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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

ANTHONY MAURICE LOUNDS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000494

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2) COURT OF GENERAL SESSIONS
3) 2009-GS-23-10154, 10155
4)

4 State of South Carolina) TRANSCRIPT OF RECORD
5)

5 vs)
6)

6 Anthony Lounds)
7)

8 Day 1 July 12, 2011
9 Greenville, South Carolina

9 B E F O R E:

10 THE HONORABLE C. VICTOR PYLE, Judge

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

12 George Campbell, Esquire
13 Sloan Ellis, Esquire
14 Assistant Solicitor
15 Attorney for the State

16
17 Scott Robinson, Esquire
18 Attorney for the Defendant
19
20
21
22
23
24
25

Caroline Hiskell
Circuit Court Reporter

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1 **(State's Exhibit Nos. 1 through 19 were marked for**
2 **identification prior to the beginning of this trial.)**

3 P R O C E E D I N G S

4 THE BAILIFF: All rise, the Honorable C.
5 Victor Pyle presiding.

6 THE COURT: Good morning. Please be seated.
7 All right, anything before I bring the panel up?

8 MR. CAMPBELL: Yes, Your Honor. I believe we
9 have a few pre-trial matters. We've got a Jackson v.
10 Denno and a Neil v. Biggers. I believe Mr. Robinson has a
11 few motions as well.

12 THE COURT: Do they affect jury selection?

13 MR. ROBINSON: Your Honor, they don't affect
14 jury selection. Mr. Lounds has asked me to present a
15 Motion to Recuse in this case on Mr. Lounds's behalf. He
16 has written a letter, I believe, to either Judge Stilwell
17 or someone regarding the Court as I believe. In the
18 original case, State v. Lounds, was a case where our
19 Supreme Court overturned a PCR, post-conviction relief
20 judge's decision and the case came back. I believe you
21 were the original judge on the case in which he received
22 life without parole.

23 I believe he was convicted for kidnapping in
24 the case. That was tried by Greg Newel.

25 THE COURT: And I tried what?

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1 MR. ROBINSON: You were the trial judge on
2 his case for armed robbery and kidnapping in which he
3 received a life without parole sentence and it was
4 overturned.

5 THE COURT: And when was that?

6 MR. ROBINSON: It was 2001, Your Honor.

7 THE COURT: Mr. Robinson, if you had not
8 mentioned that to me, I certainly would not have
9 remembered I had been the trial judge for this defendant,
10 and I certainly would not hold that against him.

11 Excuse me. Do you have something else you
12 want to say to your lawyer.

13 DEFENDANT LOUNDS: Yes, sir.

14 (Defendant Lounds confers with his attorney.)

15 MR. ROBINSON: Your Honor, Mr. Lounds has
16 informed me that you actually in December of 2010,
17 originally this case came before the Court and originally
18 the attorney was Mr. Patel and the Court relieved
19 Mr. Patel and that was regarding the facts in this case.
20 So the Court did have, according to Mr. Lounds, did have
21 some knowledge of the case when Mr. Patel was relieved as
22 counsel in this matter in the summer of 2010.

23 THE COURT: Mr. Robinson, I have absolutely
24 no memory of any matter involved in a former case with
25 this defendant, and I certainly see no reason for me to

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1 recuse myself on this case. I can be perfectly fair with
2 everyone involved so that motion is denied.

3 MR. ROBINSON: And the other motion is a
4 Motion for Continuance, Your Honor, in this case. Your
5 Honor, the original docket -- the docket in this matter
6 was for, as the Court maybe aware, the charges, and this
7 docket was published June 24th of 2011, the charges on
8 this matter on Tuesday, July 12th, were armed robbery and
9 possession of a weapon during the commission of a violent
10 crime. We met with the Solicitor's Office, Sloan Ellis
11 and the two prosecutors in this case and we were informed
12 at that time that the forgery charge, which is another
13 charge that Mr. Lounds has been charged with, was not
14 going to be tried simultaneously with this case. They
15 were going to use some evidence from that but they were
16 not going to charge that.

17 Yesterday, I was informed that they are going
18 to go forward on the forgery part of this. It's not
19 listed here. Mr. Campbell is going to note that it
20 appears that the two numbers are indicated, but they've
21 only indicated the armed robbery and possession of a
22 weapon during the commission of a violent crime. And I
23 would point out as well, Your Honor, we received -- we
24 investigate every case and talk to every witness, we
25 received yesterday at 4:59 p.m., a fax or email stating

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1 the numbers the manager at Ingles which is the manager
2 they would use and call in this case. And we also
3 received the number of Ingles loss prevention manager, and
4 this is all at 4:59 p.m.

5 Now, I'm not faulting -- they're great people
6 to work with, but in this matter, though, I think that it
7 is unfair and prejudicial to us when we prepared this case
8 for armed robbery and possession of a weapon during the
9 commission of a violent crime to now, at the last minute,
10 say we want to also bring the forgery charges.

11 I can pass up to the Court if the Court
12 doesn't have it, the trial docket that was published on
13 June 24, 2011 that does not indicate ---

14 THE COURT: And you're correct. It only
15 shows armed robbery and a possession of a weapon. What's
16 your position, solicitor?

17 MR. CAMPBELL: If it please the Court, Your
18 Honor, the trial docket does indicate the two indictment
19 numbers, one is for indictment of armed robbery and
20 possession of a weapon during the commission of a violent
21 crime, and the other is for two counts of forgery. The
22 forgeries are intricately intertwined with this case.

23 THE COURT: Well, why didn't you put on the
24 docket?

25 MR. CAMPBELL: It was a scribbler's error

State of South Carolina versus Anthony Maurice Lounds

1 that that text was not on that docket.

2 THE COURT: I will grant that motion. We
3 will not proceed on the forgery.

4 MR. CAMPBELL: We will elect to proceed on
5 the armed robbery, Your Honor.

6 THE COURT: All right, and the possession of
7 a weapon?

8 MR. CAMPBELL: And if I may add to the
9 Court's information, this is not -- these witnesses are
10 not mute. Mr. Howell has been included since the incident
11 report was written by Investigator King and Jerico Downs
12 was listed as a witness on this trial when it was slated
13 in 2010. So this is not new information or surprise
14 witnesses.

15 THE COURT: Okay.

16 MR. ROBINSON: Your Honor, if I could just
17 address that. The Solicitor's Office is great to work
18 with. These guys are great. I'm not saying that, it's
19 just that I need a little more notice.

20 THE COURT: I understand that. I grant that
21 motion. All right, anything else before I bring the panel
22 up.

23 (No response).

24 Strikes are five for the State and for the
25 defendant.

State of South Carolina versus Anthony Maurice Lounds

1 (Jury panel enters the courtroom).

2 Ladies and gentlemen, if I could have your
3 attention. At this time we will select a jury in the case
4 of State against Anthony Maurice Lounds.

5 Mr. Lounds, would you stand up, turn around
6 and face this jury panel for me, please, sir.

7 (Defendant complies).

8 Thank you. You can be seated.

9 He is indicted for armed robbery and
10 possession of a weapon during the commission of a violent
11 crime. The indictment alleges specifically that on or
12 about the 5th day of September 2009 while armed with a
13 deadly weapon or while either by action or words that he
14 was armed that he committed the robbery including US
15 currency and a checkbook from Bryan Workman.

16 Count 2 alleges that at that same time that
17 he possessed or visably displayed a handgun during the
18 commission of the armed robbery.

19 Now, potential witnesses in the case will be
20 Terrance Bowers, Doris Culp, Jeremy M. Days, Jerico Downs,
21 Mike Fortner, Dallas Gladsen, Lamont Garrison, James
22 Grubbs, Jeffery Scott Hines, don Howell, Tracy King, John
23 t. Martin, Shamika Sanders, Bryan Workman, Anthony Lounds,
24 Randy Bryant, anthony Watkins, Alfred Chandler and Rene
25 Beaufort.

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1 I will inquire at this time if any member of
2 the jury panel is related by blood or marriage or
3 connected by employment to the defendant or to any
4 potential witness in the case. Are you sensible or aware
5 of any bias or any prejudice with respect to the
6 defendant, to the State, or to the subject matter of the
7 case, or do you know any reason why you could not give
8 this defendant and the State a fair and impartial trial
9 based on the law in evidence to be presented? If so,
10 please stand and give me your name.

11 (No response).

12 Do I have any member who has any connection,
13 family, business, social or otherwise with Walt Wilkins,
14 the Solicitor, or any member of his staff including George
15 Campbell and Sloan Ellis who are the prosecutors in this
16 case, or with law enforcement whether that be federal,
17 state, county, or municipale? If so, please stand and give
18 me your name.

19 Your name, please, ma'am.

20 JUROR NO. 28: Janet Campbell.

21 THE COURT: All right, Ms. Campbell.

22 JUROR NO. 28: My husband's neice is here.

23 THE COURT: Your husband's neice?

24 JUROR NO. 28: Ms. Lowry.

25 THE COURT: Would that fact in any way

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1 interfer with your ability to be a fair and impartial
2 juror on this case?

3 JUROR NO. 28: No.

4 THE COURT: Thank you, ma'am.

5 Scott Robinson represents the defendant. Do
6 I have any clients now or formerly of Mr. Robinson? If
7 so, please stand and give me your name.

8 (No response).

9 Do I have any member of the panel or any
10 member of your family whose been a victim of a violent
11 crime? If so, please stand and give me your name?

12 (No response).

13 Any other questions I've overlooked, counsel?

14 MR. CAMPBELL: Clinton Berry is here from
15 Greenville Federal Credit Union filling in for Doris Culp.
16 He may be called as a witness.

17 THE COURT: What's his name?

18 MR. CAMPBELL: Clinton Berry.

19 THE COURT: Anyone related to Clinton Berry?

20 (No response).

21 All right, strikes are five for the State and
22 10 for the defense.

23 Ladies and gentlemen, when your name is
24 called, I would ask you to please come up to this podium,
25 turn around and face counsel and await further

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1 instructions. Thank you.

2 THE CLERK: And if you would, also bring your
3 belongings should you be seated. Thank you.

4 Juror No. 43, Daniel Davenport. If you would
5 please come forward.

6 What says the State?

7 MR. CAMPBELL: Please seat this juror.

8 MR. ROBINSON: Please seat this juror to
9 serve on this case.

10 THE CLERK: Thank you. Please have a seat in
11 the jury box.

12 (Whereupon, Juror No. 43, Daniel R.
13 Davenport, white male, was seated.)

14 Juror No. 30, David Carr.

15 What says the State?

16 MR. CAMPBELL: Please seat Mr. Carr.

17 THE CLERK: Thank you.

18 MR. ROBINSON: Please excuse this jury from
19 the trial of this case.

20 THE CLERK: Thank you. You may be seated.
21 You're excused from the trial of this case.

22 Juror No. 181, Joe Smith.

23 What says the State?

24 MR. CAMPBELL: Please seat Mr. Smith.

25 MR. ROBINSON: Please excuse this juror from

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1 the trial of this case.

2 THE CLERK: Thank you. Please be seated.

3 You're excused from the trial of this case.

4 Juror No. 40, Debra Cue.

5 MR. ROBINSON: Ma'am, what juror is this?

6 THE CLERK: 40.

7 MR. ROBINSON: 40?

8 THE CLERK: Yes.

9 What says the State?

10 MR. CAMPBELL: Please seat Ms. Cue.

11 MR. ROBINSON: Please seat the juror for the
12 trial of this case.

13 THE CLERK: Thank you. You may be seated in
14 the jury box.

15 (Whereupon, Juror No. 40, Debra Cue, white
16 female, was seated.)

17 Juror No. 216, Daniel Wilkie.

18 What says the State?

19 MR. CAMPBELL: Please seat Mr. Wilkie.

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

22 THE CLERK: You may be seated. You're
23 excused from the trial of this case.

24 Juror No. 8, Deborah Bartlett.

25 What says the State?

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1 MR. CAMPBELL: Please seat Ms. Barlett.

2 MR. ROBINSON: Please seat this juror.

3 THE CLERK: Thank you. You may be seated in
4 the jury box.

5 (Whereupon, Juror No. 8, Deborah Bartlett,
6 white female, was seated.)

7 Juror No. 29, Steven Campbell.

8 What says the State?

9 MR. CAMPBELL: Please seat Mr. Campbell.

10 MR. ROBINSON: Please excuse this juror from
11 the trial of this case.

12 THE CLERK: Thank you. You may seated.

13 You're excused from the trial of this case.

14 Juror No, 89, David Hester.

15 What says the State?

16 MR. CAMPBELL: Please seat Mr. Hester.

17 MR. ROBINSON: Please excuse this juror from
18 the trial of this case.

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

20 You're excused from the trial of this case.

21 Juror No. 123, David Lesser.

22 What says the State?

23 MR. CAMPBELL: Please seat Mr. Lesser.

24 MR. ROBINSON: Please seat this juror.

25 THE CLERK: Thank you. Please be seated in

State of South Carolina versus Anthony Maurice Lounds

1 the jury box.

2 (Whereupon, Juror No. 123, David Lesser,
3 white male, was seated.)

4 Juror No. 227, James Lovett.

5 What says the State?

6 MR. CAMPBELL: Please seat Mr. Lovett.

7 MR. ROBINSON: Please excuse this juror from
8 the trial of this case.

9 THE CLERK: You may be seated. You're
10 excused from the trial of this case.

11 Juror No. 13, Robert Berndt.

12 What says the State?

13 MR. CAMPBELL: Please excuse Mr. Berndt.

14 THE CLERK: Thank you, you may be seated.
15 You're excused from the trial of this case.

16 Juror No. 22, Gary Brison.

17 What says the State?

18 MR. CAMPBELL: Please seat Mr. Brison.

19 MR. ROBINSON: Please seat this juror.

20 THE CLERK: Thank you may be seated in the
21 jury box.

22 (Whereupon, Juror No. 22, Gary Brison, white
23 male, was seated.)

24 Juror No. 86, Larae Harvey.

25 What says the State?

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1 MR. CAMPBELL: Please seat Mr. Harvey.

2 MR. ROBINSON: Please seat this juror.

3 THE CLERK: Thank you. You may be seated in
4 the jury box.

5 (Whereupon, Juror No. 86, Larae Harvey, white
6 male, was seated.)

7 Juror No. 54, Marcia Edmonds.

8 What says the State?

9 MR. CAMPBELL: Please seat Ms. Edmonds.

10 MR. ROBINSON: Please excuse this juror from
11 the trial of this case.

12 THE CLERK: Thank you. You may be seated.
13 You're excused from the trial of this case.

14 Juror No. 213, Frank Wenning.

15 What says the State?

16 MR. CAMPBELL: Please seat Mr. Wenning.

17 MR. ROBINSON: Please seat this juror.

18 THE CLERK: Thank you. You may be seated in
19 the jury box.

20 (Whereupon, Juror No. 213, Frank Wenning,
21 white male, was seated.)

22 Juror No. 167, James Robertson.

23 What says the State?

24 MR. CAMPBELL: Please seat Mr. Robertson.

25 MR. ROBINSON: Please seat this juror.

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1 THE CLERK: Thank you. You may be seated in
2 the jury box.

3 (Whereupon, Juror No. 167, James Robertson,
4 white male, was seated.)

5 Juror No. 95, Shirley Holliday.

6 What says the State?

7 MR. CAMPBELL: Please seat Ms. Holliday.

8 MR. ROBINSON: Please seat this juror.

9 THE CLERK: Thank you. Please have a seat in
10 the jury box.

11 (Whereupon, Juror No. 95, Shirley Holliday,
12 white female, was seated.)

13 Juror No. 28, Janet Mary Campbell.

14 What says the State?

15 MR. CAMPBELL: Please seat Ms. Campbell.

16 MR. ROBINSON: Please excuse this juror from
17 the trial of this case.

18 THE COURT: Thank you. You can be seated.
19 You have been excused for the trial of this case.

20 Juror No. 163, Debra Reich.

21 What says the State?

22 MR. CAMPBELL: Please seat Ms. Reich.

23 MR. ROBINSON: Please seat this juror.

24 THE CLERK: Thank you. You may have a seat
25 in the jury box.

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1 (Whereupon, Juror No. 163, Debra Reich, white
2 female, was seated.)

3 Juror No. 11, Annie Baxley.

4 What says the State?

5 MR. CAMPBELL: Please seat Ms. Baxley.

6 MR. ROBINSON: Please seat this juror on this
7 case.

8 THE CLERK: Thank you. You may be seated in
9 the jury box.

10 (Whereupon, Juror No. 11, Annie Baxley, white
11 female, was seated.)

12 Juror No. 128, Brenda Martin.

13 What says the State?

14 MR. CAMPBELL: Please seat Ms. Martin.

15 MR. ROBINSON: Please excuse this juror from
16 the trial of this case.

17 THE CLERK: Thank you, you may be seated.
18 You're excused from the trial of this case.

19 Juror No. 137, Al Mickel.

20 What says the State?

21 MR. CAMPBELL: Please excuse Mr. Mickel.

22 THE CLERK: Thank you. You may be seated.
23 You're excused from the trial of this case.

24 Juror No. 126, Norman McDonald.

25 What says the State?

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1 MR. CAMPBELL: Please seat Mr. McDonald.

2 MR. ROBINSON: Please excuse this juror from
3 the trial of this case.

4 THE CLERK: Thank you. You may be seated.
5 You're excused from the trial of this case.

6 Juror No. 161, Katherine Rawson.

7 What says the State?

8 MR. CAMPBELL: Please seat Ms. Rawson.

9 MR. ROBINSON: Please seat this juror for the
10 trial of this case.

11 THE CLERK: Thank you. You may be seated in
12 the trial of this case.

13 (Whereupon, Juror No. 161, Katherine Rawson,
14 white female, was seated.)

15 THE COURT: Ms. Reich, would you please take
16 this seat and serve as foreperson, please, ma'am.

17 And give me one alternate, one for the State,
18 two for the defense.

19 THE CLERK: Juror No. 192, Donna Streets.

20 What says the State?

21 MR. CAMPBELL: Please seat Ms. Streets.

22 MR. ROBINSON: Please excuse this juror from
23 the trial of this case.

24 THE CLERK: Thank you, you may be seated.
25 You're excused from the trial of this case.

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1 Juror No. 79, Stephen Guthrie.

2 What says the State?

3 MR. CAMPBELL: Please excuse this juror.

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

5 You're excused from the trial of this case.

6 Juror No. 47, Robert Defoor.

7 What says the State?

8 MR. CAMPBELL: Please seat Mr. Defoor.

9 MR. ROBINSON: Please seat this juror.

10 THE CLERK: Thank you, you may be seated.

11 (Whereupon, Juror No. 47, Robert Defoor,
12 white male, was seated.)

13 THE COURT: Yes, ma'am.

14 JUROR NO.40: Twenty-six years ago I was
15 involved in a crime. I didn't hear you say the last name
16 where I was robbed at knife-point. I just wanted to let
17 you know before you got the trial started.

18 THE COURT: Okay. Would that fact in any way
19 interfere with your ability to be a fair and impartial
20 juror in this case?

21 JUROR NO: Absolutely no.

22 THE COURT: Okay. I appreciate that.

23 Now, ladies and gentlemen, there are a few
24 matters I need to take up before I start this case and
25 I'll give you a recess while I do that. You don't know

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1 anymore about this case other than what I've briefly told
2 you but I need to instruct you that from this point on you
3 don't talk about this case. You don't do that until
4 you've heard all of the testimony and the arguments by the
5 attornies as well as my charge on the law. So if you'll
6 be at ease and follow the bailiff, we'll start just as
7 soon as we can. Thank you.

8 (Jury leaves the courtroom.)

9 At this time I need the balance of the panel
10 to report back down to the jury assembly room. Thank you
11 very much.

12 (Panel leaves the courtroom.)

13 Mr. Robinson.

14 MR. ROBINSON: Your Honor, I'm going to make
15 a Motion for a Mistrial in this case. That juror, that
16 kind of took me way off guard on that one. I think she
17 poisoned the entire panel with her statements regarding
18 the fact that she had been involved in an armed robbery.
19 I can not have a fair and impartial jury in this case. I
20 was very very surprised and absolute shocked that she
21 would state that in open court in front of all these
22 jurors when she actually didn't reveal that originally.

23 Not only did the 13 jurors hear that, 12 and
24 the alternate, but also the whole panel heard that.

25 THE COURT: Well, they would have heard that

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1 had she answered that during voir dire, if she responded
2 to that time. She says she absolutely would not be an
3 unfair juror because of that. She said that very
4 emphatically, so I will deny your motion.

5 MR. ROBINSON: I just want to make sure I
6 have this on the record, Your Honor.

7 THE COURT: Sure.

8 MR. ROBINSON: The only thing I have in
9 response to that, Your Honor, and I just want to clarify
10 my position on it for the record, the jury selection
11 process takes place down stairs on the first floor and at
12 that time what they normally do, what Judge Welmaker would
13 do or the judge who gives the voir dire and so forth to
14 the jury, he actually would not allow that juror, that
15 potential juror on the jury panel to state in front of
16 those jurors what those charges -- he would have them come
17 up afterwards and they would discuss in an intimate
18 setting with the judge, the clerk, the other attorneys
19 that were there, as well as the prosecutors. It's not an
20 open court kind of thing where she states ---

21 THE COURT: That's not anything that's done
22 in jury selection, Mr. Robinson.

23 MR. ROBINSON: That's my Motion for a
24 Mistrial.

25 THE COURT: Motion is denied.

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1 All right, what matter are you proceeding on
2 first, solicitor?

3 MR. CAMPBELL: We would start on the Jackson
4 v. Denno hearing, Your Honor. The State calls
5 Investigator Tim Martin.

6 THE CLERK: Investigator, would you please
7 raise your right hand to be sworn in.

8 TIM MARTIN, having been duly sworn, testified
9 as follows:

10 Thank you. You may be seated. Please state
11 your full name for the record.

12 THE WITNESS: Tim Martin, M-A-R-T-I-N.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. ELLIS:

16 Q. Investigator Martin, where are you employed?

17 A. Greenville County Sheriff's Office, Criminal
18 Investigation Division.

19 Q. And how long have you been employed with the
20 Sheriff's Office?

21 A. This would be my 24th year.

22 Q. At some point during an investigation that you
23 were conducting, you started an investigation into some
24 checks that were taken from a victim by the name of Bryan
25 Workman?

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1 A. I did.

2 Q. As a result of that investigation, did you at
3 some point on or about October 15, 2009 come into contact
4 with the defendant, Anthony Lounds?

5 A. Yes, sir.

6 Q. When and where did you come in contact with him?

7 A. Through Investigator Tracy King I found out by
8 running the cases that he and I were working similar cases
9 during the same event so he and I conversed on this and
10 basically once I got my video from Ingles on the forgery
11 case he wanted to see them and that's how everything kind
12 of lead to that.

13 Q. Did you at some point had the opportunity to show
14 Mr. Lounds the videotape?

15 A. Yes, sir.

16 Q. Please tell the Court about how that came to
17 happen?

18 A. Both myself and Investigator King basically
19 presented the video before the victim -- are you talking
20 about Mr. Lounds?

21 Q. Mr. Lounds, yes, sir.

22 A. If the video was shown, I don't remember showing
23 him the video. I think Mr. King probably did, but I
24 didn't. Let me make sure. I got so many cases going on
25 now.

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1 Q. At some point, did you go get Mr. Lounds out of
2 detention.

3 A. I did.

4 Q. And did you take him when you got him out of
5 detention?

6 A. Took him back to my office.

7 Q. And did you identify yourself to him?

8 A. I did.

9 Q. And did you notify him of any Miranda warning?

10 A. Yes, sir, I did.

11 Q. And how did you do that?

12 A. We have a form of waiver, Waiver Rights form that
13 we read to them verbatim and they can see it actually as
14 we're reading it and then we ask for them to sign it.

15 Q. And did he appear to understand those rights?

16 A. Yes, sir, but he didn't want to sign the waiver.

17 Q. Was he clear and coherent at this time?

18 A. Yes, sir.

19 Q. Did he ask you any questions about those rights
20 after you read those time him?

21 A. No, sir.

22 Q. At any time that you were with him, did he ask
23 for a break or to use the restroom?

24 A. No, sir.

25 Q. Did he appear to be under the influence of any

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1 alcohol or drugs at that time?

2 A. No, sir.

3 Q. Did he appear to be alert and understand what you
4 were saying to him?

5 A. Yes, sir.

6 Q. And at some point during your conversation with
7 Mr. Lounds after you informed him of his rights, did he
8 say anything about the Ingles videotape or his presence at
9 Ingles?

10 A. I did show -- I see my notes here where I did
11 show the DVD from Ingles. He agreed he was in the store
12 with a guy named Allen.

13 Q. In order to get him to make that statement, did
14 you promise him anything?

15 A. No, sir.

16 Q. Did you threaten him in any way?

17 A. No, sir.

18 Q. And as an experienced law enforcement officer, it
19 was your belief that he knew his rights and that he
20 voluntarily gave up his rights?

21 A. Yes, sir.

22 Q. And he made a statement to you that that was
23 actually in fact him on the Ingles video?

24 A. Yes, sir.

25 MR. ROBINSON: Your Honor, I'm going to

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1 object. It is not only leading but also it's assuming
2 facts not in evidence. I don't think he's established a
3 foundation as far as his experience as a law enforcement
4 officer.

5 THE COURT: Overruled. Go ahead.

6 BY MR. ELLIS:

7 Q. And did you ask him to sign or give a written
8 statement?

9 A. I did.

10 Q. And what was his response?

11 A. He refused to write anything down or sign his
12 name.

13 MR. ELLIS: I beg the Court's indulgence.
14 Investigator Martin, thank you. Please answer any
15 questions Mr. Robinson may have.

16 THE COURT: Mr. Robinson.

17 MR. ROBINSON: I have no questions.

18 THE COURT: Thank you. Step down.

19 (Witness leaves the witness stand.)

20 MR. ELLIS: Your Honor, at this time, you've
21 heard evidence from Investigator Martin that Mr. Lounds
22 knew he was in custody when he was talking to Mr. Martin.
23 He knew he was talking to a law enforcement officer. He
24 was coherent and not under the influence of any drugs or
25 alcohol. He was advised of his rights including his right

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1 to remain silent. He knew and understood those rights.
2 He didn't ask for an attorney and he asked no question
3 about his rights, and he made a knowing and voluntary
4 statement to Mr. Martin that was him, in fact, on the
5 video from Ingles that day, and that's the statement that
6 the State will seek to get in during testimony.

7 THE COURT: Mr. Robinson, does your client
8 wish to take the stand solely for the purpose of
9 contesting the voluntariness?

10 MR. ROBINSON: He does not for this
11 particular issue, but I believe the Court has already
12 ruled that they are not going to be trying the case for
13 forgery in this matter. That's the only thing and I want
14 to know the relevance of this particular witness.

15 MR. ELLIS: That's correct, we are not trying
16 to forgery cases. The evidence of the defendant cashing
17 and using the checks at Ingles that day, the evidence is
18 going to be that they were taken from the victim and used
19 at Ingles the next day. And that's for the purpose of
20 tying the defendant to the checks that were taken from the
21 victim. That's why we would be using that statement.

22 THE COURT: Okay.

23 MR. ROBINSON: In response to that, Your
24 Honor, if I may, again, the objection would be they are
25 not -- this case is not on the docket forgery and too,

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1 Your Honor, he's stated that that's him in the video or
2 pictures or whatever it is, he did not cash the checks and
3 his name is not only any of these checks. So I'm not sure
4 where this is going and I think it's extremely irrelevant.

5 THE COURT: All right. Proceed.

6 MR. CAMPBELL: Proceed, Your Honor?

7 THE COURT: Yes.

8 MR. CAMPBELL: The next matter that the State
9 has is a Neil v. Biggers hearing.

10 THE COURT: All right.

11 MR. CAMPBELL: And the State calls
12 Investigator Tracy King.

13 ALVIN TRACY KING, having been duly sworn,
14 testified as follows:

15 THE CLERK: You may be seated. Would you
16 please state your full name for the record.

17 THE WITNESS: Alvin Tracy King.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Thank you, Investigator. Where do you work?

22 A. Greenville County Sheriff's Office.

23 Q. What do you do for the Sheriff's Department?

24 A. I work in the Armed Robbery Unit in the CID
25 Division.

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1 Q. How long have you worked for the Sheriff's
2 Office?

3 A. Sixteen years.

4 Q. Were you signed an investigation regarding
5 Anthony Lounds?

6 A. I was.

7 Q. Did you receive evidence in that case?

8 A. I did.

9 Q. Did you receive any video evidence in that case?

10 A. I did.

11 Q. Where did that video evidence come from?

12 A. This video evidence came from Ingles. It was
13 actually sent to me Fed ex from Mr. Don Howell from the
14 Ingles Market.

15 Q. Were you in the courtroom for Mr. Martin's
16 testimony?

17 A. I was.

18 Q. Are we talking about the same video?

19 A. We are.

20 Q. Now, were you -- did you review that video in
21 your office?

22 A. I did.

23 Q. Did the victim of the armed robbery for which you
24 were assigned come to discuss that case with you?

25 A. He did.

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1 Q. Did he view that video in your office?

2 A. He did.

3 Q. And were either of you able to recognize anyone
4 in that video?

5 A. I was.

6 Q. You said you were?

7 A. Yes.

8 Q. Let me back up just one second, the video -- was
9 that particular video footage obtained?

10 A. That video footage was obtained due to the fact
11 the victim in this case had reported an armed robbery and
12 during the armed robbery reported that a checkbook was
13 stolen. As a result the victim came to the Law
14 Enforcement office downtown shortly thereafter reported
15 that he had learned that he had some checks that were
16 actually passed at the Ingles in Cherrydale.

17 Q. These were part of the checks that were stolen
18 from him the night of the robbery?

19 A. That's correct.

20 Q. You said you were able to recognize someone on
21 the video?

22 A. I was.

23 Q. How were able to recognize him?

24 A. I had previously dealt with the defendant
25 approximately I believe it was about 19 days prior to

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1 actually sitting down with the victim in this case viewing
2 the video.

3 Q. Okay. After that video, did you ask the
4 defendant if he could identify anyone -- excuse me -- the
5 victim if he could identify anyone?

6 A. What happened was at the time I called the victim
7 in to view the video, I had no idea at that point in time
8 who was on the video. I called him in. We reviewed two
9 different angles of cameras on the video, first was at the
10 register and the second footage we reviewed was from the
11 door where they entered the store. While viewing this
12 video after I switched it from the cash register to the
13 entry door ---

14 Q. How many people were involved? How many people
15 did the video capture.

16 A. There's two people on this video that are
17 actually in the store together and they are also at the
18 register together. But when I switched the image to the
19 entry door, it was at that point in time, and as I was
20 playing the video, that I recognized the defendant. At
21 that point in time I stopped the tape which removed all
22 images from my laptop and I spoke with Investigator
23 Fortner who was in the office at the time. He put
24 together a photo line-up after I informed him that I
25 recognized the defendant on the video.

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1 He put together a photo line-up for me and it
2 was at that time that I showed the photo line-up to the
3 victim.

4 Q. Okay. Was the defendant in the line-up?

5 A. He was.

6 Q. How many -- I'm showing you what's been marked as
7 State's Exhibit No. 17. Is that the line-up you're
8 referring to?

9 A. This is the same one.

10 Q. Is that the original line-up that you used?

11 A. It is.

12 Q. Is it in substantially the same defendant as it
13 was the day that you presented that photo line-up to the
14 victim?

15 A. It is.

16 Q. Have there been any changes?

17 A. No, other than the State's Exhibit mark.

18 Q. When that line-up was created by Investigator
19 Fortner, did you review it before presenting it to the
20 victims?

21 A. I did.

22 Q. And was the line-up created with people sharing
23 similar characteristics, skin color, facial features?

24 A. That's correct.

25 Q. And is the defendant in the line-up?

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1 A. He is.

2 Q. Who did you present the line-up to?

3 A. Victim Mr. Bryan Workman.

4 Q. Was this on the same day that he saw the video?

5 A. That's correct.

6 Q. Okay. Where was that?

7 A. That was in my office in the basement of the Law
8 Enforcement Center.

9 Q. Was anyone else present that day?

10 A. Investigator Fortner was present in the office
11 this time.

12 Q. How did you present the line-up to Mr. Workman?

13 A. I've made it a practice dealing with photo line-
14 ups and victims I let them know right off the bat that the
15 person responsible for this crime may or may not be in the
16 photos. I'll let them know that he needed not to feel any
17 pressure to pick anybody out, and then I lay the photo
18 line-up upside down on the corner of my desk and I advised
19 him that when he was ready to pick it up, turn it over,
20 review the line-up and if he recognized anybody in those
21 photos to point them out to me and let me know how he
22 recognized them.

23 Q. Okay. Did you suggest a choice in any way?

24 A. Absolutely not.

25 Q. Did the victim, Mr. Workman, select a photo of

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1 the person he thought committed the crime?

2 A. He did.

3 Q. Did he say anything? Was there any ambiguity
4 about his decision?

5 A. Oh, absolutely not.

6 Q. Did he hesitate at all?

7 A. No.

8 Q. Did you ask Bryan to prepare any documents to
9 indicate his selection?

10 A. I advised him that I would later take a statement
11 from him but at that point in time he picked out the
12 photograph. I had him circle the photograph that he had
13 picked out and I had him sign inside the circle.

14 Q. Did you ask him to give a statement documenting
15 his selection?

16 A. I did.

17 Q. Okay. I'm handing you what's been marked as
18 State's 16. What is that?

19 A. This is the victim witness statements I obtained
20 from Bryan Gregory Workman on 9/29/2009.

21 Q. Do you see any changes to that document? Is it
22 in the same condition?

23 A. It is other than the State's Exhibit marker.

24 Q. Okay. Does Mr. Workman indicate his level of
25 choice in the statement that he gave you?

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1 A. He does.

2 Q. What did he say?

3 A. He states that he recognized -- he said, "I
4 recognized the person that is in the No. 4 position that's
5 on the paper as the person who held the gun to me and
6 robbed me. I am positive that this is the guy with no
7 doubt."

8 Q. Okay. Please answer any questions that
9 Mr. Robinson may have for you.

10 THE COURT: Mr. Robinson.

11 MR. ROBINSON: May it please the Court.

12 CROSS-EXAMINATION

13 BY MR. ROBINSON:

14 Q. Officer King, you've had some contact with the
15 defendant prior to the time you showed Mr. Workman the
16 video, didn't you?

17 A. That's correct.

18 Q. You've dealt with him before; is that correct?

19 A. I had assisted another investigator in our unit,
20 that's correct.

21 Q. That was Officer Weiner, I believe, correct?

22 A. That's correct.

23 Q. So when you got this video you already knew you
24 saw this person, Mr. Lounds, that you had actually were
25 assisting another officer with before; isn't that correct?

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1 A. Initially, when I first got the video and
2 reviewed it, no.

3 Q. And so but after you looked at the video, that's
4 when you recognized Mr. Lounds; is that correct?

5 A. When on the 29th when I was seated with the
6 victim reviewing the videotape, at that point in time it
7 was one angle on the doors of the entry when they were
8 entering the store that I recognized the defendant.

9 Q. You recognized the defendant. Where did you
10 recognize him from?

11 A. From that -- I believe it was on the 10th of that
12 same month like I stated. It was 19 days prior to that.

13 Q. And you recognized him from that date, correct?

14 A. That's correct.

15 Q. So actually before you looked at this video you
16 knew what Mr. Lounds looked like, didn't you?

17 A. That's correct.

18 Q. And that video which you showed to this alleged
19 victim in this case, that was the video that had
20 Mr. Lounds whom you had had experience with before and had
21 seen before; is that correct?

22 A. That's correct.

23 Q. Now, when you showed this video to the alleged
24 victim in this case, did you play the whole video or did
25 you play a snippet of it that would indicate Mr. Lounds

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1 and this other gentleman?

2 A. What I actually did was I actually showed images
3 that was provided to me by Ingles which captured the cash
4 register area or counter area initially, and then after
5 that moved to the other view which was provided on the
6 same disc of the entry door or the point of entry that the
7 two subjects used.

8 Q. You had an opportunity to review the video; is
9 that correct?

10 A. That's correct.

11 Q. Now, in the video there are two gentleman. Are
12 they both black?

13 A. Yes.

14 Q. And one is heavyset and one's not heavyset; is
15 that correct?

16 A. That's correct.

17 Q. And you had experience with Mr. Lounds before,
18 correct?

19 A. That's correct.

20 Q. Ten days ago. So when this alleged victim looked
21 at this video that you showed him, the heavyset -- there
22 was only one heavyset individual in that video; isn't that
23 correct?

24 A. With the two individuals together, that's
25 correct.

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1 Q. So there is really since the victim had already
2 said there was a heavyset black man or whatever, he was
3 the only person in that video that he could pick out,
4 isn't that correct, because he was the only person in that
5 video who was heavyset?

6 A. Well, if we're using the term heavyset, that's
7 correct.

8 Q. Not only did you know Mr. Lounds prior to this
9 time, you also showed him a video of a heavyset gentleman
10 and a smaller gentleman, there was no way this individual
11 could pick out anyone other than Mr. Lounds, was it?

12 A. Well, I couldn't answer that question. Again, at
13 the time I showed the victim the video, at that point in
14 time seated in my office, I had no idea who was in the
15 video. It wasn't until, again like I stated when we moved
16 the image to the entry door was the point in time that I
17 recognized that the defendant was the one on the video and
18 at that point in time I stopped the video.

19 Q. What's your prior -- let me rephrase this. So
20 it's your testimony you did not look at this video prior
21 to showing it to the victim?

22 A. No, that's what I'm stating. I did view the
23 video prior to showing it to the victim, however, I did
24 not recognize the defendant during that viewing.

25 Q. So you could not recognize this defendant that

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1 you had dealt with 10 days before hand on that video, is
2 that your testimony?

3 A. Previous to the viewing with the victim, no,
4 however, on the date that I viewed the videotape with the
5 victim ---

6 Q. Right.

7 A. --- is the date in time that I recognized the
8 defendant on the tape.

9 Q. And at that point -- so the exact same moment
10 that the alleged victim recognized this individual is the
11 exact same time that you recognized this individual?

12 A. No.

13 Q. You recognized him beforehand?

14 A. That's not accurate. What took place was that
15 the victim in this case stated that the larger subject on
16 the video appeared to be the same size, shape and had the
17 same walk as the suspect that robbed him. It wasn't until
18 we changed the video images or changed from the counter to
19 the point of entry once we changed the shots at that point
20 in time is when I recognized the defendant.

21 Q. Okay. Now, after the alleged victim identified
22 the heavysset black man in this video, after that,
23 subsequently then you showed him a six-person line-up;
24 isn't that correct?

25 A. Again, he did at that point in time 100 percent

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1 positively identify him as the person who robbed him just
2 by looking at the video. Again, he stated that the person
3 in the video had the same build and appeared to have the
4 same walk. Again, I recognized the defendant and at that
5 point in time I utilized a photo line-up obtained by
6 Investigator Fortner and through the photo line-up is when
7 the victim positively identified the defendant.

8 Q. So you did the video first and then you showed
9 him a line-up; isn't that correct?

10 A. That's correct.

11 Q. That you prepared?

12 A. No. The photo line-up was prepared by
13 Investigator Fortner.

14 Q. Now, you had said that you recognized the
15 defendant from his walk and his build; is that correct?

16 A. That's what the victim recognized.

17 Q. Isn't it also true that isn't it distinctive that
18 Mr. Lounds as far as his ears that make him stand out a
19 little bit?

20 A. Absolutely.

21 Q. And you recognized that as well, didn't you?

22 A. I did, that's correct.

23 MR. ROBINSON: May I approach the witness,
24 Your Honor?

25 THE COURT: Sure.

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1 BY MR. ROBINSON:

2 Q. Now, Officer King, I believe Mr. Campbell has
3 given you this -- has shown you the line-up in this case.
4 Now, you would agree with me that Mr. Lounds has
5 distinctive ears in this case that allowed you to pick him
6 out; isn't that correct?

7 A. Other than the obvious, yes.

8 Q. I'm going to let you look at what's been marked
9 as State's Exhibit No. 17 for the purpose of this hearing.
10 Now, in this line-up that you prepared which it looks like
11 No. 4, you would agree with me that looking at State's
12 Exhibit 17 marked for the purpose of this hearing, that
13 Mr. Lounds is the only person in that six-person line-up
14 that has ears that are distinctive, would you agree with
15 that?

16 A. No, sir.

17 Q. You wouldn't.

18 A. No, sir.

19 Q. So it's your testimony before this Court that
20 Mr. Lounds is -- that there are several other people that
21 have distinctive ears as well as Mr. Lounds, is that
22 correct?

23 A. The subject right beside him have ears that have
24 similar characteristics.

25 Q. All right.

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1 MR. ROBINSON: I beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 BY MR. ROBINSON:

4 Q. You have your file with you, don't you, Officer
5 King?

6 A. Yes.

7 Q. Now, do you remember the report that you did on
8 October 5, 2009?

9 A. Yes.

10 Q. And when you do your report you try to make sure
11 you put everything in the report; is that correct?

12 A. That's correct.

13 Q. Now, you mention nothing in your report that says
14 -- this is Page 1 of 2 pages, do you have that with you?

15 A. Yes.

16 Q. Now, you don't mention anything in here, in this
17 particular incident report which is marked as, "Greenville
18 County Sheriff's Office, Supplemental Report," you don't
19 mention anything any here regarding a particular walk, do
20 you?

21 A. No.

22 Q. Didn't you just testify a few moments ago that
23 you recognized this individual for a particular walk?

24 A. No, sir, that was the victim noticed the
25 particular walk.

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1 Q. The victim, not you, the victim?

2 A. The victim, that's correct.

3 MR. ROBINSON: That's all the questions I
4 have for you.

5 THE COURT: Anything else, Mr. Campbell?

6 MR. CAMPBELL: Brief redirect for the
7 purposes of this hearing.

8 REDIRECT EXAMINATION

9 BY MR. CAMPBELL:

10 Q. Investigator King, I'm showing you State's 7a and
11 7b, are those the still images of the video of the entry
12 way in which you described?

13 A. That's correct.

14 MR. CAMPBELL: And I just wanted to make
15 those part of the record for purposes of this hearing,
16 Your Honor.

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

18 (Witness leaves the witness stand.)

19 MR. CAMPBELL: The State would call Bryan
20 Workman to the stand, Your Honor.

21 THE COURT: Come around.

22 THE CLERK: Mr. Workman, please come around
23 to be sworn. Place your left hand on the Bible and raise
24 your right.

25 BRYAN GREGORY WORKMAN, having been duly

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1 sworn, testified as follows:

2 Thank you. You may be seated. State your
3 full name for the record.

4 THE WITNESS: Bryan Gregory Workman.

5 DIRECT EXAMINATION

6 BY MR. CAMPBELL:

7 Q. Good morning, Mr. Workman. How old are you, sir?

8 A. Twenty-two.

9 Q. What level of education did you complete?

10 A. I had two years of college at Greenville Tech.

11 THE COURT: Pull in a little closer to the
12 mic, please, sir.

13 THE WITNESS: I said I had two years of
14 college at Greenville Tech.

15 BY MR. CAMPBELL:

16 Q. And, do you live here in Greenville?

17 A. Yes, I do.

18 Q. What were you doing the night of September 5,
19 2009? Where were you? Let's start with that.

20 A. I was the Motel 6 waiting on a friend of mine.

21 Q. And could you described the incident location
22 where you were standing?

23 A. I was in my room when the incident actually
24 happened. I had walked outside of my room on the balcony
25 and I saw Mr. Lounds walking down the sidewalk and he

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1 walked up to me. He asked me if I had any drugs or dope
2 on me and I told him no, I didn't, so he asked me for a
3 cup of water. I went back in my room to get him a cup of
4 water, he stayed out side the door. I came back to the
5 door and that's when he pulled a gun and told me to get
6 back inside my room. And that's when it happened.

7 Q. So he pulled a gun on you. How close were you
8 standing?

9 A. Face to face less than six inches.

10 Q. Less than six inches. Was there enough light for
11 you to see his face?

12 A. Yes.

13 Q. Were you paying attention to what was going on at
14 that point?

15 A. Yes, I was.

16 Q. And how long did the first encounter last when he
17 said he approached you outside?

18 A. Ten, fifteen seconds.

19 Q. So you say you then went back in your room and
20 then the second time how long did that encounter last when
21 he pulled a gun?

22 A. That was about two or three minutes.

23 Q. Two to three minutes where you were face to face
24 with him?

25 A. Yeah.

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1 Q. What did he do after he pushed you back in the
2 room?

3 A. I put my hands up immediately. He told me to
4 give him everything I had. I told him I don't have
5 anything. He told me, you lying, you lying, give me what
6 you go, I don't have anything. I kept my hands up and I
7 asked him why you doing this I don't got nothing, I don't
8 have anything.

9 Q. Did he take anything?

10 A. When I had my hands up, he put his hands in my
11 pocket and he took my wallet, my ID, my checkbook, cash I
12 had, the little things in my pocket he took it out of my
13 pocket when my hands were in the air.

14 Q. Okay.

15 A. After that he told me to strip, take all my
16 clothes off, and I looked at him like are you serious,
17 what for, you got everything I had, I don't have anything.
18 Why am I stripping.

19 Q. Okay.

20 A. After he hit me in head, he walked out?

21 Q. After he hit you in the head, did you see which
22 direction he went?

23 A. I'm assuming he went to the right I'm assuming
24 back towards the stairs. When he walked out he went to
25 the right. My window curtain on the left side of the door

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1 was cracked, you could see out the window. He didn't go
2 back to the left side so he had to go to the right.

3 Q. Okay. Did you report the incident?

4 A. Yes. I reported to the office, the main office
5 in the motel. They had a security guard that evidently
6 must not have been on duty because there was somebody out
7 here robbing people, and the hotel front desk actually
8 called the police. I didn't call the police.

9 Q. You didn't call the police. But you called the
10 front desk and said -- what did you say to the front desk?

11 A. I said whoever y'all security guy is, he not
12 doing the job because I just go robbed.

13 Q. Did the police respond?

14 A. Yeah, they came out about 20, 30 minutes later.

15 Q. And did you tell them about the incident?

16 A. Yes, I did.

17 Q. Did you give them a description of the guy that
18 robbed you?

19 A. A black male, general height. I didn't give them
20 any specific details at that time.

21 Q. Did you give a written statement that night?

22 A. I don't recall.

23 Q. Did anybody else witness what had happened?

24 A. No.

25 Q. Is there anything that you forgot to tell police

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1 at that point in time?

2 A. I told them everything. I found out later he
3 didn't write down all of the details about when he hit me
4 in the head with the gun and the gun went off and I looked
5 up in the window -- I mean the crack of the wall and saw a
6 bullet hole. I told the officer about that point. I
7 guess he didn't write to down or didn't remember because
8 later it wasn't in his statement.

9 Q. Was your interview with the responding officers
10 interrupted by anything or was there anything going on?

11 A. Yeah. Actually after they got there I talked to
12 them about five minutes. It was a trainee officer, I can
13 tell that because he had another officer with him kind of
14 guiding him along with the process. After five minutes of
15 talking, they heard two gunshots on the other side of the
16 hotel parking lot so they took off real quick to go to the
17 other side. They told me to wait. Say about five or ten
18 minutes after that they came back and finished talking to
19 me.

20 Q. So then did you go into the police office -- the
21 Sheriff's Office and talked to Investigator King?

22 A. Yes, I did.

23 Q. When you got there, did he have any evidence for
24 you to look at or any videos?

25 A. Yeah, he had a video of him passing some checks

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1 at Ingles.

2 Q. Were you present for Investigator King's
3 testimony a few minutes ago?

4 A. Yes, I was.

5 Q. Was that the same video that he was talking
6 about?

7 A. Yes, it was.

8 Q. Was his account was that what happened by his
9 account?

10 A. Yeah, pretty much.

11 Q. I'm handing you State's Exhibit 7a and 7b. Are
12 those still images from the video you saw?

13 A. Yes, they are.

14 Q. Were you able to positively identify anyone from
15 that video?

16 A. No, not from the video.

17 Q. And did Investigator King show you a photo line-
18 up?

19 A. Yes, he did.

20 Q. I'm handing you State's No. 17, is that the photo
21 line-up that he presented you with?

22 A. Yes, it is.

23 Q. How did he present that to you? Did he --

24 A. Like he said, he spaced it out on and turned
25 over?

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1 Q. Did he suggest anyone to you in any way? Did he
2 tell you he had to make a suggestion?

3 A. No, he did.

4 Q. Did he tell you you had to make a selection?

5 A. No, he didn't.

6 Q. Did he tell you that the person who committed the
7 crime would be in that line-up?

8 A. No, he didn't.

9 Q. Did he put any pressure on you at all to make a
10 selection?

11 A. No, he didn't.

12 Q. When you flipped it over and looked at it, were
13 you able to identify the person that robbed you?

14 A. Yes, I was.

15 Q. Would you say based your view, your personal view
16 of that line-up, are all the people in that line-up of
17 similar characteristics?

18 A. Yeah, they are.

19 Q. Facial features?

20 A. Yeah.

21 Q. Do they all have some type of facial hair?

22 A. Yes.

23 Q. Are they all black males?

24 A. Yes, they are.

25 Q. And how sure were you when you made your

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1 selection that day?

2 A. I was pretty sure.

3 Q. Pretty sure. Did you give Investigator King a
4 statement that detailed your selection?

5 A. I didn't actually give him a statement. I signed
6 a statement.

7 Q. Did you review that statement before you signed
8 it?

9 A. Yeah.

10 Q. For accuracy?

11 A. Yeah.

12 Q. I'm going you State's No. 16, is that the
13 Statement that you signed for Investigator King?

14 A. That's it.

15 Q. Was that an accurate description of your
16 impression since that time?

17 A. It's been a while and I can't recall now, but it
18 must have been if I signed a paper of what I was thinking.

19 Q. And have any of those documents changed since the
20 first time you saw him?

21 A. No.

22 Q. They're in the same condition?

23 A. Yes.

24 Q. Do you see the person who committed this crime in
25 the courtroom today?

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1 A. Yeah, Mr. Lounds over there.

2 Q. Would you please say what he's wearing?

3 A. The guy in the suit with the blue tie.

4 MR. CAMPBELL: Let the record reflect the
5 victim has identified Mr. Lounds as the person who robbed
6 him.

7 BY MR. CAMPBELL:

8 Q. Has the defendant's appearance changed in any
9 way, hair, facial features?

10 A. He looks about the same.

11 MR. CAMPBELL: Please answer any questions
12 Mr. Robinson might have.

13 THE COURT: Mr. Robinson.

14 MR. ROBINSON: I beg the Court's indulgence.
15 I have no questions of this witness, Your
16 Honor.

17 THE COURT: Thank you. Step down.

18 (Witness leaves the witness stand.)

19 MR. CAMPBELL: Your Honor, based on this
20 testimony the State would seek to introduce the video and
21 the photo line-up of the victim's identification.

22 THE COURT: Mr. Robinson, do you have
23 anything to present concerning the photo line-up?

24 MR. ROBINSON: I don't, Your Honor. I will
25 make the argument at the appropriate time.

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1 THE COURT: Okay.

2 MR. ROBINSON: Your Honor, may I make my
3 motion as far as the suppression goes?

4 THE COURT: Sure.

5 MR. ROBINSON: Your Honor, we've heard the
6 Neil v. Biggers and the Jackson v. Denno and we listened
7 to the officer's rendition of what happened, how they
8 prepared the video and the photo line-up. Your Honor, we
9 would submit or I would submit to the Court that this was
10 very very suggestive on the officer's part in this case.

