.

JURISDICTION

This Court has Jurisdiction over the parties and subject matter of this Appeal because this Appeal is from a Final Judgment of a Lower Tribunal to this District Court of Appeal out of Sumter Municipal court. and the function of this Honorable Court is to review the actions of the Lower Tribunals.

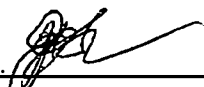
CONCLUSION

We are requested this HONORABLE Courts for a Reversial or any other releaf the courts can give.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
Appellants' Initial Brief was served via U.S. mail to; 7012346000117189080

RYAN KIRK GRIFFIN, SOLICITOR
3rd CIRCUIT SOLICITORS OFFICE
141 NORTH MAIN STREET 29150.
Sumter, SC



JOSEPH DUNBAR JR.
#348569/L.C.I.DARLINGTON
NORTH#1146 990 WISACLCY H.W.Y. BISHOPVILLE S.C.29010

8,20,2013

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the lettering in this brief is (times new Roman 14-point font) and complies with the font requirements of south Carolina rule of Appellate Procedure Rule 267SCACR

signed 

JOSEPH W. DUNBAR JR.

#348569/ L.C.I. DARLINGTON/NORTH #1146.

990 WISACLCY H.W.Y BISHOPVILLE S.C. 29010

date 8, 20, 2013

**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.

Joseph Wadell Dunbar, Jr., Appellant.

Appellate Case No. 2011-203386

Appeal From Sumter County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2014-UP-353
Submitted August 1, 2014 – Filed October 8, 2014

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, 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.

WILLIAMS, GEATHERS, and McDONALD, 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

October 24, 2014

The Honorable James C. Campbell
Sumter County Judicial Center
215 N Harvin St Rm 303
Sumter SC 29150-4974

REMITTITUR

Re: The State v. Joseph W. Dunbar
Lower Court Case No. 2010GS4300043
Appellate Case No. 2011-203386

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.

The following exhibit filed in this case is being returned to you:

State's Exhibit #2 - Photo Line-up

Please sign and return the enclosed copy of this letter acknowledging receipt of this item.

Receipt Acknowledgment

Name: _____ Date: _____

Very truly yours,

V. Claire Allen, Deputy

CLERK.

Enclosure

cc: Joseph Wadell Dunbar, 348569
Salley W. Elliott, Esquire
Kathrine Haggard Hudgins, Esquire
Alan McCrory Wilson, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Sumter)Joseph Wendell Dunbar # 348569)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

CERTIFIED TRUE COPY
OF ORIGINAL FILE

2014-CP-43

2351

Barbara Shaper
DEPUTY CLERK OF COURTSUMTER COUNTY, S.C.
APPLICATION FOR

POST-CONVICTION RELIEF

RECORDED
2014 NOV -5 PM 2:52
SUMTER COUNTY, S.C.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 LEE C.I. 990 WISACKY Hwy Bishopville S.C 29010
2. Name and location of Court which imposed sentence Sumter County Court of General Session / SUMTER S.C
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-CS-430-0043 / ARMED ROBBERY, BURGLARY 2nd
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) NOVEMBER 9, 2011 / 15 YEARS + 30 YEARS CONCURRENT
 - (b) _____

RECEIVED

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. OCTOBER 8, 2014 / REMITTITUR SENT OCTOBER 24, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished opinion NO. 2014-up-353
- ii. Submitted August 1, 2014 - File OCTOBER 8, 2014
- 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 TRIAL COUNSEL
- (b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) TRIAL COUNSEL DID NOT SUBPOENA ALIBI WITNESSES,
- (b) APPELLATE COUNSEL DID NOT RAISE CLAIM CONCERNING UNLAWFUL
- (c) IDENTIFICATION PROCEDURE THAT WAS PRESERVED FOR APPEAL

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. 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) INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS
- (b) IS COGNIZABLE ONLY ON P.C.B
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Will BRUNSON, WEEKS LAW OFFICE, P.O. BOX 370
- ii. 35 South SUMTER St. SUMTER S.C. 29151
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Will BRUNSON / Trial SENTENCING
- ii. KATHARINE HUDGINS / Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
VACATE CONVICTION, REMAND FOR NEW TRIAL
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.

SWORN to and subscribed before me this 3
day of NOV, 2014.

Diana Surin (L.S.)
Notary Public

My Commission Expires: 11-4-2015

**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:

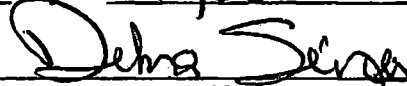
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

3 day of Nov, 2014.



Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Joseph Wadell Dunbar, Jr., #348569,	)	2014-CP-43-2351
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 5, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the May 2010 term of the Sumter County Grand Jury for burglary (violent) – second degree and armed robbery (2010-GS-43-0543). Will Brunson, Esquire represented Applicant. Applicant proceeded to a jury trial before the Honorable W. Jeffrey Young. Applicant was subsequently found guilty as indicted. Judge Young sentenced Applicant to thirty year term of imprisonment for armed robbery and fifteen year term of imprisonment for burglary-second degree.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders¹ brief was submitted. The South Carolina Court of Appeals dismissed the appeal. State v. Dunbar, Jr, Un. Op. 2014-UP-353 (S.C. Ct. App. filed October 8, 2014). The Remittitur was issued on October 24, 2014.

¹ Anders v. California, 386 U.S. 738 (1976)>

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. Trial Counsel did not subpoena alibi witnesses.
2. Ineffective Assistance of Appellate Counsel
 - a. Appellate Counsel did not raise claim concerning unlawful identification procedure that was preserved for appeal.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCRCP.

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 allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate 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. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

January 23, 2015.

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS

2014-CP-43-2351

JOSEPH W. DUNBAR, JR., #348569,)

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:

Fulton Casey Dale Cornwell, Esquire
448 Deerwood Street, Unit 9A
Columbia, SC 29205

DATED this 23rd day of January, 2015.


 Caroline Collins, Legal Assistant
 For Respondent

State of South Carolina)
)
 County of Sumter)

In the Court of Common Pleas
 Third Judicial Circuit
 2014-CP-43-2351

Joseph W. Dunbar, Jr.,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)
)
 _____)

Transcript of Record

July 26, 28, 2016
 Sumter, South Carolina

B E F O R E:

The Honorable Jocelyn J. Newman, Judge

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

Lance S. Boozer, Esquire
 Attorney for the Applicant

Julie A. Coleman, Esquire, Assistant Attorney General
 Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
 Circuit Court Reporter

I N D E XWitness/DescriptionPage No.*TUESDAY, JULY 26, 2016*

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J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

4

1 TUESDAY, JULY 26, 2016

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

3 MS. COLEMAN: May it please the court? *This is Joseph*
4 *Dunbar vs. The State of South Carolina*, docket number
5 2014-CP-43-2351. Applicant is presently confined to the
6 South Carolina Department of Corrections pursuant to orders
7 of commitment of the Sumter County Clerk of Court.
8 Applicant was true-bill indicted at the May 2010 term of
9 the Sumter County Grand Jury for burglary violence second
10 degree and armed robbery. Will Brunson, Esquire,
11 represented the applicant.

12 Applicant proceeded to a jury trial before the
13 Honorable W. Jeffrey Young; applicant was subsequently
14 found guilty as indicted. Judge Young sentenced applicant
15 to a thirty-year term of imprisonment for armed robbery and
16 a fifteen-year term of imprisonment for burglary second
17 degree. A timely notice of appeal was filed on the
18 applicant's behalf and an *Anders* brief was submitted. The
19 South Carolina Court of Appeals dismissed the appeal.
20 Remittitur was issued on October 24, 2014.

21 Applicant filed a timely application for
22 post-conviction relief on November 5, 2014, alleging that
23 he was being held in custody unlawfully based on the
24 following allegations: ineffective assistance of counsel,
25 trial counsel did not subpoena alibi witnesses; and

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

5

1 ineffective assistance of appellate counsel, applicant's

2 counsel did not raise a claim concerning unlawful

3 identification procedure that was preserved for appeal.

4 The state filed its return January 22, 2015. The applicant

5 is present today and represented in this matter by Mr.

6 Lance Boozer.

7 THE COURT: All right, Mr. Boozer.

8 MR. BOOZER: Thank you, Your Honor. If it pleases the
9 court? Judge, we would go ahead and call Mr. Dunbar to the
10 stand.

11 THE COURT: Yes, sir, Mr. Dunbar, come on forward.

12 JOSEPH W. DUNBAR, JR., BEING DULY
13 SWORN, TESTIFIES AS FOLLOWS.

14 BAILIFF: State your full name. Spell your last name
15 for the record.

16 WITNESS: Joseph Wadell Dunbar, Jr., D-u-n-b-a-r.

17 DIRECT EXAMINATION BY MR. BOOZER:

18 Q. Mr. Dunbar, how are you doing today?

19 A. I'm okay.

20 Q. Okay. Do, do you know why you're here today?

21 A. Yes, sir.

22 Q. Why is that? What did you file to get you in court
23 today?

24 A. A PCR application.

25 Q. All right, and what is it that you're asking the court

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

6

1 for today?

2 A. That I be remanded for a new trial.

3 Q. All right. Now, you had a, you had a trial in your
4 case?

5 A. Yes, sir.

6 Q. And what was, what were the charges that you went to
7 trial on?

8 A. Armed robbery and second-degree burglary.

9 Q. All right. Do you -- who represented you at trial?

10 A. Will Brunson.

11 Q. All right. What sentence did you receive as a result
12 of that trial?

13 A. Thirty years.

14 Q. All right, you got a thirty-year sentence on the armed
15 robbery?

16 A. And fifteen on the burglary.

17 Q. Is that -- were they concurrent sentences or
18 consecutive?

19 A. Concurrent.

20 Q. All right, and you're asking this court for a new
21 trial on those charges?

22 A. Yes, sir.

23 Q. And that's what you want?

24 A. Yes, sir.

25 Q. All right. You said Mr. Brunson was your attorney?

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

7

1 A. Yes, sir.

2 Q. All right. Was Mr. Brunson appointed or was he hired
3 by you or your family to represent you?

4 A. He was hired by my family.

5 Q. All right. When did you first meet with Mr. Brunson?

6 A. In February of 2011, he came to see me in the county.

7 Q. Okay. Was he your first lawyer?

8 A. No, sir,

9 Q. You had another lawyer prior to that?

10 A. Yes, sir.

11 Q. And, and what happened to that attorney?

12 A. I really didn't like how he was handling the case, so
13 we was just looking for a new attorney.

14 Q. So, y'all had some disagreements on how he was
15 handling the case?

16 A. Yes, sir.

17 Q. And that's when you hired Mr. Brunson?

18 A. Yes, sir.

19 Q. All right. Now, obviously you, you filed the
20 application, and you've got a couple of allegations, and
21 one of those is ineffective assistance of counsel in that
22 counsel didn't subpoena alibi witnesses. Is that one of
23 your allegations?

24 A. Yes, sir.

25 Q. And you've also got appellate counsel did not raise

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

8

1 the claim concerning unlawful identification procedure that
2 was preserved for appeal. Is that another allegation you
3 have?

4 A. Yes, sir.

5 Q. All right. Prior to your trial, how many times did
6 you meet with Mr. Brunson?

7 A. About four.

8 Q. Where would these meetings occur?

9 A. Two he came to see me in the county jail, and two of
10 them I, I met with him at his office.

11 Q. Did you bond out?

12 A. Yes, sir.

13 Q. And during these meetings, what would you discuss with
14 Mr. Brunson?

15 A. Just basically the evidence in the case, and we
16 discussed my alibi. He was just asking me -- they
17 originally charged me with, like, six armed robberies. So,
18 he was just asking me about all those armed robberies.

19 Q. Okay. You just mentioned that part of what you
20 discussed was your, was your alibi. When these crimes were
21 alleged to have occurred, do you know when they were
22 alleged to have occurred, the crime?

