

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

TERRELL SCOTT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001936

APPENDIX

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DIRECT - DANIEL YOUNG BY SOL. SORENSON

502

1 WHEN HE WENT IN HE ASKED THE OWNER OF THE
2 APARTMENT NAMED SCAR WAS HE STRAIGHT. SCAR WAS
3 LIKE, I -- HE SAID SCAR WAS, LIKE, I DON'T KNOW
4 YOU, BUT SOMEBODY IN THE BACKGROUND WAS, LIKE, I
5 KNOW HIM, HE'S STRAIGHT. SO, I GUESS THEY SERVED
6 HIM, AND AS HE WAS COMING ON OUT THEM BOYS CAME
7 RUSHING IN, YOU KNOW, AS THEY WAS TOLD. SO, WHEN
8 THEY RUSHED IN TERRELL PULLED OUT THE THREE FIFTY-
9 SEVEN, STARTED DEMANDING MONEY.

10 COURT REPORTER: I'M SORRY?

11 A. HE PULLED OUT THE GUN, THE THREE FIFTY-SEVEN
12 MAGNUM, AND STARTED DEMANDING MONEY. ONE OF THEM
13 DIDN'T WANT TO COOPERATE AT THE TIME SO THAT'S
14 WHEN HE HIT HIM WITH THE GUN. HAVE YOU GOT THAT?

15 COURT REPORTER: THAT'S WHEN HE DID
16 WHAT?

17 A. HE HIT THEM WITH THE GUN, HE HIT ONE OF THEM WITH
18 THE GUN. I DON'T KNOW THE PERSON'S NAME. SO,
19 WHEN HE GOT TO HARRY, WHEN HE GOT TO HARRY HE WAS
20 STEADY DEMANDING MONEY. SO, I GUESS HARRY WAS, HE
21 SAID HARRY WAS, LIKE MOVING, LIKE FIDGETING, AND
22 HE WAS ON THAT COCAINE AT THE TIME, AND HE JUST
23 SHOT HIM IN THE STOMACH, YOU KNOW, BECAUSE WHEN
24 YOU'RE ON THAT COCAINE YOU'RE SO HIGH ON THAT, YOU
25 KNOW, I GUESS YOU'RE PARANOID, I DON'T KNOW. AND

DIRECT - DANIEL YOUNG BY SOL. SORENSON

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1 THEN THEY FLEE THE SCENE, AND GOT OUT.

2 Q. AND ALL THIS INFORMATION YOU'RE GETTING, WHERE ARE
3 YOU GETTING IT FROM?

4 A. THAT'S WHEN HE WENT INTO DETAIL WITH ME IN O-
5 SEVEN, WHEN WE WAS IN CONTACT WITH ME.

6 Q. WHO WAS TELLING YOU THAT?

7 A. TERRELL SCOTT.

8 Q. TERRELL SCOTT. AND THAT WAS AT THE JAIL?

9 A. YEAH.

10 Q. DID HE HAVE ANY OF HIS PAPERWORK WITH YOU THAT HE
11 WAS GOING OVER, I MEAN, WERE YOU READING ANY - - -

12 A. NO.

13 Q. --- STATEMENTS OR ANYTHING LIKE THAT?

14 A. NO, HE NEVER DID PULL OUT HIS MOTIONS AND STUFF,
15 HE NEVER DID, NO PAPERWORK OR NOTHING.

16 Q. AND YOU, I KIND OF COVERED IT WITH YOU INITIALLY,
17 WHEN YOU WERE IN JAIL IN DECEMBER OF TWO THOUSAND
18 AND SEVEN YOU HAD BEEN CHARGED WITH THE WEAPONS
19 CHARGE, IS THAT CORRECT?

20 A. YES, SIR.

21 Q. AND YOU, YOU'VE NEVER BEEN OUT ON THE STREET SINCE
22 THEN, RIGHT?

23 A. NO, SIR.

24 Q. YOU'VE BEEN LOCKED UP EVER SINCE YOU WERE
25 ARRESTED?

DIRECT - DANIEL YOUNG BY SOL. SORENSON

504

1 A. IN JULY THIRD, I GOT LOCKED UP JULY THIRD.

2 Q. JULY THIRD OF TWO THOUSAND SEVEN, RIGHT?

3 A. UH HUH.

4 Q. AND YOU, AS A RESULT OF THAT PLEA AGREEMENT THAT
5 YOU ENTERED IN TO WITH THE U. S. ATTORNEY'S OFFICE
6 AND AFT, YOU ULTIMATELY WERE PUT IN CONTACT, OR
7 YOU I GUESS PROVIDED SOME INFORMATION ABOUT THIS
8 INCIDENT, RIGHT?

9 A. YES, SIR.

10 Q. AND YOU WERE PUT IN CONTACT WITH INVESTIGATOR
11 SHUMPERT?

12 A. YES, SIR.

13 Q. OKAY. DO YOU REMEMBER, YOU GAVE A STATEMENT TO
14 INVESTIGATOR SHUMPERT, IS THAT CORRECT?

15 A. YES, SIR.

16 Q. OKAY. AND THAT WAS, DO YOU REMEMBER THE DATE OF
17 THAT?

18 A. IT WAS OCTOBER TWENTY-SEVENTH.

19 Q. OKAY. AND YOU'VE HAD A CHANCE TO LOOK BACK OVER
20 THAT STATEMENT, RIGHT?

21 A. YEAH.

22 Q. OKAY. AND IT WAS OCTOBER TWENTY-SEVENTH OF O-
23 SEVEN?

24 A. O-SEVEN.

25 Q. OKAY. AND DID YOU TELL INVESTIGATOR SHUMPERT

DIRECT - DANIEL YOUNG BY SOL. SORENSON

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1 ABOUT WHAT YOU KNEW ABOUT THIS INCIDENT?

2 A. YES, SIR.

3 Q. AND DID YOU PROVIDE HIM AT THAT POINT IN TIME THE
4 NAMES OF THE OTHER TWO PEOPLE THAT YOU KNEW WERE
5 INVOLVED IN THIS?

6 A. YES, SIR.

7 Q. AND WHO WERE THOSE TWO PEOPLE?

8 A. MAURICE CHEESEBORO AND CLINTON JONES.

9 SOLICITOR SORENSON: THAT WOULD BE
10 ALL I WOULD HAVE, YOUR HONOR.

11 THE COURT: CROSS-EXAM.

12 (NOTE: Blank lines on this page do not indicate any
13 part of record has been omitted. Headers on testimony
14 pages and hard page breaks between testimony are now
15 required by the Court. See next ensuing page for
16 sequential continuation of record.)

CROSS - DANIEL YOUNG BY MR. CULLER

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CROSS-EXAMINATION OF DANIEL YOUNG

BY MR. CULLER:

Q. MR. YOUNG, THE SOLICITOR WAS TALKING ABOUT
DETAILS. DETAILS ARE VERY IMPORTANT TO YOU,
RIGHT?

A. YES, SIR.

Q. AND THEY'RE IMPORTANT TO YOU BECAUSE OF YOUR
AGREEMENT THAT YOU HAVE WITH THE FEDERAL
GOVERNMENT, ISN'T THAT RIGHT?

A. YES, SIR.

Q. DO YOU HAVE A COPY OF THAT?

A. I HAD ONE BUT IT'S - - -

Q. I'LL GIVE THAT TO YOU. DO YOU RECOGNIZE IT?

A. WHEN THEY GAVE ME THIS I NEVER DID BECAUSE I HAD
SO SUCH, THEY DONE GIVE ME SO MUCH TIME I KIND OF
UNDERSTOOD THE DETAILS OF IT, SO I NEVER, I NEVER
DID WENT OVER IT, YOU KNOW.

Q. I UNDERSTAND. WELL, LET'S GO OVER SOME OF THE
DETAILS NOW, IF YOU DON'T MIND. I THINK, I'LL TRY
TO HELP YOU FIND WHAT I'M LOOKING FOR. NOW, ON
PAGE TWO, IF YOU LOOK ON PAGE TWO - - -

MR. CULLER: MAY I APPROACH THE
WITNESS, YOUR HONOR?

THE COURT: YES, SIR.

Q. DOWN HERE, NUMBER THREE, WHAT DOES THAT AGREEMENT

1 SAY THAT YOU'VE GOT TO DO THERE, PROVIDED -- WOULD
2 YOU READ THAT?

3 A. "PROVIDED THE DEFENDANT COMPLIES WITH ALL THE
4 TERMS OF THIS AGREEMENT THE UNITED STATES AGREES
5 TO DISMISS THE REMAINING COUNTS OF THE INDICTMENT
6 AND ANY OTHER INDICTMENTS UNDER THIS NUMBER, THIS
7 SENTENCE."

8 Q. OKAY. AND SO, PURSUANT TO THIS AGREEMENT THEY
9 WERE GOING TO DISMISS SOME CHARGES FOR YOU?

10 A. I MEAN, IT'S, WHAT MY LAWYER WAS SAYING, IT WAS
11 NOTHING PROMISED, YOU KNOW, BUT - - -

12 Q. I UNDERSTAND. BUT WAS NOTHING PROMISED BECAUSE
13 YOU'VE GOT TO PERFORM YOUR END OF THE AGREEMENT.
14 THIS IS A PLEA BARGAIN AND IN A BARGAIN SOMETHING
15 IS GIVEN TO YOU AND IN RETURN YOU HAVE TO GIVE
16 SOMETHING, ISN'T THAT TRUE?

17 A. I DON'T KNOW, I GUESS IT'S LIKE THAT.

18 Q. ALRIGHT. IT SAYS YOU'VE GOT TO COMPLY WITH THE
19 TERMS OF THE AGREEMENT. NOW, LET'S GO TO PAGE
20 FOUR. NUMBER SEVEN, WHAT DOES NUMBER SEVEN SAY IN
21 YOUR AGREEMENT?

22 A. "IN THE EVENT THAT THE DEFENDANT FAILS TO COMPLY
23 WITH ANY PROVISION OF THIS AGREEMENT, EITHER
24 EXPRESSED OR IMPLIED, IT IS UNDERSTOOD THAT THE
25 GOVERNMENT WILL HAVE THE RIGHT AT ITS SOLE

CROSS - DANIEL YOUNG BY MR. CULLER

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1 ELECTION TO VOID ALL OF ITS OBLIGATIONS UNDER THIS
2 AGREEMENT AND THE DEFENDANT WOULD NOT HAVE ANY
3 RIGHT TO WITHDRAW HIS PLEA OF GUILTY TO THE
4 OFFENSES ENUMERATED HEREIN."

5 COURT REPORTER: WAIT A MINUTE, PLEA
6 OF GUILTY TO THE OFFENSES, AND WHAT?

7 MR. CULLER: "THE DEFENDANT WILL NOT
8 HAVE THE RIGHT TO WITHDRAW HIS PLEA OF GUILTY TO THE
9 OFFENSE ENUMERATED HEREIN."

10 A. YEAH, ENUMERATED HEREIN.

11 Q. SO, THEY CAN, THEY CAN GET RID OF YOUR AGREEMENT
12 AND YOU'RE LOOKING AT A LIFE SENTENCE BEFORE YOU
13 MADE THIS AGREEMENT, - - -

14 A. I MEAN, WELL, - - -

15 Q. --- ISN'T THAT RIGHT?

16 A. I MEAN, THEY CAN, BUT YOU KNOW - - -

17 Q. THEY CAN.

18 A. --- THAT'S THE, I MEAN, YOU KNOW, BUT WELL,
19 PEOPLE, I'LL COME OUT.

20 Q. I'M WITH YOU. NOW, LET'S GO DOWN TO NUMBER EIGHT.
21 LET ME SHOW YOU WHERE I AM.

22 A. DOWN HERE WHERE THE LINE'S AT?

23 Q. YEAH. I TRIED TO DO A LINE FOR YOU. READ THAT
24 PART IN NUMBER EIGHT?

25 A. "THE DEFENDANT MUST ALSO TESTIFY FULLY AND

1 TRUTHFULLY BEFORE ANY GRAND JURY AND AT ANY TRIALS
2 OR OTHER PROCEEDINGS IF CALLED UPON TO DO SO BY
3 THE GOVERNMENT, SUBJECT TO PROSECUTION FOR PERJURY
4 FOR NOT TESTIFYING TRUTHFULLY. THE FAILURE OF THE
5 DEFENDANT TO BE FULLY TRUTHFUL AND FORTHRIGHT AT
6 ANY STAGE AT THE SOLE ELECTION OF THE GOVERNMENT
7 CAUSE THE OBLIGATIONS OF THE GOVERNMENT WITHIN
8 THIS AGREEMENT TO BECOME NULL AND VOID."

9 Q. SO, THEY'RE SAYING THAT THEIR SOLE ELECTION, THE
10 GOVERNMENT GETS TO SAY, WELL, WE DON'T THINK YOU
11 HELD UP YOUR END, MAN, SO IT'S NULL AND VOID. AND
12 IF IT BECOMES NULL AND VOID, THIS NEXT ONE, IF THE
13 AGREEMENT BECOMES NULL AND VOID WHAT HAPPENS ON A?

14 A. "THE DEFENDANT WOULD NOT BE PERMITTED TO WITHDRAW
15 HIS PLEA OF GUILTY TO THE - - -

16 Q. YOU WOULD NOT BE ABLE TO DO THAT. WHAT DOES B
17 SAY?

18 A. "ALL ADDITIONAL CHARGES KNOWN TO THE GOVERNMENT
19 MAY BE FILED IN THE APPROPRIATE DISTRICTS."

20 Q. WHAT DOES C SAY?

21 A. "THE GOVERNMENT WILL ARGUE FOR A MAXIMUM SENTENCE
22 FOR THE OFFENSE TO WHICH THE DEFENDANT HAS PLEADED
23 GUILTY."

24 Q. OH. AND THE MAXIMUM SENTENCE HERE WAS LIFE,
25 WASN'T IT?

CROSS - DANIEL YOUNG BY MR. CULLER

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1 A. YES.

2 Q. SO, IF THEY'RE NOT HAPPY WITH YOU THEY'RE GOING TO
3 ARGUE FOR A LIFE SENTENCE, RIGHT?

4 A. THAT'S WHAT IT SAYS.

5 Q. THAT'S WHAT IT SAYS. NOW, BUT THERE'S SOME GOOD
6 NEWS FOR YOU. LET'S GO TO ELEVEN, THE BOTTOM OF
7 THE PAGE. EVERY AGREEMENT HAS SOME GOOD STUFF.
8 LET'S READ THAT, THAT'S GOOD FOR YOU.

9 A. "PROVIDED THE DEFENDANT COOPERATES PURSUANT TO THE
10 PROVISION OF THIS PLEA AGREEMENT AND THAT
11 COOPERATION IS DEEMED BY THE GOVERNMENT AS
12 PROVIDING SUBSTANTIAL ASSISTANCE IN THE
13 INVESTIGATION OR PROSECUTION OF ANOTHER PRISONER
14 WHO HAS COMMITTED AN OFFENSE THE GOVERNMENT AGREES
15 TO MOVE THE COURT FOR A DOWNWARD DEPARTMENT OR
16 REDUCTION OF SENTENCE."

17 Q. AND THAT'S, IN THAT SECOND SENTENCE RIGHT THERE,
18 THAT'S A THIRTY-FIVE, D, ISN'T THAT RIGHT?

19 A. UH HUH.

20 Q. DID YOUR LAWYER TELL YOU ANYTHING ABOUT A THIRTY-
21 FIVE, D?

22 A. HE, I MEAN, HE EXPLAINED TO ME ABOUT IT.

23 Q. RIGHT. DID HE EXPLAIN TO YOU THAT ONLY THE
24 FEDERAL PROSECUTOR CAN MAKE THAT MOTION, THAT YOUR
25 LAWYER, NOBODY ELSE CAN MAKE THAT MOTION, ONLY THE

CROSS - DANIEL YOUNG BY MR. CULLER

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1 FEDERAL PROSECUTOR, AND ONLY IF HE BELIEVES - - -

2 A. YEAH.

3 Q. --- THAT YOU'VE PROVIDED SUBSTANTIAL ASSISTANCE.
4 SO, IF HE DOESN'T THINK YOU'VE DONE EVERYTHING IF
5 HE TALKS TO THE STATE AUTHORITIES, HE MIGHT NOT GO
6 THROUGH WITH THE AGREEMENT THEN, - - -

7 A. YES.

8 Q. --- ISN'T THAT RIGHT?

9 A. YES.

10 Q. SO, YOU'VE GOT A LOT ON THE LINE HERE, TOO, I
11 MEAN, YOU KNOW, - - -

12 A. YES.

13 Q. --- LET'S BE STRAIGHT. NOW, LET ME ASK YOU THIS,
14 A COUPLE OF OTHER THINGS -- THERE'S A LOT OF
15 DETAIL IN THE STATEMENT THAT YOU GAVE TO DETECTIVE
16 SHUMPERT, RIGHT? I MEAN, A LOT, RIGHT?

17 A. YEAH.

18 Q. I MEAN, IT'S NOT A LITTLE BIT, IT'S A GOOD MANY
19 DETAILS IN HERE. ONE OF THE THINGS YOU SAID WAS
20 THAT THEY SERVED TERRELL, THEY SERVED HIM. HE
21 TOLD YOU THAT THEY SOLD HIM DRUGS, RIGHT?

22 A. YEAH.

23 Q. OKAY. AND THAT AT THAT POINT THE PLAN WAS, AS HE
24 WAS ON HIS WAY OUT THESE TWO GUYS, THEY COME
25 SHOOTING IN, RIGHT?

CROSS - DANIEL YOUNG BY MR. CULLER

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1 A. UH HUH.

2 Q. SO, HE'S ON HIS WAY OUT. BUT BEFORE THAT HAPPENED
3 HE PULLED A GUN OUT AND HE HIT ONE OF THE GUYS.
4 DID HE SAY WHO HE HIT?

5 A. NO, I MEAN, NO, HE DIDN'T - - -

6 Q. YOU KNOW WHAT I'M SAYING?

7 A. HE DIDN'T SAY WHO HE, I MEAN, HE DIDN'T SAY WHO HE
8 HIT, HE WAS TELLING ME, YOU KNOW, - - -

9 Q. SOMEBODY GAVE HIM A HARD TIME AND HE HIT THEM WITH
10 THE GUN, OR WHATEVER?

11 A. YEAH, YEAH.

12 Q. ALRIGHT. AND DID HE SAY HOW HE HIT HIM? I MEAN,
13 YOU KNOW, DID HE HIT HIM IN THE HEAD OR WHAT?

14 A. I MEAN, NOT -- HE DIDN'T SAY - - -

15 Q. DID HE KNOCK THE MAN DOWN WHEN HE HIT HIM?

16 THE COURT: DON'T INTERRUPT HIM,
17 NOW, THE COURT REPORTER - - -

18 MR. CULLER: I'M SORRY, YOUR HONOR.

19 THE COURT: THE COURT REPORTER CAN'T
20 WRITE DOWN WHEN BOTH OF YOU ARE TALKING.

21 MR. CULLER: I APOLOGIZE, YOU'RE
22 RIGHT, I APOLOGIZE.

23 THE COURT: ONE OF YOU HAS TO STOP
24 AND LET THE OTHER ONE START.

25 MR. CULLER: MY FAULT, YOU'RE RIGHT.

CROSS - DANIEL YOUNG BY MR. CULLER

513

1 I'M SORRY.

2 A. HE AIN'T TELL ME, I MEAN, IT WAS, LIKE, BECAUSE HE
3 WAS JUST TELLING ME THE SITUATION, YOU KNOW, BUT
4 HE JUST SAY HE HIT THE MAN WITH THE GUN, YOU KNOW.

5 Q. OKAY. ALRIGHT.

6 A. I GUESS IN HIS FACE.

7 Q. ALRIGHT. AND THEN HE TOLD YOU THAT, OR YOU MADE -
8 - ISN'T IT TRUE THAT IN YOUR STATEMENT, WHICH I
9 CAN GIVE YOU A COPY OF, THAT YOU MAY REMEMBER,
10 THAT HARRY WAS FLINCHING. WHAT DOES THAT MEAN?

11 A. WHEN SOMEBODY'S GOT A GUN OVER YOU - - -

12 Q. RIGHT.

13 A. --- AND SAY, IF I GOT A GUN OVER SOME PERSON, AND
14 I'M ON DRUGS, AND SOMEBODY, SOMEBODY'S MOVING,
15 YOUR LIFE IS AT STAKE AND HIS LIFE IS AT STAKE.

16 Q. ALRIGHT.

17 A. THIS MAN IS MOVING, HE'S MOVING, YOU CAN BE
18 THINKING THAT MAN IS TRYING TO REACH FOR A GUN OR
19 SOMETHING, OR YOU KNOW, YOU TELL THE MAN TO STOP
20 MOVING, AND HE DON'T STOP MOVING, I GUESS YOU GOT
21 TO DO WHAT YOU GOT TO DO, YOU KNOW.

22 Q. SO, HE SHOT HIM. SO, THEN HE TOLD YOU HE SHOT HIM
23 IN THE STOMACH?

24 A. HE HIT HIM IN THE STOMACH.

25 Q. AND HE SAID HE WAS ON COCAINE?

CROSS - DANIEL YOUNG BY MR. CULLER

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1 A. YEAH.

2 Q. SO, HE DIDN'T JUST TELL YOU, YOU KNOW, WE WENT AND
3 WE ROBBED THIS GUY, MAN, AND IT WENT DOWN, WE GOT
4 OUT STUFF, HE TOLD YOU LIKE EVERY SINGLE DETAIL?

5 A. EVERY DETAIL, THAT'S, I'LL TELL YOU, ME AND THE
6 MAN WAS COOL, AND I'M TALKING ABOUT, HE FELT HE
7 COULD DO THAT.

8 Q. SO, WHEN YOU'RE, BUT WHEN YOU'RE, EVEN WHEN YOU'RE
9 COOL WITH SOMEBODY, YOU'RE TALKING ABOUT, HE'S
10 GOING TO TELL YOU LIKE WHAT THE WALLS ARE IN THE
11 PLACE WHEN HE GOES IN, MAN? I MEAN, JUST LIKE
12 EVERY SINGLE DETAIL, YOU KNOW WHAT I'M SAYING?

13 A. ALRIGHT. SOME PEOPLE, SOME PEOPLE DON'T GET INTO
14 DETAIL ABOUT WHAT THEY DO AND SOME PEOPLE DO. YOU
15 KNOW WHAT I'M TALKING ABOUT?

16 Q. OKAY. SO, HE'S JUST THAT KIND OF FELLOW?

17 A. SO, I GUESS, ME, LIKE SAY FOR INSTANCE, IF I WAS
18 IN THAT SITUATION, I FELT ME AND HIM WAS COOL, I
19 PROBABLY WOULD HAVE TELL HIM THE DETAILS, TOO,
20 BECAUSE YOU FIGURE NOTHING LIKE THIS WOULD HAPPEN.
21 YOU KNOW WHAT I'M TALKING ABOUT?

22 Q. I'M WITH YOU. OKAY.

23 MR. CULLER: ONE MOMENT, PLEASE,
24 YOUR HONOR.

25 THE COURT: YES, SIR.

CROSS - DANIEL YOUNG BY MR. CULLER

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1 Q. LET ME ASK YOU THIS, DANIEL, JUST ONE OR TWO OTHER
2 QUICK QUESTIONS. HE DID TELL YOU THAT SOMEBODY
3 VOUCHED FOR HIM WHEN HE WENT IN?

4 A. YEAH.

5 Q. IN OTHER WORDS, HE WENT IN AND SOMEBODY SAID, THIS
6 GUY'S OKAY?

7 A. YEAH, WHEN HE HAD, LIKE, WHEN HE HAD, LIKE THE
8 OWNER OF THE APARTMENT, SCAR? SCAR SAID HE DIDN'T
9 KNOW HIM, AND HE TELL ME SOMEBODY IN THE
10 BACKGROUND SAID, HE'S STRAIGHT, HE'S ALRIGHT, I
11 KNOW HIM.

12 MR. CULLER: I DON'T HAVE ANYTHING
13 FURTHER. THANK YOU, YOUR HONOR.

14 THE COURT: REDIRECT?

15 SOLICITOR SORENSON: NOTHING, YOUR
16 HONOR.

17 THE COURT: THANK YOU, SIR, YOU MAY
18 STEP DOWN, YOU MAY BE EXCUSED. THANK YOU FOR COMING.

19 CALL YOUR NEXT WITNESS.

20 SOLICITOR SORENSON: THE STATE CALLS
21 MAURICE CHEESEBORO.

22 (Whereupon, the witness
23 enters the courtroom.)

24 THE COURT: COME ON DOWN THIS WAY,
25 PLEASE, SIR. COME RIGHT OVER THAT WAY, YOU'LL SEE A

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1 BIBLE THERE. IF YOU'LL PLACE YOUR LEFT HAND ON THAT
2 BIBLE, YOUR LEFT, AND RAISE YOUR RIGHT.

3 (Whereupon, Leafus Maurice Cheeseboro
4 is duly sworn.)

5 THE COURT: YOU NEED TO SPEAK.

6 WITNESS: YES, SIR.

7 THE COURT: ALRIGHT, GOOD. THANK
8 YOU. HAVE A SEAT RIGHT THERE AND STATE YOUR FULL NAME
9 FOR US, PLEASE, SIR.

10 WITNESS: MY NAME IS LEAFUS MAURICE
11 CHEESEBORO.

12 THE COURT: ALRIGHT, SIR, MR.
13 CHEESEBORO, EVERYBODY IN THE COURTROOM IS A LITTLE HARD
14 OF HEARING. THE AIR CONDITIONER IS RUNNING RIGHT OVER
15 OUR HEAD. EVERYBODY ON THE JURY HAS GOT TO HEAR YOU,
16 SO PLEASE SPEAK UP LOUD ENOUGH SO -- WE DON'T HAVE A PA
17 SYSTEM, THEY DON'T HAVE THE MONEY.

18 WITNESS: ALRIGHT. MY NAME IS
19 LEAFUS MAURICE CHEESEBORO.

20 THE COURT: THAT'S GOOD. THANK YOU,
21 SIR. JUST REMEMBER TOO KEEP YOUR VOLUME UP BECAUSE --
22 HOPEFULLY WE'RE GOING TO GET A PA SYSTEM ONE DAY, THAT
23 WILL HELP YOU, BUT RIGHT NOW WE DON'T HAVE ONE. SO,
24 YOU'LL JUST HAVE TO TALK LOUD. THE ONLY ONE UP THERE IS
25 FOR THE COURT REPORTER FOR HER MIKE, SO THAT DOESN'T

1 HELP THE PEOPLE HERE.

2 ALRIGHT, MR. SORENSON.

3 SOLICITOR SORENSON: THANK YOU, MAY
4 IT PLEASE THE COURT.

5 THE COURT: YES, SIR.

6 (NOTE: Blank lines on this page do not indicate any
7 part of record has been omitted. Headers on testimony
8 pages and hard page breaks between testimony are now
9 required by the Court. See next ensuing page for
10 sequential continuation of record.)

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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DIRECT EXAMINATION OF MAURICE CHEESEBORO

BY SOLICITOR SORENSON:

Q. GOOD MORNING, MR. CHEESEBORO?

A. HOW ARE YOU DOING?

Q. GOOD. IF YOU WOULD, TELL THE JURY WHERE IT IS
THAT YOU'RE FROM?

A. ORANGEBURG, SOUTH CAROLINA.

Q. KEEP IT UP, SPEAK LOUDER.

A. ORANGEBURG, SOUTH CAROLINA.

Q. OKAY. AND HOW OLD ARE YOU?

A. TWENTY-SEVEN.

Q. TWENTY-SEVEN. AND WHERE DID YOU GO TO HIGH
SCHOOL?

A. ORANGEBURG-WILKERSON.

Q. OKAY. AND DID YOU GRADUATE?

A. YES, SIR.

Q. WHAT YEAR DID YOU GRADUATE?

A. TWO THOUSAND.

Q. OKAY. AND WHAT ARE YOU CURRENTLY DOING FOR A
LIVING?

A. I ATTEND O-C TECH.

Q. O-C TECH? ALRIGHT. AND YOU CURRENTLY HAVE SOME
PENDING CHARGES ON YOU, IS THAT CORRECT?

A. YES, SIR.

Q. WHAT ARE YOU CURRENTLY CHARGED WITH?

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 A. MURDER.

2 Q. MURDER. AND THAT'S STEMMING OUT OF THIS INCIDENT,
3 IS THAT CORRECT?

4 A. YES, SIR.

5 Q. ALRIGHT. AND YOU HAVE A LAWYER, IS THAT CORRECT?

6 A. YEAH, YES, SIR.

7 Q. AND WHO IS YOUR LAWYER?

8 A. PEGGY HINDS.

9 Q. PEGGY HINDS. ALRIGHT. AND YOU HAVE BEEN OFFERED
10 IN THIS CASE, THE STATE AND YOUR LAWYER, WE HAVE
11 ENTERED INTO A, WE HAVE MADE YOU A PLEA OFFER, IS
12 THAT CORRECT?

13 A. YES, SIR.

14 Q. DO YOU KNOW WHAT THAT PLEA OFFER IS?

15 A. NO, SIR.

16 Q. OKAY. SHE HASN'T GONE OVER THAT WITH YOU?

17 A. NO, SIR.

18 Q. THE RANGE OF TEN TO THIRTY YEARS?

19 A. TEN TO THIRTY YEARS, YES, SIR.

20 Q. OKAY. AND YOUR LAWYER WENT OVER THAT WITH YOU, IS
21 THAT CORRECT?

22 A. YES, SIR.

23 Q. OKAY. AND SO, IN EXCHANGE FOR YOUR TRUTHFUL
24 TESTIMONY HERE TODAY THE STATE WILL AGREE TO
25 RECOMMEND A SENTENCE SOMEWHERE IN THE RANGE OF TEN

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 TO THIRTY YEARS, IS THAT CORRECT?

2 A. YES, SIR.

3 Q. MR. CHEESEBORO, YOU SAID YOU GRADUATED FROM O-W IN
4 TWO THOUSAND?

5 A. YES, SIR.

6 Q. OKAY. LET ME ASK YOU THIS, THE DEFENDANT IN THIS
7 CASE, TERRELL SCOTT, DO YOU KNOW MR. SCOTT?

8 A. YES, SIR.

9 Q. TELL THE JURY HOW YOU KNOW MR. SCOTT?

10 A. WE ATTENDED MIDDLE SCHOOL TOGETHER.

11 Q. MIDDLE SCHOOL?

12 A. YES, SIR.

13 Q. AND HOW LONG HAVE YOU KNOWN HIM?

14 A. MAYBE ABOUT TEN YEARS OR BETTER.

15 Q. OKAY. HOW OLD ARE YOU NOW?

16 A. TWENTY-SEVEN.

17 Q. AND WHEN WERE YOU AT MIDDLE SCHOOL?

18 A. ABOUT ELEVEN, TEN, ELEVEN.

19 Q. FIFTEEN OR SIXTEEN YEARS, THEN, IS THAT RIGHT?

20 A. YEAH.

21 Q. AND BACK IN TWO THOUSAND SIX, DID YOU, WERE YOU
22 FRIENDS OR ACQUAINTANCES WITH HIM BACK AT THAT
23 POINT IN TIME?

24 A. YES, SIR.

25 Q. OKAY. AND WHERE DID YOU KNOW HIM FROM, WHERE BACK

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 IN TWO THOUSAND AND SIX?

2 A. WE USED TO HANG OUT EVERY NOW AND THEN.

3 Q. OKAY. AND WHERE WAS THAT, WHERE WERE YOU LIVING
4 IN TWO THOUSAND AND SIX?

5 A. MAXEY STREET.

6 Q. MAXEY STREET. AND DID YOU HANG OUT OVER IN YOUR
7 NEIGHBORHOOD?

8 A. YES, SIR.

9 Q. ALRIGHT. LET ME ASK YOU, DO YOU KNOW A YOUNG MAN
10 BY THE NAME OF CLINTON JONES?

11 A. YES, SIR.

12 Q. AND HOW DO YOU KNOW MR. JONES?

13 A. FROM MAXEY STREET.

14 Q. OKAY. AND HOW LONG HAVE YOU KNOWN HIM?

15 A. MAYBE LIKE TEN YEARS, NINE OR TEN YEARS.

16 Q. SO, NOT QUITE AS LONG AS YOU'VE KNOWN MR. SCOTT?

17 A. NO, SIR.

18 Q. OKAY. NOW, MR. SCOTT, YOU SAID YOU WERE IN MIDDLE
19 SCHOOL WITH HIM, IS HE ABOUT THE SAME AGE AS YOU?

20 A. HE'S A LITTLE OLDER.

21 Q. OKAY. AND HOW ABOUT MR. JONES, IS HE YOUR AGE?

22 A. OH, HE'S YOUNGER.

23 Q. HE'S YOUNGER? AND HOW ABOUT A YOUNG MAN BY THE
24 NAME OF DANIEL YOUNG, DO YOU KNOW MR. YOUNG?

25 A. NOT REALLY, I KNOW HIM THROUGH PEOPLE.

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 Q. DO YOU KNOW HIM FROM, DID HE USED TO HANG OUT OVER
2 IN THAT MAXEY STREET AREA, TOO?

3 A. YES, SIR.

4 Q. DO YOU KNOW WHETHER HE WAS FRIENDS WITH MR. SCOTT
5 OR MR. JONES?

6 A. HE WAS FRIENDS OF MR. JONES.

7 COURT REPORTER: PULL YOUR CHAIR
8 FORWARD AND TALK LOUDER, PLEASE.

9 THE COURT: THIS LADY HAS TO WRITE
10 DOWN EVERYTHING THAT EVERYBODY SAYS. THAT'S THE REASON
11 SHE'S LISTENING SO HARD UP THERE.

12 Q. MR. CHEESEBORO, I WANT TO TURN YOUR ATTENTION BACK
13 TO DECEMBER OF TWO THOUSAND AND SIX. OKAY? THIS
14 INCIDENT THAT YOU'RE CHARGED WITH. OKAY? DO YOU
15 RECALL, DID YOU EVER HAVE AN OCCASION BEFORE THIS
16 INCIDENT OCCURRED TO HAVE ANY CONVERSATIONS WITH
17 MR. SCOTT ABOUT WHAT HAPPENED, ABOUT THE PLANNING
18 OF THIS ROBBERY?

19 A. I MEAN, NOT EXACTLY, BUT I MEAN, WE DONE TALKED.

20 Q. WELL, TELL THE JURY WHAT Y'ALL TALKED ABOUT?

21 A. I MEAN, HE JUST PRETTY MUCH SAY HE NEEDED SOME
22 MONEY AND HE KNEW WHERE TO GET IT FROM.

23 COURT REPORTER: SIR? YOU HAVE TO
24 TALK LOUDER.

25 A. HE JUST PRETTY MUCH SAY HE NEEDED SOME MONEY AND

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 HE KNEW WHERE TO GET IT FROM.

2 Q. HE NEEDED SOME MONEY AND KNEW WHERE TO GET IT
3 FROM, AND WHO WAS IT THAT SAID THAT TO YOU?

4 A. MR. SCOTT.

5 Q. AND THAT'S THE DEFENDANT IN THE BLUE SHIRT?

6 A. YES, SIR.

7 Q. AND DID HE TELL YOU ANY DETAILS ABOUT IT OR
8 ANYTHING AT THAT POINT IN TIME?

9 A. NO, SIR.

10 Q. DID HE AT ANY POINT IN TIME ASK YOU TO GO WITH
11 HIM?

12 A. YES, SIR.

13 Q. OKAY. TELL THE JURY HOW THAT CAME ABOUT?

14 A. WELL, PRETTY MUCH HE JUST, YOU KNOW WHAT I SAY, HE
15 KNOW WHERE TO GET SOME MONEY FROM AND HE ASKED ME
16 TO GO ALONG WITH HIM.

17 Q. OKAY. AND WHO ELSE WAS WITH YOU AT THAT TIME?

18 A. MR. JONES.

19 Q. OKAY. AND DID HE ASK MR. JONES ALSO?

20 A. YES, SIR.

21 Q. OKAY. AND DID THE TWO OF Y'ALL END UP GOING WITH
22 HIM THAT NIGHT?

23 A. YES, SIR.

24 Q. OKAY. AND DESCRIBE FOR THE JURY KIND OF HOW THAT,
25 HOW THAT WENT DOWN?

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 A. WE JUST WENT BY A HOUSE, HE SAID HE WAS GOING TO
2 GO IN AND CHECK IT OUT, AND GIVE A SIGNAL, AND WE
3 WOULD COME IN BEHIND HIM.

4 Q. AND DID, DID MR. SCOTT HAVE ANYTHING COVERING HIS
5 FACE AT THAT TIME?

6 A. NO, SIR.

7 Q. AND DO YOU KNOW WHETHER HE HAD A WEAPON WITH HIM
8 WHEN HE WENT INTO THE - - -

9 A. I DIDN'T SEE IT THEN, NO, I DIDN'T KNOW EXACTLY
10 RIGHT THEN AND THERE, NO.

11 Q. OKAY, INITIALLY YOU DIDN'T SEE ON?

12 A. HUH UH.

13 Q. OKAY. AND WHERE, DESCRIBE THIS PLACE THAT Y'ALL
14 WENT TO?

15 A. IT WAS SOME APARTMENTS.

16 Q. OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER
17 FIFTEEN, DO YOU RECOGNIZE THAT APARTMENT DOOR?

18 A. UH HUH.

19 Q. DOES THAT APPEAR TO -- WHAT IS THAT?

20 A. THAT'S THE APARTMENT.

21 Q. THAT'S THE APARTMENT?

22 A. YES, SIR.

23 Q. ALRIGHT. AND YOU SAID, WHAT WAS THE PLAN THAT
24 Y'ALL HAD DEvised WHEN Y'ALL WENT OVER THERE THAT
25 NIGHT?

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 A. HE WAS JUST GOING TO SEE WHAT WAS GOING ON IN THE
2 INSIDE, AND HE WOULD OPEN THE DOOR AND WE WAS
3 GOING TO COME IN BEHIND HIM.

4 Q. OKAY. HE WAS GOING TO GO IN, SEE WHAT WAS GOING
5 ON, AND WHEN HE OPENED THE DOOR YOU AND CLINTON
6 WERE TO GO IN?

7 A. UH HUH.

8 Q. OKAY. AND WHERE, SO WHERE WERE YOU WAITING, THEN,
9 WHEN HE WENT INSIDE?

10 A. WE WAS LIKE RIGHT IN THE FRONT AREA.

11 Q. OKAY. AND TELL THE JURY WHAT, WHAT CLOTHING DID
12 YOU HAVE ON, DID YOU HAVE ANYTHING, I MEAN - - -

13 A. I HAD A HOODIE ON.

14 Q. A HOODIE?

15 A. YES.

16 Q. AND DID YOU HAVE THE HOODIE UP OR DOWN?

17 A. UP.

18 Q. OKAY. AND DID YOU HAVE IT PULLED KIND OF COVERING
19 YOUR FACE AT ALL?

20 A. YES, SIR.

21 Q. AND WHAT ABOUT CLINTON, DO YOU REMEMBER WHAT, IF
22 ANYTHING, HE HAD COVERING HIS FACE?

23 A. NO, SIR, NOT EXACTLY, NO, SIR.

24 COURT REPORTER: SIR?

25 A. I SAID, NO, SIR.

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 Q. DO YOU KNOW, WAS HIS FACE COVERED?

2 A. PRETTY MUCH SO, YES, SIR.

3 Q. ALRIGHT. NOW, DID YOU OR CLINTON HAVE A WEAPON
4 WITH YOU?

5 A. YES, SIR.

6 MR. WALTERS: I OBJECT, YOUR HONOR,
7 HE'S LEADING THE WITNESS.

8 THE COURT: YES, SIR, YOU ARE. JUST
9 ASK HIM, IT NECESSARILY WASN'T LEADING, BUT ASK DIRECT
10 QUESTIONS. I OVERRULE THAT OBJECTION ON THAT QUESTION,
11 BUT - - -

12 Q. WERE YOU OR CLINTON ARMED?

13 A. YES, SIR.

14 Q. OKAY. AND WHAT DID Y'ALL HAVE?

15 A. LITTLE REVOLVERS.

16 Q. LITTLE REVOLVERS? NOW, WHEN Y'ALL WERE WAITING
17 OUTSIDE, THEN, HOW LONG WAS -- DID THAT DOOR
18 EVENTUALLY OPEN?

19 A. YES, SIR.

20 Q. OKAY. AND HOW LONG FROM THE TIME THAT MR. SCOTT
21 WENT IN UNTIL THE DOOR OPENED, DO YOU REMEMBER?

22 A. I CAN'T EXACTLY REMEMBER.

23 Q. YOU DON'T REMEMBER. WAS IT A LONG TIME, SHORT
24 TIME?

25 A. IT WASN'T TOO LONG.

1 Q. IT WASN'T TOO LONG. ALRIGHT, AND WHO WERE YOU
2 EXPECTING TO OPEN THAT DOOR WHEN IT OPENED?

3 A. MR. SCOTT.

4 Q. MR. SCOTT. AND WHO OPENED THE DOOR?

5 A. I DON'T KNOW WHO IT WAS.

6 Q. OKAY. WAS IT MR. SCOTT?

7 A. NO, HUH UH.

8 Q. OKAY. WELL, WHAT DID Y'ALL DO WHEN THE DOOR
9 OPENED?

10 A. WE RUSHED IN.

11 Q. OKAY. YOU AND CLINTON?

12 A. UH HUH.

13 Q. AND DID Y'ALL HAVE YOUR GUNS OUT AT THAT POINT IN
14 TIME?

15 A. YEAH.

16 Q. ALRIGHT. AND TELL THE JURY WHAT HAPPENED WHEN THE
17 TWO OF Y'ALL WENT RUSHING IN?

18 A. AS SOON AS WE RUSHED IN A HEARD A GUN SHOT.
19 EVERYBODY DROPPED TO THE FLOOR. OKAY, AND
20 EVERYBODY WENT IN.

21 Q. YOU HEARD HOW MANY GUN SHOTS?

22 A. ONE.

23 Q. AND AT THAT POINT IN TIME DID YOU SEE MR. SCOTT?

24 A. I MEAN, HE WAS AT THE DOOR.

25 Q. HE WAS AT THE -- SO, HE WAS INSIDE BUT AT THE

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

528

- 1 DOOR?
- 2 A. YES, SIR.
- 3 Q. AND DID YOU SEE AT THAT POINT IN TIME DID HE HAVE
- 4 A GUN?
- 5 A. I MEAN, I SEEN THE GUN BUT I AIN'T KNOW WHETHER
- 6 HE, I MEAN, I SEEN THE GUN.
- 7 Q. LET ME ASK YOU, DID YOU -- YOU SAID YOU HEARD A
- 8 GUN SHOT, DID YOU SHOOT?
- 9 A. NO, I AIN'T SHOOT.
- 10 Q. OKAY. AND MR. JONES WAS RUSHING IN WITH YOU?
- 11 A. YEAH.
- 12 Q. DID MR. JONES SHOOT?
- 13 A. NO, SIR.
- 14 Q. SO, THE SHOT CAME FROM SOMEWHERE INSIDE THE
- 15 APARTMENT?
- 16 A. YES, SIR.
- 17 Q. AND DID YOU ACTUALLY SEE WHO SHOT?
- 18 A. NO, I DIDN'T ACTUALLY SEE WHO SHOT.
- 19 Q. LET ME ASK YOU THIS, WHEN YOU GOT INTO THE
- 20 APARTMENT, BESIDES YOU AND MR. JONES, WHO ELSE HAD
- 21 A GUN WHEN YOU GOT IN THE APARTMENT?
- 22 A. IT WAS A GUN ON THE COUNTER.
- 23 Q. ON THE COUNTER?
- 24 A. YEAH, A LITTLE TABLE.
- 25 Q. OKAY. WHERE, WHERE WAS THAT INSIDE, I MEAN, DID

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 SOMEBODY HAVE THAT IN THEIR HAND, THOUGH, OR --
2 LET ME SHOW YOU A HANDFUL OF PICTURES HERE AND SEE
3 IF YOU REMEMBER WHAT'S ON THE COUNTER THERE.