11 THE COURT: The photographic line-up?

12 MR. ROBINSON: The video and the photographic
13 line-up, I think, because his testimony, if I'm correct on
14 this, his testimony was that he had known about or
15 something with this defendant from 10 days ago when he
16 worked with Officer Weiner. He knew this individual, what
17 he looked like, what about him, and he get's this video
18 and I'm still not really exactly if he showed the victim
19 before then or whatever, but he has this video where he
20 only plays a portion of it, a small snippet of it that has
21 Mr. Lounds and this other gentleman that they talk about
22 that's not here today.

23 That's all he has. He's got Mr. Lounds who
24 he knows about from before and then after he has him in
25 there and he points out this gentleman said it was a

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1 heavyset man and there was only one heavyset person in
2 that video and that's Mr. Lounds with this gentleman. The
3 only person this victim or this alleged victim could pick
4 out who would purport to be would be this heavyset person
5 and the only heavyset person in that video is Mr. Lounds.

6 And then on top of that what he does, he
7 takes -- I'm really sure what the purpose of this line-up
8 was when he already had identified Mr. Lounds in the video
9 and he prepares a line-up that has obvious Mr. Lounds in
10 it and he's already showed a video of Mr. Lounds. Of
11 course, he's going to pick out Mr. Lounds in the line-up
12 so we would suggest or I would suggest and I submit to the
13 Court that it was very suggestive to the victim, the
14 alleged victim, in this case and there was no other person
15 that he could have chosen other than Mr. Lounds.

16 And I submit to the Court that as a result of
17 that that this particular, both the photo line-up and the
18 video, should be suppressed in this matter. Thank you.

19 THE COURT: I deny your motion. I find that
20 the photographic line-up was not suggestive and as I'll
21 note suggestiveness alone does not require exclusion of
22 that evidence. And therefore I do find that it was not
23 suggestive to the point of an irreparable
24 misidentification. I further find under the totality of
25 the circumstances that the identification including itself

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1 the photo line-up was very reliable and they will be
2 admitted.

3 Anything else?

4 MR. CAMPBELL: Nothing from the State, Your
5 Honor.

6 MR. ROBINSON: The defense, Your Honor, the
7 first motion I think it's relatively easy one for the
8 Court. We'd make a motion to sequester in this case.

9 THE COURT: I'll grant that motion.
10 Sequester the witnesses. That includes your witnesses as
11 well, Mr. Robinson.

12 MR. ROBINSON: Yes, sir.

13 (Witnesses sequestered.)

14 Your Honor, the next motion is regarding a
15 Motion in Limine. I spoke to him yesterday and I advised
16 him that I was concerned that the officers, there are many
17 charges with Mr. Lounds, that the officers will
18 potentially go into or speak about certain things and I
19 asked Mr. Campbell to admonish the officers to not go into
20 that. It's a Motion in Limine so the officers do not go
21 into other matters.

22 THE COURT: Have you talked to your officers,
23 Mr. Campbell?

24 MR. CAMPBELL: I discussed that with them
25 this morning, Your Honor.

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1 THE COURT: And they understand.

2 MR. CAMPBELL: They understand not to go into
3 any other charges only the evidence that's relevant to
4 this case.

5 THE COURT: All right.

6 MR. ROBINSON: And the other motion, Your
7 Honor, is a Motion to Dismiss the notice of the life
8 without parole, 17-25-45, Your Honor. Your Honor, in
9 reviewing this matter ---

10 THE COURT: Why would that not be a motion to
11 me made post-verdict?

12 MR. ROBINSON: Your Honor, in the cases that
13 I've reviewed it seems that lawyers do in the beginning.
14 I can make the motion at that time if it comes to that.

15 THE COURT: All right. It seems to me that
16 that's appropriate.

17 MR. ROBINSON: If that comes about, Your
18 Honor, then I will make the motion then.

19 THE COURT: I understand.

20 Are we ready to go? Are all the witness
21 sequestered?

22 MR. CAMPBELL: May the lead investigator
23 remain?

24 THE COURT: The lead investigator, yes.

25 MR. CAMPBELL: Thank you, Your Honor.

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1 THE COURT: Your witnesses out, Mr. Robinson?

2 MR. ROBINSON: Yes, Your Honor.

3 THE COURT: You will make brief opening
4 statements to the jury but I admonish you not to argue in
5 your opening statements. I do not want to embarrass you
6 in the presence of the jury so do not argue in your
7 opening statement.

8 MR. ROBINSON: Yes, Your Honor.

9 MR. CAMPBELL: Yes, Your Honor.

10 THE COURT: Bring the jury and we need to
11 swear them, too. Bring them on.

12 (Jury re-enters the courtroom.)

13 Swear the jury, please.

14 THE COURT: Would you please stand and raise
15 your right hand. The correct response to the oath is "I
16 will."

17 You shall well and truly try the case,
18 2009-GS-23-10155, State versus Anthony Maurice Lounds
19 indicted for armed robbery and possession of a weapon
20 during the commission of a violent crime and a true
21 verdict rendered according to the law and the evidence, so
22 help you God.

23 JURY PANEL: (Collectively I will.)

24 THE COURT: Opening statements, solicitor. I
25 have a judge out here that needs to ask me a quick

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1 question and I'm going to answer that question while you
2 start.

3 MR. CAMPBELL: Thank you, Your Honor, may it
4 please the Court. Ladies and gentlemen of the jury, thank
5 you for being here this morning. I know you'd rather be
6 anywhere else in the world, but this is very important for
7 both the State and Mr. Lounds. I need you keep an open
8 mind and listen to all of the evidence. Don't discuss the
9 case until you've heard everything and then you can
10 compare all of the testimony and make your decision.

11 You are here to answer three questions:
12 A,B,C, 1,2,3, three questions. One, did Anthony Lounds
13 identity of the suspect use a gun to rob Bryan Workman,
14 our victim, of his money. That's it. The identity, armed
15 with a weapon, and the robbery. Was the evidence your
16 going to get prove that? That's A,B & C.

17 A, you're going to hear the victim's
18 testimony, he's the name guy. He was there. He was the
19 one who was robbed. He's going to tell you he was face to
20 face with Anthony Lounds when Anthony held a gun to his
21 face and said give me all of your stuff. And then you're
22 going to see some video evidence from Ingles in Cherrydale
23 that shows this defendant with the victim's checks which
24 were stolen at the robbery hours after this happened. It
25 was actually about 11 or 12 hours.

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1 Then you're going to hear testimony and some
2 evidence from officers that this defendant was found about
3 three weeks later with a gun that matches the description
4 given by the victim. That's it. A,B,C, 1,2,3.

5 Please pay attention and listen to what you
6 hear and what you don't hear and at the end I'm going to
7 come back and ask you for a verdict of guilty. Thank you.

8 THE COURT: Mr. Robinson.

9 MR. ROBINSON: May it please the Court. Good
10 morning ladies and gentlemen, my name is Scott Robinson
11 and I practice here in Greenville and it's my pleasure to
12 come before you today.

13 Now, a lot of you may have read the paper, on
14 the Internet, seen different things in your life regarding
15 different types trials and you've heard about this idea,
16 this presumption of innocence in this case and the fact
17 the State has to prove their case beyond a reasonable
18 doubt.

19 Now, Mr. Campbell presents this as easy as
20 1,2,3, it's not as easy as 1,2,3. That's why we're all
21 here today. That's why you're here today, and when you
22 look at this case be careful not to rush to judgment,
23 consider all the facts, all the evidence, and you have an
24 opportunity to look at he witnesses and see what they have
25 to say. And you'll have an opportunity also to see

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1 whether or not they appear credible to you. Does it make
2 sense? In 1,2,3, you'll see that it doesn't make sense.

3 What we ask you to do is consider all the
4 evidence in the case and look at it with a very careful
5 eye to insure that justice is done and justice is that
6 Mr. Lounds is innocent.

7 Now, you may have been in other cases before,
8 civil cases, car accidents, administrative cases such as
9 that. Now, the standard of proof goes up when you come to
10 a court like this because the other courts like civil
11 courts it's a preponderance of evidence which is a low
12 standard. Administrative courts it's a little more one
13 way, a little more the other way. In this court, which is
14 general sessions court in which you took an oath a few
15 months ago, the standard is beyond a reasonable doubt.
16 And that means that the standard the State must prove to
17 you all of you beyond a reasonable doubt that Anthony
18 Lounds is the person who committed these crimes.

19 If you use that standard and you use your
20 common sense and you don't rush to judgment in this case,
21 the truth, justice, is that Anthony Lounds is not guilty
22 of these charges.

23 Thank you very much.

24 THE COURT: All right, solicitor, first
25 witness.

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1 MR. CAMPBELL: Your Honor, the State calls
2 Bryan Workman to the stand.

3 THE CLERK: Mr. Workman, would you please
4 come forward to be sworn.

5 Place your left hand on the Bible and raise
6 your right.

7 BRYAN WORKMAN, having been duly sworn,
8 testified as follows:

9 Thank you, you may be seated. State your
10 name for the record.

11 THE WITNESS: Bryan Workman.

12 THE COURT: Pull in close, Mr. Workman, and
13 speak right into the mic.

14 DIRECT EXAMINATION

15 BY MR. CAMPBELL:

16 Q. Good morning, Mr. Workman. Where are you from?

17 A. I'm from Greenville.

18 Q. Do you live in Greenville still?

19 A. Yes, I do.

20 Q. Are you working right now?

21 A. Yes, I am.

22 Q. Where are you working?

23 A. I work in Piedmont and then Greer.

24 Q. What kind of working do you do there?

25 A. I do warehousing linguistics, forklift operator.

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1 Q. Where were you on the night of September 5, 2009?

2 A. That night I had got a room at the Motel 6 up on
3 85.

4 Q. What had you been out doing that night?

5 A. Earlier that night I had got into an argument
6 with my girlfriend. We had a little problem so I decided
7 not to stay at her house that night. I decided to get my
8 own room. Before I went -- I had gotten the room earlier
9 that afternoon, say 3:00 that afternoon. Before I went
10 back to the room, though, a couple friends of mine went
11 out played pool, played a few games with them, hung around
12 with some friends and stuff. They dropped me off back at
13 the hotel later that night.

14 Q. Can you describe the hotel? Where is the hotel
15 located?

16 A. The hotel is located on I85 and Augusta.

17 Q. Okay. Mr. Workman, I'm showing you what's been
18 marked as State's No. 6. Does that accurately portray
19 where you said the hotel was located in Greenville County?

20 A. Yes, sir.

21 Q. And the surrounding roads?

22 A. Yes, it is.

23 MR. CAMPBELL: I'd like to move State's No. 6
24 into evidence.

25 THE COURT: Any objection?

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1 MR. ROBINSON: No objection.

2 THE COURT: Without objection.

3 (Photograph previously marked as State's
4 Exhibit No 6 for identification was admitted into
5 evidence.)

6 BY MR. CAMPBELL:

7 Q. What room were you staying in in the hotel that
8 night?

9 A. 216 I think it was.

10 Q. Do you recall which side of the hotel it was?

11 A. From that picture it was on the left side.

12 Q. Now I'm showing you what's been marked as State's
13 No. 18. Is that an accurate close-up view of the motel?

14 A. Yes.

15 Q. Showing the parking lot?

16 A. Yes.

17 MR. CAMPBELL: Permission to publish, Your
18 Honor?

19 THE COURT: Any objection?

20 MR. ROBINSON: No objection.

21 MR. CAMPBELL: State moves this into
22 evidence. Exhibit No. 18 is a close-up map.

23 THE COURT: Without objection.

24 (Close-up map previously marked as State's
25 Exhibit No. 18 for identification was admitted into

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1 evidence.)

2 BY MR. CAMPBELL:

3 Q. Mr. Workman, just briefly if you could come down
4 and show me where your room was at the motel?

5 A. It was upstairs right in this area.

6 Q. Okay. Thank you, sir. Now, while you were there
7 that night, did you see the defendant?

8 A. Not before I came out of my room I didn't.

9 Q. Did you see him at some, though, that night?

10 A. Yes, I did.

11 Q. You said you came out of your room, what were you
12 doing then?

13 A. After I got dropped off by my friends, I was in
14 my room waiting on another female friend of mine to come
15 visit. I thought I heard a car door outside so I stepped
16 out to look over the balcony. I was upstairs. I stepped
17 out to look over the balcony railing and I didn't see
18 anybody out there must have been hearing stuff, but when I
19 stepped out I saw Mr. Lounds walking back down the
20 breezeway or the corridor from the left side. I assumed
21 it wasn't him in the car cause he was already upstairs
22 walking in the other direction.

23 Q. Did he approach you?

24 A. Yes, he did.

25 Q. Did he say anything?

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1 A. He asked me if I had some dope on me. I told him
2 no I don't mess with that stuff, I don't deal with that
3 kind of stuff, I'm waiting on a friend. He said, oh, okay
4 do you know where I can get some from. I told him no I
5 don't mess with that, I don't know anything about that.

6 THE COURT: Come in a little closer to the
7 mic.

8 THE WITNESS: Then he asked me if he could
9 get a cup of water. I didn't see a problem with that.
10 I'm sure I could get a cup of water out the room. I had
11 some plastic cups in the sink inside, so I went in to get
12 a cup of water. He stayed outside of the door. I came
13 back and opened the door and that's where he had the gun
14 right here in my midsection and told me to get back in the
15 room; don't say nothing just get back. I put the cup on
16 the counter and my hands up in the air like
17 this(demonstrating.)

18 Q. You said he had a gun. Which hand was he holding
19 the gun?

20 A. It would have been his left hand.

21 Q. Okay. When he approached you was there enough
22 light for you to see his face?

23 A. Yes, it was. There's lights outside on the front
24 of the door and I had the lights on inside.

25 Q. And how close were you?

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1 A. Approximately six to eight inches. I mean no
2 farther than the width of this bench right here.

3 Q. So you got a good look at his face?

4 A. Yes, I did.

5 Q. Did you get a good look at the gun?

6 A. Yes, I did.

7 Q. Would you describe the gun, please?

8 A. It was a revolver, black revolver kind of old and
9 had a brown handle.

10 Q. What did the defendant do next after he pushed
11 you back in the room?

12 A. He told me to give him everything I had. With my
13 hands throwed up in the air I told him I don't have
14 anything. I don't go nothing. He said it to me, you
15 lying you got something give me what you got. I'm like,
16 man, I don't have anything. I'm trying to plead with him
17 why you doing this. Hopefully, I get him to leave me
18 alone or whatever. I'm like why you doing this, I don't
19 got nothing. I told him I ain't got nothing the first
20 time. I told him right at the door I don't have any
21 thing, why you doing this.

22 My hands are still in the air. When I say I
23 don't have anything, he took it upon himself to his hands
24 in my pocket and go through my pockets to see what I had
25 in my pockets. I pulled out the little cash I had on me,

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1 my checkbook, everything I had in my pockets, he took it
2 out and put it in his pockets with this free hand.

3 After that, he told me to strip. After he
4 got everything he needed, I'm assuming he's about the
5 leave and he wanted me to strip so I couldn't follow him.
6 I asked him why am I stripping, what are you doing? Why I
7 need to strip? Are you serious? Why am I stripping. I'm
8 still close enough to him that I kind of glanced away for
9 a second and as soon as I glance away, he hits me over the
10 head with the pistol in his hand. He might have changed
11 hands, I'm not sure what it was, but he hit me in the head
12 in the pistol. When he hit me over the head, the pistol
13 went off.

14 After that I kind of stumbled a little bit to
15 the right. After I got myself together I look around and
16 I look up at the ceiling and there's a hole in the ceiling
17 where the gun went off. I'm thinking that could have been
18 me, I could have been dead. After that I looked at him
19 and say why you doing this. He didn't say anything after
20 that, he just backed up out of the room and still had the
21 gun in me. He closed the door and went downstairs, I
22 guess.

23 Q. Did you report this to anybody?

24 A. After he left I walked over to the phone and
25 called the front desk of the motel. I told them I had

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1 just been robbed. I said their security guard, whoever he
2 was -- there was no security because I had seen the
3 security guard out there before, but he wasn't around or
4 something because I just been robbed. She said, okay.

5 MR. ROBINSON: Objection, hearsay.

6 THE COURT: Don't tell us what she said.

7 THE WITNESS: Okay.

8 BY MR. CAMPBELL:

9 Q. You reported this and the police showed up?

10 A. Yes, they showed up.

11 Q. Did they find you? Did they come talk to you?

12 A. Yes, they did. They came to my room and they
13 came and talked to me. After about three or four minutes
14 as I was telling me story, they had to leave.

15 Q. Why did they have to leave?

16 A. They heard gunshots on the other side of the
17 motel parking lot so they responded to that real quick and
18 they came back to me from the other side.

19 Q. What did you do in the meantime?

20 A. I went back up to my room and waited.

21 Q. Were you scared?

22 A. Yes.

23 Q. Were you scared at the time you were talking with
24 the police?

25 A. Yeah.

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1 Q. And when you came back, did you finish telling
2 your story?

3 A. Yes. I told them how it happened and the whole
4 story. I think they were taking notes but the guy that
5 was taking notes asking me the question I assume he was
6 trainee because there was another officer kind of guiding
7 him along because he was confirm back to him what to do
8 next and what questions to ask. I was telling him
9 everything. I assume he might have missed the part about
10 the gun ---

11 MR. ROBINSON: Objection, Your Honor, calls
12 for speculation.

13 THE COURT: Go on. Move on, solicitor.

14 BY MR. CAMPBELL:

15 Q. Did you stay at the motel that night or did you
16 go home?

17 A. I didn't want to stay at the motel. The officer
18 actually dropped me off at home -- at my girlfriend's
19 house actually after that happened.

20 Q. And did you report -- did you forget to tell them
21 anything or did you report anything else later?

22 MR. ROBINSON: Objection, Your Honor,
23 leading.

24 THE COURT: No, that's all right. Go ahead.

25 THE WITNESS: I didn't count how much money

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1 was missing so I went back down to the police station
2 later and corrected the amount of money I was missing. I
3 was missing more money than I thought originally. That's
4 the only thing I changed after this.

5 BY MR. CAMPBELL:

6 Q. In total what all was stolen? You said money --

7 A. I was missing my checkbook, \$250, small bills in
8 my pocket and I don't know the rest of all that was in my
9 pocket. Those two are the most important things.

10 Q. Did you have a wallet with you at that time?

11 A. I did have a wallet with me but my wallet was on
12 the counter in the room so he didn't grab that. When he
13 came in there were two beds by the door, the first bed and
14 the second bed and like I said when he came in I was
15 standing right here. He never went past the first bed and
16 my wallet was on further back on the counter on the
17 dresser in the room so he never went back and saw that.
18 He never made it that far back to find the rest of it. He
19 just took what was in my pockets and then stepped back
20 out.

21 Q. Did you report any type of identification missing
22 to the police?

23 A. I don't think so. I don't recall. I may have.
24 I'm not sure.

25 MR. CAMPBELL: Bed the Court's indulgence,

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1 sir.

2 BY MR. CAMPBELL:

3 Q. Did you go to the front desk at the police office
4 a few days late on September 11, 2009?

5 A. Yes, sir.

6 Q. That was what, almost two years ago?

7 A. Yes.

8 Q. Did you report any additional items stolen that
9 day?

10 A. I think that's when I reported the cash missing.
11 I may have reported the wallet, I'm not sure. I knew I
12 still had my bank card and that's the most thing if was
13 worried about, my bank card. But I can't remember if my
14 ID was missing or not. I had two or three ID's at the
15 time so really wasn't too concerned with the ID.

16 Q. Did you report your Social Security card stolen?

17 A. Yeah.

18 Q. Birth certificate?

19 A. Yeah, that was in my wallet. The bank card was
20 in the detachable section that detaches from the wallet.
21 The ID section that detaches is what had my bank card in
22 it. That's what was laying over on the counter. The
23 whole wallet itself is what had my Social Security card
24 and birth certificate and other things in it. That's what
25 he took out of my pocket. The ID wallet was separate from

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1 the actual wallet.

2 Q. Let's get back to when you made that subsequent
3 report, did you find out if anything happened to your
4 checks?

5 A. I checked my bank account and I saw checks that
6 had been cleared on my account. I went back to my bank
7 and they called me the actually -- I don't know what you
8 call it -- the images of the checks. She told me that I
9 needed to ---

10 Q. Hold on. Don't tell us what anybody told you.
11 So you viewed the checks.

12 A. Yes.

13 Q. Did you sign those checks?

14 A. No.

15 Q. Did you fill out any sort of documents showing
16 that they weren't yours?

17 A. Yes, I did.

18 Q. I'm handing you what's been marked as State's
19 Exhibits 2 and 4.

20 MR. ROBINSON: Your Honor, I'm going to
21 object to these documents.

22 THE COURT: What's the objection?

23 MR. ROBINSON: The objection, Your Honor, is
24 my previous objection regarding this case and we can
25 approach, Your Honor.

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1 THE COURT: Sure.

2 (Whereupon, there was a bench conference.)

3 BY MR. CAMPBELL:

4 Q. Mr. Workman, I'm showing you Exhibits 2 and 4, is
5 that your signature on those documents?

6 A. Yes.

7 Q. What does that say at the top of the document?

8 A. "Affidavit of Forgery."

9 Q. Is that what you filled out with your bank?

10 A. Yes, it is.

11 Q. And what was the purpose of that?

12 A. That's so they can refund my money for those
13 checks that were cashed because I didn't write those
14 checks.

15 Q. So that's you telling the bank ---

16 A. It wasn't mine.

17 Q. And you said you got to view the images of the
18 checks.

19 A. Yes.

20 Q. I'm showing you what's been marked as State's
21 Exhibit 3 and 5.

22 MR. ROBINSON: Same objection.

23 THE COURT: Subject to objection, put them
24 in.

25 BY MR. CAMPBELL:

State of South Carolina versus Anthony Maurice Lounds

1 Q. State's 3 and 5, do you know what those are?

2 A. That's the back of the check -- that's the check
3 that was signed.

4 Q. Is that your signature on either one of those
5 checks?

6 A. There is no signature.

7 MR. CAMPBELL: Your Honor, the State would
8 Exhibits 2,3,4 and 5 into evidence.

9 THE COURT: Subject to objection put them in.

10 (Forgery Affidavit Check No. 1172 previously
11 marked as State's Exhibit No. 2 for identification was
12 admitted into evidence.)

13 (Check No. 1172 previously marked as State's
14 Exhibit No. 3 for identification was admitted into
15 evidence.)

16 (Forgery Affidavit Check #1160 previously
17 marked as State's Exhibit No. 4 for identification was
18 admitted into evidence.)

19 (Check No. 1160 previously marked as State's
20 Exhibit No. 5 for identification was admitted into
21 evidence.)

22 BY MR. CAMPBELL:

23 Q. Now, did the investigator assigned to the case
24 follow up with you?

25 A. Yeah.

State of South Carolina versus Anthony Maurice Lounds

1 Q. Did you go to the Law Enforcement Center to see
2 him?

3 A. Yes, I did.

4 Q. When you got there, did you view any evidence in
5 the case?

6 A. He told me he got the video back from Ingles of
7 the people who cashed the checks.

8 Q. Did he show you a video?

9 A. Yes, he did.

10 Q. Did you watch that video?

11 A. Yes, I did.

12 Q. Were you able to identify anyone positively from
13 the video?

14 A. I could tell the guy's shape from the video but I
15 couldn't identify his face, too fuzzy.

16 Q. Okay. Then did he present you with a photo line-
17 up or any other way to identify who you thought the
18 suspect was?

19 A. Yeah, when he watched the video, he recognized
20 the guy from the other case. He said he had an idea of
21 who it might be.

22 MR. ROBINSON: Hearsay, Your Honor, and I
23 asked that it be stricken.

24 THE COURT: I instruct the jury to disregard
25 the last comment.

State of South Carolina versus Anthony Maurice Lounds

1 BY MR. CAMPBELL:

2 Q. So you looked at the video. My question is did
3 he present you with a photo line-up?

4 A. Yes, he did.

5 Q. Now, when he brought you that line-up, how did he
6 show it to you? What did he do with it when he gave it to
7 you?

8 A. He put it face down and told me to get them when
9 I was ready.

10 THE COURT: Come into the microphone, please,
11 and speak into there.

12 BY MR. CAMPBELL:

13 Q. He told you to look at it when you were ready?

14 A. He told me to look at it when I got ready.

15 Q. Did he tell you you had to make a selection?

16 A. No, he didn't.

17 Q. Did he tell you that the person responsible for
18 this would necessarily be in the photo line-up?

19 A. No, he didn't.

20 Q. Did he suggest a selection to you in any way?

21 A. No, he did.

22 Q. Did he identify anyone in the line-up?

23 A. No, he didn't.

24 Q. And I'm showing you what's been marked as State's
25 Exhibit 17. Is that the line-up that you were presented

State of South Carolina versus Anthony Maurice Lounds

1 with?

2 A. Yes, it is.

3 Q. Is that your signature on the bottom?

4 A. Yes, it is.

5 Q. When you flipped that line-up over and looked at
6 it, how long did it take you to make that selection?

7 A. Ten, fifteen seconds.

8 Q. Was there any doubt in your mind? How sure were
9 you?

10 A. I'd say about 90 percent.

11 Q. And had his appearance changed from the time that
12 you saw him to the picture in that line-up?

13 A. No, it hadn't.

14 Q. Now, did you give a statement to Investigator
15 King about making a selection?

16 A. I signed a statement.

17 Q. And in that statement, you indicated you did make
18 a selection and you were sure about your selection. I'm
19 showing you what's been marked as State's Exhibit 16. Is
20 that your signature at the bottom?

21 A. Yes, it is.

22 MR. CAMPBELL: At this point, the State would
23 move in 16 and 17.

24 THE COURT: Any objection?

25 MR. ROBINSON: Same objection as I had

State of South Carolina versus Anthony Maurice Lounds

1 before.

2 THE COURT: Subject to your objection move it
3 in.

4 (Line-up previously marked as State's Exhibit
5 No. 16 for identification was admitted into evidence.)

6 (Statement previously marked as State's
7 Exhibit No. 17 for identification was admitted into
8 evidence.)

9 BY MR. CAMPBELL:

10 Q. So that was your identification of the subject.
11 Do you see the person you identified as having committed
12 this armed robbery in the courtroom today?

13 A. Yes.

14 Q. Could you please point him out to the jury and
15 describe what he's wearing.

16 A. The guy in the suit with the blue tie.

17 Q. Has his appearance changed really at all?

18 A. No, not much.

19 Q. Has this every happened to you before?

20 A. No, it's the first time.

21 Q. Did it affect your life?

22 MR. ROBINSON: Your Honor, objection,
23 relevance.

24 THE COURT: I'll sustain the objection to
25 that question.

State of South Carolina versus Anthony Maurice Lounds

1 MR. CAMPBELL: I beg the Court's indulgence,
2 Your Honor.

3 MR. ROBINSON: Your Honor, may we approach?

4 THE COURT: Sure.

5 (Whereupon, there was a bench conference.)

6 Take the jury out for a short recess.

7 (Jury leaves the courtroom.)

8 Now, before we get into this, Mr. Robinson,
9 we don't have on the record the basis for your objection
10 to the affidavits. So you want to go ahead and put on the
11 record the basis for that.

12 MR. ROBINSON: I'd be happy to. The
13 objection I have on that, Your Honor, is when we initially
14 started today, the Court had ruled that the State would
15 not be permitted to go forward on the forgery charges that
16 had against Mr. Lounds, and my objection was, and I
17 believe, that since the Court had already ruled on that it
18 was not admissible for the State to put in affidavits of
19 forgery in this matter because it was something that the
20 Court had already ruled on regarding forgery.

21 What I believe the prosecutor's position is
22 it's not charging him with forgery, it's actually just
23 part of the case to establish how he would have possibly
24 identified this guy.

25 THE COURT: And I agreed with the State's

State of South Carolina versus Anthony Maurice Lounds

1 position. Now, there's an objection to what I assume is a
2 weapon.

3 MR. CAMPBELL: Yes, sir. It's a weapon the
4 State would offer it into evidence as matching the
5 description he gave of the gun. This gun was found on the
6 defendant's person about three weeks after the robbery.
7 We're not alleging that this was the actual gun. We're
8 offering it for the purpose ---

9 THE COURT: Is he going to identify it now?

10 MR. CAMPBELL: Yes, Your Honor, we can do
11 that.

12 THE COURT: What's your objection to that?

13 MR. ROBINSON: Your Honor, my objection to
14 that is the position that he's staking -- what he's
15 staking out here is kind of confusing because what he's
16 saying is he's not going to use this gun in the case. He
17 can't tell us if it's the same gun but he's going to use
18 this gun for something. I'm not sure what he's going to
19 sue it for but it's not connected because it's two or
20 three weeks later. I don't think he can identify this
21 particular gun.

22 THE COURT: I think he's got a right to see
23 if he can identify if this is the weapon or it appears to
24 be the weapon. One of the elements that he's got to prove
25 in this case is that the man was armed and committed an

State of South Carolina versus Anthony Maurice Lounds

1 armed robbery. So I think he's got a right to question
2 him on that and see if he can identify it by a
3 description.

4 MR. ROBINSON: My objection, just Your Honor,
5 is I think it's extremely prejudicial. There's no
6 connection to this gun has to this particular issue.

7 THE COURT: That will be an issue for the
8 jury.

9 All right, bring the jury.

10 MR. CAMPBELL: Your Honor, just for the
11 record, we're going to move the gun into evidence under
12 the ---

13 THE COURT: I understand that.

14 MR. ROBINSON: And, Your Honor, before you
15 bring the jury in, one second, Mr. Campbell just said it
16 was not the gun a second ago I thought. I thought that's
17 what I heard that it was not the gun. That this robbery
18 -- I can play it back but that's what I thought he said.

19 MR. CAMPBELL: That's an issue for the jury
20 to determine and we're saying that this defendant was
21 found with a gun matching the description of the one used
22 in the armed robbery given by Mr. Workman.

23 THE COURT: All right, that's an issue for
24 the jury.

25 Bring them on.

State of South Carolina versus Anthony Maurice Lounds

1 (Jury returns to the courtroom.)

2 All right, solicitor, you may continue.

3 BY MR. CAMPBELL:

4 Q. Mr. Workman, you testified earlier that the
5 weapon the defendant had was an old revolver, black, with
6 a brown handle?

7 A. Yes.

8 Q. I'm showing you what's been marked as State's
9 Exhibit 19. Does that match the description of the weapon
10 you gave?

11 A. May I see it?

12 Q. Does that appear to be the gun that was used?

13 A. Yes, it looks like it.

14 MR. CAMPBELL: Let the record reflect that
15 the defendant has identified what's been marked as State's
16 19.

17 THE COURT: Subject to objection.

18 (Gun marked as State's Exhibit No. 19 for
19 identification was admitted into evidence.)

20 BY MR. CAMPBELL:

21 Q. One last question for you, Mr. Workman. You
22 testified earlier that Mr. Lounds approached you and asked
23 you if you had any dope?

24 A. Uh-hum.

25 Q. And you said you told him you don't do dope. You

State of South Carolina versus Anthony Maurice Lounds

1 ever smoked week before?

2 A. Yeah, in the past.

3 Q. Why did you tell him you don't mess around with
4 that stuff?

5 A. When I hear dope, I think specifically of crack
6 cocaine and that type of cocaine material. I've never
7 done it and never have. That's what I thought he was
8 talking about as dope. I don't consider marijuana as
9 dope.

10 MR. CAMPBELL: That's all the questions I
11 have. Please answer any questions Mr. Robinson may have.

12 THE COURT: Mr. Robinson.

13 MR. ROBINSON: If it please the Court.

14 CROSS-EXAMINATION

15 BY MR. ROBINSON.

16 Q. Mr. Workman, you would admit that you have used
17 drugs before, wouldn't you?

18 A. In high school.

19 Q. Now, and you understand when you come to a court
20 of law you have to testify -- you've been sworn to tell
21 the truth, you understand that, correct?

22 A. Yeah.

23 Q. And that if you don't tell the truth, you could
24 potentially face charges yourself, do you understand that?

25 A. Yes, I do.

State of South Carolina versus Anthony Maurice Lounds

1 Q. Mr. Workman, as far as drugs and so forth, you
2 would admit that this particular motel is known for drug
3 use and prostitution, wouldn't you?

4 A. No, I would not.

5 Q. No? You wouldn't know that?

6 A. I didn't have the information that this is a
7 known drug motel, no, I would not know that.

8 Q. But I think you just testified a few moments ago
9 that ---

10 A. He asked me for dope but I never said this was a
11 known drug motel or classify it as that.

12 Q. Now, you live about five miles from this motel,
13 don't you?

14 A. My girlfriend does, yes.

15 Q. You live with your girlfriend?

16 A. At the moment.

17 Q. Were you at the time?

18 A. I was between houses at the time.

19 Q. You were. And you also testified -- I want to go
20 back to that. As far as your girlfriend goes, it was her
21 place that she had at that time back in 2009, would you
22 agree about five miles away from the motel maybe?

23 A. Give or take, I don't know.

24 Q. Give or take. You also had testified that you
25 had been there before; isn't that correct?

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1 A. At that motel? Yeah.

2 Q. Actually you testified that you told the motel
3 that they needed to get security; is that correct?

4 A. I said where ever your security officer is he
5 must not be working, I just got robbed, asking them where
6 is there security officer. I had seen their security
7 officer there before.

8 Q. So what you're testifying to is prior to that
9 time in 2009 you had stayed at that motel before?

10 A. No, earlier that day. I had seen the officer
11 earlier that day at 3:00 in the afternoon. He was out
12 walking around doing his rounds then, but later that night
13 when I got robbed he wasn't no where to be found.

14 Q. So your testimony is that you hadn't been there
15 before this night?

16 A. You didn't ask me that. I had been there before
17 but that wasn't what I was saying.

18 Q. Let me make sure I clarify this.

19 A. Please do.

20 Q. So you had actually stayed at this motel before,
21 correct.

22 A. Yes, I had with no problem.

23 Q. No problems before, okay. And your girlfriend at
24 that time lived about five miles away, correct?

25 A. I guess.

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1 Q. About five miles away.

2 A. I don't know how to measure that distance other
3 than driving a car.

4 Q. What was the name of this club that you went to
5 that night?

6 A. It was -- what was the name of that club? I
7 think we went to the Casablanca that night.

8 Q. Casablanca.

9 A. It was the Casablanca and it was another bar, the
10 Dugout.

11 Q. And how many guys went with you?

12 A. There were four.

13 Q. There were four guys with you?

14 A. Possibly four, yes.

15 Q. And what were their names?

16 A. Tony, Torez, Marti, and I think Charles was with
17 us that night.

18 Q. Okay. And what time did they leave you?

19 A. My friend Torez, we left the Dugout I'd say
20 around 1:00, so my friend Torez dropped me off I'd say
21 around 1:30.

22 Q. In the morning?

23 A. Yeah.

24 Q. Your girlfriend wasn't with you, was she?

25 A. No, she wasn't.

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1 Q. Now, in terms of this gun that we're talking
2 about here, do you remember giving a statement to the
3 police?

4 A. Yes, I did.

5 MR. ROBINSON: May I approach the witness,
6 Your Honor?

7 THE COURT: Sure.

8 BY MR. ROBINSON:

9 Q. Do you remember giving this statement to the
10 police on September 29, 2009? Do you recognize this
11 statement?

12 A. No, I don't.

13 Q. You don't recognize that statement?

14 A. May I see it?

15 Q. Sure. Here you go.

16 A. Oh, yeah. Yeah, this is the one about the video.

17 Q. Now, looking at this statement, you didn't
18 mention anything in there about this particular gun having
19 a brown handle, did you?

20 A. I think I mentioned it to the officer. It might
21 not be in the statement but I mentioned it to the officer.

22 Q. Now, this was actually typed up by the officer
23 and you had an opportunity to view it, didn't you?

24 A. Yeah.

25 Q. And actually that statement says that that

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1 statement is truthful and honest? Doesn't it say that
2 before you sign it?

3 A. Uh-hum.

4 Q. And you signed that statement truthfully and
5 honestly, didn't you?

6 A. Yes, I did.

7 Q. And you didn't include in there any mention of a
8 gun with a brown handle, did you?

9 A. I didn't know you need that much detail. I mean
10 it says medium sized revolver. I mean how much detail do
11 you have to go into. It says a gun, I didn't know that
12 specifically had to be in every word in the paper.

13 Q. Now, that night that we're talking about after
14 your friends had left and so forth -- do you smoke by the
15 way?

16 A. Smoke cigarettes.

17 Q. Now, your testimony was that you were out that
18 night with your friends at Casablanca and the Dugout and
19 you actually went on the balcony; is that correct?

20 A. Uh-hum.

21 Q. That's of room 216?

22 A. Uh-hum.

23 Q. And you don't lock your doors?

24 A. The door locks automatically by itself.

25 Q. So the door was locked behind you; is that

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1 correct?

2 A. It didn't close all the way.

3 Q. Didn't close all the way?

4 A. No, it didn't. I briefly stepped out the door,
5 looked out the balcony and walked back to my room. The
6 door was cracked because I knew I wouldn't be out there
7 long the door was cracked so I can get back in my room so
8 I didn't let it close. When I went to get the water, then
9 the door closed. I came back, opened the door, and that's
10 when he came in.

11 Q. So the door to the room was not -- could not
12 lock. Is that what your testimony is?

13 A. No, that's not my testimony. I'm saying the door
14 didn't close. When it closes, it looks automatically.
15 The door didn't close. It was still cracked about an inch
16 or two open so I could get back in. I didn't close it all
17 the way when I walked out and looked over the balcony.
18 When I went back to my room, I'm at the door and he stops
19 me and approaches me when I'm already at my door.

20 Q. Isn't the balcony inside the corridor?

21 A. No, it's not. It's outside.

22 Q. It's not?

23 A. There is no inside, it's outside.

24 Q. Okay.

25 A. You can look over the balcony and see the cars in

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1 the parking lot and that's what I did.

2 Q. Looking at that statement that you wrote, I'm
3 going to let you look at it one more time. I think you've
4 got a copy of it there. You didn't mention anything as
5 far as specifics regarding -- you didn't mention anything
6 in there as far as getting stripped, did you?

7 A. I didn't strip.

8 Q. That you stripped down your clothes or anything
9 like that, you didn't mention that, did you?

10 A. I didn't strip.

11 Q. Okay.

12 A. I said he asked me to and I didn't do it. I said,
13 are you serious? Why am I doing this and that's when he
14 hit me over the head. I never took anything off?

15 Q. I think you put in your statement that he hit you
16 over the head and the gun went off; is that right?

17 A. Yes, he did.

18 Q. And it's your testimony that the bullet went up
19 into a crack; is that right?

20 A. When he hit me over the head, the gun went off
21 and the direction the gun -- the bullet went up the
22 direction of the gun.

23 Q. Now, that was a pretty hard hit, wasn't it?

24 A. I guess you could call it.

25 Q. You were bleeding weren't you?

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1 A. No, I wasn't.

2 Q. You weren't bleeding?

3 A. It wasn't a hard hit. He didn't hit me that
4 hard. I stumbled a little bit two steps to the left. I
5 didn't pass out. He didn't knock me out. I wasn't
6 bleeding. I guess it wasn't a hard hit.

7 Q. Didn't leave any scarring or anything like that?

8 A. No, it didn't. A slight knock but it went away
9 after a day or two.

10 Q. You never went to the doctor, did you?

11 A. No, I didn't.

12 Q. Never went to the hospital?

13 A. No, I didn't.

14 Q. And you said that you had three different ID's,
15 two to three different ID's; is that right?

16 A. I think it was two at the time.

17 Q. Two ID's?

18 A. I lost one and I went and got a replacement and
19 later found the one that I had lost.

20 Q. Were there any other people hanging out on the
21 balcony at that time of the time that you're talking
22 about?

23 A. No.

24 Q. And this is what time?

25 A. I think it was around 2:00, 2:15 or something

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1 like that.

2 Q. Now, this Motel 6 that we're talking about, it's
3 right off the interstate, isn't it?

4 A. Yes, it is.

5 Q. Now, after a certain hour at night in your
6 experience since you've been there before, the outside is
7 all locked, isn't it?

8 A. The outside it what?

9 Q. Locked. The outside of the hotel, you can't come
10 into the hotel after say 12:00 at night, can you?

11 A. You mean into the front office? There's three
12 separate buildings. Every room is outside, there is no
13 walking in. I don't understand you what mean come in.
14 There is no coming in. The door opens up directly outside
15 so what am I walking into? There's nothing but a
16 staircase and a walkway, anybody has access to it at any
17 time of night.

18 Q. Okay. And it's your testimony is that you called
19 911; is that right?

20 A. No, that's not my testimony.

21 Q. Excuse me, the front desk called.

22 A. They called 911.

23 Q. The question I have for you, if you were
24 allegedly robbed, why didn't you close your checking
25 account that same day instead of -- why didn't you close

State of South Carolina versus Anthony Maurice Lounds

1 your checking account?

2 A. It's 2:00 in the morning, how am I going to close
3 your checking account?

4 Q. You didn't close your checking account the next
5 day, did you?

6 A. When I noticed the checks were forged, that's
7 when I closed the account.

8 Q. And that was six days later. How many days later
9 was that?

10 A. I don't remember exactly how many days was it. I
11 remember I checked it.

12 Q. So you didn't close your checkbook the following
13 day after you say you were robbed, did you?

14 A. What day was that on? I think it was a weekend
15 if I'm not mistaken. I'm not sure. I think it was on a
16 weekend day and come around Monday, if you don't have my
17 ID and my signature, you're not supposed to be able to
18 cash my checks. It shouldn't have been an issue.

19 Q. Let's talk about Monday, then. You didn't close
20 your checking account on Monday, did you?

21 A. No, I didn't. I closed it as soon as I noticed
22 that the checks were forged.

23 Q. So you're walking around and you don't notice
24 that you're checkbook is missing? That's you've been
25 robbed of a checkbook?

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1 A. What are you saying, man? That's not what I
2 said. I noticed my checkbook was gone. I told them the
3 first night my checkbook was missing. He robbed me. I
4 didn't know he had actually used the checks the very next
5 day. You don't expect somebody to go and write checks the
6 very next day. I hadn't checked it until when I checked
7 my bank account whatever day that was I went up to the
8 bank the very next day I was available. I was working at
9 the time. I think I had other stuff going on. I wasn't a
10 really immediate action that I took to go ahead and see
11 about this checkbook, but once I noticed that checks had
12 been forged, then, yeah, I went to the bank and had it
13 taken care of.

14 Q. And that actually was about -- you actually went
15 about -- would six days sound about right that you waited
16 to go to the bank to tell them?

17 A. I may have been the first chance to get to the
18 bank, yeah. I think I had called previously before that,
19 but that may have been the day I actually got to the bank
20 to sign the forms.

21 Q. So it's your testimony, again, you were robbed of
22 your checkbook and you didn't take the time for a period
23 of six days ---

24 THE COURT: That's been asked and answered,
25 Mr. Robinson. Move on to something else.

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1 THE WITNESS: Yeah, please.

2 MR. ROBINSON: One second, Your Honor.

3 THE COURT: Okay.

4 BY MR. ROBINSON:

5 Q. Mr. Workman, between the time you got dropped off
6 in the morning until the time the incident what were you
7 doing?

8 A. What do you mean?

9 Q. What were you doing? Were you watching tv or
10 were you drinking? What were you doing?

11 A. I was watching tv. I had made a call to a friend
12 girl, but other than that talking to her I was just
13 watching tv. I didn't have any drinks in the room.

14 Q. So it's your testimony that you called the front
15 desk and they called 911, correct?

16 A. Yes.

17 MR. ROBINSON: That's all I have. Thank you.

18 THE COURT: Anything else, solicitor?

19 MR. CAMPBELL: That's all I have for this
20 witness.

21 THE COURT: Okay. Step down.

22 (Witness leaves the witness stand.)

23 MR. ELLIS: Your Honor, the State calls
24 Terrance Bowers to the stand.

25 THE CLERK: Deputy Bowers, could you step up

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1 to the Bible. Place your left hand on the Bible and raise
2 your right to be sworn.

3 TERRANCE BOWERS, having been duly sworn,
4 testified as follows:

5 Thank you. You may be seated.

6 State your full name for the record.

7 THE WITNESS: Terrance Bowers.

8 DIRECT EXAMINATION

9 BY MR. ELLIS:

10 Q. Good morning, Deputy Bowers. Where are you
11 employed?

12 A. Greenville County Sheriff's Office.

13 Q. And how long have you worked there?

14 A. Twenty-eight months.

15 Q. And prior to joining the Sheriff's Office, what
16 did you do?

17 A. I been in the military approximately 14 years.

18 Q. What branch?

19 A. I was in the Marine Corp for approximately eight
20 years, Air Force Reserve for about six now.

21 Q. And were deployed overseas?

22 A. Yes.

23 Q. And did you join the Sheriff's Office right after
24 your deployment?

25 A. I did.

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1 Q. And please tell the jury about the training that
2 goes on for a new recruit at the Sheriff's Office? What
3 sort of training do you do?

4 A. We train in report writing, officer safety, just
5 regular duties that we do at the Sheriff's Office on a
6 daily basis.

7 Q. And when you're a new deputy, do you have a
8 chance to be supervised by a more senior deputy?

9 A. Yes.

10 Q. And how long does that usually take? How long
11 are you under his or her supervision?

12 A. Approximately 14 weeks.

13 Q. And thinking back to September 5, 2009, at that
14 point how long had you been employed at the Sheriff's
15 Office?

16 A. Approximately one month at that time.

17 Q. And is this during a period of time where you
18 might have been working under another deputy?

19 A. Yes.

20 Q. Who was that deputy?

21 A. Master Deputy Gladson.

22 Q. And would you describe Master Deputy Gladson as
23 an experienced, knowledgeable law enforcement officer?

24 A. Yes.

25 Q. And approximately, how long did you work directly

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1 with him?

2 MR. ROBINSON: Your Honor, I'm going to
3 object to this.

4 THE COURT: What's our objection?

5 MR. ROBINSON: If I could approach for one
6 second, Your Honor.

7 (Whereupon, there was a bench conference.)

8 BY MR. ELLIS:

9 Q. Now, Deputy Bowers, were you on duty the night of
10 September 4th going into the morning of September 5, 2009?

11 A. Yes.

12 Q. And while you were on duty that night, did you
13 get a call to go out to 224 Bruce Road?

14 A. Yes, I did.

15 Q. And what business is at that location?

16 A. It's the Motel 6 motel.

17 Q. I'm going to show you what's been previous marked
18 and introduced as State's Exhibit 6. I'm actually going
19 to put it up on an easel so the jury can get a look at it
20 here. Deputy Bowers, I'm going to try to put this where
21 you and the jury can see it and I believe the Motel 6 is
22 marked down here. Is that correct?

23 A. That's correct.

24 Q. And what is this road right here?

25 A. It's 85.

State of South Carolina versus Anthony Maurice Lounds

1 Q. And what about this road over here?

2 A. That road over there is Augusta Road.

3 Q. So that gives the jury a better idea of what
4 we're looking at. It's right at the intersection of 85
5 and Augusta Road. Is that in Greenville County?

6 A. Yes.

7 Q. Why did you go out the Motel 6 that night?

8 A. I received a call from the Greenville County
9 dispatch that an armed robbery had just occurred at 224
10 Bruce Road at the Motel 6.

11 Q. And what did you do when you got to the Motel 6?

12 A. Myself, Sergeant Taylor, Master Deputy Gladson,
13 Deputy Mark Clifford arrived on the scene. We did an
14 initial sweep of the area to check for the suspect which
15 we did information from dispatch that it was a black male
16 at the time, clothing description, that could possible
17 still be in the area so we did a security sweep.

18 Q. Did you find anyone who matched the description?

19 A. No.

20 Q. What did you do next?

21 A. Make contact with my victim, Mr. Bryan Workman,
22 who was standing on the top balcony in front of his room.

23 Q. And did the victim describe what happened that
24 night?

25 A. Yes, he did.

State of South Carolina versus Anthony Maurice Lounds

1 Q. Was he cooperative?

2 A. Yes.

3 Q. Did it appear to you that he had been drinking?

4 A. I did smell a little bit of alcohol and he did
5 advise me that he had been in a night club earlier that
6 evening and that he had several beverages.

7 Q. And despite that fact, was he able to explain to
8 you what happened in a clear and coherent manner?

9 A. Yes.

10 Q. During the time when you were interviewing
11 Mr. Workman, did something unusual happen?

12 A. Yes, it did.

13 MR. ROBINSON: Objection, Your Honor.

14 THE COURT: What's the objection?

15 MR. ROBINSON: It's leading.

16 THE COURT: No, sir, that's not leading. Go
17 ahead.

18 BY MR. ELLIS:

19 Q. What happened?

20 A. During my interview with Mr. Workman, we heard
21 several gunshots that were fired close to our location.

22 Q. And looking at the map here, where in relation to
23 the Motel 6, where did you hearing those gunshots come
24 from?

25 MR. ROBINSON: Your Honor, objection,

State of South Carolina versus Anthony Maurice Lounds

1 relevance in this case.

2 THE COURT: That's all right, go ahead.

3 THE WITNESS: When we were at the Motel 6,
4 the parking lot, the shots came from the area of Old
5 Augusta and Warren Side Drive actually at an apartment
6 complex, Chimwood Apartments. It's located off Old
7 Augusta Road.

8 BY MR. ELLIS:

9 Q. It's across the interstate?

10 A. Yes.

11 Q. And what did you do at that point?

12 A. Instruct my victim. At the time he was sitting
13 in the back seat of Master Deputy Gladson's patrol car. I
14 instructed him to step out and that we would have to leave
15 for a few minutes and if he would just stand by and we
16 would be right back.

17 Q. Was he okay with you leaving that hotel?

18 A. He asked us not to leave. He was pretty upset.

19 MR. ROBINSON: Objection, Your Honor. It
20 calls for speculation and hearsay.

21 THE COURT: Overruled.

22 BY MR. ELLIS:

23 Q. Did he appear frightened?

24 A. He did, sir.

25 Q. Approximately how long were you over across the

State of South Carolina versus Anthony Maurice Lounds

1 interstate?

2 A. I would say approximately 15 or 20 minutes.

3 Q. And at some point did you go back to the Motel 6?

4 A. Yes.

5 Q. What did you do when you got there?

6 A. Made contact with Mr. Workman again up at his
7 hotel room.

8 Q. Was he back at his hotel room at that point?

9 A. Yes.

10 Q. Did you conclude your interview?

11 A. Yes.

12 Q. And during the time that you were at the Motel 6,
13 did you look around for any other witnesses who might have
14 seen or heard something?

15 A. Yes, we did.

16 Q. Did you find anybody?

17 A. No.

18 Q. Now, did you call forensic investigators to go
19 out to the Motel 6 that night?

20 A. No, we didn't.

21 Q. And you said earlier that you were with Master
22 Deputy Gladson. Who makes the final determination as to
23 whether or not it's appropriate to call forensics at that
24 point when you were the trainee and you at that point were
25 the Master Deputy Gladson was the supervisor?

State of South Carolina versus Anthony Maurice Lounds

1 MR. ROBINSON: Objection, Your Honor,
2 relevance.

3 THE COURT: That's all right. Go ahead.

4 THE WITNESS: At that point in my training,
5 that decision would have been made by Master Deputy
6 Gladson because I was on my first phase of training.