23 A. Yes, sir.

24 Q. And when was it?

25 A. January 1, 2010.

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

9

1 Q. And where was it that it was alleged to have occurred?

2 A. In Sumter, South Carolina, on Lafayette.

3 Q. All right. When were you arrested for the charge?

4 A. January 7th.

5 Q. What year?

6 A. 2010.

7 Q. Where were you arrested?

8 A. In Florida.

9 Q. Where in Florida?

10 A. Palm Beach County.

11 Q. All right. Did you have any discussions with Mr.

12 Brunson about what you just said was the alibi or your
13 alibi defense?

14 A. Yes, sir.

15 Q. And what was that discussion?

16 A. I told him I was in Florida with my family; I wasn't
17 even in the state.

18 Q. Okay. Well, let me ask you this. On January 1, 2010,
19 and per the transcript, that -- it alleges that there was a
20 robbery here in Sumter County at about 7 p.m.

21 A. Yes, sir.

22 Q. All right. On January 1, 2010, at 7 p.m., where were
23 you?

24 A. At the pool in Florida with my -- at a pool party.

25 Q. Where in Florida?

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

10

1 A. Boynton Beach.

2 Q. All right. Why were you in Florida?

3 A. That's where I'm from.

4 Q. Prior to January 1, 2010, when did you arrive in
5 Florida?

6 A. I would say the beginning of December.

7 Q. Where had you been before that?

8 A. In Sumter, South Carolina.

9 Q. Okay. Did you live here in Sumter?

10 A. Not at that time.

11 Q. What were you doing?

12 A. Visiting my kids.

13 Q. Okay, and why were you back down in Florida in
14 December?

15 A. That's where I stay.

16 Q. Okay. Who did you stay with then?

17 A. My father.

18 Q. And you were arrested on January 7, 2010, in Florida?

19 A. Yes, sir.

20 Q. All right. Between early December -- that would have
21 been 2009?

22 A. Yes, sir.

23 Q. And January 7th when you were arrested, had you been
24 back to South Carolina?

25 A. No, sir,

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

11

1 Q. Had you been back to Sumter County?

2 A. No, sir.

3 Q. Did you have a discussion with Mr. Brunson about that?

4 A. Yes, sir.

5 Q. What did he tell you?

6 A. He would put up my alibi defense.

7 Q. Did he file a notice about alibi?

8 A. I think so. I'm not sure.

9 Q. Okay, but you -- let me ask you this. Did you ask him
10 to investigate any alibi witness who could say that you
11 were in Florida?

12 A. Yes, sir. I actually gave him a list of people.

13 Q. When would you have given this to him?

14 A. I actually mailed it to him when I was in the county
15 jail.

16 Q. Did you discuss that list with him?

17 A. Yes, sir. When I -- after I bond out, I, when I came
18 to see him, I had discussed that list with him.

19 Q. Who was on that list?

20 A. My mother, my father, my grandmother, my brothers and
21 sister, and a couple of friends of the family.

22 Q. What's your father's name?

23 A. Joseph Dunbar.

24 Q. Is he Joseph Dunbar, Sr.?

25 A. Yes, sir.

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

12

1 Q. How about your mom? Who is she?

2 A. Margaret Dunbar.

3 Q. All right. Who else was on that list name-wise?

4 A. Gertrude Dunbar.

5 Q. Who's that?

6 A. My grandmother.

7 Q. Okay.

8 A. And my brother Michael Dunbar, my brother Timothy
9 Dunbar. Well, he's, like, my uncle. I, I just know him by
10 Harold. I don't his last name, and Cristal West.

11 Q. Who's Cristal West?

12 A. My, my father's fiancée.

13 Q. Okay. Did he ever investigate these witnesses, to
14 your knowledge?

15 A. No, sir.

16 Q. Did you ever discuss these witnesses with him?

17 A. Yes, sir.

18 Q. And what was his response when you would discuss them?

19 A. He would just say that he, he would call them to
20 testify.

21 Q. Okay. On January 1, 2010 -- let's skip back. Well,
22 let's do this. On January 1, 2010, tell the court what you
23 were doing that day.

24 A. Well, I woke up. When I woke up, me and my, me and my
25 father, we went to some friends' house.

1 Q. Where did you wake up that morning?

2 A. At my father's house.

3 Q. Okay, and that's in Boynton Beach?

4 A. Yes, sir.

5 Q. And then what did you do?

6 A. Me and my father, he got me up. We went to a couple
7 friends' house, Lisa and Margarita, and we just stayed over
8 there for, I say, about a hour or two. That was, like,
9 around -- we left there, like, 12:30, then went back. I
10 was playing a game with my brothers. I stop by my
11 grandmother's house.

12 Q. Who is your grandmother?

13 A. Gertrude Dunbar.

14 Q. Okay, and where did she live at that time?

15 A. She stayed in Boynton Beach as well. She actually --
16 we actually stayed in these apartment complexes, like,
17 called LaCosta or something like that.

18 Q. Okay.

19 A. So, like, she stay, like, a couple apartments down
20 and, like, walking distance. I stopped by there. She was
21 cooking so I just stopped by there, got me something to eat
22 and then after I left there, like, we was having a pool
23 party at the pool in the apartment complex.

24 Q. Where your grandmother lived?

25 A. Yes, sir.

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

14

1 Q. All right.

2 A. And we was at the pool.

3 Q. What time were y'all at the pool you think?

4 A. We went to the pool around, like, 4, 4:30.

5 Q. All right. Do you know what time maybe you left the
6 pool?

7 A. It was dark.

8 Q. Okay.

9 A. I can't say the exact time.

10 Q. Who was, who was with you at the pool?

11 A. My father, my brothers, and sisters, my grandmother,
12 and a couple of friends.

13 Q. All right. After you left the pool and it was dark,
14 where did you go then?

15 A. Home.

16 Q. And what did you do once you got home? When you say
17 home, you mean you went to where your father was staying?

18 A. Yes, sir.

19 Q. All right. What did y'all do then?

20 A. Watched TV, play the games. Me and my brothers, we
21 play a lot of games, so played the games. Do music and
22 stuff, too, so listening to beats and stuff then, I guess,
23 until we fell asleep.

24 Q. Did you ever leave Boynton Beach, Florida, on January
25 1, 2010?

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

15

1 A. No, sir.

2 Q. The next day, were you still in Florida?

3 A. Yes, sir.

4 Q. And the day before that, which would have been New
5 Year's Eve, were you in Florida?

6 A. Yes, sir.

7 Q. Did you come to South Carolina on New Year's Eve in
8 2009?

9 A. No, sir.

10 Q. When is the next time from December when you first got
11 down to Florida in 2009, when's the next time you came to
12 South Carolina?

13 A. January 21st of 2010.

14 Q. Now, you obviously had a trial, right?

15 A. Yes, sir.

16 Q. Okay. What alibi witnesses were called on your behalf
17 at trial?

18 A. None.

19 Q. Do you know why no alibi witnesses were called on your
20 behalf?

21 A. Yes, sir.

22 Q. All right. Well, tell, tell us why.

23 A. Will Brunson told the judge that he did not subpoena
24 the alibi witness.

25 Q. And when was that?

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

16

1 A. During the trial.

2 Q. Did you ask Mr. Brunson why your witnesses were not
3 there?

4 A. Yes, sir.

5 Q. Why was that?

6 A. He never gave an explanation.

7 Q. At any point before your trial -- and when was your
8 trial date?

9 A. November 7, 2011.

10 Q. November 7, 2011?

11 A. Uh-huh.

12 Q. Were you at any time supposed to go to trial before
13 that?

14 A. Yes, sir.

15 Q. When was that?

16 A. Supposed to go to trial August 1, 2011.

17 Q. And what happened?

18 A. They rescheduled it.

19 Q. Were your alibi witnesses there at that trial ---

20 A. Yes, sir.

21 Q. --- for August?

22 A. Yes, sir.

23 Q. Who was there?

24 A. My father, my grandmother, my brothers, my sisters,
25 couple friends of the family. They drove up from Florida

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

17

1 as well to be there to the trial.

2 Q. All right. So, Joseph Dunbar, Sr., was there?

3 A. Yes, sir.

4 Q. Was Michael Dunbar there?

5 A. Yes, sir.

6 Q. Timothy Dunbar?

7 A. Yes, sir.

8 Q. Was Gertrude Dunbar?

9 A. Yes, sir.

10 Q. How about Cristal West?

11 A. Yes, sir.

12 Q. Was Margarita and your mother there?

13 A. Yes, sir.

14 Q. Were they prepared to testify, to your knowledge?

15 A. Yes, sir.

16 Q. And why did the case get rescheduled?

17 A. At the time, he said that the, I guess the
18 investigator was on -- in training or something like that.

19 Q. An invest -- one of the witnesses for the state?

20 A. Yes, sir.

21 Q. Okay. When was the next time the case was scheduled?

22 A. Sometime in September. I want to say September 14th.

23 Q. Okay. What happened at that trial?

24 A. They rescheduled it again because the victim was in
25 the hospital.

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

18

1 Q. All right. For the September date, were any of your
2 alibi witnesses here in Sumter to testify?

3 A. Yes, sir.

4 Q. Who was here?

5 A. My father, Joseph Dunbar, my grandmother, my brothers,
6 and my sisters. The same, the same people that was there
7 the first time.

8 Q. How about Cristal West?

9 A. Yes, sir.

10 Q. Okay, and then what happened?

11 A. They rescheduled it and I didn't actually -- I didn't
12 hear from -- until November 6th.

13 Q. Hear from who?

14 A. From Will Brunson.

15 Q. Okay. What did you hear from him? What did he do,
16 call you or what?

17 A. I was in the county jail. He had came to see me, and
18 he said we got a trial in the morning.

19 Q. What did you say?

20 A. I asked him is my, my family coming, my witnesses
21 coming. Like, he was saying he was going to get in contact
22 with them.

23 Q. Did y'all discuss anything else?

24 A. He tried to get me to take a plea.

25 Q. What was the plea offer?

1 A. Ten years.

2 Q. Why didn't you take that?

3 A. Because I'm innocent.

4 Q. So, you declined that plea offer?

5 A. Yes, sir.

6 Q. And you wanted a trial?

7 A. Yes, sir.

8 Q. Did you want a trial with all those witnesses that you
9 named? Did you want them there?

10 A. Yes, sir.

11 Q. All right, and to your knowledge, did Mr. Brunson get
12 in contact with them?

13 A. No, sir.

14 Q. Do you try and contact them?

15 A. Yes, sir.

16 Q. All right. What did you do?

17 A. I, I tried to make a phone call, but being that I was
18 at -- in the county jail, it was kind of hard to get ahold
19 of people.

20 Q. Were you ever able to get hold of anyone?

21 A. Yeah. After the trial.

22 Q. So, before the trial on November 6th, you couldn't get
23 in contact with anyone?

24 A. No, sir.

25 Q. All right. You got in touch with them after the

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

20

1 trial, though?

2 A. Yes, sir.

3 Q. Okay. What did you -- what did they say when you,
4 when you called?

5 A. Nobody contacted them. They didn't even know I went,
6 I went to trial.

7 Q. Now, there was -- who was called on your behalf in
8 your defense at trial?

9 A. My sister.

10 Q. Okay. Who else?

11 A. That's it.

12 Q. Was your sister, was she able to provide an alibi
13 defense?

14 A. No, sir.

15 Q. Okay. Did you know why -- was that sister one of the
16 sisters that you had provided your lawyer as an alibi
17 witness?

18 A. No, sir.

19 Q. Why was she there to testify?

20 A. She was just in town, and I guess -- I don't even know
21 how she even knew I was at court.

22 Q. And what was her name?

23 A. Joanna Dunbar.

24 Q. Now, did you testify at trial?

25 A. No, sir.

1 Q. Why didn't you testify?

2 A. Will Brunson advised me not to.

3 Q. Okay, and what you've told the court today about where
4 you were on January 1, 2010, and even before that day and
5 after, had you testified, is that what you would have
6 testified to at your trial?

