

STATE OF SOUTH CAROLINA

VOLUME II OF II

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

KENNETH JOWAN CRAIG,

RECEIVED

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PETITIONER
S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001616

APPENDIX

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Kenneth Craig - Direct examination
by Mr. Wheelchel

1 the Citgo?

2 A Yes, sir.

3 Q And where is that in relation to this Waffle House?

4 A Down the street.

5 Q Okay. When you got to the Waffle House -- I'll find
6 it.

7 When you got to the Waffle House, where did you park?

8 A In the front.

9 Q State's Exhibit No. 22, I'm showing you this, is that
10 the Waffle House?

11 A Yes, sir.

12 Q Is that where you let Slack and Dante out that night?

13 A Yes, sir.

14 Q Did you go in the Waffle House with them?

15 A No, sir.

16 Q Did you know that they were going in the Waffle House
17 to rob it?

18 A No, man, I would of parted from that Waffle House door
19 going on, going home. No, sir.

20 Q Okay. Did anybody say, in front of you, in the car, we
21 gonna knock off the Waffle House, we gonna hit a lick, we
22 gonna do anything like that?

23 A No, sir.

24 Q You dropped them off at the Waffle House because Slack
25 told you to, is that right?

Kenneth Craig - Direct examination
by Mr. Wheelchel

1 A Yes, sir.

2 Q Okay. Where did you go after you left the Waffle
3 House?

4 A Back out towards 221, bust a left. Back out towards
5 221 and made that left.

6 Q Okay. Did you say busted a left?

7 A Yeah.

8 Q Okay. I'm just trying to catch up.

9 So, you were headed, after you let them out, back down
10 221 towards Spartanburg?

11 A Yes, sir.

12 Q Okay. What happened next, sir?

13 A I got caught -- you know it's two red lights. There's
14 one on this side of 85, and it's one on the other side of
15 85. I got caught at both of them. After the first one I
16 heard the sirens, but I didn't see none at first. I get --
17 go down to the second one, the second one, that's when I
18 seen one of them officers come out of the Motel 6 with his
19 lights on and then sirens going. I'm still sitting at the
20 light. He done went past me.

21 So, I'm being nosey, looking in my rearview and my side
22 mirror. I see him turning in the Waffle House. Like I say,
23 I know I done drop Tae and slack off at the Waffle House.
24 So, I'm -- in my mind, what's going on. In that morning,
25 what's going on.

Kenneth Craig - Direct examination
by Mr. Wheelchel

1 So, I turn around at Citgo once again, the same store I
2 pumped the gas at, I turned around in there. By the time I
3 turned around in Citgo parking lot --

4 Q Stopped.

5 You turned around at the Citgo?

6 A Uh-huh. (Affirmative).

7 Q And it's the same Citgo you already bought gas at?

8 A Yeah.

9 Q Okay.

10 A By the time I got out that parking lot, I go back to
11 221, back up to Waffle House way, it was about three or four
12 more cars, police coming then.

13 Q Okay.

14 A It passed me up. I made a left and went up toward
15 Waffle House trying to get in front of Waffle House and
16 couldn't. They had it blocked off.

17 Q Who had it blocked of?

18 A The police.

19 Q Cars you mean?

20 A Yeah.

21 Q Okay.

22 A So, instead of going in---

23 Q Was all -- were all the lights going and everything
24 like that---

25 A Yeah.

Kenneth Craig - Direct examination
by Mr. Wheelchel

1 Q ---like that?

2 A Yeah.

3 Q Okay. Go ahead.

4 A So, instead of getting -- couldn't get in there. So, I
5 kept going around and go to Lakeview Manner, which is going
6 the same way I went if I went to Cowpens. I went---

7 Q Wait a minute.

8 Showing you State's Exhibit No. 3.

9 Can you pick out the Waffle House in State's Exhibit
10 No. 3?

11 A (Witness points.)

12 Q Okay.

13 A Right there.

14 Q Step down so that we don't have to mess with that
15 machine.

16 A (Witness comes down from the stand.)

17 SOLICITOR JORDAN: Your Honor, if I could just have a
18 moment to step around?

19 THE COURT: You may.

20 MR. WHELCHER: Are you where you can see?

21 SOLICITOR JORDAN: Yes, sir.

22 Q When you came up to the Waffle House after you dropped
23 Slack and Dante off, you came in this direction, is that
24 right?

25 A Yes, sir.

Kenneth Craig - Direct examination
by Mr. Welchel

- 1 Q Okay. And then tell me what you did?
- 2 A Tried turning in there---
- 3 Q Okay.
- 4 A ---and I couldn't.
- 5 Q You couldn't?
- 6 A No, sir.
- 7 Q Okay. Then what?
- 8 A I went on up the road, went that way, tried to get back
- 9 around that way, couldn't get that way either.
- 10 Q Okay. And this is the McDonald's, is that right?
- 11 A Yes, sir.
- 12 Q And this is -- do you know the name of that road?
- 13 A I think it's Mt. Pleasant.
- 14 Q Okay. And this is the way you say you go to Cowpens?
- 15 A Yes, sir.
- 16 Q Okay. All right. State's Exhibit No. 2, do you
- 17 recognize that?
- 18 A Yes, sir.
- 19 Q Okay. Can you show us the Citgo that you bought gas at
- 20 and turned around in their lot?
- 21 You look at it and then I'll hold it back up.
- 22 A Right there.
- 23 Q All right. Point it out so the jury can see it.
- 24 A That's Motel 6 right there, ain't it?
- 25 Q I'm about to ask you. I don't know.

Kenneth Craig - Direct examination
by Mr. Welchel

- 1 A Right there.
- 2 Q Okay.
- 3 A Right there.
- 4 Q So, this is where you bought gas first---
- 5 A Yes, sir.
- 6 Q ---and then turned around when you saw the blue lights,
7 is that right?
- 8 A Yes, sir.
- 9 Q Okay. You can go back.
- 10 A (witness returns to the stand.)
- 11 Q After you tried to get into the parking lot of the
12 Waffle House and, and you could not, what did you do, sir?
- 13 A I say I kept going, turned on Mt. Pleasant. I kept
14 going and turned on Mt. Pleasant.
- 15 Q Okay. And what happened as you went down Mt. Pleasant?
- 16 A I ran into Slack again.
- 17 Q You ran into Slack?
- 18 A Yes, I did.
- 19 Q How did that happen, sir?
- 20 A He ran in front of the car. I almost hit him.
- 21 Q Slack ran out in front of your car or the car you were
22 driving?
- 23 A Yes, sir.
- 24 Q Okay. And did you have to slam on breaks or tell us
25 what happened?

Kenneth Craig - Direct examination
by Mr. Welchel

1 A I had to slam on breaks.

2 Q Okay. Then what?

3 A He come around -- he was on this side first, came
4 around the front on the passenger seat. He gets in the car
5 and he tells me I think -- well, Dante dead. I call him
6 Tae. Y'all know him as Dante. He said I think Dante dead,
7 you got to tell the family.

8 Q You called him Tae?

9 A Yeah.

10 Q Is that right?

11 A Yes, sir.

12 Q But you mean Dante?

13 A Dante, yeah.

14 Q Okay.

15 A Well, my exacts words to him was, excuse my language,
16 but you got to be fucked up. I don't know what's going on.
17 That's exactly what I told him.

18 Q Okay.

19 A We kept going on down Mt. Pleasant, got to the four-way
20 stop sign, kept all the way through the four-way stop sign,
21 got down by the church. I busted a right by the church and
22 all the way up past Cannon Campground. Kept going there.
23 You know, it's another church you get to out there where you
24 can go right or left. I bust a right.

25 Q Okay.

Kenneth Craig - Direct examination
by Mr. Wheelchel

- 1 A Came on back behind going to back that way.
- 2 Q Okay. And where did you go?
- 3 A Back to Ms. Patricia house.
- 4 Q Okay. Did Slack say or do anything to you while you
- 5 were in the car?
- 6 A Yeah.
- 7 Q What?
- 8 A When he first jumped in the car he touched me and told
- 9 me I think Tae dead, you got to tell the family.
- 10 Q What do you mean he touched you?
- 11 A Can you come over here?
- 12 Q Sure.
- 13 A Like that right there. Well, can y'all, can y'all see?
- 14 Q Here.
- 15 A Show on you there.
- 16 Q You were driving?
- 17 A Yes, sir.
- 18 MR. WHEELCHEL: Can I borrow this chair for a minute?
- 19 BAILIFF: Yeah.
- 20 Q Were you this close or closer?
- 21 A The car -- a little bit closer. About like that.
- 22 Q The steering wheel's in front of you right here,
- 23 correct?
- 24 A Yes, sir.
- 25 Q Okay. Slack gets in the car on the right side, is that

Kenneth Craig - Direct examination
by Mr. Wheelchel

1 right?

2 A Passenger side, yes, sir.

3 Q Show us what he did.

4 A He got in, leaned to the side, and grabbed my side, and
5 he touched me. I looked up. He said I think Tae dead --
6 well, I think Dante dead. You got to tell the family. I
7 looked at him and told him you got to be fucked up. I don't
8 know what's going on.

9 Q Okay. We've heard that one enough.

10 A That's what I said.

11 Q I understand.

12 And then y'all drove on?

13 A Yeah.

14 Q How long were you in the car with Slack?

15 A From there till we got back to St. Andrews.

16 Q And do you know how long that would take?

17 A No, I really don't. I'm like everybody else. I was
18 shocked myself. So, time I'm not good with.

19 Q When you got back to Ms. Pat's, where did Slack go?

20 A He told me let him out by the pathway.

21 Q By what?

22 A By the pathway.

23 Q The one that leads back to his house?

24 A Yes, sir.

25 Q Okay. And you went back to Ms. Pat's house?

Kenneth Craig - Direct examination
by Mr. Wheelchel

- 1 A Yes, sir.
- 2 Q How long after that was it before the family found out
- 3 what had happened to Dante?
- 4 A About two hours, two or three hours, something like
- 5 that.
- 6 Q Were they upset?
- 7 A Yes, sir.
- 8 Q They blame you?
- 9 A I'm supposing so.
- 10 Q Excuse me?
- 11 A I'm supposing so, yes, sir, from what I heard, yes,
- 12 sir.
- 13 Q But that night did they blame you?
- 14 A No.
- 15 Q Okay. And as a matter of fact, how long did you stay
- 16 at the house with Ms. Pat and all of the relatives of Dante?
- 17 A All day until Bryant came and talked, came and got me.
- 18 Till about eleven o'clock that night then.
- 19 Q Okay. So, you stayed at that house all day?
- 20 A Yes, sir.
- 21 Q Okay. Do you have any idea where Slack was?
- 22 A Honestly I let him out where I let him out at. I don't
- 23 know where he went to.
- 24 Q Okay. Once you let him out, you don't know where he
- 25 went?

Kenneth Craig - Direct examination
by Mr. Wheelchel

1 A Yeah, down the pathway as far as I knew.

2 Q After that, sir.

3 A No, I don't.

4 Q Okay. When you went to the Sheriff's office, that was
5 at the request of Investigator Bryant, is that correct?

6 A Yes, sir.

7 Q Okay. There was another investigator there too, is
8 that right?

9 A Yes, sir.

10 Q Do you know who that was?

11 A Excuse me. I don't know his name.

12 Q Okay. There was two there?

13 A Yes, sir.

14 Q Okay. And did they ask you if you knew anything about
15 what had happened ---

16 A One of them---

17 Q ---that night?

18 A Well, one of them say -- this how it came to be.

19 SOLICITOR JORDAN: Your Honor, I object. Hearsay.

20 THE COURT: Sustained.

21 Q Did they ask you anything about what had happened that
22 night?

23 A Yes, sir.

24 Q Okay. And did you try to tell them what you knew that
25 had happened---

Kenneth Craig - Direct examination
by Mr. Welchel

1 A They know.

2 Q ---that night?

3 A They know nothing.

4 what can I tell them?

5 Q Did they try to tell them what had happened that night
6 that you knew?

7 A I ain't had nothing to tell them.

8 Q Okay. Did they ask you if you were driving the car?

9 A No.

10 Q Did they ask you if you had said anything to Dante
11 about hitting a lick?

12 A No.

13 Q So, how long were you with them at the Sheriff's office
14 or do you -- was it the Sheriff's office or the jail?

15 A Sheriff's office.

16 Q Okay. Do you know how long you were with them at the
17 Sheriff's office?

18 A Believe it or not, about three to five minutes.

19 Q How long?

20 A About three to five minutes.

21 Q Three to five minutes.

22 And at the conclusion of that three to five minutes,
23 what happened?

24 A I went to jail.

25 Q You got arrested?

Kenneth Craig - Direct examination
by Mr. Wheelchel

1 A Yeah.

2 Q Who arrested you?

3 A Bryant.

4 Q Okay. Did they ask you about an armed robbery at all?

5 A No.

6 Q Did they ask you anything about a gun?

7 A Yes.

8 Q What?

9 A Asked -- they didn't ask me nothing. The one I don't
10 know his name made a statement about the gun.

11 Q What did he say?

12 A He said---

13 SOLICITOR JORDAN: Your Honor, I object. Hearsay.

14 THE COURT: Sustained.

15 Q After this person that was there made that statement --
16 okay?

17 A Yes, sir.

18 Q Is that when you were arrested?

19 A Yes, sir.

20 Q So, you never got a chance to tell what you knew, if
21 anything, about what had happened?

22 A No, sir.

23 Q Okay. Later on, after you were arrested --

24 A Yes, sir.

25 Q -- did you write a letter to Mr. Bryant, an inmate

Kenneth Craig - Direct examination
by Mr. Wheelchel

1 grievance form to Investigator Bryant?

2 A Yes, I did.

3 Q Okay. And you told them you knew who it was that was
4 involved in this?

5 A Yes, sir.

6 Q Okay. And after that did you contact them and tell
7 them that you would give them a statement and you wanted to
8 make a statement?

9 A Yes, I did.

10 Q And you did make a statement?

11 A Yes, I did.

12 Q And the statement, is that basically the same thing you
13 testified to today?

14 A Yes, sir.

15 Q Okay. You told them in the statement that Slack was
16 the one that's in the armed robbery and in the Waffle House,
17 is that right?

18 A Yes, sir.

19 MR. WHEELCHEL: Okay. Beg the Court's indulgence, Your
20 Honor.

21 THE COURT: Yes, sir.

22 (Pause.)

23 Q The prosecutor's gonna be able to ask you some
24 questions now. Answer what questions she has for you, sir.

25 A Yes, sir.

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 THE COURT: Ms. Jordan, your witness.

2 SOLICITOR JORDAN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY SOLICITOR JORDAN:

5 Q Kenneth, it's your testimony that the officers brought
6 you to the Sheriff's Department on the night of the 21st and
7 didn't mention an armed robbery to you?

8 A No, ma'am, they didn't.

9 Q Didn't mention anything to you at all?

10 A No, they just said something about a gun.

11 Q That's all they said to you?

12 A Yes, ma'am.

13 Q Nothing about the robbery that we've all watched on
14 video many times?

15 A No. No, ma'am.

16 Q That's it?

17 A Yes. Yes, ma'am.

18 Q So, you don't recall telling them that you had no
19 knowledge of the incident?

20 A I just said I didn't.

21 Q And you didn't say anything to them about -- and you
22 also told them that you didn't know anything about the
23 conversations that had taken place earlier in the day, did
24 you?

25 A I already stated that also.

Kenneth Craig - Cross-examination
by Solicitor Jordan

- 1 Q But you didn't know why they called you down there?
- 2 A I really didn't, no, ma'am.
- 3 Q Never -- they never mentioned this armed robbery?
- 4 A No, ma'am.
- 5 Q And you were with them two to five minutes---
- 6 A With---
- 7 Q ---or three to five minutes?
- 8 A With whom?
- 9 Q The sheriff's officers.
- 10 A Yes, ma'am.
- 11 Q That's all?
- 12 A Yes, ma'am.
- 13 Q They went over some forms with you in that three to
- 14 five minutes?
- 15 A I can't recall. I can't lie and say I know. I don't
- 16 recall.
- 17 Q Did they have you fill out a form with your name,
- 18 address?
- 19 A A waiver form?
- 20 Q Yes.
- 21 A Yes, ma'am.
- 22 Q How long did that take?
- 23 A I know my name and address.
- 24 Q But how long did it take for them to go through that
- 25 entire form with you?

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 A I -- about two minutes.

2 Q That's all?

3 A I'm not exact on time.

4 Q Okay. Let's, let's start back and go to this.

5 How long had you known Ms. Pat?

6 A Like I say, probably a week.

7 Q Probably a week.

8 How many days did you spend over at her house?

9 A About, about three.

10 Q So, you had only met these people three days to a week
11 and you spent three nights at that house?

12 A Yes, ma'am.

13 Q Okay. You're saying that you didn't know Gerald or
14 Slack Davis?

15 A No, ma'am, not like that. I done seen him, don't get
16 me wrong, but I didn't know him.

17 Q Okay.

18 A Never conversate with him.

19 Q Let me ask you. I'm gonna pull up a picture of the
20 Waffle House.

21 You stated that you dropped him off at the front door?

22 A Yes, ma'am.

23 Q Do you recall that statement Mr. Welchel talked to you
24 about earlier that you gave to law enforcement in February?

25 A Yeah, February 14th.

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 Q Where did you tell them in that statement you dropped
2 them off at?

3 A In the front of Waffle House.

4 Q Okay. I'm gonna show you that statement---

5 A Uh-huh. (Affirmative).

6 Q ---and ask if you can point that out to me.

7 A Okay. It doesn't say exactly those words.

8 Q Well, what does it say?

9 A I dropped them off behind a camper being pulled by a
10 truck. Then headed back down 221.

11 Q Was that near the -- I'm sorry.

12 You want to keep reading?

13 A Oh, when I seen the police cars coming back up 221.

14 Q Could I see the statement for just a moment?

15 A (Witness complies.)

16 It's up there.

17 Q Okay. That says police cars?

18 A Yeah.

19 Q Plural.

20 A Yeah. Also said I was headed back down 221.

21 Q Okay. I'm gonna show you State's Exhibit No. 21 and ask
22 you where this truck pulling a camper is.

23 A Where is the front?

24 Like where's the exit of Waffle House?

25 That's where it was at. I was trying---

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 Q I'll give you, I'll give you a second to look at the
2 photograph.

3 A That's in this area right here.

4 Q That's where there was a camper pulling a truck?

5 A No, a truck pulling a camper.

6 Q A truck pulling a camper?

7 A Yes, ma'am.

8 Q Okay. In the front of the Waffle House?

9 A Yes, ma'am.

10 Q Okay. Go back a little further. You said that -- your
11 testimony today was that when Slack gets back in the car or
12 your testimony today was who went with you to Pineview
13 Hills?

14 A It was me, Dante, and Slack.

15 Q Okay. How did you get there?

16 A In the car.

17 Q Whose car?

18 A I guess it was his, Roderick's.

19 Q Okay. What kind of car was it?

20 A A blue Crown Vic.

21 Q Okay. Those are kind of big and wide, aren't they?

22 A Yeah.

23 Q With a pull down thing in the front?

24 A What you mean pull down?

25 Q Like a little armrest in the middle between the two

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 seats?

2 A Yeah.

3 Q Okay. So, your testimony today is that you and Slack
4 and Dante went to Pineview Hills?

5 A (Witness nods affirmatively.)

6 Q And---

7 A Yes, ma'am.

8 Q In your statement to law enforcement, didn't you say
9 that's when he asked me where we had, where me and Dante had
10 been before we picked him up. That's when I explained to
11 him that we had went to Pineview Hills to meet someone in a
12 white car. That's when Slack said to tell his, Dante's
13 family that Pineview Hills was the last place I seen Dante.

14 So, in your statement -- what did you tell law
15 enforcement in this statement?

16 A Sound to me like I said it was me and Dante.

17 Q Yes.

18 A Yeah.

19 Q So, today you went with all three of them. All three
20 of you guys went to Pineview Hills.

21 A (Witness nods affirmatively.)

22 Q But February of 2012 --

23 A 14th.

24 Q February 14th, 2012, you told Slack that you and
25 Dante went to Pineview Hills?

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 A I ain't see Slack February 14th, 2012.

2 Q No, no, I'm sorry.

3 In the statement that you gave to law enforcement on
4 February 14th, 2012, who did you tell them you went to
5 Pineview Hills with?

6 A Me and Tae to see Slack.

7 Q I'm sorry?

8 A Me and Tae and Slack.

9 You talking about me?

10 Who I went to Pineview Hills with?

11 Me, Tae, and Slack.

12 Q And who did you tell law enforcement to---

13 A In there it was just me and Tae.

14 Q Okay.

15 A Yes, ma'am.

16 Q So, less than a month after this incident you told them
17 it was just you and Tae at Pineview Hills?

18 A Yes, ma'am.

19 Q Okay. Do you -- can you walk from Alexander Avenue to
20 Pineview Hills?

21 A No. You can, but, no, you wouldn't want to do it.

22 Q So, you'd have to have a car?

23 A Yeah.

24 Q Okay. So, February 14th, 2012, your statement was
25 that you and Dante went. So, you and Dante had a car.

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 A Yeah, we all had a car, but, yeah.

2 Q Just the two of you?

3 A Yeah.

4 Q But today it's all three of you went?

5 A Cause we all three did go. I mean I can get to why --

6 I can tell you why it's like that.

7 Q You can -- I'm sorry?

8 A I can tell you why it's like that, why I said it like

9 that. Cause honestly I was not trying to tell on nobody

10 cause, like I said, I didn't know what was going on.

11 Q You weren't trying to tell on anybody in this

12 statement?

13 A I'm talking about as far as -- I'm not trying, I'm not

14 trying to put that man at the scene of the crime.

15 Q You're telling me that you're not trying to put Slack

16 at the scene of the Waffle House---

17 A No.

18 Q ---crime?

19 A I'm talking about as it all come, boils down cause,

20 like I said, I didn't see what this man did. I did not see

21 him with no gun, no mask, no anything. What can I say about

22 him that's gonna put him there, as far as committing the

23 crime, I can't. I know his height. That's all.

24 Q I believe you pointed to this video just a few moments

25 ago and said---

Kenneth Craig - Cross-examination
by Solicitor Jordan

- 1 A Exactly.
- 2 Q ---that's slack?
- 3 A Cause I dropped---
- 4 Q Is that not true?
- 5 A Cause I dropped him off.
- 6 Q When you dropped them off, where did they go?
- 7 A They went to the Waffle House.
- 8 Q Did they go directly into the Waffle House?
- 9 A No, ma'am.
- 10 Q Where -- you dropped them off at the front.
- 11 Where did they go?
- 12 A Standing right there in front of the Waffle House right
- 13 there by the wall. You got the wall and I think it's a
- 14 newspaper machine right here and at the door.
- 15 Q What do they do out there at the Waffle House?
- 16 A I have no idea.
- 17 Q So, you just dropped them off right there---
- 18 A Yeah.
- 19 Q ---in all black?
- 20 A Yeah.
- 21 Q You were also wearing all black?
- 22 A I had on black shoes -- a black thermal, black t-shirt,
- 23 blue jeans, black socks.
- 24 Q So, everybody was in all black, even you?
- 25 A Yeah, I was in black.

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 Q And you dropped them off at the Waffle House?

2 A Yes, ma'am.

3 Q Front door?

4 A Yes, ma'am.

5 Q Okay. Is your testimony today is that the first time
6 you saw an officer was when you were at the red light on
7 221?

8 A Excuse me. At -- by the Citgo.

9 Q That's the first time you saw one?

10 A One coming out of Motel 6.

11 Q Okay. Did you give this -- in the law -- in the
12 statements you gave to law enforcement way back on February
13 the 14th, 2012, where did you tell them you were?

14 A At -- by the Citgo. At the Citgo.

15 Q I'm gonna ask you if you'll read the first two or three
16 lines.

17 A I, Kenneth J. Craig, dropped Slack and Dante Williams
18 off at the Waffle House on 221. Prior to me leaving the
19 Waffle House I witnessed two or three county cars---

20 Q Stop right there.

21 What did you just say in that statement?

22 A Which part?

23 Q Prior to leaving the Waffle House, you saw what?

24 A Two or three cars headed in the direction of the Waffle
25 House.

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 Q Okay. So, at this point in time you're still at the
2 Waffle House when you see law enforcement come by, is that
3 not true?

4 A It's not true.

5 Q Then why did you put it in that statement?

6 A I did. I said prior to me leaving the Waffle House.

7 Q Yes.

8 A Leave the Waffle House, I'm still going down 221 the
9 whole --.

10 Q I'm lost at this point.

11 Prior to you leaving the Waffle House, you see cop cars
12 coming.

13 What does that mean?

14 A It mean prior to me leaving the Waffle House. Like I
15 just -- what does prior mean?

16 Prior means just doing something, right?

17 I had just left the Waffle House. So, like I said, I
18 seen him at the red light.

19 Q Prior to leaving the Waffle House you saw the cops?

20 A Yes, ma'am.

21 Q That's what you told the officers just a few weeks
22 after this happened?

23 A Yes, ma'am.

24 Q So, based on that statement you're at the Waffle House
25 parking lot when you see officers come by?

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 A No way.

2 Q That's not what prior to means then?

3 A So, what does it mean?

4 Q No, your statement is that's not what prior to means?

5 A I always thought prior to means that you---

6 MR. WHELCHER: Your Honor, is she questioning him or is
7 she giving him an English lesson?

8 I would just ask she just ask him questions and not
9 give an English lesson.

10 SOLICITOR JORDAN: Your Honor, I---

11 THE COURT: She's on cross-examination and I'll allow
12 her to go forward.

13 MR. WHELCHER: I object.

14 Q Your statement to law enforcement was that before you
15 left Waffle House you saw two to three cop cars?

16 A That's not what my statement says. It says prior to
17 leaving the Waffle House I saw two or three police cars.

18 Q Okay.

19 A It does not say before.

20 Q And today you said that you saw one cop car come out of
21 the Motel 6?

22 A Yes, and two or three more go up the road behind him.

23 Q Okay. Cause you were in here yesterday when Deputy
24 Outlaw testified, weren't you?

25 A Yeah, I was.

Kenneth Craig - Cross-examination
by Solicitor Jordan

- 1 Q And he talked about working extra duty?
- 2 A Yes, I was.
- 3 Q And he talked about how he came out---
- 4 A Yes, ma'am.
- 5 Q ---of the Motel 6?
- 6 A That's true too.
- 7 Q And you heard that?
- 8 A Yeah, that's also in my statement.
- 9 Q Where at in your statement does it say one cop car?
- 10 A It doesn't. It's not saying no one cop car. It's
- 11 saying two or three.
- 12 Q Okay. But it doesn't say one?
- 13 A No, ma'am. It doesn't. It's not specific, no.
- 14 Q It's not specific.
- 15 When you -- so, your testimony is you dropped Dante and
- 16 slack off at the Waffle House?
- 17 A Yes, ma'am.
- 18 Q Something happened at the Waffle House?
- 19 A From what I hear, yes, ma'am. From what I've known,
- 20 no.
- 21 Q And you had the vehicle?
- 22 A Yes, ma'am.
- 23 Q So, it's your testimony today that you dropped them off
- 24 for them to commit a crime and they let you leave with the
- 25 getaway car?

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 A I didn't know nothing about a crime as I stated before.
2 I never seen nothing consist of a crime or never talked to
3 this man or Dante about a crime. I'm not know what's going
4 on. So, yeah, I left.

5 Q So, you left those two at the Waffle House?

6 A Yes, ma'am.

7 Q And you left in the only car?

8 A Yes, ma'am.

9 Q When you saw cop cars coming?

10 A No, before I seen them I was already gone.

11 Q I'm gonna show you, I think you've already seen it,
12 State's Exhibit No. 3.

13 Could you come over here if you don't mind?

14 A Uh-huh. (Affirmative).

15 (Witness comes down from the stand.)

16 Q Okay. On State's Exhibit No. 3, can you show me where
17 you tried to turn into the Waffle House?

18 A Right there.

19 Q And this is -- this is after you saw law enforcement?

20 A Yes, ma'am.

21 Q Okay. And your testimony today is that was blocked?

22 A Yes, ma'am, all that right. All that was blocked.

23 Q All this was blocked by law enforcement vehicles?

24 A Yes, ma'am.

25 Q What about this store, this entrance?

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 A I ain't even see that. They didn't go that way. I
2 went that way.

3 Q Okay. You went this way.
4 what about this entrance?

5 A It was down in here. It was blocked off.

6 Q So, they were blocked off here?

7 A No, down in here and up in here. Down here, up in
8 here, down here. No where up here was they at.

9 Q Okay. So, by the time it took you to turn around --
10 you can have a seat.

11 A (Witness returns to the stand.)

12 Q So, by the time it took you to turn around at the
13 Citgo, they already had all that blocked off?

14 A Yeah.

15 Q It was a fast response time?

16 A Yes, ma'am.

17 Q Okay. You seem to know this area pretty well.

18 A Yes, ma'am.

19 Q Have you ever lived in this area?

20 A Lakeview Manner.

21 Q You did live back there?

22 A Yes, I did.

23 Q Okay. Are you familiar with this Waffle House?

24 A Yes, I am.

25 Q Okay. So, you're familiar with the number of exits for

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 vehicles to get in and out?

2 A I mean yeah.

3 Q Okay. What was the traffic light, traffic like at
4 1:15 on that Saturday morning?

5 A If I ain't mistaken it was very low.

6 Q Very low?

7 A Yeah.

8 Q So, not much out there?

9 A No, ma'am.

10 Q Okay. When you left the Waffle House and picked up
11 slack, where did you go?

12 A I didn't pick him up. He ran into the car.

13 Q He ran to the car and got in?

14 A Yeah.

15 Q And you drove away from the scene?

16 A Drive to Mt. Pleasant to the four-way stop sign.

17 Q Okay.

18 A As that -- was traveling towards the tracks on the
19 other end. I don't know what highway that is over there.
20 But there's a highway on the other side.

21 Q Okay.

22 A Bust a right beside the church. Got all the way up
23 till you get to Cannons Campground.

24 Q Yes, sir.

25 A Then you know, if you get up there, it's a split. You

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 go towards the left or you go right.

2 Q Okay.

3 A I went right.

4 Q And where did you go once you turned right?

5 A We went all the way back to Ms. Patricia's house.

6 Q Did you go straight back there?

7 A Yes, sir.

8 Q Okay.

9 A Yes, ma'am. My bad.

10 Q Do you recall in your statement telling police that you
11 and Slack drove around for an hour and a half, two hours?

12 A Yeah.

13 Q Okay. So, February -- so, is your statement -- is your
14 testimony today that you drove straight back to Ms. Pat's
15 house?

16 A Yeah.

17 Q Okay. But your statement that you gave on February the
18 14th, 2012, is it in your statement that you drove around
19 for an hour and a half, two hours trying to figure it out?

20 A Yeah.

21 Q Okay.

22 A Yes, ma'am.

23 Q Okay. Why did you go into Ms. Pat's house and throw
24 Rod's keys?

25 A I didn't throw no keys.

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 Q What did you do with them?

2 A Little Rod, Junior, Rod's son, seen his dad's keys in
3 my hand, and ask me how you, how you get my dad's keys, and
4 I go shit, I don't know. I didn't know this was his keys,
5 bro. So, I gave him the keys.

6 Q But I thought you already said you were in Big Rod's
7 car?

8 A We're talking about in the house.

9 Q Okay.

10 A When I got back in the house that's how he got his keys
11 back.

12 Q Okay. So, you just walked in and handed them to him
13 quietly?

14 A Nah, why not?

15 Gave them right to him.

16 Q You gave them right to him?

17 A No hesitation.

18 Q No hesitation?

19 A No.

20 Q Didn't mention anything about Tae?

21 A They asked me where Tae was at.

22 Q And what did you tell them?

23 A I told them I dropped him off at Pineview Hills.

24 Q Which is a lie?

25 A No, it's kind of sort of the truth.

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 Q How is it kind of sort of the truth?

2 A I'm fixing to tell you.

3 Q Go ahead.

4 THE COURT: Order please.

5 A I'm fixing to tell you because when I let, before I let
6 slack out the car, he, he told me -- he asked me where me
7 and Tae went to, right. So, I told him, I said, he went to
8 Pineview Hills. He say yeah. Say -- he say yeah. Well,
9 tell Ms. Pat that's when you seen him. That's what I went
10 and told her.

11 I was just informed that this man died or possibly
12 died. I'm on probation. I was scared. I was in shock.

13 Q You were just informed this person had died and you did
14 not inform his family?

15 A I did not. I did not.

16 Q You didn't tell Ms. Pat where he was?

17 A No, ma'am.

18 Q You didn't tell Adisa?

19 A No, ma'am.

20 Q Did you tell Brittany where he really was?

21 A No, ma'am.

22 Q Did you tell Josh?

23 A No, ma'am.

24 Q Did you pick up the phone and call Dante's mother and
25 tell her?

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 A I didn't have the number, but I didn't call her. I
2 didn't do it.

3 Q You didn't tell anybody?

4 A No, ma'am.

5 Q No one at all?

6 A No, ma'am.

7 Q You were -- cause you wanted to distance yourself from
8 what happened to him?

9 A I was scared.

10 Q So, you distanced yourself by saying I dropped him off
11 at Pineview?

12 A I was in shock. Like I said, I did what I was asked to
13 do. I was scared. I'm on probation. I can't afford none
14 of that stuff.

15 Q What are you on probation for or let me ask you this.
16 Are you on probation for possession of crack cocaine?

17 A Yeah.

18 Q And you also have a conviction from 2000 for giving
19 false information?

20 A Yes, ma'am, I was young.

21 Q Okay. Okay. In 2000, how old were you?

22 A I'll be 31 this year. 13. About 17, 19, somewhere in
23 there.

24 Q How old was Dante on January 21st, 2012?

25 A I believe 18 or 19. I'm not for sure.

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 Q You wanted to celebrate his birthday with him, didn't
2 you?

3 A Yes, ma'am, I did.

4 Q You wanted to celebrate it by going to the Waffle
5 House?

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

7 Q If you wanted, if you wanted to celebrate your birthday
8 with him or his birthday with him, why did you leave him at
9 Waffle House?

10 A Doing what I was told to do. They told me, said, drop
11 them off at the Waffle House. That's what I did. Dropped
12 them off. I was just the driver.

13 Q You were just---

14 A That's all.

15 Q You were just driving?

16 A Yes, ma'am. I was the driver. So, I just dropped them
17 off.

18 Q Okay.

19 A It wasn't, it wasn't Dante's saying this.

20 Q It wasn't Dante saying what?

21 A Drop him off. It wasn't -- he wasn't the one that came
22 up with that I guess. Speculation or whatever it was.

23 Slack said drop him off. Tae was with it. So, I dropped
24 him off.

25 Q Wearing all black?

Kenneth Craig - Cross-examination
by Solicitor Jordan

- 1 A Yes, ma'am.
- 2 Q Just like you?
- 3 A Yes, ma'am, all black.
- 4 Q Okay. And your testimony is that I believe earlier
- 5 when Mr. Wheelchel was sitting up here beside you y'all were
- 6 about what, a foot apart if that?
- 7 A What you mean?
- 8 Q When Mr. Wheelchel was sitting beside you up here---
- 9 A Are you talking about in the car?
- 10 Q Yes, pretending to be the car, he was about a foot from
- 11 you?
- 12 A About right here. Just like he is in the car. You
- 13 know how a car is.
- 14 Q That close.
- 15 And this was a Crown Vic?
- 16 A Yes, ma'am.
- 17 Q Okay. And he reached over and touched you on your leg?
- 18 A Yes, ma'am.
- 19 Q Okay. Did you tell the police that, that, when you
- 20 talked to them in February?
- 21 A Actually when I tried to tell them what the whole thing
- 22 went on, he told me to stop, start at the point where I
- 23 dropped them off at the Waffle House.
- 24 Q But you didn't think it was important to tell them
- 25 about the touching?

Kenneth Craig - Cross-examination
by Solicitor Jordan

- 1 A That did -- that's they doing. They told me how -- I
2 told them everything that I'm telling you now and they told
3 me to start at the Waffle House. They say start at the
4 Waffle House.
- 5 Q The told you to start at the Waffle House?
- 6 A Yeah.
- 7 Q Are you -- even you talked about you guys were drinking
8 and smoking blunts.
- 9 A Yes, ma'am.
- 10 Q How much did you have to drink the first time y'all
11 were drinking?
- 12 A Probably half a beer cause that's some of Ta's beer.
- 13 Q I thought you said you had a couple of beers earlier.
- 14 A No, not the first time I didn't.
- 15 Q Okay. You sat in Slack's car and drank a couple of
16 beers, smoked a couple of blunts?
- 17 A I smoke. That's what I do. I'm not big on beer
18 alcoholic, alcohol that day. But I sipped some beer. Yes,
19 I did.
- 20 Q But you do what?
- 21 I'm sorry.
- 22 A I'm big on marijuana. I'm not an alcoholic. But I
23 sipped some beers. Yes, I did.
- 24 Q Okay. So, your testimony today is you were high that
25 night?

