

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

Honorable Letitia H. Verdin, Circuit Court Judge

JOHNELL PORTER,

RECEIVED
FEB 02 2018
S.C. SUPREME COURT
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001605

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

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

JUSTIN J. HUNTER
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 A CHARLOTTE, NORTH CAROLINA.

2 Q AND DO YOU KNOW ANGELA LAWS?

3 A YES, SIR.

4 Q HOW DO YOU KNOW MS. LAWS?

5 A WE HAD A RELATIONSHIP ONCE.

6 Q AND HAS THAT RELATIONSHIP BEEN A DIFFICULT ONE?

7 A YES, SIR.

8 Q Y'ALL BEEN OFF AND ON WITH EACH OTHER?

9 A YES, SIR.

10 Q AND WHAT WAS THE MAIN CAUSE OF DIFFICULTY

11 BETWEEN YOU AND MS. LAWS?

12 A I'M WAS, I'M A MARRIED MAN AND YOU KNOW.

13 Q WAS SHE RESENTFUL OF THAT FACT?

14 A YES, SIR.

15 Q DO YOU KNOW MR. JONES?

16 A YES, SIR.

17 Q HOW DO YOU KNOW MR. JONES?

18 A I MET JONES THROUGH HIS GRANDFATHER.

19 Q ALL RIGHT. AND DOES MR. JONES HAVE A CHILD WITH

20 THE, A RELATION OF YOURS?

21 A WELL, YEAH, A NEPHEW, IT'S HIS COUSIN.

22 Q ALL RIGHT. AND HAS THERE BEEN SOME TENSION

23 ABOUT THAT?

24 A YES, SIR.

25 Q AND YOU SAID YOU KNOW MS. LAWS. ON THE DAY OF

1 DECEMBER 22, 2006, DID YOU HAVE OCCASION TO SEE MS.
2 LAWS THAT DAY?

3 A YES, SIR.

4 Q AND WHEN IS THE FIRST TIME YOU SAW HER THAT DAY?

5 A WELL, I STAY WITH HER FOR A COUPLE NIGHTS AND
6 SHE -- WELL, THE DAY BEFORE SHE HAD RENTED A CAR FOR
7 MR. JONES AND THE REASON SHE TOOK THE CAR HOME
8 BECAUSE THE BABY GOT SICK AND I HAD TO TAKE JONES
9 HOME AND THAT MORNING SHE HAD TO GO PICK MR. JONES UP
10 AT HIS HOUSE BECAUSE MR. JONES DIDN'T WANT HER TO
11 COME TO HIS MOTHER HOUSE BECAUSE HE SAID HIS MOTHER
12 MIGHT NOT GO TO WORK BECAUSE TODAY WAS HER BIRTHDAY,
13 SO WENT AND PICKED UP MR. PORTER AND WENT BY AND
14 PICKED UP MR. JONES.

15 Q OKAY. AND WERE YOU IN THE CAR AT THAT TIME?

16 A YES, SIR.

17 Q AND ABOUT WHAT TIME OF THE MORNING WAS THAT?

18 A IT WAS ABOUT 7:30.

19 Q WERE YOU, WERE YOU PRESENT WHEN MS. LAWS RENTED
20 THAT CAR?

21 A YES.

22 Q THE DAY BEFORE?

23 A YES, SIR.

24 Q ALL RIGHT. AND WHAT REASON DID SHE GIVE YOU FOR
25 RENTING THE CAR?

1 A SHE SAID SHE WAS GOING TO -- WELL, I HAD TOOK
2 MR. PORTER TO HIS DAUGHTER'S HOUSE AND THAT'S WHERE I
3 TALKED WITH HIS GRANDSON. I KNOW HIS GRANDSON
4 PROBABLY A YEAR AND I HADN'T SEEN HIM PROBABLY ABOUT
5 NINE MONTHS, BUT HE SAID HE WANTED MS. LAWS TO RENT
6 HIM A CAR AND SO I CALLED HIM AND TOLD HER AND SO WE
7 DROVE, SHE DROVE BACK TO THE JONES HOUSE, PICKED HIM
8 UP AND WENT AND RENTED THE CAR, AND SHE DROVE THE CAR
9 HOME BECAUSE THE BABY GOT SICK, SO THEREFORE I HAD TO
10 TAKE MR. JONES HOME. AND SO THAT MORNING SHE WENT
11 AND PICKED UP THE GRANDFATHER AND MR. JONES.

12 Q OKAY. SO AS FAR AS YOU KNEW, SHE WAS RENTING A
13 CAR ON MR. JONES' REQUEST?

14 A YES, SIR. HE THE ONE THAT GAVE HER THE MONEY.

15 Q I BEG YOUR PARDON?

16 A HE GAVE HER, I THINK HE GAVE HER \$35 TOWARD THE
17 CAR.

18 Q THAT WAS GOING TO BE MY NEXT QUESTION WAS, DO
19 YOU KNOW WHO PROVIDED THE MONEY FOR THE CAR?

20 A MR. JONES GAVE HER THE MONEY.

21 Q SO ABOUT WHAT TIME WERE YOU IN THE CAR THAT
22 MORNING, DO YOU KNOW, WHEN YOU FIRST GOT IN?

23 A IT'S PROBABLY ABOUT 7:30.

24 Q AND WAS IT, WHAT WAS YOUR INTENTIONS TO DO THAT
25 DAY?

1 A I HAD TO PICK UP A CHECK. I WAS DOING SOME WORK
2 AT SUN CITY CAROLINA LAKE, BUILDING A LOT OF HOMES
3 FOR THE ELDERLY PEOPLE, AND I HAD PICK UP A CHECK UP.
4 I USE IT, I COULD WORK BUT IT WAS RAINING SO BAD, YOU
5 KNOW, I DIDN'T GET TO WORK.

6 Q AND WHAT KIND OF WORK DO YOU DO?

7 A CARPENTER.

8 Q AND THIS PLACE YOU ARE DESCRIBING, YOU WERE
9 BUILDING SOMETHING THERE?

10 A YES, SIR.

11 Q WHAT WERE YOU BUILDING?

12 A WE WAS BUILDING HOME FOR THE ELDERS.

13 Q UH-UH.

14 A YEAH, I HELP TO FRAME HOUSES AND STUFF LIKE
15 THAT.

16 Q AND WERE YOU SUPPOSED TO GET PAID THAT DAY ON A
17 FRIDAY?

18 A YEAH, I SUPPOSED TO PICKED UP A CHECK THAT
19 FRIDAY.

20 Q AND WHERE WERE YOU SUPPOSED TO DO THAT?

21 A SIR?

22 Q WHERE WERE YOU GOING TO PICK UP THAT CHECK?

23 A AT THE BOJANGLES. HE WAS COMING OUT OF
24 GASTONIA, NORTH CAROLINA, AND SUPPOSED TO HAVE MET
25 HIM AT BOJANGLES ON 49.

KENNETH YOUNG

DIRECT

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1 Q ALL RIGHT. AND DID YOU GO TO THE BOJANGLES ON
2 HIGHWAY 49?

3 A YES, SIR.

4 Q AND HOW DID YOU GET THERE?

5 A ANGELA LAWS TOOK ME THERE.

6 Q ALL RIGHT. AND ABOUT WHAT TIME WAS THAT, DO YOU
7 THINK?

8 A IT WAS ABOUT 9:30. WE GOT THERE ABOUT 9:30.

9 Q ALL RIGHT. AND ONCE YOU GOT TO THE BOJANGLES
10 WHAT HAPPENED THEN?

11 A WELL, BEFORE WE WENT TO THE BOJANGLES WE STOP AT
12 ON THE RUN. ANOTHER CAR PULLED UP, MR. PORTER AND
13 HIS GRANDSON JUMPED IN THAT CAR, AND ANGELA, SHE WAS
14 TAKING ME TO THE BOJANGLES. AND AT THAT TIME THEY
15 PULLED UP, WHEN THEY PULLED UP, I WENT IN THE
16 BOJANGLES AND ORDERED SOMETHING TO EAT AND MR. JONES
17 WENT BEHIND THE CAR AND THEY ALL JUMPED IN THE CAR.

18 Q ALL RIGHT. WELL, LET ME BACK UP JUST A LITTLE
19 BIT. SO Y'ALL STOPPED, YOU AGREE YOU STOPPED AT ON
20 THE RUN?

21 A YES, SIR, WE STOPPED AT ON THE RUN.

22 Q AND WHAT IS THAT?

23 A THAT'S A SERVICE STATION. I USED TO GO THERE
24 AND PLAY LOTTERY AND STUFF LIKE THAT.

25 Q IS THAT WHEN THE LOTTERY WASN'T LEGAL IN NORTH

1 CAROLINA?

2 A YES, SIR.

3 Q ALL RIGHT. SO YOU GOT OUT OF THE CAR AT THAT

4 TIME AT THE ON THE RUN?

5 A I GOT OUT OF THE CAR AND GOT IN THE FRONT SEAT.

6 Q OKAY. WHO ELSE GOT OUT?

7 A PORTER AND HIS GRANDSON.

8 Q AND WHERE DID THEY GO?

9 A THEY GOT IN ANOTHER CAR.

10 Q OKAY. AND WHAT TYPE OF CAR WAS THAT?

11 A IT WAS A WHITE, I THOUGHT IT WAS SOMETHING LIKE

12 T-BIRD, THUNDERBIRD, IT'S A OLD CAR.

13 Q OKAY. AND WERE THERE ANY OTHER PEOPLE IN THAT

14 THUNDERBIRD?

15 A YES, SIR.

16 Q HOW MANY OTHER PEOPLE WERE THERE?

17 A JUST A DRIVER.

18 Q ALL RIGHT. AND DO YOU KNOW WHERE THAT CAR WENT?

19 A NO, SIR.

20 Q ALL RIGHT. SO YOU LEFT THE ON THE RUN, YOU WENT

21 TO THE BOJANGLES, AND YOU GOT THERE 9:30?

22 A ABOUT 9:30, YES, SIR.

23 Q DID YOU EVER SEE THAT THUNDERBIRD AGAIN AT THAT

24 TIME?

25 A YES, SIR. IT PULLED UP PROBABLY ABOUT 25

1 MINUTES AFTER WE GOT THERE.

2 Q ALL RIGHT. AND --

3 A 25 OR 30 MINUTES.

4 Q ---WHAT WERE YOU DOING AT THAT TIME?

5 A WELL, I WAS SITTING IN THE CAR TALKING TO
6 ANGELA. I WAS WAITING ON THE MAN WHO I WORK FOR TO
7 BRING ME A CHECK.

8 Q UH-HUH.

9 A SO ABOUT THAT TIME THEY PULLED UP, I WENT ON IN
10 BOJANGLES.

11 Q ALL RIGHT. AND WHAT HAPPENED AT THAT POINT?
12 WHERE DID THE FORD THUNDERBIRD GO AT THAT POINT?

13 A OH, IT STAYED THERE.

14 Q ALL RIGHT. AND MS. LAWS' CAR, THE GRAY FORD
15 TAURUS, WHERE DID IT GO?

16 A IT LEFT OUT, IT PULLED OUT.

17 Q OKAY. DO YOU KNOW WHO WAS IN THAT CAR?

18 A MS. LAWS, SHE WAS DRIVING. IT WAS MR. JONES AND
19 MR. PORTER. I DIDN'T KNOW THE OTHER GUY.

20 Q OKAY. SO WHERE DID THIS OTHER PERSON COME FROM?

21 A HE WAS DRIVING THE OTHER CAR.

22 Q THE FORD THUNDERBIRD?

23 A YEAH. I THINK IT WAS A FORD THUNDERBIRD IF I'M
24 NOT MISTAKEN.

25 Q SO HE GOT OUT OF HIS CAR AND GOT IN WITH

1 MS. LAWS?

2 A YES, SIR.

3 Q AND DID THEY LEAVE THE BOJANGLES AT THAT TIME?

4 A YEAH, THEY LEFT THE BOJANGLES.

5 Q AND DO YOU KNOW ABOUT WHAT TIME THAT WAS?

6 A PROBABLY WAS ABOUT TEN, ABOUT TEN AFTER TEN OR
7 SOMETHING LIKE THAT, TEN O'CLOCK, TEN AFTER TEN. WE
8 GOT AT BOJANGLES ABOUT 9:30. WE SIT THERE PROBABLY
9 ABOUT 30 MINUTES.

10 Q AND DID MS. LAWS UNDERSTAND THAT YOU WERE GOING
11 TO STAY AT THE BOJANGLES?

12 A YEAH, SEE, SEE I WAS SUPPOSED TO BEEN GOING TO
13 WORK, BUT WHEN I GOT THE PHONE CALL, HE SAID THAT IT
14 WAS RAINING TOO BAD IN SOUTH CAROLINA AND TOLD ME
15 THAT HE PROBABLY BRING THE CHECK BY ABOUT THREE
16 O'CLOCK TO SPEEDY, IT'S A SPEEDY TEMP SERVICE IN
17 CHARLOTTE, NORTH CAROLINA, THAT'S WHERE I SUPPOSED TO
18 HAVE MET HIM AT AT THREE O'CLOCK, SO AT THAT TIME I
19 CALLED ANGELA ON THE CELL AND SEE WAS SHE CLOSE BY
20 BECAUSE MY IMPRESSION SHE WAS GOING TO TAKE SOME GUYS
21 TO CASH SOME CHECKS, AND WHEN I CALLED HER I ASKED
22 HER WAS SHE CLOSE BY, SHE SAID YEAH, SHE'D DOWN
23 THROUGH THERE IN ABOUT TWO MINUTES. YOU KNOW, SHE
24 WAS ON THE WAY.

25 Q OKAY. SO AS FAR AS YOU KNEW WHEN SHE LEFT THE

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1 BOJANGLES SHE WAS GOING TO TAKE SOMEBODY TO CATCH
2 CHECKS?

3 A YEAH, THAT WAS MY IMPRESSION.

4 Q ALL RIGHT. HOW LONG WAS SHE GONE BETWEEN THE
5 TIME SHE LEFT AND THE TIME YOU CALLED HER ON THE CELL
6 PHONE?

7 A OH, SHE WAS GONE PROBABLY ABOUT 25 MINUTES. 30
8 MINUTES AT THE MOST.

9 Q AND THE PERSON THAT GOT IN THE CAR WITH MS. LAWS
10 AT THE BOJANGLES, CAN YOU DESCRIBE HIM?

11 A HE WAS A SORT OF BROWN SKINNED GUY, SORT OF BIG
12 GUY. HE WAS PROBABLY ABOUT FIVE, ABOUT 5' 10" -
13 5' 11".

14 Q MUSCULAR BUILD IS THAT WHAT YOU MEAN BY BIG?

15 A YES, SIR, SORT OF MUSCULAR BUILD. I NEVER SEEN
16 HIM BEFORE.

17 Q OKAY. YOUNG OR OLD?

18 A HE WAS A YOUNG GUY.

19 Q ALL RIGHT. YOU DIDN'T, DID YOU KNOW THIS
20 INDIVIDUAL?

21 A NO, SIR.

22 Q DID THE OTHER PEOPLE IN THE CAR SEEM TO KNOW
23 HIM?

24 A I THINK MR. JONES KNEW HIM.

25 Q OKAY. SO YOU PLACED A CALL TO MS. LAWS AND SHE

1 SAID SHE WAS COMING BACK TO THE BOJANGLES?

2 A YEAH, SHE SAID SHE WAS ON THE WAY AND SHE TOLD
3 ME TO STAY AT THE ENTRANCE, THAT SHE WOULD PICK ME
4 UP, SAID SHE WASN'T GOING TO PULL IN, SO AT THAT TIME
5 I WENT, I WAITED ON HER, I WAS GETTING WET A LITTLE
6 BIT, SO WHEN SHE PULLED OUT, THE GUY JUMPED OUT, I
7 JUMPED IN.

8 Q AND THE PERSON THAT GOT OUT, WHERE DID HE GO?

9 A HE WENT BACK TOWARDS HIS CAR AT BOJANGLES.

10 Q AT THE PARKING LOT?

11 A YES.

12 Q YOU GOT IN THE CAR, WHERE DID YOU GET IN AT?

13 A I GOT ON ON THE PASSENGER SIDE, BACK REAR
14 PASSENGER.

15 Q AND WHO WAS IN THE CAR AT THAT POINT?

16 A MR. JONES WAS IN THE BACK AND MR. PORTER WAS IN
17 THE FRONT SEAT.

18 Q AND WHO WAS DRIVING?

19 A MS. LAWS.

20 Q ALL RIGHT. AND DID SHE PULL OFF?

21 A YES, SIR.

22 Q WHICH DIRECTION WAS SHE GOING?

23 A SHE WAS GOING TOWARDS, ACROSS BUSTER BOYD BRIDGE
24 BLIND.

25 Q I'M SORRY?

1 A SHE WAS DRIVING FAST.

2 Q WHEN YOU GOT IN THE CAR, DID YOU DO ANYTHING
3 ELSE?

4 A WE WAS, THERE WAS A HOODIE ON THE SEAT. I PUT
5 IT ON.

6 Q AND WHAT IS A HOODIE?

7 A IT WAS LIKE A LITTLE LIGHT BLUE JACKET.

8 Q UH-HUH.

9 A YEAH, I PUT IT ON BECAUSE I HAD GOT WET WAITING
10 ON HER TO COME AND PICK ME UP.

11 Q IT WAS RAINING THAT DAY?

12 A YES, SIR.

13 Q SO ONCE YOU PUT THAT JACKET ON, WHAT HAPPENED
14 NEXT?

15 A WE WAS RIDING, WE GOT, WENT ACROSS THE BRIDGE,
16 AND WE, SHE ENTERED INTO LIKE GOING TOWARDS CAROWINDS
17 BOULEVARD AND A COP GOT BEHIND HER AND I NOTICED
18 JONES KEPT STUFFING SOMETHING IN THE PILLOWCASE AND
19 SO.

20 Q WHERE WAS THAT PILLOWCASE THE FIRST TIME YOU SAW
21 IT?

22 A IT WAS LIKE BETWEEN HIS LEGS. I NEVER KNOW WHAT
23 IT WAS UNTIL LIKE THE POLICE GOT BEHIND US AND THEN I
24 SEEN HIM START STUFFING STUFF IN THERE.

25 Q OKAY. AND WHAT WAS HE PUTTING IN THAT

1 PILLOWCASE?

2 A I THINK HE THREW A PISTOL IN THERE AND WAS
3 TRYING TO PUT SOME, I THINK HE HAD A PAIR OF SNEAKERS
4 OR SOMETHING HE PUT IN THERE.

5 Q OKAY. DID YOU SEE HIM PUT ANYTHING ELSE IN IT?

6 A NO, SIR.

7 Q FROM WHERE YOU WERE SITTING COULD YOU SEE WHAT
8 WAS IN THE BAG?

9 A NO, SIR.

10 Q ALL RIGHT. AFTER MR. JONES STARTED PUTTING
11 STUFF IN THE BAG, WHAT HAPPENED NEXT?

12 A THE POLICE GOT BEHIND US THEN THEY WAS TELLING
13 HER DRIVE, HIT '77, AND MS. LAWS SNATCHED A WIG OFF
14 HER HEAD AND HANDED IT TO JONES BUT HE WAS PUTTING
15 STUFF IN THE BAG, AND SO HE DIDN'T NEVER GET THE WIG
16 FROM HER. I GUESS SHE THREW IT DOWN IN THE FRONT
17 SEAT OR SOMETHING. SO AT THAT TIME, YOU KNOW, I WAS
18 SHOCKED. I DIDN'T KNOW WHAT WAS GOING ON.

19 Q OKAY. LET ME ASK YOU ABOUT THE WIG. HAD MS.
20 LAWS HAD THE WIG ON WHEN SHE DROPPED YOU OFF?

21 A YES, SIR.

22 Q DOES SHE WEAR A WIG SOMETIMES?

23 A YES, SIR.

24 Q ALL RIGHT. DID SHE HAVE ANYTHING ELSE ON HER
25 HEAD?

- 1 A I THINK SHE HAD ON A CAP.
- 2 Q ALL RIGHT. DO YOU KNOW WHERE THE WIG WENT ONCE
- 3 SHE TOOK IT OFF?
- 4 A NO, SIR.
- 5 Q AT THE TIME THAT SHE WAS TAKING THE WIG OFF HER
- 6 HEAD, WERE THE POLICE ALREADY HAVING THEIR BLUE
- 7 LIGHTS AND SIREN ACTIVATED?
- 8 A YES, SIR.
- 9 Q AND WHAT DID MS. LAWS DO THEN?
- 10 A SHE WAS JUST DRIVING.
- 11 Q AND DID YOU KNOW WHERE SHE WAS GOING?
- 12 A SHE WAS HEADED TOWARDS CHARLOTTE.
- 13 Q DID ANYBODY IN THE CAR SAY ANYTHING TO YOU ABOUT
- 14 WHAT HAD HAPPENED?
- 15 A NO, SIR.
- 16 Q SO DID YOU KNOW WHY THE POLICE WERE PURSUING
- 17 YOU?
- 18 A NO, I DIDN'T KNOW.
- 19 Q DID MS. LAWS EVER STOP OR PULL OVER OR ANYTHING
- 20 DURING THE COURSE OF THE TIME THE POLICE WERE BEHIND
- 21 HER?
- 22 A NO, SIR. I THINK SHE WENT INTO A MCDONALD AND
- 23 SORT OF SKIDDED, THE CAR SORT OF SKIDDED, AND SHE
- 24 PULLED BACK OUT.
- 25 Q ALL RIGHT. AND WHERE DID THE CAR GO THEN?

1 A WENT BACK DOWN I THINK IT WAS ARROWOOD
2 BOULEVARD, ARROWOOD.

3 Q ARE YOU FAMILIAR WITH THAT AREA?

4 A NO, SIR.

5 Q ALL RIGHT. DID, WHAT HAPPENED AS FAR AS THE CAR
6 GOES AT THAT POINT?

7 A SHE HEADED TOWARDS SOME APARTMENTS AND AT A DEAD
8 END.

9 Q DO YOU KNOW THOSE APARTMENTS, ARE YOU FAMILIAR
10 WITH THEM?

11 A NO, SIR.

12 Q WHEN SHE GOT TO THE DEAD END, WHAT HAPPENED?

13 A THEN ONE OF THE PATROL CARS RAN INTO THE DOOR AS
14 JONES WAS TRYING TO FLEE, RAN INTO THE DOOR, AND
15 KNOCKING JONES BACK INTO THE CAR. WELL, HE FELL BACK
16 INTO THE CAR.

17 Q ALL RIGHT. DID MR. JONES TRY TO GET OUT?

18 A YES, SIR.

19 Q DID HE MAKE IT MOST OF THE WAY OUT?

20 A WELL, HE WAS, HAD ONE OF HIS LEGS OUT AND WHEN
21 THE CAR HIT HIM THREW HIM BACK IN THE CAR. THAT'S
22 HOW.

23 Q WHAT DID MR. JONES HAVE IN HIS HANDS WOULD HE
24 TRIED TO GET OUT?

25 A HE HAD A PILLOWCASE.

1 Q WAS IT THE SAME ONE YOU HAD SEEN HIM STUFFING
2 THINGS INTO PREVIOUSLY?

3 A YES, SIR.

4 Q ONCE THE PATROL CAR HIT AND MR. JONES FELL BACK
5 INTO THE CAR, WHAT HAPPENED TO THE PILLOW CASE?

6 A OH, THE PILLOWCASE. WHEN IT HIT, HE FELL BACK
7 IN THE CAR, THE PILLOWCASE AT THAT TIME I WAS WAITING
8 ON THE OFFICERS BECAUSE WHEN HE, WHEN I OPENED MY
9 DOOR I WAITING ON THE OFFICER TO COME IN BACK TO THE
10 CAR, SO I DON'T KNOW WHAT HAPPENED TO THE PILLOWCASE
11 AFTER THAT.

12 Q OKAY.

13 A I DIDN'T SEE IT.

14 Q DID, YOU WERE SITTING IN THE, ON THE PASSENGER
15 SIDE IN THE REAR, IS THAT CORRECT?

16 A YES, SIR.

17 Q AND THE CAR HIT ON THE OTHER SIDE, WHERE
18 MR. JONES WAS?

19 A YES, SIR.

20 Q WAS THERE ANYTHING OBSTRUCTING YOUR DOOR?

21 A NO, SIR.

22 Q DID YOU TRY TO RUN?

23 A NO, SIR.

24 Q DID YOU HAVE ANY THOUGHTS OF GETTING AWAY?

25 A HAVE ANY THOUGHTS OF GETTING AWAY?

1 Q YES, SIR.

2 A I DIDN'T, LIKE I SAY, I DIDN'T KNOW WHAT WAS
3 GOING ON.

4 Q DID YOU HAVE ANY REASON TO RUN?

5 A NO, I DIDN'T HAVE NO REASON TO RUN AT ALL.

6 Q OKAY. SO YOU WEREN'T DRIVING THE CAR, RIGHT?

7 A NO, SIR.

8 Q SO YOU COULDN'T HAVE BEEN RESPONSIBLE FOR ANY
9 TRAFFIC VIOLATION, RIGHT?

10 A RIGHT. YES, SIR.

11 Q DID YOU, UP UNTIL THE TIME THE POLICE PULLED YOU
12 OUT OF THE CAR, PUT HANDCUFFS ON YOU AND ARRESTED
13 YOU, DID YOU KNOW WHAT MS. LAWS AND MR. JONES HAD
14 BEEN UP TO PRIOR TO THAT TIME?

15 A NO, SIR. I WAS UNDER THE IMPRESSION THEY WAS,
16 THEY WAS GOING TO CASH CHECKS.

17 Q OKAY.

18 A YEAH.

19 Q AND BY CASHING CHECKS DO YOU MEAN LITERALLY THEY
20 WERE CASHING A CHECK THAT BELONGED TO THEM OR DO YOU
21 MEAN THEY WERE FORGING A CHECK?

22 A I DON'T KNOW. SHE JUST TOLD ME SHE WAS GOING TO
23 TAKE JONES AND YOU KNOW CASH A CHECK OR SOMETHING.

24 Q ALL RIGHT. SO WHEN THE POLICE WALKED UP TO YOUR
25 DOOR, DID YOU RESIST ARREST?

1 A NO, SIR.

2 Q DID YOU COOPERATE WITH THE POLICE?

3 A YES, SIR.

4 Q WHEN THEY GOT YOU OUT OF THE CAR AND FOUND, AND
5 SEARCHED YOU, DID THEY FIND ANYTHING ON YOUR PERSON?

6 A THEY WENT AND TOOK SOME, SOME KIND OF SPRAY OUT
7 OF THE HOODIE, IT WAS A POCKET AND THEY WENT INSIDE
8 THERE AND SAID SOMETHING, THEY SAID, HERE GO THE
9 MACE. YOU KNOW, I DON'T KNOW WHAT HE TALKING ABOUT,
10 HERE GO THE MACE.

11 Q UH-HUH.

12 A SO THEY THREW ME ON THE GROUND AND PUT
13 HANDCUFFS, PICK ME UP, PUT HANDCUFFS ON ME, AND PUT
14 ME IN THE CAR.

15 Q OKAY. WHEN IS THE FIRST TIME YOU SAW THE MACE?

16 A WHEN HE PULLED IT OUT OF MY POCKET.

17 Q AND WAS THAT, THE POCKET THEY GOT IT OUT OF, WAS
18 THAT THE SAME SHIRT YOU HAD PUT ON WHEN YOU GOT IN
19 THE CAR?

20 A YEAH. THE HOODIE THAT I SKIPPED OVER, YES, SIR.

21 Q WHAT HAPPENED AFTER THAT?

22 A I THINK OFFICER STRAIT CAME AND WAS AT THE CAR
23 AND ASKED FOR MY DRIVING LICENSE AND READ ME MY
24 RIGHTS AND THEY TOOK ME OUT TO THE SOUTH CAROLINA CAR
25 AND PUT ME IN NORTH CAROLINA CAR.

1 Q AND DID THEY TRANSPORT YOU TO CHARLOTTE
2 MECKLENBURG POLICE DEPARTMENT?

3 A YES, SIR.

4 Q AND DID YOU STAY IN CUSTODY THERE AWHILE?

5 A YES, SIR.

6 Q AND THEN DID YOU FINALLY WIND UP BACK DOWN HERE?

7 A YES, SIR.

8 Q AND THEY SERVED WARRANTS ON YOU WHEN YOU GOT
9 HERE?

10 A YES, SIR.

11 Q AND WERE THOSE WARRANTS FOR BANK ROBBERY AND
12 SOME OTHER THINGS?

13 A YES, SIR.

14 Q WELL, I'M GOING TO ASK YOU THE OBVIOUS QUESTION,
15 MR. YOUNG, DID YOU COMMIT A BANK ROBBERY?

16 A NO, SIR.

17 Q DID YOU COMMIT A KIDNAPPING?

18 A NO, SIR.

19 Q DID YOU CONSPIRE WITH MR. JONES AND MS. LAWS TO
20 ROB A BANK OR GIVE THEM ANY INFORMATION ABOUT ROBBING
21 A BANK?

22 A NO, SIR.

23 Q DO YOU KNOW ANYTHING ABOUT WHAT HAPPENED AT THE
24 BANK OF YORK ON THE 22 OF DECEMBER 2006?

25 A NO, SIR.

1 MR. JAMIESON: NO FURTHER QUESTIONS, YOUR
2 HONOR.

3 MR. BRACKETT: WHO GOES?

4 THE COURT: I BELIEVE ACTUALLY I'LL LET
5 THE STATE GO AND THEN MR. PORTER.

6 MR. BRACKETT: VERY GOOD.

7 CROSS EXAMINATION BY MR. BRACKETT:

8 Q GOOD AFTERNOON, MR. YOUNG. HOW ARE YOU?

9 A ALL RIGHT.

10 Q SO THIS IS JUST A BIG MISTAKE, IS THAT WHAT
11 ESSENTIALLY?

12 A I MEAN, I HAVEN'T COMMITTED NO CRIME.

13 Q A HORRIBLE MISUNDERSTANDING?

14 A I SAY I HAVEN'T COMMITTED ANY CRIME.

15 Q THIS BLUE HOODIE?

16 A YEAH.

17 Q THAT'S THE ONE YOU WERE WEARING?

18 A YES, SIR, THAT'S THE ONE.

19 Q IN THE CAR?

20 A YES, SIR.

21 Q AND YOU GOT WET SO YOU DECIDED TO PUT THIS ON?

22 A I HAD ANOTHER SHIRT ON AND I JUST PUT THAT OVER
23 ME.

24 Q YEAH, AFTER YOU GOT WET?

25 A I WASN'T WET. I WAS, IT WAS DAMP.

1 Q I SEE. BECAUSE YOU WERE STANDING OUT IN THE
2 RAIN?

3 A WELL, NO, I WASN'T STANDING OUT THERE. SHE TOLD
4 ME SHE'D BE UP THERE IN TWO MINUTES SO I WAS COMING
5 OUT THE BOJANGLES AND GOT IT THERE.

6 Q YOU MET HER ON THE SIDEWALK RIGHT THERE?

7 A AT THE ENTRANCE.

8 Q OF 49. DID SHE PULL IN?

9 A NO, SHE DIDN'T PULL IN.

10 Q SHE STOPPED ON 49?

11 A SHE STOPPED AT THE ENTRANCE OF BOJANGLES AS,
12 WHEN YOU TURN TO COME IN.

13 Q OFF OF 49?

14 A YES, SIR.

15 Q OKAY. SO YOU DRIVING DOWN 49, BOJANGLES IS ON,
16 WELL, BANK OF YORK IS FIRST AND THEN THERE IS A
17 LITTLE OFFICE BUILDING AND THEN FIFTY YARDS PAST THE
18 BANK OF YORK THERE IS THE BOJANGLES?

19 A I DON'T KNOW. I CAN'T, I DON'T KNOW WHERE THE
20 BANK AT.

21 Q OKAY. BUT AS YOU ARE COMING DOWN 49 ON THE
22 RIGHT, THERE IS A TURN IN WHERE YOU TURN OFF OF 49 TO
23 GO TO THE BOJANGLES, RIGHT, INTO THE PARKING LOT?

24 A YES, SIR, THE ENTRANCE.

25 Q SO YOU WERE STANDING BASICALLY ON THE SIDE OF

1 THE ROAD AND SHE PULLED UP?

2 A NO, SIR.

3 Q I GUESS I'M TRYING TO FIND OUT, DID SHE PULL IN
4 OFF OF 49?

5 A NO, SIR.

6 Q OR DID SHE STOP IN THE LANE?

7 A SHE, SHE DIDN'T STOP IN THE LANE. SHE PULLED
8 OVER AS YOU COME IN AT THE ENTRANCE AND TOLD ME SHE
9 WAS GOING TO MEET ME, TOLD ME TO MEET HER AT THE
10 ENTRANCE, SHE WASN'T GOING TO PULL IN, SO WHEN SHE
11 WAS COMING UP BEFORE THE CAR EVEN STOPPED, THE DOOR
12 OPENED AND A GUY JUMPED OUT AND I JUMPED IN.

13 Q WHILE THE CAR WAS STILL MOVING?

14 A YEAH, BEFORE IT EVEN CAME TO A COMPLETE STOP.

15 Q DID IT EVER COME TO A COMPLETE STOP?

16 A YEAH.

17 Q OR DID IT KEEP ROLLING?

18 A YEAH, IT CAME TO A COMPLETE STOP.

19 Q SO SHE BASICALLY PULLED IN AND THEN JUST BLOCKED
20 THE ENTRANCE BRIEFLY WHILE YOU GUYS WERE, HE WAS
21 GETTING OUT AND YOU WERE GETTING IN?

22 A BASIC, YEAH.

23 Q SO SHE WAS A LITTLE BIT OUT OF THE ROADWAY BUT
24 STILL PARALLEL WITH THE ROAD?

25 A BASICALLY, YEAH.

- 1 Q AND THEN THE BACK PASSENGER DOOR OPENS AND
2 MYSTERY MAN JUMPS OUT?
- 3 A RIGHT.
- 4 Q AND KENNETH YOUNG JUMPS IN?
- 5 A RIGHT.
- 6 Q CLOSES THE DOOR AND OFF SHE GOES?
- 7 A YES, SIR.
- 8 Q AND YOU PUT ON THIS HOODIE?
- 9 A YES, SIR.
- 10 Q I SEE. NOW THESE ARE YOUR PANTS?
- 11 A YES, SIR.
- 12 Q YOU WERE WEARING THOSE?
- 13 A YES, SIR.
- 14 Q MYSTERY MAN DIDN'T LEAVE THESE BEHIND?
- 15 A THEM ARE MY PANTS.
- 16 Q THOSE ARE YOUR PANTS, ALL RIGHT. THE MACE WAS
17 IN THERE?
- 18 A YES, SIR.
- 19 Q AND YOU SAW THEM PULL IT OUT?
- 20 A WELL, HE PULLED IT OUT AND HE SAID HERE GO THE
21 MACE.
- 22 Q OKAY. HOW WAS ANGELA LAWS DRIVING ON THE WAY
23 FROM THE BOJANGLES AFTER YOU GOT IN THE CAR?
- 24 A SHE WAS SPEEDING. SHE WAS DRIVING FAST.
- 25 Q OKAY. DID THAT CONCERN YOU?

1 A I MEAN I WAS WONDERING, YOU KNOW, WHY SHE WAS
2 DRIVING THAT FAST, YEAH. IT CONCERNED ME, YEAH.

3 Q DID YOU ASK HER?

4 A NO, I DIDN'T ASK HER.

5 Q WHAT WAS THE OTHER PEOPLE IN THE CAR SAYING?

6 A WASN'T NOBODY SAYING ANYTHING.

7 Q OKAY. DID YOU SEE ANY GUNS INSIDE THE CAR?

8 A NOT RIGHT THEN.

9 Q WHEN DID YOU FIRST SEE A GUN?

10 A WHEN THE POLICE GOT BEHIND THE CAR AND JONES WAS
11 STUFFING IN THE BAG.

12 Q I SEE. WHERE DID HE GET THE GUNS?

13 A I DON'T KNOW WHERE HE GOT IT FROM.

14 Q PORTER WAS IN THE CAR WHEN YOU GOT IN THE CAR
15 AND TRADED PLACES WITH THE MYSTERY MAN, IS THAT
16 RIGHT?

17 A YES, SIR.

18 Q OKAY. DID YOU SEE WHICH CAR THE MYSTERY MAN RAN
19 TO IN THE BOJANGLES PARKING LOT?

20 A NO, SIR.

21 Q OKAY. HOW LONG WERE YOU AT THE BOJANGLES?

22 A PROBABLY ABOUT 30 MINUTES.

23 Q ALL TOGETHER 30 MINUTES?

24 A NO, IT WASN'T ALL TOGETHER. WE GOT THERE ABOUT
25 9:30. I WENT INSIDE BOJANGLES PROBABLY ABOUT TEN. I

1 PROBABLY STAYED IN PROBABLY ABOUT 30 MINUTES INSIDE
2 THE BOJANGLES.

3 Q YOU GOT THERE AT 9:30 AND THEN YOU WENT IN AT
4 TEN. WHERE WERE YOU FROM 9:30 OR TEN?

5 A I WAS SITTING IN THE CAR WITH MS. LAWS.

6 Q SO YOU SAT IN THE CAR WITH MS. LAWS AND
7 MR. PORTER?

8 A NO, SIR. MR. PORTER HAD GOT INTO ANOTHER CAR.
9 AS SOON AS THEY PULLED UP, I WENT INTO THE BOJANGLES.

10 Q OKAY. WHEN THEY GOT INTO THE OTHER CAR AT ON
11 THE RUN?

12 A NO, SIR. WHEN THEY GOT IN ANOTHER CAR AT ON THE
13 RUN WHEN MS. LAWS LEFT, WENT TO THE BOJANGLES, 30
14 MINUTES LATER THEY PULLED UP.

15 Q WHO GOT IN THE CAR AT ON THE RUN?

16 A IT WAS MR. JONES AND MR. PORTER.

17 Q INTO THE OLDER MODEL T-BIRD?

18 A YES, SIR.

19 Q WITH THE MYSTERY MAN DRIVING?

20 A YES, SIR.

21 Q AND YOU STAYED IN THE CAR WITH MS. LAWS?

22 A YES, SIR.

23 Q AND THEN WENT TO THE BOJANGLES?

24 A YES, SIR.

25 Q AND SAT IN THE PARKING LOT FOR 30 MINUTES?

- 1 A YEAH, WAITING ON MY BOSSMAN TO COME TO.
- 2 Q AND THEN THE T-BIRD PULLS UP?
- 3 A IT PULLED UP.
- 4 Q AND PARKED?
- 5 A IT PARKED RIGHT BESIDE HER CAR, THE CAR SHE WAS
- 6 DRIVING, THE RENT A CAR.
- 7 Q WAS SHE PARKED ON THE SIDE CLOSEST TO BANK OF
- 8 YORK OR FURTHEST AWAY FROM BANK OF YORK?
- 9 A I DON'T KNOW WHERE THE BANK OF YORK AT. I CAN'T
- 10 SPEAK ON THAT. I DON'T KNOW WHERE BANK OF YORK, I
- 11 DON'T KNOW WHICH LOCATION BANK OF YORK AT.
- 12 Q YOU HAVEN'T FIGURED IT OUT FROM ALL THE
- 13 TESTIMONY THAT'S BEEN GOING ON IN THE COURTROOM?
- 14 A LIKE I SAY I'M -- I DON'T KNOW. I DON'T KNOW.
- 15 Q OKAY. AND AT THAT POINT THE MYSTERY MAN,
- 16 JOHNNELL PORTER, AND DONSHAVIS JONES GET OUT OF THE
- 17 OLDER MODEL T-BIRD?
- 18 A YES, SIR.
- 19 Q AND THEY WALK OVER TO THE CHARCOAL GRAY FORD
- 20 TAURUS THAT ANGELA LAWS RENTED?
- 21 A YES, SIR.
- 22 Q AND THEY GET IN?
- 23 A YES, SIR.
- 24 Q AND YOU GET OUT?
- 25 A NO, I WAS ALREADY HEADED ON IN BOJANGLES WHEN

1 THE CAR PULLED UP. AT THAT TIME JONES WENT IN THE
2 BACK OF THE CAR AND THEY GOT IN THE CAR AND LEFT.

3 Q OKAY. AND THEN YOU ARE WAITING AT THE BOJANGLES
4 FOR WHO?

5 A I WAS WAITING THERE FOR A GUY I WORK WITH.

6 Q WHAT'S HIS NAME?

7 A HE'S A MEXICAN GUY.

8 Q A MEXICAN GUY?

9 A YEAH.

10 Q WHAT'S HIS NAME?

11 A CARLOS MINTE.

12 Q CARLOS MINTE?

13 A YES, SIR.

14 Q AND WHAT COMPANY IS THAT?

15 A HE WAS, HE GOT HIS OWN BUSINESS. I WAS HELPING
16 HIM OUT.

17 Q AND THE COMPANY DOESN'T HAVE A NAME?

18 A HE'S, THAT'S ALL WORK DOWN THERE. IT'S A LOT OF
19 MEXICANS I WAS WORKING WITH.

20 Q I SEE. HOW DID YOU MEET THIS FELLOW?

21 A I MET HIM THROUGH TEMP SERVICE, SPEEDY TEMP. I
22 WAS GOING OUT THERE TO DO SOME CONSTRUCTION, CLEANING
23 UP BACK THERE, AND I HELP HIM BACK THERE.

24 Q AT SUN CITY?

25 A YES, SIR. HE'S GOT HIS OWN CREW, SUN CITY.

1 Q IN LANCASTER?

2 A YES, SIR.

3 Q SOUTH CAROLINA?

4 A YES, SIR.

5 Q CARLOS MINTE?

6 A YES, SIR.

7 Q HOW LONG DID YOU KNOW CARLOS?

8 A PROBABLY ABOUT SEVEN MONTHS.

9 Q WHAT CARLOS' PHONE NUMBER?

10 A IT'S BEEN AWHILE.

11 Q CARLOS MINTE WAS SUPPOSED TO GIVE YOU A CHECK?

12 A YES, SIR.

13 Q WHERE IS CARLOS NOW?

14 A I DON'T KNOW. I'VE BEEN LOCKED UP FOR THE PAST

15 SEVERAL MONTHS.

16 Q BUT CARLOS WAS SUPPOSED TO MEET YOU AT THE

17 BOJANGLES?

18 A YES, SIR.

19 Q AND CARLOS CALLED YOU AT THE BOJANGLES?

20 A NO, SIR. WELL, I HAD CALLED HIM. HE SUPPOSED

21 TO HAVE BEEN MEETING ME THERE TO BRING ME THE CHECK.

22 Q UH-HUH.

23 A AND HE CALLED ME BACK AND SAID THAT IT WAS

24 RAINING SO HE'D BRING IT BY SPEEDY TEMP IN CHARLOTTE

25 SO I DIDN'T HAVE NO PROBLEM.

1 Q SPEEDY TEMP IN CHARLOTTE?

2 A IT'S A TEMP SERVICE IN CHARLOTTE.

3 Q WHERE IS THAT LOCATED?

4 A IT'S ON ROSLYN FERRY ROAD.

5 Q ROZ?

6 A ROSLYN FERRY ROAD.

7 Q ROSLYN FERRY?

8 A OFF OF BEATTYS FORD ROAD.

9 Q R-O-S-L-Y-N?

10 A YES, SIR.

11 Q FERRY, F-E-R-R-Y?

12 A YES, SIR.

13 Q AND THAT IS, WHO DO YOU KNOW OVER AT SPEEDY

14 TEMP?

15 A WELL, THE PEOPLE THAT RUN IT.

16 Q UH-HUH. AND THEY'RE THE ONES THAT HOOKED YOU UP

17 WITH CARLOS?

18 A NO, SIR. I WAS DOING WORK FOR SPEEDY TEMP GOING

19 TO SUN CITY CAROLINA LAKES TO WORK AND I MET CARLOS

20 THROUGH THERE, AT THE PLACE, AND I GOT ON WITH HIM.

21 Q OKAY. SO YOU MET HIM INDEPENDENT, SO SPEEDY

22 TEMP WOULDN'T KNOW ANYTHING ABOUT CARLOS EITHER?

23 A NO, SIR.

24 Q ALL RIGHT. DOES ANYBODY KNOW ANYTHING ABOUT

25 CARLOS BESIDES YOU?

- 1 A I MEAN ANYBODY LIKE WHO?
- 2 Q LIKE YOUR FAMILY, ANYBODY, HOW DID HE GET YOU
- 3 THAT CHECK?
- 4 A YEAH, ANGELA, ANGELA KNOW HIM. ANGELA MET HIM
- 5 BEFORE. AS A MATTER OF FACT, SHE TOOK ME, SHE TOOK
- 6 ME TO BOJANGLES ONE TIME. HE BROUGHT ME A CHECK AND
- 7 TOOK ME TO CASH A CHECK.
- 8 Q ANGELA DID?
- 9 A YES, SIR.
- 10 Q HOW DID YOU GET-- DID YOU EVER GET THE CHECK?
- 11 A YES, SIR.
- 12 Q HOW MUCH WAS IT FOR?
- 13 A IT WAS \$1800 CHECK.
- 14 Q \$1800 CHECK?
- 15 A UH-HUH.
- 16 Q WHEN DID YOU GET THE CHECK?
- 17 A IT WAS -- NOT SINCE I'VE BEEN LOCKED UP. I
- 18 NEVER DID PICK THAT CHECK UP.
- 19 Q OH.
- 20 A IT WAS A CHECK THAT I PICKED UP PRIOR TO THAT
- 21 WAS \$1800.
- 22 Q CARLOS IS OUT THERE, STILL OUT THERE, WITH YOUR
- 23 \$1800?
- 24 A NO, SIR. I HAD PICKED ONE CHECK FROM HIM FOR
- 25 \$1800.

1 Q AND YOU CALLED CARLOS FROM THE BOJANGLES BECAUSE
2 HE WAS LATE?

3 A SAY WHAT?

4 Q YOU CALLED CARLOS FROM THE BOJANGLES BECAUSE
5 YOU'D BEEN SITTING THERE FOR 30 MINUTES NOW AND HE'S
6 LATE?

7 A NO, HE'S SUPPOSED TO MEET, HE SUPPOSED TO BEEN
8 UP THERE ABOUT TEN O'CLOCK, SO WHEN HE CALLED BACK HE
9 TOLD ME HE WASN'T GOING TO BE ABLE TO MAKE IT.

10 Q SO HE CALLED YOU?

11 A YES, SIR.

12 Q AND HOW DID HE CALL ME?

13 A HOW DID HE CALL ME, I HAD A CELL PHONE.

14 Q WHAT WAS YOUR CELL PHONE NUMBER?

15 A IT WAS [REDACTED].

16 Q THAT'S A 704?

17 A 704.

18 Q SO YOU KNEW YOUR CELL PHONE NUMBER?

19 A YES, SIR.

20 Q AND CARLOS CALLED ON YOUR CELL PHONE THAT
21 MORNING?

22 A YES, SIR.

23 Q AND YOU TOLD ALL THIS TO YOUR ATTORNEY?

24 A YEAH, HE KNOW ABOUT IT.

25 Q OKAY. DID YOU TELL HIM CARLOS' PHONE NUMBER

- 1 TOO?
- 2 A NO, SIR.
- 3 Q YOU DIDN'T? HAVE YOU SPOKEN TO CARLOS ABOUT
- 4 THIS SITUATION?
- 5 A I HAVEN'T EVEN GOT IN TOUCH WITH HIM SINCE I'VE
- 6 BEEN LOCKED UP OR ANYTHING.
- 7 Q OKAY. AND YOU WERE CONVICTED OF (A) CLASS A
- 8 FELONY IN 1986, WEREN'T YOU?
- 9 A YES, SIR.
- 10 Q WHEN DID YOU GET MARRIED?
- 11 A I GOT MARRIED IN '83.
- 12 Q OKAY. YOU STILL MARRIED TO HER?
- 13 A YES, SIR.
- 14 Q WHAT'S HER NAME?
- 15 A ANGELA YOUNG.
- 16 Q AND YOU HAD A PROBLEM WITH MS. LAWS BECAUSE YOU
- 17 WERE HAVING A RELATIONSHIP WITH HER BUT SHE DIDN'T
- 18 APPRECIATE THE FACT THAT YOU WERE MARRIED?
- 19 A BASICALLY.
- 20 Q DID YOUR WIFE APPRECIATE THE FACT THAT YOU HAD A
- 21 RELATIONSHIP WITH MS. LAWS?
- 22 A NO, SIR.
- 23 Q SHE DIDN'T. IT WAS CAUSING YOU ALL KINDS OF
- 24 TROUBLE?
- 25 A ALL KINDS. YOU RIGHT ABOUT THAT.

1 Q WHAT WAS ANYBODY SAYING IN THE CAR WHILE YOU
2 WERE DRIVING?

3 A I NEVER, I WASN'T DRIVING. I NEVER DROVE.

4 Q WELL, WHILE ANGELA LAWS WAS DRIVING, WHAT WERE
5 THEY TALKING ABOUT IN THE CAR?

6 A THEY WASN'T TALKING ABOUT ANYTHING UNTIL THE
7 BLUE LIGHT CAME ON THEN THEY WAS TELLING HER TO
8 DRIVE, KEEP DRIVING, YOU KNOW.

9 Q WHAT WERE YOU TAKING ABOUT?

10 A I MEAN I DIDN'T KNOW WHAT WAS GOING ON.

11 Q YOU WERE JUST SITTING BACK THERE IN SHOCK?

12 A BASICALLY.

13 Q DIDN'T SAY ANYTHING TO ANYBODY?

14 A I MEAN, WHAT COULD I SAY?

15 Q DID YOU HAVE YOUR SEAT BELT ON?

16 A NO, SIR.

17 Q WHAT DID YOU SAY YOUR PHONE NUMBER WAS?

18 A [REDACTED].

19 Q AND CARLOS CALLED YOU ON THAT, HUH?

20 A YES, SIR.

21 Q AND THEN YOU CALLED ANGELA AFTER THAT?

22 A I CALLED HER RIGHT AFTER THAT ON HER CELL PHONE.

23 Q ON HER CELL PHONE?

24 A YES, SIR.

25 Q WHAT WAS HER CELL PHONE NUMBER?

1 A WELL, I GOT IT DIALED INTO MY NUMBER. I JUST
2 STICK IT IN, JUST REDIAL IT.

3 Q SPEED DIAL.

4 A YES, SIR.

5 Q OKAY.

6 A I CAN'T REMEMBER WHAT IT IS OFF THE TOP.

7 Q WAS IT THE NUMBER ONE SLOT OR WAS THAT YOUR
8 WIFE?

9 A MY WIFE WAS IN THE NUMBER ONE SLOT.

10 Q OKAY.

11 A SHE WAS RIGHT BEHIND MY WIFE.

12 MR. BRACKETT: NOTHING FURTHER.

13 MR. JAMIESON: NOTHING FURTHER.

14 THE COURT: MR. PORTER.

15 CROSS EXAMINATION BY MR. PORTER:

16 Q MR. YOUNG, FROM THE BOJANGLES, WHEN YOU WAS
17 DROPPED OFF AT THE BOJANGLES, THE IMPRESSION THAT WE
18 WAS UNDER WAS WE WAS GOING TO CASH CHECKS?

19 A YEAH.

20 Q THE PEOPLE WAS GOING TO CASH CHECKS, IS THAT NOT
21 CORRECT. THAT'S CORRECT?

22 A YES, SIR.

23 Q ALL RIGHT. THE T-BIRD THAT WAS PARKED, AS YOU
24 RECALL, WAS IT, ARE YOU SURE IT WAS A T-BIRD?

25 A I'M NOT SURE. I ASSUME BECAUSE IT'S A OLDER

1 MODEL CAR. IT COULD HAVE BEEN SOMETHING ELSE, BUT IT
2 WAS A WHITE. I'D SAY IT WAS T-BIRD.

3 Q PROBABLY GRAYISH CAR?

4 A IT COULD HAVE BEEN GRAY.

5 Q WELL, WHATEVER INDICATED THAT IT WAS MERCURY
6 SABLE?

7 A IT COULD HAVE BEEN. IT COULD HAVE BEEN.

8 Q FROM THAT POINT ON, WHEN THE CAR PROCEEDED DOWN,
9 YOU WOULDN'T HAVE NO WAY OF KNOWING ANY OTHER
10 INDIVIDUALS GOT IN THAT CAR?

11 A CAN YOU REPEAT THAT AGAIN.

12 Q FROM THE BOJANGLES, WHEN WE LEFT THE BOJANGLES,
13 DID YOU HAVE ANY KNOWLEDGE WHATSOEVER THAT ANYBODY
14 ELSE GOT IN THE CAR OR ANYBODY ELSE GOT OUT OF THE
15 CAR?

16 A NO.

17 Q ARE YOU AWARE OF ANY TENSION BETWEEN PEOPLE IN
18 THE CAR AND, MYSELF INCLUDED, AND ANYBODY ELSE IN THE
19 CAR?

20 A NO, NOT RIGHT, NOT RIGHT THEN.

21 Q SO WHEN THE CAR LEFT YOU, ABOUT HOW LONG WAS IT
22 GONE?

23 A PROBABLY ABOUT 30-35 MINUTES.

24 Q TO CASH CHECKS, IS THAT CORRECT?

25 A YEAH.

1 Q I HAD INDICATED IN CROSS EXAMINING MS. LAWS THAT
2 IT WAS KENTUCKY FRIED CHICKEN, BUT YOU ARE RIGHT, IT
3 WAS BOJANGLES BUT FOR THE RECORD IT WAS BOJANGLES,
4 BUT YOU DID NOT HEAR THE OR YOU DID NOT HAVE NO
5 KNOWLEDGE THAT WHAT HAPPENED THAT I WAS ANY PART OF
6 THAT?

7 A NO, I DIDN'T HAVE NO KNOWLEDGE OF IT.

8 Q OKAY. SO YOU WOULD NOT KNOW THAT I HAD GOT OUT
9 OF THE CAR DOWN THE STREET?

10 A NO.

11 Q ONCE THE CAR CAME BACK AND THE BACK DOOR OPENED,
12 THERE WAS JUST ONLY TWO PEOPLE IN IT? I MEAN THREE
13 PEOPLE?

14 A YEAH.

15 Q THAT'S CORRECT?

16 A YEAH.

17 Q YOU DID NOT HEAR ANY ARGUMENTS BETWEEN MYSELF
18 AND THEM AS THEY ARE SAYING THAT Y'ALL SHOULD HAVE
19 TOLD ME, Y'ALL SHOULD HAVE TOLD ME, YOU DIDN'T HEAR
20 THAT?

21 A I MEAN, WHEN I GOT, WHEN I GOT IN THE CAR SHE
22 WAS SPEEDING LIKE THAT. I MEAN, I WAS TRYING TO
23 WONDER WHAT WAS GOING ON, YOU KNOW.

24 Q RIGHT. BUT YOU DID NOT HEAR ME MAKE A
25 STATEMENT, CURSING THAT YOU SHOULD HAVE TOLD ME WHAT

1 Y'ALL HAD UP?

2 MR. BRACKETT: OBJECTION, IT CALLS FOR
3 HEARSAY AND SELF-SERVING HEARSAY AT THAT.

4 THE COURT: WELL, WHAT ABOUT, WHAT'S THE
5 QUESTION AGAIN?

6 MR. PORTER: I HAD ASK HIM DID HE HEAR ME
7 CURSING TO OCCUPANTS AS HE GETTING IN THE CAR.

8 THE COURT: I'M GOING TO ALLOW THE
9 QUESTION. GO AHEAD.

10 Q DID YOU HEAR?

11 A I CAN'T SAY I HEARD IT, YOU KNOW. ONCE I GOT
12 BACK IN THE CAR I WAS TRYING TO FIGURE OUT WHAT WAS
13 GOING ON BECAUSE THE WAY SHE WAS DRIVING AND I KNEW
14 SOMETHING WASN'T RIGHT.