7 A. Yes, sir.

8 Q. Have you had any conversations with Mr. Brunson since
9 your trial?

10 A. Yes, sir.

11 Q. Okay. Have y'all discussed or have you discussed with
12 Mr. Brunson at all your trial or your alibi witnesses after
13 the trial?

14 A. No, sir. Like when I contacted him, I had wrote him
15 actually and he was just, he basically just told me that
16 he's not handling my case anymore, and he just gave me the
17 information to the people who was handling the appeal.

18 Q. Your sister, you said her name was Joanne, Joanna?

19 A. Yeah, Joanna.

20 Q. Joanna. Did she -- at the time of your trial, was she
21 living here in Sumter?

22 A. No.

23 Q. Where did she live?

24 A. In Boynton Beach, Florida.

25 Q. Okay, but you have no idea how she came to testify?

J. DUNBAR, JR. - DIRECT EXAMINATION BY MR. BOOZER

22

1 A. She was already up here, actually, but I didn't know
2 how she knew I was in court.

3 Q. Okay. Now, who represented you on your appeal?

4 A. Kathrine Hudgins.

5 Q. And you've got an allegations against your appellate
6 counsel. Is that right?

7 A. Yes, sir.

8 Q. Explain your allegation to the court.

9 A. She basically didn't do anything. She just -- I
10 talked to her one time, and she told me that she would
11 submit what she wants to submit to the court. I, I don't
12 have no discretion over that, and she submitted the *Anders*
13 brief.

14 Q. What is it that you understand about *Anders* briefs?

15 A. I guess it don't have no merit.

16 Q. Well, were there some issues you wanted her to raise?

17 A. Yes, sir.

18 Q. What was that?

19 A. The, the fact of the photo lineup.

20 Q. All right.

21 A. It was very suggestive.

22 Q. Did your lawyer object to that at trial?

23 A. Yes, sir.

24 Q. And it was admitted?

25 A. Yes, sir.

J. DUNBAR, JR. - DIRECT EXAMINATION / CROSS-EXAMINATION 23

1 Q. Okay. Did you ever speak with your appellate lawyer?

2 A. Just once.

3 Q. Okay. What did you discuss?

4 A. The photo lineup.

5 Q. And what was there -- what was her response?

6 A. She really didn't elaborate on it. She changed the
7 subject really.

8 Q. Okay. Other than what you've alleged in your
9 application and other than what you've testified to here
10 today, is there anything else about your case that you want
11 to let the court know about, or is there anything that we
12 have not covered with regard to Mr. Brunson's
13 representation of you?

14 A. I mean, it depends on what you're asking.

15 Q. Sure. Have, have we covered all of your allegations
16 for your PCR?

17 A. Yes, sir.

18 Q. Okay.

19 MR. BOOZER: I don't have any more questions at this
20 time. Please answer any that Madame Attorney General may
21 have.

22 CROSS-EXAMINATION BY MS. COLEMAN:

23 Q. Good morning, Mr. Dunbar. How are you?

24 A. I'm fine. I'm all right.

25 Q. Good. I just have a few questions for you. Let's

J. DUNBAR, JR. - CROSS-EXAMINATION BY MS. COLEMAN

24

1 see, how many times did you say you met with your attorney
2 before going to trial?

3 A. About four.

4 Q. Okay. That's right. Can you explain -- can you go
5 back a little bit? I know Mr. Boozer just went over what
6 you said happened on the day -- on January 1, 2010, when
7 you were in Florida. Let's see, you testified that you
8 were visiting your kids in Sumter at some point. Is that
9 correct?

10 A. Yes, in November.

11 Q. In November, okay. I'm sorry. You said that. I just
12 was confused about when that was, and when did you go to
13 Florida after that?

14 A. Like, the beginning of December.

15 Q. Okay, and you say you were there until January 21st of
16 2010?

17 A. Yes, ma'am.

18 Q. Okay. Did you submit a pro se brief for your direct
19 appeal?

20 A. Yes, ma'am.

21 Q. Did you raise the issue of unlawful identification in
22 your pro se brief?

23 A. Yes, ma'am.

24 Q. You did, and the Court of Appeals ultimately denied
25 that appeal, correct?

J. DUNBAR, JR. - CROSS / J. DUNBAR, SR. - DIRECT

25

1 A. Yes, ma'am.

2 Q. Do you recall apologizing to the victims and to the
3 court after you were found guilty at your trial?

4 A. I wasn't apologizing for the crime. I was apologizing
5 that something like that would happen to them.

6 Q. Okay.

7 MS. COLEMAN: No further questions. Thank you.

8 THE COURT: Anything further, Mr. ---

9 MR. BOOZER: Nothing further, Your Honor.

10 THE COURT: All right, you can go back and sit next to
11 your lawyer.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: All right, Mr. Boozer.

14 MR. BOOZER: Thank you, Your Honor. We would call
15 Joseph Dunbar, Sr. to the stand.

16 JOSEPH W. DUNBAR, SR., BEING DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 WITNESS: How are you doing, Your Honor?

19 THE COURT: Just fine, thank you.

20 BAILIFF: Please state your full name. Spell your
21 last name for the record.

22 WITNESS: My name is Joseph Wadell Dunbar, Sr. My
23 last name is spelled D-u-n-b-a-r.

24 DIRECT EXAMINATION BY MR. BOOZER:

25 Q. Mr. Dunbar, how you doing today?

J. DUNBAR, SR. - DIRECT EXAMINATION BY MR. BOOZER

26

1 A. How you doing?

2 Q. I'm doing fine. Thank you for asking. Now, Mr.

3 Dunbar, are you related to Joseph Dunbar, Jr.?

4 A. Yes, sir.

5 Q. How are y'all related?

6 A. That's my son, my first son.

7 Q. Okay. What do you do for a living?

8 A. Right now I'm disabled.

9 Q. Okay.

10 A. I was cooking. I did construction. I built bridges.

11 I built malls.

12 Q. Where do you live today?

13 A. Florida.

14 Q. Where in Florida?

15 A. Right now I live in one of rental properties in Fort

16 Pierce.

17 Q. In Fort Pierce?

18 A. Yes.

19 Q. Okay. Have you lived in Boynton Beach?

20 A. Yes, sir.

21 Q. All right. Now, you're aware that your son was
22 accused of robbing a store in Sumter County on or about
23 January 1st of 2010?

24 A. Yes, sir.

25 Q. You're aware of that?

J. DUNBAR, SR. - DIRECT EXAMINATION BY MR. BOOZER

27

1 A. Yes, sir.

2 Q. All right, and then he was ultimately convicted after
3 a jury trial of that charge on November 7, 2011. Are you
4 aware of that?

5 A. Yes, sir.

6 Q. On January 1st of 2010, where were you?

7 A. We was -- on January, I was in LaCosta.

8 Q. Say that ---

9 A. The 1st, January 1st I was in LaCosta.

10 Q. January 1, 2010?

11 A. Yes. My mother lived in one area in an apartment, and
12 I was living in another apartment. I was really renting
13 out the house.

14 Q. And the apartment complex is called LaCosta?

15 A. It's called LaCosta.

16 Q. And where is it at?

17 A. That's in Boynton Beach off of Congress right next to
18 the mall.

19 Q. Okay. Did you drive here from Fort Pierce?

20 A. Yes.

21 Q. Is Boynton Beach, is that a little bit south of Fort
22 Pierce?

23 A. Boynton Beach is about another two hours or hour or so
24 away from Fort Pierce.

25 Q. South of Fort Pierce?

J. DUNBAR, SR. - DIRECT EXAMINATION BY MR. BOOZER

28

1 A. Yeah.

2 Q. That's Palm Beach ---

3 A. It's going towards Miami.

4 Q. That's Palm Beach County?

5 A. It's Palm Beach County. It's a little, Boynton Beach
6 is a little bit past -- it's like almost to the end of Palm
7 Beach County. It goes closer towards Miami.

8 Q. Are you from there?

9 A. Yes.

10 Q. Okay. Have you ever driven from Boynton Beach to
11 Sumter, South Carolina?

12 A. Yes.

13 Q. A lot?

14 A. Yeah.

15 Q. How many times you think you made that trip?

16 A. Gosh, I've been driving that trip all my life. I may
17 -- well, I say I been driving up the road. I got a house
18 in Maine, too, so ---

19 Q. How long a drive is that if you do it straight from
20 Boynton Beach from LaCosta to Sumter, South Carolina?

21 A. It's probably about ten hours.

22 Q. Do you know how many miles it is?

23 A. I would say it would be -- starting from just to get
24 out of Florida you have to -- it will be from almost 300
25 and some -- almost 400 actually.

J. DUNBAR, SR. - DIRECT EXAMINATION BY MR. BOOZER

29

1 Q. Let me ask you this. Is it more than a 500-mile trip
2 from Boynton Beach to Sumter, South Carolina?

3 A. Just to the end of Florida. It's about -- I don't
4 know because I got to go through Georgia. So, that's
5 another hour or so, and then to get to Sumter, that's
6 another two hours, I think.

7 Q. All right. On January 1, 2010, how long had you been
8 living in Boynton Beach?

9 A. Well, I been going back and forth. I have apartment,
10 my mother had apartment, two apartments in her name. One
11 -- I was going back and forth up to Maine. That's
12 Portland, Maine straight on I-95. At that time I had
13 apartment there where my kids was at.

14 Q. All right. When did your -- did, did your son, Joseph
15 Dunbar, Jr., in December of 2009, did he ever come down to
16 Florida and stay with you guys?

17 A. Yeah. He came down there in the early part of
18 December, probably about December -- I think it was
19 December the 5th, somewhere in there, 6th, somewhere around
20 in there.

21 Q. Where was he staying?

22 A. He stayed at LaCosta.

23 Q. Who was he staying with?

24 A. He was staying in an apartment with all my kids, us,
25 me and all my kids.

J. DUNBAR, SR. - DIRECT EXAMINATION BY MR. BOOZER

30

1 Q. And that's where you lived?

2 A. Yes.

3 Q. All right, on January 1, 2010?

4 A. Yes.

5 Q. Which is the date that it was alleged that your son
6 robbed a store here in Sumter, South Carolina. Tell the
7 court where you were, who you were with, and what you were
8 doing that day from the morning on until the evening.

9 A. I woke up early that morning. I got my son Joseph,
10 and then me and him went with his uncle Harold, and we went
11 to see his uncle Harold's girlfriend, Margarite, and Lisa
12 and then we was over there. We was around the lake. Me
13 and him was talking for about an hour, you understand me,
14 and then I came back home. When I came back home,
15 everybody was getting ready for the pool party, you
16 understand? So, everybody was cooking and was trying to
17 get things ready for that.

18 Q. At 7:00 on January 1, 2010, what were y'all doing?

19 A. We was at the pool.

20 Q. Who was at the pool?

21 A. All my kids. I got eleven kids, so it was a lot of
22 them.

23 Q. All right. Tell me. Was Joseph Dunbar, Jr., at the
24 pool?

25 A. Yes.

J. DUNBAR, SR. - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. Was he in Boynton Beach, Florida, the entire day of
2 January 2010?

3 A. Yes.

4 Q. Would -- at any time during that day, based on the
5 hours that you saw him in the morning and throughout the
6 day and throughout the evening, would he have had any,
7 would he have had any chance to get to Sumter, South
8 Carolina?