7 BY MR. ELLIS:

8 Q. Moving on, after you got all the information from
9 Mr. Workman, what happened next?

10 A. I completed a copy of the Victim's Right form,
11 gave Mr. Workman instructions if he could remember any
12 additional information to give us a call and somebody
13 would be in contact with him.

14 Q. Did you leave then? When was Mr. Workman when
15 you left the scene?

16 A. Actually I took Mr. Workman home from the Motel
17 6.

18 Q. Why did you do that?

19 A. He didn't have a right from over there. He asked
20 us to take him home because he was afraid to stay in the
21 area to wait for a ride so he asked me to take him home.

22 Q. Whose house did you take him to?

23 A. I took him to his residence.

24 Q. And was there a lady there at the home?

25 A. Yes.

State of South Carolina versus Anthony Maurice Lounds

1 Q. And did you walk him to the door?

2 A. I did.

3 Q. Who answered the door?

4 A. I believe it was his girlfriend. I'm not sure on
5 that.

6 Q. What was her demeanor and mood when she answered?

7 MR. ROBINSON: Your Honor, objection.

8 THE COURT: I'll sustain the objection to
9 that.

10 BY MR. ELLIS:

11 Q. Was it clear to you she wasn't happy with
12 Mr. Workman?

13 MR. ROBINSON: Objection.

14 THE COURT: I'll sustain the objection and
15 instruct the jury to disregard that.

16 MR. ELLIS: I beg the Court's indulgence,
17 Your Honor.

18 BY MR. ELLIS:

19 Q. Please answer any questions Mr. Robinson may
20 have.

21 THE COURT: Mr. Robinson.

22 MR. ROBINSON: If it please the Court.

23 CROSS-EXAMINATION

24 BY MR. ROBINSON:

25 Q. Deputy, you didn't get a chance to go in the room

State of South Carolina versus Anthony Maurice Lounds

1 and look around, did you?

2 A. I did, sir.

3 Q. You did?

4 A. Yes, sir.

5 Q. You didn't see any bullet holes, did you?

6 A. No, sir.

7 Q. Now, going back to the witnesses. There were no
8 witnesses to this, correct?

9 A. That's correct.

10 Q. You took him home. How long did it take to get
11 to his house, do you remember?

12 A. I'd say maybe 15 ,20 minutes.

13 Q. And how many miles was his house away?

14 A. I'm not sure, sir.

15 Q. So it took about 15 or 20 minutes to get there;
16 is that correct?

17 A. Yes, sir.

18 Q. Did he ever give you the names of any friends he
19 had been with that night?

20 A. No, sir, I don't recall.

21 Q. Did he ever give you the name of the night club
22 that he had been to that night?

23 A. No, sir. I have no recollection of that.

24 Q. Did you ever speak to any other people, the staff
25 at the motel?

State of South Carolina versus Anthony Maurice Lounds

1 A. I spoke with the clerk and asked about some video
2 surveillance.

3 Q. Was there any video surveillance?

4 A. No, sir.

5 MR. ROBINSON: I beg the Court's indulgence.
6 One second, Your Honor.

7 THE COURT: Sure.

8 MR. ROBINSON: That's all I have.

9 THE COURT: Thank you. You can step down.

10 (Witness leaves the witness stand.)

11 MR. ELLIS: Your Honor, we ask that Deputy
12 Bowers be excused.

13 THE COURT: Any objection to excusing this
14 witness?

15 MR. ROBINSON: No objection.

16 THE COURT: Thank you.

17 MR. ELLIS: The State now calls Master Deputy
18 Dallas Gladson to the stand.

19 THE CLERK: Officer Gladson, if you'd come
20 forward to be sworn in.

21 DALLAS GLADSON, having been duly sworn,
22 testified as follows:

23 Thank you. You may be seated. Would you
24 please state your full name for the record.

25 THE WITNESS: Master Deputy Dallas Gladson.

State of South Carolina versus Anthony Maurice Lounds

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. ELLIS:

4 Q. Master Deputy Gladson, where are you employed?

5 A. At the Greenville County Sheriff's Office.

6 Q. And how long have you been employed there?

7 A. Ten years.

8 Q. Would you please explain to the jury what the
9 term Master Deputy means?

10 A. In short it means I'm a field training officer.
11 I've been promoted to this rank and I have the
12 responsibility of training new hires that come to the
13 Sheriff's Office.

14 Q. And what's your primary day to day duty and
15 responsibility?

16 A. Uniformed patrol responding to calls for service
17 and as I stated earlier training new hires that come to
18 the Sheriff's Office.

19 Q. And through your years at the Sheriff's Office,
20 approximately how many recruits or trainees have you
21 helped train?

22 A. Probably around in the 30s or 40s.

23 Q. Thinking back to September 5, 2009, were you
24 working that night?

25 A. I was.

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1 Q. Who were you working with?

2 A. Deputy Terrance Bowers.

3 Q. And approximately how long had you and Deputy
4 Bowers been working together?

5 A. I believe at that time it had been several weeks,
6 two to three weeks.

7 Q. And while you were out on duty late night
8 September 4th, early morning of September 5, 2009, did you
9 get a call to go out to Bruce Road?

10 A. We did.

11 Q. And what business is that location?

12 A. 224 Bruce Road is the Motel 6.

13 Q. Is that in Greenville County?

14 A. It is.

15 Q. Why did you go out there that night?

16 A. We got a report that an individual had been
17 robbed.

18 Q. When you got there what did you do?

19 A. We made contact with the individual, Mr. Workman,
20 and started gathering information about what had occurred
21 that evening.

22 Q. Where did this interview take place?

23 A. In the parking lot of the Motel 6.

24 Q. Did he describe what happened?

25 A. He did. He had stated that he and some friends

State of South Carolina versus Anthony Maurice Lounds

1 were ---

2 MR. ROBINSON: Objection, hearsay.

3 THE COURT: What's your objection?

4 MR. ELLIS: I'll move on, Your Honor.

5 BY MR. ELLIS:

6 Q. Was he cooperative?

7 A. He was.

8 Q. Did it appear to you that he had been drinking?

9 A. He was -- yes.

10 Q. Despite the fact that he had been drinking, was
11 he able to explain what happened in a clear and coherent
12 manner?

13 A. He was.

14 Q. Did it appear to you that he was under the
15 influence of any drugs?

16 A. Did not appear that way.

17 Q. At some point during this interview, did
18 something happen across the interstate?

19 A. It did. We heard approximately it sounded like
20 20 to 30 gunshots. At which time we had to -- since our
21 incident was essentially over and the suspect was no
22 longer on the scene, we left the incident location and
23 responded to that area to make sure there were not victims
24 over there. Once that was determined to be clear, we
25 responded back to the Motel 6 and met back up with

State of South Carolina versus Anthony Maurice Lounds

1 Mr. Workman again.

2 Q. And what did you do when you got back to the
3 Motel 6?

4 A. Continued gathering information about what had
5 occurred. We provided him with a victim form and we left
6 the incident location.

7 Q. Now, speaking in general terms, in an armed
8 robbery case, under what circumstances would you normally
9 call forensic investigators to a crime scene?

10 A. If there had been any evidence left at the scene
11 such as fingerprints or anything was touched, any clothing
12 that may have been left behind; obviously identification
13 or anything like that we would call forensics out.

14 Q. And that night with you and Deputy Bowers, who
15 has the final call to make a determination of whether or
16 not it's appropriate to call forensics?

17 A. That's my decision.

18 Q. And did you call forensics that night?

19 A. We didn't.

20 Q. Why is that?

21 A. Our understanding was the suspect did not make
22 any contact with anything in the hotel room. If he did
23 touch the railing, the railing would need to be a smooth
24 surface and at the Motel 6, there's a lot of rust on those
25 and that's not conducive for gaining fingerprints off. To

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1 our knowledge the suspect did not touch anything so there
2 was nothing. We scoured the parking lot. We checked the
3 areas as well as other units and we didn't find any type
4 if evidence that had been left.

5 Q. And this Motel 6 is one of the ones where the
6 doors open out to the walk way?

7 A. I believe the doors open into the room.

8 Q. Into the room and the hallway is essentially
9 outside?

10 A. That's correct.

11 Q. Did you take any pictures of the scene that
12 night?

13 A. No, we did not.

14 Q. Why is that?

15 A. There wasn't anything to take pictures of to our
16 knowledge.

17 Q. And a couple more basic questions about calling
18 things out over your radio, what circumstance would you
19 normally make a call over your radio that shots had been
20 fired?

21 A. Just to let units know in the area so we can get
22 units to that area.

23 Q. Did you make any of those calls that night?

24 A. I believe so. And also if you have a canine
25 working, they are also going to respond to that area as

State of South Carolina versus Anthony Maurice Lounds

1 well.

2 Q. I'm sorry. Going back to the Motel 6, after you
3 went across the road and came back, after those shots had
4 been fired, did you make any calls that shots had been
5 fired at the Motel 6?

6 A. No.

7 Q. Why was that?

8 A. Didn't have any knowledge of any shots being
9 fired at the Motel 6.

10 Q. And did you continue to investigate this case
11 after the initial report was written?

12 A. No, sir.

13 Q. Why not?

14 A. This is an incident that our CID Division would
15 handle so the report would go from me as a road deputy to
16 be further investigated to those who handle these type of
17 cases on a regular basis.

18 Q. What does the term CID mean?

19 A. Criminal Investigative Division.

20 Q. Did you and Deputy Bowers eventually give
21 Mr. Workman a ride back to his girlfriend's house?

22 A. We did.

23 MR. ELLIS: Beg the Court's indulgence.

24 BY MR. ELLIS:

25 Q. Master Deputy Gladson, please answer any

State of South Carolina versus Anthony Maurice Lounds

1 questions Mr. Robinson may have for you.

2 A. Yes, sir.

3 THE COURT: Mr. Robinson.

4 CROSS-EXAMINATION

5 BY MR. ROBINSON:

6 Q. Officer, there was no indication or evidence of
7 any shots fired from this motel at that time, correct?

8 A. That's correct.

9 Q. And you had an opportunity to go in the room,
10 didn't you? It was Room 216?

11 A. Yes.

12 Q. You didn't see any gunshot holes or anything like
13 that at the scene, did you?

14 A. I really wasn't looking for any because it had
15 not been told to us that a gunshot had occurred.

16 Q. Nothing was told ---

17 A. I did a brief scan as we did when we go in every
18 room, but as far as actually searching for one, no, I did
19 not?

20 Q. He didn't mention that to you when you talked to
21 him that night?

22 A. That's my recollection.

23 Q. Now, you made a report, didn't you, an incident
24 report?

25 A. That's correct.

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1 MR. ROBINSON: May I approach the witness,
2 Your Honor.

3 THE COURT: Yes, sir.

4 BY MR. ROBINSON:

5 Q. Do you have your file with you?

6 A. I just have the initial report and the victim for
7 that we provide.

8 Q. Is this a copy of Page 1 of your report?

9 A. That's correct.

10 Q. And when you do your report, you try to make sure
11 that it has everything that the victim tells you at the
12 time, isn't that correct?

13 A. Absolutely.

14 Q. And you try to make sure -- you try to listen to
15 make sure you get down everything that's appropriate for
16 this case?

17 A. That's correct.

18 Q. Now, I want you to look at your report and this
19 is going to be the regarding -- I want you to read to the
20 jury from your report what you wrote in your report here
21 and start with the after the period where it starts, "He
22 went," which is the third line up. What did you write in
23 your report?

24 A. It say, "He went back into his room and dialed
25 911 and waited."

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1 Q. So he advised you that he called 911, correct.

2 A. That's correct.

3 Q. Now, Officer, regarding the motel that we're here
4 talking about, this Motel 6, I believe the solicitor has
5 kind of put where this motel is. As far as this motel
6 goes, what's the general -- if you know -- what's the
7 general reputation of this motel?

8 A. It's not very good.

9 Q. Not very good meaning what?

10 A. It's in a high crime area.

11 Q. High crime area?

12 A. Uh-hum.

13 Q. To your knowledge what kind of crime?

14 A. Assaults, drugs, prostitution.

15 Q. Really. As far as the reputation of this motel,
16 what do people use this motel for when they go there?

17 A. I can't speculate on that, I don't know.

18 Q. But you will admit prostitution, drugs, is pretty
19 prevalent in that area; is that correct?

20 A. Absolutely, yes.

21 Q. And that motel does not have that good of a
22 reputation, correct?

23 A. That's correct.

24 Q. There were no witness, correct?

25 A. That's correct.

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1 Q. And as far as when Mr. Workman was taken home,
2 how far away -- did you help take him home?

3 A. I was in the passenger's seat, yes.

4 Q. And how far of a distance are we talking about?

5 A. If I remember correctly I believe we went back to
6 Greer, so from Augusta and 85 to Greer how long that would
7 be.

8 Q. Did you talk to anyone else in any of the other
9 rooms to see if they had heard anything?

10 A. We did not.

11 Q. I think according to your report if I am correct,
12 you didn't see any sort of wounds or facial wounds or
13 anything like that to Mr. Workman's head, did you?

14 A. That's correct. That's exactly what is
15 documented in the report that I did not observe any
16 injuries.

17 MR. ROBINSON: That's all I have. Thank you.

18 THE COURT: Any redirect?

19 MR. ELLIS: Yes, sir. Briefly, Your Honor.

REDIRECT EXAMINATION

20 BY MR. ELLIS:

21 Q. Master Deputy Master, is there any thing that
22 could refresh your recollection about who, in fact, called
23 911 that night?
24

25 A. If I looked at the CAT report from dispatch.

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1 That might be the only --

2 MR. ELLIS: I beg the Court's indulgence.

3 BY MR. ELLIS:

4 Q. Master Deputy Gladson, I'm handing you to refresh
5 your recollection a document and after reviewing that
6 document could you please tell the jury who called 911
7 that night?

8 A. From looking at this from what the call that was
9 put into dispatch it appears that -- it says it states
10 that, "Room 216 told her that a black male in multi-
11 colored shorts just hit him over the head with a revolver,
12 took his money and left." So it would appear by reading
13 this that he may have asked somebody to call on his
14 behalf. And in which that's the case when we were there,
15 he was the only other person there, there was nobody else
16 present which is why my incident report shows him as the
17 victim and the complainant at the same time.

18 Q. Master Deputy, I don't have any further
19 questions. Thank you.

20 THE COURT: Thank you. Step down.

21 MR. ELLIS: We ask that he be released from
22 his subpoena, Your Honor.

23 THE COURT: Any objection?

24 MR. ROBINSON: No objection.

25 THE COURT: Thank you, sir.

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1 (Witness leaves witness stand.)

2 MR. ELLIS: Your Honor, the State calls
3 Clinton Berry to the stand.

4 THE CLERK: Mr. Berry, can you come forward
5 to be sworn in. Please place your left hand on the Bible
6 and raise your right.

7 CLINTON BERRY, having been duly sworn,
8 testified as follows:

9 Thank you. You may be seated. Would you
10 please state your full name for the record.

11 THE WITNESS: Clinton Berry.

12 DIRECT EXAMINATION

13 BY MR. ELLIS:

14 Q. Mr. Berry, where are you employed?

15 A. Greenville Federal Credit Union.

16 Q. And would you tell the jury a little bit about
17 your business? What the Greenville Federal Credit Union
18 is?

19 A. It's a federally chartered credit union that
20 provide the same services as a bank, deposit relationships
21 and loans. The only difference is instead of it being a
22 private company it's owned by our members. They own
23 shares in the credit union by being a member.

24 Q. And what's your job title there?

25 A. Loss Prevention Specialist.

State of South Carolina versus Anthony Maurice Lounds

1 Q. And does Greenville Federal have a computer
2 system that keeps track of customer's account balances and
3 deposits and things such as that?

4 A. We do.

5 Q. Do you also keep track of images of the check
6 that may be written on the customer's accounts?

7 A. Yes.

8 Q. Are those maintained in the normal course of
9 business?

10 A. Yes, sir.

11 Q. And as the head of loss prevention, do you have
12 access to this computer system?

13 A. Yes, sir.

14 Q. If a customer comes and says that a check has
15 been written on his or her account and they didn't write
16 it, what is the normal procedure that takes place?

17 A. Well, we would first find out if there's been a
18 police report and if so, have them bring that in. But as
19 far as we're concerned we would have them fill out an
20 Affidavit of Forger which is just basically a statement
21 that they are affirming that they did not write the check.

22 Q. I'm going to hand you what's been marked as
23 State's Exhibit 2 and State's Exhibit 4 and without going
24 into it very much but are those are the documents signed
25 by the victim in this case Mr. Workman basically saying

State of South Carolina versus Anthony Maurice Lounds

1 that he didn't write those checks?

2 A. Yes, sir.

3 Q. And are those documents maintained by Greenville
4 Federal in the regular course of business?

5 A. Yes, sir.

6 Q. Now, I'm going to hand you State's Exhibits 3 and
7 5 and these are already in evidence. Will you identify
8 these documents?

9 A. These are two checks that are written out to
10 Ingles and they correspondence to the two affidavits
11 Mr. Workman signed that he did not write those checks.

12 Q. So those two affidavits was that his way of
13 telling the bank that he didn't write those checks, which
14 I may have rephrased what you just said. I apologize.

15 A. Yes, sir.

16 Q. And copies are those checks are also maintained
17 in the regular course of business?

18 A. Yes, sir.

19 MR. ELLIS: Beg the Court's indulgence, Your
20 Honor.

21 BY MR. ELLIS:

22 Q. Whose account were those checks written on?

23 A. Bryan Workman.

24 Q. And how can you tell that?

25 A. His name, address and phone number are in the top

State of South Carolina versus Anthony Maurice Lounds

1 left-hand corner of the checks, and they also have his
2 account number on the checks.

3 Q. Mr. Berry, please answer any question
4 Mr. Robinson may have.

5 THE COURT: Mr. Robinson, do you have any
6 questions?

7 CROSS-EXAMINATION

8 BY MR. ROBINSON:

9 Q. Mr. Berry, as far as the exhibits go, what's the
10 date on the exhibits?

11 A. The date that the checks were written?

12 Q. Yes.

13 A. One was September 6th and one was September 16th.

14 Q. When was it actually reported missing?

15 A. The Affidavits of Forgery were signed on
16 September 11th so it was actually September 6th. It just
17 looks like one of them was mistakenly put in as the 16th
18 but they were both dated September 6th and they were
19 processed and returned on the 9th to us from Ingles.

20 MR. ROBINSON: That's all I have. Thank you.

21 MR. ELLIS: We ask that he be released from
22 subpoena.

23 THE COURT: Any objection?

24 MR. ROBINSON: No objection.

25 (Witness leaves the witness stand.)

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1 MR. ELLIS: The State now calls Don Howard to
2 the stand.

3 THE CLERK: Mr. Howard, if you would come
4 forward please to be sworn in. Place your left hand on
5 the Bible and raise your right.

6 DONALD EDWARD HOWELL, having been duly sworn,
7 testified as follows:

DIRECT EXAMINATION

8
9 BY MR. ELLIS:

10 Q. Could you state your full name for the record.

11 A. Donald Edward Howell.

12 Q. And where are you employed?

13 A. Ingles Markets, Incorporated.

14 Q. And how long have you worked there?

15 A. This year will be 44 years.

16 Q. What is your current job title and
17 responsibility?

18 A. I'm Director of Security and Loss Prevention.

19 Q. Tell the jury a little bit about what you do
20 every day?

21 A. I purchase all the video equipment we use for our
22 company, all the EAS equipment we use to supervise the
23 outside guard service and supervise a group of people that
24 do internal investigation for our company.

25 Q. And that's company wide?

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1 A. Yes.

2 Q. About how many Ingles stores are there?

3 A. 202.

4 Q. And what sort of, we're talking specifically
5 about video surveillance, a store that have video cameras,
6 do they actually have video tapes on site or is there a
7 centralized system that stores the videos or --

8 A. All the stores that have video that have hard
9 drives. There are no tapes any more. We are able to
10 access the video equipment from my office to see all of
11 the video and pull back all the video we need to see from
12 past events?

13 Q. From any store you can see it from your office?

14 A. Yes.

15 Q. And is that video maintained in the normal course
16 of business?

17 A. Yes, it is.

18 Q. Do all of your stores have video equipment?

19 A. No, sir.

20 Q. Please tell the jury about how you go back and
21 retrieve a video clip from a particular store?

22 A. First you would need to know the amount of the
23 transaction and then I could find the transaction then
24 match the video to it.

25 Q. So if you were provided information such as the

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1 date it took place and at what store, you would be able to
2 retrieve that information?

3 A. Yes, if I know the amount, partial check number,
4 partial account number or anything like that I can find
5 it.

6 Q. On or about September 17, 2009, were you
7 contacted by Investigator Tracy King of the Greenville
8 County Sheriff's Office?

9 A. I was.

10 Q. And based on your interaction with Investigator
11 King, what did you do?

12 A. He provided me with the copy of two checks and I
13 looked at the transactions to see where they were ran and
14 which counters covered those transactions and I pulled the
15 copy of the transactions and the video to match those
16 transactions.

17 Q. I'm going to show you State's Exhibit 3 and
18 State's Exhibit 5. Are those the two checks that
19 Investigator King showed you?

20 A. Yes, sir, they are.

21 Q. What did you learn about the video surveillance
22 equipment in those particular stores used?

23 A. The check for \$75 was from the White Horse Road
24 store and there's no video there. The check for \$51.52 is
25 from our Store No. 69, Cherrydale and we have video

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1 equipment there and I was able to, from the back up, to
2 know which registered it was, what time it was, what case
3 you're checking out and what transaction.

4 Q. And you can tell all that information from what's
5 printed on the back of those checks?

6 A. Yes, sir.

7 Q. I'd like to hand you a pen and on those documents
8 somewhere on the check that was used on the White Horse
9 Road, would you write White Horse road.

10 A. (Witness complies).

11 Q. And what State's Exhibit Numb is White Horse Road
12 written on there?

13 A. State's Exhibit 3.

14 Q. And please write Cherrydale on the check that was
15 used at Cherrydale.

16 A. (Witness complies).

17 Q. And what State's Exhibit is Cherrydale written
18 on.

19 A. State's Exhibit 5.

20 Q. Thank you, sir. So once you determined that the
21 Cherrydale location had video surveillance capability,
22 what did you do?

23 A. I went back to that time that was on the
24 transaction, matched it with the video and found the
25 people checking out and then actually looked at the video

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1 side door to find out when they came in to get a shot of
2 when they came in and when they checked out.

3 Q. So Mr. Howell, I'm going to hand you an item
4 that's been marked as State's Exhibit 1. Do you know what
5 that is?

6 A. Yes, sir. That's the video I did of this
7 transaction on these two checks or this check from
8 Cherrydale.

9 Q. And how do you know what's on that video?

10 A. I actually checked the video and put my initials
11 on it before I got here in court.

12 Q. And is the footage that's contained on that video
13 in your hand that you put your initials on the same
14 footage that the Ingles security system had sent to
15 Investigator King?

16 A. It is.

17 Q. Nothing has been altered on it?

18 A. No, sir.

19 MR. ELLIS: Your Honor, the State moves
20 State's Exhibit No. 1 into evidence.

21 THE COURT: Any objection?

22 MR. ROBINSON: Subject to the previous
23 objection.

24 THE COURT: All right, it's in subject to the
25 previous objection.

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1 (Videotape previously marked as State's
2 Exhibit No. 1 for identification was admitted into
3 evidence.)

4 MR. ELLIS: At this time I'd like to publish
5 it to the jury.

6 BY MR. ELLIS:

7 Q. Mr. Howell, I'd like to have you step down if
8 it's okay. I'd like you to stand right here and I'm going
9 to put the video on and ask you some questions about it.

10 MR. ELLIS: I beg the Court's indulgence
11 while the video comes up.

12 (Whereupon, videotape was played in open
13 court.)

14 BY MR. ELLIS:

15 Q. The first thing I noticed on the video,
16 Mr. Howell, that there are on the side three different
17 cameras. I'm going to click on the first one here and
18 before I actually start the video playing, please tell us
19 what we're looking at here?

20 A. That's the video side door of the Cherrydale
21 store.

22 Q. And how can you tell that?

23 A. By the way the store is set up, the actual train
24 track goes around the video department.

25 Q. So there's a toy train track?

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1 A. Yes.

2 Q. And I believe you said earlier Store 69 is
3 Cherrydale?

4 A. Yes, it is.

5 Q. And that has the date of September 6, 2009 on it.

6 A. Yes, sir.

7 Q. What is this information down here?

8 A. It shows the time. It shows the name of the
9 county.

10 Q. Military time so that's about 1:15 and three
11 seconds?

12 A. Yes, sir.

13 Q. Now, is this a constant video or is it choppy?

14 A. It's a constant video. It's just a short clip.

15 Q. Well, I'm going to hit play now and watch it.

16 (Video played).

17 I want you to pay particular attention to
18 13:16:36 so we're getting to the section that I want you
19 to pay attention to.

20 A. Okay.

21 Q. When you pulled that video was that the footage
22 that you were looking for the two gentleman that were
23 coming into the store?

24 A. Yes, that's the two I had seen check out at the
25 time the transaction was done.

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1 Q. Okay. I'm going to go to the second clip here.
2 And is the second clip in fact the first clip you looked
3 up?

4 A. It was, yes.

5 Q. And this was a little bit longer and I'm just
6 going to play it while you and I are talking.

7 Would you please tell the jury while we're
8 watching this, this one was about seven minutes long and
9 this appears to be of the same transaction, please tell
10 the jury while we're watching this what the procedure is
11 when a customer would like to pay for merchandise with a
12 check?

13 A. Well, if they pay for it with a check and there's
14 a cash over, the manager on duty has to come over and turn
15 the key to override the transaction to approve it.

16 Q. What does cash over?

17 A. If it's cash for more than the amount of
18 groceries or there could be several other things, but
19 normally that's what it is.

20 Q. And, again, the information at the top is Store
21 69, September 6. What is REG 123?

22 A. That's just register 123.

23 Q. And this time stamp appears to be shortly after
24 the one we just watched?

25 A. Yes.

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1 Q. I'm going to speed this up a little bit and ask
2 you if you recognize -- do you recognize this individual
3 right here?

4 A. He's the co-manager of that store.

5 Q. Do you remember his name?

6 A. No.

7 Q. Rico Downs?

8 A. Rico. I knew his first name. I did not know his
9 last name.

10 Q. And he was the co-manager at the time -- I know
11 you weren't there, but is this what it would look like if
12 a manager was doing a manager override?

13 A. Oh, yes, you can actually see what he does.

14 Q. I don't mean to show you the whole thing, but,
15 again, you looked this footage first and then got
16 entrance. Did you get exit video of these two
17 individuals?

18 A. I may have. I remember the entrance and I
19 remember the actual incident.

20 Q. So, now, instead of showing you all seven
21 minutes, I'm going to click over to the last piece of
22 footage on this video and this appears to be the same
23 camera we were looking at earlier and this is a very short
24 clip. It appears to be right after the video that we just
25 watched of those same two individuals.

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1 A. The two exiting.

2 Q. I'm going to show you something else very
3 briefly. Mr. Howell, I'm going to hand you what's been
4 previously marked as Exhibit 7a and 7b after I show
5 Mr. Robinson.

6 MR. ROBINSON: The only objection I have is
7 foundation.

8 THE COURT: Subject to your objection. Go
9 ahead.

10 BY MR. ELLIS:

11 Q. I'm going to hand you what's been marked as
12 Exhibits 7a and 7b, could you tell us what those are?

13 A. 7b is these two gentleman entering the store.
14 It's the way the pictures are printed off and it gives you
15 the time and the place it was done and it also gives you
16 the time and the date it was printed.

17 Q. What is 7a?

18 A. The subjects are starting through the door.

19 Q. And are these fair and accurate print offs and
20 representations of video that you pulled from your system
21 that day?

22 A. Yes, they are.

23 MR. ELLIS: Your Honor, I'd like to move
24 State's Exhibits 7a and 7b into evidence.

25 THE COURT: Subject to objection.

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1 (Still from video previously marked as
2 State's Exhibit No. 7a for identification as admitted into
3 evidence.)

4 (Still from video previously marked as
5 State's Exhibit 7b for identification was admitted into
6 evidence.)

7 MR. ELLIS: I'd like to publish them to the
8 jury. This 7a is just a printoff from the video that we
9 just saw of those two individuals coming into the store,
10 and 7b is the two individuals a little bit into the store.

11 BY MR. ELLIS:

12 Q. Thank you, Mr. Howell. You can have a seat back
13 on the witness stand, please, sir.

14 MR. ELLIS: Your Honor, may we deem the whole
15 video published in it's entirety to the jury even though I
16 skipped forward on it. I'd like to see if Mr. Robinson
17 would have any objection to that.

18 THE COURT: You want to do what?

19 MR. ELLIS: The whole video, I'd just like
20 for the record that we're introducing the whole video even
21 though we skipped through some parts of it to speed it up.

22 THE COURT: Okay. I understand.

23 MR. ROBINSON: Your Honor, the only objection
24 I have to it I would request a hearing outside of the
25 presence of the jury to make sure it's redacted any

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1 potential parts of it because I don't know what the whole
2 video shows.

3 THE COURT: Solicitor, for purposes of this
4 jury you're publishing only the portions that --

5 MR. ELLIS: Your Honor, I'd like to introduce
6 the whole thing. I sped forward for purposes of moving
7 along so we wouldn't have to view the whole seven minutes,
8 but I'm happy to have Mr. Robinson view it in its entirety
9 to make sure there is nothing on there that he find
10 objectionable and we can do that outside the presence of
11 the jury.

12 THE COURT: Take the jury out.

13 (Jury exits the courtroom).

14 If I understand correctly, you want to show
15 the balance of the seven minutes?

16 MR. ELLIS: The purpose of doing that is so
17 Mr. Robinson is comfortable with the fact there's nothing
18 on the video ---

19 THE COURT: I understand but you're talking
20 about only the seven minutes, you're not talking about the
21 whole tape for all day?

22 MR. ELLIS: Oh, no, no, just the seven
23 minutes. That's the only thing that's on there. There
24 are three video clips.

25 THE COURT: You need to see that,

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1 Mr. Robinson?

2 MR. ROBINSON: I was just concerned -- I
3 didn't understand. It sounded like it was the whole
4 video.

5 THE COURT: So you have no objection.

6 MR. ROBINSON: I have no problem with the
7 seven minutes.

8 MR. ELLIS: It's not the whole day long.

9 MR. ROBINSON: That's what I was concerned
10 about. I appreciate the Court ---

11 THE COURT: All right.

12 MR. ELLIS: Mr. Robinson has a copy of it,
13 Your Honor.

14 THE COURT: That's fine.

15 MR. ROBINSON: I have a copy of it and I
16 reviewed it, but not the whole video.

17 THE COURT: All right.

18 MR. ELLIS: And that's the brilliance of
19 Mr. Howell's technology.

20 THE COURT: Bring the jury.

21 MR. ELLIS: Sorry about the inartfulness,
22 Your Honor.

23 (Jury returns to the courtroom.)

24 THE COURT: Solicitor, how are we witness-
25 wise.

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1 MR. ELLIS: Your Honor, we have six more,
2 Your Honor.

3 THE COURT: Okay.

4 Ladies and gentlemen, what the solicitor was
5 doing earlier the tape he was taking about goes for a
6 period of seven minutes. He did not show you the entire
7 seven minutes. He sped it up to save time so if, during
8 your deliberations, you want the film played again, the
9 whole seven minutes, then I'll certainly do that for you.

10 All right, solicitor.

11 MR. ELLIS: Thank you, Your Honor.

12 BY MR. ELLIS:

13 Q. Mr. Howell, I have no further questions. Please
14 answer any questions Mr. Robinson may have for you.

15 THE COURT: Mr. Robinson.

16 MR. ROBINSON: If it please the Court.

17 CROSS-EXAMINATION

18 BY MR. ROBINSON:

19 Q. Mr. Howell, I wanted to go back and look at this
20 video again with you so you can point out the person who
21 was trying to cash the check or whatever if Mr. Ellis is
22 kind enough to play that for me so you can point this out
23 for the jury.

24 (Video played in open court.)

25 The person on the left in the picture here,

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1 is that the person that is handing the checks that you're
2 speaking of?

3 A. Yes, it is.

4 Q. Is that him. Now, these checks were not signed,
5 were they?

6 A. No, sir, I don't believe they were.

7 Q. The person who was actually handing the checks to
8 this person up there was the guy on the left, right?

9 A. Yes.

10 MR. ROBINSON: That's all I have.

11 MR. ELLIS: No redirect, Your Honor.

12 THE COURT: Can we excuse this witness?

13 MR. ELLIS: Yes, sir.

14 MR. ROBINSON: No objection.

15 (Witness leaves the witness stand.)

16 MR. ELLIS: Your Honor, the State calls
17 Investigator Tim Martin to the stand.

18 THE CLERK: Investigator Martin, please come
19 forward to be sworn. Please place your left hand on the
20 Bible and raise your right.

21 JOHN T. MARTIN, having been duly sworn,
22 testified as follows:

23 Thank you. You may be seated. State your
24 full name for the record, please.

25 THE WITNESS: John T. Martin, M-A-R-T-I-N.

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1 DIRECT EXAMINATION

2 BY MR. ELLIS:

3 Q. Investigator Martin, where are you employed?

4 A. Greenville County Sheriff's Office, Criminal
5 Investigation Division.

6 Q. And how long have you been employed there?

7 A. Twenty-four years.

8 Q. On or about September 17, 2009, did you meet an
9 individual named Bryan Workman?

10 A. I did.

11 Q. What were the circumstances surrounding that
12 discussion?13 A. Well, in the Sheriff's Office in Greenville,
14 white collar crimes are investigated by the actual
15 investigator and not the people on the road. So when they
16 come in the front to report white collar crimes,
17 investigation ---18 Q. I'm going to stop you there just for a second.
19 Let's -- based on your contact with Mr. Workman, did you
20 make contact with Investigator Tracy King about a video
21 from Ingles.

22 A. Yes, sir, I did.

23 Q. And did you have the opportunity to review that
24 surveillance footage from the Cherrydale Ingles?

25 A. Yes, sir, I did.

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1 Q. And at some point did you learn that the victim,
2 Mr. Workman, had identified Mr. Lounds as the individual
3 who robbed him at Motel 6?

4 A. Yes, sir.

5 Q. Once you learned this, did you later have an
6 opportunity to speak with Mr. Lounds?

7 A. I did, sir.

8 Q. And did he know that you were an employee of the
9 Sheriff's Office?

10 A. Yes, sir.

11 Q. And did you advise him of his Constitutional
12 rights and tell him that he didn't have to talk to you?

13 A. I did.

14 Q. How did you advise him of those rights?

15 A. We have a written out form called Waiver of
16 Rights. We read through that verbatim and we attempt to
17 get them to initial beside each sentence we read to them
18 and they sign the bottom. It's read directly to them.

19 Q. And would you recite that? Do you have a copy of
20 that in your file? If not, are these the standard
21 warnings that you give?

22 A. Yes, sir, it is.

23 Q. And in that advisement of rights, do you tell him
24 that he has a right to have a lawyer?

25 A. Yes, sir, we did.

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1 Q. And that he doesn't have to talk to you, he's got
2 a right to remain silent?

3 A. Correct.

4 Q. Did he appear to understand all these rights when
5 you talked to him?

6 A. Yes, sir.

7 Q. And just for the record, the individual that you
8 talked to, is he in the courtroom today?

9 A. The defendant sitting at this table over here
10 with the blue tie.

11 Q. Did he ask you any questions when you were
12 talking to him about this video?

13 A. Yes, sir. He told me he would talk to me but he
14 wouldn't sign any statement or sign any waiver.

15 Q. Did he appear to understand what he was doing,
16 what he was doing by talking to you and looking at the
17 video?

18 A. Yes, sir.

19 Q. What did he tell you?

20 A. When I showed him the DVD on my computer,
21 basically, he agreed that he was in the store and he was
22 with another guy by the name of Allen.

23 Q. Did you ever verify who Allen was?

24 A. No, sir.

25 MR. ELLIS: I beg the Court's indulgence.

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1 BY MR. ELLIS:

2 Q. Investigator Martin, please answer any questions
3 Mr. Robinson may have for you.

4 THE COURT: Mr. Robinson, any questions?

5 CROSS-EXAMINATION

6 BY MR. ROBINSON:

7 Q. Your department never looked for any Allen, did
8 you? Ever look for him?

9 A. I didn't have a last name to go for and there's
10 lots of Allens.

11 Q. So the answer is no?

12 A. Correct.

13 MR. ROBINSON: That's all I have.

14 THE COURT: Thank you. Step down.

15 MR. ELLIS: We request that he be released
16 from his subpoena.

17 THE COURT: Any objection?

18 MR. ROBINSON: No objection.

19 (Witness leaves the witness stand.)

20 MR. ELLIS: The State's next witness will be
21 Investigator Tracy King.

22 THE CLERK: Investigator King, would you step
23 up to be sworn. Place your left hand on the Bible and
24 raise your right.

25 ALVIN TRACY KING, having been duly sworn,

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1 testified as follows:

2 Thank you. You can be seated. State your
3 full name for the record.

4 THE WITNESS: Alvin Tracy King.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. CAMPBELL:

8 Q. Good morning, Investigator.

9 A. Good morning.

10 Q. Where do you work?

11 A. Greenville County Sheriff's Office.

12 Q. Okay. And what is your duty there?

13 A. I worked in the armed robbery unit in the
14 Criminal Investigations Division.

15 Q. How long have you been employed there?

16 A. Sixteen years.

17 Q. Were you signed an investigation regarding this
18 defendant, Anthony Lounds?

19 A. I was.

20 Q. And when you were assigned that investigation,
21 did you look for any sort of evidence that might connect
22 him to the crime reported?

23 A. I did.

24 Q. Did you learn -- what was your first lead in the
25 case?

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1 A. I had learned that the victim in this case,
2 Mr. Workman, had actually showed up at the Law Enforcement
3 Center ---

4 MR. ROBINSON: Your Honor, objection, hearsay
5 in this matter. If I may approach, Your Honor?

6 THE COURT: No. Move on.

7 MR. CAMPBELL: Yes, Your Honor.

8 BY MR. CAMPBELL:

9 Q. Did you obtain any video evidence in this case?

10 A. I did.

11 Q. And did you -- where did you get the video from?

12 A. I got the video from Ingles Corporate -- or
13 Ingles Market from Mr. Don Howell.

14 Q. I'm showing you what's been marked as State's
15 Exhibit 1 and does that appear to be the video you're
16 referring to?

17 A. It does.

18 Q. Have you viewed this video?

19 A. I have.

20 Q. Now, did you watch that video?

21 A. I did.

22 Q. And then did you watch it with the victim?

23 A. I did.

24 Q. How did the video -- please describe how that
25 video was shown to the victim.

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1 A. After I had actually obtained the information
2 concerning the video and after I actually got the video in
3 hand, I made contact with the victim, advised him that I
4 was in possession of the video which showed the documents
5 that he had reported stolen actually being used at the
6 Ingles location, Cherrydale Ingles. He came in. It was
7 my intentions at that time to determine whether or not
8 either of the individuals on that video were actually
9 involved with the robbery that he had reported the night
10 before.

11 Q. After he viewed the video, did he indicate one or
12 the other may have been connected?

13 A. He indicated to me that one of the individuals on
14 the video had the basic build and also appeared to him to
15 have the same walk as the subject that robbed him on the
16 incident date.

17 Q. And in your viewing of the video, after that did
18 you put together a photo line-up? Did you recognize
19 anyone on the video?

20 A. I did. During the course of viewing the video
21 like it was shown earlier, there's different angles on the
22 video. We initially looked at the angle at the register
23 and after that we moved to the angle of the door, that
24 entry way that was used by these individuals. At that
25 time while I was viewing the video of the entry, I

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1 recognized the defendant on the video. So at that point
2 in time, I stopped the video and I obtained a six-person
3 photo line-up that was completed by Investigator Fortner
4 who also works in our office.

5 Q. And when you go that photo line-up which as been
6 introduced as State's Exhibit 17, is this the photo line-
7 up that you presented?

8 A. It is.

9 Q. And how did you present that photo line-up to the
10 victim?

11 A. It is a practice for me when I put together a
12 photo line-up, a six person photo-line up, I lay the photo
13 line-up upside down on the corner of my desk and I advise
14 the individual that I want to review this document that
15 the person responsible for this crime may or may not be in
16 these photos. Don't feel like you have to pick anybody
17 out. When you're ready, turn that piece of paper over,
18 review the six photos, and point out anybody that you may
19 recognize and tell me how you recognize them.

20 Q. Was the defendant in that line-up?

21 A. He is.

22 Q. Were all the people in that line-up of similar
23 physical traits?

24 A. They are.

25 Q. Same build, skin color, facial features?

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1 A. That's correct.

2 Q. And when you presented that to Mr. Workman, what
3 was the date?

4 A. That was on the, I believe, it was the 29th of --
5 9/29 of 09.

6 Q. And you said this was on your office?

7 A. That's correct.

8 Q. Did Mr. Workman prepare any sort of statement to
9 indicate his choice besides what you marked on the photo
10 line-up?

11 A. I had him mark the photo line-up and then I
12 actually typed the statement that he gave to me.

13 Q. I'm showing you what's been introduced as State's
14 16. Does that the statement that you typed that
15 Mr. Workman signed?

16 A. It is.

17 Q. Now, let's go back to Bryan's selection of the
18 photo, when he turned it over and looked at it, did he
19 appear uncertain in any way?

20 A. No.

21 Q. Did he make a selection?

22 A. He did.

23 Q. And did he say anything about it?

24 A. He did. He pointed to the defendant which is
25 positioned in what we call the No. 4 position in the line-

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1 up and he stated that ---

2 MR. ROBINSON: Objection, Your Honor,
3 hearsay.

4 THE COURT: Overruled. Go ahead.

5 THE WITNESS: He stated to me that -- he
6 pointed to the No. 4 photo and stated that's the guy.
7 With the statement that Mr. Workman provided me which I
8 typed, he stated to me that he recognized the person in
9 the No. 4 position on the paper as, "the person who had
10 held the gun to me and robbed me." He stated, "I am
11 positive that this is the guy no doubt."

12 Q. And are both of those documents in the same
13 substantial condition they were as when they were executed
14 in your office?

15 A. They are with the exception of the red exhibit
16 marks.

17 Q. So based on this information, did you take any
18 action in this investigation?

19 A. At that point in time once I received the
20 statements following the positive identification in the
21 photo line-up, I obtained warrants for the defendant in
22 this case, and I notified uniform patrol of the address
23 for this defendant. Later on that evening I had contact
24 with uniformed patrol who had actually responded out to
25 that location and had taken the defendant into custody.

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1 Q. In the course of your investigation, did the
2 defendant tell you anything about the gun going off in the
3 hotel room?

4 A. That was told to me on the same date that the
5 statement was obtained on 9/29/09.

6 Q. So that was several weeks after the incident date
7 when it was reported?

8 A. That's correct.

9 Q. Did you call forensics at that time to go and
10 investigate the motel room?

11 A. I did not.

12 Q. And what was the justification for that decision?

13 A. Well, due to the fact that, again, the nature of
14 this area, the nature of the case, the fact that the time
15 frame between the time of the incident and the time that I
16 was notified or advised of what had taken place, I have no
17 way of knowing how many people and who have been in and
18 out of that particular room.

19 Q. So there was no forensic investigation or search
20 for that bullet?

21 A. That's correct.

22 Q. Please answer any questions Mr. Robinson has for
23 you.

24 THE COURT: Mr. Robinson.

25 MR. ROBINSON: May it please the Court.

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1 CROSS-EXAMINATION

2 BY MR. ROBINSON:

3 Q. Now, Officer, you've been with the department for
4 how many years?

5 A. Sixteen years.

6 Q. And you've investigated a large number of robbery
7 cases and burglary cases and so forth?

8 A. That's correct.

9 Q. And in all that time and based on your
10 experience, you didn't perform any sort of investigation
11 of the room?

12 A. That's correct.

13 Q. And you didn't talk to any witnesses or there
14 were no witnesses available that could say anything about
15 what happened that night, correct?

16 A. That's correct.

17 Q. So did you ever attempt -- you never attempted to
18 talk to anyone else who was staying in these rooms, did
19 you?20 A. We responded out to the incident location,
21 however, again we were advised that there were no
22 witnesses. As the uniformed duties that responded that
23 evening had already canvassed the area, they did not
24 locate any witnesses.

25 Q. You didn't take it upon yourself to go and check

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1 the registry of other persons staying at the motel to see
2 if anybody else had heard anything or saw anything?

3 A. I didn't.

4 Q. In your role in this investigation, were you the
5 supervising agent? What was your role in this
6 investigation?

7 A. I was just the investigator assigned to follow up
8 on the initial report.

9 Q. Okay. As the investigator following up on this
10 report, you didn't see if Mr. Workman was registered at
11 this motel, did you?

12 A. I don't believe so.

13 Q. You didn't check with any of the persons like the
14 security at the motel or anything like that, did you?

15 A. No.

16 Q. Didn't check to see if there were any videos at
17 the motel that would have recorded this event, did you?

18 A. We did check on that.

19 Q. No video cameras?

20 A. No. No video surveillance or footage of that
21 particular location.

22 Q. And a few moments ago you talked about this
23 particular motel and the area this motel is in, what did
24 you mean by that?

25 A. We've had several calls ourselves that we've

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1 dealt with, broad range of incidents reported to us.

2 Q. Did you have an opportunity to meet with this-
3 alleged victim, Mr. Workman, this same day of the
4 incident?

5 A. No.

6 Q. Now, in the statement that he gave to you he
7 stated that the perpetrator allegedly hit him in the head
8 with a gun and a shot went off; is that correct?

9 A. That's correct.

10 Q. And from your investigation of this case, you had
11 no evidence that there was any shot coming from that motel
12 that night; is that correct?

13 A. That's correct.

14 Q. In fact, as far as going in this room, you have
15 no evidence in your investigation that there was any
16 bullet or any bullet fragment or mark, that there was any
17 bullet mark in that room that indicated that bullets had
18 been fired; isn't that correct?

19 A. That's correct.

20 Q. Now, concerning this particular motel that we're
21 talking about here, I'm concerned about this particular
22 incident because you knew there was a gun -- he said there
23 was a gun but you never went and went inside the room with
24 forensics or anyone to see if you could corroborate
25 anything that this victim allegedly said?

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1 A. Again, as stated I was not present during the
2 initial report that our uniformed patrol deputies
3 responded to. I was actually given this case several days
4 later for follow-up investigation. Again, as I stated,
5 during that point in time I had no knowledge or no idea
6 how many people may have been in or out of that room
7 between the time that the incident occurred and the time
8 that the victim reported to me that there was actually a
9 gunshot.

10 Q. And you didn't take the time -- you had about
11 three weeks or so since the date of the incident and the
12 date we're talking about, the 29th, to go out there to see
13 if there was anything in that room to corroborate anything
14 the victim said?

15 A. Well, again, during that three week period, I had
16 no knowledge of a report of a gunshot.

17 Q. After you got that report a gunshot, you didn't
18 go after that, did you?

19 A. Again, that was three weeks after the incident
20 had occurred, so, no.

21 Q. Didn't go out there to look if there was any
22 bullet holes or anything like that in the room; isn't that
23 correct?

24 A. That's correct.

25 MR. ROBINSON: One second, Your Honor.

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1 BY MR. ROBINSON:

2 Q. And you didn't go to the hotel office to find out
3 who was staying in the room since this particular incident
4 took place?

5 A. That's correct, no, I did not.

6 MR. ROBINSON: Thank you. That's all I have.

7 THE COURT: Thank you. Step down.

8 (Witness leaves the witness stand.)

9 All right. Take the jury out for a recess.

10 (Jury exits the courtroom.)

11 (Whereupon, there was a brief recess.)

12 You've got four more short?

13 MR. CAMPBELL: The forensic tech for
14 Greenville County may take a few minutes, but, yes.

15 THE COURT: Well, maybe we ought to go ahead
16 and recess for lunch. We'll let them take five minutes
17 and then I'll bring the jury in and I'll send them to
18 lunch.

19 (Jury returns to the courtroom.)

20 Ladies and gentleman, this would be a good
21 time for us to recess for lunch and we'll pick back up
22 with the testimony after lunch.

23 Before letting you go I need to read to you
24 an Order signed by Jean Toal who is our Chief Justice of
25 the Supreme Court concerning your service as a juror on

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1 this case and if you would please give me your attention.
2 She says, "The use of personal communication devices has
3 continued to increase dramatically. Accordingly, I find
4 it necessary to supplement my Order of August 25, 2000
5 related to the use of cell phones, pages and other
6 personal communication devices in courtrooms to include
7 the following directions to the Court. The Court shall
8 instruct jurors selected to serve on a jury until their
9 jury service is concluded, they shall not: A. Discuss the
10 case with others including other jurors except as
11 authorized by the Court. B. Read or listen to any news
12 reports about the case. C. Use a computer, cellular phone
13 or other electronic device with communication capabilities
14 while in attendance at trial or during deliberations.
15 These devices may be used during lunch breaks but may not
16 be used to obtain or disclose information prohibited in
17 Subsection D below. Subsection D, use a computer cellular
18 phone or other electronic devices with communication
19 capabilities or any other method to obtain or disclose
20 information about the case when they are not in the
21 courtroom.

22 Information about the case includes but is
23 not limited to the following: Information about a party,
24 witness, attorney or other court officer, news accounts of
25 the case, information collected from juror research on any

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1 topics raised or testimony offered by any witness,
2 information collected from jury research on any other type
3 that the juror might think would be helpful in deciding
4 the case.

5 Notice of the contents of this Order shall be
6 given to jurors."

7 And with that, I'll excuse you for lunch.
8 I'd ask that you be back in your jury room at 15 minutes
9 past 2:00, 2:15. Thank you.

10 All right. See you back after lunch
11 (Whereupon, court was in recess for lunch.)

12 THE BAILIFF: All rise, the Honorable C.
13 Victor Pyle residing.

14 THE COURT: Thank you. Please be seated.
15 Solicitor, are you ready to go.

16 MR. CAMPBELL: Your Honor, we just have a few
17 follow-up questions for Investigator King on redirect.

18 THE COURT: Sure. I'm sorry. I didn't ask
19 you.

20 Okay, bring the jury.

21 Come back around, sir, you're still under
22 oath.

23 (Jury re-enters the courtroom.)

24 Okay. Solicitor, redirect.

25 REDIRECT EXAMINATION

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1 BY MR. CAMPBELL:

2 Q. Investigator King, a few brief questions for you.
3 In your experience as an investigator, once you learned --
4 there has been some allegation that a gun was fired in
5 that hotel room, would going back and searching there have
6 provided you with useful evidence?

7 A. Again, due to the time frame involved, the fact
8 that I learned of the gunshot and the time that the report
9 was actually taken, as I stated earlier numerous people
10 could have been in and out of the room, basically that
11 scene was contaminated and it was my opinion with my
12 experience that ---

13 MR. ROBINSON: Your Honor, I'm going to
14 object as far as him giving expert testimony.

15 THE COURT: He's saying based on his
16 experience. Go ahead.

17 THE WITNESS: Based on my experience, at that
18 point in time any evidence collected from the scene would
19 have been contaminated.

20 BY MR. CAMPBELL:

21 Q. And would the contamination have prevented you
22 from using it in any case that you made?

23 A. That's very very possible.

24 Q. And based on the evidence that you had at that
25 time, the victim's identification and the video

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1 surveillance that you had received and the rest of your
2 investigation, did any of that give you pause in
3 proceeding with charges?