15 Q HOW LONG AFTER YOU GOT IN THE CAR DID THE BLUE
16 LIGHTS COME UP BEHIND?

17 A ANYWHERE FROM 12 TO 15 MINUTES, I GUESS. ABOUT,
18 IT'S ABOUT TEN MINUTES.

19 Q I REMEMBER, I REMEMBER YOU CHANGING YOUR COAT.

20 MR. BRACKETT: OBJECTION.

21 THE COURT: YOU CAN'T TESTIFY.

22 MR. PORTER: OKAY.

23 THE COURT: YOU GOT TO --

24 Q WHEN YOU GOT, WHEN YOU GOT IN IN THAT PARTICULAR
25 MOMENT I WAS IN THE FRONT SEAT AND I TURNED AROUND

25 JANIE KENDRICK, BEING FIRST DULY

1 SWORN WAS EXAMINED AND TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MR. BRACKETT:

3 Q MA'AM, WOULD YOU PLEASE STATE YOUR FULL NAME AND
4 SPELL YOUR LAST FOR THE COURT REPORTER?

5 A JANIE KENDRICK. K-E-N-D-R-I-C-K.

6 Q AND WHERE DO YOU LIVE, MRS. KENDRICK, JUST WHAT
7 AREA OF YORK COUNTY, NOT PHYSICAL ADDRESS BUT?

8 A RIVER HILLS.

9 Q OKAY. AND HOW LONG HAVE YOU LIVED AT RIVER
10 HILLS?

11 A ABOUT FIVE YEARS.

12 Q ALL RIGHT. AND CAN YOU TELL THE JURY WHERE YOU
13 BANK?

14 A BANK OF YORK.

15 Q HOW LONG HAVE YOU BANKED THERE?

16 A PROBABLY FOUR OR FIVE YEARS.

17 Q DID YOU HAPPEN TO BE AT THE BANK OF YORK ON
18 DECEMBER 22, 2006, AROUND 10:25-10:30 IN THE MORNING?

19 A YES, SIR.

20 Q A FEW DAYS BEFORE CHRISTMAS?

21 A YES, SIR.

22 Q AND DID YOU, HOW DID YOU GET TO THE BANK?

23 A I DROVE.

24 Q YOU DROVE YOURSELF. NOBODY DROVE YOU?

25 A I DROVE MYSELF.

1 Q WHAT COLOR CAR DO YOU DRIVE; WHAT KIND OF CAR?

2 A WHITE.

3 Q AND WHAT KIND OF CAR?

4 A NISSAN.

5 Q ALL RIGHT. NOW WHEN YOU WENT TO THE BANK OF
6 YORK, DID YOU GO INTO THE BANK OF YORK?

7 A I WENT TO THE DRIVE-THRU WINDOW.

8 Q WAS ANYBODY ELSE AT THE DRIVE-THRU WINDOW?

9 A THERE WAS ANOTHER LADY.

10 Q OKAY.

11 A AT THE DRIVE-THRU.

12 Q AND WHEN YOU PULLED UP, WAS SHE ALREADY THERE OR
13 DID SHE PULL UP AFTER YOU?

14 A SHE WAS ALREADY THERE.

15 Q ALL RIGHT. AND WHAT DID YOU OBSERVE AS YOU
16 PULLED INTO THE DRIVE-THRU LANE?

17 A WHEN I PULLED UP TO THE DRIVE-THRU LANE THE LADY
18 ROLLED HER WINDOW DOWN AND SAID I'VE BEEN SITTING
19 HERE QUITE AWHILE AND SHE SAID NOBODY HAS COME TO
20 WAIT ON ME WHICH IS UNLIKE THE TELLERS THERE. AND
21 SHE SAID I THINK MAYBE THE BANK MIGHT BE GETTING
22 ROBBED AND I WAS LIKE, NO, NOT REALLY. AND THEN I
23 DROVE AROUND, I JUST DROVE THE BANK AND BACK INTO THE
24 TELLER LINE, THERE WAS NO ACTIVITY IN FRONT OF THE
25 BANK AT THAT TIME.

1 Q WAS THE OTHER LADY STILL THERE?

2 A SHE WAS STILL SITTING THERE.

3 Q OKAY.

4 A AND NO ONE HAD COME TO THE TELLER WINDOW.

5 Q COULD YOU SEE ANYTHING INSIDE THE BANK?

6 A NO.

7 Q WERE THERE ANY PEOPLE INSIDE ON THE OTHER SIDE

8 OF THE GLASS INSIDE WHERE THE TELLERS NORMALLY ARE.

9 A I GOT OUT OF MY CAR AT ONE TIME AND LOOKED INTO

10 THE TELLER WINDOW, NOT REALLY CLOSE, BUT I DID LOOK

11 IN THERE AND I DIDN'T SEE ANYBODY.

12 Q OKAY. TELL US WHAT HAPPENED NEXT?

13 A I GOT BACK IN MY CAR AND SAT THERE FOR A COUPLE,

14 ABOUT A MINUTE I GUESS AND THEN A CAR PULLED OUT, A

15 GRAY FORD PULLED OUT, AND WE FIGURED IF THAT WAS

16 SOMEBODY ROBBING THE BANK THEN THAT WAS THEIR CAR.

17 Q ALL RIGHT.

18 A AND SO WHEN THEY GOT UP TO GET ON 49 I PULLED UP

19 BEHIND THEM.

20 Q OKAY. AND COULD YOU SEE THE CAR VERY WELL?

21 A I SAW THE CAR REALLY WELL. I DIDN'T SEE WHO WAS

22 INSIDE BUT I DID SEE THE CAR. IT WAS A GRAY FORD.

23 Q ALL RIGHT. AND DID YOU OBSERVE WHICH WAY DID

24 THE CAR GO?

25 A THE CAR TURNED RIGHT.

1 Q ONTO --

2 A ONTO HIGHWAY 49.

3 Q ALL RIGHT. AND FROM WHERE YOU WERE COULD YOU

4 SEE THE CAR MOVING DOWN HIGHWAY 49?

5 A YES, I COULD.

6 Q ALL RIGHT. TELL US WHAT YOU SAW THE CAR DO?

7 A THE CAR TURNED RIGHT GOING DOWN HIGHWAY 49

8 TOWARD RIVER HILLS.

9 Q BUSTER BOYD BRIDGE?

10 Q ALL RIGHT.

11 A I DID SEE THE CAR PASS BOJANGLES.

12 Q OKAY.

13 A YOU CAN SEE BOJANGLES FROM 49 FROM THE BANK.

14 Q HOW CLOSE IS THE BOJANGLES TO THE BANK?

15 A I REALLY DON'T KNOW. YOU CAN JUST WALK THERE IN

16 A MINUTE. I MEAN IT'S JUST THAT CLOSE. I MEAN YOU

17 CAN JUST, THE EXIT TO THE BANK AND THE ENTRANCE AND

18 THE EXIT TO BOJANGLES, BOJANGLES ENTRANCE AND THE

19 EXITS BOTH THE SAME AND I MEAN YOU CAN SEE VERY

20 CLEARLY.

21 Q ALL RIGHT. IS THERE ANY, ANY, DID THE CAR SLOW

22 DOWN OR COME TO ANY KIND OF STOP --

23 A NO, SIR.

24 Q ---AT ALL NEAR THE BOJANGLES?

25 A NO, SIR.

1 Q DID YOU SEE ANY PEOPLE STANDING OUT IN FRONT OF
2 THE BOJANGLES APPROACH THE CAR AS IT DROVE PAST?

3 A NO, SIR.

4 Q WAVING?

5 A NO, SIR.

6 Q WHAT DID YOU DO AFTER THAT?

7 A I WENT BACK TO THE TELLER LINE, BACK TO THE
8 DRIVE-THRU WINDOW.

9 Q OKAY. AND WHAT DID YOU, DID YOU SEE ANYBODY IN
10 THE TELLER WINDOW AT THIS TIME?

11 A YES, ONE OF THE TELLERS CAME TO THE WINDOW.

12 Q AND WHAT WAS HER EMOTIONAL STATE?

13 A THE LADY JUST SAID, HAVE Y'ALL BEEN ROBBED AND
14 SHE SAID YES, WE HAVE. YES, WE HAVE.

15 Q OKAY.

16 A AND THEN THE MANAGER, I BELIEVE, CAME TO THE
17 WINDOW RIGHT AFTER SHE DID AND I TOLD THEM THAT IT
18 WAS A GRAY FORD HAD JUST PULLED OUT WITH A TAG ON IT
19 THAT LOOKED LIKE A, IT WASN'T A REGULAR SOUTH
20 CAROLINA TAG. IT LOOKED LIKE A DEALER TAG OR SOME
21 KIND OF OUT OF STATE TAG BECAUSE IT HAD A LOT OF
22 NUMBERS ON IT.

23 Q ALL RIGHT.

24 A INSTEAD OF LIKE 317 PRJ. IT WAS JUST NUMBERS.

25 Q I SEE. AND SO AS THE FORD PULLED OUT OF THE

- 1 BANK PARKING LOT ONTO HIGHWAY 49?
- 2 A UH-HUH.
- 3 Q YOUR WHITE CAR APPROACHED IT?
- 4 A UH-HUH.
- 5 Q AND THEN BACKED UP?
- 6 A UH-HUH.
- 7 Q AFTER A FEW SECONDS AND YOU WERE, WERE YOU ABLE
- 8 TO SEE IT CLEARLY HEADING DOWN HIGHWAY 49?
- 9 A YES.
- 10 Q ANY QUESTION IN YOUR MIND ABOUT WHETHER IT
- 11 STOPPED AT THE BOJANGLES?
- 12 A NO, SIR.
- 13 Q THANK YOU VERY MUCH. PLEASE ANSWER ANY
- 14 QUESTIONS THAT MR. JAMIESON HAS.
- 15 CROSS EXAMINATION BY MR. JAMIESON:
- 16 Q MY NAME IS PHILLIP JAMIESON AND I REPRESENT
- 17 MR. YOUNG. THE BOJANGLES IS THAT CLOSE TO THE BANK
- 18 OF YORK?
- 19 A YES, SIR.
- 20 Q ARE YOU FAMILIAR WITH THAT?
- 21 A YES, SIR.
- 22 Q IS THERE ANY OTHER BOJANGLES ON HIGHWAY 49?
- 23 A NOT CLOSE TO THE BANK OF YORK.
- 24 Q BUT DO YOU KNOW IF THERE ARE OTHER BOJANGLES?
- 25 A ON HIGHWAY 49, I DON'T KNOW. I KNOW THERE IS

1 NONE LIKE RIGHT THERE WHERE I BANK AND WHERE THE
2 BOJANGLES IS, THE BANK THAT WAS ACTUALLY ROBBED AND
3 THAT BOJANGLES. I MEAN, THERE IS ANYTHING ELSE CLOSE
4 THERE.

5 Q OKAY. THANK YOU, MA'AM.

6 THE COURT: MR. PORTER.

7 MR. PORTER: YES.

8 CROSS EXAMINATION BY MR. PORTER:

9 Q EXCUSE ME. YOUR CAR IS THE WHITE CAR THAT, HAVE
10 YOU HAD A CHANCE TO SEE THE SURVEILLANCE CAMERA OF
11 THE BANK?

12 A HAPPEN TO SEE WHAT, SIR? I'M SORRY.

13 Q THE SURVEILLANCE CAMERA OF THE BANK?

14 A NO, SIR.

15 Q WELL, THEY HAVE A PICTURE OF THE WHITE CAR THAT
16 PULLED OUT OF THE DRIVE-THRU WINDOW.

17 A UH-HUH.

18 Q AS THE CAR WAS LEAVING THE BANK, WAS THAT YOUR
19 CAR?

20 A I'M SURE IT PROBABLY WAS.

21 Q ALL RIGHT. AND YOU SAY THAT YOU OBSERVED A CAR
22 GOING BUT IT DID NOT STOP AT BOJANGLES?

23 A NO, SIR.

24 Q ON THE VIDEO, I MEAN FROM THE BANK DRIVE-THRU TO
25 BOJANGLES, IS IT A CLEAR SHOT FROM THE BANK?

- 1 A YES, SIR.
- 2 Q FROM THE DRIVE-THRU WINDOW IT IS A CLEAR SHOT?
- 3 A I WAS AT THE EXIT OF THE BANK PARKING LOT LIKE
- 4 WHERE YOU TURN RIGHT, WHEN I SAW THE CAR GOING DOWN
- 5 THE ROAD AND I COULD SEE BOJANGLES VERY CLEARLY FROM
- 6 THAT EXIT.
- 7 Q OKAY. WERE YOU THAT CAR THAT PULLED UP BEHIND
- 8 US; OKAY, YOU ALL READY INDICATED THAT YOU PULLED UP,
- 9 BUT FROM THE VIDEO IT LOOKED LIKE THE CAR PULLED UP
- 10 TO TRY TO GET THE LICENSE TAG NUMBER?
- 11 A YES, SIR.
- 12 Q AND BACKED BACK?
- 13 A YES, SIR.
- 14 Q AS YOU WAS BACKING BACK, YOU WERE LOOKING AT THE
- 15 BOJANGLES OR YOU WASN'T LOOKING WHERE YOU WAS GOING?
- 16 A WELL, I WAS BEHIND THE GRAY FORD. THE FORD
- 17 TURNED RIGHT. I WAS TRYING TO GET THE LICENSE NUMBER
- 18 BUT I WAS SITTING, I SAT THERE FOR A FEW SECONDS AND
- 19 IT DOESN'T A CAR JUST A FEW SECONDS TO GET TO
- 20 BOJANGLES AND THE CAR KEPT GOING THERE.
- 21 Q AND DID NOT YOU SEE THE CAR STOP?
- 22 A I DID NOT SEE WHAT?
- 23 Q YOU DID NOT SEE THAT CAR STOP?
- 24 A NO, SIR.
- 25 Q I DON'T RECALL BUT THAT MAY HAVE BEEN WHAT

1 HAPPENED, BUT FROM THE WAY IT LOOKED THAT YOU RAN OUT
2 AND LOOKED AT THE CAR AND YOU IMMEDIATELY BACK BACK
3 UP, YOU IMMEDIATELY BACK BACK UP, BECAUSE BY THEN YOU
4 HAD DETERMINED WHAT?

5 A I HAD THE TURN ON BUTTON?

6 Q YEAH, YOU SAID THAT YOU HAD SUSPECTED THAT THE
7 BANK WAS BEING ROBBED?

8 A YES, SIR.

9 Q WHEN DID YOU GET OUT OF THE CAR?

10 A WHEN DID I GET OUT OF THE CAR?

11 Q YEAH, TO SEE, TO LOOK IN THE BANK WINDOW, BEFORE
12 YOU PULLED OFF OR AFTER?

13 A WHEN I FIRST PULLED UP THE LADY SAID NO ONE HAD
14 COME TO THE WINDOW.

15 Q YES, MA'AM.

16 A I GOT OUT OF THE CAR THEN AND I SAID I DON'T SEE
17 ANYBODY AND THEN I GOT BACK IN MY CAR.

18 Q SO YOUR PURPOSE FOR DOING THAT WAS TO IDENTIFY
19 THAT THE CAR DID NOT STOP AT BOJANGLES, IS THAT
20 CORRECT?

21 A NO, THAT HAD NOTHING TO DO WITH THE BOJANGLES
22 STOP. WHEN I GOT OUT OF THE CAR AND LOOKED IN THE
23 TELLER WINDOW, THE FORD HAD NOT PULLED OUT OF THE
24 FRONT PARKING LOT.

25 MR. PORTER: NO FURTHER QUESTIONS.

1 THE COURT: ALL RIGHT.

2 MR. BRACKETT: ONE BRIEF QUESTION ON
3 REDIRECT.

4 REDIRECT EXAMINATION BY MR. BRACKETT:

5 Q ARE YOU, YOU ARE VERY FAMILIAR WITH THE AREA
6 AROUND RIVER HILLS AND LAKE WYLIE?

7 A YES, SIR.

8 Q IS THERE ANOTHER BOJANGLES WITHIN THREE MINUTES
9 OF THE BANK OF YORK?

10 A NO, SIR.

11 Q THANK YOU.

12 THE COURT: MR. JAMIESON.

13 MR. JAMIESON: BEG THE COURT'S INDULGENCE.

14 THE COURT: CERTAINLY.

15 MR. JAMIESON: YOUR HONOR, WE ASK THAT THE
16 PORTION OF THE VIDEO THAT RELATES TO THE INCIDENT
17 THIS LADY JUST TESTIFIED BE SHOWN.

18 (COMPLIES.)

19 THE COURT: ANYTHING ELSE? DO YOU HAVE
20 ANY QUESTIONS OF THE WITNESS?

21 MR. JAMIESON: YES, I DO, YOUR HONOR.

22 RE CROSS EXAMINATION BY MR. JAMIESON:

23 Q WERE YOU ABLE TO SEE THAT, MA'AM?

24 A NOT VERY CLEAR.

25 Q OKAY. NO QUESTIONS.

1 THE COURT: MR. PORTER.

2 MR. PORTER: NO QUESTIONS.

3 THE COURT: ALL RIGHT. YOU CAN STEP DOWN
4 AND BE EXCUSED. WE APPRECIATE YOUR TIME.

5 A ALL RIGHT. THANK YOU.

6 MR. BRACKETT: THAT'S THE REPLY CASE, YOUR
7 HONOR.

8 THE COURT: MEMBERS OF THE JURY PANEL, YOU
9 HAVE NOW RECEIVED ALL THE EVIDENCE, LET'S GET THIS
10 TURNED OFF, THROUGH TESTIMONY AND EXHIBITS. WE ARE
11 GOING TO BREAK FOR LUNCH UNTIL 2:30 AND WHEN WE COME
12 BACK YOU'LL HEAR THE ATTORNEYS SUMMATION AND
13 MR. PORTER'S SUMMATION, THAT IS CLOSING ARGUMENTS,
14 AND THEN I WILL CHARGE YOU ON THE LAW WHICH YOU ARE
15 TO APPLY TO THE FACTS IN THIS CASE. YOU ARE NOT YET
16 IN A POSITION TO MAKE UP YOUR MIND. YOU HAVEN'T
17 HEARD THOSE THINGS. YOU ARE NOT YET IN THE POSITION
18 TO DISCUSS THE CASE AMONG YOURSELVES FOR THE SAME
19 REASON. AGAIN YOU ARE NOT TO ALLOW YOURSELF TO BE
20 EXPOSED TO ANYTHING ABOUT THE CASE WHILE YOU ARE
21 OUTSIDE OF THE COURT. WE'LL BE BACK AT 2:30. WE'VE
22 GOT SOME MATTERS TO TAKE UP OUTSIDE YOUR PRESENCE BUT
23 I THINK WE'LL BE IN POSITION TO MOVE FORWARD AT 2:30
24 PRETTY PROMPTLY AT THAT TIME, SO HAVE A PLEASANT
25 LUNCH AND WE'LL SEE YOU BACK AT 2:30.

1 (THE JURY EXITS THE COURTROOM AT 01:18
2 PM.)

3 THE COURT: ALL RIGHT. ANYTHING FROM THE
4 STATE?

5 MR. BRACKETT: NO, YOUR HONOR.

6 THE COURT: MR. JAMIESON, ON BEHALF OF MR.
7 YOUNG.

8 MR. JAMIESON: I RENEW MY EARLIER MOTIONS,
9 YOUR HONOR.

10 THE COURT: THE MOTIONS ARE DENIED FOR THE
11 SAME REASONS. THE POSTURE OF THE EVIDENCE HAS NOT
12 CHANGED SINCE THE MOTION WAS MADE.

13 MR. D'AGOSTINO: MR. PORTER JOINS IN THE
14 SAME MOTIONS.

15 MR. PORTER: NO, I HAD A QUESTION.

16 THE COURT: FIRST THE MOTION IS DENIED FOR
17 THE SAME REASONS AS IT WAS DENIED AT THE EARLIER
18 STAGE. ALL RIGHT, MR. PORTER.

19 MR. PORTER: YES, I HAD SOME KIND OF
20 MISUNDERSTANDING WITH MR. BRACKETT JUST NOW ON THE
21 VIDEO. WHEN HE ASKED THE LADY ON THE TESTIMONY AS
22 THE CAR WAS GOING UP AND PULLING BACK, HE HIT THE
23 PAUSE BUTTON TO STOP IT AND INDICATED TO THE JURY
24 THAT SHE HAD A CHANCE TO LOOK DOWN.

25 THE COURT: WELL, ACTUALLY I WAS WATCHING

1 IT AND FOR THE RECORD IT SHOWED HER BACKING UP AND
2 ACTUALLY TURNING LEFT BACK AROUND BEFORE IT WAS
3 PAUSED. I MEAN DOES ANYBODY ELSE DISPUTE THAT,
4 MR. JAMIESON?

5 MR. BRACKETT: I THOUGHT I PAUSED IT JUST
6 TO MAKE SURE THIS WAS THE SPOT THEY WANTED AND THEN I
7 HIT PLAY, IT PLAYED ON THROUGH UNTIL IT ENDED.

8 THE COURT: WELL, HE'S TALKING ABOUT AT
9 THE END. YOU PLAYED IT THROUGH THE END.

10 MR. BRACKETT: YES, SIR, THEN IT ROLLED
11 OVER THE SCREEN WHERE THE MENU POPPED BACK UP AND THE
12 TWO CHOICES CLIP ONE AND CLIP TWO.

13 THE COURT: YOU ARE OBJECTING TO HIM
14 PAUSING IT BEFORE OR AFTER?

15 MR. PORTER: AT THE END OF THAT VIDEO THAT
16 CAR IS SEEN GOING ALL THE WAY BACK TO THE DRIVE-THRU
17 WINDOW WHERE SHE GOT OUT OF THE CAR TO THE TALK TO
18 THE TELLER.

19 THE COURT: WAIT JUST A MINUTE NOW. I
20 CAN'T GET IN THE MIDDLE OF THIS, BUT WHAT I SAW WAS
21 THAT AND THIS WILL BE PART OF THE RECORD IF IT GOES
22 UP ON APPEAL THAT IT LASTED UNTIL SHE, THE WHITE CAR,
23 SAY SHE, WHOEVER IS IN THE WHITE CAR BACK UP AND IT
24 STARTED INTO THE LEFT TURN AND THEN STOPPED. I
25 DIDN'T SEE IT BACK ALL THE WAY TO THE TELLER BUT

1 THAT'S UP TO YOU TO ARGUE TO THE JURY. I'M JUST
2 TELLING YOU I DON'T, I'M NOT SURE WHAT YOUR OBJECTION
3 IS BECAUSE THAT WAS THE END OF THE FILM. THAT'S THE
4 END OF THE TAPE.

5 LET ME ASK YOU THIS, WHILE WE'RE AT
6 LUNCH IF YOU THINK THAT THEY DID NOT PLAY IT TO THE
7 END, I'LL HAVE THEM SHOW IT FOR YOU AND YOU CAN SEE
8 AND IF YOU WANT ANYTHING ELSE PLAYED, IN FAIRNESS, IF
9 IT WAS STOPPED PREMATURELY WE'LL MAKE SURE THAT'S
10 DONE.

11 MR. PORTER: YES.

12 THE COURT: OVER THE LUNCH BREAK IF YOU
13 WOULD RUN IT AGAIN FOR MR. PORTER AND MR. YOUNG AND
14 SEE IF THERE IS ANYTHING ELSE YOU WANT TO SHOW. ALL
15 RIGHT. ANYTHING ELSE, MR. PORTER?

16 MR. PORTER: NO, SIR.

17 THE COURT: ALL RIGHT. ANY REQUEST OF
18 CHARGE FROM THE STATE?

19 MR. BRACKETT: NOTHING SPECIAL, YOUR
20 HONOR. THE STANDARD, OBVIOUSLY THE CRIMES, YOU DO
21 THE VICTOR, MANNING.

22 MR. JAMIESON: I DO HAVE REQUESTS.

23 THE COURT: I'LL LOOK AT THESE OVER LUNCH.
24 WHY DON'T WE RECONVENE ABOUT 2:15 AND THAT WILL GIVE
25 US 15 MINUTES TO LOOK AT THEM. I WILL GO AHEAD AND

1 ASK YOU FIRST AND THEN I'LL COME TO YOU, MR. PORTER.
2 MR. JAMIESON, DO YOU HAVE ANY THOUGHT THAT THERE ARE
3 ANY LESSER INCLUDED OF ANY OF THESE? I CAN'T THINK
4 OF ANY LESSER INCLUDED FOR ANY OF THESE OFFENSES BUT
5 I CERTAINLY WANT TO HEAR FROM YOU.

6 MR. JAMIESON: NO, SIR, I DON'T THINK SO.

7 THE COURT: MR. PORTER, DO YOU HAVE ANY
8 REQUEST ON THE LAW YOU WANT ME TO CHARGE? I'LL LET
9 YOU GO OVER THAT OVER LUNCH. I KNOW WE'RE SAYING
10 WE'LL DO A LOT OVER LUNCH, BUT WE'RE AT THE STAGE
11 WHERE WE KIND OF NEED TO.

12 MR. D'AGOSTINO: WE DO NOT HAVE ANY
13 ADDITIONAL, OTHER THAN THE STANDARD REQUEST OF CHARGE
14 AND BE SURE THE COURT CHARGES RIGHT TO REMAIN SILENT.

15 THE COURT: ALL THOSE STANDARD BOILERPLATE
16 MATERIAL WILL BE CHARGED, ALONG WITH THE CHARGES ON
17 THE PARTICULAR OFFENSES, AND THEN WE'LL LOOK AT
18 MR. YOUNG, MR. JAMIESON'S OVER THE BREAK. SO LET'S
19 RECONVENE AT 2:15. I KNOW THAT'S NOT QUITE AN HOUR.
20 IT MIGHT BE A FEW CRACKERS BUT I THINK WE CAN GET
21 THIS TO THE JURY BY LATE THIS AFTERNOON.

22 (COURT'S IN RECESS AT 01:23 PM.)

23 (COURT RESUMES AT 02:23 PM.)

24 THE COURT: IS THE STATE READY TO DISCUSS
25 THE CHARGES?

1 MR. BRACKETT: YES, SIR. OUT OF THE TEN
2 CHARGES, AND THEN I HAVE SOME CASE LAW THAT DOESN'T
3 APPEAR TO BE RELATED TO THE CHARGES, AND I DON'T KNOW
4 WHETHER OR NOT THERE'S SOME ADDITIONAL CASE LAW THAT
5 I WAS SUPPOSED TO GET AND IT'S AN ERROR OR.

6 MR. JAMIESON: NO, IT WAS JUST A PACKAGE
7 OF EVERYTHING THAT I INTENDED TO USE.

8 THE COURT: MR. JAMIESON, BEFORE WE GO TO
9 THE CHARGES, ANYTHING ON BEHALF OF MR. YOUNG?

10 MR. JAMIESON: NO, YOUR HONOR.

11 THE COURT: MR. PORTER, DO YOU HAVE
12 ANYTHING BEFORE WE GO OVER THE REQUEST OF CHARGE?
13 LET'S PUT ON THE RECORD, OVER LUNCH DID YOU HAVE A
14 CHANCE TO LOOK AT THE TAPE THAT WE TALKED ABOUT.

15 MR. PORTER: YES, SIR.

16 MR. BRACKETT: YES, SIR.

17 THE COURT: ANYTHING YOU WANT TO DO
18 ABOUT -- I MEAN, DO YOU HAVE ANY COMMENT ABOUT THAT
19 OR ARE YOU JUST READY.

20 MR. PORTER: I HAVE A COMMENT. I WANT TO
21 ASK YOU A QUESTION ABOUT THE LAST REQUEST, BUT NO,
22 NOTHING.

23 THE COURT: OKAY. THANK YOU. ALL RIGHT.
24 THE DEFENDANT REQUEST OF CHARGE NUMBER ONE, I HAVE MY
25 OWN ARMED ROBBERY SO I WILL CHARGE IT.

1 NUMBER TWO, I DIDN'T SEE ANY CASE LAW
2 ON THIS. QUITE FRANKLY, I HAVE NOT HAD THIS
3 SITUATION COME UP SO WHAT IS THIS BASED ON?

4 MR. JAMIESON: IT'S BASED ON THE IDEA,
5 YOUR HONOR, THAT IN ORDER TO COMMIT AN ARMED ROBBERY
6 YOU NECESSARILY HAVE TO CONSTRAIN THE ACTIVITIES OF
7 THE PERSON THAT YOU ARE ROBBING OTHERWISE THEY COULD
8 WALK AWAY AND NO ROBBERY WOULD OCCUR AND WHAT I'M
9 ASKING THE COURT TO CHARGE IS THAT IF THEY ARE GOING
10 TO FIND MY CLIENT GUILTY OF KIDNAPPING THEY WOULD
11 HAVE TO FIND THAT HE DID SOMETHING MORE THAN
12 CONSTRAIN THEM FOR THE PURPOSE OF ROBBING THEM, THAT
13 HE CONSTRAINED THEM BEYOND THE NECESSARY CONSTRAINT
14 THAT WOULD NORMALLY FLOW FROM AN ARMED ROBBERY.

15 THE COURT: WELL, FIRST, OF COURSE, I
16 DON'T SEE ANY AUTHORITY FOR IT. IN THEORY IT SOUNDS
17 LOGICAL, BUT YOU'VE GOT SOME PEOPLE IN HERE THAT THEY
18 WEREN'T ROBBING, LIKE PAUL BAYER AND I DON'T SEE THE
19 OLDER MAN'S NAME ACTUALLY IN HERE, I DON'T KNOW
20 WHETHER HE WAS ONE OF THE ONES CHARGED IN THE
21 KIDNAPPING, BUT THERE WERE PEOPLE INVOLVED THAT HE
22 WASN'T ROBBING, THEY WERE JUST, SO WHAT'S THE STATE
23 POSITION ON THAT?

24 MR. BRACKETT: WE WOULD OPPOSE THAT. I
25 DON'T THINK THAT'S A CORRECT STATEMENT OF THE LAW.

1 THE COURT: I'M NOT GOING TO CHARGE THAT.
2 I WILL MAKE IT A COURT'S EXHIBIT. DO YOU HAVE
3 ANYTHING ON THAT?

4 MR. D'AGOSTINO: WE WERE JUST GOING TO
5 JOIN IN THAT REQUEST OF CHARGE AS WELL, YOUR HONOR.

6 THE COURT: DO YOU HAVE ANY LAW ON IT?

7 MR. D'AGOSTINO: NO, SIR, YOUR HONOR, I
8 DON'T. IT'S THE SAME ARGUMENT AS THE OTHER
9 CO-DEFENDANT.

10 THE COURT: NUMBER THREE, WHAT DOES THE
11 STATE HAVE TO SAY ABOUT THAT?

12 MR. BRACKETT: IT APPEARS TO BE THE
13 STANDARD CHARGE ON ALIBI. IT'S PROBABLY THE EXACT
14 SAME AS YOURS.

15 THE COURT: YES, IT LOOKED FINE TO ME.
16 GENERAL CHARGE ON PROOF BASICALLY I HAVE.

17 MR. BRACKETT: YES, SIR.

18 THE COURT: ACQUITTAL, REASONABLE DOUBT,
19 AND FAILURE OF THE DEFENDANT I HAVE.

20 MR. BRACKETT: YES, SIR.

21 THE COURT: THE BIAS WITH POSSIBLE GAIN
22 APPEARS TO BE ALL RIGHT DOWN TO WHERE IT SAYS, "THUS
23 YOU MAY CONSIDER WHETHER A PARTICULAR WITNESS WAS"
24 AND THEN IT LISTS A BUNCH OF STUFF, BUT THE ONLY ONE
25 I'M GOING TO CHANGE THAT TO SAY MAY CONSIDER WHETHER

1 A PARTICULAR WITNESS HAS ENTERED A PLEA AFTER A
2 BARGAIN WITH THE STATE BECAUSE THAT'S REALLY THE
3 ONLY.

4 MR. BRACKETT: I THINK YOUR GENERAL
5 COMMENT ON BIAS, A GENERAL CHARGE ON BIAS, I'M AFRAID
6 THIS COMES TOO CLOSE TO A COMMENT ON THE FACTS.
7 OBVIOUSLY, THEY CAN ARGUE THAT AND THAT IS A CLASSIC
8 EXAMPLE OF POTENTIAL BIAS, BUT FOR YOU TO
9 SPECIFICALLY SINGLE THAT OUT IN YOUR CHARGE AND SAY
10 AND HERE'S SOMETHING I WANT YOU TO THINK ABOUT I
11 THINK SKIRTS TOO CLOSE TO A JUDICIAL COMMENT ON THE
12 FACTS.

13 THE COURT: LET ME SEE WHAT--DO YOU HAVE
14 ANY AUTHORITY FOR CHARGING IT WITH THAT PRECISION. I
15 SAY THAT THEY CAN CONSIDER BIAS, INTEREST, PREJUDICE,
16 OR MOTIVE AND YOU CAN CERTAINLY ARGUE THAT THESE ARE
17 THINGS THAT.

18 MR. JAMIESON: YOUR HONOR, I THINK IN THIS
19 CASE THERE IS SOME VERY SPECIFIC EVIDENCE, IN FACT
20 THERE IS PLEA BARGAINS IN EVIDENCE, THAT THESE
21 INDIVIDUALS ENTERED INTO AN AGREEMENT WITH THE STATE,
22 PARTICULARLY MS. LAWS, AT THE 11TH HOUR AND THAT SHE
23 GOT A SIGNIFICANT ADVANTAGE AS A RESULT OF THAT.

24 THE COURT: I KNOW THAT. THAT'S A FACT.

25 MR. JAMIESON: YES, SIR.

1 THE COURT: BUT THIS IS THE LAW I'M
2 LOOKING AT.

3 MR. JAMIESON: YES, SIR. I DON'T HAVE A
4 CASE ON POINT FOR CHARGING THIS PARTICULAR WORDING,
5 NO, SIR.

6 THE COURT: HOW ABOUT MR. D'AGOSTINO ON
7 BEHALF OF MR. PORTER.

8 MR. D'AGOSTINO: I DON'T HAVE ANY CASE LAW
9 ON THAT. I DO THINK IT'S APPROPRIATE.

10 THE COURT: I'M NOT GOING TO CHARGE THAT.
11 NOW THE NEXT ONE, EYE WITNESS, NOBODY ID THESE
12 INDIVIDUALS AT THE BANK.

13 MR. JAMIESON: I'LL WITHDRAW THAT, YOUR
14 HONOR. AND THE NEXT ONE WHICH IS ACCURACY FACTORS,
15 I'LL WITHDRAW. I ASSUME YOU DO YOUR NORMAL CHARGE
16 ABOUT WHEN YOU LISTEN TO WITNESSES CONSIDER WHAT
17 OPPORTUNITY THEY HAD TO OBSERVE WHAT THEY SAY THEY
18 OBSERVE.

19 THE COURT: OH, YEAH.

20 MR. JAMIESON: I'LL WITHDRAW THAT.

21 THE COURT: NINE AND TEN I THINK I COVER
22 IN MY USUAL, BUT I'LL MAKE SURE THAT I DO COVER THOSE
23 BECAUSE THOSE ARE PROPER APPLICABLE STATEMENTS OF
24 LAW. WE GOT THEM ALL?

25 MR. IVEY: NO, SIR, STILL TWO SHORT.

1 THE COURT: HOW LONG DOES THE STATE
2 ANTICIPATE?

3 MR. BRACKETT: 30 MINUTES.

4 THE COURT: MR. JAMIESON, YOU KNOW ABOUT
5 HOW LONG YOU'LL TAKE?

6 MR. JAMIESON: LESS THAN THAT, PROBABLY 20.

7 THE COURT: MR. PORTER, DO YOU HAVE ANY
8 IDEA HOW LONG YOU'LL TAKE? I'M NOT GOING TO HOLD YOU
9 TO IT. I'M NOT MAKING YOU BE BOUND BY THAT.

10 MR. PORTER: CLOSER TO 20 OR 30 MINUTES.

11 THE COURT: OKAY. WHAT I'LL PROBABLY DO
12 IS AFTER WE GET THROUGH WITH THE ARGUMENTS I'LL
13 PROBABLY TAKE A SHORT BREAK BECAUSE THAT'S RUNNING
14 CLOSE TO AN HOUR AND A HALF. MY CHARGE IS NOT THAT
15 LONG BUT WITH THIS MANY CHARGES IT WILL BE, IT WON'T
16 BE A 20 MINUTES CHARGE, SO WE'LL TAKE A BREAK AFTER
17 WE GET THROUGH CLOSINGS. ALL RIGHT. BRING THEM IN.
18 MR. PORTER, ARE YOU GOING WANT TO SHOW ANYTHING ON
19 THESE DVDS IN YOUR CLOSING?

20 MR. PORTER: NO, I THINK THEY'VE SEEN THEM
21 PROBABLY AS BEST THEY CAN.

22 THE COURT: ALL RIGHT. WHY DON'T YOU GO
23 AHEAD AND SET IT UP.

24 MR. BRACKETT: IT WON'T TAKE BUT A MINUTE.

25 THE COURT: OKAY.

1 MR. JAMIESON: AS I UNDERSTAND IT WE WOULD
2 PRESENT CLOSING ARGUMENTS FIRST. WE'D ASK THAT THE
3 STATE OPEN ON THE LAW.

4 (THE JURY RETURNS TO THE COURTROOM AT
5 02:37 PM.)

6 THE COURT: THE STATE WILL MAKE OPENING
7 CLOSINGS AND THEN THE DEFENSE, THE DEFENDANTS,
8 MR. JAMIESON AND MR. PORTER ON HIS OWN BEHALF HAVE A
9 RIGHT TO MAKE THEIR CLOSING ARGUMENTS AND THEN THE
10 STATE WILL HAVE THE RIGHT TO FINAL ARGUMENT.

11 MR. BRACKETT: MAY IT PLEASE THE COURT,
12 YOUR HONOR.

13 OPENING STATEMENT ON THE LAW BY MR. BRACKETT:

14 GOOD AFTERNOON. I'M GOING TO ADDRESS YOU
15 BRIEFLY ON THE LAW AND THEN I'M GOING TO SIT DOWN AND
16 THEN MR. JAMIESON AND MR. PORTER WILL HAVE AN
17 OPPORTUNITY TO COME AND ADDRESS YOU IN GENERAL AND
18 THEN I'LL GET BACK UP HERE AND I'LL MAKE MY FINAL
19 ARGUMENT.

20 RIGHT NOW THOUGH I'M GOING TO CONFINE
21 MY COMMENTS TO WHAT THE LAW IS IN THIS CASE, THE
22 SPECIFIC ISSUE OF LAW THAT I THINK YOU NEED TO BE
23 CONCERNED ABOUT, AND BEFORE I LAUNCH INTO IT, I JUST
24 WANT TO TELL YOU THAT JUST AS THE JUDGE HAS
25 INSTRUCTED YOU, YOU ARE THE FINDERS OF THE FACT, LIKE

1 Y'ALL ARE JUDGES, THE 12 JURORS WHO DECIDE THIS CASE
2 COLLECTIVELY ARE THE JUDGES OF WHAT HAPPENED. YOU
3 DECIDE THE TRUTH OF WHAT HAPPENED ON DECEMBER 22,
4 2006, AT THE BANK OF YORK IN LAKE WYLIE. JUST AS YOU
5 ARE THE JUDGES OF THE FACTS AND NO ONE CAN INVADE
6 YOUR PROVENCE, NOBODY CAN COME IN AND TELL YOU HOW TO
7 FIND THE FACTS IN THIS CASE AND TO SAY WHAT REALLY
8 HAPPENED AND WHAT THIS EVIDENCE ALL MEANS; LIKEWISE,
9 THIS GENTLEMAN HERE, JUDGE HAYES, IS THE JUDGE OF THE
10 LAW. HE WILL INSTRUCT YOU ON WHAT THE LAW IS AT THE
11 END OF THE CASE. AFTER THE CLOSING ARGUMENTS ARE
12 SAID AND DONE, THE LAWYERS HAVE SAT DOWN AND FINALLY
13 SHUT UP, YOU WILL HAVE AN OPPORTUNITY TO HEAR FROM
14 HIS HONOR ON WHAT THE ACTUAL LAW IS IN THIS STATE.
15 HE WILL INSTRUCT YOU AS TO WHAT THE LAW IS SO THAT
16 YOU CAN APPLY THE LAW TO THE FACTS AS YOU FIND THEM
17 AND DECIDE WHAT THE TRUE VERDICT WOULD BE.

18 NOW WHAT ARE THE CHARGES IN THIS CASE?
19 ALL, BOTH OF THE DEFENDANTS ARE CHARGED WITH THE SAME
20 THING WITH ONE EXCEPTION AND THAT IS MR. YOUNG HAS AN
21 ADDITIONAL CHARGE OF ASSAULT AND BATTERY OF A HIGH
22 AND AGGRAVATED NATURE SO I'M GOING TO PUT THAT RIGHT
23 THERE FOR NOW AND I WANT TO DISCUSS THE OTHER CHARGES
24 THAT THEY HAVE BECAUSE THIS APPLIES TO BOTH OF THEM.
25 THEY ARE BOTH CHARGED WITH ENTERING A BANK WITH

1 INTENT TO STEAL. YOU'LL HAVE THE ORIGINAL
2 INDICTMENTS WITH YOU BACK THERE IN THE JURY ROOM AND
3 BASICALLY ENTERING A BANK WITH INTENT TO STEAL, THE
4 LAW ON THAT IS PRETTY MUCH THE SAME AS THE TITLE OF
5 THE CRIME. THEY WENT INTO A BANKING INSTITUTION WITH
6 THE INTENT TO STEAL MONEY BY FORCE OR INTIMIDATION
7 UNLAWFULLY TAKING IT FROM THE BANK. VERY STRAIGHT
8 FORWARD. MOST OF THESE ARE.

9 KIDNAPPING. THIS IS THE ONLY ONE I
10 WANT TO SPEND A COUPLE OF EXTRA MINUTES ON BECAUSE
11 THIS IS THE ONLY ONE YOU MIGHT BE CONFUSED ABOUT.
12 MOST PEOPLE THINK KIDNAPPING INVOLVES STEALING A
13 CHILD AWAY FROM HIS PARENTS AND HOLDING THEM FOR
14 RANSOM AND THAT'S THE TYPICAL DEFINITION OF
15 KIDNAPPING THAT MOST PEOPLE HAVE. BUT IN SOUTH
16 CAROLINA, IN MOST STATES, KIDNAPPING IS REALLY JUST
17 FORCIBLY CONFINING SOMEBODY, FORCING THEM TO GO
18 SOMEWHERE, STAY SOMEWHERE, RESTRICTING THEIR
19 MOVEMENT, PREVENTING THEM FROM DOING WHAT THEY WANT
20 TO DO, AND GO WHERE THEY WANT TO GO BY FORCE
21 TRIGGERING, TRICKERY, THERE IS A BUNCH OF DIFFERENT
22 WORDS YOU'LL HEAR, CONFINING, SEIZING, INVEIGLING,
23 DECOYING, THE JUDGE WILL GIVE YOU A LENGTHY
24 DEFINITION; BUT WHAT WE'RE TALKING ABOUT HERE ARE
25 THESE TWO GUYS WENT BANK OF YORK AND AT GUN POINT

1 FORCED ALL OF THE PEOPLE INSIDE OF THE BANK INTO THE
2 VAULT AND TWO CUSTOMERS THAT WERE IN THERE AS WELL.
3 IN THE COURSE OF DOING THAT, ALL SEVEN OF THE
4 EMPLOYEES AND BOTH CUSTOMERS WERE KIDNAPPED. THEY
5 WERE FORCED TO GO WHERE THEY DIDN'T WANT TO GO UNDER
6 CIRCUMSTANCES THEY DIDN'T WANT TO GO THERE. WHILE IN
7 THE VAULT, THEY ACTUALLY WENT ONE STEP FURTHER
8 SEALING THE DEAL, IF THERE IS ANY QUESTION IN
9 ANYBODY'S MIND BY SHOVING MR. MORGAN DOWN, AND
10 FORCING THE OTHER PEOPLE IN THERE SO THAT THEY COULD
11 PULL THE GATE CLOSED AND LOCK THEM INSIDE, THEY
12 DIDN'T REALIZE THEY HAD A KEY IN THERE, THAT DOESN'T
13 MATTER, THEIR INTENTION WAS TO LOCK THEM INSIDE THE
14 VAULT, SO THAT THEY COULD, SO THERE WOULD BE SOME
15 TIME BEFORE THEY COULD CALL FOR HELP.

16 KIDNAPPING AND ARMED ROBBERY ARE BOTH
17 VIOLENT CRIMES. BOTH OF THE DEFENDANTS ARE CHARGED
18 WITH POSSESSION OF A FIREARM DURING THE COMMISSION OF
19 A VIOLENT CRIME. IN SOUTH CAROLINA IT'S UNLAWFUL TO
20 COMMIT A VIOLENT CRIME WHILE ARMED WITH A FIREARM AND
21 IT'S A SEPARATE CRIMINAL OFFENSE SO THEY'VE BEEN
22 INDICTED FOR THAT. YOU HAVE THE FIREARMS ACTUALLY IN
23 EVIDENCE, YOU'LL HAVE THEM BACK IN THE JURY ROOM WITH
24 YOU, THE NINE MILLIMETER SMITH AND WESSON AND THE .38
25 CALIBER REVOLVER.

1 ARMED ROBBERY, TAKING THE PROPERTY OF
2 ANOTHER PERSON WHILE ARMED WITH A DEADLY WEAPON.
3 PRETTY STRAIGHT FORWARD. IF YOU TAKE SOMEBODY ELSE'S
4 PROPERTY AT GUN POINT OR KNIFE POINT OR A PIPE, ANY
5 KIND OF DEADLY WEAPON, THERE ARE A VARIETY OF
6 DEFINITIONS BUT THE ONLY ONE THAT MATTERS FOR OUR
7 CASE IS A PISTOL AND YOU'LL HEAR THE JUDGE TELL YOU
8 THAT A PISTOL IS A DEADLY WEAPON. YOU TAKE THEIR
9 PROPERTY WHILE ARMED WITH A PISTOL YOU ARE GUILTY OF
10 ARMED ROBBERY.

11 AND FINALLY THE ONE INDICTMENT THEY
12 HAVEN'T COMMENTED ON, CONSPIRACY TO COMMIT ARMED
13 ROBBERY. IT SOUNDS THE SAME AS ARMED ROBBERY EXCEPT
14 IT'S DIFFERENT. THE CONSPIRACY PART IS THE DIFFERENT
15 THING. CONSPIRACY IS JUST AN AGREEMENT TO DO A
16 CRIMINAL ACT. I WANT TO MENTION AT THE VERY
17 BEGINNING OF THE CASE, A CONSPIRACY IS AN AGREEMENT
18 AND THE AGREEMENT ITSELF IS THE CRIME. WHEN TWO OR
19 MORE PEOPLE GATHER TOGETHER TO ACCOMPLISH A CRIMINAL
20 ACT IT MAKES IT MORE LIKELY THEY ARE GOING TO
21 SUCCEED, THUS HUNDREDS OF YEARS AGO THE CRIME OF
22 CONSPIRACY WAS BORN AND THE CHARGE OF CONSPIRACY WAS
23 BORN AND PEOPLE REALIZED WHEN YOU HAVE A GROUP OF
24 PEOPLE WORKING TOWARDS A CRIMINAL PURPOSE, IT MAKES
25 IT MORE LIKELY THEY ARE GOING TO SUCCEED AT IT, SO

1 WE'RE GOING TO CRIMINALIZE THAT CONDUCT. YOU CAN'T
2 GET TOGETHER WITH A BUNCH OF PEOPLE AND AGREE TO DO A
3 CRIME. THAT'S WHAT HAPPENED HERE. THEY CONSPIRED
4 AMONG THEMSELVES, MR. YOUNG AND MR. PORTER, BUT THE
5 CONSPIRACY EXTENDS TO MR. JONES AND TO MS. LAWS, THEY
6 WERE MEMBERS OF THE CONSPIRACY AS WELL AND, YOU HEARD
7 THEM COME INTO THIS COURT AND TELL YOU THAT THEY WERE
8 PART OF THIS CONSPIRACY, THAT THEY WERE PART OF THE
9 PLAN, AND THEY KNEW WHAT WAS GOING TO HAPPENED AND
10 THEY ACTIVELY PARTICIPATED IN IT. CRIMINAL
11 CONSPIRACY TO COMMIT ARMED ROBBERY.

12 A FINAL ONE CHARGE THAT'S DIFFERENT IS
13 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE
14 CHARGING KENNETH YOUNG WITH THAT OFFENSE AND THAT IS
15 SIMPLY FOR THE FACT THAT HE CARRIED THE MACE AND
16 MACED THESE PEOPLE AS THEY WERE CRAWLING ON THEIR
17 HANDS AND KNEES BACK TO THE VAULT. YOU HEARD
18 MULTIPLE WITNESSES TESTIFY FOR NO APPROPRIATE REASON
19 MR. YOUNG WAS STANDING THERE SHAKING THE CAN OF MACE
20 AND SPRAYING THEM. YOU HEARD MR. BAYER TESTIFY HE
21 GOT SPRAYED BY THE MACE IN THE EYES, THAT'S AN
22 AGGRAVATED ASSAULT AND BATTERY, AND THAT'S WHY WE
23 HAVE THE SEPARATE INDICTMENT FOR MR. YOUNG THAT IS
24 NOT THERE FOR MR. PORTER.

25 NOW YOU ARE GOING HEAR IN THE JUDGE'S

1 CHARGE THE WORDS REASONABLE DOUBT. YOU ARE GOING
2 HEAR THEM A BUNCH OF TIMES. I JUST WANT TO COMMENT
3 VERY BRIEFLY. A REASONABLE DOUBT IS THE KIND OF
4 DOUBT FOR WHICH YOU CAN GIVE A REASON, A GOOD REASON,
5 NOT A FANCIFUL REASON, NOT A WHIMSICAL REASON, A REAL
6 SOLID REASON. A REASONABLE DOUBT IS THE KIND OF
7 DOUBT THAT WOULD CAUSE A PERSON TO HESITATE TO ACT TO
8 MAKE AN IMPORTANT DECISION. YOU ARE GOING TO HEAR ME
9 SUM UP THE EVIDENCE HERE IN A FEW MINUTES AND I
10 SUBMIT THERE IS NO REASONABLE DOUBT IN THIS CASE.
11 THERE IS NONE, ABSOLUTELY NONE, BUT I DON'T WANT YOU
12 TO THINK THAT A REASONABLE DOUBT IS JUST ANY OLD
13 FLIMSY DOUBT THAT YOU CAN SAY, WELL, MAYBE MARTIANS
14 LANDED -- THAT WOULD BE AN UNREASONABLE DOUBT
15 OBVIOUSLY. IT HAS TO BE SOMETHING SOLID THAT MAKES
16 YOU GO, WELL, THAT REALLY COULD HAVE HAPPENED. IF
17 THAT HAPPENED, THEY MIGHT NOT BE GUILTY. THERE IS
18 NONE OF THAT HERE, BUT THAT IS THE CONCEPT THAT THE
19 JUDGE IS GOING DEFINE. THAT'S THE STANDARD BY WHICH
20 YOU HAVE TO DECIDE THE GUILT OF THESE DEFENDANTS IS
21 REASONABLE DOUBT. AND THE JUDGE WILL CHARGE YOU
22 EXTENSIVELY ON THAT AND YOU WILL HEAR THE WORDS
23 REASONABLE DOUBT EXTENSIVELY THROUGHOUT HIS CHARGE.
24 NOW THAT IS MY OPENING SALVO ON THE
25 LAW. PLEASE PAY ATTENTION AS MR. JAMIESON AND

1 MR. PORTER MAKE ANY REMARKS THEY MAY CARE TO MAKE TO
2 YOU AND I'LL BE BACK IN JUST A FEW MINUTES TO SUM UP
3 THE STATE'S CASE. THANK YOU.

4 CLOSING STATEMENT BY MR. JAMIESON:

5 LADIES AND GENTLEMEN, AS YOU KNOW BY NOW
6 MY NAME IS PHILLIP JAMIESON AND I REPRESENT
7 MR. YOUNG. I WANT TO THANK YOU FOR BEING HERE. I
8 KNOW THIS HAS BEEN A LONG TRIAL AND THERE HAS BEEN A
9 LOT OF TESTIMONY PROVIDED AND I APPRECIATE YOUR
10 ATTENTION AND MY CLIENT DOES. THIS IS AN IMPORTANT
11 CASE. IT'S IMPORTANT FOR THE STATE AND IMPORTANT FOR
12 MY CLIENT AND I APPRECIATE YOUR ATTENTION HERE.

13 WHAT I'D LIKE FOR YOU TO DO, I'M GOING
14 TO TRY NOT TO IMPOSE TOO MUCH LONGER ON YOUR
15 PATIENCE, BUT I DO WANT TO GO OVER SOME OF THE
16 TESTIMONY THAT'S PROVIDED AND SOME OF THE EVIDENCE
17 THAT'S PROVIDED AND WHAT I ASK YOU TO DO WHILE I'M
18 DOING THAT IS EXAMINE THE STATE'S EVIDENCE, BECAUSE
19 IT'S THE STATE'S RESPONSIBILITY TO PROVE MY CLIENT'S
20 GUILTY OF A CRIME, EXAMINE THE STATE'S EVIDENCE
21 THROUGH THE LENS OF REASONABLE DOUBT.

22 AND THE FIRST EVIDENCE THAT YOU SAW
23 AND THE FIRST EVIDENCE THAT YOU HEARD IN THE COURSE
24 OF THIS TRIAL WAS FROM THE PEOPLE IN THE BANK AND YOU
25 MAY RECALL THERE WERE NINE OF THOSE PEOPLE, SOME OF

1 THEM WERE EMPLOYEES, AND A COUPLE OF THEM WERE PEOPLE
2 WHO WERE DOING BUSINESS AT THE BANK AND ALL NINE OF
3 THOSE PEOPLE GOT ON THE STAND AND TESTIFIED TO YOU
4 ABOUT WHAT THEY SAW. ALL OF THOSE PEOPLE TESTIFIED
5 THAT THERE WERE MORE THAN THREE SUSPECTS. ALL THOSE
6 PEOPLE TESTIFIED THAT EVERY ONE THAT CAME IN THE BANK
7 HAD A GUN. AND THEY ALL TESTIFIED THAT THEY COULD
8 NOT IDENTIFY THE PEOPLE THAT ROBBED THEM. NOW THERE
9 WAS ONE WITNESS WHO GAVE YOU SOME PARTICULARS THAT I
10 ASK YOU TO CONSIDER AND THAT WAS MRS. WINE. AND AS
11 YOU REMEMBER THE PARTICULARS SHE GAVE YOU, I ASK YOU
12 TO COMPARE THOSE NOT ONLY TO MY CLIENT MR. YOUNG, BUT
13 TO ANYBODY ELSE THAT YOU'VE SEEN APPEAR IN THIS CASE.
14 MRS. WINE TOLD YOU THAT SHE SAW A ROBBER WITH
15 BLEACHED HANDS. SHE TOLD YOU THAT SHE SAW A ROBBER
16 WITH CIRRHOSIS AROUND HIS MOUTH, BUMPS, REAL OBVIOUS
17 OUTBREAK AROUND HIS MOUTH AND I'LL ASK YOU TO COMPARE
18 THAT DESCRIPTION TO MY CLIENT MR. YOUNG AND SEE IF HE
19 HAS ANY OF THOSE CHARACTERISTICS. BUT I ALSO ASK YOU
20 TO THINK ABOUT EVERYTHING YOU SAW, MR. LAWS I MEAN
21 MS. LAWS, MR. JONES, MR. PORTER, AND MY CLIENT
22 KENNETH YOUNG AND ASK YOU IF ANY OF THOSE PEOPLE HAVE
23 THOSE KINDS OF CHARACTERISTICS, THEY ARE VERY
24 DISTINCTIVE CHARACTERISTICS, AND I ASK YOU TO THINK
25 ABOUT THAT AS YOU ARE DELIBERATING.

1 AT THIS TIME I'M GOING TO ASK
2 MR. YOUNG TO STAND UP AND SHOW YOU HIS HAIR. I'M
3 SURE YOU HAD AN OPPORTUNITY TO SEE THAT BUT I WANTED
4 TO MAKE SURE THAT YOU HAD. MR. YOUNG HAS VERY
5 DISTINCTIVE HAIR. THERE AREN'T VERY MANY PEOPLE THAT
6 HAVE HAIR LIKE HE HAS. WHAT I WOULD ASK YOU TO
7 CONSIDER WHEN YOU ARE THINKING ABOUT WHAT YOU SAW ON
8 THE VIDEO, AND I SHOULD MENTION AT THIS POINT THAT
9 YOU WILL HAVE ANY VIDEOS THAT WERE SHOWN TO YOU BACK
10 IN THE JURY ROOM, YOU CAN LOOK AT THEM AT YOUR
11 LEISURE, EXAMINE THEM AS MUCH AS YOU WANT TO, LOOK AT
12 THE BANK VIDEO AND SEE IF YOU SEE ANYBODY THAT HAS
13 HAIR LIKE THAT. THE OTHER THING I WOULD MENTION TO
14 YOU IS THAT NONE OF THE WITNESSES, ALTHOUGH MR. YOUNG
15 HAS VERY, A VERY DISTINCTIVE APPEARANCE, NONE OF
16 THOSE WITNESSES REMARK THAT ANYBODY CAME INTO THAT
17 BANK WITH HAIR DOWN TO HIS WAIST.