9 A. No.

10 Q. All right. Was Cristal West with you guys at the pool
11 on January 1, 2010?

12 A. Yes.

13 Q. Who is she?

14 A. That's my wife. We was fiancée at that time, but me
15 and her married.

16 Q. Okay. Was your mother at the pool?

17 A. Yes.

18 Q. What's your mother's name?

19 A. Gertrude Dunbar.

20 Q. All right. She was there that day on January 1, 2010?

21 A. Yes.

22 Q. And you're positive that your son was there at the
23 pool?

24 A. Yes. I always spend holidays with, with my family. I
25 make sure all my kids are around.

J. DUNBAR, SR. - DIRECT EXAMINATION BY MR. BOOZER

32

1 Q. Now after the pool, do you know what -- do you know
2 about what time y'all left the pool?

3 A. Well, it was nighttime. I'd say my mother left, she
4 left first and then after she left, I kind of left right
5 behind her because it was starting to get cold, started
6 getting chilly. Then again after that, me and my wife, we
7 had went to the apartment, and after that I went to sleep.

8 Q. All right. Did Joseph Dunbar, Jr., come back to the
9 apartment that evening?

10 A. Yes.

11 Q. Do you know about when he may have come back?

12 A. They, they was packing up right behind me, so they was
13 not too far behind.

14 Q. And then did they -- they would come back to the
15 apartment that evening and spend the night there?

16 A. Yeah. They was all talking and joking outside the
17 apartment.

18 Q. All right. Now, how about January 2, 2010? We're
19 still in Florida?

20 A. Yeah.

21 Q. Including, including your son Joseph Dunbar, Jr.?

22 A. He was there a week until after that.

23 Q. All right, and when, when did he get arrested? Do you
24 remember?

25 A. He got arrested soon as I left. I had left to go up

1 North. He got arrested on the 7th.

2 Q. Of January?

3 A. Because I got a -- yeah, I got a phone call that they,
4 they kicked in the apartment, and that's when he had left.
5 They had came and got him.

6 Q. When did he come back to South Carolina?

7 A. On, I think on the 21st, somewhere around there.

8 Q. Between the beginning of December 2009 when Joseph
9 Dunbar, Jr., first arrived in Florida until January 21st of
10 2010, to your knowledge had your son come back at all to
11 South Carolina?

12 A. No.

13 Q. Was he in Florida that entire time?

14 A. Yes.

15 Q. All right. Now, obviously you're aware that there was
16 a trial on November 7, 2011. Were you present at that
17 trial?

18 A. On the 2011?

19 Q. Correct.

20 A. Which trial?

21 Q. Yes. Let's walk -- let, let me ask that -- a better
22 question so we get a timeline here. First of all, who
23 represented your son?

24 A. Mr. Brunson.

25 Q. All right. Did you have any hand in hiring Mr.

J. DUNBAR, SR. - DIRECT EXAMINATION BY MR. BOOZER

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1 Brunson?

2 A. Me, me and my family, we are hired, we all chipped in
3 and hired him.

4 Q. All right. So, you hired him, retained him privately?

5 A. Yes.

6 Q. All right. Did you meet with Mr. Brunson?

7 A. No, not personally.

8 Q. Did you ever talk to Mr. Brunson?

9 A. No.

10 Q. Has Mr. Brunson or anyone on Mr. Brunson's behalf,
11 whether it was an instigator, an associate, an assistant, a
12 paralegal, anybody, did anybody ever contact you about this
13 case?

14 A. No.

15 Q. Now, what you've said today in court about where you
16 were on January 1, 2010.

17 A. Yes.

18 Q. And about that timeframe from December 2009 through
19 January 21, 2010, had you testified at your son's trial, is
20 that what you would have told a jury in court?

21 A. Yes, that and a lot more, yeah.

22 Q. Well, as far as where your son was, was -- is that
23 what you would have said?

24 A. Yes.

25 Q. Okay. Now let's go through and talk about court and

1 trials. Was there -- the trial that ultimately ended up
2 occurring was in November of 2011. Were you present at
3 that trial where your son was convicted?

4 A. The time he got convicted? No.

5 Q. Okay. Back up. Were there any other times that a
6 trial was scheduled, to your knowledge?

7 A. Yes.

8 Q. Okay. When was the first time?

9 A. First time, I think that was in August. When we went
10 to the courthouse, they canceled it.

11 Q. And that was in August of 2011?

12 A. I'm not sure. I'm just...

13 Q. Well, you just know that there ---

14 A. I know there was a first time.

15 Q. There was a first time.

16 A. The first time I went, and then there was a second
17 time and everybody was in there, my family and we all was
18 there, and then they said something about canceling the
19 trial, and then we all left.

20 Q. And so the first one was canceled?

21 A. Yes.

22 Q. Second one was canceled?

23 A. Yes.

24 Q. And then there was a third?

25 A. Yes.

J. DUNBAR, SR. - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. All right, and you were at the first and the second
2 one?

3 A. Yes.

4 Q. How did you know to be there at the first and the
5 second?

6 A. My family called and told me that he was having a
7 trial.

8 Q. Okay. Would, would you have testified? Were you
9 prepared to testify?

10 A. Yes.

11 Q. All right. Was it your understanding that you would
12 be testifying?

13 A. Yes.

14 Q. Were you having conversations with your son about
15 testifying on his behalf?

16 A. Yes.

17 Q. What were those conversations?

18 A. I just told him that I know he's innocent. They
19 shouldn't be having him down there because of that officer
20 calling the house. And he say Daddy, he say, like, this
21 officer's talking about rob somebody. He was right there
22 in -- by the door. We're in the kitchen and then I was,
23 like, what? He said yeah, this officer -- robbed some --
24 talking about rob somebody. I said you ain't rob nobody.
25 I just told him that and hang up the phone, and he hung up

1 the phone.

2 Q. And that was a call y'all received while you were in
3 Florida?

4 A. Yeah. That was a call we received in Florida.

5 Q. All right, and so -- but you never had any
6 conversations with Mr. Brunson or anyone working on his
7 behalf in this case?

8 A. No, nobody.

9 Q. Did you want to testify at your son's trial?

10 A. Most definitely.

11 Q. All right. For November 7, 2011, did you become aware
12 that there was going to be a trial that day?

13 A. Repeat that question.

14 Q. Yes, sir. That -- poorly phrased question.

15 A. Yes, sir.

16 Q. Prior to November 7, 2011, did you ever know that your
17 son was going to have a trial that day?

18 A. No.

19 Q. When did you learn that your son had a trial November
20 7, 2011?

21 A. The next day they told me he got thirty years, and I
22 was, like, what.

23 Q. Who told you that?

24 A. He called me.

25 Q. Your son?

J. DUNBAR, SR. - DIRECT EXAMINATION BY MR. BOOZER

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1 A. Yeah. He was, he was in jail.

2 Q. Okay. Did, did you have any conversation about your
3 son or with your son about why you weren't notified and why
4 you didn't -- why you weren't there to testify?

5 A. I was upset because I, I just thought it wasn't fair.

6 Q. Did you have any conversation after the trial with his
7 attorney, Mr. Brunson?

8 A. No. I never talked to Mr. Brunson.

9 Q. Okay.

10 MR. BOOZER: Thank you, Mr. Dunbar. That's all the
11 questions I have.

12 MS. COLEMAN: I don't have any questions.

13 THE COURT: All right, thank you, Mr. Dunbar. You can
14 go have a seat.

15 WITNESS: All right. Thank you, Your Honor.

16 (THE WITNESS EXITS THE STAND.)

17 (A PAUSE.)

18 THE COURT: Yes, sir.

19 MR. BOOZER: Your Honor, at this time we would call
20 Cristal West.

21 THE COURT: Yes, sir.

22 CRISTALINE WEST DUNBAR, BEING DULY
23 SWORN, TESTIFIES AS FOLLOWS:

24 BAILIFF: Please state your first. State you -- spell
25 your first and last name, please.

C. DUNBAR - DIRECT EXAMINATION BY MR. BOOZER

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1 WITNESS: My name is Cristal West slash Dunbar.

2 C-r-i-s-t-a-l-i-n-e is the first name. West, West. That's
3 a lot at to say at one time. Dunbar, D-u-n-b-a-r.

4 DIRECT EXAMINATION BY MR. BOOZER:

5 Q. Thank you, and do you go by Ms. West or Ms.
6 West-Dunbar or Ms. Dunbar?

7 A. Now it's Ms. Dunbar.

8 Q. Okay. Well, I'll call you Ms. Dunbar then.

9 A. Okay.

10 Q. All right, Ms. Dunbar, are you at all related either
11 by blood or marriage to Joseph Dunbar, Jr.?

12 A. Yes.

13 Q. Okay. What is your relationship to him?

14 A. I am his stepmother.

15 Q. All right. So, you're married to his father, Joseph
16 Dunbar, Sr.?

17 A. Yes, sir.

18 Q. When -- how long have you been with Mr. Dunbar, Sr.?

19 A. For about fifteen years.

20 Q. Where do you currently live?

21 A. Fort Pierce, Florida.

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

23 A. I work at Papa John's.

24 Q. Okay. Did you bring any pizzas today?

25 A. No, sir.

C. DUNBAR - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. Okay.

2 THE COURT: I wish.

3 Q. How long have you lived in Florida?

4 A. All my life.

5 Q. Are you from Florida?

6 A. Yes.

7 Q. Okay. On January 1st -- let me ask you this. Are you
8 aware and were you aware in 2011 that Joseph Dunbar, Jr.,
9 your stepson, had been in -- alleged to have committed a
10 crime of armed robbery here in Sumter County?

11 A. Yes, I was told about it.

12 Q. Okay, and do you know that he had a trial on November
13 of 2011?

14 A. No.

15 Q. Well, do, do you know -- are you aware now that he has
16 had a trial and has been convicted?

17 A. Yes. Now I am, yes.

18 Q. Okay, but at the time, you didn't know there was a
19 trial going on in November?

20 A. No.

21 Q. All right. Let me ask you this. Were you -- where
22 were you living January 1, 2010?

23 A. LaCosta Apartments.

24 Q. All right. Were you living with Mr. Dunbar, Sr.?

25 A. Yes.

- 1 Q. All right, and where is LaCosta Apartments?
- 2 A. Boynton Beach, Florida.
- 3 Q. All right. Did Joseph Dunbar, Jr., ever come down to
- 4 stay with you guys at LaCosta?
- 5 A. Yes.
- 6 Q. And when did he come down?
- 7 A. The beginning of December.
- 8 Q. December of what?
- 9 A. 2010.
- 10 Q. Okay.
- 11 A. Is that what you're asking me?
- 12 Q. No, but I'm asking you -- the crime was alleged to
- 13 have occurred January 1, 2010. And prior year, of course,
- 14 would be 2009.
- 15 A. 2009, okay.
- 16 Q. But what -- do you know when he came down to stay with
- 17 you guys?
- 18 A. I'd say around the 4th, but somewhere in there.
- 19 Q. Of December?
- 20 A. Yes.
- 21 Q. Of 2009?
- 22 A. Yes.
- 23 Q. All right. Did he stay, was he staying in your actual
- 24 apartment?
- 25 A. Yes.

C. DUNBAR - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. All right. Who else was there staying at that actual
2 apartment?

3 A. My husband; my, my two little boys; my stepdaughter,
4 Joanna Dunbar; Timothy Dunbar; Michael Dunbar was there.

5 Q. Okay. Were there any other relatives of the Dunbars
6 that lived in that particular apartment complex at that
7 time?

8 A. Yes.

9 Q. Who?

10 A. Gertrude Dunbar, my mother-in-law.

11 Q. Okay.

12 A. And my sister-in-law Jakaila [phonetic] Dunbar.

13 Q. All right. On January 1, 2010, are you aware of --
14 that the allegation is that Joseph Dunbar, Jr., robbed a
15 store here in Sumner County? Are you aware of that now?

16 A. Yes, I am.

17 Q. Okay. Tell the court where you were on January 1,
18 2010.

19 A. I was at the LaCosta Apartments. Me and my kids woke
20 up. We got dressed for the day. I started cooking.

21 Q. When you got up, who was there at the apartment?

22 A. My kids were there, myself. Joanna was there. I, I
23 believe Joseph Senior and Joseph Junior and Mike and Timmy
24 had left, I believe, because I don't remember seeing them
25 when I woke up.