4 A. I THINK IT WAS THIS COUNTER RIGHT HERE.

5 Q. THE COUNTER GOING TOWARDS WHAT'S THE KIND OF THE
6 BEDROOM, THE CORNER KITCHEN COUNTER?

7 A. YES, SIR.

8 Q. DO YOU REMEMBER SEEING A GUN THERE AT SOME POINT
9 IN TIME?

10 A. YES, SIR.

11 Q. WHEN YOU INITIALLY CAME IN, LET ME KIND OF GO BACK
12 TO MY QUESTION, THOUGH, WHO BESIDES YOU AND MR.
13 JONES HAD A GUN WHEN YOU GOT INSIDE THE APARTMENT?

14 A. JUST THE THREE OF US, WELL, I MEAN, WELL, JUST ME
15 AND JONES, I MEAN, WHEN WE GOT IN THE INSIDE.

16 Q. AND WHO ELSE, THOUGH, DID YOU SEE WITH A GUN
17 INSIDE THE APARTMENT?

18 A. ONCE WE GOT IN I SAW MR. SCOTT WITH A GUN.

19 Q. THAT'S WHAT I'M GETTING AT. OKAY. AND DESCRIBE
20 THAT GUN FOR THE JURY THAT YOU SAW HIM WITH?

21 A. SILVER, GRAY.

22 Q. A BIG GUN, A LITTLE GUN?

23 A. A PRETTY BIG GUN.

24 Q. A PRETTY BIG GUN. ALRIGHT. AND YOU SAID AFTER
25 THAT GUN SHOT EVERYBODY FELL TO THE FLOOR?

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1 A. UH HUH.

2 Q. OKAY. OBVIOUSLY, YOU AND MR. JONES AND MR. SCOTT
3 DIDN'T, DID YOU?

4 A. YEAH, EVERYBODY IN THE HOUSE FELL TO THE FLOOR.

5 Q. YOU WENT TO THE FLOOR, TOO?

6 A. YEAH, EVERYBODY IN THE HOUSE.

7 MR. WALTERS: OBJECT, YOUR HONOR,
8 HE'S STILL LEADING THE WITNESS.

9 THE COURT: ASK HIM DIRECT
10 QUESTIONS, PLEASE.

11 Q. ALRIGHT, SO YOUR TESTIMONY, WHO FELL, WHO WENT TO
12 THE FLOOR?

13 A. AT THE DOOR EVERYBODY THAT I SEEN, AS SOON AS THE
14 GUN SHOT WENT DOWN EVERYBODY DUCKED. SO, I
15 COULDN'T REALLY LOOK AND SEE WHO DID WHAT, YOU
16 KNOW.

17 Q. OKAY. WHAT DID YOU DO THEN?

18 A. I LAID DOWN AND I GOT UP AND WENT IN.

19 Q. OKAY. AND WHAT DID YOU DO WHEN YOU WENT IN?

20 A. START SEARCHING EVERYBODY.

21 Q. OKAY. WAS THAT THE, KIND OF THE PLAN INITIALLY?

22 A. SOMEWHAT, YEAH.

23 Q. OKAY. AND WHERE WAS EVERYBODY LOCATED AT INSIDE
24 THE APARTMENT THEN?

25 A. THE LIVING ROOM, AS SOON AS YOU COME IN THE LIVING

1 ROOM AREA.

2 Q. DO YOU REMEMBER IF ANYBODY WAS IN THE KITCHEN
3 AREA?

4 A. YEAH, A PERSON WAS IN THE KITCHEN AREA, OR RIGHT
5 BY THE KITCHEN AREA.

6 Q. AND HOW ABOUT THE BACK BEDROOM AREA?

7 A. I DON'T KNOW, I AIN'T SEEN HIM.

8 Q. OKAY. DID YOU GO BACK IN THE BEDROOM AREA?

9 A. NO.

10 Q. IS THERE A REASON WHY YOU DIDN'T GO BACK IN THE
11 BEDROOM AREA?

12 A. YEAH.

13 Q. WHY DIDN'T YOU GO BACK THERE?

14 A. BECAUSE MR. SCOTT SAID, DON'T GO IN THERE.

15 COURT REPORTER: BECAUSE WHAT?

16 A. MR. SCOTT SAID, DON'T GO IN THERE.

17 Q. HE TOLD YOU, DON'T GO IN THERE?

18 A. YEAH.

19 Q. DID HE TELL YOU WHY, DON'T GO IN THERE?

20 A. I THINK SOMEBODY WAS BACK IN THERE.

21 Q. OKAY. ALRIGHT. DID YOU SEE ANYBODY GO BACK THERE
22 WHEN YOU CAME IN?

23 A. NO.

24 Q. ALRIGHT. AND YOU SAID THAT YOU THEN WENT ABOUT
25 SEARCHING THE PEOPLE THAT WERE IN THERE?

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 A. UH HUH.

2 Q. AND WHAT WAS MR. SCOTT DOING WHILE ALL THAT WAS
3 GOING ON?

4 A. STANDING AT THE DOOR.

5 Q. OKAY. DID HE HAVE THE GUN OUT STILL?

6 A. UH HUH.

7 Q. WHAT, IF ANYTHING, DID YOU GET OFF OF THE PEOPLE
8 THAT YOU WERE SEARCHING?

9 A. MONEY AND DRUGS.

10 Q. MONEY AND DRUGS. LET ME ASK YOU, WHAT PEOPLE DID
11 YOU -- DID YOU PERSONALLY SEARCH EVERYBODY THAT
12 WAS IN THERE?

13 A. HUH UH.

14 Q. WHAT PEOPLE DID YOU SEARCH?

15 A. JUST ONE.

16 Q. AND WHICH ONE WAS THAT?

17 A. THE PERSON BY THE KITCHEN.

18 Q. THE PERSON BY THE KITCHEN. LET ME ASK YOU, DID
19 YOU KNOW WHO THAT WAS?

20 A. NO, SIR.

21 Q. LET ME ASK YOU THIS, THOSE PEOPLE THAT WERE IN
22 THERE, DID YOU LOOK AT, AT SOME POINT IN TIME, ALL
23 OF THE PEOPLE THAT WERE INSIDE THE APARTMENT?

24 A. NOT REALLY BECAUSE EVERYTHING WAS MOVING SO FAST.

25 Q. WAS THERE ANYBODY IN THERE THAT YOU RECOGNIZED AND

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 THAT YOU KNEW?

2 A. NO, SIR.

3 Q. SO, JOHN RANDOLPH, DID YOU KNOW JOHN RANDOLPH?

4 A. NO, SIR.

5 Q. DO YOU KNOW WILL GILLIARD?

6 A. NO, SIR.

7 Q. DO YOU KNOW LAWRENCE KELLY?

8 A. NO, SIR.

9 Q. DID YOU KNOW HARRY MACK, THE YOUNG MAN THAT WAS
10 KILLED?

11 A. NONE OF THEM.

12 COURT REPORTER: WHAT IS YOUR
13 ANSWER?

14 A. NO, SIR, NONE OF THEM.

15 Q. AND WHILE YOU WERE SEARCHING THE GUY IN THE
16 KITCHEN WHAT WAS, WHAT WAS MR. JONES DOING?

17 A. SEARCHING EVERYBODY ELSE.

18 Q. AND DID Y'ALL SEARCH THE WHOLE APARTMENT OR JUST
19 BASICALLY THE PEOPLE?

20 A. JUST THE PEOPLE.

21 Q. DID YOU PERSONALLY TAKE ANYTHING BESIDES THE ITEMS
22 THAT YOU TOOK OFF OF THE PERSON IN THE KITCHEN?

23 A. NO, SIR.

24 Q. AND YOU SAID THAT WAS SOME MONEY AND SOME DRUGS,
25 YOU SAID?

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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- 1 A. YES, SIR.
- 2 Q. AND WHAT KIND OF DRUGS DID YOU TAKE OFF OF HIM?
- 3 A. MARIJUANA.
- 4 Q. A LOT OF MARIJUANA, A LITTLE MARIJUANA?
- 5 A. A LITTLE MARIJUANA.
- 6 Q. DO YOU REMEMBER IF YOU TOOK ANY JEWELRY OR
- 7 ANYTHING LIKE THAT OFF OF ANYBODY?
- 8 A. NO, SIR.
- 9 Q. WERE YOU THE ONLY PERSON, OR DID ANYBODY ELSE DEAL
- 10 WITH THE GUY IN THE KITCHEN?
- 11 A. I WAS PRETTY MUCH THE ONLY PERSON WITH THE GUY IN
- 12 THE KITCHEN.
- 13 Q. DO YOU KNOW IF EITHER MR. SCOTT OR MR. JONES COME
- 14 INTO THE KITCHEN AREA?
- 15 A. NO, SIR.
- 16 Q. OKAY. AND DID YOU EVER SEE MR. SCOTT ACTUALLY
- 17 COME PAST, LET'S SAY, THE LIVING ROOM AREA INTO
- 18 THE KITCHEN?
- 19 A. NO, SIR.
- 20 Q. OKAY. WHILE YOU WERE IN THERE HE NEVER, HE NEVER
- 21 PASSED, LET'S SAY, THAT COUCH?
- 22 A. NO, SIR.
- 23 Q. ALRIGHT. DID Y'ALL THEN, AFTER YOU'RE DONE,
- 24 LEAVE, I GUESS ALL THREE OF YOU TOGETHER?
- 25 A. UH HUH.

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 Q. LET ME ASK YOU, HOW DID Y'ALL GET THERE?

2 A. A CAR.

3 Q. WHOSE CAR WAS THAT THAT YOU WERE IN?

4 A. I DON'T KNOW WHOSE CAR IT WAS.

5 Q. WHO WAS DRIVING?

6 A. MR. SCOTT.

7 Q. ANYBODY WITH YOU BESIDES THE THREE OF Y'ALL?

8 A. NO, SIR.

9 Q. HAD YOU EVER SEEN THAT CAR BEFORE?

10 A. NO, SIR.

11 Q. DO YOU REMEMBER WHAT TYPE OF CAR IT WAS NOW?

12 A. NO, SIR.

13 Q. LET ME ASK YOU, WHEN YOU LEFT THE APARTMENT, THE
14 TIME THAT YOU LEFT THE APARTMENT AFTER YOU WENT
15 OUT THE DOOR, DID YOU KNOW SOMEBODY HAD BEEN SHOT
16 INSIDE THERE?

17 A. NOT EXACTLY, WHEN WE GOT TO THE CAR MR. SCOTT
18 SAID, I THINK I SHOT SOMEBODY.

19 Q. THAT'S WHAT HE SAID, HE THINKS HE SHOT SOMEBODY?

20 A. RIGHT.

21 Q. DID Y'ALL GO YOUR SEPARATE WAYS THAT NIGHT?

22 A. YES, SIR.

23 Q. LET ME ASK YOU, DID YOU LEARN AT SOME POINT IN
24 TIME DOWN THE ROAD THAT MR. SCOTT HAD BEEN
25 ARRESTED AND CHARGED IN THIS CASE?

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

536

1 A. YES, SIR.

2 Q. HOW, WHAT WERE YOU FEELING WHEN THAT HAPPENED?

3 A. I AIN'T, I MEAN, I WASN'T TALKING TO HIM SO I
4 DIDN'T KNOW, YOU KNOW.

5 Q. DO YOU REMEMBER THE FIRST TIME ANYBODY FROM LAW
6 ENFORCEMENT CAME AND TALKED TO YOU ABOUT THIS
7 INCIDENT?

8 A. YES, SIR.

9 Q. DO YOU KNOW ABOUT WHEN THAT WAS?

10 A. LATE NOVEMBER.

11 Q. NOVEMBER? OKAY. AND WHO WAS THAT THAT CAME AND
12 TALKED TO YOU, DO YOU REMEMBER?

13 A. OFFICER SHUMPERT.

14 Q. OFFICER SHUMPERT RIGHT HERE?

15 A. UH HUH.

16 Q. ALRIGHT. AND DID HE GIVE YOU ANY -- HOW DID THAT
17 COME ABOUT, WHEN HE CAME TO TALK TO YOU?

18 A. HE JUST ASKED ME ABOUT THAT NIGHT, DID I KNOW
19 ANYTHING ABOUT IT?

20 Q. AND THE FIRST TIME THAT HE TALKED TO YOU DID YOU,
21 DID YOU TELL HIM YOU KNEW ANYTHING ABOUT IT?

22 A. NO, SIR.

23 Q. OKAY. AND YOU SAID THAT WAS, YOU THINK AROUND,
24 THE BEGINNING OF NOVEMBER?

25 A. UH HUH.

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

537

1 Q. AND THAT WOULD BE TWO THOUSAND AND SEVEN?

2 A. I THINK SO.

3 Q. SO, TEN MONTHS, ELEVEN MONTHS LATER?

4 A. YES, SIR.

5 Q. AND DID THERE ULTIMATELY COME A TIME WHEN
6 INVESTIGATOR SHUMPERT CAME BACK OUT AND TALKED TO
7 YOU AGAIN?

8 A. YES, SIR.

9 Q. AND DID YOU END UP AT THAT POINT IN TIME GIVING
10 HIM A STATEMENT?

11 A. YES, SIR.

12 Q. AND HE HAD ADVISED YOU OF YOUR RIGHTS WHEN HE DID
13 THAT, RIGHT, WHEN HE TOOK THAT STATEMENT FROM YOU?
14 LET ME ASK YOU, WHAT'S THE DATE?

15 A. ELEVEN/TWO/O-SEVEN.

16 Q. NOVEMBER SECOND OF O-SEVEN?

17 A. UH HUH.

18 Q. WOULD THAT BE THE SECOND TIME HE CAME TO TALK TO
19 YOU WHEN YOU ACTUALLY GAVE THE WRITTEN STATEMENT
20 TO HIM?

21 A. YES, SIR.

22 Q. AND AT THAT POINT IN TIME DID YOU TELL
23 INVESTIGATOR SHUMPERT THAT YOU WERE INVOLVED IN
24 THIS INCIDENT?

25 A. YES, SIR.

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 Q. AND DID YOU TELL HIM ALL THE DETAILS THAT YOU TOLD
2 THE JURY TODAY?

3 A. NO, SIR.

4 Q. IN FACT, DID YOU EVEN ADMIT TO GOING INTO THE
5 APARTMENT THAT DAY?

6 A. NO, SIR.

7 Q. DID YOU TELL HIM WHO ELSE WAS INVOLVED, THOUGH?

8 A. YES, SIR.

9 Q. LET ME ASK YOU THIS, IN NOVEMBER OF TWO THOUSAND
10 AND SEVEN, WHEN YOU TALKED TO INVESTIGATOR
11 SHUMPERT, WHEN, WHEN WAS THE LAST TIME YOU HAD
12 SEEN CLINTON JONES?

13 A. I CAN'T REALLY RECALL.

14 Q. IT HAD BEEN A WHILE?

15 A. YEAH, IT HAD BEEN A WHILE.

16 Q. HE HAD BEEN ARRESTED AND LOCKED UP AT SOME POINT
17 IN TIME - - -

18 A. YES, SIR.

19 Q. --- IN BETWEEN, RIGHT?

20 A. UH HUH.

21 Q. WHAT ABOUT THE DEFENDANT, TERRELL SCOTT, HAD YOU
22 BEEN ASSOCIATING AROUND HIM AT ALL?

23 A. NO, SIR.

24 Q. WHEN WAS THE LAST TIME YOU HAD SEEN HIM?

25 A. IT HAD BEEN A LONG TIME, TOO.

DIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

539

1 Q. HAD YOU SEEN HIM AFTER THIS INCIDENT HAPPENED,
2 AFTER THE EARLY MORNING HOURS OF DECEMBER TWENTY-
3 FOURTH, DID YOU SEE HIM AGAIN AFTER THAT?

4 A. I SEEN HIM A COUPLE OF TIMES AFTER THAT.

5 Q. A COUPLE OF TIMES AFTER THAT? DID Y'ALL TALK
6 ABOUT THIS AT ALL?

7 A. NO, SIR.

8 SOLICITOR SORENSON: THANK YOU, MR.
9 CHEESEBORO, PLEASE ANSWER ANY QUESTIONS DEFENSE COUNSEL
10 MAY HAVE.

11 THE COURT: CROSS-EXAMINATION.

12 (NOTE: Blank lines on this page do not indicate any
13 part of record has been omitted. Headers on testimony
14 pages and hard page breaks between testimony are now
15 required by the Court. See next ensuing page for
16 sequential continuation of record.)

CROSS - MAURICE CHEESEBORO BY MR. CULLER

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CROSS-EXAMINATION OF MAURICE CHEESEBORO

BY MR. CULLER:

Q. MR. CHEESEBORO, IT'S UNCOMFORTABLE WHEN YOU CAN'T
REMEMBER THINGS, ISN'T IT?

A. YES, SIR.

Q. MR. SORENSON JUST TRIED TO HELP YOU REMEMBER A
DETAIL THAT YOU LEFT OUT THAT'S IMPORTANT?

A. WHAT'S THAT?

Q. WHEN HE ASKED YOU, DID YOU TAKE ANY JEWELRY?

A. UH HUH.

Q. AND YOU SAID, NO.

A. YES, SIR.

Q. YOU SEE, THE RIGHT ANSWER WAS, YES, I TOOK THE
NECKLACE OFF OF THE RIGHT GUY, YOU SEE, THAT'S THE
STORY, YOU'RE NOT STICKING TO THE STORY, MR.
CHEESEBORO.

A. UH HUH.

Q. YOU HAVEN'T BEEN OVER IT ENOUGH.

THE COURT: HAVE YOU GOT A QUESTION,
MR. CULLER?

MR. CULLER: IT'S A STATEMENT, I
APOLOGIZE, YOUR HONOR.

Q. SO, ARE YOU STICKING TO THE STORY?

A. YES, SIR.

Q. YOU ARE?

1 A. YES, SIR.

2 Q. BUT YOU LEFT THAT OUT, DIDN'T YOU?

3 A. I DIDN'T TAKE NO JEWELRY.

4 Q. YOU WERE DEALING WITH -- YOUR TESTIMONY IS, YOU
5 WERE DEALING WITH THE GUY IN THE KITCHEN?

6 A. YES, SIR.

7 Q. HOW DID YOU DEAL WITH THE GUY IN THE KITCHEN, DID
8 YOU STAND HIM UP OR DID HE STAY ON THE GROUND?

9 A. NO, HE GOT UP ON HIS OWN.

10 Q. HE GOT UP ON HIS OWN?

11 A. YES SIR.

12 Q. AND YOU WANTED HIM UP ON HIS OWN?

13 A. NO, HE STOOD UP ON HIS OWN.

14 Q. OKAY. YOU'VE GOT A GUN?

15 A. YES, SIR.

16 Q. YOU'RE IN THERE TO ROB PEOPLE, CORRECT?

17 A. YES, SIR.

18 Q. AND THIS MAN STANDS UP ON HIS OWN, AND YOU'RE COOL
19 WITH THAT, YOU'RE COMFORTABLE?

20 A. YES, SIR, WHAT ELSE WAS I SUPPOSED TO DO? YES,
21 SIR.

22 Q. YOU'VE GOT THE GUN, YOU'RE IN THERE TO ROB HIM,
23 WOULDN'T YOU SAY, STAY DOWN ON THE FLOOR, I DON'T
24 WANT YOU TO DO ANYTHING, DON'T MOVE?

25 A. EVERYTHING WAS MOVING TOO FAST.

CROSS - MAURICE CHEESEBORO BY MR. CULLER

542

1 Q. EVERYTHING WAS MOVING TOO FAST?

2 A. YES, IT WAS.

3 Q. WERE YOU EVEN THERE, MR. CHEESEBORO?

4 A. YES, I WAS THERE.

5 Q. HE STOOD UP ON HIS OWN. WHEN HE STOOD UP ON HIS
6 OWN, WHAT DID YOU DO?

7 A. I FOLLOWED HIM, HE WALKED AROUND THE CHAIR AND I
8 FOLLOWED HIM AROUND THE CHAIR.

9 Q. DID YOU EVER TOUCH HIM?

10 A. YEAH, I HOLD HIM BY HIS SHOULDER.

11 Q. YOU HELD HIM BY HIS SHOULDER?

12 A. YES.

13 Q. HOW?

14 A. LIKE YOU HOLD SOMEBODY WALKING WITH THEM.

15 Q. OKAY.

16 MR. CULLER: YOUR HONOR, COULD HE
17 DEMONSTRATE ON ME?

18 Q. COULD YOU SHOW ME HOW YOU HELD HIM BY THE
19 SHOULDER?

20 (Whereupon, Witness demonstrates.)

21 Q. LIKE THAT? OKAY. THANK YOU. SO, YOU NEVER PUT
22 YOUR ARM AROUND HIS NECK?

23 A. NO, SIR.

24 Q. WHICH HAND DID YOU HAVE THE GUN IN?

25 A. I HAD THE GUN IN MY LEFT HAND.

CROSS - MAURICE CHEESEBORO BY MR. CULLER

543

1 Q. IN YOUR LEFT HAND. YOU DIDN'T HAVE IT IN YOUR
2 RIGHT HAND?

3 A. NO, SIR. I'M HOLDING HIM WITH MY RIGHT HAND. I'M
4 HOLDING THE GUN WITH MY LEFT HAND.

5 Q. OKAY. SO, YOU'RE NOT STICKING WITH THE STORY, THE
6 GUN'S SUPPOSED TO BE IN YOUR RIGHT HAND, ISN'T IT?

7 A. NO, MY LEFT HAND. WHY WOULD IT BE IN MY RIGHT
8 HAND?

9 Q. AND WHEN YOU GOT ARRESTED YOU WERE CHARGED WITH
10 MURDER, ISN'T THAT CORRECT?

11 A. ACCESSORY AFTER THE FACT OF MURDER.

12 Q. ALRIGHT. ARE YOU CURRENTLY FACING A MURDER CHARGE
13 NOW?

14 A. YES, SIR.

15 Q. AND THAT CARRIES A PENALTY OF UP TO LIFE, THIRTY
16 YEARS TO LIFE, ISN'T THAT TRUE?

17 A. YES, SIR.

18 Q. AND IT'S IMPORTANT TO YOU TO TESTIFY TODAY IN A
19 WAY THAT'S PLEASING TO THE MAN WHO CONTROLS YOUR
20 DESTINY, THE SOLICITOR, ISN'T THAT TRUE?

21 A. NOT NECESSARILY.

22 Q. NOT NECESSARILY?

23 A. NO WAY, NO, SIR, IT AIN'T TRUE.

24 Q. WELL, YOU DON'T WANT MR. SORENSON TO BE UNHAPPY
25 WITH YOUR TESTIMONY?

CROSS - MAURICE CHEESEBORO BY MR. CULLER

544

1 A. I MEAN, IT'S GOING TO HAPPEN, WHATEVER, BECAUSE -
2 - -

3 Q. SO -- I BEG YOUR PARDON. BUT YOU'RE CONCERNED
4 ABOUT THIRTY YEARS OR LIFE, AREN'T YOU?

5 A. YEAH, ANYBODY WOULD BE CONCERNED WITH THIRTY YEARS
6 OR LIFE.

7 Q. DO YOU HAVE A FAMILY?

8 A. YES, SIR.

9 Q. DO YOU HAVE ANY CHILDREN?

10 A. YES, SIR.

11 Q. HOW OLD ARE YOUR CHILDREN?

12 A. I'VE GOT A DAUGHTER THAT'S SIX.

13 Q. OKAY. WOULD YOU LIKE TO SEE YOUR DAUGHTER
14 GRADUATE FROM HIGH SCHOOL?

15 A. YES, SIR.

16 Q. DO YOU HAVE PARENTS?

17 A. WELL, MY FATHER'S DECEASED, I STILL HAVE MY
18 MOTHER.

19 Q. I'M SORRY. HOW IS YOUR MOTHER DOING?

20 A. SHE'S ALRIGHT.

21 Q. SHE'S IN GOOD HEALTH?

22 A. PRETTY MUCH.

23 Q. OKAY. IF YOUR MAMA GOT SICK, THOUGH, YOU'D WANT
24 TO BE ABLE TO TAKE CARE OF HER AND HELP HER,
25 WOULDNT'T YOU?

CROSS - MAURICE CHEESEBORO BY MR. CULLER

545

- 1 A. YES, SIR.
- 2 Q. AND YOU CAN'T DO THAT IF YOU'RE LOCKED AWAY IN
- 3 JAIL?
- 4 A. THAT'S TRUE.
- 5 Q. SO, IT'S IMPORTANT THAT YOU MAINTAIN YOUR FREEDOM?
- 6 A. YES, SIR.
- 7 Q. IT'S IMPORTANT THAT YOU DO WHAT IS NECESSARY TO
- 8 MAINTAIN YOUR FREEDOM, CORRECT?
- 9 A. IF YOU WANT TO PUT IT -- YES, SIR.
- 10 Q. AND THE STATEMENT THAT YOU GAVE, HAVE YOU SEEN
- 11 YOUR STATEMENT?
- 12 A. UH HUH.
- 13 Q. NOW, I'LL GIVE YOU A COPY AND ASK IF YOU RECOGNIZE
- 14 THAT?
- 15 A. UH HUH.
- 16 Q. THAT IS YOUR STATEMENT?
- 17 A. YES, SIR.
- 18 Q. OKAY. AND YOU GAVE THIS STATEMENT IN OCTOBER OF
- 19 O-SEVEN, RIGHT?
- 20 A. NOT OCTOBER, NOVEMBER.
- 21 Q. I BEG YOUR PARDON, NOVEMBER OF O-SEVEN, YOU'RE
- 22 RIGHT. AND THAT WAS ALMOST A YEAR AFTER THIS,
- 23 RIGHT?
- 24 A. YES, SIR.
- 25 Q. AND IN THIS STATEMENT WHERE DO YOU SAY THAT YOU

CROSS - MAURICE CHEESEBORO BY MR. CULLER

546

1 WENT IN THE HOUSE?

2 A. I DON'T SAY I GO IN THE HOUSE.

3 Q. I BEG YOUR PARDON?

4 A. I DIDN'T SAY I WENT IN THE HOUSE.

5 Q. WHY NOT?

6 A. BECAUSE I DIDN'T TELL HIM THAT THE FIRST TIME, I
7 MEAN, I WAS SCARED, THERE WASN'T NO TROUBLE.

8 Q. ALRIGHT. WELL, YOU'RE SCARED TODAY AND YOU'RE IN
9 TROUBLE, BUT YOUR STORY IS DIFFERENT, ISN'T IT?

10 A. NO, I MEAN, I JUST TOLD WHAT ACTUALLY HAPPENED, I
11 MEAN, - - -

12 Q. BUT IT'S DIFFERENT FROM WHAT YOU TOLD THE POLICE?

13 A. THE FIRST TIME, YES, BECAUSE I WAS SCARED TO BE IN
14 TROUBLE.

15 Q. TOTALLY DIFFERENT?

16 A. YEAH.

17 Q. I WENT IN THE APARTMENT, IS ONE STATEMENT?

18 A. UH HUH.

19 Q. I DIDN'T GO IN THE APARTMENT IS ANOTHER STATEMENT.
20 THOSE AREN'T REALLY CLOSE, ARE THEY?

21 A. WHAT YOU MEAN?

22 Q. I MEAN, IT'S NOT LIKE, I SORT OF WENT IN, YOU
23 SAID, I NEVER WENT IN, IN YOUR STATEMENT TO LAW
24 ENFORCEMENT?

25 A. YES, SIR.

CROSS - MAURICE CHEESEBORO BY MR. CULLER

547

1 Q. AND TODAY, UNDER OATH, YOUR TESTIMONY IS, I WENT
2 IN?

3 A. YES, SIR.

4 Q. I LIED, IS WHAT YOU'RE SAYING, THIS IS A LIE?

5 A. YEAH, IF YOU WANT TO SAY THE FIRST THING IS A LIE,
6 YEAH, BECAUSE I SAID I DIDN'T WENT IN WHEN I DID,
7 YEAH.

8 Q. I DON'T WANT TO SAY IT'S A LIE, THIS IS THE
9 CONCLUSION I'M DRAWING, DO YOU DRAW THE SAME
10 CONCLUSION, THAT THAT WAS A LIE?

11 A. THAT I DIDN'T GO IN, YEAH.

12 Q. WHAT YOU TOLD THE POLICE WAS A LIE?

13 A. WELL, - - -

14 Q. YOU LIED TO DETECTIVE SHUMPERT, DIDN'T YOU?

15 A. YEAH, ABOUT NOT GOING IN, YEAH.

16 Q. YEAH. AND YOUR TESTIMONY TODAY IS, MR. SCOTT
17 SAID, DON'T GO IN THE BEDROOM, RIGHT?

18 A. UH HUH.

19 Q. SO, THERE'S SOME MORE DETAILS TODAY THAT WERE NOT
20 IN YOUR STATEMENT, RIGHT?

21 A. YEAH.

22 Q. OKAY. AND AGAIN, THIS IS MAY OF O-NINE, YOU GAVE
23 YOUR STATEMENT IN NOVEMBER OF O-SEVEN. SO, SOME
24 SIGNIFICANT TIME HAS PASSED SINCE WHEN YOU GAVE
25 YOUR STATEMENT UNTIL WHEN YOU'RE TESTIFYING, ISN'T

CROSS - MAURICE CHEESEBORO BY MR. CULLER

548

1 THAT RIGHT?

2 A. YES, SIR.

3 Q. BUT YOUR TESTIMONY TODAY REMARKABLY HAS A LOT MORE
4 DETAIL AND CLARIFY, ALL OF WHICH GOES AGAINST MR.
5 SCOTT, DOESN'T IT?

6 A. YES, SIR.

7 Q. IT DOESN'T HELP MR. SCOTT AT ALL, DOES IT?

8 A. NO, SIR.

9 Q. HE'S DIRECTING EVERYTHING, ISN'T HE?

10 A. YES, SIR.

11 Q. DON'T GO IN THE BEDROOM?

12 A. YES, SIR.

13 Q. BECAUSE SOMEBODY MIGHT BE IN THERE. NOBODY RAN IN
14 THE BEDROOM?

15 A. THE GUN SHOT WENT OFF, I DUCKED, AND THAT WAS
16 THAT. I DON'T KNOW HOW THEY GET IN THE BEDROOM,
17 WHETHER THEY GO IN THERE, WHETHER THEY FALL IN
18 THERE, OR WHAT.

19 Q. AND HOW MANY GUN SHOTS DID YOU HEAR?

20 A. ONE.

21 Q. ARE YOU SURE?

22 A. POSITIVE.

23 Q. YOUR STATEMENT SAID, WE WERE IN A GRAY CAR. WHAT
24 KIND OF CAR?

25 A. I DON'T KNOW WHAT KIND OF CAR.

CROSS - MAURICE CHEESEBORO BY MR. CULLER

549

1 Q. WAS IT TWO DOOR, FOUR DOOR?

2 A. IT WAS A FOUR DOOR CAR, BUT THE MODEL, YEAR OR
3 WHAT IT WAS I COULDN'T TELL YOU.

4 Q. OKAY. SO, YOU DID NOT TAKE A NECKLACE FROM
5 ANYBODY IN THE KITCHEN?

6 A. NO, SIR.

7 MR. CULLER: ONE MOMENT, YOUR HONOR,
8 PLEASE.

9 THE COURT: YES, SIR.

10 Q. JUST TO BRIEFLY REVISIT THIS, MR. CHEESEBORO, THE
11 DETAILS THAT YOU COME FORWARD WITH TODAY WERE
12 CERTAINLY NOT IN THE STATEMENT, YOU WOULD AGREE
13 WITH ME THERE?

14 A. YES, SIR.

15 MR. CULLER: THANK YOU, I DON'T HAVE
16 ANYTHING FURTHER.

17 THE COURT: REDIRECT?

18 SOLICITOR SORENSON: YES, YOUR
19 HONOR.

20 (NOTE: Blank lines on this page do not indicate any
21 part of record has been omitted. Headers on testimony
22 pages and hard page breaks between testimony are now
23 required by the Court. See next ensuing page for
24 sequential continuation of record.)

REDIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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REDIRECT EXAMINATION OF MAURICE CHEESEBORO

BY SOLICITOR SORENSON:

Q. MR. CHEESEBORO, YOU'VE HAD AN OPPORTUNITY TO MEET
WITH ME ON ONE OCCASION, IS THAT CORRECT?

A. YES, SIR.

Q. I HAVEN'T TOLD YOU WHAT TO COME IN HERE AND SAY IN
COURT?

A. NO, SIR.

Q. DID I ASK YOU TO TELL THE TRUTH?

A. YES, SIR.

Q. MR. CULLER ASKED YOU ABOUT THIS STATEMENT THAT YOU
GAVE TO INVESTIGATOR SHUMPERT BACK IN NOVEMBER OF
TWO THOUSAND AND SEVEN. I MEAN, YOU TESTIFIED ON
DIRECT, I MEAN, YOU DIDN'T TELL HIM THE WHOLE
TRUTH, IS THAT CORRECT?

A. YES, SIR.

Q. OKAY.

SOLICITOR SORENSON: YOUR HONOR, AT
THIS TIME I'D LIKE TO HAVE HIM PUBLISH WHAT HE DID TELL
INVESTIGATOR SHUMPERT IN THIS STATEMENT.

MR. CULLER: I DON'T HAVE ANY
OBJECTION TO THAT, YOUR HONOR.

THE COURT: GO AHEAD.

Q. OKAY. CAN YOU, DO YOU HAVE A COPY OF THAT UP
THERE?

1 A. YES, SIR.

2 Q. FIRST OF ALL, THAT'S YOUR HANDWRITING, RIGHT?

3 A. YES, SIR.

4 Q. ARE YOU ABLE TO READ IT?

5 A. YES, SIR.

6 Q. CAN YOU READ FOR THE JURY WHAT YOU TOLD
7 INVESTIGATOR SHUMPERT BACK ON NOVEMBER SECOND?

8 A. "ONE DAY TERRELL APPROACHED ME AND CLINTON" - -

9 COURT REPORTER: WAIT, SIR.

10 Q. YOU NEED TO SPEAK LOUD AND SLOW, ALRIGHT?

11 A. "ONE DAY TERRELL APPROACHED ME AND CLINTON AND
12 ASKED US TO HELP HIM ROB SOMEBODY. SO, WE SAID,
13 WE'LL SEE. THE NIGHT WE WENT WE WAS IN A GRAY
14 CAR. TERRELL TOLD US THAT HE WAS GOING IN AND FOR
15 US TO STAY IN THE CAR UNTIL HE GAVE US THE SIGN TO
16 COME IN. BUT WHEN WE APPROACHED THE DOOR A GUN
17 WENT OFF. THE NEXT FEW DAYS I FOUND OUT THAT THE
18 PERSON WAS DEAD. THAT NIGHT TERRELL SAID THAT HE
19 THOUGHT THAT HE HAD SHOT SOMEBODY. THE GUN WAS A
20 REVOLVER AND GRAY, I DON'T KNOW THE TYPE OF GUN."

21 Q. WHEN THEY ASKED YOU A QUESTION, "WHO TALKED TO YOU
22 AND CLINTON ABOUT A ROBBERY?" AND WHAT WAS YOUR
23 ANSWER?

24 A. "TERRELL SCOTT."

25 Q. "AND WHO SHOT HARRY MACK?"

REDIRECT - MAURICE CHEESEBORO BY SOL. SORENSON

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1 A. "TERRELL SCOTT."

2 Q. "HOW DO YOU KNOW HE SHOT HARRY MACK?"

3 A. HE TOLD ME.

4 Q. "TERRELL TOLD ME AFTER THE SHOT, OR HE SHOT," IS
5 THAT RIGHT?

6 A. YEAH. "TERRELL TOLD ME AFTER HE SHOT," YEAH.

7 Q. "WHO ELSE" I THINK IT SHOULD BE, "WITH YOU AND
8 TERRELL SCOTT." "WHO ELSE WITH YOU AND TERRELL
9 SCOTT?"

10 A. "CLINTON JONES."

11 Q. ALRIGHT. AND THEN, "WHERE IS CLINTON JONES
12 LOCATED NOW?"

13 A. "JAIL."

14 Q. THAT'S THE STATEMENT YOU GAVE BACK IN TWO THOUSAND
15 AND SEVEN, IS THAT CORRECT?

16 A. YES, SIR.

17 Q. AND OBVIOUSLY, THAT'S NOT THE WHOLE TRUTH, RIGHT,
18 FROM WHAT YOU'VE TOLD THIS JURY AND TESTIFIED TO
19 TODAY?

20 A. YES, SIR.

21 Q. AND YET AGAIN, WHY DID YOU TELL INVESTIGATOR
22 SHUMPERT WHAT YOU TOLD HIM?

23 A. BECAUSE I WAS SCARED, AND I DIDN'T WANT TO GET IN
24 TROUBLE.

25 SOLICITOR SORENSON: THANK YOU, MR.

1 CHEESEBORO.

2 THE COURT: RECROSS.

3 (NOTE: Blank lines on this page do not indicate any
4 part of record has been omitted. Headers on testimony
5 pages and hard page breaks between testimony are now
6 required by the Court. See next ensuing page for
7 sequential continuation of record.)

RECROSS - MAURICE CHEESEBORO BY MR. CULLER

554

RECROSS-EXAMINATION OF MAURICE CHEESEBORO

BY MR. CULLER:

Q. MR. CHEESEBORO, YOU'RE NOT IN JAIL NOW, YOU'RE OUT
ON BOND, RIGHT?

A. YES, SIR.

MR. CULLER: I DON'T HAVE ANYTHING
FURTHER.

THE COURT: THANK YOU, SIR, YOU MAY
STEP DOWN.

ANY OBJECTION TO EXCUSING THE
WITNESS?

MR. CULLER: NONE, YOUR HONOR.

THE COURT: CALL YOUR NEXT WITNESS.

SOLICITOR SORENSON: MAY WE
APPROACH?

THE COURT: YES, SIR.

(Whereupon, a bench conference
is had out of the hearing of
the court reporter.)

THE COURT: LADIES AND GENTLEMEN,
WE'LL TAKE A SHORT BREAK AT THIS TIME. PLEASE RETIRE TO
YOUR JURY ROOM AND PLEASE DO NOT DISCUSS THE CASE.

(Whereupon, the jury retires
to the jury room.)

(Recess)

1 THE COURT: IS THE STATE READY?
2 SOLICITOR SORENSON: YES, YOUR
3 HONOR.

4 THE COURT: IS DEFENSE READY?
5 MR. WALTERS: YES, SIR, YOUR HONOR.
6 THE COURT: ALRIGHT. YOU MAY BRING

7 IN THE JURY.
8 (Whereupon, the jury enters
9 the courtroom and the following
10 takes place in the presence
11 of the jury.)

12 THE COURT: ALRIGHT, COUNSELOR, YOU
13 MAY CALL YOUR NEXT WITNESS.

14 SOLICITOR SORENSON: THANK YOU, YOUR
15 HONOR. THE STATE CALLS CLINTON JONES.

16 THE COURT: MR. JONES, PLEASE.
17 (Whereupon, the witness
18 enters the courtroom.)

19 THE COURT: MR. JONES, IF YOU WOULD
20 COME RIGHT AROUND THIS WAY, AND PLEASE PLACE YOUR LEFT
21 HAND ON THE BIBLE AND RAISE YOUR RIGHT, PLEASE, SIR.
22 (Whereupon, Clinton Jones
23 is duly sworn.)

24 THE COURT: ALRIGHT, SIR, HAVE A
25 SEAT AND STATE YOUR FULL NAME.

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16

WITNESS: CLINTON JONES.

THE COURT: THANK YOU, SIR. MR. JONES, YOU'RE TALKING GOOD. IT'S HARD TO HEAR IN HERE BECAUSE OF THE NOISE UPSTAIRS AND WE DON'T HAVE A PA SYSTEM, SO PLEASE BE SURE YOU KEEP YOUR VOICE UP, EVERYBODY HAS TO HEAR YOU, AND THIS NICE LADY HAS TO HEAR YOU AND WRITE DOWN EVERYTHING YOU SAY. ALRIGHT, SIR, THANK YOU, SIR.

COUNSELOR, YOU MAY PROCEED.

SOLICITOR SORENSON: THANK YOU, YOUR HONOR.

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DIRECT - CLINTON JONES BY SOL. SORENSON

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DIRECT EXAMINATION OF CLINTON JONES

BY SOLICITOR SORENSON:

Q. MR. JONES, IF YOU WOULD PLEASE TELL THE JURY HOW
OLD YOU ARE?

A. TWENTY-TWO YEARS OLD.

Q. OKAY. AND JUDGING BY THE JUMP SUIT YOU HAVE ON
YOU'RE CURRENTLY INCARCERATED AT THE DETENTION
CENTER HERE?

A. YES, SIR.

Q. OKAY. AND WHAT ARE YOU CURRENTLY CHARGED WITH?

A. ACCESSORY AFTER THE FACT OF MURDER.

Q. ALRIGHT. AND WHAT ELSE ARE YOU CHARGED WITH?

A. MURDER.

Q. AND MURDER? AND THAT ALL STEMS OUT OF THIS
INCIDENT FROM DECEMBER OF TWO THOUSAND AND SIX?

A. YES, SIR.

Q. OKAY. AND LET ME KIND OF GO OVER WITH YOU
INITIALLY YOUR PRIOR RECORD ALSO. YOU HAVE FROM
TWO THOUSAND THREE A CONVICTION FOR ASSAULT AND
BATTERY OF A HIGH AND AGGRAVATED NATURE, IS THAT
CORRECT?

A. YES, SIR.

Q. AND THEN ALSO FROM TWO THOUSAND SIX A CONVICTION
FOR ATTEMPTED ARMED ROBBERY, IS THAT CORRECT?

A. YES, SIR.

DIRECT - CLINTON JONES BY SOL. SORENSON

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1 Q. AND IN FACT, THAT ATTEMPTED ARMED ROBBERY
2 CONVICTION, DO YOU REMEMBER WHAT DAY YOU GOT OUT,
3 YOU WERE RELEASED FROM INCARCERATION ON THAT
4 CHARGE?