18 THE OTHER THING THAT I WANT TO POINT
19 OUT TO YOU ABOUT THAT AND AGAIN YOU'LL HAVE THE VIDEO
20 BACK THERE AND YOU WILL HAVE THE OPPORTUNITY TO LOOK
21 AT IT, WHEN MR. YOUNG WAS PULLED OUT OF THAT CAR, AS
22 SOON AS HE STEPPED OUT THE DOOR, HIS BRAIDS WERE
23 HANGING DOWN AROUND HIS WAIST. THEY WEREN'T STUFFED
24 IN A JACKET. THEY WEREN'T CONCEALED. THEY WERE
25 READY FOR ANYBODY TO SEE THEM THAT WANTED TO SEE THEM

1 AND THE OFFICERS TESTIFIED THAT, YEAH, AS SOON AS HE
2 STEPPED OUT I SAW THEM. NOW I ASK THE QUESTION DOES
3 IT MAKE SENSE TO YOU SOMEBODY COMMITS AN ARMED
4 ROBBERY THEY HIDE BRAIDS AND THEN IN THE COURSE OF A
5 GETAWAY THEY TAKE THE OPPORTUNITY TO LOOSEN UP THEIR
6 HAIR AND FIX THEIR HAIR. THAT DOESN'T MAKE ANY
7 SENSE, LADIES AND GENTLEMEN. MR. YOUNG STEPPED OUT
8 OF THAT CAR, HIS HAIR WAS CLEARLY VISIBLE, AND NOBODY
9 IN THAT BANK SAW ANYBODY WITH HAIR LIKE THAT. AGAIN
10 THE VIDEO IS THERE, YOU DON'T HAVE TO TAKE MY WORD
11 FOR IT, TAKE A LOOK AT IT AND COMPARE THE BANK VIDEO,
12 COMPARE THE VIDEO WHEN MR. YOUNG GOT OUT OF THE CAR,
13 YOU'LL SEE FOR YOURSELF. THAT'S NOT ANYTHING THAT
14 YOU HAVE TO RELY ON ME FOR.

15 THE NEXT PEOPLE THAT YOU SAW IN THE
16 COURSE OF THIS TESTIMONY WAS THE OFFICERS AND THAT
17 WAS OFFICER VINESETT AND OFFICER GIBSON AND THEY WERE
18 THE PEOPLE THAT CHASED THE VEHICLE AND THE FIRST
19 THING THAT I WOULD ASK YOU TO REMEMBER IS NONE OF
20 THOSE OFFICERS SAW THIS VEHICLE FROM THE TIME IT LEFT
21 THE BANK UNTIL IT GOT TO CAROWINDS BOULEVARD AND
22 NOBODY ELSE DID EITHER. NOBODY CAN TESTIFY TO THAT
23 FACT. WHAT THE OFFICERS COULD TESTIFY TO IS THAT
24 MR. YOUNG WAS IN THE CAR AND NOBODY DISPUTES THAT.
25 AGAIN YOU GOT THE VIDEO, YOU'LL SEE MR. YOUNG STEP

1 OUT, WE DON'T DISPUTE FOR A SECOND THAT MR. YOUNG WAS
2 THE BACK SEAT PASSENGER ON THE PASSENGER SIDE OF THAT
3 VEHICLE, BUT BEING IN THAT VEHICLE IS NOT A CRIME.
4 THE STATE HAS TO PROVE TO YOU BEYOND A REASONABLE
5 DOUBT THAT MR. YOUNG WAS ONE OF THE PEOPLE IN THAT
6 BANK AND MR. YOUNG WAS ONE OF THE PEOPLE ARMED WITH A
7 GUN COMMITTING THE ROBBERY.

8 OFFICER GIBSON AND OFFICER VINESETT BOTH
9 HAD TO TESTIFY TRUTHFULLY THAT THEY NEVER SAW
10 MR. YOUNG IN POSSESSION OF ANYTHING IN THAT VEHICLE.
11 THEY NEVER SAW HIM IN POSSESSION OF A MASK, THEY
12 NEVER SAW HIM IN POSSESSION OF GUNS, THEY NEVER SAW
13 HIM IN POSSESSION OF MONEY, BUT THEY DID TELL YOU
14 SOMEBODY WAS IN POSSESSION OF ALL THAT STUFF AND WHO
15 WAS THAT PERSON? THE STATE'S WITNESS. THE ONLY
16 PERSON THAT ANYBODY CAN IDENTIFY POSSESSING ANY OF
17 THESE ITEMS OTHER THAN THE CLOTHES THAT THEY TOOK OFF
18 OF MR. YOUNG IS THE STATE'S WITNESS, THE PERSON THAT
19 CUT A DEAL WITH THE STATE; HE'S THE ONE THAT HAD THE
20 PILLOWCASE, HE'S THE ONE THAT HAD THE GUN, HE'S THE
21 ONE THAT HAD THE MONEY, AND HE'S THE ONE THAT HAD
22 DISGUISED SO THAT WHEN HE RAN FROM THE POLICE HE'D BE
23 ABLE TO CHANGE CLOTHES AND EVADE CAPTURE.

24 THE OTHER THING I THINK IS IMPORTANT
25 FOR YOU TO UNDERSTAND AND REMEMBER WAS THE TESTIMONY

1 ABOUT MY CLIENT'S DEemeanOR WHEN THE POLICE
2 APPROACHED. THE POLICE CAR HIT MS. LAWS' VEHICLE ON
3 THE DRIVER'S SIDE REAR. THE DOOR ON THE OTHER SIDE,
4 BOTH DOORS FRONT AND BACK, WERE UNOBSTRUCTED, MY
5 CLIENT DIDN'T FLEE. HE DIDN'T ATTEMPT TO FLEE. HE
6 DIDN'T RESIST THESE OFFICERS. HE DIDN'T DO ANYTHING
7 LIKE THAT. AND THERE IS SIMPLE REASON FOR THAT, MY
8 CLIENT WAS NOT INVOLVED IN A BANK ROBBERY. MY CLIENT
9 WASN'T INVOLVED IN A CRIME. HE WAS CAUGHT UP IN A
10 CAR THAT HE COULDN'T GET OUT OF. HE DIDN'T HAVE ANY
11 REASON TO FLEE FROM THE POLICE. HE SAT RIGHT THERE
12 WHILE THE POLICE WALKED UP TO THE CAR BECAUSE HE KNEW
13 HE HADN'T DONE ANYTHING AND HE KNEW THAT HE WAS NOT
14 IN ANY DIFFICULTIES.

15 THE ID OFFICERS CAME AND TESTIFIED.
16 THERE WERE THREE OF THOSE. TOLSON WAS THE INDIVIDUAL
17 THAT'S IN CHARGE OF THE ID BUREAU AND DETECTIVE
18 TOLSON TOLD YOU WHAT KIND OF CAPABILITIES HIS
19 DEPARTMENT HAD AND THAT HE WAS THERE ON THE SCENE
20 MAKING SURE HIS OFFICERS DID A GOOD JOB. AND I ASKED
21 HIM IF YOU PULL OUT RUBBER GLOVES AND YOU TURN THEM
22 INSIDE OUT, CAN YOU GET FINGERPRINTS? YES, YOU CAN.
23 DID YOU TRY TO DO THAT? NO. DID YOU FINGERPRINT THE
24 BANK? NO, I MADE AN ASSUMPTION THAT THEY HAD ON
25 GLOVES SO I DIDN'T BOTHER TO DO THAT.

1 THE NEXT PERSON YOU HEARD FROM WAS
2 OFFICER EDDIE AND SHE'S ALSO WITH THE ID BUREAU AND I
3 ASKED HER ABOUT FINGERPRINTS INSIDE GLOVES. NO, WE
4 DIDN'T, WE DIDN'T DECIDE TO DO THAT. AND I ASKED
5 OFFICER EDDIE AND OFFICER BAGWELL BOTH A DIFFERENT
6 QUESTION THAN I DID OFFICER TOLSON BECAUSE THEY WERE
7 PEOPLE DIRECTLY PROCESSING THIS EVIDENCE AND WHAT I
8 ASKED THEM WAS: WHEN SOMEBODY HAS CLOTHING IN CLOSE
9 PROXIMITY TO THEIR FACE OR THEIR HANDS, DOES THAT
10 TRANSFER DNA ON TO THAT CLOTHING. THEY SAID, YES,
11 VERY OFTEN IT DOES. THEY HAD AN OPPORTUNITY TO FIND
12 OUT WHO WAS WEARING THE MASK, WHO WAS WEARING THE
13 GLOVES; THEY HAD AN OPPORTUNITY TO HAVE DNA EVIDENCE
14 HERE IN FRONT OF YOU TODAY THAT WOULD BE CONCLUSIVE.
15 THERE WOULDN'T BE ANY QUESTION ABOUT WHO DID WHAT,
16 WHO WORE WHAT, IF THEY HAD DONE IT. THEY DIDN'T DO
17 THAT. THEY DIDN'T DO THAT. THEY CHOSE NOT TO DO
18 THAT. HAD THEY DONE THAT, YOU WOULD HAVE HAD
19 DIFFERENT EVIDENCE IN FRONT OF YOU. NOW MR. SPRINGS
20 TRIED TO SUGGEST THAT DNA TAKES A LONG TIME AND I
21 DON'T DOUBT IT DOES, BUT THAT DOESN'T MEAN THEY
22 COULDN'T HAVE DONE IT. IT DOESN'T MEAN THEY
23 SHOULDN'T HAVE DONE IT. IT JUST MEANS THEY DID NOT.
24 AND AFTER THOSE PEOPLE TESTIFIED, OF COURSE
25 DETECTIVE STRAIT TESTIFIED, BUT HE TESTIFIED HE WAS

1 THE LEAD OFFICER AND HE WAS COORDINATING THINGS AND
2 THE TRUTH IS, NO DISRESPECT TO OFFICER STRAIT AT ALL,
3 BUT HE WASN'T AT THE BANK, HE DON'T KNOW WHAT
4 HAPPENED THERE, AND HE WASN'T AT THE CAR UNTIL AFTER
5 THE FACT, SO HE DOESN'T KNOW HAPPENED THERE, SO I'M
6 NOT GOING TO BELABOR HIS TESTIMONY.

7 THE NEXT PERSON YOU HEARD FROM OR THE
8 NEXT TWO PEOPLE YOU HEARD FROM ARE MR. JONES AND
9 MS. LAWS. NOW MR. JONES GOT ON THE STAND AND
10 TESTIFIED THAT HE WAS A WILLING PARTICIPATE IN THIS
11 CRIME, HE WAS THERE, AND AGAIN HE'S THE ONLY PERSON
12 THAT HAD A GUN, MONEY, DISGUISE TO ESCAPE WITH, ALL
13 THOSE ITEMS IN HIS POSSESSION, AND HE'S THE PERSON
14 THAT THE STATE'S OFFERED YOU TO PROVE THEIR CASE.
15 THE ONLY PERSON THAT HAD ANY OF THE ITEMS THAT CAME
16 FROM THIS ROBBERY.

17 NOW MR. JONES TESTIFIED, OH, NO, I
18 DIDN'T HAVE A GUN. I CONTRAST THAT TO WHAT THE BANK
19 EMPLOYEES SAID. THEY SAID VERY CLEARLY AND I ASKED
20 EVERY ONE OF THEM DID EVERYBODY HAVE A GUN?
21 EVERYBODY HAD A GUN. SO MR. JONES, OH, NO. NO, I
22 DIDN'T HAVE A GUN. I WAS JUST THE BAG MAN. CONTRAST
23 HIS TESTIMONY WITH THE TESTIMONY OF THE BANK
24 EMPLOYEES AND YOU JUST DETERMINE WHETHER YOU THINK
25 WHO IS MORE CREDIBLE IN THAT SITUATION. WHAT DID HE

1 HAVE TO ADMIT BECAUSE AGAIN IT'S ON THE VIDEO AND THE
2 OFFICERS TESTIFIED TO IT THAT WHEN THAT CAR STOPPED
3 THERE WAS ONE PERSON RUNNING AND THAT WAS MR. JONES.
4 THERE WAS ONE PERSON THAT HAD THE GUILT ON HIS
5 CONSCIOUS TO MAKE HIM FLEE FROM THAT SCENE AND THAT
6 WAS MR. JONES.

7 NOW MR. JONES, AS YOU HEARD HIM IN
8 TESTIMONY, IS THE GRANDSON OF MR. PORTER AND YOU
9 MIGHT BE THINKING TO YOURSELF AND IT'S A REASONABLE
10 QUESTION TO ASK, WELL, WHY WOULD MR. JONES LIE ABOUT
11 THIS SITUATION? WELL, YOU MIGHT HAVE HEARD THAT OLD
12 EXPRESSION ABOUT BLOOD IS THICKER THAN WATER. WHAT
13 BLOOD IS NOT THICKER THAN IS 90 YEARS. MR. JONES
14 TESTIFIED TO YOU THAT IF HE HAD NOT CUT A DEAL WITH
15 THE STATE HE WAS LOOKING AT THE POSSIBILITY OF BEING
16 SENTENCED TO 90 YEARS OR MORE, HE WASN'T EXACTLY
17 SURE, BUT HE KNEW HE WAS FACING AT LEAST 90 YEARS.
18 THAT CUTS RIGHT THROUGH BLOOD. THAT CUTS RIGHT
19 THROUGH EVERYTHING ELSE. MR. JONES IS A PERSON WHO
20 HAD ALL THE EVIDENCE IN THIS CASE THAT CAME FROM THAT
21 PILLOWCASE IS THE PERSON THAT CUT A DEAL TO SAVE
22 HIMSELF AND PUT SOMEBODY ELSE IN HIS PLACE.
23 MR. JONES KNEW THAT HE HAD TO TESTIFY TO THE FACTS
24 THAT IMPLICATE MY CLIENT IN ORDER TO GET HIS DEAL.
25 HE'S ALREADY PLEAD GUILTY BUT HE'S GOT A SENTENCE

1 HANGING OVER HIS HEAD AND HIS CHOICES WERE TESTIFY
2 CONSISTENT WITH THE STATE'S CASE OR FACE HIS ORIGINAL
3 TIME AND HIS ORIGINAL CHARGES.

4 NOW MS. LAWS HAS ALSO TESTIFIED AND
5 MS. LAWS MADE A DEAL WITH THE STATE AT THE LAST
6 MINUTE, AND WHEN I WAS THINKING ABOUT MY CLOSING
7 ARGUMENT I THOUGHT WHAT I WOULD DO IS GO THROUGH HER
8 ORIGINAL STATEMENT AND HER DEAL STATEMENT AND POINT
9 OUT THE INCONSISTENCIES TO YOU. FRANKLY, IN THE
10 INTEREST OF TIME, IT'S A WHOLE LOT EASIER TO POINT
11 OUT THE CONSISTENCIES BECAUSE THERE ARE A LOT MORE
12 CONSISTENCIES THAN THERE ARE INCONSISTENCIES. WELL,
13 COME TO THINK OF IT, THERE AREN'T ANY CONSISTENCIES.
14 YOU'LL HAVE THAT BACK THERE, YOU LOOK AT IT YOURSELF.
15 THIS IS THE STATEMENT THAT SHE GAVE THE DAY OF THE
16 ROBBERY. THIS IS STATEMENT SHE GAVE PREPARED BY THE
17 STATE IN ORDER TO GET THIS DEAL. AND SHE WAS LOOKING
18 AT 90 YEARS JUST LIKE EVERYBODY ELSE, MR. JONES WAS
19 LOOKING AT, AND SHE KNOWS THAT SHE'S GOT TO TESTIFY
20 CONSISTENT WITH THIS STATEMENT IN ORDER TO GET THAT
21 DEAL. TAKE THESE TWO THINGS AND LOOK AT THEM
22 YOURSELF. WELL, I GUESS THERE ARE SOME
23 CONSISTENCIES, SHE DID GET HER NAME RIGHT, BUT OTHER
24 THAN THAT THERE IS NOT A WHOLE LOT OF CONSISTENT
25 STATEMENTS GOING ON IN THERE. MS. LAWS WAS COVERING

1 HER BASES FROM THE MINUTE SHE STEPPED OUT OF THAT
2 CAR. SHE WAS MAKING EXCUSES FROM THE MINUTE SHE
3 STEPPED OUT OF THE CAR, IF YOU WILL LISTEN TO THE
4 VIDEO YOU'LL HEAR HER DOING IT. MS. LAWS WAS GOING
5 TO SAVE HERSELF NO MATTER WHO GOT THROWN UNDER THE
6 BUS. THAT'S WHAT THIS STATEMENT IS ABOUT. I DIDN'T
7 KNOW A THING ABOUT THIS. THIS WAS ALL A BIG SURPRISE
8 TO ME. I THOUGHT WE WERE GOING DOWN THERE FOR
9 SOMEBODY TO CASH THEIR CHECK AND LOW AND BEHOLD THEY
10 ARE ROBBING SOMEBODY. THEN, OF COURSE, IT CHANGES TO
11 I KNEW ALL ABOUT IT. I WAS IN ON THE PLANNING FROM
12 THE VERY BEGINNING. I RENTED A CAR JUST TO COMMIT
13 THIS ROBBERY. MS. LAWS IS TAKING CARE OF MS. LAWS.
14 THAT'S WHAT SHE WAS DOING WHEN THEY GOT STOPPED,
15 THAT'S WHAT SHE WAS DOING WHEN SHE GAVE THIS
16 STATEMENT, AND THEN WHEN SHE SAW IT WAS IN HER BEST
17 INTEREST TO GIVE A DIFFERENT STATEMENT, SHE WAS ALL
18 ABOUT THAT TOO. READ BOTH OF THESE STATEMENTS.
19 SATISFY YOURSELF ABOUT THAT.

20 NOW YOU HEARD MR. YOUNG TESTIFY THAT
21 HE AND MS. LAWS HAVE HAD DIFFICULTIES IN THE PAST.
22 AGAIN THAT OLD EXPRESSION ABOUT HELL HAVE NO FURY
23 LIKE A WOMAN SCORNE -- WELL, THERE WAS SOME OF THAT
24 GOING ON HERE TOO. MR. YOUNG WAS MARRIED MAN; MS.
25 LAWS WAS IN A RELATIONSHIP WITH HIM; SHE WASN'T HAPPY

1 ABOUT THE FACT THAT HE WAS A MARRIED MAN. THAT'S
2 CLEAR FROM THE TESTIMONY.

3 NOW MR. BRACKETT HAD ALREADY SPOKEN
4 WITH YOU ABOUT REASONABLE DOUBT. I'M GOING TO TALK
5 TO YOU ABOUT THAT TOO. WHEN THIS COUNTRY WAS
6 FOUNDED, OUR FOUNDING FATHERS HELD A VERY SACRED
7 BELIEF, IT'S A BELIEF WE STILL HOLD TODAY, AND THAT
8 BELIEF IS THAT IT'S BETTER IN THE WORST CASE SCENARIO
9 FOR GUILTY MEN TO GO FREE THAN FOR AN INNOCENT MAN TO
10 BE CONVICTED AND THAT'S THE REASON WE HAVE THE SYSTEM
11 THAT WE HAVE TODAY, THE SYSTEM WE ALL LOVE, AND WE
12 ALL CHERISH. THAT'S WHY WE HAVE A SYSTEM THAT PUTS
13 THE BURDEN ON THE STATE TO PROVE BEYOND A REASONABLE
14 DOUBT THAT SOMEBODY DOES SOMETHING THAT'S ILLEGAL.
15 AND THAT SYSTEM ALSO SPECIFIES AND THE JUDGE WILL
16 TELL YOU THIS, THAT IF THERE IS ANY REASONABLE DOUBT
17 ABOUT MR. YOUNG'S GUILT, HE'S ENTITLED TO THE BENEFIT
18 OF THAT DOUBT. HE'S ENTITLED TO THE BENEFIT OF THAT
19 DOUBT UNDER THE SYSTEM OF JUSTICE THAT WE ALL LIVE
20 UNDER BECAUSE IT'S A STATE'S BURDEN, THAT'S THE LAW
21 OF THE LAND, AND THE JUDGE WILL INSTRUCT YOU ABOUT
22 THAT.

23 NOW WHAT IS REASONABLE DOUBT?
24 REASONABLE DOUBT IT'S DEFINED BY THE JUDGE AND IT'S
25 BEEN DEFINED IN CASE LAW AND ONE OF THE DEFINITIONS

1 IS IT'S THE KIND OF DOUBT THAT WOULD CAUSE A
2 REASONABLE PERSON TO HESITATE TO ACT. THE KIND OF
3 DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
4 HESITATE TO ACT. IN OTHER WORDS, IN ORDER TO CONVICT
5 MR. YOUNG OF THESE CRIMES YOU HAVE TO BE FIRMLY
6 CONVINCED OF HIS GUILT BEYOND A REASONABLE DOUBT, NOT
7 UP TO REASONABLE DOUBT, BUT BEYOND A REASONABLE
8 DOUBT. IF THAT'S NOT THE CASE, THEN MY CLIENT'S
9 INTENT, ENTITLED TO THE BENEFIT OF THAT REASONABLE
10 DOUBT AND YOU HAVE TO FIND HIM NOT GUILTY.

11 AS YOU ARE DELIBERATING YOU KNOW THERE
12 IS GOING TO BE A LOT OF STUFF BACK THERE WITH YOU AND
13 YOU ARE ENTITLED TO CONSIDER ANY OF IT OR ALL OF IT.
14 DON'T HOWEVER BE CONFUSED ABOUT THE FACT THAT, THE
15 FACT THAT THERE IS A LOT OF EVIDENCE, THAT THAT
16 EVIDENCE PROVES ANYTHING. THINK ABOUT WHAT THAT
17 EVIDENCE PROVES. THERE IS CLOTHING HERE. THERE IS
18 GLOVES HERE. THERE IS ALL KINDS OF ITEMS HERE FOR
19 YOU TO CONSIDER, BUT THE UNDISPUTED TESTIMONY IS THAT
20 NOT ONLY ONE PERSON CAN PLACE THAT IN THAT, ANY OF
21 THOSE ITEMS EXCEPT FOR THE CLOTHES HE WAS WEARING AT
22 THE TIME HE WAS ARRESTED IN MY CLIENT'S POSSESSION.
23 NO DNA EVIDENCE CAN DO THAT. NO FINGERPRINTS CAN DO
24 THAT. NO WITNESS CAN DO THAT. DON'T BE CONFUSED
25 ABOUT THE QUANTITY OF EVIDENCE. YOUR JOB IS TO

1 DECIDE THE QUALITY OF THE EVIDENCE.

2 I WANT TO ASK YOU AGAIN TO THINK ABOUT
3 HOW THE DISTINCTIVE MY CLIENT IS IN HIS APPEARANCE.
4 DOES MY CLIENT'S APPEARANCE MATCH WHAT YOU SAW ON
5 THOSE VIDEOS IN THE BANK? DOES MY CLIENT'S
6 APPEARANCE MATCH THE DISTINCTIVE CHARACTERISTICS THAT
7 MRS. WINE GAVE YOU, CIRRHOSIS AROUND HIS MOUTH,
8 BLEACHED HANDS. TAKE A LOOK AT THAT CHASE VIDEO, I
9 KNOW YOU'VE SEEN IT A COUPLE TIMES, BUT I ENCOURAGE
10 YOU TO AT LEAST LOOK AT THE LAST SEGMENT OF THAT
11 CHASE VIDEO AND SEE MY CLIENT STEP OUT OF THAT CAR
12 WITH HIS BRAIDS HANGING DOWN AROUND HIS WAIST AND
13 THINK ABOUT WHETHER THAT IT IS REASONABLE DOUBT THAT
14 IN THE MIDST OF A HIGH SPEED CHASE HE TAKES THE
15 OPPORTUNITY TO ARRANGE HIS HAIR. DOES THAT SEEM LIKE
16 A REASONABLE THING TO YOU? DOES ANYBODY YOU'VE SEEN,
17 MR. JONES, MS. LAWS, MR. PORTER, AND PARTICULARLY MY
18 CLIENT MR. YOUNG, DO ANY OF THOSE PEOPLE HAVE
19 BLEACHED HANDS? DO ANY OF THOSE PEOPLE HAVE
20 CIRRHOSIS AROUND THEIR MOUTH, AND IF THEY DON'T,
21 WHERE IS THAT INDIVIDUAL? WHERE IS THAT PERSON?
22 MRS. WINE IS WRONG ABOUT THAT. SHE JUST MAKE THAT
23 UP? SHE SEEMED LIKE A PRETTY OBSERVANT PERSON. SHE
24 SEEMED LIKE SHE WAS FRANKLY IN A VERY TRYING
25 SITUATION BEING PRETTY OBSERVANT. AND IF THAT PERSON

1 HADN'T COME INTO COURT IN FRONT OF YOU WHERE IS THAT
2 PERSON AND HOW DOES THE STATE EXPLAIN THAT.

3 WHEN I BEGAN THIS CASE I TOLD YOU THAT
4 I FELT THIS CASE WOULD COME DOWN TO TWO WITNESSES,
5 TWO PAID INFORMANTS PAID WITH TIME, AND I DO BELIEVE
6 THAT'S WHAT THIS CASE HAS COME DOWN TO. EXCEPT FOR
7 THE CLOTHES THAT MR. YOUNG WAS WEARING NOT ONE PERSON
8 HAS THE STATE OFFERED YOU CAN PUT ANY OF THOSE ITEMS
9 IN HIS POSSESSION. EXCEPT FOR TWO PEOPLE THAT WENT
10 FROM 90 YEARS TO SIX YEARS OR EIGHT YEARS DEPENDING
11 ON THE DEAL. I'LL LEAVE IT TO YOUR JUDGMENT WHETHER
12 THAT'S A GOOD REASON TO LIE OR NOT. I'LL LEAVE IT TO
13 YOUR JUDGMENT WHAT KIND OF INCENTIVE THAT IS AND WHAT
14 KIND OF PRESSURE THAT IS TO IMPLICATE PEOPLE THAT THE
15 STATE HAS ON TRIAL HERE TODAY AND I WANT TO REITERATE
16 TO YOU THAT MR. YOUNG'S PRESENCE IN THAT CAR IS NOT A
17 CRIME. MR. YOUNG TESTIFIED ON THE STAND TODAY,
18 ALTHOUGH HE DID NOT HAVE TO DO THAT, HE TESTIFIED AND
19 HE SUBJECTED HIMSELF TO CROSS EXAMINATION BY THE
20 STATE BECAUSE HE WANTED YOU TO HEAR HIS SIDE OF THE
21 STORY. HE WANTED YOU TO HEAR WHAT HAPPENED THAT DAY.
22 HE WANTED YOU TO HEAR THE TRUTH. AND I SUBMIT TO YOU
23 THAT WHAT MR. YOUNG SAID IS PLAUSIBLE, VERY
24 PLAUSIBLE.

25 NOW THE STATE'S MADE MUCH OF THE FACT

1 THAT THERE IS A BOJANGLES RIGHT DOWN THE STREET FROM
2 THE BANK OF YORK. MY CLIENT'S NEVER TESTIFIED THAT
3 THAT'S THE BOJANGLES HE WENT TO. I DIDN'T HEAR
4 ANYBODY ELSE TESTIFY. WHAT MY CLIENT SAID WAS HE
5 WENT TO AND WAS DROPPED OFF AT A BOJANGLES. I REMIND
6 YOU THAT IF THERE IS ANY REASONABLE DOUBT IN THIS
7 CASE, MY CLIENT IS ENTITLED TO THE BENEFIT OF THAT.
8 I ASK YOU TO CONSIDER ALL THAT. I ASK YOU TO
9 CONSIDER THE MOTIVES OF THE PEOPLE THAT GOT UP HERE
10 AND TESTIFIED. I ASK YOU TO CONSIDER ALL OF THE
11 EVIDENCE, CONSIDER MY CLIENT'S APPEARANCE, CONSIDER
12 THE FEW DETAILS THE BANK EMPLOYEES WERE ABLE TO GIVE
13 YOU AND COMPARE THAT TO THE STATEMENTS MS. LAWS AND
14 MR. JONES MADE AND I'M CONFIDENT THAT AFTER HAVING
15 DONE THAT YOU'LL FIND THERE IS A REASONABLE DOUBT IN
16 MY CLIENT'S FAVOR. THANK YOU VERY MUCH.
17 CLOSING STATEMENT BY MR. PORTER.

18 GOOD AFTERNOON. I'M CERTAIN THAT THIS
19 WILL IS PROBABLY THE FIRST TIME THAT YOU WILL HEAR
20 THAT WHAT HAPPENED ON 12-22-06 COMING DIRECTLY FROM
21 ME. THERE IS NO QUESTION FROM THE VIDEO, FROM THE
22 BANK EMPLOYEES' STATEMENTS, WITNESSES, ESPECIALLY
23 VIDEO CAMERA, THAT SOMEONE ENTERED THE BANK OF YORK
24 AT APPROXIMATELY 10:30. NO ONE IN THE BANK
25 IDENTIFIED WHO THAT PERSON WAS OR THOSE PARTICULAR

1 PERSONS WAS. YOU'LL HEAR TESTIMONY FROM A DONSHAVIS
2 JONES AND MS. ANGELA LAWS WHO ARE READILY ADMITTED TO
3 THEIR PART IN THIS PARTICULAR CRIME. BUT AS
4 TESTIMONY SHOW THERE WERE OTHER PEOPLE INVOLVED. BY
5 CIRCUMSTANCES AND REASONS, YES, WHEN THE CAR STOPPED
6 I WAS IN THE CAR, I'M NOT GOING TO DENY THAT, I WAS
7 IN THE FRONT SEAT, BUT I WAS NOT IN THAT BANK.

8 THE STATE, MYSELF, EVERYONE, YOU
9 LISTEN PARTICULARLY OF THE DESCRIPTION THEY GAVE OF
10 THE ROBBERS. NO ONE INDICATED THAT IT WAS TALL OR
11 SHORT, WHAT THEY WEIGH, OR ANY OF THE DESCRIPTIVE
12 FEATURES OTHER THAN THE FACT THAT THE TELLER
13 INDICATED THAT SOMEONE HAD CIRRHOSIS. THEY ALL
14 STATED THAT EVERYBODY HAD ON MASKS AND EVERYBODY HAD
15 ON GLOVES AND WE SAW THAT AND WE SEEN THAT AND IT WAS
16 REPEATEDLY ASKED, BUT IN THOSE MASKS THAT THOSE
17 ROBBERS WORE, IN THOSE GLOVES, HAD FORENSIC OR THE
18 STATE, MAYBE THE OFFICERS INVOLVED IN THE CHASE, HAD
19 NOT JUMPED THE GUN AND ASSUMED THAT THE OCCUPANTS OF
20 THE CAR WAS ACTUALLY GUILTY SOMEONE COULD HAVE DONE
21 THEIR JOB AND FOUND OUT FROM THE DNA OR FINGERPRINTS
22 WHO THOSE PARTICULAR PERSONS WAS. I'M VERY HAIRY,
23 VERY HAIRY. (SHOWING ARMS TO THE JURY.) DNA COMES
24 OFF OF HAIR PARTICLES. IN FACT, HOW MANY OF YOU,
25 SOME OF YOU PROBABLY REMEMBER THIS, THEY GET HAIR

1 FIBERS, THEY CAN ACTUALLY TAKE CARPET PAD AND CONNECT
2 IT, THAT'S HOW THEY CONVICTED WAYNE WILLIAMS BACK
3 THEN IN 1980 FOR AT A LOT OF MURDERS ON THOSE KIDS
4 THAT WERE GETTING KILLED BECAUSE THEY FOUND THE
5 FIBERS THROUGH DNA IN LABORATORY TECHNOLOGY TO
6 CONNECT THE FIBERS WITH THE PANTS, THE CLOTHES,
7 ANYTHING, AND ALL TO HIS CAR, TO THE CARPET IN HIS
8 CAR. BUT THESE FORENSIC PEOPLE FOR THE CITY OF YORK
9 THEY DIDN'T DO THAT. THEY DIDN'T WANT TO. THEY
10 DIDN'T WANT TO DO THAT. BECAUSE I MEAN, LET ME BACK
11 UP. THEY MAY HAVE DONE THAT BUT IT DIDN'T MATCH ME.
12 IT DIDN'T MATCH MR. YOUNG. SO THE LOGICAL
13 EXPLANATION WOULD BE WE DID NOT DO THAT. IF YOU WAS
14 NOT GOING TO DO THAT, WHY WAS THE EVIDENCE STAYING IN
15 A DYER FOR A LATER DAY? BECAUSE AS WE RECALL, IT WAS
16 RAINING AND WHAT THEY DO? THEY SAVE THIS. THEY
17 DRIED IT. THEY COULD HAVE GOTTEN DNA. THEY COULD
18 HAVE GOTTEN HAIR PARTICLES. THEY COULD GOT SWEAT
19 FROM THE PLASTIC LATEX GLOVES. AND STANDING HERE
20 BEFORE YOU THEY PROBABLY DID. BUT NONE OF IT MATCHED
21 ME OR MR. YOUNG. WHY? BECAUSE I WAS NOT IN THAT
22 BANK. I WAS IN THE CAR. I WAS NOT IN THE BANK.
23 YES, I WAS TOLD THAT THEY WAS GOING TO ROB -- I
24 MEAN NOT TO ROB THE BANK, TO BUST CHECKS FOR ONE OF
25 THE GUYS, BUT, YOU KNOW, THERE IS NO CHECK OR EXCUSE

1 FOR PULLING OUT THE GLOVES, SO THAT CAR WAS STOPPED
2 ON THE WAY TO THE BANK AND I GOT OUT. BUT I'M FROM
3 CHARLOTTE, ONE OF THE ADMITTED ROBBER'S GRANDFATHER,
4 THAT REFUSED TO GO IN THE BANK WITH HIM AND IT WAS
5 ALREADY TENSION THERE, SO EVEN IF I DIDN'T GO INTO
6 THAT BANK WHEN THE CAR GOT STOPPED AND I WAS IN THE
7 CAR, I WAS GOING TO BE A PART OF THAT ROBBERY BECAUSE
8 HE HAD NO CONVICTIONS AND HE WAS GOING TO SAVE
9 HIMSELF.

10 BUT YOU ALSO SEEN ON THE VIDEO THE
11 IMPACT OF THE TRAILING VEHICLE THAT HIT HIM. AT THE
12 TIME THE CAR HIT HIM IT NEARLY KILLED HIM FROM THE
13 IMPACT. THEY DID NOT SHOW THAT PARTICULAR VIDEO BUT
14 I HAD A GRANDSON THAT GOT HIT. I RAISED UP, COULD
15 HAVE GOT SHOT, BUT THAT VIDEO DON'T SHOW THAT. I
16 DON'T EVEN SEE THAT CAR. I WAS TOLD TO GET BACK
17 DOWN. OUT OF CONCERN I LOOKED UP. I'M SAYING GET
18 INTO IT BETTER, GET INTO IT BETTER, BUT I DIDN'T SEE
19 THAT PART OF THE VIDEO. MY REASON FOR SAYING THAT IS
20 THAT I KNOW HE WAS HURT BUT THEY LATER FOUND OUT THAT
21 THERE IS A LOT OF INJURY TO HIS FOOT BUT AT THAT TIME
22 HE WAS SHAKEN AND THE KID WAS GIVEN TWO LORTABS THAT
23 YOU WILL SEE IN THE EVIDENCE FOR PAIN. TWO LORTABS.
24 I TAKE LORTABS AND I TAKE LORTABS AND I KNOW WHAT IT
25 DO FOR ME AND I KNOW WHAT IT DID FOR HIM. BUT THIS

1 IS THE PART THAT YOU DON'T KNOW: ON THE WAY IN THE
2 EMERGENCY, IN THE HOSPITAL, THIS KID WAS SO CONFUSED,
3 SO IN PAIN, SO DISSOLUTIONAL, AND HE WAS BEING
4 INTERROGATED. THE PLOT WAS CREATED THEN FOR HIM TO
5 SAVE HIS SELF AND ONCE THEY FOUND OUT THROUGH THE
6 COMPUTER WHO CERTAIN PEOPLE WAS, THEY DIDN'T EVEN
7 HAVE TO DO NO WORK. THEY WANTED WHO THEY HAD POP UP
8 IN THE COMPUTER. THIS IS JOHNNELL PORTER. THIS IS
9 KENNY YOUNG. BAM. OPEN AND SHUT. IRREGARDLESS OF
10 WHAT COULD HAVE TAKEN PLACE, WHAT HAPPENED, THEY
11 DIDN'T, THEY DIDN'T FIGURE THEY HAD TO LOOK NO
12 FURTHER. THEIR CASE WAS CLOSED.

13 IN THE BACK OF THE AMBULANCE, HE DID
14 NOT ADMIT IT ON THE STAND, BUT HE GOT, HE TOLD ME
15 WHAT WAS HAPPENING TO HIM ON THE RIDE TO CAROLINA
16 MEDICAL. HE WAS BEING INTERROGATED BY COPS,
17 HARASSED, HARASSED. HE CONFUSED. HE WAS SCARED. HE
18 KNEW HE HAD HURT SOME PEOPLE. HE KNEW HE HAD HURT ME
19 WHEN I FIND OUT EXACTLY WHAT THEY WAS UP TO IN
20 ANOTHER STATE. I DIDN'T HAVE TO COMMIT, I WORKED AT
21 THE BAR CASTLE INC. AND THEN IN THERE, I DON'T KNOW
22 WHY I'M NOT INCLUDED, SECURITY AT THE CAROLINA
23 MEDICAL HAD TO TELL WHOEVER THE OFFICERS WAS, YOU
24 CAN'T INTERROGATE A PERSON RECEIVING MEDICAL
25 TREATMENT. HE STAYED THERE. HE WAS DISCHARGED AT

1 1405 AND HE WAS INTERVIEWED AT 15 SOMETHING, MAYBE
2 3:15. I THINK THAT'S WHAT THE TIME WAS, BUT YOU'LL
3 SEE THIS. THERE IS NO WAY, THAT IN SPITE OF WHAT HE
4 TESTIFIED ON THAT STAND, THERE IS NO WAY THAT HE WAS
5 IN HIS RIGHT FRAME OF MIND WITH TWO LORTABS AND HE
6 DON'T EVEN DO DRUGS. HE DON'T EVEN GET HIGH. HE
7 DON'T SMOKE OR DRINK. HE NEVER SMOKED. HE NEVER
8 DRINK. HE NEVER GOT HIGH. HE DON'T EVEN DO
9 MARIJUANA. AND HE GAVE A STATEMENT. LOOK AT HER
10 STATEMENT. BECAUSE WHEN I SEEN HIM AT CAROLINA
11 MEDICAL BEFORE WE WENT TO THE MAGISTRATE HE SAID,
12 GRANDDADDY, THEY MADE ME DO THAT. THEY KNOW WHO YOU
13 ARE. THEY MADE ME SAY THAT.

14 NOW WAIT A MINUTE, ARE WE GOING TO GO
15 BACK AND SHOW YOU THAT A LOT OF THINGS THAT YOU WILL
16 SEE AND LOT OF THINGS THAT YOU SAW WAS FABRICATED.
17 IT'S NOT THE ORIGINAL. YOU HEARD TESTIMONY THAT THE
18 BANK WAS ROBBED AT 10:30. EVEN THE TELLER STATED
19 THEY WAS CONFUSED. THEY WAS MOVING AROUND. THEY WAS
20 TOLD TO DO THIS. THEY WAS TOLD TO DO THAT. THEY
21 DIDN'T KNOW WHETHER THEY WANTED THEM TO CRAWL, DIDN'T
22 WANT THEM TO GET UP, DIDN'T KNOW WHETHER TO SIT DOWN,
23 OR WHATEVER. AND IT TOOK A LOT TIME. YOU KNOW, THE
24 WOMAN COULDN'T OPEN HER SAFE. THE MANAGER HAD TO
25 COME AND OPEN, ASSIST HER, BUT AT THE SAME TIME

1 SOMEBODY IS SPRAYING PEPPER SPRAY. IT'S CONFUSION IN
2 THERE. BUT THE CLOCK IS TICKING, IT'S TICKING, AND
3 THEN THEY SAY SOMEBODY IS TELLING THEM, COME ON,
4 HURRY UP, HURRY UP, TAKING TOO MUCH TIME. PEOPLE WAS
5 IN THERE OVER FOUR MINUTES BEFORE THEY CAME OUT. AND
6 THE PEOPLE THAT WAS LOCKED IN THAT VAULT WITH
7 MR. MORGAN, GOD FORBID, WAS PUSHED TO THE FLOOR, THEY
8 DIDN'T JUST RUN RIGHT, THEY DIDN'T CARE PEOPLE, THEM
9 HARD WORKING PEOPLE EVERYDAY. THEY HELPED THAT MAN.
10 THEY PICKED UP THAT MAN. THEY SEEING WAS EACH OTHER
11 WAS ALL RIGHT THEN THEY CAME OUT. THAT'S ANOTHER TWO
12 MINUTES. BUT I STOPPED THE VIDEO TO SHOW YOU THAT
13 FROM 10:30 AT THE BANK, VINESETT PATROL CAR WAS
14 ALREADY BEHIND THE CLOCK AT 10:34. IT'S IMPOSSIBLE.
15 THAT'S IMPOSSIBLE. BUT THEY WANT YOU TO BELIEVE THAT
16 THIS ACTUALLY TOOK PLACE. THERE'S NO VIDEO CAMERA IN
17 THE WORLD IN THE BANK. THEY SMART. THEY SMART.
18 THEY CHANGED THAT VIDEO. WHY? BECAUSE THE DATE AND
19 THE TIME THAT THE PEOPLES LEFT THE BANK DID NOT
20 CORRESPOND TO THE VIDEO YOU WOULD HAVE SEEN IN
21 OFFICER VINESETT PATROL CAR. YOU COULDN'T EVEN
22 SUBMIT THAT BANK IF IT WAS FEDERALLY INSURED THAT
23 CAMERA, THAT SECURITY CAMERA. THAT'S WHY THEY PUT
24 THE DATES UP THERE. WHATEVER ANYBODY, ANY THREAT TO
25 THE UNITED STATES OR YOUR GOVERNMENT OR ANYBODY

1 AROUND HERE IS BEING SEEN IN THERE, THAT'S WHY THEY
2 DO THAT BECAUSE TO IDENTIFY THE DATE AND TIME.
3 THAT'S THE ONLY BANK I KNOW IN THE WORLD AIN'T HAD NO
4 SECURITY CAMERA WITH THE DATE AND THE TIME ON IT.
5 WHY? BECAUSE IT DID NOT FIT OFFICER VINESETT PATROL
6 CAR CLOCK.

7 AND THEN THE OTHER DAY WE SEEN A
8 VIDEO, YOU SEEN IT, WHERE A LADY PULLED UP, FOLLOWED
9 THE CAR, AND BACKED BACK AND WAS TALKING TO THE
10 WINDOW. BUT ALL OF A SUDDEN TODAY WE SEE A VIDEO
11 THAT GOES UP, COMES BACK, STOP, SEE ANOTHER VIDEO.
12 THEY THINK I WAS STUPID? YOU DON'T SEE IT GO BACK TO
13 THE DRIVE-THRU WINDOW AND TELL THEM WHAT COLOR THE
14 CAR, A GRAY SEDAN, YOU DON'T SEE THAT. THIS IS THAT
15 SAME WHITE CAR. THAT VIDEO IS STOPPED AND EDITED
16 TODAY. WHY? BECAUSE MR. YOUNG SAY HE GOT OUT OF THE
17 CAR. SOMEBODY KNEW MR. YOUNG WAS GOING TO SAY THAT.
18 BUT ALL OF A SUDDEN THEY POPS UP WITH ANOTHER WITNESS
19 AFTER MR. YOUNG TESTIMONY THAT HE WAS AT THE
20 BOJANGLES. NO, I CANNOT SEE. DID YOU SEE THE CAR
21 STOPPED AT THE BOJANGLES? NO, I COULD NOT. IF THAT
22 WOULD HAVE BEEN THE VIDEO THAT YOU SAW YESTERDAY OR
23 MAYBE THE DAY BEFORE THAT FIRST INFORMATION THAT
24 MRS. MARTHA HARRIS SAY SHE WAS TALKING TO THROUGH THE
25 WINDOW, THE GRAY SEDAN, THAT BACKED BACK, THAT CAR

1 DON'T BACK BACK TODAY, IT STOPPED RIGHT THERE IN THE
2 MIDDLE WHERE SHE COULD LOOK THROUGH THE RAIN.
3 SOMETHING DON'T FIT HERE. THEY HAVEN'T PROVEN THEIR
4 CASE BEYOND A REASONABLE DOUBT, BUT THEY WANT YOU TO
5 THINK THAT YOU ALL LOOKING PEOPLE ARE STUPID TOO.
6 THEY HADN'T PROVED THEIR CASE. THEY EDITED. THEY
7 DOCTORED. I GOT A 12 YEAR OLD NIECE THAT CAN TAKE A
8 COMPUTER AND DO WHATEVER SHE WANT TO DO WITH IT. YOU
9 TELL ME SOME PROFESSIONAL PEOPLE CAN'T DO THAT. I
10 GOT A 12 YEARS OLD NIECE THAT'S A COMPUTER GENIUS,
11 ALL READY GUARANTEED SCHOLARSHIP BY MICROSOFT, AND
12 YOU TELL ME THAT PEOPLE THAT WENT TO SCHOOL, THAT
13 FINISH SCHOOL, TRAINED FOR THIS, CAN'T EDIT AND
14 DOCTOR A COMPUTER TO FIT WHAT THEY WERE TRYING TO
15 PROJECT, THE IMAGE OR WHATEVER THEY TRYING TO
16 PROJECT. I DON'T DENY PEOPLE AND I'M SORRY FOR THAT.
17 I APOLOGIZE NOW AND IF I WOULD HAVE BEEN IN THAT CAR
18 I WOULD HAVE SAVED YOU MONEY. I WOULD HAVE SAVED
19 YOUR TIME. IF I HAD BEEN IN THAT BANK, EXCUSE ME,
20 EXCUSE ME, I DID SAY CAR. I WOULDN'T EVEN TOOK UP
21 YOUR TIME BECAUSE I'M MAN ENOUGH TO SAY I'M GUILTY.
22 TODAY, HAVE DONE IT BEFORE, AND WILL DO IT AGAIN IF
23 I'M GUILTY OF ANYTHING. BUT ACCORDING TO THE
24 EVIDENCE BEYOND A REASONABLE DOUBT AS YOU WILL BE
25 TOLD BY JUDGE HAYES IT'S NO REASONABLE DOUBT. THEY

1 COULD HAVE REMOVED ALL DOUBT AND I PROBABLY WOULD
2 HAVE TOOK A PLEA BUT THEY DIDN'T DO THAT. THEY CAME
3 WITH THE LAST 11 O'CLOCK HOUR ON ONE OF THOSE DIE
4 HARDS AND ALL OF A SUDDEN THE DAY BEFORE TRIAL
5 STARTED THEY GO UP AND TELL THE TRUTH OR SO THEY WANT
6 YOU TO BELIEVE THAT THEY ARE TELLING THE TRUTH.
7 EVERYTHING THEY SAYING AIN'T GOLD AND EVERYTHING THAT
8 LOOK LIKE GOLD AIN'T NECESSARILY HOW IT HAPPENED.
9 THE STATE HASN'T PROVED THEIR CASE. THEY PROVED
10 SOMETHING, THAT A ROBBERY WAS COMMITTED, THAT SOMEONE
11 ROBBED THE CAR, YEAH, AND THEY WILL SHOW IT THAT THEY
12 GOT ME OUT OF THE CAR, BUT THEY HAVEN'T PROVEN THE
13 ROBBERY. THEY DON'T HAVE ANYTHING ON JOHNNELL PORTER
14 BUT WHAT TWO PEOPLE SAY. THEY DIDN'T OFFER TO ME 6
15 VERSUS 90. YEAH, I'D SELL YOU THE TRUTH. YOU WOULD
16 HAVE TOO. DON'T NOBODY WANT TO DO NO TIME IF THEY
17 DON'T WANT TO BUT THEY HAD TO. BUT THEY DIDN'T WANT
18 TO RISK, THEY DIDN'T WANT TO TAKE THE CHANCE, BECAUSE
19 IF WHATEVER THEY SAY OR WHATEVER THEIR REASON THEY
20 TOOK THAT PLEA AGREEMENT OR WAS GUILTY OR WHATEVER
21 THAT'S ONLY, BUT I DIDN'T TAKE THAT TO SHOW FOLK TO
22 COME IN HERE. I CAME IN HERE BECAUSE I'M NOT GUILTY.
23 THE STATE HASN'T PROVED ME GUILTY. BUT THEY LEFT IT
24 TO YOU PEOPLE, THEY LEFT IT TO YOU, INNOCENT OF
25 SITUATIONS; YOU GOING TO ROB A BANK; NO, I AIN'T, GET

1 ME OUT OF THE CAR, PICK ME UP WHEN YOU COME BACK.
2 DID THEY SAY ACCESSORY AFTER? I THREW UP MY HANDS.
3 BUT, NO, THAT'S ONE OF THE CHARGES.

4 ANGELA LAWS AND DONSHAVIS JONES, THEY
5 HAD A REASON TO BE HERE, BOTH WAS CONVICTED, BOTH HAD
6 COMMUNICATED LONGER THAN WHAT THEY WANTED YOU TO
7 BELIEVE, BOTH WAS UNDER PRESSURE. BECAUSE ONE CAR
8 WAS SUPPOSED TO SEEN AT A PARTICULAR ONE, THAT'S WHAT
9 I WAS TRYING TO GET TO A MINUTE AGO BUT NO, IT WASN'T
10 GOING TO DO THAT BECAUSE HAD THE TATE TESTIFIED
11 TRUTHFULLY WHAT THEY BELIEVE, THEY WASN'T GOING TO
12 GIVE YOU THAT. I CAN'T PROTECT THEM AND I CAN'T
13 BLAME THEM BUT I TRIED, THEY WOULDN'T DO IT, YOU SEEN
14 THE TENSION. THERE IS TENSION THERE. THERE IS
15 TENSION WITH LAWS. THERE IS TENSION WITH YOUNG. YOU
16 DON'T WANT TO DO ANYTHING WITH ME, I'M GOING TO PUT
17 YOU THERE. YOU SHOULDN'T HAVE BEEN MESSING WITH ME.
18 BUT ON THE OTHER HAND, LIKE THEY SAID, BLOOD
19 SUPPOSEDLY THICKER THAN WATER. WHEN YOU ARE FACING
20 90 YEARS BLOOD CAN TURN TO KOOL AID, VINEGAR,
21 ANYTHING. THAT'S BEEN DONE BEFORE, IT WILL BE DONE
22 AGAIN, AND I'M TELLING YOU IT'S BEEN DONE NOW.

23 THE JUDGE WILL INSTRUCT YOU ON
24 REASONABLE DOUBT. GUILTY BEYOND A REASONABLE DOUBT.
25 THAT'S THE WHOLE CASE, GUILTY BEYOND A REASONABLE

1 DOUBT. THE STATE BLEW THEIR CASE. THEY COULD HAVE
2 ELIMINATED THAT DOUBT. THEY COULD HAVE SENT
3 EVERYTHING TO SLED, EVEN WITH A BACK LOG, A CASE AS
4 SERIOUS AS A BANK, 83 YEAR OLD MAN PUSHED IN, YOU
5 HEARD HIM, COULDN'T EVEN TESTIFY. I DON'T EVEN GOT
6 THAT KIND OF HEART. I DIDN'T EVEN TESTIFY. I DIDN'T
7 EVEN CROSS EXAMINE NONE OF THE FEMALES OR NONE OF
8 EMPLOYEES THAT WAS SHAKEN UP, THAT WAS CRYING,
9 BECAUSE THEY ALREADY BEEN TORTURED AND WENT THROUGH
10 ORDEAL. THAT COULD HAVE BEEN MY MOMMA. THAT COULD
11 HAVE BEEN MY DAUGHTER. THAT COULD HAVE BEEN MY,
12 ANYBODY WENT THROUGH THAT. I DON'T WISH THAT ON
13 NOBODY. GUILTY BEYOND A REASONABLE DOUBT, THE STATE
14 HASN'T PROVEN THEIR CASE. THANK YOU.

15 CLOSING STATEMENT BY MR. BRACKETT:

16 OKAY, LET'S GET ONE THING STRAIGHT, IF
17 I WAS GOING TO DUMMY UP A BUNCH OF EVIDENCE YOU'D
18 HAVE SOME DNA REPORTS. ME AND OLD EDDIE OVER THERE,
19 MAYBE RUSS IN THE BACK AND A COUPLE OF OTHER FORENSIC
20 GUYS, WE'D GO OUT TO LUNCH WITH A CORONA ELECTRIC
21 TYPEWRITER AND I'D CRANKED OUT SOME DNA REPORTS FOR
22 YOU. IF I AM GOING TO GO TO THE TROUBLE TO DOCTOR
23 ALL THIS VIDEO UP, THE LEAST I CAN DO IS TYPE UP A
24 PHONY DNA REPORT. BUT YOU DON'T HAVE ANY DNA REPORT.
25 YOU KNOW WHY? BECAUSE THE EVIDENCE IS SO

1 OVERWHELMING, THE EVIDENCE IS SO ABSOLUTELY
2 IRONCLAD, THERE IS NO NEED FOR A DNA REPORT BECAUSE
3 OUR JOB IS NOT JUST TO PROSECUTE BUT TO SHEPHERD YOUR
4 TAX DOLLARS IN A WISE FASHION. INSTEAD OF SPENDING
5 MONEY TO DO EVERY CONCEIVABLE TEST UNDER THE SUN, WE
6 TAKE A LOOK AT THE EVIDENCE THAT WE ACTUALLY HAVE, WE
7 TAKE A LOOK AT THE VIDEO, WE TALK TO THE BANK PEOPLE
8 OVER HERE, WE TALK TO THE POLICE OFFICERS WHO PULLED
9 ALL FOUR OF THOSE CLOWNS OUT OF THE BACK OF THAT FORD
10 TAURUS WITH THE BIG PILLOWCASE WITH \$18,000 OF THE
11 BANK'S MONEY, INCLUDING \$500 IN MARKED BAIT MONEY,
12 TWO GUNS, THREE SKI MASKS, A CAN OF MACE, AND WE SAY,
13 YOU KNOW WHAT, I THINK WE GOT ENOUGH. I THINK THAT
14 WILL DO IT, BOYS. LIKE NO TO THE DNA LAB, WE DON'T
15 NEED TO SEND ANYTHING DOWN THERE. I THINK WE GOT OUR
16 CASE.

17 OH, I DIDN'T EVEN MENTION THE FACT
18 THAT THE TWO OTHER CLOWNS FROM THE CAR CAME IN HERE
19 AND TOLD THAT YOU THEY WERE GUILTY AND THAT THEY DID
20 IN FACT GO INTO THE BANK, MR. JONES DID AND THAT MS.
21 LAWS DROVE THEM THERE, AND THAT THEY CONSPIRED AND
22 THEY PLANNED AND HE WORE A SKI MASK AND HE CARRIED
23 THE BAG IN AND HE'S GUILTY AND HE SAID HE WAS GUILTY
24 AND HE'S GOING TO PRISON AND HE KNOWS HE'S GOING
25 PRISON AND SO DOES MS. LAWS AND THEY DID IT TOO THEY

1 SAID.

2 I DIDN'T MENTION THAT THAT WAS ANOTHER
3 GOOD LITTLE PIECE OF EVIDENCE THAT WE HAD, AND
4 MR. JONES, HE SAID THAT FROM THE BEGINNING BEFORE
5 THERE WAS ANY HEAT. HE DIDN'T EVEN KNOW WHAT HIS
6 CHARGES WERE GOING TO BE. HE DIDN'T KNOW WHETHER HE
7 WOULD HAVE A LAWYER OR WHEN HE WOULD GET TO SOUTH
8 CAROLINA, WHAT WOULD HAPPEN WHEN HE GOT THERE, HOW
9 MUCH TIME HE WAS LOOKING AT, WHO THE PROSECUTORS WERE
10 GOING TO BE OR WHAT KIND OF OFFER THEY WERE GOING TO
11 MAKE, HE JUST SAID, I WENT IN THERE AND I TOLD THEM
12 THE TRUTH AND NO MATTER HOW MUCH MR. PORTER TRIED TO
13 MAKE HIM SAY, NOW YOU WERE HIGH ON LORTAB, YOU DIDN'T
14 REALLY KNOW WHAT YOU WERE DOING, NO, GRANDPA I REALLY
15 DID. I DID. I KNEW WHAT I WAS DOING. HE KNEW WHAT
16 HE WAS DOING THE WHOLE TIME. I JUST WANTED TO GET
17 THAT LITTLE THING OUT OF THE WAY BEFORE I LAUNCHED
18 INTO MY CLOSING ARGUMENT.

19 NOW DISPUTE ALL OF OUR TECHNICAL
20 GLITCHES AND SNAFUS THAT WE HAVE HAD THROUGHOUT THIS
21 TRIAL, I IN AN ACT OF PURE OPTIMISM HAVE CREATED A
22 POWER TO SHOW YOU SOME OF THE EVIDENCE THAT I THINK
23 THAT YOU NEED TO CONSIDER WHEN YOU COME BACK THERE
24 BECAUSE I HAVE FAITH THAT THIS IS GOING TO WORK SO
25 BEAR WITH ME AND CROSS YOUR FINGERS. HERE WE GO.