Kenneth Craig - Cross-examination
by Solicitor Jordan

- 1 A I'm high, yes, ma'am.
- 2 Q Smoked several blunts?
- 3 A Yeah, I'm high.
- 4 Q And your testimony today is that you never mentioned a
5 mission or a lick in front of Adisa or Brittany?
- 6 A No, ma'am.
- 7 Q They just made that up?
- 8 A Yes, ma'am.
- 9 Q And told law enforcement that?
- 10 A Yes, ma'am.
- 11 Q Okay. Earlier you mentioned a Burger King and a
12 subway. Can you show me on State's -- on 221 you talked
13 about a Burger King and a Subway.
- 14 Can you show me on this State's Exhibit 2 where the
15 Burger King and the Subway are?
- 16 A Be up in the area, up in the area right there.
- 17 Q Okay. I'll hold it up so you can show the jury.
18 Up in which area?
- 19 A Right there.
- 20 Q Okay. That -- there's a Subway and a Burger King
21 there?
- 22 A (Witness nods affirmatively.)
- 23 Q Okay. And---
- 24 A Burger King is connected to the store. Across the
25 street from there is a Subway.

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 Q Okay. And it was at this point that they told you just
2 to drop them off at the Waffle House?

3 A Yeah.

4 Q Okay. Could you see what was going on inside the
5 Waffle House?

6 A No, ma'am.

7 As far as -- what you mean?

8 Tell me what you talking about.

9 Q After you dropped them off and saw the lights of the
10 cop cars and turned, could you see what was going on in the
11 Waffle House?

12 A I didn't see lights till I got down by Citgo, by the
13 first red light.

14 Q Okay. But you -- at any point were you able to see
15 what was going on inside the Waffle House?

16 A No, ma'am.

17 Q Okay. In your statement to law enforcement back in
18 February, did you tell them so, I turned around in the store
19 right before you get to Raceway to see what was going on.
20 That's when I seen everyone in the Waffle House was running
21 in the same direction as if something had happened.

22 A I told you yes, I did.

23 Q All right. So, you told the police---

24 A That's why---

25 Q ---back then---

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 A That's why I asked you what you was pertaining to. I
2 didn't know what you was pertaining to before I asked the
3 question.

4 Q Okay. So, in this part of the statement you told them
5 that you turned around the store right before you get to
6 Raceway?

7 A No, it's, it's -- I turned around at Citgo. Citgo is
8 on the left side. Raceway is like right across the street,
9 diagonal a little bit, from Waffle House.

10 Q Okay. But can you just take a look at this and tell me
11 if this says Raceway or that -- does that say Raceway or
12 Citgo?

13 A Raceway.

14 Q Okay. And in that statement you said you turned around
15 at the store near Raceway?

16 A No, it's not what I said.

17 Q What does it say then?

18 A I said prior to me leaving the Waffle House, I say it
19 was two or three county cars headed in the direction of the
20 Waffle House with their, with their lights flashing. So, I
21 turned around in the store right before you get to Raceway,
22 which would be Citgo cause it's coming down this way. Say
23 store I got the gas in.

24 Q On State's Exhibit No. 2, where's Raceway?

25 I'll give you a second to look at it.

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 A Right there.

2 Q I'm sorry.

3 Can you point to it again?

4 A Right there.

5 Q So, this is the Raceway?

6 A Yeah. Yeah, right there.

7 Q So, so this is Raceway now?

8 A You got --.

9 Q Take, take all the time you need to look at it.

10 A Motel 6 is here. Yeah. Yeah.

11 Q Okay.

12 A That's it right there.

13 Q So, at this point in time you turned right, you turned
14 around at the Raceway?

15 A No, that's -- I mean that's Citgo. That's not --
16 that's Citgo.

17 Q Where is the Raceway?

18 Please show me that.

19 A Right there.

20 Q So, the Raceway is across from the Waffle House?

21 A Yeah.

22 Q On -- is it on the same side as 85?

23 A As far like north or south or east and west goes?

24 Q Just is it on the same side of 85 on Highway 221 as
25 Waffle House?

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 A Yeah.

2 Q Okay. And that's where you told police you turned
3 around?

4 A No, I said the store before Raceway and I, like I said,
5 it would be Citgo. I came up to 221. That's what I brought
6 up. It's hard to understand that.

7 Q Help me out.

8 Where's the Raceway again?

9 A Right across the street.

10 Q Okay. And where's the Citgo?

11 A Here.

12 MR. WHELCHER: Your Honor, she's asked him where the
13 Raceway was about a half a dozen times. It's been asked and
14 answered.

15 SOLICITOR JORDAN: Your Honor, I'm just asking for
16 clarification because---

17 THE WITNESS: May I---

18 SOLICITOR JORDAN: ---the way---

19 MR. WHELCHER: And I would object to it.

20 SOLICITOR JORDAN: I'll withdraw it.

21 THE COURT: Okay. You may proceed.

22 SOLICITOR JORDAN: Thank you, Your Honor.

23 Your Honor, if I may have a moment?

24 THE COURT: Yes, ma'am.

25 (Pause.)

Kenneth Craig - Cross-examination
by Solicitor Jordan

1 Q So, you told no one in Dante's family what happened?

2 A No, ma'am.

3 Q And you knew that he was dead at the Waffle House?

4 A I didn't know. I just know what I was told. I was
5 told that me might be dead, yes, ma'am.

6 Q And you told no one?

7 A No.

8 Q You told no one where their relative was laying?

9 A No, ma'am.

10 SOLICITOR JORDAN: Nothing further.

11 THE COURT: Your witness, Mr. Whelchel, redirect?

12 MR. WHELCHEL: No, sir.

13 THE COURT: You may step down, sir.

14 Defense may call its next witness.

15 MR. WHELCHEL: Defense rests, Your Honor.

16 THE COURT: State wish to call any witnesses in reply?

17 You want to take a moment to think about it?

18 SOLICITOR JORDAN: If I could, Your Honor.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, we'll take a short break. I'll ask you to step back
21 to the jury room. Don't begin any discussions until I've
22 asked you to do so.

23 Thank you.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury.)

1 THE COURT: All right. Court will be in recess for
2 about ten to fifteen minutes.

3 (WHEREUPON, a short recess was taken at this time.)

4 THE COURT: Ms. Jordan, does the State wish to call any
5 witnesses in reply?

6 SOLICITOR JORDAN: No, sir.

7 THE COURT: All right. I'm gonna bring the jury in.
8 It's, it's 4:30. I'm gonna dismiss them for the evening.
9 We'll start again at nine o'clock in the morning with
10 closing arguments, and I'll charge thereafter.

11 Anything we need to take up before then?

12 MR. WHELCHER: May I put the directed verdict, the
13 renewal of them on the record in the morning, Your Honor?

14 THE COURT: That will be fine.

15 MR. WHELCHER: Thank you, sir.

16 THE COURT: All right. Let me bring the jury in and
17 dismiss them.

18 Come to order.

19 Bring the jury in.

20 (WHEREUPON, the following takes place within the
21 presence of the jury.)

22 THE COURT: The record will reflect that the jury has
23 returned to the courtroom.

24 Ms. Jordan, you've indicated to the Court that you do
25 not intend to call any additional witnesses, is that

1 correct?

2 SOLICITOR JORDAN: Yes, sir.

3 THE COURT: All right. Ladies and gentlemen, that
4 completes the presentation of evidence in this case, and
5 when we started I told you that the process we would go
6 through or the procedure or the order would be we would have
7 our opening statements by attorneys, and then we would have
8 proof. And once we've completed the evidence being
9 presented we would allow the attorneys then to make their
10 closing or final arguments and then I'll charge you
11 concerning the law.

12 That process will probably take well in excess of an
13 hour or around an hour, about an hour and a half I estimate
14 at this point in time. It could take longer. It could take
15 less. But at any rate, we're thirty minutes from five
16 o'clock. So, rather than us go past 5:00 tonight I'm going
17 to recess for the evening.

18 I'll ask that you be back in the jury room in the
19 morning at nine o'clock. During your absence from the
20 courthouse, you probably can tell me, but I'm gonna tell you
21 not to gather, not to attempt to gather any information on
22 your own. Don't listen to, watch, or read media reports.
23 Don't discuss this case with anyone and don't allow anyone
24 to discuss the case with you. Report any contact that you
25 might have concerning this case should someone try to

1 contact you while you're out.

2 Nine o'clock in the morning. Be back in the jury room.
3 we should start shortly thereafter.

4 Thank you very much. You're free to go at this time.

5 (WHEREUPON, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right. Court is in recess until nine
8 o'clock in the morning.

9 Thank you very much.

10 MR. WHELCHER: May I approach, Your Honor?

11 THE COURT: Please.

12 (WHEREUPON, a bench conference was held at this time.)

13

14 (WHEREUPON, Court was in recess for the evening.)

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1 Thursday, July 25th, 2013

2
3 THE COURT: All right. We'll have a brief conference
4 concerning the charge in this case.

5 The State has requested the hand of one hand of all. I
6 do intend to charge that.

7 A charge number two request is a gun need not be loaded
8 or operable in order to be included in the provisions of
9 the, the armed robbery or attempted armed robbery statute.

10 Defense's position concerning the charge?

11 MR. WHELCHER: I think that's the status of the law,
12 Your Honor.

13 THE COURT: All right. Thank you.

14 SOLICITOR JORDAN: Your Honor, in addition to one and
15 two I also have three. If I could pass that up.

16 THE COURT: I'm getting ready to talk about that right
17 now.

18 SOLICITOR JORDAN: Okay.

19 THE COURT: I just saw it.

20 And there's another request for charge for voluntary
21 intoxication is not an excuse for or a defense to a crime.

22 Defense's position as regard to that charge?

23 MR. WHELCHER: That's the status of the law also, Your
24 Honor.

25 THE COURT: Yes, sir.

1 All right. I do intend to charge those. The defense
2 mentioned mere presence. I will charge that as, as part of
3 my charge concerning hand of one, hand of all. That, that,
4 that will be included in the statement concerning that.

5 MR. WHELCHEL: Yes, sir.

6 THE COURT: So, I do intend to charge that as well.
7 Any other specific request from the defense?

8 MR. WHELCHEL: Before I get to specific request, Your
9 Honor --

10 THE COURT: Yes, sir.

11 MR. WHELCHEL: -- I need to renew my motions for a
12 directed verdict --

13 THE COURT: Uh-huh. (Affirmative).

14 MR. WHELCHEL: -- based on the insufficiency of the
15 evidence as presented by the State on all the indictments.

16 THE COURT: Yes, sir.

17 MR. WHELCHEL: -- Your Honor. Specifically, Count Two
18 of Indictment 12-2199, the armed robbery and possession of a
19 firearm during the commission of a violent crime.

20 THE COURT: Yes, sir.

21 MR. WHELCHEL: That, that charge on that indictment,
22 Your Honor, alleges that my client did, in Spartanburg
23 County, on the 21st of January, possess a firearm during
24 commission of a violent crime as defined in 16-1-60. To
25 wit, armed robbery. In violation of 16-24-490, which

1 alleges that if a person is in possession of a firearm or
2 visibly displays what appears to be a firearm, and I think
3 that statute is defendant specific, and would request that
4 the judge charge that they have to prove my client was in
5 possession of the firearm in order to convict him of 14,
6 excuse me, 16-23-490.

7 THE COURT: Are you requesting a charge to that effect
8 or are you asking for a directed verdict as to that?

9 MR. WHELCHER: Asking for a directed verdict at this
10 time, Your Honor.

11 THE COURT: All right.

12 MR. WHELCHER: A directed verdict at this time, Your
13 Honor.

14 THE COURT: All right. Then I'll hear from the State
15 concerning that request.

16 SOLICITOR JORDAN: Your Honor, I think hand of one hand
17 of all covers this.

18 THE COURT: Do you have any case law that would
19 indicate that the hand of one hand of all does not apply to
20 that statute as well?

21 MR. WHELCHER: Your Honor, I don't think there's any
22 case law that's pertaining to hand of one hand of all that I
23 know of that deals with this statute specifically. But the
24 statute is, I believe, defendant specific. It says if a
25 person is in possession of a firearm or visibly displays

1 what appears to be a firearm, and the hand of one hand of
2 all theory has been in effect for before this statute came
3 into effect, Your Honor, and I think if they wanted to
4 include hand of one is hand of all that would of been in the
5 statute when the Legislature passed it.

6 THE COURT: Interesting.

7 Yes, ma'am.

8 SOLICITOR JORDAN: Your Honor, the law of hand of one
9 hand of all isn't referenced in any of the specific statutes
10 because it applies overall in the criminal arena.

11 THE COURT: Yeah, I'm not familiar with a statute that
12 says the hand of one -- that does what you say it should do,
13 that the Legislature passed a statute that says hand of one
14 hand of all does apply to this statute.

15 Have you---

16 MR. WHELCHEL: well, I don't know that they've done
17 that, Your Honor.

18 THE COURT: I don't know that they ever -- I know that
19 when the Legislature also passed it they would of been aware
20 of common law---

21 MR. WHELCHEL: Yes, sir.

22 THE COURT: ---that existed at that time and could of
23 put a statement in there that hand of one hand of all either
24 does or does not apply. They did not.

25 MR. WHELCHEL: Yes, sir, my, my request is based on the

1 fact that, for both the directed verdict and the charge,
2 Your Honor, is that this statute is a specific statute and I
3 think the specific statute overrides any legal charge or
4 legal theory, and that's what the hand of one is is a legal
5 theory. But it's---

6 THE COURT: Well, it's common law I think. I don't
7 think it's statutory.

8 MR. WHELCHER: No, sir.

9 THE COURT: It's -- that I'm aware of. Interesting
10 point. May have to stop and take a look at that one.

11 Anything else?

12 MR. WHELCHER: No, sir.

13 THE COURT: Now, as to specific charges other than that
14 issue?

15 MR. WHELCHER: None, Your Honor.

16 THE COURT: All right. All right. I'm gonna take
17 about a five, ten minutes to take a look at it.

18 Court will be in recess briefly.

19 (WHEREUPON, a short recess was taken at this time.)

20 THE COURT: All right. In considering the question of
21 directed verdict as to the charge of use of a weapon during
22 the commission of a violent crime, my research indicates
23 that statutes generally will not be held to be in derogation
24 of the common law unless the statute itself shows that such
25 was the object and intention of the lawmakers and the common

1 law will not be changed by a doubtful implication.

2 Now, this particular statute makes no comment as to the
3 common law one way or the other, and it does not appear to
4 be a specific intent to derogate the common law by its
5 passage.

6 I also note that the armed robbery statute itself, if
7 you read it, requires that the person committing the armed
8 robbery must possess a, a weapon at the time of the
9 commission of that crime. It would appear to be person
10 specific as well. However, we all know that the hand of one
11 hand of all is always been applied by our Courts as to the
12 armed robbery statute as well, and it's not required that
13 everyone in the group of people that might be robbing a
14 place has to have a weapon in order to be guilty of hand of
15 one hand of all under the armed robbery statute.

16 So, given those two factors, I do not find anything in
17 reading the statute itself to indicate a, a specific intent
18 or a statement that there was the object and intention of
19 the lawmakers to derogate the common law as to that statute.
20 Therefore, I will deny the motion.

21 MR. WHELCHER: I understand, Your Honor.

22 THE COURT: All right. Now, anything else before we
23 bring the jury in?

24 I believe the State will be going first?

25 SOLICITOR JORDAN: Just as to opening on the law, yes,

1 sir.

2 THE COURT: Yes.

3 And then followed by the defense?

4 MR. WHELCHER: Yes, sir.

5 THE COURT: And then we'll return to you.

6 SOLICITOR JORDAN: Did the defense have any request to
7 charge that they were gonna make in addition to the---

8 THE COURT: He indicated he didn't have any
9 additional---

10 SOLICITOR JORDAN: Okay.

11 THE COURT: I told him I would charge mere presence---

12 SOLICITOR JORDAN: Yes, sir.

13 THE COURT: ---which I think was something he mentioned
14 yesterday. I don't think there were any other specific
15 request.

16 SOLICITOR JORDAN: Yes, sir.

17 THE COURT: Is that right?

18 MR. WHELCHER: Yes, sir.

19 THE COURT: Of course, he reserves his right to object
20 to my charge once it's completed.

21 SOLICITOR JORDAN: Yes, sir. Thank you.

22 THE COURT: All right. Let's bring the jury in.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: All right. The record will reflect that

1 the jury has returned to the courtroom.

2 I hope everyone had a good evening and have returned
3 ready to proceed with the trial.

4 If anybody had any difficulty in complying with my
5 instructions over the evening I'd ask that you please stand.

6 (No response.)

7 THE COURT: It appears that all jurors have been able
8 to comply with my instructions thus far.

9 I told you that, upon your return, the parties will be
10 allowed to make their closing statements or arguments to
11 you, and at this time the State will be going first.

12 You may proceed, Ms. Jordan.

13 SOLICITOR JORDAN: Your Honor, just as to the law?

14 THE COURT: Yes.

15 SOLICITOR JORDAN: Thank you, ladies and gentlemen.

16 Right now I'm just gonna speak to you what the law is
17 in the State of South Carolina, and, of course, the judge,
18 at the end, is going to tell you what the law is, but I'm
19 just going to inform you of what that is, and then Mr.
20 Welchel's gonna have a chance to talk to you and I'll be
21 back.

22 The defendant in this case is charged with multiple
23 crimes, but they boil down to three different areas of the
24 law by statute. The first is that he's charged with armed
25 robbery. He has two counts of armed robbery.

1 Armed robbery states that I have to prove that, in
2 Spartanburg County, while armed with a pistol, other items,
3 or a deadly weapon or while alleging, by either words or
4 actions, he was armed while, while using a representation of
5 a deadly weapon or any object which a person, person present
6 during the commission of a robbery reasonably, reasonably
7 believed to be a deadly weapon feloniously takes something
8 from the person or presence of another. That's armed
9 robbery.

10 The next charge he has or the next set of different
11 charges he has is attempted armed robbery. It's that
12 statute, but the actual taking doesn't occur. Attempted
13 armed robbery.

14 He's also charged with possession of a firearm during
15 the commission of a violent crime. That while committing a
16 violent crime, armed robbery is defined as a violent crime,
17 he was in possession of a firearm.

18 Those are the charges by statute. The judge is also
19 gonna talk to you about a law that we have in our state
20 that's called the hand of one is the hand of all. That's
21 what it's commonly known as.

22 what that basically states that if the crime is
23 committed by two or more people who are acting together in
24 committing the crime, the act of one is the act of all.
25 That a person who joins with another to accomplish an

1 illegal purpose is criminally responsible for everything
2 done by the other person which occurs as a natural
3 consequence of the acts done in carrying out the common plan
4 or purpose.

5 An example of this is that if two or more people, two
6 people or more can be guilty of killing another person when
7 only one of the two had a gun, there was only one bullet,
8 and only one of the two fired the shot that caused the
9 death. If two or more people are together, acting together,
10 assisting each other in committing the offense, the act of
11 one is the act of all or, as it's sometimes said, it's the
12 hand of one is the hand of all.

13 THE COURT: Mr. Wheelchel, you may proceed for the
14 defense.

15 MR. WHELCHER: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. WHELCHER: Ladies and gentlemen of the jury, 48
18 hours ago or roughly 48 hours ago I stood before you and
19 told you this:

20 That at the time of my client's arrest not a single
21 soul had identified him as the person, as the other person
22 involved in the Waffle House, and now you've heard people
23 get up on the stand and make an identification.

24 You also heard me asking them, each and every one of
25 them who had a chance and identified, the ones who actually

1 identified my client.

2 You also heard me ask them, them these questions:

3 In your statements that you gave that night or that
4 morning because what we're talking about is an incident that
5 took place at about 1:15 in the night. The early AM. I
6 think one of the waitresses testified we were waiting on our
7 bar rush. It's Saturday. It was Saturday night just
8 turning into Sunday morning.

9 Nobody, nobody said, at that time, one of those two
10 people was very short, one of them was a lot shorter than
11 the other, one of them was slighter build. Nobody, at that
12 time, said there was something specific about the voice.
13 Not until they're here, almost 18 months to the day after
14 this event took place, do we hear anything about a specific
15 voice. Eighteen months.

16 Now, let me talk to you about the process here cause
17 I've had that job. I'm a lot older than them. I had that
18 job in the past, and the difference between law enforcement
19 and the prosecutors and the way that they view these cases
20 when an arrest is made on a case, the statistics kept by the
21 sheriff's Office, case cleared by arrest. They're done.

22 1:15 there's an armed robbery. 11:30PM that same day,
23 case is cleared. We got the guy.

24 We're gonna wait 18 months to have anybody identify or
25 wait -- wait a minute. I'm sorry. After his name and

1 likeness is all over the news, we're gonna contact the
2 witness, the witness and we're gonna say -- and this is
3 three days later. Three days of that coverage. We're gonna
4 contact him and we're not gonna say will you come in and
5 view a lineup we've prepared.

6 Will you come in -- and what do we say or what did he
7 testify that we said or they said?

8 They contacted him and said this:

9 Have you seen the news?

10 That is the way they decided to conduct this
11 investigation in this case.

12 Is that believable, credible, allowable?

13 You're the ones who decide what the facts are, and
14 whether or not you believe them. It doesn't matter what I
15 think or anybody else in this room thinks about that. But
16 judging the facts now in this room about this case are
17 seated before me. And part of the things that you determine
18 when you determine what the facts are is how the facts are
19 gathered and how the facts are presented and how the facts
20 are preserved or not preserved.

21 Speaking of fact preservation, when the State, the
22 government, when the government takes the known samples for
23 Mr. Harrison -- now, there is no question I think in
24 anybody's mind, there, then, or now, that Mr. Harrison shot
25 one of the robbers. Okay. Nobody ever doubts that.

1 But yet, the government shows up and they do those
2 tests and they talk to you about how they do the tests and
3 all the dabbing and the special thing that you hold that
4 with so that you don't contaminate one sample from another
5 sample or this from that. You know, four different wands
6 and a special handle.

7 But when my client gets arrested, and they're gonna do
8 the same kind of tests on his clothing, let's just throw all
9 those clothes in there together. We're not gonna separate
10 them. They had a chance. They could do it right then. But
11 no, they throw them all together, throw them in a bag, and
12 every time -- and you heard testing was requested multiple
13 times. Multiple times.

14 And between the tests, where do the clothes go?

15 We all know where they went cause they told us where
16 they went. These clothes have been in and out of that bag
17 no, who knows how many times, and the agent that testified,
18 I think Moskal, told us from the very beginning on my
19 cross-examination, I asked him and it says here that you can
20 not tell us when, where, or how this residue got there.

21 Your test won't do that?

22 He said no, no, it won't do that.

23 Then I asked him, the trace evidence lab, that's where
24 you run all the GSR tests for the entire state?

25 Yeah. And he went into a big long elaborated answer to

1 try to, you know, inform you how they try to keep that
2 clean, and I understand that.

3 But how -- trying to keep it clean doesn't really
4 matter, and, you know, my wife's a nurse. She's the -- use
5 to be the head hanchu nurse at the hospital years ago. We
6 were talking the other day and we were talking about -- I
7 think there was something in the paper or newspaper. I
8 don't know what it was, but it was about salmonella, and she
9 said that the statics have shown that salmonella -- you
10 know, everybody worries about outbreaks at restaurants and
11 stuff and most of the time you get it right in your own
12 kitchen, and it's kind of like right in your own lab.

13 You got to clean those things up. But it don't really
14 matter if you clean it up or not if you keep stuffing
15 everything back in there together. If you keep dumping the
16 peas and the carrots together, you're gonna have peas and
17 carrots. You're not gonna have peas over here and carrots
18 over here. But every time these items are taken in and out
19 of that bag for the testing, and that's what's got to be
20 done. You just got to make sure that when you're testing
21 this item, what you're testing comes from this item, and he
22 told you we can't do that. Not the way it's bagged.

23 You decide what you believe, what is acceptable, the
24 level of proof, the weight you want to attach to some piece
25 of evidence or alleged evidence. You decide that and the

1 way you decide that is very simple.

2 The judge is gonna talk to you about that, but it's
3 this. Each and every one of you bring to today a level of
4 common sense that you use in every day life to decide who
5 and what you're gonna believe. You do that when you deal
6 with your co-workers, wives, children, everything like that.
7 That's why we have 12 citizens that do that.

8 So, let's talk about applying common sense. You're
9 gonna have a video. You've seen it probably more than you
10 want to, but this video is going to be available to you.
11 You can run it in -- I know you can run it better than I
12 can. We've proven. We've shown that. You'll be able to
13 see this video cause it's in evidence with all this other
14 stuff that the State has put into evidence. But you'll have
15 that with you, and here's what I want you to do.

16 I want you to remember and recall the testimony that we
17 brought out about how tall people are that are involved in
18 this case. I stood back here while my client was on the
19 stand and Slack stood up. Slack was, I believe, right there
20 yesterday, and my client said Slack and Dante were the same
21 height or about the same height. You heard it. You look at
22 the video. You look. You can stop it. You look at that
23 video when they come in the door, those two people, and you
24 tell me -- cause we know that Dante's 5'11".

25 Remember the lady from the Coroner's Office?

1 Seventy-one inches tall. 5'11". That's Dante. My
2 client tells you they're about the same height.

3 Look at that video. Tell me or not, not tell me. Look
4 at the video and see if you can see that when they come in
5 that door. One of them is at least five inches shorter than
6 the other.

7 And here we go again. Not until he testified Tuesday,
8 I believe, did you hear anything about anybody being
9 five inches shorter. Not until you can -- and we've all had
10 the opportunity to see Midget. He's called Midget for a
11 reason. Not until we're here in a courtroom 18 months later
12 is there anybody anywhere with any statement or any
13 description said got a distinctive voice, he's 5'6", slim
14 built. Eighteen months after the fact. Of course, and if
15 we do have an ID three days later, after one photograph, and
16 one likeness has been all over the newspaper and the TV.

17 why?

18 Why wasn't there a lineup between the arrest and call
19 Mr. Harrison three days later?

20 It's simple to do. The computer does that. Three
21 days. Three days might not seem like a long time to you,
22 but even then we don't hear anything about he's 5'6", he's
23 slender build, he's slight.

24 You got him. That's him. Don't need to do anything.

25 The proper procedure would of been to prepare that and

1 take it to those witnesses once the arrest has been made.
2 Not to wait, advocate your responsibility to the newspaper
3 and the TV coverage cause that's what happened.

4 So, you have two people going into this Waffle House.
5 You can see -- you determine whether you believe that those
6 two people are five, six inches -- my client told you
7 yesterday, he's five and a half, 5'6". You're the ones who
8 determine it. It doesn't matter what anybody else says. I
9 mean you can hear what the witnesses say. You determine the
10 facts. You determine who and what you believe.

11 Now, we've talked a little bit about the, what I call
12 the professionals, the SLED guys, and the, the cops. Well,
13 let me talk to you about another one. They made a big deal
14 out of bringing to you the officer that talked all about
15 fingerprints, and the great thing about all of that was that
16 we got to find out that the bag that the fellow who didn't
17 have the gun, according to everything you've been told that
18 would be him, my client, the bag didn't have his fingerprint
19 on it. There was a print. There was a partial print. But
20 it ain't his.

21 Now, we know his prints were available then cause he
22 admitted to you he has some prior criminal convictions.
23 Nobody's trying to hide that. He's telling you he made
24 mistakes. He said he was young. He's still young, and you
25 heard what the officer said. We've photographed it and

1 showed you that little card and then we send it in to
2 A.F.I.S. and this computer sends it back.

3 Do you wonder, cause I do, when they just sat and
4 didn't do a lineup, they already knew that fingerprint on
5 that bag didn't match Midget?

6 And, you know, here's the other thing. Midget can't
7 help being short. I can help being the size I am. Midget
8 can't help being short. Once you grow you grow as tall as
9 you're gonna get, and as far as I know you can't get any
10 bigger, taller. So, once he shows up here and he's standing
11 or sitting, it doesn't matter, it's pretty obvious that he
12 is a short slight of stature individual and the other thing
13 is this.

14 From the very beginning of this trial, ladies and
15 gentlemen, there's been three people sitting over here. One
16 of them is me and the two guys that went in were or
17 described as black males. So, I'm out. My investigator,
18 Curtis. Curtis has been called a lot of things in his life.
19 Been in the Air Force for a long time. Air Force I think.
20 But Midget ain't one of them.

21 So, who are you gonna pick out?

22 I want you to understand just how difficult it is when
23 somebody says that's him and it's not. It's essentially
24 your word against theirs.

25 Who is new to this equation?

1 Ask yourself that.

2 who's new to the neighborhood?

3 who's new to the house?

4 who's the brand new person in this whole thing?

5 Slack lives a block away, and Slack is immediately
6 involved in this situation cause, do you remember, Brittany
7 tells you she heard him ask.

8 Now, even -- that's the other thing. This is a man
9 whose met these people within a week or less and he barely
10 knows them. Yet he's going to say, in front of whoever was
11 there, and there were more people there than you heard or
12 that was brought up to testify, and he's suppose to have
13 said, so that everybody could hear, hey, Dante, you want to
14 hit a lick for your birthday.

15 Now, assuming that you believe that, then you got to
16 believe the response. Nah, I just want to chill.

17 Then what happens?

18 Slack shows up and notices how Slack is the one who
19 makes everything possible. Midget don't have a car. Dante
20 don't have a car. Slack produces, provides a car that he
21 got from the fellow that was seated on the front row with
22 him yesterday. The two of them seated there together.

23 So, that's where we -- and you remember what Brittany
24 said?

25 This -- and she said she heard him say that. And then,

1 on cross-examination, I asked her and all this other
2 information that you have that you testified to is what
3 Slack told you?

4 Yes.

5 We have Slack going off with Dante. Midget's not
6 there. Dante comes back and they tell you Dante says I got
7 a mission, and they tell you they talked about it, but they
8 don't tell you what was said. They don't know what they're
9 talking about because they didn't testify to it.

10 Shortly -- or we don't really know, cause nobody knows
11 time frames here, my client and Dante leave. They even
12 tried to tell you they left in a car. Remember I think it
13 was Keisha or maybe the other girl. I was -- it was Keisha
14 I think. Not Keisha. The first girl that testified. I
15 asked her no, I didn't see him.

16 Well, where were you?

17 She just assumed, because they left together, they
18 went -- they got in a car. But nobody knows. You don't
19 hear how a car becomes involved until my client tells you we
20 left, we went to Slack's. There was a car, and it's just a
21 block away.

22 They go there and they're in the car and you hear that
23 they're drinking beer and smoking blunts. They go to
24 Pineview Hills and then Slack, on the way to Cowpens, tells
25 my client to drop us off at the Waffle House and he does.

1 They've already gotten gas. He drops them off at the Waffle
2 House and he leaves.

3 You heard -- and you heard him cross-examined. But
4 here's the thing. If you leave the Waffle House and you're
5 heading back to Spartanburg, and the police are coming,
6 you're heading in the opposite direction of where they're
7 coming from. You're heading in the opposite direction where
8 the first one was because he was coming from Jones Road and
9 the Motel 6.

10 My client says he saw him, looked at him, he was nosey,
11 turned around. He had just dropped two people off at the
12 Waffle House.

13 Now, of course, it's going to be argued to you, I
14 assume, that he dropped them off cause he knew there was
15 gonna be a robbery or actually didn't drop them off. He's
16 the one driving.

17 Okay. Assuming he's the one driving, you commit an
18 armed robbery and then you park the car so far away that you
19 have to run to it. Yeah, you committed the armed robbery.
20 You parked the car so far away that you have to run to it
21 because Mr. Harrison said, after the shooting took place, he
22 went out and the fellow ran around the back side or actually
23 he didn't know where he ran to. He just lost him. Thought
24 he went that way. But I was asking which direction is
25 which.

1 You're gonna be able to see in the video who's
2 wrestling with who. You're gonna be able to see heights.
3 Mr. Harrison and I are about the same height. I asked him
4 that. You look and you see if you think that fellow is
5 five inches shorter, the fellow who he's wrestling with,
6 cause they say that's my client. You're gonna have that
7 evidence. You decide. It doesn't matter what anybody else
8 says. You decide. And the picture is worth a thousand
9 words cause you're the one who decides that. Not me. Not
10 the State. You.

11 And while we're talking about Mr. Harrison, I don't
12 want you to think that I'm making light of what he had to do
13 and what he did that night cause I am not. And there's
14 nobody from that side, from the defense, telling you that it
15 was wrong in anyway his reaction when a man had a gun.

16 However, when we're up here in front of you and he
17 testified that that fellow was trying to get the gun from
18 him or thought he was trying to get him, wrestling for the
19 gun or what, in-between the two doors, running away, that
20 fellow, you'll have the video to see what you can see of
21 that.

22 But here's the thing. Shot at his chest at point blank
23 range. Mr. Expert, all of that stuff comes out, and yet we
24 find several microscopic particles on the t-shirt.

25 Let me ask you a question or ask yourselves this

1 question. Everybody involved in this case told you the same
2 thing. Both dressed in black. Everybody involved. We kept
3 looking at the video, and it took me, I don't know why, to
4 point out the fact, and you'll be able to see this, point
5 out the fact that that fellow, Slack, had on a white t-shirt
6 hanging out from under it. Everything else.

7 Again, we get back to Slack. Slack is the one who's
8 with Dante when Dante comes back and says I got a mission.
9 Slack is the one who provides a vehicle.

10 Now, backing up again. If you believe what they say
11 that my client wants to get these guys, and let's go hit a
12 lick, get Dante, let's go hit a lick, they gonna do that
13 without a car?

14 Dante is the one who talks to Slack and comes back with
15 a mission. Slack is the one who provides the automobile for
16 this that he got from his buddy.

17 And who drives?

18 He doesn't even know. Didn't even meet the guy till
19 that weekend. Didn't even meet the guy who owned the car
20 until that very weekend. But they have him driving. Slack
21 has him driving.

22 Is there a doubt in your mind about whether maybe some
23 more investigation of Slack might of been called for in this
24 instance in this case?

25 Because you're gonna hear what we call the charge, and

1 the judge may have talked to you in his initial opening
2 remarks, but this is fundamental basic law. The State has
3 to prove to you the evidence so strong and so convincing
4 beyond a reasonable doubt.

5 Now, we'll get to see the video as I told you probably
6 too many times, and you'll get to decide whether or not
7 there's five or six inches difference in height between
8 those two robbers that come in that store.

9 And do you remember when he stood up and my client had
10 already said they're the same height or about the same
11 height?

12 You look at the video.

13 There's reasonable doubt in and of itself right there,
14 but the discharge of a firearm at point blank range into the
15 chest area with all of what you heard in Mr. Moskal
16 testified about the, how the expulsion of those particles
17 come out, and we have the minute ones that he found on a
18 shoe, and a sleeve, and a shirt, and the shirt that nobody
19 says was there, the brown and white shirt.

20 My client, if you believe them, is dressed in all
21 black. They're both dressed in all black except for the
22 t-shirt that nobody seemed to remember, the white one,
23 that's hanging down Slack's whatever, and the stuff is on
24 that shirt too.

25 And that's when I asked him, you can transfer this from

1 cloth to cloth, from one piece of clothing to the other?

2 Here we are again.

3 And you can transfer it from person to person?

4 And if you can transfer it from person to person, you
5 can, and you can transfer it from clothing to clothing,
6 there's your next reasonable doubt. He should have a bunch
7 of GSR on his clothing shot at point blank range. I don't
8 know how he missed.

9 How did he miss?

10 Well, here's how he missed. That is not the man that
11 he shot at. It's simple.

12 The judge will charge you, as I said earlier, and I am
13 not gonna put words in his mouth cause I've seen him do this
14 a time or two before, you have to be convinced as individual
15 jurors and as a collective body.

16 When I say that, I mean this:

17 Your verdict must be unanimous. All 12 of you must
18 agree on the verdict, on each and every indictment that is
19 given to you using all of this evidence. You take the facts
20 as you determine them to be, and you can take the facts and
21 the lack of facts or the lack of an identification prior to
22 an arrest or the lack of an identification until after it's
23 been plastered all over the news media or the lack of an
24 identification until 18 months afterward when Midget's the
25 only midget on that side of the courtroom.

1 But you take the law as the judge instructs you about
2 the law, and the facts as you determine the facts to be, and
3 you put those two together and the decision you come up with
4 is what we call the verdict.

5 And the word verdict comes from the combination of
6 Latin words, vera dictum and it means simply this:

7 It means to speak the truth.

8 I submit to you that the truth in this case is that
9 there was a tragic, tragic incident. There's no question
10 but that a young man lost his life unnecessarily. But the
11 question you have to answer is what's in there.

12 Has it been proven to you, each individual person on
13 this jury, has it been proven to you, beyond a reasonable
14 doubt, with evidence so strong and so convincing as to
15 remove the presumption of innocence?

16 Now, the judge will tell you the presumption of
17 innocence still remains with my client. It still remains
18 with anyone who is accused of a criminal offense because the
19 burden of proof lies with the State of South Carolina, the
20 government. The burden of proof lies with the government.
21 The same people who let this case sit for three days, let it
22 run all over the newspaper and the TV, and then decided
23 let's call that fellow and see if he can identify somebody
24 after we've arrested him.

25 What you have to do is you have to marry, so to speak,

1 the law and the facts as you determine them to be and then
2 you come up with the decision, the verdict. I submit to you
3 that the facts presented in this case and the lack of facts
4 and the way that this case was investigated and the way that
5 this case was handled from collection of clothes to
6 collection of identifications -- and even in the very
7 beginning nobody asked these people can you give us a
8 description specifically height, weight, anything specific.
9 No.

10 I submit to you that when you marry the law as the
11 judge charges you and the facts in this case, the proper
12 verdict is not guilty.