C. DUNBAR - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. When you woke up, they weren't there?

2 A. No.

3 Q. Okay. When's the next time you saw Joseph Junior and
4 Joseph Senior that day?

5 A. Probably about 3, 2:30, 3:00 that afternoon.

6 Q. All right. At about 3:00 or whatever that time may
7 have been on January 1, 2010, you saw Joseph Dunbar, Jr.,
8 and Joseph Dunbar, Sr.?

9 A. Yes.

10 Q. At LaCosta Apartments at ---

11 A. Yes.

12 Q. --- Boynton Beach, Florida?

13 A. Yes.

14 Q. All right. What did y'all do next?

15 A. I was cooking in the kitchen. Of course me and my
16 mother-in-law, we were both cooking different things in the
17 house to get ready for the pool party, and then we all went
18 to the pool from that point after we were cooking.

19 Q. Who all went to the pool?

20 A. My mother-in-law; all my stepchildren, Michael,
21 Timothy, Joanna, Chastity; my son Jolion [phonetic],
22 Jovonie [phonetic]; my husband, Joseph; my stepson Joseph.

23 Q. When you say your stepson, you're talking about Joseph
24 Dunbar, Jr.?

25 A. Yes, yeah, junior.

C. DUNBAR - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. Is Joseph Dunbar, Jr., in the courtroom today?

2 A. Yes.

3 Q. Could you point him out?

4 A. Right there.

5 Q. Okay. As the record reflects, he's sitting next to
6 me?

7 A. Yes.

8 Q. In a jumpsuit?

9 A. Yes.

10 Q. Okay. He was with you on January 1, 2010 ---

11 A. Yes, he was.

12 Q. --- in Boynton Beach, Florida?

13 COURT REPORTER: One at the time, please.

14 Q. Well, let me ask, ask the question, and then you
15 answer.

16 A. Okay.

17 Q. When we talk over each other ---

18 A. Okay.

19 Q. --- she can't take all that down. How long were y'all
20 at the pool?

21 A. For a while. I think we left the pool probably around
22 maybe 10, 9 or 10:00.

23 Q. Could have been earlier? Could have been later?

24 A. Yes.

25 Q. Okay.

- 1 A. It's possible.
- 2 Q. Who, who left the pool with, with you?
- 3 A. Me and my husband left first.
- 4 Q. Okay.
- 5 A. And my little ones, my two little boys, we left
- 6 together.
- 7 Q. All right. Did Joseph Dunbar, Jr., leave after you
- 8 guys left?
- 9 A. Yeah. The older kids were packing everything up.
- 10 Q. All right.
- 11 A. To bring it to the apartment.
- 12 Q. Did you go back to your apartment?
- 13 A. Yes.
- 14 Q. Did Joseph Dunbar, Jr., come back to the apartment
- 15 that evening?
- 16 A. Yes.
- 17 Q. And did he go to sleep there at that apartment ---
- 18 A. Yes.
- 19 Q. --- that evening? All right. On January -- on
- 20 December 31, 2009, did Joseph Dunbar, Jr., to your
- 21 knowledge, ever come to South Carolina?
- 22 A. It's not possible.
- 23 Q. Okay. On January 1, 2010, did Joseph Dunbar, Jr.,
- 24 ever come to South Carolina?
- 25 A. No.

C. DUNBAR - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. And is that your own personal knowledge of seeing him?

2 A. Yes.

3 Q. Okay. On January 2, 2010, would he ever come to South
4 Carolina?

5 A. No, sir.

6 Q. All right. Do you know when the next time Joseph
7 Dunbar, Jr., would have come to South Carolina?

8 A. To my knowledge is when he got arrested and got
9 extradited back here.

10 Q. Okay, and between December, whatever it was that
11 Joseph Dunbar, Jr., arrived in Florida to stay with you
12 guys until he was extradited back to South Carolina, did he
13 ever come back to South Carolina?

14 A. No.

15 Q. Okay. Now, did you ever have any discussions or speak
16 with either an attorney named Mr. Brunson or anyone in his
17 office prior to Joseph Dunbar, Jr.'s trial?

18 A. No, I did not.

19 Q. All right. Did anyone ever contact you?

20 A. No.

21 Q. All right. Were you -- was there ever a trial
22 scheduled for Joseph Dunbar, Jr., on these charges and it
23 got rescheduled or moved?

24 A. Yes, sir.

25 Q. Do you recall when, when that may have been?

C. DUNBAR - DIRECT EXAMINATION BY MR. BOOZER

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1 A. I'm not sure exactly what day.

2 Q. All right. Well, let's just, let's just call it the
3 first one. Was there a trial scheduled initially for
4 Joseph Dunbar, Jr.?

5 A. Yes.

6 Q. Were you present in Sumter for that trial?

7 A. Yes.

8 Q. Why were you here?

9 A. To testify that he -- there's no way he could have
10 committed those crimes because he was with us.

11 Q. Okay, and you -- were you prepared to testify to what
12 you have testified to today in court then at a trial?

13 A. Yes, sir.

14 Q. And would your testimony then have been the same as it
15 is today?

16 A. Yes, sir.

17 Q. All right. How did you know about the first, that
18 first trial where you said you were prepared to testify?

19 A. Because my husband told me.

20 Q. All right. Was there -- then what happened? It just
21 got rescheduled?

22 A. Uh-huh.

23 Q. All right. Did you have any conversation with Mr.
24 Brunson at that first trial?

25 A. No, sir.

C. DUNBAR - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. All right. Was there then a second trial that was
2 scheduled?

3 A. Yes.

4 Q. And were you present at that trial?

5 A. Yes, sir.

6 Q. All right, and why were you there?

7 A. To testify the same, that there no way he could have
8 committed those crimes. He was with us.

9 Q. And how about -- well, what happened? Was it
10 rescheduled?

11 A. Yes.

12 Q. All right. Did you talk to Mr. Brunson or anyone from
13 his office then?

14 A. Me? No.

15 Q. Okay. November 7, 2011, there was a trial for Joseph
16 Dunbar, Jr. Were you present at that trial?

17 A. No.

18 Q. All right. When did you become aware of that trial?

19 A. After the fact when my husband got the phone call that
20 they gave him thirty years.

21 Q. And that was after November 7th or, or whenever the
22 trial was in November?

23 A. Yes.

24 MR. BOOZER: Court's indulgence, Your Honor?

25 THE COURT: Yes, sir.

1 (A PAUSE.)

2 BY MR. BOOZER:

3 Q. Were you ever under a subpoena to testify at any
4 trial?

5 A. No, sir.

6 Q. Okay. Were you -- how were -- how did you know that
7 there were trials, the two, first two trials? Who told
8 you?

9 A. My husband made me aware of them.

10 Q. Okay, and it was your understanding that you would be
11 there to testify to his whereabouts?

12 A. Yes.

13 MR. BOOZER: All right, Ms. Dunbar, that's all the
14 questions I have for you. Thank you.

15 MS. COLEMAN: Just briefly, Your Honor.

16 THE COURT: Yes, ma'am.

17 CROSS-EXAMINATION BY MS. COLEMAN:

18 Q. Just a couple of questions. This pool party that
19 you're talking about on January 1, 2010, today is July 26,
20 2016. So, that was, what, six and a half years ago. Is
21 that correct?

22 A. Yes.

23 Q. Why is it you remember so well what happened that day?

24 A. Because Joseph Junior actually taught Michael, my son,
25 how to swim that day.

C. DUNBAR - CROSS-EXAMINATION BY MS. COLEMAN

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1 Q. So, you seem to remember in pretty great detail the
2 times that you were cooking and when everyone was there and
3 got back. Is it possible that maybe your memory is a
4 little hazy from then or ---

5 A. Not at all.

6 Q. Okay, and you remember all the times, the details from
7 that day because he taught your, your child how to swim?

8 A. Yes.

9 Q. Okay.

10 MS. COLEMAN: Okay, no further questions. Thank you.

11 THE COURT: Anything further, Mr. Boozer?

12 MR. BOOZER: Nothing further, Your Honor.

13 THE COURT: All right, thank you, ma'am.

14 WITNESS: Thank you.

15 THE COURT: You may step down.

16 (THE WITNESS EXITS THE STAND.)

17 MR. BOOZER: Your Honor, at this time we call Ms.
18 Gertrude Dunbar Cooper to the stand.

19 GERTRUDE DUNBAR COOPER, BEING DULY
20 SWORN, TESTIFIES AS FOLLOWS:

21 BAILIFF: Please state your full name and spell your
22 last name for the record.

23 WITNESS: Gertrude Dunbar Cooper. Cooper is
24 C-o-o-p-e-r.

25 DIRECT EXAMINATION BY MR. BOOZER:

G. COOPER - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. Good afternoon, Ms. Cooper. How are you?

2 A. I'm fine.

3 Q. All right, Ms. Cooper, are you related to Joseph
4 Dunbar, Jr.?

5 A. Yes, I am.

6 Q. All right. What relation are you to him?

7 A. I am his grandmother.

8 Q. All right. Where do you live?

9 A. I live in -- well, now I live in Sumter, South
10 Carolina.

11 Q. You say now. Did you live somewhere before that?

12 A. Yes. I lived in Boynton Beach, Florida, until
13 November of 2013.

14 Q. How long had you lived in Boynton Beach, Florida,
15 until November of 2013?

16 A. Thirty-five years.

17 Q. Okay. On January 1, 2010, where were you?

18 A. I was in Boynton Beach, Florida.

19 Q. All right, and that's where you lived?

20 A. Yes.

21 Q. Where in Boynton Beach, Florida, exactly were you?

22 A. In the LaCosta Apartments.

23 Q. Okay, and that's an apartment complex there?

24 A. Yes.

25 Q. All right. Did you have any other relatives that

G. COOPER - DIRECT EXAMINATION BY MR. BOOZER

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1 lived in that apartment complex?

2 A. Yes.

3 Q. Who was that?

4 A. My son, his fiancée at that time.

5 Q. Who -- your son who?

6 A. Joseph Dunbar, Sr.

7 Q. All right. Who was his fiancée at the time?

8 A. Cristal West.

9 Q. All right. Who else?

10 A. My, all my grandkids, Joseph Junior's sisters and
11 brothers. Cristal and my grandkids and my son, Joseph
12 Dunbar, Sr.

13 Q. And, and ---

14 THE COURT: Can you speak a little louder directly to
15 that microphone? Thank you.

16 WITNESS: All right.

17 BY MR. BOOZER:

18 Q. Okay. On January 1, 2010, was Joseph Dunbar, Jr.,
19 staying at those apartments?

20 A. Yes, he was.

21 Q. Who was he staying with?

22 A. With his father, Joseph Senior.

23 Q. Okay. Do you know when...

24 A. Sorry. I talk softly most of the time.

25 Q. If you can, just speak up a little bit for us.

G. COOPER - DIRECT EXAMINATION BY MR. BOOZER

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1 A. Okay. Is that good? Still not?

2 THE COURT: You're just going to have to make an
3 effort to speak really loudly.

4 WITNESS: Okay.

5 (A PAUSE.)

6 BY MR. BOOZER:

7 Q. Ms. Dunbar, I think I forgot the last question I
8 asked, but on January 1, 2010, was Joseph Dunbar, Jr.,
9 staying at LaCosta Apartments?

10 A. Yes, he was.

11 Q. And he was staying with who now?

12 A. With his father and Cristal West and my other
13 grandkids.

14 Q. Do you know when he first arrived down -- and I'm
15 talking about Joseph Dunbar, Jr. Do you know when he first
16 arrived down in Florida to stay at LaCosta Apartments?

17 A. It was the first week of December.

18 Q. Okay, December of 2009?

19 A. 2009, yes.

20 Q. All right. Now, are you aware that on January 1,
21 2010, it's alleged that your grandson, Joseph Dunbar, Jr.,
22 committed a robbery of a store here in Sumter County?