1 ALL RIGHT.

2 FIRST, I TOLD YOU AT THE BEGINNING
3 THAT THERE ARE MANY KINDS OF EVIDENCE. MOST OF THE
4 EVIDENCE THAT YOU HEAR IS TESTIMONIAL. TESTIMONIAL
5 EVIDENCE COMES IN THE FORM OF TESTIMONY FROM THE
6 WITNESS STAND, PEOPLE WHO SAW, HEARD, SMELLED, SAW
7 SOMETHING RELEVANT TO THIS CASE, HAVE A SEAT AND TELL
8 YOU WHAT IT IS THAT THEY SAW OR HEARD. SO YOU'VE GOT
9 TESTIMONY. BUT IN THIS CASE WE'RE DON'T HAVE JUST
10 TESTIFY, WE'VE GOT VIDEO AND WE HAVE PHOTOGRAPHS AND
11 SOME OF THAT IT'S IN TO. AND THEN LASTLY PHYSICAL
12 EVIDENCE, PHYSICAL EVIDENCE IS STUFF THAT YOU CAN
13 HOLD IN YOUR HANDS LIKE DUCK TAPE, NINE MILLIMETER
14 HAND GUNS, SKI MASKS, MACE, BULLETS, THAT KIND OF
15 STUFF. ALTHOUGH I DON'T THINK YOU WILL HAVE THE
16 BULLETS BACK THERE. IF YOU WANT TO SEE THEM WE
17 TYPICALLY DON'T SEND THE BULLETS BACK TO THE JURY
18 ROOM. I THINK YOU'LL ALL GET ALONG BUT AS A GENERAL
19 RULE WE HAVE HAD PEOPLE TRY TO LOAD GUNS IN THE PAST
20 IN THERE, JUST TO SEE, AND IT'S NOT A GOOD IDEA, BUT
21 IF YOU WANT TO SEE THE BULLETS THEY'RE IN HERE AND
22 WE'LL LAY THEM OUT ON THE RAIL AND YOU CAN FILE BY
23 THEM AND LOOK AT THEM TO YOUR HEART'S CONTENT, BUT
24 THE BULLETS WILL BE IN HERE, THE GUNS WILL BE IN
25 THERE WITH YOU, YOU'LL SEE THAT, SO YOU'LL HAVE ALL

1 THAT STUFF. YOU ARE GOING TO HAVE THE BOXES WITH THE
2 BAGS AND BAGS WILL TELL YOU WHAT'S IN THE BOXES, WHO
3 SEIZED IT, WHEN THEY SEIZED IT, WHERE IT WAS SEIZED
4 FROM, AND WHAT HAPPENED TO IT AFTER IT WAS SEIZED AND
5 ALL THAT'S GOING TO BE BACK THERE WITH YOU TOO.
6 THAT'S THE PHYSICAL EVIDENCE. SO LET'S GO THROUGH
7 IT.

8 THE TESTIMONY. THE BANK EMPLOYEES AND
9 THE CUSTOMERS. NOBODY DISPUTES THAT THE BANK WAS
10 ROBBED. NOBODY. IT'S JUST A QUESTION OF WHO DID IT.
11 MR. JONES AND MS. LAWS WILL TELL YOU THAT THEY DID
12 IT. AND THEY ALSO TELL YOU THAT THEY DID IT. THEY,
13 ON THE OTHER HAND, ADMIT THAT THEY WERE IN THE AREA
14 BUT GOT OUT OF THE CAR CONVENIENTLY IMMEDIATELY PRIOR
15 TO THE BANK BEING ROBBED. THEY DIDN'T DO IT, SOME
16 OTHER DUDE DID IT, SOME OTHER DUDES ACTUALLY. ALL
17 RIGHT.

18 THE POLICE TESTIFIED. NOW THE POLICE
19 WEREN'T THERE. THEY DON'T KNOW WHAT HAPPENED IN THE
20 BANK AND NOBODY IN THE BANK CAN TELL YOU THAT THESE
21 TWO GUYS DID IT BECAUSE THEY WORE MASKS. THAT'S WHY
22 ROBBERS WEAR MASKS SO THAT PEOPLE CAN'T LATER COME
23 INTO COURT AND GO, YES, THAT'S THE GUY WHO DID IT.
24 THAT'S THE WHOLE POINT OF A MASK IS TO PREVENT THAT
25 FROM HAPPENING. NOW THE POLICE DIDN'T ACTUALLY SEE

1 WHO DID IT EITHER, BUT THEY FOUND SOME INTERESTING
2 STUFF THAT WHEN YOU CONSIDER IT LEADS YOU TO CONCLUDE
3 THEY DID IT TOO.

4 WE GOT TESTIMONY FROM CODEFENDANTS:
5 ANGELA LAWS TESTIFIED. NOW MR. SMITH -- OH, SORRY --
6 MR. JAMIESON MADE A BIG TO DO SAYING THAT THERE WAS
7 NOTHING CONSISTENT BETWEEN THE STATEMENT THAT SHE
8 GAVE WHEN SHE WAS ARRESTED WHICH IS STATE'S EXHIBIT
9 76, AND THIS TOO WILL BE BACK THERE WITH YOU, AND THE
10 STATEMENT THAT SHE AGREED WAS TRUE AND TESTIFIED TO
11 HERE IN COURT THAT YOU HEARD. NOW I DON'T AGREE WITH
12 MR. JAMIESON'S ASSESSMENT OF THESE TWO STATEMENTS.
13 THE DIFFERENCE BETWEEN THE TWO STATEMENTS, BECAUSE
14 THERE IS A DIFFERENCE, IS WHEN ANGELA LAWS WAS
15 ARRESTED SHE GAVE A STATEMENT THAT IMPLICATED
16 EVERYBODY ELSE BUT HERSELF. SHE KEPT HERSELF OUT OF
17 IT. SHE WAS ASLEEP FOR A LITTLE WHILE, THEY WERE
18 PICKING PEOPLE UP, SHE DIDN'T KNOW WHERE THEY GO;
19 THEY WENT TO THE BANK. THEY GOT OUT TO CASH SOME
20 CHECKS SHE THOUGHT BUT THEN ALL OF A SUDDEN SHE
21 REALIZED THAT THEY HAD GUNS AND SKI MASKS ON AND
22 SAID, OH, WAIT A MINUTE, I DON'T THINK THEY ARE
23 ACTUALLY GOING TO CASH CHECKS, UH. MAYBE THEY ARE
24 GOING IN TO ROB THE BANK AND SHE SAYS IN HER
25 STATEMENT TO THE POLICE ON THE DAY OF THE ROBBERY

1 THAT'S WHEN SHE FIRST REALIZED SOMETHING WAS AMISS
2 AND SHE GOT SUSPICIOUS AND SHE REALIZED THEY WERE
3 GOING TO ROB THE BANK BUT SHE DECIDED SHE WAS GOING
4 TO STAY THERE IN THE CAR ANYWAY BECAUSE SHE LOVED
5 KENNETH YOUNG, SHE LOVED HIM, AND SHE DIDN'T WANT TO
6 JUST LEAVE HIM THERE AT THE BANK. SO HER STATEMENT
7 THAT DAY IS KIND OF RIDICULOUS WHEN YOU THINK ABOUT
8 IT BECAUSE IT DOES PUT IT ALL ON THEM SO THEY ARE
9 STILL GUILTY BY THIS STATEMENT, IT'S JUST SHE'S NOT.
10 WHAT CHANGED WAS: I'M GUILTY TOO. THEY ARE GUILTY
11 LIKE I TOLD YOU BEFORE AND I'M REALLY GUILTY TOO AND
12 I'M GOING TO CONFESS AND PLEAD GUILTY AND ADMIT WHAT
13 I DID IN OPEN COURT TO THIS JUDGE AND DO MY TIME AND
14 I'LL TESTIFY AGAINST THEM. THAT'S WHAT CHANGED.

15 BUT READ THEM YOURSELF. SHE PUTS IT
16 ON THEM. THEY STOPPED AT ON THE RUN. THEY WENT BACK
17 BEHIND THE CAR, HAD TO GO TO THE BATHROOM. YOUNG
18 SAID ONE OF THE GUYS NEEDED TO CASH A CHECK AND GAVE
19 HER DIRECTIONS TO A BANK ACROSS THE WATER. LAWS
20 STATED THAT SHE PULLED UP RIGHT IN FRONT OF THE BANK
21 AND THEY ALL GOT OUT WITH MASKS ON. SHE KNEW WHAT
22 THEY WERE GOING TO DO. SAW THE YOUNG GUY IN THE BACK
23 WITH A BAG. I MEAN, SHE GAVE A PRETTY COMPLETE
24 STATEMENT EXCEPT FOR HER PART; THAT'S WHAT SHE OWNED
25 UP TO LATER AND THAT'S NOT UNREASONABLE. THAT'S WHAT

1 A LOT PEOPLE DO. SHE WAS SCARED. SHE HAS A CRIMINAL
2 HISTORY BUT SHE HAD NEVER DONE ANY TIME IN JAIL.
3 SHE'S GOT MINOR STUFF AND SHE KNEW THAT SHE HAD MOVED
4 FROM, YOU KNOW, MINOR LEAGUE BASEBALL TO THE MAJOR
5 LEAGUES. BANK ROBBERY IS SERIOUS CRIME. FORGERY
6 CHECK, STEALING MONEY FROM YOUR EMPLOYER, MINOR.
7 GOING INTO A BANK WITH SKI MASKS AND GUNS AND MACING
8 PEOPLE AND LOADING UP \$18,000 WORTH OF CASH, STUFFING
9 THEM INTO THE VAULT AND CLOSING THE DOOR -- MAJOR.
10 SHE SAID, I'M IN REAL TROUBLE NOW, SO HER STATEMENT
11 WAS VERY SELF-PROTECTIVE. JUDGE HER TESTIMONY BASED
12 ON HOW SHE WAS ON THE STAND THOUGH, CONSIDER THAT
13 TOO. SHE WAS PRETTY FORTHRIGHT. SHE WASN'T HAPPY TO
14 BE HERE, WHO CAN BLAME HER, HER POSITION RIGHT NOW IS
15 PRETTY BAD. SHE'S GOING TO PRISON. SHE KNOWS IT.
16 SHE'S NOT HAPPY ABOUT BEING HERE, BUT SHE TOLD THE
17 TRUTH AND IT DIDN'T REALLY CHANGE A WHOLE LOT OVER
18 TIME.

19 DONSHAVIS JONES, HIS TESTIMONY, I
20 SUBMIT, IS EVEN BETTER IN ONE RESPECT. HE ADMITTED
21 FROM THE VERY BEGINNING THAT HE WAS IN THE BANK.
22 THEY CAN'T A REALLY TOUCH HIM WITH THAT WHOLE "HE'S
23 JUST SELLING OUT FOR THE DEAL." NO, ACTUALLY, THIS
24 IS DEFENSE EXHIBIT NUMBER TWO, HIS STATEMENT IS
25 ATTACHED AS A PART OF THAT, ACTUALLY DONSHAVIS, HE

1 SOLD OUT BEFORE THERE WAS A DEAL, SO HE DIDN'T REALLY
2 BUY ANYTHING AND WE DIDN'T-- I MEAN WE DIDN'T BUY
3 ANYTHING. HE DIDN'T SELL US ANYTHING WE DIDN'T
4 ALREADY HAVE. HE GAVE US THIS THE DAY OF THE ROBBERY
5 AND HE PUT IT RIGHT ON THEM. PORTER IS HIS
6 GRANDFATHER, HE KNOWS KY, AND LAWS IS YOUNG'S
7 GIRLFRIEND. KY IS KENNETH YOUNG. THEY MET ABOUT A
8 MONTH AGO. WENT TO THE BANK. WENT INSIDE TO CHECK
9 IT OUT. FRIDAY 7:30 OR 8 O'CLOCK PORTER CALLED, TOLD
10 THEM THEY WERE ON THE WAY TO PICK HIM UP AND HE
11 UNDERSTOOD THAT PORTER WAS IN THE CAR WITH YOUNG AND
12 LAWS. JONES STATED HE WAS SUPPOSED TO BRING A BAG TO
13 PUT THE MONEY IN. YOUNG BROUGHT A SKI MASK FOR EACH
14 OF THEM. THEY STOPPED AT ON THE RUN -- HOW IRONIC IS
15 THAT? A LITTLE BIT OF FORESHADOWING FOR YOU THERE,
16 ON THE RUN, PRETTY GOO. YOUNG STOPPED AT ON THE RUN
17 SO YOUNG COULD STICK THE PAPER TAG ON THE CAR. THEN
18 THEY WENT ON TO THE BANK, WENT IN, SHE PULLED UP,
19 THEY ALL GOT OUT WITH THEIR MASKS ON AND WENT INSIDE.
20 PORTER HAD A .9 MILLIMETER, YOUNG HAD .38 PISTOL
21 ALONG WITH SOME MACE. WENT INSIDE, HE DOES NOT KNOW
22 WHAT PORTER AND YOUNG DID BUT JONES SAID HE RAN AND
23 STARTED GETTING THE MONEY.

24 THE COURT: MR. BRACKETT, I'M GOING TO ASK
25 YOU SLOW DOWN A LITTLE BIT. I'M SURE SHE'S HAVING

1 TROUBLE KEEPING UP WITH YOU.

2 MR. BRACKETT: I'M SORRY.

3 THE PLAN WAS TO GO BACK TO LAWS' HOUSE
4 AND SPLIT THE MONEY UP. THE POLICE GOT BEHIND THEM,
5 THE BIG CHASE, DEAD END. HE HAD THE SHIRT AND PAIR
6 OF SHOES IN THE PILLOW IN CASE HE HAD TO CHANCE, IF
7 HE HAD TO RUN. DEAL WHEN HE MADE THAT STATEMENT?
8 NO, HE HAD NO DEAL. HE GAVE THIS STATEMENT BEFORE HE
9 KNEW KEVIN BRACKETT OR E. B. SPRINGS EVEN EXISTED AND
10 WE'RE THE ONES THAT NEGOTIATE THE DEALS. NO DEAL.
11 THIS IS JUST THE TRUTH. SO TRYING TO HIT HIM WITH
12 THE WHOLE HE SOLD OUT, DONSHAVIS SOLD HIS GRANDFATHER
13 OUT, DOESN'T HOLD ANY WATER. THEY CAN'T HIT HIM WITH
14 THAT.

15 DIDN'T IMPEACH HIM WITH ANY
16 CONVICTIONS. 22 YEARS OLD, HE'S 22 YEARS OLD, HIS
17 GRANDFATHER IS 56, AND SAYS HIS GRANDFATHER GOT HIM
18 INTO THIS, 22 YEARS OLD, THEY DIDN'T HAVE ANY
19 CONVICTIONS TO IMPEACH HIM WITH. HIS GRANDFATHER
20 ASKED HIM, HE SAID, ISN'T IT TRUE YOU HAVE SOME
21 FAMILY PROBLEMS? THIS IS THE ONE QUESTION HE MESSED
22 UP ON. HE MESSED UP ON THIS QUESTION, MR. PORTER, HE
23 MESSED UP BECAUSE THE ANSWER HE GAVE WAS NO, BUT THE
24 ANSWER, THE TRUE ANSWER, IS YES. MR. DONSHAVIS
25 JONES, HE'S GOT FAMILY PROBLEMS AND HIS FAMILY

1 PROBLEM IS HIS GRANDFATHER JOHNNELL PORTER, JOHNNELL
2 PORTER THE MAN WHO DRAGGED HIM ALONG INTO THIS MESS,
3 AND AN OTHERWISE STRAIGHT, CLEAN KID, WHO HAD NO
4 PROBLEMS, IS NOW GOING TO PRISON FOR 6 TO 8 YEARS AND
5 THAT'S A SHAME. THAT'S A DARN SHAME. THAT'S JUST A
6 TRAVESTY AND HE SITS OVER THERE TRYING TO PAINT THIS
7 GUY AS THE BAD GUY. PLEASE.

8 HERE'S WHERE WE'RE GOING TO TEST MY
9 TECHNOLOGICAL PROWESS. THIS IS A VIDEO CLIP, JUST
10 ONE CLIP, THE WHOLE VIDEO WHICH IS RIGHT HERE FROM
11 THE BANK OF YORK IS STATE'S EXHIBIT ONE. THE ENTIRE
12 VIDEO THAT WAS PLAYED ON TUESDAY IN THE COURTROOM
13 HERE, THIS IS STATE'S EXHIBIT ONE AND WAS PUT INTO
14 EVIDENCE ON TUESDAY AND HAS REMAINED IN EVIDENCE
15 SINCE TUESDAY, THE SAME CD WITH THIS MARK ON IT STAYS
16 IN THE CUSTODY OF THE COURT, SO DESPITE MR. PORTER'S
17 COMPLAINTS NOBODY CHANGED THIS VIDEO AND ADDED IN
18 SOME CAR DRIVING UP AND PULLING BEHIND. THAT LITTLE
19 WHITE CAR THAT PULLED UP BEHIND HIM, IT WAS THERE ON
20 TUESDAY TOO. THE ONLY THING THAT WASN'T THERE WAS
21 THIS RIDICULOUS BOJANGLES STORY. BUT MRS. JANIE
22 KENDRICK, SHE'S A REAL PERSON, SHE REALLY DOES LIVE
23 IN RIVER HILLS; SHE'S NOT AN ACTRESS THAT WE HIRED TO
24 COME IN HERE AND SAY SHE WAS DRIVING THAT WHITE CAR
25 AND SAY THAT THE OTHER CAR DIDN'T STOP AT THE

1 BOJANGLES. SHE'S A REAL PERSON AND SHE WAS REALLY AT
2 THE BANK OF YORK AND SHE WAS REALLY DRIVING THAT
3 LITTLE WHITE CAR. NOBODY TAMPERED WITH THIS.

4 THIS IS A LITTLE VIDEO CLIP, LET'S SEE
5 IF I CAN GET IT TO WORK, AND OF COURSE. THIS IS FROM
6 A SECTION OF THE VIDEO, THIS VIDEO DOESN'T WORK ON
7 THIS, YOU'LL HAVE THE VIDEO BACK THERE AND A TV WITH
8 A DVD PLAYER IN THE BACK, GO THROUGH, THERE IS A
9 PAUSE BUTTON, PLAY AROUND WITH IT A LITTLE BIT, AND
10 GET IT TO PAUSE AND STOP. RIGHT, THERE IS ONE ANGLE
11 FROM HERE, RIGHT OVER THE DOOR, AS THE THREE OF THEM
12 COME IN, STOP AND YOU'LL SEE THAT MR. JONES, THE
13 THIRD GUY COMING IN WITH THE BAG, HE'S GOT SOMETHING
14 IN HIS HANDS, AND IF YOU PAUSE IT, IT IS A STOP
15 PLAYING FILM, THIS ISN'T LIKE FLUID FULL MOTION 35
16 MILLIMETER LIKE GOING TO THE CINEMA MOVIE, THIS IS A
17 SECURITY VIDEO, BUT YOU CAN PAUSE IT AT ONE STOP AND
18 YOU'LL SEE DONSHAVIS IS HOLDING A BAG IN HIS HAND,
19 HE'S GOT BOTH HANDS THERE.

20 THERE IS ANOTHER CLIP WHERE THE THREE
21 OF THEM ARE WALKING IN THE FRONT DOOR, THE CAMERA IS
22 ON THE FRONT DOOR AND IT'S WHEN THEY FIRST COME IN.
23 YOU'LL ALSO SEE IF YOU GO THROUGH STOP MOTION BIT BY
24 BIT YOU'LL SEE THE FIRST GUY COMING IN WHOSE WEARING
25 ALL DARK, DARK HOODIE OVER THE TOP, SKI MASK, AND

1 DARK PANTS. AS HE WALKS IN YOU CAN STOP IT AT ONE
2 POINT AND YOU'LL SEE THE .9 MILLIMETER IN HIS HANDS.
3 IT'S CLEARLY THE FRAME OF THE SEMIAUTOMATIC PISTOL
4 WHICH YOU'LL HAVE BACK THERE TO COMPARE IT TO. THE
5 NEXT PERSON THAT COMES IN HOLDING IT AT ABOUT THIS
6 POINT WITH A WHITE RUBBER GLOVE, WHICH ARE ALSO IN
7 EVIDENCE, THE BLEACHED HANDS. WHO BLEACHES THEIR
8 HANDS? I MEAN PLEASE. THEY WERE WHITE BECAUSE HE
9 WAS WEARING WHITE SURGICAL GLOVES. THAT'S WHAT SHE
10 MEANT. YOU'LL SEE ONE HAND LIKE THIS AND YOU'LL SEE
11 A .38. THAT FELLOW IS WEARING A GRAY SKI MASK AND A
12 BLUE JACKET ABOUT LIKE THAT AND LIGHT BLUE JEANS.
13 THE THIRD PERSON COMING IN IS HOLDING SOMETHING IN
14 THEIR HANDS THAT LOOKS KIND OF LIKE A FOLDED UP
15 PILLOWCASE AND AT ONE POINT YOU'LL SEE HIS HAND COME
16 UP LIKE THIS AND THERE IS NOTHING IN IT. SO THEY
17 FOUND TWO GUNS. I DON'T KNOW IN THE CONFUSION DID
18 THEY THINK THAT EVERYBODY HAD A GUN? DID THEY DITCH
19 A GUN? BECAUSE IT REALLY DOESN'T MATTER WHETHER
20 DONSHAVIS HAD A GUN OR NOT, BUT I SUBMIT WHEN YOU
21 LOOK AT THE VIDEO YOU'LL SEE AND THAT WAS THE POINT
22 OF THIS VIDEO IS TO SHOW YOU THAT IT APPEARS AS
23 DONSHAVIS IS ENTERING THE BANK HE IS ONLY HOLDING THE
24 PILLOWCASE IN HIS HAND, HERE THERE IS, THAT'S IT.
25 THIS ONE WORKED. HALLELUJAH. HE UNFURLS IT. IT

1 SORT OF FALLS DOWN BESIDE HIM. IT APPEARS THAT
2 DONSHAVIS JONES IS ONLY HOLDING THE PILLOWCASE. BUT
3 YOU'LL HAVE IT BACK THERE AND IT LOOKS BETTER, IT'S
4 CLEAR AND SHARPER ON THAT THAN IT IS THROUGH THIS
5 PROJECTOR AND THIS COMPUTER. YOU'LL HAVE IT BACK
6 THERE AND YOU CAN STOP IT AND TAKE A LOOK AT IT
7 YOURSELF.

8 THE NEXT PIECE OF EVIDENCE I WANT YOU
9 TO CONSIDER IS THE VIDEOS IN GENERAL AND WHEN YOU
10 LOOK AT THE VIDEOS, I WANT YOU TO REMEMBER THERE IS
11 TWO DIFFERENT, THERE IS ONE FROM THE CARS AND THE ONE
12 FROM THE BANK; OKAY. THE CAR CHASE VIDEOS FROM THE
13 TWO POLICE OFFICERS WHO CHASED THEM UP INTO
14 CHARLOTTE, THE ONE IS THE CAR THAT WAS RIGHT BEHIND
15 HIM, VINESETT'S VIDEO, AND THEN GIBSON'S VIDEO.
16 VINESETT'S IS THE ONE THAT HITS THE CAR DOOR. GIBSON
17 IS THE ONE THAT PULLS OFF TO THE RIGHT OF THE CAR
18 DOOR. WHEN YOU SEE THEM YOU'LL KNOW WHICH ONE IS
19 WHICH.

20 GIBSON'S VIDEO IS REALLY IMPORTANT
21 BECAUSE IT SHOWS MR. YOUNG AND MR. PORTER BEING
22 PULLED OUT OF THE CAR. VINESETT'S VIDEO SHOWS THE
23 MONEY BAG COMING OUT ON THE HOOD OF THE CAR AND HIM
24 PULLING DONSHAVIS JONES OUT AND IT'S RATHER ABRUPT,
25 BUT THIS HAS BEEN A 80 MILE AN HOUR - 90 MILE AN HOUR

1 CHASE THROUGH THE RAIN DOWN I-77, I'M SURE THAT
2 EVERYBODY'S ADRENALINE WAS PUMPING, AND EVERYBODY WAS
3 SCARED CHASING. YOU ARE CHASING A CAR THAT'S
4 SUPPOSED TO BE FILLED OF ARMED MEN. YOU DON'T KNOW
5 HOW DESPERATE THEY ARE OR WHAT THEY ARE GOING TO DO.
6 IT WAS A SCARY TIME. BUT TAKE A GOOD LOOK AT THE
7 VIDEO FROM THE RIGHT SIDE OF THE CAR AND COMPARE THE
8 TWO. THERE'S A COUPLE OF THINGS THAT I'LL POINT OUT
9 AND Y'ALL CAN GO BACK THERE AND LOOK AT THEM UNTIL
10 YOUR HEART'S CONTENT AND COMPARE THEM YOURSELF, BUT
11 THERE IS A COUPLE OF THINGS THAT I WANTED TO POINT
12 OUT TO YOU THAT I THINK WERE IMPORTANT. OKAY.

13 TAKE A LOOK AT THIS ONE. ALL RIGHT.
14 THIS IS THE GUY WITH THE BLUE JACKET AND THE GRAY,
15 AGAIN IT'S FUZZY, LOOK AT IT BACK THERE, YOU'LL SEE,
16 YOU SEE THIS, RIGHT HERE, THERE. LET'S TAKE A LOOK
17 AT THE NEXT CLIP. THIS IS THE CLIP FROM, THAT WAS
18 MR. YOUNG BEING PULLED OUT OF THE CAR. I SUBMIT TO
19 YOU THIS IS MR. YOUNG'S JACKET THAT WAS TAKEN OFF HIS
20 BACK, STATE'S EXHIBIT FIVE. (DISPLAYS THE JACKET.)
21 THIS IS THE JACKET THAT WAS THE ROBBER WAS WEARING.
22 THERE WAS ANOTHER CLIP, THE SAME ONE WHERE THEY ARE
23 COMING IN THE BANK AT THE VERY BEGINNING, ALL THREE
24 OF THEM WALK IN THE BANK, FIRST PORTER, THEN YOUNG,
25 THEN DONSHAVIS JONES, YOUNG IS SECOND, AND YOU CAN

1 CLEARLY SEE THIS ON THERE AS WELL. MR. YOUNG'S
2 JACKET.

3 NOW WE DIDN'T SEE ANY DREAD LOCKS IN
4 THE VIDEO, IT'S TRUE, BUT THEN AGAIN, WHEN YOU LOOK
5 AT THOSE VIDEOS YOU WILL SEE THAT THEY ALL HAVE
6 HOODIES THAT ARE UP OVER THEIR SKI MASKS AND PUT YOUR
7 SKI MASK ON, YOU PULL YOUR HOODIE UP, AND YOU HAVE
8 YOUR DREAD LOCKS GOING DOWN THE BACK OF YOUR JACKET.
9 WHAT ARE YOU GOING TO SEE? IF THEY WERE EVEN A
10 LITTLE BIT LONGER YOU CAN TUCK THEM DOWN BACK OF YOUR
11 PANTS AND THEN WHEN YOU GO TO SIT DOWN IN THE CAR,
12 YOU GOING TO DRIVE AROUND WITH YOUR SKI MASK ON?
13 PROBABLY NOT, ESPECIALLY IF YOU JUST ROBBED A BANK.
14 YOU ARE GOING TO TAKE YOUR SKI MASK OFF AND IT'S
15 PROBABLY NOT GOING TO BE TOO COMFORTABLE TO SIT ON
16 YOUR HAIR SO YOU MIGHT PULL YOUR HAIR UP AND OUT OF
17 THE BACK OF YOUR JACKET, AND ZIP IT DOWN AND MAKE
18 YOURSELF A LITTLE MORE COMFORTABLE. MR. YOUNG.

19 HERE'S THE VIDEO FROM THE FRONT DOOR
20 THAT I WAS TELLING YOU ABOUT, IF I CAN GET IT TO
21 WORK. THERE AGAIN IS MR. YOUNG GOING IN THE DOOR,
22 WHITE GLOVES WITH A SKI MASK, AND A LITTLE WHITE
23 EMBLEM ON THE FRONT. THE FIRST MAN THROUGH ALL DARK.
24 ALL DARK, ALL DARK SWEAT SHIRT, DARK HOODIE, DARK
25 PANTS. AND THERE WAS DONSHAVIS. I'M GOING TO TRY TO

1 PLAY THAT ONE AGAIN AND SEE IF I CAN STOP IT WHEN
2 DONSHAVIS'S HANDS AS HE COMES THROUGH. THERE WE GO.
3 I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT IS THE
4 PILLOWCASE AND THAT IS AN EMPTY HAND. LOOK AT IT ON
5 THE BETTER TV. HIS HAND WILL BE EMPTY. I BELIEVE
6 HIS HAND WAS EMPTY. NOW WHETHER HE HAD A GUN, MAYBE
7 HE PULLED IT OUT LATER, AGAIN IT'S NOT IMPORTANT THAT
8 HE DID OR HE DIDN'T. I JUST THINK IT'S IMPORTANT
9 NECESSARILY FOR HIS TESTIMONY, FOR THE CREDIBILITY OF
10 MR. JONES BECAUSE HE SAYS HE DIDN'T HAVE A GUN.

11 THE FOLKS IN THE BANK ALSO THOUGHT
12 THAT THERE WAS AS MANY AS FOUR OR POSSIBLY FIVE
13 PEOPLE IN THE BANK. I THINK FEAR HAS A LOT TO DO
14 WITH YOUR PERCEPTION.

15 THIS IS THEM LEAVING THE BANK. LET'S
16 LOOK AT THAT AGAIN. THAT IS MR. PORTER THE LAST MAN
17 OUT. LOOK AT IT AGAIN. LOOK AT ALL THE VIDEO OF
18 MR. PORTER IN PARTICULAR, THE FELLOW IN THE DARK,
19 HE'S WEARING THE DARK HOODIE, THE DARK PANTS. AND
20 NOW THIS IS FROM MR. GIBSON, OFFICER GIBSON'S CAR,
21 COME A LITTLE BIT CLOSER, WHAT ARE THE ODDS OF THAT?
22 POOR MR. PORTER, NOT ONLY DID HE GET LET OUT BEFORE
23 THE ROBBERY, PICKED UP AFTER THE ROBBERY, BUT HE
24 HAPPENED TO BE BEARING DARK PANTS AND A DARK HOODIE
25 JUST LIKE THE ROBBER. WHAT A HORRIBLE COINCIDENCE

1 FOR POOR MR. PORTER TO BE CAUGHT IN THIS SITUATION
2 LIKE THIS. IT'S RIDICULOUS.

3 LET'S TALK QUICKLY ABOUT THE PHYSICAL
4 EVIDENCE. \$18,000 IN CASH. THE MONEY RETURNED TO
5 THE BANK INCLUDING THE \$500 IN BAIT MONEY, MARKED
6 MONEY, SO THERE IS NO QUESTION THAT IS THE SAME MONEY
7 THAT WAS PREVIOUSLY LOCATED IN THE VAULT OF THE BANK
8 OF YORK IMMEDIATELY PRIOR TO THE ARRIVAL OF MISTERS'
9 PORTER, LAWS, YOUNG, AND JONES.

10 THREE SKI MASKS. YOU'LL HAVE THEM
11 BACK THERE. I'M NOT GOING TO DRAG THEM OUT. YOU CAN
12 LOOK AT THEM IF YOU WANT. COINCIDENTALLY TWO DARK
13 SKI MASKS, ONE LIGHT GRAY SKI MASK, JUST LIKE THE
14 VIDEO SHOWS. TWO GUNS: A .9 MILLIMETER
15 SEMIAUTOMATIC HANDGUN, THE KIND THAT HAS A CLIP AT
16 THE BOTTOM OF IT, AND .38 CALIBER REVOLVER THE KIND
17 THAT HAS A LITTLE CYLINDER THAT SPINS, IT'S THE
18 REVOLVER. LOOK AT THE VIDEO IN THERE, YOU'LL SEE IT
19 APPEARS TO BE A REVOLVED AND A .9 MILLIMETER.
20 AGAIN, A HECK OF A COINCIDENCE.

21 THE CLOTHING MATCHES. THERE IS ONE
22 OTHER PIECE OF CLOTHING THAT I WANT YOU TO TAKE A
23 LOOK AT BECAUSE I THINK IF YOU REALLY LOOK HARD
24 ENOUGH AT IT, I THINK YOU WILL SEE THIS IS THE PANTS
25 THAT MR. YOUNG ACKNOWLEDGED HE WAS WEARING. NOW I

1 DIDN'T PULL THE CLIP BECAUSE IT JUST DOES IT SO FAINT
2 IT DOESN'T LOOK GOOD ON THIS, BUT GO BACK AND LOOK AT
3 THE PICTURES, THE VIDEO CLIPS OF THE ROBBER IN THE
4 STORE, THE ONE WITH THE LIGHT GRAY MASK, AND LOOK
5 CAREFULLY I BELIEVE YOU WILL SEE A LITTLE POOFED OUT
6 PORTION FROM THE CARGO PANTS ON THE SIDE OF HIS
7 PANTS. THEY WILL ALSO BE MORE OR LESS THE SAME COLOR
8 AS MR. YOUNG'S PANTS. AGAIN ANOTHER HORRIBLE
9 COINCIDENCE? OR HAVE WE GOT THE RIGHT GUYS.

10 THIS ONE IS A NO BRAINER. THE DUCK
11 TAPE IN THE CAR, SAME COLOR AS THE DUCK TAPE THAT HAD
12 THE DEALER TAG TAPED ON THE BACK OF IT, THE DEALER
13 TAG IS IN AND THE MACE FOUND ON YOUNG. OF COURSE,
14 HE'S GOING TO SAY THAT THE MACE WAS THE MYSTERY GUY'S
15 MACE THAT WAS IN THERE WHEN HE GOT OUT WITHIN A
16 COUPLE OF MINUTES FROM THE BARK ROBBERY BECAUSE
17 REMEMBER HE SAID AT ABOUT 10:25, I'VE BEEN THERE
18 ABOUT HALF AN HOUR, WAITING FOR CARLOS OR WHOEVER
19 THIS DUDE IS THAT IS GOING TO PAY HIM \$1800 TO SHOW
20 UP AND THEN FOUND OUT HE WASN'T COMING, SO I CALLED
21 ANGELA AND SHE SAID I'LL BE THERE IN TWO MINUTES AND
22 THAT'S APPROXIMATELY THE TIME OF WHEN THE BANK
23 ROBBERY WENT DOWN, SO WE KNOW ANGELA WAS THERE
24 BECAUSE SHE SAID SHE WAS THERE AND THE CAR IS ON THE
25 VIDEO THERE AND THERE IS NO DOUBT HE EVEN ADMITS THAT

1 HE WAS LATER IN THAT CAR WHEN IT WAS STOPPED, SO
2 THAT'S WHY THE FINAL QUESTION I ASKED MRS. KENDRICK
3 IS THERE ANOTHER BOJANGLES WITHIN THREE MINUTES OF
4 THAT BANK? AND SHE SAID NO, I'M FAMILIAR WITH THAT
5 AREA. THERE IS NO WAY SHE COULD HAVE BEEN AT THE
6 BANK AND THEN PICKED HIM UP AT ANY OTHER BOJANGLES ON
7 49 BECAUSE THERE IS NO OTHER BOJANGLES ANYWHERE CLOSE
8 TO THAT BANK ON 49. SO IF THE ROBBERY HAPPENED AT
9 AROUND 10:30-10:25 AND CLOCKS ARE OFF, YOU HEARD FROM
10 VINESETT THE TIMING IS NEVER GOING TO BE EXACTLY ON;
11 MAYBE IF WE WERE REALLY MAKING ALL THIS STUFF UP WE
12 WOULD PUT IT DEAD ON SO IT WENT RIGHT BY THE MINUTE,
13 BUT SINCE WE'RE NOT, WE ARE GOING TO DEAL WITH
14 REALITY WHICH MEANS CLOCKS ARE GOING TO BE OFF. WHEN
15 WAS THE LAST TIME YOU CHANGED YOUR CLOCK ON YOUR FAX
16 MACHINE AT THE OFFICE OR CHECKED IT TO FIND OUT
17 WHETHER IT WAS ON OR NOT. IT'S PROBABLY OFF BY 5,
18 10, 15 MINUTES; IT MAY BE OFF BY 3 DAYS. IT MAY SAY
19 2:30 IN THE MORNING WHEN YOU FAX SOMETHING AT FOUR IN
20 THE AFTERNOON. IT COULD BE COMPLETELY OFF. BUT WE
21 DO KNOW BY HIS OWN TESTIMONY AT ABOUT 10:25 HE WAS AT
22 THE BOJANGLES AND HE CALLS ANGELA LAWS ON HIS CELL
23 PHONE AND SAYS WHEN YOU COMING TO PICK ME UP AND SHE
24 SAYS IN ABOUT TWO MINUTES, SO THE ONLY WAY SHE COULD
25 HAVE BEEN AT THE BANK ROBBING IT, WHICH EVEN HE

1 ADMITS SHE WAS THERE DOING THAT, AND THEN TWO MINUTES
2 LATER AT THAT BOJANGLES UNLESS HE WAS AT THE
3 BOJANGLES ON 49 IN LAKE WYLIE, BUT WE KNOW THAT
4 DIDN'T HAPPEN BECAUSE MRS. JANIE KENDRICK CAME HERE
5 AND TOLD YOU IT DIDN'T HAPPEN. HIS WHOLE DEFENSE IS
6 AMAZING AND INCREDIBLE AND FANTASTIC AND THAT'S
7 BECAUSE HE'S REALLY GOT NO CHOICE. THERE IS NOTHING
8 ELSE TO SAY. HE'S LEFT WITH NO OPTION BUT TO MAKE UP
9 SOME INCREDIBLE OUTRAGEOUS STORY THAT CAN'T POSSIBLY
10 HOLD WATER.

11 A PAYCHECK. THESE ARE THINGS THAT
12 WOULD BE VERIFIABLE. WE DON'T HAVE A PAYCHECK.
13 WHERE IS CARLOS MINTEZ.

14 PORTER, THIS IS INTERESTING THOUGH
15 BECAUSE HE DID THROW HIS BUDDY UNDER THE BUS, PORTER
16 LEFT WITH THE MYSTERY DUDE FROM THE T-BIRD. HE
17 DIDN'T TRY TO PUT PORTER AT THE BOJANGLES WITH HIM.
18 HE WASN'T GOING TO THROW HIM A LIFE VEST. POOR
19 PORTER HAD TO GET IN THE CAR -- ACCORDING TO YOUNG,
20 HE HAD TO GET IN THE CAR WITH THE ROBBERS AND HEAD
21 OFF DOWN THE ROAD, EVEN THOUGH MR. PORTER DESPERATELY
22 TRIED TO GET HIM TO SAY, DIDN'T YOU HEAR ME CUSSING
23 AND YELLING? I SAW YOU CHANGING THE JACKET OUT, GIVE
24 ME SOME LOVE, BABY. YOUNG SAID -- NO, I DON'T
25 ACTUALLY REMEMBER YOU SAYING THAT.. RIGHT UNDER THE

1 BUS. POOR MR. PORTER. PICKED UP ON THE SIDE OF THE
2 ROAD; NO, DIDN'T HAPPEN. CELL PHONE CALLS,
3 TRACEABLE, IDENTIFIABLE, VERIFIABLE, DIDN'T HAPPEN.
4 DIDN'T HAPPEN.

5 LADIES AND GENTLEMEN, THEY PUT CHAIRS
6 BACK IN YOUR JURY ROOM, THEY PUT THEM BACK THERE SO
7 THAT YOU CAN SIT DOWN CAREFULLY, THOUGHTFULLY
8 CONSIDER THE EVIDENCE AND DISCUSS IMPORTANT WEIGHTY
9 QUESTIONS ABOUT IT, DECIDE ISSUES THAT ARE IMPORTANT
10 TO THE CASES THAT JURIES HAVE TO DECIDE, BUT JUST
11 BECAUSE THEY PUT THE CHAIRS BACK THERE, ONE THING YOU
12 WILL HEAR AND ONE THING YOU WILL NOT HEAR THE JUDGE
13 NOT DO IS CHARGE THAT YOU HAVE TO ACTUALLY USE THE
14 CHAIRS. YOU DO NOT. YOU CAN CHOSE TO STAND AND
15 CONVICT WITHIN MOMENTS AND THIS, LADIES AND
16 GENTLEMEN, IS A CASE THAT SHOULD NOT MERIT ANY MORE
17 OF YOUR TIME THAN IT ALREADY HAS. THESE ARE THE TWO
18 MEN, THESE ARE THE TWO MEN, MR. JOHNNELL PORTER RIGHT
19 HERE AND MR. KENNETH YOUNG RIGHT HERE, THAT ENTERED
20 THE BANK OF YORK ON HIGHWAY 49 ARMED WITH GUNS AND
21 MACE, WEARING SKI MASKS, AND YELLING AND SCREAMING AT
22 THESE POOR PEOPLE HERE. THESE ARE THE TWO MEN HERE
23 THAT MADE THESE GOOD PEOPLE WHO WERE TRYING TO GET
24 THROUGH THEIR LAST WORK DAY BEFORE CHRISTMAS GET DOWN
25 ON THEIR HANDS AND KNEES AND CRAWL LIKE ANIMALS WHILE

1 THIS MAN HERE SAT THERE, STOOD THERE, MACING THEM AND
2 POINTING HIS GUN AT THEM, DON'T LOOK AT ME, KEEP
3 CRAWLING.

4 THESE ARE THE TWO MEN RIGHT HERE THAT
5 PUT POOR ROBERT MORGAN, THAT POOR SHUFFLING 82 YEAR
6 OLD MAN WHO JUST SHOWED UP TO DO A LITTLE BIT OF
7 BUSINESS BEFORE CHRISTMAS AND SHOVED HIM BACK IN SO
8 HE COULDN'T STAND UP AND FELL DOWN AND SCARED HIM SO
9 BAD THAT SIX MONTHS AFTER THIS HAPPENED TO HIM HE SAT
10 HERE AND COULDN'T TELL YOU EVERYTHING THAT HAPPENED
11 TO HIM AND HOW SCARED HE WAS.

12 AND THESE POOR PEOPLE FIGHTING BACK
13 THE TEARS AND THE ANGER AND THE SHAME AND THE FEAR,
14 RECALLING THESE EVENTS THAT HAPPENED TO THEM SIX
15 MONTHS AGO AS THEY THOUGHT ABOUT THEIR CHILDREN AND
16 HOW THEIR PLANS FOR CHRISTMAS NOT COME THROUGH
17 BECAUSE THEY MIGHT NOT MAKE IT OUT OF THE BANK.

18 THESE TWO MEN ORDERED UP A MIGHTY MEAL
19 ON DECEMBER 22, 2006, AND NOW THE CHECK HAS COME TO
20 THE TABLE AND Y'ALL GOT TO COLLECT AND THEY HAVE TO
21 PAY, MAKE SURE THEY DO. COME BACK IN THIS JURY ROOM
22 AND TELL THEM YOU DON'T BELIEVE THEM. TELL THEM THEY
23 ARE NOT FOOLING ANYBODY. TELL THEM YOU KNOW THEY
24 WENT IN THAT BANK, THAT THEY POINTED THOSE GUNS, THEY
25 SCREAMED AND YELLED AND SCARED THOSE PEOPLE AND HOSED

1 THEM DOWN WITH MACE AND KIDNAPPED THEM LOCKING THEM
2 IN THE VAULT, TELL THEM THEY ARE GUILTY. THANK YOU.

3 THE COURT: MEMBERS OF THE JURY PANEL,
4 BEFORE I CHARGE YOU ON THE LAW WE'RE GOING TO TAKE A
5 SHORT REFRESHER BREAK BECAUSE MY CHARGE WILL TAKE A
6 LITTLE BIT OF TIME. IT WON'T BE A LONG BREAK. MR.
7 FOREMAN, IF YOU WILL JUST TELL US WHEN YOU ARE READY
8 TO RETURN.

9 MR. FOREMAN: YES, SIR.

10 THE COURT: ALL RIGHT.

11 (THE JURY EXITS THE COURTROOM AT 04:15
12 PM.)

13 THE COURT: WE'LL TAKE A REAL SHORT BREAK.

14 (COURT'S IN RECESS AT 04:15 PM.)

15 (COURT RESUMES AT 04:28 PM.)

16 THE COURT: BRING IN THE JURY.

17 (THE JURY RETURNS TO THE COURTROOM AT
18 04:28 PM.)

19 CHARGE BY THE COURT:

20 MEMBERS OF THE JURY PANEL, I
21 APPRECIATE THE ATTENTION THAT YOU'VE GIVEN ME AND THE
22 ATTORNEYS AND MR. PORTER AND THE WITNESSES IN THIS
23 CASE. I'M NOW GOING TO CHARGE YOU THE LAW THAT YOU
24 APPLY TO THE FACTS. I'M GOING TO QUICKLY GO OVER THE
25 CHARGES AGAIN. LATER IN MY CHARGE I WILL TELL YOU

1 THE ELEMENTS. THAT IS THE THINGS THE STATE MUST
2 PROVE BEYOND A REASONABLE DOUBT BEFORE YOU COULD
3 CONVICT EITHER OR BOTH OF THESE INDIVIDUALS FOR THE
4 OFFENSES.

5 BUT FIRST JUST TO CATALOG WHAT THE
6 CHARGES ARE, THESE ALL OF COURSE ARE ALLEGED TO HAVE
7 OCCURRED ON DECEMBER 22 OF LAST YEAR HERE IN YORK
8 COUNTY ALL DEALING WITH THE BANK OF YORK. EACH OF
9 THESE GENTLEMEN ARE CHARGED WITH ALL OF THESE, EXCEPT
10 FOR ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
11 NATURE WHICH WILL BE THE LAST ONE I MENTION AND THAT
12 CHARGE IS ONLY AS TO MR. YOUNG, BUT EACH OF THESE
13 INDIVIDUALS IS CHARGED WITH CONSPIRING. CONSPIRACY
14 TO COMMIT ARMED ROBBERY IS ALLEGED THEY CONSPIRED
15 WITH EACH OTHER AND WITH MR. JONES AND MS. LAWS FOR
16 PURPOSES OF COMMITTING ARMED ROBBERY.

17 THE NEXT INDICTMENT IS THAT OF ARMED
18 ROBBERY AND EACH OF THESE INDIVIDUALS IS CHARGED,
19 BOTH OF THESE INDIVIDUALS ARE CHARGED WITH USING A
20 DEADLY WEAPON TO EFFECT AN ARMED ROBBERY ON THAT DATE
21 AT THAT TIME AND AT THAT PLACE; THAT IS, THEY USED
22 FORCE OR INTIMIDATION TO PUT EMPLOYEES OF THE BANK OF
23 YORK IN FEAR BY POINTING A PISTOL AT THEM AND TAKING
24 MONEY BELONGING TO THE BANK OF YORK.

25 IT'S ALLEGED IN THE NEXT INDICTMENT AS

1 TO BOTH OF THEM THAT AT THAT TIME THEY EACH WERE IN
2 POSSESSION OF A HAND GUN IN VIOLATION OF THE LAWS OF
3 THIS STATE.

4 THE NEXT INDICTMENT ALLEGES THAT AT
5 THAT TIME AND THAT DATE EACH OF THESE INDIVIDUALS
6 WERE INVOLVED IN THE KIDNAPPING OF MR. LUBIATO,
7 MRS. WINE, MRS. NEELANDS, MR. BAYER, MRS. THOMAS,
8 MRS. HARRIS, AND MRS. LYLES IN THE VIOLATION OF THE
9 LAWS OF THIS STATE.

10 EACH OF THESE INDIVIDUALS IS CHARGED
11 WITH ENTERING A BANK WITH INTENT TO STEAL AND IT'S
12 ALLEGED AT THE BANK OF YORK ON THAT DATE THEY ENTERED
13 THE BANK WITH INTENT TO STEAL MONEY OR SECURITIES
14 EITHER BY FORCE OR INTIMIDATION OR THREATS.

15 FINALLY MR. YOUNG AND MR. YOUNG ONLY
16 IS CHARGED WITH COMMITTING ASSAULT AND BATTERY UPON
17 PATRICK BAYER, THE AGGRAVATING CIRCUMSTANCES WERE BY
18 SPRAYING A CHEMICAL AGENT ON HIM WHILE HE WAS HELD AT
19 GUN POINT AND HELPLESS AND THE INFLECTION OF SERIOUS
20 BODILY INJURY AND THE PURPOSEFUL INFLECTION OF SHAME
21 OR DISGRACE.

22 NOW THESE INDICTMENTS WHICH YOU WILL
23 HAVE WITH YOU IN THE JURY ROOM ARE NOT EVIDENCE.
24 THEY ARE THE CHARGING PAPERS. THEY ARE THE PAPERS BY
25 WAY OF WHICH THIS CASE HAS BEEN AND WILL CONTINUED BE

1 PROCESSED THROUGH OUR COURT SYSTEM. AGAIN THEY JUST
2 CONTAIN THE CHARGES. THEY ALSO ARE THE PAPER WORK,
3 MR. FOREMAN, WHERE YOU WILL ENROLL THE UNANIMOUS
4 VERDICTS OF THE JURY AND I WILL TELL YOU MORE ABOUT
5 THAT AT THE END OF THE CHARGE. NOW AS I TOLD YOU
6 THESE ARE SIMPLY THE FORMAL WRITTEN DOCUMENTS THAT
7 ARE USED IN A CASE SUCH AS THIS TYPE.

8 NOW IN THESE INDICTMENTS THERE ARE
9 ALLEGATIONS OF DIFFERENT OFFENSES AGAINST EACH
10 DEFENDANT. EACH INDICTMENT CHARGES A SEPARATE AND
11 DISTINCT OFFENSE. YOU MUST DECIDE AS TO EACH
12 INDICTMENT SEPARATELY BASED ON THE EVIDENCE AND THE
13 LAW UNINFLUENCED BY YOUR DECISION ON THE OTHER
14 INDICTMENTS, WHETHER OR NOT THE STATE HAS PROVEN AS
15 TO A PARTICULAR CHARGE A PARTICULAR DEFENDANT GUILTY
16 BEYOND A REASONABLE DOUBT.

17 THE DEFENDANTS MAY BE CONVICTED OR
18 ACQUITTED ON ANY OR ALL OF THE CHARGES AND I WILL ASK
19 YOU TO WRITE SEPARATE VERDICTS, WITH ONE EXCEPTION TO
20 THAT, IF THEY ARE FOUND NOT GUILTY OF ARMED ROBBERY,
21 THEN THEY CANNOT BE FOUND GUILTY OF POSSESSION OF A
22 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME
23 BECAUSE THE VIOLENT CRIME THEY ARE ALLEGED TO HAVE
24 BEEN IN THE COMMISSION OF WAS ARMED ROBBERY AND IF
25 THEY ARE NOT GUILTY OF THE ARMED ROBBERY THEN THEY

1 CAN'T BE GUILTY OF HAVING A PISTOL WHEN THEY DID IT.
2 OTHER THAN THAT YOU WILL LOOK AT THE INDICTMENTS
3 SEPARATELY.

4 I CHARGE YOU THAT THE FACT THAT THERE
5 ARE TWO INDIVIDUALS, MR. YOUNG AND MR. PORTER,
6 CHARGED WITH THESE OFFENSES, THE CASE OF EACH
7 DEFENDANT AND THE EVIDENCE AND LAW CONCERNING EACH
8 SHOULD BE SEPARATELY AND INDIVIDUALLY CONSIDERED.
9 YOUR VERDICTS DO NOT HAVE TO BE THE SAME FOR BOTH
10 DEFENDANTS. THE FACT THAT YOU FIND ONE DEFENDANT
11 GUILTY OR NOT GUILTY DOES NOT AND SHOULD NOT AND
12 CANNOT CONTROL YOUR VERDICT AS TO THE OTHER DEFENDANT
13 AS TO A PARTICULAR CHARGE.

14 WHEN MORE THAN ONE PERSON HAS BEEN
15 CHARGED WITH THE CRIME AND THE EVIDENCE WARRANTS IT
16 YOU MAY CONVICT ONE OR BOTH OR ACQUIT ONE OR BOTH.
17 IT WOULD DEPEND ON YOUR VIEW OF THE TESTIMONY AND THE
18 EVIDENCE. YOU MUST TAKE EACH DEFENDANT AND CONSIDER
19 THE EVIDENCE AS IT PERTAINS TO THAT PARTICULAR
20 DEFENDANT, APPLY THE LAW AS I CHARGE IT, AND WRITE A
21 SEPARATE VERDICT OF GUILTY OR NOT GUILTY AS TO EACH
22 DEFENDANT AS TO EACH CHARGE.

23 BOTH OF THESE DEFENDANTS HAVE PLEAD
24 NOT GUILTY TO ALL OF THE CHARGES AGAINST THEM. THIS
25 PLEA PUTS THE BURDEN ON THE STATE TO PROVE EACH ONE'S

1 GUILT AS TO A PARTICULAR OFFENSE BEYOND A REASONABLE
2 DOUBT. A DEFENDANT IN OUR SYSTEM IS PRESUMED
3 INNOCENT OF ANY CHARGE AGAINST THEM. THIS
4 PRESUMPTION OF INNOCENCE IS A SUBSTANTIAL RIGHT.
5 THEY DO NOT HAVE TO PROVE THEIR INNOCENCE. THIS IS
6 NOT A MERE LEGAL THEORY OR A MERE LEGAL PHRASE. AS I
7 SAID IT'S A SUBSTANTIAL RIGHT WHICH INURES TO THE
8 BENEFIT OF THE DEFENDANT AT THE TIME THEY ARE
9 ARRESTED FOR THE CHARGE. THE PRESUMPTION OF
10 INNOCENCE IN MR. YOUNG AND MR. PORTER'S FAVOR EXISTS
11 RIGHT AT THIS MOMENT AS I SPEAK. THE PRESUMPTION OF
12 INNOCENCE IN THEIR FAVOR REMAINS AS YOU DELIBERATE.
13 THE PRESUMPTION OF INNOCENCE IN THEIR FAVOR IS
14 REMOVED IF AND WHEN AS TO A PARTICULAR OFFENSE YOU AS
15 THE TRIAL JURY HAS DETERMINED THAT THE STATE HAS
16 PROVEN ONE'S GUILT BEYOND A REASONABLE DOUBT TO THAT
17 OFFENSE.

18 NOW THE STATE IS NOT REQUIRED TO PROVE
19 ALL -- I'M SORRY. IS NOT REQUIRED TO PROVE AN
20 INDIVIDUAL'S GUILT BEYOND ALL OR BEYOND EVERY DOUBT,
21 BUT BEYOND A REASONABLE DOUBT.

22 NOW THE DEFENDANTS ARE EACH ENTITLED
23 TO ANY REASONABLE DOUBTS THAT YOU HAVE AS TO ANY
24 ISSUE. THAT IF YOU HAVE A REASONABLE DOUBT AS TO ANY
25 ISSUE IN THIS CASE YOU MUST RESOLVE THAT REASONABLE

1 DOUBT IN THE DEFENDANT'S FAVOR.

2 A REASONABLE DOUBT HAS BEEN DESCRIBED
3 BY OUR COURTS AS THE KIND OF DOUBT THAT WOULD CAUSE A
4 REASONABLE PERSON TO HESITATE TO ACT. PROOF BEYOND A
5 REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
6 CONVINCED OF AN INDIVIDUAL'S GUILT. THERE ARE VERY
7 FEW THINGS IN OUR WORLD THAT WE KNOW WITH ABSOLUTE
8 CERTAINTY AND IN CRIMINAL CASES THE LAW DOES NOT
9 REQUIRE PROOF THAT OVERCOMES EVERY DOUBT. IF BASED
10 ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY
11 CONVINCED THAT A DEFENDANT IS GUILTY OF ONE OF THE
12 CRIMES OR MORE OF THE CRIMES WITH WHICH THEY ARE
13 CHARGED YOU MUST FIND THEM GUILTY AS TO THAT CHARGE.

14 ON THE OTHER HAND, IF YOU THINK THERE
15 IS A REAL POSSIBILITY THAT A DEFENDANT IS NOT GUILTY
16 AS TO A CHARGE, YOU MUST GIVE HIM THE BENEFIT OF THE
17 DOUBT AND FIND HIM NOT GUILTY AS TO THAT CHARGE.

18 I REMIND YOU, AS I TOLD YOU AT FIRST,
19 YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE AND
20 I AM THE SOLE JUDGE OF THE LAW. YOU ARE TO CONSIDER
21 THE TESTIMONY WHICH WAS PRESENTED FROM THE WITNESS
22 STAND AND ANY EXHIBITS. YOU ARE NOT TO GO OUTSIDE
23 THE RECORD AND CONSIDER ANYTHING THAT IS NOT IN THE
24 RECORD. YOU ARE NOT TO INFER FROM ANYTHING THAT I
25 SAY OR DO AS BEING AN OPINION OF MINE ON THE FACTS.