13 Thank you.

14 THE COURT: Ms. Jordan, for the State.

15 SOLICITOR JORDAN: Yes, sir.

16 Thank you, Your Honor.

17 Ladies and gentlemen, Mr., Mr. Welchel mentioned that
18 a picture is worth a thousand words. I believe this video
19 is worth one word 14 times. That word's guilty.

20 He wants to talk to you about the video and height and
21 how you can't tell the difference with the height or how you
22 can tell there's, you know, they're the same height. You
23 can tell it. You can see it in the video.

24 Ladies and gentlemen, what do we know about the camera
25 system?

1 We know the camera system was up in the ceiling.

2 What do you get from a video up in the ceiling?

3 You get an angle. The angle's going to distort the
4 height.

5 But I'll tell you this, take the video and watch it.

6 You'll have it back there with you. Watch when Brent, who
7 you saw on the stand---

8 MR. WHELCHER: Objection, Your Honor, and I hate to
9 interrupt in the closing. But she's just told the jury that
10 the angle of the video's gonna distort the height. But
11 that's already been admitted into evidence as a fair and
12 accurate representation of what happened that night. We
13 can't argue this it's distorted now after it's been admitted
14 as a fair and accurate representation.

15 THE COURT: She has the right to argue inferences that
16 can be taken from the evidence. I did hear testimony that
17 the system was contained in the ceiling of the, of the
18 building. And, so, she has the right to argue any
19 inferences that she feels might be reasonably drawn from the
20 evidence admitted.

21 MR. WHELCHER: Yes, sir.

22 THE COURT: Overruled.

23 SOLICITOR JORDAN: Thank you, Your Honor.

24 THE COURT: You may proceed.

25 SOLICITOR JORDAN: If you'll just give me a moment to

1 pull -- I want to show you just a small clip, and ask you to
2 focus on an item that's in one specific position in the
3 entire video. I'm gonna ask you to look -- I'm gonna ask
4 you to watch this light switch. It doesn't change.

5 watch when Kenneth Craig comes through the door and
6 stands right in this area. Watch where he hits that light
7 switch. 5'6". Then I want you to watch where Brent Atkins
8 hits that light switch. 6'1".

9 (WHEREUPON, a portion of the video was played for the
10 jury at this time.)

11 SOLICITOR JORDAN: Right there. His shoulder is below
12 that light switch. Even if you give him a little bit of a
13 lean it's below that light switch in that area.

14 Here's Brent. Watch him hit that light switch. It's
15 at his shoulder blades. He still has his head up above it.

16 There's your height difference right there. Not when
17 people are rushing through the front door at the very
18 beginning and the camera's up here. Look at something
19 that's stationary. Watch it. You'll have it back there.

20 Look at the video. See what it tells you cause it's
21 telling you part of this story, and there's a lot of stories
22 that are mixed in with this.

23 Let's talk about Dante Williams. My old boss use to
24 tell or he, he had this quote one time that he told me, and
25 I even saw it in the newspaper, where some, some mistakes,

1 some choices cost you 40 bucks. Some cost you your life.
2 That your successes and failures in life are based upon the
3 choices that you make.

4 Dante made some bad choices. There is no doubt about
5 that. One of the choices he made was to befriend that man
6 right there, and I'm not diminishing Dante's actions at all.
7 We clearly see what Dante did in that video. He chose to go
8 with him. Dante's story ended that night. Kenneth Craig is
9 still going.

10 What other stories do you know?

11 You know the stories from all of the, from several of
12 the people who were in the Waffle House. You've seen them
13 all on the video. You see what they went through.

14 We know the story -- we know what Brittany told you.
15 Look at all the witnesses in the stories that the, and the
16 story that they put together.

17 Brittany tells you that Midget, the defendant, is
18 talking to Dante about going on a lick or a mission for his
19 birthday. It's his idea, his choice to talk to Dante about
20 that. At that point in time Dante's like no, I'm cool. She
21 talks about how Dante and them have another conversation
22 about a mission or a lick.

23 Ladies and gentlemen, the one thing I don't recall her
24 saying is that she -- there was ever any mention of her, of
25 a conversation between Slack and Dante. I don't recall

1 that. The conversations she discussed were between Midget
2 and Dante. Not Slack. Mission/lick for your birthday.
3 Adisa even tells you that, that there's a conversation
4 between those two about a mission or a lick.

5 Brittany also told you Dante and Midget left together
6 dressed in all black. She talked to you about the brown
7 jacket. He took his jacket off. Kenneth Craig took his
8 jacket off, and said, in all black, I'm good or I'm ready.
9 I don't remember the exact words she used as to that, but
10 I'm in all black, I'm ready.

11 He was ready for the mission that he was gonna go on,
12 that he was going on with Dante.

13 And guess what, ladies and gentlemen?

14 He did. They went on that mission.

15 She also tells you that they left together. It was
16 Dante's 21st birthday. His 21st birthday was Saturday,
17 -- or not his 21st birthday. His birthday
18 was on Saturday, the , 2012. He turned 19. We know
19 where he was at 1:10 and where he remained.

20 They left together in all black. I'm good. Dante
21 comes back in for his gloves. Dante never came back, but
22 Midget did.

23 You remember how she describes that he came back?

24 He didn't just walk back in. But he came in fast like
25 he was nervous and he threw the keys. Those keys were

1 connecting him to Dante. Not that -- apparently he wasn't
2 focused on all the other stuff about leaving earlier, going
3 on a mission or a lick, all, dressed in all black and that
4 he was good. But he comes in, throws the keys down. Man,
5 he dropped his bro off, his Breck, he dropped him off. I
6 dropped him off at Pineview Hills. I dropped him off at
7 Pineview Hills.

8 No, he didn't. He tells you that. Waiting on my boy,
9 Tae. Waiting on my boy, Tae, to call. Dropped him off at
10 Pineview Hills. I think we can all agree that that didn't
11 occur.

12 Adisa, heard him talk of a mission. Dante. Midget.
13 Not Slack. She never mentioned seeing Slack. She thinks
14 Dante came back for the gloves, but she's not sure. That's
15 a ring of truth. She's not up here going yeah, he came back
16 for the gloves. She thinks he did, but she's not sure.

17 She tells you Midget came back alone, also fast, also
18 nervous, also throwing keys. Dropped my boy Tae off at
19 Pineview Hills.

20 There are stories from all those people who were inside
21 of the waffle House that night, and you heard from Justin.
22 Justin was placed in the position, by Dante and Midget, to
23 take someone's life that night. He tells you that he's, he
24 had just been at work, worked a shift, came to the waffle
25 House where he had been many times, was eating before he

1 went home to his grandmother's house where he lived, has a
2 concealed weapons permit, took it in with him.

3 You see him on the video just eating, and he sees two
4 people walk in. He doesn't get down because he doesn't want
5 to put himself in a position of vulnerability down there.
6 He tells you that there's a pistol and a black trash bag.
7 His best chance for survival was not to get on the floor.

8 The second robber crosses his vision. And if you watch
9 the video, Dante and Midget are not together, but just
10 coming in the door and then they separate. Midget comes in
11 the door, goes to the counter where Justin is sitting, and
12 places down the black bag, and then he focuses his attention
13 on the employees.

14 That's his part of the mission. He's got to get the
15 employees. He wants what's in that cash register in the
16 presence of those employees who are there. Puts the bag
17 down at the cash register. He walks around.

18 Dante is controlling the other people. He's got his
19 gun. Y'all get down. Y'all know what time it is, and you
20 hear from several of the people in the store that day that
21 both of them were talking. They were working together.
22 They were committing this crime.

23 Justin says they're all, they're wearing all black.
24 Gloves. They both have on gloves.

25 Ladies and gentlemen, that's why you don't have a

1 fingerprint. There was a partial. It was lifted. It
2 didn't match. Didn't match Midget or Kenneth Craig. Didn't
3 match Dante Williams and it didn't match Gerald, Slack
4 Davis. They had gloves on.

5 what are you not going to get on a bag if you're
6 wearing gloves?

7 Fingerprints. You're not gonna have those.

8 Justin tells you he stands up. He shoots Dante.
9 Several shots are fired, and you see Dante goes down fast.
10 But now he's left with Kenneth Craig.

11 watch the video. He says I had 30 to 45 seconds with
12 Kenneth Craig in this area. I'll show it to you. We'll,
13 we'll look at how much time he had with him.

14 (WHEREUPON, another portion of the video was played for
15 the jury at this time.)

16 SOLICITOR JORDAN: Dante's down at 36 seconds, 39, 40.
17 41, 42, 43, 44. Justin's back there in that area with him.
18 The mask is off.

19 51, 54, 56, 58.

20 1, 2, 3, 4, 6, 8, 10, 13, 15, 16, 18, 19, 20, 22, 23,
21 24, 25, no mask, 28, 29, 30, 31, 36, 37, 38, 39, 40. No
22 mask. He's right there with him.

23 we know there's also the struggle at the door that's on
24 the other angle. It's a long time for him to view that
25 person without a mask. When you see Kenneth Craig come in,

1 you can tell he's wearing a mask because it's black. The
2 whole facial outline is black.

3 But when you watch this aspect of the video, after the
4 mask has come off, you see the hairline, and the change in
5 color between his hair and his face.

6 You saw Slack. Slack has a darker complexion and less
7 hair. Look at that video and what you see. You see him.

8 Justin told you, after all that time he had to view
9 him, one hundred percent sure it was him. He had the best
10 view of Kenneth Craig that night. One hundred percent sure
11 it was him.

12 He did see him on the media. But as I recall, he
13 stated that the officers called him for a lineup, and he
14 said there's no need, you got him. Justin knew. They
15 didn't call him and say hey, have you seen the media. My
16 recollection is they called him for a lineup, no need, you
17 got him.

18 He sees him at another hearing a few weeks later.
19 That's him. He sees him here. That's him. One
20 hundred percent sure.

21 The man who spent the most time with him, the man who
22 had a heighten sense of awareness, he took out Dante and
23 then went straight to him protecting himself and the other
24 people in that Waffle House. One hundred percent sure.

25 And you see, you see the space, how close they are.

1 Waffle Houses are not that big. Not a big restaurant. It's
2 an L-shape, and they spent a lot of their time in that small
3 area of the L-shape.

4 Ladies and gentlemen, Justin's attention was on Kenneth
5 Craig. Dante, Dante was down. His attention was focused on
6 him.

7 Mr. Welchel wants to make a lot about well, there is
8 that, there was that shot at the end that was fired, and it
9 was fired in what I would call the vestibule area. Watch
10 the video and see how fast they go through the vestibule
11 area. They start struggling at the inner door and go
12 through towards the outer door.

13 Justin doesn't tell you he shot him. He says he shot
14 up. They were struggling. He shot up.

15 GSR was where?

16 On his pants.

17 Shot up. I'll get to the explanation that Kenneth
18 Craig gives you for the GSR on his pants later and I'll talk
19 to you about the bag and the collection.

20 Next you hear from Bryan Rogers. Mr. Rogers was at
21 that waffle House that night with his girlfriend. They had
22 just been down here, wanted to eat on the way back to North
23 Carolina. Stopped at the waffle House. Just got his food
24 and he sees two people coming in there, and he thinks you
25 can't wear that in the store.

1 Cause you know why?
2 They're wearing masks.
3 You don't wear masks in a store.
4 Dark clothes, mask, y'all know what time it is, get
5 down.

6 He saw Justin reach for his gun and he said thank God.
7 He told you too here that he got a look at Kenneth Craig and
8 he was pretty sure. He wasn't a hundred percent certain.

9 That's honesty, ladies and gentlemen. He's pretty
10 sure. Not a hundred percent certain, but he did see him.

11 Joseph. Joseph tells you that he's in there with his
12 friend, Amanda. They had been moving and just wanted
13 coffee. All he wanted was a cup of coffee, and that cup of
14 coffee turned into this.

15 Rushed the front door, two men, all black, masks.
16 stayed at his table. Took his phone and wallet out, and
17 remember how he remembers the details of Dante taking the
18 wallet and the phone and stacking them before he gets -- and
19 then he gets Amanda's stuff and he comes around.

20 There's your armed robbery at that point. Remember
21 where the hand of one hand of all. That's your armed
22 robbery with Dante taking those items from those two people.
23 The others are attempted armed robberies because items were
24 not taken from them cause Justin stopped it.

25 Joseph said he was in a state of shock. He talks about

1 he, the mask on the robber did come off when he got to the
2 back corner.

3 Julie Tesnar Black, one of the waitresses who worked at
4 the Waffle House, she's in the back taking a break before
5 the bar crowd. They're back in the back smoking. She
6 knows, you know, she knows the store. Knows the bar crowds
7 coming in. She's been there for a while. She talks to you
8 about this store.

9 She tells you or she shows, and you've got the pictures
10 of it, she shows you that this Waffle House has many
11 entrances and exits for vehicles. It's not just a one way
12 in and one way out. It's many.

13 221, into the Waffle House, back into the empty parking
14 lot where the abandoned Ingle's is, and I believe it was a
15 Dollar General or General or Dollar Tree back here. Right
16 here there's a roadway and entrance and exit between Waffle
17 House and McDonald's. You have another exit right here on
18 Mt. Pleasant Road.

19 Do you know who also knew this McDonald's or this, this
20 area well, this Waffle House well?

21 Kenneth Craig.

22 He told you he use to live back there, Lakeview Manner.
23 He knew the -- he knew this Waffle House wasn't one way in
24 one way out. He knew this area.

25 He picked it. He picked the mission. He came up with

1 the mission. He picked the mission and Dante went with him.
2 Knew the area. Knew the exits.

3 She said she knew what was going on, and you can see in
4 the video how she stands up and she looks out that door and
5 she sees them. She tells them all and you also heard
6 Victoria say Julie said we're getting hit.

7 The robber comes in the room, and gets them out, asked
8 for the head waitress cause he knew his part. She goes to
9 the register to open it. She's gonna give him what they've
10 got. At that point in time she says it's about the same
11 time that she hits the register when the shots go off, and
12 you see she does go down. All of them go down. I don't
13 blame them. I would of been on the floor too. She goes
14 down, but she doesn't stay down.

15 She comes up and you look at the waffle House layout.
16 There's nothing obstructing the view. State's No. 7,
17 there's nothing obstructing the view. They're not high
18 counters from where the employees were. They're no high
19 counters. That's the open area right here in the corner
20 that employees use to go in and out to serve customers at
21 tables. There's a better view of it -- pardon me for one
22 moment.

23 Right here. State's 14. It's an open area. You see
24 them in the video in this area. There's the cash register.
25 You see them back here. This is where the silverware is.

1 She had a good view of him.

2 She told you she heard his voice. It sent chills down
3 her spine. She knew it was Kenneth Craig when she saw him.
4 She heard his voice. Chills down her spine. You can't fake
5 emotions like that.

6 You can fake tears. We saw someone trying to do that
7 yesterday.

8 Victoria working. Julie said they're getting a hit.
9 Comes in, got the masks on. Like I said, you can see where
10 he's got the mask on where his, it's all one black area in
11 his face region when he comes through the door of the back.

12 I said well, what did he look like, expecting some
13 characteristics, and she looks and goes him. Kenneth Craig.
14 Justin. Julie. Victoria. Bryan, not sure, pretty sure,
15 but not a hundred percent it was him.

16 And you got a chance to look at Kenneth Craig and also
17 to look at Slack. You got to see them both. There's
18 differences between the two of them. Hair. Slack doesn't
19 have as much. Shorter cropped. He has a fuller area of
20 hair all over on the sides and everything.

21 Look at that video when that mask is off. That's him.
22 Slack also has a darker complexion then Kenneth Craig. The
23 video is him.

24 Brian Outlaw was the first officer on scene. He was
25 just across 85 at Motel 6. Thank goodness officers work

1 extra duty cause he was right there. He tells you that he's
2 in the parking lot of Motel 6 in his car. Gets the call and
3 goes. Lights are on. Lights are on.

4 You-all -- you know also that the phone call -- you see
5 Justin hand the phone call or the phone in the video over to
6 the waitress to make a phone call to 9-1-1. So, the phone's
7 going on and Kenneth Craig's still in there. Still in
8 there.

9 He leaves from here. Officer Outlaw, Deputy Outlaw
10 leaves from here and goes, he estimates, maybe .3 miles.
11 Crosses over 85 and he's at the Waffle House. He tells you
12 I'm the first officer on scene by -- been there probably --
13 it's probably a minute before the other officers get there.

14 where does he tell you he parks?

15 The front of the Waffle House.

16 He doesn't say I blocked any entrances or exits. I
17 parked at the front of the Waffle House. It was just him
18 for about a minute, and I point out this time because I'm
19 gonna talk to you about timing and the defendant in just a
20 little bit cause timing doesn't add up.

21 Continuing on with each person. Investigator Shaffer's
22 there. He tells you the location of Joseph's wallet and
23 cell, at Dante's body, and you see the pictures. He takes
24 photographs of the waffle House and the gun. There's no
25 doubt that there's a gun there that night. You've got it.

1 Hand of one. The State does not have to prove that all of
2 the individuals involved had a gun. Hand of one.

3 There's your gun. That's your weapon, your deadly
4 weapon right there.

5 He collects the bag. I've already talked about the
6 prints. There's not gonna be prints. There's no -- with
7 gloves on, and it didn't match any of them.

8 Terry Carter, she takes Amanda's items off of Dante in
9 the pockets, and she tells you she gives you part of those
10 or she gives you the items -- she gives the items back to
11 Amanda because they're hers. They were taken from her.

12 Anthony Knighton tells you that he did a GSR kit on
13 Justin cause there's a time limit on the hands on people,
14 and he tells you later that night that he went and he took
15 all this clothing from the defendant. At one place, all
16 this clothing came from the defendant.

17 Mr. Welchel has made a big point about contamination,
18 they, they -- it's just contaminated.

19 Ladies and gentlemen, there was mixture. It wasn't
20 contamination. He tells you about peas and carrots and how
21 you put peas and carrots together and they're gonna mix.

22 Well, guess what you got to have to get a mixture of
23 peas and carrots?

24 You got to have the peas and the carrots. You got to
25 have the gunshot residue on one of those items to get any

1 sort of mixture. Just like you can't separate the peas and
2 the carrots, you can't separate the gunshot residue.

3 He tells you about all the trips that bag took. That
4 bag took two trips to the State Law Enforcement Division.
5 He tells you that there's multiple tests of these items.

6 Ladies and gentlemen, there were two sets of tests, but
7 the items were tested once. Not both times.

8 What was tested the first time?

9 The brown jacket that we know he's wearing at the time
10 of his arrest, and there's some particles and stuff on it.
11 The first test also was on the jeans. It wasn't during the
12 second test with the jeans. It was the first test when they
13 found the GSR the first time because it was on his clothing.
14 Peas and carrots, on his clothing, GSR.

15 You can have transfer. And I love the fact that the
16 defendant explained it away for you. He just happened to
17 pick up Slack after this, and I'll get to that in a second.
18 But I just wanted to point out he tells you it's a Crown
19 Vic. He shows you how close they were seated beside each
20 other in this Crown Vic.

21 It looked more like a smaller model Ford to me with the
22 closeness that they were seated.

23 And that Slack leans over and touches his leg at the
24 same spot Michael Moskal says he tested his pants for GSR?

25 That's an awesome coincidence. Awesome. He is one of

1 the most unluckiest men in the world if you believe some of
2 the stuff he told you.

3 Ladies and gentlemen, the GSR was there because he was
4 in the Waffle House when gunshots were fired. He tussles
5 with Justin and a shot was fired. You see them. They're,
6 they're tussling there. They're both bent. They're both
7 rushing towards the door. There's movement going on.
8 That's how he got GSR there.

9 He also had on gloves. Maybe he had his hand around
10 the muzzle. Justin tells you that he has his hand -- I'm
11 sorry. Around the ejection port. You know GSR comes out of
12 it.

13 What if he got in his car and said woo?

14 I was driving to work this morning and one thing I
15 noticed was I had one hand on the wheel and the other hand
16 right here. If he had on gloves, there's your transfer too.

17 The point is his clothes had GSR. There's no
18 contamination here. Michael Moskal testified we followed
19 procedures in there to assure that things are not
20 cross-contaminated. Cross-contaminated means from other
21 places. He's claiming contamination within this bag. Peas
22 and carrots.

23 Before I talk to you a while about the defendant's
24 story, I just want to talk to you about Brent and Keisha.
25 Brent tells you he's 6'1". Watch the video. He tells you

1 that robber is smaller than him.

2 Do you know what's smaller than him?

3 Midget.

4 5'6".

5 Watch the video. Watch the stationary object in the
6 video. Watch that.

7 He passed by him and then Brent got on the ground. Yet
8 again, don't blame him.

9 Kesha, she sees him come in. It's fast when they walk
10 through and they're not together side-by-side long. Watch
11 the video. They knew what their mission was and what each
12 one of their jobs were in that mission and they split up
13 when they come in to carry it out. All black. Masks.

14 She was talking about differences in sizes and she
15 tells you I'm five foot. Maybe she even stated that she was
16 a little below five foot. She's tiny.

17 Watching the video, at the angle, at the angle where
18 you get the view behind the register and that second robber
19 passes her, there's some difference, but she's five foot.
20 And then she tells you, in comparison to Bryan, she says
21 that the robbers were the same height, but then she talks
22 about a head difference, a head difference.

23 And she tells you she also got to the floor and she
24 stayed there and she screamed. You heard of her screams
25 from Julie and Victoria.

1 The defendant. I don't even think I could begin to
2 count the number of inconsistencies or lies that he told.
3 There were a lot.

4 He even, sitting here with you guys, told you, when I
5 asked him, I said, you knew Dante was dead on the floor of
6 Waffle House and you went back and told his family that you
7 dropped him off at Pineview Hills?

8 I believe he stated well, it was a little bit of a lie.

9 Ladies and gentlemen, that's not a little bit of a lie.
10 That's like you're either pregnant or you're not. Your
11 friend is either dead at the Waffle House where you left him
12 or he's at Pineview Hills. It's not a little bit of the
13 lie, of a lie.

14 He can't even keep up with the story he's made. He
15 can't keep up with it because it's not the truth. The truth
16 is the easiest thing to remember. Lies you've got to
17 remember. You got to remember what you told people.

18 He told Brittany and Adisa -- they testified that he
19 said I dropped off Tae at Pineview Hills. Tells you he
20 tells the officers I don't know anything. I don't know
21 anything about those conversations.

22 He also wants you to believe that the officers picked
23 him up and didn't talk to him about a robbery. They only
24 talked to him, I don't know, three to five minutes. That's
25 it. But they also filled out a waiver form with him.

1 But three to five minutes and that's it?

2 That's it.

3 Then he writes the officers a note and they go and see
4 him. They didn't stop their investigation on February or on
5 January 21st, 2012, when he was taken into custody that
6 evening. They did talk to Justin and they did talk to the
7 defendant, and they got a statement from him. Compare the
8 statement that he gave that you heard him read parts of to
9 that day to his testimony yesterday. He couldn't even keep
10 that straight.

11 A couple of the inconsistencies. He told you here that
12 he had pulled out and was at a red light on 221 when he sees
13 the cops car, the cop lights. Back in February he tells the
14 officers, prior to leaving the Waffle House, he sees two or
15 three cop cars. Prior to leaving.

16 He doesn't have an issue with understanding what the
17 word prior means. He has an issue with the fact that he
18 used it back in February of 2012. That's his problem with
19 it. Prior to leaving the Waffle House.

20 He tells you that or he testified that his statement
21 says I turned around in the store right before you get to
22 Raceway and then he shows you Raceway. He shows you that
23 the Raceway is on 85, is on the side of 85 right at Waffle
24 House. But then he remembers I've already told them I
25 turned around at the Citgo.

1 So, now, right before the Raceway is where he wants the
2 Citgo to be. You can't move buildings. The Citgo's over on
3 the other side of 85. He doesn't like the wording he used
4 back then. So, he just kind of stretches what that word
5 means right beside. Now we're across 85.

6 He tells you that when he turned back around, cause
7 that's where he dropped his friends off, and something was
8 going on cause the cop cars were turning into the Waffle
9 House. He drops his friends off there. Sees these cop
10 cars. He tries to get back in, but it's blocked. In that
11 time frame it's blocked.

12 You see the video.

13 It's about two minutes for the robbery, and he's
14 telling us that, in the span of seeing the cars turn around
15 or seeing the cop cars coming and him turning around and
16 coming back they've already got it blocked?

17 Brian Outlaw tells you I was the first one there and I
18 was there by myself for about a minute. The officers --
19 Brian Outlaw got there fast, but he was by himself. He also
20 wants to tell you, when I tried to turn, and it was blocked.
21 So, I went around to the other entrance on Mt. Pleasant Road
22 and tried to come in. It was blocked too. That must of
23 been blocked by the imaginary officer who got there in that
24 short time frame.

25 When I was little growing up -- I'm one of five kids,

1 and four of us are older than the younger one. So, I
2 remember one of my older brothers growing up would always
3 come up with imaginary people to blame things on, Orville
4 and Eugene. He even named them. Slack's not imaginary, but
5 that's who he picked to blame on, it on.

6 I love the part where he just happens to turn around
7 and just happens to run, almost hit Slack, on Mt. Pleasant
8 Road. Think about it. The timing doesn't fit. Slack
9 wasn't there. He didn't almost hit him. I almost hit him.

10 Unluckiest person I know. Unluckiest person I know.

11 He says well, Slack got in the car. That's when he did
12 the touching and the talking, and they must of been, you
13 know, he touched him. They're talking. He tells you, from
14 this witness stand yesterday, I went straight back to
15 Alexander Avenue. Straight back to Dante's family's house.

16 But what did he tell the officers back in February, a
17 few weeks after this happened?

18 I drove around for an hour and a half to two hours to
19 come up with a story. To come up with a story. Tells you
20 in that story that he tells Slack well, Dante and I had gone
21 to Pineview Hills. But he told you guys yesterday that he
22 went to Pineview Hills with Dante, Slack -- with both of
23 them. He can't keep up with the lies he's told because
24 they're not the truth.

25 He also has told you that in this statement yesterday

1 he says he turned around, after he tells you he turn around
2 at the store right beside the Raceway, he tells you later on
3 that he turned around at the store where he got the gas.
4 So, even on this day he couldn't keep his lies straight.
5 The truth doesn't change. Lies do.

6 If you believe, if you believe parts of his story, then
7 he's made himself -- he drops them off and he's the getaway
8 driver if you want to believe his story. He just happened
9 to drop them off. They just all happened to wear all black.
10 There was a gun. There's a couple of masks. You see Dante
11 had on two masks.

12 Ladies and gentlemen, look at this mask. Its original
13 intention was not to be a mask. It appears to me to be the
14 sleeve of a black shirt with holes cut out. So, Dante just
15 happened to have this with him.

16 He just happened, from the time that he was dropped off
17 and walked into that waffle House, made another mask?

18 They planned it. It was their mission. Hitting a
19 lick.

20 Let's talk about how unlucky he is. I like to cap -- I
21 like to call it the just so happened aspect of his story.
22 If you believe his story, he just so happened to be with
23 Brittany and Adisa who just so happened to talk to the cops
24 about the mission or the lick. Just so happened.

25 He just so happened to end up with a vehicle that night

1 from people he didn't know. He tells you I was driving it.
2 Just so happened.

3 He just so happened to be in a car with two people who
4 were gonna go commit armed robbery where they're all dressed
5 in black?

6 where, before he leaves, it just so happens that
7 Brittany talks about he changes his clothes or he doesn't
8 change his clothes. He says -- takes off his jacket. I'm
9 in all black. I'm good.

10 He was starting his mission. The mission didn't start
11 when they walked into the Waffle House. It started at
12 Alexander Avenue when he started talking about it and
13 planning it.

14 He just so happened to drive them to the robbery. They
15 were going to Pineview Hills and then they were going to
16 Cowpens via 221, and then they stopped for gas and they're
17 like oh, just drop us off at the Waffle House, the Waffle
18 House that he lived around, he knew it. Just drop us off
19 there. Just so happened.

20 He also, and this is probably the craziest part of his
21 story, he just so happened to drop off two people to rob a
22 Waffle House who give him the getaway car. I'm gonna commit
23 a robbery, but I'm gonna let you take the car. You take it
24 with you. Just leave us.

25 It doesn't add up. It's just another one of his

1 stories that he tells.

2 He's with people who are dumb enough to give away the
3 getaway car. Go ahead and take it with you.

4 He also just so happened -- and we talked about this.
5 So, I won't belabor it. Just happened to run back into
6 Slack. Just so happened.

7 Thank goodness those cop cars had blocked that first
8 entrance and that second entrance. Thank goodness for that.
9 Just so happened.

10 He just so happened to go back and tell the family I
11 don't know where Dante is -- or I'm sorry. I dropped Dante
12 off at Pineview Hills. Brittany and Adisa remember that.

13 So, under his story, Brittany just so happened to lie
14 to the officers. Adisa just so happened to lie to the
15 officers. They both talked about licks or missions. Just
16 so happened.

17 They weren't lying, ladies and gentlemen. They told
18 the officers what they heard. They told the officers who
19 Dante left the Waffle House with, I'm sorry, who Dante left
20 Alexander Avenue with. Dante left with him. All black.
21 Dressed in all black.

22 Look at the video, ladies and gentlemen. Justin
23 Harrison tells you it's him. Victoria tells you it's him.
24 Julie tells you it's him. Watch the video. It tells you
25 that too.

1 There's -- we've -- I've, I've hit on this too that the
2 number of cop cars that he says he saw. It ranges anywhere
3 from three, four, whatever number, whatever story you want
4 to take. Changes it around.

5 He told you yesterday, as he testified, one of his
6 statements was just a little bit of a lie. A little bit of
7 a lie.

8 Ladies and gentlemen, the hand of one is the hand of
9 all. He was with Dante Williams that night. He committed
10 these crimes that night.

11 Kenneth Craig's story with Waffle House hasn't finished
12 yet. You get to write that ending and it's guilty.

13 Thank you.

14 THE COURT: Ladies and gentlemen, that completes the
15 closing arguments or statements by counsel. We've been
16 going for a little while. So, we're gonna take a short
17 break before I start my charge on the law cause it will take
18 a few minutes as well and I know you probably need to
19 stretch your legs.

20 I'm gonna ask that you step back to the jury room, and
21 this may be the last time -- well, I may ask you one other
22 time -- that I'll tell you not to begin any discussions
23 about this matter until I've completed my charge on the law
24 and instructed you to begin your deliberations.

25 So, at this time, you may retire to the jury room.

1 Thank you very much.

2 (WHEREUPON, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. Court will be in a brief
5 recess.

6 Thank you.

7 (WHEREUPON, a short recess was taken at this time.)

8 THE COURT: Are you ready, Ms. Jordan?

9 SOLICITOR JORDAN: Yes, sir.

10 THE COURT: Are you ready, Mr. Welchel?

11 MR. WELCHEL: Yes, sir.

12 THE COURT: Bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect the
16 jury has returned to the courtroom.

17 Now, ladies and gentlemen of the jury, when we began
18 the trial I went over with you a set of indictments in this
19 case. The indictments, I explained to you at that time, are
20 the documents that bring this case before the Court, and it
21 explains or describes to the Court the charges to be tried
22 and it informs the defendant of the charges that have been
23 lodged in this case.

24 Now, the indictments are here before me, and I'm going
25 to go over those with you briefly. There, there are two

1 indictments for armed robbery. That is Indictment
2 12-GS-42-2199. That indictment is for the offense of armed
3 robbery. It has two counts in that indictment. One count
4 for the offense of armed robbery. The other count is for
5 the possession of a firearm during the commission of a
6 violent crime.

7 I'm not gonna read all of the indictments to you
8 because they all allege the same elements of the crime. But
9 I will go over this indictment with you, and then I will go
10 over at least one of the attempted armed robbery indictments
11 with you in detail.

12 This indictment states, in Count Number One, for armed
13 robbery, that the defendant, Kenneth Jowan Craig, did, in
14 Spartanburg County, on or about January 21 of 2012, while
15 armed with a pistol, dirk, slingshot, metal knuckles, razor,
16 knife, or other deadly weapon, or while engaged, either by
17 actions or words or, excuse me, or while alleging, either by
18 actions or words, that he was armed while using a
19 representation of a deadly weapon or any object which a
20 person present during the commission of the robbery
21 reasonably believed to be a deadly weapon feloniously take
22 from the person or presence of Amanda Kiwitz, by means of
23 force and/or violence and/or intimidation, to wit, goods or
24 money in violation of Code Section 16-11-330(a) of the Code
25 of Laws of South Carolina, 1976 as amended.

1 Count Two of that indictment is for the charge of
2 possession of a firearm during the commission of a violent
3 crime. That indictment states or that count of the
4 indictment states that Kenneth Jowan Craig did, in
5 Spartanburg County, on or about January 21 of 2012, possess
6 a firearm during the commission of a violent crime as
7 defined in Code Section 16-1-60. To wit, armed robbery in
8 violation of Code Section 16-23-490 of the Code of Laws of
9 South Carolina, 1976 as amended, against the peace and
10 dignity of the state and contrary to the statute in such
11 case made and provided.

12 Now, that's the indictment, the first indictment for
13 armed robbery. The second indictment for armed robbery is
14 Case Number 13-GS-42-2855. That indictment alleges the same
15 elements of the crime. It alleges that the victim in this
16 case was Joseph McCullough, and it alleges that it occurred
17 at the same date as the other.

18 Now, I'll be giving these indictments to you to take
19 into the jury room. So, you'll have an opportunity to
20 review them if you would like to do that during your
21 deliberations.

22 Now, the other indictments in this case, and there are
23 eleven of them, beginning with Case Number 13-GS-42-2844 and
24 ending with Case Number 13-GS-42-2854, those indictments are
25 all for the offense of attempted armed robbery, and I will

1 read Indictment 13-GS-42-2844 for attempted armed robbery.

2 It states that Kenneth Jowan Craig did, in Spartanburg
3 County, on or about January 21 of 2012, while armed with a
4 pistol, dirk, slingshot, metal knuckles, razor, knife, or
5 other deadly weapon, or while alleging, either by action or
6 word, that he was armed while using a representation of a
7 deadly weapon or any object which a person present during
8 the commission of an attempted armed robbery reasonably
9 believed to be a deadly weapon, feloniously attempt to take
10 from the person or presence of Brent Atkins by means or
11 force or intimidation, to wit, goods or monies in violation
12 of section 16-11-330(b) of the Code of Laws of South
13 Carolina, 1976 as amended, against the peace and dignity of
14 the State, and contrary to the statute in such case made and
15 provided.

16 Now, the other indictments allege the same offense, the
17 same elements of the offense on the same date. They each
18 allege a different victim.

19 Case Number 2845 alleges as the victim being Bryan
20 Rogers.

21 Case Number 2846 alleges as the victim being Victoria
22 Felton.

23 Case Number 2847 alleges the victim to be Julie Tesnar.

24 Case Number 2848 alleges as the victim James Long.

25 Case Number 2849 alleges the victim to be Kimberly

1 Henderson.

2 Case Number 2850 alleges as the victim to be Nikki
3 Scruggs.

4 Case Number 2851 alleges the victim to be Jamie Mattox.

5 2852 alleges the victim to be Linda Greene.

6 2853 alleges as the victim to be Amanda Jolly.

7 2854 alleges as the victim Justin Harrison.

8 So, those are the allegations that are contained in the
9 indictments, and I'm going to tell you and charge you that
10 a, the fact that a defendant has been arrested, charged, and
11 indicted in this case, those facts do not constitute
12 evidence in this case, and can not be considered by you as
13 evidence in this matter nor does the fact that there's been
14 an arrest or an indictment create any presumption or
15 inference of guilt.

16 The documents I've discussed with you are simply the
17 documents, the formal written instruments that bring the
18 case before the Court. And, again, it informs both the
19 Court and the defendant of the charges to be tried.

20 Now, when you have a case with multiple indictments,
21 each indictment charges a separate and distinct offense,
22 and, therefore, the law requires that each indictment must
23 be decided separately on the evidence and the law that
24 applies to each indictment, and your decision should be
25 uninfluenced by your decision as to any other indictment.

1 The defendant can be convicted or acquitted on any or
2 all of the offenses charged, and you're going to be asked to
3 write a separate verdict as to each indictment that I've
4 gone over with you in this case. That verdict would be
5 either guilty or not guilty as to the charges that are
6 contained in those indictments.

7 I told you at the beginning of the charge that the
8 defendant has pled not guilty to the indictments. Under the
9 law and the Constitution of this State, that plea places the
10 burden of proof on the State to prove the defendant guilty.
11 I will tell you that a person whose been charged with the
12 commission of a criminal offense in South Carolina is never
13 required to prove himself innocent of that charge.

14 I charge you it's an important rule of law that a
15 defendant, in a criminal trial, no matter what the
16 seriousness of the crime might be, under our system, will
17 always be presumed to be innocent of the crime for which the
18 indictments have been issued until and unless you, the jury,
19 are convinced of the defendant's guilt by evidence that
20 satisfies you of that guilt beyond a reasonable doubt.

21 The presumption of innocence doesn't end when you begin
22 your deliberations. It continues into your deliberations.
23 It accompanies the defendant throughout the trial until such
24 time as you, the verdict -- you, the jury, might reach a
25 verdict of guilt based on evidence that satisfies you of

1 that guilt beyond a reasonable doubt.