23 A. Yes. I'm aware of it.

24 Q. All right. On January 1, 2010, where was Joseph
25 Dunbar, Jr.?

G. COOPER - DIRECT EXAMINATION BY MR. BOOZER

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1 A. In LaCosta Apartments in Boynton Beach, Florida.

2 Q. All right. If you would, would you just tell the
3 court about your day on January 1, 2010?

4 A. Well, I take a walk early, early in the morning and I
5 went for a walk that morning, and the apartment they were
6 in was this close. The -- you know, they're in that
7 complex. So, they had left some things at, at my
8 apartment, and I just went through -- went for a walk, and
9 I dropped them things off. And when I went in, you know,
10 everybody was sleep. It was, like, 7:30 in the morning.
11 Everybody was asleep.

12 Q. Was Joseph Dunbar, Jr., asleep there?

13 A. Yes.

14 Q. Okay. You observed that?

15 A. Yes. He was in the living room.

16 Q. Okay.

17 A. On the sofa, and the TV was still on. It was a thing
18 about turning the power off, you know, the TV off when you
19 go to bed, and now it was on and I just automatically
20 turned it off. That's when I noticed he was sleeping out.

21 Want me to say that again?

22 Q. Make sure you just speak slowly, okay?

23 A. Okay. I left there. Finished my walk. Went back to
24 my apartment. Did some cleaning and started cooking for
25 the New Year's dinner, some things for the New Year's

1 dinner. I knew we were going to the pool, and I watched
2 some TV, and then I got dressed to go to the pool.

3 Q. Okay. Do you know when you arrived at the pool?

4 A. It was between 4 and 5. I can't give an exact minute
5 or, or so between 4 and 5.

6 Q. And that was on January 1st of 2010?

7 A. On January 1st, uh-huh.

8 Q. Who else was at the pool that you knew?

9 A. My son, Joseph Senior, Joseph Junior, Cristal West.
10 Carolyn, another friend. I don't remember their name. I
11 didn't see them that often, but anyway I knew they were
12 friends of theirs. Did I say Joe Junior? Chastity,
13 Timothy, Mike, and a couple other people.

14 Q. Okay. How long were you at the pool?

15 A. Til about 7 or 7:30 p.m. I left before anybody did.
16 I didn't want to stay out that late.

17 Q. When, when you left the pool, was Joseph Junior still
18 in the pool?

19 A. Yes, uh-huh.

20 Q. Okay. Did you see Joseph Junior any other, any other
21 time that evening?

22 A. Yes. After -- when I came home and I took a shower
23 and changed my clothes, and when I came out he was coming
24 in. I think he got some food out of the refrigerator or
25 something and, and he left.

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1 Q. At your house?

2 A. Pardon me?

3 Q. In your apartment?

4 A. My apartment, yes.

5 Q. Okay, in Florida?

6 A. In Florida, yes.

7 Q. All right. Now, do you know the next time after
8 January 1, 2010, when you, when you saw Joseph Dunbar, Jr.?
9 Do you know when he was back in South Carolina?

10 A. When they arrested him.

11 Q. And was that in -- a little bit later in January?

12 A. Yes. It was a little later in January.

13 Q. All right. Between December 2009, the beginning of
14 December until Joseph Dunbar, Jr., was arrested and brought
15 back to South Carolina, to your knowledge had Mr. -- had
16 Joseph Dunbar, Jr., been back to South Carolina at all?

17 A. No.

18 Q. Are you sure of that?

19 A. I'm sure.

20 Q. Okay. Now, are you aware that your grandson, Joseph
21 Dunbar, Jr., was eventually convicted in a trial that was
22 held in November of 2011?

23 A. Yes.

24 Q. All right. Were you there at that trial?

25 A. No.

1 Q. Were you aware at the time that there was a trial
2 going on?

3 A. Not the -- I -- not the -- I, when I found out, it
4 wasn't enough time for me to get here or get the family
5 together or anything.

6 Q. Well, when did you learn of it?

7 A. My, my granddaughter called me. I believe my
8 granddaughter called me.

9 Q. Do you know when she called you?

10 A. I think it was the day -- it was either the day of the
11 trial or the day before.

12 Q. Okay. Prior to that trial, were there other times
13 that a trial was scheduled but it didn't happen?

14 A. Yes.

15 Q. All right. How -- do you know how many times?

16 A. It was -- I remember the one in August and September.
17 I don't remember the date.

18 Q. All right. So, you recall that there was a trial
19 scheduled for your grandson in August of 2011?

20 A. Yes.

21 Q. All right. Were you present for that?

22 A. Yes.

23 Q. All right. Why were you there?

24 A. Well, a number of reason. So I could testify for my
25 grandson, and my son and I were the ones that hired Mr.

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1 Brunson. I was there to talk to him.

2 Q. Okay. Well, you said it was to testify for your
3 grandson.

4 A. Yeah. I just assumed I would be. I didn't...

5 Q. What would your testimony have been? Would it have
6 been what you told us today?

7 A. Yes, that he was not in Sumter, South Carolina.

8 Q. And was that really what the purpose of your testimony
9 would have been was to show that he was in Florida at the
10 time of this crime?

11 A. Exactly, yes.

12 Q. Okay, and everything that you've testified to today,
13 would you have testified to that either in August of 2011,
14 September of 2011, or November of 2011, or whenever a trial
15 may have been? Would you have testified to what you
16 testified to today?

17 A. Yes.

18 Q. Okay, how about the second trial in September? What
19 happened with that?

20 A. That was rescheduled also. We came to everything, you
21 know. That's a long way, from, you know, Florida, to come
22 every, every time but we, we, we were here to support him,
23 and it was rescheduled.

24 Q. Were you also prepared to testify in September?

25 A. Yes.

1 Q. Did you ever receive any sort of subpoena or anything
2 like that to attend trial?

3 A. No.

4 Q. All right. Now, you, you indicated, I think, that you
5 and your son had hired Mr. Brunson?

6 A. Yes.

7 Q. All right. Did you have any conversations ever at any
8 time with Mr. Brunson?

9 A. Yes.

10 Q. Okay. What were those conversations?

11 A. We had conversations about his payment. We have
12 conversation about him taking a plea. We had conversations
13 about his bond. We had conversation about all the other
14 charges that they were adding to him. I pointed out to Mr.
15 Brunson that those -- he was already locked up when they
16 put those charges on him, so he couldn't have possibly done
17 them charges.

18 Q. Well, did y'all talk about -- did you ever talk, have
19 any discussion with Mr. Brunson that your grandson was in
20 Florida at the time of these crime -- of this crime?

21 A. I don't recall him asking me. We were pretty much
22 talking about there were so many cases. It sort of, like,
23 I guess we could say they were, like, grouped together.
24 So, we were, like, something more than one cases but that
25 was, you know, one I was positive that he was in Florida.

G. COOPER - DIRECT EXAMINATION BY MR. BOOZER

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1 Q. Did you tell that to Mr. Brunson, that he was in
2 Florida?

3 A. I don't recall telling him that because we didn't --
4 he didn't really ask questions like you're doing now. He
5 didn't really ask me questions like that. Pretty much
6 talked about whether he was going to have a trial or plea,
7 things like that.

8 Q. Did you ever talk to anyone else in Mr. Brunson's
9 office beside Mr. Brunson?

10 A. Yes. I don't recall her name, but I, I'll just say
11 Mr. Brunson was always cordial. The few times I did talk
12 to him, they were short, brief except for -- I think I saw
13 him in person maybe twice, but there was a lady in the
14 office. Whenever I would call, she told me, well, too many
15 people are calling. Stop calling so much. I said, well, I
16 never get to talk to Mr. Brunson, and I'd leave messages.
17 I was not even sure he was getting them, but she was really
18 rude to me. She said too many people are calling, but the
19 only people I knew that were calling, you know, were my son
20 and, and Joe's mother and myself, and we all had
21 information. So, you know.

22 Q. Okay.

23 MR. BOOZER: That's all the questions that I have for
24 you right now.

25 WITNESS: Okay.

1 MR. BOOZER: Thank you.

2 CROSS-EXAMINATION BY MS. COLEMAN:

3 Q. Hello. How are you?

4 A. Fine. Great.

5 Q. Just briefly. You testified that you spoke to Mr.
6 Brunson about this charge and, and several other charges,
7 too?

8 A. Right.

9 Q. But he never asked you about Florida, about where he
10 was on the day of the crime?

11 A. No.

12 Q. Did you think it was important to tell him that he was
13 in Florida with you during this crime?

14 A. At that time I was -- it was just -- I was just
15 surprised that all these other charges were added. Well,
16 we only have a short amount of time to talk because I was
17 trying to get everything out, and I guess -- I, I'm not
18 sure. It was, it was upsetting to, you know, be even
19 there.

20 Q. Right.

21 A. So, you know, knowing the right thing to, you know,
22 say at that time, you know, when the, you know, trial was
23 almost, almost, you know -- the date was almost there for
24 the trial. Even though it got rescheduled, I don't think
25 we had enough time together before, before any of the

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1 trials.

2 MS. COLEMAN: Thank you. No further questions.

3 THE COURT: Anything further, Mr. Boozer?

4 MR. BOOZER: Nothing further, Your Honor.

5 THE COURT: All right. Thank you, ma'am. You may
6 step down.

7 WITNESS: Thank you.

8 (THE WITNESS EXITS THE STAND.)

9 THE COURT: Any other witnesses, Mr. Boozer?

10 MR. BOOZER: No further witnesses on behalf of the
11 applicant, Your Honor.

12 THE COURT: All right, Ms. Coleman.

13 MS. COLEMAN: The state calls Willie Brunson.

14 WILLIE BRUNSON, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 BAILIFF: Please state your full name. Spell your
17 last name for the record.

18 WITNESS: It's Willie Brunson, B-r-u-n-s-o-n.

19 DIRECT EXAMINATION BY MS. COLEMAN:

20 Q. Hi, Mr. Brunson. How are you?

21 A. Doing well. How are you?

22 Q. I'm going well. Thank you.

23 A. Good.

24 Q. How long have you been practicing law?

25 A. Since 2004.

1 Q. Okay, and were you retained in this case?

2 A. I was.

3 Q. Okay. How many times did you meet with the applicant
4 before his trial?

5 A. A number of times, anywhere between four and eight.

6 Q. Did you file any *Brady* or Rule 5 motions?

7 A. I did.

8 Q. Did you review the discovery materials with the
9 applicant?

10 A. A number of times.

11 Q. Did you discuss the applicant's version of the facts?

12 A. Yes.

13 Q. And did he tell you that he was in Florida that day?

14 A. He did not.

15 Q. Okay.

16 A. In fact, I also filed a notice of alibi defense.

17 Q. You did file a notice?

18 A. Yes.

19 Q. Okay. Can you tell us a little bit about these alibi
20 witnesses and your contact with them?

21 A. Yeah. When I met with Mr. Dunbar, he indicated that
22 he did, in fact, have an alibi. That he was not present at
23 the time that this crime occurred. He indicated to me that
24 he was with his children at, at home here in Sumter.
25 Indicated to me that Dexter Dunbar would be able to

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1 corroborate that story and that Janice Dunbar would also be
2 able to corroborate it, and as a result of my meeting with
3 him, I, I filed the notice of alibi.

4 Q. Okay, and were you in contact with -- I'm sorry, what
5 did you say the names of those two witnesses were? Dexter?

6 A. Dexter Dunbar and Janice Dunbar.

7 Q. Okay. Were you in contact with them?

8 A. I was.

9 Q. Okay, and did you subpoena them to testify at trial?

10 A. I did not. We, we decided to abandon that alibi
11 because the timeframes didn't add up. I know that Mr.
12 Dunbar had at some point been with some children that day.
13 It appears that the timeframe was, was inconsistent, and so
14 we declined to go that route.

15 Q. Okay. Did he ever tell you anything about being in
16 Florida during the date that the charge -- that the crime
17 was alleged to have been?