5 A. THE EARLY PART OF DECEMBER.

6 Q. THE EARLY PART OF DECEMBER? SO, THAT WOULD HAVE
7 BEEN A COUPLE OF WEEKS BEFORE THIS INCIDENT
8 OCCURRED?

9 A. YES, SIR.

10 Q. NOW, AS TO THE CHARGES THAT YOU HAVE NOW, YOU HAVE
11 A LAWYER, IS THAT CORRECT?

12 A. YES, SIR.

13 Q. OKAY. AND WHAT'S YOUR LAWYER'S NAME?

14 A. MS. JILLIAN.

15 COURT REPORTER: WHO?

16 Q. MS. ULLMAN?

17 A. MS. ULLMAN.

18 Q. MS. ULLMAN, SEATED RIGHT THERE, RIGHT?

19 A. YES, SIR.

20 Q. AND ARE YOU AWARE THAT I'VE HAD AN OPPORTUNITY TO
21 TALK WITH YOUR LAWYER ABOUT YOUR CASE?

22 A. YES, SIR.

23 Q. OKAY. AND THAT WE'VE MADE AN OFFER TO YOU IN
24 EXCHANGE FOR YOUR TRUTHFUL TESTIMONY, THAT WE
25 WOULD RECOMMEND TO THE COURT A SENTENCE IN THE

DIRECT - CLINTON JONES BY SOL. SORENSON

559

- 1 RANGE OF TEN TO THIRTY YEARS?
- 2 A. YES, SIR.
- 3 Q. IS THAT YOUR UNDERSTANDING?
- 4 A. YES, SIR.
- 5 Q. DID I PROMISE YOU ANYTHING ELSE?
- 6 A. NO, SIR.
- 7 Q. NOW, MR. JONES, WHERE -- YOU SAID YOU'RE TWENTY-
- 8 TWO YEARS OLD, WHERE DID YOU GROW UP?
- 9 A. ON MAXEY STREET.
- 10 Q. MAXEY STREET?
- 11 A. ORANGEBURG, SOUTH CAROLINA.
- 12 Q. HERE IN ORANGEBURG. OKAY. AND DID YOU GO TO HIGH
- 13 SCHOOL HERE?
- 14 A. YES, SIR.
- 15 Q. OKAY. AND WHAT HIGH SCHOOL DID YOU GO TO?
- 16 A. ORANGEBURG-WILKERSON.
- 17 Q. OKAY. AND DID YOU GRADUATE?
- 18 A. NO, SIR.
- 19 Q. OKAY. DID YOU GET YOUR G.E.D.?
- 20 A. YES, SIR.
- 21 Q. AND WHEN DID YOU GET THAT?
- 22 A. WHEN I WAS INCARCERATED AT TURBEVILLE.
- 23 Q. OKAY. DO YOU REMEMBER WHAT YEAR THAT WAS?
- 24 A. TWO THOUSAND SIX.
- 25 Q. TWO THOUSAND SIX. ALRIGHT, NOW YOU TESTIFIED A

DIRECT - CLINTON JONES BY SOL. SORENSON

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1 LITTLE WHILE AGO THAT YOU HAD GOTTEN OUT OF PRISON
2 IN EARLY DECEMBER, TWO THOUSAND SIX, IS THAT
3 CORRECT?

4 A. YES, SIR.

5 Q. ALRIGHT. LET ME ASK YOU, DO YOU KNOW THE
6 DEFENDANT IN THIS CASE, TERRELL SCOTT?

7 A. YES, SIR.

8 Q. TELL THE JURY HOW YOU KNOW MR. SCOTT?

9 A. BY HANGING ON MAXEY STREET, SIR.

10 Q. HANGING ON MAXEY STREET?

11 A. YES, SIR.

12 Q. HOW LONG DO YOU THINK YOU'VE KNOWN MR. SCOTT FOR?

13 A. SINCE ABOUT TWO THOUSAND ONE, TWO THOUSAND TWO.

14 Q. THAT'S SEVEN OR EIGHT YEARS NOW?

15 A. YES, SIR.

16 Q. AND HOW ABOUT, DO YOU KNOW A -- AND IS MR. SCOTT
17 YOUNGER THAN YOU OR OLDER THAN YOU?

18 A. OLDER.

19 Q. HOW ABOUT, DO YOU KNOW A YOUNG MAN BY THE NAME OF
20 MAURICE CHEESEBORO?

21 A. YES, SIR.

22 Q. AND HOW DO YOU KNOW MR. CHEESEBORO?

23 A. WE'RE LONG TIME FRIENDS.

24 Q. LONG TIME FRIENDS?

25 A. YES, SIR.

DIRECT - CLINTON JONES BY SOL. SORENSON

561

1 Q. ALRIGHT. AND IS MR. CHEESEBORO YOUR AGE OR OLDER
2 THAN YOU?

3 A. OLDER.

4 Q. AND HOW ABOUT, DO YOU KNOW A YOUNG MAN BY THE NAME
5 OF DANIEL YOUNG?

6 A. YES, SIR.

7 Q. OKAY. AND HOW DO YOU KNOW MR. YOUNG?

8 A. WE WENT TO SCHOOL TOGETHER.

9 Q. AND ALL OF Y'ALL USED TO HANG OUT IN THAT MAXEY
10 STREET AREA?

11 A. YES, SIR.

12 Q. NOW, IS MR. YOUNG YOUR AGE OR OLDER THAN YOU?

13 A. MY AGE.

14 Q. OKAY. AND I WANT TO TURN YOUR ATTENTION IF I
15 COULD BACK TO DECEMBER OF TWO THOUSAND SIX, RIGHT
16 AFTER YOU GOT OUT OF BEING INCARCERATED, OKAY?
17 DID YOU HAVE AN OPPORTUNITY AROUND THAT TIME TO GO
18 BACK TO THAT MAXEY STREET AREA HERE IN ORANGEBURG?

19 A. YES, SIR.

20 Q. OKAY. AND WERE YOU HANGING OUT WITH TERRELL SCOTT
21 DURING THAT PERIOD OF TIME, THOSE COUPLE OF WEEKS
22 AFTER YOU GOT OUT OF JAIL?

23 A. YES, SIR.

24 Q. AND YOU WERE HANGING OUT WITH MR. CHEESEBORO?

25 A. YES, SIR.

DIRECT - CLINTON JONES BY SOL. SORENSON

562

1 Q. OKAY. AND WAS MR. YOUNG AROUND ALSO DURING THAT
2 PERIOD OF TIME?

3 A. YES, SIR.

4 Q. ALRIGHT. I WANT YOU TO TELL THE JURY, MR. JONES,
5 AND MAKE SURE YOU KEEP YOUR VOICE UP NICE AND
6 LOUD, ALRIGHT, DID THERE EVER COME A TIME IN
7 DECEMBER OF TWO THOUSAND AND SIX WHEN YOU HAD ANY
8 CONVERSATIONS WITH MR. SCOTT, THE DEFENDANT IN
9 THIS CASE ABOUT COMMITTING A ROBBERY?

10 A. YES, SIR.

11 Q. OKAY. AND TELL THIS JURY WHAT THAT CONVERSATION
12 CONSISTED OF?

13 A. WE WAS PLANNING ON ROBBING A COUPLE OF DUDES THAT
14 HAD A DRUG SPOT.

15 Q. DID HE GIVE YOU ANY OTHER INFORMATION ABOUT, I
16 MEAN, WHAT YOU HOPED TO GET OUT OF IT OR ANYTHING
17 LIKE THAT?

18 A. YES, SIR.

19 Q. WHAT WAS THAT?

20 A. SOME MARIJUANA AND MONEY.

21 Q. AND DID HE TELL YOU WHO IT WAS, DO YOU REMEMBER?

22 A. NO, SIR, I DON'T REMEMBER.

23 Q. AND LET ME ASK YOU THIS, WHOSE IDEA WAS THIS?

24 A. TERRELL SCOTT'S.

25 Q. AND WHO ELSE WAS THERE WHEN THIS CONVERSATION

1 ABOUT DOING THIS ROBBERY OCCURRED?

2 A. MAURICE CHEESEBORO AND DANIEL YOUNG.

3 Q. AND WHEN DID THAT OCCUR IN RELATION TO THE ACTUAL
4 ROBBERY?

5 A. A COUPLE OF WEEKS BEFORE AND A DAY BEFORE THE
6 ARMED ROBBERY HAPPENED.

7 Q. SO IT HAPPENED MORE THAN ONE TIME THAT Y'ALL
8 TALKED?

9 A. YES, SIR.

10 Q. NOW, THE NIGHT OF DECEMBER TWENTY-THIRD, INTO THAT
11 EARLY MORNING HOURS OF DECEMBER TWENTY-FOURTH WHEN
12 THIS INCIDENT HAPPENED TELL THE JURY WHAT, HOW
13 THINGS WENT DOWN THAT EVENING?

14 A. WELL, WHEN TERRELL WENT, WHEN TERRELL SCOTT WENT
15 INTO THE HOUSE HE WAS SUPPOSED TO COME BACK
16 OUTSIDE AND GIVE US A SIGNAL TO GO INSIDE AND ROB
17 THEM.

18 Q. LET ME BACK YOU UP, HOW DID Y'ALL END UP
19 ALTOGETHER THAT NIGHT EVEN TO START WITH?

20 A. WELL, THAT NIGHT ON MAXEY STREET?

21 Q. UH HUH.

22 A. WE WAS OVER THERE HANGING AROUND, CHILLING, JUST
23 HAVING A CONVERSATION.

24 Q. WERE Y'ALL DRINKING OR DOING ANY DRUGS OR ANYTHING
25 LIKE THAT?

DIRECT -- CLINTON JONES BY SOL. SORENSON

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- 1 A. NO, SIR.
- 2 Q. ALRIGHT, GO ON. AND WHAT HAPPENED, WHO WAS
- 3 HANGING OUT?
- 4 A. ME AND MAURICE CHEESEBORO, TERRELL SCOTT AND
- 5 DANIEL YOUNG.
- 6 Q. OKAY. GO AHEAD.
- 7 A. SO, WE GOT IN THE CAR, ME, MAURICE CHEESEBORO AND
- 8 TERRELL SCOTT GOT IN THE CAR, WE LEFT AND WENT
- 9 OVER TO SHADOW LANE, AND TERRELL SCOTT TOLD US HE
- 10 WAS GOING IN THERE TO BUY SOME DRUGS FROM WHOEVER
- 11 THE DUDE WAS. AND THEN HE WENT IN THE HOUSE AND
- 12 LEFT ME AND MAURICE ON THE OUTSIDE. HE WAS
- 13 SUPPOSED TO COME BACK AND GIVE US A SIGNAL FOR US
- 14 TO GO IN AND ROB THEM, BUT SOMEBODY ELSE CAME TO
- 15 THE DOOR, AND WHEN THE DOOR OPENED A GUN SHOT WENT
- 16 OFF. WHEN ME AND MAURICE CHEESEBORO ENTERED THE
- 17 HOUSE EVERYBODY WAS LAYING ON THE FLOOR.
- 18 Q. OKAY. LET ME BACK YOU UP NOW, I MEAN, HOW -- SO,
- 19 INITIALLY MR. SCOTT, -- HOW DID YOU GET OVER TO
- 20 THIS APARTMENT?
- 21 A. IN A CAR.
- 22 Q. OKAY. AND WHO WAS DRIVING?
- 23 A. TERRELL SCOTT.
- 24 Q. OKAY. AND DO YOU KNOW WHOSE CAR IT WAS?
- 25 A. NO, SIR.

- 1 Q. HAD YOU EVER SEEN THE CAR BEFORE?
- 2 A. NO, SIR.
- 3 Q. DO YOU REMEMBER WHAT TYPE OF CAR IT WAS?
- 4 A. NO, SIR.
- 5 Q. AND WHEN Y'ALL GOT OVER THERE WHO HAD WEAPONS OUT
- 6 OF Y'ALL?
- 7 A. ALL THREE OF US.
- 8 Q. ALL THREE OF Y'ALL?
- 9 A. YES, SIR.
- 10 Q. WHAT KIND OF GUN DID MR. SCOTT HAVE WHEN YOU GOT
- 11 OVER THERE?
- 12 A. A THREE FIFTY-SEVEN.
- 13 Q. OKAY. AND CAN YOU DESCRIBE IT FOR THE JURY?
- 14 A. IT WAS A CHROME THREE FIFTY-SEVEN.
- 15 Q. OKAY. BIG, LITTLE?
- 16 A. BIG.
- 17 Q. OKAY. AND WHAT ABOUT YOU?
- 18 A. I HAD A THIRTY-EIGHT REVOLVER.
- 19 Q. OKAY. AND WHAT ABOUT MR. CHEESEBORO?
- 20 A. HE HAD A THIRTY-EIGHT REVOLVER.
- 21 Q. WHEN Y'ALL GOT OVER THERE -- LET ME ASK YOU THIS,
- 22 ALRIGHT, SO Y'ALL GET OVER THERE, AND Y'ALL GET
- 23 OUT OF THE CAR?
- 24 A. NO, NOT AT ONE TIME.
- 25 Q. NOT AT THE SAME TIME? WHO GOT OUT FIRST?

DIRECT - CLINTON JONES BY SOL. SORENSON

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1 A. TERRELL SCOTT.

2 Q. OKAY. NOW, DID MR. SCOTT, DID HE HAVE ANYTHING
3 COVERING HIS FACE OR ANYTHING OF THAT NATURE?

4 MR. CULLER: YOUR HONOR, I OBJECT TO
5 THAT, HE'S LEADING.

6 THE COURT: IT IS LEADING.

7 Q. DID HE HAVE ANYTHING COVERING HIS FACE?

8 THE COURT: THAT'S LEADING. WHAT
9 DID HE HAVE ON? WHO, WHAT, WHERE? WHEN YOU SUGGEST AN
10 ANSWER IT'S LEADING.

11 SOLICITOR SORENSON: I MEAN, I THINK
12 THE ANSWER -- I MEAN, I'LL MOVE ON, I MEAN, IT'S A YES
13 OR NO QUESTION, HE CAN ANSWER YES OR NO. I MEAN, - - -

14 Q. DID HE HAVE ANYTHING - - -

15 A. NO, SIR.

16 Q. HOW ABOUT YOU AND MR. CHEESEBORO, DID YOU HAVE
17 ANYTHING - - -

18 MR. CULLER: OBJECTION, YOUR HONOR,
19 AGAIN, I THINK IT'S - - -

20 THE COURT: WHAT DID HE HAVE ON?

21 Q. WHAT WERE YOU AND MR. CHEESEBORO WEARING?

22 A. SKI MASKS.

23 Q. BOTH OF Y'ALL?

24 A. YES, SIR.

25 Q. MR. SCOTT, TELL THE JURY WHAT HAPPENED THEN

DIRECT - CLINTON JONES BY SOL. SORENSON

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1 INITIALLY, SO MR. SCOTT GETS OUT OF THE CAR FIRST?

2 A. WELL, HE GOES TO THE DOOR AND HE GOT LET IN. ME
3 AND MAURICE CHEESEBORO WERE STANDING ON THE
4 OUTSIDE OF THE DOOR. SO, WHEN THE DOOR OPENED, IT
5 WAS SUPPOSED TO BE TERRELL COME THROUGH THE DOOR
6 BUT SOMEBODY ELSE CAME THROUGH THE DOOR. THAT'S
7 WHEN THE GUN SHOT WENT OFF, AND ME AND MAURICE
8 CHEESEBORO ENTERED THE APARTMENT AND EVERYBODY WAS
9 LAYING ON THE FLOOR.

10 Q. OKAY. AND WHAT HAPPENED WHEN Y'ALL WENT INTO THE
11 APARTMENT, THEN, WHAT DID YOU DO?

12 A. I CHECKED EVERYBODY'S POCKETS, AND CHECKED THE
13 PLACE FOR MONEY AND DRUGS.

14 Q. OKAY. AND YOU SAID EVERYBODY WAS ON THE FLOOR,
15 WHERE WERE THE PEOPLE LOCATED AT ON THE FLOOR?

16 A. IN THE FRONT ROOM.

17 Q. ALRIGHT. LET ME SHOW YOU STATE'S EXHIBIT NUMBER
18 EIGHTEEN, DO YOU RECOGNIZE THAT PHOTOGRAPH?

19 A. YES, SIR.

20 Q. ALRIGHT. AND THAT FRONT ROOM IS THAT WHAT YOU'RE
21 REFERRING TO?

22 A. YES, SIR.

23 Q. AND DO YOU REMEMBER HOW MANY PEOPLE WERE ON THE
24 FLOOR UP IN THAT FRONT ROOM AREA?

25 A. ABOUT FOUR OR FIVE.

DIRECT - CLINTON JONES BY SOL. SORENSON

568

1 Q. FOUR OR FIVE. HOW MANY PEOPLE WERE IN THE
2 APARTMENT?

3 A. OH, ALTOGETHER?

4 Q. UH HUH.

5 A. I THINK IT WAS ABOUT FOUR OR FIVE ALTOGETHER, BUT
6 IT WAS, LIKE, THREE OR FOUR LAYING ON THE FLOOR.

7 Q. OKAY. AND WERE YOU THE PERSON THAT WAS GOING
8 THROUGH CHECKING EVERYBODY'S POCKETS?

9 A. YES, SIR.

10 Q. OKAY. AND WHAT DID YOU, WHAT, IF ANYTHING, DID
11 YOU GET OFF THE PEOPLE IN THERE?

12 A. MONEY.

13 Q. OKAY. DO YOU REMEMBER HOW MUCH MONEY YOU GOT?

14 A. NO, SIR.

15 Q. ANY IDEA?

16 A. PROBABLY A COUPLE OF HUNDRED.

17 Q. ANYTHING ELSE THAT YOU TOOK OFF ANYBODY, ANY
18 WALLET, JEWELRY, DRUGS, ANYTHING OF THAT NATURE?

19 A. ID CARDS.

20 Q. AND WHERE WAS MR. CHEESEBORO AT WHEN YOU WERE
21 GOING THROUGH EVERYBODY'S POCKETS?

22 A. STANDING LIKE TOWARDS, BESIDE THE KITCHEN.

23 Q. OKAY. AND WHAT WAS HE DOING?

24 A. HE WAS HOLDING A GUY IN A CHOKE HOLD.

25 Q. AND DID YOU KNOW WHO THAT PERSON WAS THAT HE HAD

DIRECT - CLINTON JONES BY SOL. SORENSON

569

1 IN A CHOKE HOLD?

2 A. NO, SIR.

3 Q. HAD YOU EVER SEEN HIM BEFORE?

4 A. NO, SIR.

5 Q. WHAT WAS MR. SCOTT DOING?

6 A. STANDING BY THE FRONT DOOR.

7 Q. NOW, THE GUN THAT YOU DESCRIBED MR. SCOTT HAVING
8 EARLIER, DID HE HAVE THAT GUN OUT AT THAT POINT IN
9 TIME?

10 A. YES, SIR.

11 Q. BESIDES YOU AND MR. CHEESEBORO AND MR. SCOTT, DID
12 YOU SEE ANYBODY ELSE IN THE APARTMENT WITH A GUN
13 AT THAT TIME?

14 A. NO, SIR.

15 Q. NOW, YOU SAID MR. SCOTT WAS STANDING BY THE DOOR?

16 A. YES, SIR.

17 Q. WHAT, IF ANYTHING, WAS HE DOING, WAS HE SAYING
18 ANYTHING OR DOING ANYTHING?

19 A. HE WAS TELLING US SOMEBODY WAS IN THE BACK ROOM
20 AND HAD A GUN.

21 Q. DID YOU EVER GO IN THAT BACK ROOM?

22 A. NO, SIR.

23 Q. ALRIGHT, AFTER YOU WENT THROUGH EVERYBODY'S
24 POCKETS -- DID YOU GO THROUGH EVERYBODY'S POCKETS?

25 A. THE ONES IN THE FRONT ROOM.

DIRECT - CLINTON JONES BY SOL. SORENSON

570

1 Q. THE FRONT ROOM. HOW ABOUT THE GUY IN THE KITCHEN?

2 A. YES, SIR.

3 Q. HIS, TOO?

4 A. YES, SIR.

5 Q. WHILE, YOU TESTIFIED MR. CHEESEBORO HAD HIM IN A
6 CHOKE HOLD?

7 A. YES, SIR.

8 Q. OKAY. WHAT DID YOU GET OFF OF THAT GUY IN THE
9 KITCHEN?

10 A. MONEY.

11 Q. DID YOU TAKE ANYTHING ELSE BESIDES THE ITEMS THAT
12 YOU TOOK OUT OF PEOPLE'S POCKETS FROM INSIDE THAT
13 APARTMENT?

14 A. A BOOK BAG.

15 Q. WHERE WAS, DO YOU RECALL WHERE THAT BOOK BAG WAS?

16 A. SITTING IN THE FRONT ROOM.

17 Q. DO YOU REMEMBER ANYTHING ABOUT IT, COLOR-WISE OR
18 ANYTHING LIKE THAT?

19 A. NO, SIR.

20 Q. AND WHAT, DID YOU LOOK INSIDE THE BOOK BAG WHILE
21 YOU WERE IN THERE?

22 A. NO, SIR.

23 Q. DID YOU LOOK IN IT AT SOME POINT IN TIME
24 AFTERWARDS?

25 A. YES, SIR.

DIRECT - CLINTON JONES BY SOL. SORENSON

571

1 Q. OKAY. AND WHAT, IF ANYTHING, WAS IN THE BOOK BAG
2 WHEN YOU LOOKED IN IT LATER?

3 A. MARIJUANA.

4 Q. DO YOU REMEMBER HOW MUCH MARIJUANA?

5 A. ABOUT A POUND OR A POUND AND A HALF OF MARIJUANA.

6 Q. HOW BIG IS THAT, I MEAN, I'M NOT - - -

7 A. ABOUT THAT MUCH MARIJUANA.

8 Q. SO, IT WAS A PRETTY GOOD SIZED CHUNK OF MARIJUANA
9 IN THERE?

10 A. YES, SIR.

11 Q. AFTER, AFTER GOING THROUGH EVERYBODY'S POCKETS AND
12 TAKING THAT BOOK BAG WHAT DID YOU DO THEN?

13 A. WE LEFT AND WENT BACK ON MAXEY STREET.

14 Q. ALL THREE OF Y'ALL LEFT?

15 A. YES, SIR.

16 Q. TOGETHER?

17 A. YES, SIR.

18 Q. AND DID YOU CONTINUE TO HANG OUT WITH THEM THAT
19 NIGHT?

20 A. YES, SIR.

21 Q. WHAT ABOUT, WHAT ABOUT THE MONEY AND THE MARIJUANA
22 YOU GOT, WHAT DID Y'ALL DO WITH THAT?

23 A. WE SPLIT IT UP.

24 Q. THOSE PEOPLE THAT WERE INSIDE THAT APARTMENT, DID
25 YOU RECOGNIZE ANY OF THEM?

DIRECT - CLINTON JONES BY SOL. SORENSON

572

- 1 A. NO, SIR.
- 2 Q. DID YOU HAVE ANY -- AFTER THAT NIGHT AND THE DAYS
- 3 THAT FOLLOWED DID YOU HAVE ANY CONVERSATIONS WITH
- 4 EITHER MR. SCOTT OR MR. CHEESEBORO ABOUT WHAT HAD
- 5 HAPPENED THAT NIGHT?
- 6 A. MR. CHEESEBORO.
- 7 Q. OKAY. LET ME BACK YOU UP, THAT NIGHT WHEN Y'ALL
- 8 LEFT THAT APARTMENT, DID YOU REALIZE THAT SOMEBODY
- 9 HAD BEEN SHOT INSIDE THE APARTMENT?
- 10 A. THAT NIGHT, NO, SIR.
- 11 Q. OKAY. DID ANYBODY OUT IN THAT FRONT ROOM THAT YOU
- 12 WERE SEARCHING APPEAR TO BE INJURED WHEN YOU WERE
- 13 SEARCHING THEM?
- 14 A. NO, SIR.
- 15 Q. HOW ABOUT THE GUY IN THE KITCHEN?
- 16 A. NO, SIR.
- 17 Q. OKAY. WHEN DID YOU LEARN THAT SOMEBODY HAD BEEN
- 18 SHOT?
- 19 A. A COUPLE OF DAYS LATER.
- 20 Q. OKAY. AND HOW DID YOU FIND OUT ABOUT THAT?
- 21 A. OFF THE STREETS.
- 22 Q. OKAY. AND DID YOU EVER HAVE ANY CONVERSATIONS
- 23 WITH MR. SCOTT AFTERWARDS ABOUT WHAT HAD HAPPENED?
- 24 A. YES, SIR.
- 25 Q. CAN YOU TELL THE JURY WHAT THAT CONSISTED OF?

DIRECT - CLINTON JONES BY SOL. SORENSON

573

1 A. HE WAS TELLING US HOW HE, WHY HE SHOT THE GUY, HE
2 WAS, LIKE, THE GUY WAS REACHING FOR HIS GUN, THAT
3 WAS THE REASON WHY HE SHOT THE GUY.

4 Q. NOW, DID YOU LEARN AT THE END OF JANUARY INTO
5 EARLY FEBRUARY OF TWO THOUSAND SEVEN THAT TERRELL
6 SCOTT HAD BEEN ARRESTED ON THIS CASE?

7 A. YES, SIR.

8 Q. OKAY. AND LET ME ASK YOU, DID YOU HAVE ANY
9 CONVERSATIONS AT THAT POINT IN TIME -- WELL, FIRST
10 OF ALL LET ME -- WHEN YOU HEARD ABOUT THAT, I
11 MEAN, HOW DID THAT, WHAT WERE YOU FEELING AT THAT
12 POINT IN TIME?

13 A. THAT THINGS WEREN'T RIGHT.

14 Q. WERE YOU WORRIED ABOUT YOU GETTING ARRESTED AT
15 THAT POINT IN TIME?

16 A. YES, SIR.

17 Q. DID YOU HAVE ANY CONVERSATIONS THEN WITH MR.
18 CHEESEBORO AFTER THAT HAD OCCURRED?

19 A. YES, SIR.

20 Q. OKAY. AND WHAT DID YOU DISCUSS WITH HIM?

21 A. ABOUT WHAT HAPPENED THAT NIGHT.

22 Q. AND DID YOU COME UP WITH A STORY THAT YOU, TO TELL
23 THE POLICE IF YOU GOT CONFRONTED?

24 A. YES, SIR.

25 Q. OKAY. AND WHAT WAS THAT STORY GOING TO BE?

DIRECT - CLINTON JONES BY SOL. SORENSON

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- 1 A. WE WERE GOING TO TELL THE POLICE THAT WE ONLY JUST
2 STAYED OUTSIDE, WE NEVER ENTERED THE APARTMENT.
3 Q. AND THAT WOULD HAVE BEEN SHORTLY AFTER HE WAS
4 ARRESTED?
5 A. YES, SIR.
6 Q. LET ME ASK YOU, WHEN -- DID THERE COME A TIME IN
7 TWO THOUSAND AND SEVEN WHEN YOU WERE ARRESTED?
8 A. YES, SIR.
9 Q. OKAY. AND DO YOU REMEMBER WHEN THAT WAS?
10 A. APRIL FOURTH.
11 Q. APRIL FOURTH?
12 A. YES, SIR.
13 Q. AND THAT WAS FOR A REVOCATION - - -
14 A. OF MY PAROLE.
15 Q. OF YOUR PAROLE FOR THAT - - -
16 A. Y.O.A.
17 Q. --- FOR THAT ABHAN THAT YOU'D BEEN CONVICTED OF
18 EARLIER, IS THAT CORRECT?
19 A. YES, SIR.
20 Q. SO, APRIL FOURTH OF TWO THOUSAND SEVEN, WHERE DID
21 YOU GO?
22 A. TO TURBEVILLE.
23 Q. AND TURBEVILLE IS A DEPARTMENT OF CORRECTIONS?
24 A. YES, SIR.
25 Q. A YOUTHFUL OFFENDER DIVISION OF THE DEPARTMENT OF

DIRECT - CLINTON JONES BY SOL. SORENSON

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1 CORRECTIONS?

2 A. YES, SIR.

3 Q. AND WHEN, WHEN DID YOU GET OUT OF JAIL?

4 A. I AIN'T GOT OUT OF JAIL.

5 Q. SO, YOU'VE BEEN, SINCE APRIL FOURTH OF TWO
6 THOUSAND SEVEN UNTIL TODAY YOU'VE BEEN
7 INCARCERATED EVER SINCE THEN, IS THAT CORRECT?

8 A. YES, SIR.

9 Q. OKAY. NOW, DO YOU RECALL, MR. JONES, WHEN THE
10 FIRST TIME ANYBODY FROM LAW ENFORCEMENT CAME TO
11 TALK TO YOU ABOUT THIS CASE?

12 A. IN OCTOBER.

13 Q. OCTOBER? AND DO YOU RECALL WHO THAT WAS?

14 A. JAMES SHUMPERT, JAMES SHUMPERT.

15 Q. IS THAT HIM RIGHT THERE?

16 A. YES, SIR.

17 Q. AND WHERE WERE YOU AT WHEN THAT OCCURRED?

18 A. AT TURBEVILLE, SOUTH CAROLINA.

19 Q. NOW, HAVE YOU HAD ANY CONVERSATIONS SINCE YOU'VE
20 BEEN INCARCERATED IN APRIL, HAVE YOU TALKED TO
21 EITHER TERRELL SCOTT OR MR. CHEESEBORO - - -

22 A. NO, SIR.

23 Q. --- SINCE APRIL UP UNTIL OCTOBER WHEN HE COMES TO
24 TALK TO YOU?

25 A. NO, SIR.

DIRECT - CLINTON JONES BY SOL. SORENSON

576

1 Q. OKAY. AND DID YOU END UP GIVING A STATEMENT TO
2 INVESTIGATOR SHUMPERT?

3 A. YES, SIR.

4 Q. OKAY. AND DO YOU REMEMBER WHAT DAY IT WAS
5 SPECIFICALLY OR - - -

6 A. NO, SIR.

7 Q. IF I SHOWED YOU YOUR STATEMENT WOULD THAT HELP
8 REFRESH YOUR MEMORY?

9 A. OCTOBER THIRTIETH, TWO THOUSAND SEVEN.

10 Q. OCTOBER THIRTIETH OF TWO THOUSAND AND SEVEN? AND
11 AT THAT POINT IN TIME DID YOU TELL, DID YOU TELL
12 INVESTIGATOR SHUMPERT YOUR INVOLVEMENT IN THIS
13 WHOLE SITUATION?

14 A. NOT, NO, SIR.

15 Q. DID YOU TELL HIM YOU WERE THERE?

16 A. YES, SIR.

17 Q. IN FACT, WHAT STORY DID YOU GIVE HIM AT THAT POINT
18 IN TIME?

19 A. I TOLD HIM THAT ME AND MAURICE CHEESEBORO STAYED
20 ON THE OUTSIDE OF THE APARTMENT WHILE TERRELL
21 SCOTT WENT IN.

22 Q. IS THAT ESSENTIALLY WHAT YOU HAD SPOKEN TO MR.
23 CHEESEBORO ABOUT SOME EIGHT OR NINE MONTHS
24 EARLIER?

25 A. YES, SIR.

DIRECT - CLINTON JONES BY SOL. SORENSON

577

1 SOLICITOR SORENSON: I BEG THE
2 COURT'S INDULGENCE.

3 THE COURT: YES, SIR.

4 Q. DID INVESTIGATOR SHUMPERT AT ANY POINT IN TIME
5 WHEN HE CAME TO TALK TO YOU, I MEAN, THREATEN YOU
6 IN ANY WAY TO GET YOU TO TALK TO HIM?

7 A. NO, SIR.

8 SOLICITOR SORENSON: ALRIGHT, THANK
9 YOU, MR. JONES, PLEASE ANSWER ANY QUESTIONS MR. CULLER
10 HAS.

11 THE COURT: MR. CULLER.

12 MR. CULLER: THANK YOU, YOUR HONOR.

13 (NOTE: Blank lines on this page do not indicate any
14 part of record has been omitted. Headers on testimony
15 pages and hard page breaks between testimony are now
16 required by the Court. See next ensuing page for
17 sequential continuation of record.)

CROSS - CLINTON JONES BY MR. CULLER

578

CROSS-EXAMINATION OF CLINTON JONES

BY MR. CULLER:

Q. SO, YOU HAVEN'T BEEN OUT OF JAIL, AND YOU MAY NEVER GET OUT UNLESS THINGS GO RIGHT TODAY, ISN'T THAT CORRECT?

A. YES, SIR.

Q. AND ISN'T IT TRUE THAT YOU WERE CONVICTED OF ATTEMPTED ARMED ROBBERY AND THAT'S A STRIKE, DID YOUR LAWYER EXPLAIN TO YOU THAT'S A MOST SERIOUS STRIKE ON YOUR RECORD?

A. YES, SIR.

Q. AND DID YOUR LAWYER ALSO TELL YOU THAT MURDER AND INVOLVEMENT WITH MURDER IS ANOTHER MOST SERIOUS STRIKE?

A. YES, SIR.

Q. AND WHAT DO YOU GET IF YOU HAVE TWO MOST SERIOUS STRIKES?

A. LIFE IN PRISON.

Q. LIFE IN PRISON, YOU NEVER GET OUT, DO YOU?

A. NO, SIR.

Q. AND YOU WANT TO GET OUT?

A. YES, SIR.

Q. AND TODAY IS THE FIRST TIME THAT YOU'VE TOLD THE TRUTH ABOUT THIS, IS THAT CORRECT?

A. YES, SIR.

1 Q. YOU NEVER TOLD THE TRUTH BEFORE, YOU LIED TO THE
2 POLICE?

3 A. NO, SIR.

4 Q. YOU NEVER GAVE ANOTHER STATEMENT TO THIS
5 INVESTIGATOR ABOUT WHAT HAPPENED, AND YOU'RE
6 COMING IN HERE TODAY, AND TODAY IS THE FIRST TIME
7 YOU'RE TELLING THE FULL TRUTH, IS THAT RIGHT?

8 A. YES, SIR.

9 Q. AND THAT'S BECAUSE YOU'VE GOT TO HAVE SOME HELP SO
10 YOU CAN GET OUT OF PRISON?

11 A. YES, SIR.

12 Q. NOW, ISN'T IT TRUE THAT IN YOUR STATEMENT -- HAVE
13 YOU GOT A COPY OF YOUR STATEMENT, MAY I SHOW THAT
14 TO YOU AND SEE IF YOU RECOGNIZE IT? IS THAT YOUR
15 STATEMENT?

16 A. YES, SIR.

17 Q. ISN'T IT TRUE THAT IN YOUR STATEMENT YOU STATED, I
18 DIDN'T WANT TO GO?

19 A. YES, SIR.

20 Q. BUT YOU HAD A GUN?

21 A. YES, SIR.

22 Q. A THIRTY-EIGHT?

23 A. YES, SIR.

24 Q. RIGHT? AND YOU STATED IN YOUR STATEMENT, DIDN'T
25 YOU, WE DIDN'T REALLY KNOW WHAT HE CAME TO DO, - -

CROSS - CLINTON JONES BY MR. CULLER

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A. YES, SIR.

Q. --- DID YOU SAY THAT?

A. YES, SIR.

Q. AND THEN YOU SAID YOU'D NEVER SEEN THE CAR BEFORE?

A. YES, SIR.

Q. NEVER SEEN THE CAR BEFORE, BUT YOU KNOW THIS MAN,
YOU'VE KNOWN THIS MAN SINCE TWO THOUSAND AND ONE,
Y'ALL HANG TOGETHER ON MAXEY. YOU'RE AROUND HIM
ALL THE TIME, MAN, YOU NEVER GOT IN HIS CAR?

A. NO, SIR.

Q. NEVER SEEN HIS CAR?

A. NO, SIR.

Q. DIDN'T EVEN KNOW WHAT COLOR IT WAS?

A. NO, SIR.

Q. UNTIL THAT NIGHT WHEN YOU WERE PUZZLED ABOUT WHERE
YOU WERE GOING, YOU DIDN'T KNOW WHAT WAS GOING ON,
DID YOU? DID YOU?

COURT REPORTER: WHAT'S YOUR ANSWER?

A. SIR? MA'AM?

COURT REPORTER: YOU DIDN'T ANSWER

THE QUESTION.

A. WHAT WAS YOUR QUESTION AGAIN, SIR?

Q. YOU DIDN'T EVEN KNOW WHAT WAS GOING ON, DID YOU?

A. NO, SIR.

1 Q. YOU'RE JUST A VICTIM, AREN'T YOU?

2 A. YES, SIR.

3 Q. A COUPLE OF THINGS, MR. JONES, YOU STATED IN YOUR
4 TESTIMONY, THE ONLY PEOPLE WITH GUNS WERE YOU, MR.
5 CHEESEBORO AND TERRELL, ISN'T THAT RIGHT?

6 A. YES, SIR.

7 Q. HARRY NEVER HAD A GUN, DID HE?

8 A. I DON'T KNOW, SIR.

9 Q. WELL, YOU WERE THERE.

10 A. I WASN'T IN THE HOUSE WHEN - - -

11 Q. I BEG YOUR PARDON, YOU'RE CORRECT. DID YOU SEE HIM
12 WITH A GUN?

13 A. NO, SIR.

14 Q. YOU NEVER SAW HIM WITH A GUN?

15 A. NO, SIR.

16 Q. ALRIGHT. AND I BELIEVE IT'S YOUR TESTIMONY IN
17 ADDITION THAT THERE WAS A GENTLEMAN WHO WAS
18 STANDING UP IN THE KITCHEN AREA, RIGHT?

19 A. YES, SIR.

20 Q. AND YOU GOT THIS RIGHT, HE HAD HIM IN A CHOKE
21 HOLD, DIDN'T HE?

22 A. YES, SIR.

23 Q. HE HAD HIM JUST LIKE THAT AROUND THE NECK?

24 A. YES, SIR.

25 Q. HE COULDN'T MOVE, COULD HE?

CROSS - CLINTON JONES BY MR. CULLER

582

- 1 A. NO, SIR.
- 2 Q. HAD A GUN IN HIS RIGHT HAND, DIDN'T HE?
- 3 A. WHO?
- 4 Q. MR. CHEESEBORO, HE HAD THAT MAN IN A CHOKE HOLD
- 5 AND HE HAD THE GUN IN HIS RIGHT HAND LIKE THIS,
- 6 HE'S NOT GOING TO MOVE, IS HE?
- 7 A. NO, SIR.
- 8 Q. AND YOU WENT AND GOT THE STUFF OUT OF HIS POCKETS?
- 9 A. YES, SIR.
- 10 Q. BECAUSE THAT MAN WAS IN A CHOKE HOLD JUST LIKE
- 11 THAT, IS THAT CORRECT?
- 12 A. YES, SIR.
- 13 Q. NOW, UNFORTUNATELY, YOU SAID IT WAS A BOOK BAG,
- 14 WAS IT NOT A BLACK NIKE BAG?
- 15 A. TO ME THAT'S THE SAME THING, SIR.
- 16 Q. IT'S THE SAME THING, SO MAYBE THAT WOULD -- IT WAS
- 17 A BLACK NIKE BAG, WASN'T IT?
- 18 A. I DON'T KNOW, SIR.
- 19 Q. THAT HAD THE MARIJUANA IN IT?
- 20 A. I DON'T KNOW.
- 21 Q. WELL, HOW MUCH MARIJUANA DID IT HAVE? YOU DID
- 22 THIS, WAS IT A HALF POUND, WHAT DID YOU SAY?
- 23 A. SOMETHING LIKE THIS, A HALF POUND, A POUND.
- 24 Q. HOW MANY GALLON BAGS DO YOU THINK IT WOULD TAKE TO
- 25 PUT A HALF POUND OF MARIJUANA IN IT?

CROSS - CLINTON JONES BY MR. CULLER

583

1 A. I COULDN'T ANSWER THAT, SIR.

2 Q. WELL, JUST LOOKING AT IT, JUST PRETENDING LIKE IT
3 WAS HAY OR STRAW, HOW MANY GALLON BAGS DO YOU
4 THINK YOU'VE HAVE TO STUFF IT IN, TWELVE?

5 A. I STILL CAN'T ANSWER THAT, SIR.

6 Q. COULD IT BE AS MANY AS TWELVE?

7 A. I DON'T KNOW, SIR.

8 Q. THAT'S A FAIR ANSWER. AND YOU SAID THAT TERRELL
9 TOLD YOU, NO ONE GO IN THE BACK ROOM, RIGHT?

10 A. YES, SIR.

11 Q. YOU HEARD ONE GUN SHOT OR WAS IT - - -

12 A. ONE GUN SHOT.

13 Q. WHERE DID THAT GUN SHOT GO?

14 A. WHERE DID IT GO?

15 Q. YES, SIR.

16 A. IT WENT OFF WHILE I WAS ON THE OUTSIDE SO I
17 WOULDN'T REALLY - - -

18 Q. YOU DON'T KNOW?

19 A. NO, SIR.

20 Q. NOBODY CAME FROM THE BACK ROOM WHILE Y'ALL WERE IN
21 THERE?

22 A. NO, SIR.

23 Q. NOBODY OPENED THE DOOR?

24 A. NO, SIR.

25 Q. WAS THE DOOR SHUT?

CROSS - CLINTON JONES BY MR. CULLER

584

1 A. I DON'T KNOW.

2 Q. YOU DON'T KNOW IF THE DOOR WAS SHUT?

3 A. I COULDN'T SEE.

4 Q. YOU COULDN'T SEE, YOU MEAN YOU COULDN'T SEE
5 ANYTHING, OR WHAT DO YOU MEAN?

6 A. I COULDN'T SEE WHERE I WAS STANDING TO, I COULDN'T
7 SEE THE ROOM.

8 Q. I SEE. AND BECAUSE YOU SAID THERE WERE FOUR OR
9 FIVE PEOPLE INITIALLY YOU SAID THAT, AND YOU
10 CORRECTED YOURSELF, THE FOUR OR FIVE PEOPLE THAT
11 WERE ON THE FLOOR, WHERE WERE YOU STANDING WHEN
12 YOU CAME IN THE DOOR? LET'S USE STATE'S ONE, AND
13 I'LL SHOW THIS TO YOU, IF YOU COULD SHOW ME, WHERE
14 WERE YOU STANDING, AND YOU CAN SHOW THE JURY, YOU
15 WERE STANDING THAT WAY?

16 A. WHEN I CAME IN.

17 Q. OKAY. ALRIGHT, SO, WHERE IS THE BEDROOM, DO YOU
18 KNOW?

19 A. NO, SIR.

20 Q. OKAY. YOU DON'T KNOW. ALRIGHT. HOW TALL ARE
21 YOU?

22 A. I'M ABOUT FIVE-TEN.

23 MR. CULLER: JUST ONE MOMENT,
24 PLEASE, YOUR HONOR.

25 Q. ALRIGHT, ONE OTHER THING, MR. JONES, DO YOU KNOW

CROSS - CLINTON JONES BY MR. CULLER

585

1 WHAT TYPE OF GUN MR. CHEESEBORO HAD?

2 A. YES, SIR.

3 Q. HE HAD A THIRTY-EIGHT, DIDN'T HE?

4 A. YES, SIR.

5 Q. AND YOU HAD A THIRTY-EIGHT?

6 A. YES, SIR.

7 Q. THE ONLY PERSON THAT HAD THE THREE FIFTY-SEVEN WAS
8 TERRELL, RIGHT?

9 A. YES, SIR.

10 Q. OKAY.

11 MR. CULLER: OKAY. THANK YOU,
12 NOTHING FURTHER.

13 THE COURT: REDIRECT?

14 SOLICITOR SORENSON: JUST BRIEFLY,
15 YOUR HONOR.

16 (NOTE: Blank lines on this page do not indicate any
17 part of record has been omitted. Headers on testimony
18 pages and hard page breaks between testimony are now
19 required by the Court. See next ensuing page for
20 sequential continuation of record.)