2 Now, to give you kind of a visual idea of what we mean
3 by this presumption of innocence that remains with the
4 defendant, I want you to kind of visualize that presumption
5 of innocence somewhat like the robe that I wear into the
6 courtroom everyday. That presumption of innocence remains
7 about the defendant's shoulders throughout the trial. It
8 accompanies the defendant into your deliberations in the
9 jury room. It remains about the defendant's shoulders until
10 such time as it has been stripped from him by evidence that
11 satisfies you of the defendant's guilt beyond a reasonable
12 doubt.

13 So, the presumption of innocence it not just a legal
14 theory and it's not just a legal phrase. It's a substantial
15 right. Every defendant is, is entitled to that presumption
16 of innocence until you, the jury, are satisfied, from the
17 evidence, of the defendant's guilt beyond a reasonable
18 doubt.

19 Now, you've heard me refuse, refer to the standard of
20 proof of proof beyond a reasonable doubt several times
21 already, and I, I believe you understand it's a very
22 important concept in our criminal justice system, and you
23 may be asking yourself well, just what is the definition of
24 a reasonable doubt.

25 what is a reasonable doubt?

1 I will tell you that a reasonable doubt has been
2 defined as that kind of doubt that would cause a reasonable
3 person to hesitate to act, and the state has the burden of
4 proving the defendant guilty beyond a reasonable doubt.

5 Now, I want to draw a distinction for you. Some of you
6 may have served or been involved in cases involving civil
7 matters. Civil cases are cases involving the, someone
8 seeking monetary damages and that could be for various
9 reasons that someone may think someone else owes them money.
10 And, in civil cases, the standard of proof is different than
11 in this case.

12 The standard of proof in a civil case is proof by the
13 greater weight or the preponderance of the evidence. If
14 you've ever seen the scales of justice. That would be the
15 scales of justice tilting ever so slightly in favor of
16 either a plaintiff or a defendant in a civil case. So,
17 that's the standard of proof in a civil case. That's not
18 the standard of proof we use in criminal cases.

19 The standard of proof used in a criminal case is more
20 powerful than that. It's proof beyond a reasonable doubt.

21 Now, proof beyond a reasonable doubt would be that kind
22 of proof that would leave you firmly convinced of the
23 defendant's guilt. Now, I'm going to tell you there's very
24 few things that go on in peoples lives that can be proven
25 beyond any doubt whatsoever, and that's not the standard of

1 proof that the State is held to. They're not required to
2 prove their case beyond any doubt whatsoever.

3 I will tell you that if, based on your consideration of
4 the evidence, if you are firmly convinced that the defendant
5 is guilty of the crime charged, again, beyond a reasonable
6 doubt you must find the defendant guilty. However, on the
7 other hand, if you think there's a real possibility that the
8 defendant is not guilty, then you must give the defendant
9 the benefit of that doubt and find him not guilty.

10 Now, I will remind you that, during the trial, you and
11 I have had different duties to perform. It's been my job
12 and responsibility to preside over the trial, and I've had
13 to rule on the admissibility of evidence and questions
14 concerning the appropriateness of questions that may have
15 been asked, and I will tell you that if there was anything
16 that I ruled out, did not allow into evidence, or struck it
17 from the record, then you should not consider any matter
18 such as that at all in reaching a verdict.

19 You are to consider only the competent evidence that's
20 been put into the record of the case during the trial, and
21 you are only to consider the testimony which has been
22 presented from the witness stand and the exhibits which have
23 been made a part of the record and any stipulations as to
24 the admissibility of evidence made by the attorneys in this
25 matter.

1 I have now the additional duty of charging you
2 concerning the law, and I'm going to remind you, at the
3 beginning of the trial, I told you that I am the sole judge
4 of the law in this case, and it's your duty to accept and
5 apply the law as I now state it to you.

6 Again, if you have an idea as to what the law is or
7 what it ought to be, you should leave those notions outside
8 of the jury room. It's your responsibility to take the law
9 exactly as I state it to you and apply it to the facts as
10 you find those facts to be because, in every case tried in
11 this Court before a jury, you are the sole and exclusive
12 judges of the facts.

13 Again, I'm going to caution you, you should not take
14 from anything that I have said or that I am saying or
15 anything that I do in this case to somehow indicate to you
16 that I have an opinion one way or the other as to how you
17 determine the facts in this case. The law doesn't allow a
18 judge an opinion on that subject, and I can assure you I
19 have no opinion as to how you should determine the facts in
20 this case. So, don't infer, from anything that I've said or
21 done or might say or do, to indicate otherwise. I do not
22 have an opinion as to how you determine the facts in this
23 case.

24 As jurors, it's your duty to determine the effect, the
25 value, the weight, and the truth of the evidence that's been

1 presented during this trial. Now, in doing so, you have the
2 right to consider two types of evidence, and let me explain
3 to you what I mean by the two types of evidence you can
4 consider.

5 The law generally classifies evidence as either direct
6 evidence or circumstantial evidence. Direct evidence is
7 testimony by a witness who claims to have direct knowledge
8 of the facts about which that person testified. Someone who
9 experienced the events about which they're testifying. That
10 is someone such as an eye witness or a participant in an
11 event. They can testify directly as to what they saw,
12 heard, felt, smelled, things that they experienced directly.
13 So, that's what we mean by direct testimony, direct evidence
14 on a particular issue.

15 The other type of evidence that a jury has the right to
16 consider is what we call circumstantial evidence. Now,
17 circumstantial evidence is different from direct evidence.
18 Circumstantial evidence involves proof of a chain of facts
19 or circumstances that indicate the existence of another
20 fact. It's been described as proof of collateral facts from
21 which a main fact might be reasonably inferred.

22 That's a lot of lawyer language, and I like to use a
23 very simple example I've used as long as I've been on the
24 bench, and I think it explains to you what we mean by proof
25 of facts by circumstantial evidence.

1 Let's say last night, before you went to bed, you
2 walked to the window in your bedroom and looked outside.
3 The stars were shining. It's a beautiful night out,
4 outside, and you went to bed and you slept well all night.
5 Didn't wake up at all.

6 The next morning you got up and walked to the same
7 window at your home and looked outside and the sun might be
8 shining. But then you notice there's water dripping from
9 all the trees. The driveway in front of your house is wet.
10 The grass is wet. There's puddles in the road.

11 Now, during the night, you slept well all night. You
12 didn't see it rain. You didn't hear it rain. So, you
13 didn't directly experience that. But from a chain of facts
14 that you know to be true, you could reasonably infer that at
15 sometime during the night it rained. So, that's what we
16 mean by a chain of facts or circumstances indicating the
17 existence of another fact or collateral facts from which a
18 main fact might be reasonably inferred.

19 So, that's what we mean by proof by circumstantial
20 evidence. So, circumstantial evidence is, is not based on
21 observation. It's based on evidence -- inference.

22 Now, the law doesn't make any distinction between the
23 weight or the value that you can give to either direct or
24 circumstantial evidence nor is there a greater degree of
25 certainty required for circumstantial evidence to be, to

1 warrant a finding of fact than that of direct. I will tell
2 you, as jurors, you should weigh all of the evidence in this
3 case, both direct and circumstantial. And if, after you've
4 weighed all the evidence, if you're not convinced of the
5 defendant's guilt beyond a reasonable doubt, then you must
6 find the defendant guilty. However, on the other hand, if
7 you're firmly convinced of the defendant's guilt beyond a
8 reasonable doubt, you must find the defendant guilty.

9 Now, as being the finders of the facts, I explained to
10 you, at the beginning of the trial, it's gonna be necessary
11 that you determine the credibility or the believability of
12 the testimony that you've heard during the case, and that's
13 what credibility means. It just means believability.

14 It's your duty, as jurors, to analyze and evaluate the
15 evidence and determine which evidence convinces you of its
16 truth. In determining the believability of witnesses who
17 testified in the case, you can believe one witness against
18 all of them. You can believe all of them against one. You
19 can believe all of, part of, or none of what any one witness
20 may have said.

21 You, as the sole judges of the facts, have the right to
22 consider whether a witness may have, have an interest in the
23 outcome of the case, whether or not you believe a witness
24 may have a bias or a prejudice one way or the other, whether
25 or not the witness actually had the ability to know the

1 facts that the witness purported to testify about, and
2 you've observed the witnesses as they testify, how they
3 delivered their testimony, the way they spoke. Use your
4 good common sense in evaluating the testimony that you've
5 heard. Make a determination as to the credibility or
6 believability of the testimony that you've heard in this
7 case.

8 Now, an issue in this case has been the identification
9 of the defendant as the person who committed the crime
10 charged. Now, I will tell you, the State has the burden of
11 proving identity beyond a reasonable doubt. You must be
12 satisfied, beyond a reasonable doubt, of the accuracy of the
13 identification of the defendant before you can convict the
14 defendant. Identification testimony is an expression or a
15 belief or an impression by a witness. You must determine
16 the accuracy of the identification of the defendant. You
17 must consider the believability of each identification
18 witness the same way as any other witnesses.

19 You may consider whether the witness had an adequate
20 opportunity to observe the offender at the time of the
21 offense. This can be affected by such things as the length
22 of time that was available, how far or close the witness was
23 from the, the alleged perpetrator, the lighting conditions,
24 and whether the witness had the chance to see or know the
25 person in the past.

1 Once again, I instruct you, the burden of proof is upon
2 the State. It extends to every element of crimes that are
3 charged and specifically it also includes the burden of
4 proving, beyond a reasonable doubt, the identity of the
5 defendant as the person who committed the crime.

6 I will tell you, as I've told you before, if, after
7 examining all of the testimony, if you have a reasonable
8 doubt as to the accuracy of the identification, you must
9 find the defendant not guilty. However, on the other hand,
10 after examining all the testimony, including the
11 identification testimony, if you are firmly convinced of the
12 defendant's guilt beyond a reasonable doubt, you must find
13 the defendant guilty.

14 Now, in this case, the defendant has been charged with
15 several offenses, and I'm going to go over, first of all,
16 the offense of armed robbery. Armed -- the offense of armed
17 robbery is located in the South Carolina Code of Laws in
18 Code Section 16-11-330. The defendant, in those
19 indictments, has been charged with armed robbery.

20 In order to prove this offense, the State must prove,
21 beyond a reasonable doubt, that the defendant took personal
22 property from the person or presence of another person.
23 Property is in the presence of a person if it's within that
24 person's reach, inspection, observation, or control so that
25 the person could, if not overcome with violence or prevented

1 by fear, keep possession of that property.

2 The State must prove, beyond a reasonable doubt, that
3 the defendant carried the property away intending to
4 permanently deprive the owner of that property and to keep
5 the property for the defendant's own use. I'll tell you
6 even the slightest removal of the property or the complete
7 possession of the property, if even for an instant by a
8 defendant, would be sufficient to show a taking and carrying
9 away of the property. Taking and carrying away of the
10 property must have been done with violence or by putting the
11 owner of the property in fear of violence.

12 Finally the State must prove, beyond a reasonable
13 doubt, that the defendant was armed with a deadly weapon
14 during the robbery. A deadly weapon is defined under the
15 law as any article, instrument, or substance, which is
16 likely to cause death or great bodily harm.

17 Now, whether any instrument is a deadly weapon depends
18 upon the facts and circumstances of each case. A gun need
19 not be loaded or even operable in order for it to satisfy
20 the requirements of the statute. That fact would be an
21 evidentiary fact for you to consider along with all the
22 other evidence in the case and you give it the weight you
23 think it deserves.

24 Under the law, there are some examples of instruments
25 which have been determined to be deadly weapons, and they

1 include a pistol, a shotgun, a rifle, a dirk, a dagger,
2 knife, slingshot, metal knuckles, razors, gasoline, even
3 fire bombs, Molotov cocktails, or lighter fluid. So, that's
4 a -- those are things that you could find to be a deadly
5 weapon, but that's a question of fact for you to determine.

6 Another charge that's been levied against the defendant
7 is the attempted armed robbery. An attempt is an effort to
8 accomplish a crime, which is, does not, is not been, does
9 not succeed. An attempt includes a specific intent to do a
10 particular criminal act along with an act falling short of
11 the act that was intended.

12 The State must show more than mere preparation and
13 intent. There must be some overt act committed in an effort
14 to commit the crime. Intent means intending the result
15 which actually occurs. Not accidentally or involuntarily.
16 Intent may be shown by acts and conduct of the defendant and
17 other circumstances from which you may naturally and
18 reasonably infer intent.

19 To prove an attempt to commit a crime, the State must
20 prove that the defendant committed an overt act. It is
21 sufficient that the act go far enough toward the
22 accomplishment of the, the crime to amount to the
23 commencement of its consummation. While the efficiency of a
24 particular act depends upon the facts of a particular case,
25 the act must always amount to more than mere preparation and

1 move directly toward the commission of the crime. In any
2 events, it would seem the act need not be the last proximate
3 step leading to the consummation of the offense. The
4 preparation consists of devising and/or arranging the means
5 or measures necessary for the commission of the crime. The
6 attempt or overt act is the direct movement toward the
7 commission of the crime after the preparations have been
8 made.

9 Now, the crimes I've described to you, and especially
10 the one I just went over with you, has an element known as
11 intent, and I want to explain to you what we mean by
12 criminal intent. In order to establish criminal liability
13 for some offenses, intent is required. The example -- to --
14 for example, it's the mental state that's required to be
15 proven by the State for a particular crime, and that can be
16 intent, knowledge, recklessness, criminal negligence.

17 Criminal intent must be proven, again, beyond a
18 reasonable doubt, and it's always a matter for a jury to
19 determine whether or not criminal intent existed at the time
20 of the commission of the alleged event from the
21 circumstances surrounding the situation because there's no
22 way to prove, by direct evidence, what someone intended to
23 do in any situation. We can't cut open their head and look
24 at their brain and see what they intended to do. So, intent
25 is proven from the facts and circumstances that existed at

1 the time of the alleged instances. That's how you make a
2 determination as to whether or not the element requiring
3 intent was present.

4 It's not necessary, in order to establish intent, that
5 it be proven by direct or positive evidence. Again, it can
6 be established by inference. The same way that any other
7 fact can be established, taking into consideration the acts
8 of the parties, and all of the facts and circumstances of
9 the case.

10 Criminal intent is a mental state. It's a conscious
11 wrongdoing. It's up to you to determine what a defendant
12 intended to do based on the circumstances that have shown to
13 have existed.

14 Now, under the law of South Carolina, if a crime is
15 committed by two or more people, acting together in
16 committing a crime, the act of one person becomes the act of
17 all of the participants. A person who joins with another to
18 commit an unlawful act is criminally responsible for,
19 responsible for everything that's done by the other person
20 which happens as a probable or natural consequence of the
21 acts done in carrying out the common plan and purpose.

22 For example, two people can be guilty of killing
23 another person when only one of them had a gun and there was
24 only one bullet fired and only one of the two fired the shot
25 that caused the death. If two or more people are acting

1 together and are together assisting each other in the
2 commission of the offense, the act of one is the act of all
3 or, as it's been said by some people, the hand of one
4 becomes the hand of all.

5 Prior knowledge that a crime is going to be committed
6 without more, without more happening is not sufficient to
7 make a person guilty of that crime. Mere knowledge that
8 someone else is going to commit a crime, even if the
9 defendant is present when the crime is committed, is not
10 sufficient to convict a defendant as a principle.

11 Guilt, as a principal, is shown by actual or
12 constructive presence at a scene as a result of a prior
13 arrangement. Therefore, a finding of a prior arranged plan
14 or common scheme is necessary for a finding of guilt as a
15 principle. The State must prove, beyond a reasonable doubt,
16 by competent evidence, the theory of the hand of one is the
17 hand of all.

18 A principal in a crime is one who either actually
19 commits the crime or is present aiding, abetting, or
20 assisting in the committing of the crime. When a person
21 does an act in the presence of and with the assistance of
22 another, the acts, the act is done by both. Where two or
23 more acting with a common plan or scheme or intent are
24 present at the commission of a crime, it does not matter who
25 actually commits the crime. All are guilty. The hand of

1 one is the hand of all.

2 Present -- being present at the commission of a crime
3 means to be sufficiently near to aid, abet, assist in the
4 commission of the crime. However, mere presence at the
5 scene of a crime is not sufficient to convict one as,
6 someone as a principle on the theory of aiding and abetting.
7 Intent is also a necessary element. For there must have
8 been a common design or an intent to commit the crime, and
9 the crime must have been committed pursuant thereto with the
10 person aiding and abetting by some overt act.

11 Intent means intending the result which actually
12 occurred. Not accidentally or involuntarily. Intent can be
13 shown by conduct of the defendant and other circumstances
14 from which you may naturally and reasonably infer intent.
15 The State must prove these elements beyond a reasonable
16 doubt.

17 Mere presence, again, at the scene of a crime is not
18 sufficient to prove someone guilty of the crime. A
19 defendant's presence at a, at, where a crime is being
20 committed or mere association with a person who commits a
21 crime does not make the defendant an accomplice, aider, or
22 abettor of the person committing the crime.

23 I will charge you also that involuntary intoxication is
24 not an excuse for or a defense to a crime that, that -- or
25 charge that a defendant has committed a crime.

1 Now, also the offense of possession of a firearm during
2 the commission of violent crime was charged, and, again, the
3 State must prove, beyond a reasonable doubt, that the
4 defendant possessed a firearm and that firearm was used
5 during the commission of a violent crime, and I will tell
6 you that, under the Code of Laws of South Carolina, an armed
7 robbery is classified as a violent crime.

8 Mr. Waybright, you just happen to have seated, seated
9 yourself I believe in this chair right here, is that right?

10 Aren't you Mr. Waybright?

11 THE JUROR: Yes, sir.

12 THE COURT: You're gonna be the foreperson of the jury.
13 I guess that was just luck or maybe something happened. But
14 you happen to be in the right seat.

15 Now, as the foreperson of the jury, you'll be the
16 person who will be presiding over or conducting the
17 discussions by the jury. If, during those discussions, the
18 jury has a question that you would like to ask of the Court,
19 of me, I'd ask that you write it on a piece of paper and
20 knock on the door, pass it to the bailiff, and the bailiff
21 will see that I get it.

22 Now, I will tell you, the jury, that I can't answer
23 every question you may have in deliberations. I've told you
24 I can't get involved in your decisions concerning the facts.
25 You're the sole judge of the facts.

1 I could answer questions about the law I've charged you
2 or the procedure that we've followed, some limited questions
3 about the evidence depending on what they are. But I'm not
4 gonna ask you to edit any question the jury may have. You
5 just write them down and send them to me once the jury
6 has -- be sure the jury agrees on what questions to ask,
7 submit, submit them to me, if any, and I will give them the
8 answers I think that I'm allowed to do so.

9 Also, I will be giving you a verdict form to fill out
10 as to each indictment, and I'll explain that to you in just
11 a few minutes in more detail, and you will be filling out
12 the verdict form as verdicts are reached by the jury. Once
13 the form has been completed, I ask that you sign it, knock
14 on the door, inform the bailiff that a final verdict has
15 been reached, and you'll be returned to the courtroom in
16 order for us to receive the verdict.

17 Now, I told you at the beginning of the trial that your
18 verdict must be unanimous. All of you must agree on each
19 verdict before it is the verdict of the jury. That includes
20 the verdict on each indictment has to be unanimous before
21 you've reached a verdict. That means none of you is more
22 important than any other juror in the case. You all have an
23 equal say in the outcome of this case. So, those verdicts
24 must be unanimous as we move along with it, That process.

25 Now, I've gone over a lot of things with you. There's

1 a couple of things that I need to take care of, housekeeping
2 wise. We're going to gather the evidence together because
3 the evidence will be given to you in the jury room for you
4 to look at, and I want to be sure that only the evidence
5 that was put into the record goes with you back in the jury
6 room. I will be getting the indictments together and the
7 verdict form.

8 So, there's some things I have to go over with the
9 attorneys and I want to be sure that I haven't left
10 something out or misspoken during my charge on the law. So,
11 I'll be discussing that with the lawyers as well.

12 So, there's a brief time here that we'll be doing some
13 things. I'll get you back into the courtroom for the final
14 charge in just a few minutes. This will be the last time
15 I'll tell you to leave the courtroom and not begin any
16 discussion about this case.

17 Mr. Foreman, be sure that doesn't happen until I've
18 advised you to start deliberations. You may retire to the
19 jury room.

20 Thank you very much.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Objections to the charge from the
24 plaintiff, from the State?

25 SOLICITOR JORDAN: No, sir.

1 THE COURT: And from the defense?

2 MR. WHELCHER: Yes, sir, Your Honor.

3 THE COURT: Yes, sir.

4 MR. WHELCHER: Your Honor, at the 11:40 mark on the
5 clock you were charging the jury, and it was during one of
6 the times when you were telling the jury that the State must
7 prove this beyond a reasonable doubt, and if they don't,
8 then -- if you find that they haven't, you must find the
9 defendant -- you were going -- I thought you were going to
10 say not guilty, but actually you said guilty. And then you
11 said if they did---

12 THE COURT: Well, I'll make that real clear when they
13 come back.

14 MR. WHELCHER: All right, sir. I just wanted to---

15 THE COURT: It would of been a misspeaking on my part.

16 MR. WHELCHER: Oh, I -- that's all I'm saying, Your
17 Honor.

18 THE COURT: Okay. I'll be sure that they understand
19 that.

20 MR. WHELCHER: Yes, sir.

21 THE COURT: All of their decisions must be proof beyond
22 a reasonable doubt, and I'll explain to them that it should
23 be.

24 MR. WHELCHER: Thank you, Your Honor.

25 SOLICITOR JORDAN: Will you also give them the guilty

1 or not---

2 THE COURT: Oh, I'm gonna give them both sides.

3 SOLICITOR JORDAN: Yes, sir.

4 THE COURT: I always give them both sides of that coin.

5 MR. WHELCHEL: Yes, sir.

6 THE COURT: And that's what I'll do this time.

7 SOLICITOR JORDAN: Thank you.

8 THE COURT: All right. Now, I'll ask you to go through
9 the evidence. Be sure we have an agreement as to what's
10 going back to the jury room. I have a verdict form here if
11 you'd like to look at that please.

12 MR. WHELCHEL: Yes, sir.

13 THE COURT: Be sure there's no problems with the jury
14 form, and these are the indictments that are going back. Be
15 sure to look through them. Be sure they're all there and
16 nothing's in there that shouldn't go back.

17 (Pause.)

18 MR. WHELCHEL: Okay.

19 (WHEREUPON, a bench conference was held at this time.)

20 THE COURT: Any objection to the verdict form?

21 MR. WHELCHEL: No, sir.

22 THE COURT: Look through those to be sure we got them
23 all there. I took out what you requested.

24 MR. WHELCHEL: I think Your Honor replaced it. Let me
25 be sure.

1 SOLICITOR JORDAN: Yeah.

2 THE COURT: And this is the computer that's gonna go
3 back?

4 SOLICITOR JORDAN: Judge, it is. Would it be possible
5 to place a post-it on there that says there's no password.
6 Just click -- it's either okay or cancel cause they always
7 seem to come back and ask what the password is.

8 THE COURT: As long as he agrees on the sticky note.

9 MR. WHELCHER: Just write it out and let me see it.

10 THE COURT: Just get a sticky note.

11 SOLICITOR JORDAN: I've got to see whether it's cancel
12 or okay. I can't remember. It's okay. Okay.

13 (Pause.)

14 SOLICITOR JORDAN: It is okay. Your Honor, the sticky
15 note says there is no password. Just click okay.

16 THE COURT: We good with that one, Mr. whelcher?

17 MR. WHELCHER: Yes, sir, Your Honor.

18 THE COURT: All right.

19 SOLICITOR JORDAN: And I'll check the bag. If
20 Mr. whelcher wants to check the bag just to make sure
21 there's nothing in it.

22 (Pause.)

23 SOLICITOR JORDAN: Your Honor, there's nothing in the
24 bag that will contain the computer.

25 THE COURT: All right. Very good.

1 All right. Please be seated and let's bring the jury
2 in.

3 SOLICITOR JORDAN: Your Honor, can I put the power cord
4 in real quick?

5 THE COURT: Just one second. Just one second,
6 Mr. Scruggs.

7 okay. The power cord will be a wise thing.

8 All right. Now we can bring the jury in.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: All right. The record will reflect that
12 the jury has returned to the courtroom.

13 One thing I want to make clear to you is that on all of
14 the issues that the State is required to show in this case,
15 all of the elements of the crime, all the questions that are
16 presented to you, the standard of proof is proof beyond a
17 reasonable doubt. And, in that regard, I will tell you that
18 if, after -- based on your consideration of the evidence in
19 this case, if you are firmly convinced of the defendant's
20 guilt of the crime charged, then you must find the defendant
21 guilty. And as to any question that you have to answer in
22 reaching those determinations, again, the standard is proof
23 beyond a reasonable doubt. And if you are firmly convinced
24 as to the question that is presented to you, beyond a
25 reasonable doubt, you must find for the State on that

1 question.

2 However, on the other hand, again, if there's any
3 real -- if you find there's a real possibility that the
4 defendant is not guilty or a real possibility that you
5 should find on the question presented for the defendant,
6 then you must give the defendant the benefit of the doubt
7 and find the defendant not guilty. I may of misspoken one
8 of the times I went over that with you, and I want to be
9 sure you understand that standard of proof.

10 Now, I'm gonna pass the verdict form over along with
11 the indictments in this case.

12 Mr. Waybright, the indictments are for you to review as
13 you go through your deliberations. They're available to you
14 if you need to look at them.

15 The question -- the verdict form -- let me go over that
16 with you briefly. At the top it has the State and county
17 we're in, the caption of the case, the name of the case, The
18 State against Mr. Craig. Then it asks you a series of
19 questions. So, there is a question for each indictment that
20 you've been presented as to all of the charges.

21 Now, on one of the indictments there are two counts,
22 and I believe that's the first two questions they ask you
23 about. One is armed robbery. One is possession of a gun
24 during the commission of a violent crime. So, there -- as
25 to one indictment, one indictment, there's two verdicts on

1 that particular indictment. But on each of them the, the
2 choice is either guilty or not guilty.

3 Once the jury has reached a unanimous decision as to
4 each charge or each indictment, then you would record it by
5 putting a check or an X on the blank line next to the
6 appropriate verdict. Once all of the verdicts have been
7 reached, then you would sign the document, knock on the
8 door, and inform the bailiff that a verdict has been reached
9 on all charges.

10 Do you understand how that would work?

11 FOREMAN: Yes, sir.

12 THE COURT: All right. Now, we're going to send back
13 to you the evidence that's been presented in the case. That
14 will be available to you during your deliberations.

15 There's a computer that we're going to give you and it
16 should be a clean computer. It has a sticky note in there
17 that should give you some instructions as to how you call up
18 the video so that you can watch the video and the disk is
19 loaded into the computer already.

20 So, is that -- isn't it in the computer now or it's
21 separated?

22 SOLICITOR JORDAN: No, sir, it's separate.

23 THE COURT: It's separate. So, you'll have to load
24 that in before you start. So, it's -- but it's in the
25 evidence that you will be receiving.

1 If you have any difficulty in operating that device,
2 knock -- let the bailiffs know. We'll do what we can to get
3 that going for you.

4 Now, I realize it's a little afternoon. If you feel
5 that lunch should be ordered for the jury, please let the
6 bailiff know. It will take about 45 minutes to an hour for
7 us to get lunch here. So, you probably need to make that
8 decision pretty early on if you do want us to order. Of
9 course, you don't have to order lunch. That's up to the
10 jury. So, if you want to do that, let us know.

11 If you decide to do that, we'll send a clerk into the
12 jury room to take your lunch orders. When that clerk is in
13 the jury room, do not discuss the case at all during that
14 period of time. Stop your deliberations. Don't discuss the
15 case with the clerk. Don't, don't mention anything about
16 this case. Give your order, once you're finished, and the
17 clerk leaves, then resume your deliberations.

18 You understand how that works?

19 FOREMAN: Yes, sir.

20 THE COURT: All right. Now, at this time I'm going to
21 ask the jury to retire to begin your deliberations.

22 Ma'am, you're the alternate. You remain seated please.

23 You may retire and begin your deliberations.

24 Thank you.

25 (WHEREUPON, the following takes place outside the

1 presence of the jury. The alternate juror was dismissed at
2 this time.)

3 THE COURT: Any objections to my correction of the
4 charge and my final charge from the State?

5 SOLICITOR JORDAN: No, sir.

6 THE COURT: Any from the defense?

7 MR. WHELCHER: None, Your Honor.

8 THE COURT: All right. Then we'll be in recess until
9 such time as a verdict is reached.

10 Thank you very much.

11 (WHEREUPON, the jury began deliberations at 12:09PM and
12 returned with a question at 1:04PM.)

13 THE COURT: Ask the attorneys to approach.

14 (WHEREUPON, a bench conference was held out of the
15 hearing of the jury at this time.)

16 THE COURT: All right. State ready for the jury to
17 come in?

18 SOLICITOR JORDAN: Yes, sir.

19 THE COURT: Defense ready?

20 MR. WHELCHER: Yes, sir.

21 THE COURT: All right. Bring the jury in.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: All right. The record will reflect the
25 jury has returned to the courtroom.

1 I have received a question from the jury. The question
2 is does the hand of one ruling apply to a getaway car
3 driver.

4 Ladies and gentlemen of the jury, it's -- after
5 reviewing the question, I'm not able to answer that
6 question. A response to that question would, in my view, be
7 a comment concerning the facts in this case, and I can not
8 comment concerning the facts in this matter. So, I can not
9 answer the question as it was written.

10 Now, if the jury wants qualification -- excuse me --
11 clarifications concerning the law that I've charged,
12 something of that nature, as I've indicated that I can
13 answer questions about the law that I've charged, the, the
14 procedure that we followed, and some questions about the
15 evidence, but I'm not in a position to respond to this
16 question and would not be allowed to do so.

17 So, I'll ask the jury to retire to the jury room. If
18 you have additional questions, you can submit those in the
19 same fashion.

20 You may resume your deliberations.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Any objections to my response from the
24 State?

25 SOLICITOR JORDAN: No, sir.

1 THE COURT: Any from the defense?

2 MR. WHELCHER: None, Your Honor.

3 THE COURT: All right. The question will be made an
4 exhibit for the court.

5 (WHEREUPON, the note from the jury was marked as
6 Court's Exhibit No. 1 and received into evidence at this
7 time.)

8 THE COURT: We'll be in recess until such time as a
9 verdict is reached.

10 Thank you.

11 (WHEREUPON, the jury began deliberations again at
12 1:05PM and returned with a verdict at 1:49PM.)

13 THE COURT: All right. I'm informed that the, by the
14 bailiff that a verdict has been reached.

15 State ready to receive the verdict?

16 SOLICITOR JORDAN: Yes, sir.

17 THE COURT: Is defense ready to receive the verdict?

18 MR. WHELCHER: Yes, sir.

19 THE COURT: I will, before the jury comes in, caution
20 those who are present in the courtroom. This is a courtroom
21 setting. If you have trouble in controlling your emotions
22 in a situation such as this, I would suggest that you stay,
23 step outside of the courtroom while the verdict is read. I
24 will not tolerate any outbursts or demonstrations.

25 So, if you have difficulty in controlling your emotions

1 in this situation, step outside and we won't have a problem
2 with that situation. So, at this time if anybody would like
3 to leave, please do so.

4 Bring the jury in.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: All right. The record will reflect the
8 jury's returned to the courtroom.

9 I've been informed by the bailiffs that a verdict has
10 been reached.

11 Is that true, Mr. Foreman?

12 FOREMAN: Yes, sir.

13 THE COURT: Pass the form to the bailiff please.

14 (WHEREUPON, the foreman complies.)

15 THE COURT: Thank you.

16 Madam Clerk, you can publish the verdicts.

17 CLERK: Yes, sir.

18 THE COURT: Court come to order while the verdicts are
19 read.

20 CLERK: The State of South Carolina versus Kenneth
21 Jowan Craig, we, the jury, unanimously find the defendant,
22 Kenneth Jowan Craig, concerning the offense of armed robbery
23 against Amanda Kiwitz, on Indictment Number 2012-2199, the
24 verdict is guilty.

25 We, the jury, unanimously find the defendant, Jowan,

1 Kenneth Jowan Craig, concerning the offense of possession of
2 a firearm during the commission of a violent crime,
3 Indictment Number 2012-2199, the verdict is guilty.

4 We, the jury, unanimously find the defendant, Kenneth
5 Jowan Craig, concerning the offense of armed robbery against
6 Joseph McCullough, Indictment Number 2013-2855, the verdict
7 is guilty.

8 We, the jury, unanimously find the defendant, Kenneth
9 Jowan Craig, concerning the offense of attempted armed
10 robbery against Brent Atkins, Indictment Number 2013-2844,
11 guilty.

12 We, the jury, unanimously find the defendant, Kenneth
13 Jowan Craig, concerning the offense of attempted armed
14 robbery against Bryan Rogers, Indictment Number 2013-2845,
15 guilty.

16 We, the jury, unanimously find the defendant, Kenneth
17 Jowan Craig, concerning the offense of attempted armed
18 robbery against Victoria Felton, Indictment Number
19 2013-2846, guilty.

20 We, the jury, unanimously find the defendant, Kenneth
21 Jowan Craig, concerning the offense of attempted armed
22 robbery against Julie Tesnar, Indictment Number 2013-2847,
23 guilty.

24 We, the jury -- we, the jury, unanimously find the
25 defendant, Kenneth Jowan Craig, concerning the offense of

1 attempted armed robbery against James Long, Indictment
2 Number 2013-2848, guilty.

3 We, the jury, unanimously find the defendant, Kenneth
4 Jowan Craig, concerning the offense of attempted armed
5 robbery against Kimberly Henderson, Indictment Number
6 2013-2849, guilty.

7 We, the jury, unanimously find the defendant, Kenneth
8 Jowan Craig, concerning the offense of attempted armed
9 robbery against Nikki Scruggs, Indictment Number 2013-2850,
10 guilty.

11 We, the jury, unanimously find the defendant, Kenneth
12 Jowan Craig, concerning the offense of attempted armed
13 robbery against Jamie Mattox, Indictment Number 2013-2851,
14 guilty.

15 We, the jury, unanimously find the defendant, Kenneth
16 Jowan Craig, concerning the offense---

17 (WHEREUPON, a phone begins to ring in the courtroom.)

18 THE COURT: Take that phone please.

19 (Bailiff complies.)

20 THE COURT: Thank you.

21 Sorry, Madam Clerk, you may proceed.

22 CLERK: Yes, sir.

23 We, the jury, unanimously find the defendant, Kenneth
24 Jowan Craig, concerning the offense of attempted armed
25 robbery against Linda Greene, Indictment Number 2013-2852,

1 guilty.

2 We, the jury, unanimously find the defendant, Kenneth
3 Jowan Craig, concerning the offense of attempted armed
4 robbery against Kesha Jolly, Indictment Number 2013-2853,
5 guilty.

6 We, the jury, unanimously find the defendant, Kenneth
7 Jowan Craig, concerning the offense of attempted armed
8 robbery against Justin Harrison, Indictment Number
9 2013-2854, guilty.

10 Signed by the foreperson. Dated July the 25th of
11 2013.

12 Ladies and gentlemen of the jury, is this your verdict
13 and still your verdict, if so, please raise your
14 right-hands.

15 (WHEREUPON, all jurors raise their right-hands at this
16 time.)

17 CLERK: So say you-all.

18 THE COURT: Thank you very much.

19 Anything further from the State before I release the
20 jury?

21 SOLICITOR JORDAN: No, sir, Your Honor.

22 THE COURT: Anything further from the defense?

23 MR. WHELCHER: No, sir, Your Honor.

24 THE COURT: All right.

25 (WHEREUPON, the jury was dismissed at this time.)

1 THE COURT: Madam Solicitor, there were 13 separate
2 indictments, is that correct?

3 SOLICITOR JORDAN: Yes, sir, Your Honor, and there's
4 one with the two counts.

5 THE COURT: One with two counts.

6 SOLICITOR JORDAN: Yes, sir.

7 THE COURT: Just wanted to be sure we got them all back
8 from the jury.

9 SOLICITOR JORDAN: Yes, sir.

10 THE COURT: Ms. Jordan, for sentencing, I'd like for
11 the ELMO to be out of the way.

12 SOLICITOR JORDAN: Yes, sir.

13 THE COURT: Can you take care of that for me?

14 SOLICITOR JORDAN: Yes, sir.

15 THE COURT: Thank you.

16 (Pause.)

17 THE COURT: All right. Ready to approach the bench,
18 the bar?

19 (WHEREUPON, all parties comply.)

20 THE COURT: All right. Kenneth Jowan Craig, you have
21 been found guilty by a jury of your peers of all charges
22 that are before the Court.

23 At this time I'm going to hear from your attorney and
24 from you or anyone else you'd like to present concerning
25 sentencing in this matter.

1 Mr. Wheelchel.

2 MR. WHELCHEL: Your Honor, the first matter I'd like to
3 address the Court with is I would make a motion at this
4 time, based on the prior motions and objections I made
5 during and throughout the trial. I would renew all those
6 motions and renew or make a motion at this time for a new
7 trial notwithstanding the verdict.

8 THE COURT: All right. The motion is noted. The Court
9 would make the same or similar rulings as it made before the
10 motion and it would be denied.

11 MR. WHELCHEL: Your Honor?

12 THE COURT: I'll hear from you, Mr. Wheelchel.

13 MR. WHELCHEL: Yes, sir.

14 My client has family members here. I would ask the
15 Court if you would hear from those family members that may
16 want to, may be able to speak to the Court.