1 A TRIAL JUDGE IN THIS STATE IS NOT ALLOWED TO
2 FORMULATE OR EXPRESS TO A JURY ANY OPINION ON THE
3 FACTS, SO IF YOU INFER FROM ANYTHING I SAY OR DO OR
4 HAVE SAID OR DONE OR NOW SAY OR DO AS BEING AN
5 INDICATION OF AN OPINION OF MINE ON THE FACTS YOU
6 WOULD BE WRONG IN MAKING SUCH INFERENCE. SO DON'T
7 MAKE ANY INFERENCE OF ANY OPINION OF MINE ON THE
8 FACTS. YOU MUST TAKE, ACCEPT, AND APPLY THE LAW AS I
9 CHARGE IT. THIS IS TRUE EVEN IF YOU THINK I CHARGE
10 THE LAW IN ERROR OR EVEN IF YOU THINK THE LAW SHOULD
11 BE DIFFERENT. YOUR OATH REQUIRES YOU TO TAKE,
12 ACCEPT, AND APPLY THE LAW AS I CHARGE IT.

13 IT IS UP TO YOU TO EXAMINE THE
14 EVIDENCE, GIVE TO THE EVIDENCE THE EFFECT, THE VALUE,
15 THE WEIGHT, AND THE TRUTH YOU BELIEVE IT SHOULD HAVE.
16 IN DOING THIS YOU MAY BELIEVE ONE WITNESS AS OPPOSED
17 TO SEVERAL, SEVERAL WITNESSES AS OPPOSED TO ONE; YOU
18 MAY BELIEVE ALL, PART, OR NONE OF A WITNESS'
19 TESTIMONY. USE YOUR COMMON SENSE, YOUR SENSE OF
20 LOGIC, YOUR SENSE OF REASON, USE YOUR EXPERIENCES IN
21 LIFE AS YOU ANALYZE THE EVIDENCE. OF NECESSITY IN
22 DETERMINING THE TRUE FACTS YOU MUST JUDGE THE
23 CREDIBILITY, THAT IS, THE BELIEVABILITY OF THE
24 WITNESSES WHO HAD TESTIFIED. IN ASSESSING
25 BELIEVABILITY YOU CAN USE THOSE THINGS THAT I HAVE

1 JUST MENTIONED; YOU CAN USE THOSE THINGS THAT YOU IN
2 YOUR DAY-TO-DAY LIFE FIND AS BEING INDICATIVE OF
3 TRUTHFULNESS. YOU CAN USE CERTAIN WHAT I CALL
4 EVALUATORS, A WITNESS' DEMEANOR, HOW THEY ACT ON THE
5 STAND, ARE THEY HESITANT OR STRAIGHT FORWARD. YOU
6 CAN CONSIDER A WITNESS'S OPPORTUNITY TO ACTUALLY HAVE
7 OBSERVED THOSE THINGS TO WHICH THE WITNESS TESTIFIED.
8 YOU CAN CONSIDER ANY BIAS OR PREJUDICE OR MOTIVE AN
9 INDIVIDUAL MAY HAVE FOR TESTIFYING.

10 WHERE A PERSON TESTIFIES AND THEY HAVE
11 A PAST CRIMINAL RECORD, THEY ARE COMPETENT TO
12 TESTIFY. HOWEVER, A PAST RECORD DOES NOT AFFECT
13 THEIR ABILITY, THAT IS, THEY CAN TESTIFY. BUT YOU
14 CAN CONSIDER ANY PAST CRIMINAL RECORD OF A WITNESS IN
15 DETERMINING THE CREDIBILITY OF THAT WITNESS. THAT
16 IS, THE BELIEVABILITY. YOU'VE HEARD EVIDENCE THAT AT
17 LEAST ONE OF THE WITNESSES, MS. LAWS I BELIEVE, HAD A
18 PRIOR CONVICTION AND MR. YOUNG, THERE WAS SOME
19 TESTIMONY THAT HE HAD BEEN CONVICTED OF AN OFFENSE.
20 NOW THAT EVIDENCE AS TO MR. YOUNG, LIKE THE EVIDENCE
21 AS TO MS. LAWS, CAN ONLY BE USED IN JUDGING
22 BELIEVABILITY OF MR. YOUNG AND FOR NO OTHER PURPOSES.
23 THAT IS, YOU CANNOT USE HIS PAST RECORD AS ANY
24 EVIDENCE THAT HE WAS INVOLVED IN THIS IN ANY DEGREE
25 WHATSOEVER. IT IS NOT EVIDENCE AS TO THE CHARGES

1 TODAY. IT IS ONLY ALLOWED INTO EVIDENCE FOR YOUR
2 CONSIDERATION IN REGARDING WHAT DEGREE OF
3 BELIEVABILITY TO GIVE TO A WITNESS.

4 NOW IN CASES SUCH AS THIS THERE ARE
5 TWO TYPES OF EVIDENCE THAT ARE GENERALLY INTRODUCED,
6 DIRECT AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE
7 IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE
8 ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYE WITNESS.
9 IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN
10 FACT SOUGHT TO BE PROVEN.

11 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A
12 CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE
13 EXISTENCE OF A FACT. IT IS EVIDENCE WHICH
14 IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH
15 THE MAIN FACT MAY BE INFERRED.

16 CIRCUMSTANTIAL EVIDENCE IS BASED ON
17 INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR PERSON
18 OBSERVATION. OUR LAWS MAKES ABSOLUTELY NO
19 DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN
20 DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER
21 DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
22 EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH
23 ALL OF THE EVIDENCE IN THIS CASE. AFTER WEIGHING ALL
24 THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT
25 OF A DEFENDANT AS TO A PARTICULAR CHARGE BEYOND A

1 REASONABLE DOUBT, YOU MUST ACQUIT HIM AND FIND HIM
2 NOT GUILTY.

3 I INSTRUCT AND EMPHASIZE TO YOU THAT
4 THE FACT THAT MR. PORTER DID NOT TESTIFY IS NOT A
5 FACTOR TO BE CONSIDERED BY YOU IN ANY WAY WHATSOEVER
6 IN YOUR DELIBERATION NOR ON YOUR CONSIDERATION OF HIS
7 GUILT OR INNOCENCE. IT MUST NOT BE CONSIDERED BY YOU
8 IN ANY MANNER WHATSOEVER, MUST NOT BE DISCUSSED, IT
9 MUST NOT BE FACTORED INTO YOUR OWN CONSIDERATION.
10 UNDER OUR CONSTITUTION, BOTH THE STATE AND FEDERAL, A
11 DEFENDANT HAS A RIGHT TO REMAIN SILENT AND THE
12 ASSERTION OF THIS RIGHT CANNOT AND MUST NOT AND WILL
13 NOT BE USED BY YOU IN YOUR DELIBERATIONS. UNDER YOUR
14 OATH YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM
15 THE FACT MR. PORTER CHOSE TO EXERCISE HIS RIGHT NOT
16 TO TESTIFY. AS I SAID THAT CANNOT EVEN BE DISCUSSED
17 BY YOU AND FACTORED INTO YOUR CONSIDERATION. THE
18 BURDEN IS ON THE STATE TO PROVE AN INDIVIDUAL'S GUILT
19 BEYOND A REASONABLE DOUBT.

20 NOW THE DEFENDANT YOUNG CLAIMS THAT HE
21 WAS NOT AT THE SCENE OF THE CRIME AT THE TIME THE
22 CRIME WAS COMMITTED. THIS CLAIM IS THAT HE WAS
23 ELSEWHERE AND HAD NOTHING TO DO WITH THE CRIME. THIS
24 IS SOMETIMES CALLED ALIBI. A DEFENDANT DOES NOT HAVE
25 TO PROVE, THAT IS MR. YOUNG, DOES NOT HAVE TO PROVE

1. THIS DEFENSE. THE STATE HAS THE BURDEN OF PROVING
2 THE IDENTITY OF THE PEOPLE THAT COMMITTED THIS
3 ALLEGED CRIME AND THE BURDEN IS UPON THE STATE TO
4 PROVE THAT MR. YOUNG WAS ACTUALLY PRESENT AT THE
5 SCENE OF THE CRIME AND THAT HE PARTICIPATED IN IT AND
6 THAT HE WAS NOT ELSEWHERE AT THE TIME AND THEY MUST
7 PROVE THAT BEYOND A REASONABLE DOUBT.

8 NOW DEFENDANT'S FIRST CHARGE I'M GOING
9 TO GO OVER IS CONSPIRACY. EACH IS CHARGED WITH
10 CONSPIRING AND THE STATE MUST PROVE BEYOND A
11 REASONABLE DOUBT THAT ONE OR BOTH OF THE DEFENDANTS
12 COMBINED WITH ONE OR MORE PERSONS FOR THE PURPOSE OF
13 COMMITTING AN UNLAWFUL ACT.

14 THERE MUST BE A MUTUAL UNDERSTANDING,
15 AGREEMENT, OR COMMON INTENT AND PLAN. MERE PASSIVE
16 KNOWLEDGE OF OR CONSENT TO THE CRIMINAL CONDUCT OF
17 ANOTHER IS NOT ENOUGH TO MAKE A PERSON A CONSPIRATOR.
18 THERE MUST BE GUILTY KNOWLEDGE AND PARTICIPATION.

19 IT IS NOT NECESSARY THAT THERE BE ANY
20 FORMAL AGREEMENT. THERE NEED NOT BE A WRITING, NEED
21 NOT BE PROVEN THAT INDIVIDUALS HELD A MEETING AND
22 EXPRESSLY STATED THE TERMS OF THEIR PLAN. THE
23 AGREEMENT OF CRIMINAL CONSPIRACY MAY COME INTO BEING
24 THROUGH AN IMPLIED MUTUAL UNDERSTANDING.

25 THE WILFUL, INTENTIONAL, AND KNOWING

1 ADOPTION BY TWO OR MORE PERSONS OF A COMMON PLAN IS
2 SUFFICIENT. NO OVERT ACTS NEED TO BE SHOWN TO
3 ESTABLISH A CONSPIRACY. A CONSPIRACY MAY BE SHOWN BY
4 CIRCUMSTANTIAL EVIDENCE AND BY THE CONDUCT OF THE
5 PARTIES ALLEGED TO HAVE PARTICIPATED IN THE
6 CONSPIRACY.

7 IN ORDER TO CONVICT ONE OR MORE OF THE
8 DEFENDANTS OF CONSPIRACY, THE STATE MUST PROVE BEYOND
9 A REASONABLE DOUBT NOT ONLY THAT HE KNEW OF THE
10 UNLAWFUL CONDUCT BUT THAT HE AGREED TO COMBINE WITH
11 THE OTHERS FOR THE PURPOSE OF ACCOMPLISHING THE
12 UNLAWFUL CONDUCT.

13 EACH DEFENDANT IS CHARGED WITH ARMED
14 ROBBERY. IN ORDER TO PROVE ARMED ROBBERY, THE STATE
15 MUST PROVE BEYOND A REASONABLE DOUBT THAT A
16 DEFENDANT, ONE OR BOTH, TOOK PERSONAL PROPERTY FROM
17 THE PERSON OR PRESENCE OF OTHERS. PROPERTY IS IN THE
18 PRESENCE OF ANOTHER WHEN IT IS WITHIN THAT PERSON'S
19 REACH, INSPECTION, OBSERVATION, OR CONTROL SO THAT
20 THE PERSON COULD IF NOT OVERCOME WITH VIOLENCE OR
21 PREVENTED BY FEAR RETAIN OR KEEP POSSESSION OF THAT
22 PROPERTY.

23 THE STATE MUST PROVE BEYOND A
24 REASONABLE DOUBT THAT A DEFENDANT CARRIED THE
25 PROPERTY AWAY INTENDING TO PERMANENTLY DEPRIVE THE

1 OWNER OF THAT PROPERTY AND TO KEEP THE PROPERTY FOR
2 THEIR OWN USE. THE TAKING AND CARRYING AWAY OF THE
3 PROPERTY MUST HAVE BEEN DONE WITH VIOLENCE OR BY
4 PUTTING THE OWNER OF THE PROPERTY IN FEAR OF
5 VIOLENCE.

6 THE STATE MUST PROVE FINALLY AS TO
7 THIS OFFENSE, THAT IS ARMED ROBBERY, THAT A DEFENDANT
8 WAS ARMED WITH A DEADLY WEAPON DURING THE ROBBERY. A
9 DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR
10 SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT
11 BODILY HARM. AN EXAMPLE OF THIS IS A PISTOL, A
12 PISTOL AND A REVOLVER ARE DEADLY WEAPONS. THE STATE
13 MUST PROVE THOSE ELEMENTS BEYOND A REASONABLE DOUBT
14 BEFORE YOU COULD CONVICT A DEFENDANT OF ARMED
15 ROBBERY.

16 NOW AS I SAID EACH IS CHARGED ALSO
17 WITH POSSESSION OF A FIREARM DURING THE COMMISSION OF
18 AN ARMED ROBBERY. BY OUR CODE OF LAWS THIS IS CALLED
19 POSSESSION OF A WEAPON DURING THE COMMISSION OF A
20 VIOLENT CRIME AND I CHARGE YOU THAT ARMED ROBBERY IS
21 BY DEFINITION UNDER THE LAWS OF OUR STATE AS ENACTED
22 BY OUR LEGISLATURE A VIOLENT CRIME.

23 THE STATE MUST PROVE BEYOND A
24 REASONABLE DOUBT THAT ONE OR BOTH OF THE DEFENDANTS
25 WAS IN POSSESSION OF A FIREARM OR VISIBLY DISPLAYED

1 WHAT APPEARED TO BE A FIREARM DURING THE COMMISSION
2 OF A VIOLENT CRIME. A REVOLVER AND A PISTOL, AS I
3 SAID A MOMENT AGO, ARE BOTH CONSIDERED FIREARMS BY
4 THE LAW. IN ORDER TO FIND A DEFENDANT GUILTY OF
5 POSSESSION OF A WEAPON DURING THE COMMISSION OF A
6 VIOLENT CRIME, YOU MUST FIRST FIND THAT THEY WERE
7 GUILTY OF COMMITTING THE VIOLENT CRIME OR ATTEMPTING
8 TO COMMIT A VIOLENT CRIME AND I JUST MENTIONED THAT
9 ARMED ROBBERY IS BY LAW A VIOLENT CRIME. THE STATE
10 MUST PROVE THAT BEYOND A REASONABLE DOUBT.

11 THE NEXT CHARGE IS ENTERING A BANK
12 WITH INTENT TO STEAL AND THAT IS THE SHORTEST CHARGE
13 OF ALL BECAUSE IT SAYS, IT IS A STATUTORY CHARGE
14 ENACTED BY OUR LEGISLATURE AND IT SIMPLY SAYS IT IS
15 UNLAWFUL FOR A PERSON TO ENTER A BUILDING OR PART OF
16 A BUILDING OCCUPIED AS A BANK, DEPOSITORY, OR
17 BUILDING AND LOAN ASSOCIATION WITH INTENT TO STEAL
18 MONEY OR SECURITIES, MONEY OR SECURITIES EITHER BY
19 FORCE, INTIMIDATION, OR THREATS. SO IT MAKES IT
20 ILLEGAL TO ENTER A BANK WITH INTENT TO COMMIT A
21 THEFT, INTENT TO STEAL. NOW THE STATE MUST PROVE
22 THAT ONE OR BOTH OF THE DEFENDANTS DID THAT AND THEY
23 MUST PROVE IT BEYOND A REASONABLE DOUBT.

24 THE DEFENDANTS EACH ARE CHARGED WITH
25 KIDNAPPING. THE STATE MUST PROVE BEYOND A REASONABLE

1 DOUBT AS TO THIS CHARGE THAT A DEFENDANT KNOWINGLY
2 AND UNLAWFULLY SEIZED, CONFINED, INVEIGLED, DECOYED,
3 KIDNAP, ABDUCTED, OR CARRIED AWAY ANOTHER PERSON
4 WITHOUT THE AUTHORITY OF LAW.

5 TO DO A THING UNLAWFULLY IS TO DO IT
6 WILLFULLY, THAT IS, AGAINST THE LAW.

7 KNOWINGLY MEANS WITH KNOWLEDGE, THAT
8 IS, CONSCIOUSLY NOT ACCIDENTALLY.

9 THE WORD SEIZE MEANS TO TAKE HOLD OF
10 SUDDENLY OR FORCIBLY.

11 THE WORD CONFINED MEANS TO LIMIT,
12 RESTRICT, ENCLOSE WITHIN BOUNDS, IN PRISON, OR SHUT
13 OR KEEP IN..

14 THE WORD KIDNAP MEANS TO REMOVE A
15 PERSON AGAINST THEIR WILL BY UNLAWFUL FORCE OR BY
16 FRAUD. THE STATE DOES NOT HAVE TO PROVE THAT A
17 DEFENDANT DID ALL OF THOSE THINGS; THAT IS, THEY
18 DON'T HAVE TO PROVE THAT THEY SEIZED, CONFINED, OR
19 KIDNAPPED, THEY MUST ONLY PROVE BEYOND A REASONABLE
20 DOUBT ONE OF THOSE THINGS, BUT THEY MUST PROVE AT
21 LEAST THAT A DEFENDANT DID ONE OF THOSE, MUST BE
22 PROVEN BEYOND A REASONABLE DOUBT, BEFORE YOU COULD
23 CONVICT AN INDIVIDUAL OF KIDNAPPING.

24 I USED THE TERM THAT IT HAD TO BE THE
25 COMBINING, SEIZING, COMBINING, SEIZING, OR KIDNAPPING

1 HAD TO BE DONE WITHOUT AUTHORITY OF LAW AND THAT IS
2 SOMETHING WITHOUT THE AUTHORITY OF LAW IS SOMETHING
3 THE LAW DOES NOT SANCTION, PERMIT, ALLOW, CONDONE, OR
4 PROVIDE JUSTIFICATION FOR.

5 KIDNAPPING DOES NOT HAVE TO BE FOR ANY
6 PERSONAL OR MONETARY GAIN OR FOR ANY ILLEGAL PURPOSE.
7 IT MAY NOT BE FOR ANY REASON WHATSOEVER; THAT IS, ONE
8 CANNOT CONFINE, SEIZE, OR KIDNAP SOMEONE FOR ANY
9 REASON WHATSOEVER. IF THE STATE HAS PROVEN THAT
10 BEYOND A REASONABLE DOUBT THEN YOU WOULD CONVICT HIM.

11 AS TO THAT OFFENSE, IF THE STATE HAS
12 FAILED TO PROVE THAT BEYOND A REASONABLE DOUBT, YOU
13 WOULD FIND THE DEFENDANT NOT GUILTY.

14 NOW MR. YOUNG AND MR. YOUNG ONLY IS
15 CHARGED WITH ASSAULT AND BATTERY OF A HIGH AND
16 AGGRAVATED NATURE AND THIS HAS TO DO, IT'S ALLEGED
17 AND YOU'LL HAVE THE INDICTMENT, SPRAYING MACE ON --
18 WELL, IT SAYS PAINFUL CHEMICAL AGENT, MACE, OR PEPPER
19 SPRAY. I BELIEVE BOTH OF THOSE WERE MENTIONED IN THE
20 TRIAL. ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
21 NATURE IS AN UNLAWFUL ACT OF VIOLENT INJURY TO THE
22 PERSON OF ANOTHER ACCOMPANIED BY CIRCUMSTANCES OF
23 AGGRAVATION. AN ASSAULT OCCURS WHEN A PERSON
24 UNLAWFULLY ATTEMPTS OR OFFERS TO COMMIT A VIOLENT
25 INJURY UPON ANOTHER PERSON AND HAD THE PRESENT

1 ABILITY TO COMPLETE THE ATTEMPTED INJURY.

2 AN ASSAULT IS THE INTENTIONAL CREATION
3 OF REASONABLE FEAR OF IMMEDIATE BODILY HARM TO
4 ANOTHER. IT IS NOT NECESSARY THAT THE ATTEMPTED
5 INJURY OR HARM ACTUALLY TAKE PLACE FOR THERE TO BE AN
6 ASSAULT. FOR EXAMPLE, IF I COME WITHIN STRIKING
7 DISTANCE OF YOU AND I RAISE BACK MY HAND AND GO TO
8 STRIKE YOU AND PUT YOU IN FEAR AND YOU ARE, I HAVE
9 COMMITTED AN ASSAULT IF I'M CLOSE ENOUGH TO STRIKE
10 YOU. A BATTERY IS THE UNLAWFUL TOUCHING OF ANOTHER
11 PERSON BY A PERSON WHO HAS COMMITTED THE ASSAULT. AN
12 UNLAWFUL TOUCHING CAN BE CAUSED BY PART OF THE
13 ACCUSED BODY OR BY ANY OBJECT THE ACCUSED HAS PUT IN
14 MOTION.

15 A BATTERY IS THE COMPLETION OF THE
16 ASSAULT BY USING OR APPLYING FORCE TO ANOTHER PERSON
17 HOWEVER SLIGHT IN A RUDE, ANGRY, OR RESENTFUL MANNER
18 WITHOUT LEGAL JUSTIFICATION FOR SO DOING. USING BY
19 EARLIER EXAMPLE, IF I PULL MY FIST BACK AND THEN I
20 FOLLOW THROUGH AND HIT YOU, I'VE COMMITTED A BATTERY.
21 AN ASSAULT IS AN ATTEMPT AND A BATTERY IS WHEN I
22 CARRY THROUGH AND ACTUALLY MAKE CONTACT.

23 THE STATE MUST PROVE ALSO NOT ONLY
24 THAT AN ASSAULT AND BATTERY TOOK PLACE, THEY MUST
25 PROVE A CIRCUMSTANCE OF AGGRAVATION OR CIRCUMSTANCES

1 OF AGGRAVATION. CIRCUMSTANCES OF AGGRAVATION WOULD
2 INCLUDE THE USE OF DEADLY FORCE, THE INFLECTION OF
3 SERIOUS BODILY INJURY, OR THE PURPOSEFUL INFLECTION
4 OF SHAME OR DISGRACE. AND THOSE ARE JUST EXAMPLES OF
5 WHAT CAN BE CONSIDERED AGGRAVATING CIRCUMSTANCES.
6 YOU MAY CONSIDER WHAT MAY OR MAY NOT BE AN AGGRAVATED
7 CIRCUMSTANCE IN YOUR CONSIDERATION. THOSE AGAIN ARE
8 JUST EXAMPLES.

9 NOW THERE ARE TWO POSSIBLE VERDICTS AS
10 TO EACH OF THESE INDICTMENTS. I'VE ALREADY TOLD YOU
11 THAT AS TO THE POSSESSION OF A FIREARM DURING THE
12 COMMISSION OF A VIOLENT OFFENSE THAT IF YOU FIND ONE
13 OR BOTH NOT GUILTY OF THAT ARMED ROBBERY YOU WOULD
14 OBVIOUSLY FIND THEM NOT GUILTY OF POSSESSION OFFENSE
15 BECAUSE YOU SAID THEY DIDN'T DO IT SO THEY COULDN'T
16 HAVE POSSESSED SOMETHING WHILE THEY DIDN'T DO IT.

17 YOUR VERDICTS MUST BE UNANIMOUS; ALL
18 12 JURORS MUST AGREE. YOUR VERDICTS CANNOT BE BASED
19 ON PREJUDICE, PASSION, PUBLIC OPINION, OR SYMPATHY.

20 IF DURING YOUR DELIBERATIONS YOU HAVE
21 A QUESTION, PLEASE WRITE IT DOWN, MR. FOREMAN, SEND
22 IT OUT BY WAY OF THE BAILIFF AND I WILL CONFER WITH
23 THE ATTORNEYS AND WE'LL RESPOND TO THE QUESTION. IT
24 MAY BE THAT I CAN WRITE -- AND MR. PORTER. WHEN I
25 SAY THE ATTORNEYS I INCLUDE MR. PORTER. I MAY BE

1 ABLE TO WRITE AN ANSWER TO THE QUESTION ON THE NOTE
2 OR IT MAY BE THAT I'LL HAVE TO BRING YOU BACK HERE IN
3 THE COURTROOM AND DISCUSS YOUR QUESTION WITH YOU. AS
4 I SAID I WILL CONFER WITH COUNSEL AND MR. PORTER
5 BEFORE I DO THAT. WE DO NOT IN SOUTH CAROLINA SEND
6 IN A WRITTEN CHARGE BUT IF YOU WANT ME TO GO OVER ANY
7 PART OR ALL OF THE LAW I WILL BRING YOU BACK HERE IN
8 THE COURTROOM AND GO OVER ANY PART OR ALL OF THE LAW
9 YOU NEED TO BE CHARGED.

10 IF YOU NEED TO HAVE ANY TESTIMONY
11 REPLAYED LET US KNOW AND WE WILL BRING YOU BACK IN
12 AND DO THAT. YOU WILL HAVE THE EXHIBITS, YOU WILL
13 HAVE THE ABILITY TO PLAY THE VARIOUS VIDEOS. IF YOU
14 HAVE ANY PROBLEM WITH THAT LET US KNOW AND WE'LL MAKE
15 ARRANGEMENTS TO SECURE WHATEVER THE PROBLEM IS.

16 THE TWO ALTERNATES WILL REMAIN IN HERE
17 IN JUST A MOMENT WHEN YOU GO TO JURY ROOM. WHEN THE
18 REST OF THE JURY GOES TO THE JURY ROOM DO NOT START
19 DELIBERATING YET BECAUSE I MUST GO OVER MY CHARGE
20 WITH THE ATTORNEYS. IF I HAVE MADE AN ERROR I'LL
21 HAVE TO BRING YOU BACK IN AND CORRECT IT. IF I'VE
22 NOT MADE ANY ERROR I WILL SEND IN TO YOU THE
23 INDICTMENTS AND ALL THE EXHIBITS EXCEPT FOR THE
24 BULLETS AND THE BAILIFF WILL TELL YOU TO START
25 DELIBERATING AT THAT TIME.

1 ALL OF THESE INDICTMENTS HAVE ON
2 THEIR, I NEVER HAVE BEEN ABLE TO FIGURE OUT IF IT'S
3 BACK OR FRONT, BUT ON ONE SIDE THEY HAVE THE WORD
4 VERDICT AND UNDER IT FOUR LINES. THE BOTTOM LINE,
5 MR. FOREMAN, IS A PLACE FOR YOU TO SIGN AND A PLACE
6 FOR THE DATE, TODAY IS THE 26 OF COURSE OF JULY.

7 ON ONE OF THE OTHER LINES YOU WILL
8 WRITE THE JURY'S UNANIMOUS VERDICT. OF COURSE, YOU
9 WILL PRESIDE OVER THE DELIBERATIONS. IF AS TO A
10 PARTICULAR INDICTMENT THE STATE HAS FAILED TO PROVE A
11 DEFENDANT'S GUILT AS TO THAT PARTICULAR INDICTMENT
12 BEYOND A REASONABLE DOUBT THEN YOUR VERDICT WOULD BE
13 AS TO THAT INDICTMENT TWO WORDS NOT GUILTY AND YOU
14 WOULD SIMPLY WRITE THOSE TWO WORDS ON ONE OF THOSE
15 LINES.

16 IF ON THE OTHER HAND THE STATE HAS
17 CONVINCED YOU BEYOND A REASONABLE DOUBT UNANIMOUSLY
18 OF AN INDIVIDUAL'S GUILT AS TO A PARTICULAR CHARGE
19 YOU WILL WRITE THE ONE WORD GUILTY AND THEN OF COURSE
20 SIGN IT.

21 NOW WHEN YOU GO, DO NOT START
22 DELIBERATING, AS I SAID I HAVE TO GO OVER WITH THE
23 ATTORNEYS MY CHARGE AND I'LL LET YOU GO TO THE JURY
24 ROOM NOW AND DON'T GET TOO COMFORTABLE OR DON'T START
25 DELIBERATING BECAUSE IF I HAVE TO SEND FOR YOU IT

1 WILL BE VERY PROMPTLY.

2 (THE JURY EXITS THE COURTROOM AT 04:55
3 PM.)

4 THE COURT: ANY EXCEPTIONS FROM THE STATE?

5 MR. BRACKETT: NONE FROM THE STATE.

6 THE COURT: MR. JAMIESON?

7 MR. JAMIESON: I DON'T THINK SO, YOUR
8 HONOR, BUT LET ME JUST FINISH GLANCING OVER MY NOTES.

9 THE COURT: SURE. TAKE YOUR TIME.

10 MR. JAMIESON: NO, YOUR HONOR.

11 THE COURT: MR. PORTER?

12 MR. D'AGOSTINO: HE HAS NO EXCEPTIONS. WE
13 DO WISH FOR THAT REQUEST OF CHARGE MR. JAMIESON
14 SUBMITTED BE PART OF THE RECORD.

15 THE COURT: OKAY.

16 MR. D'AGOSTINO: THAT ONE ABOUT
17 KIDNAPPING.

18 THE COURT: ALL RIGHT.

19 MR. D'AGOSTINO: I UNDERSTAND THE COURT'S
20 RULING ON THAT.

21 THE COURT: OKAY. WE'LL MAKE SURE, I
22 THINK I SET IT ASIDE. I HAVE A STACK OF STUFF AND
23 I'LL FIND IT UNLESS YOU HAPPEN TO HAVE A COPY.

24 MR. D'AGOSTINO: I HAVE A COPY.

25 THE COURT: IF YOU HAVE A COPY, IF YOU'LL

1 HAND IT UP TO THE COURT REPORTER, MAKE SURE IT GETS
2 MARKED AS A COURT'S EXHIBIT. NOW FOR ALL OF THOSE
3 WHO NEED TO, CHECK THE EXHIBITS WITH THE COURT
4 REPORTER, MAKE SURE THEY ARE IN ORDER, AND WE'LL SEND
5 THEM BACK ALONG WITH THE INDICTMENTS AND THE BAILIFF
6 TELL THEM TO START DELIBERATING.

7 (THE ALTERNATE JURORS ARE EXCUSED.)

8 (THE JURY BEGINS DELIBERATION AT 05:12
9 PM.)

10 (COURT RESUMES AT 6:14.)

11 THE COURT: I UNDERSTAND WE HAVE A
12 VERDICT. ANYTHING BEFORE THE JURY COMES IN FROM THE
13 STATE?

14 MR. BRACKETT: NOTHING FROM THE STATE.

15 THE COURT: MR. JAMIESON.

16 MR. JAMIESON: RENEW OUR EARLIER MOTIONS,
17 THAT'S ALL.

18 THE COURT: MR. PORTER.

19 MR. PORTER: NO, SIR.

20 THE COURT: BRING IN THE JURY.

21 (THE JURY RETURNS TO THE COURTROOM AT
22 06:17 PM.)

23 THE COURT: MR. FOREMAN, I UNDERSTAND THE
24 JURY HAS REACHED VERDICTS.

25 THE FOREMAN: YES, YOUR HONOR.

1 THE COURT: IF YOU'LL HAND THEM TO THE
2 BAILIFF, HE'LL HAND THEM UP TO ME.

3 THE FOREMAN: YES, SIR.

4 THE COURT: MADAM CLERK.

5 THE CLERK: INDICTMENT 2006-1695 THE STATE
6 VERSUS KENNETH YOUNG INDICTMENT FOR ARMED ROBBERY THE
7 VERDICT GUILTY SIGNED BY THE FOREMAN DATED TODAY'S
8 DATE.

9 2007-1699 THE STATE VERSUS KENNETH
10 YOUNG POSSESSION OF, INDICTMENT FOR POSSESSION OF
11 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME
12 VERDICT GUILTY SIGNED BY THE FOREMAN DATED TODAY'S
13 DATE.

14 2007-1697 THE STATE VERSUS KENNETH
15 YOUNG INDICTMENT FOR KIDNAPPING VERDICT GUILTY SIGNED
16 BY THE FOREMAN DATED TODAY'S DATE.

17 07-1696 THE STATE VERSUS KENNETH YOUNG
18 INDICTMENT FOR ENTERING A BANK WITH INTENT TO STEAL
19 VERDICT SIGNED BY THE FOREMAN DATED TODAY'S DATE.

20 2007-1700 THE STATE VERSUS KENNETH
21 YOUNG INDICTMENT FOR CONSPIRACY TO COMMIT ARMED
22 ROBBERY THE VERDICT GUILTY SIGNED BY THE FOREMAN
23 DATED TODAY'S DATE.

24 2007-1698 THE STATE VERSUS KENNETH
25 YOUNG INDICTMENT FOR ASSAULT AND BATTERY OF A HIGH

1 AND AGGRAVATED NATURE VERDICT GUILTY SIGNED BY THE
2 FOREMAN DATED TODAY'S DATE.

3 2007-1687 THE STATE VERSUS JOHNNELL
4 PORTER INDICTMENT FOR ARMED ROBBERY VERDICT IS
5 GUILTY.

6 2007-1688 THE STATE VERSUS JOHNNELL
7 PORTER INDICTMENT FOR ENTERING A BANK WITH INTENT TO
8 STEAL VERDICT GUILTY.

9 2007-1689 THE STATE VERSUS JOHNNELL
10 PORTER INDICTMENT FOR KIDNAPPING VERDICT GUILTY.

11 2007-1690 THE STATE VERSUS JOHNNELL
12 PORTER INDICTMENT FOR POSSESSION OF A FIREARM DURING
13 THE COMMISSION OF A VIOLENT CRIME VERDICT GUILTY.

14 2007-1691 THE STATE VERSUS JOHNNELL
15 PORTER INDICTMENT FOR CONSPIRACY TO COMMIT ARMED
16 ROBBERY THE VERDICT GUILTY.

17 LADIES AND GENTLEMEN OF THE JURY, IF
18 THIS BE YOUR VERDICT PLEASE SO SAY YOU ALL BY RAISING
19 YOUR RIGHT HAND. LET THE RECORD REFLECT ALL JURORS
20 AFFIRM THIS VERDICT.

21 THE COURT: ANYTHING FROM THE STATE BEFORE
22 THE JURY IS DISMISSED?

23 MR. BRACKETT: NOTHING FROM THE STATE,
24 YOUR HONOR.

25 THE COURT: MR. JAMIESON?

1 MR. JAMIESON: NO, YOUR HONOR.

2 THE COURT: MR. PORTER, ANYTHING BEFORE
3 THE JURY IS DISMISSED?

4 MR. PORTER: NO, SIR.

5 (THE JURY EXITS THE COURTROOM AT 06:21
6 PM.)

7 THE COURT: MR. JAMIESON, ANYTHING ON
8 BEHALF OF MR. YOUNG?

9 MR. JAMIESON: I WOULD RENEW MY EARLIER
10 MOTIONS FOR DIRECTED VERDICT, YOUR HONOR, JUST ON THE
11 SAME GROUNDS.

12 THE COURT: MOTION IS DENIED.

13 MR. D'AGOSTINO: YOUR HONOR, MR. PORTER
14 WOULD RENEW HIS MOTION FOR DIRECT VERDICT, ALSO MOVE
15 FOR A NEW TRIAL, SET ASIDE THE VERDICT AND A NEW
16 TRIAL.

17 THE COURT: I'M GOING TO TAKE THESE
18 MOTIONS FOR NEW MOTION AND MOTION TO ARREST THE
19 JUDGMENT SINCE THOSE ARE THE TWO CRIMINAL MOTIONS AND
20 BOTH WILL BE DENIED. AS I SAID BEFORE, THE EVIDENCE
21 WAS SUFFICIENT BOTH SUBSTANTIAL CIRCUMSTANTIAL
22 EVIDENCE AND CERTAINLY WAS AN AWFUL LOT OF DIRECT
23 EVIDENCE INCLUDING CO-CONSPIRATOR'S TESTIMONY. ALL
24 RIGHT. WE'LL TAKE A MINUTE TO GET THE SENTENCING
25 SHEETS I BELIEVE ARE READY AND THEN IF WE'LL WAIT

1 JUST ONE MINUTE AND THEN WHEN THAT IS READY THE
2 CLERKS WILL LET ME KNOW AND HAVE YOU COME AROUND AND
3 GO THROUGH THE SENTENCING.

4 MR. YOUNG AND MR. PORTER, EACH OF YOU
5 HAVE A RIGHT TO TALK TO ME BEFORE THE SENTENCING.
6 WHEN YOU COME AROUND YOU'LL BE ABLE TO TELL ME
7 ANYTHING YOU WANT TO TELL ME SO. ALSO I WILL GIVE
8 THE VICTIMS ANY OPPORTUNITY IF ANY OF THEM WISH TO
9 SPEAK ALSO.

10 MR. BRACKETT: WE HAVE THE SENTENCING
11 SHEETS, THEY ARE READY, YOUR HONOR, WE'RE JUST
12 WAITING FOR ANY OF JURY MEMBERS THAT CARE TO HEAR THE
13 SENTENCING.

14 (THE JURY RETURNS TO THE BACK OF THE
15 COURTROOM AT 06:23 PM.)

16 THE COURT: BRING THE DEFENDANTS AROUND.

17 (THE DEFENDANTS APPROACH THE BAR.)

18 THE COURT: ALL RIGHT. MR. SPRINGS, LET'S
19 DEAL WITH MR. YOUNG FIRST AND LET'S DO THIS SINCE WE
20 GOT TWO DEFENDANTS. DO ANY OF THE VICTIMS WANT TO
21 SAY ANYTHING?

22 MR. SPRINGS: YES, YOUR HONOR, AT THE
23 APPROPRIATE TIME.

24 THE COURT: I THINK NOW WOULD BE THE
25 APPROPRIATE TIME.

1 MR. SPRINGS: ALL RIGHT. ANYONE WHO WOULD
2 LIKE TO SPEAK, YOU CAN STAND AND SPEAK FROM THERE OR
3 YOU CAN COME STAND HERE.

4 THE COURT: I'D RATHER THEY COME UP HERE
5 BECAUSE WE HAVE GOT A LOT PEOPLE AND I CAN'T SEE THEM
6 BACK HERE.

7 MR. SPRINGS: WOULD ANYONE LIKE TO COME
8 SPEAK, ANY OF THE VICTIMS, AT THIS TIME? THE TELL
9 THE COURT REPORTER YOUR NAME.

10 MRS. COLIN: MY NAME IS CHRISTA BOLIN.

11 THE COURT: YES, MA'AM. OF COURSE, YOU
12 TESTIFIED, SO I'LL BE GLAD TO HEAR FROM YOU.

13 MRS. BOLIN: YES, SIR. YOU HAVE NO CLUE
14 WHAT THESE TWO GENTLEMEN HAVE TAKEN FROM ME. YOU
15 HAVE NO CLUE WHAT THEY HAVE TAKEN FROM THE OTHER
16 PEOPLE THAT I SIT WITH. THEY HAVE TAKEN MY SENSE OF
17 SECURITY. THEY HAVE -- MY CHILDREN HAVE NOT SLEPT
18 BECAUSE OF WHAT I'VE BEEN THROUGH. THAT'S VERY
19 DISTURBING. AND I PERSONALLY THINK THAT THEY SHOULD
20 RECEIVE THE MOST TIME THAT THEY CAN POSSIBLY RECEIVE
21 BECAUSE THIS WILL NEVER BE OUT OF MY HEART AND OUT OF
22 MY MIND, NEVER, NEVER.

23 THE COURT: OF COURSE, OBVIOUSLY I
24 UNDERSTAND. I CAN'T PUT MYSELF IN YOUR SHOES BUT I
25 UNDERSTAND AND I APPRECIATE YOUR BRAVERY IN COMING

1 FORWARD AND TESTIFYING AND COMING FORWARD AND
2 SPEAKING.

3 MR. SPRINGS: DOES ANYONE ELSE WANT TO
4 SPEAK?

5 MR. BRACKETT: I BELIEVE THAT WOULD BE IT,
6 YOUR HONOR.

7 THE COURT: ALL RIGHT. DISCUSS MR. YOUNG
8 FIRST. IF YOU WOULD TELL ME MR. YOUNG'S PRIOR
9 RECORD.

10 MR. SPRINGS: YES, YOUR HONOR. I'M GOING
11 TO GO THROUGH A NUMBER OF PAGES HERE, YOUR HONOR.
12 THE DATES MAY SKIP AROUND. WE HAVE ASSAULT ON A
13 FEMALE IN THE STATE OF NORTH CAROLINA. WE HAVE
14 BURGLARY -- I'M SORRY. THE ASSAULT ON FEMALE IN
15 NORTH CAROLINA THAT WAS BACK IN 2006 NOT LONG BEFORE
16 THIS CASE.

17 BURGLARY IN 1975 IN NORTH CAROLINA.
18 ARMED ROBBERY IN NORTH CAROLINA IN 1976. LARCENY IN
19 NORTH CAROLINA IN '85. ANOTHER ARMED ROBBERY IN
20 NORTH CAROLINA IN 1986. ANOTHER LARCENY IN '85.
21 POSSESSION OF STOLEN GOODS IN '85. ASSAULT WITH A
22 DEADLY WEAPON INFLECTING SERIOUS INJURY 1988.
23 FORGERY IN 1985. THAT'S HIS RECORD AS I UNDERSTOOD
24 IT.

25 GIVEN HIS RECORD THE STATE HAS FILED

1 NOTICE, SERVED NOTICE UPON BEHALF MR. YOUNG
2 PERSONALLY, PUT THE PAPER IN HIS HAND MYSELF AND UPON
3 HIS ATTORNEY, OUR INTENTION TO SEEK LIFE BECAUSE OF
4 HIS PRIOR RECORD. I WOULD LIKE TO MAKE ANOTHER COPY
5 OF THAT NOTICE A PART OF THE RECORD HERE, YOUR HONOR,
6 AS A COURT OR STATE'S EXHIBIT WHICH EITHER THE COURT
7 THINKS IS MORE APPROPRIATE.

8 THE COURT: MAKE IT COURT EXHIBITS.

9 MR. SPRINGS: YES, SIR. AND I WOULD ALSO
10 LIKE TO MAKE A COURT'S EXHIBIT CERTIFIED TRUE COPIES
11 OF HIS TWO PRIOR ARMED ROBBERY CONVICTIONS. I HAVE
12 THOSE CERTIFIED RAISED SEAL CONVICTIONS HERE IN MY
13 HAND AND I WOULD LIKE TO MAKE THEM A PART OF THE
14 RECORD AS WELL.

15 THE COURT: MR. JAMIESON, I'LL BE GLAD TO
16 HEAR FROM YOU AND THEN MR. YOUNG.

17 MR. JAMIESON: YOUR HONOR, MR. YOUNG
18 STANDS BEFORE YOU CONVICTED BY A JURY. HE, I'M NOT
19 GOING TO MAKE ANY EXCUSES FOR HIS ACTIONS. YOUR
20 HONOR HEARD THE TESTIMONY. THIS CRIME WAS OBVIOUSLY
21 A VERY SERIOUS ONE. WHAT I WOULD POINT OUT IS
22 MR. YOUNG IS 51 YEARS OLD, YOUR HONOR. IF HE
23 RECEIVED THE MAXIMUM SENTENCE ON ANY ONE OF THESE
24 CRIMES HE WOULD BE A VERY OLD MAN INDEED IF HE EVER
25 GOT OUT OF PRISON WHICH IS UNLIKELY. I'D ASK THE

1 COURT TO CONSIDER THAT IN SENTENCING MR. YOUNG AND
2 ASK THE COURT TO CONSIDER THAT WHEN IT CONSIDERS
3 WHETHER OR NOT TO GIVE HIM LIFE, THE 30 YEAR SENTENCE
4 OR EVEN A 20 YEAR SENTENCE TO MR. YOUNG WOULD
5 CERTAINLY BE A VERY LONG TIME, HE'D BE A MAN IN HIS
6 70 OR 80'S WHEN HE GOT OUT. I ASK THE COURT TO
7 SENTENCE HIM TO A SENTENCE LIKE THAT TO GIVE HIM SOME
8 OPPORTUNITY TO COME OUT AND REDEEM HIMSELF. HE'S 51
9 YEARS OLD. HE'S MARRIED. HE HAS THREE CHILDREN, ALL
10 OF WHOM ARE GROWN. HE WENT THROUGH THE 12TH GRADE AT
11 SCHOOL AND HE IS EMPLOYED OR WAS EMPLOYED AS A
12 CARPENTER, YOUR HONOR.

13 MR. BRACKETT: MAY IT PLEASE THE COURT, I
14 BELIEVE IT'S MANDATORY AND EVEN IF IT WASN'T, OUR
15 POSITION WOULD BE THESE MEN, AND THIS WOULD APPLY TO
16 BOTH OF THEM ARE ARMED CAREER CRIMINALS, ARMED CAREER
17 FELONS, AND THE WORLD IS A SAFER PLACE WITH THEM IN
18 JAIL.

19 THE COURT: SECTION 17-25-45 DOES SAY THAT
20 A PERSON MUST BE SENTENCED TO A TERM OF LIFE IN
21 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE IF
22 THEY HAVE ONE OR MORE PRIOR CONVICTIONS FOR A SERIOUS
23 OFFENSE OR TWO MOST SERIOUS, MOST SERIOUS OFFENSE --
24 I'M SORRY. ONE OR MORE PRIOR CONVICTIONS FOR A MOST
25 SERIOUS OFFENSE OR THREE SERIOUS OR A COMBINATION OF

1 THREE AND THEY CERTAINLY MEET THAT QUALIFICATION OR
2 MR. YOUNG, I HADN'T GOTTEN TO MR. PORTER YET, BUT
3 MR. YOUNG CERTAINLY FALLS INTO THAT CATEGORY.
4 MR. YOUNG, ANYTHING YOU WANT TO SAY?

5 MR. YOUNG: NO, SIR.

6 THE COURT: ALL RIGHT. THE SENTENCE ON
7 THE KIDNAPPING IS LIFE WITHOUT PAROLE UNDER SECTION
8 17-25-45.

9 ON ARMED ROBBERY LIFE WITHOUT PAROLE
10 UNDER SECTION 17-25-45.

11 ENTERING A BANK WITH INTENT TO STEAL
12 LIFE WITHOUT PAROLE UNDER SECTION 17-25-45.

13 ASSAULT AND BATTERY OF A HIGH AND
14 AGGRAVATED NATURE IS TEN YEARS.

15 CONSPIRACY TO COMMIT ARMED ROBBERY
16 FIVE YEARS.

17 POSSESSION OF FIREARM DURING A VIOLENT
18 CRIME FIVE YEARS.

19 THESE ARE ALL TO RUN CONCURRENT.

20 MR. YOUNG, YOU UNDERSTAND THESE ARE TRUE LIFE
21 SENTENCES; THAT IS, THERE IS NO ELIGIBILITY FOR
22 PAROLE WHATSOEVER.

23 MR. YOUNG: YES, SIR.

24 THE COURT: YOU UNDERSTAND THAT?

25 MR. YOUNG: YES, SIR.

1 THE COURT: ALL RIGHT. YOU HAVE TEN DAYS
2 TO FILE ANY APPEAL IF YOU WISH TO IN THE TRIAL OF
3 THIS CASE. YOU CAN STEP OUT.

4 MR. SPRINGS: YOUR HONOR, BEFORE I TURN TO
5 MR. PORTER LET ALSO ADD IN MR. YOUNG'S CASE.

6 THE COURT: WAIT, WAIT, BEFORE HE LEAVES.

7 MR. SPRINGS: WE PUT THAT PAPER IN HIS AND
8 HIS ATTORNEY'S HAND ON MAY 24, 2007, THE NOTICE OF
9 OUR INTENTION TO SEEK LIFE.

10 THE COURT: WAIT JUST ONE SECOND. ALL
11 RIGHT. THAT'S FINE. I JUST WANTED TO MAKE SURE. I
12 COULDN'T REMEMBER THE CONSPIRACY BUT GO AHEAD.

13 MR. SPRINGS: YES, YOUR HONOR. TURNING TO
14 MR. JOHNNELL PORTER. AND AGAIN AS I READ HIS RECORD
15 AS I UNDERSTAND IT I'M GOING TO SKIP AROUND A BIT
16 WITH THE DATES. WE HAVE LARCENY IN 1967. WE HAVE
17 BANK ROBBERY IN 1972. I'M SORRY. WE HAVE ARMED
18 ROBBERY IN 1980. AND AN ARMED ROBBERY IN 1995. YES,
19 IN 1995.

20 YOUR HONOR, WE HAVE GIVEN MR. PORTER'S
21 PRIOR RECORD, SERVED NOTICES FROM THE STATE THAT
22 GIVEN HIS PRIOR RECORD WE INTENDED TO SEEK LIFE
23 WITHOUT PAROLE IN THIS MATTER, FILED THAT NOTICE WITH
24 THE CLERK, AND I MYSELF PUT THAT PAPER, A COPY OF
25 THAT PAPER IN HIS HAND AND IN HIS PRIOR ATTORNEY'S

1 HAND MR. MATTHEW NIEMIEC WHEN MR. NIEMIEC WAS ON THE
2 CASE. I ACTUALLY PUT THAT IN THEIR HANDS ON THE SAME
3 DAY, MAY 24, 2007. I BELIEVE THAT WAS THE SAME DAY
4 AS MR. YOUNG. I WOULD LIKE TO MAKE A COPY OF THAT
5 NOTICE OF OUR INTENTION TO SEEK LIFE AS COURT'S
6 EXHIBIT, I HAVE THAT PAPER HERE, AND I WOULD ALSO
7 LIKE TO MAKE A COURT'S EXHIBIT TWO CERTIFIED
8 CONVICTIONS THAT I HAVE HERE ON TWO OF HIS ARMED
9 ROBBERIES. I'M SORRY, THREE. THREE OF HIS FOUR
10 PRIOR ARMED ROBBERIES, I'D LIKE TO MAKE THESE
11 CERTIFIED CONVICTIONS THREE OF THE FOUR ARMED
12 ROBBERIES A PART OF THE RECORD HERE.

13 THE COURT: MR. PORTER, OF COURSE
14 MR. D'AGOSTINO IS HERE TO, AS STANDBY COUNSEL ON
15 PROCEDURAL MATTERS SINCE YOU APPEAR PRO SE, I'M
16 CERTAINLY GOING TO GIVE HIM AN OPPORTUNITY TO SPEAK
17 IF HE WISHES, BUT HE'S HERE ONLY IN A STANDBY
18 CAPACITY, BUT I'LL BE GLAD TO LET HIM SPEAK FOR YOU.

19 MR. PORTER: HE'LL SPEAK.

20 THE COURT: YOU WANT HIM TO SPEAK FOR YOU.

21 MR. D'AGOSTINO: YOUR HONOR, I'VE LOOKED
22 AT THE PRIOR CONVICTIONS PROCEDURALLY THEY DO HAVE
23 THE THREE PRIOR CERTIFIED COPIES OF HIS PRIOR
24 CONVICTIONS. THIS IS AN LWOP CASE, LIFE WITHOUT
25 PAROLE. THE COURT AS I UNDERSTAND HAS NO DISCRETION.

1 HE IS 56 YEARS OF AGE AND HE DOES HAVE CHILDREN AND
2 GRANDCHILDREN BUT THE COURT HAS HEARD THE TESTIMONY
3 AND I WASN'T HERE FOR THE WHOLE TRIAL. IF MR. PORTER
4 HAS SOMETHING THAT HE'D LIKE TO INFORM THE COURT, BUT
5 I UNDERSTAND THE COURT HAS NO DISCRETION IN THE
6 SENTENCING AND IT IS LIFE WITHOUT PAROLE.

7 THE COURT: THE COURT HAS NO DISCRETION.
8 I DIDN'T SAY THIS IN FRONT OF MR. YOUNG, BUT EVEN IF
9 I HAD DISCRETION I THINK I WOULD -- I KNOW I WOULD
10 IMPOSE LIFE WITHOUT PAROLE IF THAT WAS AN OPTION
11 WHICH IT IS. MR. PORTER, ANYTHING YOU WANT TO SAY?

12 MR. PORTER: NO.

13 THE COURT: HE INDICATED NO. SENTENCE ON
14 THE KIDNAPPING IS LIFE UNDER SECTION 17-25-45.

15 THE ARMED ROBBERY SECTION UNDER
16 SECTION 17-25-45 IS LIFE.

17 ENTERING BANK WITH INTENT TO STEAL IS
18 LIFE UNDER SECTION 17-25-45.

19 POSSESSION OF A FIREARM DURING THE
20 COMMISSION OF A VIOLENT CRIME IS FIVE YEARS.

21 CONSPIRACY IS FIVE YEARS AND THESE ARE
22 TO RUN CONCURRENT. THESE ARE TRUE LIFE SENTENCES.
23 MR. PORTER, YOU HAVE TEN DAYS TO FILE AN APPEAL FROM
24 THE TRIAL OF THIS CASE IF YOU WISH. DO YOU
25 UNDERSTAND?

1 MR. PORTER: CAN I GET A ORDER SO.

2 THE COURT: NO, YOU HAVE TO GIVE WRITTEN
3 NOTICE AND MR. D'AGOSTINO ISN'T REQUIRED TO BUT.

4 MR. D'AGOSTINO: I'LL PREPARE NOTICE.

5 THE COURT: BUT HE'S BEEN GENEROUS WITH
6 HIS TIME AND SKILLS AND IF HE WEREN'T ALL READY AN
7 EAGLE SCOUT, I'D PROBABLY MAKE HIM ONE FOR COMING IN
8 AND HELPING, BUT HE'LL TELL YOU ABOUT THAT.

9 MR. D'AGOSTINO: OKAY.

10 THE COURT: THANK YOU.

11 MR. D'AGOSTINO: ALL RIGHT.

12 THE COURT: ALL RIGHT. I APPRECIATE
13 EVERYBODY'S HELP AND I BELIEVE THAT WE'LL BE BACK IN
14 SESSION AT 9:30 IN THE MORNING. THANK YOU.

15 (COURT'S IN RECESS AT 06:36 PM.)

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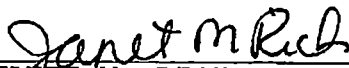
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25

1 I, JANET RICH, OFFICIAL COURT REPORTER FOR
2 THE SIXTEENTH CIRCUIT OF THE STATE OF SOUTH CAROLINA,
3 DO HEREBY CERTIFY THAT THE FORGOING IS A TRUE,
4 ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
5 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
6 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN
7 THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON
8 THE 23-26 OF JULY 2007.

9 I DO FURTHER CERTIFY THAT I AM NEITHER KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.
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JANET M. RICH

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHNELL PORTER,

APPELLANT

FINAL BRIEF OF APPELLANT

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in refusing to quash the indictments or to dismiss the case against appellant where appellant was arrested by South Carolina officers in North Carolina and where the officers failed to comply with the North Carolina statute which would have permitted such an arrest?
2. Did the trial judge err in admitting in evidence items which were not relevant in the absence of evidence connecting the items to appellant?
3. Did the trial judge err in excluding this pro se appellant from participating in bench conferences during trial?
4. Did the trial judge err in refusing to issue the kidnapping charge as requested by the defense where that charge was raised by the evidence presented?

STATEMENT OF THE CASE

Johnell Porter, appellant, was indicted by the York County Grand Jury for armed robbery, kidnapping, entering a bank with intent to steal, possession of a firearm during the commission of a violent crime, and conspiracy. On June 26, 2007, appellant appeared before the Honorable John C. Hayes on his motion to dismiss appointed counsel. As the result of this hearing, the judge granted appellant's motion to relieve his appointed attorney, Matthew Niemiec. On July 23, 2007, appellant proceeded to trial before Judge Hayes and a jury pro se. However, the judge appointed attorney D'Agostino to act as stand-by counsel. The jury returned verdicts of guilty as to all charges. Judge Hayes sentenced appellant to life in prison without the possibility of parole for armed robbery, kidnapping, and entering a bank with intent to steal. The judge sentenced appellant to five years for conspiracy and five years for possession of a firearm with the sentences to be served concurrently.

ARGUMENT

- I. The trial judge erred in refusing to quash the indictments or to dismiss the case against appellant where appellant was arrested by South Carolina officers in North Carolina and where the officers failed to comply with the North Carolina statute which would have permitted such an arrest.

Appellant joined in his co-defendant's attorney's argument and motion to quash the indictments and dismiss the case on the grounds that the State had failed to comply with the North Carolina statute under which the officers were authorized to arrest appellant after pursuit across state lines. (R. p. 66; 73). Appellant argued that the statute required that he be taken before a North Carolina judge without delay after he was arrested by South Carolina officers in North Carolina. The Solicitor informed the judge: "They were pursued by South Carolina officers, a pursuit that began in York County, South Carolina, pursued into Charlotte, North Carolina. The pursuit ended in Charlotte, North Carolina, and the first officers on the scene were the South Carolina pursuing officers and very shortly thereafter Charlotte Mecklenburg police officers arrived and took these folks into custody and took them to the Charlotte Mecklenburg police station." (R. p. 67, lines 11-19).

The judge specifically asked whether defendant was arrested by officers from South Carolina or officers from North Carolina. Despite having stated that the first officers on the scene were the South Carolina officers, the Solicitor indicated the actual arrests were made by North Carolina officers. The Solicitor acknowledged that the South Carolina officers later took out warrants and that these warrants were "waiting in York County for them when the extradition process brought their bodies back to York County, so they were detained for a minute or so on the scene until Charlotte Mecklenburg arrived

and then Charlotte Mecklenburg took custody of them and took charge of them at that point.” (R. p. 68, lines 1-12).