4 A. Absolutely not.

5 Q. And just to be certain for the record, Your
6 Honor, there was some ambiguity as to whether State's
7 Exhibit 16, which I'm handing to Investigator King, is
8 that the statement that you took from Bryan Workman as to
9 the photographic line-up?

10 A. It is.

11 MR. CAMPBELL: We wanted to make sure that's
12 been made part of the record.

13 MR. ROBINSON: Your Honor, we would object to
14 any statement coming in from the alleged victim in this
15 case. It's hearsay in this case.

16 THE COURT: That statement concerns only the
17 photographs?

18 MR. CAMPBELL: It's an affidavit and a
19 statement to some of the facts, Your Honor. I'd be happy
20 to pass it up to the Court to review.

21 THE COURT: Is this a subsequent statement or
22 the original?

23 MR. CAMPBELL: That is the first written
24 statement he gave the law enforcement.

25 THE COURT: All right, it's in evidence

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1 subject to your objection.

2 (Statement previously marked as State's
3 Exhibit No. 16 for identification was admitted into
4 evidence.)

5 Is that all, solicitor.

6 MR. CAMPBELL: That's all the questions, Your
7 Honor.

8 THE COURT: Recross.

9 MR. ROBINSON: I have some recross.

10 THE COURT: Sure.

11 RECROSS-EXAMINATION

12 BY MR. ROBINSON:

13 Q. Mr. King, when you left the courtroom, you
14 actually went out and talked to the solicitor about your
15 testimony, didn't you?

16 A. Not about the testimony but about, I guess,
17 facts.

18 Q. Despite the Judge, despite you knowing that
19 you're not supposed to talk about a case with the
20 solicitor in an ongoing case, you still talked to the
21 solicitor about this case when you're under oath?

22 A. Well, at that point in time I had been excused
23 and, again, we didn't talk about, I would say, testimony
24 just facts that I had on hand.

25 Q. Now, I want -- you had the opportunity to explain

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1 to Mr. Campbell and you background and so forth, the time
2 that this phone call came regarding this from Mr. Workman
3 who is sitting back there, this was supposedly an armed
4 robbery with a gun and this person allegedly -- you're
5 saying that no one at this hotel was ever questioned as
6 far as anyone in the other room or anything like that to
7 corroborate anything Mr. Workman says, is that what you're
8 telling this jury?

9 A. That's correct. Again, I stated at that point in
10 time we had no witnesses and no information of any
11 witnesses to go back and look for to try to question or
12 obtain statements from.

13 Q. So you didn't go back to -- now, we're talking
14 the date of incident to the time Mr. Workman came in and
15 spoke to you is about three weeks, is that right, two
16 weeks?

17 A. Roughly, yes.

18 Q. And during that period of time in your
19 department, your Sheriff's Department, you, the other
20 officers involved in this case, you didn't think it was
21 important to go back to this location and corroborate what
22 this gentleman said as far as whether or not there were
23 any bullet holes in this place, bullets or fragments or
24 anything like that?

25 A. Had we been investigating an actually shooting

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1 where we go a gunshot victim, yes, that would have come
2 into play. However, due to the fact that the victim in
3 this case had reported to us that he had been robbed at
4 gun point, the fact that he had reported his checkbook was
5 stolen, and on this date that I obtained the statement
6 which was the 29th being the same day that we reviewed the
7 videotape, the same day that Investigator Fortner put
8 together the photo line-up in this case, and the same day
9 that the victim positively identified the defendant in
10 this case, at that point in time I had the probable cause
11 needed to make the arrest.

12 In that the fact that the checks were
13 reported stolen and the fact that these checks were
14 negotiated without the victim's permission we had that on
15 video as proof, basically I was able to substantiate and
16 cooperate what the victim says. His checkbook was taken
17 and here we are on the video showing someone other than
18 the victim is negotiating the checks, so I had the
19 information I needed for the charge.

20 Q. So you take the word of a victim in this case,
21 which you did in this case, without going back and
22 checking whether or not that victim is correct in terms of
23 whether you got anything like -- this statement was taken
24 when?

25 A. The 29th, the same day that we reviewed the video

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1 and the same date that he was shown the photo line-up.

2 Q. And on that day and no day after did anyone go
3 out to that motel to see if there was a shot, like any
4 sort of shot, whether or not the same room had a shot up
5 on the -- someplace around there, you didn't go out to do
6 that?

7 A. That's correct. Again, with the fact because of
8 the time frame involved, the status and condition of these
9 rooms, no, we did not.

10 Q. So you're saying that the rooms were not in good
11 shape, is that what you're saying?

12 A. What I'm saying is, again, these rooms are used
13 quite frequently and the fact that there are several
14 people in and out of these rooms, again, that location was
15 contaminated from my experience and from my opinion at
16 that point and that's why I didn't go back to the room.

17 Q. So you got no evidence you could present to
18 corroborate what this witness says, correct?

19 A. As far as the gunshot.

20 Q. As far as the gunshot.

21 A. Correct.

22 Q. Because no one heard a gunshot, right?

23 A. That's correct. There was no witnesses.

24 Q. Did you go to the hotel or motel to see who was
25 staying there that night ---

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1 THE COURT: It's been asked and answered.

2 MR. ROBINSON: Okay.

3 THE COURT: Move on.

4 BY MR. ROBINSON:

5 Q. So you're calling this crime scene contaminated
6 because there was a period of about two or three weeks
7 from the time he came in and the time he first reported
8 this, right?

9 A. That's correct.

10 Q. Because he never reported anything about a gun
11 prior to that time, did he?

12 A. Again, as I spoke to the deputies who had taken
13 the original report, at that time frame, they did not
14 recollect the victim making any statement to that
15 gunshots. So, again, due to the time frame, that scene
16 was contaminated.

17 MR. ROBINSON: That's all I have for this
18 witness, Your Honor.

19 MR. ELLIS: The State calls Jericho Downs to
20 the stand.

21 THE CLERK: Mr. Downs, if you could please
22 come forward to be sworn, please. Place your left hand on
23 the Bible and raise your right.

24 JERICHO DOWNS, having been duly sworn,
25 testified as follows:

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1 Thank you. Please state your name for the
2 record.

3 THE WITNESS: Rico Downs.

4 DIRECT EXAMINATION

5 BY MR. ELLIS:

6 Q. Good afternoon, Mr. Downs. Where are you
7 currently employed?

8 A. Ingles.

9 Q. And how long have you worked there?

10 A. About 13 years, maybe.

11 Q. What store are you with at this point?

12 A. The Spartanburg store 204.

13 Q. And have you ever worked at the Cherrydale
14 Ingles?

15 A. Yes.

16 Q. What store number is that?

17 A. 69.

18 Q. What did you do there?

19 A. Co-manager.

20 Q. And what are some of your duties and
21 responsibilities as co-manager?

22 A. Walk the store, displays, resets, overrides,
23 everything.

24 Q. When you say the term "override," please tell the
25 jury what a manager override is when a customer is using a

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1 check?

2 A. Override means we just approve a check and it
3 comes up manager needed in the corner of the screen and it
4 calls for a override for a manger to approve that check.

5 Q. And what do you have to do? Do you have to do
6 anything or see anything from that customer when using a
7 check?

8 A. Identification whether it's an ID or driver's
9 license.

10 Q. And do you personally always follow this
11 procedure when doing management override?

12 A. Yes, sir.

13 Q. Were you working at the Cherrydale Ingles at
14 approximately 1:30 on September 6, 2009?

15 A. Yes, sir.

16 Q. And were you the co-manager at the store at this
17 time?

18 A. Yes, sir.

19 Q. Mr. Downs, I'm going to show you some video
20 footage that we've already taken a look at and I'm going
21 to ask you to see if you recognize that store yourself on
22 the video, and if it's all right with the Judge, I'm going
23 to ask you to step around and watch the video.

24 (Video played in open court.)

25 Mr. Downs, I'm going to start this at the

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1 period of time marked 1:29 and very soon somebody is going
2 to come into the video here. I'm going to ask you if you
3 recognize that person.

4 Do you recognize that gentleman?

5 A. That's me.

6 Q. What's going on here? What are you doing?

7 A. She called for manager to that register and it
8 appears to be a check, a personal check, and I'm just
9 following policy looking for identification to make sure
10 it matches the check that kind of thing, and anything else
11 weird on that check that we look for whether it's like a
12 mess up on the writing or things of that nature.

13 Q. It appears that that person wrote a check and it
14 appears to rewrite a check, do you recall what happened at
15 that point?

16 A. Going back it's been a while ago, I think he
17 messed up on that check. He messed up the spelling or
18 something or the amount, it was something of that nature,
19 that I had him correct on it.

20 Q. Before he's able to use that check, does the ID
21 -- well, tell us about what you look for when the person
22 hands you the ID and how you compare it to the check?

23 A. The name, kind of the picture. The address not
24 so much, people move, you know, so the address may change
25 from the ID and the check, but normally I look at the

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1 picture. If it looks decent, we'll take it.

2 Q. And you're not going to let them use that check
3 unless they show you the ID?

4 A. Yes, that's correct.

5 Q. I'm going to turn this off and you can have a
6 seat back in the witness stand.

7 Now, Mr. Downs, I'm going to hand you what's
8 been marked as State's Exhibit 5. Do you recognize -- I
9 know it's been a long time -- but do you recognize that
10 check?

11 A. Not this particular check, no. I see all kinds
12 of checks.

13 Q. I'm sure you do, but previous testimony is that
14 check was the one used at your store that day, and when
15 you were presented that check -- I know the signature line
16 on it kind of looks kind of funny. What appears to be
17 written on that signature line?

18 A. Grocery or something like that of that nature.

19 Q. And even though that's sort of a weird thing on a
20 signature line, did it cause you any concern about
21 accepting the check?

22 A. In the back of my head, truthfully, kind of.
23 That's something normally nobody writes there, but
24 probably just overlooked.

25 Q. Did it give you any comfort that you just

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1 testified that you looked at some form of identification
2 of the person who presented that check do you, did that
3 give you comfort in accepting that check?

4 A. Yeah, the picture looked just like the guy from
5 the check.

6 Q. Would you have prepared the name on the check to
7 the ID that was handed to you?

8 A. Sure.

9 Q. Thank you, Mr. Downs. Answer any questions
10 Mr. Robinson may have for you.

11 MR. ROBINSON: I have no questions.

12 THE COURT: Thank you. You can step down.

13 MR. ELLIS: We ask that he be released from
14 his subpoena, Your Honor.

15 THE COURT: Any objection?

16 MR. ROBINSON: No, objection, Your Honor.

17 (Witness leaves witness stand.)

18 MR. CAMPBELL: The State's next witness is
19 Shamika Sanders from the Greenville Police Department.

20 THE CLERK: Officer Sanders, could you please
21 come forward to be sworn in.

22 SHAMIKA SANDERS, having been duly sworn,
23 testified as follows:

24 Thank you. You may be seated. State your
25 full name for the record.

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1 THE WITNESS: Shamika Sanders.

2 DIRECT EXAMINATION

3 BY MR. CAMPBELL:

4 Q. Good afternoon, Officer. Where do you work?

5 A. Greenville City Police Department.

6 Q. How long have you worked there?

7 A. Just a little over two years.

8 Q. Were you on duty the day of September 27, 2009?

9 A. Yes, I was.

10 Q. What were you doing that day? What duties did
11 you have that day?

12 A. Just regular routine patrol.

13 Q. Did you respond to a call regarding a car at some
14 point near 81 South Textile Avenue?

15 A. Yes, I did.

16 Q. And in responding to that call, was a vehicle
17 describe given of that car?

18 A. Yes.

19 Q. Was there a suspect description given?

20 A. Yes.

21 MR. ROBINSON: Your Honor, this is irrelevant
22 to this particular -- that's my objection in this matter,
23 relevancy.

24 THE COURT: What's the relevance?

25 MR. CAMPBELL: The relevance -- the next

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1 question is whether or not she came into contact with the
2 defendant.

3 THE COURT: Go ahead.

4 BY MR. CAMPBELL.

5 Q. Did you come into contact with the defendant,
6 Anthony Lounds, on that day?

7 A. Yes.

8 Q. When you received the call and responded to the
9 location of South Textile Avenue, I'm going to show you
10 what's been marked as State's 8,9,10,11,12,13,14 and 15.
11 When you responded to that call, did you find the car you
12 were looking for?

13 A. Yes.

14 Q. Was there a tag number that had been given?

15 A. Yes.

16 Q. Did all that match up?

17 A. Yes, it did.

18 Q. Did you see near the car?

19 A. Yes, I did.

20 Q. When you approached the suspects, did you say
21 anything to them?

22 MR. ROBINSON: Your Honor, I'm going to
23 object again as far as described this person or persons as
24 suspects.

25 THE COURT: Take the jury out.

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1 (Jury exits the courtroom.)

2 Where are you headed, solicitor?

3 MR. CAMPBELL: I'm headed to whose car was
4 it. Her testimony will be this is the defendant's car.
5 He identified it as his girlfriends. Identification was
6 asked from Mr. Lounds and when he reached in the car to
7 retrieve the identification, he became combative and
8 created a hostile environment. The car had been reported
9 stolen so they called forensics to examine the car. It
10 turns out the car was not stolen, but while forensics were
11 conducting their examination of the car, that exhibit, the
12 black revolver, was found in the floor board of the car.

13 THE COURT: Why is that not circumstantial
14 evidence, Mr. Robinson?

15 MR. ROBINSON: Well, first of all, it's three
16 months after the fact, three months after this incident
17 occurred. They haven't linked this particular gun -- that
18 gun and that car to this particular incident.

19 THE COURT: The victim says it was or appears
20 to be the gun.

21 MR. ROBINSON: It appears to be.

22 THE COURT: Why isn't that an issue for the
23 jury?

24 MR. ROBINSON: I understand, Your Honor. I
25 was concerned about where he was going. He also has in

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1 this picture here, I would point, a bunch of Bud Lites in
2 the car and I'm really not sure what the purpose of that
3 is.

4 THE COURT: I agree with that.

5 MR. ROBINSON: I would ask that these be
6 taken out.

7 THE COURT: Take out one photograph,
8 solicitor.

9 MR. ROBINSON: The objection, again, Your
10 Honor, is relevance and I think there's an argument to be
11 made that the probative value is highly out done by the
12 prejudicial value in this case.

13 THE COURT: All right, you don't want him to
14 go into the fact that it was a stolen car or do you?

15 MR. ROBINSON: I don't, Your Honor. I think
16 he just said it wasn't stolen.

17 THE COURT: In other words, you object to him
18 stating the reason she was out there, what she was doing,
19 and why she needed to tag number and what she did to
20 identify it?

21 MR. ROBINSON: I don't know that that's
22 particular relevant, Your Honor, in this case. That's the
23 only thing.

24 THE COURT: It's relevant to show that a car
25 that the defendant was in and this pistol in it, that's

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1 relevant.

2 MR. ROBINSON: Same objection.

3 THE COURT: All right, bring the jury.

4 (Jury re-enters the courtroom.)

5 All right, you may proceed.

6 BY MR. CAMPBELL:

7 Q. Officer, I think we left off with you
8 investigating to this car that you've been called to
9 respond to an incident. Did the defendant approach you
10 while you were standing next to the car?

11 A. That's correct.

12 Q. Now, I'm going to show you what we talked about
13 earlier, State Nos. 8,9,10,11,13,14 & 15.

14 THE COURT: No, just pick out one.

15 MR. CAMPBELL: Just pick out one photo, Your
16 Honor?

17 THE COURT: Yes.

18 MR. CAMPBELL: I thought you said to take out
19 one.

20 BY MR. CAMPBELL:

21 Q. State's No. 14, can you identify what that
22 picture is?

23 A. Yes, it's a photo of a handgun under the driver's
24 seat.

25 Q. And that was the gun that the defendant

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1 approached you while you were standing next to it?

2 A. Yes, it was.

3 Q. Did the defendant say whose vehicle it was?

4 A. He did. He stated that it was his girlfriend's
5 vehicle.

6 Q. Did you ask the defendant for any identification?

7 A. Yes, I did.

8 Q. Did he produce any identification?

9 A. He told me the identification was in the vehicle
10 and that he was going to go to the car and get it. He
11 went over to the car, reached in the driver's side. I was
12 standing by him. He was kind of scrambling around in the
13 console area. As he came out of the vehicle, he came back
14 in kind of a rapid manner. I wasn't sure what he had in
15 his hands. At that point, I tried to subdue him to find
16 out what he had in his hands. He didn't produce an ID.

17 Q. And after you got everything under control, you
18 then inspected the inside of the vehicle?

19 A. Yes.

20 Q. And is that picture the gun that you found on the
21 floor board of that vehicle?

22 A. Yes, it is.

23 Q. I'm handing you what's been marked as State's
24 Exhibit 19, is that the same gun you pulled out of that
25 vehicle September 27, 2009?

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1 A. Yes, it is.

2 Q. Same serial number and everything?

3 A. Yes, it matches.

4 Q. Did you bring this with you to court today?

5 A. Yes, I did.

6 Q. Where has it been since September 27, 2009?

7 A. Secured in our Property and Evidence Department.

8 MR. CAMPBELL: At this time, the State would
9 move No. 19 into evidence.

10 THE COURT: Subject to his objection.

11 MR. CAMPBELL: Permission to publish it to
12 the jury, Your Honor.

13 (Handgun previously marked as State's Exhibit
14 No. 19 for identification was admitted into evidence.)

15 BY MR. CAMPBELL:

16 Q. Now, Officer, when you got the report for the
17 incident saying there had been a call out, was any
18 description given of the driver of the vehicle or the type
19 of person who was driving the vehicle?

20 A. Yeah, our dispatch relayed the information that
21 it was a black male.

22 Q. Thank you, Officer Sanders.

23 THE COURT: Mr. Robinson.

24 MR. ROBINSON: If it please the Court.

25 CROSS-EXAMINATION

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1 BY MR. ROBINSON:

2 Q. Ma'am, Mr. Lounds advised you that it was his
3 girlfriend's vehicle, correct?

4 A. Yes.

5 Q. And you found out it was his girlfriend's
6 vehicle, correct?

7 A. Yes.

8 Q. Now, as far as did you take any fingerprints from
9 the gun to make sure it was Mr. Lounds's gun?

10 A. Yes, I called Forensics out to process the
11 evidence and anything they recovered from the vehicle, and
12 that was there responsibility.

13 Q. So you have nothing that would indicate that any
14 prints on that gun belonged to Mr. Lounds?

15 A. I would not have that information, no.

16 Q. To our knowledge there are not prints, are there?

17 A. I don't know to my knowledge.

18 MR. ROBINSON: That's all I have. Thank you.

19 THE COURT: Any redirect?

20 MR. CAMPBELL: No redirect. We'd ask that
21 she be excused.

22 THE COURT: Any objection?

23 MR. ROBINSON: No objection.

24 MR. CAMPBELL: Your Honor, the State calls
25 Jeremy Days to the stand.

State of South Carolina versus Anthony Maurice Lounds

1 We've got State's Exhibit 14, permission to
2 publish to the jury?

3 THE COURT: Go ahead.

4 (Photograph previously marked as State's
5 Exhibit No. 14 for identification was admitted into
6 evidence.)

7 THE CLERK: Please step around to be sworn.
8 Place your left hand on the Bible and raise your right
9 hand.

10 JEREMY DAYS, having been duly sworn,
11 testified as follows:

12 Thank you. You may be seated. Would you
13 please state your name for the record.

14 THE WITNESS: Jeremy Mylan Days.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. ELLIS:

18 Q. Good afternoon, Mr. Days. Where are you
19 currently employed?

20 A. I am a special agent with the Department of
21 Social Services. I am an investigator.

22 Q. Where were you employed on September 27, 2009?

23 A. I was employed with the Greenville County
24 Forensics.

25 Q. And as an employee of the Forensics Department,

State of South Carolina versus Anthony Maurice Lounds

1 what was your job title?

2 A. Forensic Evidence Technician.

3 Q. And what were your responsibilities?

4 A. To process collect any evidence.

5 Q. So would you briefly describe if an officer calls
6 you out to an incident location, what some of the normal
7 things you would do?

8 A. Some of my normal job duties would be take
9 photographic documentation, process the scene using latent
10 powder and collect any and all evidence that's related to
11 the incident at hand.

12 Q. You just used the term latent powder, please tell
13 the jury what that is?

14 A. It's just a powder that adheres to some of the
15 proteins and amino acids left behind in sweat glands which
16 the powder is used to bring latent prints to develop ridge
17 lines from that's left by the hands or the fingers.

18 Q. Maybe a common word is that's what you use to
19 dust for fingerprints?

20 A. Yes, sir.

21 Q. And how long had you worked at Forensics
22 Division?

23 A. I worked for about two years.

24 Q. And what type of training did you receive before
25 employed there?

State of South Carolina versus Anthony Maurice Lounds

1 A. I receive my Craft-One(ph) Law Enforcement
2 Certification and also I received on-the-job training in
3 forensics, handling evidence, processing scenes, taking
4 photographs.

5 Q. Generally speaking about fingerprints, while you
6 were at the Forensics Division, you've already testified,
7 one of your duties was collecting prints, what are the
8 different ways that you could collect fingerprints?

9 A. There are several different ways you can collect
10 prints. You can either photograph them and like I said
11 you could use the dusting for fingerprints to develop
12 them. You can also use different types of chemical
13 processes such as, most commonly known as super glue which
14 you bring the super glue to a gasey state to assist in
15 developing fingerprints.

16 Q. And after you process a scene and collect
17 fingerprints, are you the individual that compares those
18 fingerprints to different fingerprints?

19 A. No, I'm not.

20 Q. Who does that job?

21 A. The latent examiner.

22 Q. Speaking specifically about September 27, 2009,
23 were you on duty that day?

24 A. Yes, I was.

25 Q. Do you recall being dispatched to 81 South

State of South Carolina versus Anthony Maurice Lounds

1 Textile Avenue in Greenville County?

2 A. I do.

3 Q. Did you speak with Officer Sanders of the
4 Greenville City Police Department when you arrived there?

5 A. Yes, I did.

6 Q. Did you learn that there was a car where Officer
7 Sanders discovered a firearm?

8 A. Yes, sir.

9 Q. Was this car located in the parking lot there?

10 A. Yes, sir.

11 Q. Would you please describe that car to the jury?

12 A. It was a golden colored four-door Honda Accord.

13 Q. Did you take any photographs of that car?

14 A. Yes, I did.

15 Q. I'm going to hand you what's been marked and
16 entered into evidence as State's Exhibit 14. Do you
17 recognize that photograph?

18 A. I do.

19 Q. And is that one of the photographs that you took
20 that day?

21 A. It is.

22 Q. And what's that a picture of?

23 A. That is a picture of a handgun that appears to be
24 on the floor board of the vehicle. I'm sure there are
25 several other pictures that go along with this picture as

State of South Carolina versus Anthony Maurice Lounds

1 well.

2 Q. So you took some pictures of that vehicle inside
3 and out?

4 A. Yes, sir.

5 Q. What do you do after you take that photograph?

6 Do you take the gun out of the car at that point?

7 A. Yes, sir, I did.

8 Q. Would you please describe that gun?

9 A. It was a black revolver with a brown handle,
10 Rosier I also documented and serial number in my report.

11 Q. And are serial numbers on guns particular to that
12 specific gun?

13 A. Yes, sir.

14 Q. And can you look at State's Exhibit 19 which has
15 been rendered safe by our sheriff's deputies in the
16 courtroom, is that the same gun that you recovered from
17 under the seat that day?

18 A. Yes, sir.

19 Q. And how do you know?

20 A. By the serial number and also ---

21 Q. Can you tell the jury what you're looking for?

22 A. I'm looking for my initials. I also put my
23 initials on the bottom any time I collect it.

24 Q. The serial number of that gun is the same one as
25 you collected that day?

State of South Carolina versus Anthony Maurice Lounds

1 A. Yes, sir, it's the same serial number.

2 Q. After you collected it, did you test it for
3 fingerprints?

4 A. I did.

5 Q. Where and when did you perform this test?

6 A. I performed this test at the crime scene office.

7 Q. And what method did you use?

8 A. I used the super glue method which I mentioned
9 before to recover latent prints.

10 Q. Were you able to obtain any latent prints from
11 the gun?

12 A. No, sir, I was not.

13 Q. Were you surprised?

14 A. No, sir.

15 Q. Why is that?

16 A. The typical ideal to get latent prints is a
17 smooth, clean and dry surface. Also, in reference to this
18 gun, the handle is coarse and it would absorb any type of
19 sweat left behind.

20 MR. ELLIS: Your Honor, can I ask Mr. Days to
21 come around and show the specific piece?

22 THE COURT: Sure.

23 BY MR. ELLIS:

24 Q. Mr. Days, would you come around so the jury can
25 get a better understanding of what you're talking about?

State of South Carolina versus Anthony Maurice Lounds

1 And, again, the gun has been rendered safe by our sheriff
2 deputies here.

3 Please show the jury certain characteristics
4 of the gun that you were describing that made it difficult
5 to get fingerprints?

6 A. Well, the handle as you can see is a coarse
7 surface ---

8 THE COURT: Speak up. Speak up.

9 THE WITNESS: I apologize. The handle of the
10 firearm is a wooden type surface and it absorbs a lot of
11 sweat and the actual gun itself is beginning to oxidize so
12 it's not a smooth brand new firearm where we could
13 typically maybe possibly get fingerprints off of.

14 MR. ELLIS: Could you show this side so they
15 can see what you're talking about.

16 BY MR. ELLIS:

17 Q. So it wasn't surprising to you that you weren't
18 able to pull any fingerprints off that gun, was it?

19 A. No, sir.

20 Q. You just described oxidation process, would an
21 example be like maybe this pen that I carry around all day
22 in my pocket, if I put it down right here, some
23 characteristics of the pen may be such that you couldn't
24 get my fingerprints off that. Is that similar?

25 A. That is correct.

State of South Carolina versus Anthony Maurice Lounds

1 MR. ELLIS: I beg the Court's indulgence,
2 please.

3 BY MR. ELLIS:

4 Q. Mr. Days, please answer any questions
5 Mr. Robinson has?

6 A. Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. ROBINSON:

9 Q. Mr. Days, good afternoon.

10 A. Good afternoon.

11 Q. So this gun that we're speaking about today that
12 you found in this vehicle that belong to the girlfriend of
13 Mr. Lounds, you can't say that it belonged -- you can't
14 say whether or not it belonged to the girl who owned the
15 car or anyone else? You really can't say who it belonged
16 to, can you?

17 A. No, I can not.

18 Q. Now, also, too, you're a forensic -- what is it
19 again?

20 A. Evidence technician.

21 Q. And you, at the time, were employed by the
22 Sheriff's Office; is that correct?

23 A. No, sir. I was employed with Greenville County
24 Department of Public Safety Forensics Division.

25 Q. Does the Greenville County Sheriff's Office have

State of South Carolina versus Anthony Maurice Lounds

1 a forensics division?

2 A. Greenville County Sheriff's Office uses our
3 agency.

4 Q. And your office was never called out to do any
5 sort of forensics at the Motel 6, was it?

6 A. No. I have no recollection.

7 Q. You were working at that time; is that correct?

8 A. That's correct.

9 Q. So you were never called out to that motel to
10 dust down for prints or get anything to indicate who was
11 out there, who perpetrated this crime out there; is that
12 correct?

13 A. I was never out there to the Motel 6, no, sir.

14 MR. ROBINSON: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 MR. ROBINSON: That's all I have. Thank you.

17 THE COURT: Any redirect?

18 MR. ELLIS: No redirect, Your Honor.

19 THE COURT: Thank you. You can step down.

20 MR. ELLIS: We ask that he be released from
21 his subpoena, Your Honor.

22 MR. ROBINSON: No objection.

23 THE COURT: Without objection.

24 (Witness leaves witness stand.)

25 MR. ELLIS: State calls James Grubbs.

State of South Carolina versus Anthony Maurice Lounds

1 THE CLERK: Mr. Grubbs, would you come around
2 to be sworn.

3 JAMES GRUBBS, having been duly sworn,
4 testified as follows:

5 Thank you. You may be seated. State your
6 full name for the record.

7 THE WITNESS: James C. Grubbs.

8 DIRECT EXAMINATION

9 BY MR. CAMPBELL:

10 Q. Good afternoon, Officer. Where do you work?

11 A. Williamston Police Department now.

12 Q. Where were you working on September 27, 2009?

13 A. With the Greenville Police Department.

14 Q. Did you respond to an incident at 81 South
15 Textile Avenue?

16 A. Yes, sir, I did.

17 Q. Did you come into contact with the defendant,
18 Anthony Lounds?

19 A. Yes, I did.

20 Q. When you arrived on the scene, did you see him or
21 what was going on?

22 A. Another officer had arrived prior to me. Once
23 she had gotten there, I arrived moments later and I saw
24 the defendant coming out of an apartment there. I was
25 looking at a vehicle there that had aroused our suspicions

State of South Carolina versus Anthony Maurice Lounds

1 while we were there.

2 Q. Did the defendant say anything about the vehicle?

3 A. Said it was his girlfriend's vehicle.

4 Q. Did you ask the defendant for any identification?

5 A. Yes, sir, I did.

6 Q. Did he respond to that request?

7 A. He reached into the vehicle into the console area
8 of the vehicle. He pulled is South Carolina driver's
9 license out.

10 Q. What was your impression of his demeanor at that
11 time?

12 A. He was very nervous, his hands were shaking,
13 sweating.

14 Q. Did the defendant remove his South Carolina
15 identification from the console?

16 A. Yes, sir, he did, and he gave that to me.

17 Q. Did he just simply turn around and hand it to you
18 calmly?

19 A. I told him at that time due to the circumstances
20 he was being placed in investigative detention. I wanted
21 him against the car for his safety and mine. As soon as
22 his hands were against the car, I proceeded with a pat
23 down. The other officer walked over there at that time.
24 He violently resisted ---

25 MR. ROBINSON: Your Honor, I'm going to

State of South Carolina versus Anthony Maurice Lounds

1 object to the relevance at this time.

2 THE COURT: Hold on. What's the relevance of
3 this, solicitor? I instruct the jury to disregard that.

4 MR. CAMPBELL: Okay.

5 BY MR. CAMPBELL:

6 Q. So you got the identification out. Was the car
7 searched?

8 A. Later it was, yes, sir.

9 Q. Was anything found in the car?

10 A. Yes, sir, there was numerous amounts of ---

11 Q. Hang on. Was there a weapon found in the car.

12 A. I learned later, yes, sir.

13 Q. Did you actually see the weapon?

14 A. No, sir, I did not.

15 Q. Please answer any questions Mr. Robinson may
16 have.

17 THE COURT: Any questions, Mr. Robinson?

18 MR. ROBINSON: I have no questions.

19 THE COURT: You may step down..

20 (Witness leaves the witness stand.)

21 MR. CAMPBELL: We ask that he be released.

22 THE COURT: Any objection?

23 MR. ROBINSON: No objection.

24 MR. CAMPBELL: Your Honor, that concludes the
25 State's Case in Chief.

State of South Carolina versus Anthony Maurice Lounds

1 THE COURT: All right, take the jury out,
2 please.

3 (Jury exits the courtroom.)

4 Any motions, Mr. Robinson?

5 MR. ROBINSON: Your Honor, I would motion for
6 a directed verdict in this case. The State has not
7 produced any evidence. Here's what they have produced,
8 what they've produced is they have an incident that
9 occurred at the Motel 6 and they have a video of two
10 persons and Mr. Lounds, I believe, was the not the person
11 actually cashing the checks and I believe if you look at
12 the exhibits, his name is not any place. We don't believe
13 that they have put force a case of armed robbery against
14 Mr. Lounds for possession of a pistol during the
15 commission of a violent crime during this matter. We ask
16 that the case be dismissed or Mr. Lounds be acquitted at
17 this time.

18 THE COURT: And I'd have to deny that motion.
19 Okay. Tell me about your testimony and your
20 evidence.

21 MR. ROBINSON: May I have one moment to speak
22 with my client?

23 THE COURT: Sure. We'll take a short recess.

24 (Whereupon, there was a brief break.)

25 Mr. Robinson.

State of South Carolina versus Anthony Maurice Lounds

1 MR. ROBINSON: In the morning, when we first
2 started this case before we took any testimony there was a
3 gentleman sitting in the courtroom in a blue shirt. I
4 think you may have seen him. He went outside. His name
5 is Brigham Young, and according to Mr. Young, he was
6 actually in the room with Mr. Workman and Mr. Lounds when
7 all this happened. And he's given his story and I've
8 spoken to him at the break and I let the prosecutor speak
9 to him as well. I would like to, if we're going to
10 proceed, my client would like him to testify because he
11 was there when this all happened, when this all went down
12 and he knows Mr. Workman.

13 THE COURT: What's his name?

14 MR. ROBINSON: Brigham Young.

15 THE COURT: And tell me again what connection
16 he has with this case?

17 MR. ROBINSON: Your Honor, he was the one
18 that he and Mr. Workman set this thing up where
19 Mr. Workman would buy the drugs at the motel that night.
20 That's what he was there for to buy the drugs and he's the
21 person was there in the room when he bought the drugs in
22 this matter.

23 THE COURT: What relevance does that have
24 whether or not this man committed an armed robbery?

25 MR. ROBINSON: Because he could say that it

State of South Carolina versus Anthony Maurice Lounds

1 was not an armed robbery. That's what he could say that
2 it was not an armed robbery. No gun was used or anything
3 of that nature.

4 THE COURT: Who says this?

5 MR. ROBINSON: Brigham Young.

6 THE COURT: Solicitor.

7 MR. CAMPBELL: Judge, my first concern is
8 that he violated the sequestration order that you imposed
9 at Mr. Robinson's request. I have an understanding that
10 this gentleman, Brigham Young was sitting in the courtroom
11 during Bryan Workman's testimony. This is also last
12 minute witness. He's not on the witness list and he shows
13 up during the trial.

14 THE COURT: Why wasn't this witness disclosed
15 to the State long ago, Mr. Robinson?

16 MR. ROBINSON: I had no idea who this guy
17 was. They had a guy allegedly ---

18 THE COURT: Didn't you talk to your client to
19 find out what your client said?

20 MR. ROBINSON: There was nothing regarding a
21 gentleman in the room.

22 THE COURT: I'm talking about during your
23 investigation in preparation for trial whatever
24 conversations you had with your client.

25 MR. ROBINSON: There was no mention of this

State of South Carolina versus Anthony Maurice Lounds

1 individual. He didn't know his name, Your Honor. He
2 didn't know his name.

3 THE COURT: No, sir, I'm not going to allow
4 that, Mr. Robinson.

5 MR. ROBINSON: Thank you, Your Honor.

6 THE COURT: All right. How much other
7 evidence do you have?

8 MR. ROBINSON: One second, Your Honor.

9 THE COURT: Sure.

10 (Attorney confers with client.)

11 MR. ROBINSON: Your Honor, my client would
12 like to testify in this case.

13 THE COURT: Okay. And you'll have these
14 other witnesses you listed?

15 MR. ROBINSON: Just my client, Your Honor.

16 THE COURT: Okay. Put Mr. Lounds under oath.

17 THE CLERK: Please stand and raise your right
18 hand.

19 ANTHONY LOUNDS, having been duly sworn,
20 testified as follows:

21 Thank you.

22 THE COURT: You can sit down now, Mr. Lounds.
23 Mr. Lounds we are at a point in your trial where you need
24 to make a determination as to whether testify yourself or
25 otherwise present testimony. Do you understand that?

State of South Carolina versus Anthony Maurice Lounds

1 DEFENDANT LOUNDS: (No response).

2 THE COURT: Mr. Robinson just told me that
3 you want to testify; is that correct?

4 DEFENDANT LOUNDS: (Witness nods).

5 THE COURT: Now, you understand that you
6 don't have to testify. You have absolutely no burden in
7 this case. You don't have to take the stand and testify.
8 You don't have to present other evidence and the reason
9 for that is that it's your Constitutional right not to do
10 that, and if you made that choice I would have to tell the
11 jury that they can't even talk about that in the jury
12 room. They can't hold it against you. You understand
13 that?

14 DEFENDANT LOUNDS: (Witness nods).

15 THE COURT: Now, you got a perfect right to
16 take the stand and testify. If you do that, then you
17 become like any other witness subject to cross-
18 examination. Do you understand that?

19 DEFENDANT LOUNDS: Yes, sir. Your Honor, I
20 have a record and I'd like to ---

21 THE COURT: Okay. I'm going to get to that.
22 If you've got a record, then the State has a right to go
23 into that.

24 DEFENDANT LOUNDS: Yes, sir, I'm familiar
25 with that and that's why I want to find out evidentiary

State of South Carolina versus Anthony Maurice Lounds

1 hearing.

2 THE COURT: You want to find out if you can
3 be impeached?

4 DEFENDANT LOUNDS: No, sir. I want to find
5 out what would be the impeachment process referring to the
6 record.

7 THE COURT: I'm saying if you testify, when
8 the solicitor starts his cross-examination, if it comes
9 within the rule and I'm sure Mr. Robinson has told you, if
10 those offenses are of the type for which you can be
11 impeached, then the State has a perfect right to go into
12 that.

13 DEFENDANT LOUNDS: Yes, sir. We would like
14 to have an evidentiary hearing to determine that.

15 THE COURT: Sure.

16 All right, solicitor, what would you use to
17 impeach?

18 MR. CAMPBELL: As far as particular offense,
19 Your Honor, we provided notice to the defendant that we
20 would use impeachment crimes past the 10 years period --
21 I'll go ahead and address within the last 10 years for the
22 Court. He has in 2000, which is right on the verge, false
23 information to an officer, 2001, false representation
24 charge, receiving stolen goods conviction 2009, which
25 would be a crime of dishonesty. He does have some

State of South Carolina versus Anthony Maurice Lounds

1 shoplifting, grand larceny, and burglary convictions from
2 the early 90's, Your Honor.

3 THE COURT: Those are old?

4 MR. CAMPBELL: He also has a voluntary
5 manslaughter conviction from 1995 or '96, but I think that
6 would more prejudicial than probative in this case.

7 THE COURT: I agree.

8 Mr. Robinson, talk with your client about
9 those charges and whether or not they can be used for
10 impeachment.

11 (Attorney confers with client).

12 MR. ROBINSON: Your Honor, Mr. Robinson would
13 like to address the Court again on the subject of
14 testifying. I've had the opportunity to speak with him
15 and have gone over the dangers and pluses and so forth,
16 and he would like to address the Court at this time.

17 THE COURT: All right, go ahead.

18 DEFENDANT LOUNDS: I'd like not to testify at
19 this time, Your Honor, and allow my attorney to have the
20 closing arguments.

21 THE COURT: That's what I was going to get
22 to. Has Mr. Robinson put any pressure on you not to take
23 the stand and testify?

24 DEFENDANT LOUNDS: Your Honor, I would say
25 that you have because you wouldn't allow my witness to

State of South Carolina versus Anthony Maurice Lounds

1 testify. No, sir.

2 THE COURT: This is your decision?

3 DEFENDANT LOUNDS: Yes, sir. I can't present
4 my defense because you won't let my witness testify.

5 THE COURT: That's another matter.

6 MR. ROBINSON: This is your decision.

7 DEFENDANT LOUNDS: I'm satisfied with that
8 Your Honor and let Mr. Robinson make the closing argument.

9 THE COURT: If you don't get any testimony
10 then he does get the final argument.

11 Are you under the influence of any alcohol,
12 drug or any other substance right at this moment?

13 DEFENDANT LOUNDS: No, sir, Your Honor, I'm
14 not.

15 THE COURT: You're sober, you know what
16 you're doing?

17 DEFENDANT LOUNDS: Yes, sir, Your Honor, I
18 am.

19 THE COURT: You made the decision?

20 DEFENDANT LOUNDS: Yes, sir, Your Honor, I
21 did.

22 THE COURT: All right, it's too late in the
23 afternoon to let you argue and charge tonight so we'll do
24 that in the morning at 9:00. Now, tell me how long you
25 think you need to talk to the jury?

State of South Carolina versus Anthony Maurice Lounds

1 MR. CAMPBELL: Judge, I don't anticipate my
2 closing to be very long. I will review all the evidence,
3 but I don't think it will be very long. Are you asking
4 for a specific time frame?

5 THE COURT: I'd like to know.

6 MR. CAMPBELL: I close it in under 25
7 minutes, Your Honor.

8 THE COURT: Mr. Robinson?

9 MR. ROBINSON: Twenty, twenty-five.

10 THE COURT: Anything else before I release
11 the jury?

12 MR. CAMPBELL: Nothing from the State, Your
13 Honor.

14 THE COURT: Okay. Bring them on.

15 (Jury re-enters the courtroom.)

16 Ladies and gentlemen, in the trial of a
17 criminal case, a defendant has absolutely no burden. A
18 defendant does not have to take the stand and testify or
19 otherwise present testimony or evidence and that's because
20 that's the defendant's Constitutional right. The burden
21 is always on the State to prove guilty beyond a reasonable
22 doubt.

23 Now, the defendant in this case has exercised
24 that right and he is not going to testify or present
25 evidence. Now, I will charge you more fully concerning

State of South Carolina versus Anthony Maurice Lounds

1 this right during the course of my charge. We're going to
2 have the final argument sand charge tomorrow morning.
3 It's too late in the afternoon to do the arguments and the
4 charge and to submit to you for deliberation.

5 So when you leave, please remember what I
6 read to you from the Order of the Chief Justice. Please
7 keep your badges on and have them on when you come back in
8 the morning. I ask that you do that so that everyone
9 involved with this case will know that you are a juror and
10 it would highly improper for them to talk about or discuss
11 this case in your presence. So please have your badges on
12 when you leave and when you come back.

13 Please be back in your jury room promptly at
14 9:00. Thank you.

15 (Jury dismissed for the evening at 3:25 p.m.)

16 Be back at 9:00 in the morning.

17 MR. CAMPBELL: Thank you, Your Honor.

18 MR. ROBINSON: Thank you, Your Honor.

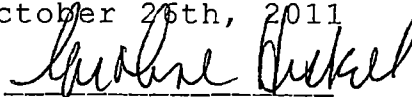
19 --END OF TRANSCRIPT RECORD FOR DAY 1 OF TRIAL--
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21
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23
24
25

State of South Carolina versus Anthony Maurice Lounds

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 12th day of July, 2011.

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

11
12
13 October 26th, 2011

14 

15 Caroline Hiskell
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State of South Carolina versus Anthony Maurice Lounds

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
3) 2001-GS-23-10154,55
4)
5)

4 State of South Carolina) TRANSCRIPT OF RECORD
5)
6)

5 vs)
6)

6 Anthony Lounds)
7)

8 July 13, 2011 - Day 2
9 Greenville, South Carolina

9 B E F O R E:

10 THE HONORABLE C. VICTOR PYLE, Judge

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

12 GEORGE CAMPBELL, Esquire
13 Sloan Ellis, Esquire
14 Assistant Solicitor
15 Attorney for the State

16
17 SCOTT ROBINSON, Esquire
18 Attorney for the Defendant
19
20
21
22
23
24
25

Caroline Hiskell
Circuit Court Reporter

State of South Carolina versus Anthony Maurice Lounds

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2

I N D E X

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(No exhibits or witness presented on this day.)

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State of South Carolina versus Anthony Maurice Lounds

P R O C E E D I N G S

(Whereupon, State versus Lounds - Day 2 continued.)

THE BAILIFF: All rise, court will come to order, the Honorable C. Victor Pyle presiding.

THE COURT: Good morning. Please be seated. Gentlemen, any request for the charge?

MR. CAMPBELL: We don't have anything different from the standard, Your Honor.

THE COURT: Okay. Get ready to talk to the jury.

MR. CAMPBELL: Yes, sir. Although -- the State would note for the record there is no evidence in this case about this being a drug deal, that Mr. Workman was at this hotel for any illegal purpose, so we'd ask Mr. Robinson -- I don't want to object during his closing -- so we'd ask him to stay within the evidence that was presented at trial.

MR. ROBINSON: Likewise.

THE COURT: Of course.

MR. ROBINSON: Your Honor, yesterday at the sidebar I mentioned the lesser included charged of common law strong armed robbery and I'd ask the Court to charge that in this case.

The reason for that it sounded like -- I know

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1 he went over the facts regarding this trial, but also the
2 nature of this case and the seriousness of this case, I
3 would ask for the lesser included charge.

4 THE COURT: I can't do that because there is
5 no evidence that would warrant a lesser charge, so I'd
6 have to deny that.

7 Okay, bring the jury.

8 MR. ROBINSON: Your Honor.

9 THE COURT: Yes, sir.

10 DEFENDANT LOUNDS: May it please the Court,
11 Your Honor, yesterday me and Mr. Robinson had a
12 credibility issue pertaining to a witness that I wanted to
13 put on the stand, Your Honor. This is a life without
14 parole trial, I'm fighting for my life. At this time, I
15 would request that I have an opportunity to present the
16 witness. As I said, again, I am fighting for my life as
17 the defense hasn't presented anything. There is a witness
18 and he is on the list, Your Honor, and he is under
19 subpoena. I would like to have this witness to testify
20 for the defense.

21 THE COURT: I asked you yesterday if you had
22 any witnesses to present and I asked you if you wanted to
23 testify and you said no. I excluded the one witness that
24 was sitting in the courtroom because he had not been
25 listed, heard all the testimony. You never gave his name.

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1 DEFENDANT LOUNDS: This is not the witness,
2 Your Honor. This is another witness that was a
3 credibility issue between me and Mr. Robinson. He has
4 presented nothing and I want to present this witness. I
5 am fighting for my life, Your Honor.

6 THE COURT: I understand that, but I have to
7 deny that, sir.

8 DEFENDANT LOUNDS: One more thing, Your
9 Honor, I want to make sure I put this on the record.

10 THE COURT: Sure.

11 DEFENDANT LOUNDS: Yesterday me and
12 Mr. Robinson made a motion for you to recuse yourself from
13 this case, Your Honor, because this case was before you on
14 December 8, 2010 and I made a motion and, Your Honor, you
15 agreed you would recuse yourself because I was sentenced
16 by you to a life without parole on December 5, 2001.
17 Subsequently it was overturned by the higher court. We
18 brought this to your attention. I just wanted to put that
19 on the record, sir.

20 THE COURT: Okay. You got it. Bring the
21 jury.

22 (Jury re-enters the courtroom.)

23 Good morning. All right, solicitor, you may
24 proceed.

25 MR. CAMPBELL: Thank you. Your Honor.

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1 If it please the Court, ladies and gentlemen,
2 this is closing arguments. This is where we get to come
3 and talk to you and sum up all of the evidence in the case
4 and inferences you can draw and what your decision ought
5 to be.

6 At the beginning of the case I told you about
7 A,B,C-1,2,3. There are three questions that you have to
8 answer in this case that's your duty as finders of fact.
9 A, the identity of the robbery, was that Mr. Lounds? B,
10 did he use a deadly weapon, did he have a gun? C, did he
11 use that gun to rob Bryan Workman of his wallet,
12 checkbook, and other items. Those are the three questions
13 you have to answer. If you answered yes, you have to
14 convict him.

15 The evidence you have is 1,2 & 3. No. 1, you
16 have the victim's identification. He gave a description
17 the night of the robbery. He came in and identified
18 Mr. Lounds in a photo line-up before Investigator King.
19 He was positive of no doubt that that was the guy. Then
20 he sat there on the stand under oath and told you that's
21 the guy. He pointed to him and said that is the man who
22 robbed me. We've got the Ingles video, that's No. 2. You
23 see Mr. Lounds on that video with the accomplice, whoever
24 that was, cashing the check. That was only hours -- less
25 than 12 hours after this robbery.

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1 Then we have the gun. Three weeks later he
2 was found with the gun that matches the description.
3 Bryan Workman got on the stand and said, that's it, that's
4 the gun used to rob him.

5 Now, the law applies equally at the Motel 6
6 as at the Ritz Carlton. In this country you have a right
7 to not have things taken from you by force. It doesn't
8 matter what area of town that you live in; what your race,
9 religion, creed, belief; whether you're staying at a
10 \$5,000 a night suite or \$20 a night motel, you got a right
11 to be safe, you got a right not to be robbed.

12 Now, what's not relevant in this case? I
13 want to talk about that. Did the gun go off? Doesn't
14 matter. The robbery had already occurred. If this gun
15 was broken, under the law as Judge Pyle will charge you,
16 it's still an armed robbery. It's either a weapon or a
17 representation of a weapon. You have to live as Judge Pyle
18 gives it to you and you apply the facts as you find him.
19 So did the gun go off? May be, may be not, it doesn't
20 matter.

21 Now, let's talk about forensics,
22 contamination. What we do know is Investigator King
23 finally discovered or at least knew for certain that the
24 gun went off in the motel room. That was a couple weeks
25 after this happened and he told you that the contamination

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1 of that crime scene and it would be highly unlikely that
2 whatever evidence he found would be useless in this case
3 charging Anthony Brown. Remember how Jeremy Days got up
4 here and told you about prints, how it's hard to get
5 prints off of rough surfaces. Deputy Gladson told you
6 that the railings of the motel had a lot of rust on them
7 at the time. They were oxidized. There weren't any clean
8 smooth surfaces that were dry to get fingerprints off of.

9 We'd all like to get more forensics. We'd
10 always like to have DNA in every case. We'd always like
11 to have satellite images from the CIA's database of what
12 was going on but that's just not reality. The great thing
13 about television is we can have a crime. We can identify
14 all the witnesses. We can have a full investigation. We
15 can test the DNA and then we can have a full blown trial
16 and a verdict in less than an hour. But as you know
17 sitting here again this morning, that's not really what
18 happens in the real world. These things take time and
19 they always don't come out perfect. Just because it's not
20 perfect doesn't mean you don't have enough evidence to
21 convict Anthony Lounds of armed robbery without
22 hesitation.

23 We talked about how this may have been a bad
24 area. We all can't afford to stay at the Westin or afford
25 the Ritz Carlton. The law applies equally everywhere to

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1 everyone.

2 Now, Investigator Morgan told you that he had
3 plenty of evidence to charge. In his experience doing
4 these type of investigations, he had all the evidence he
5 needed to go forward with charging Anthony Lounds with
6 armed robbery.

7 Now, let's talk about reasonable doubt.
8 There are very few things in this world that we know for
9 absolutely certain. The law does not require you to know
10 everything for absolute certain. The law requires you to
11 have enough evidence to be convinced of your decision to
12 act without hesitation.

13 Let me give you a story I heard from an old
14 country lawyer in Pickens. He said, imagine you and I go
15 down to the State Fair in Columbia and we go to one of
16 those dunking booths where you get the baseball and you
17 can throw that baseball at the bulls eye and that clown or
18 whoever it is that's on the platform falls in the water.
19 I take that baseball and I throw it and I nail the bulls
20 eye and the clown falls in the water. Now, is it possible
21 that the spring broke? Yeah. Is it possible that a mouse
22 tripped the switch running behind the machine? Yeah. Is
23 it possible that the clown had a stroke and fell into the
24 water? Sure. All those things are possible but they're
25 not reasonable given that situation.

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1 Again, reasonable doubt is you don't have to
2 know everything for absolutely certain. You simply have
3 to be convinced of your decision to act without
4 hesitation.

5 Now, let's talk about take home messages for
6 each of the witnesses. There are not a lot of them but I
7 just want to briefly touch on each of them. Bryan Workman
8 got on the stand right here under oath. He pointed to
9 Anthony Lounds and said that's him under oath. That's the
10 man who robbed me. Bryan Workman identified Mr. Lounds in
11 this photo line-up, and Bryan Workman looked at this gun
12 and said that's it, that's the gun. Then we go on -- and
13 also remember Bryan got two good looks in lighted
14 conditions face to face.