17 THE COURT: Certainly. Be glad to.

18 MR. WHELCHEL: And from him, Your Honor.

19 THE COURT: All right. One at a time.

20 The family members that wish to speak can come forward.

21 MR. WHELCHEL: They are too distraught at this time,
22 Your Honor---

23 THE COURT: All right, sir.

24 MR. WHELCHEL: ---to address the Court.

25 THE COURT: I understand.

1 All right. Mr. Craig, you want to speak -- you want
2 Mr. Craig to speak at this time?

3 MR. WHELCHER: If he would like to, yes, sir, Your
4 Honor.

5 THE COURT: All right. Mr. Craig, this is your
6 opportunity to speak to the Court. I'll be happy to hear
7 from you, sir.

8 DEFENDANT: Your Honor, no disrespect to the Court, I
9 still plead my innocence in this case, on these cases should
10 I say. I should of came forward before and told what
11 happened. I was scared. I'm on probation. I couldn't
12 afford that.

13 Honestly I couldn't -- I couldn't go to people, this
14 man family and tell them that Tae possibly dead. I don't
15 know how to do that. I didn't.

16 Believe me when I tell you I'm really sorry for what
17 happened to Tae. I had just met the little dude, the little
18 kid I say about three days to a week before that, before
19 this process -- well, before this happen. I don't wish that
20 on nobody, man. I'm not -- I don't do no robbing. No,
21 no -- I don't do.

22 Check my records. My records -- I don't do none of
23 that. If anything, Your Honor, no -- like I say, no
24 disrespect to the Court, I been framed. I mean it's not
25 hard to tell. People get up -- I can't say who lying, who

1 ain't lying. I got caught in some of mine. They wasn't
2 lies, but they wasn't all the way truth.

3 Okay. I did that. I admit that. I'm a man and I'm
4 sorry. But I got a family too. Like I say, I hate what
5 happened to Dante Williams. God bless his soul. I really
6 hate that. But if I knew what was going on before I got in
7 that car I wouldn't of got in that car. This, this man's
8 birthday. I'm not thinking about doing no, how they want to
9 say it, a lick, a mission, whatever it is, on somebody's
10 birthday.

11 One, he's young. So, I know what's on his mind is sex.
12 No disrespect to no females or none of that. It's just the
13 truth. He had sex on his mind. That's on my mind.
14 Somehow, stuff went out, went side, went out.

15 I got manipulated. Tae was manipulated, and it
16 happened. I was not nowhere near this place. I pray to God
17 I come back on this. I know, for God sake -- Ms.
18 Anderson---

19 THE COURT: Sir, you can address the Court.

20 DEFENDANT: Oh, my bad. I was fixing.

21 Mrs. Woodruff, Ms. Patricia, I'm sorry for not
22 informing y'all from the beginning. I truly am. But I did
23 not do this, and I believe y'all know I did not do this.

24 THE COURT: Sir, I said to address the Court.

25 DEFENDANT: I'm sorry. I'm sorry. My bad. Well,

1 I'm---

2 THE COURT: Maybe you misunderstood me.

3 DEFENDANT: I did. I mean -- that just me. Just
4 talking.

5 THE COURT: You talk to me.

6 DEFENDANT: Okay. Yeah, I pray to God that you please
7 have leniency. I, I got mixed up. I did the situation that
8 cost a young man his life. I regret that.

9 Now, my mother, my family, I mean also possibility of
10 family member, but not to death, to the prison bars. I
11 ain't trying to do all my time, all my life in prison. I
12 made a mistake. I made a couple mistakes. I'm sorry.

13 Please take that into consideration. I did not mean
14 that. I didn't know what's going on. I really didn't. It
15 was bad for me. It do. I did not do this, Your Honor. I
16 didn't.

17 When I -- like I say, I'm not trying to do a plan.
18 That didn't work.

19 What else can I do?

20 I leave it in God's hands and your hands from now on.
21 Please, please, Your Honor. I beg you have mercy on me at
22 this moment. I can't do this. I could not do this. I have
23 no choice. I'm sorry. I swear I'm sorry.

24 I did not know -- at that point in time when I was at
25 the house, up to a certain point in time, I still didn't

1 know what went on at that waffle House until I met Slack,
2 Rod, and Hoops that, that next morning in the car. I still
3 didn't know. I didn't. But when I found out, I should of
4 told the family. I should have and I didn't and that makes
5 me basically just as guilty as they, as him and Dante and
6 Slack cause I didn't tell them.

7 Please, Your Honor, forgive me. I make mistakes. I'm
8 a human. I'm truly sorry. I don't know what else to say.
9 I just plead leniency.

10 THE COURT: All right. Mr. Wheelchel, anything you'd
11 like to say?

12 MR. WHELCHEL: Your Honor, Mr. Craig, I believe, has
13 been as forthright with you as he possibly can at this
14 moment. He is, I believe, sorry for being involved in this
15 situation. It's an understatement, but it's just the fact
16 that it's so tragic that this had to happen.

17 I would request that the Court keep in mind, and I
18 believe the statute is 17-1-50, but I'm not sure, Your
19 Honor. It's the one that requires closely -- even though
20 they're separate offenses, it requires the sentencing to be
21 done as if they were one offense, and there's no question,
22 from what we've seen throughout this trial, but that from
23 beginning to end that was one big massive offense.

24 I would request the Court sentence in accord with that
25 statute, Your Honor.

1 THE COURT: All right. I'd like to have some personal
2 information about Mr. Craig.

3 Mr. Craig, if you can answer my questions please, sir?

4 DEFENDANT: Yes, sir.

5 THE COURT: You are 30 years of age?

6 DEFENDANT: Yes, sir.

7 THE COURT: How far did you go in school?

8 DEFENDANT: I quit school in ninth grade, but I went
9 back and got my GED.

10 THE COURT: Are you married?

11 DEFENDANT: No, sir.

12 THE COURT: Do you have children?

13 DEFENDANT: No, sir.

14 THE COURT: Were you working at the time that this
15 incident occurred?

16 DEFENDANT: Yes, sir.

17 THE COURT: And where were you working?

18 DEFENDANT: Burger King off, off Reidville Road, but
19 below the -- Motel 6. Below Denny's.

20 THE COURT: All right.

21 DEFENDANT: Up at the top of the road.

22 THE COURT: All right. Now, at this time I'll ask the
23 state to go over any prior record the individual may have.

24 SOLICITOR JORDAN: Yes, sir, Your Honor.

25 He has, from 2000, giving false or false information.

1 He has, from 2000, a disturbing schools.

2 He has a conviction from 2001 for possession of a
3 stolen vehicle.

4 He has a conviction from 2009 for unlawful possession
5 of a sawed-off shotgun. He received one year for that
6 sentence, Your Honor.

7 He has a parole revocation in '07.

8 A parole revocation in '09.

9 He has the charges of possession of crack cocaine and
10 unlawful carrying of a pistol that he received a sentence
11 of, as to the crack charge, three years suspended to 30 days
12 and 24 months probation, and then a similar sentence with a
13 one year max on the pistol case on September the 14th of
14 2011.

15 Your Honor, out of the State of California, it appears
16 to be Bakersfield County, he has a 2003 conviction for
17 assault with a firearm on a person with great bodily injury,
18 used firearm. He was convicted of that, committed to prison
19 for four years.

20 THE COURT: Is he claiming credit for time served?

21 MR. WHELCHEL: Yes, sir, Your Honor.

22 THE COURT: And his time served is?

23 MR. WHELCHEL: He's been incarcerated for exactly 18
24 months when we started the trial. So, it would be 18 months
25 and -- well, 180 days, 184 days, Your Honor.

1 THE COURT: Any objection to that?

2 MR. WHELCHEL: Oh, excuse me, Your Honor.

3 THE COURT: It would be more.

4 MR. WHELCHEL: A year and a half. So, it would be 365
5 plus another 184, Your Honor.

6 SOLICITOR JORDAN: Your Honor, I just -- I don't know
7 the exact number of days, but he has been in custody since
8 January 21st, 2012.

9 MR. WHELCHEL: 549, Your Honor, according to the clerk.

10 THE COURT: That's what I added up too.

11 MR. WHELCHEL: Yes, sir.

12 THE COURT: I would ask you have a seat at the table.
13 It's gonna take a while to fill these out.

14 MR. WHELCHEL: Ye, sir.

15 THE COURT: So, you can have a seat back at the table
16 please.

17 MR. WHELCHEL: Yes, sir.

18 (Pause.)

19 THE COURT: You can approach the bar.

20 (WHEREUPON, the parties comply.)

21 THE COURT: All right. Mr. Kenneth Jowan Craig, it is
22 the sentence of this Court, first of all, in Case Number
23 2012-GS-42-2199, Count One, which is for armed robbery, the
24 sentence of this Court is that you be confined to the State
25 Department of Corrections for a period of 20 years. I have

1 run that sentence consecutive to the sentence in the next
2 case and concurrent with the other sentences given on
3 today's date. I've given credit for 549 days.

4 The next case that I'm sentencing is Case Number
5 2013-GS-42-2844, it's a case for attempted armed robbery,
6 the Sentence is ten years. I've run that consecutive with
7 the first case I announced and concurrent with others.

8 On the possession of a weapon during the commission of
9 a violent crime, Case Number 12-GS-42-2199, the Sentence is
10 five years. I've run that concurrent with credit for the
11 days that you've requested.

12 On all others, let's see, on the other armed robbery,
13 which is 2013-GS-42-2855, the Sentence is 20 years
14 concurrent with credit for time served.

15 On all attempted armed robberies, other than the one
16 I've announced earlier, the Sentence is ten years run
17 concurrent with credit for time served.

18 Good luck to you, sir.

19 DEFENDANT: Thank you, sir.

20 MR. WHELCHER: Thank you, Your Honor.

21

22

23 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

24

25

C E R T I F I C A T E

I, Pamela E. Green, 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 22nd, 23rd, 24th, and 25th day of July, 2013.

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

August 24th, 2013



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)
)
 County of SPARTANBURG)

IN THE COURT OF COMMON PLEAS

KENNETH JOWAN CRAIG #310521
 Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2015-CP-42-937

APPLICATION FOR
 POST-CONVICTION REVIEW

FILED
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 SPARTANBURG COUNTY
 2015 MAR -6 PM 12:38
 M. HOPE BLACKLEY

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 S.C. DEPT. OF CORRECTIONS - LIEBER CORR. INST
2. Name and location of Court which imposed sentence SPARTANBURG CTY. COURT
OF GENERAL SESSIONS, 180 MAGNOLIA ST., SPARTANBURG
S.C. 29306
3. Name(s) of co-defendant(s) (if any) DONTAE LAMONT WILLIAMS,
(DECEASED).
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012-GS-42-2199 ARMED ROBBERY; POSSESSION OF A

- (b) FIREARM DURING THE COMMISSION OF A VIOLENT CRIME
 (c) 2013-GS-42-2855: ARMED ROBBERY 2013-GS-42-2844-2854;
ALL ATTEMPTED ARMED ROBBERY

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

- (a) JULY 25TH, 2013 (30 YR. SENTENCE)
 (b) SAME AS (A)
 (c) SAME AS (A) & (B)

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty N/A
 (b) after a plea of not guilty ✓
 (c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

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

- i. SOUTH CAROLINA COURT OF APPEALS
 ii. _____
 iii. _____

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

- i. CONVICTIONS AND SENTENCES "AFFIRMED"
 ii. _____
 iii. _____

(c) the date of each such result:

- i. NOVEMBER 26TH, 2014
 ii. _____
 iii. _____

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

- i. UNPUBLISHED OPINION No. 2014-UP-431
 ii. _____
 iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) N/A

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- (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
- (b) VIOLATION OF MY 6TH & 14TH AMENDMENT VIOLATION
- (c) CONFLICT OF INTEREST
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) TREAL COUNSEL FAILED TO PRESENT G.S.R EXPERT, AS WELL
- (b) AS FAILED TO FILE A MOTION TO SUPPRESS MY DUE PROCESS
- (c) RIGHTS WERE VIOLATED, THE JUDGE THAT SIGNED MY ARREST WARRANT(S) WAS THE MOTHER OF ONE OF THE VICTIM/WITNES
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

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iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

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16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL & MUST RAISE
 (b) IN P.C.R. COURT
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. RICHARD H. WHELCHER, 366 N. CHURCH ST., STE. 3000,
SPARTANBURG, S.C. 29303
 ii. DENNIS GREGORY PLACONE, 1230 MAIN ST., STE. 700,
NEXSEN PRUETT LLC, COLUMBIA S.C. 29201
 iii. ROBERT M. DUDEK, ESQ., CHIEF APPELLATE DEFENDERS,
S.C. OFFICE OF APPEALATE DEFENSE
 (b) the proceedings at which each such attorney represented you:
 i. ARRAIGNMENT, TRIAL, SENTENCING
 ii. DIRECT APPEAL
 iii. DIRECT APPEAL

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

I ASK THAT MY CONVICTION AND SENTENCE
BE REVERSED AND VACATED

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 SPARTANBURG)

VERIFICATION

I, KENNETH JOWAN CRAIG # 310521, 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.

Kenneth J. Craig

SWORN to and subscribed before me this 17th
 day of February, 2015.

Ludeman Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

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

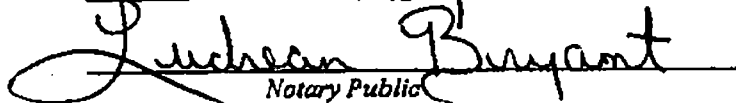
I, KENNETH SOWAN CRAIG #310521, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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 February, 2015.


Notary Public

My Commission Expires: May 26, 2020

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

10(656)

INEFFECTIVE ASSISTANCE OF COUNSEL; TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL PRIOR TO AND DURING MY TRIAL, THUS DENYING ME OF MY 6TH AND 14TH AMENDMENT RIGHTS TO THE EFFECTIVE ASSISTANCE OF COUNSEL AND A FAIR TRIAL IN VIOLATION OF DUE PROCESS, "STRICKLAND V. WASHINGTON, 104 S.C.T. 2052 (1984)". BY THE FOLLOWING ACTS OR OMISSIONS, INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

- 1). TRIAL COUNSEL FAILED TO OBJECT TO "INVALID WARRANT(S)" PRIOR TO JURY BEING SWORN IN...
- 2). TRIAL COUNSEL FAILED TO INSTRUCT THE JURY ON A LESSER INCLUDED OFFENSE OF "STRONG ARM ROBBERY"...
- 3). TRIAL COUNSEL NEVER ARGUED THE FACT TO THE JURY THAT THERE WAS NO TYPE OF GUN/WEAPON PRESENTED TO THE COURT AS EVIDENCE, THAT WOULD HAVE SHOWN THAT NEITHER THE "ARMED ROBBERY" NOR "ATTEMPTED ARMED ROBBERY" STATUTE'S WERE MET...
- 4). TRIAL COUNSEL FAILED TO REQUEST THAT I BE PLACED IN A PHOTO-LINE UP OF ANY TYPE...
- 5). TRIAL COUNSEL FAILED TO PRESENT A "G.S.R." EXPERT FOR MY DEFENSE...
- 6). TRIAL COUNSEL FAILED TO FILE FOR A "MOTION TO SUPPRESS" HEARING THAT I ASKED FOR...

2015 MAR -6 PM 12:39

DR. HOPE BLANKLEY

FILED
CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
Kenneth Jowan Craig, #310521
Plaintiff(s),

-vs-

South Carolina State Of,
Defendant(s).

IN THE COURT OF COMMON PLEAS
7th JUDICIAL CIRCUIT
CASE NO.: 2015CP4200937
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

☒ ORDER
☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

☒ Post-Conviction Relief (PCR)/habeas case	☐ Adoption	☐ Juvenile
☐ SVP case	☐ Custody and/or Visitation	☐ Abuse and Neglect
☐ Minor Name Change	☐ Other: Post Convict Rel 500	

It appears Kenneth Jowan Craig, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- ☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- ☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- ☐ court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- ☐ Other: .

Therefore, it is ordered that **John Brandt Rucker**, hereby is appointed as (Select one.)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
April 20, 2015

M. Hope Blackley

☐ Circuit Judge ☒ Clerk of Court

Plaintiff Attorney:

John Brandt Rucker	<i>Neil Moffitt</i>
Attorney at Law	<i>Clerk</i>
522 North Church Street	
Greenville, S. C. 29601 (864) 271-9925	

Defendant Attorney:

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Kenneth Jowan Craig, #310521,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2015-CP-42-0937

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on March 6, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the December 2012 term for the Spartanburg County Grand Jury, amended June 2013, for armed robbery and possession of firearm during the commission of a violent crime (2012-GS-42-2199, counts one and two). He was indicted during the June 2013 term for armed robbery (2013-GS-42-2855) and 11 counts of attempted armed robbery (2013-GS-42-2844,-2845,-2846,-2847,-2848,-2849,-2850,-2851,-2852, -2853, and -2854). Richard Whelchel, Esquire, represented Applicant. Applicant was tried before the Honorable Roger L. Couch and a jury on July 22-25, 2013. The jury found Applicant guilty as indicted on all charges. Judge Couch sentenced Applicant to imprisonment for a term of 20 years for armed robbery (2012-GS-42-2199), and 10 years for attempted armed robbery (2013-GS-42-2844) to run consecutive to one another and concurrent to the following sentences: 20 years for armed robbery (2013-GS-42-2855), 10 years

each for each remaining count of attempted armed robbery, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Robert M. Dudek, and Dennis G. Placone, Esquires, represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on November 26, 2014. State v. Craig, Op. No. 2014-UP-431 (S.C. Ct. App. filed November 26, 2014). The remittitur was returned on December 12, 2014.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the transcript of Applicant's trial, and Applicant's records from the Department of Corrections and appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Failed to object to 'invalid warrant'"
 - b. "Failed to instruct the jury on a lesser included offense of 'strong arm robbery'"
 - c. Counsel never argued that no gun or weapon was presented as evidence
 - d. Counsel failed to request photo lineup
 - e. "Counsel failed to present G.S.R. expert"
 - f. "[Counsel] failed to file a motion to suppress"
2. 6th and 14th Amendment Violations
 - a. "Due Process rights were violated"
3. "Conflict of Interest"
 - a. "Judge that signed my arrest warrant(s) was the mother of one of the victim/witness"

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial 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." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test.

However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50. In an application for PCR, Applicant must make at least a prima facie showing that would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant has failed to make such a showing. Moreover, this allegation is so vague that it is impossible for the State to respond. Accordingly, the Court should dismiss this allegation for failure to meet the requirements of the Uniform Post-Conviction Procedures Act.

V.

Respondent interprets Applicant's second claim as an allegation of judicial bias. Respondent submits Applicant's allegation regarding judicial bias is wholly without merit and should be dismissed. An allegation of judicial bias must be supported by evidence of bias. State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (quoting State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002)). However, the alleged bias "must be personal, as distinguished from judicial, in nature." Id. Allegations of judicial bias based on a trial judge's adverse ruling are wholly frivolous and are not grounds for relief. See Reading v. Ball, 291 S.C.

492, 495, 354 S.E.2d 397, 399 (Ct. App. 1987) (“The fact a judge rules against a litigant is not proof of prejudice by the judge[.] We find Reading's argument clearly frivolous[.]”).

Furthermore, PCR “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.” S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.”). Applicant’s allegations regarding judicial bias could have been raised at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, Respondent requests these allegations be dismissed pursuant to Rule 12(b)(6), SCRCP.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing solely on the allegation of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRCP. All claims should be made well in advance of the PCR hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11, SCRCP. Filings by Applicant will not be considered at the PCR hearing.

VIII.

Each and every allegation contained within the application not expressly admitted, qualified or explained above is hereby denied.

IX.

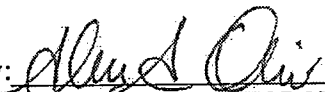
WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claim of ineffective assistance of counsel.

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Attorney General

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Chief Deputy Attorney General

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By: 
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Dec. 18th, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2015-CP-42-0937
KENNETH JOWAN CRAIG, #310521,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 18TH day of December, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Kenneth Jowan Craig,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2015-CP-42-0937
7 The State.) June 14, 2016
8) Spartanburg, South Carolina
9
10

11 B E F O R E:

12 HONORABLE R. FERRELL COTHRAN, JR., JUDGE
13
14

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

16 J. BRANDT RUCKER, ESQUIRE
17 Attorney for the Applicant

18 ALICIA OLIVE, ESQUIRE
19 Attorney for the State
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 MS. OLIVE: May it please the Court, Your Honor.

2 This is Kenneth Craig, 2015-CP-42-0937.

3 Mr. Craig was indicted in December of 2012 and amended
4 June 2013 for armed robbery and possession of a firearm
5 during the commission of a violent crime. He was indicted
6 June of 2013 for armed robbery and 11 counts of attempted
7 armed robbery.

8 Richard Whelchel represented him on those charges.

9 On July the 22nd through 25th of 2013 he was tried
10 before the Honorable Judge Couch and a jury. The jury
11 found him guilty as indicted on all charges. Judge Couch
12 sentenced him to imprisonment for 20 years for armed
13 robbery and ten years for attempted armed robbery to run
14 consecutively to one another and to -- and concurrently to
15 the following sentences: 20 years for armed robbery, ten
16 years for each remaining count of attempted armed robbery
17 and five years for possession of a weapon during the
18 commission of a violent crime.

19 He filed a timely notice of appeal. Robert Dudek and
20 Dennis Placone of the Office of Appellate Defense perfected
21 the appeal.

22 The Court of Appeals confirmed his conviction on
23 November 26th of 2014. The remittitur was returned on
24 December 12th of 2014.

25 He filed this application for post conviction relief

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 on March 6th of 2015 alleging various counts of ineffective
2 assistance of counsel, along with Sixth and Fourteenth
3 Amendment, due process rights violations and alleging
4 conflict of interest on behalf of, or regarding, his arrest
5 warrants.

6 Your Honor, Mr. Craig is present in the courtroom
7 today and represented by Brandt Rucker. I will turn it
8 over to him at this time.

9 THE COURT: Okay.

10 MR. RUCKER: May it please the Court. I call my
11 client, Kenneth Jowan Craig, to the stand.

12 THE COURT: Okay.

13 KENNETH JOWAN CRAIG, having
14 been first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. RUCKER

16 Q Mr. Craig, what is your current sentence?

17 A Thirty years.

18 Q Okay. And make sure you turn towards the judge so he
19 can hear you before you get into your documents. And speak
20 loudly into the microphone.

21 What were you -- were you, in fact, convicted at trial?

22 A Yes, I was.

23 Q And what were you convicted of?

24 A Possession of a firearm commission -- during the
25 commission of a violent crime, 11 attempted armed robberies

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 and two armed robberies.

2 Q All right. And did you have a trial attorney for this
3 case?

4 A Yes, I did.

5 Q Who was that attorney?

6 A Richard Whelchel.

7 Q All right. Is Mr. Whelchel the only attorney you had
8 in this case?

9 A Yes, sir.

10 Q How long were you in jail before you went to trial?

11 A Eighteen months.

12 Q Were you ever free during that time --

13 A No, sir.

14 Q -- on bond? Okay. How many times did Mr. Whelchel
15 actually meet with you?

16 A I say about three.

17 Q And in those three meetings how long did y'all meet?

18 A Probably ten or fifteen minutes max.

19 Q All right. Make sure you speak loudly.

20 A Probably ten or fifteen minutes the max.

21 Q Did y'all go over your discovery motion?

22 A Yes, we did.

23 Q All right. Did he tell you about the evidence that
24 was going to be used against you?

25 A Yes, he did.

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 Q Specifically, what did he say was the strength of the
2 case in the prosecution?

3 A I don't remember him telling me, giving me a strength.

4 Q Did he talk to you about being identified by
5 witnesses?

6 A No.

7 Q Okay. Did he talk to you about any gunshot residue or
8 anything they -- they found?

9 A Okay. Yeah, yeah.

10 Q Okay. Did -- what other evidence did he discuss with
11 you from that discovery motion?

12 A As far as G.C.R. -- G.S.R., it was about on my -- on
13 my clothes. That was it.

14 Q Okay. How long after the alleged incident were you
15 arrested?

16 A I was -- about 20 -- about 21 hours and some change
17 after the alleged incident.

18 Q Okay. Did they allege -- did they execute a search
19 warrant at your home?

20 A After I didn't get that -- got to the county.

21 Q Okay. And how did you go into custody originally?
22 Where were you when you were arrested by the police?

23 A I was on -- I can't remember the name of the street,
24 but I was at the house.

25 Q Okay. Were you in a house at that time?

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 A Yeah, I was in a house.

2 Q Was there a warrant issued for you? Did they produce
3 a warrant?

4 A No, sir.

5 Q Okay. How many -- what agency arrested you?

6 A Spartanburg Sheriff's Department.

7 Q Okay. How many people were there from the sheriff's
8 office to arrest you?

9 A Two.

10 Q Was that your home where you live?

11 A No, sir.

12 Q All right. Whose home was that?

13 A Ms. Patricia McSwain.

14 Q To your knowledge was permission given by Ms. McSwain
15 for the police to enter the home?

16 A Not to my knowledge, no, sir.

17 Q Did you discuss that with Mr. Welchel --

18 A No, sir.

19 Q -- about the whole arrest process?

20 A Oh, yes, sir.

21 Q Okay. And as part of your claim today are you arguing
22 there was an invalid arrest?

23 A Yes, sir.

24 Q And what is that based on?

25 A Nobody -- I was never -- like, no finger -- no prints

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 of mine was found on the scene of the crime. I was never
2 pointed out prior to -- prior to me being arrested by any
3 victim or witness from the scene of the crime.

4 The state never conducted a photo lineup of any type.
5 I mean, once again, the main thing was I was never placed,
6 pointed out at any point in time for 18 months while I was
7 in the county jail.

8 Q Is it your -- is it your view that Mr. Wheelchel should
9 have objected to the actual warrant and the indictment
10 based on lack of evidence?

11 A Yes, sir.

12 Q Did you discuss that with him before trial?

13 A Yes, sir.

14 Q Okay. What did he tell you in response?

15 A I really can't recall. I know we didn't do it.

16 Q Now, talking about the identification, you went in
17 the -- in the jail, the local jail, around 21 hours after
18 the alleged incident?

19 A Yes, sir.

20 Q And you were inside the jail the entire time --

21 A Yes, sir.

22 Q -- until you went to trial?

23 A Yes, sir.

24 Q What is your issue with that identification?

25 A They tried to use a 3-day identification from Justin

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 Harrison because he seen my picture on the news. But I had
2 been in jail for the whole time, the whole three days.

3 Q All right. The judge will -- has a transcript. I'm
4 sure he's read it, but we're going to have to give some
5 context so he can understand.

6 who is Justin Harrison?

7 A He was one of the victims/witnesses on the scene of
8 the crime.

9 Q Okay. And you believe his identification of you was
10 tainted?

11 A Yeah, very tainted.

12 Q And why was that?

13 A I was never -- he never pointed -- he never gave a
14 description of the second suspect the night the crime
15 happened, the night the police came and asked him to
16 give -- write a statement. It was the same night the crime
17 was committed. He never gave a description of the second
18 suspect or talking about face, facial features, clothes,
19 nothing. He was very discrete with this when I was -- when
20 I went to trial. He was very clear about what I had on
21 this day.

22 Q To your knowledge had he ever identified you
23 previously --

24 A No, sir.

25 Q -- before trial?

Kenneth Jowan Craig
Direct examination by Mr. Rucker

- 1 A No, sir.
- 2 Q Did you know him beforehand?
- 3 A No, sir.
- 4 Q Y'all were strangers --
- 5 A Yes, sir.
- 6 Q -- at the time of your trial?
- 7 A I got transcript pages to prove that.
- 8 Q Okay.
- 9 A What he said himself, that he didn't.
- 10 Q And the judge will be able to review the transcript.
- 11 Additionally, what is your -- do you have any other claims
- 12 as to identification at trial?
- 13 A They didn't file the five prongs in Neil vs. Biggers
- 14 as far as, like I say, once again, the prior description of
- 15 the suspect or that they didn't never mention the lighting
- 16 of the place or the timeframe between the initial -- the
- 17 initial appearance and the show-up. None of that.
- 18 Q Did anybody identify you at trial after going through
- 19 an identification process, photo lineup?
- 20 A Nobody. They never showed them photos.
- 21 Q Okay. And do you believe that affected their
- 22 testimony?
- 23 A Yes, sir.
- 24 Q Why do you believe that?
- 25 A Because you put -- put me in a -- in a possible lineup

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 with five other different people that -- that probably
2 supposed to look like me, he could have possibly picked the
3 right individual out of this photo lineup and not me. And
4 I asked my lawyer to do that.

5 Q To your knowledge did he formally request that of the
6 sheriff's office?

7 A I don't know. I don't think so. I don't know, yeah
8 or no. I don't think so.

9 Q Did he bring that issue up at trial to your knowledge?

10 A Yes, he did -- yes, he did.

11 Q All right. Now, what were you actually indicted for?

12 A I was indicted for armed robbery and possession of
13 a -- possession of weapon during the commission of a
14 violent crime.

15 Q All right. Do you -- do you know what the theory of
16 the case the prosecution was -- do you know what that term
17 means?

18 A No.

19 Q Okay. Do you know -- when they argue to the jury, how
20 are they arguing that you were guilty of this crime?

21 A What you mean?

22 Q As a general -- I apologize. Was the jury charge that
23 you were a coconspirator in this case?

24 A No. I was -- yeah, in the trial, but prior to
25 trial -- well, during trial, should I say, and prior to

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 trial I was charged as being a principal committer of the
2 crimes, which means I actually committed these crimes. But
3 during the -- after the state's closing arguments and after
4 the defense closing arguments the state asked the judge to
5 give the jurors the jury charge of hands of one, hands of
6 all.

7 There is no -- where my indictments -- I was charged
8 with aiding, abetting, assisting or acting together, which
9 as I been studying, are all factors of for the finding
10 guilty of hands of one, hands of all law.

11 Q Did Mr. Welchel object to that jury charge to your
12 knowledge?

13 A No.

14 Q Did you appeal this case?

15 A Yes, sir.

16 Q Were you able to appeal that issue because he --

17 A No.

18 Q Go ahead.

19 A No.

20 Q And was that because he did not actually bring that to
21 the attention of the Court?

22 A Yes, sir.

23 Q Okay. Do you -- were you ever -- we talked about the
24 gunshot residue previously. What -- what is your objection
25 to Mr. Welchel's representation of you based on

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 gunshot-residue evidence?

2 A Honestly, I can't say he -- as far as G.S.R. went, he
3 did -- he did okay job, yes, sir.

4 Q Okay. Did you -- did you believe he should have hired
5 an expert?

6 A Yeah, besides that, yes, sir.

7 Q All right. So do you think he failed you in that he
8 did not get an expert involved?

9 A Yeah, because the -- the state witness has said that
10 it was minute particles found on my clothes, G.S.R.
11 particles on my clothes. And, once again.

12 THE COURT REPORTER: I don't know what he's saying,
13 Judge.

14 THE WITNESS: Oh, excuse me.

15 A The state witness had said that it was minute
16 particles of G.S.R. found on my clothes.

17 Had my attorney requested a G.S.R. expert he probably
18 most likely could have showed the state and the jurors and
19 the judge that those particles are not amounts -- amount of
20 particles that they say happened during this crime, because
21 they -- they claim that the -- that the second suspect and
22 this Justin Harrison guy, which was the victim, slash,
23 witness were face to face when the gunshot was fired.

24 So with that being minute particles the -- the expert
25 could have argued that those particles did not match the

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 amount that would be on the person that was face to face
2 with the person shooting the gun.

3 Q Okay. And Mr. Welchel never even followed up on that
4 to your knowledge?

5 A No.

6 Q Did you talk to him about that well before trial?

7 A Yes, sir.

8 Q Okay. This is not something you discovered later --

9 A No.

10 Q Obut this is something y'all actually talked about.

11 A No, no.

12 Q And you think you were prejudiced by him not getting
13 the experts?

14 A Yes, sir.

15 Q Did he tell you they could not afford to hire an
16 expert?

17 A No, sir.

18 Q Okay. Do you know if he ever made a motion for costs
19 from the Court to be able to get an expert?

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

21 Q All right. Make sure you speak loud.

22 A I don't know.

23 Q Okay. Do you believe he investigated your case
24 properly then?

25 A No, sir.

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 Q Were there witnesses you wanted him to call?

2 A Yes, they was.

3 Q Who were those witnesses?

4 A Amanda L. Kilworth. She was a state's witness as
5 well. But she had from what I see on the film and what
6 they were saying at trial, she had the best view of the
7 second suspect because supposedly the second suspect took
8 his mask off right beside her when she was sitting down
9 eating, and she supposedly looked at the man.

10 I asked him to call her up there. His exact words to
11 me was, "what if she picks you out? what if she says it's
12 you?"

13 But during a break he went in and asked all of the
14 witnesses, because the second suspect was really at my
15 trial, but he wasn't on the stand or being charged with it.
16 But, anyway, he asked the second suspect to stand up. And
17 when he stood up he asked all of the witnesses during the
18 break what do you think now basically. And all of them had
19 changed their mind. A majority of them had. But mainly
20 Amanda L. Kilworth because she was like now she was
21 confused, she don't know any more.

22 Q Who is that second suspect?

23 A I mean, he's not up here right now, but his name is
24 Slack Gerald Davis.

25 Q Okay. And did he -- why was he at your trial?

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 THE COURT: What's his name again?

2 THE WITNESS: Gerald Davis.

3 THE COURT: Gerald Davis?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay.

6 Q Did you give a street name for him as well?

7 A Slack.

8 Q Okay.

9 THE COURT: Slack?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay.

12 Q Why was he at your trial?

13 A A state witness.

14 Q Okay. What did he -- did he testify in --

15 A No, sir.

16 Q What was he going to testify to to your knowledge?

17 A I don't know.

18 Q Did your attorney actually talk to him?

19 A I don't believe he did.

20 Q Okay. Why do you believe he was a suspect? Did you
21 get information through discovery for that?

22 A No. I don't think he was ever a suspect.

23 Q I may have misunderstood you when you said a suspect.
24 Did you have reason to believe he probably did this?

25 A Yeah.

Kenneth Jowan Craig
Direct examination by Mr. Rucker

- 1 Q okay. And what's that based on?
- 2 A well, how -- how the -- how the crime went about.
- 3 Q All right. Did you discuss that with Mr. Welchel?
- 4 A Yeah.
- 5 Q Did you talk to him about that being a possible
- 6 defense for you?
- 7 A Yeah.
- 8 Q Did he present that defense for you?
- 9 A Yes, he did, he did.
- 10 Q All right. Was Mr. Davis called as a witness?
- 11 A No, he wasn't.
- 12 Q So he -- he didn't even -- he wasn't called and pled
- 13 the Fifth. He just wasn't called at all.
- 14 A He just wasn't called at all.
- 15 Q To your knowledge he may have admitted some things on
- 16 the stand if he was called.
- 17 A I couldn't say if he did, can't say if he didn't.
- 18 Q But he present at the courthouse that day?
- 19 A Yes, yes, he was.
- 20 Q He was under subpoena by the state?
- 21 A It's in the transcript. Yes, he was.
- 22 Q Okay. And I'm just highlighting parts of the
- 23 transcript for the judge.
- 24 Were there any other witnesses that you intended to
- 25 call?

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 A Brent Atkins. He was also a victim, slash, witness of
2 the -- of the crime.

3 Q Was he called in the state's case?

4 A He was called for my defense. He was.

5 Q Okay. And what went wrong with that testimony? What
6 do you think Mr. Welchel could have done better?

7 A Honestly, nothing.

8 Q All right. But you -- you wanted him to be called
9 separately or --

10 A I wanted him to be called then on the stand for my
11 defense. He was state's witness. He was key witness for
12 the state, but we used him.

13 Q Okay.

14 A You know what I'm saying, so for the defense. And
15 during his testimony he was deprived of -- my lawyer asked
16 him a question, basically, is my client the second suspect.
17 And when he went to answer the question the judge was like
18 don't answer that question. Once again, that's in the
19 transcript as well.

20 Q Okay. Did your attorney try to make clear to the
21 judge why he was --

22 A Yes, he did.

23 Q Why that was relevant?

24 A Yes, he did -- yes, he did.

25 Q All right. Were there other witnesses you believe he

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 should have gotten in touch with and called?

2 A Nay, no, sir, no, sir.

3 Q No other witnesses.

4 A No, sir.

5 Q Are there other issues you want this Court to review
6 in addition to what we talked about?

7 A As far as this ineffective claim?

8 Q Yeah, oh, yeah.

9 A Yeah. I never talked to my investigator. I never
10 knew I had investigator until I went to trial.

11 Q Was that investigator working with the public
12 defender's office?

13 A Yes, sir.

14 Q What would that investigator have found if you would
15 have been able to talk to the investigator?

16 A He would have found that the scene of the crime is
17 video from the front of the scene of the crime showing me
18 leaving the scene of the crime. And then that's when --
19 that's from the scene of the crime itself. But on down the
20 road is a store I got gas at which shows pumping gas at the
21 same time the scene of the crime was going on.

22 Q Was that an alibi?

23 A No, sir.

24 Q Was that presented to the Court?

25 A No, sir.

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 Q To your knowledge did Mr. Welchel file any paperwork
2 showing that you had an alibi defense?