Defense counsel argued that the defendants’ vehicle could not be moved because it was hit by a York County vehicle during the stop. Counsel argued, “They got all these folks out at gun point, put handcuffs on them, and put them on the ground and had them for a period of time before Charlotte ever showed up. I think in light of that they certainly executed an arrest. They pulled them out of the car at gun point, they handcuffed them, they put them on the ground, and there was conversation on the part of the officers about ‘Don’t move, you are under arrest,’ and so forth.” (R. p. 68, lines 14-25). Plainly, appellant and the others in the vehicle with him were arrested in North Carolina by South Carolina police officers.

The statute authorizing South Carolina officers to make an arrest in North Carolina specifically requires that the out-of-state officer “must, without unnecessary delay, take the person arrested before a judicial officer of this state, who must conduct a hearing for the purpose of determining the lawfulness of the arrest.” N.C. Gen. Stat. Section 15A-403(b).¹ Accordingly, the trial judge asked if the officers complied with the law by taking these defendants before a North Carolina judicial officer without delay. The Solicitor responded, indicating that the defendants “certainly were” taken before a North Carolina Judicial officer. However, the Solicitor explained that he knew the defendants had been before a North Carolina judge because he had the court documents

¹ South Carolina’s corresponding statute also requires, “When an arrest is made in this State by a law enforcement officer of another state pursuant to subsection (A), the law enforcement officer must, without unnecessary delay, take the person arrested before a judicial official of this State.” S.C. Code Ann. § 17-13-47.

signed by the North Carolina judge in 2007. The Solicitor conceded that the defendants were taken before a judge and these documents were signed as part of the extradition process and not as the result of the defendants being taken before a North Carolina judicial officer without delay upon being arrested by South Carolina officers in North Carolina.

The Solicitor argued, "If there was some error in meeting the letter of this statute, that's a statutory error and it's not a constitutional violation such that would enable them to not be brought and tried before this court." The Solicitor argued that once the defendant was present before the South Carolina Court on a valid indictment, the failure to comply with North Carolina's statute was irrelevant. The judge indicated that he basically agreed with the solicitor. The judge observed, "This is just a North Carolina procedure of what could be done if somebody within their, the confines of their state. I don't think it effects the arrest itself. It just effects what happens in North Carolina, not what happens sometime thereafter, so I find that 15-A-403 North Carolina general statute GS-15-1-403 is inapplicable and to the extent that it would be applicable, I find there has been no evidence of any violation by South Carolina of the law that applies to the officers." (R. p. 70).

To the contrary, the North Carolina statute was specifically relevant and applicable where that statute particularly addresses the precise circumstances present in this case. Appellant was arrested in North Carolina by South Carolina officers outside their jurisdiction. 'To constitute an arrest, there must be an actual or constructive seizure or detention of the person, performed with the intention to effect an arrest and so understood by the person detained.' Jenkins v. United States, 10 Cir., 161 F.2d 99, 101.

It is not necessary that there be an application of actual force, or manual touching of the body, or physical restraint which may be visible to the eye, or a formal declaration of arrest; it is sufficient if the person arrested understands that he is in the power of the one arresting and submits in consequence. State v. Williams, 237 S.C. 252, 116 S.E.2d 858, 860 (S.C.1960). The arresting officers failed to comply with the North Carolina statute which permitted them to arrest appellant after pursuit across the state line.

Appellant testified that he was not taken and there was no indication that defendant was taken before a North Carolina judge immediately upon his being arrested. Instead, it would appear that the South and North Carolina police officers believed that a sufficient and acceptable substitute for taking the arrested defendant before a North Carolina judge was to have the North Carolina officers provide another layer of police activity by themselves arresting him. However, the North Carolina legislature particularly mandated that the police officers involve a judicial officer in the process "without unnecessary delay" after an arrest by out-of-state officers acting outside their jurisdiction.

Appellant stated that he was not taken before a North Carolina judge after he was arrested by South Carolina officers in North Carolina. Indeed, the Solicitor tacitly conceded that those arrested were not taken before a North Carolina judicial officer until the time of their extradition in January of 2007. Clearly, appellant's arrest was made without jurisdiction absent the North Carolina statute which permitted the arrest but required that a judicial officer review and approve the arrest without delay. The trial judge erred in finding that the statute was irrelevant and in refusing to dismiss the charges against appellant in light of the admitted violation of the statute's requirements and given

that without reference to and reliance upon that statute, the South Carolina officers had no authority to arrest or detain appellant in North Carolina.

- II. The trial judge erred in admitting in evidence items which were not relevant in the absence of evidence connecting the items to appellant.

The judge erred in admitting in evidence items found in a parking lot, including a pair of black gloves, a blue shirt, a pillow case, a can of pepper spray, a knife, a dew rag, a white shirt, a black jacket, a pair of boots, and a pair of tennis shoes. (R. p. 430). Under Rule 401, SCRE, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (S.C.,2001). Counsel Jamison objected to the admission of these items in evidence on the grounds of relevance given that the State had submitted no evidence connecting the items found on the ground in an apartment complex parking to appellant or his co-defendants. (R. p. 430). Counsel argued that there was no testimony tying these items to the defendants. The items were not found in the possession of the defendants and not found in the defendants' vehicle. In addition, there were no fingerprints found on any of the items from the apartment parking lot. The trial judge erred in ruling that these items were admissible upon finding that there was a probative nexus connecting the items to the nearby vehicle. (R. p. 432).

- III. The trial judge erred in excluding this pro se defendant from bench conferences during trial.

Appellant's co-defendant, Young, was represented by attorney Jamison while appellant appeared pro se but with stand-by counsel, Mr. D'Agostino. During jury voir dire and selection the trial judge indicated, "Let me ask counsel to come up here and Mr.

Porter, I'll ask Mr. Jamison to tell you what I mention up here." (R. p. 55, lines 22-24). The trial judge thus erred as a matter of law in excluding appellant from participation in the bench conference.

The trial judge's error violated appellant's constitutional rights to be present and to present a defense during his trial as guaranteed by the South Carolina and United States constitutions. The United States Supreme Court has held that a defendant has a constitutionally guaranteed right to represent himself at trial. Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (U.S.Cal. 1975). The Court has further ruled that a pro se defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address court and jury at appropriate points in trial. McKaskle v. Wiggins, 465 U.S. 168, 178, 104 S.Ct. 944, 951 (U.S.Tex. 1984). The Court held in McKaskle: "The pro se defendant is entitled to preserve actual control over the case he chooses to present to the jury. This is the core of the Faretta right. If standby counsel's participation over the defendant's objection effectively allows counsel to make or substantially interfere with any significant tactical decisions, or to control the questioning of witnesses, or to speak instead of the defendant on any matter of importance, the Faretta right is eroded." McKaskle, 465 U.S. at 178, 104 S.Ct. at 951.

The constitutional right to presence is rooted to a large extent in the confrontation clause of the Sixth Amendment. Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). However, the United States Supreme Court has recognized that this right is also protected by the due process clause in some situations where the defendant is not actually confronting witnesses or evidence against him. In Snyder v. Massachusetts,

291 U.S. 97, 54 S.Ct. 330, 78 L.Ed. 674 (1934), the Court explained that a defendant has a due process right to be present at a proceeding “whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge ... [T]he presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by *500 his absence, and to that extent only,” *Id.*, at 105-108, 54 S.Ct. at 332-333, 78 L.Ed. at 678-679. These same principles were reiterated recently in Kentucky v. Stincer, 482 U.S. 730, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987). In Oses v. Com. of Mass. 961 F.2d 985 (C.A.1, 1992), the Massachusetts Supreme Court held that the defendant's Sixth Amendment right of pro se representation was violated by his exclusion from bench or lobby conferences during trial, even though standby counsel was present. Here, the attorney the judge welcomed to the bench conference was actually the attorney for appellant’s co-defendant. Thus, neither appellant nor even his stand-by counsel was included in the bench conference with the judge and the State’s representative. Appellant’s rights to be present and to represent himself at trial were clearly violated such that reversal is required.

IV. The trial judge erred in refusing to issue the kidnapping charge as requested by the defense where that charge was raised by the evidence presented.

Appellant joined in the motion of his co-defendant’s counsel requesting that the judge issue a particular charge on kidnapping during his charge on the law. (R. p. 555, lines 4-5; p. 636, lines 12-23). The judge indicated that the requested charge sounded logical; however, he refused to issue the charge in light of the State’s opposition. (R. p. 554, line 15- p. 555, line 1). Defense counsel argued, “It’s based on the idea, Your

Honor, that in order to commit an armed robbery you necessarily have to constrain the activities of the person that you are robbing, otherwise, they could walk away and no robbery would occur and what I'm asking the court to charge is that if they are going to find my client guilty of kidnapping they would have to find that he did something more than constrain them for the purpose of robbing them, that he constrained them beyond the necessary constraint that would normally flow from an armed robbery." (R. p. 554, lines 4-14). The written request to charge indicates in part, "Therefore, if you find beyond a reasonable doubt that defendant is guilty of robbery, in order for you to also find defendant guilty of kidnapping, you must find beyond a reasonable doubt that any confinement by defendant was so substantial that it involved an independent and greater confinement than that necessary for robbery alone." (R. 662).

"The law to be charged is determined by the evidence presented at trial." State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241 (1996). Here, the evidence presented included extensive testimony describing the armed robbery at the bank. However, from the descriptions of the robbery and the supposed kidnapping it would appear that the actions which the State alleged constituted both kidnapping and armed robbery were the same. Appellant was alleged to have committed armed robbery by using a gun to threaten bank employees in order to constrain their movements so that he and his cohorts would be free to take the bank's money. Appellant was alleged to have committed kidnapping by using a gun to threaten bank employees in order to constrain their movements so that he and his cohorts would be free to take the bank's money. Therefore, the evidence presented at trial called for the judge to explain to the jury that unless the State alleged that appellant constrained movements beyond the constriction

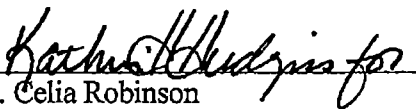
required to commit armed robbery, they should find him not guilty of the superfluous charge of kidnapping.

The trial judge erred in refusing to issue the requested charge which was raised by the evidence and consistent with the law.

CONCLUSION

For all the forgoing reasons, appellant's convictions should be reversed and a new trial granted.

Respectfully submitted,


M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

This 5th day of May, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 5, 2009



M. Celia Robinson
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

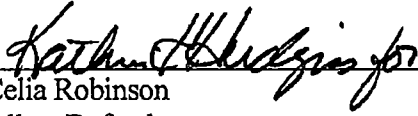
V.

JOHNELL PORTER,

APPELLANT

CERTIFICATE OF SERVICE

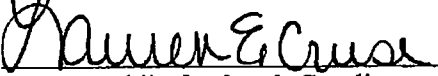
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie M. Thames, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 5th day of May, 2009.



M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 5th day of May, 2009.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014 .

STATE OF SOUTH CAROLINA)

County of YORK)Case # 2011CP4602620
IN THE COURT OF COMMON PLEASJOHNELL PORTER#240208)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEFFILED-RECEIVED
2011 JUL -6 PM 3:24
DAVID HAMILTON
C.C.P.E.G.S.
YORK COUNTY, S.C.**INSTRUCTIONS B 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 the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention PERRY CORRECTIONAL INST., 430 OAKLAWN ROAD,
PELZER, S.C. 29669
2. Name and location of Court which imposed sentence YORK COUNTY GENERAL
SESSIONS COURT, YORK, S.C. 29745
3. Name(s) of co-defendant(s) (if any) KENNETH YOUNG, DONSHAVIS JONES, AND
ANGELA LAWS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (1.) 2007-GS-46-01687(Armed ROBBERY), (2.) 2007-GS-46-01688
(ENTERING A BANK WITH INTENT TO STEAL), (3.) 2007-GS-46-01689

(b) (KIDNAPPING), (4.) 2007-GS-46-01690(POSSESSION OF FIREARMS,

(c) (5.) 2007-GS-01691 (CONSPIRACY TO COMMIT ARMED ROBBERY).

5. The date upon which sentence was imposed and the terms of the sentence:

(a) JULY 26, 2007, (LIFE WITHOUT PAROLE), AND TWO . . .) 5YRS.

(b) ~~SENTENCES TO RUN CONCURRENTLY WITH LWOP SENTENCE !!!~~

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty X _____

(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 Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. COURT OF APPEALS, AND THE

ii. S.C. SUPREME COURT OF APPEALS

iii. _____

(b) the result in each such Court to which you appealed:

i. APPEAL- DENIED. APRIL 5, 2010, AND THE

ii. PETITION FOR REHEARING- DENIED. JULY 7, 2010, AND THE

iii. WRIT OF CERTIORARI- DENIED. FEBRUARY 16, 2011

(c) the date of each such result:

i. APRIL 5, 2010

ii. July 7, 2010

iii. FEBRUARY 16, 2011

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) N/A

- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) (SEE ATTACHED MEMORANDUM OF LAW)
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (SEE ATTACHED MEMORANDUM OF LAW)
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. (MOTION TO VACATE/AND SET ASIDE JUDGMENT, PURSUANT TO
- ii. RULE# 60 S.C.R.CIV.P., (FILED PRO SE), JULY 25, 2008)
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. TRIAL COURT, YORK COUNTY GENERAL SESSIONS COURT, AND REQUESTED
- ii. LEAVE TO FILE(DIRECT APPEAL WAS PENDING), FROM THE S.C.
- iii. COURT OF APPEALS, IN ACCORDING TO RULE# 60 SCRCIV.P.1111

- iv. _____
- (c) the disposition thereof:
 - i. (THE YORK COUNTY GENERAL SESSIONS COURT, FAILED TO FILE OR
 - ii. ~~PROCESS THE MOTION, AND THE S.C. COURT OF APPEALS CLERK, DID~~
 - iii. ~~NOT PROCESS THE MOTION, AND STATED APPLICANT WAS REPRESENTED~~
 - iv. ~~BY APPELLATE COUNSEL, ALTHOUGH HE REPRESENTED HIMSELF PROSE.)~~
- (d) the date of each such disposition:
 - i. (MOTION TO VACATE/AND SET ASIDE JUDGMENT, PURSUANT TO
 - ii. RULE# 60 SCRCIV.P., WAS RETURNED, ON SEPTEMBER 17, 2008, BY
 - iii. THE S.C. COURT OF APPEALS CLERK ERRORENOUSLY !!!)
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____ N/A _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? (YES)
~~MOTION TO VACATE/AND SET ASIDE JUDGMENT, PURSUSNT TO RULE# 60~~
~~SCRCIV.P.,~~

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. RULE# 60(B)(#) SCRCIV.P., (FRAUD UPON THE COURT)
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. TRIAL COURT, ... YORK COUNTY GENERAL SESSIONS COURT, AND A
 - ii. REQUEST FOR LEAVE TO FILE, WAS SENT TO S.C. COURT OF APPEALS
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) ~~(ALL OF THE GROUNDS IN (10), COULD NOT HAVE BEEN RAISED UNTIL~~
 - (b) ~~APPLICANT'S DIRECT APPEAL HAD BEEN FINALIZED, WITH THE EXCEPTION~~
 - (c) ~~OF FRAUD UPON THE COURT, RULE# 60(B)(3) SCRCIV.P.)~~
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? NO (APPLICANT WAS NEVER ARRAIGNED)
 - (b) your trial, if any? APPLICANT WAS FORCED TO GO TO TRIAL PRO SE
 - (c) your sentencing? PRO SE, STAND COUNSEL APPOINTED 3RD OF TRIAL
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? PRO SE
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. MS.M.CELIA ROBINSON, ESQ.
 - MR. TRISTAN M. SHAFFER, ESQ. BOTH WERE FROM THE S.C. OFFICE
 - ii. OF THE APPELLATE DEFENDER, 1330 LADY ST., SUITE#410
 - COLUMBIA, S.C. 29211-1589
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. (THE DIRECT APPEAL AND PETITION FOR REHEARING, MS.ROBINSON),
 - (THE WRIT OF CERTIORARI, BY MR. SHAFFER.)
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

VACATE SENTENCE/AND OR NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of YORK)

VERIFICATION

I, JOHNELL PORTER, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 27TH
day of June, 2011.

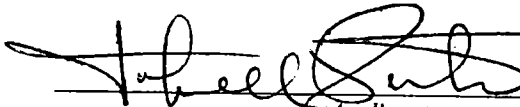
 (L.S.)
Notary Public

My Commission Expires: February 21, 2012

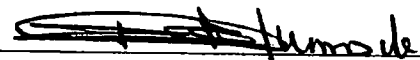
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JOHNELL PORTER, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
27th day of June, 2011.


Notary Public

My Commission Expires: February 21, 2012

MEMORANDUM OF LAW

(10.) STATE CONCISELY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOU ARE BEING HELD IN CUSTODY UNLAWFULLY:

(A.) The Applicant asserts, that he was denied effective assistance of counsel prior to trial, that severely prejudiced him, and caused him to suffer a Constructive Denial Of Counsel, at critical stages of his defense. In violation of his Sixth(6th) Amendment Rights to effective assistance of counsel under the United States Constitution, and also violated his Due Process Rights under the Fourteenth(14th) Amendment of the United States Constitution.

(B.) The applicant, was forced to represent himself Pro Se at trial, and the trial court did not appoint Stand-By Counsel, until the third day of his trial. Therefore, violating his right to counsel under the Sixth(6th) Amendment of the United States Constitution, and his Due Process Rights under the Fourteenth(14th) Amendment of United States Constitution.

(C.) The trial court, failed to warn applicant of the dangers to proceed Pro Se at trial. Therefore, violated a clear and established federal law mandated by the United States Supreme Court. Applicant's Sixth(6th) Amendment Right to Waiver of Counsel, and his Due Process Rights of the Fourteenth(14th) Amendment of the United States Constitution were violated. Trial Court record, must show that applicant waived his right to counsel voluntarily, knowingly, and intelligently!!!

(D.) The applicant, was denied effective assistance of Appellate Counsel, on his direct appeal. Violating his Sixth(6th) Amendment Rights to effective assistance of Appellate Counsel, under the United States Constitution.

(E.) The applicant asserts, that he was subjected to Prosecutor Misconduct, Fraud Upon The Court, and A Sham Legal Process, that violated his Due Process Rights under the Fourteenth(14th) Amendment of the United States Constitution.

(F.) The applicant was denied a Substantial Right To Open and Close the argument to the jury. Therefore, violating his due Process Rights under the Fourteenth(14th) Amendment of the United States Constitution.

(G.) The applicant asserts, the trial court erred in admitting evidence, that the state failed to establish a Complete Chain Of Custody. In violation of the Statutorial Requirementss Of Rule# 6, SCRCrim.P., and applicant's Due Process Rights under the Fourteenth(14th) Amendment of the United States Constitution.

(11.) STATE CONCISELY IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (10):

(A.) The applicant asserts, that he was denied effective assistance of counsel prior to trial, that prejudiced him, and caused him to suffer a Constructive Denial Of Counsel, at critical stages of his defense, in violation of his Sixth(6th) Amendment Rights under the Fourteenth(14th) Amendment of the United States Constitution.

(1.)The State Of South Carolina, enacted reciprocal legislation effective February 17,2006, called The Uniform Fresh Pursuit Act, As a result, under North Carolina Law, South Carolina Law Enforcement Officials complying with the North Carolina Statue, have the authority to enter North Carolina to make arrests when in fresh pursuit, (SEE e.g. S.C. Code Ann.§ 17-13-47; N.C. Gen. Stat.§ 1A-403; and N.C. Gen. Stat.§ 14-43.1).

On December 22,2006, as the result of a high speed chase from York,S.C., into the Charlotte,N.C.. Applicant along with three other people were arrested in Charlotte,N.C., by the York County Sheriff Department, in connection with the robbery of the Bank Of York. He and the other three people, were placed under arrest and restrained of their liberty, by the York County Sheriff Department, until the Charlotte Mecklenburg County Police Department arrived on the scene. All of them, were taken to the Mecklenburg County Jail, in Charlotte,N.C., where they were questioned by the York County Sheriff Department Officials, and a F.B.I. Official. Due to fact, the applicant had not committed any crime in the state of North Carolina, a North Carolina Governor's Warrant was placed on him, because he was fighting extradition to the state of South Carolina. However, the York County Sheriff Department, later that same day faxed an Arrest Warrant to the Mecklenburg County Jail, charging applicant with S.C. Code Ann.§ 16-11-0380,Robbery/Entering Bank,Depository or Bldg., and Loan Association with intent to steal.

The applicant remained in the Mecklenburg County Jail, in Charlotte,N.C., until february 15,2007, when he was brought to the state of South carolina, by a Deputy Sheriff from the York County Sheriff Department. He was not giving an Extradition Hearing, nor did he waive any of his rights to extradition. He was placed in the York County Detention, Moss justice Center, York,S.C., was booked, and later taken before the Honorable Judge N.R.Watkins,Jr., who informed him that he had five(5) Arrest Warrants. Applicant was denied bail, and the York County Public Defender's Office, was appointed to represent him on the charges that was pending against him.

Eventhough, the York County Public Defender's Office, is located in the very same building as the York County Detention Center, where the applicant was detained. He was subjected to

"Constructive Denial of Counsel", as none of his letters or requests to the York County Public Defender's Office were answered, nor did anyone from their office come visit him. Exactly thirty five(35) days later via letter, he was informed that as the result of a "Conflict Of Interest", the York County Public Defender's Office could not represent him. The letter was dated March 22, 2007, attached with an "Order" signed by the Honorable See S. Alford, who on March 21, 2007, had appointed Mr. Matthew R. Randall, Esq., 1036 Assembly Drive, Fort Mill, S.C. 29708, to represent applicant at trial.

(2.) The appointment of Mr. Randall, Esq., as applicant's attorney by Judge Alford, severely prejudiced him and denied him his rights to effective assistance of counsel prior to trial. Judge Alford, knew or should have known that Mr. Randall, Esq., was a "Real Estate Attorney", and did not have any criminal law or trial experience. The applicant had several pre-trial issues that needed to be addressed, and wrote several letters to his attorney requesting him to submit a timely request for a preliminary hearing. However, prejudice is presumed, because with an ill-equipped attorney, applicant could not receive proper or adequate legal assistance, in regards to his pre-trial issues. Nor could he prepare a defense for trial, and he was denied his Sixth(6th) Amendment Rights to effective assistance of counsel. He was prejudiced prior to trial by his ill-equipped attorney, and was subjected to due process violations under the Fourteenth(14th) Amendment of the United States Constitution. See e.g. Cronic v. United States, 446 U.S. 643, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984); and Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006). The applicant, never received his initial appearance, preliminary hearing, or arraignment!!!!!!

On February 15, 2007, when the Honorable Judge N.R. Watkins, Jr., informed applicant of the charges against him, restrained him of his liberty, and appointed the York County Public Defender's Office to represent him. The applicant's Sixth(6th) Amendment Rights had been attached. See e.g. Michigan v. Jackson, 475 U.S. 625, 629, n.3; and Brewer v. Williams, 130 U.S. 387, 398-399. Both the York County Public Defender's Office and Mr. Matthew R. Randall, Esq., completely ignored his repeated requests for legal assistance, and therefore, subjected him to "Constructive Denial of Counsel". See e.g. United States Ex Rel Madej v. Gilmore, 2002 WL 370222 (N.D. Ill. March 3, 2002); and Gonzales v. Phillips, 195 F.Supp.2d 893 (E.D. Mich. 2001). In Estelle v. Smith, 451 U.S. 454, 469 (1981) ("The United States Supreme Court held the right of counsel granted by the Sixth(6th) Amendment means that a person is entitled to the help of a lawyer at or after the time that adversary judicial proceedings have been initiated against him"). Also Brewer v. Williams, Supra.

The applicant's due process rights were severely violated prior to trial as explained by the United States Supreme Court in Kirby v. Illinois, 406 U.S. 682, 683 (1972). A plurality of the Court stated that a person's Sixth(6th) Amendment and Fourteenth(14th) Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against him. A majority of the Court elaborated on that explanation in Moore v. Illinois, 434 U.S. 220(1977). The York County Public Defender's Office

actions from February 15, 2007-thru-March 22, 2007 (the date applicant was notified in regards to the conflict of interest), and Mr. Randall's, Esq., actions from March 21, 2007-thru-April 15, 2007 (the date Judge John C. Hayes, III, signed A Consent Order Of Counsel Substitution), were very prejudicial, deficient, and subjected applicant to a Constructive Denial Of Counsel, and cannot be deemed a trial court strategy. The applicant was denied ineffective assistance of counsel in violation of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 30 L.Ed.2d 574, 692 (1984), and Cronic v. United States, Supra. Mr. Randall, Esq., completely "ABDICATED" applicant's defense by passing his case off to a friend (Mr. Matthew Niemiec, Esq.,) without informing him that he was a "Real Estate Attorney", and had no criminal law or trial court experience. Again, the applicant, was subject to Constructive Denial Of Counsel, from April 15, 2007-May 21, 2007, the day Mr. Niemiec, Esq., first came to visit him. The visit did not go well, because applicant had not been informed of the Consent Order Of Counsel Substitution, signed by Judge Hayes, on April 15, 2007, and was still under the impression that Mr. Randall, Esq., was still his attorney. Mr. Niemiec, Esq., on that first visit, brought the applicant a thirty (30) years plea from the state, and informed him that Mr. Randall, Esq., was a "Real Estate Attorney", and asked him as a friend to take applicant's case. Applicant, filed a "Complaint" with the Office Of The Disciplinary Counsel, against Mr. Randall, Esq., and filed a Motion To Dismiss Counsel, to have Mr. Matthew Niemiec, Esq., removed from his case.

(B.) The applicant, was forced to represent himself Pro Se at trial, and the trial court did not appoint "Stand-By" counsel until the third day of his trial. Therefore, violating his right to counsel under the Sixth (6th) Amendment of the United States Constitution. As well as his due process rights under the Fourteenth (14th) Amendment of the United States Constitution.

(1.) The Applicant, was granted a hearing on his Motion To Dismiss Counsel, in the York County General Sessions Court, on June 26, 2007, the Honorable John C. Hayes, III, presiding. At that hearing, applicant stated more than once that he was not comfortable with Mr. Niemiec, Esq., as his attorney. (See Transcript of Applicant's Motion To Dismiss Counsel Hearing, June 26, 2007, in the York County General Sessions Court.) The state served a LWOP Notice on applicant on May 24, 2007, the applicant asked Mr. Niemiec, Esq., what date was his preliminary hearing? Mr. Niemiec's response, was that it was too late for a preliminary hearing because the applicant had already been indicted by the York County Grand Jury. Applicant knew he had not been indicted and requested to see his Indictments and his Rule 45, SCRCrim.P., Motion To Discover, and he could not produce either. Please Note, Applicant's Indictments shows that he was allegedly indicted on June 14, 2007, and Mr. Niemiec's, "lie" denied applicant his Initial Appearance, Arraignment, and Preliminary Hearing. However, because Judge Hayes, had appointed Mr. Niemiec, Esq., April 15, 2007, The Consent Order Of Counsel Substitution, he was very bias towards Mr. Niemiec, in spite of applicant's repeated responses that he was not comfortable with him as his attorney. The court would not

appoint him another attorney, and applicant was forced by the court to choose between "Incompetent Counsel" or "NO Counsel At All". See Crandall v. Bunnell, 144 F.3d 1213 (9th Cir.1998), overruled by Schell v. Witak, 213 F.3d 1017 (9th Cir.2000). The state cannot force attorney on defendant, but decision to represent self must be knowing and intelligent. See Faretta v. California, 422 U.S. 306 (1975). Judge must allow sufficient time for defendant to make decision, develop for record information on defendant's ability to make waiver decision, and explain value of counsel to accused. Townes v. United States, 371 F.2d 930 (4th Cir.1966), cert. denied, 387 U.S. 947 (1967); and United States v. Gallop, 838 F.2d 105 (4th Cir.), cert. denied, 487 U.S. 1211 (1988).

In State v. Arthur, 295 S.C. 405, 374 S.E.2d 291 (1988), the South Carolina Supreme Court stated, "We held that waiver of a Constitutional or Statutory Right requires a showing on the record, that the defendant made the waiver knowingly and intelligently". Citing the United States Supreme Court, in Paton v. United States, 281 U.S. 276, 50 S.Ct. 253, 74 L.Ed. 854 (1930); See also, State v. Orr, 403 S.E.2d 623 (1981). Applicant's trial would begin in exactly "Twenty Seven (27) Days" later, an Highly Skilled Attorney would not be prepared or ready for trial in such a short notice, and especially considering the nature and seriousness of the charges he was faced with. Judge Hayes, forced him into making the decision to represent himself at trial, he had neither seen his Indictments or Motion To Discover, Pursuant to Rule 5, SCRCrim.P., nor was he allowed access to a law library or legal books, or anything else that would assist in his preparation for trial. Applicant's asserts, that his right to counsel under the Sixth (6th) Amendment, and his due process rights were violated under the Fourteenth (14th) Amendment of the United States Constitution.

(C.) The trial court, failed to warn applicant of the dangers to proceed Pro Se at trial. Therefore, the trial court violated a clear and established federal law mandated by the United States Supreme Court. Applicant's Sixth (6th) Amendment rights to waiver of counsel, and his due process rights under the Fourteenth (14th) Amendment of the United States Constitution were violated. Because, the trial court record must show that applicant waived his rights to counsel voluntarily, knowingly, and intelligently !!!!!!!

(D.) The applicant asserts, an affirmative right of criminal defendant to represent self at trial under the Sixth (6th) Amendment extends to states via the Fourteenth (14th) Amendment. State cannot force attorney on defendant, but decision to represent self must be knowing and intelligent. Faretta v. California, Supra. Although, defendant may waive right to counsel, courts entertain every reasonable presumption against waiver. The "trial court" record, must show voluntary, knowing, and intelligent waiver. See United States v. Gallop, 838 F.2d 105 (4th

Cir.), cert. denied, 437 U.S. 1211 (1988). Question of waiver is one of law. Brewer v. Williams, 430 U.S. 337, 397 n.4 (1977). (The applicant's "trial transcript", does have a "Colloquy" between him and Judge Hayes, in regards to the dangers to proceed Pro Se, nor does it show that he waived his right to counsel voluntarily, knowingly, or intelligently.)

The South Carolina Supreme Court, in State v. Arthur, 295 S.C. 495, 374 S.E.2d 291 (1983), stated, "We held that waiver of a constitutional or statutory right requires a showing on the record that the defendant made the waiver knowingly and intelligently." Citing the United States Supreme Court, in Paton v. United States, 281 U.S. 276, 50 S.Ct. 253, 74 L.Ed. 854 (1930). Applicant is entitled to relief, if the record fails to demonstrate the applicant made an informed choice to proceed "Pro Se" with "Eyes Open". Watts v. State, 347 S.C. 399, 556 S.E.2d 363 (2001). "Absent a showing of an unusual fact situation in which the background and experience of the defendant in legal matters was apparent from the record, the court (trial court) must specifically inquire into the elements of the crime charged. The court, must specifically discuss with the defendant, the nature of the charges against him, the possible penalties, and the dangers and disadvantages of self-representation." United States v. Balough, 820 F.2d 1435, 1433 (9th Cir. 1987); Hendricks v. Zenon, 993 F.2d 654 (9th Cir. 1993); and Snook v. Wood, 89 F.3d 505 (9th Cir. 1995).

Sixth (6th) Amendment right to self-representation, ... "the request must be (1.) Knowing and Intelligent; and (2.) Unequivocal." Armani v. Marquez, 772 F.2d 552, 555 (9th Cir. 1985), cert. denied 475 U.S. 1099, 105 S.Ct. 1502, 89 L.Ed.2d 902 (1985); and Stano v. Dugger, 921 F.2d 1125, 1143 (11th Cir.) (EN BANC), cert. denied, U.S., 112 S.Ct. 116, 116 L.Ed.2d 85 (1991). "The trial court's failure to warn the applicant of the dangers to proceed Pro Se at trial, clearly violated a clear and established federal law mandated by the United States Supreme Court. See Faretta v. California, Supra, United States v. Gallop, Supra; and Towns v. United States, 371 F.2d 930 (4th Cir. 1965), cert. denied 387 U.S. 947 (1967) !!!!!!!

(D.) The applicant, was denied effective assistance of Appellate Counsel, on his direct appeal. Violating his Sixth (6th) Amendment rights to effective assistance of appellate counsel under the United States Constitution.

(1.) A defendant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). The United States Supreme Court, ruled in Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 330, 83 L.Ed.2d 921 (1985) "A defendant is constitutionally entitled to effective assistance of appellate counsel." Where result of appeal would have been different had counsel not been deficient, the appropriate remedy is to grant a new trial. See Ezell v. State, 345 S.C. 312, 548

S.E.2d 852 (2001).

The applicant, was represented on appeal by Ms.M.Celia Robinson, Esq., of the SCCID, Division of Appellate Defense. In his appeal (State v. Porter, Opinion No. 4672; Submitted March 1, 2010-----Filed April 5, 2010.) The South Carolina Court Of Appeals's Opinion, is very clear and obvious. That his appellate counsel, willfully abandoned his "Strongest" appeal argument. An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority. Glasscoch Inc. v. U.S. Fidelity & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 599, 601 (CT. APP. 2001); State v. Howard, 384 S.C. 212, 218, 592 S.E.2d 42, 45 (CT. APP. 2009).

(2.) Applicant's first argument in his appeal brief, to the S.C. Court of Appeals, (A.) Motion To Quash The Indictments/Or Dismiss The Case. Appellate Counsel's argument was deficient, unprepared, failed to properly investigate, and severely prejudiced applicant. The proper authority that was being requested by the S.C. Court Of Appeals, appellate counsel had in her possession, and could have gotten applicant's appeal overturned. "Please Note", that the S.C. Court Of Appeals, was also unaware and uninformed of the statutory requirements of "The Uniform Fresh Pursuit Act", that is a "South Carolina law", the state enacted reciprocal legislation effective February 17, 2006, former Governor Mark Sanford, requested the South Carolina Legislators to pass this act." Granting law enforcement officials, in the "States" of North Carolina and Georgia, to make arrests in the state of South Carolina when in fresh pursuit, and South Carolina Law Enforcement Officials would be granted the same rights, when in fresh pursuit. Nevertheless, "The Uniform Fresh Pursuit Act Requires That The Statutory Provisions Are Met And Adhered To Before Arrests Can Be Made". See e.g. S.C. Code Ann. § 17-13-47; and N.C. Gen. STAT. § 15a-403. (There is no case law or authority, in regards to this South Carolina law, because it was newly enacted the same year applicant was arrested, 2006.) Appellate Counsel's error arose out of her unfamiliarity with The Uniform Fresh Pursuit act, and the applicant sent a copy of the law to her. See Flores v. Demskie, 215 F.3d 293, 304 (2nd. Cir. 2000), cert. denied, 121 S.Ct. 606 (2000). Counsel's failure to properly investigate and research, caused applicant ineffective assistance of appellate counsel, and violated his rights to effective assistance of appellate counsel under the Sixth (6th) Amendment of the United States Constitution.

(3.) The applicant was denied effective assistance of appellate counsel, when appellate counsel failed to spot and raise an obvious non-frivolous issue in his appeal brief. At trial he represented himself pro se, and at the introduction of evidence by Ms. Audra Eddie, an Investigator for the Forensic Service Unit, of the York County Sheriff Department. The applicant, "Objected" to introduction of the evidence Investigator Eddie, was about to offer, in regards to the fact, the

state had failed to establish a complete chain of custody. However, the "objection" was preserved for appeal, but appellate counsel failed to raise it on appeal and it was a non-frivolous issue. See Smith v. Robbins, 528 U.S. 219 (2000); and Delgado v. Lewis, 223 F.3d 975, 980 (9th Cir. 2000). Also, see, Mason v. Hanks, 97 F.3d 387, 397 (7th Cir. 1995), "appellate counsel ineffective for failing to raise issue on appeal."

(C.) The applicant asserts, that he was subjected to Prosecutor Misconduct; Fraud Upon The Court; and A Sham Legal Process, that violated his due process rights under the Fourteenth (14th) Amendment of the United States Constitution.

(1.) Applicant's due process rights under the Fourteenth (14) Amendment of the United States Constitution, was willfully, knowingly, and intentionally violated by the York County Solicitor's Office. Especially, by Assistant Solicitor, Mr. E. B. Springs' "Egregious Misconduct", and willful violations of South Carolina Laws and Statutory Requirements. Mr. E. B. Springs, allowed and submitted "false and fabricated" information to be printed on applicant's indictments. Such actions constitutes an "Extrinsic Fraud Upon The Court", in violation of Rule 450(B)(3), of South Carolina Rules Of Civil Procedures. That caused the trial court to be without lawful jurisdiction to hear his case. Please note, first and foremost, the applicant is not challenging the sufficiency of the elements of his indictments, therefore, State v. Gentry, 353 S.C. 93, 610 S.E.2d 494 (2005), do not apply. Nor is he challenging the legality of sufficiency of the process of the grand jury, in regards to Evans v. State, 353 S.C. 491, 611 S.E.2d 510. However, the facts herein stated, will show that the York County Assistant Solicitor, Mr. E. B. Springs, actions clearly constituted an "Extrinsic Misconduct". That resulted in an Extrinsic Fraud Upon The Court; Prosecutor Misconduct; knowing and Willing Perjury By An Officer Of The Court; and A Sham Legal Process (See e.g. S.C. Code Ann. § 16-17-735(E)(3)(c)), and caused the court to be without lawful jurisdiction to try applicant.

In Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104, the United States Supreme Court stated,..... "As long ago as Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct. 340, 342, 79 L.Ed.2d 791 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." This was reaffirmed in Pyle v. Kansas, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed.2d 214 (1942). In Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), the Court said, the same result obtains when the "State", although not soliciting false evidence, allows it to go "Uncorrected" when it appears. Id., at 269, 79 S.Ct. at 1177. Thereafter, Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1197, held that suppression of material evidence justifies a new trial "irrespective of the good faith or bad faith of the prosecutor".

(2.) The York County Solicitor's Office, in particular Assistant Solicitor Mr. E. B. Springs, knowingly and willingly violated applicant's due process rights. In violation of the Fourteenth(14) Amendment of the United States Constitution, by allowing false and fabricated information to be printed on his True Bill Indictments. Applicant's True Bill Indictments states "At a Court Of General Sessions, Convened on June 14, 2007, the Grand Jurors of York County Presented Upon Their Oath", all of the indictments were signed by Asst. Solicitor, Mr. E. B. Springs. However, there were "NO" court of general sessions open on the date of June 14, 2007, nor were there any "Special Terms Of Court" authorized for the month of June 2007, by the Honorable Jean H. Toal, Chief Justice, for the S.C. Supreme Court of Appeals, or by the Chief Administrative Judge, for York County. Although, the York County Grand Jury, did convene on June 14, 2007, the statutory requirements of S.C. Code Ann. § 14-9-170 and S.C. Code Ann. § 14-9-210, "Coexist" with each other and requires that both the Grand Jury and the General Sessions Court be in attendance at the same time!!! Since no General Sessions Court was open on June 14, 2007, the indictments are null and void, and at the hands of Asst. Solicitor, Mr. E. B. Springs, A Sham Legal Process, S.C. Code Ann. § 16-17-735(B)(3)(c), was used to Indict, Try, and Convict the applicant, Mr. E. B. Springs, is further guilty of willful violating S.C. Code Ann. § 16-9-10, "Perjury and Subornation of Perjury"...against Public Justice, which constitutes "Gross Misconduct." See SCACR Rules Of Professional Conduct Rule# 407, and Rule# 3.4.

As an "Officer Of The Court", he (Asst. Solicitor, Mr. E. B. Springs) was required by law to know the laws of the state of South Carolina, and had special required responsibilities to see that justice was properly done. See South Carolina Appellate Court Rules Of Professional Conduct, Rules# 3.3, and Rule# 407. In State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (S.C. 2000); State v. Durdan, 264 S.C. 36, 212, S.E.2d 537(1975); and State v. King, 222 S.C. 103, 71 S.E.2d 793,793 (1952), ("He, prosecutor must see that no conviction takes place except in strict conformity with the law, and that the accused is not deprived of any constitutional right or privilege.")(INSERT ADDED). Prosecutor Misconduct arose from Asst. Solicitor, Mr. E. B. Springs', covert, corrupt, and cover-up actions in a rush for a conviction against applicant at any means necessary. Testimony from applicant's trial transcript, will show that Mr. Springs, has a flagrant disregard for the S.C. Supreme Court's laws and rulings, because he appeared as the "Sole Witness" at the Grand Jury, on June 14, 2007. See State v. Anderson, 312 S.C 203, 439 S.E.2d 335, the S.C. Supreme Court stated....."we take this opportunity to "Explicitly Prohibit" the practice of prosecutors appearing as the sole witness before the grand jury."

(3.) The York County Solicitor's Office, again in particular Asst. Solicitor, Mr. E. B. Springs, illegal actions and

cactices constitutes "Fraud Upon The Court", in violation of Rule# 60(B)(3), S.C.R.Civ.P., that shows a willful Prosecutor Misconduct committed against the applicant. In the case of Don Allyn Ray v. Melind Hodges Ray, Opinion No# 26343, Heard January 30, 2007-----Filed June 25, 2007. The S.C. Supreme Court, made reference to what constitutes "Fraud Upon The Court". The Court stated, their ruling in Chewing v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (S.C. 2003), "that subornation of perjury by an attorney and or the intentional concealment of documents by an attorney are actions which constitutes Extrinsic Fraud". the "Intentional" fabrication and concealment of the false and faulty indictments, that Asst. Solicitor, Mr. Springs, signed off on and used to Indict, Try, and Convict the applicant, is an Extrinsic Fraud Upon The Court and a Miscarriage of Justice that clearly violates his due process rights under the Fourteenth(14th) Amendment of the United States Constitution. However, the Court further stated, our holding in Chewing, does not limit the finding of Extrinsic Fraud to Misconduct of an Attorney, or an Officer of the Court. As we noted in Evans, Fraud Upon The Court has been defined as that species of fraud which does or attempts to subvert the integrity of the court itself or is a fraud perpetrated by officers of the court that are presented for adjudication. Evans v. Gunter, 294 S.C. 525, 529, 365 S.E.2d 44,46 (1987) (quoting from H. Lightsey, South Carolina Civil Procedure, 403 2nd.ED 193") (EMPHASIS ADDED).

The applicant represented himself Pro Se at trial, and filed a Motion To Vacate And Set Aside Judgment, Pursuant To Rule# 60(B)(3), S.C.R.Civ.P., in the trial court, York County General Sessions Court, in July 2003. His Direct Appeal, was still pending but in compliance with the requirements of Rule# 60 S.C.R.Civ.P., applicant "REQUESTED LEAVE FROM THE S.C. COURT OF APPEALS, TO STAY DIRECT APPEAL; And REQUESTED THAT APPELLATE COUNSEL BE PLACED IN "ABEYANCE", until the matter is resolved in the trial court. Applicant served copies of the said "motion" on the York County Clerk Of Court; York County Solicitor's Office; The Honorable John C. Hayes, III, (trial court judge); The S.C. Attorney General's Office; and the S.C. Court Of Appeals. When a party can show and prove an "Extrinsic Fraud Upon The Court", the S.C. Supreme Court has ruled "there is NO STATUTE OF LIMITATIONS, when a party seeks to set aside a judgment due to Fraud Upon The Court". See Chewing v. Ford Motor Co., Supra. Prosecutor Misconduct, by the York County Solicitor's Office, when it prevented the York County Clerk Of Court's Office from filing and processing applicant's Pro Se Motion To Vacate and Set Aside Judgment Pursuant To Rule# 60(B)(3), S.C.R.Civ.P., in the trial court. The Asst. Solicitor, Mr. E. B. Springs, et. al., willfully, knowingly and intentionally violated applicant's due process rights under the Fourteenth(14th) Amendment of the United States Constitution. The trial court was without legal or lawful jurisdiction to try or convict the applicant, because the "Indictments" were unconstitutional, illegal, and was not done in accordance with the statutory requirements of S.C. Code Ann. § 14-9-170, and S.C. Code Ann. § 14-9-210. The signature of the

Asst. Solicitor, on the "Fraudulent Indictments", constitutes violations under S.C. Code Ann. § 16-9-10, Perjury and Subornation of Perjury.....Against Public Justice; as well as violations under S.C. Code Ann. § 16-17-735(a)(3)(c), A Sham Legal Process; and violation of Rule# 60(a)(3) S.C. Civ.P., Fraud Upon The Court !!!!!!!

(7.) The applicant was denied a "Substantial Right" to "open and close" the argument to the jury. Therefore, violating his due process rights under the Fourteenth(14th) Amendment of the United States Constitution.

(1.) When a defendant in a criminal case offers no evidence, he is entitled to the final closing argument to the jury. State v. Rodgers, 269 S.C. 22, 24, 235 S.E.2d 303, 309 (1977) (citing State v. Gellis, 118 S.C. 471, 487, 155 S.E. 349, 355 (1930)), quoting from, State v. Pinkard, 517 S.E.2d 307 (S.C. App. 2005). "The right to open and close the argument to the jury is a substantial right, the denial of which is reversible error." Rodgers, 269 S.C. at 24-25, 235 S.E.2d at 309. In cf. State v. Mouzon, 325 S.C. 109, 203-04, 485 S.E.2d 913, 920-21 (1997) noting that a jury view of the crime scene pursuant to South Carolina Code Section § 14-7-1320, "is not regarded as evidence" and that defendant was therefore "entitled to the last closing argument." At trial, the applicant as indicated earlier, represented himself Pro Se. As he was cross-examining the state's witness, Mr. Eddie Staitz, and for identification purposes only. Applicant sought to introduce the warrant that the York County Sheriff Department faxed to the Mecklenburg County Jail, Charlotte, N.C., on December 22, 2007, (S.C. Code Ann. § 16-11-0330 Robbery/Entering bank, depository or bldg and loan Association with intent to steal), as well as a copy of the North Carolina Governor's Warrant. (See Applicant's trial transcript p.435; lines 6-thru-23). There were no "Objections" by the state in deference to the two documents being introduced for identification purposes. However, the trial court erred in allowing the state "Without Making A Contemporaneous Objection", to move the trial court, "that before anything is published from the two documents." They (the two documents) should be moved into evidence, even though applicant's sole purpose was for identification purposes pursuant to South Carolina Code Section § 14-7-1320. See cf. State v. Mouzon, Supra. Applicant asserts, that his due process rights under the Fourteenth(14th) Amendment of the United States Constitution, was severely violated by the "Trial Court and Solicitor's" Rules of Court violation, as the applicant was entitled to the last closing argument to the jury !!!!!!!

(2.) The applicant's rights to "Severance", was vehemently denied by the trial court, at the beginning of his trial, on July 23, 2007. His two co-defendants attorneys were asking the court to sever their cases, because of "Antagonistic Defenses." Severance is required where it appears that a

defendant might be prejudiced by a joint trial. See Burton v. United States, 33 S.Ct. 1520. By the state's own admission, "highly prejudicial information would be revealed in a joint trial", and for the reason of "Judicial Economy", the trial refused to sever the cases. (See Trial Transcript p.27, lines 5-thru-17). In State v. King, 222 S.C. 103, 71 S.E.2d 793, 798 (1952) ("He, the prosecutor must see that no conviction takes place except in strict conformity with the law, and that the accused is not deprived of any constitutional right or privilege.") (Insert Added). Applicant was never informed, (by the State, Trial Court, or Co-Defendant's attorney) that his co-defendant Kenneth Young, was offering an alibi-defense or that he would be testifying in his own defense. The applicant, was denied the right to "Interview Any Witness" prior to trial and was therefore denied his due process rights, which were severely violated under the Fourteenth(14th) Amendment of the United States Constitution !!!!!!!

(G.) The applicant asserts, the trial court erred in admitting evidence for which the state failed to establish "A Complete Chain of Custody". In violation of Rule 3, SCRCrim.P., and applicant's due process rights under the Fourteenth(14th) Amendment of the United States Constitution.

(1.) At trial applicant, "OBJECTED", to the admission of evidence, because the state failed to establish a complete chain of custody. (See Trial Transcript p.433; lines 0-thru-16.) The evidence, had been collected in a parking lot of an apartment complex, in Charlotte, N.C., on December 22, 2005. An Investigator for the York County Sheriff Department Forensic Service Unit, Ms. Audra Eddie, was called to the scene where applicant had been arrested. The state sought to introduce the evidence that Investigator Eddie, had collected off the ground, (from the parking lot) at his trial. In State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007), "A party offering into evidence any fungible items...must establish a complete chain of custody as far as practicable." Under Rule 3, SCRCrim.P., evidence is inadmissible when the offering party omitted a link in the chain of possession by failing to establish the identity of each custodian at least as far as practicable. See State v. Governor, 352 S.C. 609, 612, 603 S.E.2d 474, 475 (Cr. App. 2005). The Forensic Investigators, (Ms. Audra Eddie, and Mr. Brian Raywell), and Lead Detective Mr. Eddie Smith, all admitted under oath to gathering and collecting evidence in applicant's case. Such as money, guns, clothes, etc., and leaving them at the York County Evidence Room, in an alleged secure location. However, stating that the evidence had not been tampered with, etc., is not sufficient to overcome missing links in the chain of custody. See State v. Chisolm, 355 S.C. 175, 594 S.E.2d 401 (Cr.App. 2003). The state failed to establish: (1.) The person who the Investigators and Detective, signed the evidence into at the York County Evidence Room; (2.) The name of the person who they signed the evidence out from at the evidence room, in order to



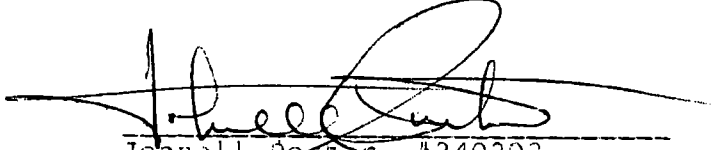
2003 1, 355 S.C. 175, 534 S.E.2d 401, rehearing denied, certiorary denied, criminal law key 404.30!!!

Conclusion

The Applicant asserts, as the result of violations herein stated, in regards to his constitutional rights under the Sixth(6th) and Fourteenth(14th) Amendments of the United States Constitution. He is entitled to an evidentiary hearing on the factual allegations asserted in the Application. The applicant is indigent, and is requesting that an attorney be appointed to represent him, under S.C. Code Ann. § 17-27-60. See Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315 (1992). Also, applicant asks that the allegations cited herein this "Application" be ruled upon in reference to Pruitt v. State, 423 S.E.2d 177 (S.C. 1992).

Date:

June 27, 2011
Greenville County


Tonnell Porter, #240203
Perry C.I. / 048-111
430 Oaklawn Road
Pelzer, SC 29569

FILED-RECEIVED

2011 JUL -6 PM 3:24

State of South Carolina

IN THE YORK COUNTY COURT OF COMMON PLEAS

Application for Post-Conviction Relief

DAVID HAMILTON
C.O.C.P. & G.S.
YORK COUNTY, SC

Tonnell Porter #240203,

Applicant,

vs.

State of South Carolina,

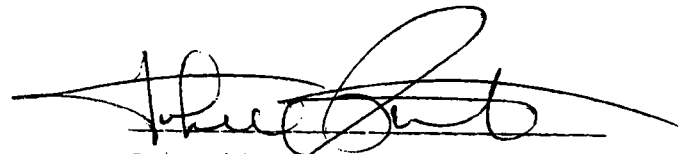
Respondent.

PROOF OF SERVICE

I, Tonnell Porter #240203, certify that I have served the within Application for Post-Conviction Relief on the Respondent by depositing one copy of the same in the United States Mail, at Perry Correctional Institution, addressed to:

The Honorable Alan Wilson
S.C. Attorney General's Office
P.O. Box 11540
Columbia, S.C. 29211

This 28th day of June, 2011.


Tonnell Porter #240203, Pro Se

Sworn to before me this

28 day of June 2011.

Dayle W. Wynn
Notary Public:

Jan 28, 2018

My Commission Expires:

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2011-CP-46-2620

Johnell Porter, #240208,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

2011 OCT 24 AM 8:38
C.C.P. & D.S.
YORK COUNTY, SC

In response to the post-conviction relief application filed on July 7, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the June 2007 term of General Sessions for Armed Robbery (2007-GS-46-01687), Entering a bank with intent to steal (2007-GS-46-01688), Kidnapping (2007-GS-46-01689), Possession of a firearm during the commission of a violent crime (2007-GS-46-01690), and Conspiracy to commit armed robbery (2007-GS-46-01691). Applicant appeared pro se. Daniel D'Agostino served as stand-by counsel for applicant.

On July 26, 2007, the Applicant was convicted of these charges by a jury. The Honorable John C. Hayes, III sentenced the Applicant to confinement for life for Kidnapping, life for Armed Robbery, life for Entering a bank with intent to steal, five (5) years for Possession of a firearm during the commission of a violent crime, and five (5) years for Conspiracy to commit armed robbery, all

running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. A Petition for Rehearing was filed by the Applicant and denied by the Court on July 7, 2010. A Petition for Writ of Certiorari was filed by the Applicant and denied by the Court on February 16, 2011. The Remittitur was issued on February 23, 2011.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
2. Ineffective Assistance of Appellate Counsel
3. Violation of Due Process via Prosecutorial Misconduct

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the trial transcript, the appellate briefs, the petition for rehearing, the petition for writ of certiorari and return thereto as used as the opinion and orders denying rehearing and certiorari. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the

trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that 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. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent asserts that the Applicant's allegation that appellate counsel was ineffective is

without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys.

A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant further alleges that he was denied due process of law via prosecutorial misconduct. The Respondent submits that this issue in Applicant's Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily

dismiss this application for post-conviction relief.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

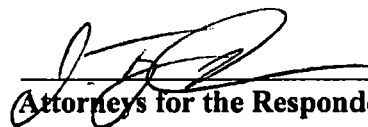
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Chief Criminal Appeals & Post Conviction
Relief

J. RUTLEDGE JOHNSON
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

Columbia, South Carolina
Oct 14, 2011

STATE OF SOUTH CAROLINA
COUNTY OF YORK

JOHNELL PORTER,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-46-2620

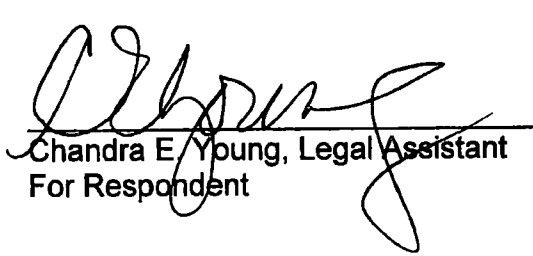
AFFIDAVIT OF SERVICE BY MAIL

FILED - RECEIVED
2011 OCT 24 AM 8:38
DANIEL HAMILTON
C.C.P. #115
YORK COUNTY, SC

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(s) by depositing same in the United States mail, postage prepaid:

Charles T. Brooks, III, Esquire
Post Office Box 3512
Sumter, SC 29151

DATED this 21st day of October, 2011.


Chandra E. Young, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA
2 -----x
3 JOHNNELL PORTER,
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Petitioner,

Case No.

-against- 2011-CP-46-2620

STATE,

Respondent.

-----x

January 21, 2014

York, S.C.

B E F O R E:

HONORABLE MICHAEL BAXLEY

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

JAMES RUTLEDGE JOHNSON

Assistant Attorney General

LEAH MOODY

Attorney for the Petitioner

Aileen Butler

Official Court Reporter

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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2			
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5	NO EXHIBITS MARKED		
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1 THE COURT: I want to welcome everyone to this
2 term of Civil Court. I am Judge Baxley. We are here
3 today for Post Conviction Relief claims. We are
4 going to take the cases in Order from the docket,
5 which we have. Our first case is Mr. Johnell Porter.

6 Is his counsel ready?

7 MR. JOHNSON: I think we are waiting Mr. Porter.

8 THE COURT: When Mr. Porter comes in we will
9 begin.

10 All right. Sir, are you Mr. Johnell Porter?

11 MR. PORTER: Yes, sir.

12 THE COURT: Well, good morning. I am Judge Baxley.

13 MR. PORTER: Good morning.

14 THE COURT: We are here today because you have
15 filed a motion for Post Conviction Relief, and that is
16 what brings us together. We will start by determining
17 whether there are any motions pending and then we will
18 proceed from there.

19 All right. Sir, I will let you be seated. Welcome
20 to the courtroom.

21 MR. PORTER: Thank you.

22 MR. JOHNSON: May it please the Court.

23 THE COURT: Yes, sir.

24 MR. JOHNSON: This is case of Johnell Porter
25 versus the State of South Carolina. This is case

number 2011-GS-46-2620. Mr. Porter was indicted at the June 2000 term of the York County Grand Jury for armed robbery, entering a bank with intent to steal, kidnapping, possession of firearm during the commission of a violent crime and conspiracy to commit armed robbery. He appeared pro se at his trial. Dan D'Agostino served as standby counsel and he was appointed I think the second or third day into the trial.