REDIRECT - CLINTON JONES BY SOL. SORENSON

586

REDIRECT EXAMINATION OF CLINTON JONES

BY SOLICITOR SORENSON:

Q. MR. CULLER HAD ASKED YOU A FEW MOMENTS AGO IF THIS
IS THE FIRST TIME YOU'VE EVER TOLD THE TRUTH ABOUT
THIS?

A. YES, SIR.

Q. BACK WHEN YOU GAVE THE STATEMENT, I MEAN, YOU
WEREN'T TOTALLY TRUTHFUL, IS THAT CORRECT?

A. YES, SIR.

Q. I MEAN, HAVE YOU TALKED WITH YOUR LAWYER SINCE
THEN?

A. YES, SIR.

Q. HAVE YOU TOLD YOUR LAWYER WHAT HAPPENED?

A. YES, SIR.

Q. BEEN TRUTHFUL WITH YOUR LAWYER?

A. YES, SIR.

Q. HE WAS ASKING YOU, WHEN YOU CAME IN MR. CHEESEBORO
HAD THE GUY IN THE KITCHEN UP IN A CHOKE HOLD, IS
THAT CORRECT?

A. YES, SIR.

Q. LET ME ASK YOU, I MEAN, DO YOU REMEMBER WHAT HAND
THAT MR. CHEESEBORO WAS HOLDING THE GUN IN, IS
THAT SOMETHING YOU WERE PAYING ATTENTION TO?

A. NO, SIR.

Q. AND BACK WHEN YOU GAVE THAT STATEMENT TO

REDIRECT - CLINTON JONES BY SOL. SORENSON

587

1 INVESTIGATOR SHUMPERT BACK IN OCTOBER OF, OCTOBER
2 THIRTIETH, DID YOU AT THAT POINT IN TIME
3 INVESTIGATOR SHUMPERT WHAT KIND OF GUN TERRELL
4 SCOTT HAD, DO YOU REMEMBER?

5 A. YES, SIR.

6 THE COURT: YOU HAVE TO SPEAK UP SO
7 SHE CAN WRITE IT DOWN.

8 A. YES, SIR.

9 Q. AND WHAT KIND DID YOU TELL HIM?

10 A. A THREE FIFTY-SEVEN.

11 Q. IN FACT, THAT'S IN YOUR STATEMENT HERE, RIGHT,
12 WHAT KIND OF WEAPON DID TERRELL HAVE?

13 A. YES, SIR.

14 SOLICITOR SORENSON; THAT WOULD BE
15 ALL I WOULD HAVE, YOUR HONOR.

16 THE COURT: RECROSS?

17 (NOTE: Blank lines on this page do not indicate any
18 part of record has been omitted. Headers on testimony
19 pages and hard page breaks between testimony are now
20 required by the Court. See next ensuing page for
21 sequential continuation of record.)

RECROSS - CLINTON JONES BY MR. CULLER

588

RECROSS-EXAMINATION OF CLINTON JONES

BY MR. CULLER:

Q. I GUESS THAT ONE DETAIL THAT'S THE SAME MAKES
EVERYTHING ELSE TRUE, DOESN'T IT?

A. WHAT DETAIL, SIR?

MR. CULLER: I DON'T HAVE ANY
FURTHER QUESTIONS.

THE COURT: THANK YOU, SIR, YOU CAN
STEP DOWN.

YOU MAY CALL YOUR NEXT WITNESS.

SOLICITOR SORENSON: THE STATE CALLS
INVESTIGATOR SHUMPERT. AND I DO BELIEVE WE HAVE A SHORT
MATTER THAT WE NEED TO TAKE UP.

THE COURT: ALRIGHT, LADIES AND
GENTLEMEN, STEP OUT TO THE JURY ROOM JUST A MINUTE
PLEASE. PLEASE DO NOT TALK ABOUT THE CASE.

(Whereupon, the jury retires
to the jury room and the following
takes place out of the presence
of the jury.)

THE COURT: YES, SIR?

SOLICITOR SORENSON: YOUR HONOR, I
INFORMED THEM OVER THE LUNCH BREAK THAT IN LOOKING AT
THIS INITIALLY -- WHEN MR. SCOTT WAS INITIALLY ARRESTED
THEY MIRANDIZED HIM, AND HE DOESN'T REALLY GIVE A

RECROSS - CLINTON JONES BY MR. CULLER

589

1 STATEMENT, BUT THERE IS AN INITIAL KIND OF ORAL
2 STATEMENT HE GIVES WHERE HE BASICALLY SAYS, I DON'T KNOW
3 ANYTHING YOU'RE TALKING ABOUT. AND THEN HE TRIES TO
4 PROVIDE AN ALIBI. THAT'S BEFORE THEY'VE EVEN TOLD HIM
5 WHEN IT OCCURRED. AND I THINK I WOULD LIKE TO TRY TO
6 GET INTO THAT, AND I'VE INFORMED THEM OF THAT AND I
7 DON'T KNOW IF THEY'RE GOING TO REQUIRE A JACKSON V.
8 DENNO HEARING ON THAT OR NOT. BUT, I MEAN, IT WILL BE
9 A PRETTY SHORT LITTLE MATTER IF THEY DO.

10 THE COURT: I DON'T THINK THEY HAVE
11 ANY CHOICE.

12 SOLICITOR SORENSON: I MEAN, CAN I
13 CALL HIM?

14 THE COURT: CALL HIM.

15 SOLICITOR SORENSON: INVESTIGATOR
16 SHUMPERT.

17 (Whereupon, James Carl Shumpert
18 is duly sworn.)

19 THE COURT: HAVE A SEAT, PLEASE.

20 (NOTE: Blank lines on this page do not indicate any
21 part of record has been omitted. Headers on testimony
22 pages and hard page breaks between testimony are now
23 required by the Court. See next ensuing page for
24 sequential continuation of record.)

DIRECT, IN CAMERA, JAMES CARL SHUMPERT
BY SOL. SORENSON

590

DIRECT EXAMINATION, IN CAMERA OF JAMES CARL SHUMPERT

BY SOLICITOR SORENSON:

Q. INVESTIGATOR SHUMPERT, WERE YOU INVOLVED IN THE
ARREST OF TERRELL SCOTT BACK ON JANUARY TWENTY-
NINTH OF TWO THOUSAND AND SEVEN?

A. YES, I WAS.

Q. AND AT THAT POINT IN TIME DID YOU HAVE AN
OPPORTUNITY TO -- FIRST OF ALL, WHERE WAS HE
ARRESTED AT?

A. IN CALHOUN COUNTY, OFF THE KENNERLY ROAD.

Q. OKAY. AND WHERE WAS, DID YOU HAVE ANY
CONVERSATION WITH HIM THERE IN CALHOUN COUNTY?

A. NO, BUT HE WAS TRANSPORTED BACK TO THE OFFICE,
FIFTY-TWO TWENTY ELLIS AVENUE.

Q. OKAY. AND DID YOU HAVE AN OPPORTUNITY THERE BACK
AT THE LAW ENFORCEMENT COMPLEX TO ATTEMPT TO TALK
TO MR. SCOTT?

A. CORRECT, I DID.

Q. AND DID YOU ADVISE HIM OF HIS RIGHTS?

A. I DID.

Q. OKAY.

SOLICITOR SORENSON: AND IF I COULD
GET THIS MARKED, MS. HARRY DOT. HOW DO YOU WANT TO DO
THIS?

COURT REPORTER: THAT'S STATE'S

DIRECT, IN CAMERA, JAMES CARL SHUMPERT
BY SOL. SORENSON

591

1 TWENTY-TWO, ID.

2 (State's Exhibit Twenty-two,
3 Miranda rights form,
4 marked for identification.)

5 Q. I SHOW YOU STATE'S EXHIBIT NUMBER TWENTY-TWO FOR
6 ID, DO YOU RECOGNIZE THAT DOCUMENT?

7 A. YES, SIR.

8 Q. IS THAT THE ADVICE OF RIGHTS FORM THAT YOU WENT
9 OVER WITH MR. SCOTT THAT AFTERNOON?

10 A. IT IS.

11 Q. OKAY. AND DID YOU GO OVER THOSE FIVE RIGHTS WITH
12 HIM?

13 A. I DID.

14 Q. OKAY. AND, THE RIGHT TO REMAIN SILENT, ANYTHING
15 YOU SAY CAN BE USED AGAINST YOU IN COURT?

16 A. I DID.

17 Q. DID HE INITIAL NEXT TO THAT RIGHT?

18 A. HE DID.

19 Q. DO YOU HAVE A RIGHT TO TALK TO A LAWYER FOR ADVICE
20 BEFORE ANSWER ANY QUESTIONS AND HAVE HIM WITH YOU
21 DURING QUESTIONING, DID HE INITIAL NEXT TO THAT
22 RIGHT?

23 A. HE DID.

24 Q. IF YOU CANNOT AFFORD A LAWYER ONE WILL BE
25 APPOINTED FOR YOU BEFORE ANY QUESTIONS IF YOU

DIRECT, IN CAMERA, JAMES CARL SHUMPERT
BY SOL. SORENSON

592

1 WISH, DID HE INITIAL THERE?

2 A. HE DID.

3 Q. IF YOU DECIDE TO ANSWER QUESTIONS WITHOUT A LAWYER
4 PRESENT YOU WILL STILL HAVE THE RIGHT TO STOP
5 ANSWERING AT ANYTIME. DID HE INITIAL THERE?

6 A. HE DID.

7 Q. AND YOU HAVE THE RIGHT TO STOP ANSWERING AT
8 ANYTIME UNTIL YOU TALK TO A LAWYER. DID HE
9 INITIAL THERE?

10 A. HE DID.

11 Q. AND THEN, UNDER THERE WHERE IT SAYS, I UNDERSTAND
12 MY RIGHTS, DID ANYBODY SIGN THERE?

13 A. TERRELL SCOTT SIGNED HIS SIGNATURE.

14 Q. OKAY. ALRIGHT, AND THEN IS THERE A SECOND
15 PORTIONS THAT DEALS WITH HIM WAIVING RIGHTS?

16 A. YES, SIR, IT IS.

17 Q. AND DID HE SIGN THAT WAIVER OF RIGHTS PORTION OF
18 THAT FORM?

19 A. HE DID.

20 Q. INDICATING THAT HE WISHED TO WAIVE THOSE ABOVE
21 RIGHTS AND TALK TO YOU?

22 A. HE DID.

23 Q. OKAY. AND AT ANY POINT IN TIME LEADING UP TO
24 THIS, I MEAN, DID YOU THREATEN MR. SCOTT?

25 A. NO, I DID NOT.

DIRECT, IN CAMERA, JAMES CARL SHUMPERT
BY SOL. SORENSON

593

1 Q. PRESSURE HIM?

2 A. NO, I DID NOT.

3 Q. COERCE HIM TO GET HIM TO TALK TO YOU?

4 A. NO, SIR.

5 Q. ALRIGHT. AND AT THAT POINT IN TIME HAD HE BEEN,
6 HAD HE HAD A WARRANT OR ANYTHING SERVED ON HIM
7 YET?

8 A. NO, WE HAD THE WARRANT IN POSSESSION BUT
9 LIEUTENANT BAMBERG HAD THE WARRANT.

10 Q. OKAY. AND AT THAT POINT IN TIME AFTER YOU
11 FINISHED GOING OVER THOSE MIRANDA WARNINGS WITH
12 HIM AND GETTING HIM TO SIGN THESE, THE
13 UNDERSTANDING AND THE WAIVING OF THE RIGHTS, WHAT
14 IF ANYTHING, DID MR. SCOTT SAY TO YOU AT THAT
15 POINT IN TIME?

16 A. WELL, I TOLD HIM WHAT HE WAS THERE FOR.

17 Q. OKAY. AND WHAT DID YOU TELL HIM?

18 A. THE ARMED ROBBERY, BECAUSE WE HAD A WARRANT FOR
19 ARMED ROBBERY AT THE TIME.

20 Q. OKAY. DID YOU TELL HIM THE SPECIFICS OF THE ARMED
21 ROBBERY?

22 A. I DIDN'T GET INTO THE DETAILS, NO, SIR.

23 Q. DID YOU TELL HIM WHEN IT HAPPENED?

24 A. NO, SIR.

25 Q. DID YOU TELL HIM WHERE IT HAPPENED?

DIRECT, IN CAMERA, JAMES CARL SHUMPERT
BY SOL. SORENSON

594

1 A. NO, SIR, I DID NOT.

2 Q. ALRIGHT. AND WHAT -- DID HE VOLUNTEER ANY
3 INFORMATION AFTER YOU TOLD HIM THAT YOU WERE, HAD
4 AN ARREST WARRANT FOR ARMED ROBBERY FOR HIM?

5 A. WELL, ALL HE SAID TO ME WAS THAT HE WAS AT HIS, I
6 THINK, WIFE'S MOM'S HOUSE EATING DINNER BEFORE I
7 EVEN REALLY - - -

8 COURT REPORTER: WHAT?

9 A. WIFE'S, HIS MOTHER-IN-LAW, I BELIEVE HE SAID,
10 HAVING DINNER.

11 Q. OKAY. NOW, HAD YOU TOLD HIM ANYTHING YET AT THAT
12 TIME ABOUT EVEN WHERE THIS OR WHEN THIS HAD
13 OCCURRED?

14 A. NO, I DIDN'T, BECAUSE SHORTLY AFTER THAT HE ASKED
15 TO SPEAK TO A LAWYER.

16 Q. OKAY. AND THEN HE ENDED UP, DID HE GIVE YOU ANY
17 OTHER INFORMATION AT THAT POINT IN TIME?

18 A. NO, SIR, HE REQUESTED A LAWYER.

19 Q. OKAY.

20 SOLICITOR SORENSON: THAT WOULD BE
21 IT, YOUR HONOR.

22 THE COURT: CROSS-EXAMINATION.

23 MR. WALTERS: MAY IT PLEASE THE
24 COURT.

25 THE COURT: YES, SIR.

CROSS, IN CAMERA, JAMES CARL SHUMPERT
BY MR. WALTERS

595

CROSS-EXAMINATION, IN CAMERA, OF JAMES CARL SHUMPERT
BY MR. WALTERS:

Q. INVESTIGATOR SHUMPERT, - - -

A. YES, SIR.

Q. --- YOU ALSO PROVIDED A NARRATIVE, IS THAT
CORRECT?

A. I DID, YES, SIR.

Q. NOW, THE POLICE HAD ALREADY GONE OUT AND THEY WERE
LOOKING FOR HIM, IS THAT CORRECT?

A. YES, WE DID.

Q. I BELIEVE YOU WENT BY HIS GRANDMOTHER'S HOUSE,
SOME FAMILY MEMBERS?

A. ON ANTIOCH ROAD, [REDACTED] [REDACTED], I BELIEVE, IN
SANTEE, WE DID.

Q. BUT NEVERTHELESS, THE POLICE WERE LOOKING FOR HIM,
IS THAT CORRECT?

A. YES, WE WERE.

Q. ALRIGHT. AND THEN, HE VOLUNTARILY CAME IN, I
BELIEVE?

A. NO, HE DID NOT.

Q. ALRIGHT. WHAT HAPPENED?

A. WE WENT TO, I BELIEVE IT'S [REDACTED] NORTH ROAD,
NORTH WOODS ESTATES, I CAN'T REMEMBER THE ADDRESS,
BUT WE WENT OUT THERE WHERE, ALONG WITH CALHOUN
COUNTY SHERIFF'S DEPARTMENT.

CROSS, IN CAMERA, JAMES CARL SHUMPERT
BY MR. WALTERS

596

1 Q. RIGHT.

2 A. WE WENT TO THE HOUSE, NOBODY ANSWERED.

3 Q. OKAY.

4 A. AND WHILE WE WERE STANDING IN THE YARD MR. SCOTT,
5 HIS MOM AND ANOTHER YOUNG LADY PULLED UP IN A
6 VEHICLE.

7 Q. RIGHT.

8 A. AND HE WAS ARRESTED THERE ON THE SCENE, AND WE
9 BROUGHT HIM BACK TO THE COMPLEX.

10 Q. OKAY. BUT HE DIDN'T RESIST ARREST OR ANYTHING
11 LIKE THAT?

12 A. NO, HE DIDN'T RESIST, HE DIDN'T GIVE ME NO
13 PROBLEM.

14 Q. IN FACT, EACH TIME THAT HE'S HAD TO COME IN HE'S
15 VOLUNTARILY CAME IN, OR WHEN YOU REQUESTED THAT HE
16 COME HE APPEARED BEFORE THE COURT?

17 A. I NEVER REQUESTED HIM TO COME BACK IN.

18 Q. OKAY.

19 A. I KNOW THE FIRST CONTACT WE HAD DEFINITELY WENT
20 OUT AND WE PLACED HIM UNDER ARREST AT HIS MOM'S
21 HOUSE.

22 Q. OKAY. WHEN YOU HAD THIS CONVERSATION, DID YOU
23 INFORM HIM THAT HE WAS CHARGED WITH ARMED ROBBERY?

24 A. YES, I DID.

25 Q. ALRIGHT.

CROSS, IN CAMERA, JAMES CARL SHUMPERT
BY MR. WALTERS

597

1 A. BACK AT THE COMPLEX.

2 Q. ALRIGHT. AND THEN HOW DID THE DISCUSSION ENSUE
3 FROM THERE?

4 A. WELL, THIS IS WHAT HAPPENED, WE GOT BACK TO THE
5 COMPLEX, LIEUTENANT BAMBERG HAD THE WARRANT. WE
6 WENT OVER HIS ADVISEMENT OF RIGHTS. HE WANTED TO
7 KNOW WHY HE WAS THERE, I WAS TELLING HIM ABOUT THE
8 ARMED ROBBERY, AND HE TOLD ME THAT HE DIDN'T KNOW
9 WHAT I WAS TALKING ABOUT, HE WAS AT HIS MOM'S, HIS
10 MOTHER-IN-LAW'S HOUSE EATING DINNER.

11 Q. UH HUH.

12 A. AND THEN, SHORTLY AFTER THAT HE REQUESTED A
13 LAWYER. AND THEN LIEUTENANT BAMBERG SERVED THE
14 WARRANT ON HIM, AND THEN HE WENT TO JAIL.

15 Q. ALRIGHT. SO, HE DENIED THAT HE WAS INVOLVED IN
16 ANY TYPE OF ARMED ROBBERY?

17 A. CORRECT, HE DID.

18 Q. OKAY.

19 MR. WALTERS: YOUR HONOR, I HAVE NO
20 FURTHER QUESTIONS.

21 THE COURT: ANYTHING ELSE FROM THE
22 STATE?

23 SOLICITOR SORENSON: NO, SIR.

24 THE COURT: YOU CAN STEP DOWN.

25 WITNESS: YES, SIR.

1 THE COURT: I'LL HEAR YOU ON THE
2 MOTION TO SUPPRESS, MR. WALTERS.

3 MR. WALTERS: YOUR HONOR, UNDER THE
4 CIRCUMSTANCES WE WOULD JUST MAKE A MOTION FOR THE RECORD
5 THAT IT BE DENIED BUT WE'RE AWARE OF THE COURT'S RULING
6 INVOLVING THIS MATTER.

7 THE COURT: ALRIGHT, WELL, I FIND
8 THAT THE STATEMENT HE MADE WAS FREELY AND VOLUNTARILY
9 MADE, IT WAS MADE AFTER HE WAS ADVISED OF HIS RIGHTS,
10 INCLUDING THE MIRANDA RIGHTS, WHICH THE OFFICER WENT
11 OVER IN COURT, AS WELL AS TO THE DEFENDANT, THE
12 STATEMENT HE MADE WAS MADE FREELY, VOLUNTARILY,
13 KNOWINGLY AND INTELLIGENTLY, AND THAT HE WAS NOT OFFERED
14 ANYTHING, HE WAS NOT THREATENED WHEN HE MADE THE
15 STATEMENT.

16 SOLICITOR SORENSON: ONE THING JUST
17 THAT MR. WALTERS BROUGHT UP IN REGARD TO THAT THAT I'D
18 JUST KIND OF BRING TO THE COURT'S ATTENTION. I THINK IF
19 HE ASKS THAT SAME LINE OF CROSS-EXAMINATION TO
20 INVESTIGATOR SHUMPERT ABOUT HIM, YOU KNOW, SHOWING UP
21 EVERY TIME WE'VE REQUESTED HIM, HE WASN'T HERE TWO DAYS
22 AGO, WE HAD TO GET A BENCH WARRANT TO GO GET HIM. SO,
23 THAT LINE OF QUESTIONING I THINK MIGHT OPEN THE DOOR TO
24 THAT. SO, - - -

25 MR. WALTERS: MAY IT PLEASE THE

1 COURT. YOUR HONOR, WE WERE INFORMED, AND I BELIEVE
2 SOLICITOR SORENSON WILL CONFIRM THAT WE WERE TOLD THE
3 TRIAL WOULD START ON WEDNESDAY MORNING. IS THAT CORRECT?

4 SOLICITOR SORENSON: I HAVE NEVER
5 TOLD ANYBODY THAT WE WEREN'T DOING ANYTHING BEFORE
6 WEDNESDAY. I HAVE NEVER TOLD ANYBODY THAT.

7 MR. WALTERS: WHAT YOU INFORMED ME
8 OF IS THAT WE HAVE SOME PRELIMINARY MOTIONS THAT WE NEED
9 TO GO THROUGH.

10 SOLICITOR SORENSON: THAT WE NEEDED
11 TO GET ALL THE PRETRIAL DONE ON TUESDAY, - - -

12 MR. WALTERS: RIGHT.

13 SOLICITOR SORENSON: AND THEN - - -

14 MR. WALTERS: AND THEN YOU INFORMED
15 ME, YOU SAID, GLENN, DID YOU TALK TO MICHAEL, BECAUSE I
16 THINK WE'RE GOING TO START ON WEDNESDAY? DIDN'T YOU SAY
17 THAT TO ME?

18 THE COURT: WELL, I WAS PRESENT
19 DURING THE CONVERSATION. THE CONVERSATION BETWEEN MR.
20 WALTERS, MR. SORENSON AND MYSELF WAS THAT THE TRIAL
21 COULDN'T START UNTIL WEDNESDAY, BUT THAT THE PRETRIAL
22 MOTIONS WOULD BE HEARD ON TUESDAY.

23 MR. WALTERS: YES, SIR. AND OF
24 COURSE, IN THIS PARTICULAR CASE MY CLIENT WAS PICKING UP
25 HIS WIFE AND HE WAS INFORMED THAT THE TRIAL WOULD START

1 ON WEDNESDAY MORNING.

2 SOLICITOR SORENSON: IT'S MY
3 UNDERSTANDING -- I'M SORRY.

4 THE COURT: IT'S ON THE RECORD THAT
5 MR. -- IT'S ON THE RECORD BY MR. CULLER, AND I THINK YOU
6 CONFIRMED IT WHEN YOU CAME IN LATE, MR. WALTERS, THAT
7 Y'ALL TOLD MR. TERRELL SCOTT TO BE HERE TUESDAY
8 AFTERNOON. THAT'S ON THE RECORD.

9 MR. WALTERS: YES, SIR.

10 THE COURT: AND HE WASN'T HERE.

11 MR. CULLER: WELL, IF I MIGHT, THE
12 ONLY THING I WOULD CORRECT, I THINK YOU'RE ABSOLUTELY
13 RIGHT, BUT WHEN I SAID, BE HERE, I MEANT IN ORANGEBURG.
14 I DON'T KNOW THAT HE TOLD HIM TO BE IN COURT. I'M NOT
15 TRYING TO SPLIT HAIRS, I'M JUST TELLING YOU.

16 THE COURT: WELL, - - -

17 MR. CULLER: I, I KNOW, JUDGE, I
18 KNOW.

19 MR. WALTERS: AND I DON'T WANT TO
20 SPLIT HAIRS, YOUR HONOR, BUT HE WAS INSTRUCTED TO BE AT
21 MY OFFICE, AND OF COURSE, WHEN HE APPEARED BEFORE THE
22 COURT, WELL, NOT BEFORE THE COURT, BUT HE APPEARED ON
23 THE GROUND IT WAS AT SIX:THIRTY THAT EVENING. YOUR
24 HONOR WAS WALKING OUT OF THE COURTHOUSE, AND WE, AS
25 OFFICERS OF THE COURT WE SAY WE IMMEDIATELY CONTACTED

1 LAW ENFORCEMENT. HE WAS PICKED UP WHEN HE GOT OUT OF HIS
2 MOTHER'S TRUCK BECAUSE HE WAS PICKING UP HIS WIFE. AND
3 I SAID, THEY STARTED THE PRELIMINARY MOTIONS, IT'S MY
4 UNDERSTANDING THAT DON WANTED AN IN COURT IDENTIFICATION
5 BY SOME OF THE PEOPLE TESTIFYING ON THIS MOTIONS. HE
6 DIDN'T INDICATE THAT TO ME, AND OF COURSE, HE SHOWED UP,
7 AND WE CONTACTED LAW ENFORCEMENT, AND HE WAS ARRESTED AT
8 THAT TIME. IF DON HAD TOLD US THAT, GLENN, I WANT HIM
9 IDENTIFIED IN COURT BY THE PEOPLE I PUT UP, THEN I WOULD
10 HAVE SAID, OKAY, TERRELL, YOU NEED TO BE HERE.

11 THE COURT: OKAY. IT IS MY BELIEF
12 AND IT IS MY RULING THAT IF YOU PROCEED WITH THAT LINE
13 OF QUESTIONING THAT HE HAS ALWAYS COOPERATED AND THAT HE
14 HAS ALWAYS BEEN WHERE HE WAS SUPPOSED TO BE AT THE TIME
15 THAT HE WAS SUPPOSED TO BE THERE, THAT WOULD OPEN THE
16 DOOR FOR MR. SORENSON TO ASK WHETHER HE WAS HERE
17 TUESDAY. THEN YOU WOULD HAVE THE RIGHT TO COME BACK, I
18 DON'T KNOW HOW YOU WOULD -- BUT I DON'T KNOW HOW YOU
19 WOULD GET IT IN THE RECORD, BECAUSE THIS OFFICER DOESN'T
20 KNOW WHAT YOU TOLD YOUR CLIENT.

21 MR. WALTERS: YES, SIR.

22 THE COURT: THE ONLY WAY I KNOW YOU
23 CAN GET IT IN THE RECORD WOULD BE TO PUT IT UP, PUT YOUR
24 CLIENT UP.

25 MR. WALTERS: YES, SIR.

1 THE COURT: YOU CAN'T CALL MR.
2 CULLER, AND HE CAN'T CALL YOU, AND MR. BROWN DOESN'T
3 KNOW ANYTHING ABOUT IT, SO IT'S A BAD SITUATION. I DON'T
4 THINK YOU NEED TO GO THERE.

5 MR. WALTERS: YOUR HONOR, WE'VE
6 CONSIDERED THE OPTION OF PUTTING OUR CLIENT UP, SO - - -

7 THE COURT: YOU WHAT?

8 MR. WALTERS: WE'VE CONSIDERED THE
9 OPTION OF PUTTING OUR CLIENT UP.

10 THE COURT: WELL, I'M JUST SAYING,
11 IF YOU OPEN THE DOOR I'M GOING TO LET HIM COME THROUGH
12 IT, AND YOU'RE GOING TO HAVE TO DEAL WITH IT THE BEST
13 WAY YOU CAN.

14 MR. WALTERS: YES, SIR.

15 THE COURT: YOU MIGHT CONSIDER NOT
16 OPENING THAT DOOR BUT I'LL LEAVE THAT UP TO YOU, MR.
17 WALTERS. YOU KNOW, SOMETIME WE DON'T NEED TO TELL
18 EVERYTHING WE KNOW.

19 MR. WALTERS: YES, SIR.

20 THE COURT: BUT I'LL LEAVE THAT UP
21 TO YOU, BUT YOU'VE GOT MY POSITION ON IT.

22 MR. WALTERS: THANK YOU.

23 THE COURT: AND I'LL HEAR OBJECTIONS
24 OR WHATEVER AT THE TIME THAT IT'S MADE, BUT THAT'S THE
25 WAY, IF IT SHAPES UP THE WAY THAT IT APPEARS IT WOULD

1 SHAPE UP, YOU KNOW HOW I'M GOING TO RULE.

2 MR. WALTERS: YES, SIR.

3 THE COURT: BRING THE JURY IN,
4 PLEASE.

5 (Whereupon, the jury enters the courtroom
6 and the following takes place in the
7 presence of the jury.)

8 THE COURT: ALRIGHT, WE HAVE ALL OF
9 OUR JURY.

10 MR. SORENSON.

11 SOLICITOR SORENSON: THANK YOU, MAY
12 IT PLEASE THE COURT.

13 THE COURT: YES, SIR.

14 SOLICITOR SORENSON: THE STATE CALLS
15 INVESTIGATOR SHUMPERT.

16 THE COURT: COME AROUND, PLEASE,
17 SIR. PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR
18 RIGHT, PLEASE.

19 (Whereupon, James Carl Shumpert
20 is duly sworn.)

21 THE COURT: STATE YOUR FULL NAME,
22 PLEASE, SIR.

23 WITNESS: JAMES CARL SHUMPERT.

24 (NOTE: Blank lines on this page do not indicate any
25 part of record has been omitted.)

DIRECT - JAMES CARL SHUMPERT BY SOL. SORENSON

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DIRECT EXAMINATION OF JAMES CARL SHUMPERT

BY SOLICITOR SORENSON:

Q. GOOD AFTERNOON, INVESTIGATOR SHUMPERT.

A. HOW ARE YOU DOING?

Q. GOOD. IF YOU WOULD, PLEASE TELL THE JURY WHERE IT IS THAT YOU'RE EMPLOYED?

A. I WORK FOR THE ORANGEBURG COUNTY SHERIFF'S OFFICE IN THE CRIMINAL INVESTIGATION DIVISION.

Q. ALRIGHT. AND IF YOU WOULD, TELL THE JURY HOW LONG YOU'VE BEEN IN LAW ENFORCEMENT?

A. I'VE BEEN IN LAW ENFORCEMENT FOR A TOTAL OF THIRTEEN YEARS, TEN AT THE SHERIFF'S OFFICE.

Q. AND TEN AT THE SHERIFF'S OFFICE, HOW MANY OF THOSE YEARS HAVE YOU BEEN EMPLOYED AS A CRIMINAL INVESTIGATOR?

A. JUST A LITTLE OVER THREE YEARS.

Q. I'LL TURN YOUR ATTENTION, IF I COULD, INVESTIGATOR, BACK TO DECEMBER TWENTY-FOURTH OF TWO THOUSAND AND SIX. IF YOU WOULD, TELL THE JURY HOW IT IS THAT YOU INITIALLY BECAME INVOLVED IN THE INVESTIGATION OF THE MURDER OF HARRY MACK?

A. I BECAME INVOLVED WHEN MY SUPERVISOR CALLED ME AND TOLD ME HE HAD A MURDER SCENE, AND THEY CALLED ME OUT TO HELP WITH THE INVESTIGATION ON THE EARLY MORNING OF DECEMBER TWENTY-FOURTH OF TWO THOUSAND

DIRECT - JAMES CARL SHUMPERT BY SOL. SORENSON

605

1 AND SIX.

2 Q. OKAY. AND DID YOU COME IN, WHERE DID YOU COME TO
3 INITIALLY?

4 A. I WENT STRAIGHT TO THE OFFICE, FIFTEEN TWENTY
5 ELLIS AVENUE, WHICH IS KNOWN AS THE COMPLEX.

6 Q. OKAY. AND AT THAT POINT IN TIME WHO, WITNESS
7 WISE, WHO WAS DOWN THERE AT THE SHERIFF'S OFFICE,
8 AT THE LAW COMPLEX ON ELLIS AVENUE WHEN YOU GO
9 THERE THAT MORNING?

10 A. WHEN I ARRIVED IT WAS SERGEANT CRAFT, JOHN
11 RANDOLPH AND WILL T. GILLIARD.

12 Q. NOW, AT THAT POINT IN TIME DO YOU KNOW WHETHER THE
13 THIRD INDIVIDUAL THAT HAD BEEN IN THE HOME,
14 LAWRENCE KELLY, DO YOU KNOW WHETHER HE HAD BEEN
15 LOCATED YET?

16 A. NO, HE WAS NOT LOCATED AT THE TIME.

17 Q. OKAY. AND WERE YOU INVOLVED IN LOCATING MR.
18 KELLY?

19 A. YES, I WAS.

20 Q. AND WHERE AND HOW DID YOU FIND HIM?

21 A. I THINK WILLIAM STATED THAT HE WAS MARRIED TO HIS
22 COUSIN OR AUNT OR SOMETHING, AND IN FACT, WE MADE
23 CONTACT WITH HER. SHE GAVE ME THE PHONE NUMBER
24 THAT HE WAS AT AND I CALLED HIM, AND HE MET WITH
25 ME.

DIRECT - JAMES CARL SHUMPERT BY SOL. SORENSON

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1 Q. OKAY. AND WHERE DID YOU MEET WITH HIM INITIALLY?

2 A. I INITIALLY MET AT FIFTEEN TWENTY ELLIS AVENUE, AT
3 THE COMPLEX. WE CALLED HIM BACK INTO THE LAW
4 ENFORCEMENT COMPLEX.

5 Q. OKAY. AND WAS HE COOPERATIVE?

6 A. YES, HE WAS.

7 Q. DID HE APPEAR TO BE HIDING FROM YOU OR ANYTHING OF
8 THAT NATURE?

9 A. NO. ONCE I TOLD HIM TO COME HE CAME.

10 Q. AND DID YOU TAKE A STATEMENT FROM HIM THAT
11 MORNING?

12 A. I DID.

13 Q. ARE YOU AWARE THAT HE HAD PREPARED SOMETIME THAT
14 DAY THIS COMPOSITE ALSO, IS THAT CORRECT, STATE'S
15 EXHIBIT NUMBER THIRTEEN?

16 A. HE DID.

17 Q. AND WERE YOU AS THE LEAD INVESTIGATOR ABLE TO KIND
18 OF REVIEW THE OTHER INFORMATION THAT HAD COME IN
19 ON THE CASE?

20 A. OF SOMEWHAT, IT WAS SO MUCH GOING ON, EVERYBODY
21 WAS DOING DIFFERENT THINGS, BUT I HAD SOME KIND OF
22 IDEA OF WHAT HAPPENED.

23 Q. OKAY. HAD YOU LEARNED THAT ONE OF THE, ONE OF THE
24 WITNESSES OUT THERE INDICATED HE THOUGHT THAT HE
25 MAY HAVE KNOWN WHO THE PERSON WAS, RECOGNIZED HIM

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607

1 AT LEAST?

2 A. YES, I DID.

3 Q. OKAY. AND WHO WAS THAT?

4 A. WILLIAM T. GILLIARD.

5 Q. ALRIGHT. LET ME ASK YOU, INVESTIGATOR SHUMPERT,
6 AS THE DAYS KIND OF PROGRESSED THEN ON FROM THE
7 TWENTY-FOURTH, DID YOU HAVE AN OPPORTUNITY TO
8 START TRYING TO, BASED ON THE COMPOSITE AND THE
9 INFORMATION THAT YOU HAD TO TRY TO START
10 DEVELOPING SOME SUSPECTS TO SEE IF ANYBODY COULD
11 IDENTIFY WHO MIGHT BE INVOLVED?

12 A. YES, SIR. NUMEROUS CALLED WITH NAMES AND I DID
13 SEVERAL LINEUPS.

14 Q. OKAY. AND INITIALLY, ON DECEMBER TWENTY-SIXTH,
15 LET ME SHOW YOU STATE'S EXHIBITS NUMBERS FOUR AND
16 FIVE, ACTUALLY I'LL SHOW YOU FIVE FIRST, IS THAT
17 ONE OF THE LINEUPS YOU PUT TOGETHER?

18 A. YES, IT IS.

19 Q. OKAY. AND I'M SHOWING YOU STATE'S EXHIBITS
20 NUMBERS FOUR AND ELEVEN, IS THAT ESSENTIALLY THE
21 SAME LINEUP, JUST KIND OF IN DIFFERENT, DIFFERENT
22 ARRANGEMENT OF WHERE THE PICTURES ARE LOCATED?

23 A. IT IS.

24 Q. AND DID YOU PUT THAT LINEUP TOGETHER - - -

25 A. I DID.

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608

1 Q. --- AT THAT POINT IN TIME?

2 A. YES, SIR, I DID.

3 Q. ALRIGHT. AND ON DECEMBER TWENTY-SIXTH, THEN, OF
4 TWO THOUSAND AND SIX, OR SOME TWO DAYS LATER DID
5 YOU HAVE AN OPPORTUNITY TO SHOW THESE LINEUPS TO
6 TWO OF THE WITNESSES?

7 A. YES, I DID.

8 Q. ALRIGHT. AND WHO WAS THAT THAT YOU SHOWED THESE
9 TWO LINEUPS TO?

10 A. THAT WAS MR. KELLY AND MR. RANDOLPH.

11 Q. OKAY. AND I'LL START OFF WITH MR. RANDOLPH,
12 STATE'S FOUR AND FIVE I BELIEVE ARE THE TWO THAT
13 WERE SHOWN TO HIM THEN?

14 A. YES, THOSE ARE THE TWO.

15 Q. AND DID MR. RANDOLPH PICK ANYBODY OUT OF EITHER
16 ONE OF THESE LINEUPS?

17 A. NO, HE DIDN'T RECOGNIZE NO ONE IN THE LINEUPS.

18 Q. ALRIGHT. AND DID YOU HAVE AN OPPORTUNITY THEN AT
19 THAT SAME TIME TO SHOW TO MR. KELLY THAT SAME DAY,
20 ON DECEMBER TWENTY-SIXTH STATE'S EXHIBITS NUMBERS
21 FIVE AND ELEVEN, THOSE TWO?

22 A. YES, I DID.

23 Q. OKAY. AND DID MR. KELLY INDICATE TO YOU THAT HE
24 THOUGHT ONE OF THE INDIVIDUALS WAS THE PERSON
25 INVOLVED IN ONE OF THESE LINEUPS?

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609

1 A. HE DID.

2 Q. AND IS THAT, IS THAT IN THIS LINEUP?

3 A. NO, SIR, IT'S NOT.

4 Q. THAT WOULD BE IN STATE'S EXHIBIT NUMBER ELEVEN, IS
5 THAT CORRECT?

6 A. CORRECT.

7 Q. OKAY. AND WHAT DID YOU HAVE HIM DO WHEN HE - - -

8 A. I HAD HIM CIRCLE RIGHT HERE AND INITIAL IT AND PUT
9 HIS, THE DATE OF WHEN I SHOWED IT TO HIM.

10 Q. AND WHAT, IF ANYTHING, DID HE INDICATE TO YOU WHEN
11 HE POINTED OUT AND CIRCLED AND INITIALED THAT
12 PICTURE?

13 A. HE SAID THAT HE WASN'T SURE IF THAT WAS THE GUY,
14 HE WAS, LIKE, SEVENTY-FIVE, OR EIGHTY PER CENT
15 SURE, BUT HE WASN'T POSITIVE THAT WAS THE GUY.

16 Q. NOW, AS THE WEEKS WENT BY DID YOU HAVE AN
17 OPPORTUNITY AS TO, WITH THESE SAME TWO LINEUPS,
18 STATE'S EXHIBITS FOUR AND ELEVEN, TO SHOW THESE --
19 I'M SORRY, FOUR AND FIVE, TO SHOW THESE TWO
20 LINEUPS TO THE OTHER WITNESS, MR. GILLIARD?

21 A. CORRECT.

22 Q. DID MR. GILLIARD IDENTIFY ANYBODY OUT OF EITHER
23 ONE OF THESE LINEUPS?

24 A. HE DID NOT.

25 Q. NOW, ADDITIONALLY, I'M GOING TO SHOW YOU STATE'S

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610

1 EXHIBITS NUMBERS SIX, SEVEN AND EIGHT AND ASK YOU
2 TO TAKE A LOOK AT THOSE. DO YOU RECOGNIZE THOSE
3 DOCUMENTS?

4 A. I DO.

5 Q. OKAY. AND DID YOU HAVE AN OPPORTUNITY, AS MR.
6 GILLIARD TESTIFIED TO, TO SHOW THESE THREE
7 LINEUPS, SIX, SEVEN AND EIGHT, TO MR. GILLIARD
8 THEN OVER THE MONTH OF JANUARY, TWO THOUSAND AND
9 SEVEN?

10 A. I DID.

11 Q. AND DID MR. GILLIARD PICK ANYBODY OUT OF ANY OF
12 THESE THREE LINEUPS AS BEING INVOLVED IN THAT
13 INCIDENT?

14 A. HE DID NOT.

15 Q. NOW, DID THERE COME A TIME TOWARDS THE END OF
16 JANUARY, TWO THOUSAND SEVEN, WHEN YOU GOT SOME
17 INFORMATION REGARDING THE NAME, TERRELL SCOTT?

18 A. YES, I DID.

19 Q. OKAY. AND WHO, WHO DID YOU GET THAT NAME FROM?

20 A. MR. GILLIARD.

21 Q. OKAY. AND WHEN YOU GOT THAT NAME WHAT DID YOU THEN
22 DO WITH THAT NAME?

23 A. I WENT AND ASKED THE SECRETARY TO GET ME A DMV
24 PHOTO OF THE NAME THAT WAS GIVEN TO ME, AND THEN I
25 ALSO ASKED MR. GILLIARD TO MEET ME AT THE COMPLEX,

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611

1

- - -

2

Q. OKAY.

3

A. --- WHICH IS THE LAW ENFORCEMENT COMPLEX.

4

Q. OKAY. I'M SHOWING YOU STATE'S EXHIBIT NUMBER NINE
THAT'S IN EVIDENCE, DO YOU RECOGNIZE THAT
DOCUMENT?

6

7

A. YES, THAT'S THE DMV PHOTO.

8

Q. SO, THAT'S WHAT YOU, WHEN YOU GOT THAT NAME THAT
WOULD THEN BE THE DOCUMENT THAT YOU GOT?

9

10

A. YES, IT IS.

11

Q. OKAY. LET ME ASK YOU, DID IT HAVE AN ADDRESS ON
THAT FOR DMV, HIS DRIVERS LICENSE ADDRESS?

12

13

A. YES, IT DOES.

14

Q. WHAT IS THAT ADDRESS THAT HE'S GOT ON HIS DRIVERS
LICENSE BACK IN DECEMBER OF TWO THOUSAND SIX?

15

16

A. [REDACTED] ANTIOCH ROAD, SANTEE, SOUTH
CAROLINA.

17

18

Q. THAT WOULD BE IN SANTEE, SOUTH CAROLINA?

19

A. YES, SIR.

20

Q. ALRIGHT. NOW, TELL THE JURY, WHAT, IF ANYTHING
HAPPENED -- YOU HAD INDICATED THAT YOU HAD THEN
ASKED MR. GILLIARD TO COME BACK IN ALSO TO TALK TO
HIM AGAIN?

23

24

A. YES.

25

Q. OKAY. TELL THE JURY WHAT HAPPENED WHEN HE CAME

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612

1 INTO YOUR OFFICE THAT DAY WITH REGARDS TO THIS
2 PHOTOGRAPH?

3 A. ALONG WITH THAT PHOTO RIGHT THERE I HAD ANOTHER, A
4 BUNCH OF LINEUPS SITTING ON MY DESK. MR. GILLIARD
5 SAT AT THE DESK, AND HE PICKED UP THE DMV PICTURE
6 THERE AND HE SAID, THIS IS THE GUY RIGHT HERE,
7 WITHOUT HESITATION. AND I ASKED HIM TO SHOW ME
8 THE PICTURE, I LOOKED AT THE PICTURE, HE SAID,
9 THIS IS THE GUY THAT CAME INTO THE APARTMENT.