3 A No, sir.

4 Q So you -- the tape could have existed, and nobody went
5 out there to try to retrieve it.

6 A Exactly.

7 Q Was there any other alibi defense that you had in
8 addition to you believe there was a video showing you
9 weren't at the scene?

10 A No. That was it.

11 Q Now, you allege a conflict of interest. What is that
12 conflict of interest?

13 A The magistrate judge that signed my arrest warrant was
14 one of the victim's mother. As a matter of fact, it was
15 Brent Atkins' mother. And the warrant was signed 21 hours
16 and some change later after the alleged crime.

17 Q Did you raise this issue with Mr. -- Mr. Welchel?

18 A Yes, I did.

19 Q Does this fold into your invalid-arrest-warrant
20 argument as well?

21 A Yes, it does.

22 Q How did that affect the evidence that was gotten by
23 them?

24 A I mean, that's how they got the G.S.R. with the
25 clothes.

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 Q And you believe she was not a neutral and detached
2 magistrate?

3 A No. It was his mama.

4 Q Did Mr. Whelchel raise this issue at trial?

5 A Yeah, he did.

6 Q And what -- in what way did he not do what he was
7 supposed to as far as that?

8 A He didn't push. He just -- he just -- he brought it
9 up. He didn't -- he didn't -- he didn't enforce it with
10 no -- no backing behind it, no reason behind it. Know what
11 I'm saying.

12 Q Was this done in the presence of the jury or was it
13 part of a motion before trial?

14 A Present in the jury.

15 Q Are there other issues that we haven't talked about?
16 I want to make sure we're covering everything.

17 A As far as ineffective?

18 Q Yeah.

19 (Pause.)

20 A Oh, yeah. Brittany McSwain's statement and testimony.

21 Q All right. Who is Brittany McSwain?

22 A She was a key witness in the state's case on the
23 state's side.

24 Q Did Mr. Whelchel talk to her before the trial to your
25 knowledge?

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 A He tried, but she had told him that he didn't -- he
2 had -- she had told him that her solicitor told her not to
3 talk to him.

4 Q All right. What could Mr. Welchel have done
5 differently regarding her testimony?

6 A We didn't get it till ten days, a week, before trial.

7 Q Did you ask him to make a motion for continuance so
8 y'all could review it?

9 A No, I didn't.

10 Q All right. Did he, in fact, make any motion for
11 continuance?

12 A Not as I know of.

13 Q And let's go back to before the trial. Were you ever
14 given a plea offer by the state to your knowledge?

15 A Yeah, 20 -- 20 years.

16 Q Did Mr. Welchel communicate that to you?

17 A Yes, he did.

18 Q Did he advise you you should take it, or what was his
19 position on that?

20 A Left up to me.

21 Q Okay. And it was based on -- your conversation with
22 him, you thought you had a good chance at trial?

23 A I was going to trial regardless.

24 Q Now, what was -- and remind me. The witness' name we
25 just spoke about -- McSwain? I'm sorry?

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 A Brittany -- Brittany McSwain.

2 Q Okay. What was -- what did she testify to that you
3 think he could have done a better job cross-examining?

4 A Well, it wasn't the fact about cross-examining. It
5 was the fact he could -- I felt like he could've got her
6 statement and her testimony completely kicked out because
7 it -- it deprived me of a proper defense, of presenting a
8 proper defense for myself. I never seen a statement until
9 a week before the trial.

10 Q So you didn't have sufficient notice before it was
11 presented.

12 A No, none at all, exactly.

13 Q And he -- he didn't argue that at all.

14 A No. He didn't.

15 Q All right. You also have a due process claim. Did we
16 go through the basis for that already, or no?

17 A Yeah.

18 Q All right. Are there any other claims you want to
19 tell the judge about that are included in your --

20 A Subject matter jurisdiction.

21 Q What -- is that based on the hand of one, hand of all
22 charge?

23 A Yes, sir, it is.

24 Q All right. So we covered that?

25 A Yes, we did. And also as far as the arrest warrants

Kenneth Jowan Craig
Direct examination by Mr. Rucker

1 theirself. They lack probable cause.

2 Q All right. And that's the invalid arrest, part of the
3 invalid-arrest-warrant claim?

4 A Yeah.

5 Q You have to say yes or no.

6 A Yes, sir, yes, sir.

7 Q Are there any other issues you want this judge to
8 address?

9 A Prejudice.

10 Q Okay. And what kind of prejudice are you alleging?

11 A When the -- when the state asked the judge to give the
12 jury -- jury charge of hands of one, hands of all, when
13 I -- when my -- the evidence within mandamus not meet the
14 criteria for hands of one, hands of all jury charge that
15 prejudiced me and my grass [sic] was created when the -- it
16 broadened my indictments.

17 Q And/but that goes into that original argument of hand
18 of one, hand of all should not have been argued.

19 A Yeah, yeah.

20 Q Should have been objected to.

21 A Yes, sir.

22 Q All right. Do you have any other issues you want to
23 put before the Court?

24 (Pause.)

25 A That's it -- that's it.

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 Q That's it?

2 A Yeah, that's it.

3 Q All right. Answer any questions that the state may
4 have or the judge may have.

5 THE COURT: One question. I couldn't understand you.
6 Who did you say the magistrate was akin to?

7 THE WITNESS: Brent Atkins. He was a witness and a
8 victim at the scene of the crime.

9 THE COURT: And that was his mother?

10 THE WITNESS: His mother.

11 THE COURT: Okay.

12 THE WITNESS: And the warrant was signed 21 and some
13 hours later after.

14 Q Do you have the magistrate's name? The Judge might --

15 A Nancy Atkins.

16 Q Okay.

17 THE COURT: What?

18 THE WITNESS: Nancy Atkins.

19 THE COURT: Okay.

20 CROSS-EXAMINATION

21 BY MS. OLIVE

22 Q Good morning, Mr. Craig.

23 A Good morning.

24 Q Regarding this issue with the signing of the warrants,
25 your attorney raised that at trial, did he not?

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 A Yeah, he raised it.

2 Q Okay. And he made, he actually made, a proffer to the
3 judge about that and put forth evidence that Nancy Atkins
4 signed the warrant?

5 A Not that I recall.

6 Q Do you have a transcript with you?

7 A Yes, I do. It's right here.

8 Q Do you -- are you able to look at that transcript?

9 A Yes, I am.

10 Q Do you want me to show it to you? Okay. If it would
11 refresh your memory, your attorney -- would you agree with
12 me if it's in the transcript that it occurred?

13 A Yes. I agree with that.

14 Q Okay. And you would agree that your attorney made
15 this proffer and told the judge, challenged the warrant on
16 the basis that Nancy Atkins signed it?

17 A I don't recall that.

18 Q Okay. Do you recall the judge making a ruling that
19 there is sufficient evidence to justify the warrant and
20 that there was -- that probable cause existed?

21 A Yeah. I remember making a ruling probable cause
22 existed, but it wasn't behind the Nancy Atkins situation
23 though -- issue.

24 As a matter of fact, that issue -- the probable --
25 when he -- because the -- I think my lawyer raised the

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 issue about lack of probable cause. And he brought up the
2 warrants theirself being -- being very slack in indensia
3 [sic], and which they lacked. They lacked certain facts
4 and circumstances and that's what --

5 Q Can you repeat that? I'm sorry?

6 A I believe the lawyer brought up the -- the probable
7 cause issue was not about Nancy Atkins. It was about the
8 probable cause being no probable cause at all, which means
9 mine was -- I think warrants -- my warrants lacked indensia
10 [sic], facts and circumstances that would let it be known
11 for a magistrate to make actual conclusion to present this
12 indictment, I mean, just to present the search warrant. I
13 think that's what I'm telling to in the transcript.

14 Q Would it refresh your memory if I showed you the
15 transcript --

16 A Yes, ma'am.

17 Q -- regarding this argument at least?

18 MS. OLIVE: May I approach the witness, Your Honor?

19 THE COURT: Yes. What page?

20 MS. OLIVE: I'm looking at page 182 of the trial
21 transcript, specifically down at lines 22 through 25 or --
22 excuse me -- 21 through 25.

23 Q Do you remember your attorney making the argument that
24 Nancy Atkins was the mother of one of the victims and she
25 signed the arrest warrant?

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 A I remember him saying it. He brought -- it was
2 brought up.

3 Q Okay. So he challenged it on that basis?

4 A It was brought up.

5 Q Thank you.

6 And your attorney did also challenge the warrant on the
7 basis of the probable-cause issue? And the judge's ruling
8 is on pages 213 through 215 regarding that. So even though
9 he brought it up later in trial the judge still made a
10 ruling, correct?

11 A He brought up to Jason Bryant.

12 Q Even though your attorney brought up the issue with
13 the warrant later in trial the judge still made a ruling on
14 that, correct?

15 A That's -- that's -- that's when it wasn't about Nancy
16 Atkins. It was about the probable-cause issue. And it's
17 on line -- second -- page 182, lines eight through sixteen.
18 That's -- that's what the -- he brought up on the same
19 page, 182, eight through sixteen.

20 Q But he still put that before the Court, correct?

21 A But it wasn't about -- it wasn't about issue at hand,
22 the Nancy Atkins issue. It was about probable cause being
23 found, my warrant, was it or was it not? That was the
24 issue. The issue here is the Nancy Atkins issue being the
25 man's -- Justin -- I mean, Brent Atkins' mother. Neutral

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 detached magistrate is the issue here, not probable cause.

2 Q Right. But the issue -- okay. But the challenge on
3 the basis, he was challenging it for lack of probable cause
4 because it was not signed by a detached magistrate. Is
5 that your understanding?

6 A No. If you look on the same page, once again, 182,
7 eight through sixteen, it states exactly what he was
8 challenging him on. And it says...

9 THE WITNESS: 182, Your Honor, page, eight through --
10 number eight through sixteen. It says --

11 THE COURT: You've got to speak a little bit -- I
12 don't know. I can't understand it, and I don't know if my
13 court reporter can or not.

14 THE WITNESS: Yes, sir, yes, sir.

15 THE COURT: But you don't do better you're not going
16 to have a record of this.

17 THE WITNESS: Yes, sir.

18 A It says on page 182 of the transcript, numbers eight
19 through sixteen. No. I take that back, number one through
20 sixteen.

21 It says -- the Court says, "Yes, sir."

22 Number two says, "I did, yes, sir."

23 And then number three says, "Court: Did you find the
24 copies? I have -- I have a copy of it, yes, sir, attached
25 to the indictment. Okay. Now, at the time that you

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 obtained the warrant -- thank you, sir -- would you read
2 this statement here for the record starting what it listed
3 as the probable cause? Probable cause is based on the
4 following facts that on January the 21st of 2012 in the
5 city and county of Spartanburg Kenneth Jowan Craig did take
6 money belonging from the Waffle House at 2322 --

7 THE COURT REPORTER: I don't know what he's saying.

8 THE WITNESS: Excuse me.

9 THE COURT: Slow down. Don't talk so fast.

10 A I'm going to start over.

11 It says the Court says, "Yes, sir."

12 He says, "I did, yes, sir. Did you find the copies?

13 I had a copy of it, yes, sir, attached to the indictment.

14 Okay, now at the time that you obtained a warrant -- thank
15 you, sir -- would you read this statement here for the
16 record starting with it's listed as probable cause.

17 Probable cause is based on the following facts: That on
18 January the 21st of 2012 in the city and county -- in the
19 city and county of Spartanburg one Kenneth Jowan Craig did
20 take money belonging from the Waffle House at 2230 Chesnee
21 Highway, Spartanburg County, so, I mean, Spartanburg, South
22 Carolina, with the intent to deprive owner with the
23 handgun, deadly weapon, and findings and belief is based
24 upon a police investigation."

25 And it goes on to 17, and it says, "Okay. And when

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 you contacted -- contact or talk to the magistrate to
2 obtain the warrant they said I'm sorry, but I didn't hear
3 you. I'm sorry. You talked to a magistrate to obtain a
4 warrant." That's what you're talking about.

5 Q Mr. Craig, I don't mean to interrupt you, but if I
6 could direct your attention to page 83 of the transcript,
7 that's just that next page, where your attorney states what
8 the basis of his argument is. And that's line 18 through
9 22.

10 A I do see that, yes, ma'am. I do see that.

11 Q Okay. And he says, "Probable cause has to be based on
12 them obtaining information and going to a neutral and
13 detached magistrate. A neutral and detached magistrate, I
14 don't think can be the mother of one of the victims in the
15 case."

16 A That's true.

17 Q Would you agree with me he made this argument?

18 A I agree to this, yes, sir, I mean, yes, ma'am. Excuse
19 me.

20 Q And the judge made the ruling on it.

21 A Yes, ma'am.

22 Q Okay. Thank you.

23 A I agree. That goes back to my -- go ahead.

24 Q Well, he raised it and the judge ruled on it, right?

25 A No. I left it alone. You're right, correct.

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 Q Okay, now, okay. This issue regarding the gunshot
2 residue, you say that an expert could have explained that
3 the particles -- that was inconsistent with someone holding
4 and firing a gun. Is that what --

5 A No, ma'am, no, ma'am. I said it would be inconsistent
6 with someone that would be within close proximity to
7 someone that was firing a gun. That's what I said.

8 Q Can you repeat that? So you're saying that an
9 expert -- you wanted your attorney to call an expert
10 witness regarding a gunshot residue to show what now?

11 A That the particles -- that not -- that the particles
12 that they say found, which were minute particles, did
13 not -- would not match a scene that would show a person,
14 two people, being face to face to face as they described
15 the second suspect and the Justin Harrison being in trial
16 face to face with me firing the pistol. They were not --
17 they would not coincide with each other, should I say.

18 Those particles from the state, from somebody being
19 closer, would be more particles. You've find, as a matter
20 of fact, acute particles, active particles, big particles
21 of this.

22 Q Do you have an expert here today?

23 A No, ma'am.

24 Q So really we don't know what his testimony would have
25 been.

Kenneth Jowan Craig
Cross-examination by Mr. Olive

- 1 A That's the big problem.
- 2 Q Do you recall whether your attorney looked into hiring
- 3 a gunshot residue expert? I'm just asking.
- 4 A I'm fixing to answer your question for you. I
- 5 don't -- I don't recall it.
- 6 Q Okay. Do you recall whether your attorney
- 7 cross-examined the state's witness regarding the gunshot
- 8 residue?
- 9 A Yes, I do.
- 10 Q Okay. And he did, correct?
- 11 A Yes, he did.
- 12 Q And in your testimony at trial -- you testified at
- 13 trial, correct?
- 14 A Yes, sir, yes, ma'am.
- 15 Q Okay. And you testified at trial that one of the
- 16 codefendants -- that would be Slack --
- 17 A I didn't have no codefendants.
- 18 Q I'm sorry. Excuse me. The other person that you
- 19 allege was responsible for this crime, that he ran out in
- 20 front of the car.
- 21 A Yes, ma'am.
- 22 Q Okay. And then he got in and he hugged you.
- 23 A No, ma'am.
- 24 Q You don't remember testifying to that?
- 25 A Not no hug.

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 Q Okay. You say he touched you?

2 A Yeah. I say touched -- touched me on my knee.

3 Q Okay. And he was the one that supposedly held a gun?

4 A I have no idea. I wasn't in there, but from what
5 they -- from what trial states is I believe they said that
6 Justin Harrison the one that held the gun and they was --
7 they were struggling with the gun in close proximity in the
8 closed-off area.

9 Q But your defense or your -- your testimony at trial
10 was that you were driving the car that night and you
11 dropped them off and you weren't there when this happened.

12 A Yes, ma'am.

13 Q Okay. But your clothing did have gunshot residue on
14 them, correct?

15 A Yes, ma'am.

16 Q You testified on direct that you weren't aware that
17 you had an investigator prior to trial.

18 A Yes, ma'am.

19 Q But did you not tell your attorney your version of the
20 facts of this case?

21 A But it was stated, once again, just like the video. I
22 asked him to go get the video from the scene, from --
23 from -- from the scene of the crime and from the store. He
24 didn't go receive it -- go review that. So, hopefully, I
25 was hoping that I could get an investigator and he would do

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 it for me.

2 Q Okay. who? who is -- who do you understand the
3 investigator to work for?

4 A Public defender's office.

5 Q Okay.

6 A But it's my --

7 Q In connection with your attorney, correct?

8 A But it's me on -- it's horse's mouth. It's me. I
9 was -- from the horse's mouth it'd be better to get it from
10 the horse's mouth.

11 Q Okay.

12 THE COURT: Tell me what you just said.

13 THE WITNESS: It'll be better to get it from the
14 horse's mouth, like, if I was --

15 THE COURT: Oh, okay.

16 THE WITNESS: -- tell him, you know, he probably would
17 have did more.

18 THE COURT: Okay.

19 Q And you say that he could have obtained a video from
20 the front of the Waffle House?

21 A Yes, ma'am.

22 Q Okay. But there was a video from inside the Waffle
23 House, right?

24 A Yes. It is.

25 Q Okay. And --

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 A It shows two suspects.

2 Q Okay. And there's eye witness testimony about those
3 suspects at trial, right?

4 A Only at trial.

5 Q Okay. Now, you stated that you wanted him to obtain a
6 video from the gas station that would have shown you were
7 pumping gas at the same time?

8 A Yeah, no. It would have showed I -- I turned around
9 in the store at the same time, as well as I had pumped gas
10 earlier from the store. I think it's called a Hess or
11 something like that. Citgo or something. I can't
12 remember, but I -- I pumped gas there first, and I come
13 down the highway.

14 And when I seen -- like I told them on trial, I
15 supposed to go up the road. I turned around in that same
16 gas station and went back off the road towards Waffle
17 House. It would've showed all. I would've showed this car
18 because I was on the car in the light at that point in time
19 anyway.

20 Q Okay. But on direct you said that it'd have shown you
21 pumping gas at the same time. Now you're saying that's --

22 A No. I -- I had said pump, because I did pump gas at
23 the same store. That's what I meant to say.

24 Q Okay. And with regards to Brittany McSwain's
25 testimony, your attorney cross-examined her, correct?

Kenneth Jowan Craig
Cross-examination by Mr. Olive

1 A Yes, he did.

2 Q Okay. And didn't he ask her about refusing to talk to
3 him prior to trial?

4 A She was asked twice.

5 Q Okay. So he cross-examined her on that.

6 A Yeah, but --

7 Q And you stated he did try to speak with her prior to
8 trial.

9 A That what he -- no. That what he -- he stated that,
10 and she stated that he -- first time she said he came, but
11 second time -- when she -- when he went the first time he
12 told -- she told him what she said that her solicitor told
13 her she didn't have to talk to nobody. And that was far as
14 that went.

15 Q Okay. But you testified on direct that he did try to
16 talk to her before trial, right?

17 A Not me. That's what I was told. I wasn't there, but
18 yes, ma'am.

19 Q Okay. Well, you -- you didn't say somebody told you
20 that. You just stated on direct --

21 A That that -- yes, ma'am.

22 Q -- that your attorney tried to talk to her.

23 A Yes, ma'am, yes, ma'am, yes, ma'am.

24 Q Regarding the identification issue, these witnesses
25 who identified you, they were not shown a lineup, correct?

Kenneth Jowan Craig
Cross-examination by Mr. Olive

- 1 A Yes, ma'am.
- 2 Q They -- do you recall your attorney challenging their
3 in-court identification of you at trial?
- 4 A Only one. That was Justin Harrison.
- 5 Q And that issue was also raised on your direct appeal,
6 was it not?
- 7 A Yeah, yes, ma'am, yes, ma'am, yes, ma'am.
- 8 Q And you stated that your attorney didn't object to
9 hand of one, hand of all instruction.
- 10 A Yes, ma'am.
- 11 Q But your attorney did request a mere presence charge,
12 correct?
- 13 A I can't recall. If you refresh my memory, I can't
14 recall. I can't say no; I can't say yeah.
- 15 Q If you would -- I'm referring to page 548 of the trial
16 transcript. This is the judge speaking, lines one through
17 four.
- 18 A Forty-eight? You say 548?
- 19 Q 458, right.
- 20 A Yes, ma'am.
- 21 Q Okay. So you agree your judge, I mean -- excuse me --
22 that your attorney did request a mere presence instruction.
- 23 A He mentioned it, yes, ma'am.
- 24 Q And you stated that you rejected a 20-year plea offer.
- 25 A Yes, ma'am.

Kenneth Jowan Craig
Redirect examination by Mr. Rucker

1 Q Because you wanted to go to trial?

2 A Yes, ma'am.

3 Q And that's the relief you're seeking today, is to go
4 back to trial?

5 A No, ma'am.

6 Q What is it you're seeking today?

7 A Vacate my sentence.

8 Q Okay. You realize that's not something this judge can
9 do, correct?

10 A I understand; I understand.

11 Q All he can do is send you back. All of your charges
12 are there. And the solicitor's office --

13 A Yes, ma'am.

14 Q -- would decide what to do but --

15 A I understand; I understand. So, yes, ma'am, to answer
16 the question, yes, ma'am.

17 Q Thank you.

18 MS. OLIVE: That's all the questions I have.

19 MR. RUCKER: Your Honor, just a few on redirect.

20 THE COURT: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. RUCKER

23 Q Mr. Craig, just to make sure. You're wanting this
24 judge to do whatever he's entitled.

25 A Entitled.

Kenneth Jowan Craig
Redirect examination by Mr. Rucker

1 Q What relief he can give you under the law.

2 A Yes, sir.

3 Q Okay. I want to have you refer to page 213 of the
4 transcript starting at line 22.

5 A Yes, sir.

6 Q That's the summary of the judge summarizing what the
7 argument of the defense is related to the warrant, is that
8 right?

9 A Yes, sir.

10 Q All right. Do you see anywhere in there where the
11 neutral-and-detached-magistrate issue is mentioned by the
12 judge or actually ruled upon by the judge in the following
13 pages?

14 A No, sir.

15 Q Mr. Welchel -- did Mr. Welchel preserve that issue
16 for appeal for you?

17 A No, sir.

18 Q Okay.

19 MR. RUCKER: No further questions.

20 Your Honor, I have no other witnesses.

21 THE COURT: Okay. You can step down.

22 MS. OLIVE: Your Honor, may I ask another question --

23 THE COURT: Okay.

24 MS. OLIVE: -- on recross?

25

Kenneth Jowan Craig
Recross-examination by Ms. Olive

1 RECROSS-EXAMINATION

2 BY MS. OLIVE

3 Q Apologize, Mr. Craig.

4 I'm going to direct your attention to page 214. This
5 is lines four through eight.

6 The judge stated, "I've decided there was sufficient
7 evidence to justify a warrant to be probable cause did
8 exist."

9 A Yeah, but that was about -- once again, go back to
10 lines 22 to 25. And the Court stated, "And my
11 understanding is that you're challenging the warrant."
12 This is the Court speaking. "That you're challenging the
13 warrant that was originally issued for this -- his
14 arrest -- arrest based on a failure of probable cause that
15 was presented to a magistrate."

16 And that's -- that's when the judge came back and made
17 his ruling that he found probable cause did exist.

18 Q Okay. So he ruled that probable cause existed.

19 A Yeah, but on the grounds for probable cause, for, and
20 warrant itself, not for the magistrate, neutral, detached
21 magistrate.

22 Q Okay. But that was the argument that your attorney
23 presented to him on the basis. That's the reason he was
24 challenging the warrant, right?

25 A No, it's not right.

Richard H. Whelchel
Direct examination by Ms. Olive

1 Q Okay. Well, we'll let the transcript speak for
2 itself.

3 A Okay.

4 Q Thank you.

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

6 THE WITNESS: Yes, sir.

7 MS. OLIVE: Your Honor, the state would call Richard
8 Whelchel.

9 THE COURT: Okay.

10 RICHARD H. WHELCHER, having
11 been first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. OLIVE

13 Q Good morning, Mr. Whelchel.

14 A Good morning.

15 Q Mr. Whelchel, how long have you been practicing law?

16 A Thirty-four years.

17 Q And how much of your practice has been criminal law?

18 A All of it.

19 Q Prior to -- well, were you appointed or retained in
20 this case?

21 A I was appointed.

22 Q Was that through the public defender's office?

23 A Yes, ma'am.

24 Q Had you represented other -- had you previously
25 represented individuals who faced these same charges?

Richard H. Wheelchel
Direct examination by Ms. Olive

1 A Yes, ma'am.

2 Q Do you recall how many times you met with Mr. Craig
3 prior to trial?

4 A I can't give you a definitive number, no, ma'am.
5 Probably somewhere around a dozen.

6 Q A dozen. You heard Mr. Craig testify that you only
7 met with him three times?

8 A I heard that.

9 Q Would you agree or disagree with that?

10 A I wouldn't agree with that.

11 Q You would not agree with that?

12 A No, ma'am.

13 Q He also testified that you only met about five or ten
14 minutes per time. Would you say that's accurate?

15 A No, ma'am. We -- we met for substantially longer than
16 that.

17 As we discussed, the first time we reviewed the
18 discovery would have been substantially longer than that.
19 There were times that I would meet with him because I was
20 at the jail to see other persons and I would talk with him
21 briefly. But when we were talking and meeting about his
22 case it was substantially longer than ten minutes.

23 Q Did Mr. Craig cooperate with you throughout your
24 representation?

25 A Yes, ma'am.

Richard H. Whelchel
Direct examination by Ms. Olive

- 1 Q Did you file discovery motions in this case?
- 2 A Yes, ma'am.
- 3 Q Did you review all of the discovery material with
- 4 Mr. Craig?
- 5 A Yes, ma'am.
- 6 Q Did you discuss the charges that he was facing
- 7 including the components of those charges and what the
- 8 state would have to prove at trial?
- 9 A I did.
- 10 Q Did you ever feel that he did not understand your
- 11 discussions?
- 12 A No, ma'am. I mean, he -- he may not understand when
- 13 we first start talking about it, but as you go over each
- 14 element of each crime, he understood.
- 15 Q Did you discuss the theory of hand of one, hand of
- 16 all?
- 17 A Yes, ma'am.
- 18 Q Did he understand?
- 19 A Yes, ma'am. He didn't like it, but he understood it.
- 20 Q Did he tell you his version of the facts?
- 21 A Yes, ma'am.
- 22 Q Did you discuss possible defenses with him?
- 23 A I did.
- 24 Q Did he provide you with any -- did you attempt to
- 25 speak with Brittany McSwain?

Richard H. Whelchel
Direct examination by Ms. Olive

1 A Yes, ma'am.

2 Q And he stated that her statement was not provided
3 until a week before trial, is that correct?

4 A I'm not sure of the timeframe. It may have been. It
5 may have been earlier. I just don't remember but it was --
6 what -- what was given to us was a short statement, if
7 that.

8 My investigator and I went out to the home that
9 Mr. Craig was at before this incident took place and
10 immediately after this incident took place and attempted to
11 talk to all of the persons there who were witnesses or
12 potential witnesses, and to a person. They refused to
13 speak with us.

14 Q Mr. Whelchel, can you briefly describe the state's
15 evidence against Mr. Craig?

16 A The state's evidence against Mr. Craig? They had the
17 individual who was the patron at the Waffle House and who
18 shot the other individual identify Mr. Craig as the person,
19 the other person, involved in the armed robbery.

20 In addition to that they had persons at the home of
21 the codefendant, the deceased codefendant, that had heard
22 Mr. Craig saying, making statements, about hitting a lick
23 that night and things of that nature.

24 In addition, they had gunshot residue on Mr. Craig,
25 and they had Mr. Craig's statement that he had, according

Richard H. Whelchel
Direct examination by Ms. Olive

1 to him, ferried those two individuals out there, Dante and
2 Slack. Let them out. And then when he saw the police cars
3 while he was at the gas station, he doubled back and
4 attempted to go into the parking lot but couldn't get in
5 the parking lot because there were so many police cars.

6 If this is that waffle House, he couldn't get in the
7 parking lot. So he turned right at the next road. And I
8 think that's when he -- he testified that that's when Slack
9 ran out in front of him. He almost ran over him. And
10 Slack got in the car, and Slack touched him. And that's
11 how the gunshot residue was transferred to him.

12 Q Is that -- was the statement that he gave consistent
13 with what he testified to at trial?

14 A Yes, ma'am.

15 Q And is that consistent with his discussions with you
16 regarding his version of the facts?

17 A Yes, ma'am.

18 Q Mr. Whelchel, what kind of investigation did you do in
19 this case?

20 A Well, the first thing that I did was sent our
21 investigator out to this service station to see if there
22 was video of my client pumping gas or anything of that
23 nature as he had claimed.

24 They didn't have video at the gas station. That's
25 what we were told. If I remember correctly, they had done

Richard H. Whelchel
Direct examination by Ms. Olive

1 the same thing with the sheriff's department investigators,
2 that they were told the same thing.

3 Q And that's the video that he was --

4 A Excuse me?

5 Q I'm sorry. That was the video that he was speaking
6 about?

7 A Yes, ma'am. There was no video from -- from the gas
8 station.

9 Q Okay. And you testified you also went to the house
10 and spoke with individuals who might have knowledge.

11 A Attempted to, yes, ma'am.

12 Q And they were not cooperative. Do you feel you had
13 ample time to prepare for trial?

14 A Yes, ma'am.

15 Q There's some discussion about or Mr. Craig mentioned
16 that you did not move for a continuance on the basis that
17 Ms. McSwain's statement was provided to the defense a week
18 before trial. Do you -- did you feel that you needed a
19 continuance?

20 A No, ma'am.

21 Q Would there have been any need for you to move for a
22 continuance?

23 A No, ma'am.

24 Q Mr. Whelchel, what was your overall trial strategy or
25 theory in this case?

Richard H. Whelchel
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1 A The theory was that Mr. Craig's story would be
2 presented to the jury and that would be his defense. The
3 theory was to try to get them to accept and understand his
4 statement and his defense, that he was not the other person
5 there.

6 Q Was part of that theory based on the fact that someone
7 else was responsible?

8 A Yes, ma'am.

9 Q Do you recall whether you opposed the state's motion
10 to exclude evidence of third-party guilt?

11 A I believe I did. I can't say for sure or not. I
12 generally oppose those motions just because I think they're
13 ludicrous.

14 Q Did you also request a mere presence charge?

15 A I believe so, yes, ma'am.

16 Q Do you recall whether you objected -- or do you recall
17 whether you objected to the arrest warrant at trial?

18 A I objected to the arrest warrant at a preliminary
19 hearing. They found probable cause. And I think we had
20 that motion about the arrest warrant and its lack of
21 probable cause at the -- at a pretrial motion.

22 Q Do you recall also challenging the identification of
23 Mr. Craig?

24 A Yes, ma'am.

25 Q Are you familiar with whether that was raised on

Richard H. Whelchel
Direct examination by Ms. Olive

1 direct appeal?

2 A No, ma'am. I don't know.

3 Q Did you feel that a gunshot residue expert was
4 necessary in this case?

5 A Not for testimony. I contacted a gunshot residue
6 expert.

7 Q So you spoke with a gunshot residue expert?

8 A Yes, ma'am.

9 Q But you felt that his testimony was not necessary for
10 trial.

11 A It would not have been beneficial to our side.

12 Q Do you recall whether you had a basis to object to a
13 hand of one, hand of all charge?

14 A No, ma'am.

15 Q You don't recall or you had no basis?

16 A I don't think I did.

17 Q Do you recall whether you cross-examined witnesses
18 about, regarding their identification of Mr. Craig?

19 A Yes, ma'am.

20 Q Would you have been able to present Mr. Davis, the
21 person identified as Slack? Would you have been able to
22 present him as a witness?

23 A No, ma'am.

24 Q Do you think his testimony would have been helpful?

25 A No, ma'am.

Richard H. Whelchel
Cross-examination by Mr. Rucker

1 MS. OLIVE: Beg the Court's indulgence for a moment,
2 Your Honor.

3 (Pause.)

4 Q Thank you. That's all the questions I have. Please
5 answer any questions of Mr. Rucker.

6 MR. RUCKER: May it please the Court.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. RUCKER

10 Q Mr. Whelchel, is it your testimony there was a
11 previous pretrial motion that's not reflected in the
12 transcript, like at a -- on a different day? I may have
13 misunderstood your testimony. Any pretrial motions would
14 have been in our record, is that right?

15 A Yeah.

16 Q Okay. How often did you meet with my client?

17 A I can't tell you. I've met him about a dozen times.
18 Do you mean --

19 Q I mean around a dozen times?

20 A I would say so.

21 Q And those were lengthy meetings, most of them?

22 A As the trial got closer to trial, yes.

23 Q Okay. Did y'all discuss the neutral and detached
24 magistrate issue?

25 A We did?

Richard H. Welch
Cross-examination by Mr. Rucker

1 Q What evidence -- if that arrest warrant was suppressed
2 or with the evidence that was gathered based on that arrest
3 warrant, what evidence would that have been?

4 A If the neutral -- if the arrest warrant was
5 suppressed?

6 Q If it was determined that his constitutional rights
7 had been violated because a neutral and detached magistrate
8 did not sign the warrants and they used that warrant to get
9 evidence, what was that evidence that they got -- what was
10 the fruit of the poisonous tree in that situation?

11 A I believe everything that they had as a result of
12 that -- that warrant.

13 Q Well, that's what I mean. Which -- what -- was the
14 I.D. based on that warrant?

15 A Well, the I.D. was based on him seeing him on T.V., so
16 I would have to say yes.

17 Q And the -- the picture, mug shot, was placed up based
18 on him being arrested under that warrant.

19 A The T.V. station got a copy, or the paper or somebody,
20 or both of them could have gotten it.

21 Q Okay. And the gunshot-residue evidence was based on
22 that warrant as well. They used that probable cause to
23 then seize that.

24 A Yes, sir.

25 Q Okay. I'm going to turn your -- do you have a

Richard H. Welchel
Cross-examination by Mr. Rucker

1 transcript in front of you?

2 (Pause.)

3 A Yes, sir.

4 Q And I'm going to have you turn your attention to page
5 213.

6 A Okay.

7 Q Line -- starting at line 22. And I'll give you a
8 brief second to read it.

9 (Pause.)

10 A Twenty-two to twenty-five?

11 Q Twenty-two to the end of the page.

12 A Okay.

13 Q Would you agree that this is Judge Couch summarizing
14 your argument as to the warrant?

15 A Yes, sir.

16 Q Okay. And feel free to flip back a couple of pages or
17 forward a couple of pages. But you mentioned previously in
18 that argument about the neutral and detached magistrate
19 issue, but he never actually issued a ruling on the neutral
20 and detached-magistrate-issue portion of the warrant issue,
21 did he?

22 (Pause.)

23 A I think the I.D. issue is commingled with this.
24 That's what I'm looking for.

25 Q Okay. Well, just to simplify it for you, the judge,

Richard H. Welchel
Cross-examination by Mr. Rucker

1 obviously, has the transcript. You're saying that if he
2 reads it in context you believe it was ruled upon by the
3 judge?

4 A Yeah. That was the judge's summation, yes, sir.

5 Q But when it actually comes to when he's ruling on
6 whether the magistrate was neutral and detached or if the
7 constitutional safeguards were still intact after this, he
8 doesn't actually say specifically I am ruling that there is
9 no issue on the neutral and detached magistrate.

10 A Are you talking about this bottom of page 213?

11 Q When he -- does he ever rule that I find that Judge
12 Atkins was a neutral and detached magistrate?

13 A He didn't specifically say that, no, sir.

14 Q Okay. Do you think it was properly preserved then
15 since he never actually ruled on whether my client's
16 constitutional right to have a neutral and detached
17 magistrate review the probable cause was actually ruled
18 upon?

19 A Well, I'd have to read this whole transcript here to
20 tell you.

21 Q Well, I'm not asking you to read the whole transcript,
22 but, I mean --

23 A I don't know. I'll just tell you. I don't know.

24 Q And we aren't going to be able to look in the
25 transcript and find any language where he specifically

Richard H. Welchel
Cross-examination by Mr. Rucker

1 rules that --

2 A I would assume not.

3 Q Do you -- Atkins, the witness, is related to the judge
4 in what way -- to the magistrate?

5 A I was told that she was his mother.

6 Q Okay. And he was an alleged victim in this case?

7 A He was one of the persons there at the Waffle House,
8 yes.

9 Q So, yes, he was a victim? And he's a witness who
10 later gave testimony, correct?

11 A Yes.

12 Q How long after the alleged incident did the warrant
13 get issued? Was it within 12 hours?

14 A I think so. It was -- it was rather quickly.

15 Q Was there time for Mr. Atkins and the Judge Atkins to
16 have communicated about this case?

17 A I have no idea. I mean, I don't know that they did or
18 didn't, so.

19 Q Did you ever ask Mr. Atkins if he did communicate with
20 her?

21 A I think so.

22 Q All right. And on the record though?

23 A Oh, no, no.

24 Q Did -- did -- did -- is there any way for you to
25 believe that something this dramatic happening, that

Richard H. Welchel
Cross-examination by Mr. Rucker

1 Mr. Atkins wouldn't have talked to his mom about what
2 happened? I mean, she works with law enforcement.

3 A Well, the only thing that would keep that from
4 happening is that they were being -- the whole thing was
5 being investigated at the time and they were -- they were
6 all kept there for -- for a long period of time.

7 I talked to Atkins if I'm remembering correctly,
8 because I talked to a lot of people. I talked to Atkins.
9 And I think he -- he went -- after they kept him there for
10 hours, he went home. But/and I don't remember him saying
11 anything about calling his mother. He may have. I don't
12 remember him saying anything about it.