15 Now, Bowers and Gladson, our two deputies
16 that responded that night. They got on the stand. The
17 take home message there is that Bryan Workman was scared
18 to death. He was terrified. He didn't want to be there.
19 He didn't want them to leave when the shots started going
20 off across the road. He didn't want to stay at the room
21 he had already paid for. He wanted them to take him home
22 to his girlfriend who was already mad at him. That means
23 he really didn't want to be at that hotel.

24 Clinton Berry got on the stand and said these
25 are definitely Bryan's checks. They were cashed at Ingles

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1 and he signed an Affidavit of Forgery saying these are not
2 my signatures. I did not authorized these checks to be
3 cashed. Don Howell from Ingles got on the stand and told
4 you this is the video equipment from the time these checks
5 were cashed. The same checks Clinton Berry identified.
6 On that video, we've got the images and y'all saw the
7 video and one of these people is Anthony Lounds standing
8 right there at the counter. And remember the time frame,
9 less than 12 hours after the robbery.

10 Jerico Downs, the Ingles manager got on the
11 stand under oath and told you I always check for ID.
12 That's the company policy, that is my practice, I always
13 check for ID. And the guy in the picture certainly looked
14 like the guy who was presenting the checks. Think about
15 that. Look at Anthony Lounds. He does not look at thing
16 like Bryan Workman so he had to go get somebody to cash
17 the check for him. There is no way he could have passed
18 for Bryan with an ID that looked like Bryan. He had to
19 get some help.

20 Now, Investigator Morgan told you he went to
21 talk to Anthony about this to see what was going on. He
22 said Anthony I got a video I want you to watch. He
23 explained his rights to him. Anthony knew he didn't have
24 to say anything, didn't have to say a word, but he admit,
25 yeah, that's me in the video. Investigator King told you,

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1 yeah, I recognized Anthony Lounds on that video with the
2 checks that were stolen less than 12 hours earlier. He
3 told you in my experience I didn't need anything more to
4 charge him. This was enough.

5 Shamika Sanders got on the stand, the officer
6 from the Greenville City Police Department. She said I
7 saw the defendant, found the gun in the car. He came and
8 told me this was his girlfriend's car. His ID was in the
9 car. So remember Bryan said, that's the gun.

10 Jeremy Days got up on the stand and explained
11 we can't get fingerprints from a rough surface. That an
12 oxidized and a coarse handle will very unlikely leave
13 fingerprints so it's not surprising we weren't able to get
14 anything off of that gun. And then Officer Grubbs got up
15 on the stand and told you that when they found Anthony
16 with that gun, he was nervous, he was shaky, he was
17 scared. He knew he was caught.

18 Now, if you remember anything in this case,
19 the most important thing is this, Bryan Workman --
20 probably in most of these robberies, the victim is lucky
21 to even get a look at the robbers face. They've either
22 got a mask on or standing behind them or something of that
23 nature. In this case, Bryan got two good looks face to
24 face in well lit areas where he had a conversation with
25 the defendant, and Anthony Lounds has a distinctive look

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1 at him. He's not an easily forgotten person, and that's
2 what makes Bryan's testimony credible.

3 So at the end of the day, A,B,C, 1,2,3. Did
4 Anthony Lounds use a gun to rob Bryan Workman? The answer
5 is, yes, because the victim identified him, identified the
6 gun. You have the Ingles and this gun was found on
7 Anthony Lounds a few weeks later. If you answer yes to
8 that question, you must uphold your oath, you must do your
9 duty, you must find him guilty of armed robbery. Thank
10 you.

11 THE COURT: Thank you.

12 MR. ROBINSON: May it please the Court,
13 Mr. Campbell, Mr. Sloan. I want to thank you for giving
14 us the opportunity to address you for the last couple of
15 days. I want to address at the outset some of the
16 comments that were made by Mr. Campbell that I think you
17 may find interesting.

18 First of all, he back tracked on the
19 statement that you're going to see back in the jury room
20 that Mr. Workman gave a week-and-a-half, two weeks later.
21 He back tracks saying about a gun being defective or
22 something wrong with the gun. There is no evidence in
23 this case that that gun was defective or this black gun
24 was defective. He said, oh, well, it could be something
25 wrong with the gun or something like that, but you

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1 understand that the police never said anything about a
2 shot. It's what Mr. Workman says in his statement and
3 he's trying to go back on what Mr. Workman says.

4 Secondly, this contamination of the scene,
5 the police is an entity. They are supposed to serve and
6 protect. They're supposed to investigate and there was no
7 investigation done in this case. The interesting tale
8 that the officer says that they just happened these
9 officers went to the scene and they didn't talk to any
10 witnesses. They were no witnesses. They didn't talk to
11 the store -- the desk clerk as to what they say. They
12 didn't talk to anybody. They didn't go into the room to
13 see if there was anything that could corroborate what
14 Mr. Workman said. There's nothing. So to blame it on
15 contamination.

16 What he is trying to say is, well, we didn't
17 have to investigate this case. We didn't have to do
18 forensics. We didn't have to do anything basically. Is
19 that investigation to you? Is that an investigation that
20 should have taken place? It's not.

21 As far as Mr. Campbell trying to say checks
22 were reported missing a day later in the previous
23 statement, we're not talking about a day. We're talking
24 about a week basically. Six days finally before he
25 reported the checks being missing from Ingles. I'd like

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1 to clarify that a little bit.

2 And, also, too, if you listen to the
3 testimony, Mr. Workman could not say this was the gun. He
4 could not say this was a gun. He also couldn't say that
5 this gentleman was the -- he said 90 percent sure, not 100
6 percent but 90 percent sure. That's what he said. He
7 didn't get up on the stand and say anything different from
8 that.

9 Let's go through the evidence in this case
10 because you've got a lot of stuff here you need to look
11 at. This gun -- you'll have this back in the jury room --
12 this gun that they have presented to you, this nice little
13 gun with this brown handle can not be connected to this
14 case. You heard the forensic person from Public Safety
15 yesterday. He says he has no idea who this gun belonged
16 to, no idea. They did forensics on it or whatever it is.
17 They make it so this gun had something to do with it, but
18 they have nothing that would establish this gun had
19 anything to do with it. So they can't do anything to show
20 that this is connected to any robbery.

21 The tape, this is the tape that they have,
22 you saw that yesterday, Power Point presentation. Look at
23 the tape when you go back there. You can't see Anthony on
24 that tape. You see two gentlemen on that tape, but you
25 can't see him, and he's not even the guy that cashes any

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1 checks. The checks themselves, look at the checks when
2 you go back there. There's no one indication here of
3 Anthony Lounds on these checks, nothing; not his
4 signature, not his handwriting, nothing.

5 This was the vehicle. This vehicle belonged
6 to someone else. Didn't belong to Anthony Lounds, it
7 belonged to somebody else, and you heard the officer
8 testify and there were other people out there, but they
9 have nothing that would indicate to forensics or otherwise
10 that this gun that was found in a vehicle that did not
11 belong to Mr. Lounds, was Mr. Loundss' gun. There were no
12 fingerprints on there. Nothing.

13 Now, Mr. Campbell uses a quote from an old
14 Pickens County lawyer and I think that was good, very
15 good, but let's use a different quote then we can talk
16 about it -- two quotes. The first quote is nothing good
17 happens after midnight in the morning, nothing good
18 happens at that time.

19 Let's talk about Mr. Workman's story and why
20 it can't be corroborated and doesn't make any sense.
21 First, you'll got an opportunity to read his statement
22 back there, which is an exhibit that the State has put
23 into evidence. There's no record any place of Mr. Workman
24 staying at that motel. You didn't hear anyone come
25 forward to testify that he ever stayed at that hotel. You

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1 didn't see any registration being presented to you.
2 Nothing. When the officers got there, no one had heard
3 any gunshots. No one had seen Mr. Lounds at this motel at
4 maybe 2:00, 3:00 in the morning.

5 The police says that he had no visible signs
6 of injury, but he says in his statement on the 29th that
7 he was hit on the head and he fell to the ground. The
8 officer said he saw no signs of physical injury. He also
9 so no signs that there was bullet holes or anything any
10 place, nothing.

11 So you got to think about it going back to
12 that quote, nothing good happens after midnight in the
13 morning. So what do we gather could have happened out
14 there and why was his girlfriend mad? Do you remember him
15 testifying that he had been out there before? Now, this
16 motel was may be 15 minutes away from where he lived.
17 Now, you tell me why would a person go to a motel on this
18 side of town -- the officers all testified -- one officer
19 testified that this is a bad place. What did they do at
20 this motel? What was its reputation? Prostitution and
21 drugs.

22 I would submit to you that Mr. Workman was
23 scared. Of course, he was scared because his girlfriend
24 who lived 15 minutes away was made that he had been out at
25 this time of morning with his buds at Casablanca and the

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1 Dugout and he got in some trouble. Maybe he bought some
2 drugs, bought a prostitution or something like that, who
3 knows? What was he doing at that motel at that time of
4 morning only 15 minutes away from where he lived? Think
5 about that.

6 And what they don't have in this case -- they
7 Mr. Workman in that motel this time of morning, but where
8 were these buds that he had with him, these guys that went
9 with him to the different places. He had three other guys
10 that were with him going out to Casablanca and the Dugout.
11 The officers all testified -- they testified that he
12 smelled of alcohol, but what they don't have is not one
13 person that can corroborate or say anything that
14 Mr. Lounds was over there at this motel. Nothing. No
15 video of the motel, no witnesses that could put Mr. Lounds
16 at the motel that time of day, no fingerprints that could
17 put him at that motel that time of day. Nothing.

18 And besides the victim being there in the
19 early morning hours, think about this and think about --
20 one of the reasons why our jury system works the way that
21 it does, you may have heard when the panel was originally
22 struck downstairs, Judge Welmaker talked about other
23 countries versus our country's judicial system. You were
24 chosen because y'all bring to this your collective wisdom,
25 your knowledge, what you been through in your life, your

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1 common sense. What was this victim doing at this motel
2 that was reputed to be a place where prostitution took
3 place -- area, excuse me -- drugs this time of the
4 morning?

5 But the other question you need to ask
6 yourself if he was robbed of a checkbook, why didn't he
7 close his account -- think about that -- from this
8 location. In 2009, they did have telephones. They did
9 have customer service where a person could call on the
10 phone and cancel they're account and close they're
11 account, but he didn't do that. He didn't do it for six
12 days, five or six days or so. He didn't do it immediately
13 on the 16th. Could it be maybe he was paying for a
14 prostitute, paying for some drugs, doing something.

15 MR. CAMPBELL: Your Honor, objection,
16 argument outside of the evidence.

17 THE COURT: You're getting a little bit
18 outside of my ruling.

19 MR. ROBINSON: I apologize, Your Honor.

20 THE COURT: I instruct the jury to disregard
21 the last comment by Mr. Robinson.

22 MR. ROBINSON: Again, I want you to look at
23 the line-up that they presented to this alleged victim at
24 this time of morning talks about. It's pretty apparent
25 the only person in this line-up with the ears that Anthony

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1 has -- Anthony has something distinctive about him. Not
2 only is he a fine, good-looking man with a nice suit, he
3 also has ears that are very distinctive, and he is the
4 only one in this picture that distinctive ears.

5 The second quote that I give in this case is
6 from Harry Truman, one of our presidents, that almost only
7 counts in horse shoes and hand grenades. The victim in
8 this case was in a motel in the early morning hours.

9 There's no forensic evidence placing Anthony Lounds there,
10 nothing at all. The gun can't be connected to this. The
11 victim says it may be the gun, may not be the gun. The
12 victim says he was 90 percent sure it was Anthony Lounds,
13 almost definite. 90 percent. As President Truman said,
14 almost only counts in horse shoes and hand grenades.

15 So you have this. One, you have a video, you
16 have a very suggestive line-up, but nothing connects
17 Anthony Lounds to being at that motel that time of day.
18 Look at the person and look at the victim's credibility in
19 this matter and use your common sense.

20 Now, Mr. Campbell talked about this idea of
21 reasonable doubt and the Judge will charge you in a moment
22 and what I saw it not the law. What the Judge charges is
23 the law. Now, I talked about it when I first opened the
24 case with you. When you came into this courtroom
25 yesterday, you took an oath. On tv and in newspapers and

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1 on the Internet, when the police or law enforcement arrest
2 someone or catches someone, the automatic reaction that
3 everyone makes is that they presume that that person is
4 guilty. That person must be guilty. That's not the law
5 in the case. Anthony Lounds is presumed innocent and the
6 State has the burden of proof in this matter, not the
7 defense, the State has the burden of proof in this case.

8 It's not maybe, could be, possibly. You may
9 not like the way Anthony Lounds looks. You may not like
10 his tie or his suit, but just because you don't like the
11 way someone looks does not make them guilty in a case. I
12 ask you on behalf of Mr. Lounds that you render a verdict
13 that speaks the truth. He may not be perfect, you may not
14 like Mr. Lounds, but has the State proven their case
15 beyond a reasonable doubt to you and let the forensic
16 evidence or lack of forensic evidence and look at the fact
17 that nothing can be connected. The dots can't be
18 connected and the circumstances why this gentleman was at
19 the motel at this time of day.

20 There is no corroborate and he didn't cash
21 his check -- didn't find out about these checks being
22 stolen or whatever it was here for days and days and days.
23 Think about those things and I ask you to render a verdict
24 that speaks the truth, and that is that Anthony Lounds is
25 not guilty of these charges. Thank you.

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1 THE COURT: All right, no one in or out of
2 the courtroom during my charge. So if anyone has to now
3 is the time to do it.

4 Ladies and gentlemen, the defendant in this
5 case is indicted on two counts the first of which is for
6 armed robbery and in order for you to understand armed
7 robbery I must first define for you the term larceny and
8 then robbery.

9 Ladies and gentlemen, larceny is defined as
10 the taking and carrying away by any person of the goods
11 and things personable of another with the intent to
12 permanently deprive that owner of his or her property.
13 Now, that is what constitutes larceny. Robbery on the
14 other hand is the felonious or the unlawful taking of
15 money or goods or things personable from the person of
16 another or in his or her presence and by using violence or
17 by putting that person in fear.

18 Robbery includes all of the elements to
19 constitute larceny as I define that to you, but the
20 aggravating circumstances necessary to constitute robbery
21 as distinguished from larceny, first of all, the taking
22 must not only be without consent but it must be taken by
23 using violence or by putting that person in fear.

24 I charge you, ladies and gentlemen, if it is
25 taken in his or her presence, it is taken constructively

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1 from that person. In other words, for the purpose of
2 robbery a thing is in the presence of a person if it be
3 within his reach, inspection, observation or control so
4 that he could retain possession of it if not overcome by
5 violence or prevented by fear. That is what constitutes
6 robbery.

7 An armed robbery, ladies and gentlemen, is
8 robbery as I have described that to you while armed with a
9 deadly weapon. Now, Section 16-11-350 of our Code of Laws
10 reads and is as follows: Any person convicted for the
11 crime of robbery while armed with a pistol, dirk,
12 slingshot, metal knuckles, razor or other deadly weapon,
13 or while alleging either by action or words he was armed
14 or using a representation of a deadly weapon or any object
15 which a person present during the commission of the
16 robbery reasonable believed to be a deadly weapon. That,
17 ladies and gentlemen, is armed robbery.

18 Now, the defendant is next indicted in Count
19 2 with the possession of a weapon during the commission of
20 a violent crime. In Section 16-23-4 mainly provides in
21 part if a person is in the possession of a firearm or
22 visible displays what appears to be a firearm during the
23 commission of a violent crime or is convicted of
24 committing or attempting a violent crime as defined in
25 Section 16-1-60, he must be imprisoned in addition to the

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1 punishment provided for the principle crime. And under
2 the Statute, ladies and gentlemen, I charge you that armed
3 robbery is defined as a violent crime.

4 So before this defendant can be convicted of
5 this offense, you, the jury, just find him first of all
6 guilty of armed robbery. The State must prove beyond a
7 reasonable doubt that this defendant was in possession of
8 or displayed a firearm or what appeared to be a firearm as
9 I defined that term to you during the commission of a
10 crime.

11 Now, ladies and gentlemen, one of the issues
12 in this case is the identification of this defendant as
13 the perpetrator of the crime. The State has the burden of
14 proving identity beyond a reasonable doubt. It is not
15 essential that the witness, himself or herself, be free
16 from doubt as to the correctness of his statement or her
17 statement, however, you the jury must be satisfied beyond
18 a reasonable doubt of the accuracy of the identification
19 of this defendant before you can convict him. If you're
20 not convinced beyond a reasonable doubt that this
21 defendant was the person who committed the crime, then you
22 must find him, not guilty.

23 Now, identification testimony is an
24 expression of belief or impression of the eyewitness.
25 It's value depends on the opportunity of the witness to

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1 observe the defendant at the time of the offense and to
2 make a reliable identification there after.

3 Now, in appraising identification testimony
4 of a witness you may consider the following: First of
5 all, did the witness have the capacity and the opportunity
6 to observe the defendant. Now, whether a witness had an
7 adequate opportunity to observe the offender at the time
8 of the offense which would be a fact affected by such
9 matters as how long or short a time was available, how far
10 or close the witness was and or how good were lighting
11 condition.

12 You may also, ladies and gentlemen, consider
13 whether the identification made by the witness subsequent
14 to the offense the product of his or her own recollection.
15 You may take into account both the strength of the
16 identification and the circumstances under which the
17 identification was made.

18 Now, as I said earlier, ladies and gentlemen,
19 the burden of proof is on the State in this case and it
20 extends through ever element of the crimes charged and
21 this includes the identity of the defendant as the
22 perpetrator of the crimes for which he has been charged.
23 And after examining the testimony, you have a reasonable
24 doubt as to the accuracy of the identification, then you
25 must find this defendant not guilty.

State of South Carolina versus Anthony Maurice Lounds

Now, ladies and gentlemen, as jurors in this case you have a function or responsibility that is entirely separate and distinct from my function as the trial judge. The Constitution of this state does not permit me to charge you on the facts on this case. I am also prohibited from discussing the facts of the case with you or in any way letting you know of what my feelings are about this case; therefore, if during the course of this trial or during the course of my charge, you have a feeling I have an opinion about this case one way or another, then you disregard that feeling or that impression.

It's your duty and your duty alone to weigh the testimony and the evidence presented in this case and to pass upon the credibility and the believability of the witnesses you heard testify. In this connection you can believe all of what a witness told you or you can disbelieve all of what a witness told you. You can believe part of what a witness told you and disbelieve a part of what a witness told you. You can believe one witness against several or you can believe several against one. You also have the right to take into consideration any bias or prejudice or sympathy you may feel a witness in the case might have.

Now, it's my duty to charge you the law

State of South Carolina versus Anthony Maurice Lounds

1 applicable to the facts in this case. It's not a question
2 of what you feel the law might be or what it should be.
3 It is not necessarily what the lawyers told you it was
4 because you must take the law as I give it to you, apply
5 that law to the facts that you determine those facts to be
6 and to write your verdict according.

7 It is also my duty to see that this trial is
8 conducted according to the rules of court and the rules of
9 evidence applicable to the facts of the case and I charge
10 you that you are not to consider in any way or manner
11 testimony or evidence or arguments that were ruled out by
12 me or disallowed.

13 Now, in this case, as in all criminal cases
14 this defendant comes into this courtroom presumed to be
15 innocence and this presumption continues and carries
16 throughout the entire trial until and unless it is removed
17 by evidence that satisfies you of his guilty beyond a
18 reasonable doubt.

19 The burden is on the State in this case to
20 prove the defendant guilty and to prove each and every
21 element of the offenses for which he is charged beyond a
22 reasonable doubt.

23 Now, some of you may have in the past served
24 as jurors on civil cases and if so you were most likely
25 told it was only necessary to prove that a fact was more

State of South Carolina versus Anthony Maurice Lounds

1 likely true than not true, but in criminal cases, the
2 burden of proof must be more powerful than that. As I've
3 told you, it must be beyond a reasonable doubt.

4 Now, proof beyond a reasonable doubt is proof
5 that leaves you firmly convinced of this defendant's
6 guilty. There are very few things in this world that we
7 know with absolute certainty and in criminal cases, our
8 law does not require proof that overcomes every possible
9 doubt. If based on your consideration of testimony and
10 evidence in this case you are firmly convinced that this
11 defendant is guilty, then you will find him guilty. If on
12 the other hand, you think there is a real possibility that
13 he is not guilty, then you must give him the benefit of
14 that doubt and find him not guilty.

15 Ladies and gentlemen, our law does not compel
16 a defendant in a criminal case to take the stand and
17 testify or otherwise present evidence or testimony and no
18 presumption of guilty may be raised and no inference of
19 any kind may be drawn from this defendant's decision not
20 to testify or otherwise not to present testimony or
21 evidence. Our law never imposes on a defendant in a
22 criminal case the burden or duty of calling any witnesses
23 or producing any evidence or of testifying, therefore, the
24 decision of this defendant not to take the stand and
25 testify on his behalf can not be taken, held, considered

State of South Carolina versus Anthony Maurice Lounds

1 or discussed against him in any manner whatsoever.

2 Ladies and gentlemen, under the oath you took
3 in this case, you swore to try this case based solely on
4 the testimony and evidence in this case. I tell you that
5 it is your duty to lay aside all outside opinions, bias,
6 prejudice or sympathy that you may have in reaching your
7 verdict. The word verdict is taken from the latin work
8 veredicto it means to speak the truth. You have no
9 friends to reward in this case or enemies to punish. I
10 charge you to abide by your oath and return verdicts that
11 speak the truth.

12 Now, you'll have in the jury room with you
13 the indictment in this case. This indictment does not
14 constitute evidence. It simply sets forth the allegations
15 by the State. This is the legal document that brings this
16 case into the courtroom and presents it to you for your
17 determination. With respect to each count, there are one
18 of two possible verdicts, guilty or not guilty, and
19 whatever those verdicts are they must be unanimous, that
20 means all 12 of your must agree.

21 Madam foreman, you will find on the back of
22 the indictment where it says verdict, I put Count 1, Count
23 2. Count 1 is armed robbery, Count 2 is possession of a
24 weapon, and what I whatever the unanimous verdict is
25 guilty or not guilty please write it out in those spaces

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1 and then sign your name where it says for person of the
2 jury.

3 Now, at this time, I am required to go over
4 my charge with the lawyers. I need you to go back into
5 the jury room, but do not begin deliberating until I send
6 in for you to do so.

7 Thank you.

8 (Jury leaves the courtroom).

9 Anything from the State?

10 MR. CAMPBELL: Nothing from the State.

11 THE COURT: The defense?

12 MR. ROBINSON: No exceptions but I would note
13 my earlier request for a charge on the lesser included
14 charge.

15 THE COURT: All right, you got all the
16 exhibits together.

17 (Jury began deliberations at 9:50 a.m.)

18 (Court and parties reconvene for jury
19 question.)

20 All right, the jury has a question. "May we
21 have access to the original police report. We are
22 interested in the defendant's original description of the
23 gun. Thank you."

24 (Question from the jury marked as Court's
25 Exhibit No. 1 for identification and admitted into

State of South Carolina versus Anthony Maurice Lounds

1 evidence.)

2 Bring the jury our please.

3 (Jury re-enters the courtroom.)

4 Madam foreman, you have sent in this
5 question. "May we have access to the original police
6 report. We are interested in the defendant's original
7 description of the gun."

8 Now, ladies and gentlemen, I don't know if
9 there is a police report. If there is one, I don't know
10 whether the defendant's description is or is not in the
11 report. Normally, police reports are not present into
12 evidence because they contain opinions of the police
13 officers. But in any event, since it is not in evidence
14 then I can not present or give that to you.

15 So with that, I need you to retire to your
16 jury room and continue with your deliberations. Thank
17 you.

18 (Jury exits the courtroom.)

19 Thank you. Be at ease.

20 THE COURT: Yes, sir.

21 MR. ROBINSON: Your Honor, in your
22 instruction to the jury, you said the defendant's
23 statement to the police. I thought this was the victim's
24 statement that they were talking about what the victim
25 said.

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1 THE COURT: Let me see the question.

2 The want the original police report. "We are
3 interested in the defendant's original description of the
4 gun." They asking for the statement made by the defendant
5 whether he gave a description. I agree it's confusing.

6 MR. ROBINSON: Thank you, Your Honor.

7 THE COURT: In any event, it's not in
8 evidence.

9 Please be at ease and stay close.

10 (Court reconvene, verdict reached at
11 12:15 p.m.)

12 All right, ladies and gentlemen, I've been
13 told we have a verdict in this case and obviously we don't
14 know what that verdict is but I need everyone in the
15 courtroom to understand that regardless of the verdict, I
16 will not permit or condone any displays of any kind of
17 emotions, no outburst, no crying, laughing, nothing. And
18 should there be in, that will constitute contempt of court
19 and I will punish accordingly. Now, does anyone not
20 understand what I just said.

21 All right, bring out the jury.

22 (Jury re-enters the courtroom.)

23 Madam foreman, if you reached a verdict, hand
24 it to the bailiff, please, ma'am.

25 Would you please publish the verdict.

State of South Carolina versus Anthony Maurice Lounds

1 THE CLERK: Your Honor, this is Case No.
2 2009-GS-23-10155, Anthony Maurice Lounds, indictment for
3 armed robbery and a possession of a weapon of a violent
4 crime; Count 1 guilty, Count 2 guilty, signed fore person
5 Debra Reich. If this is your verdict, please raise your
6 right hand.

7 (Jury complies).

8 Thank you.

9 THE COURT: Anything further from the jury,
10 counsel?

11 MR. CAMPBELL: Nothing from the State, Your
12 Honor.

13 MR. ROBINSON: Nothing from the defense.

14 THE COURT: Ladies and gentlemen, thank you
15 for your service on this case. I don't know what the
16 balance of the day holds for you but what I need for you
17 to do this time is report back downstairs to the jury
18 assembly room and Judy will let you know about the rest of
19 the day. Thank you very much.

20 (Jury exits the courtroom.)

21 Any motions, Mr. Robinson?

22 MR. ROBINSON: Your Honor, at this time we
23 make a motion for the Court to render a verdict
24 notwithstanding this particular verdict. We do not
25 believe and we submit to the Court that there was not

State of South Carolina versus Anthony Maurice Lounds

1 enough evidence in this case for the jury to make this
2 decision. There was a lot of reasonable doubt in this
3 case and I ask the Court to render its own verdict.

4 THE COURT: And I deny that motion. Anything
5 else?

6 MR. CAMPBELL: Nothing from the State, Your
7 Honor.

8 MR. ROBINSON: Your Honor, at the appropriate
9 time as I had alluded to at the beginning of the trial,
10 the solicitor has noticed us to a life without parole
11 under the Statute in December. I would like to argue when
12 the Court wishes.

13 THE COURT: Please do so.

14 MR. ROBINSON: Your Honor, looking at
15 Anthony's records, he's got a record starting back in
16 1990, but his record kind of -- he had a long period of
17 time when he was doing nothing. He was doing fine and so
18 forth. I talked to his sister about the original
19 voluntary manslaughter in this case and he had a very good
20 self-defense argument in that case and he entered a plea
21 of voluntary manslaughter originally charged with murder.
22 But, Your Honor, that case itself, there were a lot of
23 facts in that case that could have led a reasonable fact
24 finder to find him not guilty by reason of self defense.
25 He decided at some point to enter a plea of voluntary

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1 manslaughter to avoid having the case heard on murder.

2 But, Your Honor, we believe that this kind of
3 punishment for Anthony is cruel and unusual under the
4 Statute. One argument that Anthony did ask me to make to
5 you and this is from Anthony and I don't believe this is a
6 credible argument based on the case law, but he would like
7 to make the argument at the time he pled guilty of
8 voluntary manslaughter, he believed it was not a Most
9 Serious offense. I read the Statute and it was a Most
10 Serious offense at the time, but the argument that I have,
11 Your Honor, is I don't believe should apply to him because
12 while he's got one voluntary manslaughter and a self
13 defense case, it's not a situation where you have a
14 criminal where you have a career criminal here.

15 The facts in this case completely lend
16 themselves to -- there is no indication in this case.
17 There are no fingerprints in this particular case,
18 forensic evidence, nothing, to indicate that he has
19 committed the crimes. He was found guilty and I have to
20 respect what the jury did, but based on the fact that his
21 record, if you look at his record, he's got the one
22 voluntary manslaughter that pled down on murder that
23 should have been self defense if he went to trial on that.

24 We don't believe it's applicable in this case
25 and we ask the Court not to sentence him under the LOP

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1 Statute.

2 THE COURT: As the trial judge, tell me what
3 authority I have to second guess what occurred on a murder
4 trial that pled voluntary manslaughter. What you're
5 saying may very well be true when he pled guilty, but I
6 don't know what authority I had or what authority I will
7 have to go behind the Statute which says voluntary
8 manslaughter fits the rule.

9 MR. ROBINSON: Yes, sir.

10 THE COURT: I wish I could help you, but I
11 just don't have any authority to do that. So I would have
12 to deny that motion.

13 MR. ROBINSON: Yes, sir.

14 THE COURT: Anything further.

15 MR. CAMPBELL: Nothing from the State.

16 THE COURT: Come around. Do you have
17 everything?

18 MR. CAMPBELL: Sentence, tracking and a copy
19 of the notice.

20 DEFENDANT LOUNDS: Your Honor, can I ---

21 THE COURT: Just a minute. Is this the
22 sentence form for the Count 2?

23 MR. CAMPBELL: Yes, sir.

24 THE COURT: Now, Mr. Lounds, you have
25 something you want to say.

State of South Carolina versus Anthony Maurice Lounds

1 DEFENDANT LOUNDS: Yes, I would like to
2 present this to you.

3 MR. ROBINSON: He would like to present this
4 to the Court.

5 DEFENDANT LOUNDS: I would like for him to
6 read it.

7 THE COURT: Okay.

8 DEFENDANT LOUNDS: Just can you put that on
9 the record.

10 THE COURT: Yes, sir. There is a letter to
11 Mr. Robinson from Judge Stilwell saying that, "I have
12 received correspondence from Mr. Lounds and I send this to
13 you for you information."

14 DEFENDANT LOUNDS: Would you read the other
15 one, the one that I wrote?

16 THE COURT: Sure. You want me to read it out
17 loud?

18 DEFENDANT LOUNDS: Yes, sir.

19 THE COURT: Sure. "Your Honor, may it please
20 the Court, I would just like to put on the record
21 concerning my attorney, Mr. Robinson. He's been appointed
22 to me since December 31, 2010. I just seen him for first
23 one time on July 10, 2011, last Sunday. I've seen his
24 investigator one time on June 29 and I met with her again
25 July 6th, that's when I was informed I was going to trial,

State of South Carolina versus Anthony Maurice Lounds

1 July 12, 2011. I wrote the Honorable Judge Stilwell
2 concerning Mr. Robinson. I received correspondence from
3 Judge Stilwell informing Mr. Robinson that he's received
4 correspondence from his client Anthony Lounds. There were
5 very important witnesses in this case who were never
6 investigated on follow-up from previous attorney,
7 Mr. Patel." Okay. All right. You want me to make this a
8 part of the record.

9 DEFENDANT LOUNDS: If you would, sir.

10 THE COURT: Anything else, Mr. Lounds?

11 DEFENDANT LOUNDS: Sir, I understand this is
12 a LOP case and I do feel like I didn't receive a fair
13 trial due to the fact that I didn't get a chance to do
14 some defense because every motion that was made was
15 denied, but I think it would be an issue for direct appeal
16 in the near future. I would like to appeal this today so
17 that I can retain my freedom.

18 THE COURT: So Mr. Robinson will go ahead and
19 serve notice.

20 MR. ROBINSON: We will, Your Honor.

21 DEFENDANT LOUNDS: I'm request that it be
22 done today.

23 THE COURT: I understand. I gather he'll do
24 that today so you're protected as far as your appeal is
25 concerned. Now, I don't know what his status will be as

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1 far as your appellate lawyer.

2 DEFENDANT LOUNDS: I understand that, Your
3 Honor.

4 MR. ROBINSON: That will go to Appellate
5 Defense, Your Honor.

6 THE COURT: Okay.

7 MR. ROBINSON: I would note the date of the
8 letter which is, I think, June 28. I'm not sure what the
9 date of the letter.

10 THE COURT: His letter is not dated but the
11 letter from Judge Stilwell is dated July 5th.

12 DEFENDANT LOUNDS: That's the date that I
13 received it from Your Honor.

14 MR. ROBINSON: We've been investigating this
15 case, Your Honor, and we met with him and we spoke to any
16 witness that he wanted us to speak to. I just want to
17 make sure that's apparent.

18 THE COURT: Okay. Mr. Lounds on the
19 indictment for armed robbery the sentence of the Court is
20 you be committed to the Department Correction for life
21 without patrol, and on the indictment for possession a
22 weapon during the commission of a violent crime, the
23 sentence is you be committed for a period of five years
24 concurrent to the other sentence.

25 MR. CAMPBELL: Thank you. Judge.

State of South Carolina versus Anthony Maurice Lounds

1 MR. ROBINSON: Thank you.

2 ---END OF TRANSCRIPT RECORD---

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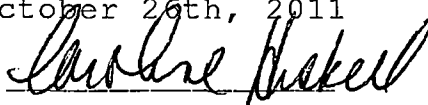
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State of South Carolina versus Anthony Maurice Lounds

1
2 I, the undersigned Caroline Hiskell, Official
3 Court Reporter for the Thirteenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript of
6 record of all the proceedings had and evidence introduced
7 in the trial of the captioned case, relative to appeal, in
8 the Circuit Court of Greenville County, South Carolina on
9 the 13th day of July, 2011.

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

12
13
14 October 26th, 2011

15 

16 Caroline Hiskell
17
18
19
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21
22
23
24
25

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY LOUNDS,

APPELLANT

Appellate Case No. 2011-196208

CORRECTED FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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II.

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court judge erred when he did not recuse himself, upon motion by Appellant, when he earlier presided over Appellant's trial, which resulted in a life without parole sentence, and which was subsequently overturned by the South Carolina Supreme Court and when he had granted Appellant's motion for recusal in a prior hearing?

II. Whether the trial court judge erred when he did not grant appellant's motion for a mistrial when a juror, after having already been seated, then disclosed that she had been the victim of a violent crime?

STATEMENT OF THE CASE

Anthony Maurice Lounds was indicted by the Greenville County grand jury for armed robbery and possession of a weapon during the commission of a violent crime on November 23, 2010. Indictment. The state served notice of intent to seek life without parole on November 12, 2010. He was tried before the Honorable C. Victor Pyle and a jury on July 12 and 13, 2011. He was convicted, and sentenced to life in prison.

This appeal timely follows.

ARGUMENT

I. The trial court judge erred when he did not recuse himself, upon motion by Appellant, when he earlier presided over Appellant's trial, which resulted in a life without parole sentence, and which was subsequently overturned by the South Carolina Supreme Court and when he granted Appellant's motion for recusal in a prior hearing.

On December 8, 2010, Appellant moved to relieve his attorney and to recuse the Honorable C. Victor Pyle from his case. R. 4, ll. 5-25. When Judge Pyle asked if that was Appellant's desire, Appellant responded affirmatively. R. 5, ll. 1-3. Judge Pyle responded "you are dissatisfied with your lawyer and the Court. I'm interested in seeing that you get a fair trial. If that's what you want, I don't have any problem with granting your motion." R. 5, ll. 12-16. He then made clear that Appellant's motion was granted. R. 5, l. 18.

Nevertheless, Appellant was tried before the Honorable C. Victor Pyle on July 12 and 13th, 2011. Immediately, prior to trial, Appellant asked the trial court judge to recuse himself based on the fact he was the original judge on the case in which he received a life without parole sentence which was later overturned by the South Carolina Supreme Court, after review of a post-conviction relief order of dismissal.¹ Additionally, Appellant reminded the court that this issue had been raised in December of 2010. R. 3, ll. 13-22. The trial court judge informed Appellant that he had no memory of the prior case, and refused to remove himself from this case. R. 4, l. 23- 5, l. 2.

¹ During its November 2000 term, the Greenville County Grand Jury indicted Appellant for armed robbery and kidnapping. The matter proceeded to trial before the Honorable C. Victor Pyle. Appellant was found guilty of kidnapping and not guilty of armed robbery. Judge Pyle sentenced Appellant to life without parole. The Supreme Court of South Carolina reversed Appellant's conviction and remanded the matter for a new trial based on ineffective assistance of trial counsel. Lounds v. State, 380 S.C. 454, 670 S.E.2d 546 (2008).

During the second day of trial, Appellant renewed his motion for the judge to recuse himself. Appellant explained that the matter was before the trial judge on December 8, 2010 at which time, the judge agreed to recuse himself. Again, the judge denied the motion. R. 204, ll. 8-21.

The trial court judge erred because he should have recused himself from Appellant's trial upon Appellant's motion for him to do so. According to South Carolina's Code of Judicial Conduct, "a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." Canon 2, CJC, Rule 501, SCACR. Generally, "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned" Canon 3(E)(1), CJC, Rule 501, SCACR. In Floyd v. State, 303 S.C. 298, 400 S.E.2d 145 (1991), the South Carolina Supreme Court granted the defendant a new PCR hearing because the judge who presided over his PCR hearing also presided over the trial from which PCR was sought. Id. at 299, 400 S.E.2d at 146. The Court held that "in all [PCR] hearings . . . , a judge shall, upon motion, recuse himself if he was the judge who presided at the guilty plea, criminal trial, or probation revocation proceeding for which relief is being sought." Id. The Floyd court emphasized that "a per se rule of recusal . . . will eliminate even the suggestion of partiality." Id.

The same reasoning is applicable here. Judge Pyle sentenced appellant to life without parole when he was convicted of kidnapping after a trial in 2002. The South Carolina Supreme Court reversed his conviction after post-conviction finding that the appellant's trial counsel during that case was ineffective, and that appellant was prejudiced by his attorney's substandard performance. See Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008). Applying Floyd's *per se* rule, the trial court judge should have recused himself

from Appellant's trial at his request. The judge's impartiality is especially important in this case, where the trial court judge denied Appellant's request to put up a defense witness who would have offered a significantly different version of the events that occurred this night. R. 193, l. 1- 195, l. 4. The trial court judge should have recused himself upon Appellant's request. His failure to do so requires that appellant be afforded a new trial.

Additionally, the trial judge initially disqualified himself from Appellant's case on December 8, 2010 when he granted Appellant's motion for recusal. When Appellant's case was called for trial before the trial judge, he refused to recuse himself or acknowledge the prior ruling. In short, the trial judge reversed his earlier oral disqualification. This matter differs from Simpson v. Simpson, 377 S.C. 519, 660 S.E.2d 274 (Ct. App. 2008) where the family court judge issued an oral ruling to recuse herself, but later issued a written order denying the motion of recusal. On December 8, 2010, the trial judge clearly granted Appellant's motion for recusal. He did not agree to accept memoranda on the issue as the judge in Simpson did. On the date of trial, he reversed that ruling by failing to acknowledge and enforce the prior hearing and ruling. The trial judge's order on December 8, 2010 was controlling over the matter. The judge erred by failing to enforce his prior ruling.

Respectfully, Appellant asks this Court to reverse his conviction and sentence, and remand his case for a new trial.

II. The trial court judge erred when he did not grant appellant's motion for a mistrial when a juror, after having already been seated, then disclosed that she had been the victim of a violent crime.

Prior to trial, the jury was selected. Juror No. 40 was seated. R. 18, ll. 10-16. After she was seated, but before the trial started, she informed the court that she had been the victim of a violent crime 26 years earlier. R. 24, ll. 14-17. Counsel moved for a mistrial, but the trial court judge denied the motion. R. 25, l. 13- 21, l. 25. The trial court judge erred because Lounds was entitled to a fair and impartial jury.

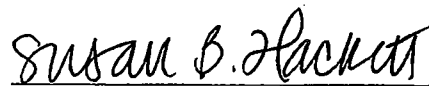
Criminal defendants have an absolute, bedrock constitutional right to a fair trial by a fair and impartial tribunal, with the verdict rendered solely on the basis of in court evidence. The denial of a fair trial by a fair tribunal is a structural error. See Mattox v. United States, 146 U.S. 140 (1892); Jordan v. Massachusetts, 225 U.S. 167 (1912); Turner v. Louisiana, 379 U.S. 466 (1965); Donnelly v. DeChristoforo, 416 U.S. 637 (1974); Arizona v. Fulminante, 499 U.S. 279 (1991).

The trial court judge abused his discretion by not granting a mistrial because appellant had the right to a jury panel that did not include someone who had been victimized. Had this fact about her been disclosed before jury selection, trial counsel could have used a peremptory challenge to remove her. The trial court judge erred, and appellant respectfully asks this Court to reverse his convictions and remand his case for trial.

CONCLUSION

For the preceding reasons, appellant respectfully asks this Court to reverse his convictions and sentence, and remand his case for a new trial.

Respectfully submitted,

A handwritten signature in cursive script that reads "Susan B. Hackett". The signature is written in dark ink and is positioned above a horizontal line.

Susan B. Hackett
Appellate Defender

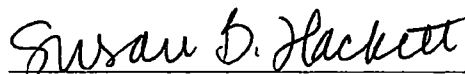
ATTORNEY FOR APPELLANT

This 31st day of May, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Corrected Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 31st, 2013

A handwritten signature in cursive script that reads "Susan B. Hackett". The signature is written in black ink and is positioned above a horizontal line.

Susan B. Hackett

Appellate Defender

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

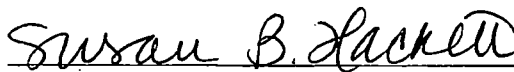
V.

ANTHONY LOUNDS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Corrected Final Brief of Appellant in the above referenced case has been served upon Christina Catoe, Esquire, at the Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, on this 31st day of May, 2013.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of May, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable C. Victor Pyle, Jr., Circuit Court Judge
Appellate Case No. 2011-196208

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

ANTHONY LOUNDS,

APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
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CHRISTINA J. CATOE
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial judge properly denied Appellant's motion to recuse himself from presiding over Appellant's trial where the judge had no memory of being involved in Appellant's unrelated trial ten years earlier, where the judge stated he would be fair and impartial towards Appellant, and where there was no evidence that the judge had any personal bias against Appellant.**
- II. Assuming the issue was preserved for appellate review, the trial judge did not err in failing to grant Appellant's mistrial motion where the juror in question stated she could be fair and impartial regardless of the fact that she had been the victim of a crime twenty-six years previously.**

STATEMENT OF THE CASE

Appellant was indicted in Greenville County in November 2010 for armed robbery and possession of a weapon during the commission of a violent crime. On July 12-13, 2011, Appellant proceeded to trial before the Honorable C. Victor Pyle, Jr. The jury found Appellant guilty of both offenses, and Judge Pyle imposed a sentence of life without parole pursuant to S.C. Code § 17-25-45. A notice of appeal was timely served and filed.

ARGUMENT

- I. The trial judge properly denied Appellant's motion to recuse himself from presiding over Appellant's trial where the judge had no memory of being involved in Appellant's unrelated trial ten years earlier, where the judge stated he would be fair and impartial towards Appellant, and where there was no evidence that the judge had any personal bias against Appellant.**

"It is well settled judges should recuse themselves where questions of impartiality or impropriety are raised." State v. Cheatham, 349 S.C. 101, 111, 561 S.E.2d 618, 623 (Ct. App. 2002), *reh'g denied* Apr. 18, 2002. "The Code of Judicial Conduct requires a judge to 'disqualify himself in a proceeding in which his impartiality might reasonably be questioned.'" Id. at 111, 561 S.E.2d at 624. (citing Canon 3(C)(1), Code of Judicial Conduct, Rule 501, SCACR). "However, as Judge Posner wrote, '[t]he presumption that judges are unbiased is more than a pious hope.'" State v. Langford, Op. No. 27195 (S.C. Sup. Ct. filed Nov. 21, 2012) (Davis Adv. Sh. No. 42 at 96) (citing Tyson v. Trigg, 50 F.3d 436, 442 (7th Cir.1995)). "Absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." Cheatham at 111, 561 S.E.2d at 624 (citation omitted). Indeed, when disqualification is not required, a judge has a duty to hear and decide a matter assigned to the judge. Simpson v. Simpson, 377 S.C. 519, 523, 660 S.E.2d 274, 277 (Ct. App. 2008) (citing Canon 3B(1), Code of Judicial Conduct, Rule 501, SCACR).

It is insufficient for a party seeking disqualification to simply allege bias - the party must show actual evidence of bias, and this bias must be *personal* rather than *judicial* in nature. Cheatham at 111, 561 S.E.2d at 624 (citations omitted) (emphasis added). Moreover, "[t]he alleged bias or prejudice must stem from an extra-judicial source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge." State v. Jackson, 353 S.C. 625, 627,

578 S.E.2d 744, 745 (Ct. App. 2003) (citation omitted). Recusal is not required when no evidence is presented other than rulings adverse to the defendant. *Id.* at 628, 578 S.E.2d at 746, n.8 (citation omitted). “[A] judge is not disqualified in a criminal action because of an adverse decision in a former case involving entirely different and unrelated criminal charges against the same party.” *State v. Cabiness*, 273 S.C. 56, 57, 254 S.E.2d 291, 292 (1979) (citation omitted). Where “a trial judge has sentenced a defendant in a previous criminal proceeding, that fact alone does not necessarily establish cause to disqualify him in a subsequent, unrelated criminal proceeding.” *Id.* Importantly, “[t]he contention that a judge was biased *solely* because he ruled against a defendant is untenable and insulting towards the court, and it would set a dangerous precedent were we to sanction it.” *State v. Langford*, Op. No. 27195 (S.C. Sup. Ct. filed Nov. 21, 2012) (Davis Adv. Sh. No. 42 at 97) (emphasis in original).

Appellant contends that the trial judge erred in failing to grant his motion to recuse himself from presiding over Appellant’s armed robbery trial because this same judge presided over a different, unrelated trial involving Appellant ten years earlier, that Appellant was sentenced to life without parole¹ as a result of his conviction following that trial, and that the conviction was subsequently overturned on post-conviction relief due to ineffective assistance of counsel. (See 12/8/10 Tr; see R. p. 8-9). See *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (reversing Appellant’s conviction for kidnapping because trial counsel’s inadequate preparation for what he knew would be a life without parole case and his improper comments during closing argument, prejudiced Appellant).

¹ As in the instant case, the life without parole sentence in Appellant’s previous trial was mandatory due to Appellant’s 1995 conviction for voluntary manslaughter. See *Lounds v. State*, 380 S.C. 454, 459, 670 S.E.2d 646, 648 (2008); S.C. Code Ann. § 17-25-45(A)(1)(a).

To the contrary, the trial judge did not err in declining Appellant's request that he recuse himself. First, the fact that the trial judge presided over an entirely separate and distinct trial ten years earlier was not, in itself, a proper basis for the judge to recuse himself. See, e.g., State v. Cabiness, 273 S.C. at 57, 254 S.E.2d at 292. Moreover, the judge stated he had "absolutely no memory" of the previous trial and that he "certainly would not hold that against [Appellant]." ² (R. p. 9, lines 7-24). He also stated that he saw no reason to recuse himself especially since he could "be perfectly fair with everyone involved." (R. p. 9, line 25 – p. 5, line 2). Importantly, Appellant presented no evidence - or even argument - that the trial judge had any *personal* bias against Appellant. ³ Respondent submits that if recusal were required under the circumstances presented here, it would permit defendants to drive the docket in a fashion inappropriate to the interests of justice.

Additionally, contrary to Appellant's argument on appeal, the post-conviction relief case of Floyd v. State, 303 S.C. 298, 400 S.E.2d 145 (1991), does not support Appellant's position in any way. Floyd's *per se* rule that a PCR judge must recuse himself, upon an applicant's motion, if he presided over the trial or guilty plea is simply not applicable, nor does Floyd's reasoning apply here. See, e.g., Cabiness at 57, 254 S.E.2d at 292 (holding that a judge is "not disqualified in a criminal action because of an

² Indeed, the trial judge had been on the circuit court bench for over thirty years at the time of Appellant's trial and had presided over hundreds, if not thousands, of criminal cases.

³ Appellant states that "the judge's impartiality is especially important in this case, where the trial court judge denied Appellant's request to put up a defense witness who would have offered a significantly different version of events that occurred that night." (Brief of Appellant, p. 7). However, although the judge did make some rulings during trial that were not favorable to the defendant, there is no contention that such rulings were incorrect or unsupported by the facts he had before him. See Simpson, 377 S.C. at 523, 660 S.E.2d at 277 ("A judge's impartiality might reasonably be questioned when his [or her] factual findings are not supported by the record.") (citation omitted). Notably, immediately after denying Appellant's motion for recusal, the trial judge actually granted Appellant's motion to disallow the State to proceed on certain other charges - a ruling obviously favorable to Appellant. (See R. p. 8-12).

adverse decision in a former case involving entirely different and unrelated criminal charges against the same party.”).

Appellant further argues that the judge’s failure to recuse himself was error because, at a previous hearing held on December 8, 2010, the trial judge stated he would grant Appellant’s motion to recuse himself. (See 12/8/10 Tr.). However, Appellant cites no authority for the proposition that it was error for the trial judge to change his mind about recusing himself, particularly where a written order was apparently never entered after the December 8, 2010 hearing and where the oral ruling regarding recusal was necessarily not “final” until the time of trial. Moreover, as discussed above, the judge had no proper basis to recuse himself, and therefore, he had a *duty* to hear Appellant’s case since it was assigned to him as the presiding judge of general sessions court that week.⁴ Simpson, 377 S.C. at 523, 660 S.E.2d at 277 (when disqualification is not required, a judge has a duty to hear and decide a matter assigned to the judge) (citation omitted). Therefore, the trial judge did not abuse his discretion when he reconsidered his prior oral ruling and ultimately decided that he was not required to recuse himself. See State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (where trial judge had no proper basis to recuse himself, he did not abuse his discretion in declining to do so).

⁴ Notably, although the presiding judge assignments are posted in advance, Appellant apparently failed to raise the recusal issue at any point prior to the week of court, instead choosing to raise the issue immediately before jury selection. (See R. p. 8-9).

- II. Assuming the issue was preserved for appellate review, the trial judge did not err in failing to grant Appellant's mistrial motion where the juror in question stated she could be fair and impartial regardless of the fact that she had been the victim of a crime twenty-six years previously.**

Error Preservation

Appellant now argues on appeal that the trial judge erred in denying his motion for mistrial because Appellant “had the right to a jury panel that did not include someone who had been victimized.” (Brief of Appellant, p. 8). Appellant further argues that, had Juror # 40 disclosed that she had been the victim of a violent crime prior to jury selection, “trial counsel could have used a peremptory strike to remove her.” (Brief of Appellant, p. 8). These arguments are not preserved for appellate review. Immediately following jury selection, Juror # 40, who had been seated on Appellant's jury, disclosed that, twenty-six years ago, she was “robbed at knife-point.” (R. p. 24, lines 14-17). She apparently did not hear or understand the judge's earlier question asking whether any of the prospective jurors had been victims of a violent crime. (See R. p. 15, lines 9-12; see p. 24, lines 14-17). She stated that she “just wanted to let you know before you got the trial started.” (R. p. 24, lines 16-17). The judge then asked Juror # 40 if the fact that she had been robbed at knife-point twenty-six years ago would “in any way interfere with your ability to be a fair and impartial juror in this case.” (R. p. 24, lines 18-20). Juror # 40 responded, “Absolutely no.” (R. p. 24, line 21).