18 A. No.

19 Q. Okay.

20 A. Not on the day.

21 Q. So, he, did you ever tell you about the witnesses that
22 were presented today, his father and Cristal and his
23 grandmother?

24 A. No.

25 Q. Okay. So, you would have had no reason to call them?

1 A. Well, that actually would have been a fantastic
2 defense, and I certainly would have called them had I known
3 that that's where he was on that day.

4 Q. Okay. Did any of them get in contact with you about
5 the fact that he was in Florida this day?

6 A. No. I've spoken with Ms. Gertrude Dunbar, the
7 grandmother, a number of times. Very nice lady, and I've
8 spoken with a number of his family members, but no, none of
9 them ever contacted me about him being in Florida on that
10 day.

11 Q. Okay. Did you discuss any other possible defenses
12 with the applicant?

13 A. Yes. In fact, the applicant -- I decided to call his
14 sister, Joanna Dunbar, as a witness. He was adamant about
15 her testifying, and, and the reason he was adamant about
16 Joanna testifying is that the individual that was a victim
17 in this case that operated the salon, she did, she did not
18 mention to law enforcement that my client was the one that
19 did it initially, and my -- she acted as if she did not
20 know him. And my client was adamant that Joanna would be
21 able to prove via her testimony that this victim knew not
22 only him but knew her and knew other members of his family,
23 and so she was called for that purpose.

24 Q. Okay. What was your -- and this probably goes into
25 this question. What was your overall trial strategy in

1 this case?

2 A. Well, what we had was a very tough trial because the
3 alleged victim indicated that my client, Mr. Dunbar,
4 removed his mask during the perpetration of the robbery and
5 made a threat to her that I know you, I know where you
6 live, and I'll kill you or something to that effect. And
7 so it was very difficult from the standpoint of a victim
8 with an in-court -- an identification. And so of course I
9 did create other avenues for Mr. Dunbar in that we
10 negotiated a plea offer, and we explored that. Mr. Dunbar
11 declined and thought that the state's case was not as
12 strong as it was. My advice to him was to accept that, the
13 initial plea.

14 I believe when he came -- when I first was hired, a
15 plea offer was made for fifteen years, but that also
16 included some, some other charges that at this time have
17 been dismissed, but we were able to effectively negotiate
18 that down to an offer of, I believe, ten and Mr. Dunbar
19 declined. And so we decided that we would just attack the
20 state's evidence witness by witness and indicate or hope
21 that we would be able to show that they weren't able to
22 make their case.

23 And to that end, in the beginning of the trial, of
24 course the Honorable Judge Young asked who the state's
25 witnesses, who the witnesses were, and of course we told

1 him the only witness that we planned on calling was his
2 sister, Joanna Dunbar. And as evidenced by that, the judge
3 asked me to write her name on the bottom of the state's
4 witness list so that he may announce that to the jury. Of
5 course if Mr. Dunbar had all these other witnesses, we
6 would have been able to tell the judge about those
7 witnesses, and of course the judge would have asked the
8 jury if they knew them or had a relationship with them.
9 None of that occurred because there were no other witnesses
10 other than Joanna, so.

11 Q. Let me ask you this. All three of the witnesses who
12 testified today claim that they showed up to the first and
13 second scheduling for a trial, and they were prepared to
14 testify and ready to go. Did they ever reach out to you
15 about testifying or about their intentions to testify?

16 A. Never. I, I, in fact, never received a call or
17 message that any one of those witnesses wanted to talk with
18 me. So, yeah, I, I knew nothing about them wanting to ever
19 talk with me or any information that he was there on that
20 date that this crime occurred.

21 Q. Okay. Would you briefly describe the state's evidence
22 against the applicant?

23 A. Okay. Well, there was a number of break-ins -- I'm
24 sorry, not break-ins, armed robberies in the community,
25 south side of Sumter, all within about a one-mile radius,

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1 and they were investigating them. And so what happened
2 after -- well, this is a Friday evening and a salon owner
3 has customers in the shop, and the, the backdrop on the
4 story was someone knocked on the door. Said hey, can you
5 twist my hair? She opened the door. They looked in. Saw
6 that there was people. She said come back at some other
7 time. Moments later, they heard the door kicked in and
8 four gentleman entered with -- armed with guns. And they
9 put the guns to the heads of the people present and
10 demanded money, took money. And the allegation was that
11 Joseph Dunbar, Jr., after having received the money from
12 the victim, on the way out pulled up the mask, put up his
13 mask and, and made those statements to the victim in an
14 attempt to intimidate them. That was the state's position.

15 So shortly after that, law enforcement was, was called
16 and they found pocketbooks in the area. So there were --
17 some of the belongings were recovered that evening. And
18 while they were canvassing the neighborhood, they
19 encountered a young man that had Joseph Dunbar Jr.'s ID in
20 his back pocket, and so they questioned him about it, and
21 it turns out he was the young man that knocked on the door.
22 And so they asked him about it and why do you have Joseph
23 Dunbar Jr.'s ID in your pocket and, and he said that Joseph
24 asked him to hold it.

25 So as a result of that, law enforcement went out and

1 they obtained a photo lineup from SLED, which included a
2 picture. We thought that the lineup was suggestive, and we
3 went through the appropriate motions and lost those
4 motions. And -- but nevertheless, they showed the photo
5 lineup to the victim. She identified Mr. Dunbar as the one
6 who robbed her at gunpoint and pulled up his mask.

7 Q. And did she identify him in the courtroom at -- during
8 the trial as well?

9 A. She did.

10 Q. Would you classify this evidence as overwhelming?

11 A. It was. It was. It was.

12 Q. Okay. Did you have ample time to prepare for trial?

13 A. I did. We -- I drafted all the appropriate motions
14 and met with Mr. Dunbar a sufficient time. Reviewed all
15 the evidence repeatedly, as I always do. Researched any
16 issues that I needed to and was prepared to go. I actually
17 contacted Ms. Joanna Dunbar, and she traveled from Florida
18 and appeared in court that day and served as the witness
19 like she was supposed to. So, everything happened that was
20 supposed to.

21 However, there was some testimony offered by the, the
22 victim and she indicated that she didn't know Joseph Dunbar
23 from the Optimist Club, which is a boxing school here in
24 town. And Mr. Dunbar communicated to me that, hey, that's
25 not true. Her son boxed with Dexter, Dexter Dunbar, and so

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1 -- I did not subpoena Dexter Dunbar because that's his, I
2 believe cousin and did not think I needed to and obviously
3 did not know that she was going to deny knowing him.

4 And so I believe on the transcript it appears that at
5 some point, I told the judge on page 273, I think --
6 whether -- I'm not sure which page it was, but I told the
7 judge that we needed to subpoena a rebuttal witness, and we
8 wanted to subpoena Dexter so that Dexter could come to
9 court and testify that this victim knew him from the box --
10 from the Optimist Club, and we called Dexter. Dexter
11 refused to come, and so for that reason I asked the judge
12 could we issue a subpoena and have him present for that
13 purpose. So, the only witness that we needed for this case
14 that wasn't here was Dexter, and that's the only testimony
15 that Dexter was going to offer was that, hey, she's not
16 telling the truth. She knew me from the Optimist because
17 we all boxed there.

18 MS. COLEMAN: No further questions. Thank you.

19 WITNESS: Okay.

20 CROSS-EXAMINATION BY MR. BOOZER:

21 Q. Mr. Brunson, how are you doing?

22 A. I'm doing well, thank you.

23 Q. Good. Talking about the Dexter and, I think, Janice
24 Dunbar.

25 A. Yes.

1 Q. Those were witnesses that you say he was advising you
2 that they would provide an alibi for him here in Sumter?

3 A. Correct.

4 Q. Okay. Were those for, were those witnesses for the
5 January 1, 2010, event or were they for -- an alibi for
6 other charges that he was facing?

7 A. They were for this particular case, yeah, indictment
8 number 2010-GS-43-543.

9 Q. Okay. Do you recall there being, I guess, a trial
10 date scheduled in August 2011 and one subsequent in
11 September 2011?

12 A. I do not recall.

13 Q. Okay. Do you recall then whether any of his family
14 members, whether it was his father, grandmother, stepmom,
15 brothers, sisters, were at either of those scheduled trial
16 dates?

17 A. I, I do not recall, and the reason I do not recall is
18 because I have tried a number of cases since then, and I do
19 not know. What I do know, though, is that they were never
20 there for purposes of serving as a witness as far as I'm
21 concerned because I have never talked with any of them in
22 regards to any testimony that they might have offered. And
23 I was certainly not going to call any of them as a witness
24 if the trial had occurred on the date that you mentioned.

25 Q. Okay. Do you have any recollection or anything in

W. BRUNSON - CROSS-EXAMINATION BY MR. BOOZER

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1 your file that represents any sort of note or the letter
2 from Joseph Dunbar, Jr., about looking into the alibi
3 witnesses that were presented today?

4 A. No.

5 Q. Okay.

6 A. I do not have correspondence with, with those names on
7 it as witnesses.

8 Q. Would he send you correspondence?

9 A. Yes.

10 Q. But you're certain that there's no correspondence
11 about those folks being potential alibi witnesses?

12 A. I am most certain.

13 MR. BOOZER: Court's indulgence, Your Honor.

14 THE COURT: Yes, sir.

15 (A PAUSE.)

16 MR. BOOZER: Mr. Brunson, that's all the questions I
17 have. Thank you, sir.

18 WITNESS: Yes, sir.

19 MS. COLEMAN: Beg the court's indulgence for a moment.

20 THE COURT: Yes, ma'am.

21 MS. COLEMAN: Or nothing else for this witness.

22 THE COURT: Okay.

23 MS. COLEMAN: He can be released, but beg the court's
24 indulgence.

25 (THE WITNESS EXITS THE STAND.)

1 MS. COLEMAN: Your Honor, the state has no further
2 witnesses, but I would request at this time if it would be
3 possible to leave the record open just for the purposes of
4 running a background check on the alibi witnesses that went
5 today just to -- for impeachment purposes. If there is
6 something on the report, I can submit it to you after the
7 case, if that's something you're interested in.

8 THE COURT: Sure. I'll allow ten days. In the grand
9 scheme of things, I can't tell you whether it will make a
10 difference. It may or may not, I don't know, but I'll
11 allow ten days for that.

12 MS. COLEMAN: Okay. Thank you. Just for the record.
13 Just for the record.

14 THE COURT: And, I mean, I assume you're talking about
15 just the existence of ---

16 MS. COLEMAN: Yes.

17 THE COURT: --- convictions.

18 MS. COLEMAN: Yes, and that shouldn't take more than a
19 couple of days.

20 THE COURT: Right. Right. Okay.

21 MR. BOOZER: And that's as long as it's, I guess,
22 limited. I know it says background checks, but just any
23 priors or anything like that.

24 MS. COLEMAN: Right.

25 MR. BOOZER: And that's fine, Your Honor.

1 THE COURT: Right.

2 MS. COLEMAN: Anything that would come in as
3 impeachable offenses.

4 THE COURT: Right. Yeah, just the existence. I don't
5 expect any memorandum.

6 MS. COLEMAN: No.

7 THE COURT: Or any discussion of, you know, the
8 meaning or significance of those convictions, but the
9 existence.

10 MS. COLEMAN: Just the existence.

11 THE COURT: Yes. That would be fine.

12 MS. COLEMAN: Thank you, Your Honor.

13 THE COURT: All right, is that all for this case? Do
14 you want to make any argument of any sort?

15 MR. BOOZER: That's all, Your Honor.

16 THE COURT: Okey dokey. I'll let y'all know in that
17 ten-day period for sure.

18 MS. COLEMAN: Okay. Thank you.

19 (WHEREUPON, THE CASE IS AT EASE.)

20 *THURSDAY, July 28, 2016*

21 THE COURT: All right. Well, Ms. Coleman has handed
22 me what appear to be SLED reports on the criminal
23 backgrounds of Cristaline West and Joseph Dunbar, the
24 witnesses that testified in Mr. Dunbar's case.