10 Q. OKAY. NOW, HAD YOU POINTED THAT PICTURE OUT TO
11 HIM?

12 A. NO, I DID NOT.

13 Q. WERE YOU EVEN HAVING A CONVERSATION WITH HIM WHEN
14 THAT OCCURRED?

15 A. NO, WE HAD JUST GOTTEN BACK TO MY DESK IN THE
16 CUBICLE, AND WE HAD JUST SAT DOWN.

17 Q. AS A RESULT OF THAT, THEN, INVESTIGATOR SHUMPERT,
18 DID YOU HAVE AN OPPORTUNITY THEN TO PUT MR.
19 TERRELL SCOTT IN A PHOTO LINEUP?

20 A. I DID.

21 Q. AND JUST FOR THE RECORD, THE TERRELL SCOTT THAT'S
22 DEPICTED HERE, IS THAT THE DEFENDANT IN THIS CASE?

23 A. YES, THAT'S HIM.

24 Q. OKAY. AND DID YOU THEN PUT HIM IN A LINEUP?

25 A. YES, I DID.

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613

1 Q. ALRIGHT. I'M SHOWING YOU STATE'S EXHIBIT NUMBER
2 TWELVE AND ASK YOU TO TAKE A LOOK AT THAT AND SEE
3 IF YOU RECOGNIZE THAT?

4 A. YES, SIR.

5 Q. AND IS THAT ONE OF THE LINEUPS YOU PUT TOGETHER?

6 A. IT IS.

7 Q. OKAY. AND HOW MANY -- THIS IS ACTUALLY TWO
8 SEPARATE LINEUPS, IS THAT CORRECT?

9 A. CORRECT.

10 Q. DID YOU PREPARE THEM AT THE SAME TIME?

11 A. YES. I SENT OFF FOR THAT LINEUP THERE.

12 Q. OKAY. AND THAT IS ACTUALLY, THE PICTURE IN THERE
13 IS ACTUALLY HIS DRIVERS LICENSE PHOTO, IS THAT
14 CORRECT?

15 A. IT IS.

16 Q. AND WHO DID YOU SHOW THIS LINEUP TO?

17 A. LET ME SEE IT AGAIN? I BELIEVE, THIS IS THE
18 LINEUP I SHOWED TO LAWRENCE KELLY.

19 Q. ALRIGHT. AND WHAT DAY DID YOU DO THAT?

20 A. LET ME SEE THE DATE. JANUARY TWENTY-FIFTH OF O-
21 SEVEN.

22 Q. OKAY. AND TELL THE COURT HOW YOU WENT ABOUT
23 SHOWING THIS LINEUP, STATE'S EXHIBIT NUMBER
24 TWELVE, TO MR. KELLY?

25 A. OKAY. I MET BACK WITH MR. KELLY AND I PLACED THE

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614

1 DEFENDANT IN WHAT I CALL A TWELVE MAN LINEUP, BUT
2 TWO PIECES OF PAPER. I PLACED THE LINEUP LIKE
3 THIS, ONE ON TOP OF THE OTHER, AND MR. KELLY SAT
4 DOWN AND SAID, THIS IS THE GUY RIGHT HERE.

5 Q. OKAY. AND DID HE INDICATE TO YOU HOW CERTAIN HE
6 WAS?

7 A. HE SAID HE WAS A HUNDRED PER CENT SURE.

8 Q. OKAY. AND THAT WOULD BE THE DEFENDANT'S PICTURE
9 THAT HE CIRCLED AND INITIALED, IS THAT CORRECT?

10 A. IT IS. YES, SIR, IT IS.

11 Q. AND WHAT DID HE SAY TO YOU?

12 A. HE SAID HE WAS A HUNDRED PER CENT SURE THAT WAS
13 THE CORRECT GUY.

14 Q. AND DID YOU HAVE AN OPPORTUNITY THEN TO ALSO GET
15 WITH MR. RANDOLPH, THE THIRD VICTIM WITNESS, AND
16 SHOW HIM A LINEUP CONTAINING MR. SCOTT'S PHOTO?

17 A. YES, I DID.

18 Q. OKAY. AND DID YOU USE THE SAME LINEUP THAT YOU
19 HAD SHOWED TO MR. KELLY?

20 A. NO, I USED A TOTALLY DIFFERENT PHOTO OF THE
21 DEFENDANT IN THIS LINEUP.

22 Q. OKAY. I'M SHOWING YOU STATE'S EXHIBIT NUMBER TEN,
23 IS THAT THE LINEUP AND THE AFFIDAVIT THEN THAT YOU
24 USED WHEN SHOWING IT TO MR. RANDOLPH?

25 A. YES, THAT'S THE ONE I SHOWED MR. RANDOLPH.

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615

1 Q. OKAY. AND WHEN WAS THAT DONE?

2 A. JANUARY TWENTY-EIGHTH.

3 Q. THAT'S THREE DAYS AFTER MR. KELLY HAD PICKED HIM
4 OUT, IS THAT CORRECT?

5 A. CORRECT.

6 Q. ALRIGHT. AND WHEN YOU SHOWED THIS TO MR. RANDOLPH
7 WHAT, IF ANYTHING, DID YOU SAY TO MR. RANDOLPH?

8 A. I ASKED HIM DID HE RECOGNIZE ANYBODY IN THAT
9 PICTURE -- IN THAT LINEUP THAT CAME TO HIS
10 APARTMENT THAT NIGHT.

11 Q. AND DID HE INDICATE HE DID?

12 A. YEAH, HE PICKED OUT THE DEFENDANT.

13 Q. OKAY. AND THAT'S TERRELL SCOTT, NUMBER ONE IN
14 THIS LINEUP?

15 A. UH HUH.

16 Q. AND YOU HAD HIM CIRCLE AND INITIAL IT?

17 A. AND INITIAL IT AND DATE IT.

18 Q. AND DATE IT? AND ALSO FILL OUT THE ATTACHED
19 AFFIDAVIT, IS THAT CORRECT?

20 A. YES, SIR, I DID.

21 Q. AND AS A RESULT OF THAT, THOSE THREE INDIVIDUALS
22 ID'ING MR. SCOTT, DID YOU AT THAT POINT IN TIME
23 GET A WARRANT FOR MR. SCOTT'S ARREST?

24 A. I DID.

25 Q. OKAY. AND DO YOU RECALL, WAS HE PICKED UP?

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616

1 A. YES, HE WAS.

2 Q. OKAY. AND DO YOU REMEMBER WHAT DAY THAT WAS?

3 A. THE SAME DAY I GOT THE WARRANT.

4 Q. LET ME SHOW YOU, DID YOU HAVE A CHANCE -- AND I'M
5 GOING TO GET THIS FOR YOU, DID YOU HAVE A CHANCE
6 TO SPEAK WITH HIM THAT SAME DAY?

7 A. YES, ON JANUARY TWENTY-NINTH, TWO THOUSAND SEVEN.

8 Q. OKAY. SO THAT WOULD BE THE DAY, THE DAY AFTER MR.
9 RANDOLPH HAD PICKED HIM OUT AND FOUR DAYS AFTER
10 MR. KELLY HAD, IS THAT CORRECT?

11 A. CORRECT.

12 Q. ALRIGHT. AND WAS HE BROUGHT DOWN TO THE
13 ORANGEBURG COUNTY SHERIFF'S OFFICE?

14 A. HE WAS.

15 Q. OKAY. AND DID YOU HAVE AN OPPORTUNITY AT THAT
16 TIME TO GO OVER WHAT ARE COMMONLY KNOWN AS HIS
17 MIRANDA WARNINGS WITH HIM?

18 A. I DID.

19 Q. OKAY. I'M SHOWING YOU STATE'S EXHIBIT NUMBER
20 TWENTY-TWO, IS THAT A FORM THAT'S COMMONLY USED BY
21 YOUR OFFICE TO GO OVER RIGHTS WITH A DEFENDANT?

22 A. YES, SIR, IT IS.

23 Q. OKAY. AND DID YOU, IS THAT THE FORM THAT YOU USED
24 WITH MR. SCOTT THAT DAY?

25 A. YES, SIR.

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617

1 SOLICITOR SORENSON: YOUR HONOR, AT
2 THIS TIME WE'D OFFER STATE'S TWENTY-TWO INTO EVIDENCE.

3 MR. WALTERS: NO OBJECTION, YOUR
4 HONOR.

5 THE COURT: ADMITTED WITHOUT
6 OBJECTION.

7 COURT REPORTER: I'M SORRY, I
8 ALREADY HAVE A TWENTY-TWO, THOSE ARE THE RIGHTS.

9 SOLICITOR SORENSON: YEAH, THAT'S
10 IT.

11 COURT REPORTER: OH, THAT'S IT.
12 ALRIGHT. OKAY.

13 (State's Exhibit Twenty-two
14 marked and filed.)

15 Q. INVESTIGATOR SHUMPERT, IF YOU WOULD, KIND OF GO
16 OVER FOR THE JURY HOW YOU WENT OVER THOSE RIGHTS
17 WITH MR. SCOTT THAT AFTERNOON?

18 A. OKAY. THIS IS AN ADVISEMENT OF RIGHTS FORM. YOUR
19 RIGHTS RIGHT HERE WHICH ARE BROKEN DOWN INTO FIVE
20 PARTS, AND WE GO LINE BY LINE WITH THE INDIVIDUAL
21 THAT WE'RE GETTING READY TO QUESTION. AND THE
22 FIRST LINE IT SAYS, "YOU HAVE A RIGHT TO REMAIN
23 SILENT. ANYTHING YOU SAY CAN BE USED AGAINST YOU
24 IN COURT." AND THEN WE ASKED HIM IF HE
25 UNDERSTAND, INITIAL, WHICH HE DID RIGHT HERE, HE

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618

1 PLACED T.S. IN THE LINE. NUMBER TWO SAYS, "YOU
2 HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE
3 BEFORE WE ASK YOU ANY QUESTIONS AND HAVE HIM WITH
4 YOU DURING QUESTIONING." WHICH HE INITIALED ALSO.
5 NUMBER THREE, "IF YOU CAN'T AFFORD A LAWYER ONE
6 WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING
7 IF YOU WISH." HE INITIALED. "AND IF YOU DECIDE
8 TO ANSWER QUESTIONS WITHOUT A LAWYER PRESENT YOU
9 STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS
10 AT ANYTIME," WHICH HE ALSO INITIALED. AND THE
11 VERY LAST ONE, WHICH IS NUMBER FIVE, "YOU ALSO
12 HAVE THE RIGHT TO STOP ANSWERING AT ANYTIME UNTIL
13 YOU TALK TO A LAWYER." AND THEN HE INITIALED AND
14 SIGNED HIS NAME HERE AT THE BOTTOM SAYING THAT HE
15 UNDERSTOOD HIS RIGHTS.

16 Q. OKAY. AND IS THERE A SECOND PART THERE INDICATING
17 KIND OF A WAIVER OF RIGHTS PORTION?

18 A. YES, SIR.

19 Q. OKAY.

20 A. THIS IS THE SECOND PORTION OF THE AFFIDAVIT. IT'S
21 THE WAIVER OF RIGHTS, AND IT READS AS FOLLOWS, IT
22 SAYS, "I HAVE READ THE STATEMENT OF MY RIGHTS AND
23 I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO
24 MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT
25 WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW

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619

1 WHAT I AM DOING. NO PROMISE OR THREATS HAVE BEEN
2 MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND
3 HAS BEEN USED AGAINST ME." AND HE ALSO SIGNED
4 RIGHT HERE. I SIGNED UP UNDER HIS NAME, AND I HAD
5 ANOTHER INVESTIGATOR WITNESS IT.

6 Q. OKAY. AND DID AT ANY POINT IN TIME WHEN YOU WERE
7 WITH MR. SCOTT DID YOU THREATEN HIM IN ANY WAY?

8 A. NO, I DIDN'T.

9 Q. DID YOU PRESSURE HIM OR COERCE HIM TO GET HIM TO
10 TALK TO YOU?

11 A. I DID NOT.

12 Q. LET ME ASK YOU, AT THAT POINT IN TIME WHEN YOU
13 WERE GETTING READY TO SIT DOWN AND TALK TO HIM HAD
14 HE ACTUALLY BEEN SERVED WITH ANY WARRANTS YET?

15 A. NOT YET, NO.

16 Q. OKAY. WHAT, AND TELL THE JURY WHAT, IF ANYTHING
17 YOU HAD TOLD HIM, OR HAD BEEN TOLD TO HIM AT THAT
18 POINT IN TIME ABOUT WHY HE WAS BEING ARRESTED AND
19 WHY YOU HAD HIM, GETTING READY TO ATTEMPT TO
20 QUESTION HIM?

21 A. I INFORMED THE DEFENDANT THAT HE WAS ARRESTED FOR
22 THE ARMED ROBBERY, AND THEN THAT'S AS FAR AS WE
23 GOT.

24 Q. OKAY. SO, YOU, I MEAN, DID YOU TELL HIM WHO THE
25 VICTIM WAS, WHEN IT OCCURRED, WHERE IT OCCURRED,

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620

1 ANYTHING LIKE THAT?

2 A. NO, SIR.

3 Q. OKAY. AND DID YOU EVER HAVE AN OPPORTUNITY TO
4 START EXPLAINING ANY OF THAT INFORMATION TO HIM?

5 A. NO, HE CUT ME OFF FIRST.

6 Q. OKAY. AND WHAT DID HE SAY TO YOU?

7 A. HE SAID HE DIDN'T KNOW WHAT I WAS TALKING ABOUT,
8 HE WAS AT HIS MOTHER-IN-LAW'S HOUSE EATING DINNER
9 WITH HIS WIFE. AND THAT WAS THE END OF OUR
10 CONVERSATION.

11 Q. BEFORE HE SAID THAT, I MEAN, YOU HADN'T, I MEAN,
12 HADN'T TOLD HIM WHEN OR WHERE THIS INCIDENT
13 OCCURRED?

14 A. NO, IT WOULD SEEM TO ME THAT HE WAS JUST TRYING TO
15 GIVE ME AN ALIBI TO WHERE HE WAS BEFORE I EVEN
16 TOLD HIM WHAT WAS GOING ON.

17 Q. ARE YOU AWARE OF APPROXIMATELY HOW TALL MR. SCOTT
18 IS?

19 A. YEAH, APPROXIMATELY, YES, SIR.

20 Q. APPROXIMATELY HOW TALL IS HE?

21 A. ABOUT FIVE-EIGHT, FIVE-NINE.

22 Q. AND YOU SEE HIM IN THE COURTROOM TODAY, IS THAT
23 ESSENTIALLY HOW HE LOOKED BACK IN THE EARLY PART
24 OF TWO THOUSAND SEVEN?

25 A. NO, IT'S NOT.

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621

1 Q. HOW IS HE DIFFERENT?

2 A. HE DON'T HAVE THE FACIAL HAIR LIKE IN THE PAST.

3 Q. OKAY. HAVE YOU HAD AN OPPORTUNITY TO SEE HIM AT
4 VARIOUS TIMES THROUGHOUT THE LAST COUPLE OF YEARS?

5 A. NO, SIR, THE FIRST TIME I SAW HIM.

6 Q. NO, I'M SAYING, SINCE THEN.

7 A. WELL, I MEAN, WE HAD SOME COURT PROCEEDINGS, I SAW
8 HIM IN COURT, BUT OUTSIDE THE COURTROOM, OTHER
9 THAN THAT I HAVEN'T SEEN HIM.

10 Q. AND HAS HE HAD FACIAL HAIR MOST OF THE TIME YOU'VE
11 SEEN HIM IN VARIOUS DEGREES OF FACIAL HAIR?

12 A. I COULD SAY PROBABLY, I BELIEVE ONCE, I THINK,
13 COURT APPEARANCE HE MAY HAVE, BUT I JUST CAN'T
14 REMEMBER.

15 Q. NOW, AT THAT TIME, INVESTIGATOR SHUMPERT, WHEN HE
16 WAS ARRESTED ON JANUARY TWENTY-NINTH OF TWO
17 THOUSAND AND SEVEN, DID YOU HAVE ANY INFORMATION
18 AT THAT POINT IN TIME AS TO THE IDENTITIES OF THE
19 EITHER OF THE OTHER TWO PEOPLE INVOLVED IN THIS
20 CASE?

21 A. NO, SIR, I DIDN'T HAVE A CLUE.

22 Q. ALRIGHT. AND LET ME KIND OF FAST FORWARD YOU A
23 LITTLE BIT TO KIND OF INTO THE FALL THEN OF TWO
24 THOUSAND AND SEVEN. DID THERE COME A TIME WHEN
25 YOU WERE CONTACTED BY ANOTHER LAW ENFORCEMENT

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622

1 AGENCY?

2 A. YES, SIR, I WAS CONTACTED BY THE ATF.

3 Q. OKAY. AND WHAT WAS THAT REGARDING?

4 A. I WAS CONTACTED BY AN ATF AGENT, HE STATED THAT HE
5 HAD A YOUNG GUY THAT WAS PLEADED TO ATTORNEY
6 GENERAL CHARGES AND THAT HE WAS UNDER SOME TYPE OF
7 PROFFER ACTUALLY WHERE HE WOULD HAVE TO TELL THE
8 TRUTH REGARDING ANY CRIMES THAT HE KNEW OF.

9 Q. OKAY. DO YOU KNOW, DID HE INDICATE TO YOU THAT HE
10 HAD ANY SPECIFIC INFORMATION ABOUT ANY OF YOUR
11 CRIMES, OR WAS HE JUST ASKING YOU TO GO TALK TO
12 HIM IN GENERAL?

13 A. NO, HE SAID THAT THEY HAVE SPECIFIC RELATED TO
14 CRIMES THAT - - -

15 MR. WALTERS: I'M GOING TO OBJECT,
16 YOUR HONOR, HE'S TESTIFIED AS TO WHAT THE AGENT SAID. I
17 BELIEVE THAT'S HEARSAY.

18 THE COURT: WELL, HE'S TESTIFYING AS
19 TO INFORMATION THAT LED HIM TO TAKE THE ACTION THAT HE
20 TOOK, NOT TO PROVE THE TRUTH OF WHAT THE AGENT TOLD HIM,
21 SO I OVERRULE YOUR OBJECTION.

22 A. HE CONTACTED ME AND STATED THAT HE HAD INFORMATION
23 IN REGARD TO A HOMICIDE THAT I HAD BACK IN
24 DECEMBER OF TWO THOUSAND AND SIX.

25 Q. OKAY. WAS THIS THE ONLY CASE THAT YOU COULD THINK

1 OF THAT IT MUST HAVE RELATED TO?

2 A. YES, SIR, BECAUSE HE, ONCE HE SAID DECEMBER,
3 BECAUSE I HAVE OTHER CASES, - - -

4 Q. WELL, THAT'S WHAT I MEANT.

5 A. --- BUT HE SAID DECEMBER.

6 Q. OKAY. AND DID YOU THEN HAVE AN OPPORTUNITY TO
7 MEET WITH -- WHO WAS THAT INDIVIDUAL THAT HE WAS
8 TELLING YOU ABOUT?

9 A. DANIEL YOUNG.

10 Q. OKAY. AND DID YOU HAVE AN OPPORTUNITY THEN TO
11 MEET WITH DANIEL YOUNG?

12 A. I DID.

13 Q. DO YOU REMEMBER WHAT DAY THAT WAS?

14 A. NO, SIR, I WOULD HAVE TO LOOK BACK AT MY NOTES.

15 Q. LET ME ASK YOU, DID YOU TAKE A STATEMENT FROM HIM
16 THAT DAY?

17 A. I DID, I TOOK A STATEMENT FROM HIM.

18 Q. I SHOW YOU A COPY OF THAT STATEMENT, AND WILL THAT
19 HELP TO KIND OF REFRESH YOUR MEMORY AS TO THE DATE
20 YOU MET WITH HIM?

21 A. YES, SIR, IT WILL. OCTOBER TWENTY-SEVENTH OF TWO
22 THOUSAND AND SEVEN.

23 Q. OKAY. SO, THAT WOULD BE SOME TEN MONTHS AFTER
24 THIS INCIDENT?

25 A. CORRECT, IT WAS.

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- 1 Q. AND DID MR. YOUNG AT THAT POINT IN TIME PROVIDE
2 YOU INFORMATION REGARDING THIS CASE?
3 A. HE DID.
4 Q. DID HE PROVIDE YOU INFORMATION REGARDING TWO OTHER
5 POTENTIAL SUSPECTS THAT YOU HAD NOT HEARD OF
6 BEFORE?
7 A. HE DID.
8 Q. DID HE ALSO PROVIDE INFORMATION REGARDING THIS
9 DEFENDANT, TERRELL SCOTT?
10 A. HE DID.
11 Q. AND WHO WERE THOSE OTHER TWO INDIVIDUALS THAT YOU
12 LEARNED OF FOR THE FIRST TIME ON OCTOBER TWENTY-
13 SEVENTH, TWO THOUSAND SEVEN?
14 A. MAURICE CHEESEBORO AND CLINTON JONES.
15 Q. AND DID YOU THEN HAVE AN OPPORTUNITY, INVESTIGATOR
16 SHUMPERT, TO ATTEMPT TO LOCATE AND TALK TO MR.
17 CHEESEBORO AND MR. JONES?
18 A. I DID.
19 Q. OKAY. AND WHO OUT OF THE TWO OF THEM DID YOU FIND
20 OR TALK TO FIRST?
21 A. I TALKED TO -- I LOCATED MR. CHEESEBORO FIRST.
22 Q. OKAY. AND WAS INCARCERATED AT THE TIME?
23 A. NO, HE WAS NOT.
24 Q. OKAY. AND WHERE -- DID YOU HAVE A CHANCE THEN TO
25 MEET WITH HIM?

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1 A. CORRECT, AT THE LAW ENFORCEMENT COMPLEX.

2 Q. OKAY. AND ON TAT FIRST MEETING WITH MR.
3 CHEESEBORO DID HE PROVIDE YOU ANY INFORMATION
4 REGARDING HIS INVOLVEMENT IN THIS INCIDENT?

5 A. NO, HE DIDN'T. IN FACT, HE STATED THAT HE DIDN'T
6 KNOW WHAT I WAS TALKING ABOUT.

7 Q. NOW, WERE YOU ABLE TO LOCATE, SOMETIME AROUND THAT
8 SAME TIME PERIOD, CLINTON JONES?

9 A. YES, I DID.

10 Q. AND WHERE WAS CLINTON JONES LOCATED AT?

11 A. I BELIEVE HE WAS THE SOUTH CAROLINA DEPARTMENT OF
12 CORRECTIONS IN TURBEVILLE.

13 Q. TURBEVILLE, AND THAT'S WHERE THE YOUTHFUL OFFENDER
14 DIVISION IS OF ONE OF THE DEPARTMENTS?

15 A. I DON'T KNOW WHAT TYPE OF PEOPLE THEY HOUSE, BUT I
16 BELIEVE IT WAS TURBEVILLE, I WENT UP THERE.

17 Q. AND DID YOU GO AND TALK TO MR. JONES?

18 A. I DID.

19 Q. OKAY. AND WHAT, DO YOU REMEMBER WHAT DAY THAT
20 WAS?

21 A. AGAIN, I WOULD HAVE TO LOOK BACK AT MY NOTES.

22 Q. DID YOU TAKE A STATEMENT FROM HIM THAT DAY?

23 A. I DID.

24 Q. LET ME SHOW YOU THAT.

25 A. OCTOBER THIRTIETH, TWO THOUSAND AND SEVEN.

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1 Q. SO, THAT WOULD BE THREE DAYS AFTER YOU MET FOR THE
2 FIRST TIME WITH DANIEL YOUNG, IS THAT CORRECT,
3 THAT WAS ON OCTOBER TWENTY-SEVENTH?

4 A. YES, SIR, YES, SIR.

5 Q. AND AT THAT POINT IN TIME IN TALKING WITH MR.
6 JONES DID HE ULTIMATELY ADMIT TO BEING AT LEAST
7 PRESENT WHEN THIS INCIDENT OCCURRED?

8 A. YES, HE DID.

9 Q. DID YOU TAKE THAT STATEMENT THAT WAS, WHEN HE
10 TESTIFIED WAS REFERRED TO, WAS THAT STATEMENT
11 TAKEN FROM HIM THEN AT THAT POINT IN TIME?

12 A. YES, IT WAS.

13 Q. AND DID HE IMPLICATE MR. CHEESEBORO?

14 A. YES, HE DID.

15 Q. AND HOW ABOUT MR. SCOTT?

16 A. HE DID.

17 Q. DID YOU THEN HAVE AN OPPORTUNITY TO GO BACK AND
18 TALK TO MR. CHEESEBORO?

19 A. I DID.

20 Q. AND AT THAT POINT IN TIME DID YOU GET ANY FURTHER
21 INFORMATION FROM MR. CHEESEBORO AS TO WHAT YOU HAD
22 GOTTEN EARLIER?

23 A. I DID.

24 Q. OKAY. AND DID HE ADMIT TO BEING AT LEAST PRESENT
25 AT THAT POINT IN TIME?

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1 A. HE DID.

2 Q. AND WHEN TALKING TO MR. CHEESEBORO OR MR. JONES,
3 AT ANY POINT IN TIME DID YOU SHARE ANY OF THE
4 EVIDENCE WITH THEM OR ANYTHING OF THAT NATURE?

5 A. NO, I DIDN'T.

6 Q. ANY OF THE STATEMENTS THAT HAD BEEN GIVEN BY ANY
7 OF THE WITNESSES OR ANYTHING OF THAT NATURE?

8 A. NO, I DIDN'T.

9 Q. DID YOU TELL THEM ANYTHING ABOUT THE STATUS OF
10 ANYBODY ELSE'S CHARGES IN THIS MATTER?

11 A. NO, I DID NOT.

12 Q. OR EVEN WHETHER ANYBODY ELSE HAD BEEN CHARGED?

13 A. NO, I DID NOT.

14 Q. DID YOU BRING UP THE NAME TERRELL SCOTT WITH
15 EITHER ONE OF THEM WHEN YOU WERE TALKING TO EITHER
16 ONE OF THEM?

17 A. THEY BROUGHT THE NAME UP, I DIDN'T.

18 Q. AND AS A RESULT OF THEIR STATEMENTS THAT THEY GAVE
19 TO YOU THEY HAVE BOTH SUBSEQUENTLY BEEN CHARGED,
20 AND NOW BOTH ARE CHARGED WITH MURDER ALSO, IS THAT
21 CORRECT?

22 A. THEY ARE.

23 SOLICITOR SORENSON: MS. HARRY DOT,
24 IS STATE'S TWENTY-ONE INTO EVIDENCE? IT'S CROSSED OFF,
25 I THINK IT IS.

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1 COURT REPORTER: IT IS.

2 Q. LET ME ASK YOU ABOUT STATE'S EXHIBIT NUMBER
3 TWENTY-ONE, THIS THREE FIFTY-SEVEN PISTOL, - - -

4 A. YES, SIR.

5 Q. --- WAS THAT TURNED IN TO YOU?

6 A. YES, SIR, IT WAS.

7 Q. BY WHO?

8 A. JOHN RANDOLPH.

9 Q. OKAY. AND DID YOU IN TURN THEN HAVE THAT SENT OUT
10 TO STATE LAW ENFORCEMENT DIVISION?

11 A. CORRECT. LIEUTENANT CARTER SENT IT OFF. I TURNED
12 IT IN TO HIM AND HE SENT IT OFF.

13 Q. OKAY. I'VE GOT YOU.

14 SOLICITOR SORENSON: THAT WOULD BE
15 ALL I WOULD HAVE, YOUR HONOR. THANK YOU.

16 THE COURT: CROSS-EXAM.

17 MR. WALTERS: MAY IT PLEASE THE
18 COURT.

19 THE COURT: YES, SIR.

20 MR. WALTERS: ATTORNEY SORENSON.

21 (NOTE: Blank lines on this page do not indicate any
22 part of record has been omitted. Headers on testimony
23 pages and hard page breaks between testimony are now
24 required by the Court. See next ensuing page for
25 sequential continuation of record.)

CROSS - JAMES CARL SHUMPERT BY MR. WALTERS

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CROSS-EXAMINATION OF JAMES CARL SHUMPERT

BY MR. WALTERS:

Q. INVESTIGATOR SHUMPERT, - - -

A. YES, SIR.

Q. --- LET'S START WITH THE FIRST EXHIBIT THAT YOU REFERRED TO, I BELIEVE YOU HAD LAWRENCE KELLY IDENTIFY SOMEONE, IS THAT CORRECT?

A. YES, WE DID.

Q. ALRIGHT. OKAY, I BELIEVE WE'RE REFERRING TO THIS DOCUMENT ON TWELVE/TWENTY-SIX/O-SIX, THE TIME WAS ELEVEN:FIFTY-THREE, IS THAT THE ID THAT WAS GIVEN BY LAWRENCE KELLY?

A. YES, SIR, IT IS.

Q. ALRIGHT. AND WHEN YOU CONDUCTED THAT PROCESS DID HE IDENTIFY A DEFENDANT?

A. YES, HE DID.

Q. ALRIGHT. WHO IS THAT INDIVIDUAL?

A. THE NAME?

Q. YES.

A. MR. WASHINGTON.

Q. MR. WASHINGTON?

A. UH HUH.

Q. ALRIGHT. DID YOU HAVE AN OPPORTUNITY TO GO OUT AND INVESTIGATE THAT MATTER?

A. YES, I DID.

CROSS - JAMES CARL SHUMPERT BY MR. WALTERS

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1 Q. ALRIGHT. AND DID YOU TALK TO MR. WASHINGTON?

2 A. I DID.

3 Q. ALRIGHT. AND AFTER YOU TALKED TO MR. WASHINGTON
4 WHAT WAS THE RESULTS OF YOUR INVESTIGATION?

5 A. HE WAS EXCLUDED BECAUSE THE INFORMATION, BASED ON
6 THE INFORMATION THAT HE GAVE, I CORROBORATED,
7 CHECKED IT OUT, AND IT CAME OUT TO BE TRUE.

8 Q. HOW DID YOU FEEL AS A POLICE OFFICER IN YOUR
9 THIRTEEN YEARS OF LAW ENFORCEMENT EXPERIENCE WHEN
10 ONE OF THE THREE GUYS RIGHT HERE, KELLY, GILLIARD
11 AND RANDOLPH, ONE OF THEM COMES TO YOU, IDENTIFIES
12 A PERSON AND SAYS, THAT'S THE PERSON, AND THEN IT
13 TURNS OUT IT'S NOT TRUE, HOW DID YOU FEEL ABOUT
14 THAT?

15 SOLICITOR SORENSON: I'M GOING TO
16 OBJECT, I DON'T KNOW -- HOW IS IT RELEVANT, HOW HE FELT?

17 MR. WALTERS: I'M ASKING THE OFFICER
18 HIS PERSONAL IMPRESSION OF GOING OUT TO SEARCH FOR
19 SOMEONE. I CAN TAKE IT UP OUTSIDE THE PRESENCE OF THE
20 JURY.

21 THE COURT: NO. I OVERRULE YOUR
22 OBJECTION.

23 MR. WALTERS: THANK YOU, YOUR HONOR.

24 Q. HOW DID YOU FEEL AS A POLICE OFFICER AFTER SOMEONE
25 HAD COME TO YOU AND SAID, THIS IS THE PERSON THAT

1 COMMITTED THE CRIME. YOU RUN OUT, GO AND SEARCH,
2 CONDUCT YOUR PROCESS OF INVESTIGATING, AND THEN
3 YOU DETERMINE THAT THIS PERSON IS TOTALLY
4 INCORRECT?

5 A. WELL, LET'S CLARIFY. HE DIDN'T ACTUALLY SAY, THIS
6 IS THE GUY THAT COMMITTED THE CRIME. HE SAID THAT
7 HE WAS SEVENTY-FIVE TO EIGHTY PER CENT SURE THIS
8 MAY BE THE GUY.

9 Q. RIGHT.

10 A. SO, ON THE BASIS OF HIM PICKING THAT GUY WE WENT
11 OUT AND LOOK FOR THIS GUY AND INTERVIEWED HIM.

12 Q. ALRIGHT. WELL, LET'S TALK ABOUT THE CHRONOLOGY OF
13 THE EVENTS AND WHAT OCCURRED. AFTER THAT HAPPENED
14 DID YOU HAVE ANY INFORMATION AT ALL TO IMPLICATE
15 TERRELL SCOTT IN THIS PARTICULAR ROBBERY?

16 A. NO, I DID NOT.

17 Q. IN FACT, THE SHERIFF'S DEPARTMENT HAD NO
18 INFORMATION, THERE WAS NOTHING THAT YOU COULD DRAW
19 FROM THE CRIME SCENE, IS THAT CORRECT?

20 A. CORRECT.

21 Q. THERE WAS NO BLOOD AT THE CRIME SCENE, IS THAT
22 RIGHT?

23 A. CORRECT.

24 Q. THERE WERE NO BULLETS IN THE WALL AT THE CRIME
25 SCENE?

CROSS - JAMES CARL SHUMPERT BY MR. WALTERS

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1 A. CORRECT.

2 Q. THERE WERE NO FINGERPRINTS AT THIS SO CALLED CRIME
3 SCENE?

4 A. WELL, I BELIEVE HE TESTIFIED HE CAN'T LIFT ANY
5 FINGERPRINTS OFF THE STUFF HE PROCESSED.

6 Q. IN YOUR THIRTEEN YEARS AS A LAW ENFORCEMENT
7 OFFICER, WHEN SOMEONE TESTIFIES THAT SEVEN OR
8 EIGHT PEOPLE WERE INSIDE OF A ROOM AND THERE WAS A
9 MALAY - - -

10 A. YES SIR.

11 Q. --- THE COFFEE TABLE IS TURNED OVER, AND IT'S
12 ALLEGED THAT THERE IS A FIGHT, DID YOU FIND IT
13 PECULIAR THAT THERE WERE NO FINGERPRINTS THERE?

14 A. NO, NOT REALLY.

15 Q. WHEN YOU'VE GOT SEVEN TO EIGHT PEOPLE FIGHTING IN
16 A SMALL PLACE LIKE THAT, YOU DIDN'T FIND IT
17 PECULIAR?

18 A. WELL, LIKE I SAY, I WENT TO THE SOUTH CAROLINA
19 CRIMINAL JUSTICE ACADEMY.

20 Q. YES, SIR.

21 A. AND I ALSO WAS INSTRUCTED THAT, YOU KNOW, YOU MAY
22 NOT GET FINGERPRINTS ALL THE TIME.

23 Q. I COMPLETELY UNDERSTAND.

24 A. AND FROM WHAT LIEUTENANT CARTER STATED, HE TESTED
25 THE THINGS THAT HE POSSIBLY COULD HAVE GOT

1 FINGERPRINTS OFF OF, SO - - -

2 Q. ALRIGHT.

3 A. --- I DON'T FIND THAT PECULIAR AT ALL.

4 Q. DID YOU FIND IT PECULIAR THERE WAS NO BLOOD?

5 A. NO, SIR.

6 Q. DID YOU FIND IT PECULIAR -- BUT LET ME ASK YOU
7 THIS, YOU'VE HEARD THE TESTIMONY FROM PAAVEL WITH
8 REGARDS TO A THREE FIFTY-SEVEN?

9 A. CORRECT.

10 Q. BOOM, HOW POWERFUL IT IS?

11 A. YES, SIR.

12 Q. AS AN INVESTIGATOR DID YOU GO OUT IN THE
13 NEIGHBORHOOD AND KNOCK ON THE DOOR NEXT TO THE
14 APARTMENT AND SAY, DID YOU HEAR A GUN FIRE?

15 A. NO, I DID NOT.

16 Q. SO, THE SHERIFF'S DEPARTMENT DIDN'T GO OUT AND
17 TALK TO ANYONE IN THE NEIGHBORHOOD WHEN THESE
18 THREE GUYS WERE ALLEGING THAT A SHOOTING OCCURRED
19 THERE?

20 A. I DIDN'T SAY THE SHERIFF'S DEPARTMENT, I SAID, I
21 DIDN'T, BECAUSE WHEN I WAS CALLED IN I WAS
22 INTERVIEWING MR. RANDOLPH AND MR. GILLIARD.

23 Q. YOU'RE IN CHARGE, AREN'T YOU?

24 A. YES, I WAS.

25 Q. ALRIGHT. SO, IF YOU'RE IN CHARGE AND YOU'RE

CROSS - JAMES CARL SHUMPERT BY MR. WALTERS

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1 CALLED AND THEY SAY THERE'S A HOMICIDE THAT'S
2 OCCURRED, THE NEXT MORNING YOU CAN ORDER
3 PARTICULAR DEPUTIES AND OTHER PEOPLE TO GO AND
4 FIND OUT IF SOMEONE HEARD THIS SHOOTING THAT
5 OCCURRED, THESE TWO OR THREE SHOTS, ONE, TWO OR
6 THREE SHOTS. YOU HAD THE ABILITY TO DO THAT.

7 A. CORRECT.

8 Q. BECAUSE YOU'RE IN CHARGE.

9 A. YES, SIR.

10 Q. DID YOU DO THAT?

11 A. NO, I DID NOT.

12 Q. ALRIGHT. SO, THERE WERE NO FINGERPRINTS, THERE
13 WAS NO BLOOD?

14 A. CORRECT.

15 Q. YOU DIDN'T GO TO CHECK AND SEE IF ANYONE HEARD ANY
16 KIND OF SHOOTING THAT OCCURRED, AND YOU HAD NO
17 EVIDENCE, NO EVIDENCE AT ALL THAT LINKED YOU TO
18 TERRELL SCOTT?

19 A. CORRECT.

20 Q. ALRIGHT. AND NOT HAVING ANY OF THAT INFORMATION
21 THERE WAS NO MAURICE CHEESEBORO THAT HAD COME
22 FORWARD, IS THAT CORRECT?

23 A. CORRECT.

24 Q. THERE WAS NO CLINTON JONES THAT HAD COME FORWARD?

25 A. CORRECT.

CROSS - JAMES CARL SHUMPERT BY MR. WALTERS

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1 Q. AND THERE WAS NO DANIEL YOUNG THAT HAD COME
2 FORWARD?

3 A. CORRECT.

4 Q. THE ONLY REASON THAT YOU WENT OUT AND YOU PICKED
5 UP TERRELL SCOTT, AFTER THEY MADE THIS BLUNDER
6 WITH REGARDS TO MR. JOHNNY WHITE, IS BECAUSE YOU
7 GOT A CALL FROM WHOM?

8 A. MR. GILLIARD.

9 Q. THAT'S RIGHT. SO, MR. KELLY CAME IN AND
10 IDENTIFIED THIS PERSON, AND IT TURNED OUT TO BE
11 INCORRECT. THEN MR. GILLIARD, THE SECOND OF THE
12 BOYS, HE CAME FORWARD AND SAID, I'VE GOT ANOTHER
13 PERSON THAT YOU MAY NEED TO LOOK INTO, IS THAT
14 RIGHT?

15 A. I WOULDN'T SAY THAT HE SAID, I'VE GOT ANOTHER
16 PERSON THAT YOU MAY LOOK INTO. WHEN I SPOKE WITH
17 THE INDIVIDUALS I STAYED IN CONSTANT CONTACT WITH
18 THEM, WITH THE VICTIMS. AND THEY SAID IF THEY
19 HEARD ANYTHING THEY WOULD CALL ME BACK AND LET ME
20 KNOW.

21 Q. DID YOU EVER FEEL AS AN INVESTIGATOR WITH THIRTEEN
22 YEARS OF EXPERIENCE, AS A TRAINED POLICE OFFICER,
23 THAT YOU WERE BEING PLAYED BY MR. KELLY, MR.
24 GILLIARD AND MR. RANDOLPH, BECAUSE THEY JUST HAD
25 YOU RUNNING ALL OVER THE PLACE, THEY HAD YOU

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1 LOOKING FOR MR. WHITE, MR. WASHINGTON, AND THAT
2 TURNED OUT TO BE INCORRECT. THEN THEY CALLED IN
3 AGAIN, THEY SAID, WE'VE GOT A GUY HERE. THEY
4 SAID, GET A PICTURE OF HIM AND WE WANT TO SEE IF
5 THIS IS THE GUY. AND YOU RAN OUT AND GOT A
6 PICTURE, DIDN'T YOU?

7 A. WELL, MR. WALTERS, I DON'T THINK THEY JUST, AS YOU
8 CALLED, PLAYED ME, BECAUSE THAT'S WHY I WENT ABOVE
9 AND BEYOND. THE LINEUP THAT I SHOWED MR. KELLY IS
10 TOTALLY DIFFERENT THAN THE LINEUP THAT I SHOWED
11 MR. RANDOLPH. SO, YOU KNOW, THAT'S WHY I SHOWED
12 TWO DIFFERENT INDIVIDUAL LINEUPS. SO, NO, WE LOOK
13 OUT FOR STUFF LIKE THAT.

14 Q. I WANT TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
15 EXHIBIT NUMBER NINE. WOULD YOU IDENTIFY THAT
16 DOCUMENT?

17 A. THE DMV PHOTO LINEUP THAT WAS PRINTED.

18 Q. THAT'S RIGHT. AND IT HAS A PICTURE OF WHOM ON IT?

19 A. TERRELL SCOTT.

20 Q. AND IT DOES -- DOES IT HAVE HIS NAME UNDER IT?

21 A. YES, IT DOES.

22 Q. ALRIGHT. AND THAT WASN'T PART OF YOUR LINEUP OR
23 ANYTHING. I BELIEVE THE TESTIMONY IS, IS THAT
24 SOMEHOW THEY WALKED, OR THE INDIVIDUAL WALKED IN.

25 A. WE WALKED IN.

1 Q. WE WALKED IN, AND YOU HAPPENED TO HAVE IT ON YOUR
2 DESK, AND WHAT A PETROUS EVENT, THEY SAID, BOOM,
3 THAT'S THE PERSON, IS THAT RIGHT?

4 A. WELL, YES.

5 Q. SO, IF THEY WOULD HAVE SAID, WELL, TAKE A LOOK AND
6 FIND GLENN WALTERS, YOU KNOW, IF YOU WOULD HAVE
7 SLID MY DRIVING RECORD THAT HAD MY PICTURE, AND
8 THEY WALKED IN AND SAW THE WORDS, GLENN WALTERS,
9 AND THEY SAID, THAT'S THE GUY, AND THEN IT'S
10 CORROBORATED BY THE OTHER GUYS THAT WERE INVOLVED
11 IN THE SHOOTING, IS THAT RIGHT?

12 A. IF GLENN WALTERS WAS ON THAT DESK YOU WOULD HAVE
13 BEEN INVESTIGATED TOO.

14 Q. THAT'S EXACTLY RIGHT, BECAUSE THEY CALLED THE NAME
15 IN, JUST LIKE THEY COULD CALL ANYBODY IN THIS
16 ROOM, THEY CAN CALL THEIR NAME IN AND THEY CAN
17 SAY, OFFICER SHUMPERT, YOU'RE WORKING FOR US TO
18 SOLVE A MURDER. GO LOOK INTO THIS PERSON. THEY
19 HAD YOU GO LOOK INTO MR. WASHINGTON AND THAT WAS
20 INCORRECT, WASN'T IT?

21 A. CORRECT.

22 Q. THEN THEY TURNED AROUND AND SAID, LET'S GO LOOK AT
23 TERRELL SCOTT. IS THAT RIGHT?

24 A. THERE WERE MORE NAMES BETWEEN TERRELL AND MR.
25 WASHINGTON.

CROSS - JAMES CARL SHUMPERT BY MR. WALTERS

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1 Q. YOU'VE READ YOUR ENTIRE CASE JACKET, HAVEN'T YOU?