On July 26, 2007 he was convicted of all these charges by a jury. The Honorable John C. Hayes III sentenced him to confinement for life for kidnapping, life for armed robbery, life for entering a bank with intent to steal, five years for possession of a weapon during the commission of a violent crime and five years for conspiracy. All of which to run to currently.

A timely Notice of Appeal was filed on his behalf and an appeal was perfected. The South Carolina Court of Appeals confirmed his conviction and sentence. A petition for rehearing was filed by the applicant and denied by the Court on July 7, 2010.

A petition for Writ of Certiorari was filed by the applicant and denied by the Supreme Court on February 16, 2011. The Remitter was thereafter issued on

1 February 23, 2011.

2 Mr. Porter filed a timely PCR application on July
3 6, 2011. The State filed its return on October 21,
4 2011. Just procedurally as far as PCR is concerned,
5 Mr. Porter was here on January the 30, 2012 before
6 Judge Alford. Judge Alford relieved his PCR counsel
7 and continued the case. There was a hearing in front
8 of Judge Steven John on June 17, 2013 which overturned
9 Judge Alford's Order which relieved Charles Brooks as
10 counsel because Judge Alford had recused himself since
11 he is a stockholder in the Bank of York which
12 basically set the case back to square one.

13 Then on August 13, 2013 Judge Edward Welmaker
14 relieved Mr. Brooks as counsel and appointed Miss
15 Moody as his attorney and now we are here.

16 The State also has a motion for partial summary
17 judgement motion. So if you like me to get into
18 those.

19 THE COURT: Let me address Miss Moody first.
20 Ma'am, good morning.

21 MS. MOODY: Good morning.

22 THE COURT: Miss Moody, you heard the history
23 given to us by Mr. Johnson and I ask you ma'am, do you
24 agree with the history and the procedural posture of
25 where we find ourselves based on what Mr. Johnson told

1 us?

2 MS. MOODY: Yes sir, Your Honor, I believe that is
3 how it came to me. In the documents that I believe he
4 speaks of one document I do not have, but I do have a
5 copy of the Order relieving Charles Brooks as counsel.

6 THE COURT: Okay.

7 MS. MOODY: And then I knew there was a period of
8 time I want to say that Mr. Porter was a pro se
9 defendant in his own matter. He filed a motion to
10 amend and I believe there was a response filed from
11 the Attorney General's office as to his motion. There
12 is some question as to whether this was ever
13 addressed. He tells me that he did not have a lawyer
14 file it for him and I have copies from him which he
15 sent to me -- clocked time copies, that he filed this
16 motion on February 9, 2012 and they were canceled and
17 sent back to him, and at that time I believe that Miss
18 Elliot responded to him with regard to hybrid
19 representation which we discussed as typically when a
20 pro se applicant wants to file an amendment to their
21 PCR they must go through you their attorney and there
22 is case law supporting that. So I understand that
23 position, but I think that he wishes to amend his PCR
24 application as well as he may have another motion.

25 THE COURT: All right. And so on you have a

1 motion then to amend, or there is a motion pending to
2 amend.

3 MS. MOODY: Yes, sir.

4 THE COURT: Are there other matters that need to be
5 resolved as well?

6 MS. MOODY: The conversation that we had preparing
7 for this hearing he indicated that if I had not
8 subpoenaed some witnesses, which he gave me their
9 names, and I did not subpoena them. After talking
10 with him that day and trying to understand what their
11 purpose was I did not feel like they were necessary,
12 coupled with the fact that at his trial originally he
13 was appointed counsel -- and I will let him speak to
14 that in terms of whether we proceed if I'm the counsel
15 that remains on the case, but he was appointed
16 counsel. Those counsel were relieved.

17 There was a period of time that they did not come
18 and talk to him and that's part of what he is alleging
19 in terms of his constitutional rights. He relieved
20 the counsel and proceeded in the trial by himself. As
21 he tells me he received standby counsel from the Court
22 the third day of the trial, but nonetheless he
23 represented himself. He handled his trial and filed
24 his motions.

25 THE COURT: Okay. And do you need to speak with

1 your client to determine whether or not he has a
2 motion about relief of counsel.

3 MS. MOODY: I do.

4 THE COURT: Go ahead and just be seated and we
5 will wait a moment while you do that.

6 MS. MOODY: Your Honor, I do believe he has a
7 motion.

8 THE COURT: All right. And is it a motion to
9 relieve you as counsel.

10 MS. MOODY: Yes, sir.

11 THE COURT: All right. Let's do this. Mr. Porter
12 -- well first of all, Mr. Johnson before we hear your
13 dispositive motions in part, let me talk with Mr.
14 Porter about this matter.

15 Mr. Porter, please accept the oath -- just where
16 you stand will be fine -- as a witness by my clerk.

17 JOHNNELL PORTER, called as a witness, having been
18 duly sworn by the clerk, was examined and testified as
19 follows:

20 THE COURT: All right. Please speak up so that
21 our court reporter can be sure to hear you and tell us
22 Mr. Porter what is the motion that you bring today
23 yourself.

24 MR. PORTER: I understand your name is Judge
25 Baxley?

1 THE COURT: Yes, sir.

2 MR. PORTER: Okay, The Attorney General had gave a
3 summary, history of my PCR and proceeding.

4 At the time that Judge Alford relieved attorney
5 Brooks -- he relieved attorney Brooks. I had prepared
6 a motion to amend. The clerk of court, Mr. Hamilton,
7 wasn't aware that Mr. Brooks had been relieved of
8 counsel. I in return wrote Judge Alford and had Judge
9 Alford address the clerk of court's office with the
10 motion to amend. They sent the motion to amend back.
11 Clocked stamped and sent it back because they were
12 under the impression that I was still represented by
13 PCR counsel. But as Judge Alford received my letter
14 apparently when I submitted the letter to him I sent a
15 copy of it, a motion to amend to Judge Alford, and I
16 sent another copy to amend to David Hamilton. The
17 motion to amend was clocked stamped and filed because
18 they had an understanding that I was representing
19 myself pro se and I had this right to make this motion
20 to amend. The motion to amend is on record now. I
21 have a copy. She has a copy. Judge *Jones has been
22 served with a copy. Everybody has been served with a
23 copy of this motion.

24 THE COURT: Yes, sir. Tell me this. Excuse me
25 for breaking in. How do you wish to amend your

1 pleadings? What is the substance of the amendment?

2 MR. PORTER: I wish to amend my substance because
3 at the time I was indicted, I was indicted under
4 17-25-25 and I wish to make the amendment under
5 17-25-50 being that those two enhancement motions
6 should be read in accordance under State versus Brown.
7 Meaning that, the charge that I was charged with,
8 allegedly robbing the Bank of York charged with a
9 allegedly robbing the Bank of York, the kidnapping,
10 conspiracy and possession all that constitutes one
11 charge of bank robbery.

12 THE COURT: All right. Let me just stop you right
13 there sir and just confirm though, your lawyer told me
14 that you had a motion for which you wish to relieve
15 her as counsel. We need to take that up first because
16 if there is a motion to amend out there, we'll
17 actually hear from your lawyer about that if you have
18 a lawyer, after this first matter is taken up. So do
19 you wish to relieve your counsel?

20 MR. PORTER: Yes, I do.

21 THE COURT: And why?

22 MR. PORTER: Because the only time I spoke with
23 her was about 34, 40 minutes last Wednesday. I had a
24 list of witnesses that was to come to testify in
25 regards to the motion to amend. She stated that she

1 did not see a reason for those witnesses to be
2 present. I do. I prepared the PCR. I prepared the
3 motion to amend. I know why I had these witnesses
4 subpoenaed. It's a misunderstanding between her and
5 myself and she didn't submit the witnesses. She is
6 only telling me that I have ground against appellant
7 counsel, ineffective assistant of appellant counsel.
8 I know I have other grounds for other avenues. So
9 it's a conflict between -- misunderstanding between
10 her and myself. So the reason --

11 THE COURT: Let me stop you there, sir, and let me
12 hear from your counsel on this issue. I understand
13 what you are telling me. I got it. Let me hear from
14 her and if you wish to reply. Thank you.

15 Miss Moody, do you wish to be heard on this
16 matter?

17 MS. MOODY: Yes, sir, Your Honor. Actually he has
18 written me a number of times and I responded to him
19 and I provided him with information. So as I read his
20 letters I respond to his letters.

21 I sent him his transcript and my looking at the
22 transcript he was not represented by counsel. He
23 lists a number of witnesses in his PCR application
24 which he did file and he lists those individuals and I
25 asked him on Wednesday specifically why these

1 individuals needed to be subpoenaed because none of
2 them had any relationship toward the issues as I could
3 see in his amended PCR application.

4 One ever them being Judge Hayes who presided over
5 the trial. He indicated to me that Judge Hayes was --
6 he should have recused himself as to the Bank of York
7 and that he was friends with everybody from that bank
8 and that he banked there.

9 He also included Dan D'Agostino as counsel. He was
10 appointed as standby counsel when he represented
11 himself. He included Harry Dest who was the -- at the
12 time I guess the the chief public defender for York
13 County and that is based off of the fact that they
14 were appointed to him but there was a conflict. They
15 did not come visit him I guess in a timely manner.
16 But they conflicted the public defender's out.

17 The next witness he requested to bring was Roselyn
18 Frierson, because Court administration sent the Grand
19 Jury dates to him regarding the times that the Grand
20 Jury met. Then he wanted Reginald Lloyd who is the
21 former USA -- excuse me -- the United States Attorney.
22 He said to me initially that Reggie Lloyd was the AG,
23 but I corrected him and reminded him that Reggie Lloyd
24 had never been the AG for South Carolina.

25 Norman Watkins, who was the bank -- who is

1 technically the victim in the case. He wanted -- no,
2 excuse me. That's the Magistrate. He wanted the
3 Magistrate subpoenaed because the Magistrate denied
4 his bond and I believe his bond paperwork would show
5 that he was denied bond and he was held in custody.

6 Then EB Springs, who was the prosecutor and Kevin
7 Brackett. EB Springs talked with him and worked on
8 this case and tried this case ultimately.

9 These are the people that he wanted to have testify
10 as his witnesses. The issue that he brought up to me
11 was he discussed extradition and I informed him that I
12 use to be deputy legal counsel for Governor Hodges and
13 I handled exclusively in his office extradition. As a
14 matter of fact I basically trained the entire state on
15 extraditions and the process; the paperwork the
16 Governors have to send out. So I am familiar with
17 extraditions and he pointed out to me fresh pursuit
18 law, and that was ruled on. He made his argument.
19 His appellant counsel chose to appeal certain things.
20 At that point when we were talking about the federal
21 bank and extradition that's when he hung up on me. So
22 I didn't limit our conversation. He limited it
23 because he became upset because I told him what the
24 law was or challenged him on his position for the
25 witnesses.

1 THE COURT: All right. Thank you. And then Mr.
2 Porter do you want to reply to what you heard sir?

3 MR. PORTER: Yes. Part of her being appointed to
4 me by Judge Welmaker was the fact that Court was
5 giving me hard times subpoenaing witnesses. The clerk
6 of court I had sent several subpoenas to the clerk of
7 Court and they were was telling me I couldn't sign on
8 it or I had signed in the wrong place or I had to make
9 sure that all the witnesses were secured or secure the
10 witness myself. So I explained to the Judge Welmaker
11 that I was having problems. And then I made a motion
12 for appointment of counsel on the strength that I
13 needed my witnesses present. I wasn't allowed by me
14 being an inmate, I wasn't allowed to subpoena or
15 secure the presence of my witnesses. This is why he
16 appointed counsel. For me to have my witnesses
17 present. I mean that's was the issue he took up in
18 this seat, right where you sit and to make sure that
19 my witnesses would be here. I don't have these
20 witnesses. I am going through the same thing. I went
21 through Charles Brooks, so I'm saying. They are vital
22 to my PCR case. I need these witnesses.

23 THE COURT: All right.

24 MR. PORTER: I can't proceed without them.

25 THE COURT: Tell me how sir? Tell me how they are

1 vital to the issues of Post Conviction Relief today?

2 MR. PORTER: Well, one, I received a letter from
3 like I said Rosalyn Frierson in regards to -- I asked
4 her the procedure -- certain people being paid in York
5 County. I now know that certain people have the
6 direct deposit to a certain bank. I was under the
7 impression that the Bank of York was for York County.
8 My charge stems from this bank. Judge Alford relieved
9 himself because he said he had stock. So I'm saying,
10 if these people are getting paid and if money is being
11 deposited, direct deposited in the Bank of York then
12 they had a conflict of interest. They should have
13 recused them self.

14 THE COURT: Excuse me, Mr. Porter. I respectfully
15 disagree with you, sir. If indeed -- and I don't know
16 if any of these individuals who have been involved in
17 your case bank with the Bank of York, but there
18 interest would be de minimis at best simply as a
19 customer of a bank which you are accused of allegedly
20 robbing and then convicted of that robbery.

21 Sir, I don't find that would be sufficient to stop
22 this process and recuse all these individuals because
23 literally your case would be unable to go forward.
24 This has been a history in your case from my review of
25 it. Even at the trial Mr. Porter, you ended up

1 representing yourself after discharging your lawyer
2 and then you were appointed a standby lawyer and when
3 I opened your PCR file I find the very same thing has
4 happened. We have been through a series now of judges
5 who have either recused, or lawyers who were appointed
6 and that was stood down. Then another lawyer
7 appointed. We are just keep going back and forth and
8 we can't make any progress with it Mr. Porter, and
9 thus I am not even inclined to even today you are
10 asking me to relieve your lawyer, grant a continuance
11 and this is a 2011 case. In Order for you to subpoena
12 a bunch of individuals who really have nothing to do
13 with this post conviction relief motion.

14 So, I am respectfully going to deny your motion to
15 relieve counsel because what I find is you got a
16 capable attorney who is well aware of the law of South
17 Carolina with regard to post conviction relief. She
18 tells me she has talked with you and as she said a few
19 moments ago in one conversation at least 45 minutes.
20 That she is prepared today on the issues and ready to
21 go forward for what she believes to be the cognizable
22 issues.

23 This Court specifically declines to grant your
24 request to relieve counsel and continue this case.
25 The best that would happen today you would due to the

1 age of this case have counsel relieved and then have
2 to represent yourself. You tell me you are not in a
3 position to do that because all these witnesses are,
4 not here. That would be unfair to you and so in order
5 for this case to proceed I am simply going to deny
6 your request to relieve your attorney and we will
7 proceed with counsel representing you.

8 MR. PORTER: I will not participate in this case,
9 Your Honor. I will not participate.

10 THE COURT: Well --

11 MR. PORTER: I will not take the stand. I don't
12 want to take the stand. I am not taking the stand in
13 this matter.

14 THE COURT: Well, then Mr. Johnell, if that's your
15 decision, sir, that is your prerogative. You may be
16 seated in the chair and watch or you may leave the
17 courtroom.

18 MR. PORTER: I will leave the courtroom. I will
19 not participate.

20 THE COURT: Very good. Then we will have security
21 escort you out of the courtroom.

22 Now Mr. Porter, please understand this case will
23 go forward in your absence. Do you realize that sir?

24 MR. PORTER: You do what you want to do. You did
25 it anyway.

1 THE COURT: All right. Sir, very good. You may
2 return to the correction center.

3 (WHEREUPON, the applicant left the courtroom)

4 MR. JOHNSON: Your Honor, I submit this is the
5 appropriate time the State moves for dismissal of this
6 case I think it is under Rule 4041 that this is his
7 burden of proof of showing that counsel was
8 ineffective. If he is not going to present any
9 testimony and I don't think there is going to be
10 testimony to the contrary, the State would move to
11 dismiss this matter all together.

12 THE COURT: Let hear from Miss Moody on that
13 point.

14 Ma'am, tell me, are you able to put up a case at
15 this point without the benefit of the applicant being
16 in the courtroom?

17 MS. MOODY: I hesitate to say no, Your Honor, and
18 one, because I think that his testimony -- the things
19 that he wants to testify he can testify clearly from
20 the stand and he could testify as to his issue of the
21 Grand Jury. One of the issues was of the sufficiency
22 of the Indictment. I don't necessary know if that
23 argument would sway the Court to grant him any kind of
24 relief on it. However, I think that he needs to
25 testify as to those issues. He talks about some

1 things that took place in North Carolina as it relates
2 fresh pursuit. I read the transcript and it was
3 something that should have been appealed from the
4 trial level. And I think he went through some efforts
5 trying to get that done and that was the reason why I
6 said he had appellant counsel here that he could
7 proceed in terms of ineffective assistance of counsel,
8 but if it wasn't preserved in the record he would, you
9 know, obviously, he couldn't appeal it to the Court.

10 THE COURT: What I am hearing you say is, he is
11 your one witness today, is that correct?

12 MS. MOODY: Yes, sir.

13 THE COURT: Do you have other witnesses present?

14 MS. MOODY: No, sir, Your Honor. And again, as I
15 related to the Court my issue for him was that he
16 represented himself in trial. He indicates that his
17 rights were violated under the due process and sixth
18 amendment right to counsel to represent him. From
19 what I understand he was appointed counsel. He just
20 hadn't met with counsel. When he met with counsel
21 that came in to substitute due to the conflict with
22 the public defender's office, he felt like that the
23 first counsel was not aware of criminal law. He had a
24 person that I think is quite aware of criminal law,
25 Mathew Neimiec. He refused to talk to Matthew Niemiec

1 because Matthew Niemiec delivered him a plea offer
2 which I don't know how else you can receive a plea
3 offer other than your counsel telling you directly.
4 He was somewhat offended by that. He got Matthew
5 Niemiec relieved so then he is by himself. So, I
6 don't know who the ineffective assistance of counsel
7 is. I would think it would be himself.

8 So that leaves me with what happened on the
9 appellant level, but that's what is preserved in the
10 record.

11 THE COURT: Very good. That answers the question.
12 Thank you, counsel.

13 MS. MOODY: Thank you.

14 THE COURT: Then Mr. Johnson, I would be glad to
15 hear from you on your motion which was a completely
16 dispositive motion, that is to dismiss at this
17 juncture.

18 Do you have anything further you wish to say on
19 that point?

20 MR. JOHNSON: No, sir, Your Honor.

21 THE COURT: And then Miss Moody, do you wish to
22 respond now to the State's motion to dismiss this case
23 for, essentially for lack of prosecution.

24 MS. MOODY: Again, like I said, I find myself in a
25 predicament. I would ask for the Court to continue

1 it. I know that's a great burden on the Attorney
2 General's office because we have to have cases heard
3 by judges that can actually hear it and I believe you
4 are the only one than is going to be here. So that
5 puts us out maybe a year, but I would ask that you
6 continue it to allow me an opportunity to speak to Mr.
7 Porter one more time. I would greatly appreciate it.

8 THE COURT: Just one moment. Please be seated.

9 MS. MOODY: Thank you.

10 THE COURT: All right. Mr. Johnson, I am going to
11 ask you to prepare an Order in this matter. I am
12 going to grant your motion under Rule 41B. The
13 applicant has stripped himself of any ability to
14 prosecute this case by voluntarily absenting himself
15 from the courtroom, being advised that this case would
16 go forward. He has consistently through the trial
17 below and now through the PCR claim been unable to get
18 along with counsel. Refused to accept the advice of
19 counsel. Refused to cooperate with counsel. Now
20 today he has refused to cooperate with the Court and
21 to engage in these proceedings. The Court has no
22 alternative but to dismiss this case for failure to
23 prosecute.

24 What I ask you to do, Mr. Johnson, if you would
25 prepare an Order within thirty days of today's date

1 then the Court -- well, I would ask you to let Miss
2 Moody to review it. Not necessarily to agree with it,
3 but to review it for her statement of her position. I
4 also would ask that you then forward it to me
5 electronically to JBaxley1c@SCCourts.org. That will
6 come to James Scruggs my law clerk and we will
7 respond appropriately.

8 Now, let me address some other issues which may be
9 are not necessary to the decision in the case, but I
10 believe are necessary to collateral proceedings that
11 may follow this matter.

12 Let me say that I had the opportunity to review the
13 clerk's file in this case, also had discussions with
14 counsel here today in the courtroom concerning this
15 matter. I was advised prior to this matter being
16 called that Mr. Porter was going to make a motion to
17 remove counsel and I just simply say that based on my
18 review, the evidence before us which at the trial
19 below was overwhelming evidence of Mr. Porter's guilt
20 and he further complicated his own situation by firing
21 his attorney, failing to accept and refusing any pleas
22 or offers to resolve the trial below in a way other
23 than a straight up trial which ended up in a life
24 sentence unfortunately for Mr. Porter, but one that
25 was appropriate under the law.

1 Now, I don't find that Miss Moody has done anything
2 here that was against the interest of Mr. Porter's.
3 She was just simply trying to advise him of what the
4 law is on Post Conviction Relief which he would not
5 accept. He would not cooperate with her. And so I
6 just simply say for the purposes of our record, Miss
7 Moody, I find absolutely no fault in your
8 representation and what you have done today in your
9 effort to try and bring Mr. Porter in to Court to
10 engage in the PCR claim under the rules of procedure,
11 the rule of evidence, and the just the way our process
12 works. But Mr. Porter has steadfastly refused, which
13 is consistent with his response to this from day one.
14 So simply for whoever may review this record, will
15 again comment Miss Moody has given her best for Mr.
16 Porter but unfortunately has been thwarted in doing so
17 by the actions of Mr. Porter.

18 Is there anything further in this case before we
19 close this record from the State?

20 MR. JOHNSON: No, Your Honor. Thank you.

21 THE COURT: From the defense?

22 MS. MOODY: No, sir.

23 THE COURT: All right, if you wish to release your
24 witness she may go on about her business.

25 MR. JOHNSON: Thank you.

1 THE COURT: And appear at the Supreme Court later.
2 Then good luck to you.

3 MS. MOODY: Thank you.

4 MR. JOHNSON: Thank you, Your Honor.

5 * * *

6 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the Seventh 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 in the captioned case, in the Circuit Court for York County, South Carolina, on the 21st day of January, 2014.

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

October 24, 2016

Aileen Butler

722 STATE OF SOUTH CAROLINA

County of York

COURT OF COMMON PLEAS

Case # 2011 -CP- 46 - 2620

Johnell Porter

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

TEMPORARY ORDER

FILED
2014 JAN 22 AM 8:07
CLERK OF COURT
YORK COUNTY, SC

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: denied granted under advisement; a formal order will be filed (see below - No.6)

2. Motion(s) was/were heard in this case and the court orders:

✓ The motion to dismiss and/or for summary judgment is hereby ✓ granted denied under advisement based upon the statute of limitations and/or the successive nature of the application or other reason as follows:

Motion to relieve PCR counsel denied. After Applicant indicated he would not participate, Respondent moved to dismiss under Rule 41(b) which was granted.

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed with prejudice without prejudice.

5. Other:

✓ 6. The court further orders:

✓ The Attorney General Applicant's counsel is/are directed to submit to the court a proposed order and to serve the order on opposing counsel within 30 days. The court reserves the right to issue an order prior to the submission of any proposed orders.

The court does not request proposed orders.

IT IS SO ORDERED.

Date: 1 / 21 / 14

J. Michael Baxley
Presiding Judge

Court Reporter Aileen Butler

Attorney for Applicant Leah B. Moody

Attorney for Respondent J. Rutledge Johnson

Rev 12/06/2002

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Johnell Porter, SCDC # 240208,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A NO. 2011-CP-46-2620

**ORDER DISMISSING
POST-CONVICTION RELIEF
APPLICATION**2014 MAR 14 PM 3:41
CLERK OF COURT
SOUTH CAROLINA
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR"), filed July 7, 2011. Respondent made its Return on October 21, 2011. An evidentiary hearing into the matter was convened on January 21, 2014, at the Moss Justice Center in York, South Carolina. The Applicant was present at the hearing and represented by Leah B. Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the June 2007 term of General Sessions for Armed Robbery (2007-GS-46-01687), Entering a Bank with Intent to Steal (2007-GS-46-01688), Kidnapping (2007-GS-46-01689), Possession of a Firearm During the Commission of a Violent Crime (2007-GS-46-01690), and Conspiracy to Commit Armed Robbery (2007-GS-46-01691). Applicant appeared *pro se* at the trial of his case. Daniel D'Agostino, Esquire served as court-appointed standby counsel for Applicant.

On July 26, 2007, Applicant was convicted of these charges by a jury. The Honorable John C. Hayes, III sentenced Applicant to imprisonment for life for Kidnapping, life

imprisonment for Armed Robbery, life imprisonment for Entering a Bank with Intent to Steal, five (5) years imprisonment for Possession of a Firearm During the Commission of a Violent Crime, and five (5) years imprisonment for Conspiracy to Commit Armed Robbery, all to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. A Petition for Rehearing was filed by Applicant and denied by the Court of Appeals on July 7, 2010. A Petition for Writ of Certiorari was filed by Applicant and denied by the Supreme Court on February 16, 2011. The Remittitur was issued on February 23, 2011.

 At the commencement of the evidentiary hearing on Applicant's PCR claim, Applicant moved to have Ms. Moody relieved as PCR counsel. This Court denied Applicant's motion, finding no reason to relieve counsel as Ms. Moody was well-prepared and well-versed in Applicant's allegations. Applicant then informed the Court that he would refuse to attend, to take the stand, or to otherwise participate in the PCR hearing. This Court instructed Applicant that he had a right to be present during the hearing, but that the hearing would proceed in his absence should he elect to depart, but Applicant summarily left the room to return to the holding cell.

The Respondent then moved pursuant to Rule 41(b), SCRCP, to dismiss this matter due to Applicant's failure to prosecute.

The plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's neglect in proceeding with his cause. Don Shevey & Spires, Inc. v. American Motors Realty Corp., 279 S.C. 58, 301 S.E.2d 757 (1983). This Court finds the Respondent's motion well taken and hereby dismisses this matter, with prejudice. This decision

is based upon the fact that Applicant's case could not go forward without the support and testimony of the applicant himself, as it was his specific allegations of ineffective assistance of standby counsel that formed the basis of his PCR claim, and without his testimony the case was devoid of both allegations and proof.

IT IS THEREFORE ORDERED:

1. That the above-captioned Post-Conviction Relief application is dismissed, with prejudice, for failure of Applicant to prosecute; and,
2. Applicant must remain in the custody of Respondent for the completion of his sentence.

IT IS SO ORDERED.



J. Michael Naxley
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

Hartsville, South Carolina

March 6, 2014

2015CP4601186

5

FORM 5

STATE OF SOUTH CAROLINA

County of YORKJohnell Porter, #240208

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

General Action No #"Austin Petition"

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and 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 the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, 430 Oaklawn Road
Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence Court of General
Sessions, York County, P.O. Box 649, York, S.C. 29745
3. Name(s) of co-defendant(s) (if any) Angela Laws, Donshavis Jones;
and Kenneth Young
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (2007-GS-46-01687) Armed Robbery; (2007-GS-46-D1688)
 - (b) Entering a Bank (2007-GS-46-01689) Kidnapping; Possession
of Firearm (2007-GS-46-01690); and (2007-GS-46-01691)
Conspiracy.

FILED - RECEIVED
2015 APR 20 PM 12:10
DAVE HAMILTON
C.C.P. & GS
YORK COUNTY, S.C.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 26, 2007
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. S.C. Supreme Court of Appeals
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Direct Appeal-Denied
- ii. Writ of Certiorari-Denied
- iii. _____
- (c) the date of each such result:
- i. April 5, 2010
- ii. February 16, 2011
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel under Austin v. State;
- (b) and Newly and After Discovered Evidence !!!
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached Memorandum of Law!!!!!!
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Application for Post-Conviction Relief
- ii. \ (Case No. #2011-CP-46-02620)
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. York County Court of Common Pleas
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Order of Dismissal
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. March 6, 2014
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Case No. #2011-CP-46-02620
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. All PCR grounds "(with the exception of)" Austin Petition
- ii. and Newly and After Discovered Evidence!!!
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Austin Petition
 (b) Newly and after Discovered Evidence
 (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
 (b) your trial, if any? No
 (c) your sentencing? No
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. _____

 ii. _____

 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. _____

 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

A "New" PCR Hearing; Belated Appeal under Austin v. State,
in Accordance with S.C. Code Ann. Sec. 17-27-100; and Supreme
Court Rule 50(9).

20. Are you now under sentence from any other court that you have not challenged?

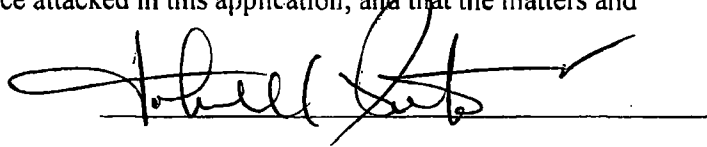
No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of York)

I, Johnell Porter, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 17th
 day of April, 2015.

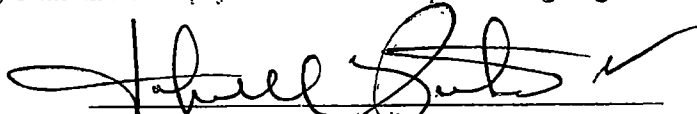
Nancy C. Murkoff (L.S.)
 Notary Public

My Commission Expires: 1-23-2023

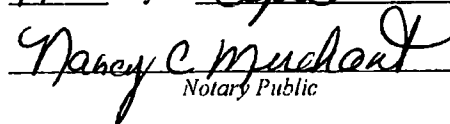
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Johnell Porter. #240208, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
17th day of April, 2015.


Notary Public

My Commission Expires: 1-23-2023

"MEMORANDUM OF LAW"

(11) State concisely and in the same order the facts which support each of the grounds set out in (10):

(1) The applicant claim that he received ineffective assistance of counsel, due to counsel's failure to file a timely Notice of Appeal from the PCR court's decision. See Austin v. State, 409 S.E.2d 395 (S.C. 1991); South Carolina Code Ann. Sec. 17-27-100; and S.C. Supreme Court Rules, Rule 50(9). The defendant asserts that he is entitled to an evidentiary hearing on his right to appellate review under Austin v. State; Odom v. State, 523 S.E.2d 753 (S.C. 1999). The S.C. Supreme Court has allowed successive PCR applications where the applicant has been denied complete access to the appellate process. Austin v. State, Supra. Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "One bite at the apple". Aice v. State, 409 S.E.2d 392, 395 (1991). This "bite" includes an applicant's right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal. See Aice, 305 S.C. at 448, 409 S.E.2d at 392.

An Austin appeal is used when an applicant is prevented from seeking appellate review of a denial of his or her PCR application, such as when an attorney fails to seek timely review. See Aice v. State, Supra; and Hope v. State, 492 S.E.2d 76 n.1 (1977) (permitting an Austin appeal where original PCR counsel failed to appeal from the first denial of PCR). As in Austin, ... the applicant in the case at bar, never received a full procedural "bite at the apple" because he was prevented from seeking any review of the denial of his PCR application. Aice, 305 S.C. at 452, 409 S.E.2d at 395. Quoting from Odom v. State, Supra. Also, in Lamb v. Estelle, 667 F.2d 496, 497 (5th Cir. 1982), an indigent defendant is denied his Sixth Amendment rights to effective assistance of counsel, when his court appointed attorney fails to advise him of his right to appeal and of the procedures and time limits involved therein and of his right to be appointed counsel on appeal..... Emphasis were added and citing Lumpkin v. Smith, 439 F.2d 1084 (5th Cir. 1971); Bonds v. Wainwright, 579 F.2d 317 (5th Cir. 1978); and Martin v. State, 694 F.2d 423-25 (5th Cir. 1982).

The applicant's Order Dismissing Post-Conviction Relief Application, was signed by the Honorable J. Michael Baxley, on March 6, 2014. See herein attached said Order marked as exhibit #A. In the Notice of Appeal, PCR counsel indicated she received written Notice of Entry of the Order, on March 14, 2014. The notice of appeal was not served on opposing counsel until April 17, 2014. However, Under Rule 203(b)(1) of the South Carolina Appellate Court Rules the applicant's notice of appeal was not timely filed by PCR counsel. Accordingly, the notice of appeal was dismissed and the motion to extend the time to file the appeal was denied under Rule 263(b) SCACR, citing Elam v. South Carolina Dept. of Transportation, 361 S.C. 9, 604 S.E.2d 772 (2004). See the Order, signed by the Honorable Jean H. Toal, Chief Justice, South Carolina Supreme Court, on April 28, 2014, marked as exhibit #B. It would be a month later, before PCR counsel (Ms. Leah B. Moody) via letter, dated May 27, 2014, informed the applicant that his appeal was dismissed and that he would have to PCR her, in order to have his appeal filed. See exhibit #C, a letter dated May 27, 2014, from PCR counsel Ms. Leah B. Moody. In the United States v. Hill, 310 F.2d 601 (4th Cir. 1962) (counsel is required to acquaint himself or herself with the law of the case. See Kraft v. United States, 238 F.2d 794 (8th Cir. 1956); Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019; Von Moltke v. Gilles, 332 U.S. 708, 68 S.Ct. 316; and Willis v. Hunter, 166 F.2d 721, (10th Cir. 1948) cert. denied 334 U.S. 848, 68 S.Ct. 1499.

In Austin v. State, Supra, the S.C. Supreme Court stated;..... While we are aware the Constitutional Right to counsel does not extend to discretionary appeals on collateral attack. We have ruled that Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), shall continue to apply in PCR matters. Johnson v. State, 294 S.C. 310, 364 S.C.2d 201 (1988); compare Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990 (1987). Anders requires appellate counsel to brief arguable issues, despite counsels belief the appeal is frivolous, as a safeguard to the right to appeal. In applying Anders on PCR, we have recognized a prisoner's right to the assistance of appellate counsel in seeking review of the denial of PCR, Supreme Court Rule 50(6) expressly provides for the appointment of counsel to seek appellate review on PCR. Because petitioner is entitled to the assistance of appellate counsel on PCR, and because we must craft a remedy to correct the unfairness which has occurred, we find his allegation that counsel failed to seek review in this case sufficiently states a claim of ineffective assistance.

The applicant, in the case at bar suffered the same unfairness,.... Likewise, he should be entitled to the same relief. The applicant's PCR attorney actions violated his Sixth (6th) Amendment Rights under the United States Constitution. As well as similar rights under the South Carolina Constitution, to effective assistance of counsel!!!

(2) The applicant asserts, that his Due Process and Equal Protection rights under the Fifth (5th) and Fourteenth (14th) Amendments under the United States Constitution. The similar rights under the South Carolina Constitution were violated due to the newly and after deiscovered evidence he received, on June 9, 2014, from the Federal Deposit Insurance Corporation (F.D.I.C.).

The applicant and three (3) other people were charged with robbing the Bank of York, in York, S.C., on December 22, 2006. See copies of applicant's indictments marked as exhibits #D).. He was tried and convicted by a jury in the York County Court of General Sessions. Before the Honorable John C. Hayes, III, on July 26, 2007, and was sentenced to multiple sentences running concurrently totaling life without parole (LWOP).

On June 9, 2014, applicant received a letter from the Federal Deposit Insurance Corporation (F.D.I.C.). Nevertheless, applicant asserts the contents of the F.D.I.C.'s letter constituted Due Process and Equal Protection rights violations. In clear violation of his Fifth (5th) and Fourteenth (14th) Amendments of the United States Constitution, and similar rights under the South Carolina Constitution. It is a fact,..... the Bank of York, in York, S.C., is and was insured on December 22, 2006, by the F.D.I.C.. See letter dated June 9, 2014, from the F.D.I.C. marked as exhibit #E.. In United States v. Harris, 108 F.3d 1107, C.A.9 (Was) (1997) - Federal Court's have jurisdiction over a bank robbery offense where the bank was a federally insured institution." Also, in United States v. Mohaw, 20 F.3d 1480, 1482 n1 (9th Cir. 1994) and Title 18 U.S.C. Sec. 2113 (f) (1994) (for purpose of statute, bank means any bank whose deposits are insured by the Federal Deposit Insurance Coporation). The Bank of York's Certificate's insurance number, is #15104. (See F.D.I.C. letter marked as exhibit E.)!!

At no time during applicant's arrest, interrogation, initial appearance, trial, etc.. It was never mentioned, that the Bank of York was a federally insured bank. Even though, a Special Agent from the Federal Bureau of Investigation, Mr. Bob Hamilton, was present during the interrogation. Plus the bank's vice president and several bank

tellers, etc., testified under oath at his trial. The United States Supreme Court stated, in United States v. Ford, 642 F.2d 77 (4th Cir. 1981), cert. denied, 451 U.S. 917, 101 S.Ct. 1996, 68 L.Ed. 2d 310 (1981)..... "Testimony from the bank manager and a certificate of insurance, satisfied the minimum requirements for establishing federal jurisdiction under the bank robbery statute of Title 18 U.S.C. Sec. 2113(f)". Applicant asserts, that his due process and equal protection rights under the fifth and fourteenth amendments under the United States Constitution were violated. As well as similar rights under the South Carolina Constitution. When the State failed to disclose potentially exculpatory evidence related to the charged offenses relating to the robbery of the Bank of York. See Simpson v. Moore, 627 S.E.2d 701, 708 (S.C. 2006).

The applicant's Austin petition constitutes a pending PCR proceeding and therefore, he is entitled to amend his PCR with the newly and after discovered evidence. State v. Taylor, 508 S.E.2d 870 (S.C. 1998); See also S.C.R.Crim.P 29(b). At trial, he represented himself pro se and had no access to a law-library, legal books, legal address books, etc.. And could not have discovered the evidence before trial, State v. Taylor, Supra. The newly and after discovered evidence is timely filed in regards to Town of Hilton Head Island v. Godwin, 634 S.E.2d 59, (S.C. Ct. App. 2006). An affidavit, is hereby submitted with the amended allegation to satisfy the requirements of State v. DeAngelis, 182 S.E.2d 732, 735 (S.C. 1971). See applicant's affidavit marked as exhibit #F.!!!

The State by withholding potentially exculpatory evidence committed Brady and Rule #5 violations. Whereas his due process and equal protection rights were further violated. The United States Supreme Court in Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, stated ---- "As long ago as Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct. 340 (1935), this Court made clear that deliberate deception of a Court and Jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." This was reaffirmed in Pyle v. Kansas, 317 U.S. 213, 63 S.Ct. 177 (1942). In Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, the Court stated ---- "the same results obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Id at 269, 79 S.Ct. at 1177. Thereafter, Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1197, held that suppression

of material evidence justifies a new trial "irrespective of the good faith or bad faith of the prosecutor." Applicant asserts, that the crime he was found guilty of, robbing the Bank of York, is a crime against the laws of the United States of America. In United States v. Walden, 464 F.2d 1015 (1972), Title 18 U.S.C. Sec. 3231 provides that -----
"the District Courts of the United States shall have original jurisdiction, exclusive of the Courts of States, of all offenses against the laws of the United States. See also, Ex Parte Houghton, D.C. Vt. 1881, 8F. 897 Title 18 U.S.C. Sec. 3232 states ----- the proceeding to be in district and division in which offense committed.

The York County Court of General Sessions was without legal, lawful or proper jurisdiction, to try, convict, and sentence the applicant. He has never appeared before any United State District Court to waive his federal rights under Rules #18, #20, or #21 of the Federal Rules of Criminal Procedure. Therefore, as the result of the June 9, 2014 letter from the F.D.I.C., that constitutes newly and after discovered evidence. The applicant was illegally arrested, tried, convicted, and sentenced, and is being unconstitutionally detained in the South Carolina Department of Corrections. By the State and Bank of York employees, purposely concealing and withholding the fact, that the Bank of York, was a federally insured institution. Is both an overt and covert conspiracy, that willfully violated the Applicant's due process and equal protection rights. Which in the setting, constitutes a denial of fundamental fairness shocking to the Universal Sense of Justice!!!!

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Exhibit #A

Law Office of Leah B. Moody, LLC

235 East Main Street
Post Office Box 1015
Rock Hill, South Carolina 29731
LBMatty@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

March 18, 2014

Johnell Porter, #240208
Perry Correctional Institute
430 Oaklawn Road
Pelzer, SC 29669

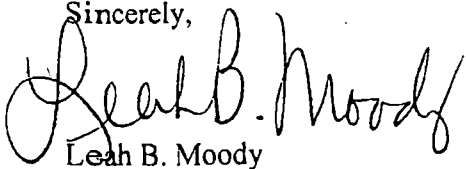
RE: Johnell Porter v. State of South Carolina
C.A. No.: 2011-CP-46-02620

Dear Mr. Porter:

Please find enclosed a copy of the letter I received from the Attorney General's Office dated March 12, 2014 and the Order of Dismissal dated March 6, 2014 regarding your PCR case.

If you have any questions or concerns, please feel free to contact my office in writing. Please be advised that I do not accept collect calls. Thank you for your attention in this matter.

Sincerely,



Leah B. Moody

LBM/rae

Enclosures

Exhibit # A³⁹



ALAN WILSON
ATTORNEY GENERAL

March 12, 2014

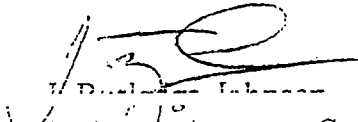
The Honorable David Hamilton
Clerk of Court, York County
Post Office Box 649
York SC 29745

Re: Johnell Porter v. State of South Carolina
2011-CP-46-2620

Dear Mr. Hamilton:

Enclosed please find an original and a copy of an Order Dismissing Post-Conviction Relief application in connection with the above referenced case. Please file the original and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,


Assistant Attorney General

Enclosure
Enclosures

cc: Leah B. Moody, Esquire



imprisonment for Armed Robbery, life imprisonment for Entering a Bank with Intent to Steal, five (5) years imprisonment for Possession of a Firearm During the Commission of a Violent Crime, and five (5) years imprisonment for Conspiracy to Commit Armed Robbery, all to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. A Petition for Rehearing was filed by Applicant and denied by the Court of Appeals on July 7, 2010. A Petition for Writ of Certiorari was filed by Applicant and denied by the Supreme Court on February 16, 2011. The Remittitur was issued on February 23, 2011.

At the commencement of the evidentiary hearing on Applicant's PCR claim, Applicant moved to have Ms. Moody relieved as PCR counsel. This Court denied Applicant's motion, finding no reason to relieve counsel as Ms. Moody was well-prepared and well-versed in Applicant's allegations. Applicant then informed the Court that he would refuse to attend, to take the stand, or to otherwise participate in the PCR hearing. This Court instructed Applicant that he had a right to be present during the hearing, but that the hearing would proceed in his absence should he elect to depart, but Applicant summarily left the room to return to the holding cell.

The Respondent then moved pursuant to Rule 41(b), SCRCP, to dismiss this matter due to Applicant's failure to prosecute.

The plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's neglect in proceeding with his cause. Don Shaver & Spitzer, Inc. v. American Motors Realty Corp., 279 S.C. 58, 301 S.E.2d 757 (1983). This Court finds the Respondent's motion well taken and hereby dismisses this matter, with prejudice. This decision

The Supreme Court of South Carolina

Johnell Porter, Petitioner,

v.

State of South Carolina, Respondent.

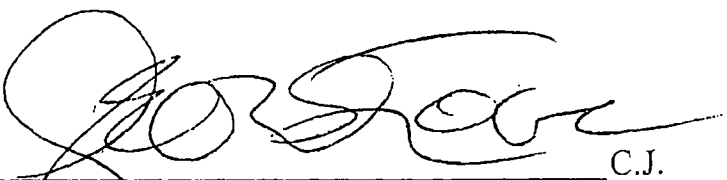
Appellate Case No. 2014-000834

Trial Court Case No. 2011-CP-46-02620

ORDER

Petitioner's counsel has filed a notice of appeal from an order dated March 6, 2014. In the notice of appeal, petitioner's counsel indicates that she received written notice of entry of the order on March 14, 2014. The notice of appeal was not served on opposing counsel until April 17, 2014.

The notice of appeal has not been timely served under Rule 203(b)(1) of the South Carolina Appellate Court Rules (SCACR). Accordingly, the notice of appeal is dismissed and the motion to extend the time to file the appeal is denied. Rule 263(b), SCACR (time to serve the notice of appeal may not be extended); *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."). The remittitur will be sent as provided by Rule 221, SCACR.


C.J.
FOR THE COURT

Columbia, South Carolina
April 25, 2014

cc: Leah B. Moody, Esquire
James Rutledge Johnson, 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

May 14, 2014

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: Johnell Porter v. State
Lower Court Case No. 2011CP4602620
Appellate Case No. 2014-000834

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: Leah B. Moody, Esquire
James Rutledge Johnson, Esquire
Johnell Porter, #240208

Law Office of Leah B. Moody, LLC

235 East Main Street
Post Office Box 1015
Rock Hill, South Carolina 29731
lbnatty@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

May 27, 2014

Johnell Porter, #240208
Perry Correctional Institute
430 Oaklawn Road
Pelzer, SC 29669

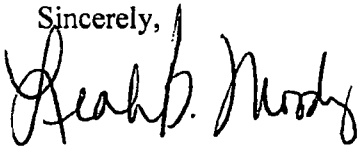
RE: Johnell Porter v. State of South Carolina
C.A. No.: 2011-CP-46-02620

Dear Mr. Porter:

Please find enclosed a copy of the documents I received from the Supreme Court of South Carolina Clerk of Court's Office regarding your case with my office. The motion to extend the time to file your appeal was denied so you will need to PCR me in order to have your appeal filed.

If you have any questions or concerns, please feel free to contact my office in writing. Please be advised that I do not accept collect calls. Thank you.

Sincerely,



Leah B. Moody

LBM/res

Enclosures

Cc: Wanda Carter, SCCID

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

ARMED ROBBERY

The Defendant, Johnell Porter, did in York County, South Carolina, on or about December 22, 2007, while armed with a deadly weapon, to wit: a hand gun, 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 reasonably believed to be a deadly weapon, feloniously take and carry away personal property belonging to the Bank of York from the person of or in the presence of employees of the Bank of York, including Cassie wine, and/or Christa Thomas, and/or Debbie Alexander, and/or Angel Neelands, and/or Monica Harris, and/or Marc Lubiato. The Defendant by means of force or intimidation put the employees of the Bank of York in fear by pointing a pistol at them and took goods or monies of said Bank of York, located on Charlotte Highway, Lake Wylie, such goods or monies being described as follows: US Currency. All in violation of §16-11-330(A), Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E B Springs Jr
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

ENTERING A BANK WITH INTENT TO STEAL

The Defendant, Johnell Porter, did in York County, South Carolina, on or about December 22, 2006, did unlawfully enter a building occupied as a bank, with the intent to steal money or securities for money, either by force, intimidation, or threats, in that he did enter the Bank of York's Lake Wylie branch intending to steal money. All in violation of Section 16-11-380, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E. B. Springs, Jr.
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

KIDNAPPING

The Defendant, Johnell Porter, did in York County, South Carolina, on or about December 22, 2006, unlawfully seize and/or confine employees and customers of the Bank of York, those people including Marc Lubiato, and/or Cassie Wine, and/or Angel Neelands, and/or Paul Bayer, and/or Christina Thomas, and/or Monica Harris, and/or Cecilia Lyles, without authority of law, all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E B Sprague Jr

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

CONSPIRACY TO COMMIT ARMED ROBBERY

The Defendant, Johnell Porter, did in York County, South Carolina, on or about December 22, 2006, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have tacit understanding with Donshavis Jones, Kenneth Love, and Angela Laws, for the purpose of committing the crime of Armed Robbery. All in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

The Defendant, Johnell Porter, did in York County on or about December 22, 2007, while committing the crime of Armed Robbery, a crime of violence, have in his possession a handgun, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E. B. Sprague
ASSISTANT SOLICITOR


FDIC

 Federal Deposit Insurance Corporation
 Division of Depositor and Consumer Protection

 550 17th Street, N.W.
 Washington, DC 20429

June 9, 2014

Ref. No.: SCC2014F-000652-1

 Mr. Johnell Porter #240208
 Perry Corr. Inst. (Q2B-118)
 430 Oaklawn Road
 Pelzer, SC 29669

Dear Mr. Porter #240208:

Thank you for contacting the Federal Deposit Insurance Corporation (FDIC). We have received your letter of May 18, 2014 in which you referenced our response of May 9, 2014 to you (#SCC2014F-000652-0) regarding referral to our Legal Division for review. In your letter dated December 2, 2013, you specifically requested answers to the following questions. Listed below are the responses to those questions.

"(1) Is the Bank of York insured by the FDIC?"

Yes, the Bank of York, York, SC is FDIC insured under FDIC Certificate #15104 and is a non-member of the Federal Reserve System.

(2) Are all banks insured by the FDIC under federal jurisdiction?

No. State-chartered banks that are not members of the Federal Reserve System are regulated by the chartering state and the FDIC.

(3) Does the United States District Courts have exclusive jurisdiction over all banks insured by FDIC?

No. Federal jurisdiction for bank robbery is not exclusive – bank robbery can be charged and prosecuted in State courts.

✗ 4) Is it mandatory for the FDIC certificate to be displayed or brought to trial as evidence? When a FDIC insured bank has been robbed and a jury trial is taken place?"

The federal bank robbery statute (18 USC § 2113) does require proof beyond a reasonable doubt of Federally-insured status. However, proof is not limited to display or entering into evidence of the certificate of Federally-insured status. For example, the proof can be accomplished by stipulation or the testimony of a witness.

The FDIC protects the depositors of insured banks against the loss of their deposits due to a bank failure up to the insurance limit. The FDIC does not cover bank losses due to fire, theft, or fraud. However, such losses may be covered by a bank's hazard and casualty insurance and fidelity bonds. The standard deposit insurance amount is \$250,000 per depositor, per insured bank, for each account ownership category.

We hope this information is helpful.

Enclosure (1)

Sincerely,
Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
550 17th Street, N.W.
Washington, DC 20429

As part of our ongoing efforts to improve our service to the public, we would appreciate it if you would complete a short consumer satisfaction survey on the level of service you received from this office. The survey is enclosed.

State of South Carolina

County of YorkJohnell Porter, #240208
Applicant,

v.

State of South Carolina,
Respondent.

In The Court of Common Pleas

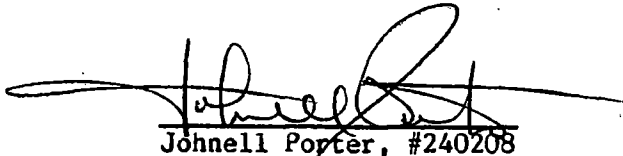
Civil Action No. # _____

AFFIDAVIT

Johnell Porter, being duly sworn, depose and says:

- (1) That I am the pro se applicant in the above caption case.
- (2) That from February 15, 2007 - until- the date of his trial, on July 23, 2007, he was incarcerated in the York County Detention Center.
- (3) The Honorable John C. Hayes, III, on June 26, 2007, at a Motion to Dismiss Counsel hearing. Relieved Counsel and allowed the applicant to represent himself pro se at trial.
- (4) Applicant's trial began twenty-seven (27) days after counsel had been relieved. He did not have access to a law library, legal books, legal material, etc..
- (5) Nor did he have any knowledge that the Bank of York, in York, S.C. was a federal insured bank, by the F.D.I.C..
- (6) The newly and after discovered was discovered seven (7) years after his trial and conviction, on July 26, 2007, and could not have been discovered by him before trial.
- (7) The applicant's PCR attorney failed to file a timely Notice of Appeal to the South Carolina Supreme Court, from denial of the PCR. Therefore, he is allowed under Austin v. State, 409 S.E.2d 395 (S.C. 1991); South Carolina Ann. Sec. 17-27-100; and Supreme Court Rule #50(9) to seek appellate review.
- (8) The Austin Petition, is a PCR proceeding and allows the Applicant to amend his PCR Application with the newly, and after discovered evidence. See the June 9, 2004 F.D.I.C. letter; and Simpson v. Moore, 627 S.E.2d 701 (S.C. 2006).

The applicant declares under the penalty of perjury that the statements in his Affidavit is true and correct.


Johnell Porter, #240208
Affiant:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
County of York	)	Civil Action No.: #2015-CP-46-1186
	)	
Johnell Porter, #240208	)	MOTION TO RELIEVE COUNSEL
Applicant,	)	"AND"
v.	)	OBJECTIONS TO THE APPOINTMENT
	)	OF COUNSEL PURSUANT TO RULE
State of South Carolina,	)	#71(d) SCRCiv.P
Respondent.	)	

Now comes Johnell Porter, the Applicant in the above captioned case, in a Motion To Relieve Counsel and Objections to the Appointment of Counsel, Ms. Leah B. Moody, Esq., by the Honorable John C. Hayes, III, on May 18, 2015.

The applicant asserts that both the Honorable John C. Hayes, and Ms. Leah B. Moody, Esq., are potential witnesses in the case at bar, and shows unto the Court the following:

(1) The Honorable John C. Hayes, III, was the presiding judge at the Applicant's trial, on July 23, 2007, and sentenced him to multiple sentences totaling life without parole, on July 26, 2007.

(2) The Austin Petition at bar, is a Post-Conviction proceeding. A Judge must recuse himself if he was also the Judge who presided over the guilty plea, criminal trial, or probation revocation proceeding for which post-conviction relief is being sought. By this Motion, the Applicant hereby requests the appointment of counsel (Ms. Leah B. Moody, Esq.), by the Honorable John C. Hayes, III, on May 18, 2015, be rescinded under Floyd v. State, 400 S.E.2d 145, 146, (S.C. 1991).

(3) The Austin Petition at bar, is being filed as the result of Ms. Leah B. Moody, Esq., failed to file a timely Notice of Appeal, in the Applicant's prior post-conviction, Civil Action No. #2011-CP-46-02620. See herein attached a May 27, 2014, letter from Ms. Leah B. Moody, Esq., marked as exhibit #A. Also see attached and marked as Exhibit #B, the S.C. Supreme Court's Order and Remittitur Dismissing the Applicant's Post Conviction Appeal, on April 28, 2014!!!

(4) The applicant hereby opposes the appointment of Ms. Leah B. Moody, as his counsel because she and Judge Hayes, III, are potential witnesses in the upcoming hearing. Also, there is a conflict-of-interest between attorney and applicant.

2015 JUN - 1 PM 3:21
RECEIVED
DAVID HAMILTON
CLERK OF COURT
CRIMINAL DIVISION

"CONCLUSION"

The applicant asserts that any action by the Honorable Judge Hayes, in the matter at bar is unconstitutional and violates the applicant's due process rights under Floyd v. State, Supra.

Plus the appointment of Ms. Leah B. Moody, Esq. as counsel for the applicant in the case at bar, should be rescinded. As she is the sole reason for the Austin Petition that the applicant has filed. Ms. Moody, Esq., failed to file a timely Notice of Appeal from the PCR Court's decision. See Austin v. State, 409 S.E.2d 395 (S.C. 1991); S.C. Code Ann. sec. 17-27-100; and S.C. Supreme Court Rules, Rule #50(q).

In the interest of justice and fairness, the applicant humbly asks that another attorney be appointment in this matter and that Judge Hayes, III, be precluded from having any thing further to do with this case!!!

further, the PCR Judges Order, dated March 6, 2014, shows that the applicant asked the PCR Court to remove Ms. Leah B. Moody, Esq. as his PCR counsel. See Austin Petition's exhibit #A the Hon. J. Michael Baxley's Order.

The applicant asserts that another attorney be appointed to represent him under SCR.CivP., Rule #71.1(d). In the interest of justice and fairness!!!

Respectfully submitted,


Johnell Porter, #240208

Sworn To And Subscribed Before Me

This 29th Day of May 2015.


Notary Public For South Carolina

My Commission Expires: 1-23-2023

STATE OF SOUTH CAROLINA)

County of York)

Johnell Porter, #240208)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: #2015-CP-46-1186

CERTIFICATE OF SERVICE

Now comes the Applicant, Johnell Porter, and hereby certify that a copy of the Motion to Relieve Counsel and Objects to the Appointment of Counsel, was served on the Respondents via U.S. mail, by placing it in the U.S. mailbox here at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, S.C. 29669, prepaid and addressed to the following:

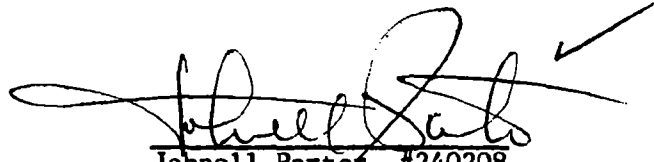
The Honorable Alan Wilson
S.C. Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211-1549

Sworn To And Subscribed Before Me

This 29th Day of May 2015.