After the jurors were excused so that the parties could present pre-trial motions, Appellant's counsel made a “motion for a mistrial.” (R. p. 25, line 15). Counsel argued that Juror # 40 “poisoned the entire panel with her statements regarding the fact that she had been involved in an armed robbery.” (R. p. 25, lines 16-18). He argued that Appellant could not have a “fair and impartial jury in this case” because of such

poisoning. (See R. p. 25, lines 16-19). Counsel also argued that he was “very very surprised and absolutely shocked that she would state that in open court in front of all these jurors when she actually didn’t reveal that originally. (R. p. 25, lines 19-22). Counsel asserted that, “not only did the 13 jurors hear that, 12 and the alternate, but also the whole panel heard that.” (R. p. 25, lines 23-24). The trial judge ruled that, because Juror # 40 stated “very emphatically” that she “absolutely would not be an unfair juror” despite her prior experience being a victim of a crime, the motion for mistrial was denied. (R. p. 26, lines 2-4).

As illustrated above, Appellant’s sole argument below was that the juror’s revelation in open court about her being a victim of a crime “poisoned” the jury panel and therefore a mistrial should be granted.⁵ (See R. p. 25-26). Appellant never argued that he had a “right to a jury panel that did not include someone who had been victimized” or that he would have used a peremptory strike against the juror had she revealed this information previously.⁶ (See R. 25-26). Therefore, the arguments raised on appeal are not preserved for this Court’s review. See, e.g., State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (a party may not argue one ground at trial and another ground on appeal); State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”); State v. Adams, 332 S.C. 139, 144-145, 504 S.E.2d 124, 126-27 (Ct. App. 1998) (argument not preserved for appeal where precise issue was not presented to the trial court).

⁵ Appellant is not pursuing this argument on appeal. (See Brief of Appellant, p. 8). Appellant does not now assert that there was a problem with the fairness or impartiality of any of the other jurors.

⁶ In fact, counsel never even requested that Juror # 40 be removed from the panel and replaced. (See R. p. 25-26).

Standard of Review and Applicable Law

All criminal defendants have a right to a trial by an impartial jury. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). The right to a fair trial guarantees to a defendant a fair trial by a panel of impartial, indifferent jurors. State v. Parker, 381 S.C. 68, 96, 671 S.E.2d 619, 633 (Ct. App. 2008). However, a criminal defendant has no right to a trial by any particular jury, but only to a competent and impartial jury panel. Smith v. State, 375 S.C. 507, 518, 654 S.E.2d 523, 529 (2007). It is the duty of the trial judge to ensure a jury of fair, impartial, and unbiased jurors is impaneled. State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 119 (1998). The trial judge's determination of the neutrality of prospective jurors should not be disturbed on appeal absent manifest error. DeLee v. Knight, 266 S.C. 103, 111-112, 221 S.E.2d 844, 847 (1975) (citing Irvin v. Dowd, 366 U.S. 717 (1961)). "A juror's competence is within the trial judge's discretion and is not reviewable on appeal unless wholly unsupported by the evidence." State v. Simpson, 325 S.C. 37, 41, 479 S.E.2d 57, 59 (1996); see also State v. Johnson, 248 S.C. 153, 164, 149 S.E.2d 348, 353 (1966).

Discussion

Even assuming that the arguments Appellant now makes on appeal had been properly preserved for review, the arguments are without merit. Appellant's contention that he "had the right to a jury panel that did not include someone who had been victimized" is wholly unsupported by case law and is, Respondent submits, patently incorrect. As discussed above, Appellant's right was to be tried by a fair and impartial jury. See, e.g., Woods, 345 S.C. at 587, 550 S.E.2d at 284 (2001). However, Appellant

did not have a right to a jury whose members had never been victims of crimes.⁷ See State v. Sapp, 366 S.C. 283, 290, 621 S.E.2d 883, 886 (2005) (indicating that jurors have a constitutionally-protected right to serve on a jury panel if selected unless incompetent, ineligible, or otherwise unqualified); State v. George, 323 S.C. 496, 503, 476 S.E.2d 903, 907 (1996) ("A venireperson must be excused only if her opinions would prevent or substantially impair the performance of her duties as a juror in accordance with her oath and instructions."); see also S.C. Code Ann. § 14-7-810 (listing disqualifications from jury service); S.C. Code Ann. § 14-7-1020 (explaining jurors may be examined by the court and should be set aside if not indifferent).

Indeed, Appellant has not articulated, at trial or on appeal, that Juror # 40 was actually disqualified to serve or that she was in fact not fair and impartial. His assertion on appeal that he "could have used a peremptory strike to remove her" had he known she was a victim of a crime previously is wholly speculative and was, as mentioned previously, not asserted below.⁸ (See R. p. 24-26). Compare State v. Woods, 345 S.C. 583, 590, 550 S.E.2d 282, 285-86 (2001) (defense counsel told the trial judge that, had he known of a juror's previous relationship with the solicitor's office, he would have used a peremptory challenge to remove her, and nothing in the record refuted this assertion). Moreover, as the trial judge found, Juror # 40 clearly and unequivocally stated, under oath, that she could be fair and impartial in spite of her experience being the victim of a crime twenty-six years ago. (See R. p. 14, lines 4-11; p. 24, lines 14-21; p. 26, lines 2-4). Since this finding is obviously supported by the record, there is no basis for concluding

⁷ Notably, disqualifying persons who have been victims of crime from jury service effectively victimizes these persons *twice*.

⁸ Furthermore, since Appellant is not asserting that the juror intentionally concealed any information, it is irrelevant whether or not Appellant could have used his peremptory strikes differently had he known of Juror # 40's experience twenty-six years earlier. See State v. Burgess, 391 S.C. 15, 20, 703 S.E.2d 512, 514-15 (Ct. App. 2011); State v. Guillebeaux, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (Ct. App. 2004).

that Appellant was denied his right to a fair and impartial jury. See, e.g., State v. Maxey, 218 S.C. 106, 110, 62 S.E.2d 100, 102 (1950) (“The findings of the trial court on questions of fact relating to the fitness of a juror are conclusive, and will not be disturbed on review unless manifestly erroneous.”). Therefore, the trial judge properly denied Appellant’s motion for mistrial. See State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627-628 (2000) (the grant or denial of a mistrial lies within the sound discretion of the trial judge, whose ruling will not be disturbed on appeal absent an abuse of discretion or an error of law).

CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm Appellant’s convictions and sentences.

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General


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ATTORNEYS FOR RESPONDENT

February 4, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

ANTHONY LOUNDS,

Appellant.

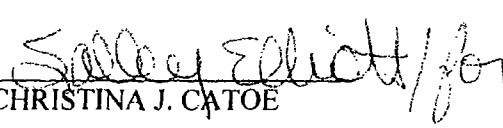
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b),
SCACR.

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

By: _____


CHRISTINA J. CATOE

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ATTORNEYS FOR RESPONDENT

February 4, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

ANTHONY LOUNDS,

Appellant.

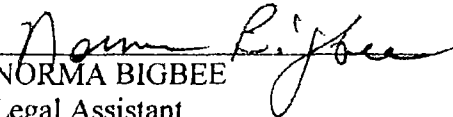
PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
Appellate Defender
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 4th day of February, 2013


NORMA BIGBEE
Legal Assistant

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**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.

Anthony Lounds, Appellant.

Appellate Case No. 2011-196208

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Unpublished Opinion No. 2013-UP-289
Heard June 12, 2013 – Filed June 26, 2013

AFFIRMED

Appellate Defender Susan B. Hackett, of Columbia, for
Appellant.

Attorney General Alan Wilson and Assistant Attorney
General Christina J. Catoe, both of Columbia, for
Respondent.

PER CURIAM: Appellant Anthony Lounds seeks review of his convictions for armed robbery and possession of a weapon during the commission of a violent crime. Appellant argues the trial judge erred in declining to recuse himself because he presided over a previous trial of Appellant. Appellant also argues the

trial court erred in denying his motion for a mistrial when a juror waited until after she had been seated to disclose that she had been the victim of a violent crime. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Appellant's motion for recusal: Canon 3(B)(1) of the Code of Judicial Conduct, Rule 501, SCACR [hereinafter Canon 3(B)(1)] ("A judge *shall* hear and decide matters assigned to the judge except those in which disqualification is required." (emphasis added)); Canon 3(E)(1) of the Code of Judicial Conduct, Rule 501, SCACR [hereinafter Canon 3(E)(1)] (requiring a judge to "disqualify himself or herself in a proceeding in which the judge's impartiality might *reasonably* be questioned" (emphasis added)); *State v. Howard*, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) ("[A] judge is not disqualified in a criminal action because of an adverse decision in a former case involving entirely different and unrelated criminal charges against the same party." (citation omitted)); *Simpson v. Simpson*, 377 S.C. 519, 523-24, 660 S.E.2d 274, 276-77 (Ct. App. 2008) (interpreting Canon 3(E)(1), *supra*, and the requirement of Canon 2 of the Code of Judicial Conduct, Rule 501, SCACR, for a judge to avoid the appearance of impropriety and holding when a party offers no evidence to support a claim of partiality, the trial judge is correct to deny a motion for recusal); *id.* at 525-26, 660 S.E.2d at 278 (finding Canon 3(B)(1), *supra*, controlling when there was "no evidence that could question the impartiality of [the trial judge], or any other reason requiring her recusal"); *State v. Jackson*, 353 S.C. 625, 627, 578 S.E.2d 744, 745 (Ct. App. 2003) (holding a judge's alleged bias or prejudice must stem from an extra-judicial source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge); *State v. Cheatham*, 349 S.C. 101, 111, 561 S.E.2d 618, 624 (Ct. App. 2002) ("A judge must exercise sound judicial discretion in determining whether his impartiality might reasonably be questioned."); *id.* ("It is not enough for a party seeking disqualification to simply allege bias. The party must show some evidence of bias.").

2. As to Appellant's mistrial motion: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."); *State v. Patterson*, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (observing the appellant was limited to the grounds raised at trial); *State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 627-28 (2000) ("The granting or refusing of a motion for a mistrial lies within the sound discretion of the trial court and its ruling will not be disturbed on appeal absent an abuse of discretion amounting to an error of law."); *id.* at 63, 530 S.E.2d at 628 ("In order to receive a mistrial, the defendant must show error and resulting prejudice."); *State v.*

Bonneau, 276 S.C. 122, 125, 276 S.E.2d 300, 301 (1981) ("It is, of course, incumbent upon an appellant in this court to prove that he was denied a fair trial.").

AFFIRMED.

FEW, C.J., GEATHERS, J., and CURETON, A.J., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 17, 2013

The Honorable Paul B. Wickensimer
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RECEIVED

JUL 17 2013

REMITTITUR

COURT OF APPEALS
APPELLATE CLERK

Re: The State v. Lounds, Anthony
Lower Court Case No. 2009GS2310155
Appellate Case No. 2011-196208

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Jay A. Kitchings

CLERK

cc: Susan Barber Hackett
Christina J. Catoe

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF McCORMICK)ANTHONY MAURICE LOUNDS #227456)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-23- 04178APPLICATION FOR
POST-CONVICTION RELIEFFILED
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL WICKENS
2013 AUG -2 AM 10:43INSTRUCTIONS - 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 McCORMICK CORR. INST. 386 Redemption Way McCormick SC 29899
2. Name and location of Court which imposed sentence GREENVILLE County 305 E. North Street Greenville SC 29601
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 0139 and 0549
 - (a) _____
 - (b) ARMED Robbery
 - (c) POSSESSION OF A WEAPON DURING Commission of Violent Crime
5. The date upon which sentence was imposed and the terms of the sentence: July 13, 2011
 - (a) LIFE Without parole ARMED Robbery
 - (b) 5 YEARS possession of weapon During Violent Crime

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? **YES**
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed: **SOUTH CAROLINA COURT OF APPEALS**
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed: **AFFIRMED**
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result: **JUNE 26, 2013**
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results: **2013-UP-289**
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) **N/A**
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: **INEFFECTIVE ASSISTANCE OF COUNSEL.**

- (a) COUNSEL FAILED TO FUNCTION AS THE STATE'S ADVERSARY in any sense of the word.
- (b) COUNSEL FAILED TO CALL WITNESSES on my behalf which would have proven my innocence.
- (c) COUNSEL FAILED TO do the necessary Factual Investigations on my behalf.
11. State concisely and in the same order the facts which support each of the grounds set out in (10): COUNSEL Neglected the necessary investigation and preparation of my case.
- (a) COUNSEL Did not offer any defense to the court on my behalf
- (b) COUNSEL Failed to subject the prosecution's case to any adversarial TESTING.
- (c) COUNSEL Failed to Function as the Counsel that the Constitution's Sixth Amendment Guarantees.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. N/A
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. N/A
- 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: CANNOT RAISE INEFFECTIVE ASSISTANCE ON
- (a) DIRECT APPEAL.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (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? NIA
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NIA

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. MR. SCOTT ROBINSON (TRIAL COUNSEL) 101 LAVENEXA AVE. GREENVILLE SC 29601

ii. _____

iii. _____

- (b) the proceedings at which each such attorney represented you:

i. MR. SCOTT D. ROBINSON, ESQ (TRIAL)

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

NEW TRIAL, RESPECTFULLY.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of McCORMICK)ANTHONY M. LOUNDS #227456

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.

ANTHONY M. LOUNDS #227456

SWORN to and subscribed before me this 11
day of July, 2013.

A Frankel (L.S.)

Notary Public

My Commission Expires: 12-16-2019

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

ANTHONY M. LOUNDS #227456

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.

ANTHONY M. LOUNDS #227456
Applicant

SWORN or affirmed to and subscribed before me this

11 day of July, 2013.

[Signature]
Notary Public

My Commission Expires: 12-16-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-23-4178
COUNTY OF GREENVILLE	)	
	)	
Anthony Maurice Lounds,	)	
S.C.D.C. No. 227456,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed August 2, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2010 term of General Sessions for armed robbery (2009-GS-23-10155, count 1) and possession of a weapon during commission of a violent crime (2009-GS-23-10155, count 2). Scott D. Robinson, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On July 13, 2011, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of life imprisonment without parole for armed robbery and five years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Susan B. Hackett, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense

perfected the. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Lounds, Op. No. 2013-UP-289 (S.C. Ct. App. filed June 26, 2013). The Remittitur was sent on July 17, 2013.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel:
 - a. Failed to function as the State's adversary.
 - b. Failed to call witnesses.
 - c. Failed to investigate.
 - d. Failed to offer defense to the court.
 - e. Failed to subject the prosecution's case to adversarial testing.

In a pro se "Amendment to PCR Application" filed September 17, 2013, the Applicant made the following additional allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to "communicate with the Applicant to adequately prepare for life without parole trial."
 - b. Failed to challenge the Applicant's arrest.
 - c. "[N]ever intended to offer any defense to the court on my behalf."
 - d. Failed to "function as the governments adversary."
 - e. Failed to "conscientiously gather any information to protect my rights."
 - f. Failed to "conscientiously discharge his professional responsibilities."
 - g. Failed to "make proper arguement concerning the seating of jury #40 peremptory challenge."

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 Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

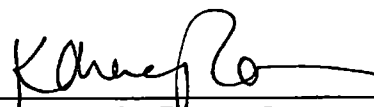
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

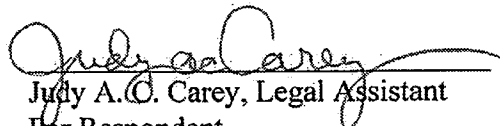
April 8, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2013-CP-23-4178
	)	
ANTHONY MAURICE LOUNDS, 227456	)	
	)	
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:

**Anthony Maurice Lounds, 227456
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899**

DATED this 8th day of April, 2014.


Judy A.C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2013CP2304178
	)	
Anthony Lounds,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

October 21, 2014
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

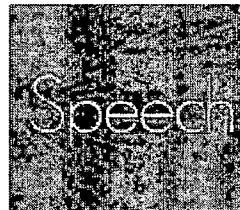
A P P E A R A N C E S:

KAREN RATIGAN, Esquire
Attorney for the Respondent

MILLS ARIAIL, Esquire
Attorney for the Applicant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7™

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Motions	5			
APPLICANT WITNESSES:				
Anthony Lounds				
by Mr. Ariail	6			
Brigham Young				
by Mr. Ariail	37			
by Ms. Ratigan		44		
Zeldric Vance				
by Mr. Ariail	47			
by Ms. Ratigan		52		
STATE WITNESSES:				
Scott Robinson				
by Ms. Ratigan	54			
by Mr. Ariail		61		
REPLY WITNESSES:				
Janet Lounds				
by Mr. Ariail	68			
Certificate of Reporter	73			

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
APPLICANT EXHIBITS			
A-1	Letters	25	25
A-2	Notice to Seek Life without Parole	26	
A-3	Indictments	28	28

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 21st day of October, 2014 at approximately 1:36 p.m.)

THE COURT: All right.

MS. RATIGAN: Thank you, Your Honor. May it please the Court. This is the case of Anthony Lounds versus the State of South Carolina. The docket number is 2013-CP-23-4178. Mr. Lounds was indicted for Armed Robbery and Possession of a Weapon During the Commission of a Violent Crime. He was represented on these charges by Mr. Robinson. The case was brought to trial in July of 2011 before Judge Pyle. The conclusion of which, Mr. Lounds was found guilty.

On July 13th, 2011, Judge Pyle sentenced him to concurrent terms of life imprisonment without parole for armed robbery and five years for the weapons charge. Mr. Lounds did file an appeal. It was affirmed in June of 2013 by the Court of Appeals. The State is ready to proceed.

THE COURT: All right.

MR. ARIAIL: Thank you, Your Honor. We're ready to proceed. And I will call Mr. Lounds as

1 our first witness.

2 **MR. LOUNDS:** Ma'am, I make a motion to
3 have Mr. Robinson sequestered while I testify.
4 That way, he won't sit and rebuttal -- come
5 right behind me and rebuttal what I testify to.
6 I would ask that he be sequestered.

7 **THE COURT:** All right. Mr. Ariail?

8 **MR. ARIAIL:** Your Honor, we discussed this
9 downstairs. I told him that based upon my
10 understanding that he is a witness for the
11 State, I think he is allowed to sit there. I
12 know that he wants to sequester him so that he
13 can not hear testimony. I don't know if that's
14 appropriate and I told him that.

15 **THE COURT:** Ms. Ratigan, do you have any
16 response to that?

17 **MS. RATIGAN:** We would ask that Mr.
18 Robinson be allowed to stay simply because this
19 is a -- these are allegations about his
20 effectiveness of counsel. It would be best if
21 he would be able to hear the allegations
22 straight from Mr. Lounds.

23 **THE COURT:** Mr. Lounds, uh, you know, you
24 understand Mr. Robinson is not going to be able
25 to say anything to you about this or anything

1 like that. But he has got a right. I wanted to
2 hear if there is anything I could base it on.
3 But he's got a right to be present in this
4 hearing since they are allegations about him.
5 Make sense?

6 **MR. LOUNDS:** Yes, ma'am.

7 **THE COURT:** All right. But I appreciate
8 your motion. If you would, come forward and be
9 sworn.

10 **THE CLERK:** Mr. Lounds, please place your
11 left hand on the Bible and raise your right
12 hand best you can. You can set those papers
13 down. Raise your right hand.

14 **ANTHONY LOUNDS**

15 having first been duly sworn, testifies as follows:

16 **THE CLERK:** Thank you. Please state your
17 full name for the record.

18 **THE WITNESS:** Anthony Maurice Lounds.

19 **THE CLERK:** Thank you, sir. You may be
20 seated.

21 **DIRECT EXAMINATION**

22 **BY MR. ARIAIL:**

23 **Q** All right. Mr. Lounds, yes, how are you
24 doing today?

25 **A** I'm fine. How about yourself?

1 **Q** Good. Doing fine. Thank you. We're here on
2 behalf of your PCR that you filed in regards to two
3 charges, the armed robbery charge and a possession of
4 a weapon during the commission of a violent crime.
5 That's the PCR you filed, correct?

6 **A** Yes, sir.

7 **Q** And your representation, you were
8 represented by Mr. Robinson in this case, correct?

9 **A** Yes, sir.

10 **Q** Now, I want to go through a little bit of
11 the history about this. Initially, Mr. Robinson was
12 not your attorney, correct?

13 **A** Yes, sir. Indeed, he wasn't.

14 **Q** Tell me, when you initially got these
15 charges, you were appointed a public defender,
16 correct?

17 **A** Uh, Nihar Patel.

18 **Q** Nihar Patel. Mr. Patel was your attorney
19 for that time. Right after you got the charges until
20 -- this case was actually prepared by Nihar Patel.

21 **A** I was scheduled to come in here to the
22 courtroom on December 8th, 2010. At that time when I
23 came into the courtroom, I made a motion to have
24 Patel leave due to conflict that I received from the
25 public defender's office. I had a licensed attorney.

1 That would be a conflict. So Judge Pyle relieved
2 Patel.

3 Therefore, Mr. Robinson came on board on
4 December 31st of 2008, well, 2010. December 31st,
5 2010. I was notified by Mr. Silvaggio, that was his
6 investigator, that he would be representing me on my
7 charge. I was like okay, that was the 31st of
8 December that he came to the county jail to visit me.
9 He brought me a letter that he was going to be
10 representing me. He said he would be there to speak
11 with me. He came back again on March 24, 2011. This
12 is Silvaggio, his investigator.

13 **THE COURT:** Okay. I just want to stop you
14 here, Mr. Lounds. You've got a real excellent
15 attorney here who does these PCR hearings all
16 the time. When he ask you a question -- I'm
17 just doing this for your benefit. When he asks
18 you a question, I want you to answer the
19 question he asks you okay. He knows how this
20 should all go. All right? Let me stop you
21 right there.

22 Did he answer your question?

23 **MR. ARIAIL:** Yep. I'm just going to go
24 through a little bit of the proceedings because
25 we got to get up to -- the key in this is when

1 Mr. Robinson began to represent you. It appears
2 to be that Mr. Silvaggio, Paul Silvaggio, who
3 is --

4 **THE WITNESS:** That was the one who was
5 representing me. That is the one who I was
6 talking to.

7 **THE COURT:** I got you.

8 **BY MR. ARIAIL:**

9 **Q** What I am trying to figure out is basically
10 he came and began -- Mr. Robinson sometime began
11 representing you in December 2010, correct?

12 **A** Yes, sir.

13 **Q** And you talked to Mr. Silvaggio?

14 **A** Yes, sir.

15 **Q** You gave him your facts about the case,
16 correct?

17 **A** Yes, sir.

18 **Q** How many times did you meet with Mr.
19 Silvaggio?

20 **A** I met with Mr. Silvaggio on December 31st.
21 I met with him again on March 24th. No other
22 dealings with him.

23 **Q** That was two times. The March 24th date,
24 from my notes and what you told me is that is when he
25 and the Solicitor George Campbell came down and

1 noticed you for life without parole?

2 A Yes, sir.

3 Q Okay. So after that, the next note I have
4 is showing you first met with Scott, Mr. Robinson,
5 would've been on July 10th, 2011?

6 A Yes, sir, at the county jail. Sunday
7 night, he came to visit me.

8 Q And that was, your case was coming up for
9 trial?

10 A In two days.

11 Q Okay. On July 10th, 2000 [sic] meeting,
12 what did you discuss?

13 A Basically, I seen what he was trying to do.
14 What was there to discuss. What can you discuss in
15 two days. This is a life without parole trial. He
16 had discussed no witnesses. I seen what he was
17 trying to do. I wrote a letter to -- ma'am?

18 THE COURT: Yes, sir. Go ahead.

19 THE WITNESS: I wrote a letter to Judge
20 Stillwell who appointed Scott Robinson to me. I
21 tried to get him relieved. I knew the case was
22 coming up.

23 BY MR. ARIAIL:

24 Q When did you write that letter?

25 A I wrote that letter on the 26th. 26th of

1 June, I wrote a letter to Judge Stillwell. I asked
2 about the representation of Scott. I asked him did
3 he be relieved for the fact that he had not
4 communicated with me adequately to prepare for this
5 trial. I knew it was coming up because he had
6 informed Mr. Campbell do not put this case back on
7 the docket for at least six months. Mr. Campbell was
8 trying to get Mr. Robinson to take this case, any
9 attorney to take this case for 30 days and then he is
10 going to put this case back on the docket after
11 I made the motion for Patel to be relieved.

12 He said he was going to try this case in 30
13 days. He told him no, whoa, whoa, whoa, wait a
14 minute. He said anybody can prepare. This is a life
15 without parole case. He said I would suggest that
16 you not put this case back on the docket for six
17 months. That is when I was notified that Mr.
18 Robinson was going to be my attorney.

19 Q Did you at any time when you met with Mr.
20 Silvaggio tell him about any witnesses or individuals
21 you wanted to be interviewed?

22 A My family did. I did not know the guy's
23 name, the guy that -- I known him by Al Capone. That
24 is what I knew him by, street name. I did not know
25 him by the real name. I told the authorities that

1 when they showed me the video. They asked me who the
2 guy was. I said I don't know his name. I know his
3 name is Al Capone.

4 Q You told Mr. Silvaggio that too?

5 A Yes, sir.

6 Q What I am trying to get into is what you
7 told Mr. Silvaggio or Mr. Robinson to do to prepare
8 your case for trial.

9 A My family went to his office, Scott
10 Robinson's office, on several occasions and informed
11 Mr. Silvaggio who Brigham Young was. They told them
12 about who Brigham Young was, his name. They got his
13 name.

14 Q Okay. So what did they tell him or what
15 did you tell Mr. Robinson or Mr. Silvaggio about
16 Brigham Young?

17 A I didn't tell Mr. Silvaggio anything about
18 him. My family did.

19 Q What did they tell him?

20 A They told him who he was and what he had
21 did.

22 Q Okay. Can you tell us what that is?

23 A The 20th, I think it was September 5th,
24 6th, we were at a club, Club Cora's on West
25 Washington Street about 2 o'clock in the morning,

1 1:30, something like that. He asked me to take him
2 to get some money. I was like all right. We went
3 down to the Motel 6. We met Anthony Watkins and
4 Zeldric Vance. They were working at Columbia Farms.
5 They had got off of work or whatever. We went to the
6 room. I went with them. It was a guy in there that
7 Brigham knew. They was talking about some weed, some
8 marijuana. I don't know what they're dealing was
9 with him where he gave Brigham a checkbook. They
10 were talking or whatever and we left.

11 Q So it was just a checkbook being exchanged?

12 A Yes, sir. Then, maybe a month or so,
13 October 1st, I was arrested form robbery. This guy
14 is saying he identified me from a video that I robbed
15 him of his checkbook.

16 Q Okay. Of his checkbook. Okay. So you are
17 saying Brigham Young and Zeldric Vance would have
18 testified that there was no robbery?

19 A Yes, indeed.

20 Q Okay. Did you tell Mr. -- did your family
21 -- did you -- anybody tell Mr. Silvaggio or Mr.
22 Robinson about that?

23 A I told Mr. Robinson about that I did not
24 commit no robbery.

25 Q Okay. What did he say about that?

1 **A** Nothing. We didn't discuss it no more. I
2 don't know what his trial strategy was.

3 **Q** That's what I'm getting at. Why -- if you
4 had this information --

5 **A** I did reveal it to him. I revealed it to
6 him. I revealed this about Brigham. Brigham came and
7 testified on the morning of trial. The man was in
8 the courtroom.

9 **Q** What explanation did he give you for why he
10 didn't put him up or let him testify?

11 **A** He gave the judge -- right here. It is in
12 the transcript. He told the judge -- he made a
13 sequestered motion to have all of the witnesses
14 sequestered at the morning of trial.

15 **Q** Who did?

16 **A** Brigham wasn't present. My family went and
17 bought Brigham to the courthouse on the morning I was
18 sentenced. They told him this morning we had a
19 witness. You may have seen him, you may have not.
20 He's been sitting in the courtroom.

21 **Q** We can go through and summarize. Basically
22 he came in the courtroom and Judge Pyle said he was
23 there and he excluded him as a witness, right?

24 **A** He excluded him. Yes, he did. Mr. Robinson
25 requested he said he was in the courtroom. He said

1 he was not going to allow him to testify.

2 Q Who excluded him? The prosecution make a
3 request?

4 A Yes, he did. He said he violated Mr.
5 Robinson's request. He wasn't never sequestered due
6 to the fact that he wasn't in the courtroom.

7 Q You are not alleging that anything Mr.
8 Robinson did --

9 A Yes, I am. I am alleging that Mr. Robinson
10 fabricated. The witness never came into the
11 courtroom. He told the judge you may have seen him,
12 you may have not. He was sitting in the courtroom
13 with a blue striped shirt on.

14 Q Who said that?

15 A Mr. Robinson. The transcript, I've got the
16 transcript right here.

17 Q Just make sure I get this right. You are
18 saying that Mr. Robinson told the court --

19 A He was sitting in the courtroom. You may
20 have seen him. There was a witness in the courtroom
21 with a blue striped shirt on. You may have seen him,
22 you may have not. He said he let the prosecutor
23 speak to him. He said he has spoke to him.

24 Q Tell us the page number when you get to it,
25 if you would.

1 **MS. RATIGAN:** It is 188.

2 **MR. ARIAIL:** Okay.

3 **THE COURT:** Okay.

4 **MR. ARIAIL:** Thank you.

5 **THE WITNESS:** Yes. He said just this
6 morning. Page 188, line 1. This morning when
7 we first started this case before we took any
8 testimony, there was a gentleman sitting in the
9 courtroom in a blue shirt. I think you may have
10 seen him. He went outside. His name is Brigham
11 Young. According to Mr. Young, he was in the
12 room with Mr. Brigham and Mr. Lounds when all of
13 this happen. He had given his story. I spoke
14 to him at the break. I let the prosecutor speak
15 to him as well.

16 I would like to see if my client would like
17 him to testify because he was there when all of
18 this happened and all of this went down. He
19 knows Mr. Brigham. The court said what is his
20 name? Brigham Young. The court, tell me again
21 what connection he had with this case. Mr.
22 Robinson, Your Honor, he has -- he was the one
23 that he and Mr. Workman set this thing up where
24 Mr. Workman would buy the drugs at the motel
25 that night. That is what he was there for to

1 buy drugs. He is the person that was there in
2 the room that brought the drugs.

3 What relevance does this have whether this
4 man committed armed robbery? Because he could
5 say it was not an armed robbery. That is what
6 he could say. It was not an armed robbery. No
7 gun was used or anything of that nature. Who
8 says this? Brigham Young. Mr. Campbell, Judge,
9 my first concern is that he violated the
10 sequestered order that you imposed.

11 **THE COURT:** Okay. Mr. Lounds, I want to
12 let you know, just so you know, I've got this
13 transcript. They did give me the transcript. I
14 don't want you to feel like there is anything in
15 here that I'm not going to read. I'm going to
16 read this entire thing.

17 **THE WITNESS:** Yes ma'am. Yes, ma'am.
18 Yes, ma'am.

19 **THE COURT:** All right. Okay.

20 **BY MR. ARIAIL:**

21 **Q** What I want to go through to make sure with
22 you is basically the court said and inquired as to
23 whether or not this individual was known during the
24 preparation for trial?

25 **A** Yes.

1 Q Did you tell or did your family tell Mr.
2 Robinson about Brigham Young prior to the trial?

3 A They told Silvaggio. That was his
4 investigator.

5 Q Who told Silvaggio?

6 A My family.

7 Q Okay. I'm going to go with which person.
8 What is their name?

9 A Janet Lounds.

10 Q Janet Lounds. Okay. Janet told them that
11 Brigham Young was an individual that could testify as
12 to what happened in the room?

13 A Yes.

14 Q Who other than Brigham Young? Zeldric
15 Vance, was that another witness that you wanted?

16 A It was a witness that Mr. Patel had spoke
17 to. His name was Anthony Watkins. He wanted, had
18 informed him of what was going on. He and Zeldric
19 Vance was working at Columbia farm. They was at the
20 motel. Mr. Patel had spoke to Mr. Watkins. He
21 informed them about Mr. Vance. His case was actually
22 prepared for, like I said, on 8th of December.

23 Q It was prepared. So what, going into the
24 trial, was Mr. Patel wanting to do? Did he tell you
25 he was going to call these people?

1 **A** Yes indeed. Yes indeed. Yes indeed.

2 **Q** Who was he going to call?

3 **A** Those witnesses that were listed that he
4 turned in. Like I said, we did not know Brigham's
5 name.

6 **Q** Do you have any written statements for any
7 of these individuals or did they provide anything to
8 him?

9 **A** Do you have Mr. Patel's file?

10 **Q** Do you got anything from him? Do you have
11 a copy of any statements that were made? I don't
12 have any.

13 **A** No, we don't have Patel's file. We turned
14 in a list of witnesses.

15 **Q** Did he tell you he had any prepared
16 statements?

17 **A** Yes indeed. Yes indeed. He did.

18 **Q** Patel did?

19 **A** Patel, yes, sir.

20 **Q** Now, after you had this discussion on July
21 10th, before the trial with Mr. Robinson, did you
22 request that he call these people to trial?

23 **A** Yeah.

24 **Q** Okay. What was his response?

25 **A** Nothing happened.

1 Q What was his response? Did he say I'm not
2 going to call him?

3 A He didn't do nothing. He didn't call him.

4 Q Did he tell you why he wasn't going to call
5 him?

6 A No. I knew what was -- I see what was
7 going on. The deck was stacked.

8 Q Tell me what was going on.

9 A He was fixing to send me to life in prison,
10 that's what was going to happen.

11 Q Okay.

12 A He did not adequately prepare his case.

13 Q Okay. You would call these individuals and
14 wanted them called to your trial, is that correct?

15 A Sir?

16 Q You wanted Brigham Young, Zeldric Vance and
17 Anthony Watkins to come and testify?

18 A Along with the rest of these people as
19 well.

20 Q Okay. Now, what other things did he --

21 A We have a main witness here right now who
22 is going to testify. He is the one. My innocence.

23 Q Who is that?

24 A Brigham Young.

25 Q Okay. Brigham Young is the key one. He

1 will testify to your innocence in this?

2 A Yes indeed.

3 Q What other things did Mr. Robinson do in
4 failing to investigate or review the case? I'm
5 saying investigate, talk to witnesses. What other
6 items do you have?

7 A The 6th and 14th amendment of the United
8 States Constitution guarantee the defendant a fair
9 trial. During voir dire, the trial judge asked on
10 Page 10 lines 9 through 12 Juror Number 40 was
11 seated.

12 Q Okay. Let's go through Juror 40.

13 A Yes, sir.

14 Q You are saying that he should have made a
15 motion, I guess, to strike or to exclude Juror Number
16 40.

17 A He should have informed the judge that the
18 information would have supported a challenge for
19 cause. It would have been a material fact and used
20 our peremptory challenges versus him telling the
21 judge he motions for a mistrial.

22 Q Juror Number 40. Explain to me.

23 A Juror number 40 indicated she was --

24 Q A victim of violent crime, right?

25 A Yes indeed. She said she was robbed at

1 knife point. That is the same crime I was on trial
2 for.

3 Q So you think he should've made some motion
4 to exclude that individual?

5 A The least he could have did was asked that
6 she be removed and replaced with the alternate. He
7 asked that the whole jury panel be -- he asked for a
8 mistrial. You should have informed the judge that
9 the information would've been supporting a challenge
10 for cause or been a material fact and used our
11 peremptory challenge. We were denied to make an
12 intelligent use of our peremptory challenge
13 disclosing that information. Had the information
14 been revealed, certainly, I would have struck her.
15 At that time, he only had used eight strikes. I mean,
16 he only had used two. So we still had eight strikes
17 left.

18 Q All right.

19 A That prejudiced me right there and caused
20 me to go to a trial where a juror had been a victim.

21 Q Did he discuss that with him? Did he tell
22 you why he put Juror Number 40 on there?

23 A No, he didn't.

24 THE COURT: Am I clear? I hate to
25 interrupt. I just want to clarify something. You

1 saying Mr. Robinson did make a motion for a
2 mistrial when this information came to light? I
3 just want to be clear that I understand the
4 testimony. He made a motion for mistrial but not
5 a motion to have that juror excluded and the
6 alternate seated. Am I understanding?

7 **THE WITNESS:** He --

8 **MR. ARIAIL:** That's right.

9 **THE COURT:** Okay. I got you. Go ahead.

10 **BY MR. ARIAIL:**

11 **Q** Now, let me go through real quick. I want
12 to talk to you. You mentioned to me at no point did
13 you get any type of plea offer from Mr. Robinson or
14 Mr. Patel, correct?

15 **A** I came up here on December -- I came to
16 Greenville on December -- the exact -- (Pause.) I
17 came to, uh, court on -- in the month of -- December
18 the 5th, 2012. I spoke with Mr. Campbell. I asked Mr.
19 Campbell you didn't offer me no kind of plea or
20 anything. He was like we did offer you a plea. He
21 said we offered a plea. I said nobody told me nothing
22 about no plea. He said I offered a plea.

23 So when I got back, I notified my appellate
24 counsel. She said she would write George Campbell a
25 letter and find out about it. She wrote him a letter.

1 He responded back to her. I would like to submit
2 this.

3 **THE COURT:** All right. Give it to your
4 attorney.

5 **THE WITNESS:** Yes, ma'am. This is the
6 letter.

7 **BY MR. ARIAIL:**

8 **Q** This letter says there were plea offers
9 that were extended on May 17, 2010 and January 26,
10 2011. The offers were made to Mr. Patel, is that
11 correct?

12 **A** Uh-huh.

13 **Q** Okay.

14 **A** And she also wrote a letter to Mr. Patel as
15 well.

16 **Q** Okay. Were there any letters that you got
17 from SCCID regarding plea offers extended or showing
18 that Mr. Robinson had a plea offer for you?

19 **A** No, I did not.

20 **Q** Did Mr. Patel give you these plea offers?

21 **A** No, he did not. Mr. Patel wasn't my
22 attorney when those pleas were made. Those were
23 after. Mr. Patel was relieved on December 8th. Mr.
24 Robinson came aboard on December 31st. Mr. Robinson
25 failed to investigate or negotiate a sentence. That

1 plea was there then. He did not try to get it
2 established. Not saying that I would have accepted
3 it. But how can I? I don't know.

4 **THE COURT:** All right.

5 **MR. ARIAIL:** Your Honor, I'm going to move
6 these into evidence if I can as Exhibit 1.

7 **THE COURT:** Any objection?

8 **MS. RATIGAN:** No objection. Is it going to
9 be all one?

10 **MR. ARIAIL:** All one.

11 **MS. RATIGAN:** All right.

12 **THE COURT:** All right.

13 **(WHEREUPON, Applicant's Exhibit 1 is marked for**
14 **identification and admitted into the record.)**

15 **BY MR. ARIAIL:**

16 **Q** All right. Now, you said that Mr. Robinson
17 began representation of you sometime during, I guess
18 it would have been December 2010, correct?

19 **A** 2011. He came December 31, 2011. (Pause.)

20 I got a letter from Silvaggio on December
21 31, 2010 saying Scott Robinson will be representing
22 me. That was December 31, 2010.

23 **Q** Right. That is the first time you ever met
24 with Mr. Silvaggio?

25 **A** Yes.

1 **Q** That means Mr. Robinson would've had to be
2 appointed to you before that time, correct? You were
3 talking to Mr. Silvaggio.

4 **A** December 31st.

5 **Q** 2010?

6 **A** That's the day before New Year's.

7 **Q** At the time when you got this plea offer,
8 it was January 26, 2011 and Mr. Robinson would have
9 been on board?

10 **A** Yes.

11 **Q** You said March 24, 2011, they came down and
12 provided you notice --

13 **A** Notice to seek life without parole.

14 **Q** Yeah.

15 **A** The notice is right here. It is --

16 **Q** March 23rd?

17 **A** 24th.

18 **Q** Signed March 23rd. That is your notice to
19 seek life without parole, correct?

20 **A** Yes, sir.

21 **MR. ARIAIL:** I'm going to mark that as
22 Exhibit 2, Your Honor.

23 **THE COURT:** All right.

24 **(WHEREUPON,** Applicant's Exhibit 2 is marked for
25 identification purposes.)

1 **BY MR. ARIAIL:**

2 **Q** Now the indictment numbers on that -- and I
3 think you had a question as part of your PCR?

4 **A** Yes indeed, I do. Those indictments don't
5 -- conflict with what I was sentenced with. The
6 sentence was illegal.

7 **Q** You are saying the indictment numbers --

8 **A** The indictment numbers that are on the
9 paper that they sent.

10 **Q** Let me try to explain. Don't cut me off.
11 The indictment numbers on life without parole are
12 2010-6028 and 2010-10156. On the indictment numbers,
13 what you are saying right here they end in 139 and
14 0549 if I'm not mistaken, is that correct?

15 **A** Yes, sir.

16 **Q** Your argument is they provided you a notice
17 of life without parole with different indictment
18 numbers than what you were convicted on?

19 **A** Yes, sir.

20 **Q** Did you ever discuss that with Mr. --

21 **A** I didn't pay that no attention. He eluded
22 to at one time -- in the transcript, he eluded to it.

23 **Q** My question is do you know what these
24 indictment numbers are for?

25 **A** No, sir, I do not.

1 **Q** But that doesn't correspond with what you
2 were convicted?

3 **A** Exactly.

4 **Q** These are the indictments with the guilty
5 verdict --

6 **THE COURT:** To the folks in the gallery, I
7 know you're here supporting Mr. Lounds. I
8 appreciate that. If you want to have a
9 conversation, you can step outside and have a
10 conversation. If you are going to be in here, I
11 need you to remain quiet. It is becoming
12 distracting. All right. Thank you.

13 **BY MR. ARIAIL:**

14 **Q** This indictment I'm showing you right here
15 is one where they pled guilty for both counts,
16 correct?

17 **A** Yes, sir.

18 **Q** That is the one where you are saying the
19 indictment numbers are different than the one on the
20 life without parole?

21 **A** Uh-huh.

22 **MR. ARIAIL:** Your Honor, if I may move
23 these into evidence as Exhibit 3.

24 **MS. RATIGAN:** No objection.

25 **(WHEREUPON, Applicant's Exhibit 3 is marked for**

1 identification and admitted into the record.)

2 **BY MR. ARIAIL:**

3 **Q** Now, at some point you discussed there was
4 a gun found, correct?

5 **A** Yes, sir.

6 **Q** In the vehicle, you're going to have to
7 help me with the dates. You were arrested on
8 September 10th. I think they found you got out on
9 bond. And then you were arrested again based upon a
10 car that was reported stolen. When they came and
11 arrested you, they found a gun, is that correct?

12 **A** Say that again?

13 **Q** Okay. Let me see if I can. You were
14 arrested on September 10th with these charges, right?

15 **A** No, not for these charges.

16 **Q** Which charge?

17 **A** It was an unrelated charge.

18 **Q** Receiving stolen goods?

19 **A** Sir?

20 **Q** Receiving stolen goods?

21 **A** That's what I was arrested for.

22 **Q** You got out. You are out on bond. They
23 come back and they find a vehicle that they say is
24 stolen and they arrest you again, do a search of the
25 car and find a gun, is that correct?

1 A What happened was I went to run an errand
2 on September 27th.

3 Q Okay.

4 A While I was running the errand, I picked up
5 someone. I was going into an apartment complex. He
6 had some beer. I gave him a ride to his apartment
7 complex, where I was going to. I bought the beer
8 from him. I got out of the car, went to the girl's
9 house. While I was in the apartment, I heard her say
10 don't nobody know who drive in this car. I raised
11 the window, looked out the window and the police was
12 around the car.

13 So I come out of the door, I'm driving that
14 car, sure. Sir, you got some identification? Yeah.
15 They pat me down for their safety and my safety. I
16 had no problem with that. Now they want to put
17 handcuffs on me. I had a problem with that. I gave
18 them my license. I became combative. When I was in
19 the back of the police car, they told me that I was
20 wanted for armed robbery. The car was reported
21 stolen.

22 They went on to take me downtown. When I
23 got downtown, I was charged with receiving stolen
24 goods and assault while resisting. They said I
25 assaulted an officer from the incident. Monday

1 morning, I bonded out.

2 Three days later, this was September 27th,
3 the date of this incident. Three days later, they
4 come back and arrested me for armed robbery and said
5 when they -- on the 27th when they arrested me for
6 receiving stolen goods, they said they found an
7 alleged gun in the car. That is the gun that we are
8 referring to now. They said they found this gun in
9 the car.

10 Q The gun that was placed into the trial,
11 correct?

12 A Yes, sir.

13 Q You are saying that should have been
14 excluded for an illegal search of the vehicle and Mr.
15 Robinson didn't do that, is that correct?

16 A Exactly. A suppression.

17 Q Let me go through my notes real quick. The
18 key item in your case, just want to go back because I
19 want to focus on this, you are saying no robbery took
20 place in that the key witnesses who would have shown
21 that were Brigham Young, is that correct?

22 A Yes, sir.

23 MR. ARIAIL: Your Honor, I have no further
24 questions. Thank you.

25 THE COURT: All right.

1 **MS. RATIGAN:** I have no questions for Mr.
2 Lounds, Your Honor.

3 **THE COURT:** All right, Sir. You may step
4 down.

5 **THE WITNESS:** I ain't through. I have one
6 more issue.

7 **THE COURT:** He is saying he has one more
8 issue.

9 **MR. ARIAIL:** Tell me what the issue is and
10 I will go into it.

11 **THE WITNESS:** Confront. Confront. Sixth
12 amendment right to confront, to thoroughly and
13 properly examine witnesses.

14 **BY MR. ARIAIL:**

15 **Q** You are talking about in regards to Mr.
16 Workman?

17 **A** Yes, indeed. Mr. Robinson didn't examine
18 the witness.

19 **Q** You're talking about the alleged victim in
20 this case?

21 **A** Yes, sir.

22 **Q** Tell me how he did not confront him and ask
23 what he needed to in regards to the case.

24 **A** For one, the alleged victim gave a
25 statement on the original night this alleged incident

1 took place. He said that there was a black gun,
2 handgun.

3 **Q** Okay.

4 **A** Three weeks later he gave another
5 statement. He stated that it was a big revolver. On
6 the morning of trial, he gave another -- he testified
7 there was an old black revolver with a brown handle.
8 It became significant to the jury. During the
9 liberation, the jury requested the original
10 description, the original police report describing
11 the gun that was given. However, Mr. Robinson was in
12 possession of this evidence and didn't confront the
13 alleged victim with it nor did he admit it into
14 evidence for a jury to make an informed decision.

15 **Q** You are saying he did not cross him at all
16 in regards to the different types of weapon?

17 **A** He didn't confront him with the original.

18 **Q** With the original statement?

19 **A** Also the alleged victim testified that the
20 gun went off when he hit him. He said I hit him in
21 the head with a gun and the gun went off. On the
22 original police report, he did not inform the
23 authorities. He did not confront him with that. On
24 the original, it does not state that. The one that
25 he gave three weeks after that, that is the one that

1 Mr. Robinson confronted. It was like he was
2 boasting. When he was in possession of this right
3 here saying the gun did not go off, it was like he
4 was boasting.

5 Q My question is the statement you're talking
6 about was September 29th, 2009, correct?

7 A Yes, sir.

8 Q He did question him then regards to that?

9 A Questioned him in regards to that
10 statement?

11 Q Right.

12 A I'm talking about the original. He did not
13 submit the original statement, he did not confront
14 him with the original statement. The original
15 statement.

16 Q You told me he went into it. That is the
17 original statement you're talking about, right?

18 A No, no, no, no.

19 Q You are talking about the one that was --

20 A The original statement given. The
21 original. The original one that the police got from
22 the victim.

23 Q What is the date on that?

24 A This right here is the 6th.

25 Q He didn't go into that statement as to what

1 you wanted him to about what he said in that?

2 **A** He said he did not say that he was hit on
3 the head. He said the gun went off. He said the gun
4 went off. He could have went in there and found out
5 forensics if the gun went off. Then he said it was a
6 black handgun. All handguns are not revolvers. That
7 was a motion for the jury. During the break, they
8 requested to see that. They wanted the original
9 description of the gun.

10 **Q** Okay.

11 **A** And he prejudiced me in that regard because
12 he failed to enter it in as evidence and he failed to
13 confront the accuser with the original statement.

14 **Q** Okay.

15 **A** That significantly prejudiced me.

16 **Q** He did go over the statement that was done
17 on September 29th, 2009, right?

18 **A** I'm talking about the original.

19 **Q** What I am asking you is he did go over
20 that, correct? He impeached him with that but he did
21 not impeach him with the first statement that's what
22 you are talking about.

23 **A** The original. The one that is not saying
24 that the gun went off.

25 **Q** Okay. I think he asked him. And I want to

1 go back real quick. Is that the only issue that you
2 had in regards to the confrontation or impeachment
3 evidence?

4 **A** I have another issue pertaining to trial
5 counsel not objecting to life without parole
6 sentence. It was five years for the gun. 16-23-49
7 when it says this statute states -- exceed statutory
8 limits constitutional era would make the sentence an
9 illegal sentence. According to this statute right
10 here, even though I was sentenced to life plus 5
11 years, he could have made a motion under 16-23-49 to
12 throw away the five years and have me just with a
13 life sentence or whatever.

14 **Q** Okay.

15 **A** He failed to object to the notice of intent
16 which contain the indictment. I already got that.
17 He did not motion to have the indictment quashed. It
18 was directed to the grand jury 13 months after I was
19 arrested.

20 **THE COURT:** Okay.

21 **MR. ARIAIL:** Okay.

22 **THE COURT:** All right.

23 **MR. ARIAIL:** No further questions, Your
24 Honor.

25 **THE COURT:** Sir, you may step down.

1 **MR. ARIAIL:** Your Honor, no further
2 questions. I'm going to call Mr. Brigham Young.

3 **THE COURT:** Mr. Young, come forward and be
4 sworn please.

5 **THE CLERK:** Place your left hand on the
6 Bible and raise your right hand.

7 **BRIGHAM YOUNG**
8 having first been duly sworn, testifies as follows:

9 **THE CLERK:** Thank you. Please state your
10 full name for the record.

11 **THE WITNESS:** Brigham Young.

12 **THE CLERK:** Thank you. You may be seated.

13 **DIRECT EXAMINATION**

14 **BY MR. ARIAIL:**

15 **Q** Mr. Young, how are you doing today?

16 **A** Good, sir.

17 **Q** Good. Tell me how you know Mr. Lounds.

18 **A** Uh, I know him through his little cousin. I
19 was raised up with him.

20 **Q** Little cousin. Give me a name. Who?

21 **A** Mike. Michael.

22 **Q** Michael. Okay.

23 **A** Yes, sir.

24 **Q** Now, I want to take you back to September
25 5th, 2009.

1 **A** Yes, sir.

2 **Q** Where were you on that date?

3 **A** It's been a minute ago. I was staying off
4 of Easley Bridge Road.

5 **Q** Okay. Now, do you remember having any
6 involvement with Mr. Lounds on that night?

7 **A** I remember that certain night. I remember
8 the night that it happened.

9 **Q** Say what?

10 **A** That it happened. It's been a little minute
11 ago. But I can tell you what happened because I
12 remember because I tried to come to court. And they
13 wouldn't let me come in when he came to trial.

14 **Q** When he was at trial, you came to court?

15 **A** I came up here.

16 **Q** Okay.

17 **A** They wouldn't let me do nothing.

18 **Q** Okay. So you came to trial. Did you talk --

19 **A** I tried to come in the courtroom. They
20 wouldn't let me come in. I talked to all lawyers. I
21 talked to everybody. I told the truth and everything.

22 **Q** Okay. And you weren't called as a witness
23 in that case?