25 Mr. Boozer, you had some comment to make about those

1 or some concern?

2 MR. BOOZER: Thank you, Your Honor. Just briefly. As
3 I'm certainly sure the court is aware, we would just ask
4 that the review of any of those background reports just be
5 limited to any, any convictions that would weigh in on the
6 honesty or whatnot, should it be a felony within ten years
7 or, of course, those involving dishonesty, crimes of
8 dishonesty. Anything else that may appear, such as an
9 arrest or anything like that or any unrelated conviction,
10 we would just certainly request that Your Honor disregard
11 those for purposes of, of their testimony.

12 THE COURT: Absolutely. I would limit my review or
13 consideration of these records to what would be admissible
14 for impeachment purposes at trial pursuant to the rules of
15 evidence. All right?

16 MR. BOOZER: Thank you.

17 THE COURT: Thank you.

18 MS. COLEMAN: Thank you, Your Honor.

19 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
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 HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON
THE 26TH AND 28TH DAYS OF JULY, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

APRIL 3RD, 2017

STATE OF SOUTH CAROLINA **RECORDED** IN THE COURT OF COMMON PLEAS
 COUNTY OF SUMTER 2016 DEC 30 PM 3:59 THIRD JUDICIAL CIRCUIT

Joseph Wadell Dunbar, Jr., #348569, S.C. CAPPELL 2014-CP-43-2351
 CLERK OF COURT

Applicant,

v.

State of South Carolina,

Respondent.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED

Sherry H. Hunt
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 5, 2014. Respondent submitted its return on January 23, 2015. An evidentiary hearing was convened on July 26, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the May 2010 term of the Sumter County Grand Jury for burglary (violent) – second degree and armed robbery (2010-GS-43-0543). Will Brunson, Esquire represented Applicant. Applicant proceeded to a jury trial before the Honorable W. Jeffrey Young. Applicant was subsequently found guilty as indicted. Judge Young sentenced Applicant to thirty year term of imprisonment for armed robbery and fifteen year term of imprisonment for burglary-second degree.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted. The South Carolina Court of Appeals dismissed the appeal. State v. Dunbar, Jr., Un.

Op. 2014-UP-353 (S.C. Ct. App. filed October 8, 2014). The Remittitur was issued on October 24, 2014.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Trial Counsel
 - a. Trial Counsel did not subpoena alibi witnesses.
2. Ineffective Assistance of Appellate Counsel
 - a. Appellate Counsel did not raise claim concerning unlawful identification procedure that was preserved for appeal.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness

under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

IV. 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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. This Court further finds all three alibi witnesses presented at the hearing to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted an allegation of ineffective assistance of counsel. This Court finds this claim to be meritless and it is denied and dismissed with prejudice. At the evidentiary hearing, Applicant presented three witnesses that he asserted Trial Counsel should have presented at trial as alibi witnesses. Their testimony is summarized as follows:

Applicant

Applicant testified that he was arrested for this crime in Palm Beach, Florida on January 7, 2010. The crime was alleged to have taken place on January 1, 2010. He stated that he is from Florida and he lives in Boynton Beach, Florida with his father, but he had taken a trip to Sumter, South Carolina, to visit his children in November of 2009. On January 1, 2010, however, the day of the crime, Applicant testified that he was at his father's residence in Florida at a pool party.

Applicant stated that he woke up that morning at his father's house, went to a friend's house for an hour or two, left his friend's house at 12:30 P.M., and went back to his father's house to play video games with his brother. Applicant testified that he then went to his grandmother's apartment to eat, because she lived in the same apartment complex as his father. He stated that he then went to a pool party at the apartment complex around 4:00 or 4:30 P.M. with his family until it got dark. Afterwards, he stated that he went back to his father's apartment, watched television and played a game, and listened to music until he went to sleep. He testified that he did not leave Boynton Beach that day.

Applicant testified that he gave Trial Counsel a list of all of his alibi witnesses and asked him to investigate them, and Trial Counsel told him he would put up his alibi defense and call all of these witnesses to testify at trial. He stated that Trial Counsel did not call them to testify at trial because he did not subpoena them, and he never explained why. He stated that his case was scheduled for trial twice before it actually went forward, and it was continued both times for various reasons. Applicant stated that his alibi witnesses were present in court at both of the original trial dates, but they did not appear at the actual trial because they were never notified of it.

Joseph Dunbar, Sr.

Joseph Dunbar, Sr. testified that he is Applicant's father and he lives in Fort Pierce, Florida. He stated that he lived in Boynton Beach, Florida, on January 1, 2010, in an apartment complex called La Costa. Mr. Dunbar testified that Applicant came to visit him and stay at his apartment on December 5 or 6, 2009 with all of Mr. Dunbar's children.

Mr. Dunbar testified that on January 1, 2010, he woke up early, then went to see his friends. He stated that he talked with his friends for about an hour, then came back home to get ready for the pool party. He stated that Applicant was at the pool party with him that day, and he had been there all day and had no chance to get to South Carolina on that day. He testified that Crystal West and Gertrude Dunbar also attended the pool party that day. Mr. Dunbar stated that he left the pool at night time when it got dark, and Applicant left shortly after he did. He stated that Applicant then came home and was hanging out outside the apartment.

Mr. Dunbar testified that he hired Trial Counsel to represent his son, but he never met him or spoke to him. He stated that he came to Sumter twice to see his son's trial because his family called him and told him that it was scheduled for trial. He stated that Trial Counsel never contacted him about the trial. He stated that he wanted to testify at trial with his alibi.

Crystalline West

Crystalline West, or Crystal West, testified that she is married to Applicant's father, Mr. Joseph Dunbar, Sr. She stated that she lives in Fort Pierce, Florida, and she previously lived with her husband in the La Costa apartments in Boynton Beach, Florida. She testified that Applicant came to stay with them on December 4, 2009, and her children and step-children all lived there with them.



On January 1, 2010, Crystaline West testified that when she woke up and got dressed, her children and Applicant's sister Joanna were at the apartment, but Joseph Sr. and Applicant were gone. She stated that they got back home around 2:30 or 3:00 that afternoon. She testified that she was cooking food for the pool party that afternoon, and they all went to the pool until dark. She testified that, although this pool party took place on an afternoon six years prior to the evidentiary hearing, she remembered the details about the day because it was the day that Applicant taught her son how to swim.

Ms. West testified that she came to court for the first and second trial dates, and she was ready to testify on both dates. She stated that she was never contacted by Trial Counsel and she was never subpoenaed to testify at trial.

Gertrude Dunbar Cooper

Gertrude Dunbar Cooper testified that she is Applicant's grandmother, and is Joseph Dunbar Sr.'s mother. She stated that she lives in Sumter, but she lived in the La Costa apartments in Boynton Beach, Florida for thirty-five years prior to that, until November of 2013. She stated that Applicant came to stay at her apartment complex the first week of December, 2009.

Ms. Dunbar Cooper testified that, on January 1, 2010, she went for a walk early in the morning, then went to her son's apartment, where everyone was asleep. She stated that she watched television, cooked and got ready for the pool party, then went to the pool between 4:00 and 5:00 P.M. She stated that Applicant, Joseph Dunbar Sr., Crystal West and her children, and some family friends were all at the pool party that day. She testified that she left the pool around 7:00 or 7:30 that evening.

Ms. Dunbar Cooper testified that she came to the first and second dates for trial and was prepared to testify, but she was never subpoenaed to testify. She stated that she spoke with Trial

Counsel before the trial about the charges, a plea deal, and payment of legal fees, but not about testifying. She stated that she never told Trial Counsel about her alibi.

Trial Counsel

Trial Counsel testified that he filed an alibi defense in this case. However, he stated that Applicant gave him a different alibi. He stated that Applicant told him he was at home with his children in Sumter on January 1, 2010. Trial Counsel testified that he investigated two alibi witnesses, Dexter Dunbar and Janice Dunbar, but the time frame did not add up, so he abandoned the defense and did not subpoena those witnesses at trial.

Trial Counsel testified that Applicant never told him about the alibi witnesses that were presented at the evidentiary hearing. He stated that he spoke with Applicant's grandmother, Ms. Dunbar Cooper, a number of times, but she never told him about Applicant being in Florida. He stated that these witnesses appeared at the first two trial dates to support Applicant, but they never told him that they wanted to testify.

Rulings

Applicant has failed to present any probative evidence that any of Trial Counsel's actions or inactions in regard to this allegation were ineffective and prejudicial, and this allegation is denied and dismissed with prejudice.

To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or

otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence.

Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

"When a PCR applicant alleges trial counsel failed to investigate or present an alibi witness, the PCR court must make two findings to determine if counsel's deficient performance constitutes prejudice under *Strickland*. First, the court must find as a matter of law whether the witness's testimony meets the legal definition of an alibi. Second, the court must assess the witness's credibility." Walker v. State, 397 S.C. 226, 238, 723 S.E.2d 610, 616 (Ct. App. 2012).

This Court finds that the alibi witnesses presented were not credible. Regardless of whether their testimony would have met the legal definition of an alibi, these witnesses are not credible and their testimony would not have changed the outcome of the trial, thus Applicant cannot satisfy the prejudice prong of the Strickland test.

Furthermore, this Court finds that Trial Counsel was not ineffective in failing to call these witnesses because he was never told about their alibi. Despite speaking to Ms. Gertrude Dunbar Cooper a number of times about the case, this Court finds very credible Trial Counsel's testimony that she never mentioned to him that Applicant was in Florida on the day of the crime. Trial Counsel credibly testified that Applicant never told him about these witnesses or their alibi, and he could not have investigated them. Furthermore, Trial Counsel credibly testified that Applicant told him a different alibi story, that he was in Sumter with his children on the day of the crime, which contradicts the alibi presented at the evidentiary hearing.

This Court accordingly finds that Applicant has presented no credible evidence that Trial Counsel was ineffective on these grounds, and this application is denied and dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

This Court finds that Applicant has failed to present evidence on his claim for ineffective assistance of appellate counsel, and thus has failed to meet his burden of proof. Therefore, this allegation is denied and dismissed with prejudice.

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.

V. CONCLUSION

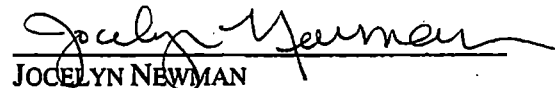
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20th day of December, 2016.


JOCELYN NEWMAN
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Burglary / Burglary (Violent) (After 06/20/85) - Second degree
Armed RobberyCERTIFIED TRUE COPY
OF ORIGINAL FILE

At a Court of General Sessions, convened on May 20, 2010, the Grand Jurors of

SUMTER County present upon their oath:

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA**COUNT ONE - BURGLARY, SECOND DEGREE (VIOLENT)**

That Joseph Wadell Dunbar Jr did in Sumter County on or about January 1, 2010, enter without consent and with the intent to commit a crime therein, a building of Untouchable Cuts, located at 516 S. Lafayette Dr., and the defendant, Joseph Wadell Dunbar Jr, did enter the building in the nighttime, in violation of Section 16-11-0312(B), S. C. Code of Laws, 1976, as amended.

COUNT TWO - ARMED ROBBERY

That on or about January 1, 2010, in Sumter County, South Carolina, the Defendant, Joseph Wadell Dunbar Jr., at Untouchable Cuts, 516 S. Lafayette Dr., by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Mary Pollard, with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

WITNESSES

William Lyons

Sumter Police Dept.

DOCKET NO. 2010-GS-43-0543

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

May **TERM** 2010

THE STATE

vs.

JOSEPH WADELL DUNBAR JR

ARREST WARRANT NUMBER

J296656

J296657

ACTION OF GRAND JURY

True Bill

Linda A. Thompson

Foreperson of Grand Jury

Date: 5-20-10

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

Burglary / Burglary (Violent) (After 06/20/85) - Second
degree
Armed Robbery

C. KELLY JACKSON, SOLICITOR