Nancy C. Muchard
Notary Public For South Carolina

My Commission Expires: 1-23-2023


Johnell Porter, #240208

RECEIVED
MAY 29 2015
P.C.I. MAILROOM

2015 JUN -1 PM 3:27
DAVID L. ACTION
C.C.P. & CS
YORK COUNTY, SC
-1 FD-RECEIVED

Law Office of Leah B. Moody, LLC

235 East Main Street
Post Office Box 1015
Rock Hill, South Carolina 29731
lbmatty@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

May 27, 2014

Johnell Porter, #240208
Perry Correctional Institute
430 Oaklawn Road
Pelzer, SC 29669

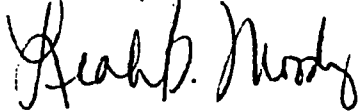
RE: Johnell Porter v. State of South Carolina
C.A. No.: 2011-CP-46-02620

Dear Mr. Porter:

Please find enclosed a copy of the documents I received from the Supreme Court of South Carolina Clerk of Court's Office regarding your case with my office. The motion to extend the time to file your appeal was denied so you will need to PCR me in order to have your appeal filed.

If you have any questions or concerns, please feel free to contact my office in writing. Please be advised that I do not accept collect calls. Thank you.

Sincerely,



Leah B. Moody

LBM/res

Enclosures

Cc: Wanda Carter, SCCID

The Supreme Court of South Carolina

Johnell Porter, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000834

Trial Court Case No. 2011-CP-46-02620

ORDER

Petitioner's counsel has filed a notice of appeal from an order dated March 6, 2014. In the notice of appeal, petitioner's counsel indicates that she received written notice of entry of the order on March 14, 2014. The notice of appeal was not served on opposing counsel until April 17, 2014.

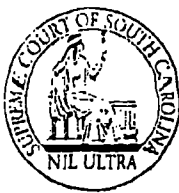
The notice of appeal has not been timely served under Rule 203(b)(1) of the South Carolina Appellate Court Rules (SCACR). Accordingly, the notice of appeal is dismissed and the motion to extend the time to file the appeal is denied. Rule 263(b), SCACR (time to serve the notice of appeal may not be extended); *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."). The remittitur will be sent as provided by Rule 221, SCACR.



C.J.
FOR THE COURT

Columbia, South Carolina
April 25, 2014

cc: Leah B. Moody, Esquire
James Rutledge Johnson, 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

May 14, 2014

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: Johnell Porter v. State
Lower Court Case No. 2011CP4602620
Appellate Case No. 2014-000834

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: Leah B. Moody, Esquire
James Rutledge Johnson, Esquire
Johnell Porter, #240208

Johnell Porter, #240208
 Perry Correctional
 Institution Q4 A114
 430 Oaklawn Road
 Pelzer, S.C. 29669

July 13th, 2015

The Honorable John C. Hayes, III
 Moss Justice Center, 2nd Flr.
 1675-1H York Highway
 York, S.C. 29745

RE: Johnell Porter v. State
 Civil Action No. #2015-CP-46-1186

FILED-RECEIVED
 2015 JUL 15 PM 12:25
 DAVID HAMILTON
 C.C.P. & S.S.
 YORK COUNTY S.C.

Dear Judge Hayes:

On May 18, 2015, you appointed Ms. Leah B. Moody, Esq., to represent me in the pending Austin Petition.

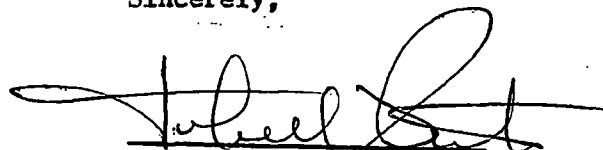
However, I filed a Motion to Relieve Counsel and Objections to the Appointment of Counsel, that was filed in the York County Clerk of Court's office, on June 1, 2015. A copy of said Motion was mailed to the Honorable Alan Wilson, at the S.C. Attorney General's office.

Also, in that very same Motion, I am asking that the appointment of Ms. Leah B. Moody, Esq. as counsel be rescinded under Floyd v. State, 400 S.E.2d 145, 146 (S.C. 1991); and another attorney be appointed in regards to Rule #71.1(d) SCRCiv.P.!!!

Judge Hayes, you were the trial and sentencing Judge, in my case and in a prior PCR motion had vacated your own Order. Plus the Austin Petition at bar, is a Post Conviction proceeding. Ms. Leah B. Moody, Esq., is the reason, cause, and is directly responsible for me having to file the Austin Petition!!!

In the interest of justice, fairness, and due process rights protection. If another attorney can not be appointed by the S.C. Attorney General's office. Then an immediate hearing date should be set, because I am vehemently objecting the appointment of Ms. Leah B. Moody, Esq. and Mr. Charles T. Brooks, Esq, from representing in the pending case at bar!!!

Sincerely,


 Johnell Porter, #240208

cc:

Johnell Porter, #240208
Perry Correctional
Institution Q4 A114
430 Oaklawn Road
Pelzer, S.C. 29669

July 13th, 2015

The Honorable David Hamilton
York County, Clerk of Court
P.O. Box 649
York, S.C. 29745

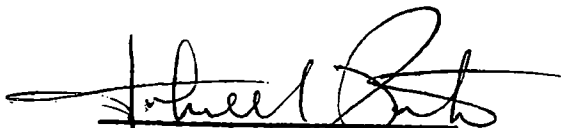
RE: Johnell Porter v. State
Civil Action No. #2015-CP-46-1186
Motion to Relieve Counsel
Filed June 1, 2015, York County
Court of Common Pleas

Dear Clerk:

Here's copies of letters to the Honorable John C. Hayes, III, and the Honorable Alan Wilson, S.C. Attorney General. Please file and return a clock-stamped copy to me.

Thank you for your time and utmost consideration!!!

Sincerely



Johnell Porter, #240208

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEA
) FOR THE SIXTEENTH JUDICIAL CIRCUIT
)

Johnell Porter #240208,

Plaintiff,

-vs-

State of South Carolina,

Defendant.

ORDER RELIEVING COUNSEL

Case No.: 2015CP4601186

This matter comes before me pursuant to Leah B. Moody's motion to be relieved as counsel. Ms. Moody was appointed on May 14, 2015 in the above-reference case. Ms. Moody informed the Court that her motion was based on prior representation and this matter directly deals with that prior representation.

I find that the petitioner's motion is proper and that this motion should be granted. Additionally, the court will appoint another attorney.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Leah B. Moody, Esquire be and hereby is relieved as counsel for Johnell Porter in the above- referenced case.

AND IT IS SO ORDERED

7/13, 2015
York, South Carolina

John C. Hayes, III
John C. Hayes, III
Judge, Sixteenth Judicial Circuit

FILED-RECEIVED
2015 JUL 29 PM 1:24
DAVID HAMILTON
C.C.P. & C.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2015-CP-46-1186
Johnell Porter,	)	
S.C.D.C. No. 240208,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO
	)	DISMISS ALL CLAIMS EXCEPT
v.	)	<u>AUSTIN</u> REVIEW
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED-RECEIVED
2016 JUN 30 PM 1:09
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

Respondent, making its Return to the application for post-conviction relief (PCR) filed April 20, 2015, would respectfully show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the June 2007 term of General Sessions for Armed Robbery (2007-GS-46-01687), entering a bank with intent to steal (2007-GS-46-01688), kidnapping (2007-GS-46-01689), possession of a firearm during the commission of a violent crime (2007-GS-46-01690), and Conspiracy to commit armed robbery (2007-GS-46-01691). Applicant appeared pro se. Daniel D'Agostino served as stand-by counsel for applicant.

On July 26, 2007, Applicant was convicted of these charges by a jury. The Honorable John C. Hayes, III sentenced Applicant to confinement for life for kidnapping, life for armed robbery, life for entering a bank with intent to steal, five years for Possession of a firearm during

the commission of a violent crime, and five years for conspiracy to commit armed robbery, all running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. A Petition for Rehearing was filed by the Applicant and denied by the Court on July 7, 2010. A Petition for Writ of Certiorari was filed by the Applicant and denied by the Court on February 16, 2011. The Remittitur was issued on February 23, 2011.

2011-CP-46-2620

On July 7, 2011, Applicant filed his first application for post-conviction relief, alleging he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
2. Ineffective Assistance of Appellate Counsel
3. Violation of Due Process via Prosecutorial Misconduct

Respondent made its Return on October 21, 2011. An evidentiary hearing into the matter was convened on January 21, 2014, at the Moss Justice Center in York County before the Honorable J. Michael Baxley. Applicant was present at the hearing and represented by Leah Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

During the PCR hearing, Applicant moved to have Ms. Moody relieved as PCR counsel. The PCR Court denied this motion. Applicant then expressed to the Court that he would refused to take the stand or testify during the hearing. The PCR Court instructed Applicant that he had a right to be present during the hearing, but Applicant elected to return to the jail holding cell. The PCR Court also found Ms. Moody well-prepared and well-versed in Applicant's allegations and found no reason to relieve her as counsel. Respondent then moved pursuant to Rule 41(b), SCRCP, to dismiss this matter due to the Applicant's failure to prosecute. The PCR Court

granted Respondent's motion and an Order of Dismissal was signed and filed March 14, 2014. Applicant filed a pro se Motion to Alter or Amend the Judgment on February 4, 2014. This motion was denied by and order filed April 18, 2014.

A notice of appeal was filed but dismissed by the South Carolina Supreme Court for failure to timely serve opposing counsel. The Remittitur was sent May 14, 2014.

II.

In his *second* and current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel under *Austin v. State*"
2. Newly discovered evidence

For the purpose of this Return, Respondent incorporates the Clerk of Court's records regarding Applicant's convictions, the current application, and the prior PCR records. Respondent reserves the right to amend this Return upon receipt of any relevant materials

III.

Except for Applicant's claim that he was denied an appeal from the denial of his first PCR application, the Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

The remittitur from Applicant's direct appeal was sent on February 23, 2011. Applicant was therefore required to file his application before February 23, 2012. This application was filed on April 20, 2015, well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

Applicant's claim of alleged "newly-discovered evidence" fails to make a prima facie showing that he is in actual possession of new evidence and that the new evidence likely would have changed the outcome at trial. Under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained. Applicant claims that his newly discovered evidence is a letter from the Federal Deposit Insurance Corporation stating that the bank he was convicted of robbing was insured under the FDIC. Respondent interprets his allegations to allege that he should have been told that the Bank was federally insured and that the federal court should have had jurisdiction. Respondent contends this allegation does not constitute newly discovered evidence because such information could have been ascertained at or before the time of trial rather than sending a letter to the FDIC in December 2013. Additionally,

Respondent would argue that any jurisdictional issues should be dismissed as the "newly discovered evidence" of the FDIC's letter to Applicant states "federal jurisdiction for bank robbery is not exclusive – bank robbery can be charged and prosecuted in State courts." See Applicant's PCR Application "Exhibit #E."

Applicant has failed to set forth with any specificity how the evidence would have affected the outcome if used at trial or why such alleged evidence was not readily discoverable at the time of trial or his previous PCR action. Before the Court will hold an evidentiary hearing, the Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has entirely failed to make such a prima facie showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter should be summarily dismissed with prejudice.

V.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation..." Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

VI.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

[signature block on following page]

VII.

WHEREFORE, with the exception of Applicant's allegation that he is entitled to belated review of his first PCR application, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

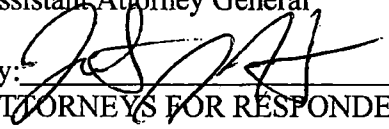
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

June 27, 2016

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2015-CP-46-1186

JOHNELL PORTER, #240208,
Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent.

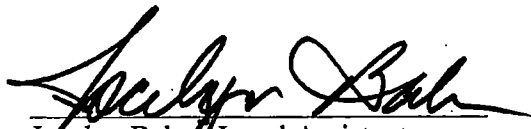
AFFIDAVIT OF SERVICE BY MAIL

FILED-RECEIVED
2016 JUN 30 PM 1:09
DAVID HAMILTON
C.C.P. & S.S.
YORK COUNTY, SC

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:

Nathan J. Sheldon, Esquire
The Law Office of Nathan J. Sheldon, LLC
PO Box 36682
Rock Hill, SC 29732-0510

DATED this 27th day of June, 2016.


Jocelyn Baker, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-46-1186

JOHNELL PORTER)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)

AUGUST 1, 2016
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE LETITIA VERDIN

APPEARANCES:

JUSTIN HUNTER, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

NATHAN J. SHELDON, ESQUIRE
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES: DIRECT CROSS RE-DIRECT RE-CROSS

(NO TESTIMONY TAKEN)

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

(NO EXHIBITS)

1 MR. HUNTER - May it please the Court, Your Honor.
2 The next case is Johnell Porter vs. State of South
3 Carolina. This is 2015-CP-46-1186.

4 Your Honor, Mr. Porter, -- and as an initial
5 matter, we moved Mr. Porter's case from Wednesday to today.
6 I did notify SCDC. It looks like he was not transported
7 today. I talked to opposing counsel. This short motion
8 hearing we're about to have, we believe, can be done
9 without his presence. So, just background on the case, he
10 was indicted for armed robbery, entering bank with intent
11 to steal, kidnapping and possession of a firearm during the
12 commission of a violent of crime and conspiracy to commit
13 armed robbery. He appeared pro se with Daniel D'Agostino
14 as standby counsel on July 26th, 2007. He was convicted on
15 all charges. Judge Hayes sentenced him to life for
16 kidnapping, life for armed robbery, life for entering a
17 bank with intent to steal, five years for the firearm
18 charge and five years for conspiracy. A notice of appeal
19 was filed, which was dismissed and a remittitur sent
20 February 23rd, 2011. He had a first post-conviction relief
21 action filed July 7th, 2011. He was represented by Ms. Leah
22 Moody. That hearing was held January 21st, 2014. And just
23 brief background, during that hearing he actually opposed -
24 - he wanted to relief Ms. Moody; the Court wouldn't let
25 him; he opposed that and decided to go back to the holding

1 cell, so the -- he was, essentially, TIAd on the -- he was
2 -- the hearing was on his absence. Order of Dismissal was
3 signed by the PCR Court and filed March 14th, 2014. And,
4 Your Honor, a notice of appeal was filed, but was,
5 subsequently, dismissed for failure to serve opposing
6 counsel, and I believe a copy of the Supreme Court's order
7 dismissing it is in your file and remittitur from that was
8 sent May 14th, 2014. This current action was filed April
9 20th, 2015, and in it one of the main allegations is
10 ineffective assistance of PCR counsel for failing to
11 properly file the notice of appeal. Given that it's
12 apparent from the record that the notice of appeal was
13 filed but not properly protected, the State would agree
14 that Mr. Porter was not afforded his right -- or did not
15 voluntarily waive his right for this PCR appeal. So at
16 this point, the State in discussing with Mr. Sheldon, would
17 consent to have -- consent to have his opportunity for
18 relief under Austin v. State.

19 THE COURT - All right. Yes, sir.

20 MR. SHELDON - Thank you, Your Honor. May it
21 please the Court.

22 THE COURT - Yes, sir.

23 MR. SHELDON - That's our understanding of the
24 consent agreement, Your Honor. The petition for PCR this
25 time around is for the Austin petition. In addition, he's

1 also made a claim to newly discovered evidence. We are
2 holding that, essentially, for a later date, ---

3 THE COURT - Gotcha.

4 MR. SHELDON - --- the newly discovered evidence
5 portion, and the attorney general's agreed to -- since it's
6 in the same petition, has agreed to provide me with the
7 trial transcript of his original trial and -- but also
8 allowed this plea (sic) to move forward - or this appeal to
9 move forward.

10 THE COURT - All right. All right, we will then.

11 MR. HUNTER - Thank you. And I'll provide you
12 with an order.

13 THE COURT - Yes, that's good.

14 (END OF TRANSCRIPT)

15

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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 6 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Johnell Porter vs. State of South Carolina, as taken by me in The Court of Common Pleas for the Sixteenth Judicial Circuit on August 1, 2016, and provided by me this the 5th day of January, 2017.

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

A handwritten signature in cursive script, reading "Shirley Broom", with a horizontal line extending to the right.

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4601186

Johnell Porter

South Carolina State Of

PLAINTIFF(S)

Submitted by:

DEFENDANT(S)

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:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.Additional Information for the Clerk: Motion to dismiss all claims except Austin review is granted. Order to be prepared by the Attorney General's Office

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.

Letitia H. Verdin
 Letitia H. Verdin
 Circuit Court Judge

2162

Judge Code

8/1/14
 Date

For Clerk of Court Office Use Only

This judgment was entered on August 2, 2016, and a copy mailed first class or placed in the appropriate attorney's box on August 2, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Nathan James Sheldon PO Box 36682 Rock Hill, SC 29732

Justin James Hunter PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: Shirley Broom

David Hamilton - 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.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Johnell Porter,
S.C.D.C. No. 166280

Applicant,

v.

State of South Carolina,
Respondent.IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-1186

ORDER GRANTING AN APPELLATE
PURSUANT TO AUSTIN v. STATEFILED-RECEIVED
2016 SEP 22 AM 10:14
DAVID L. AMILTON
CLERK OF COURT
YORK COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed April 20, 2015. Respondent made its Return on or about June 27, 2016, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on August 1, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the June 2007 term of General Sessions for Armed Robbery (2007-GS-46-01687), entering a bank with intent to steal (2007-GS-46-01688), kidnapping (2007-GS-46-01689), possession of a firearm during the commission of a violent crime (2007-GS-46-01690), and Conspiracy to commit armed robbery (2007-GS-46-01691). Applicant appeared pro se. Daniel D'Agostino served as stand-by counsel for applicant.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

On July 26, 2007, Applicant was convicted of these charges by a jury. The Honorable John C. Hayes, III sentenced Applicant to confinement for life for kidnapping, life for armed robbery, life for entering a bank with intent to steal, five years for Possession of a firearm during the commission of a violent crime, and five years for conspiracy to commit armed robbery, all running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. A Petition for Rehearing was filed by the Applicant and denied by the Court on July 7, 2010. A Petition for Writ of Certiorari was filed by the Applicant and denied by the Court on February 16, 2011. The Remittitur was issued on February 23, 2011.

On July 7, 2011, Applicant filed his first application for post-conviction relief (2011-CP-46-2620). Respondent made its Return on October 21, 2011. An evidentiary hearing into the matter was convened on January 21, 2014, at the Moss Justice Center in York County before the Honorable J. Michael Baxley. Applicant was present at the hearing and represented by Leah Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

During the PCR hearing, Applicant moved to have Ms. Moody relieved as PCR counsel. The PCR Court denied this motion. Applicant then expressed to the Court that he would refused to take the stand or testify during the hearing. The PCR Court instructed Applicant that he had a right to be present during the hearing, but Applicant elected to return to the jail holding cell. The PCR Court also found Ms. Moody well-prepared and well-versed in Applicant's allegations and found no reason to relieve her as counsel. Respondent then moved pursuant to Rule 41(b), SCRCP, to dismiss this matter due to the Applicant's failure to prosecute. The PCR Court

granted Respondent's motion and an Order of Dismissal was signed and filed March 14, 2014. Applicant filed a pro se Motion to Alter or Amend the Judgment on February 4, 2014. This motion was denied by and order filed April 18, 2014.

A notice of appeal was filed but dismissed by the South Carolina Supreme Court for failure to timely serve opposing counsel. The Remittitur was sent May 14, 2014

ALLEGATIONS

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel under Austin v. State"
2. Newly discovered evidence

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that they would be consenting to the grant of an Austin appeal. Respondent explained that the State was consenting based off of its discussions with prior PCR Counsel and Applicant's current PCR Counsel and due to the fact that Applicant's prior PCR action was not properly appealed.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that Applicant is entitled to appeal the denial of his first post-conviction relief application (2011-CP-46-2620) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based upon the foregoing, this Court finds that the granting of an appeal of Applicant's first post-conviction relief action (2011-CP-46-2620) pursuant to Austin v. State is warranted. This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2011-CP-46-2620 pursuant to Austin v. State; and
2. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 30 day of Aug., 2016.



LETITIA VERDIN
Presiding Judge
Sixteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Johnell Porter,
S.C.D.C. No. 166280

Applicant,

v.

State of South Carolina,
Respondent.FILED-RECEIVED
2016 OCT 14 AM 11:20DAVID HAMILTON
C.C.P. 2015
YORK COUNTY SCIN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-1186

**AMENDED ORDER GRANTING AN
APPEAL PURSUANT TO
AUSTIN V. STATE¹**

This matter comes before the Court by way of an application for post-conviction relief filed April 20, 2015. Respondent made its Return on or about June 27, 2016, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on August 1, 2016, at the Moss Justice Center in York, South Carolina. Applicant was not present but was represented at the hearing by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the June 2007 term of General Sessions for Armed Robbery (2007-GS-46-01687), entering a bank with intent to steal (2007-GS-46-01688), kidnapping (2007-GS-46-01689), possession of a firearm during the commission of a violent crime (2007-GS-46-01690), and Conspiracy to commit armed robbery (2007-GS-46-01691). Applicant appeared pro se. Daniel D'Agostino served as stand-by counsel for applicant.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

On July 26, 2007, Applicant was convicted of these charges by a jury. The Honorable John C. Hayes, III sentenced Applicant to confinement for life for kidnapping, life for armed robbery, life for entering a bank with intent to steal, five years for Possession of a firearm during the commission of a violent crime, and five years for conspiracy to commit armed robbery, all running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. A Petition for Rehearing was filed by the Applicant and denied by the Court on July 7, 2010. A Petition for Writ of Certiorari was filed by the Applicant and denied by the Court on February 16, 2011. The Remittitur was issued on February 23, 2011.

On July 7, 2011, Applicant filed his first application for post-conviction relief (2011-CP-46-2620). Respondent made its Return on October 21, 2011. An evidentiary hearing into the matter was convened on January 21, 2014, at the Moss Justice Center in York County before the Honorable J. Michael Baxley. Applicant was present at the hearing and represented by Leah Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

During the PCR hearing, Applicant moved to have Ms. Moody relieved as PCR counsel. The PCR Court denied this motion. Applicant then expressed to the Court that he would refused to take the stand or testify during the hearing. The PCR Court instructed Applicant that he had a right to be present during the hearing, but Applicant elected to return to the jail holding cell. The PCR Court also found Ms. Moody well-prepared and well-versed in Applicant's allegations and found no reason to relieve her as counsel. Respondent then moved pursuant to Rule 41(b), SCRPC, to dismiss this matter due to the Applicant's failure to prosecute. The PCR Court

granted Respondent's motion and an Order of Dismissal was signed and filed March 14, 2014. Applicant filed a pro se Motion to Alter or Amend the Judgment on February 4, 2014. This motion was denied by and order filed April 18, 2014.

A notice of appeal was filed but dismissed by the South Carolina Supreme Court for failure to timely serve opposing counsel. The Remittitur was sent May 14, 2014

ALLEGATIONS

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel under Austin v. State"
2. Newly discovered evidence

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that they would be consenting to the grant of an Austin appeal. Respondent explained that the State was consenting based off of its discussions with prior PCR Counsel and Applicant's current PCR Counsel and due to the fact that Applicant's prior PCR action was not properly appealed.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that Applicant is entitled to appeal the denial of his first post-conviction relief application (2011-CP-46-2620) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based upon the foregoing, this Court finds that the granting of an appeal of Applicant's first post-conviction relief action (2011-CP-46-2620) pursuant to Austin v. State is warranted. This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

IT IS THEREFORE ORDERED:

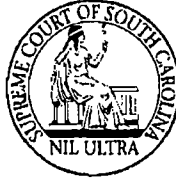
1. That Applicant be granted an appeal of case 2011-CP-46-2620 pursuant to Austin v. State; and
2. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 10 day of Oct., 2016.



LETITIA VERDIN
Presiding Judge
Sixteenth Judicial Circuit

Ypre, South Carolina.



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

December 14, 2016

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: Johnell Porter v. State
Lower Court Case No. 2015CP4601186
Appellate Case No. 2016-002053

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:

Nathan James Sheldon, Esquire
Justin James Hunter, Esquire
Johnell Porter, #240208

FILED-RECEIVED
2016 DEC 20 AM 11:04
DAVID HAMILTON
C. CLERK & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

787

Johnell Porter 240208

CASE NO. 2015 CP-46- 1186

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Applicant Johnell Porter's Motion to Relieve Counsel is Granted. Court is not to appoint any other representation for Mr. Porter. Will proceed *Pro Se*

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.

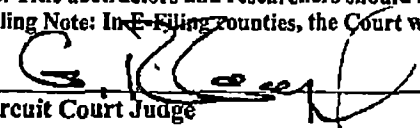
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

788

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2126

Judge Code

4/19/17

Date

For Clerk of Court Office Use Only

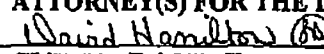
This judgment was entered on the 19th day of Apr, 20 17 and a copy mailed first class or placed in the appropriate attorney's box on this 19th day of Apr, 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

Nathan J. Sheldon

Justin Hunter

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


CLERK OF COURT

Court Reporter: Wanda Nelson

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

FILED-RECEIVED

IN THE COURT OF COMMON PLEAS

16th JUDICIAL CIRCUIT

CASE NO.: 2015-CP-46 - 11816

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

2017 MAY 25 PM 12:17

vs.

DAVID H. HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Defendant.)

Plaintiff's Attorney:

J. H. HAMILTON, Bar No. _____

Address: Broad River Court, Trust.

4461 Broad River Rd., Columbia, S.C. 29210

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Mr. Justin Hunter, Esq., Bar No. _____

Address:

S.C. Attorney General's Office

Phone: _____ Fax: _____

E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion To Alter or Amend Judgment, Rule #59(E)

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
- ☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/ ☐ Defendant

Date submitted: May 18, 2017

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☒ Other: Motion To Revoke Counsel / Rule #59(E)

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____, 20 _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 20 _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

State of South Carolina
County of York

FILED-RECEIVED
2017 MAY 25 PM 12:11

DAVID HAMILTON
C.C.P. & S.S.
YORK COUNTY, SC

In The Court of
Common Pleas

Case No. #2015-CP-46-1186

Johnell Porter, 240208,
Applicant,

State of South Carolina,
Respondent.

Motion To Alter or
Amend Judgment
Pursuant to Rule #59(E)
SCR Civ. 4.

Comes now the Applicant, pursuant to Rule #59(E), SCR Civ. 4. and hereby moves to Alter or Amend the Judgment rendered by the Honorable Thomas G. Cooper, Jr., on April 19, 2017, in regards to the Applicant's Motion To Relieve Counsel in the York County Court of Common Pleas.

(1) At the Motion To Relieve Counsel hearing, the Applicant asked that PCR Counsel Mr. Nathan F. Sheldon, Esq., be relieved as Counsel and that another Counsel be appointed to represent him!!!

LEGAL MAIL

(2.)

791

(2.) The Applicant never asked the Court to represent himself pro se, and in State v. Arthur, 295 S.C. 495, 374 S.E. 2d 291. "The South Carolina Supreme Court stated, we held that waiver of a Constitutional or Statutory Right requires a showing on the Record, that the defendant made the waiver knowingly and intelligently." Citing the United Supreme Court, in Paton v. United States, 281 U.S. 275, 50 S.Ct. 253 (1930); See also, State v. Diaz, 403 S.E. 2d 523.

(3.) The Court would not appoint him another Attorney and the Applicant was forced by the Court to choose between "Incompetent Counsel" or "No Counsel at All". See Crandell v. Bunnell, 144 F.3d 1213 (9th Cir. 1998), overruled by Schell v. Witek, 213 F.3d 1017 (9th Cir. 2000). The State cannot force Attorney on defendant, but decision to represent self must be knowing and intelligent. See Gonzalez v. California, 422 U.S. 806 (1975). The Judge must allow sufficient

LEGAL MAIL

(3.)

Time for defendant to make decision, develop for record information on defendant's ability to make waiver decision, and explain value of counsel to accused. TOWNES v. United States, 371 F.2d 930 (4th Cir. 1955), cert. denied, 387 U.S. 947 (1967); and United States v. Gallop, 838 F.2d 105 (4th Cir.), cert. denied 487 U.S. 1211 !!!

(4.) Prior to the August 1, 2016, Austin v. State, Hearing, the Applicant had never seen, spoken too, or received any letter correspondence from Mr. Nathan F. Sheldon, Esq., in two (2) years. Nevertheless, Mr. Sheldon and South Carolina Assistant Attorney General Mr. Justin Hunter, Esq. had entered a consent / decree agreement in regards to Applicant's Austin v. State, Petition. Without the Applicant's knowledge, approval or consent the August 1, 2016 "Order", stated the Applicant was present in the Court room, represented by Mr. Sheldon. Whereas the Applicant was not present, and the investigation

LEGAL MAIL

(4.)

Was ordered by former South Carolina Supreme Court Chief Justice, the Honorable Costa M. Pleicones. In which was conducted by the Honorable Daniel E. Sheardouse Clerk of the S.C. Supreme Court..... Revealed the Applicant was not present at the August 1, 2011 hearing !!!

(5.) By not appointing the Applicant another Attorney and forcing him to go pro se, Judge Cooper, violated a Substantial and Constitutional Right to have witnesses testify in his behalf.... IN VIOLATION of the Sixth (6th) Amendment of the United States Constitution. The Applicant never asked the Court to represent himself pro se !!!

(6.) On April 24, 2012, the York County Clerk of Court, filed twelve (12) Subpoenas for witnesses to testify in his behalf. The Clerk of Court filed the Subpoenas, but inform the Applicant that it was his responsibility to make sure the witnesses were properly served !!!

(5.)

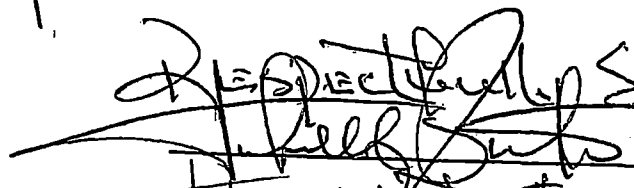
(7.) The Applicant asserts the Motion to ~~Relieve~~ Consent Hearing held April 19, 2017, in the Moss Justice Center, in York, S.C. Before, the Honorable Thomas C. Cooper was a miscarriage of justice that ~~violated~~ violates a Substantial and Constitutional Right which violates the Applicant's Due Process and Equal Protection Rights under the Fifth and Fourteenth Amendments of the United States Constitution. Also, the Applicant NEVER asked to represent himself pro se. That is required in regards to the United States Supreme Court's Rules, Rules and Mandates in Heard v. California, 422 U.S. 806 (1975).

(8.) The Applicant needs all of the witnesses subpoenaed to testify in regards to the Newly Discovered Evidence Claim presented in his Austin v. State Petition, that the S.C. Supreme Court "Ordered" to be heard before a writ of CERTIORARI can be filed in the S.C. Supreme Court. See the "Order"

of former Chief Justice of the S.C. Supreme Court, the Honorable Costa M. PLECONES, ON November 28, 2016 !!!

" CONCLUSION "

Wherefore, the Applicant asked that Judge Cooper's April 19, 2017 Order denying the Appointment of Counsel should be "vacated". Is not appointing a new Counsel that Applicant's Fifth (5th), Sixth (6th) and fourteenth (14th) Amendment Rights under the United States Constitution is clearly violated !!!

Respectfully Submitted

 Thomas Porter #240208



Sworn and Subscribed before me
 this 8 day of May 2017.


 Notary Public:

9/16/2016
 My Commission Expires:

State of South Carolina
 County of York

FILED-RECEIVED
 2017 MAY 25 PM 12:17
 DAVID HAMILTON
 C.C.P. & G.S.
 YORK COUNTY, SC

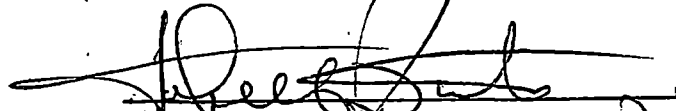
The Court of
 Common Pleas

Johnell Porter, #240208, Pro Se
 State of South Carolina

Case No. 2015-CP-46-1196

Certificate of
Service

I do hereby certify that a copy
 of the Motion to Alter and Amend
 Judgment Pursuant to Rule #59(e) SCRPC,
 was sent to the Respondent by pre-paid
 postage via U.S. Mail herein at the
 Broad River Court. Truly and Addressed
 to this Honorable Justice Hunter, Ass. S.C.
 Attorney General, S.C. Attorney General's
 Office, P.O. Box 11549, Columbia, S.C 29211.


 Johnell Porter, #240208, Pro Se

Sworn to and Subscribed before me
 this 8 day of May 2017


 Notary Public:

9/16/2020
 My Commission Expires:



LEGAL MAIL

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 2015 CP-46-1186

Johnell Porter 240208

FILED-RECEIVED
2017 APR 19 PM 3:01

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

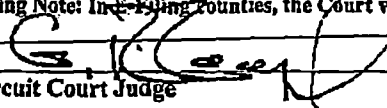
Applicant Johnell Porter's Motion to Relieve Counsel is
~~Granted. Court is not to appoint any other representation for~~
Mr. Porter. Will proceed *Pro Se*

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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2126

Judge Code

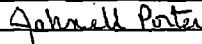
4/19/17

Date

For Clerk of Court Office Use Only

This judgment was entered on the 19th day of Apr, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 19th day of Apr, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

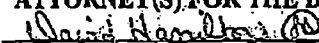
Nathan J. Sheldon



ATTORNEY(S) FOR THE PLAINTIFF(S)

Justin Hunter

ATTORNEY(S) FOR THE DEFENDANT(S)


CLERK OF COURT

Court Reporter: Wanda Nelson

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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.

OFFICE OF
CLERK OF COURT
DAVID HAMILTON
POST OFFICE BOX 649
YORK, SOUTH CAROLINA 29745
(803) 684-8507

TO:

Johnell Porter # 240 208

FROM:

DAVID HAMILTON, YORK COUNTY CLERK OF COURT

RE:

POST CONVICTION RELIEF
WRIT OF HABEAS CORPUS

_____ All correspondence concerning your PCR application must be presented to our office by your appointed attorney.

_____ All PCR's are scheduled directly by the Office of the Attorney General, you may contact them at: PO Box 11549, Columbia, SC 29211.

_____ When filing your PCR application be sure to complete the verification form in full, otherwise the document cannot be filed in our office.

_____ When requesting transcripts from your proceedings you will need to contact the South Carolina Court Administration, 1015 Sumter Street, Suite 200, Columbia, South Carolina 29201.

_____ If you have any question concerning matters in your case and an attorney has been appointed, you must contact your attorney.

_____ You have filed a PCR application and requested that an attorney be appointed to represent you. Please be advised that pursuant to a memorandum issued by Chief Justice Toal dated January 12, 2004 the Clerk of Courts office is not to appoint an attorney until directed to do so by the Office of the Attorney General.

_____ Your PCR was filed on _____ and is being processed.

_____ Requires original signature on filings

_____ Must submit a Motion to Proceed in Forma Pauperis before case can be filed

☒ Other

Unfortunately, you are not able to issue or sign a subpoena. Since you are pro se you are responsible for making sure that they are properly serviced.

*** If your paperwork has been returned by our office, please address the checked items and return to our office for proper handling. ***

York County Clerk of Court
P. O. Box 649
York, SC 29745

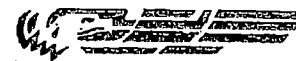


CLERK OF COURT'S OFFICE

Post Office Box 649, York, South Carolina 29745-0649



U.S. POSTAGE PITNEY BOWES



ZIP 29745 \$ 000.46⁰
02 4W
0000345885 APR. 20. 2017

RECEIVED

APR 24 2017

**BRCI
MAILROOM**

7/1 S/L
MO 124
Johnell Porter #240208
Broad River CI
4460 Broad River Road
Columbia, SC 29210

2921034047 C077



The State of South Carolina
In The Supreme Court

MAY 08 2017

Appeal from York County
 Court of Common Pleas

BRCI
 MAILROOM

Thomas G. Cooper, Circuit Court Judge

Case No. #2015-CP-46-1186

State of South Carolina, Respondent,

v.

Johnell Porter, Pro Se, Appellant.

Notice of Appeal

Johnell Porter, pro se appeals the Order of the Honorable Thomas G. Cooper dated April 19, 2017, Motion to Relieve Counsel Hearing. Whereas the Court would not appoint another Attorney and forced the Appellant to represent him-

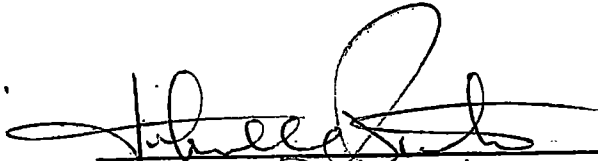
LEGAL MAIL

(2.)

SELF PRO SE. This Appeal is Filed because the Appellant NEVER Asked the Court to represent himself pro se, as required in Frederick v. California, 422 U.S. 806 (1975). However, by the Court not appointing another Attorney instead of trying to force Mr. Nathaniel Sheldon, Esq. on him. The Court is violating a Substantial and Constitutional Rights under the Sixth (6th) Amendment Right to have WITNESSES Testify in his behalf. And the Fifth and Fourteenth Amendments under the Due Process and Equal Protection Rights Clauses.

The Motion to Relieve Counsel, Motion was granted, on April 19, 2017, and Appellant received written notice, on April 24, 2017 !!!

May 8, 2017.


 Johnell Porter #240208, Pro Se
 Broad River Court Inst.
 4460 Broad River Rd.
 Columbia, S.C. 29210

LEGAL MAIL

The State of South Carolina
In The Supreme Court

Appeal from York County
Court of Common Pleas

RECEIVED

MAY 08 2017

Thomas C. Cooper, Circuit Court Judge

BRCI
MAIL ROOM

Case No. # 2015-CP-46-1186

State of South Carolina, Respondent,
Johnell Porter, Pro Se, Appellant.

Proof of Service

I certify that I have served
the Notice of Appeal on Mr. Justin T.
Hunters, Ass. Attorney General in the S.C.
Attorney General's Office by depositing a
copy of it in the United States Mailbox
located at Broad River Court. Inst. Addressed
to P.O. Box 11549; Columbia, S.C. 29211-1549

May, 2017

Johnell Porter, Pro Se
JOHNELL PORTER, PRO SE
LEGAL MAIL

RECEIVED

MAY 08 2017

BRCI
MAILROOM

Stewart Porter #240208
 Broad River Court
 Monticello Unit (124)
 4460 Broad River Rd.
 Columbia, S.C. 29210

May 8, 2017

The Honorable David Hamilton, Clerk
 Clerk of Court's Office
 P.O. Box 649
 York, S.C. 29745-0649

Re: Case No. 2015-CF-46-1186

Dear Clerk:

Enclosed, please find the
 Applicant's Rule #59(E) SURCEIN, Motion
 to Alter and Amend Judgment and
 Certificate of Service. Please Clock-
 Stamp and RETURN a Copy to me. I
 submit this Motion under Houston
v. Lack, 487 U.S. 266-274 (1988). Applicant
 RECEIVED Judge Cooper's Order, ON April
 25, 2017!!

cc:

Stewart Porter
 Stewart Porter

LEGAL MAIL

Bennett Porter #240208
 Broad River Court Inst.
 Monticello Unit (124)
 4460 Broad River Rd.
 Columbia, S.C. 29210

May 8, 2017

The Honorable DANIEL E. SHEARHOUSE, Clerk
 South Carolina Supreme Court
 Clerk of Court's Office
 P.O. Box 11330
 Columbia, S.C. 29211

Re: Motion to Relieve Counsel
 April 19, 2017 (Moss Justice Center)

Dear Honorable Clerk:

First of all, thank you for the
 inquiry, in regards to the Newly Discovered
 Evidence Claim. Which resulted in
 former Chief Justice Costa M. PLECONES
 Dismissed Without Prejudice, on Nov.
 28, 2016. (See Appellate Case No. #2016-002053)
 At the Motion to Relieve Counsel
 hearing, on April 19, 2017. I asked that

LEGAL MAIL

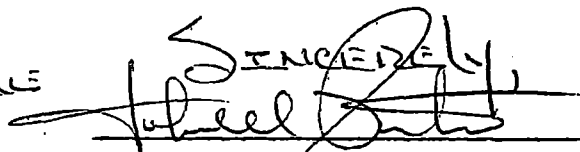
(2.)

Another Attorney be appointed to represent me, and never asked the Court to represent myself, pro se, under Farell v. California, 422 U.S. 806 (1975).

However, the Court forced me to go pro se or keep the Attorney "Mr. Nathan F. Sheldon, Esq." who had consented with the S.G. Attorney General, in my Austin v. State petition, without approval, or ever meeting me personally. I have a host of witnesses,

(12) that have been subpoenaed since April 24, 2012, and filed with the York County Clerk of Court. I have a substantial and constitutional right to have the witnesses testify under the Sixth (6th) Amendment of the United States Constitution. Nevertheless, the York County Clerk of Court Office, is telling me that it is my responsibility to make sure all of the ~~the~~ witnesses be present in Court. As a pro se litigant... that is impossible!!! Would you please look into this matter?

P.S. Attached is the Clerk's Note!!!

Sincerely,

 Michael Butler

LOCAL MAIL

~~Johnell~~ ~~Porter~~ #240208
 Broad River Court, Trst.
 Monticello Unit (124)
 4460 Broad River Rd.
 Columbia, S.C. 29210

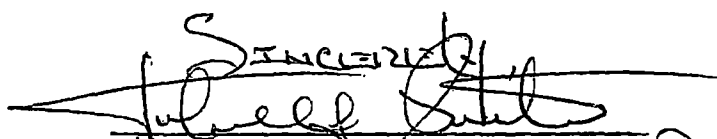
May 8, 2017

The Honorable Tustin T. Hunter,
 S.S. Attorney General
 S.C. Attorney General's Office
 P.O. Box 11549
 Columbia, S.C. 29211

In Re: Case No. #2015-CP-46-1186

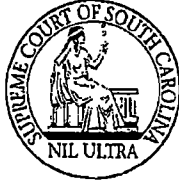
Dear Sir:

Enclosed is a copy of the
 Rule #59(e) SCRCv.P. Motion to Alter
 and Amend Judgment. The Motion is
 filed in accordance with Houston
v. Lack, 487 U.S. 266, 274, (1988)!!!

Sincerely,

 Johnell Porter, #240208, P20 SEE

cc:

LEGAL MAIL



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

June 01, 2017

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: Johnell Porter v. State
Lower Court Case No. 2015CP4601186
Appellate Case No. 2017-001120

FILED-RECEIVED
2017 JUN 25 PM 2:57
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

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:

Nathan James Sheldon, Esquire
Justin James Hunter, Esquire
Johnell Porter, #240208

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
 Johnell Porter,
 S.C.D.C. No. 166280)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

FILED 2017 JUL -5 AM 10:08
 IN THE COURT OF COMMON PLEAS
 THE SIXTEENTH JUDICIAL CIRCUIT
 DAVID HAMILTON
 C.C.C. & G.S.
 YORK COUNTY S.C.
 2015-CP-46-1186

**AMENDED ORDER GRANTING AN
 APPEAL PURSUANT TO
AUSTIN V. STATE¹**

This matter comes before the Court by way of an application for post-conviction relief filed April 20, 2015. Respondent made its Return on or about June 27, 2016, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on August 1, 2016, at the Moss Justice Center in York, South Carolina. Applicant was not present but was represented at the hearing by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The York County Grand Jury indicted the Applicant at the June 2007 term of General Sessions for Armed Robbery (2007-GS-46-01687), entering a bank with intent to steal (2007-GS-46-01688), kidnapping (2007-GS-46-01689), possession of a firearm during the commission of a violent crime (2007-GS-46-01690), and Conspiracy to commit armed robbery (2007-GS-46-01691). Applicant appeared pro se.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Daniel D'Agostino served as stand-by counsel for applicant. On July 26, 2007, Applicant was convicted of these charges by a jury. The Honorable John C. Hayes, III sentenced Applicant to confinement for life for kidnapping, life for armed robbery, life for entering a bank with intent to steal, five years for Possession of a firearm during the commission of a violent crime, and five years for conspiracy to commit armed robbery, all running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. A Petition for Rehearing was filed by the Applicant and denied by the Court on July 7, 2010. A Petition for Writ of Certiorari was filed by the Applicant and denied by the Court on February 16, 2011. The Remittitur was issued on February 23, 2011.

PCR#1 2011-CP-46-2620

On July 7, 2011, Applicant filed his first application for post-conviction relief. Respondent made its Return on October 21, 2011. An evidentiary hearing into the matter was convened on January 21, 2014, at the Moss Justice Center in York County before the Honorable J. Michael Baxley. Applicant was present at the hearing and represented by Leah Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

During the PCR hearing, Applicant moved to have Ms. Moody relieved as PCR counsel. The PCR Court denied this motion. Applicant then expressed to the Court that he would refused to take the stand or testify during the hearing. The PCR Court instructed Applicant that he had a right to be present during the hearing, but Applicant elected to return to the jail holding cell. The PCR Court also found Ms. Moody well-prepared and well-versed in Applicant's allegations and found no reason to relieve her as counsel. Respondent then moved pursuant to Rule 41(b),

SCRCF, to dismiss this matter due to the Applicant's failure to prosecute. The PCR Court granted Respondent's motion and an Order of Dismissal was signed and filed March 14, 2014. Applicant filed a pro se Motion to Alter or Amend the Judgment on February 4, 2014. This motion was denied by and order filed April 18, 2014.

A notice of appeal was filed but dismissed by the South Carolina Supreme Court for failure to timely serve opposing counsel. The Remittitur was sent May 14, 2014

Current PCR Application

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel under Austin v. State"
2. Newly discovered evidence

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Newly Discovered Evidence

Applicant alleges newly discovered evidence, claiming that the York County Court of General Sessions did not have proper jurisdiction because a letter from the Federal Deposit Insurance Corporation (FDIC) reveals that the Bank of York is insured by the FDIC. The letter includes four questions submitted by Applicant and the responding answers from the FDIC. The letter reads:

- (1) Is the Bank of York insured by the FDIC?

Yes, the Bank of York, York, SC is FDIC insured under FDIC Certificate #15104 and is a non-member of the Federal Reserve System.

- (2) Are all banks insured by the FDIC under federal jurisdiction?

No. State-chartered banks that are not members of the Federal Reserve System are regulated by the chartering state and the FDIC.

- (3) Does the United States District Courts have exclusive jurisdiction over all banks insured by FDIC?

No. Federal jurisdiction for bank robbery is not exclusive - bank robbery can be charged and prosecuted in State courts.

(4) Is it mandatory for the FDIC certificate to be displayed or brought to trial as evidence? When a FDIC insured bank has been robbed and a jury trial is taken place?

The federal bank robbery statute (18 U.S.C. § 2113) does require proof beyond a reasonable doubt of Federally-insured status. However proof is not limited to display or entering into evidence of the certificate of Federally-insured status. For example the proof can be accomplished by stipulation or the testimony of a witness.

Applicant's PCR Application, Letter dated June 9, 2014.

A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

This Court finds that Applicant's alleged evidence does not meet any of the requirements for after discovered evidence. His evidence is a letter from the FDIC in responding to questions he submitted to it. Specifically this Court finds that on its face, the letter would not change the result if a new trial was had because, as the letter indicates, "Federal jurisdiction for bank robbery is not exclusive - bank robbery can be charged and prosecuted in State courts." Before a Court will hold an evidentiary hearing, the applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Because Applicant has failed to make such a showing, This Court finds that the allegation of newly discovered evidence must be denied and dismissed.

Austin v. State

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation..." Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Prior to the start of the evidentiary hearing, the State indicated to this Court that they would be consenting to the grant of an Austin appeal. Respondent explained that it was consenting based off of its discussions with prior PCR Counsel and Applicant's current PCR Counsel, and due to the fact that Applicant's prior PCR action was not properly appealed.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that Applicant is entitled to appeal the denial of his first post-conviction relief application (2011-CP-46-2620) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

III. CONCLUSION

Based upon the foregoing, this Court finds that Applicant's claim of newly discovered evidence must be dismissed. This Court also finds that Applicant should be granted an appeal of his first post-conviction relief action (2011-CP-46-2620) pursuant to Austin v. State. This Court

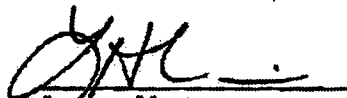
advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2011-CP-46-2620 pursuant to Austin v. State;
2. That all other allegations raised in this application are dismissed with prejudice; and
3. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 22 day of June, 2017.

York, South Carolina.


LETITIA VERDIN
Presiding Judge
Sixteenth Judicial Circuit

RECEIVED

JUL 24 2017

Johnell Porter #240208 S.C. SUPREME COURT
 Broad River Court Trust
 Monticello Unit-124
 4460 Broad River Rd.
 Columbia, S.C. 29210

July 21, 2017

The Honorable Daniel E. Shenzouse, Clerk
 South Carolina Supreme Court
 Clerk of Court's Office
 P.O. Box 11330
 Columbia, S.C. 29211

Re: Nature of Appeal
 Case No. # 2015-CP-46-1186

Dear Honorable Clerk:

Again, the Honorable let's see Verdon,
 on June 22, 2017, defined your inquiry, and
 both former Chief Justice: Peterson's and the
 present Chief Justice: Don Brattley's Orders. The
Nature of Appeal is filed under Houston v.
Lack, 487 U.S. 266, 108 S.Ct. 2379 !!!

Johnell Porter #240208

RECEIVED

JUL 21 2017

BRCI
MAILROOM

The State of South Carolina
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS

RECEIVED

JUL 24 2017

S.C. SUPREME COURT

Letitia Vanden, Circuit Court Judge

CASE NO. # 2015-CP-46-0486

State of South Carolina Respondent,
v.

Johnell Porter Appellant

"NOTICE OF APPEAL"

Johnell Porter, appeals the Order of the Honorable Letitia Vanden, dated June 22, 2017, DISMISSING his Newly Discovered Evidence Claim without any hearing and blatantly denying former South Carolina Supreme Court's Chief Justice Pitcock's Order, dated November 28, 2016, in regards to this very same issue, and the Chief Justice

(2.)

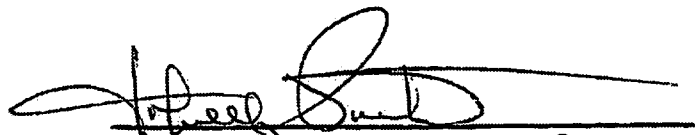
of the South Carolina Supreme Court, the Honorable Don Beatty's Order, dated May 16, 2017. There is NO final decision or judgment, in regards to Lewis v. State, 630 S.E. 2d 464 (2006). Again, the Appellant was not in any courtroom and NO Evidentiary Hearing has been held, in regards to the Newly Discovered Evidence claim !!!

The Appellate relief was granted on June 22, 2017, but the Newly Discovered Evidence claim has NEVER been properly ruled on. As a Pro Se Appellant, he has the right to be present at every critical stage of his proceedings !!!

The Appellant received written Notice of Entry of this Order, on July 14, 2017. Whereby the Notice of Appeal, is filed under the Workbox Rules, in Houston v. Lick, 487 U.S. 266, 108 S.Ct. 2379.

July 21, 2017:

cc:


Turrell Porter #240208, Pro Se
Broad River Court Inst.
4460 Broad River Rd.
Columbia, S.C. 29210

The State of South Carolina
In The Supreme Court **RECEIVED**

JUL 24 2017

Appeal from York County
Court of Common Pleas S.C. SUPREME COURT

Litton Vanden, Circuit Court Judge

Case No. # 2015-CP-46-D1186

State of South Carolina Respondent,

Townell Porter #240208 Appellant.

"PROOF OF SERVICE"

I certify that I have served the Notice
of Appeal on Justice T. Hunter, with the S.C. Attorney
General's Office by depositing a copy of it in the
U.S. Mail-box, postage prepaid, on _____ 2017,
mailed to Post Office Box 11549, Columbia, S.C. 29211-
1549 !!!

July 21, 2017:

Townell Porter
Townell Porter, #240208, Pro Se

CC:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

659
Y.C.S.D./Strait
WITNESSES

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

June 14, Term 2007

I hereby appear in my own proper person and plead guilty to the within indictment or to

jm

ARREST WARRANT NUMBER

J151347

Defendant

THE STATE

vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

JOHNELL PORTER

TRUE BILL

DM Hampshire
Foreperson of Grand Jury
Date: 6-14-07

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)
CDR Code: 0139

Larry D. Miller
Foreperson of Petit Jury
Date: 7/26/2007

CERTIFIED TRUE COPY
2007 AUG 15 PM 4: 20
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

ARMED ROBBERY

The Defendant, Johnell Porter, did in York County, South Carolina, on or about December 22, 2007, while armed with a deadly weapon, to wit: a hand gun, 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 reasonably believed to be a deadly weapon, feloniously take and carry away personal property belonging to the Bank of York from the person of or in the presence of employees of the Bank of York, including Cassie wine, and/or Christa Thomas, and/or Debbie Alexander, and/or Angel Neelands, and/or Monica Harris, and/or Marc Lubiato. The Defendant by means of force or intimidation put the employees of the Bank of York in fear by pointing a pistol at them and took goods or monies of said Bank of York, located on Charlotte Highway, Lake Wylie, such goods or monies being described as follows: US Currency. All in violation of §16-11-330(A), Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SOUTH CAROLINA

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E B Springs
 ASSISTANT SOLICITOR

4
656

WITNESSES

YCSD\Hager

jm

ARREST WARRANT NUMBER

J162454

ACTION OF GRAND JURY

TRUE BILL

Olivia Hampshire
Foreperson of Grand Jury
Date: 6-14-07

VERDICT

Guilty

Larry D. White
Foreperson of Petit Jury
Date: 7/26/07

DOCKET NO. 2007-GS-46-01688

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 14, Term 2007

THE STATE

vs.

JOHNELL PORTER

Indictment for

ENTERING A BANK WITH INTENT TO STEAL

SC Code: 16-11-380
CDR Code: 0257

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

ENTERING A BANK WITH INTENT TO STEAL

The Defendant, Johnell Porter, did in York County, South Carolina, on or about December 22, 2006, did unlawfully enter a building occupied as a bank, with the intent to steal money or securities for money, either by force, intimidation, or threats, in that he did enter the Bank of York's Lake Wylie branch intending to steal money. All in violation of Section 16-11-380, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

DAVID HAMILTON
 CLERK OF COURT

2007 AUG 15 PM 4:20

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E. B. Springer, Jr.
 ASSISTANT SOLICITOR

656
659

WITNESSES

YCSD\Strait

jm

ARREST WARRANT NUMBER

J162474

ACTION OF GRAND JURY

TRUE BILL

OW Hampshire
Foreperson of Grand Jury
Date: 6-14-07

VERDICT

Guilty

Larry D. Smith
Foreperson of Petit Jury
Date: 7/26/2007

DOCKET NO. 2007-GS-46-01689

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 14, Term 2007

THE STATE

vs.

JOHNELL PORTER

Indictment for

KIDNAPPING

SC Code: 16-3-910
CDR Code: 0095

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

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2007 AUG 15 PM 4:21
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

KIDNAPPING

The Defendant, Johnell Porter, did in York County, South Carolina, on or about December 22, 2006, unlawfully seize and/or confine employees and customers of the Bank of York, those people including Marc Lubiato, and/or Cassie Wine, and/or Angel Neelands, and/or Paul Bayer, and/or Christina Thomas, and/or Monica Harris, and/or Cecilia Lyles, without authority of law, all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such

case provided.

DAVID HAMILTON
CLERK OF COURT

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E B Sprague
ASSISTANT SOLICITOR

WITNESSES

YCS\Strait

CERTIFIED TRUE COPY

2007 AUG 15 PM 4:21

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, S.C.

jm

ARREST WARRANT NUMBER

J162475

ACTION OF GRAND JURY

TRUE BILL

DM Hampshire

Foreperson of Grand Jury

Date: 6-14-07

VERDICT

Guilty

Larry D Wilson

Foreperson of Petit Jury

Date: 7/26/2007

DOCKET NO. 2007-GS-46-01690

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 14, Term 2007

THE STATE

VS.

JOHNELL PORTER

Indictment for

**POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME**

SC Code: 16-23-490

CDR Code: 549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 14, 2007, the Grand Jurors of York County present upon their oath:

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

The Defendant, Johnell Porter, did in York County on or about December 22, 2007, while committing the crime of Armed Robbery, a crime of violence, have in his possession a handgun, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DAVID HAMILTON

2007 AUG 15 PM 4:21

CERTIFIED TRUE COPY


ASSISTANT SOLICITOR

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

YCSPI Yeager

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

June 14, Term 2007

I hereby appear in my own proper person and plead guilty to the within indictment or to

jm

ARREST WARRANT NUMBER

J162476

Defendant

THE STATE

VS.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

JOHNELL PORTER

TRUE BILL

DM Hampshire
Foreperson of Grand Jury
Date: 6-14-07

VERDICT

Guilty

Larry D. Wilson
Foreperson of Petit Jury
Date: 7/26/2007

Indictment for

CONSPIRACY TO COMMIT ARMED ROBBERY

SC Code: 16-17-410
CDR Code: 049

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2007 AUG 15 PM 4:21
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

INDICTMENT

CONSPIRACY TO COMMIT ARMED ROBBERY

35 * Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

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ASSISTANT SOLICITOR