24 **A** They wouldn't let me come in. They told me
25 I was late or something. I was too late. I said how

1 I was too late. I was trying to get in contact about
2 this incident. I found out what happened to him. When
3 I called, he had got locked up. I called his sister.
4 I said you seen Anthony. She said he was locked up. I
5 asked what for. She said he had a robbery charge. I
6 just really found out about the incident.

7 Q Let me take you back --

8 A He didn't do it so I just wanted to say
9 something about it.

10 Q Okay. Let me just take you back. Let me try
11 to organize this a little bit. Have you ever spoken
12 with Mr. Robinson or anybody with his office about --

13 A Yeah, I spoke. I spoke to the lawyers and I
14 spoke to all of them. Everybody.

15 Q Okay. When did you do that?

16 A I think I spoke to the solicitor, his
17 lawyer, I spoke to everybody.

18 Q Was it at the trial?

19 A They can tell you that I spoke to them
20 during the trial.

21 Q At the trial? During the trial?

22 A Yes, sir.

23 Q Let's go back to what you know about this
24 incident. September 5th, 2009, were you involved with
25 Mr. Lounds during that day?

1 A We was at a club.

2 Q Okay.

3 A We was at a club.

4 Q Both of y'all were at a club. What club?

5 A We were at Club Cora's.

6 Q What happened while you were at Club

7 Cora's?

8 A I was at Club Cora's and they called me.

9 They said I had a friend down at the Motel 6. I said

10 I need to get a ride down there. I said I'm trying to

11 get a ride down there. Hold on. Let me see if I can

12 get a ride. Call you back. I asked Anthony Lounds can

13 you give me a ride down to the, uh, 6. He was like

14 yeah. So I called Van and Boochie back. Got me a ride

15 down to the Motel 6. So I got down to -- he said

16 yeah he'll give me a ride. I said I'm on my way.

17 Q Okay. So you got Van who goes by Zeldric

18 Vance. And then Boochie is in jail?

19 A I think he in jail.

20 Q Okay. But he's not here today?

21 A Yes, sir.

22 Q Okay. So y'all were all at Club Cora's?

23 A No, just me.

24 Q And Anthony?

25 A Anthony, sir.

1 Q So Boochie and Zeldric Vance were down at
2 the Motel 6?

3 A Boochie was at the Motel 6.

4 Q Okay. So you go and you need -- you're
5 going down there. You get a ride?

6 A Yeah, I asked can I get a ride.

7 Q Okay.

8 A I told him I'll call him back.

9 Q Okay.

10 A So I asked Anthony will he give me a ride.
11 He said yeah.

12 Q Okay.

13 A So I called them back to say I got a ride
14 and I'll be down there.

15 Q Okay.

16 A I said be out there where I can see you. He
17 ain't want to give me a ride out there. So I told him
18 I'll give him a couple of dollars.

19 Q So he drives you down there. What did y'all
20 do?

21 A When I got down there, I see Nam. Nam came
22 down the steps. I say, what's up, man. Where your
23 friend that want the weed. So he took me up the
24 steps, sir. So he took me up the steps. I got in the
25 room. I know -- as soon as I got in the room, I knew

1 the dude name Beat. I know him from back in the days,
2 from back in the days when he used to be out there
3 with the women. He used to be down there in District
4 25 with the women.

5 I said what's up, man. I said hey, man.
6 Where the weed. He smelled it and all that. I was
7 like give me my money. He said I'm trying to find the
8 money. I said no, man, give me my weed back. He said
9 you been knowing me for a long time. You know I get
10 money. You know what I mean? I was like, man, give me
11 my cash. Give me my cash.

12 He said I got a checkbook. He gave me his
13 Greenville Tech ID and checkbook. I said, man, I
14 don't want that. I don't want that. He said you been
15 knowing me for a good minute. He said I'll pay you
16 tomorrow. So he kept begging me and begging me. I
17 said, here man, I want my money tomorrow. So after
18 the fact, I took the checkbook. He gave me his
19 number. He gave me his number. I called him back. He
20 did not answer the phone.

21 Q Okay.

22 A So I took the Greenville Tech ID and the
23 checkbook and brought like, what, \$50 in groceries
24 with the ID, the Greenville Tech ID and the
25 checkbook.

1 Q Okay.

2 A A couple of months down the line, I left it
3 alone.

4 Q You got the checkbook?

5 A Yes, sir.

6 Q Mr. Lounds didn't get the checkbook?

7 A No, sir. It's on camera.

8 Q Okay.

9 A It's on camera.

10 Q It's on camera?

11 A They know. Everybody know that. The lawyers
12 and all that know that.

13 Q So all this was done. You then tell them
14 afterwards at some point in time that you were the
15 one that had the checkbook, correct?

16 A I had the checkbook. I been had the
17 checkbook.

18 Q Okay.

19 A I got the checkbook. The next day, I asked
20 for a ride.

21 Q Okay.

22 A I told him could you take me to the grocery
23 store. I told Anthony Lounds to take me to the
24 grocery store, Ingles in Cherrydale. We went in the
25 grocery store. I cashed the checkbook. It's on camera

1 and everything.

2 Q Now, at no time did you see -- you were
3 with Mr. Lounds the entire time y'all were dealing
4 with Mr. Workman, I guess. At no time did you see him
5 take any cash or checkbook from him, is that right?

6 A Oh, no, sir. No, sir.

7 Q So he didn't rob him. He didn't do anything
8 from him?

9 A He ain't do none of that.

10 Q Okay.

11 A He ain't do nothing. I don't know how that
12 came about. He robbing somebody, I don't know how
13 that could have happened. He gave me a ride. How he
14 going to rob somebody. He gave me a ride.

15 Q Mr. Vance and Boochie saw this also, is
16 that correct?

17 A Yes, sir.

18 MR. ARIAIL: Okay. Your Honor, I've got no
19 further questions.

20 MS. RATIGAN: Just very briefly, Your
21 Honor.

22 CROSS-EXAMINATION

23 BY MS. RATIGAN:

24 Q So you've known Mr. Lounds for a while.

25 A I know him a little bit. I know him a

1 little bit.

2 Q So you were knowing him before that night?

3 A Yes, ma'am.

4 Q And he went with you to the Ingles to cash
5 the checks and buy the groceries?

6 A Yes, ma'am. He was right behind me when I
7 cashed the check.

8 Q And when did you find out Mr. Lounds had
9 been arrested for armed robbery?

10 A When I came to his house down on Easley
11 Bridge Road and I couldn't find him. I ain't seen him
12 so I called his sister. She told me he was in jail
13 for armed robbery or whatever.

14 Q Would that have been a couple of weeks
15 later? A couple of days?

16 A It was like months ago. I can't tell you.

17 Q A couple of months later?

18 A I think it was months later.

19 Q Did you ever contact Mr. Lounds lawyer to
20 tell him that you were there that night?

21 A I tried to. I tried to. I done came up
22 here.

23 Q Okay. But I'm talking about prior to the
24 trial. Once you found out from Anthony's sister that
25 he had been arrested.

1 A I told his sister that I was trying to get
2 in contact with his lawyer. I told her to talk to
3 him.

4 Q Okay.

5 A Talk to the lawyer. She said he said come
6 up here or whatever. Come to the courthouse or
7 whatever. I was a little bit late because I was in
8 jail on an accident.

9 Q Okay.

10 A I was a little late.

11 Q So you didn't contact directly. You asked
12 his sister to contact?

13 A Yes, ma'am. Cause I was in jail.

14 Q And you have a prior criminal record?

15 A Yes, ma'am. I got a little record. Yes,
16 ma'am.

17 Q So you know how the court system works?

18 A A little bit.

19 Q Okay. And you didn't think it would be
20 helpful to call his attorney directly and say you
21 were there that night and there was no robbery?

22 A I can't do it. I was in jail.

23 Q Okay. Did you write him a letter?

24 A I can't write it in jail.

25 Q You can't write a letter to Mr. Lounds'

1 lawyer while you were in jail?

2 **A** I don't think you can do that.

3 **Q** Okay. That's all I have, Your Honor.

4 **MR. ARIAIL:** Nothing further, Your Honor.

5 **THE COURT:** Sir, you can step down.

6 **THE WITNESS:** Yes, ma'am.

7 **MR. ARIAIL:** Our last witness, Your Honor,
8 will be Mr. Vance, Zeldric Vance.

9 **THE COURT:** All right.

10 **ZELDRIC VANCE**

11 having first been duly sworn, testifies as follows:

12 **THE CLERK:** Thank you. Please state your
13 full name for the record.

14 **THE WITNESS:** Zeldric Shanang Vance.

15 **THE CLERK:** And please spell it. Spell
16 your full name please.

17 **THE WITNESS:** Zeldric, Z as in zebra-E-L-D-
18 R-I-C. Shanang, S-H-A-N-A-N-G. Vance, V-A-N-C-E.

19 **THE CLERK:** Thank you.

20 **DIRECT EXAMINATION**

21 **BY MR. ARIAIL:**

22 **Q** All right. Mr. Vance, how are you doing
23 today?

24 **A** All right.

25 **Q** Just want to go through a little of

1 background in regards to how you know Mr. Lounds. How
2 long have y'all been friends?

3 A Mr. Lounds, I really don't know him.

4 Q What's that?

5 A I said I really don't know Mr. Lounds.

6 Q So you hadn't met him. You know some of his
7 friends, right?

8 A Yeah. I know Boochie and Brigham.

9 Q Okay. And Boochie is not here, right?

10 A No, sir.

11 Q Okay. Brigham is the gentleman who just
12 testified.

13 A Yes, sir. I know Brigham.

14 Q So on September 5th, 2009, were you at the
15 Motel 6?

16 A Yes, sir.

17 Q Who do you remember being there at the
18 time?

19 A Well, me and Boochie. We came there. This
20 guy -- long story short, this guy is like a small
21 pimp. So we did -- before we went down there, me and
22 Boochie went up to the room. Already had some weed.
23 He was like I want to get some more of that. He asked
24 me if I had some to sell. Nah, this all I got. But I
25 told him I got somebody who could bring it. That's

1 when I called Brigham. Brigham and them came about 45
2 minutes later.

3 **Q** Okay.

4 **A** Cause we had time to do what we was doing.
5 They came up there. Brigham knew the dude. They was
6 talking -- I don't know really what was going on as
7 far as the money transaction part. But they was
8 talking. I remember. I was having a conversation with
9 the girl. I remember seeing them exchange checkbooks
10 and stuff. Brigham was like, man, I need my money and
11 stuff. I was talking to her.

12 And to tell you the truth, I know what
13 happened to old boy money. The girl got it. When she
14 left with us, she had the money. That's what happened
15 to the other dude cash. I don't know the other dude.

16 **Q** Okay. So let me go back and piece this
17 together a little bit. So you are there. This victim
18 who is part of this case, Brian Workman, was he there
19 with y'all?

20 **A** Yes. All of us was in the room. Me, him,
21 Boochie and the girl.

22 **Q** So at some point, Brigham shows up. He got
23 some weed. He comes in with Mr. Lounds, correct?

24 **A** Yes, sir.

25 **Q** So it's five guys and two girls at that

1 time?

2 A Yes, sir.

3 Q Okay. At this point in time, there's some
4 transaction between Brigham and Mr. Workman, is that
5 right?

6 A I guess that's his name. I ain't know him.

7 Q Who was buying the weed at that time?

8 A I seen Brigham and the dude.

9 Q The dude is...

10 A Mr. Workman.

11 Q Okay.

12 A That's his name?

13 Q Okay. But you didn't know who he was. It's
14 not Boochie?

15 A Oh. No, sir.

16 Q Okay.

17 A Me, Boochie and the girl was over here.

18 Q Okay. So at that point in time, you see
19 them doing a transaction.

20 A Yes, sir.

21 Q What happens during the transaction?

22 A Well, it got my attention. Brigham was like
23 no, man, I need my money. He was like man. He know
24 everybody was kind of looking at them and stuff. Then
25 after that, the transaction of the checkbook. I

1 remember that because I was saying to myself you
2 crazy. I wouldn't give him my checkbook. That's what
3 I was saying to myself.

4 Q Right.

5 A They made the transaction after that. Then
6 I guess they stayed a little bit. Anthony and
7 Boochie, they left.

8 Q Okay.

9 A I stayed about 30 more minutes, then I left
10 too.

11 Q At no time did you see any type of armed
12 robbery or any robbery or anybody fighting over a
13 checkbook?

14 A No.

15 Q He gave him the checkbook freely and
16 voluntarily?

17 A Yes, sir.

18 Q Okay. Now, after that, has anybody
19 contacted you or did you talk to any of the attorneys
20 in the case?

21 A No, sir.

22 Q Okay. Did anybody ask you to come to court
23 and provide a statement about this other than today?

24 A No, sir. His sister had called and had told
25 me that he had got a life sentence and stuff. That

1 was it.

2 Q Okay. So first time you really heard about
3 this was after you were contacted by his sister?

4 A Yes, sir.

5 Q Okay. Did you ever give a statement,
6 statement to police or anything of that nature?

7 A No, sir.

8 Q Were you ever listed as a witness in
9 anything?

10 A Not that I know of.

11 Q So you were never involved in the
12 underlying trial or anything?

13 A No, sir.

14 Q Okay. Did you talk to Mr. Robinson or his
15 office, anybody with him?

16 A No, sir. That's the first time I seen him.

17 MR. ARIAIL: Okay. Your Honor, I have no
18 further questions.

19 THE COURT: All right. Ms. Ratigan.

20 CROSS-EXAMINATION

21 BY MS. RATIGAN:

22 Q So you didn't hear that Mr. Lounds had been
23 arrested until he actually had been sentenced at
24 trial?

25 A Yes, sir. Yes, ma'am.

1 **Q** Okay. Okay. And if Mr. Robinson had
2 contacted you, you would have testified at Mr.
3 Lounds' trial that this was a drug deal?

4 **A** I would have testified to what I just
5 testified to.

6 **Q** Okay. That it was a drug deal and not an
7 armed robbery?

8 **A** I would testify that he didn't rob him.

9 **Q** Okay.

10 **A** I guess you say drug deal.

11 **Q** Yes, sir. Okay.

12 **MR. ARIAIL:** Nothing further, Your Honor.

13 **THE COURT:** Sir, you can step down.

14 **MR. ARIAIL:** That is all we have, Your
15 Honor.

16 **THE COURT:** All right.

17 **MS. RATIGAN:** The State would call Mr.
18 Robinson, Your Honor.

19 **THE COURT:** All right.

20 **THE CLERK:** Mr. Robinson, place your left
21 hand on the Bible and raise your right hand.

22 **SCOTT ROBINSON**

23 having first been duly sworn, testifies as follows:

24 **THE CLERK:** Thank you. Please state your
25 full name for the record.

1 **THE WITNESS:** Scott David Robinson.

2 **THE CLERK:** Thank you.

3 **DIRECT EXAMINATION**

4 **BY MS. RATIGAN:**

5 **Q** Mr. Robinson, do you recall representing
6 Mr. Lounds on these charges?

7 **A** I do.

8 **Q** Mr. Lounds testified you were appointed in
9 December of 2010. Does that sound accurate?

10 **A** Yeah. The latter part of December of 2010.

11 **Q** Were you the first attorney on the case?

12 **A** I just heard that Mr. Patel was the
13 attorney before me.

14 **Q** Did you receive materials, discovery
15 materials from Mr. Patel or did you file your own
16 discovery motions?

17 **A** I would have normally filed my own
18 discovery motions.

19 **Q** Did you receive those materials from the
20 state?

21 **A** Yes, anything that they had they gave it to
22 me.

23 **Q** And did you have an investigator during
24 this period of time?

25 **A** I did.

1 Q And who was that?

2 A Paul Silvaggio.

3 Q Was he involved in your investigation of
4 this case?

5 A Yes.

6 Q Would you -- let me strike that. Did you
7 send a copy of discovery materials to Mr. Lounds?

8 A Yes. He would have probably had Mr.
9 Silvaggio go over them with him or bring them to him.
10 He may have had the discovery too that Mr. Patel had
11 given him as well.

12 Q So your testimony is your practice would
13 have been for the investigator to go over it?

14 A Yes.

15 Q Okay.

16 A Or myself.

17 Q Can you recall in this case whether you
18 went over it with Mr. Lounds or was it Mr. Silvaggio?

19 A I don't recall that. Paul is a very good
20 investigator. He would have wanted to go over it with
21 him possibly. But I'm not sure.

22 Q Was Mr. Lounds over at the detention
23 center?

24 A Yes.

25 Q Did you go visit him at the detention

1 center?

2 **A** I believe I did. I don't know when I
3 visited him. I would have visited him, I think. I
4 don't recall exactly when. My practice would be to
5 visit him.

6 **Q** Do you recall whether you had any meetings
7 with him in the courthouse?

8 **A** I would have probably had a meeting with
9 him at the courthouse at trial, during breaks or
10 whatever.

11 **Q** So what did you do in preparation for Mr.
12 Lounds case?

13 **A** Well, here's what we have. The situation
14 was that he was accused of going to a Motel 6 and
15 robbing a guy named Brian Workman and then going to
16 an Ingles with another gentleman and cashing checks.
17 Mr. Workman's testimony was inconsistent as far as
18 statements go. He gave different statements in this
19 case. I was going to draw out of him the
20 inconsistencies of the statement because I believe he
21 said Mr. Lounds, he could identify him and also about
22 a gun when there was no gunshot heard by anyone. The
23 strategy was to take apart the State's case and go
24 after that part of it. That's what I thought I would
25 do.

1 I couldn't put Mr. Lounds on the stand
2 because he had a pretty significant prior record for
3 burglaries, larcenies. He had actually been -- he
4 actually started serving time in different jail
5 things from 1995. He had about approximately 15
6 outstanding charges at the same time as this trial.

7 **Q** Mr. Lounds testified that you met with him
8 two or three days before the trial. Does that sound
9 accurate?

10 **A** Yeah, it does.

11 **Q** Do you recall whether or not you had
12 meetings with him prior to that?

13 **A** I can't recall independently when I would
14 have met with him. Either myself or Mr. Silvaggio
15 would have.

16 **Q** Does your file reflect that, uh, the name
17 of Brigham Young was ever given to either you or Mr.
18 Silvaggio prior to trial?

19 **A** I'm not sure about that. I don't know. I
20 am not sure that -- I know the day of trial there was
21 a guy named Brigham. Mr. Lounds --

22 **THE COURT:** Again, I'm going to ask you to
23 leave if you are not -- if you can't just sit
24 here quietly and listen, all right? I don't
25 need anybody to point anybody out to me. Thank

1 you.

2 Go ahead, Ms. Ratigan.

3 **BY MS. RATIGAN:**

4 **Q** So I believe you stated that there was a
5 gentleman named Brigham at the trial?

6 **A** At the trial, yes.

7 **Q** Had that name been given to you prior to
8 trial? Do you remember?

9 **A** I don't have any recollection of that. I
10 never met with Mr. Brigham Young. I don't even know
11 if Mr. Lounds knew his last name. I think when he
12 talked with the detectives and he pointed out that he
13 was in that video from Ingles, he indicated this
14 guy's name was Allen, not Brigham.

15 **Q** If he had given you the name of Brigham
16 Young, would you have asked your investigator to
17 follow up?

18 **A** Of course, yes.

19 **Q** Do you recall anyone in Mr. Lounds family
20 giving you any kind of information on witnesses?

21 **A** I don't have any recollection. I do know
22 we subpoenaed witnesses that Mr. Lounds asked us to.
23 I think the names of potential witnesses would have
24 been on page 8. We would have subpoenaed them in
25 this matter. But on the question of Mr. Brigham

1 Young, I mean, trying to portray this as a drug deal
2 versus a robbery in this kind of case, I don't know
3 if that would have been the best trial strategy.

4 Q Did Mr. Lounds tell you his version of what
5 happened that night? Do you recall?

6 A I don't recall exactly what he told me at
7 that time.

8 Q Did Mr. Lounds ever mention to you the
9 names of Anthony Watkins or Zeldric Vance that you
10 recall?

11 A Vance, no. Watkins was actually one of the
12 witnesses on our witness list that Judge Pyle read to
13 the jury and he was subpoenaed.

14 Q All right. And was Mr. Lounds served with
15 the LWOP notice?

16 A Yeah, that would have been some time in
17 early 2011.

18 Q So pretty soon after you came on the case,
19 he was served with the notice of intent to seek life
20 without parole?

21 A Yes.

22 Q Do you recall ever having received a plea
23 offer from the State while you represented Mr.
24 Lounds?

25 A I don't recall independently. I actually

1 took the precaution of calling Sloan Ellis. Sloan
2 Ellis did not recall any plea offer being made in
3 this matter.

4 Q Just for the record, Sloan Ellis is who?

5 A He was the assistant solicitor who
6 prosecuted the case with Mr. Campbell in this matter.
7 I don't believe -- I think Mr. Lounds -- whatever the
8 plea offer would have been, it would have been 15 or
9 so, approximately 15 charges that were outstanding at
10 that point. I can't imagine that plea offer would
11 have been something he would've taken.

12 Q But you don't have any independent
13 recollection that there was a plea offer?

14 A I don't. I don't believe there was.

15 Q As part of your general practice, what do
16 you do when you get a plea offer from the state?

17 A Take it to the client. That's why I think
18 that either myself or Mr. Silvaggio would have done
19 that. But I believe that -- if an offer actually did
20 take place, it would have been a very high, very
21 significant offer in this matter. I don't believe
22 Mr. Lounds would ever take it.

23 MS. RATIGAN: That's all I have, Your
24 Honor.

25 THE COURT: All right. Mr. Ariail?

1 **MR. ARIAIL:** Thank you, Your Honor. May it
2 please the Court.

3 **CROSS-EXAMINATION**

4 **BY MR. ARIAIL:**

5 **Q** Now, Mr. Robinson, just go back real quick.
6 You heard Mr. Young and Mr. Vance testify that no
7 armed robbery occurred, correct?

8 **A** That's what they said.

9 **Q** Okay. I don't understand. Did you receive
10 any calls from any family members about these
11 witnesses?

12 **A** That would have been -- I have a pretty
13 good memory as far as what I did last week. But as
14 far as something that happened two or three years, I
15 have no independent, I don't know. I would have
16 followed up on it typically. Either myself or Mr.
17 Silvaggio would have followed up on it.

18 **Q** Would you keep any notes in your file on
19 that?

20 **A** I normally would not. As I said, I had an
21 investigator at the time. He would've talked to
22 anyone that he was contacted about.

23 **Q** What do you have in your file, what do you
24 recall as far as any alibi or any type of defense in
25 this case?

1 **A** There was no person or there was no alibi
2 in this case.

3 **Q** Okay.

4 **A** He was there in the room. All of the
5 witnesses -- he admits he was there in the room. He
6 admits -- he admitted to the officer he was on the
7 tape at Ingles cashing these checks. He may not have
8 been the one to cash the checks but he was with a guy
9 that he said was Allen in the Ingles. The same
10 checks that were taken from Mr. Workman in this
11 matter. Mr. Workman also on the stand said that Mr.
12 Lounds was the person who robbed him that night and
13 he was about three feet away.

14 **Q** Okay. Now, when you reviewed all of this
15 with Mr. Workman, were there any other witnesses that
16 you had -- from my understanding of Mr. Young, there
17 were at least seven people in this room including the
18 victim. So did you see any of those or talk to any
19 of those individuals or have any --

20 **A** Mr. Lounds, anyone that he asked us to talk
21 to, he did not know the actual names of these folks.
22 They had street names. One of the persons that they
23 talked to was Al Capone.

24 **Q** Okay.

25 **A** I don't know if he knew -- he didn't know

1 who that was as far as like the real name of that
2 person, where they live, their telephone number or
3 anything of that nature.

4 **Q** When you talked to Mr. Young at trial, do
5 you remember what your discussion with him was and
6 what he was going to testify about?

7 **A** He would have -- he would have -- what I
8 told the judge. He would have testified that he was
9 there and they were not -- they were actually doing a
10 drug deal at that time with this individual. The guy
11 didn't give them any money so he got the checkbook
12 instead and went to Ingles.

13 **Q** Okay.

14 **A** That's what I believe he would have said.

15 **Q** Anthony Watkins, did he show up to trial?

16 **A** I don't know that. I know we sent
17 subpoenas. I don't know if he ever showed up at
18 trial.

19 **Q** Do you know who you subpoenaed for trial?

20 **A** I don't know independently. What I do
21 know, I can tell you by looking at the -- I am
22 speculating. I can look at the potential witnesses.
23 There would have been Randy Bryant, Anthony Watkins,
24 Alford Chandler. Those are the names he would have
25 given me.

1 **Q** Okay. The key -- what I am trying to get
2 and figure out is that apparently we have a case
3 where I have got two individuals now alleging that it
4 didn't happen, there was no robbery, there was a drug
5 deal. They are coming in here acknowledging there
6 was a drug deal. What did you do to go through to
7 figure out if this is truly an armed robbery or if
8 this was a drug deal like they were saying?

9 **A** On the one hand, we had the victim who said
10 that he was within three feet of Anthony Lounds and
11 he identified him in a six-person lineup as a person
12 who robbed him. That is what he said in this case.
13 He said that he had a gun. He also said that they
14 took, he and whoever, took the checkbook, either
15 robbed him of the checkbook, took the checkbook or
16 whatever and took it to Ingles where he cashed the
17 checks. He was on a videotape cashing the checks.
18 They have a gun, a black gun. I made a motion to
19 exclude that because it wasn't the same but it was a
20 black gun.

21 **Q** Okay.

22 **A** On the other hand, whether it is an armed
23 robbery or a drug deal where they are stealing the
24 checks, I am not really sure what the difference is
25 as far as in terms of how the jury perceives Mr.

1 Lounds. The victim says robbed him with a gun, hit
2 him in the head, took his checkbook and whatever
3 stuff he had and went to Ingles. That is what the
4 victim said.

5 Q I guess the question -- the reason I'm
6 asking these questions is if it is an armed robbery
7 which he is charged with rather than a drug deal,
8 that is a two separate wholly different issues,
9 correct?

10 A What you have is if it is a drug deal, if
11 during the drug deal -- I think Mr. Young just
12 testified to this. He said that the guy didn't have
13 cash. He said I want cash. He got a checkbook. He
14 got his ID. The jury could -- I don't think the jury
15 -- this is my own perception, but I think that a jury
16 could look at that as a robbery or someone taking
17 money from somebody. Whether I had a gun or not is
18 another issue. According to the victim, he had a
19 gun.

20 Q Right. These individuals, you heard them
21 testify. Nobody said there was any guns that were
22 involved in this.

23 A The victim says there was a gun.

24 Q Here is what I'm asking. If the alleged
25 victim has made this whole thing up, then wouldn't it

1 be sensible to try to run down some of these
2 witnesses who not only testify to what they testified
3 now but probably would throw in some more potential
4 impeachment information that you could use against
5 Mr. Workman?

6 **A** He has got to know the name of these
7 people. If he doesn't know the name of the people
8 and he can't tell me who these people are other than
9 Al Capone or Boochie or something like that, I have
10 no -- I nor my investigator know who these people
11 are.

12 **Q** So no one in his family or Mr. Lounds gave
13 you that information, I guess?

14 **A** If someone had given us this information,
15 Mr. Silvaggio especially, he would have run that
16 person down. If they knew the names, the addresses
17 and the telephone numbers of these people.

18 **Q** Did you discuss -- when you meet with him,
19 how many times did you meet with him personally or
20 talk about this case?

21 **A** I have no recollection. I'm not sure.

22 **Q** Did he have any questions or request you to
23 do anything from your recollection as to what --

24 **A** We went over the problems with the
25 statement that the victim gave in this case. The

1 victim gave several statements. We went over the
2 problem that -- anything he wanted to tell me, we
3 talked about as far as research, as far as what he
4 was wanting -- anytime you get life without parole
5 notice given to you, I'm sure it is extremely nerve-
6 racking. Anything he wanted to talk about, we talked
7 about or Mr. Silvaggio talked about.

8 **MR. ARIAIL:** Okay. I have no further
9 questions, Your Honor. Thank you.

10 **THE COURT:** Ms. Ratigan?

11 **MS. RATIGAN:** I have nothing further. The
12 state would rest, Your Honor.

13 **THE COURT:** All right. Sir, you can step
14 down.

15 **THE WITNESS:** Thank you, Judge.

16 **MS. RATIGAN:** We would also waive any
17 closings, Your Honor.

18 **THE COURT:** All right.

19 **MR. ARIAIL:** Your Honor, I just have one
20 reply witness if I could put up real quick. Ms.
21 Lounds, Janet Lounds.

22 **THE COURT:** All right.

23 **JANET LOUNDS**

24 having first been duly sworn, testifies as follows:

25 **THE CLERK:** Thank you. Please state your

1 full name for the record.

2 **THE WITNESS:** Janet Lee Lounds.

3 **THE CLERK:** Thank you, ma'am.

4 **DIRECT EXAMINATION**

5 **BY MR. ARIAIL:**

6 **Q** Ms. Lounds, how are you doing today?

7 **A** All right. And you, sir?

8 **Q** Good. Doing fine. What is your relation
9 to Mr. Lounds?

10 **A** That is my brother.

11 **Q** You've heard us talk about a lot of this
12 information about witnesses who provided information
13 to Mr. Robinson and the other investigators. Did you
14 contact Mr. Robinson's office at any time to give him
15 a list of witnesses?

16 **A** I told his investigator, Mr. Silvaggio.

17 **Q** Okay. And what did you tell Mr. Silvaggio?

18 **A** I told him that there was some witnesses.
19 Well, I bought one up there and drop them off. Mr.
20 Silvaggio took them home.

21 **Q** Which one was that?

22 **A** I can't remember what his name was.

23 **Q** Was he Boochie or --

24 **A** No.

25 **Q** No?

1 **A** No.

2 **Q** Did you give any names about these
3 individuals, about Mr. Young, about Mr. Vance, did
4 you provide them any of this information?

5 **A** I told him that there was some witnesses
6 trying to contact Mr. Robinson.

7 **Q** Explain that to me. I'm confused.

8 **A** I told him that it was some witnesses that
9 was wanting to testify for my brother.

10 **Q** You're talking witnesses?

11 **A** Yes.

12 **Q** So did you give him the names, addresses,
13 any of the information?

14 **A** No, I didn't give him no names.

15 **Q** Did he contact you to tell you or ask you
16 who they were?

17 **A** No.

18 **Q** You brought one down to his office. Did
19 you bring anybody else?

20 **A** No, I didn't.

21 **Q** Did you provide any other information to
22 him outside of the witnesses other than the stuff
23 your brother wanted you to provide to him?

24 **A** No.

25 **MR. ARIAIL:** Your Honor, I have no further

1 questions.

2 **THE COURT:** Ms. Ratigan?

3 **MS. RATIGAN:** I have no cross, Your Honor.

4 **THE COURT:** All right, ma'am. You can
5 step down.

6 All right. I believe the state said they
7 are waiving any closing.

8 **MR. ARIAIL:** Yes, Your Honor.

9 **THE COURT:** Mr. Lounds, as I told you
10 earlier on in the hearing today, I'm going to
11 read every bit of this transcript. I have not
12 yet done so. So I'm going to take this matter
13 under advisement. I'm going to look at the
14 things that's been entered into evidence and I'm
15 going to take a look at this transcript and then
16 I will be issuing a decision shortly. Is there
17 something you would like to say?

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

19 **THE COURT:** Very briefly.

20 **MR. LOUNDS:** Judge, when I was on the
21 stand, right, and you had eluded to something
22 pertaining to the juror, my argument was that we
23 were denied the right to make intelligent use of
24 our peremptory challenge. That is what I was
25 saying. He didn't inform the judge that we were

1 denied the right to make intelligent use of our
2 peremptory challenge. He made a motion for a
3 mistrial. Therefore, the judge denied that
4 motion. His total lack of making that motion
5 and for the judge to inform him that that is not
6 something that is done during mistrial, for a
7 mistrial. He made a motion for a mistrial. I
8 wish you would turn to that page right fast.

9 **THE COURT:** I'll tell you what, I'm going
10 to read it in the transcript. I'm going to read
11 it fully. I understand your argument about this
12 completely. I do. I am going to look at the
13 transcript to see what actually happened during
14 the trial.

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

16 **THE COURT:** And I will tell you I will do
17 that before I rule. All right?

18 **MR. LOUNDS:** Thank you.

19 **THE COURT:** Thank you.

20 **MR. LOUNDS:** Can I ask you one more
21 question?

22 **THE COURT:** Yes, sir.

23 **MR. LOUNDS:** Can I see my family, ma'am?
24 I've been on restriction, canteen restriction.
25 I don't want to make no visit or nothing.

1 **THE COURT:** I understand.

2 **MR. LOUNDS:** Just two minutes. I ain't
3 going to touch them.

4 **THE COURT:** I'm afraid I can't do that.

5 **MR. LOUNDS:** Good to see y'all. I love
6 y'all. Appreciate you all representing, man.

7 **THE COURT:** I had no problem with you
8 speaking to them like that but I've got to ask
9 you to leave.

10 **MR. LOUNDS:** Yes, Your Honor.

11 Money, money, money.

12 **THE COURT:** I have no idea what that
13 means.

14 **MS. RATIGAN:** May we take a recess, Your
15 Honor?

16 **THE COURT:** Certainly.

17 **(WHEREUPON, the proceedings conclude at**
18 **approximately 3:02 p.m.)**

19

20

21

22

23

24

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 15th day of April, 2015.

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

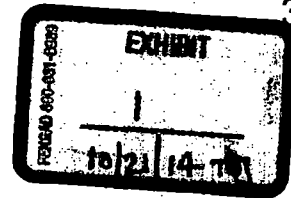
Teresa B. Johnson

Official Court Reporter



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE



357

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1689
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 13, 2012

Mr. Nihar Patel
The Carolina Law Group
910 East Washington Street
Greenville, S.C. 29601

Re: State v. Anthony Lounds, our file no.: 11-423

Dear Mr. Patel:

I represent Anthony Lounds in his direct appeal. You represented Mr. Lounds concerning the charges. The judge relieved you prior to trial. On Mr. Lounds' behalf, I am requesting copies of all written communications between your office and the prosecutor in his case. I appreciate your cooperation in this matter. I look forward to receiving those materials soon.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/

cc: Anthony Lounds

**SCCID**

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 13, 2012

Mr. George Anthony Campbell, Jr.
Thirteenth Circuit Solicitor's Office
305 East North Street, Ste. 325
Greenville, S.C. 29601

Re: State v. Anthony Lounds, our file no.: 11-423

Dear Mr. Campbell:

I represent Anthony Lounds in his direct appeal. Mr. Lounds informed me that he met with you on December 5, 2012 at the Greenville County Courthouse. He further informed me that you indicated that you communicated a written plea offer to Nihar Patel, Mr. Lounds' trial attorney. Please provide me with a copy of the written plea offer. I look forward to receiving the plea offer soon. Thank you for your cooperation.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/

cc: Anthony Lounds

**SCCID**

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 1, 2013

Mr. Anthony Lounds, #227456
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Dear Mr. Lounds:

I spoke to Mr. George Campbell of the Greenville Solicitor's office today. He received my letter inquiring about plea offers in your case. He stated that he does not retain written copies of the plea offers, but did find in his computer system were offers were made on May 17, 2010 and January 26, 2011. He believes he made the offers to Nihar Patel.

I hope this information assists you in your endeavor.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
 The State)
)
 -vs-)
)
 Anthony Maurice Lounds,)
Defendant)

IN THE COURT OF GENERAL SESSIONS
 Indictment Nos. 2010GS236028
 2010GS2310156

NOTICE OF INTENT TO SEEK LIFE
 WITHOUT PAROLE

FILED
 CLERK OF COURT
 PAUL WICKENBARGER
 GREENVILLE, SC

2011 MAR 24 AM 8:55

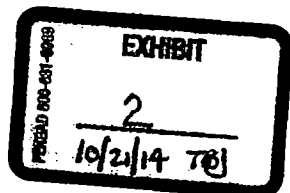
The State hereby notifies Anthony Maurice Lounds and his attorney, Scott Robinson, of its intention to seek sentencing of the Defendant under Section 17-25-45 for a sentence of life without the possibility of parole if the State obtains a conviction on the above-referenced indictments for Anthony Maurice Lounds.

The Defendant has been convicted of the following most serious offense: Voluntary Manslaughter.


 George A. Campbell
 Assistant Solicitor

Greenville, South Carolina
 March 23, 2011

Car



WITNESSES

Alvin King

Greenville County Sheriffs Office

10/1/2009

ARREST WARRANT NUMBER

I343242 and I343243

ACTION OF GRAND JURY

TRUE BILL

Ann S. Swerette

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

COUNT I: *guilty*

COUNT II: *guilty*

Ann S. Swerette

Foreperson of Petit Jury

7/13/11
Date:

DOCKET NO. 2009-GS-23-
GAC

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November

TERM 2009/10

THE STATE

vs.

ANTHONY MAURICE LOUNDS

Indictment for

0139 and 0549

ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and 16-23-0490

010155

EXHIBIT

3

10/21/14

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) INDICTMENT FOR
) ARMED ROBBERY and POSSESSION OF A WEAPON DURING
) THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **NOV 23 2010** the Grand Jurors of Greenville
County present upon their oath:

COUNT I – ARMED ROBBERY

That ANTHONY MAURICE LOUNDS did in Greenville County, on or about the 5th day of September, 2009, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. currency and a checkbook from the person or presence of BRIAN WORKMAN. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II – POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That ANTHONY MAURICE LOUNDS did in Greenville County, on or about the 5th day of September, 2009, possess or visibly display a hand gun during the commission or attempted commission of a violent crime, to wit: ARMED ROBBERY. This is in violation of §16-23-490 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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2013-CP-23-4178
	)	
Anthony Maurice Lounds,	)	
S.C.D.C. No. 227456,	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKENSIMER
2014 OCT 19 PM 4 45

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 2, 2013. The Respondent made its return on April 8, 2014. A hearing into the matter was held on October 21, 2014 before Judge Letitia H. Verdin at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was Brigham Young, Zeldric Shanaeng Vance, and the Applicant's trial counsel, Scott D. Robinson, Esquire. The Court had before it the transcript of the trial, the Greenville County Clerk of Court records, including the arrest warrant, indictment and sentencing sheet; the Applicant's South Carolina Department of Corrections Records; the PCR Application; and the Return.

PROCEDURAL HISTORY

The Applicant was confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant in the November 2010 term of General Sessions for armed



robbery (2009-GS-23-10155, count 1) and possession of a weapon during the commission of a violent crime (2009-GS-23-10155, count 2). Scott D. Robinson, Esquire, represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On July 13, 2011, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of five years imprisonment without parole for armed robbery and five years for possession of a weapon during the commission of a violent crime.

The Applicant filed a notice of appeal in the South Carolina Court of Appeals. Susan B. Hackett, Esquire, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentenced. State v. Lounds, Op. No. 2013-UP-289 (S.C. Ct. App. June 26, 2013). The Remittitur was sent on July 17, 2013.

ALLEGATIONS

In this Application, the Applicant alleges that he is entitled to PCR for the following reasons:

1. Ineffective assistance of trial counsel;
 - a. Failure to function as the State's adversary and to subject the prosecution's case to adversarial testing;
 - b. Failure to investigate and call witnesses; and
 - c. Failure to offer a defense to the court.

The Applicant filed a *pro se* amendment to his Application for PCR, and made the following additional allegations of ineffective assistance of counsel:

- d. Failure to communicate with the Applicant "to adequately prepare for life without parole trial;"
- e. Failure to challenge the Applicant's arrest;
- f. Failure to "conscientiously discharge his professional responsibilities;" and
- g. Failure to make proper objection and argument concerning the seating of Juror 40.



Of these allegations, the Applicant presented evidence relating to points (b), (e), and (g) at his PCR hearing. The Applicant additionally argued at the hearing that his trial counsel should have moved to quash the indictment in this case, because it was presented to the Grand Jury more thirteen months after the incident occurred.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2014).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 686 (1984); Porter v. State, 368 S.C. 378, 629 S.E.2d 353, 356 (2006). Regarding the first prong, the Applicant must in essence show that counsel's advice was not “within the range of competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56 (1985). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel's unprofessional errors, the result of



the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). A reasonable probability is “a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 686).

Furthermore, the decisions and advice of trial counsel should be assessed for reasonableness under all the circumstances, with heavy deference given to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). A criminal defense attorney has a duty to conduct a reasonable investigation so that he may discover all reasonably available mitigation evidence, as well as any reasonably available evidence tending to rebut evidence produced by the state. McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 361 (2008). There is a strong presumption that adequate assistance of counsel was rendered, and that reasonable care was exercised—particularly in the arena of professional judgments. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007).

a. Failure to function as the State's adversary and to subject the State's case to adversarial testing.

During his PCR hearing, the Applicant testified that trial counsel did not adequately cross-examine the State's witnesses concerning the description of the handgun used in the robbery. There were conflicting statements concerning the gun, which was never recovered. Additionally, different witnesses testified that the gun went off at different times. The Applicant argues that these points were not sufficiently emphasized during his trial.

The Applicant further argues that one of the State's witnesses originally gave a statement to law enforcement on September 6, 2009, and that this statement conflicted with the State's theory of events presented at trial. In short, the Applicant claims that trial counsel should have used this witness statement to impeach the State's witness.



b. Failure to investigate and call witnesses.

As discussed above, a criminal defense attorney has a duty to conduct a reasonable investigation into the facts of a case, and a duty to discover all reasonably available mitigation evidence. McKnight, 378 S.C. at 46, 661 S.E.2d at 361.

During his PCR hearing, the Applicant testified that he disclosed the existence of an alibi witness—Mr. Young—to trial counsel’s investigator. However, as the Applicant’s trial counsel later testified, this witness would not have provided a true alibi—one which would place the Applicant in a different physical location than the scene of the crime at the relevant time. Rather, Mr. Young merely would have stated that the alleged armed robbery committed by the Applicant was actually a congenial sale of contraband. Mr. Young testified at the Applicant’s PCR hearing and confirmed that he would have characterized the Applicant’s meeting with the victim in this case as a drug deal, rather than an armed robbery.

The Applicant’s trial counsel testified that he received the State’s discovery from the Applicant’s prior attorney, who stepped down due to a conflict of interest. He further testified that he reviewed the discovery prior to the trial and worked out his trial strategy based on those materials. The Applicant had a “pretty significant” prior record, as well as more than ten outstanding criminal charges at the time. A number of the outstanding charges were dismissed in conjunction with the trial going forward.

When asked whether and how often he conferred with the Applicant directly, trial counsel stated that he did not have a particular recollection of the number of communications in this case, but it is his standard practice to meet with a criminal defendant prior to a trial.

Furthermore, trial counsel testified at the PCR hearing that he subpoenaed several witnesses to testify on the Applicant’s behalf at trial, per his instructions. However, most of



these individuals did not show up for the trial, or were otherwise determined to be unhelpful in the defense's case. It appeared to trial counsel that several of the witnesses named by the Applicant used pseudonyms, which made contacting them much more difficult.

c. Failure to offer a defense.

A defendant has no obligation to present any evidence in a criminal case—the burden lies with the state to prove that the events occurred beyond a reasonable doubt.

The Applicant did not present any additional evidence in his PCR application in support of this contention. Therefore, this Court finds that the Applicant has failed to meet his burden of proving that trial counsel failed to offer a proper defense.

d. Failure to communicate with the Applicant “to adequately prepare for life without parole trial.”

This issue was not raised during the Applicant's PCR hearing. Furthermore, the Applicant did not present any evidence in his PCR application in support of this contention. Therefore, this Court finds that the Applicant has failed to meet his burden of proving that trial counsel did not properly prepare the defendant for the possibility of a sentence of life without parole.

e. Failure to challenge the Applicant's arrest.

The Applicant presented no evidence on this point during his PCR hearing. The PCR materials submitted by the Applicant also do not discuss this issue. An examination of the trial transcript reveals that the Applicant's trial counsel adequately cross examined both of the officers who were involved in the investigation and the subsequent arrest. (Trial Tr. 140–41, 148–52, 157–61.) Therefore, the Applicant has not met his burden of proving that trial counsel was ineffective for failing to challenge his arrest. The first prong of Strickland has not been satisfied.



f. Failure of trial counsel to “conscientiously discharge his professional responsibilities.”

The Applicant presented no evidence on this point during his PCR hearing. Further, in his PCR materials the Applicant has not pointed to any specific instances in which trial counsel acted unprofessionally. This Court finds that the Applicant has failed to meet his burden of proving that trial counsel rendered ineffective assistance by acting unprofessionally.

g. Failure to make proper objection and argument concerning the seating of Juror 40.

Criminal defendants have a constitutional right to a fair and impartial jury. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001); see also Smith v. State, 375 S.C. 507, 518, 654 S.E.2d 523, 529 (2007). The trial judge has a duty to ensure that a jury of fair, impartial, and unbiased jurors is impaneled. State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 119 (1998). The trial judge’s determination of the ability of a prospective juror to be neutral will not be disturbed on appeal in the absence of manifest error. DeLee v Knight, 266 S.C. 103, 111–12, 221 S.E.2e 822, 847 (1975).

A trial judge acts with discretion when he or she evaluates a prospective juror’s qualifications. State v. Simpson, 325 S.C. 37, 41, 479 S.E.2d 57, 59 (1996). Where a prospective juror’s conflict of interest in a case is exposed, the prospective juror must only be excused if the court determines that her opinions would prevent or substantially impair the performance of a juror’s duty. State v. George, 323 S.C. 496, 503, 476 S.E.2d 903, 907 (1996). In short, a trial judge may choose to accept a potential juror’s statement that, in spite of a conflict, he or she is able to be fair and impartial.

In this case, Juror #40 clearly stated that she could be fair and impartial despite her experience as a victim of a violent crime twenty-six years prior. (R. at 14, 24, 26.)



Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test—that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed wither errors or omissions in his representation of the Applicant. This Court also finds that the Applicant has failed to prove the second prong of Strickland—that he was prejudiced by trial counsel’s performance. This Court concludes that the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier, 351 S.C. at 389, 570 S.E.2d at 174.

Delayed Presentation of the Indictment

Pre-indictment delay will only violate the Due Process Clause when (1) such a delay caused substantial actual prejudice to a defendant’s right to a fair trial and (2) the prosecution can present no justification for the delay that outweighs the prejudice experienced by the defendant. State v. Brazell, 325 S.C. 65, 68–69, 480 S.E.2d 64, 72 (1997) (citing United States v. Lovasco, 431 U.S. 783 (1977)). Substantial prejudice requires a showing that a defendant was meaningfully impaired in his ability to defend against the state’s charges, to the extent that the outcome of the proceeding was likely affected. Brazell, 325 S.C. at 73, 480 S.E.2d at 69. Applying Brazell, the South Carolina Supreme Court previously found that a delay of twelve years before seeking an indictment violated the Due Process Clause because it presented a significant obstacle to the defendant in preparing an adequate defense and receiving a fair trial. State v. Lee, 375 S.C. 394, 399, 653 S.E.2d 259, 261 (2007).

This issue was not raised in the Applicant’s PCR application or its *pro se* amendment. The Applicant argued at his PCR hearing that his indictment should have been quashed, because it was presented to the Greenville County Grand Jury thirteen months after the incident occurred.



The Applicant also asserts that this is an additional ground which supports his argument for ineffective assistance of counsel.

In the case at bar, this Court finds that the delay of thirteen months before the indictment was presented to the Grand Jury did not cause substantial prejudice for the Applicant.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by Counsel's representation. Furthermore, this Court finds no evidence of prosecutorial misconduct. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.



AND IT IS SO ORDERED this 8 ^{Dec.} day of November, 2014.



Letitia H. Verdin
Circuit Court Judge
Thirteenth Judicial Circuit

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Letitia H. Verdin, Circuit Court Judge

ANTHONY MAURICE LOUNDS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000124

PETITION FOR WRIT OF CERTIORARI

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- II. Trial counsel erred in failing to call defense witnesses Brigham Young and Zeldric Vance, both of whom testified at the PCR hearing, to testify at trial because both of these witnesses would have provided favorable testimony for the defense by offering testimony that petitioner was not guilty as neither a principle nor an accomplice liability, and by presenting testimony that the case was a drug deal gone awry rather than a robbery in the first place.

STATEMENT

Petitioner Anthony Maurice Lounds was convicted of armed robbery and possession of a weapon during the commission of a violent crime during the November 2010 term of the Greenville County General Sessions Court before Judge C. Victor Pyle. Petitioner received a sentence of life without parole on the armed robbery conviction and five years on his conviction of possession of a weapon during the commission of a violent crime. App. 1 – 237. Scott Robinson represented petitioner at trial, and Assistant Solicitors George Campbell and Sloan Ellis appeared on behalf of the state. Petitioner appealed, but his convictions and sentences were affirmed on appeal. See State v. Lounds, Op. No. 2013-UP-289 (S.C. Ct. App. filed June 26, 2013). Susan B. Hackett, of the Office of Appellate Defense, represented petitioner on direct appeal.

On August 3, 2013, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 239 – 245. The respondent filed a return dated April 8, 2014, requesting that a PCR hearing be held in the case. App. 246 – 249.

A PCR hearing was convened on October 21, 2014, at the Greenville County Courthouse before Judge Letitia H. Verdin. App. 251 – 322. Petitioner was present at the hearing and represented by Mills Ariail, and Assistant Attorney General Karen Ratigan appeared on behalf of the state. On November 8, 2014, Judge Verdin signed an Order of Dismissal in the case therein denying petitioner's allegations of ineffective assistance of trial counsel. App. 324 – 333.

Petitioner appealed Judge Verdin's Order. This petition follows.

QUESTION I

Trial counsel erred in failing to inquire into and communicate to petitioner the state's plea offers presented in the case.

Petitioner testified at the PCR hearing and explained that his trial attorney was not his only appointed counsel. Originally, Nihar Patel, Esquire, was assigned to petitioner's case, but he was relieved as counsel for petitioner on December 8, 2010. On December 31, 2010, trial counsel was assigned to petitioner's case. Petitioner's case was tried before a jury on July 12, 2011. App. 257, l. 10 – p. 260, l. 10. Petitioner testified that he later learned that plea offers were extended to him on May 17, 2010, when Patel was his attorney, and on January 26, 2011, while trial counsel represented him. Petitioner added that he might have accepted either of the offers had he known of them. App. 273, l. 11 – p. 276, l. 20. Note that two solicitors prosecuted petitioner: George Campbell and Sloan Ellis.

Trial counsel addressed this issue at the PCR hearing as follows:

Q. Do you recall ever having received a plea offer from the State while you represented Mr. Lounds?

A. I don't recall independently. I actually took the precaution of calling Sloan Ellis. Sloan Ellis did not recall any plea offer being made in this matter.

Q. Just for the Record, Sloan Ellis is who?

A. He was the assistant solicitor who prosecuted the case with Mr. Campbell in this matter. I don't believe – I think Mr. Lounds – whatever the plea offer would have been, it would have been 15 or so, approximately 15 charges that were outstanding at that point. I can't imagine that plea offer would have been something he would've taken.

Q. But you don't have any independent recollection that there was a plea offer?

A. I don't. I don't believe there was.

Q. As part of your general practice, what do you do when you get a plea offer from the state?

A. Take it to the client. That's why I think that either myself or Mr. Silvaggio would have done that. But I believe that – if any offer actually did take place, it would have been a very high, very significant offer in this matter. I don't believe Mr. Lounds would ever take it. App. 309, l. 22 – p. 310, l. 22.