13 Q I'm not asking you to speculate.

14 A Okay.

15 Q But the magistrate could have known about this crime.

16 A Oh, yes.

17 Q Is that fair to say?

18 A I mean, if she -- if she saw the news, she could have
19 known.

20 Q Okay. And would you agree with me that if you don't
21 have a neutral and detached magistrate issuing the warrant
22 that any evidence gathered based on that warrant is
23 inadmissible?

24 A If you don't have a neutral and detached magistrate.

25 Q And I'm not trying to be ugly about this, but you're

Richard H. Whelchel
Cross-examination by Mr. Rucker

1 agreeing with me just for the record?

2 A Yeah.

3 Q Okay. You testified previously that the -- you didn't
4 think there was a need for a continuance motion based on
5 the late arrival of the -- Ms. McSwain's statement?

6 A No.

7 Q All right. The -- and you agree. I don't -- I didn't
8 fully understand your -- your testimony. But are you
9 agreeing that the statement came to y'all about a week
10 before trial?

11 A I believe so. Something like that.

12 Q I'm going to refer you to page 124 where you're
13 starting at line four, like, I would say line four for
14 context, but line six.

15 A 124?

16 Q Yes, sir.

17 A Starting at six?

18 Q Start -- four for context, but six is the specific
19 line.

20 A Okay.

21 (Pause.)

22 A Okay.

23 Q Do you -- do you agree with your statement there that
24 it was approximately a week before that you got it?

25 A I do.

Richard H. Welchel
Cross-examination by Mr. Rucker

1 Q Were you in trial the week before? Did you have --
2 I'm assuming you -- let me rephrase. Strike that. You
3 have a heavy case load, fair to say?

4 A I do.

5 Q Were you doing other things that week previously?

6 A No, sir. Generally what -- well, I'm always doing
7 other things, but generally our schedule is we're scheduled
8 for a week of court and a non-week or non-court week. So
9 we generally have court every other week.

10 There are times like this coming July where we have
11 court for three straight weeks, but I don't believe I had
12 court the week before.

13 Q You -- in your testimony or your statement to the
14 Court in the record is that you attempted to reach out to
15 her, and she just refused to talk to you, is that right?

16 A Yeah. There were several persons there that I tried
17 to talk to. None of them would talk to me.

18 Q Okay. To your knowledge is there any device through
19 the legal system that you can compel that testimony?

20 A No, sir.

21 Q Did you attempt to make -- to depose them, for
22 example?

23 A No.

24 Q All right. If you got this entire case a week before
25 would you have filed a motion to continue the case?

Richard H. Welchel
Cross-examination by Mr. Rucker

1 A Oh, yeah. The case had already been continued once
2 before it was actually tried.

3 Q Did you know of Ms. McSwain the first time it was
4 continued?

5 A I don't know. I'd have to look in my -- look in the
6 whole file to tell you if I knew about her.

7 Q Did you -- sure. Did you ask her why she was coming
8 forward to testify?

9 A Do you mean on the stand or --

10 Q On the stand or if -- if -- in your brief conversation
11 you were able to get that in.

12 A They wouldn't talk to me at all prior to taking the
13 stand.

14 Q And I know asking a question that you don't know the
15 answer to is dangerous, obviously. I think we can agree on
16 that. I suppose you would.

17 A Oh, yeah.

18 Q But do you have a reason to believe why she came
19 forward to testify at such a late date?

20 A Well, they were the ones who originally contacted the
21 police or when the police were looking for my client.

22 You have to understand that my client and the
23 codefendant who ended up losing his life, they were
24 together at that fellow's house or a relative of that
25 fellow's.

Richard H. Whelchel
Cross-examination by Mr. Rucker

1 These people claimed to have heard my client making
2 statements about hitting a lick, I think, which is doing a
3 robbery. And that's why they were going to be used as a
4 witness and that's why they wanted to testify. That's what
5 I assumed.

6 Q I'm going to refer you to page 117, line seven.

7 A Seven?

8 Q Yes, sir.

9 A "What did he discuss with him?"

10 Q And then line eight and nine -- lines eight and nine.

11 A "About going -- going on a mission. But I don't know
12 what the mission was."

13 Q She -- she did not testify that she had any idea of
14 what was happening. I mean, she didn't call it a lick at
15 that point, did she?

16 A No. There -- she may not have been the person who
17 said that they were going to testify about hitting a lick.

18 Q But to your knowledge her -- her information was not
19 used by the magistrate concerning who did this. This came
20 later.

21 A I don't believe so.

22 Q Okay. What evidence -- and we've touched on this --
23 but what evidence would have been there if -- left if the
24 warrant -- if all of the evidence that was included based
25 on the warrant, what would be -- was excluded -- what would

Richard H. Whelchel
Redirect examination by Ms. Olive

1 be left? what would the case be at that point?

2 A If -- what would the case be if --

3 Q That was a -- I'll rephrase it.

4 If all of the evidence that was received by the -- or
5 given to the jury based on the warrant, the warrant leading
6 to that evidence, was excluded, is there any other evidence
7 pointing to my client at that point?

8 A I don't think so. They don't have an I.D. of him at
9 that point at the robbery scene.

10 Q And the I.D. flows solely through -- or at least the
11 initial I.D. flows solely through -- the mug shot that was
12 sent out over the airways.

13 A Yes, sir.

14 Q And those witnesses agree that they first saw him on
15 the air.

16 A Yeah.

17 Q And y'all did argue that was unduly suggestive, right?

18 A Yeah.

19 MR. RUCKER: No further questions, Your Honor.

20 MS. OLIVE: Brief redirect, Your Honor.

21 THE COURT: Okay.

22 REDIRECT EXAMINATION

23 BY MS. OLIVE

24 Q Mr. Whelchel, you testified that you really don't know
25 whether your argument was preserved regarding the

Richard H. Whelchel
Redirect examination by Ms. Olive

1 magistrate issue.

2 A I thought it had been preserved.

3 Q You thought it had been preserved?

4 A Yeah.

5 Q Okay. I'm going to direct your attention to page 212
6 of the transcript.

7 A 212?

8 Q Yes. Beginning at line 25 and then ending at page
9 213, line ten.

10 A Okay.

11 Q Do you believe that the judge made the ruling with
12 respect to probable cause based on the magistrate issue?

13 A In here, yes, ma'am.

14 Q Okay. So he did, in fact, rule on that issue.

15 A Yes, ma'am.

16 Q Okay. And you testified -- was it your testimony on
17 cross-examination that Ms. McSwain testified consistent
18 with what you would have expected her to testify to?

19 A Their statements were very general to begin with, so
20 there wasn't a whole lot gained in my opinion when they
21 gave us their statements. And I think those statements may
22 have been based on the fact that the solicitor had just
23 recently talked to them too and that's what they got. But
24 that's probably why we got it at the -- at the time that we
25 did.

Richard H. Whelchel
Redirect examination by Ms. Olive

1 THE COURT: Was there anything exculpatory in those
2 statements?

3 MS. OLIVE: Not to my knowledge.

4 Q Was there anything exculpatory in the statement?

5 THE COURT: And under the rules the solicitor doesn't
6 have to give you those statements until the person actually
7 gets on the stand to testify. Isn't that correct? Unless
8 there's something exculpatory in it.

9 MR. RUCKER: Well, certainly if there -- if there's
10 exculpatory evidence they have a duty early on to give that
11 information.

12 THE COURT: Right. But short of that, they don't have
13 any duties except when a person gets on -- now, from a
14 practical matter a lot of solicitors' offices give it to
15 you ahead of time because it frustrates the judge when --
16 you know, because the defense attorney hasn't had a chance
17 to look at it.

18 But doesn't the rules require only you give it when
19 they get on the stand?

20 MR. RUCKER: Well, my understanding of the discovery
21 rules in South Carolina says you have to give fair notice
22 of the material in the -- not the entire solicitor's file
23 but discoverable evidence and especially Brady evidence.

24 If you're just -- if you're holding things back to the
25 last minute, I think that goes -- at least against the

Richard H. Whelchel
Redirect examination by Ms. Olive

1 spirit of the rule that you're able to review it so you can
2 decide whether you're going to plead guilty or go to trial.

3 THE COURT: I understand that. It deals with
4 specifically -- but doesn't Rule Five deal specifically
5 with statements of witnesses and the state doesn't have to
6 give the other side statements of their witnesses until the
7 witness actually gets on the stand to testify?

8 MR. RUCKER: I do think that's what Rule Five says,
9 yes, sir.

10 THE WITNESS: It is.

11 THE COURT: And excludes it from some exculpatory
12 issue which --

13 MR. RUCKER: Yes, sir.

14 THE COURT: Under Brady. Let me -- okay.

15 MS. OLIVE: That's all the questions I have, Your
16 Honor.

17 THE COURT: That's okay. And I just wanted to be sure
18 there was nothing exculpatory in those statements that the
19 solicitor was required to give it to them, to you, before,
20 long before, but I hadn't heard anything.

21 MR. RUCKER: If you're asking me to question him on
22 that --

23 THE COURT: No. I was just -- I assume that -- that
24 there wasn't -- that issue had been brought up, so I assume
25 it didn't say anything that would have -- because the jury

Richard H. Whelchel
Redirect examination by Ms. Olive

1 ultimately heard it, whether there's anything different in
2 the statements versus what they said.

3 THE WITNESS: I don't think there was anything in
4 those statements that was beneficial to my client, or
5 exculpatory.

6 BY MR. RUCKER

7 Q Do you have copies of those statements with you in
8 your file?

9 A They may be in the file, yes.

10 Q We would ask to include that then so the judge can
11 review it and determine if he believe it's exculpatory.

12 REDIRECT EXAMINATION

13 BY MS. OLIVE

14 Q Mr. Whelchel, do you recall when you received those
15 statements?

16 A About a week before the trial. I think that these
17 statements were given to me out of an abundant -- out of an
18 abundance of caution by the state so that there wouldn't be
19 any issue like the judge just brought up. And it was based
20 on their interview with these witnesses.

21 THE COURT: And from a practical matter, even though
22 the rule says that, it frustrates most trial judges because
23 when it happens in the middle of the trial, you know, they
24 usually want some time to review it and therefore you've
25 got a jury sitting there and you're sending the jury out.

1 And so from a practical matter judges, you know, give
2 you a hard time about that. So they want the state to
3 provide those, you know, statements far enough ahead of
4 time where you're not stopping a trial.

5 MR. RUCKER: Yes, sir.

6 THE COURT: And I -- and so I assume that normally is
7 how it works. And of course -- and Judge Cole has been on
8 the bench a long time. He would have, you know. And it
9 didn't appear that that stopped this trial since they had
10 some notice.

11 THE WITNESS: No, sir.

12 THE COURT: You had some. Okay.

13 MR. RUCKER: Judge, we're simply asking to have those
14 statements -- at least Ms. McSwain's statement -- admitted
15 into evidence as part of our P.C.R. hearing today for the
16 judge to determine its exculpatory value.

17 THE COURT: Have you got any objection?

18 MS. OLIVE: Your Honor, I just -- I don't think
19 there's been any showing that there was failure to turn
20 over the evidence because they both testified that it was
21 given to them a week before. She testified consistently
22 with what she -- I mean --

23 THE COURT: Well, I can review it. I mean, if
24 he turned -- whether a week is enough notice or whether
25 they're exculpatory or not --

1 MR. RUCKER: I'm just building a record.

2 THE COURT: I understand. You have a right to look at
3 it. And if you find something, you can point it out.

4 THE WITNESS: Do you want us to look for it?

5 THE COURT: Whatever. I mean, you don't have to do it
6 right this second.

7 MR. RUCKER: I mean, I have no objection if it's going
8 to take a little time. They may have another hearing to go
9 through. We can go out and look at it.

10 (Exhibit was never submitted to be marked.)

11 THE COURT: Okay. Anything else?

12 MR. RUCKER: Nothing else.

13 MS. OLIVE: Nothing from the state.

14 THE COURT: Let me ask y'all this since I don't have
15 the appellate record.

16 MS. OLIVE: You should, Your Honor.

17 THE COURT: I do? Well, was it raised on appeal?

18 MR. RUCKER: The neutral and detached magistrate issue
19 was not raised on appeal.

20 THE COURT: Did the Court of Appeals or the Supreme
21 Court rule that -- that it was barred because the judge did
22 not actually rule on it?

23 MR. RUCKER: I don't think they attempted to. I think
24 it would be the position of appellate defense that it's not
25 preserved. We're not even going to try to get it in, we

1 have another issue that we'll try to go forward on.

2 MS. OLIVE: Well, Your Honor, I will state that's
3 speculation, but, I mean, Your Honor should have the direct
4 appeal records in your packet.

5 The front of it says brief of appellant. If not, I'm
6 happy to hand you up mine. But it does have each side's
7 brief, as well as the Court's decision.

8 Unless there is an additional page to this decision
9 that I'm missing, it simply states affirmed. There's no --

10 THE COURT: Right. And I didn't know whether, in
11 fact, that they had ruled on -- even though the judge had
12 found probable cause existed, whether the appellate courts
13 had ruled that he should have dealt with whether the
14 magistrate was neutral and detached and whether he could
15 even go to probable cause. If you find that the magistrate
16 is not neutral and detached --

17 MS. OLIVE: Your Honor, the only issue that -- that
18 wasn't before the Court of Appeals.

19 The only issue that was raised was the identification
20 issue. So the Court would have not been in a position to
21 make a determination about the preservation issue.

22 And -- and, you know, there's been no allegation of
23 ineffective assistance of appellate counsel, so we -- it's
24 pure speculation regarding, you know, why something wasn't
25 raised as an issue on appeal.

1 MR. RUCKER: It's our argument that it was not
2 addressed by the judge.

3 It was brought up briefly. But when he actually says
4 what he's doing, he doesn't specifically say it.

5 I also point out that this is not in the Anders brief
6 on -- in my practice I generally see -- in my appellate
7 practice, well, that all they will review is what is
8 actually briefed.

9 Sometimes they'll go back and look back behind it, but
10 it's not being reviewed in total like an Anders brief would
11 be.

12 THE COURT: Okay. But he -- I mean, it's clear that
13 he raised the neutral and detached magistrate issue to the
14 judge. And the judge didn't say those exact words. He
15 just looked at in totality and determined that it was
16 sufficient probable cause, even though the warrant on its
17 face doesn't state probable cause.

18 MR. RUCKER: No, sir.

19 THE COURT: You know, that's pretty clear. It's
20 conclusory. There's no probable cause that I could find
21 based on the warrant, but the testimony of the officer that
22 he -- what he actually told the magistrate, the judge ruled
23 that it was sufficient probable cause but in -- I can't
24 find anything in the -- in the transcript that he -- that
25 the judge actually addressed the neutral and detached

1 issue.

2 He just kind of overall determined based on what the
3 magistrate knew at the time there was sufficient probable
4 cause to issue the warrant.

5 MR. RUCKER: Well, we would argue that the probable
6 cause is separate. Those are two arguments, two very
7 clearly --

8 THE COURT: I understand. Do you have any case law
9 that separates?

10 MR. RUCKER: Not with me. I mean, we can brief that
11 if necessary.

12 MS. OLIVE: Happy to brief that, Your Honor.

13 THE COURT: Okay. I mean, I understand the argument.
14 Whether you have any cases that actually separate those
15 issues -- and I'd be interested because, you know, most of
16 the -- the fruits of the poisonous tree deal with the lack
17 of probable cause --

18 MR. RUCKER: Yes, sir.

19 THE COURT: -- and doesn't necessarily separate how
20 neutral and detached the magistrate has to be. Of course
21 clearly in this case this is probably a stronger argument
22 than there ever could be that the magistrate is the mother
23 to one of the victims.

24 Now, whether -- the next issue is whether the
25 magistrate knew her son was a victim at the time the

1 warrant was issued and what she actually knew.

2 MR. RUCKER: We can certainly brief it.

3 I would say that, I mean, it's in the -- clearly in
4 the constitution. And it's clear that you have to have a
5 neutral and detached magistrate.

6 They can't just -- the Court couldn't just write that
7 off. I mean, it's there. There is a warrant issue. It's
8 got to be issued by a neutral and detached magistrate.

9 THE COURT: Okay.

10 MS. OLIVE: Your Honor, I'm more than happy to brief
11 the issue.

12 I -- I certainly think that the argument was
13 preserved. That was the entire basis of this probable
14 cause argument for why it did not --

15 THE COURT: And it would have been so much easier if
16 the appellate court had addressed it.

17 MR. RUCKER: Yes, sir.

18 THE COURT: And, you know, the fact that they
19 haven't --

20 MS. OLIVE: Well, Your Honor, I would also argue that
21 it should have been raised on direct appeal, and it wasn't,
22 so it's been waived.

23 THE COURT: Well, that's -- looking at this transcript
24 that's the biggest legal argument that jumps out at you.

25 Okay. All right. I'll let y'all brief that because I

1 think that's a key issue in this case.

2 Anything else?

3 MR. RUCKER: No, sir.

4 MS. OLIVE: Nothing from the state, Your Honor.

5 THE COURT: Thank you.

6 THE WITNESS: Thank you.

7 MS. OLIVE: Your Honor, how long would you like us --
8 how much time would you like for us to take in preparing
9 those briefs?

10 THE COURT: I mean, I need it just as soon as y'all
11 can get it to me, I mean.

12 MS. OLIVE: Is two weeks okay?

13 THE COURT: Yeah. Ten days or two weeks is fine. I
14 just don't want it to be -- if you wait much longer -- you
15 know, I like it while everything is still fresh in my
16 memory and I don't have to research it. But that's an
17 interesting question. And I have never had this issue come
18 up the whole time I've been on the bench or the 30 years I
19 did it beforehand.

20 MR. RUCKER: It's definitely a weird situation.

21 Thank you, Judge.

22 END OF REQUESTED TRANSCRIPT OF RECORD

23

24

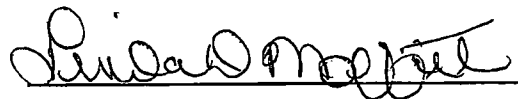
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CERTIFICATE

I, the undersigned Linda D. Moffitt, 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 had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 14th day of June 2016.

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

October 13, 2017

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Kenneth Jowan Craig, #310521,	)	C/A No.: 2015-CP-42-0937
	)	
Applicant,	)	
	)	RESPONDENT'S POST-HEARING
v.	)	MEMORANDUM OF LAW
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 6, 2015. Respondent made its Return on December 18, 2015, requesting an evidentiary hearing solely on the issue of ineffective assistance of counsel. The Court convened an evidentiary hearing into the matter on June 13, 2016, at the Spartanburg County Courthouse before the Honorable R. Ferrell Cothran, Jr. Applicant was present at the hearing and represented by J. Brandt Rucker, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Richard Whelchel, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. Following the hearing, the parties requested the opportunity to submit post-hearing memoranda. Respondent would respectfully submit the following:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at

the December 2012 term of the Spartanburg County Grand Jury, and amended June 2013, for armed robbery and possession of firearm during the commission of a violent crime (2012-GS-42-2199, counts one and two). He was indicted during the June 2013 term for armed robbery (2013-GS-42-2855) and 11 counts of attempted armed robbery (2013-GS-42-2844,-2845,-2846,-2847,-2848,-2849,-2850,-2851,-2852, -2853, and -2854). Richard Whelchel, Esquire, ("Counsel") represented Applicant. Applicant was tried before the Honorable Roger L. Couch and a jury on July 22-25, 2013. The jury found Applicant guilty as indicted on all charges. Judge Couch sentenced Applicant to imprisonment for a term of 20 years for armed robbery (2012-GS-42-2199), and 10 years for attempted armed robbery (2013-GS-42-2844) to run consecutive to one another and concurrent to the following sentences: 20 years for armed robbery (2013-GS-42-2855), 10 years each for each remaining count of attempted armed robbery, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Robert M. Dudek, and Dennis G. Placone, Esquires, represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on November 26, 2014. State v. Craig, Op. No. 2014-UP-431 (S.C. Ct. App. filed November 26, 2014). The remittitur was returned on December 12, 2014.

II. ALLEGATIONS

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Failed to object to 'invalid warrant'"
 - b. "Failed to instruct the jury on a lesser included offense of 'strong arm robbery'"
 - c. Counsel never argued that no gun or weapon was presented as evidence
 - d. Counsel failed to request photo lineup
 - e. "Counsel failed to present G.S.R. expert"

- f. "[Counsel] failed to file a motion to suppress"
- 2. 6th and 14th Amendment Violations
 - a. "Due Process rights were violated"
- 3. "Conflict of Interest"
 - a. "Judge that signed my arrest warrant(s) was the mother of one of the victim/witness"

A. Summary of Testimony

Applicant testified that he met with Counsel three times for about five to ten minutes each time. Applicant testified that Counsel reviewed discovery with him and talked to him about all of the evidence, but he did not remember Counsel discussing with him the strength of the State's case against him. Counsel did not tell him about the identification witness. Counsel did discuss with him the gunshot residue found on his clothes. He was arrested approximately twenty-one hours after the robbery and was at his house when he was arrested. He testified there was no arrest warrant. He testified he discussed the arrest with Counsel. He said the arrest was invalid and that he was never pointed out (or identified) prior to the arrest. The State never conducted a photo line-up. He testified Counsel should have objected to the warrant and indictment. Applicant testified Justin Harrison identified him from seeing his photograph on the news and that this was a tainted identification because he never gave a description. Applicant testified there was no Biggers hearing, but also testified that the witness was never shown any photographs by the State. He stated he asked Counsel to do a lineup. Applicant agreed that Counsel did raise the identification issue at trial.

Applicant testified that the charge that the hand of one is the hand of all should not have been given at trial. He stated his attorney did not object to the charge. However he agreed that his attorney did request a mere presence charge and the trial judge did charge mere presence. Applicant also testified that he thought Counsel should have hired a gunshot residue expert who could have testified that the particles did not match, although Applicant did not present an expert

at the hearing. Applicant testified that Gerald Davis should have been presented as a defense witness. He testified Davis was present in the courtroom because he was going to be presented as a State's witnesses. Applicant said there was reason to believe Davis was responsible for the crime, but Applicant stated he did not know what Davis would have testified to if he had been called as a witness. He further testified Counsel could not have done anything better.

Applicant testified Counsel did not produce any other witnesses. Applicant never spoke to the investigator and did not even know he had one. If he had spoken to the investigator he would have told him to get a video recording from the gas station. Applicant testified the magistrate who issued the arrest warrant had a conflict of interest because she was the mother of one of the victims of the robbery. Applicant agreed this folded into the invalid arrest warrant argument and that Counsel raised the issue at trial but "did not push it." Applicant testified that Brittany McSwain, the deceased's cousin, provided a statement and that the defense did not receive her statement until a week before trial. He stated Counsel could have gotten her statement and her testimony completely thrown out. Applicant testified that Counsel tried to speak with McSwain before trial. Applicant testified Counsel relayed a twenty year plea offer to him, which he rejected.

Counsel testified that he has been practicing law for 34 years and that all of his practice has been criminal law. Contrary to Applicant's testimony, Counsel testified that he met with Applicant 12 times prior to trial and that the meetings were lengthy and substantially longer than five or ten minutes. Counsel testified he made discovery motions, reviewed all discovery with Applicant, and discussed all the elements of the charges and what the State would have to prove. Counsel stated that the evidence against Applicant at trial consisted primarily of the statements of the patrons and employees at Waffle House, including one patron's identification of Applicant

as the other person involved in the robbery, statements of persons present at the home of Applicant's co-defendant who heard Applicant saying he wanted to "hit a lick" that night, and the gunshot residue that was found on Applicant's clothing. He testified Applicant's story was that he had driven Dante (the deceased victim) and Davis to the Waffle House, but Applicant was not involved in the robbery itself and did not know why he was dropping them off at Waffle House. He testified he discussed the hand of one hand of all with Applicant and that Applicant understood those discussions.

Counsel stated that he raised the issue of whether the arrest warrant was issued by a neutral and detached magistrate. When asked on cross-examination, he stated he did not know if the issue was preserved. Counsel testified he did not ask the witness, Brett Atkins, on the record if he had talked to his mother (the magistrate) about the robbery. Counsel stated McSwain's testimony was consistent with her statement. Counsel testified that he also objected to the arrest warrant and indictment in a preliminary hearing based on lack of probable cause. Counsel testified he also challenged the identification issue at trial. Counsel testified he did speak with a gunshot residue expert but that he did not call the expert to testify because his testimony would not have been helpful to the defense. Counsel testified that he did not call Gerald Davis to testify because he likely would not have been able to, and his testimony would not have been helpful. Counsel testified he tried to speak with Brittany McSwain. He went to the home where Applicant was and tried to talk to all who were there, but they were not cooperative. Counsel testified he sent his investigator to the service station to see if there was a video recording that would support Applicant's story, but there was no video.

Counsel testified his trial strategy was to convince the jury to accept or understand that someone else was the responsible party. He also stated he opposed the State's motion to exclude

third party guilt and asked for a mere presence instruction, which the judge charged. Counsel testified he had ample time to prepare for trial and had no reason to ask for a continuance.

B. Ineffective Assistance of Trial Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Counsel had been practicing exclusively criminal law for a substantial amount of time when he was appointed to represent Applicant. Counsel made the appropriate motions for discovery, reviewed all discovery with Applicant, discussed the State's evidence against him and what the State would have to prove at trial. Furthermore, Counsel discussed the concept of the hand of one as the hand of all with Applicant and stated that Applicant understood those discussions. Counsel also discussed possible defenses with Applicant and conducted a thorough investigation, which included, among other things, reviewing witness statements, interviewing all potential witnesses and determining whether there was a video from the convenience store across the street from the Waffle House to support Applicant's story. Counsel challenged the identification of Applicant, challenged Applicant's arrest, and Counsel moved for and renewed his motion for a directed verdict at the appropriate times at trial. Respondent submits that Counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Accordingly, respondent submits this Court should deny and dismiss applicant's application for PCR because he has failed to satisfy his burden of proving either deficiency or prejudice as to all allegations of ineffective assistance. Respondent addresses Applicant's specific allegations below.

Failure to object to invalid arrest warrant and move to suppress evidence

Applicant argued at the PCR hearing that Counsel failed to properly challenge the validity of the arrest warrant. Applicant alleges that Counsel was ineffective for not arguing at trial that Applicant's arrest was invalid because the arrest warrant (1) was not supported by probable cause, and (2) was not issued by a neutral and detached magistrate. Applicant has failed

to show that Counsel's performance in challenging the arrest warrant was deficient or that there is a reasonable probability that but for the alleged error the outcome of trial would have been different.

1. Probable Cause

Counsel argued at trial that the arrest warrant was not supported by probable cause because no one had identified Applicant at that point and the only evidence against him was the fact that he was at the Alexander Avenue residence and left with another male. Counsel argued that no one at that time had placed him at the Waffle House. (Tr. p. 168). Counsel argued that as a result of Applicant's arrest, his photograph was taken and used by the media, and police then went to the witness (Justin Harrison) and asked him if he had seen the news. (Tr. p. 168). Based on this, Counsel moved at trial to suppress the arrest warrant and to suppress the alleged identification leading from the warrant and property evidence that was taken as a result of the arrest. (Tr. p. 169). Counsel argued that when Applicant was arrested without probable cause, everything that stemmed from his arrest was tainted and should not be allowed to go to the jury, including photographs of Applicant. (Tr. p. 172). The State argued that the arrest was based on a judge signing a warrant for probable cause and there was also a probable cause hearing in which a different magistrate judge again found probable cause. (Tr. p. 170). The trial judge then allowed Counsel to make a proffer concerning the probable cause argument. (Tr. pp. 179-80). Counsel presented the testimony of Investigator Bryant. Counsel questioned him about whether he was aware at the time he obtained the arrest warrant that the magistrate who issued the warrant was the mother of one of the victims. Investigator Bryant testified that he was not aware at that time. Counsel argued that because the magistrate was the mother of one of the victims she could not have been neutral and detached. The State objected on the grounds that Counsel was

procedurally barred from making the argument because it should have been raised pretrial. The Court stated it would "go ahead and let [Counsel] make his proffer." (Tr. p. 184).

Investigator Bryant stated that the facts supporting the warrant were that the investigators had spoken to Brittany McSwain, the individuals from the family members of Dante Williams, and the people at Alexander Avenue. Investigator Bryant stated that none of those individuals had been at the Waffle House, but that they indicated that Applicant had left with Dante Williams, the decedent, after they discussed wanting to "hit a lick" that night. (Tr. pp. 185-87). Bryant stated that he told the magistrate that "they had planned the robbery, changed clothes, came back in for the gloves, and had left together, and shortly afterwards, and that the only one that had [come] back was [Applicant]." (Tr. p. 195). Bryant also testified that he and the other officers on the scene at the Waffle House had obtained general information as to the race and sex of the defendant and that there was also a video that captured the entire crime on it. (Tr. p. 198). The trial judge ultimately ruled that the information presented to the magistrate was sufficient and that probable cause did exist. (Tr. p. 213-14).

2. Neutral and Detached Magistrate

Applicant argues Counsel failed to preserve the issue that Applicant's arrest was invalid because the magistrate who issued the arrest warrant was not neutral and detached because her son was a victim. This allegation is without merit.

"When [an applicant] claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is *meritorious* and that the verdict would have been different absent the evidence that *should* have been excluded." McHam v. State, 404 S.C. 465, 475-76, 746 S.E.2d 41, 47 (2013) (quoting Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994)).

Here, Counsel did raise the issue at the trial, and there was no finding on appeal that it was not preserved. Investigator Bryant testified that he was not aware at the time that the magistrate who issued the warrant was the mother of one of the victims. Regardless, the fact the magistrate's son was a victim—whether she was aware of that fact at the time or not—is not evidence that she was not neutral and detached such that the trial judge would have held the arrest warrant was invalid. See, e.g., Lo-Ji Sales, Inc. v. New York, 422 U.S. 319 (1979) (finding magistrate was not neutral and detached where he "allowed himself to become a member, if not the leader, of the search party which was essentially a police operation. . . . conducted a generalized search under authority of an invalid warrant [and in doing so] he was not acting as a judicial officer but as an adjunct law enforcement officer"). In addition, post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). This is an issue that could have been raised on direct appeal, and Applicant's failure to do so precludes him from raising this issue in a post-conviction relief action. See also Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973) (holding a post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal).

Nevertheless, even if Applicant had proved the magistrate was not neutral and detached, Applicant has failed to show what, if any, affect this would have had on his trial because the exclusionary rule would not have applied pursuant to the good faith exception. See State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009). "The fact that a Fourth Amendment violation occurred—*i.e.*, that a search or arrest was unreasonable—does not necessarily mean that the exclusionary rule applies." Herring v. United States, 555 U.S. 135, 140 (2009) (citing Illinois v. Gates, 462 U.S. 213, 223, (1983)). Rather, "the exclusionary rule is not an individual right and applies only where it 'results in appreciable deterrence.' . . . [And] the benefits must outweigh the

costs. Id. at 140-41 (quoting Leon v. United States, 468 U.S. 897, 909-10 (1984)). "[W]hen police mistakes are the result of negligence . . . rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not 'pay its way.'" Id. (quoting Leon, 468 U.S. at 909-10) (upholding the trial court's denial of the defendant's motion to suppress evidence obtained as the result of a search incident to an arrest where the arrest was found to be invalid)). In State v. Herring, 387 S.C. 201, 692 S.E.2d 490, the South Carolina Supreme Court held that even if the Court determined that an affidavit was improper, it would find that the investigators acted in good faith and reasonably believed the warrant valid, such that the search should be upheld.

Here, Investigator Bryant testified that he had no knowledge that the magistrate was related to one of the victims at the Waffle House. Moreover, he testified that the information he provided the magistrate in obtaining the search warrant was obtained from people who were not present at the location where the robbery occurred. He testified that he had spoken to individuals who saw Applicant and the decedent that night and that they had discussed carrying out a robbery in celebration of the decedent's birthday. They also stated that only Applicant returned to the house that evening. The trial judge ruled that there was probable cause to issue the arrest warrant. Applicant has failed to present any evidence that the investigators were not acting in good faith. Accordingly, Applicant has failed to show that but for the alleged deficiency of Counsel, there is a reasonable probability that the gunshot residue or clothing would have been excluded or that the failure to exclude the evidence would have been reversible error. See, e.g., State v. Tisdale, 338 S.C. 607, 611-15, 527 S.E.2d 389, 391-94 (Ct. App. 2000) ("The admission of evidence is within the sound discretion of the trial court."). As a result, Applicant has failed to satisfy his burden of proving either deficiency or prejudice.

Failure to Suppress Identification by Justin Harrison

Applicant also alleged that Counsel was ineffective for not suppressing his identification and all evidence that flowed therefrom. He argued that Harrison's identification led to the arrest and that as a result of the arrest, the physical evidence implicating Applicant was discovered pursuant to a search incident to arrest. This allegation is meritless and is not supported by the record. Applicant had already been arrested when Harrison identified him. Counsel challenged the arrest itself, the identification that resulted from the arrest, and the reliability of the identification, arguing that the State intentionally avoided conducting an identification process and instead allowed the process to occur in the media. Counsel argued that if the arrest was illegal, and Applicant's picture was on the news as a result of his arrest, then Harrison's identification must be thrown out also. Counsel argued at trial that the State allowed the identification process to occur in the press, but, no evidence has been presented to indicate the State actually sponsored the activity. See State v. Tisdale, 338 S.C. 607, 611-15, 527 S.E.2d 389, 391-94 (Ct. App. 2000) (finding pretrial identification of defendant by three tellers who witnessed the armed robbery was properly admitted because the television and newspaper were nongovernmental sources of the suggestiveness). Harrison testified that after Applicant's arrest, the police called him and asked him if he could identify the second suspect from a police lineup but he told the police "there was no use, that's the guy, y'all caught him." (Tr. p. 228). The Court overruled Counsel's objection to the reliability of Harrison's identification and allowed the identification to go forward. The Court ruled that, pursuant to Tisdale, the identification should not be excluded merely because it was made as the result of Applicant's photo being shown by the media. (Tr. p. 214). Therefore, the record reflects that Counsel properly challenged the identification, both on the basis that it flowed from the allegedly illegal arrest and on the basis

that it was unreliable, and that the Court ruled on both. This issue was also raised in Applicant's appeal. The Court of Appeals affirmed Applicant's conviction, and made no finding that the issue was not preserved. Accordingly, Applicant has failed to identify any deficient performance concerning Counsel's handling of the identification issue and has provided no example of what Counsel could or should have done to have the identification thrown out. See State v. Tisdale, 338 S.C. 607, 611-15, 527 S.E.2d 389, 391-94 (Ct. App. 2000) ("the Neil analysis is inapplicable where there is a nongovernmental identification source.").

Further, Applicant has failed to show that but for the alleged deficiency the outcome of the proceeding would have been different. Applicant has failed to set forth what Counsel could have done differently, and has made no showing that the trial judge would have ruled differently than he did. See State v. Brown, 356 S.C. 496, 502, 589 S.E.2d 781, 784 (Ct. App. 2003) ("[T]he decision to admit an eyewitness identification is in the trial [court]'s discretion and will not be disturbed on appeal absent an abuse of discretion, or the commission of prejudicial legal error."); State v. Singleton, 395 S.C. 6, 13-14, 716 S.E.2d 332, 335-36 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) ("To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof.")). Applicant was already under arrest at the time, therefore, Harrison's identification, even if Applicant had shown it was unreliable, would not have resulted in the exclusion of evidence seized as a result of his arrest. See Herring, 555 U.S. at 140-41 (upholding the trial court's denial of defendant's motion to suppress evidence obtained as the result of a search incident to an arrest where the arrest was found to be invalid). Accordingly, this allegation is without merit. Applicant has failed to show either deficiency or

prejudice as to these allegations and they should be denied and dismissed.

Failure to request a photo line-up

Applicant alleged in his application that Counsel was ineffective for not requesting a photo line-up. The only testimony Applicant provided at the hearing was that the witness was never shown any photographs by the State and that he asked Counsel to do it. Counsel testified he challenged the identification of Applicant at trial and Applicant agreed. Respondent submits Applicant produced no evidence at the PCR hearing in support of this allegation. Therefore, this Court should dismiss this allegation.

Failure to present a gunshot residue expert

Applicant thought Counsel should have hired a gunshot residue expert. Applicant said he could have testified that the particles did not match. However, Applicant did not present an expert at the hearing. Counsel testified he did speak with a gunshot residue expert but that he did not call the expert to testify because his testimony would not have been helpful to the defense. Respondent submits Applicant has failed to show either deficiency or prejudice with respect to this allegation. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) ("[An] applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence.")); Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir.1977) ("[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.")).

Failure to argue third party guilt

Respondent submits Applicant presented no evidence in support of this allegation. Applicant alleged at the PCR hearing that Counsel should have presented Gerald Davis as a defense witness to show that it was Davis, and not Applicant, who was responsible for the crime. Applicant testified that Davis was present at the trial because the State was intending to call him as a witness. Counsel did pursue the third party guilt theory. He opposed the State's motion to exclude third party guilt at trial. He testified that he could not have presented Davis as a defense witness in support of the third party guilt theory, and that regardless, his testimony would not have been helpful. Counsel has articulated a valid trial strategy in not presenting Davis as a witness. See Whitehead, 308 S.C. at 122, 417 S.E.2d at 531. In addition, Applicant testified he did not know what Davis would have testified to at trial, and Davis was not called as a witness at the PCR hearing. He further testified Counsel could not have done anything better. Applicant has failed to show he was prejudiced by the alleged deficiency. See Dempsey v. State, 363 S.C. at 369, 610 S.E.2d at 814. Accordingly, Respondent submits that Applicant has failed to satisfy his burden of proving either deficiency or prejudice with regard to this allegation. Therefore, this Court should deny and dismiss this allegation.