2 A. YES, FOR THE MOST PART, YES.

3 Q. ALRIGHT. AND I BELIEVE THAT YOUR OFFICERS IN
4 INVESTIGATING THIS PROCESS, AND YOU CAN LOOK AT
5 THE NARRATIVES IF YOU WANT TO, I BELIEVE THEY ALL
6 CONCLUDED THAT THE STORIES WERE INCONSISTENT, IS
7 THAT RIGHT?

8 A. YES.

9 Q. ALRIGHT. CAN YOU SIT HERE BEFORE THIS JURY AND
10 TELL ME WHAT CORROBORATING PHYSICAL EVIDENCE THAT
11 YOU HAVE THAT DEFINES THAT MR. TERRELL SCOTT WAS
12 IN AN APARTMENT WHEN SOMEONE WAS SHOT? YOU HAVE
13 NO BLOOD, IS THAT CORRECT?

14 A. CORRECT.

15 Q. YOU HAVE NO FINGERPRINTS?

16 A. CORRECT.

17 Q. YOU HAVE NO DOCUMENTATION, ALL YOU HAVE IS A GROUP
18 OF SNITCHES AT THE JAIL, IS THAT RIGHT? PEOPLE
19 TRYING TO WORK CHARGES OFF, WORK DEALS, IS THAT
20 RIGHT?

21 A. WELL, I DON'T KNOW THEIR PRESENT POSITIONS, BUT
22 LIKE I STATED EARLIER, I WAS CONTACTED, AND FROM
23 THAT INFORMATION I INVESTIGATED AND - - -

24 Q. YOU WERE SITTING HERE IN THIS COURTROOM, YOU HEARD
25 THE DEALS THAT WERE BEING WORKED. MR. SORENSON IS

1 OFFERING TEN TO THIRTY FOR PEOPLE THAT COULD GO TO
2 JAIL FOR THE REST OF THEIR LIVES.

3 A. TEN TO THIRTY, A DEAL?

4 Q. WELL, DO YOU UNDERSTAND WHAT I'M SAYING?

5 A. YEAH.

6 Q. YOU WERE SITTING RIGHT BESIDE HIM AND YOU KNOW FOR
7 A FACT -- YOU SAID YOU DIDN'T KNOW, BUT YOU'VE SAT
8 IN THIS COURTROOM, YOU'VE HEARD PEOPLE TESTIFY.

9 A. I SAID, PRIOR TO COMING TO COURT TODAY.

10 Q. THAT'S FINE, BUT YOU KNEW DEALS WERE BEING WORKED,
11 SO THE ONLY EVIDENCE THAT YOU HAVE TO PUT BEFORE
12 THIS JURY ARE PEOPLE THAT ARE TRYING TO FIGHT TO
13 GET OUT OF PRISON, IS THAT CORRECT?

14 A. I DON'T KNOW THEIR MOTIVES, I CAN'T TELL YOU WHAT
15 REASON THEY'RE DOING.

16 Q. DO YOU THINK THEY'RE DOING BECAUSE THEY WANT TO BE
17 NICE OR DO YOU THINK THEY DOING IT BECAUSE THEY
18 WANT TO SEE THEIR CHILDREN AGAIN, THEY WANT TO SEE
19 THEIR MOTHER AGAIN, THEY WANT TO SEE THEIR
20 DAUGHTER AGAIN, THEY WANT TO GO TO THEIR DAD'S OR
21 THE MOTHER'S FUNERAL, OR THEY WANT TO VISIT THEM
22 IN A REST HOME. THEY WANT TO WALK AROUND HERE AND
23 GOT TO MCDONALD'S AND GET A BURGER? DO YOU THINK
24 THEY'RE DOING IT JUST BECAUSE THEY FEEL LIKE
25 WORKING WITH THE POLICE?

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1 A. YOU'RE ASKING ME TO THINK FOR ANOTHER PERSON, AND
2 I'LL TELL YOU, I CAN'T DO THAT.

3 Q. NO, I'M ASKING FOR YOUR PERSONAL OPINION.

4 A. MY PERSONAL OPINION?

5 Q. YES, SIR.

6 A. THEY COULD BE DOING IT OUT OF THE KINDNESS OF
7 THEIR HEART, I DON'T KNOW THAT, I CAN'T ANSWER
8 THAT QUESTION.

9 Q. THAT'S YOUR TESTIMONY?

10 A. I DON'T KNOW, THAT'S MY TESTIMONY.

11 Q. ALRIGHT. SO, AFTER YOU GOT THIS SEVENTY-FIVE TO
12 EIGHTY PER CENT CHANCE THAT WAS PUT ON THE TABLE
13 AND IT TURNED OUT TO BE WRONG, DID YOU EVER STOP
14 AND SIT DOWN AND SAY, OKAY, I'M GOING THROUGH THIS
15 SERIES OF PRISONERS THAT ARE IN JAIL. WHAT DID
16 YOU DO TO CORROBORATE ANY OF THEIR TESTIMONY,
17 OTHER THAN THE FACT THEY SAID, THIS IS THE MAN
18 THAT DID IT WHAT EVIDENCE DO YOU HAVE -- YOU'VE
19 GOT A GUN IN HERE THAT WE KEEP FLASHING BEFORE
20 THESE PEOPLE, AND THIS IS NOT THE GUN THAT KILLED
21 THE MAN, IS IT?

22 A. NO. NO, SIR.

23 Q. YOU KEEP BRINGING THIS GUN AND PARADING IT AROUND
24 AND SAYING, LOOK AT THE THREE FIFTY-SEVEN, BUT
25 THIS IS NOT THE GUN THAT WAS USED TO SHOOT AND

1 KILL THE MAN. WHO DID THIS GUN BELONG TO?

2 A. AS FAR AS I KNOW, JOHN RANDOLPH.

3 Q. THAT'S RIGHT. THIS GUN BELONGED TO ONE OF THOSE
4 INDIVIDUALS THAT WALKED IN HERE THAT WAS TALKING
5 ABOUT ALL THESE CHARGES AND WHAT HE'S DOING IN
6 ORANGEBURG COUNTY, ONE OF THE COUSINS, RIGHT?

7 A. CORRECT.

8 Q. THAT GUN BELONGED TO HIM?

9 A. YES, SIR.

10 Q. THE APARTMENT BELONGED TO HIM?

11 A. CORRECT.

12 Q. WHAT DO YOU HAVE OF PHYSICAL EVIDENCE TO PUT
13 BEFORE US TODAY THAT SAYS TERRELL SCOTT WAS
14 INVOLVED IN THIS CRIME OTHER THAN SOME JAIL BIRDS
15 THAT COME IN HERE AND KEEP SINGING AND SINGING AND
16 SINGING? AS A POLICE OFFICER DO YOU HAVE ANYTHING
17 TO PUT HERE?

18 A. WELL, TO ANSWER YOUR QUESTION CORRECTLY, MR.
19 WALTERS, I JUST FIND IT HARD TO BELIEVE THAT TWO
20 INDIVIDUALS WILL PUT THEIRSELVES AT A PLACE OF A
21 MURDER.

22 Q. YES, SIR, I UNDERSTAND, THOSE SAME TWO INDIVIDUALS
23 THAT TOLD YOU ONE STORY, THE LIED, THEN THEY COME
24 HERE TODAY AND STATED ANOTHER STORY, ALRIGHT, AND
25 THEY'VE ADMITTED BEFORE THESE PEOPLE, I KNOW I'M A

CROSS - JAMES CARL SHUMPERT BY MR. WALTERS

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1 LIAR, I KNOW I CHANGED MY STORY, BUT PLEASE
2 BELIEVE ME. THOSE ARE THE PEOPLE YOU'RE PUTTING
3 YOUR TRUST IN?

4 A. TRUST, I MEAN, THEY HAD MORE FACTS THAN I HAD.

5 Q. EXCUSE ME?

6 A. THE FACTS THAT THEY GAVE IS THE FACTS THAT WAS
7 INVESTIGATED, AND WE WENT ON THE FACTS.

8 Q. OKAY. SO, JUST LIKE THE FIRST OFFICER THAT
9 TESTIFIED, I ASKED HIM SOME QUESTIONS, AND YOU
10 KNOW WHAT HIS ANSWER WAS? THAT'S ORANGEBURG
11 COUNTY. AND YOUR ANSWER TODAY IS, ALL I'VE GOT IS
12 WHAT THEY SAY AND THEY GAVE ME A LITTLE BIT MORE
13 INFORMATION THAN SOMEBODY ELSE, SO THAT'S ALL I'VE
14 GOT. IS THAT WHAT YOU REST YOUR HAT ON, YOUR
15 THIRTEEN YEARS OF EXPERIENCE?

16 A. CRIMES ARE SOLVED BY THE PEOPLE. NO INVESTIGATOR
17 HAS A MAGIC WAND THAT SWIRLS AND SAYS THAT THIS IS
18 THE PERSON THAT DOES IT. SO, JUST BECAUSE MR.
19 GILLIARD CALLED ME, I DONE WORKED NUMEROUS CASES
20 AND THE CRIMES ARE SOLVED BY THE PEOPLE, AND MR.
21 GILLIARD IS A CITIZEN.

22 Q. AREN'T THE CRIMES SOLVED BY THE EVIDENCE, BECAUSE
23 THE EVIDENCE DOESN'T LIE, AM I RIGHT OR WRONG?

24 A. YOU'RE RIGHT.

25 Q. ALRIGHT. SO, IF YOU HAVE NO BLOOD, YOU HAVE NO

1 FINGERPRINTS, YOU HAVE NO BULLETS INSIDE OF A
2 WALL, YOU DON'T EVEN KNOW, YOU DON'T EVEN KNOW IF
3 A MURDER OCCURRED IN THAT APARTMENT, YOU'RE
4 GUESSING, YOU DON'T KNOW. DID YOU LOOK IN THE CAR
5 FOR POOKIE? DID YOU LOOK IN LAWRENCE KELLY'S CAR
6 TO SEE IF THERE WAS BLOOD? DID YOU?

7 A. NO, I DID NOT.

8 Q. THEY DUMPED THE BODY AT THE HOSPITAL AND YOU
9 DIDN'T GET UP AND GO SAY, GIVE ME YOUR CAR RIGHT
10 NOW, I WANT TO OPEN IT UP AND SEE IF THERE'S SOME
11 BLOOD IN THERE TO SEE IF YOU'RE TELLING ME THE
12 TRUTH?

13 A. LIEUTENANT CARTER WAS HANDLING THAT PART OF THE
14 INVESTIGATION.

15 Q. OKAY. IT'S SOMEBODY ELSE'S FAULT BUT YOU'RE IN
16 CHARGE, IS THAT RIGHT?

17 A. THAT'S LIEUTENANT, HE DOES FORENSICS.

18 Q. OKAY. SO, - - -

19 A. I WOULDN'T HAVE BEEN ABLE TO COLLECT NO BLOOD.

20 Q. SO, IF CARTER DIDN'T DO IT, YOU CAN GET ON THE
21 PHONE AND SAY, HEY, I JUST FOUND OUT THAT THAT CAR
22 WAS USED TO DUMP THE BODY. PULL THE CAR OVER SO
23 CARTER CAN GET OVER THERE, BECAUSE YOU'RE IN
24 CHARGE.

25 A. I DIDN'T KNOW NOTHING ABOUT NO CAR BEING DUMPED,

CROSS - JAMES CARL SHUMPERT BY MR. WALTERS

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1 OR NOBODY BEING DUMPED AT THE HOSPITAL. I HEARD
2 THAT THE GUY WALKED IN AND THEN HE COLLAPSED, AND
3 HE WAS PICKED UP AND TAKEN INSIDE THE PLACE.

4 Q. DID YOU GO GET A COPY OF THE MEDICAL RECORDS AT
5 THE HOSPITAL TO SEE HOW HE WAS BROUGHT IN?

6 A. THE AUTOPSY REPORT, I'M QUITE SURE IT DON'T PUT IN
7 THERE HOW THE PERSON WAS BROUGHT IN.

8 Q. NO, SIR. I DIDN'T ASK YOU ABOUT THE AUTOPSY
9 REPORT.

10 A. DO YOU HAVE A COPY?

11 Q. YOU COULD HAVE SENT A SUBPOENA RIGHT DOWN THERE AT
12 THE ORANGEBURG REGIONAL HOSPITAL, AND WHEN THEY
13 ADMIT SOMEONE THERE'S A RECORD OF THE ADMISSION.
14 DID YOU GO DOWN THERE AND PICK IT UP?

15 A. NO. BUT I - - -

16 Q. SO, YOU DON'T EVEN KNOW IF HE WAS DUMPED, YOU
17 DON'T EVEN KNOW IF HE WAS LEFT IN THE PARKING LOT
18 BECAUSE YOU DIDN'T DO YOUR JOB.

19 A. MY INVESTIGATOR TOLD ME THAT THE GUY WALKED IN AND
20 HE SPOKE TO THE NURSE.

21 Q. WHICH INVESTIGATOR?

22 A. INVESTIGATOR ETHERIDGE.

23 Q. OKAY.

24 A. AND I DID DO MY JOB. SO, - - -

25 Q. HE TOLD YOU THAT, BUT YOU DIDN'T GO DOWN AND GET

1 THE RECORDS, DID YOU?

2 A. INVESTIGATOR ETHERIDGE WAS AT THE HOSPITAL.

3 Q. THERE'S BEEN TESTIMONY ALL DAY AS TO WHO HE TALKED
4 TO, WHETHER HE TALKED TO A NURSE, WHETHER HE
5 DUMPED THE BODY, WHETHER HE PICKED UP THE BODY,
6 WHETHER HE PUT HIM IN A WHEEL CHAIR, AND YOU
7 DIDN'T GO DOWN THERE AND PICK UP ANY RECORDS, DID
8 YOU?

9 A. NO, I DID NOT.

10 Q. JUST LIKE YOU DIDN'T GO LOOK AT POOKIE'S CAR?

11 A. NO, I DIDN'T FIND OUT ABOUT THE CAR.

12 Q. AND THAT'S THE VEHICLE THAT TRANSPORTED THE BODY
13 AND YOU DIDN'T EVEN DO THAT?

14 A. WHAT THAT WAS RELEVANT ON, HIM BEING PICKED UP.

15 Q. BUT THIS JURY'S SUPPOSED TO BELIEVE, THREE JAIL
16 BIRD SNITCHES BACK THERE THAT HAVE CONTINUOUSLY
17 TOLD PEOPLE OVER AND OVER AGAIN, YOU DON'T HAVE TO
18 BELIEVE US, WE CAN CHANGE OUR STORY OVER AND OVER,
19 JUST SO LONG AS WE PLEASE MR. SORENSON SO WE CAN
20 GET OUT DEAL.

21 A. I DON'T KNOW WHO THEY -- I DON'T THINK THEY'RE
22 TRYING TO PLEASE MR. SORENSON. I JUST THINK
23 THAT'S YOUR OPINION.

24 Q. IN THE END THEY'RE TRYING TO PLEASE THEMSELVES.

25 A. THAT'S YOUR OPINION.

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1 MR. WALTERS: I HAVE NO FURTHER
2 QUESTIONS, MR. SHUMPERT.

3 THE COURT: REDIRECT?

4 SOLICITOR SORENSON: I HAVE NOTHING
5 FURTHER.

6 THE COURT: THANK YOU, SIR, YOU MAY
7 STEP DOWN.

8 YOU MAY CALL YOUR NEXT WITNESS.

9 SOLICITOR SORENSON: I BEG THE
10 COURT'S INDULGENCE JUST ONE SECOND.

11 THE COURT: YES, SIR.

12 SOLICITOR SORENSON: THE STATE
13 RESTS.

14 THE COURT: ALRIGHT, LADIES AND
15 GENTLEMEN, THE STATE HAS NOW FINISHED IT'S CASE AND
16 WE'LL TAKE A BREAK NOW. PLEASE RETIRE TO YOUR JURY
17 ROOM. PLEASE DO NOT DISCUSS THE CASE.

18 (Whereupon, the jury retires
19 to the jury room and the following
20 takes place out of the presence
21 of the jury.)

22 MR. WALTERS: YOUR HONOR, IS THAT
23 THE STATE'S CASE?

24 THE COURT: YES, SIR, THEY RESTED.

25 MR. WALTERS: MAY IT PLEASE THE

1 COURT. YOUR HONOR, AT THIS TIME WE'D MAKE A MOTION FOR
2 A DIRECTED VERDICT.

3 THE COURT: ALRIGHT.

4 MR. WALTERS: OF COURSE, YOUR HONOR
5 IS AWARE OF THE STANDARD THAT IS REQUIRED IN ORDER TO
6 INITIATE A DIRECTED VERDICT IN A CRIMINAL CASE. WE'D
7 MAKE A MOTION AT THIS TIME BECAUSE THEY HAVE FAILED TO
8 PROVE THE ELEMENTS OF THE OFFENSE ITSELF WITH REGARDS TO
9 THE CHARGE OF ARMED ROBBERY AND MURDER, AND OF COURSE,
10 THE COURT HAS BEEN HERE FOR THE ENTIRE RECORD PUT BEFORE
11 THE COURT, SO I'M NOT GOING TO BELABOR THE POINT AND
12 ARGUE THAT BEFORE YOUR HONOR. WITH ALL DUE RESPECT WE'D
13 MAKE A MOTION FOR A DIRECTED VERDICT.

14 THE COURT: ALRIGHT. I DENY THAT
15 MOTION. I THINK THERE ARE SIX PEOPLE WHO HAVE TESTIFIED
16 THEY SAW THE DEFENDANT SHOOT THE GUY, OR PRETTY WELL --
17 MAYBE, I THINK SIX, I THINK ALL SIX OF THEM SAID THAT.
18 BUT ANYHOW, BASED ON ALL THE EVIDENCE I'VE HEARD,
19 ESPECIALLY HAVING TO TAKE IT IN THE LIGHT MOST FAVORABLE
20 TO THE STATE I WOULD DENY THAT MOTION.

21 MR. WALTERS: THANK YOU, YOUR HONOR.
22 (NOTE: Blank lines on this page do not indicate any
23 part of record has been omitted. Headers on testimony
24 pages and hard page breaks between testimony are now
25 required by the Court.)

EXAM, IN CAMERA, TERRELL SCOTT BY THE COURT

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EXAMINATION, IN CAMERA, OF TERRELL SCOTT

BY THE COURT:

Q. ALRIGHT, MR. SCOTT, DID YOU TALK WITH YOUR
ATTORNEYS ABOUT YOUR RIGHT TO TESTIFY?

A. YES, SIR.

Q. HAVE YOU MADE A DECISION?

A. YES, SIR.

Q. WHAT DO YOU WANT TO DO?

A. I WOULD LIKE TO TESTIFY.

Q. AND THAT'S YOUR DECISION?

A. YES, SIR.

Q. AND YOU'RE COMFORTABLE WITH THAT DECISION?

A. YES, SIR.

Q. NOBODY HAS FORCED YOU INTO MAKING THAT DECISION?

A. NO, SIR.

THE COURT: ALRIGHT, THANK YOU, SIR.

I FIND THAT THE DEFENDANT HAS
FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY, AFTER
CONFERRING WITH HIS ATTORNEYS, WAIVED HIS RIGHT TO
REMAIN SILENT AND WE WILL TAKE A SHORT BREAK AND THEN
WE'LL HAVE THE DEFENSE'S CASE.

ALRIGHT WE'LL TAKE ABOUT FIVE
MINUTES.

(Recess)

THE COURT: IS THE STATE READY?

1 SOLICITOR SORENSON: THE STATE'S
2 READY.

3 THE COURT: IS THE DEFENSE READY?

4 MR. WALTERS: THE DEFENSE IS READY,
5 YOUR HONOR.

6 THE COURT: ALRIGHT, BRING IN THE
7 JURY.

8 (Whereupon, the jury enters
9 the courtroom and the following
10 takes place in the presence
11 of the jury.)

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1 THE COURT: LADIES AND GENTLEMEN,
2 I TOLD YOU BEFORE WE TOOK THE RECESS THE STATE HAS
3 FINISHED ITS CASE, AND I ALSO TOLD YOU I THINK YESTERDAY
4 BEFORE WE GOT STARTED THAT ONCE THE STATE FINISHED THE
5 DEFENSE WOULD HAVE AN OPPORTUNITY TO PUT UP TESTIMONY
6 AND TO TESTIFY IF HE WANTED TO DO SO, BUT HE DID NOT
7 HAVE TO DO SO IF HE DIDN'T WANT TO. HE DOESN'T HAVE TO
8 PROVE A THING. BUT NOW IS HIS CHANCE.

9 ALRIGHT, MR. WALTERS.

10 MR. WALTERS: MAY IT PLEASE THE
11 COURT.

12 THE COURT: YES, SIR.

13 MR. WALTERS: ATTORNEY SORENSON.

14 YOUR HONOR, AT THIS TIME WE WOULD
15 CALL MR. TERRELL SCOTT.

16 THE COURT: COME AROUND, MR. SCOTT.
17 MR. SCOTT, WOULD YOU PUT YOUR LEFT HAND ON THE BIBLE AND
18 RAISE YOUR RIGHT.

19 (Whereupon, Terrell Scott
20 is duly sworn.)

21 THE COURT: THANK YOU, SIR, HAVE A
22 SEAT RIGHT THERE, AND STATE YOUR FULL NAME FOR US,
23 PLEASE.

24 WITNESS: MY NAME IS TERRELL SCOTT.

25 THE COURT: THANK YOU, SIR.

1 ALRIGHT, MR. WALTERS.

2 MR. WALTERS: MAY IT PLEASE THE
3 COURT.

4 THE COURT: YES, SIR.

5 (NOTE: Blank lines on this page do not indicate any
6 part of record has been omitted. Headers on testimony
7 pages and hard page breaks between testimony are now
8 required by the Court. See next ensuing page for
9 sequential continuation of record.)

DIRECT - TERRELL SCOTT BY MR. WALTERS

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DIRECT EXAMINATION OF TERRELL SCOTT

BY MR. WALTERS:

Q. HOW ARE YOU, MR. SCOTT?

A. I'M FINE.

Q. MR. SCOTT, LET'S TELL THE JURY SOMETHING ABOUT YOURSELF, OKAY? FIRST OF ALL, WHERE DO YOU LIVE?

A. WELL, I LIVE AT [REDACTED] NORTH WOOD COURTS WITH MY MOTHER, MY WIFE AND MY DAUGHTER.

Q. ALRIGHT. AND HOW LONG HAVE YOU LIVED THERE, SIR?

A. PARDON ME?

Q. HOW LONG HAVE YOU LIVED THERE?

A. HOW LONG HAVE I LIVED THERE?

Q. YES, SIR.

A. I LIVED THERE FOR ABOUT TEN YEARS NOW.

Q. OKAY. YOU STATED THAT YOUR MOTHER LIVES THERE, YOUR DAUGHTER LIVES THERE. WHAT'S YOUR MOTHER'S NAME?

A. MY MOTHER'S NAME IS ANGELA FIELDS, MY DAUGHTER'S NAME IS TRESHAY SCOTT.

Q. ALRIGHT. AND IN YOUR HOME, YOU'VE LIVED THERE FOR ABOUT TEN YEARS YOU SAID, IS THAT CORRECT?

A. SAY AGAIN?

Q. YOU'VE LIVED IN YOUR HOME ABOUT TEN YEARS?

A. YES, SIR.

Q. ALRIGHT. NOW, MR. SCOTT, WHERE DID YOU GO TO HIGH

DIRECT - TERRELL SCOTT BY MR. WALTERS

653

1 SCHOOL, WHERE DID YOU GRADUATE FROM HIGH SCHOOL?

2 A. WELL, I DIDN'T ACTUALLY GRADUATE HIGH SCHOOL, BUT
3 I ATTENDED ELLOREE HIGH AND O-W HIGH, BUT I GOT MY
4 G.E.D. FROM DENMARK TECH.

5 Q. ALRIGHT. AND WHERE WERE YOU EMPLOYED AFTER HIGH
6 SCHOOL, WHERE DID YOU WORK?

7 A. I WAS EMPLOYED WITH INFAMOUS ENTERTAINMENTS, I'M A
8 MANAGER OF A DJ CLEVE.

9 Q. OKAY. AND WHAT EXACTLY DO YOU DO WHEN YOU MANAGE
10 THIS DJ?

11 A. LIKE I BOOK PARTIES, MAKE SURE EVERYTHING RUNS
12 SMOOTHLY, MAKE SURE WE GET PAID AT THE END OF THE
13 NIGHT, AND STUFF LIKE THAT.

14 Q. OKAY. SO, YOU SET UP DATES AND YOU MAKE SURE YOU
15 GET PAID?

16 A. YES, SIR.

17 Q. HOW LONG HAVE YOU BEEN DOING THAT?

18 A. SINCE ABOUT SIXTEEN, ON AND OFF.

19 Q. OKAY. DID YOU GET ANY FURTHER EDUCATION AFTER YOU
20 ATTENDED HIGH SCHOOL?

21 A. I GOT MY G.E.D. AT DENMARK TECH.

22 Q. OKAY. ANY OTHER EDUCATION?

23 A. NOT RIGHT NOW.

24 Q. TELL THE JURY SOMETHING ABOUT YOUR PERSONAL LIFE,
25 ARE YOU MARRIED?

DIRECT - TERRELL SCOTT BY MR. WALTERS

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1 A. YES, SIR, I'M MARRIED, I'VE BEEN MARRIED SINCE TWO
2 THOUSAND SIX, DECEMBER EIGHTEENTH, AND I HAVE ONE
3 DAUGHTER, SHE IS SIX YEARS OLD.

4 Q. AND WHAT'S THE NAME OF YOUR WIFE, SIR?

5 A. MY WIFE'S NAME IS IESHA SCOTT.

6 Q. OKAY. NOW, MR. SCOTT, THIS IS A VERY SERIOUS
7 OFFENSE AND THIS JURY WANTS TO HEAR FROM YOU - - -

8 A. YES, SIR.

9 Q. --- ABOUT THE EVENTS THAT OCCURRED BACK ON
10 DECEMBER OF TWO THOUSAND SIX.

11 A. YES, SIR.

12 Q. THE FIRST QUESTION I HAVE TO ASK YOU IS, DID YOU
13 COMMIT ANY ARMED ROBBERY OR MURDER OF ANYONE?

14 A. NO, SIR.

15 Q. ALRIGHT. NOW, IT'S ALLEGED THAT THIS EVENT
16 OCCURRED ON DECEMBER TWENTY-THIRD, THAT NIGHT
17 GOING INTO CHRISTMAS EVE. COULD YOU PLEASE TELL
18 THE JURY WHAT YOU WERE DOING THAT DAY, ON DECEMBER
19 TWENTY-THIRD, AND TELL US WHAT YOU WERE DOING ON
20 THE TWENTY-FOURTH?

21 A. WELL, I WAS, I WAS KIND OF SHOPPING FOR MY WIFE,
22 YOU KNOW WHAT I SAY, BECAUSE MY WIFE BEING FELT
23 VERY SPECIAL BECAUSE SHE ACCEPTED MY DAUGHTER.
24 SO, I WAS DOING A LITTLE SHOPPING, YOU KNOW WHAT
25 I'M SAYING, TO LET HER KNOW I APPRECIATE HER FOR

DIRECT - TERRELL SCOTT BY MR. WALTERS

655

1 ACCEPTING MY DAUGHTER. AND WE WERE STILL
2 NEWLYWEDS AND STUFF LIKE THAT, SO WE WERE SPENDING
3 A LOT OF TIME TOGETHER.

4 Q. OKAY. AND WHAT EXACTLY WERE YOU DOING ON THE
5 TWENTY-THIRD. YOU SAY YOU WERE SHOPPING, WHAT
6 ELSE DID YOU DO THAT DAY?

7 A. I RODE AROUND WITH MY MOTHER, WATCHING DIFFERENT
8 STORES AND STUFF LIKE THAT TO FIND OUT JUST THE
9 PERFECT GIFT FOR MY WIFE, LIKE I SAID, SHE MEANS
10 SO MUCH TO ME FOR ACCEPTING MY DAUGHTER AND STUFF
11 LIKE THAT.

12 Q. ALRIGHT, WHEN YOU SAY ACCEPTING YOUR DAUGHTER,
13 SHE'S NOT THE BIOLOGICAL MOTHER?

14 A. MY DAUGHTER IS NOT BY MY WIFE.

15 Q. OKAY. AND WHAT DATE WERE YOU MARRIED?

16 A. DECEMBER EIGHTEENTH, O-SIX.

17 Q. OKAY. SO, YOU GOT MARRIED ON THE EIGHTEENTH OF O-
18 SIX?

19 A. YES, SIR.

20 Q. AND YOU'RE TALKING ABOUT THE TWENTY-THIRD OF
21 DECEMBER, O-SIX, IS THAT RIGHT?

22 A. YES, SIR.

23 Q. SO, YOU'RE SHOPPING THAT DAY FOR YOUR WIFE, YOU'RE
24 HAPPY THAT YOU'RE ABLE TO WORK OUT YOUR FAMILY
25 SITUATION WITH REGARDS TO YOUR DAUGHTER, AND WHAT

DIRECT - TERRELL SCOTT BY MR. WALTERS

656

1 DID YOU DO THAT DAY -- IF WE STARTED AT EIGHT
2 O'CLOCK THAT MORNING, WHATEVER YOU CAN REMEMBER -
3 - -

4 A. ACTUALLY, WE STARTED ABOUT ELEVEN.

5 Q. OKAY.

6 A. ME AND MY WIFE AND MY MOTHER, YOU KNOW WHAT I'M
7 SAYING, WE WENT OUT. FIRST WE WENT HOUSE
8 SHOPPING, WE WAS LOOKING AT THIS HOUSE DOWN AT,
9 OFF OF MAJORITY ROAD.

10 Q. ALRIGHT, WHEN YOU SAY HOUSE SHOPPING, TELL THE
11 JURY WHAT YOU'RE TALKING ABOUT.

12 A. WHEN I SAY HOUSE SHOPPING, ME AND MY WIFE HAD JUST
13 GOT MARRIED, SO ME BEING A MAN I WANTED TO PUT MY
14 WIFE IN A HOUSE, SO I WAS LOOKING FOR A HOUSE, MY
15 MOTHER WAS HELPING ME LOOK FOR A HOUSE. SO, WE
16 WAS LOOKING FOR A HOUSE. WE SAW A HOUSE ON
17 MAJORITY ROAD THAT WAS INTERESTING BUT WE COULDN'T
18 AFFORD IT AT THE TIME. SO, WE LOOKED ON AND THEN
19 WE WENT CHRISTMAS SHOPPING AND I BOUGHT SOME
20 THINGS FOR MY WIFE AND MY DAUGHTER, A LITTLE STUFF
21 FOR MY MOTHER. WE WENT TO DIFFERENT STORES LIKE
22 ROSES, K-MART, W-MART AND STUFF LIKE THAT. YOU
23 KNOW, I MEAN, I WENT TO FRIEDMAN'S FOR MY WIFE.

24 Q. ALRIGHT, NOW TELL ME SOMETHING, IN TRAVELING
25 AROUND WITH YOUR FAMILY ON THAT PARTICULAR DAY OR

DIRECT - TERRELL SCOTT BY MR. WALTERS

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1 DURING THAT TIME WHAT TYPE OF VEHICLE DID YOU
2 DRIVE?

3 A. MY -- WELL, I DON'T HAVE A VEHICLE AT THE TIME.
4 MY MOTHER DRIVES A SILVERADO, FOUR DOOR.

5 Q. ALRIGHT. SO, AT THAT TIME YOU WERE NOT DRIVING A
6 NISSAN CENTRA?

7 A. NO.

8 Q. ALRIGHT. WERE YOU DRIVING A BLUE CAPRICE AT THAT
9 TIME?

10 A. NO, SIR.

11 Q. DID YOU OWN A VEHICLE AT THAT TIME?

12 A. WE HAD A COUPLE OF VEHICLES IN THE YARD BUT NONE
13 OF THEM WAS RUNNING.

14 Q. OKAY. SO, YOUR MOTHER HAD A SILVERADO?

15 A. A SILVERADO, WE HAD A CADILLAC IN THE BACK YARD
16 AND AN OLDER MODEL STATION WAGON.

17 Q. OKAY. AND THE SILVERADO, WHAT COLOR IS THAT?

18 A. IT'S LIKE A TAN COLOR.

19 Q. OKAY. ALRIGHT. AND HOW DID YOU TRAVEL, HOW DID
20 YOU GET AROUND?

21 A. IF I'M NOT RIDING WITH MY MOTHER SHE TENDS TO LET
22 ME USE THE TRUCK FROM TIME TO TIME, YOU KNOW WHAT
23 I MEAN, THAT'S ABOUT IT, LIKE, IF I HAD SOMEWHERE
24 TO GO SHE WOULD LET ME USE HER CHECK, IF ME AND MY
25 WIFE WAS GOING OUT TO DINNER OR SOMETHING LIKE

DIRECT - TERRELL SCOTT BY MR. WALTERS

658

1 THAT.

2 Q. DID YOUR WIFE HAVE A VEHICLE?

3 A. NO, SIR.

4 Q. ALRIGHT. SO, YOU WERE USING YOUR MOTHER'S
5 VEHICLE. NOW, AFTER YOU DID YOUR SHOPPING AND YOU
6 SAID YOU WENT ON MAJORITY ROAD AND YOU WERE
7 LOOKING FOR A HOUSE, HOW DID YOU END THAT DAY, UP
8 UNTIL, YOU KNOW, TWELVE O'CLOCK MIDNIGHT?

9 A. WELL, THAT DAY, AFTER ALL THE EVENTS WAS OVER WE
10 WENT BACK TO THE HOUSE, WE HAD DINNER, WE PLAYED A
11 LITTLE DOMINOS, MY MOTHER AND HER FRIEND HAD
12 DRINKS, ME AND MY WIFE WE TALKED FOR A LITTLE
13 WHILE, PLAYED AROUND, AND WENT TO BED.

14 Q. DID YOU VISIT ANY FAMILY ON THAT PARTICULAR?

15 A. NOT CHRISTMAS EVE DAY, BUT CHRISTMAS DAY WE VISIT
16 MY WIFE'S FAMILY DOWN IN ST. MATTHEWS.

17 Q. ALRIGHT. SO, YOU WERE SHOPPING ON THAT PARTICULAR
18 DAY, - - -

19 A. UH HUH.

20 Q. --- DID YOU SEE ANY FAMILY ON THE DAY YOU WERE
21 SHOPPING?

22 A. JUST MY MOTHER, MY DAUGHTER, MY WIFE, MY IN-LAWS
23 AND STUFF LIKE THAT.

24 Q. ALRIGHT. SO Y'ALL JUST WENT AROUND AND VISITED
25 SOME PEOPLE AND THAT WAS IT. OKAY. NOW, WHEN

DIRECT - TERRELL SCOTT BY MR. WALTERS

659

1 MIDNIGHT CAME ON THE TWENTY-SECOND, OKAY, THAT'S
2 THE DAY BEFORE CHRISTMAS EVE, MIDNIGHT ON THE
3 TWENTY-SECOND -- ARE YOU HAVING TROUBLE HEARING?

4 A. YES, IT'S BECAUSE OF LOUD MUSIC AND STUFF LIKE
5 THAT, BEING IN CLUBS A LOT, YOU KNOW WHAT I'M
6 SAYING, BOOKING PARTIES AND STUFF.

7 Q. OKAY. ALRIGHT, WELL, I'LL SPEAK LOUDER. ON
8 MIDNIGHT OF THE TWENTY-SECOND, BEFORE IT TURNED
9 INTO CHRISTMAS EVE, WHERE WERE YOU THAT NIGHT?

10 A. I WAS AT HOME.

11 Q. ALRIGHT. AND WHEN YOU SAY HOME, WHERE WERE YOU?

12 A. [REDACTED] NORTH WOOD COURTS.

13 Q. OKAY. NOW, YOU'RE HOME THAT NIGHT AND DID YOU GET
14 UP THAT MORNING, WHERE DID YOU GO THAT MORNING?

15 A. THAT MORNING WHICH IS CHRISTMAS MORNING WE'RE
16 TALKING ABOUT, RIGHT?

17 Q. CHRISTMAS EVE.

18 A. CHRISTMAS EVE?

19 Q. UH HUH.

20 A. LIKE I SAY, WE DID A LITTLE SHOPPING, YOU KNOW,
21 STUFF LIKE THAT. BASICALLY, THAT'S IT. LIKE, I
22 BEEN WITH MY FAMILY MOST OF THAT DAY.

23 Q. OKAY. DID YOU HAVE AN OPPORTUNITY TO TALK TO
24 INVESTIGATOR SHUMPERT?

25 A. ON CHRISTMAS EVE?

DIRECT - TERRELL SCOTT BY MR. WALTERS

660

1 Q. NO, BUT DID HE CONTACT YOU LATER?

2 A. SHUMPERT, HE CAME TO MY HOUSE -- WELL, FIRST HE
3 WENT TO MY GRANDMOTHER'S HOUSE DOWN AT [REDACTED]
4 [REDACTED] ANTIOCH ROAD.

5 Q. RIGHT.

6 A. ALRIGHT. THAT'S THE FIRST PLACE HE WENT. AND MY
7 AUNTIE, SHE CALLED BECAUSE MY GRANDMOTHER IS
8 EIGHTY-SEVEN YEARS OLD, AND THE WAY THEY ROLLED IN
9 HER YARD THEY DISTURBED HER, YOU KNOW. SO, MY
10 AUNTIE CALLED THE POLICE DEPARTMENT AND TALKED TO
11 SHUMPERT'S SUPERVISOR, WHICH IS I THINK MS.
12 BAMBERG, AND SHE TOLD MY AUNTIE WHAT WAS GOING ON
13 AND WHY THEY WAS IN MY GRANDMOTHER'S YARD. AND
14 THAT'S WHEN HE CAME TO MOTHER'S HOUSE AND HE
15 PICKED ME UP.

16 Q. OKAY. AND DID YOU COOPERATE WITH HIM?

17 A. YES, I TURNED MYSELF IN AT LEAST FIVE TIMES.

18 Q. ALRIGHT. SO, WHEN YOU COOPERATED WITH HIM THE
19 FIRST TIME WHAT HAPPENED?

20 A. HE TOOK ME DOWN, HE TOOK ME IN THIS LITTLE ROOM. I
21 SIGNED SOME MIRANDA RIGHTS. HE ASKED ME A
22 QUESTION, I TOLD HIM I DIDN'T KNOW WHAT HE WAS
23 TALKING ABOUT. THEY PUT ME IN THE BACK, THAT WAS
24 IT.

25 Q. OKAY. NOW, DID YOU HAVE AN OPPORTUNITY TO SPEAK

DIRECT - TERRELL SCOTT BY MR. WALTERS

661

1 TO OFFICER SHUMPERT AFTER THAT ANY OTHER TIME?

2 A. NO.

3 Q. OKAY.

4 A. JUST THAT ONE TIME.

5 Q. OKAY. NOW, LET ME ASK YOU SOMETHING, YOU'VE SEEN
6 WHAT'S BEEN ENTERED INTO EVIDENCE AS STATE'S
7 EXHIBIT NUMBER THIRTEEN, I BELIEVE MR. SORENSON
8 ENTERED IT INTO EVIDENCE. I WANT YOU TO COME OVER
9 HERE AND STAND UP IN FRONT OF THE JURY. I WANT
10 THE JURY TO LOOK AT YOU AND LOOK AT THE EXHIBIT
11 THEY SUBMITTED. ON THE NIGHT THAT THEY ALLEGE
12 THAT THIS EVENT OCCURRED IN THIS APARTMENT WERE
13 YOU THERE WEARING A BASEBALL CAP AND SOME TYPE OF,
14 I BELIEVE THE KIDS CALL IT - - -

15 A. THIS DOESN'T EVEN LOOK LIKE ME I MEAN, IT LOOKS
16 LIKE SOMEBODY TOTALLY DIFFERENT. IT HAS NO, IT
17 DON'T EVEN LOOK LIKE ME.

18 Q. ALRIGHT, BUT YOU WEARING A BASEBALL CAP ROBBING
19 ANYBODY THAT PARTICULAR NIGHT?

20 A. NO, SIR, NO, SIR.

21 Q. NOW, I DON'T WANT TO ASK YOU ANYTHING DEGRADING,
22 HOW TALL ARE YOU?

23 A. I'M ABOUT FIVE-NINE, MAYBE FIVE-TEN.

24 Q. AND HOW MUCH DO YOU WEIGH?

25 A. ALL MY LIFE I'VE BEEN A BIG BOY, SO I WEIGHED

DIRECT - TERRELL SCOTT BY MR. WALTERS

662

1 ABOUT TWO FIFTY AND UP. RIGHT NOW I'M AT TWO
2 SEVENTY-EIGHT.

3 Q. OKAY. AND YOU'VE ALWAYS WEIGHED ABOUT TWO
4 SEVENTY-EIGHT?

5 A. I NEVER WEIGHED LESS THAN TWO FIFTY, NEVER.

6 Q. OKAY. ALRIGHT. HAVE A SEAT, PLEASE.

7 MR. WALTERS: I BEG THE COURT'S
8 INDULGENCE, YOUR HONOR.

9 Q. NOW, THERE'S BEEN SOME TESTIMONY FROM THREE
10 INDIVIDUALS THAT ARE INCARCERATED. LET'S GO
11 THROUGH EACH ONE OF THE INDIVIDUALS. DO YOU KNOW
12 A MAURICE CHEESEBORO?

13 A. YEAH, I SEEN HIM AROUND, YOU KNOW WHAT I'M SAYING,
14 LIKE, AROUND THE NEIGHBORHOOD, LIKE, HE'S A LOCAL
15 GUY, YOU KNOW WHAT I MEAN, YOU GET WHAT YOU NEED
16 FROM HIM.

17 Q. OKAY. AND THEN THERE WAS ANOTHER GUY THAT CAME
18 AND TESTIFIED, MR. CLINTON JONES, DO YOU KNOW HIM?

19 A. I HAVE NO IDEA.

20 Q. OKAY. AND THE THIRD INDIVIDUAL IS MR. YOUNG, DO
21 YOU KNOW HIM?

22 A. NO.

23 Q. OKAY. CAN YOU PLEASE EXPLAIN TO THE JURY ANY
24 ASSOCIATION YOU HAVE WITH THEM OTHER THAN SEEING
25 THEM IN THE NEIGHBORHOOD?

DIRECT - TERRELL SCOTT BY MR. WALTERS

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1 A. PARDON ME?

2 Q. CAN YOU EXPLAIN TO THE JURY ANY ACQUAINTANCE THAT
3 YOU WOULD HAVE WITH THEM OTHER THAN SEEING THEM IN
4 THE NEIGHBORHOOD?

5 A. NONE. I LIVE IN A SECLUDED AREA, LIKE, I LIVE IN
6 CALHOUN COUNTY, IT'S OUTSIDE OF ORANGEBURG COUNTY,
7 SO LIKE, I VERY SELDOM COME INTO ORANGEBURG
8 COUNTY.

9 Q. OKAY. AND IN THIS PARTICULAR CASE I'LL ASK YOU
10 AGAIN, DID YOU ROB ANYBODY ON THAT PARTICULAR
11 NIGHT, PULL A THREE FIFTY-SEVEN AND SHOOT SOMEONE?