Additionally, reprinted below from page three (3) of the supplemental appendix is a paragraph from a letter written by appellate counsel to petitioner during the direct appeal verifying the fact that plea offers were made in his (petitioner's) case. The letter confirms as follows:

“I [Direct Appeal Counsel] spoke to George Campbell of the Greenville Solicitor's office...[who] stated that ...[he] did find in his computer system.....offers made on May 17, 2010 and January 26, 2011.”

Apparently, trial counsel contacted Solicitor Ellis regarding plea offers, but failed to contact Solicitor Campbell, who was also a prosecutor in the case, about plea offers. Also, counsel failed to contact former counsel Patel, who was previously assigned to represent petitioner, about plea offers. These omissions constituted error.

A defendant has a right to effective assistance of counsel during the plea bargaining process. In Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), the Court held that the Sixth Amendment regarding effective assistance of counsel applied to the plea bargaining process also. Judge was overruled on other grounds by Jackson v. State, 342 SC 95, 535 S.E. 2d 926 (2000), to the extent that a statement by a client that he was prejudiced by counsel's deficient performance at the plea bargaining process can satisfy the prejudice prong of the two-pronged test to be met in ineffective assistance of counsel cases. See Missouri v. Frye, 132 S.Ct. 1399 (2012), where counsel was found ineffective in failing to convey to the defendant the plea offer before it expired. See also Davie v.

State, 381 S.C. 601, 675 S.E.2d 416 (2009), where the Court held that counsel was ineffective in failing to communicate a plea offer to the defendant. In Davie, the Court held that counsel's failure to inform the defendant of a written plea offer that was substantially less than the sentence he received after pleading guilty constituted ineffective assistance of counsel because the defendant was unaware of the existence of the plea offer (due to counsel's error) until after the plea offer had expired, and that he would have accepted the plea offer had it been communicated to him. In Lafler v. Cooper, 132 S.Ct. 1376 (2012), the Supreme Court held that petitioner was prejudiced by counsel's deficient performance in advising petitioner to reject a plea offer and go to trial.

A guilty plea must represent a voluntary and intelligent choice among alternative courses of action open to the defendant. Hill v. Lockhart, 474 U.S. 52 (1985). Here, counsel's error regarding the failure to communicate to petitioner the state's two plea offers prior to trial violated petitioner's right to receive effective legal assistance in his criminal case by guarantee of the Sixth Amendment to the United States Constitution. See Hill v. Lockhart, *supra*. Petitioner was prejudiced by counsel's negligence because he stated at the PCR hearing that he would have considered and maybe accepted either of the plea offers had they been made know to him, and note that a reasonable probability existed that the outcome of his convictions and sentences might have been different but for counsel's error in this regard.

QUESTION II

Trial counsel erred in failing to call defense witnesses Brigham Young and Zeldric Vance, both of whom testified at the PCR hearing, to testify at trial because both of these witnesses would have provided favorable testimony for the defense by offering proof that petitioner was not guilty as neither a principle nor an accomplice, and by presenting testimony that the case was a drug deal gone awry rather than a robbery in the first place.

At trial, Bryan Workman testified that he spent the night in a Motel 6 Hotel room on September 5, 2009, and had been waiting for a female companion to appear during that time when he heard a car door sound. Workman stated that he exited his room and saw petitioner walking towards him. Workman stated that petitioner asked for “dope” and then minutes later, petitioner placed a gun in [his midsection] and told him to go back into the hotel room. While they were inside the room, Workman stated that petitioner took his checkbook and fled. Workman realized subsequently that some checks, which he presumably had not authorized to be cashed, had cleared on his account. Workman identified petitioner as the perpetrator by selecting his photograph from a police line-up he viewed. Note that there was a videotape in existence of two men who allegedly cashed one of Workman’s checks at a grocery store, but Workman could not identify petitioner on the tape. App. 61, l. 11 – p. 78, l. 15. Note further that there were no other eyewitnesses in the case who were available to corroborate Workman’s testimony. Finally, note that although petitioner did not testify at trial or present any defense witnesses at trial, petitioner gave a statement to police after viewing the grocery store video revealing that he was the person seen at the grocery store on camera. App. 25, lines 6-12.

During the PCR hearing, petitioner testified in effect that trial counsel erred in failing to call two defense witnesses, who could have testified at trial, that petitioner was not guilty as a principle

an accomplice. Petitioner explained at the PCR hearing that trial counsel was aware of the existence of Brigham Young and Zeldric Vance, who would have testified as witnesses for the defense. Young and Vance would have corroborated petitioner's version of the facts via his (petitioner's) PCR testimony, which was that he (petitioner) took Young to Workman's hotel room because Young wanted drugs, and that Workman paid for the drugs via his (Workman's) checkbook. Petitioner's PCR testimony was that no robbery occurred. App.262, l. 23 – p. 263, l. 18. Young and Vance, who both testified at the PCR hearing, confirmed that no robbery occurred, but rather a drug transaction between Workman and Young occurred, and that petitioner had no role in the drug deal between the men. App. 261, l. 19 – p. 269, l. 25; App. 270, l. 13 – p. 271, l. 2. Nonetheless, in the event the jury interpreted the case to be an armed robbery, even if Young and Vance had testified; clearly, Vance's and Young's testimony would have established that petitioner was not a principal or an accomplice to any alleged robbery.

Brigham Young testified at the PCR hearing and explained that petitioner gave him a ride to the hotel, and that upon arriving there he (Young) asked Workman for the money owed, and that Workman paid him by turning over his checkbook. Then, Young stated that he took the checkbook to Ingles grocery store and cashed a check. Young added that Lounds simply gave him a ride to the hotel not knowing the reason for giving him a ride, and that no robbery even occurred in the case. App. 287, l. 7 – p. 294, l. 17.

Zeldric Vance testified at the PCR hearing also and explained that Workman wanted "weed," so he asked Young to supply Workman with the "weed," and that he saw Workman give Young the checkbook as payment. Vance stated that petitioner merely gave Young a ride to the hotel where Workman had a room. Vance added that no robbery that occurred. App. 297, l. 10 – p. 303, l. 11.

Trial counsel testified during the PCR hearing and explained that he did not recall being informed of the existence of Vance or Young as witnesses, but that the presentment of petitioner's case as a drug deal rather than a robbery might not have been the best strategy. App. 306, l. 13 – p. 309, l. 3; App. 314, l. 1 – p. 315, l. 21. Contrary to counsel's testimony, the record revealed that although counsel did not have Vance present to testify at trial as a potential witness, it was clear that counsel had Young present at trial, but Young could not testify based on the trial judge's ruling that counsel failed to list him as a potential witness prior to trial. App. 188, l. 1 – p. 190, l. 5.

Under the state's version of the facts, petitioner was portrayed as a principle. A principle in a crime is one who perpetrates the crime. State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010). However, even though petitioner did not testify at trial, he pled not guilty to armed robbery, which in effect meant he did not admit guilt as a principle, and his PCR testimony confirmed this.

Alternately, despite petitioner's and Vance's and Young's PCR testimony, there was wiggle room for the state to assert petitioner's guilt as an accomplice because petitioner drove Young to the location where the incident (robbery or drug deal) took place, and because there was a tape in existence showing Young and someone else suspected to be petitioner at a grocery store cashing one of Workman's checks, and because Young confessed to appearing at the grocery store and cashing one of Workman's checks, and because petitioner confessed that he was on the videotape at that grocery store when said check was cashed. As a rule, accomplice liability occurs when one joins with another to accomplish an illegal purpose where there is a common design or intent to commit a crime, which is committed by the accomplice via an overt act. State v. Mattison, supra. The accomplice must have acted with the intention of encouraging and abetting the commission of the offense, and the accomplice must have knowledge of the principle's criminal conduct, although prior knowledge that a crime is going to be committed without more is insufficient evidence to

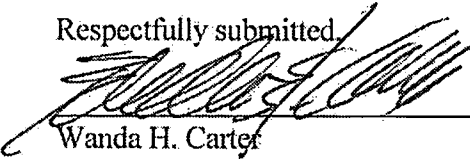
render one guilty. State v. Mattison, supra. Also, although presence at the crime scene by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principle, the accomplice's mere presence at the scene is not sufficient evidence to establish guilt as an accomplice. State v. Mattison, supra. Nevertheless, in light of Vance's, and Young's PCR testimony, the state's accomplice liability theory regarding the incident, albeit a drug deal or robbery, would have been nullified because their testimony would have established that petitioner had no knowledge and no intent to aid and abet in a drug deal or a robbery even if the jurors believed the state's position that this was a robbery case. Clearly, petitioner was merely present at the crime scene by way of offering Young a ride to a hotel where unbeknownst to him a drug deal (or robbery) was about to occur, and where unbeknownst to him payment by way of forged checks would also occur per Young's future actions.

A defendant has a right to have witnesses presented in his defense at trial. Crane v. Kentucky, 476 U.S. 683 (1986). Trial counsel erred in failing to present witnesses Young and Vance to testify on petitioner's behalf at trial in order to establish that there was no intent or knowledge associated with and connected to petitioner that would render him a principle or an accomplice during the drug deal/robbery at issue. This error constituted deficient legal representation in petitioner's criminal case in violation of the Sixth Amendment to the United States Constitution. See also Strickland v. Washington, 466 U.S.668 (1984). But for counsel's neglect and omission in this regard, a reasonable probability exists that had the defense witnesses in question been presented at trial, the outcome of petitioner's case would have been different.

CONCLUSION

Based on the foregoing arguments, petitioner requests that this Court grant the petition and allow full briefing on the issues raised above.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of September, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Letitia H. Verdin, Circuit Court Judge

ANTHONY MAURICE LOUNDS,

PETITIONER,

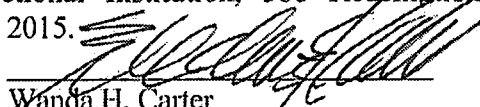
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

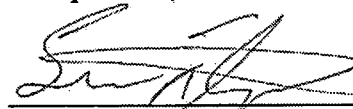
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Anthony Maurice Lounds #227456, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 18th day of September, 2015.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of September, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2015-000124

Anthony Maurice Lounds, ... Petitioner,

v.

State of South Carolina, ... Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

1. Did trial counsel err in failing to inquire into and communicate to Petitioner the State's plea offers presented in the case?
2. Did trial counsel err in failing to call defense witnesses Brigham Young and Zeldric Vance, both of whom testified at the PCR hearing, to testify at trial because both of these witnesses would have provided favorable testimony for the defense by offering testimony that Petitioner was not guilty as neither a principle [sic] nor an accomplice liability [sic], and by presenting testimony that the case was a drug deal gone awry rather than a robbery in the first place?

STATEMENT OF THE CASE

The Greenville County Grand Jury indicted Petitioner at the November 2010 term of General Sessions for armed robbery (2009-GS-23-10155, count 1) and possession of a weapon during commission of a violent crime (2009-GS-23-10155, count 2). (App.pp.334-35). Scott D. Robinson, Esquire represented Petitioner.

After the State called the case to trial, Petitioner was found guilty. On July 13, 2011, the Honorable C. Victor Pyle, Jr. sentenced Petitioner to concurrent terms of life imprisonment without parole for armed robbery and 5 years for possession of a weapon during commission of a violent crime. (App.p.236).

A notice of appeal was filed at the South Carolina Court of Appeals. Susan B. Hackett, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense represented Petitioner on appeal. The Court of Appeals affirmed Petitioner's convictions and sentences. State v. Lounds, Op. No. 2013-UP-289 (S.C. Ct. App. filed June 26, 2013. The remittitur was sent on July 17, 2013.

Petitioner filed an application for post-conviction relief (PCR) on August 2, 2013 (2013-CP-23-4178). (App.pp.239-45). A hearing was held at the Greenville County Courthouse on October 21, 2014. (App.pp.251-322). Petitioner was present and represented by R. Mills Ariail, Esquire. Karen C. Ratigan, Esquire of the South Carolina Attorney General's Office represented Respondent. The Honorable Letitia H. Verdin denied relief in an order filed December 19, 2014. (App.pp.324-33).

STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

I. **The issue of whether trial counsel was deficient in his inquiry into or conveyance of plea offers is not preserved for appellate review.**

Petitioner argues trial counsel was deficient because he failed to “inquire into and communicate” to him any plea offers from the State. This issue, however, is not preserved for appellate review because it was not addressed in the final order of dismissal. As such, it was not raised to and ruled upon by the PCR judge and is not preserved for review by this Court. See Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (“It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.”); see also Plyler v. State, 309 S.C. 408, 409, 424 S.E.2d 477, 478 (1992) (holding an issue is procedurally barred if it is not both raised to and ruled upon by the PCR judge) (citing Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983)). While there may have been some testimony about plea offers at the PCR hearing, Petitioner did not file a post-trial motion to alter or amend the order to include a ruling on this issue. In the absence of such a post-trial motion, this Court may not review

the issue on appeal. See Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (holding that where a trial court does not explicitly rule on an argument raised, and appellant makes no Rule 59(e) motion to obtain a ruling, the appellate court may not address the issue).

II. The PCR judge did not err in finding Petitioner failed to meet his burden of proving trial counsel was deficient in not calling certain witnesses at trial.

Petitioner argues trial counsel was deficient in not calling Brigham Young and Zeldric Vance as defense witnesses at his trial because these witnesses would have testified the incident in this case was not an armed robbery. Petitioner's argument is without merit.

A.

At the PCR hearing, Petitioner stated he told trial counsel's investigator that the man in the Ingles video with him was someone he knew by his street name, Al Capone. (App.pp.261-62). Petitioner stated his family later "got his name" and told the investigator this person was Brigham Young. (App.p.261). Petitioner stated Young asked him for a ride to the motel, that they saw Anthony Watkins and Zeldric Vance there, and that Young spoke to someone about marijuana and received a checkbook. (App.p.263). Petitioner stated Watkins and Vance could have testified there was no robbery. (App.p.263). Petitioner stated his prior attorney had said Watkins and Vance would testify at his trial but that trial counsel did not call them. (App.pp.268-70). Petitioner also stated Young was not allowed to testify at his trial. (App.p.264).

Brigham Young stated he had known Petitioner for years. (App.p.287; pp.294-

95). Young stated he went to the motel that night and sold marijuana to someone. Young stated this person did not have any cash, so he gave Young his identification card and checkbook. (App.pp.291-92). Young stated he asked Petitioner to give him a ride to Ingles and he used a check there. (App.pp.292-93; p.295). Young stated there was no robbery. (App.p.294). Young stated he came to the courthouse for Petitioner's trial but was not allowed to testify. (App.pp.288-89).

Zeldric Vance stated he knew Young but did not know Petitioner. (App.pp.297-98). Vance stated he was at the motel that night and saw Young receive a checkbook. (App.pp.298-301). Vance stated he would have testified at trial that this was a drug deal, not a robbery. (App.p.302).

Trial counsel confirmed he had an investigator working on Petitioner's case. (App.pp.304-05). Trial counsel testified he did not know whether Young's name was ever provided to him prior to trial because Petitioner did not know this person's name (and referred to him as "Allen" when he spoke to detectives). (App.pp.307-08). Trial counsel testified he would have asked his investigator to follow up if he had been given Young's name. (App.p.308). Trial counsel testified he subpoenaed any witnesses that Petitioner requested. (App.p.308). Trial counsel noted Petitioner admitted to being in the motel room and then later at Ingles when the check was cashed. (App.p.312). Trial counsel also noted he did not believe it would have been a good trial strategy to argue this was a drug deal instead of an armed robbery. (App.pp.308-09).

B.

In denying Petitioner's application for post-conviction relief, the PCR judge found

Petitioner failed to meet his burden of proving both that trial counsel was ineffective and that he was prejudiced as the result of trial counsel's representation. (App.pp.324-33).

C.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 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)).

D.

Deficiency

Petitioner failed to meet his burden of proving trial counsel failed to render reasonably effective assistance under prevailing professional norms. Petitioner failed to demonstrate trial counsel was provided with the proper contact information for Young prior to trial. Trial counsel testified Petitioner only knew this person by his street name ("Allen" or "Al Capone"). Trial counsel testified he did not recall Petitioner's family giving him any contact information for potential witnesses, but that he would have had

his investigator look into anyone Petitioner requested.

Trial counsel's testimony is supported by the record. Investigator Martin testified at trial that Petitioner said he was at Ingles with Allen but that Martin was unable to verify Allen's identity. (App.p.139). Young and Vance were also not listed as a potential defense witness during voir dire. (App.p.8). As trial counsel testified his investigator would have followed up with potential witnesses, it is reasonable to infer their contact information was never provided. This is especially true since another person Petitioner noted was in the motel room (Anthony Watkins) was listed as a potential witness. Petitioner's sister even stated at the PCR hearing that she did not provide names or addresses of potential witnesses to trial counsel and Young said Petitioner's sister is who asked him to come to the courthouse on the day of trial. (App.p.296; pp.318-19). Trial counsel stated at trial that he "had no idea who this guy was" when asked about Young's presence at Petitioner's trial and noted Petitioner never said anything to him "regarding a gentleman in the room." (App.p.189).

The record fully supports trial counsel's assertion that he was not made aware of Young and Vance as potential witnesses prior to Petitioner's trial. There is ample probative evidence to support the PCR judge's finding that Petitioner failed to demonstrate trial counsel was ineffective. See Cherry v. State, 300 S.C. at 119, 386 S.E.2d at 626.

Prejudice

Regardless, Petitioner failed to meet his burden of proving he was prejudiced by trial counsel's representation. The State presented strong evidence of Petitioner's guilt at

trial. The victim – both in a photographic lineup and in court – identified Petitioner as the man who robbed him at gunpoint at the motel and took his cash and checkbook. (App.pp.64-67; pp.76-77; p.78; pp.145-46). There was an in-store surveillance video at Ingles showing Petitioner was present when one of the victim’s checks was used. (App.pp.122-32; pp.163-66). As the State presented such a strong case against Petitioner, he cannot demonstrate prejudice. See Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009) (holding no prejudice occurs, even if trial counsel was deficient, where there is otherwise overwhelming evidence of the defendant’s guilt).

Further, Petitioner cannot demonstrate the outcome of his trial would have been different if Young and Vance had testified. It is unlikely the jury would have found Young and Vance to be credible witnesses because Young had a criminal record and was a drug dealer and Vance “[a]lready had some weed” when the incident allegedly took place. (App.pp.291-92; p.296; p.298). In addition, they would have offered testimony that this was a drug deal gone awry and not an armed robbery. (App.pp.291-92; pp.298-302). It is doubtful testimony from these witnesses would have carried favor with the jury and changed the result of Petitioner’s trial. There is no reasonable probability the outcome of Petitioner’s trial would have been any different with Young’s and Vance’s testimony. See Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735.

E.

Accordingly, Petitioner failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Similarly, Petitioner also failed to prove the second prong of Strickland – that he

was prejudiced by trial counsel's performance.

As Petitioner failed to meet his burden of proving ineffective assistance of trial counsel, the PCR judge did not err in denying the PCR application. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.").

CONCLUSION

For the foregoing reasons, Respondent submits this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issues discussed above.

Respectfully submitted,

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By: Karen Ratigan
ATTORNEYS FOR RESPONDENT

January 4, 2016

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2015-000124

Anthony Maurice Lounds, ... Petitioner,

v.

State of South Carolina, ... Respondent.

CERTIFICATE OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Return to Petition for Writ of Certiorari upon Petitioner by depositing a copy of the same into inter-agency mail and addressed to:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 4th day of January, 2016.


KAREN C. RATIGAN
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Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ATTORNEY FOR RESPONDENT

The Supreme Court of South Carolina

Anthony Maurice Lounds, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-000124

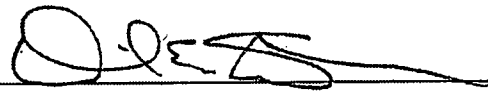
Lower Court Case No. 2013-CP-23-04178

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

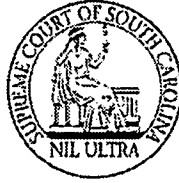
Columbia, South Carolina

October 20, 2016

cc:

Karen Christine Ratigan, Esquire

Wanda H. Carter, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

November 7, 2016

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

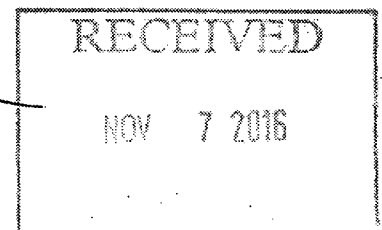
Re: Anthony Maurice Lounds v. State
Lower Court Case No. 2013CP2304178
Appellate Case No. 2015-000124

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK



cc: Karen Christine Ratigan, Esquire
Wanda H. Carter, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

FEB 23 2017

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Letitia H. Verdin, Circuit Court Judge
Case No. 2013-CP-23-04178

Anthony Maurice Lounds

Appellant

V

STATE OF South Carolina

Respondent

NOTICE OF APPEAL

Appellant appeals the Honorable Letitia H. Verdin's Dismissal dismissing Appellants' Rule 60(b) motion, AFTER DISCOVERED EVIDENCE. On ~~NOVEMBER 30~~, 2016, The Honorable Letitia H. Verdin signed an order Denying Applicants 60(b) AFTER DISCOVERED EVIDENCE motion. Appellant, received written notice of entry of Denial on FEBRUARY 8, 2017. A copy of the Honorable Letitia H. Verdin's Denial and a copy of Appellant's motion is attached.

ANTHONY MAURICE LOUNDS #27456
McCORMICK CORR. INST. F2B-125
386 Redemption Way
McCORMICK, SC. 29899.

McCORMICK, South Carolina
February 16, 2017

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ANTHONY M. LOUNDS

Vs.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
CASE NO: 2013-CP-2304178

RECEIVED

FEB 23 2017

S.C. SUPREME COURT
UPON THE COURT

Fed R. Civ. P. 60(b)

AFTER DISCOVERED EVIDENCE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL BRICKENSHAW
2016 NOV 17 10 08

More over not only does this court posses the inherent Authority to Consider Such Fraud The court has a duty to Consider whether theres been A Fraud on the court, and if so to order an appropriate Remedy when ever Such Fraud comes to the courts attention, even Fully. "Fraud on the court" may occur when acts of Party Prevent his adversary From Fully and Fairly Presenting his case or defense. EVEN Fully litigated Judgement can be set aside on grounds of Fraud, atleast by making civil motion in the original Forum.

- FRAUD on the court must involve unconscionable Plan or scheme which is designed to improperly influence court in its decision, Preventing opposing Party From Fully Fairly Presenting his case. DUE PROCESS, Violation of U.S. Constitution, and South Carolina Laws.

Subornation of perjury by an attorney constitute EXTRINSIC FRAUD and allows a judgement to be set aside due to fraud upon the court as such conduct by an attorney effectively precludes the opposing party from having his day in court. It is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud. These actions committed by an attorney or officer of the court constitute fraud upon the court and voids the whole proceeding. Applicant's case was life without parole such serious, and grave consequences.

Applicant was indicted by The Greenville County Grand Jury in the November 2010 term of General Sessions for Armed Robbery 2009-GS-23-10155 Count 1) and possession of a weapon during the commission of a violent crime (2009-GS-10155 Count 2). Scott D. Robinson, Esquire represented the Applicant. STATE brought the case to trial on July 12, 13, 2011. Applicant was found guilty on July 13, 2011 the Honorable C. Victor Pyle, Jr. sentenced the Applicant to Life without parole for the armed robbery and Five years Concurrent for possession of a weapon during the commission of a violent crime. The Applicant filed a notice of appeal in the South Carolina Court of Appeals Susan B. Hackett, Esquire of the South Carolina Commission on Indigent Defense, perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentence State v. Lounds, Op. No. 2013-up-289 (S.C. Ct. App. June 26 2013) Applicant filed PCR with Greenville County Clerk of Court on August 2, 2013. a hearing was held on October 21, 2014 at the Greenville County Court house before the Honorable Letitia W. Verdin. R. Mills ARIATH, JR represented the applicant, Karen Ratigan Esq. of the Attorney Generals office represented Scott D. Robinson. In Applicant's Application for post-conviction relief, the Applicant alleged he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel: SEE PCR Filed with clerk. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." The Applicant must overcome this presumption in order to receive relief.

Applicant testified at the PCR hearing, and also testifying was Brigham Young, Zeldric Sharneng Vance, and Janet Lounds. Applicant testified he disclosed the existence of a witness whom would have proven the Applicants innocence, and trial counsel failed to investigate and call witnesses. Trial counsel testified at the PCR hearing he was assigned this case in the later part of December 2010, and just had learned on the day of the PCR that NIHAR PATEL, Esq. was the attorney on the case before it was assigned to him. NIHAR PATEL Esq. was relieved on December 8, 2010 due to conflict. Applicant testified he seen investigator from Scott Robinson law firm on December 31, 2010 and seen the investigator again on March 24, 2011 along with solicitor George Campbell at that time the Applicant was served with states notice to seek life without parole SEE EXHIBIT 2 Filed with clerk. Applicants sister Janet Lounds testified at PCR hearing, she informed trial counsel's investigator about witnesses whom would have proven Applicants innocence, she also testified she took witness to lawyers office. Trial counsel testified that he had investigator during the period of my trial, and stated PAUL SILVAGGIO WAS INVOLVED WITH THE INVESTIGATION OF THIS CASE. SEE TESTIMONY

OF TRIAL COUNSEL FROM PCR hearing PG. 303-317. AFTER the PCR hearing Applicant contacted PAUL SILVAGGIO OF SILVAGGIO INVESTIGATIONS, LLC, Regarding the testimony Attorney Scott Robinson had provided to the Court regarding the investigation of Applicants case.

Paul Silvaggio informed the Applicant that his service with Scott Robinson's law firm was servered at the end of April 2011.

Paul Silvaggio Forwarded letter to Applicant's PCR Counsel Whom
 heard testimony Scott Robinson had given before the court
SEE LETTER FROM PAUL SILVAGGIO DATED NOVEMBER 28, 2014

to Applicants PCR Counsel Mr. R. Mills Atrial, Jr Applicant
 Further communicated with Paul Silvaggio, As Paul Silvaggio
 Requested copy of Applicants discovery to see what aspects of
 Applicants case he had actually investigated. Applicant Forward
 Copy of discovery to Paul Silvaggio Enclosed Please SEE
letter from Paul Silvaggio dated March 17, 2015, Trial
 Counsel improperly influenced the court in making decision,
 Furthermore Counsel prevented Applicant from fully and fairly
 Presenting his case Due Process, Constitutional Violation.

When your opposing lawyer lies or submits falsified documents,
 as he is an officer of the court, this amounts to fraud
 upon the court and voids the whole proceeding. In the
 order of Dismissal issued by the Honorable Letitia H. Verdin
 on December 8, 2014, stated this court finds that the Applicant
 has not established any constitutional violations or deprivations
 before or during Applicants trial and sentencing proceedings.
 Counsel was not deficient and the Applicant was not prejudiced
 by Counsel's representation. Applicant Submitt A Criminal defense
 attorney has a duty to conduct a reasonable investigation so
 that he may discover all reasonably available mitigation evidence
 as well as any reasonably available evidence tending to rebut
 evidence produced by the state McKnight V. State 661 S.2d
 (2008) 354-361

Trial Counsel knowingly provided court with perjured testimony as he knew Paul Silvaggio had severed his association with his law firm months before my trial. Applicant's trial was held July 12, 13 2011 while Paul Silvaggio association ended April 2011. Applicant's testimony was that he seen Scott Robinson for the first time on July 10 just 2 days before trial, and Scott agreed by stating: Sounds about accurate. Applicant's sister Janet Counds testified she informed Paul Silvaggio about witnesses whom would have proven Applicant's innocence. Applicant submit he never knew the association of Paul Silvaggio, and attorney Scott Robinson had severed until after the PCR hearing. Applicant submit by the testimony of trial counsel stating sound about accurate regarding visiting with Applicant just 2 days before trial, what was trial counsel going to do had he given the names of Brigham Young & Zeldric Vance just 2 days before trial. Applicant submit this was not a case of over whelming evidence as jury sent note in during deliberations requesting Police report alleged victim gave Police on night of the alleged incident SEE TRIAL TRANSCRIPT. Had trial counsel communicated with him and adequately prepared for trial of such magnitude and grave consequence he could have found out about Brigham Young & Zeldric Vance whom testified at Applicant's PCR hearing.



SILVAGGIO INVESTIGATIONS, LLC

When a Strong Defense is NOT Negotiable

November 28, 2014

Mr. R. Mills Ariail, Jr., Attorney at Law
11 N. Irvine Street
Greenville, South Carolina 29601
Office# (864) 232-4883

Re: Your PCR Client – Anthony Maurice Lounds

Mills,

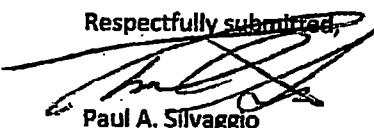
I have been recently contacted by your Post Conviction Relief client – Mr. Anthony Maurice Lounds regarding my involvement and / or lack of involvement in the defense investigation in the matter for which he is currently serving a life sentence.

Mr. Lounds has asked me to send you a copy of the two letters that I have authored and mailed to him; those being dated April 29th, 2012 and November 17th, 2014 for your review and retention for which I have enclosed. Please note that my involvement with the Scott D. Robinson Law Firm was severed at the end of April 2011 following a Murder trial in Oconee County. I will tell you that the reason for my severing association with the noted firm was due to the repeated anti-family comments made to me by Mr. Robinson; i.e. "next time I hire an investigator they aren't going to have a fuck'n family". Another example was that my young daughter had a musical performance at school one evening and I informed Mr. Robinson that I really needed to attend. Time went on during a trial in Oconee and I ultimately missed the performance as he required my presence during this trial. The next day, following my daughter's performance, he looked at me and said "well I won't need you for this part so why don't you leave and go to your daughter's performance". Now you can see why my relationship with the noted Firm was severed to say the least.

Your client did have a series of criminal charges pending and because I was working through the Law Office of Scott D. Robinson, all of my related files were turned back in to his office. I did not retain copies of any of those files, as again they were directly through his Firm and not through my investigative company.

After you review the enclosed letters, please feel free in calling upon me at (864) 569-8382. Email at: paul@silvaggioinvestigations.com and / or via the United States Postal Service at the address listed below.

Respectfully submitted,


Paul A. Silvaggio
Licensed Private Investigator [State of South Carolina]
GCSO – Homicide Supervisor [Retired]

Cc: File



SILVAGGIO INVESTIGATIONS, LLC

When a Strong Defense is NOT Negotiable

March 17, 2015

Mr. Anthony Maurice Lounds [Inmate# 227456]
McCormick Correctional Institute F2 B-125
386 Redemption Way
McCormick, South Carolina 29899

Re: Documents you sent and now being returned to you

Anthony,

I respect your position in this matter and yes I will and always have told the truth. There is nothing in this world more important than ones name and integrity.

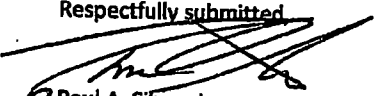
As to your sister -Janet Lounds, I never refrained from taking your calls nor her calls but I will not tolerate your sister's disrespect with her loud and boisterous tone toward me. Your sister's actions are not a reflection of you and I certainly do not hold you accountable for her actions.

The documents that you sent me and are enclosed with this letter are as follows:

-) Two page Letter from Anthony Maurice Lounds [Dated: February 25, 2015]
-) One page Report from the GCSO - MD Gladson [Dated: September 05, 2009]; 09-142228
-) One page Supplemental Report from the GCSO - DEP Leppard [Dated: October 01, 2009]; 09-142228
-) One page Warrant [I-343242] [Dated: September 29, 2009]; Armed Robbery
-) One page Information Sheet [Dated: September 17, 2009]; Forgery
-) Two page Letter to Attorney Nihar Patel from Assist Sol Campbell [Dated: November 30, 2010]
-) One page Warrant [I-343243] [Dated: September 29, 2009]; Weapons Possession
-) Two page Report from the GCSO - MD Gladson [Dated: September 05, 2009]; Armed Robbery
-) One page Signed Statement of Brian Workman [Dated: September 29, 2009]; 09-142228
-) One page Wanted Flyer of Anthony Maurice Lounds
-) One page depicting check # 1172 [Check Dated: September 06, 2009]; acct of Bryan Workman
-) Two page Supplemental Report of Investigator King [Dated: October 05, 2009]; 09-142228
-) One page Supplemental Report of Investigator King [Dated: September 24, 2009]; 09-142228
-) One page Incident Report of Investigator Martin [Dated: October 01, 2009]; 09-148908

After reviewing each of the documents noted above, I do not recall the incidents named. There is a very good likelihood that I did not perform a Defense Investigation as the 'Staff Investigator' and not as a contracted Private Investigator. This being a result of the fact that I did not retire from the Greenville County Sheriff's Office until November of 2009 while the documents authored above are, in majority, dated prior to my retirement. I would have conflicted the above matters with your Attorney Scott Robinson, therefore I would not have worked the Defense Investigation.

Respectfully submitted


Paul A. Silvaggio

Licensed Private Investigator [State of South Carolina]
GCSO - Homicide Supervisor [Retired]

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Letitia H. Verdin, Circuit Court Judge

ANTHONY MAURICE LOUNDS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000124

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

KAREN RATIGAN
Senior Assistant Deputy Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

Zeldric Vance - Cross-Examination by Ms. Ratigan

53

1 Q Okay. Okay. And if Mr. Robinson had
2 contacted you, you would have testified at Mr.
3 Lounds' trial that this was a drug deal?

4 A I would have testified to what I just
5 testified to.

6 Q Okay. That it was a drug deal and not an
7 armed robbery?

8 A I would testify that he didn't rob him.

9 Q Okay.

10 A I guess you say drug deal.

11 Q Yes, sir. Okay.

12 MR. ARIALL: Nothing further, Your Honor.

13 THE COURT: Sir, you can step down.

14 MR. ARIALL: That is all we have, Your
15 Honor.

16 THE COURT: All right.

17 MS. RATIGAN: The State would call Mr.
18 Robinson, Your Honor.

19 THE COURT: All right.

20 THE CLERK: Mr. Robinson, place your left
21 hand on the Bible and raise your right hand.

22 SCOTT ROBINSON
23 having first been duly sworn, testifies as follows:

24 THE CLERK: Thank you. Please state your
25 full name for the record.

1 THE WITNESS: Scott David Robinson.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MS. RATIGAN:

5 Q Mr. Robinson, do you recall representing
6 Mr. Lounds on these charges?

7 A I do.

8 Q Mr. Lounds testified you were appointed in
9 December of 2010. Does that sound accurate?

10 A Yeah. The latter part of December of 2010.

11 Q Were you the first attorney on the case?

12 A I just heard that Mr. Patel was the
13 attorney before me.

14 Q Did you receive materials, discovery
15 materials from Mr. Patel or did you file your own
16 discovery motions?

17 A I would have normally filed my own
18 discovery motions.

19 Q Did you receive those materials from the
20 state?

21 A Yes, anything that they had they gave it to
22 me.

23 Q And did you have an investigator during
24 this period of time?

25 A I did.

Scott Robinson - Direct Examination by Ms. Ratigan

55

1 Q And who was that?

2 A Paul Silvaggio.

3 Q Was he involved in your investigation of
4 this case?

5 A Yes.

6 Q Would you -- let me strike that. Did you
7 send a copy of discovery materials to Mr. Lounds?

8 A Yes. He would have probably had Mr.
9 Silvaggio go over them with him or bring them to him.
10 He may have had the discovery too that Mr. Patel had
11 given him as well.

12 Q So your testimony is your practice would
13 have been for the investigator to go over it?

14 A Yes.

15 Q Okay.

16 A Or myself.

17 Q Can you recall in this case whether you
18 went over it with Mr. Lounds or was it Mr. Silvaggio?

19 A I don't recall that. Paul is a very good
20 investigator. He would have wanted to go over it with
21 him possibly. But I'm not sure.

22 Q Was Mr. Lounds over at the detention
23 center?

24 A Yes.

25 Q Did you go visit him at the detention

1 center?

2 A I believe I did. I don't know when I
3 visited him. I would have visited him, I think. I
4 don't recall exactly when. My practice would be to
5 visit him.

6 Q Do you recall whether you had any meetings
7 with him in the courthouse?

8 A I would have probably had a meeting with
9 him at the courthouse at trial, during breaks or
10 whatever.

11 Q So what did you do in preparation for Mr.
12 Lounds case?

13 A Well, here's what we have. The situation
14 was that he was accused of going to a Motel 6 and
15 robbing a guy named Brian Workman and then going to
16 an Ingles with another gentleman and cashing checks.
17 Mr. Workman's testimony was inconsistent as far as
18 statements go. He gave different statements in this
19 case. I was going to draw out of him the
20 inconsistencies of the statement because I believe he
21 said Mr. Lounds, he could identify him and also about
22 a gun when there was no gunshot heard by anyone. The
23 strategy was to take apart the State's case and go
24 after that part of it. That's what I thought I would
25 do.

Scott Robinson - Direct Examination by Ms. Ratigan

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1 I couldn't put Mr. Lounds on the stand
2 because he had a pretty significant prior record for
3 burglaries, larcenies. He had actually been -- he
4 actually started serving time in different jail
5 things from 1995. He had about approximately 15
6 outstanding charges at the same time as this trial.

7 Q Mr. Lounds testified that you met with him
8 two or three days before the trial. Does that sound
9 accurate?

10 A Yeah, it does.

11 Q Do you recall whether or not you had
12 meetings with him prior to that?

13 A I can't recall independently when I would
14 have met with him. Either myself or Mr. Silvaggio
15 would have.

16 Q Does your file reflect that, uh, the name
17 of Brigham Young was ever given to either you or Mr.
18 Silvaggio prior to trial?

19 A I'm not sure about that. I don't know. I
20 am not sure that -- I know the day of trial there was
21 a guy named Brigham. Mr. Lounds --

22 THE COURT: Again, I'm going to ask you to
23 leave if you are not -- if you can't just sit
24 here quietly and listen, all right? I don't
25 need anybody to point anybody out to me. Thank

1 you.

2 Go ahead, Ms. Ratigan.

3 **BY MS. RATIGAN:**

4 **Q** So I believe you stated that there was a
5 gentleman named Brigham at the trial?

6 **A** At the trial, yes.

7 **Q** Had that name been given to you prior to
8 trial? Do you remember?

9 **A** I don't have any recollection of that. I
10 never met with Mr. Brigham Young. I don't even know
11 if Mr. Lounds knew his last name. I think when he
12 talked with the detectives and he pointed out that he
13 was in that video from Ingles, he indicated this
14 guy's name was Allen, not Brigham.

15 **Q** If he had given you the name of Brigham
16 Young, would you have asked your investigator to
17 follow up?

18 **A** Of course, yes.

19 **Q** Do you recall anyone in Mr. Lounds family
20 giving you any kind of information on witnesses?

21 **A** I don't have any recollection. I do know
22 we subpoenaed witnesses that Mr. Lounds asked us to.
23 I think the names of potential witnesses would have
24 been on page 8. We would have subpoenaed them in
25 this matter. But on the question of Mr. Brigham

Scott Robinson - Direct Examination by Ms. Ratigan

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1 Young, I mean, trying to portray this as a drug deal
2 versus a robbery in this kind of case, I don't know
3 if that would have been the best trial strategy.

4 Q Did Mr. Lounds tell you his version of what
5 happened that night? Do you recall?

6 A I don't recall exactly what he told me at
7 that time.

8 Q Did Mr. Lounds ever mention to you the
9 names of Anthony Watkins or Zeldric Vance that you
10 recall?

11 A Vance, no. Watkins was actually one of the
12 witnesses on our witness list that Judge Pyle read to
13 the jury and he was subpoenaed.

14 Q All right. And was Mr. Lounds served with
15 the LWOP notice?

16 A Yeah, that would have been some time in
17 early 2011.

18 Q So pretty soon after you came on the case,
19 he was served with the notice of intent to seek life
20 without parole?

21 A Yes.

22 Q Do you recall ever having received a plea
23 offer from the State while you represented Mr.
24 Lounds?

25 A I don't recall independently. I actually

1 took the precaution of calling Sloan Ellis. Sloan
2 Ellis did not recall any plea offer being made in
3 this matter.

4 Q Just for the record, Sloan Ellis is who?

5 A He was the assistant solicitor who
6 prosecuted the case with Mr. Campbell in this matter.
7 I don't believe -- I think Mr. Lounds -- whatever the
8 plea offer would have been, it would have been 15 or
9 so, approximately 15 charges that were outstanding at
10 that point. I can't imagine that plea offer would
11 have been something he would've taken.

12 Q But you don't have any independent
13 recollection that there was a plea offer?

14 A I don't. I don't believe there was.

15 Q As part of your general practice, what do
16 you do when you get a plea offer from the state?

17 A Take it to the client. That's why I think
18 that either myself or Mr. Silvaggio would have done
19 that. But I believe that -- if an offer actually did
20 take place, it would have been a very high, very
21 significant offer in this matter. I don't believe
22 Mr. Lounds would ever take it.

23 MS. RATIGAN: That's all I have, Your
24 Honor.

25 THE COURT: All right. Mr. Ariail?

Scott Robinson - Cross-Examination by Mr. Ariail

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1 MR. ARIAIL: Thank you, Your Honor. May it
2 please the Court.

3 CROSS-EXAMINATION

4 BY MR. ARIAIL:

5 Q Now, Mr. Robinson, just go back real quick.
6 You heard Mr. Young and Mr. Vance testify that no
7 armed robbery occurred, correct?

8 A That's what they said.

9 Q Okay. I don't understand. Did you receive
10 any calls from any family members about these
11 witnesses?

12 A That would have been -- I have a pretty
13 good memory as far as what I did last week. But as
14 far as something that happened two or three years, I
15 have no independent, I don't know. I would have
16 followed up on it typically. Either myself or Mr.
17 Silvaggio would have followed up on it.

18 Q Would you keep any notes in your file on
19 that?

20 A I normally would not. As I said, I had an
21 investigator at the time. He would've talked to
22 anyone that he was contacted about.

23 Q What do you have in your file, what do you
24 recall as far as any alibi or any type of defense in
25 this case?

1 A There was no person or there was no alibi
2 in this case.

3 Q Okay.

4 A He was there in the room. All of the
5 witnesses -- he admits he was there in the room. He
6 admits -- he admitted to the officer he was on the
7 tape at Ingles cashing these checks. He may not have
8 been the one to cash the checks but he was with a guy
9 that he said was Allen in the Ingles. The same
10 checks that were taken from Mr. Workman in this
11 matter. Mr. Workman also on the stand said that Mr.
12 Lounds was the person who robbed him that night and
13 he was about three feet away.

14 Q Okay. Now, when you reviewed all of this
15 with Mr. Workman, were there any other witnesses that
16 you had -- from my understanding of Mr. Young, there
17 were at least seven people in this room including the
18 victim. So did you see any of those or talk to any
19 of those individuals or have any --

20 A Mr. Lounds, anyone that he asked us to talk
21 to, he did not know the actual names of these folks.
22 They had street names. One of the persons that they
23 talked to was Al Capone.

24 Q Okay.

25 A I don't know if he knew -- he didn't know

1 who that was as far as like the real name of that
2 person, where they live, their telephone number or
3 anything of that nature.

4 Q When you talked to Mr. Young at trial, do
5 you remember what your discussion with him was and
6 what he was going to testify about?

7 A He would have -- he would have -- what I
8 told the judge. He would have testified that he was
9 there and they were not -- they were actually doing a
10 drug deal at that time with this individual. The guy
11 didn't give them any money so he got the checkbook
12 instead and went to Ingles.

13 Q Okay.

14 A That's what I believe he would have said.

15 Q Anthony Watkins, did he show up to trial?

16 A I don't know that. I know we sent
17 subpoenas. I don't know if he ever showed up at
18 trial.

19 Q Do you know who you subpoenaed for trial?

20 A I don't know independently. What I do
21 know, I can tell you by looking at the -- I am
22 speculating. I can look at the potential witnesses.
23 There would have been Randy Bryant, Anthony Watkins,
24 Alford Chandler. Those are the names he would have
25 given me.

1 Q Okay. The key -- what I am trying to get
2 and figure out is that apparently we have a case
3 where I have got two individuals now alleging that it
4 didn't happen, there was no robbery, there was a drug
5 deal. They are coming in here acknowledging there
6 was a drug deal. What did you do to go through to
7 figure out if this is truly an armed robbery or if
8 this was a drug deal like they were saying?

9 A On the one hand, we had the victim who said
10 that he was within three feet of Anthony Lounds and
11 he identified him in a six-person lineup as a person
12 who robbed him. That is what he said in this case.
13 He said that he had a gun. He also said that they
14 took, he and whoever, took the checkbook, either
15 robbed him of the checkbook, took the checkbook or
16 whatever and took it to Ingles where he cashed the
17 checks. He was on a videotape cashing the checks.
18 They have a gun, a black gun. I made a motion to
19 exclude that because it wasn't the same but it was a
20 black gun.

21 Q Okay.

22 A On the other hand, whether it is an armed
23 robbery or a drug deal where they are stealing the
24 checks, I am not really sure what the difference is
25 as far as in terms of how the jury perceives Mr.

1 Lounds. The victim says robbed him with a gun, hit
2 him in the head, took his checkbook and whatever
3 stuff he had and went to Ingles. That is what the
4 victim said.

5 Q I guess the question -- the reason I'm
6 asking these questions is if it is an armed robbery
7 which he is charged with rather than a drug deal,
8 that is a two separate wholly different issues,
9 correct?

10 A What you have is if it is a drug deal, if
11 during the drug deal -- I think Mr. Young just
12 testified to this. He said that the guy didn't have
13 cash. He said I want cash. He got a checkbook. He
14 got his ID. The jury could -- I don't think the jury
15 -- this is my own perception, but I think that a jury
16 could look at that as a robbery or someone taking
17 money from somebody. Whether I had a gun or not is
18 another issue. According to the victim, he had a
19 gun.

20 Q Right. These individuals, you heard them
21 testify. Nobody said there was any guns that were
22 involved in this.

23 A The victim says there was a gun.

24 Q Here is what I'm asking. If the alleged
25 victim has made this whole thing up, then wouldn't it

1 be sensible to try to run down some of these
2 witnesses who not only testify to what they testified
3 now but probably would throw in some more potential
4 impeachment information that you could use against
5 Mr. Workman?

6 A He has got to know the name of these
7 people. If he doesn't know the name of the people
8 and he can't tell me who these people are other than
9 Al Capone or Boochie or something like that, I have
10 no -- I nor my investigator know who these people
11 are.

12 Q So no one in his family or Mr. Lounds gave
13 you that information, I guess?

14 A If someone had given us this information,
15 Mr. Silvaggio especially, he would have run that
16 person down. If they knew the names, the addresses
17 and the telephone numbers of these people.

18 Q Did you discuss -- when you meet with him,
19 how many times did you meet with him personally or
20 talk about this case?

21 A I have no recollection. I'm not sure.

22 Q Did he have any questions or request you to
23 do anything from your recollection as to what --

24 A We went over the problems with the
25 statement that the victim gave in this case. The

Scott Robinson - Cross-Examination by Mr. Ariail

67

1 victim gave several statements. We went over the
2 problem that -- anything he wanted to tell me, we
3 talked about as far as research, as far as what he
4 was wanting -- anytime you get life without parole
5 notice given to you, I'm sure it is extremely nerve-
6 racking. Anything he wanted to talk about, we talked
7 about or Mr. Silvaggio talked about.

8 MR. ARIAIL: Okay. I have no further
9 questions, Your Honor. Thank you.

10 THE COURT: Ms. Ratigan?

11 MS. RATIGAN: I have nothing further. The
12 state would rest, Your Honor.

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

15 THE WITNESS: Thank you, Judge.

16 MS. RATIGAN: We would also waive any
17 closings, Your Honor.

18 THE COURT: All right.

19 MR. ARIAIL: Your Honor, I just have one
20 reply witness if I could put up real quick. Ms.
21 Lounds, Janet Lounds.

22 THE COURT: All right.

23 JANET LOUNDS

24 having first been duly sworn, testifies as follows:

25 THE CLERK: Thank you. Please state your

323

CERTIFICATE

73

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 15th day of April, 2015.

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

Teresa B. Johnson

Official Court Reporter

THE STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS

Letitia W. Verdin Circuit Court Judge

Case No. 2013-CP-23-04178

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL S. WICKENSMEYER
2016 NOV 17 AM 10 08

ANTHONY M. LOUNDS

V.

Applicant

STATE OF SOUTH CAROLINA

Respondent.

CERTIFICATE OF SERVICE

I, ANTHONY LOUNDS do hereby certify that on this November 8, 2016, I served upon the below named individuals copies of the FRAUD UPON THE COURT. By depositing copies of the same via U.S. mail in an envelope addressed as set forth below. CLERK PLEASE FILE in your office, and return clocked stamped copy to Addressee.

GREENVILLE COUNTY CLERK'S OFFICE
GREENVILLE COUNTY COURTHOUSE
305 EAST NORTH STREET
GREENVILLE, SC 29601

ALAN WILSON
ATTORNEY GENERAL
P.O. BOX 11549
Columbia, SC 29211

RECEIVED

FEB 23 2017

S.C. SUPREME COURT

ANTHONY LOUNDS

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2304178

Anthony Maurice Lounds

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☒ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court: Court denies the Rule 60(b) motion made by Anthony Maurice Lounds.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

2162

Judge Code

11/30/2016

Date

For Clerk of Court Office Use Only

428

12-7-16

12-7-16

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail, Jr. 11 North Irvine Street, Suite 11,
Greenville, SC 29601

Karen Christine Ratigan PO Box 11549, Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Court Reporter

**Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court**

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

Alvin King

Greenville County Sheriffs Office

10/1/2009

ARREST WARRANT NUMBER

1343242 and 1343243

ACTION OF GRAND JURY

TRUE BILL

Ann Swerette

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

COUNT I: *guilty*

COUNT II: *guilty*

Ann P. Bell

Foreperson of Petit Jury

Date: *7/13/11*

DOCKET NO. 2009-GS-23-
GAC

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November

TERM 2009/10

THE STATE

vs.

Cu

ANTHONY MAURICE LOUNDS

✓ ✓ Indictment for
0139 and 0549

ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and 16-23-0490

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 ARMED ROBBERY and POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on

NOV 23 2010

the Grand Jurors of Greenville

County present upon their oath:

COUNT I – ARMED ROBBERY

That ANTHONY MAURICE LOUNDS did in Greenville County, on or about the 5th day of September, 2009, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. currency and a checkbook from the person or presence of BRIAN WORKMAN. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II – POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That ANTHONY MAURICE LOUNDS did in Greenville County, on or about the 5th day of September, 2009, possess or visibly display a hand gun during the commission or attempted commission of a violent crime, to wit: ARMED ROBBERY. This is in violation of §16-23-490 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

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
 STATE VS.
Anthony Maurice Lounds

AKA:

Race: BLACK Sex: M Age: 39DOB: 1972 SS#: Address: City, State, Zip: Greenville, SC 29607-4401DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery, robbery while armed or allegedly armed with a deadly weaponINDICTMENT/CASE#: 2009GS2310155A/W#: 1343242Date of Offense: 9/5/2009S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☒ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Campbell, George77409
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life without Parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Hick

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2020Sentence Date: 7-13-2010

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Anthony Maurice Lounds

AKA:

Race: BLACK Sex: M Age: 39DOB: -1972 SS# Address: City, State, Zip: Greenville, SC 29607-4401DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Campbell, George77409 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
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§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter: Hickell

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2310155A/W#: 1343243Date of Offense: 9/5/2009S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code: 2070Sentence Date: 7-13-2011