Counsel never argued that no gun was presented as evidence

Respondent submits Applicant failed to produce any evidence in support of this allegation at the PCR hearing. Accordingly, Applicant has failed to satisfy his burden as to this allegation and it should be denied and dismissed.

Failure to instruct the jury on the lesser included offense of strong arm robbery

Respondent submits Applicant failed to produce any evidence in support of this allegation at the PCR hearing. Accordingly, Applicant has failed to satisfy his burden as to this

allegation and it should be denied and dismissed.

C. Sufficiency of Indictments

Applicant claimed at the PCR hearing that the Court lacked subject matter jurisdiction because the indictment did not have "hand of one hand of all" language. "An indictment is merely a notice document." State v. Baker, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing State v. Gentry, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005)). Whether or not the indictment could be made more definite and certain is irrelevant. Baker, 390 S.C. at 62, 700 S.E.2d at 442. "[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." Id. at 63, 700 S.E.2d at 443 (citing State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007)). Furthermore, to challenge the sufficiency of an indictment, an objection must be made before the jury is sworn in. S.C. Code Ann. § 17-19-90 (2003). A court reviewing an indictment for sufficiency should consider the indictment "‘on its face,’ *and* consider the events at trial." State v. Reddick, 348 S.C. 631, 636, 560 S.E.2d 441, 443 (Ct. App. 2002). Here, the indictments against Applicant are sufficient on their face. Applicant has failed to show he did not understand the nature of the charges against him. Applicant was unquestionably on notice of the charges waged against him. In addition, this claim in no way affects the circuit court’s jurisdiction. Respondent submits Counsel’s testimony is persuasive on the issue as he reviewed all indictments and elements of all charges brought against Applicant. Counsel testified that he explained hand of one hand of all to Applicant and he understood those discussions. Therefore, this Court should deny and dismiss this allegation.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

matter and not specifically addressed in herein, Respondent submits Applicant failed to present any evidence regarding such allegations. Accordingly, Respondent submits Applicant has abandoned any such allegations.

III. CONCLUSION

Respondent respectfully submits Applicant has failed to satisfy his burden of proving the allegations in his application, and therefore, this Court should deny and dismiss his application with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 22nd, 2016.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2015-CP-42-0937
KENNETH JOWAN CRAIG, #310521,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Respondent's Post-Hearing Memorandum of Law** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
128 Millport Circuit, Ste. 200
Greenville, SC 29607

DATED this 22ND day of August, 2016.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Kenneth Jowan Craig, #310521,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-42-0937

ORDER OF DISMISSAL
WITH PREJUDICECLERK OF COURT
SPARTANBURG COUNTY
2017 JUN 27 AM 8:51
H. HOPE GLACKLEY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 6, 2015. Respondent made its Return on December 18, 2015, requesting an evidentiary hearing solely on the issue of ineffective assistance of counsel. The Court convened an evidentiary hearing into the matter on June 13, 2016, at the Spartanburg County Courthouse before the Honorable R. Ferrell Cothran, Jr. Applicant was present at the hearing and represented by J. Brandt Rucker, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Richard Whelchel, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. Following the hearing, the parties requested the opportunity to submit post-hearing memoranda. Respondent would respectfully submit the following:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at



the December 2012 term of the Spartanburg County Grand Jury, and amended June 2013, for armed robbery and possession of firearm during the commission of a violent crime (2012-GS-42-2199, counts one and two). He was indicted during the June 2013 term for armed robbery (2013-GS-42-2855) and 11 counts of attempted armed robbery (2013-GS-42-2844,-2845,-2846,-2847,-2848,-2849,-2850,-2851,-2852, -2853, and -2854). Richard Wheelchel, Esquire, ("Counsel") represented Applicant. Applicant was tried before the Honorable Roger L. Couch and a jury on July 22-25, 2013. The jury found Applicant guilty as indicted on all charges. Judge Couch sentenced Applicant to imprisonment for a term of 20 years for armed robbery (2012-GS-42-2199), and 10 years for attempted armed robbery (2013-GS-42-2844) to run consecutive to one another and concurrent to the following sentences: 20 years for armed robbery (2013-GS-42-2855), 10 years each for each remaining count of attempted armed robbery, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Robert M. Dudek, and Dennis G. Placone, Esquires, represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on November 26, 2014. State v. Craig, Op. No. 2014-UP-431 (S.C. Ct. App. filed November 26, 2014). The remittitur was returned on December 12, 2014.

II. ALLEGATIONS

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Failed to object to 'invalid warrant'"
 - b. "Failed to instruct the jury on a lesser included offense of 'strong arm robbery'"
 - c. Counsel never argued that no gun or weapon was presented as evidence
 - d. Counsel failed to request photo lineup
 - e. "Counsel failed to present G.S.R. expert"

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- f. "[Counsel] failed to file a motion to suppress"
2. 6th and 14th Amendment Violations
 - a. "Due Process rights were violated"
3. "Conflict of Interest"
 - a. "Judge that signed my arrest warrant(s) was the mother of one of the victim/witness"

A. Summary of Testimony

Applicant testified that he met with Counsel three times for about five to ten minutes each time. Applicant testified that Counsel reviewed discovery with him and talked to him about all of the evidence, but he did not remember Counsel discussing with him the strength of the State's case against him. Counsel did not tell him about the identification witness. Counsel did discuss with him the gunshot residue found on his clothes. He was arrested approximately twenty-one hours after the robbery and was at his house when he was arrested. He testified there was no arrest warrant. He testified he discussed the arrest with Counsel. He said the arrest was invalid and that he was never pointed out (or identified) prior to the arrest. The State never conducted a photo line-up. He testified Counsel should have objected to the warrant and indictment. Applicant testified Justin Harrison identified him from seeing his photograph on the news and that this was a tainted identification because he never gave a description. Applicant testified there was no Biggers hearing, but also testified that the witness was never shown any photographs by the State. He stated he asked Counsel to do a lineup. Applicant agreed that Counsel did raise the identification issue at trial.

Applicant testified the charge that the hand of one is the hand of all should not have been given at trial. He stated his attorney did not object to the charge. However he agreed his attorney did request a mere presence charge and the trial judge did charge mere presence. Applicant also testified he thought Counsel should have hired a gunshot residue expert who could have testified that the particles did not match, although Applicant did not present an expert at the hearing.

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Applicant testified that Gerald Davis should have been presented as a defense witness. He testified Davis was present in the courtroom because he was going to be presented as a State's witnesses. Applicant said there was reason to believe Davis was responsible for the crime, but Applicant stated he did not know what Davis would have testified to if he had been called as a witness. He further testified Counsel could not have done anything better.

Applicant testified Counsel did not produce any other witnesses. Applicant never spoke to the investigator and did not even know he had one. If he had spoken to the investigator he would have told him to get a video recording from the gas station. Applicant testified the magistrate who issued the arrest warrant had a conflict of interest because she was the mother of one of the victims of the robbery. Applicant agreed this folded into the invalid arrest warrant argument and that Counsel raised the issue at trial but "did not push it." Applicant testified that Brittany McSwain, the deceased's cousin, provided a statement and that the defense did not receive her statement until a week before trial. He stated Counsel could have gotten her statement and her testimony completely thrown out. Applicant testified that Counsel tried to speak with McSwain before trial. Applicant testified Counsel relayed a twenty year plea offer to him, which he rejected.

Counsel testified that he has been practicing law for 34 years and that all of his practice has been criminal law. Contrary to Applicant's testimony, Counsel testified that he met with Applicant 12 times prior to trial and that the meetings were lengthy and substantially longer than five or ten minutes. Counsel testified he made discovery motions, reviewed all discovery with Applicant, and discussed all the elements of the charges and what the State would have to prove. Counsel stated that the evidence against Applicant at trial consisted primarily of the statements of the patrons and employees at Waffle House, including one patron's identification of Applicant.

as the other person involved in the robbery, statements of persons present at the home of Applicant's co-defendant who heard Applicant saying he wanted to "hit a lick" that night, and the gunshot residue that was found on Applicant's clothing. He testified Applicant's story was that he had driven Dante (the deceased victim) and Davis to the Waffle House, but Applicant was not involved in the robbery itself and did not know why he was dropping them off at Waffle House. He testified he discussed the hand of one hand of all with Applicant and Applicant understood those discussions.

Counsel stated he raised the issue of whether the arrest warrant was issued by a neutral and detached magistrate. When asked on cross-examination, he stated he did not know if the issue was preserved. Counsel testified he did not ask the witness, Brett Atkins, on the record if he had talked to his mother (the magistrate) about the robbery. Counsel stated McSwain's testimony was consistent with her statement. Counsel testified he also objected to the arrest warrant and indictment in a preliminary hearing based on lack of probable cause. Counsel testified he also challenged the identification issue at trial. Counsel testified he did speak with a gunshot residue expert but he did not call the expert to testify because his testimony would not have been helpful to the defense. Counsel testified he did not call Gerald Davis to testify because he likely would not have been able to, and his testimony would not have been helpful. Counsel testified he tried to speak with Brittany McSwain. He went to the home where Applicant was and tried to talk to all who were there, but they were not cooperative. Counsel testified he sent his investigator to the service station to see if there was a video recording that would support Applicant's story, but there was no video.

Counsel testified his trial strategy was to convince the jury to accept or understand that someone else was the responsible party. He also stated he opposed the State's motion to exclude

third party guilt and asked for a mere presence instruction, which the judge charged. Counsel testified he had ample time to prepare for trial and had no reason to ask for a continuance.

B. Ineffective Assistance of Trial Counsel

This Court finds Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

Counsel had been practicing exclusively criminal law for a substantial amount of time when he was appointed to represent Applicant. Counsel made the appropriate motions for discovery, reviewed all discovery with Applicant, discussed the State's evidence against him and what the State would have to prove at trial. Furthermore, Counsel discussed the concept of the hand of one as the hand of all with Applicant and stated Applicant understood those discussions. Counsel also discussed possible defenses with Applicant and conducted a thorough investigation, which included, among other things, reviewing witness statements, interviewing all potential witnesses and determining whether there was a video from the convenience store across the street from the Waffle-House to support Applicant's story. Counsel challenged the identification of Applicant, challenged Applicant's arrest, and Counsel moved for and renewed his motion for a directed verdict at the appropriate times at trial. This Court finds Counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Accordingly, this Court denies and dismisses applicant's application for PCR because he has failed to satisfy his burden of proving either deficiency or prejudice as to all allegations of ineffective assistance. This Court addresses Applicant's specific allegations below.

Failure to object to invalid arrest warrant and move to suppress evidence

Applicant argued at the PCR hearing that Counsel failed to properly challenge the validity of the arrest warrant. Applicant alleges that Counsel was ineffective for not arguing at trial that Applicant's arrest was invalid because the arrest warrant (1) was not supported by probable cause, and (2) was not issued by a neutral and detached magistrate. Applicant has failed to show that Counsel's performance in challenging the arrest warrant was deficient or that there

is a reasonable probability that but for the alleged error the outcome of trial would have been different.

1. Probable Cause

Counsel argued at trial that the arrest warrant was not supported by probable cause because no one had identified Applicant at that point and the only evidence against him was the fact that he was at the Alexander Avenue residence and left with another male. Counsel argued that no one at that time had placed him at the Waffle House. (Tr. p. 168). Counsel argued that as a result of Applicant's arrest, his photograph was taken and used by the media, and police then went to the witness (Justin Harrison) and asked him if he had seen the news. (Tr. p. 168). Based on this, Counsel moved at trial to suppress the arrest warrant and to suppress the alleged identification leading from the warrant and property evidence that was taken as a result of the arrest. (Tr. p. 169). Counsel argued that when Applicant was arrested without probable cause, everything that stemmed from his arrest was tainted and should not be allowed to go to the jury, including photographs of Applicant. (Tr. p. 172). The State argued that the arrest was based on a judge signing a warrant for probable cause and there was also a probable cause hearing at which a different magistrate judge again found probable cause. (Tr. p. 170). The trial judge then allowed Counsel to make a proffer concerning the probable cause argument. (Tr. pp. 179-80). Counsel presented the testimony of Investigator Bryant. Counsel questioned him about whether he was aware at the time he obtained the arrest warrant that the magistrate who issued the warrant was the mother of one of the victims. Investigator Bryant testified that he was not aware at that time. Counsel argued that because the magistrate was the mother of one of the victims she could not have been neutral and detached. The State objected on the grounds that Counsel was procedurally barred from making the argument because it should have been raised pretrial. The

Court stated it would "go ahead and let [Counsel] make his proffer." (Tr. p. 184).

Investigator Bryant stated that the facts supporting the warrant were that the investigators had spoken to Brittany McSwain, the individuals from the family members of Dante Williams, and the people at 351 Alexander Avenue. Investigator Bryant stated that none of those individuals had been at the Waffle House, but that they indicated that Applicant had left with Dante Williams, the decedent, after they discussed wanting to "hit a lick" that night. (Tr. pp. 185-87). Bryant stated he told the magistrate "they had planned the robbery, changed clothes, came back in for the gloves, and had left together, and shortly afterwards, and that the only one that had [come] back was [Applicant]." (Tr. p. 195). Bryant also testified he and the other officers on the scene at the Waffle House had obtained general information as to the race and sex of the defendant and that there was also a video that captured the entire crime on it. (Tr. p. 198). The trial judge ultimately ruled the information presented to the magistrate was sufficient and probable cause did exist. (Tr. p. 213-14).

2. *Neutral and Detached Magistrate*

Applicant argues Counsel failed to preserve the issue that Applicant's arrest was invalid because the magistrate who issued the arrest warrant was not neutral and detached because her son was a victim. This allegation is without merit.

"When [an applicant] claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is *meritorious* and that the verdict would have been different absent the evidence that *should* have been excluded." McHam v. State, 404 S.C. 465, 475-76, 746 S.E.2d 41, 47 (2013) (quoting Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994)).

Here, Counsel did raise the issue at the trial, and there was no finding on appeal that it

was not preserved. Investigator Bryant testified he was not aware at the time that the magistrate who issued the warrant was the mother of one of the victims. Regardless, the fact the magistrate's son was a victim—whether she was aware of that fact at the time or not—is not evidence that she was not neutral and detached such that the trial judge would have held the arrest warrant was invalid. See, e.g., Lo-Ji Sales, Inc. v. New York, 422 U.S. 319 (1979) (finding magistrate was not neutral and detached where he "allowed himself to become a member, if not the leader, of the search party which was essentially a police operation. . . . conducted a generalized search under authority of an invalid warrant [and in doing so] he was not acting as a judicial officer but as an adjunct law enforcement officer"). In addition, post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). This is an issue that could have been raised on direct appeal, and Applicant's failure to do so precludes him from raising this issue in a post-conviction relief action. See also Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973) (holding a post-conviction relief application cannot assert any issue that could have been raised at trial or on direct appeal).

Nevertheless, even if Applicant had proved the magistrate was not neutral and detached, Applicant has failed to show what, if any, affect this would have had on his trial because the exclusionary rule would not have applied pursuant to the good faith exception. See State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009). "The fact that a Fourth Amendment violation occurred—i.e., that a search or arrest was unreasonable—does not necessarily mean that the exclusionary rule applies." Herring v. United States, 555 U.S. 135, 140 (2009) (citing Illinois v. Gates, 462 U.S. 213, 223, (1983)). Rather, "the exclusionary rule is not an individual right and applies only where it 'results in appreciable deterrence.' . . . [And] the benefits must outweigh the costs. Id. at 140-41 (quoting Leon v. United States, 468 U.S. 897, 909-10 (1984)). "[W]hen

police mistakes are the result of negligence . . . rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not 'pay its way.'" Id. (quoting Leon, 468 U.S. at 909-10) (upholding the trial court's denial of the defendant's motion to suppress evidence obtained as the result of a search incident to an arrest where the arrest was found to be invalid)). In State v. Herring, 387 S.C. 201, 692 S.E.2d 490, the South Carolina Supreme Court held that even if the Court determined that an affidavit was improper, it would find that the investigators acted in good faith and reasonably believed the warrant valid, such that the search should be upheld.

Here, Investigator Bryant testified he had no knowledge that the magistrate was related to one of the victims at the Waffle House. Moreover, he testified the information he provided the magistrate in obtaining the search warrant was obtained from people who were not present at the location where the robbery occurred. He testified he had spoken to individuals who saw Applicant and the decedent that night and they had discussed carrying out a robbery in celebration of the decedent's birthday. They also stated only Applicant returned to the house that evening. The trial judge ruled there was probable cause to issue the arrest warrant. Applicant has failed to present any evidence that the investigators were not acting in good faith. Accordingly, Applicant has failed to show that but for the alleged deficiency of Counsel, there is a reasonable probability that the gunshot residue or clothing would have been excluded or that the failure to exclude the evidence would have been reversible error. See, e.g., State v. Tisdale, 338 S.C. 607, 611-15, 527 S.E.2d 389, 391-94 (Ct. App. 2000) ("The admission of evidence is within the sound discretion of the trial court."). This Court finds, as a result, Applicant has failed to satisfy his burden of proving either deficiency or prejudice.

Failure to Suppress Identification by Justin Harrison

Applicant also alleged Counsel was ineffective for not suppressing his identification and all evidence that flowed therefrom. He argued Harrison's identification led to the arrest and as a result of the arrest, the physical evidence implicating Applicant was discovered pursuant to a search incident to arrest. This allegation is meritless and is not supported by the record. Applicant had already been arrested when Harrison identified him. Counsel challenged the arrest itself, the identification that resulted from the arrest, and the reliability of the identification, arguing that the State intentionally avoided conducting an identification process and instead allowed the process to occur in the media. Counsel argued that if the arrest was illegal, and Applicant's picture was on the news as a result of his arrest, then Harrison's identification must be thrown out also. Counsel argued at trial that the State allowed the identification process to occur in the press, but, no evidence has been presented to indicate the State actually sponsored the activity. See State v. Tisdale, 338 S.C. 607, 611-15, 527 S.E.2d 389, 391-94 (Ct. App. 2000) (finding pretrial identification of defendant by three tellers who witnessed the armed robbery was properly admitted because the television and newspaper were nongovernmental sources (suggestiveness)). Harrison testified that after Applicant's arrest, the police called him and asked him if he could identify the second suspect from a police lineup but he told the police "There was no use, that's the guy, y'all caught him." (Tr. p. 228). The Court overruled Counsel's objection to the reliability of Harrison's identification and allowed the identification to go forward. The Court ruled that, pursuant to Tisdale, the identification should not be excluded merely because it was made as the result of Applicant's photo being shown by the media. (Tr. p. 214). Therefore, the record reflects that Counsel properly challenged the identification, both on the basis that it flowed from the allegedly illegal arrest, on the basis that it was unreliable, and that the Court

ruled on both. This issue was also raised in Applicant's appeal. The Court of Appeals affirmed Applicant's conviction, and made no finding that the issue was not preserved. Accordingly, Applicant has failed to identify any deficient performance concerning Counsel's handling of the identification issue and has provided no example of what Counsel could or should have done to have the identification thrown out. See State v. Tisdale, 338 S.C. 607, 611-15, 527 S.E.2d 389, 391-94 (Ct. App. 2000) ("the Neil analysis is inapplicable where there is a nongovernmental identification source.").

Further, Applicant has failed to show that but for the alleged deficiency the outcome of the proceeding would have been different. Applicant has failed to set forth what Counsel could have done differently, and has made no showing that the trial judge would have ruled differently than he did. See State v. Brown, 356 S.C. 496, 502, 589 S.E.2d 781, 784 (Ct. App. 2003) ("the decision to admit an eyewitness identification is in the trial [court]'s discretion and will not be disturbed on appeal absent an abuse of discretion, or the commission of prejudicial legal error."). See State v. Singleton, 395 S.C. 6, 13-14, 716 S.E.2d 332, 335-36 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) ("To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof.")). Applicant was already under arrest at the time, therefore, Harrison's identification, even if Applicant had shown it was unreliable, would not have resulted in the exclusion of evidence seized as a result of his arrest. See Herring, 555 U.S. at 140-41 (upholding the trial court's denial of defendant's motion to suppress evidence obtained as the result of a search incident to an arrest where the arrest was found to be invalid). Accordingly, this allegation is without merit. This Court finds Applicant has failed to show either

deficiency or prejudice as to these allegations and they are denied and dismissed.

Failure to request a photo line-up

Applicant alleged in his application Counsel was ineffective for not requesting a photo line-up. The only testimony Applicant provided at the hearing was that the witness was never shown any photographs by the State and he asked Counsel to do it. Counsel testified he challenged the identification of Applicant at trial and Applicant agreed. This Court finds Applicant produced no evidence at the PCR hearing in support of this allegation. Therefore, the Court denies and dismisses this allegation.

Failure to present a gunshot residue expert

Applicant thought Counsel should have hired a gunshot residue expert. Applicant said he could have testified that the particles did not match. However, Applicant did not present an expert at the hearing. Counsel testified he did speak with a gunshot residue expert but did not call the expert to testify because his testimony would not have been helpful to the defense. This Court finds Applicant has failed to show either deficiency or prejudice with respect to this allegation. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) ("[An] applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence.")); Whitchcad v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir.1977) ("[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.")).

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STATE OF SOUTH CAROLINA

Failure to argue third party guilt

This Court finds Applicant presented no evidence in support of this allegation. Applicant alleged at the PCR hearing that Counsel should have presented Gerald Davis as a defense witness to show that it was Davis, and not Applicant, who was responsible for the crime. Applicant testified Davis was present at the trial because the State was intending to call him as a witness. Counsel did pursue the third party guilt theory. He opposed the State's motion to exclude third party guilt at trial. He testified he could not have presented Davis as a defense witness in support of the third party guilt theory, and that regardless, his testimony would not have been helpful. Counsel has articulated a valid trial strategy in not presenting Davis as a witness. See Whitehead, 308 S.C. at 122, 417 S.E.2d at 531. In addition, Applicant testified he did not know what Davis would have testified to at trial, and Davis was not called as a witness at the PCR hearing. He further testified Counsel could not have done anything better. Applicant has failed to show he was prejudiced by the alleged deficiency. See Dempsey v. State, 363 S.C. at 369, 610 S.E.2d at 814. Accordingly, this Court finds Applicant has failed to satisfy his burden of proving either deficiency or prejudice with regard to this allegation. Therefore, the allegation is denied and dismissed.

Counsel never argued that no gun was presented as evidence

This Court finds Applicant failed to produce any evidence in support of this allegation at the PCR hearing. Accordingly, Applicant has failed to satisfy his burden as to this allegation and the allegation is denied and dismissed.

Failure to instruct the jury on the lesser included offense of strong arm robbery

This Court finds Applicant failed to produce any evidence in support of this allegation at the PCR hearing. Accordingly, Applicant has failed to satisfy his burden as to this allegation and

the allegation is denied and dismissed.

C. Sufficiency of Indictments

Applicant claimed at the PCR hearing that the Court lacked subject matter jurisdiction because the indictment did not have "hand of one hand of all" language. "An indictment is merely a notice document." State v. Baker, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing State v. Gentry, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005)). Whether or not the indictment could be made more definite and certain is irrelevant. Baker, 390 S.C. at 62, 700 S.E.2d at 442. "[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." Id. at 63, 700 S.E.2d at 443 (citing State v. Turnbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007)). Furthermore, to challenge the sufficiency of an indictment, an objection must be made before the jury is sworn in. S.C. Code Ann. § 17-19-90 (2003). A court reviewing an indictment for sufficiency should consider the indictment "on its face," and consider the events at trial." State v. Reddick, 348 S.C. 631, 636, 560 S.E.2d 441, 443 (Ct. App. 2002). Here, the indictments against Applicant are sufficient on their face. Applicant has failed to show he did not understand the nature of the charges against him. Applicant was unquestionably on notice of the charges waged against him. In addition, this claim in no way affects the circuit court's jurisdiction. This Court finds Counsel's testimony is persuasive on the issue as he reviewed all indictments and elements of all charges brought against Applicant. Counsel testified he explained hand of one hand of all to Applicant and he understood those discussions. Therefore, this allegation is denied and dismissed.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

matter and not specifically addressed herein, Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

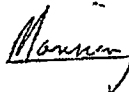
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRPC. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 16 day of June


R. FERRELL COTHRAN, JR.
Presiding Judge
Seventh Judicial Circuit

, South Carolina

CLERK OF COURT
SPARTANBURG COUNTY
2017 JUN 27 AM 8:52
M. HOPE BLACKLEY

WITNESSES

Spartanburg County Sheriff's Office

Kevin [Signature]

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

JUN 13 2013

VERDICT

Guilty

Foreperson of Petit Jury

Date:

July 25, 2013

DOCKET NO.

13-GS-42-2845

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE

vs.

Kenneth Jowan Craig

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)

CDR Code: 26

Class FEL/C

2013 JUN 14 PM 2:50

M. HOPE BLACKLEY

CP

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

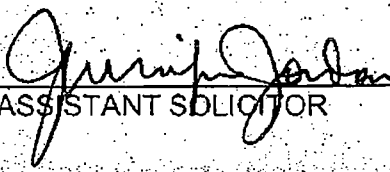
JUN 13 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Bryan Rogers, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

WITNESSES

Spartanburg County Sheriff's Office

Kevin Loto

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

Harold Dyer
Foreperson of Grand Jury
Date:

JUN 13 2013

VERDICT

Guilty

Shane Long
Foreperson of Petit Jury
Date:

July 25, 2013

DOCKET NO. **13-GS-42-2847**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE
vs.

Kenneth Jowan Craig

Indictment for
ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)
CDR Code: 26
Class FEL/C

2013 JUN 14 PM 2:50

M. HURD BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

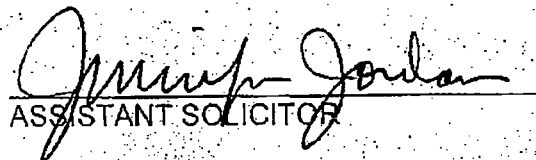
JUN 13 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Julie Tesnear, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

WITNESSES

Spartanburg County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

[Stamp]

[Signature]
Foreperson of Grand Jury
Date: JUN 13 2013

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: July 25, 2013

DOCKET NO. **13-GS-42-2846**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE
vs.

Kenneth Jowan Craig

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)
CDR Code: 26
Class FEL/C

2013 JUN 14 PM 2:50

M. HOPE BLACKLEY

CP

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

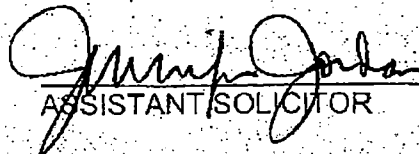
At a Court of General Sessions, convened on JUN 13, 2013 the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Victoria Felton, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

WITNESSES

Spartanburg County Sheriff's Office

Kevin Loto

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Handel J. J.
Foreperson of Grand Jury
Date:

JUN 13 2013

VERDICT

Guilty

Shane Lutz
Foreperson of Petit Jury
Date:

July 25, 2013

DOCKET NO.

13-GS-42-2848

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE
vs.

Kenneth Jowan Craig

Indictment for
ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)
CDR Code: 26
Class FEL/C

2013 JUN 14 PM 2:50

CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF SPARTANBURG)

JUN 13 2013

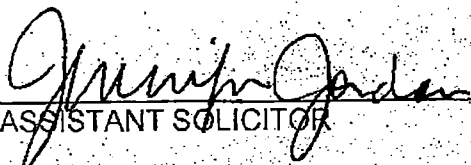
At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of James Long, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

WITNESSES

Spartanburg County Sheriff's Office

Kenneth Jowan Craig

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Harold J. [Signature]
Foreperson of Grand Jury
Date:

JUN 13 2013

VERDICT

Guilty

Shane [Signature]
Foreperson of Petit Jury
Date:

July 25, 2013

DOCKET NO. -

13-GS-42-2849
The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE
vs.

Kenneth Jowan Craig

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)

CDR Code: 26

Class FEL/C

2013 JUN 14 PM 2:51

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

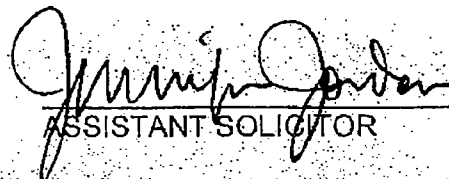
JUN 13 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Kimberly Henderson, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

WITNESSES

Spartanburg County Sheriff's Office

Kevin Roto

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Harold Dyer
Foreperson of Grand Jury
Date:

JUN 13 2013

VERDICT

Guilty

Shane Dyer
Foreperson of Petit Jury
Date:

July 25, 2013

DOCKET NO.

13-GS-42-2850

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE
vs.

Kenneth Jowan Craig

Indictment for
ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)
CDR Code: 26
Class FEL/C

2013 JUN 14 PM 2:51

M. HOFF BLADLEY

clg

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

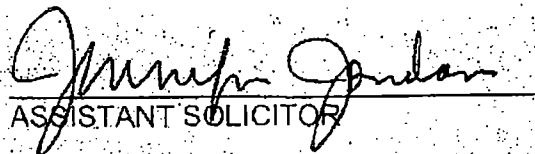
JUN 13 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Nikki Scruggs, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

WITNESSES

Spartanburg County Sheriff's Office

Kevin Loto

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Handel
Foreperson of Grand Jury
Date: *JUN 13 2013*

VERDICT

Guilty

Shane Dwyer
Foreperson of Petit Jury
Date: *July 25, 2013*

13-GS-42-2851

The State of South Carolina

County of Spartanburg

Barry Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE
vs.

Kenneth Jowan Craig

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)
CDR Code: 26
Class FEL/C

2013 JUN 14 PM 2:51

M. HURD BLANCHLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

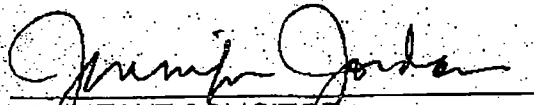
JUN 13 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Jamie Mattox, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

WITNESSES

Spartanburg County Sheriff's Office

Kevin Rote

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Harold J. [Signature]
Foreperson of Grand Jury
Date: JUN 13 2013

VERDICT

Guilty

Shirley [Signature]
Foreperson of Petit Jury
Date: July 25, 2013

DOCKET NO.

13-GS-42-2852
The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE
vs.

Kenneth Jowan Craig

Indictment for
ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)
CDR Code: 26
Class FEL/C

2013 JUN 14 PM 2:51

N. HOLE-DALEY

SP

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

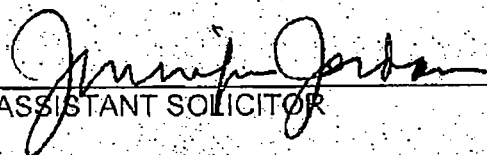
JUN 13 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Linda Greene, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

WITNESSES

Spartanburg County Sheriff's Office

Kevin L. Lott

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Harold Dyer
Foreperson of Grand Jury
Date: JUN 13 2013

VERDICT

Guilty

Sharon Dyer
Foreperson of Petit Jury
Date: July 25, 2013

DOCKET NO.

13-GS-42-2853

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE
vs.

Kenneth Jowan Craig

Indictment for
ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)
CDR Code: 26
Class FEL/C

2013 JUN 14 PM 2:51

CLERK OF COURT

SP

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

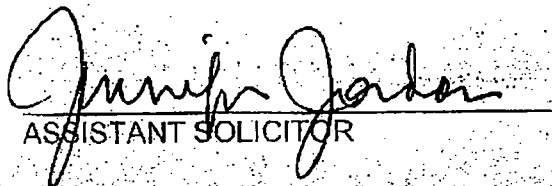
At a Court of General Sessions, convened on JUN 13 2013 the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Kesha Jolly, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

WITNESSES

Spartanburg County Sheriff's Office

Kevin [Signature]

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

JUN 13 2013

VERDICT

Guilty

Foreperson of Petit Jury

Date: July 25, 2013

DOCKET NO.

13-GS-42-2854

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 1 / 2013

TERM

THE STATE
vs.

Kenneth Jowan Craig

Indictment for
ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)

CDR Code: 26

Class FEL/C

2013 JUN 14 PM 2:51

CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF SPARTANBURG)

JUN 13 2013

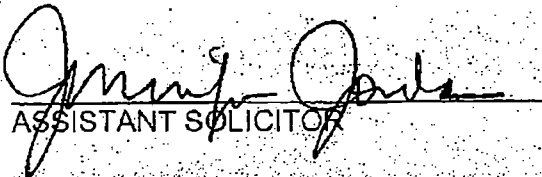
At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Justin Harrison, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

WITNESSES

SCSO

Kenneth Jowan Craig

ARREST WARRANT NUMBER

M757599 (Count One)

M757600 (Count Two)

ACTION OF GRAND JURY

Handwritten Signature
Foreperson of Grand Jury
Date:

JUN 13 2013

VERDICT

Guilty on both counts

Handwritten Signature
Foreperson of Petit Jury

Date: July 25, 2013

DOCKET NO. -

12-GS-42-2199

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

June 17, 2013

TERM

THE STATE

vs.

Kenneth Jowan Craig

Indictment for

ARMED ROBBERY AND
POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

SC Code: 16-11-330 (A); 16-23-490

CDR CODE: 139; 0549

CLASS: FEL/A; FEL/F

M. HOPE BLACKLEY

2013 JUN 20 PM 3:04

CLERK OF COURT
SPARTANBURG COUNTY

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on June 13, 2013, the
Grand Jurors of Spartanburg County present upon their oath:

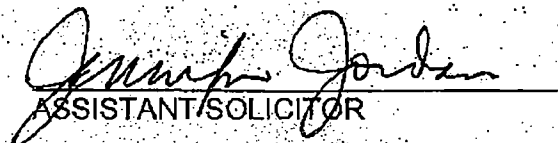
COUNT ONE-ARMED ROBBERY

That the Defendant, Kenneth Jowan Craig, did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, 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 from the person or presence of Amanda Kiwitz, by means of force, violence and/or intimidation, to wit: goods or monies, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

**COUNT TWO-POSSESSION OF FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ARMED ROBBERY, in violation of Code §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:


ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

Kenneth Jowan Craig

ARREST WARRANT NUMBER

COUNT ONE-M757599

COUNT TWO-M757600

ACTION OF GRAND JURY

Kenneth Jowan Craig

Foreperson of Grand Jury

Date:

DEC 06 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 12-GS-42-2199

**Amended
The State of South Carolina**

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 10 2012

TERM

THE STATE

vs.

Kenneth Jowan Craig

**Indictment for
COUNT ONE-ARMED ROBBERY**

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

**COUNT TWO-POSSESSION OF WEAPON
DURING COMMISSION OF VIOLENT CRIME**

SC Code: 16-23-490

CDR Code: 549

Class: FEL/F

DEC 11 PM 4:32
H. ROBERTSON

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

DEC 06 2012

At a Court of General Sessions, convened on _____ the Grand
 Jurors of Spartanburg County present upon their oath:

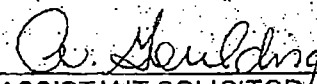
COUNT ONE-ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, committ a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, and did feloniously take from the person or presence of Justin Harrison and/or Kesha Jolly and/or Linda Greene and/or Jamie Mattox and/or Nikki Scruggs and/or Amanda Kiwitz and/or Kimberly Henderson and/or James Long and/or Joseph McCullough and/or Julie Tesnear and/or Victoria Felton and/or Bryan Rogers and/or Brent Atkins by means of force, violence, and/or intimidation, to wit: goods or monies, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO-POSSESSION OF WEAPON DURING COMISSION OF VIOLENT
 CRIME**

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery, all in violation of § 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.


 ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

Kevin R. [Signature]

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

JUN 13 2013

VERDICT

Guilty

Foreperson of Petit Jury

Date: July 25, 2013

DOCKET # **13-GS-42-2855**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE

vs.

Kenneth Jowan Craig

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

2013 JUN 14 PM 2:51

CLERK: J. L. JACKLEY

dp

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

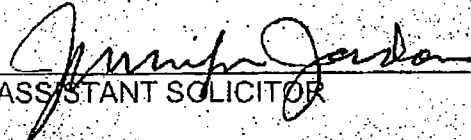
JUN 13 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Brent Atkins, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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

WITNESSES

Spartanburg County Sheriff's Office

Kenneth J. Craig

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

JUN 13 2013

VERDICT

Guilty

Foreperson of Petit Jury

Date: July 25, 2013

DOCKET NO. -

13-GS-42-2844

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 17 2013

TERM

THE STATE
vs.

Kenneth Jowan Craig

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-330 (B)

CDR Code: 26

Class FEL/C

FILED
JUN 17 2013

2013 JUN 14 PM 2:50

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

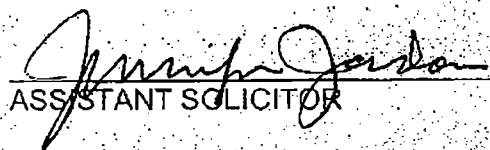
JUN 13 2013

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Kenneth Jowan Craig did in Spartanburg County on or about January 21, 2012, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of an attempted armed robbery reasonably believed to be a deadly weapon, feloniously attempt to take from the person or presence of Brent Atkins, by means of force or intimidation, to wit: goods or monies, in violation of §16-11-330 (B), 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