12 A. NO, SIR.

13 Q. ALRIGHT.

14 MR. WALTERS: YOUR HONOR, I HAVE NO
15 FURTHER QUESTIONS.

16 THE COURT: CROSS-EXAMINATION.

17 SOLICITOR SORENSON: THANK YOU, MAY
18 IT PLEASE THE COURT.

19 (NOTE: Blank lines on this page do not indicate any
20 part of record has been omitted. Headers on testimony
21 pages and hard page breaks between testimony are now
22 required by the Court. See next ensuing page for
23 sequential continuation of record.)

CROSS - TERRELL SCOTT BY SOL. SORENSON

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CROSS-EXAMINATION OF TERRELL SCOTT

BY SOLICITOR SORENSON:

Q. ARE YOU DOING ALRIGHT, MR. SCOTT?

A. YES, SIR, I'M GOOD.

Q. ARE YOU NERVOUS?

A. JUST A LITTLE.

Q. YOU'RE SWEATING QUITE A BIT, AREN'T YOU?

A. PARDON ME?

Q. SWEATING QUITE A BIT, AREN'T YOU?

A. NO.

Q. IT'S YOUR TESTIMONY, SIR, THAT YOU -- WHAT DO YOU
DO FOR A LIVING?

A. LIKE I'M A MANAGER OF A DJ. I BOOK PARTIES, I SET
UP EQUIPMENT, AND I MAKE SURE EVERYTHING GOES
SMOOTHLY.

Q. OKAY. AND THAT'S YOUR ONLY JOB YOU HAVE?

A. YES, SIR.

Q. OKAY. AND HIS NAME IS D.J. CLEVE, IS THAT
CORRECT?

A. YES, SIR. HIS REAL NAME IS CLEVELAND JUNIOR
GILMORE.

Q. OKAY. AND MR. GILMORE PERFORMS, HE DJ'S CLUBS
KIND OF ALL AROUND THE ORANGEBURG AREA, IS THAT
CORRECT?

A. YES, SIR.

1 Q. INCLUDING SANTEE, CORRECT?

2 A. YES.

3 Q. SO, YOU'VE BEEN IN SANTEE BEFORE?

4 A. YES.

5 Q. OF COURSE, BACK IN TWO THOUSAND AND SIX, YOU'RE
6 AWARE THAT YOUR DRIVERS LICENSE, THAT WAS YOUR
7 ADDRESS WAS A SANTEE ADDRESS, IS THAT CORRECT?

8 A. IT STILL IS.

9 Q. BUT YOUR TESTIMONY, THAT'S NOT WHERE YOU'VE BEEN
10 LIVING FOR THE LAST TEN YEARS?

11 A. NO.

12 Q. OKAY. BUT YOU DON'T DENY THE FACT THAT YOU'VE
13 SPENT TIME IN SANTEE BACK IN TWO THOUSAND AND SIX?

14 A. MY GRANDMOTHER, MY AUNTIE, ALL OF MY FAMILY IS
15 FROM SANTEE.

16 Q. OKAY. YOUR FAMILY IS FROM SANTEE AND YOU ALSO DO
17 WORK IN SANTEE AT TIMES, IS THAT CORRECT?

18 A. FROM TIME TO TIME, YOU KNOW WHAT I'M SAYING, IF
19 TIME PERMITS, YEAH, I WORK IN SANTEE FROM TIME TO
20 TIME.

21 Q. OKAY. AND OTHERWISE YOU WERE STAYING HERE IN
22 ORANGEBURG, IS THAT CORRECT?

23 A. RIGHT.

24 Q. NOW, DID YOU USED TO EVER HANG OUT OVER ON MAXEY
25 STREET?

CROSS - TERRELL SCOTT BY SOL. SORENSON

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1 A. NO.

2 Q. OKAY. SO YOU DENY EVER HANGING OUT OVER THERE?

3 A. NO, NOT HANGING OUT.

4 Q. ALRIGHT. LET ME ASK YOU, THE VICTIMS IN THIS CASE
5 THAT HAVE TESTIFIED, LET ME ASK YOU FIRST OF ALL,
6 THE DECEASED, HARRY MACK, DO YOU KNOW MR. MACK?

7 A. NO, SIR.

8 Q. OKAY. HOW ABOUT JOHN RANDOLPH, DO YOU KNOW MR.
9 RANDOLPH?

10 A. NO, SIR.

11 Q. NICK NAME, SCAR?

12 A. NO, SIR.

13 Q. HOW ABOUT LAWRENCE KELLY?

14 A. NO, SIR.

15 Q. HOW ABOUT WILL GILLIARD?

16 A. NO, SIR.

17 Q. NEVER SEEN HIM, YOU KNOW, HE LIVES DOWN IN SANTEE?

18 A. SIR?

19 Q. HE LIVES IN SANTEE, YOU'VE NEVER SEEN HIM BEFORE
20 AT A CLUB?

21 A. NO, SIR.

22 Q. YOU'RE POSITIVE ABOUT THAT?

23 A. UH HUH.

24 Q. SO, I GUESS THAT WOULD BE BAD TO ADMIT THAT YOU
25 KNEW HIM, RIGHT?

1 A. PARDON ME?

2 Q. THAT WOULD NOT BE GOOD IF YOU KNEW YOU ADMITTED
3 HIM, RIGHT?

4 A. I CAN'T HEAR YOU.

5 Q. THAT WOULD BE BAD IF YOU ADMITTED KNOWING HIM, IS
6 THAT CORRECT?

7 A. I HAVE NO IDEA WOULD IT BE BAD.

8 Q. OKAY. ALRIGHT. NOW, IT'S YOUR TESTIMONY, I'M A
9 LITTLE CONFUSED HERE, ALRIGHT, IT'S YOUR TESTIMONY
10 THAT THE DAY THAT MR. WALTERS WENT THROUGH WITH
11 YOU WHERE YOU DESCRIBED GETTING UP AND GOING,
12 LOOKING AT A HOUSE SOMEWHERE DOING SOME SHOPPING
13 AND RIDING AROUND WITH YOUR MOTHER, YOUR WIFE,
14 YOUR CHILD, THAT STARTED AT ELEVEN O'CLOCK AND
15 WENT THROUGHOUT THE DAY, YOU DESCRIBED THAT DAY TO
16 THE JURY, IS THAT RIGHT?

17 A. DID I DESCRIBE THAT DAY TO THE JURY? YES, I DID.

18 Q. OKAY. AND THEN YOU, HE ASKED YOU, WELL, WHAT DID
19 YOU DO WHEN YOU GOT UP THE NEXT MORNING, DO YOU
20 REMEMBER MR. WALTERS - - -

21 A. THIS IS CHRISTMAS MORNING, RIGHT?

22 Q. IT WOULD BE CHRISTMAS MORNING, RIGHT?

23 A. WHICH IS CHRISTMAS MORNING, RIGHT?

24 Q. RIGHT.

25 A. THAT'S WHAT YOU REFER TO WHEN I GOT UP THE NEXT

CROSS - TERRELL SCOTT BY SOL. SORENSON

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1 MORNING YOU MEAN CHRISTMAS MORNING, RIGHT?

2 Q. YES, SIR, WELL, THAT'S WHAT - - -

3 A. ALRIGHT, CHRISTMAS MORNING I GOT UP, ME AND MY
4 WIFE WENT DOWN TO MY MOTHER-IN-LAW'S HOUSE, WE HAD
5 DINNER, AND THAT'S ABOUT IT.

6 Q. SO, THAT WOULD BE, SO ALL OF THIS, LET'S MAKE
7 SURE, I'M MAKING SURE I UNDERSTAND THIS, BECAUSE
8 OBVIOUSLY, I HAVEN'T HEARD THIS BEFORE, OKAY?

9 A. YES, SIR.

10 Q. SO, THE EVENTS THAT YOU DESCRIBED, EVERYTHING YOU
11 DID, YOU THEN WENT HOME, WENT TO BED, GOT UP THE
12 NEXT MORNING AND IT WAS CHRISTMAS MORNING, IS THAT
13 CORRECT?

14 A. UH HUH.

15 Q. I'M NOT PUTTING WORDS IN YOUR MOUTH, THAT'S
16 CORRECT, RIGHT?

17 A. CHRISTMAS MORNING, RIGHT.

18 Q. OKAY. I'M MAKING SURE I UNDERSTAND ALL OF THAT,
19 SIR. NOW, YOU OBVIOUSLY ARE CLEAN SHAVEN TODAY,
20 RIGHT?

21 A. SOMETIMES I HAVE A LITTLE BEARD.

22 Q. SOMETIMES YOU HAVE A LITTLE BEARD?

23 A. SOMETIMES.

24 Q. A COUPLE OF DAYS AGO YOU HAD A LOT OF BEARD,
25 RIGHT?

1 A. RIGHT.

2 Q. OKAY. I MEAN, A LOT OF BEARD?

3 A. RIGHT.

4 Q. OKAY. AND IT'S, YOU SHAVED THAT OFF FOR COURT,
5 RIGHT?

6 A. RIGHT.

7 Q. OKAY. AND OVER THE YEARS, I MEAN, YOU'VE HAD
8 TIMES WHEN YOU'VE HAD FACIAL HAIR, IS THAT
9 CORRECT?

10 A. SOMETIMES, YES.

11 Q. SO, BACK IN DECEMBER OF TWO THOUSAND AND SIX, I
12 MEAN, YOU MAY HAVE HAD SOME FACIAL HAIR AT THAT
13 POINT IN TIME?

14 A. TWO THOUSAND AND SIX, LIKE I SAID, I JUST GOT
15 MARRIED SO I KNOW I WAS KIND OF CLEAN CUT.

16 Q. OKAY. BUT A WEEK LATER YOU DON'T THINK YOU HAD
17 GROWN SOME FACIAL HAIR BACK?

18 A. I MEAN, NOT THAT MUCH.

19 Q. WELL, NOBODY'S SAYING YOU HAD A FULL BEARD NOW.
20 OKAY. BUT IT'S POSSIBLE, THOUGH, THAT YOU HAD
21 SOME FACIAL HAIR BACK ON DECEMBER TWENTY-FOURTH,
22 POSSIBLE?

23 A. IT'S A POSSIBILITY, YES, SIR.

24 Q. OKAY. AND OBVIOUSLY, YOU WERE ABOUT THE SAME
25 HEIGHT YOU ARE NOW, YOU KNOW, FIVE-EIGHT, FIVE-

CROSS - TERRELL SCOTT BY SOL. SORENSON

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- 1 NINE, SOMEWHERE IN THAT RANGE?
- 2 A. ABOUT FIVE-NINE, FIVE-TEN.
- 3 Q. FIVE-NINE, FIVE-TEN?
- 4 A. YES, SIR.
- 5 Q. IN YOUR BOOKING INFORMATION THEY'VE GOT YOU DOWN
- 6 AS FIVE FOOT EIGHT. YOU DON'T KNOW WHERE THAT
- 7 CAME FROM THEN?
- 8 A. THEY COULD HAVE MADE A MISTAKE.
- 9 Q. AND YOU SAID YOU WEIGH TWO HUNDRED AND SEVENTY
- 10 SOMETHING POUNDS NOW?
- 11 A. YES, SIR.
- 12 Q. OKAY. AND HOW, WERE YOU ABOUT THE SAME SIZE THREE
- 13 YEARS AGO?
- 14 A. LIKE, I'VE BEEN A BIG BOY ALL MY LIFE, MAN, LIKE,
- 15 I NEVER, I NEVER WEIGHED UNDER TWO FIFTY.
- 16 Q. UNDER TWO FIFTY?
- 17 A. NEVER.
- 18 Q. ALRIGHT. COULD YOU HAVE BEEN - - -
- 19 A. EVEN WHEN I WAS A KID AND EVERYTHING, I WAS A FAT
- 20 BOY.
- 21 Q. SO, BACK IN DECEMBER OF TWO THOUSAND SIX, YOU WERE
- 22 AT LEAST TWO HUNDRED AND FIFTY POUNDS AT THAT
- 23 POINT, RIGHT?
- 24 A. OR MORE.
- 25 Q. OR POSSIBLY A LITTLE MORE?

1 A. RIGHT.

2 Q. OKAY. NOW, MR. WALTERS ASKED YOU ABOUT SOME OF
3 THE PEOPLE THAT HAVE TESTIFIED, ABOUT MAURICE
4 CHEESEBORO. IT'S YOUR TESTIMONY YOU KNOW MR.
5 CHEESEBORO, RIGHT?

6 A. I SEEN HIM AROUND THE NEIGHBORHOOD, YEAH.

7 Q. YOU DIDN'T HAVE ANY GRUDGE WITH MR. CHEESEBORO,
8 DID YOU?

9 A. NO.

10 Q. AND BACK IN TWO THOUSAND SEVEN, I MEAN, Y'ALL
11 WEREN'T ENEMIES OR ANYTHING LIKE THAT?

12 A. NO.

13 Q. SO, IT'S YOUR TESTIMONY THAT YOU WEREN'T HANGING
14 AROUND WITH HIM BACK IN TWO THOUSAND, DECEMBER OF
15 TWO THOUSAND SIX?

16 A. NO.

17 Q. NO?

18 A. NO, SIR.

19 Q. OKAY. AND I BELIEVE IT'S YOUR TESTIMONY AS TO
20 CLINTON JONES, THAT'S THE YOUNG MAN THAT TESTIFIED
21 RIGHT BEFORE YOU, - - -

22 A. RIGHT.

23 Q. --- IT'S YOUR TESTIMONY THAT YOU DON'T KNOW WHO HE
24 IS?

25 A. NO.

CROSS - TERRELL SCOTT BY SOL. SORENSON

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- 1 Q. NEVER SEEN HIM BEFORE?
- 2 A. NO.
- 3 Q. POSITIVE ABOUT THAT?
- 4 A. YES, SIR.
- 5 Q. OKAY. SO, YOU NEVER SEEN HIM OVER ON MAXEY
- 6 STREET?
- 7 A. I DON'T HANG ON MAXEY STREET.
- 8 Q. WELL, I'M JUST ASKING. AND THEN, DANIEL YOUNG, DO
- 9 YOU REMEMBER MR. YOUNG WHO TESTIFIED THIS MORNING?
- 10 HE HAD, I BELIEVE, THE GREEN JUMP SUIT ON WHEN HE
- 11 TESTIFIED?
- 12 A. IT WAS BLUE.
- 13 Q. BLUE. ALRIGHT. AND HE TESTIFIED THIS MORNING, IS
- 14 THAT RIGHT?
- 15 A. RIGHT.
- 16 Q. OKAY. AND IT'S YOUR TESTIMONY, MR. WALTERS ASKED
- 17 YOU, YOU HAD NEVER SEEN HIM BEFORE EITHER?
- 18 A. WELL, I SEEN HIM THIS MORNING.
- 19 Q. OKAY. WELL, THIS MORNING OBVIOUSLY, BUT DIDN'T,
- 20 NEVER SEEN HIM, DIDN'T KNOW HIM BEFORE?
- 21 A. SIR?
- 22 Q. NEVER SEEN HIM, DIDN'T KNOW HIM BEFORE TODAY, IS
- 23 THAT CORRECT?
- 24 A. I'M THIRTY YEARS OLD. HE'S TWENTY-TWO, WHAT WOULD
- 25 I LOOK LIKE HANGING OUT WITH KIDS?

1 Q. ANSWER MY QUESTIONS, PLEASE, SIR.

2 A. NO, SIR.

3 Q. OKAY.

4 A. NO, SIR.

5 Q. LET ME ASK YOU THIS, DO YOU REMEMBER HAVING A
6 CONVERSATION WITH HIM YESTERDAY BACK IN THAT
7 HOLDING CELL?

8 A. NO, I REMEMBER HAVING A CONVERSATION WITH THE CELL
9 OFFICER.

10 Q. YOU DON'T REMEMBER MAKING A CONVERSATION WITH MR.
11 YOUNG WHEN Y'ALL WERE IN DIFFERENT CELLS BACK
12 THERE?

13 A. NO, I DON'T, I REMEMBER TALKING TO THEM AND ASKING
14 HIM TO BE MOVED.

15 Q. DO YOU REMEMBER CALLING MR. YOUNG A SNITCH
16 YESTERDAY BACK IN THE HOLDING CELL?

17 A. NO, SIR, I DON'T, NO, SIR.

18 Q. OKAY. DO YOU RECALL HAVING ANY CONVERSATION WITH
19 THE OTHER GUY THAT WAS IN THE HOLDING CELL BACK
20 THERE, IN THE OTHER HOLDING CELL BACK THERE?

21 A. ACTUALLY, I WAS IN A HOLDING CELL BY MYSELF.

22 Q. RIGHT. SO, DO YOU REMEMBER HAVING A CONVERSATION
23 OR SAYING SOMETHING TO THE PERSON IN THE OTHER
24 HOLDING CELL BACK THERE?

25 A. NO, SIR.

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1 Q. YOU DENY EVER SAYING ANYTHING ABOUT REFERRING TO
2 HIM BEING A SNITCH?

3 A. RIGHT.

4 Q. ALRIGHT. BECAUSE OBVIOUSLY, IF YOU HAD NEVER SEEN
5 MR. YOUNG BEFORE THIS MORNING YOU WOULDN'T KNOW
6 WHO HE WAS IF HE WAS IN THE OTHER HOLDING CELL
7 BACK THERE?

8 A. RIGHT.

9 Q. OKAY.

10 SOLICITOR SORENSON: THANK YOU,
11 THAT'S ALL I WOULD HAVE.

12 THE COURT: REDIRECT?

13 MR. WALTERS: I HAVE NO FURTHER
14 QUESTIONS, YOUR HONOR.

15 THE COURT: THANK YOU, SIR, YOU MAY
16 STEP DOWN.

17 WITNESS: THANK YOU.

18 THE COURT: YOU MAY CALL YOUR NEXT
19 WITNESS.

20 MR. WALTERS: YOUR HONOR, AT THIS
21 TIME WE'D CALL MS. ANGELA FIELDS.

22 (Whereupon, the witness
23 enters the courtroom.)

24 THE COURT: COME AROUND, PLEASE,
25 MA'AM AND PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE

1 YOUR RIGHT, PLEASE.

2 (Whereupon, Angela Fields
3 is duly sworn.)

4 THE COURT: THANK YOU, MA'AM, HAVE
5 A SEAT RIGHT THERE AND STATE YOUR FULL NAME, AND PLEASE
6 SPEAK LOUD ENOUGH FOR EVERYBODY TO HEAR YOU. WE DON'T
7 HAVE A PA SYSTEM IN HERE TO HELP YOU, YOU HAVE TO TALK
8 LOUD.

9 WITNESS: YES, SIR.

10 THE COURT: THANK YOU.

11 (NOTE: Blank lines on this page do not indicate any
12 part of record has been omitted. Headers on testimony
13 pages and hard page breaks between testimony are now
14 required by the Court. See next ensuing page for
15 sequential continuation of record.)

DIRECT - ANGELA B. FIELDS BY MR. WALTERS

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DIRECT EXAMINATION OF ANGELA B. FIELDS

BY MR. WALTERS:

Q. MA'AM, WOULD YOU STATE YOUR FULL NAME FOR THE
RECORD, PLEASE.

A. ANGELA BALLARD FIELDS.

Q. ALRIGHT. AND WHERE DO YOU LIVE, MA'AM?

A. [REDACTED] NORTH WOOD COURT.

Q. ALRIGHT. AND WHO LIVES IN THAT HOME WITH YOU,
MA'AM?

A. TERRELL SCOTT, TRESHAY NEW, IESHA SCOTT.

Q. OKAY. AND WHAT'S YOUR RELATIONSHIP TO MR. TERRELL
SCOTT?

A. MOTHER.

Q. OKAY. AND DID YOU RAISE TERRELL, MA'AM?

A. YES, SIR.

Q. ALRIGHT. AND YOU'RE AWARE OF THE EVENTS AND
WHAT'S GOING ON IN THIS COURTROOM TODAY, IS THAT
CORRECT?

A. YES, SIR.

Q. ALRIGHT. AND YOU'VE TAKEN AN OATH TO TELL THE
TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
IS THAT CORRECT?

A. YES, SIR.

Q. ALRIGHT. NOW, YOU ARE AWARE OF THE FACT THAT IT'S
ALLEGED THAT ON THE NIGHT OF THE TWENTY-THIRD

DIRECT - ANGELA B. FIELDS BY MR. WALTERS

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1 GOING INTO CHRISTMAS EVE THAT MORNING, AFTER
2 MIDNIGHT ON THE TWENTY-FOURTH OF TWO THOUSAND AND
3 SIX, IT WAS ALLEGED THAT THERE WAS AN ARMED
4 ROBBERY AND A MURDER. WHERE WERE YOU DURING THAT
5 TIME?

6 A. AT HOME.

7 Q. ALRIGHT. AND WHO ELSE WAS WITHIN YOUR HOME?

8 A. TERRELL, TRESHAY NEW AND IESHA.

9 Q. ALRIGHT. WELL, LET'S BACK UP. HOW DID YOU START
10 OUT THAT DAY, WHAT DID Y'ALL DO THAT DAY?

11 A. WE WENT AND PICKED UP A LAST MINUTE'S CHRISTMAS
12 GIFT FOR TRESHAY, WHICH IS OUR FIRST CHRISTMAS
13 TOGETHER. OKAY. WE CAME BACK, WE SAT AROUND THE
14 HOUSE FOR A LITTLE BIT, TERRELL TURNED AROUND AND
15 SAID, I'M GOING TO GET SOME CIGARETTES, I THINK HE
16 SAID, I THINK, YOU KNOW, I'M NOT A HUNDRED PER
17 CENT SURE, BUT I'M PRETTY SURE HE SAID THAT, THAT
18 WAS IT.

19 Q. OKAY.

20 ~~A. HE CAME BACK AND WE JUST SAT AROUND THE HOUSE.~~

21 Q. ALRIGHT. AND THAT NIGHT AROUND MIDNIGHT, DURING
22 THAT TIME OF THE NIGHT, WHO ALL WAS IN THE HOUSE
23 AT THAT TIME?

24 A. TERRELL, TRESHAY, IESHA AND MYSELF. AND A FRIEND
25 OF MINE WAS THERE FOR A WHILE.

DIRECT - ANGELA B. FIELDS BY MR. WALTERS

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1 Q. OKAY. SO, DURING THE MIDNIGHT HOUR, SAY TEN
2 O'CLOCK UNTIL TWELVE O'CLOCK OF THE TWENTY-THIRD,
3 Y'ALL WERE ALL AT THE HOUSE?

4 A. YES, SIR.

5 Q. ALRIGHT. AND DURING THE NIGHT, AFTER TWELVE
6 O'CLOCK YOU'RE GOING INTO CHRISTMAS EVE, DID
7 EVERYBODY STAY IN THE HOUSE THAT NIGHT?

8 A. YES, SIR. WE DID SOME GIFT WRAPPING.

9 Q. ALRIGHT. WHEN YOU GOT UP THAT MORNING WHO WAS AT
10 THE HOUSE?

11 A. YES, SIR.

12 Q. WHO WAS AT THE HOUSE THAT MORNING ON THE TWENTY-
13 FOURTH WHEN YOU GOT UP?

14 A. TERRELL AND IESHA WERE IN THEIR ROOM, SHAY AND I
15 WAS IN, WELL, SHAY AND I WAS IN MY BEDROOM.

16 Q. WELL, WHEN YOU SAY SHAY YOU'RE REFERRING TO YOUR
17 GRANDDAUGHTER?

18 A. TRESHAY, MY GRANDDAUGHTER.

19 Q. OKAY. YOU UNDERSTAND THAT IF YOU WERE TO
20 FABRICATE OR LIE WITH REGARDS TO ANY OF THIS THAT

21 YOU COULD BE PUT IN JAIL?

22 A. YES, SIR.

23 Q. HAVE YOU TOLD THIS JURY THE COMPLETE TRUTH ABOUT
24 WHAT WAS GOING ON IN YOUR HOME ON THAT, THOSE
25 PARTICULAR NIGHTS?

DIRECT - ANGELA B. FIELDS BY MR. WALTERS

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1 A. YES, SIR.

2 MR. WALTERS: YOUR HONOR, I HAVE NO
3 FURTHER QUESTIONS.

4 THE COURT: CROSS-EXAMINATION.

5 SOLICITOR SORENSON: THANK YOU.

6 (NOTE: Blank lines on this page do not indicate any
7 part of record has been omitted. Headers on testimony
8 pages and hard page breaks between testimony are now
9 required by the Court. See next ensuing page for
10 sequential continuation of record.)

CROSS - ANGELA B. FIELDS BY SOL. SORENSON

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CROSS-EXAMINATION OF ANGELA B. FIELDS

BY SOLICITOR SORENSON:

Q. GOOD AFTERNOON, MS. FIELDS.

A. GOOD AFTERNOON.

Q. MY NAME IS DON SORENSON, I'M WITH THE SOLICITOR'S
OFFICE, AND I JUST HAVE A FEW QUESTIONS FOR YOU.
SO, YOU TESTIFIED THAT TERRELL IS YOUR SON, IS
THAT CORRECT?

A. YES, SIR.

Q. AND HE LIVES WITH YOU?

A. YES, SIR.

Q. WHO ELSE IS LIVING IN YOUR HOME?

A. IESHA SCOTT.

Q. AND THAT'S HIS WIFE?

A. HIS WIFE.

Q. AND WHEN WERE THEY MARRIED?

A. TWO THOUSAND THREE, WAS IT DECEMBER, I THINK IT
WAS THE SIXTEENTH OR THE EIGHTEENTH.

Q. DECEMBER SIXTEENTH OR DECEMBER EIGHTEENTH OF TWO
THOUSAND THREE?

A. YES, SIR.

Q. SO, THEY HAD BEEN MARRIED WHEN THIS HAPPENED ABOUT
THREE YEARS?

A. YES, SIR.

Q. AND SO, IT WAS YOU, IESHA, TERRELL, AND THEN

1 TERRELL'S DAUGHTER?

2 A. YES, SIR.

3 Q. AND IS MR. SCOTT THE SOLE SOURCE OF INCOME IN THE
4 HOUSE RIGHT NOW?

5 A. NO, HE'S NOT.

6 Q. WHO ELSE IS WORKING IN YOUR HOME?

7 A. I'M WORKING.

8 Q. DOES HIS WIFE WORK?

9 A. YES, SHE DOES.

10 Q. WHERE DOES SHE WORK?

11 A. AT, WHAT THE NAME OF THE PLACE, I CAN'T THINK OF
12 THE NAME OF THE PLACE RIGHT NOW BECAUSE, YOU KNOW
13 -- I'M TRYING TO THINK OF IT.

14 Q. THAT'S FINE, THAT'S FINE. NOW, AT THE TIME YOU
15 TESTIFIED ABOUT THIS DAY WHEN Y'ALL WERE ALL
16 TOGETHER, AND THEN HOME TOGETHER THAT EVENING, IS
17 THAT CORRECT?

18 A. YES, SIR.

19 Q. WHEN -- MS. FIELDS, WHEN WAS THE FIRST TIME
20 SOMEBODY CAME TO YOU AND ASKED YOU WHERE WAS
21 TERRELL AT ON DECEMBER TWENTY-THIRD OR TWENTY-
22 FOURTH, OR ANY POINT IN TIME IN DECEMBER OF TWO
23 THOUSAND AND SIX, WHEN WAS THE FIRST TIME SOMEBODY
24 CAME AND ASKED YOU ABOUT THAT?

25 A. WHEN WAS THE FIRST TIME SOMEBODY CAME AND ASKED ME

CROSS - ANGELA B. FIELDS BY SOL. SORENSON

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1 A QUESTION?

2 Q. UH HUH.

3 A. ACTUALLY, WHEN I WAS QUESTIONED, I THINK, BY MR.
4 WALTERS, WHEN I WENT IN AND TALKED TO MR. WALTERS,
5 I THINK.

6 Q. OKAY. AND WHEN WAS THAT? I'M JUST TRYING TO GET
7 AN IDEA OF THE TIME FRAME. I MEAN, WHEN WAS THAT?

8 A. WELL, IT'S BEEN A WHILE, IT'S BEEN A LITTLE WHILE
9 AFTER I TALKED TO HIM, AFTER HIRING HIM.

10 Q. I GUESS WHAT I'M TRYING TO GET AT, I MEAN, YOU'RE
11 AWARE THAT MR. SCOTT WAS ARRESTED, THE FIRST
12 CONTACT THAT LAW ENFORCEMENT HAD WITH YOUR SON WAS
13 ON JANUARY TWENTY-NINTH OF TWO THOUSAND SEVEN,
14 RIGHT, OKAY, DOES THAT SOUND RIGHT?

15 A. YEAH.

16 Q. OKAY. SO, FROM JANUARY TWENTY-NINTH OF TWO
17 THOUSAND AND SEVEN, HOW LONG AFTERWARDS WAS IT
18 WHEN YOU FIRST, YOU KNOW, SAT DOWN AND TALKED WITH
19 SOMEBODY AND TOLD THEM THAT, YOU KNOW, TERRELL WAS
20 WITH ME THE NIGHT THIS HAPPENED?

21 A. IT WAS AFTER I HIRED MR. WALTERS.

22 Q. AND DO YOU KNOW WHEN THAT WAS, I MEAN, DID YOU
23 HIRE MR. WALTERS THAT DAY OR WAS IT A WEEK LATER,
24 TWO WEEKS LATER?

25 A. NOT EXACTLY THAT DAY. I SPOKE WITH HIM THAT DAY.

1 Q. SO, DO YOU KNOW WHEN IT WAS THAT YOU HIRED HIM?

2 I'M JUST TRYING TO -- I MEAN, I'M NOT - - -

3 A. THE EXACT DATE I HIRED HIM?

4 Q. WELL, NOT THE EXACT DATE, BUT I MEAN, WAS IT IN
5 THE MONTH OF FEBRUARY THEN, WAS IT MARCH?

6 A. NO, IT WAS IN THE MONTH OF JANUARY.

7 Q. OKAY. SO, IT WAS SOMETIME BETWEEN JANUARY TWENTY-
8 NINTH AND JANUARY THIRTY-FIRST?

9 A. IT WAS RIGHT AFTER TERRELL WAS ARRESTED, ABOUT
10 TWO WEEKS OR SO AFTER HE WAS ARRESTED I THINK IT
11 WAS.

12 Q. SO, IT COULD BE INTO THE FIRST OR SECOND WEEK OF
13 FEBRUARY I GUESS IS WHAT I'M GETTING AT.

14 A. YEAH.

15 Q. SO, SOMETIME BETWEEN JANUARY TWENTY-NINTH OF TWO
16 THOUSAND AND SEVEN, AND LET'S SAY, FEBRUARY, YOU
17 KNOW, FOURTEENTH OF TWO THOUSAND AND SEVEN,
18 SOMETIME IN THAT TIME PERIOD?

19 A. IN THAT TIME FRAME.

20 Q. IT WAS WHEN Y'ALL HIRED MR. WALTERS?

21 A. YES, SIR.

22 Q. AND WHEN WAS IT THEN THAT YOU FIRST SAT DOWN AND
23 TOLD MR. WALTERS ABOUT WHERE MR. SCOTT WAS AT THE
24 TIME THIS HAPPENED?

25 A. MR. WALTERS AND I SAT DOWN AND SPOKE, I WANT TO

CROSS - ANGELA B. FIELDS BY SOL. SORENSON

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1 SAY PROBABLY MARCH WHEN WE ACTUALLY SAT DOWN AND
2 DID A CONVERSATION ABOUT TERRELL.

3 Q. I'VE GOT YOU, I UNDERSTAND. ALRIGHT, SO IT WAS
4 SOMETIME IN MARCH OF O-SEVEN?

5 A. YES, SIR.

6 Q. AND THAT'S WHEN YOU FIRST TOLD ANYBODY ABOUT THE
7 FACT THAT YOUR SON WAS WITH YOU AT THE TIME THAT
8 THIS HAPPENED?

9 A. YES.

10 Q. OKAY. AND HAD YOU TALKED WITH, WITH TERRELL ABOUT
11 THIS BEFORE THEN, I GUESS?

12 A. NOT REALLY.

13 Q. OKAY. SO, WHO TOLD YOU WHEN IT HAPPENED, I GUESS,
14 WHO LAID OUT TO YOU THAT THE INCIDENT HAPPENED ON
15 THIS SPECIFIC TIME?

16 A. MY BABY SISTER GAVE ME A CALL, OKAY. THEY WENT
17 DOWN TO MY MOTHER'S HOUSE AND SHE GAVE ME A CALL
18 AND TOLD ME THAT THEY WAS LOOKING FOR TERRELL, SHE
19 DIDN'T KNOW WHY. SHE SAID I NEED TO, YOU KNOW,
20 COME TO ORANGEBURG, SEE WHAT'S GOING ON.

21 Q. UH HUH.

22 A. AND I SAID, OKAY.

23 Q. AND THAT'S WHEN YOU FIRST FOUND OUT HE HAD BEEN
24 ARRESTED. WHEN WAS THE FIRST TIME YOU FOUND OUT
25 THAT THE INCIDENT OCCURRED ON DECEMBER TWENTY-

1 FOURTH?

2 A. THAT WAS WHEN I FOUND OUT.

3 Q. OKAY. SOMEBODY TOLD YOU THAT THAT DAY, THAT IT
4 HAPPENED ON DECEMBER TWENTY-FOURTH?

5 A. NO. WHEN MY BABY SISTER CALLED ME, THAT WAS WHEN
6 THEY ARRESTED HIM IN JANUARY.

7 Q. RIGHT, I UNDERSTAND THAT.

8 A. THAT'S WHEN I FOUND OUT THAT THIS INCIDENT WAS
9 SUPPOSED TO HAVE HAPPENED. I DIDN'T KNOW ANYTHING
10 ABOUT ANYTHING BEFORE THIS.

11 Q. OKAY. BUT DID YOU FIND OUT ON THAT DAY, WHEN HE
12 WAS ARRESTED, THAT'S THE DAY YOU FOUND OUT WHEN IT
13 OCCURRED. THAT'S WHAT I'M TRYING TO GET AT, IS
14 WHEN YOU KNEW THAT THE INCIDENT THAT HE'S CHARGED
15 WITH - - -

16 A. OH, NO, THEY DIDN'T TELL ME ANYTHING. WHEN THEY
17 CAME AND SAID THEY WAS ARRESTING HIM THEY DIDN'T
18 TELL ME ANYTHING, THE OFFICERS DIDN'T TELL ME
19 ANYTHING.

20 Q. RIGHT, OKAY, THAT'S - - -

21 A. THEY JUST SAID, HE'S UNDER ARREST.

22 Q. THAT'S KIND OF WHAT I FIGURED. SO, WAS IT IN
23 MARCH WHEN YOU SAT DOWN WITH MR. WALTERS WHEN
24 Y'ALL FIRST STARTED TALKING ABOUT THE FACT THAT
25 WHAT YOUR SON IS ACCUSED OF HAPPENED ON THE

CROSS - ANGELA B. FIELDS BY SOL. SORENSON

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1 DECEMBER TWENTY-FOURTH?

2 A. YES.

3 Q. OKAY. SO, THAT WOULD BE THE FIRST TIME. AND IT'S
4 YOUR TESTIMONY THAT YOU REMEMBER AND ARE POSITIVE,
5 IN MARCH OF TWO THOUSAND SEVEN, THAT YOU KNEW WHAT
6 Y'ALL WERE ALL UP TO BACK ON DECEMBER TWENTY-
7 FOURTH OF TWO THOUSAND AND SIX?

8 A. YES.

9 Q. AND YET AGAIN, THE DAY THAT YOU TOLD THE JURY
10 ABOUT, THAT Y'ALL HAD INITIALLY GONE OUT IN THE
11 MORNING TO DO SOME LAST MINUTE CHRISTMAS SHOPPING,
12 RIGHT?

13 A. YES, SIR.

14 Q. AND THEN COME BACK AND SPENT THE REST OF THE DAY
15 AT THE HOUSE, IS THAT RIGHT?

16 A. YES, SIR.

17 Q. OKAY. ALL THE WAY UP UNTIL Y'ALL WENT TO BED THAT
18 NIGHT?

19 A. YEAH, HE MIGHT HAVE LEFT OUT AND GOT A PACK OF
20 CIGARETTES, YOU KNOW, THAT'S ABOUT IT.

21 Q. ALRIGHT. AND THEN THE NEXT MORNING WOULD HAVE
22 BEEN CHRISTMAS MORNING?

23 A. CHRISTMAS EVE.

24 Q. CHRISTMAS EVE MORNING.

25 A. YES.

CROSS - ANGELA B. FIELDS BY SOL. SORENSON

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1 Q. SO, IT WOULD HAVE BEEN THE TWENTY-THIRD, INTO THE
2 MORNING OF THE TWENTY-FOURTH?

3 A. YES, SIR.

4 Q. AND IT'S YOUR TESTIMONY YOU ARE POSITIVE NOW, TWO
5 AND A HALF YEARS LATER, THAT MR. SCOTT DID NOT GO
6 OUT AT ALL THE NIGHT OF DECEMBER TWENTY-THIRD?

7 A. YES.

8 SOLICITOR SORENSON: THANK YOU, MS.
9 FIELDS.

10 THE COURT: REDIRECT?

11 MR. WALTERS: NO QUESTIONS, YOUR
12 HONOR.

13 THE COURT: THANK YOU, MA'AM, YOU
14 CAN STEP DOWN. THANK YOU FOR COMING.

15 WITNESS: THANK YOU.

16 THE COURT: CALL YOUR NEXT WITNESS,
17 PLEASE.

18 MR. WALTERS: THE DEFENSE RESTS,
19 YOUR HONOR.

20 THE COURT: DOES THE STATE HAVE
21 ANYTHING IN REPLY?

22 SOLICITOR SORENSON: YES, SIR, IF I
23 COULD HAVE JUST A VERY SHORT BREAK, I MIGHT NEED JUST
24 ABOUT - - -

25 THE COURT: ALRIGHT, LADIES AND

1 GENTLEMEN, PLEASE RETIRE TO THE JURY ROOM. PLEASE DO
2 NOT TALK ABOUT THE CASE.

3 (Whereupon, the jury retires
4 to the jury room and the following
5 takes place out of the presence
6 of the jury.)

7 (Recess)

8 THE COURT: BRING THE DEFENDANT IN,
9 PLEASE.

10 (Whereupon, the defendant
11 enters the courtroom.)

12 THE COURT: ALRIGHT, I UNDERSTAND
13 YOU HAVE ONE MORE WITNESS, MR. SORENSON?

14 SOLICITOR SORENSON: YES, SIR.

15 THE COURT: AND WHO IS THAT?

16 SOLICITOR SORENSON: THAT WOULD BE
17 OFFICER RAVANDA, I THINK HIS FIRST NAME IS MARTIN, I'M
18 NOT SURE, I'VE NEVER HEARD HIM CALLED ANYTHING BUT
19 OFFICER RAVANDA.

20 THE COURT: HE DOESN'T HAVE A FIRST
21 NAME. WE'RE GOING TO FIND OUT I GUESS. JUST STAY
22 RIGHT OVER THERE, JUST STAND OVER THERE FOR RIGHT NOW.

23 ALRIGHT, IS THE STATE READY TO
24 PROCEED, THEN?

25 SOLICITOR SORENSON: WE ARE, YOUR

1 HONOR.

2 THE COURT: IS THE DEFENSE READY?

3 MR. WALTERS: YES, SIR, YOUR HONOR.

4 THE COURT: ALRIGHT, BRING IN THE
5 JURY, PLEASE.

6 (Whereupon, the jury enters
7 the courtroom and the following
8 takes place in the presence
9 of the jury.)

10 THE COURT: ALRIGHT, WE HAVE ALL THE
11 JURY. MR. SORENSON.

12 SOLICITOR SORENSON: THE STATE CALLS
13 OFFICER RAVANDA.

14 THE COURT: COME AROUND, OFFICER.
15 WOULD YOU PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE
16 YOUR RIGHT.

17 (Whereupon, Maurin Ravanda
18 is duly sworn.)

19 THE COURT: THANK YOU, SIR. PLEASE
20 HAVE A SEAT AND STATE YOUR FULL NAME.

21 WITNESS: OFFICER MAURIN RAVANDA.

22 THE COURT: THANK YOU, SIR.

23 ALRIGHT, COUNSELOR.

24 SOLICITOR SORENSON: THANK YOU, YOUR
25 HONOR. THANK YOU, OFFICER RAVANDA.

DIRECT - MAURIN RAVANDA BY SOL. SORENSON

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DIRECT EXAMINATION OF MAURIN RAVANDA

BY SOLICITOR SORENSON:

Q. OFFICER, IF YOU WOULD, TELL THE JURY, PLEASE,
WHERE YOU ARE EMPLOYED?

A. ORANGEBURG COUNTY REGIONAL DETENTION CENTER.

Q. AND PART OF YOUR DUTIES WITH THE DETENTION CENTER
ARE YOU ONE OF THE COURT SECURITY OFFICERS?

A. YES, I AM.

Q. AND WERE YOU WORKING YESTERDAY, SIR?

A. YES, I WAS.

Q. HERE AT THE COURTHOUSE?

A. YES.

Q. OKAY. AND LET ME ASK YOU, THROUGH THAT DOOR OVER
THERE, ARE THERE SOME HOLDING CELLS LOCATED OVER
THERE?

A. YES, IT IS.

Q. AND HOW MANY HOLDING CELLS ARE THERE OVER THERE?

A. APPROXIMATELY FOUR NOW.

Q. OKAY. HOW MANY OF THEM DID YOU HAVE IN USE
YESTERDAY AFTERNOON?

A. TWO.

Q. TWO?

A. TWO.

Q. AND LET ME ASK YOU, WHO WERE IN THOSE TWO CELLS
YESTERDAY AFTERNOON?

DIRECT - MAURIN RAVANDA BY SOL. SORENSON

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1 A. TERRELL SCOTT AND DANIEL YOUNG.

2 Q. OKAY. AND WERE THEY IN THE SAME CELL OR DIFFERENT
3 CELLS?

4 A. DIFFERENT CELLS.

5 Q. OKAY. AND HOW ARE THOSE TWO CELLS THAT THE TWO OF
6 THEM WERE LOCATED IN, HOW WERE THEY RELATED TO
7 EACH OTHER?

8 A. THEY'RE NEXT DOOR TO EACH OTHER.

9 Q. NEXT DOOR TO EACH OTHER. AND WERE YOU BACK THERE
10 IN THE HALLWAY YESTERDAY AFTERNOON - - -

11 A. YES, I WAS.

12 Q. --- WHILE THE TWO OF THEM WERE IN THOSE CELLS?

13 A. YES, I WAS.

14 Q. AND DID YOU OVERHEAR ANY CONVERSATION GOING ON
15 BETWEEN THE TWO OF THEM?

16 A. A SLIGHT ARGUMENT BETWEEN BOTH OF THEM.

17 Q. OKAY. AND DURING THAT ARGUMENT BETWEEN THE TWO OF
18 THEM DID YOU OVERHEAR MR. SCOTT MAKE ANY COMMENTS
19 TO MR. YOUNG?

20 A. HE CALLED HIM A SNITCH, AND A POLICE.

21 Q. OKAY. AND DID YOU THEN COME AND BRING THAT TO
22 EVERYBODY'S ATTENTION OUT THERE?

23 A. I DID.

24 SOLICITOR SORENSON: THANK YOU,
25 OFFICER RAVANDA.

1 THE COURT: CROSS-EXAMINATION.

2 MR. WALTERS: I HAVE NO QUESTIONS,
3 YOUR HONOR.

4 THE COURT: THANK YOU, SIR, YOU MAY
5 STEP DOWN. I WOULD SAY YOU COULD BE EXCUSED BUT YOU'VE
6 GOT WORK TO DO BACK THERE.

7 ANYTHING ELSE FROM THE STATE?

8 SOLICITOR SORENSON: NO, SIR.

9 THE COURT: ALRIGHT, LADIES AND
10 GENTLEMEN, THAT IS ALL THE TESTIMONY AND EVIDENCE THAT
11 YOU'RE GOING TO HEAR IN THIS CASE. IT REMAINS NOW FOR
12 THE ATTORNEYS TO MAKE THEIR CLOSING ARGUMENTS TO YOU, I
13 WILL THEN CHARGE YOU ON THE LAW, AND YOU CAN BEGIN YOUR
14 DELIBERATIONS. MERCIFULLY, WE ARE NOT GOING TO DO THAT
15 TODAY. WE COULDN'T POSSIBLY FINISH, IT WOULD JUST RUN
16 US WAY INTO THE NIGHT. SO, THIS IS, WE'RE GOING TO STOP
17 FOR TODAY, WE'RE GOING TO COME BACK IN THE MORNING AT
18 NINE:THIRTY, AT WHICH TIME THE ATTORNEYS WILL SPEAK TO
19 YOU, THEN I'LL CHARGE YOU ON THE LAW, AND THEN YOU CAN
20 BEGIN YOUR DELIBERATIONS. AND YOU'LL HAVE ALL THE TIME
21 YOU NEED TO TALK ABOUT THE CASE AT THAT TIME.

22 IT IS VERY IMPORTANT THAT YOU NOT
23 TALK ABOUT THE CASE WITH ANYONE TONIGHT, AND THAT YOU BE
24 BACK IN THE MORNING AT NINE:THIRTY. IT IS ALSO
25 IMPORTANT THAT YOU DO NOT LOOK AT THE NEWSPAPER IN THE

1 MORNING. I FEEL CERTAIN WE'LL BE THROUGH BY TOMORROW
2 NIGHT AND THEN YOU CAN GATHER UP ALL THE PAPERS AND READ
3 THEM ALL YOU WANT TO, BUT JUST DON'T DO THAT IN THE
4 MORNING WHEN THE PAPER COMES OUT, AND WE'LL SEE YOU AT
5 NINE:THIRTY IN THE MORNING.

6 THANK YOU VERY MUCH, YOU ARE
7 EXCUSED.

8 (Whereupon, the jury leaves
9 the courtroom for the day
10 and the following takes place
11 out of the presence of the
12 jury.)

13 THE COURT: ANY MOTIONS?

14 SOLICITOR SORENSON: NO, SIR.

15 MR. WALTERS: NO, SIR, YOUR HONOR.

16 THE COURT: ALRIGHT, ON THE CHARGE,
17 I MEAN, ALL OF YOU HAVE HEARD MY CHARGE MANY TIMES.
18 DOES ANYBODY WANT CIRCUMSTANTIAL EVIDENCE? I ALWAYS ASK
19 THAT QUESTION, I ALWAYS CHARGE IT IF ANYBODY WANTS IT,
20 AND I NEVER CHARGE IT UNLESS SOMEBODY DOES WANT IT. IT
21 DOESN'T MATTER TO ME, I JUST - - -

22 MR. CULLER: YES.

23 MR. WALTERS: YES.

24 THE COURT: YOU WANT IT. ALRIGHT,
25 FINE, I'LL CHARGE CIRCUMSTANTIAL EVIDENCE. YOU KNOW

1 WHAT I CHARGE ON CREDIBILITY OF WITNESSES, AND BURDEN OF
2 PROOF, AND OF COURSE, I'LL CHARGE ARMED ROBBERY AND I'LL
3 CHARGE MURDER. THAT'S IT. EXPERT WITNESS.

4 SOLICITOR SORENSON: THE ONLY THING
5 WE WOULD ASK, AND I GUESS ALSO SINCE WE GOT INTO THE
6 STATEMENT, YOUR HONOR, IS VOLUNTARINESS.

7 THE COURT: I'LL CHARGE
8 VOLUNTARINESS, YES, SIR.

9 SOLICITOR SORENSON: AND THE ONLY
10 OTHER THING WOULD BE A CHARGE UNDER THE FELONY MURDER
11 RULE. I'VE GOT IT AT THE OFFICE, I CAN GIVE IT TO YOU.

12 THE COURT: WELL, BRING IT IN THE
13 MORNING. I THINK I'VE GOT IT BUT BRING IT IN THE
14 MORNING.

15 CAN YOU THINK OF ANYTHING ELSE RIGHT
16 NOW, MR. WALTERS?

17 MR. WALTERS: NO, SIR, YOUR HONOR.

18 THE COURT: ALRIGHT.

19 SOLICITOR SORENSON: AND ALSO, WOULD
20 YOU CONSIDER CHARGING ACCOMPLICE LIABILITY, SINCE THERE
21 IS EVIDENCE THAT THERE WERE THREE PEOPLE INVOLVED THAT
22 WERE ALL ARMED? I MEAN, THEY COULD CONCEIVABLY FEEL
23 THAT, YOU KNOW, MAYBE ONE OF THE OTHER PEOPLE SHOT, AND
24 THEY WOULD ALL BE, UNDER THE ACCOMPLICE LIABILITY, THEY
25 WOULD ALL BE, THE HAND OF ONE IS THE HAND OF ALL.

1 THE COURT: MR. WALTERS, YOUR
2 POSITION ON THAT? I THINK IT'S PROBABLY APPROPRIATE.

3 MR. WALTERS: YOUR HONOR,
4 RESPECTFULLY, I WOULD JUST ARGUE AGAINST IT. I KNOW
5 THERE'S BEEN SIX PEOPLE THAT HAVE TESTIFIED THAT THEY
6 DIDN'T GO INSIDE THE HOUSE, SO, THERE WAS THREE PEOPLE
7 INVOLVED. THERE'S NOT MUCH I CAN DO WITH THE FACTS.

8 THE COURT: WELL, PLEASE BE HERE AT
9 NINE:FIFTEEN IN THE MORNING, AND WE'LL TALK ABOUT ANY
10 OTHER MATTERS THAT YOU THINK I SHOULD CHARGE, AND I CAN
11 FINE TUNE IT AT THAT TIME.

12 MR. WALTERS: YES, SIR.

13 THE COURT: LET'S TRY TO BE READY TO
14 GO AT NINE:THIRTY WHEN THE JURY GETS HERE.

15 SOLICITOR SORENSON: YES, SIR.

16 THE COURT: WE CAN DO THAT AHEAD OF
17 TIME AND I'LL BE HERE PLENTY EARLY.

18 (Recess for the day.)

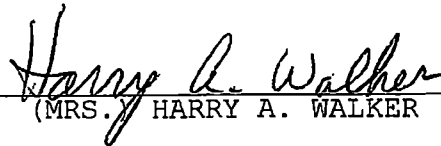
19 NOTE: THE REMAINDER OF THIS TRIAL WAS TAKEN BY ANOTHER
20 COURT REPORTER ON MAY 15, 2009.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF A PORTION OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE TWELFTH THROUGH THE FOURTEENTH DAYS OF MAY, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: AUGUST 21, 2009


(MRS.) HARRY A. WALKER

COUNTY: ORANGEBURG DATE: MAY 12, 2009
 Case No.: 07-GS-38-480
07-GS-38-640
VOIR DIRE (PAGE 1 OF 2)

Judge: JAMES C. WILLIAMS, JR.

Pl./State: STATE OF SOUTH CAROLINA State/Pl's.Atty: DONALD SORENSON

Defendant: TERRELL SCOTT Defense Atty: GLENN WALTERS
MICHAEL CULLER

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Race	SEX	Pl.	Strikes:		
					Def.	Accept	
135	TERRY NEAL	W	M				X
118	ANITRA MACK	B	F				X
67	ROGER GLEATON	W	M				X
49	ROBERT FIELDS	B	M		X		
50	YVETTE FLOYD	B	F		X		
169	SUSAN STILLINGER	W	F				X
156	ALICE SHULER	B	F				X
103	BRITTANY JONES	B	F				X
192	ROBERT WOLFE	W	M				X
80	JANET HALL	B	F				X
187	DAVID WILLIAMSON	W	M				X
161	KATHLEEN SMITH	W	F				X
182	KATHY WILLIAMS	B	F				X
47	SAMUEL FELDER	W	M				X
91	EMMA JAMES	B	F				X
53	DEBORA FOGLE	W	F				X
59	WILLIAM FRENCH	W	M				X
27	MICHELLE BURNS	B	F				X
31	LEVON CALHOUN	B	M		X		
92	TERRANCE JAMES	B	M				X

COUNTY: ORANGEBURG DATE: MAY 12, 2009
 Case No.: 07-GS-38-480
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VOIR DIRE (PAGE 2 OF 2)

Judge: JAMES C. WILLIAMS, JR.

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Defendant: TERRELL SCOTT Defense Atty: GLENN WALTERS
MICHAEL CULLER

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Race	SEX	Strikes:		Accept
				Pl.	Def.	
110	JOHN LANE		W	M		X
28	CAROLINE BUSH		B	F		X
177	MELINDA WASHINGTON		B	F		X
ALTERNATE NO. 1:						
123	LINDA McDANIEL		W	F		X
174	LOIS VOID		B	F	X	
96	ELAINE JEFFCOAT		W	F		X
ALTERNATE NO. 2:						
150	SHERRILL SAULS		W	F		X

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

) COURT OF GENERAL SESSIONS
)

2007-GS-38-0480, 640

State of South Carolina)
)

vs.)

) TRANSCRIPT OF RECORD
) (Trial)
)

Terrell Scott,)
)

Defendant.)

May 15, 2009
Orangeburg, South Carolina

BEFORE:

THE HONORABLE JAMES C. WILLIAMS, JR., JUDGE

APPEARANCES:

DONALD SORENSON, ASSISTANT SOLICITOR
Attorney for the State

GLENN WALTERS, ATTORNEY AT LAW
MICHAEL CULLER, ATTORNEY AT LAW
Attorneys for the Defendant

JENNY H. WILLIAMS
Official Circuit Court Reporter
(803) 576-1743

1 Friday, May 15, 2009

2 **THE COURT:** Did you show the defendants your
3 charge?

4 **MR. SORENSON:** I gave him a copy of it on the
5 table. I don't know if he's looked at it.

6 **MR. CULLER:** Yes, he did, Your Honor.

7 **THE COURT:** Is there any objection to that
8 charge?

9 **MR. CULLER:** I have one, Your Honor. I think
10 it's pretty specific to this case, is my problem with
11 it. It seems like hand of one or the hand of all is
12 pointed out. And, you know, this is particularly the
13 Crebb case. Crebb/Wright talked about robbery which
14 is awful close to the facts in this case.

15 **THE COURT:** Well, of course --

16 **MR. CULLER:** It seems to me that the hand of one
17 is the hand of all charge that the Court generally
18 gives would cover that without going quite
19 specifically into the facts. You can change it and
20 say something else. But I just think the hand of one
21 is the hand of all is innocuous and gives them the
22 law without going into the facts. That's my concern.

23 **THE COURT:** Well, I think he's -- what concerns
24 me is the word "robbery".

25 **MR. CULLER:** Yes, sir, I agree.

1 **THE COURT:** And so I'm trying to think what I
2 could substitute there. Maybe carjacking.

3 **MR. CULLER:** Well, that's what I was wondering,
4 whether that would -- I mean, to be frank with the
5 Court -- whether that would satisfy my concerns.

6 **THE COURT:** Well, does it?

7 **MR. CULLER:** Well, probably not. I would
8 probably, if I had a magic wand, rather just have the
9 hand of one, hand of all.

10 **THE COURT:** But he's entitled to the charge of
11 accomplice. If kidnapping occurs, he's entitled to
12 that part of the charge.

13 **MR. CULLER:** Understood.

14 **THE COURT:** And so I think the only
15 objectionable part is the word "robbery".

16 **MR. CULLER:** I understand.

17 **THE COURT:** Because there's a robbery in this
18 case.

19 **MR. CULLER:** Agreed. And I would just say I've
20 got Judge Ervin's book. I know you've got it. But
21 the hand of one, hand of all charge talks about, as
22 you know, two or more can be guilty of killing. And
23 it talks about if they acted together, which is a
24 little bit more of an innocuous way of addressing it.
25 It's got that language in it as well, 44 of Ervin's

1 charge. I didn't give you what we had.

2 **MR. SORENSON:** Well, part of what I was trying
3 to get at, Judge, it's also under the felony murder
4 rule. So even if you wanted to change it instead of,
5 you know, making reference to such a robbery, just
6 committing an unlawful felony, I guess I would
7 additionally ask for a charge, that of the crime of
8 armed robbery is a felony.

9 **THE COURT:** Do you want me to charge
10 identification?

11 **MR. CULLER:** Identification. I think so, Your
12 Honor.

13 **THE COURT:** Do you object?

14 **MR. CULLER:** I think I've handed those to your
15 clerk. I gave them to Mr. Sorenson earlier. It's
16 all out of -- I tried to put a line next to them,
17 Your Honor, that are all out of Ervin's book, Judge
18 Ervin's book.

19 **THE COURT:** The only problem with Judge Ervin --
20 and I'll have to see how it looks compared to this
21 one.

22 **MR. CULLER:** Yes, sir.

23 **THE COURT:** -- they're just so long, you know.

24 **MR. SORENSON:** This is one, Judge. That may be
25 one. I may have gotten that from you at some point

1 in time in the past. I'm not sure.

2 **THE COURT:** Show that to Mr. Culler and
3 Mr. Walters.

4 **MR. SORENSON:** I mean, I've gotten that from
5 some judge in the past during a trial. I'm not sure
6 if it's Your Honor or not.

7 **THE COURT:** That may be mine. I don't know.
8 His go though over three pages.

9 **MR. CULLER:** I know. I know. He does. Well,
10 do you have one that you're getting?

11 **THE COURT:** He's going to get one right now.

12 **MR. CULLER:** This is almost too -- to be frank
13 with you, I think this is almost too brief to satisfy
14 the concerns I would have. But I don't want three
15 pages either. I agree with you, Judge Williams.

16 **THE COURT:** Well, he's going to bring me mine.

17 **MR. CULLER:** And the last one, Judge, is the
18 charge about inconsistent statements. I don't know
19 if you've got a charge on that.

20 **THE COURT:** I do.

21 **MR. CULLER:** Judge Ervin's charge is pretty
22 short on that.

23 **THE COURT:** Let me find his.

24 **MR. CULLER:** The last two pages, 37.

25 **THE COURT:** Well, this is not exactly the right

1 charge -- because.

2 **MR. CULLER:** Well, that's true.

3 **THE COURT:** Well, let me go get mine.

4 **MR. CULLER:** Okay.

5 **THE COURT:** You look at this one. I have not
6 looked at it on identification. But let me go and
7 get mine out of the back.

8 (Pause)

9 **THE COURT:** How about this? The testimony of a
10 witness may be discredited or impeached by showing
11 that he previously made statements which are
12 inconsistent with his present testimony. The earlier
13 contradictory statements are also admissible to
14 establish the truth of these statements. It would
15 fall to the jury to determine the credibility, if
16 any, to be given to earlier statements that are given
17 by a witness who has been impeached.

18 **MR. CULLER:** That's probably better than this.
19 I agree. It is more to the point.

20 **THE COURT:** If a witness is shown knowingly to
21 have testified falsely concerning any material
22 matter, you may consider this in determining whether
23 to trust the witness's testimony in other
24 particulars. You may reject all the testimony of
25 that witness or give all or part of such testimony

1 the credibility you think it deserves.

2 **MR. CULLER:** I agree.

3 **THE COURT:** I think that's appropriate.

4 **MR. CULLER:** I think that's right. Now
5 identification is fine.

6 **THE COURT:** Okay. All right. Anything else
7 then?

8 **MR. CULLER:** No. I don't think so, Your Honor.

9 **THE COURT:** All right. Now, I never limit the
10 lawyers in these closing arguments. But I have a
11 list of three lawyers that have practiced before me
12 in my career that I have to make an exception to that
13 rule. Mr. Walters is on that list as a result of a
14 four-hour closing he and Mr. Townsend gave in a case
15 that took three hours to try. So I don't like to
16 limit you, Mr. Walters, but I don't want to be
17 sitting here at 2:00 waiting on you to finish your
18 closing.

19 **MR. WALTERS:** Yes, sir, Your Honor.

20 **THE COURT:** I mean, I know it's an important
21 case and I want you to do your job. But, you know,
22 even juries don't need to hear things over and over
23 and over. So just please be considerate of
24 everybody.

25 **MR. WALTERS:** Yes, sir.

1 **THE COURT:** All right, sir. Anything else?

2 **MR. WALTERS:** No, sir.

3 **THE COURT:** You'll open and close?

4 **MR. SORENSON:** Yes, sir.

5 **THE COURT:** Bring in the jury. Hold it. I'd
6 use the word "carjacking" instead of "robbery".

7 **MR. CULLER:** I guess so.

8 **THE COURT:** If you've got some other word --

9 **MR. CULLER:** I think that's fine, Judge. It
10 directly relates to this.

11 **THE COURT:** Okay. Yes, ma'am.

12 (Jury in)

13 **THE COURT:** Good morning, ladies and gentlemen.
14 I trust all of you had a good night. Did any of you
15 read that article in *The Times and Democrat* this
16 morning? I didn't think so. All right. They'll
17 read it later, Ms. Reporter, but not right now.

18 As I told you, ladies and gentlemen, you have
19 heard all of the testimony and the evidence that
20 you're going to hear. The attorneys are going to
21 come to you now and they're going to make their
22 closing arguments. They're going to try to persuade
23 you to see the facts in this case in favor of their
24 respective positions in the case.

25 As I told you earlier, you are the judges of the

1 facts which means you determine the truth of the
2 matters about which you have heard testimony. What
3 the attorneys tell you is not evidence. As I told
4 you I think earlier, evidence is testimony that comes
5 from witnesses who were placed under oath that
6 testify from this witness stand and exhibits that you
7 will have with you in the jury room when you begin
8 your deliberations.

9 But what the attorneys tell you is important.
10 They have a good grasp of the facts of this case.
11 They've been working with it for a long time to
12 prepare the matter for their respective interests,
13 and they know the law in the case. And so what they
14 tell you can help you understand some things and help
15 you understand my instructions to you on the law when
16 I give that to you once they are finished. So please
17 give them your attention.

18 Under our rules Mr. Sorenson goes first. Then
19 the defense will make their argument. Then
20 Mr. Sorenson has an opportunity to make the final
21 argument. So please give them your attention. I
22 don't know how long we're going to be. If I think we
23 need a break between somewhere in there, we'll take a
24 short break. Please remember that these attorneys
25 have very important jobs to do. So be patient with

1 them and listen carefully as they tell you what they
2 think they need to under these circumstances. All
3 right, Mr. Sorenson.

4 **MR. SORENSON:** Thank you. May it please the
5 Court?

6 **THE COURT:** Yes, sir.

7 **MR. SORENSON:** Mr. Walters, Mr. Culler. Good
8 morning, ladies and gentlemen. I want to start off
9 by thanking you for not only your time here today but
10 also the attention that you've paid to this matter on
11 behalf of not only the State of South Carolina,
12 myself, Investigator Shumpert, but also on behalf of
13 the family of 21-year-old Harry Mack.

14 I'm going to take just a few minutes now to kind
15 of go over a little bit of the law involved in this
16 case just to let you know a little bit about how
17 we're going to proceed here. So I'm going to take a
18 few minutes to go over a little bit of the law, and
19 then I'm going to sit down and Mr. Walters is going
20 to have an opportunity to come before you and argue
21 to you what he feels the testimony has show up on
22 this witness stand over the last couple of days.
23 Then I'm going to have an opportunity to then come
24 back before you and argue to you what I feel the
25 facts show, the facts that I submit prove that man is

1 guilty of murder and armed robbery, guilty of murder
2 and armed robbery.

3 Now, as I told you folks several times now,
4 Mr. Scott has been charged with two crimes, two
5 crimes, two indictments that you're going to have
6 back in your jury room. The first one is for armed
7 robbery. Armed robbery is very simple. As I told
8 you the other day, it's the taking and carrying away
9 of property of another, whether their person or
10 presence, through threats or intimidation while armed
11 with a deadly weapon.

12 Very simply, breaking it down, it's stealing
13 property, whether it be money, whether it be jewelry,
14 whether it be drugs from another person without their
15 consent while armed with a deadly weapon, in this
16 case a .357 revolver and two other small handguns.
17 Very simply, that is armed robbery.

18 Now, murder, ladies and gentlemen, as I told you
19 also, murder is the unlawful killing of another
20 person with malice aforethought either expressed or
21 implied or inferred, the lawful killing of another
22 person with malice aforethought either expressed or
23 inferred.

24 And malice, Ladies and Gentlemen, is hatred or
25 ill will towards another person, the intentional

1 doing of a wrongful act without just cause or excuse
2 with an intent to inflict bodily injury on the other
3 person.

4 The aforethought part as opposed to before
5 thought is essentially the opposite of an
6 afterthought. An afterthought is something you have
7 after an incident occurs. What aforethought means is
8 that malice, that evil, ill will, that hatred had to
9 have existed prior to the fatal blow being struck.

10 It doesn't have to exist for any significant
11 amount of time. We don't have to prove that this was
12 something that was planned, that they planned to go
13 there and pull the trigger and kill somebody. We
14 just have to prove that at the time that that trigger
15 was pulled that that malice existed in the mind and
16 the heart of that defendant, Terrell Scott.
17 Premeditation and planning is not required to prove
18 malice.

19 You know, I submit to you you're going to hear
20 that there was a plan involved. As I indicated to
21 you, that malice could be either expressed or
22 inferred. Expressed malice is, very simply, if I
23 walked up to Investigator Shumpert and said, I'm
24 going to kill you, and pulled out a gun and shot him,
25 well, that's expressed malice. I have expressed to

1 him my malice, that evil wickedness in my heart.

2 Okay.

3 We don't always have that. So a lot of times
4 then what you've got to look at is inferred malice.
5 You, ladies and gentlemen, when you get back there
6 and you deliberate, you have various things that you
7 can look at that you can infer malice from.

8 Conduct showing a total disregard for human
9 life, taking three loaded guns and forcing your way
10 into an apartment and shooting and killing somebody,
11 conduct showing a total disregard for human life.
12 And very actively using a deadly weapon, in this case
13 a .357 revolver, you can infer malice.

14 Where one intentionally kills another during the
15 commission of felony, if you go to commit an armed
16 robbery armed with a loaded weapon, a foreseeable
17 consequence of that could be that somebody is going
18 to get killed. So, therefore, you can infer malice
19 from that intentional commission of a felony, in this
20 case an armed robbery while armed with a loaded
21 firearm.

22 Now, another thing that's hard to charge you on
23 that Your Honor is going charge you on is something
24 called the hand of one is the hand of all. I'm sure
25 you've probably all heard of that term before. Very

1 simply, what that means is that two or more people
2 get together, plan to go commit a crime; in this case
3 an armed robbery. We've got three people, Clinton
4 Jones, Maurice Cheeseboro and Terrell Scott. They
5 get together for the purpose of going to commit an
6 armed robbery. You are guilty, you are held
7 responsible for the actions of your co-defendants.

8 There were three people that take loaded guns
9 into an apartment to rob people that are in the
10 apartment. If somebody gets killed as a result of
11 that, you don't have to be the one that fired the
12 fatal shot to be guilty of murder. The hand of one
13 is the hand of all. In other words, the act of one
14 is the act of all.

15 If it is a natural and foreseeable consequence,
16 which I submit to you any time you force your way at
17 midnight into a person's apartment armed with a
18 loaded weapon, two individuals with their faces
19 covered with masks, three with loaded guns, a
20 foreseeable consequence could be that somebody is
21 going to be killed.

22 Ladies and gentlemen, as I told you the other
23 day, just as His Honor, Judge Williams, sits up there
24 and is the judge of the law, and while I'm kind of
25 going over some of this, some legal things with you,

1 one caveat in all this. If at any point in time I
2 tell you something that differs from what Judge
3 Williams tells you, what he charges you on the law
4 when we are done, you are required to take the law
5 according to Judge Williams, not the law according to
6 Don Sorenson. Hopefully I'm not going to misstate
7 anything, but if that were to happen, please take it
8 as the law of Judge Williams.

9 But just as he is the judge of the law, the 12
10 of you as you're sitting there are also judges. You
11 may not realize that, but you're also judges. You
12 are the judges of the facts; in other words, the
13 judges of the credibility. It is you and you alone,
14 the 12 of you, that are going to tell us what
15 happened, what the facts are, what happened back on
16 December 24th of 2006, of 2006.

17 I'm sure you didn't realize that when you came
18 into court initially on Tuesday morning, when you
19 came back in again Wednesday morning what you had in
20 store for you this week.

21 Ladies and gentlemen, this is something -- and I
22 realize nobody gave you a class. Nobody sat down
23 with you and explained to you how to be a perfect
24 juror. But I have confidence in you. Mr. Walters
25 and Mr. Culler have confidence in you. That's why

1 the 12 of you were selected to sit here and decide
2 this case, that you have the proper background, the
3 proper experiences, life experiences, the proper
4 dealings with the people, that you can come in and be
5 judges of the credibility of the witnesses.

6 Very simply, ladies and gentlemen, when you're
7 looking at the credibility of the witnesses that come
8 before you, there are various different things you
9 want to look at. The demeanor of the witness on the
10 stand, how did they appear? Did they appear to be
11 forthright or hesitant in their answers? Was the
12 witness's testimony consistent not only with himself
13 but also with other witnesses that testified before
14 you?

15 What was their opportunity to know the facts
16 that they came to you and testified about? Do they
17 have any bias or prejudice? Do they have a stake in
18 the outcome or some reason to possibly not tell you
19 the truth when they took that witness stand? Was
20 their testimony corroborated by other witness's
21 testimony and the physical evidence that was
22 presented to you?

23 Lastly, something I want to point out, as His
24 Honor has told you, Terrell Scott came in this
25 courtroom the other day and he had no burden of

1 proof. He had nothing -- he could have sat there and
2 not said a word and the lawyers didn't have to ask a
3 single question. The burden is solely on us to prove
4 him guilty.

5 Ladies and gentlemen, as he chose yesterday to
6 take that witness stand, he gave up the right to
7 remain silent. Okay. He took that witness stand and
8 testified before you. And when he did that, he
9 became just like any other witness that testifies,
10 subject to the same scrutiny that I suspect you've
11 seen of every other witness and you have to give to
12 his testimony also.

13 A part of that when dealing with part of this
14 case centers around eye witness identification. We
15 have three individuals: Mr. Randolph, Mr. Gilliard
16 and Mr. Kelly. They have all come in this courtroom
17 and pointed out that man was Terrell Scott and
18 identified him as being the person they saw come into
19 that apartment and ultimately pull out that .357 gun
20 and fired a shot that ultimately killed Harry Mack.
21 So you've got to judge.

22 So you've got to judge the credibility of their
23 identification, the credibility of the identification
24 of Terrell Scott. There are several factors that go
25 into that that you need to look at when doing that.

1 What was their opportunity to observe the person that
2 night? What was the lighting like in the room? Was
3 there anything covering his face? Was there anything
4 that was obstructing their view of the person?

5 What was the degree of attention they had? Did
6 they have a reason to be paying attention to this
7 person? I submit to you in this case, I'm going to
8 talk a lot more about this when I got back up here
9 and go over the facts with you, but do they have some
10 reason to be paying attention and looking and
11 focusing on the person in the apartment? What was
12 the prior description that they gave before they
13 identified him? Is it consistent or inconsistent?

14 What was their level of certainty when they
15 identified the person? In other words, when they
16 were shown the line-up and they picked him out, they
17 came in the courtroom the other day and pointed him
18 out to y'all, how certain were they? Those are all
19 factors that you have to consider when determining
20 the credibility of those identifications.

21 Now, the last thing I just want to mention to
22 you is -- well, actually two things. One thing is
23 you've heard a lot of testimony about statements that
24 witnesses have given throughout the course of this.
25 Pretty much the vast majority of them, you're not

1 going to have those statements back in evidence with
2 you because they are not admissible.

3 You heard the testimony from the witness stand.
4 The things that were inconsistent in those
5 statements, I put them up on the board. A lot of
6 times juries get back there and they wonder, well,
7 where is the statement we heard about? Well, they're
8 not admissible. So you won't have the statements
9 back there.

10 The last thing I want to kind of close on is
11 what Judge Williams kind of pointed out. Nothing we
12 as lawyers during opening statements or closing
13 statements or even questions that we ask during the
14 course of the trial is evidence. Evidence, ladies
15 and gentlemen, is the testimony, the sworn testimony
16 that comes from this witness stand. I just want you
17 to keep that in mind. Okay? Because not only --

18 (Whereupon, the proceedings are interrupted by a
19 cellphone)

20 **MR. SORENSON:** Not only is opening statements
21 and closing argument, questions not evidence, but
22 neither are accusations, speculations, things of that
23 nature that are brought before you. No matter how
24 loud a lawyer asks a question, how angry he gets, how
25 many times he asks it, the question still doesn't

1 become the truth. It's the answer from the witness
2 stand, ladies and gentlemen, that's the evidence.
3 That's something I want you to keep in mind when
4 you're listening to Mr. Walters' closing argument.

5 I appreciate the attention you've given me and I
6 expect you will give Mr. Walters the same attention.
7 Actually I just want to close with this. I just ask
8 you, ladies and gentlemen, please keep an open mind.
9 Please keep an open mind and give me an opportunity
10 to come back before you to argue to you what I submit
11 to you the facts are in this case, the facts that
12 prove that that man is guilty. Thank you.

13 **THE COURT:** Thank you, sir. Mr. Walters.

14 **MR. WALTERS:** May it please the Court. Mr.
15 Sorenson.

16 **THE COURT:** Don't worry about it. I did that
17 myself one time. Some of the jurors wanted to lock
18 me up, but I wouldn't let them.

19 (Court referring to earlier cellphone
20 interruption)

21 **MR. WALTERS:** His Honor when he was qualifying
22 you as jurors, he most importantly wanted to ensure a
23 jury that listens to the facts, the evidence and the
24 testimony that's presented. And most importantly,
25 His Honor wanted someone that could sit down and

1 carefully evaluate the testimony and the credibility
2 of the witnesses that were before the court and most
3 importantly evaluate the evidence that was before the
4 court.

5 Now, in this particular case, when it started
6 off, the prosecution was required to come forward and
7 prove their case beyond a reasonable doubt and to
8 carefully evaluate the evidence. And as jurors you
9 hold them to that standard of proving their case
10 beyond a reasonable doubt; not maybe this happened or
11 it could have been happened, but they must prove
12 their case beyond all reasonable doubt.

13 And no matter how loud I talk or how soft I talk
14 or how emotional I become, the bottom line is they
15 must be held to their burden to prove their case
16 beyond a reasonable doubt. And if we carefully
17 evaluate the evidence and the testimony that has been
18 presented before you these last couple of days, you
19 can only reach one conclusion, that they have failed
20 miserably.

21 The game they're playing today is: You pick the
22 story, you decide which story is best. And of
23 course, as Officer Shumpert said, people solve a
24 crime. The police don't solve a crime. People solve
25 a crime.

1 Well, let's go through the facts, the testimony
2 and the evidence that was presented. And, most
3 importantly, let's get to the bottom line of why they
4 have failed miserably to meet their burden of proving
5 their case beyond a reasonable doubt.

6 The first issue is that this particular event
7 started when this family dumped a family member's
8 body at Orangeburg Regional Hospital. If you'll
9 notice in the opening statement, Attorney Sorenson,
10 he overlooked that issue. He just said someone was
11 shot.

12 And then they brought in Officer Ethridge. And
13 when Officer Ethridge was brought in, of course we
14 pulled out his incident report of what one of his
15 deputies told him. And the testimony was and the
16 statement was that a body was dumped at Orangeburg
17 Regional Hospital.

18 **MR. SORENSON:** I'm going to object because
19 that's not what he said. He did not say dumped.

20 **THE COURT:** Well, the jury heard the testimony.
21 You'll remember the testimony as you heard it, not
22 what I say or what some lawyer says but what you
23 remember the testimony to be. Go ahead.

24 **MR. WALTERS:** A body was dropped off at the
25 revolving doors, the entrance doors at the Orangeburg

1 Regional Hospital. And in this particular case they
2 can coat it any way they want to. The bottom line is
3 is that Terrell Scott never dumped this body at the
4 hospital. The body was dumped by these particular
5 family members.

6 Because today what you're seeing is that all the
7 dirty laundry, all the things that have been going on
8 among first cousins whose parents are brothers and
9 sisters, the evil, the chicanery and the deceit that
10 was going on among them, it resulted in what? It
11 resulted in their first cousin dying. And they
12 dumped his body at the hospital.

13 Whether you're black, white, rich, poor, no
14 matter what, you would expect some type of compassion
15 if someone had been shot and bring them in the
16 hospital and assume the responsibility that you're
17 supposed to assume. That's what we're talking about,
18 the credibility of witnesses, the type of people that
19 you've got before you today. And you can only reach
20 one conclusion with regards to these three boys that
21 have been in here. They are rotten to the core.

22 And in this particular case what happened? They
23 dumped the body off. And instead of calling the
24 police, instead of dialing 911, instead of getting in
25 contact with someone, and most importantly in this

1 particular case, to pick up the phone and simply say
2 someone has been shot, I need you to come to the
3 apartment, we need help; instead of doing that, one
4 of those individuals, John Randolph -- let's start
5 with Mr. Randolph.

6 He's a very interesting character, Mr. Randolph
7 who came before you. And Mr. Randolph was proud of
8 the fact that we smoke weed, we had guns inside the
9 apartment. Eight different charges. He is walking
10 around in Orangeburg County free, walking around here
11 out on bond with eight different charges,
12 trafficking, manufacturing of dope, everything under
13 the sun.

14 And in this particular case, what was his
15 testimony? You have to ask yourself based on this
16 chart that was just presented, the credibility of the
17 witnesses. Look at the demeanor of the witness. He
18 stood there and told you, yeah, I've got eight
19 charges. I'm in Orangeburg County here. What about
20 it? In addition to that, we smoke weed. We've got
21 weapons inside the house.

22 In fact, there was a .380. The bullets were a
23 .380. A .45 caliber gun. And, in fact, in this
24 particular case, to get you to buy into the deal,
25 what did they do? They introduced into evidence the

1 gun of John Randolph. This gun wasn't used to shoot
2 the victim in this particular case. And this gun
3 wasn't used by Terrell Scott. But, nevertheless,
4 they want you to buy into the deal somehow.

5 But what does the evidence show if we look at
6 the credibility of the witnesses? Let's use the
7 prosecution's chart and let's carefully go through
8 their test of the witnesses.

9 First of all, you've got the demeanor of their
10 first witness, Mr. John Randolph. What was his
11 testimony? Mr. Star. We all wonder where that name
12 comes from. But that's his nickname, Star. We've
13 got an idea where it comes from. But what did he
14 first say?

15 He said, well, I heard one gunshot. You heard
16 the testimony of Agent Paavel. What did he say?
17 Agent Paavel said if you fired that gun inside of
18 this room, everyone would know this gun had been
19 fired. But the testimony has been that John Randolph
20 heard one shot. Other members in the house heard two
21 or three shots. In fact, that was the testimony of
22 Will Gilliard.

23 And in this particular case he goes on and he
24 talks about what happened. He states someone was
25 wearing a mask. Someone was somehow covered up. He

1 goes on and argues that one of the murderers was
2 wearing a stocking cap. In addition to that, he left
3 the apartment after his loved one was shot.

4 Imagine that. Your first cousin has been shot.
5 You steal his cellphone. You jump inside your own
6 car. You drive 23 miles away from where the shooting
7 occurred. You have to ask yourself -- and the police
8 have never solved this. They have never asked the
9 questions. They have never addressed these issues.
10 They never even raised these issues.

11 We asked the police department: What was he
12 doing driving 23 miles away from where the shooting
13 occurred? And what did he do? Instead of going to
14 the hospital and saying, I need to check on my
15 cousin. Because you remember what Will Gilliard
16 said? I love him. Do you remember that?

17 John Randolph, in this particular case, he drove
18 away, and then he called back and he said, you all
19 meet me at the hospital. What happened when they
20 left? Randolph was there. And of course Kelly says,
21 well, we didn't go out The Oaks. I went to The Love
22 Station. All right. So there's a contradiction as
23 to where.

24 But in this particular case Randolph says, well,
25 I called them on the phone and we met. So at that

1 meeting is Gilliard who is the first cousin who is in
2 love with his cousin but he dumps the body at the
3 hospital. And remember Terrell Scott wasn't there.
4 Okay? The second is is Randolph is there.
5 Mr. Eight-Charges-Walking-Around-Orangeburg, very
6 proud of the trafficking and manufacturing of dope.
7 And he loved his cousin. All right.

8 And then we've got Lawrence Kelly, Mr. Kelly who
9 is from Detroit. Remember him saying to you, you had
10 to ask yourself what's up with this Detroit
11 connection? But, nevertheless, these three people
12 meet after someone has been shot. And you can infer
13 from their behavior there was a discussion.

14 And what happened in that discussion? One
15 person panicked. You know who it was? Lawrence
16 Kelly. Couldn't control him. Lawrence Kelly said,
17 look, I dumped the body. I can't have anything to do
18 with this. And what does he do? He takes off. In
19 fact, his testimony was I wiped the blood out of the
20 car, the same car that Investigator Shumpert and
21 nobody else raised any issues about.

22 A body is dumped at the hospital, and the police
23 department, they don't even stop them and say, look,
24 we need to look inside the vehicle. We need to know
25 if this actually happened. He says he drove away and

1 he wiped the blood out of the car.

2 Now, when Kelly panics as a result of this, he
3 disappears. So then what happens is Randolph, he
4 talks to Gilliard, and what do they say? Let's go
5 back to the hospital because we've got to put up a
6 good front.

7 Now, was Terrell Scott present during any of
8 this? Was Terrell Scott involved in wiping blood out
9 of the car? Was Terrell Scott involved in any
10 shooting that occurred in an apartment? Well, let's
11 talk about the apartment. There is no blood. You
12 can't find any of them weapons. They didn't even
13 canvas the neighborhood to see were there three shots
14 that were fired in this particular neighborhood.
15 They failed to do so.

16 And they say this is good police work because
17 people solve crimes. The police don't. It's your
18 job to go out and find out. Give us a call and let
19 us know.

20 But in addition to that, if you go to the
21 apartment, and you've seen these pictures over and
22 over and over again, if we carefully go through those
23 pictures, it's a coffee table that's turned over and
24 the leg is broken. And that coffee table that's
25 turned over, the leg is broken, the rest of the

1 house, what did Officer Carter say? Well, the
2 bedroom didn't look like it was disturbed.

3 It's not Lieutenant Carter's fault that he
4 didn't have a footprint to compare with another foot.
5 It's not his fault that he didn't find any blood. He
6 said that's what I got. I got no blood at the scene.
7 I've got no bullet casings at the scene. There were
8 three shots that were for identification but I don't
9 see anything inside of the apartment.

10 What do we find inside of the apartment? What
11 do we find? 12-gallon bags with a leafy substance in
12 it that he believed to be marijuana. 12 of these
13 bags, well, guess what? So much money is being made
14 we can infer somebody is subscribing to *The Wall*
15 *Street Journal*. Imagine that; Mr. Randolph
16 subscribing to *The Wall Street Journal*. In addition
17 to that, he is taking an M2K case on tradings
18 options. But as he said, we have guns. We have
19 dope. We have money. I am unstoppable. And he's
20 walking around right here in this community now.

21 But in addition to that, Mr. Randolph, had goes
22 on and he testifies that, yes, I left and I went
23 somewhere else and I used the phone. The question
24 was, well, who did he call? He didn't call his
25 family. He didn't call his mother. He didn't call

1 the young man's daddy. Who did he call?

2 The police never followed up with that phone to
3 find out what calls were being made. They never
4 inquired as to the meeting itself and what was going
5 on. The chicanery and the deceit here cannot be
6 denied. And that is what the physical evidence
7 shows.

8 So let's go through the solicitor's test. If we
9 look at the demeanor of John Randolph and we look at
10 the witness himself, was he forthright or hesitant?
11 His statements are inconsistent over and over again.
12 Was there an opportunity to be consistent? We'll
13 never know because the truth is nobody wants to get
14 to the heart of the matter.

15 And the reality is: We only asked one question.
16 Did these cousins actually kill their cousin? Did
17 they kill their first cousin? And did the police in
18 this particular case fail to follow up to raise the
19 proper questions?

20 In addition to that, is there a problem of bias
21 or prejudice? In this particular case Mr. Randolph
22 was in major trouble. When you think of Mr.
23 Randolph, just say the word 94. He is facing 94
24 years in jail. And he's walked in this courtroom and
25 said, please believe me. I have a loving family and

1 I love my cousin. I would take care of him.

2 In addition to that, let's use the next test
3 that they had. Was the testimony corroborated by
4 other testimony or evidence? Well, it's obvious the
5 physical evidence doesn't support the testimony that
6 there was somehow some struggle in the house. There
7 were over seven men, it is alleged, that were inside
8 of that house. And there is no fingerprints.

9 And Officer Carter is right. Sometimes you
10 can't get a fingerprint. But these people were
11 actually living in the home. What you have to ask
12 yourself is, is that after this particular individual
13 was shot and the story was given to the police and
14 they went back to that house and the house is clean
15 and you can't find anything and "Pookie" said he
16 wiped the blood out of the car, he disappeared, the
17 machinations and games that are going on among these
18 people has come to an end. And in this particular
19 case they even went so far as to play our Sheriff's
20 Department.

21 What do the facts show? Lawrence Kelly, the
22 same individual that they tried to hide from the
23 police, because if you remember they inquired of Mr.
24 Gilliard, and they said, what's his name? He said
25 "Pookie". The pressure came down some more. Then he

1 said, well, he might be kin to my wife and he's from
2 Detroit.

3 Now, if you're a married man, I know all my
4 wife's people and my wife knows all my people, good
5 and bad. But then he rolls over and he says, well,
6 he might not have been.

7 Then I asked the officer on the stand, I said,
8 well, the next thing that was given to you was
9 Lawrence Williams. He said, yes, that might be a
10 typo. But then eventually they tracked him down.
11 Because among that group "Pookie" was a weakling. He
12 ran from the hospital. He ran from over at The Oaks.
13 He wiped the blood out of the car. He disappeared.
14 He didn't want anything to do with it.

15 But then the pressure was on "Pookie". And what
16 did "Pookie" to? He ran up to the police department
17 and he started pulling out mug shots. They said, if
18 your story is believable, why don't you pick out the
19 man that committed the crime? And what did he do?
20 He said, that's the man. And what does the police
21 department say? Well, he said he was 70 or maybe
22 80 percent sure.

23 Maybe he was five percent sure. The bottom line
24 is there was an ID that was made by Lawrence Kelly.
25 You heard Officer Shumpert. What did he say? Yeah,

1 it was Mr. Washington. This is the second time
2 someone has been accused of committing this crime.

3 And I inquired of the officer, I said, do you
4 feel sometimes like you're being played? Are people
5 really solving the crime? Our law enforcement here
6 in the county, are the crooks or the cops running the
7 police station? And my question was, how did you
8 come up with this particular person? Well, Lawrence
9 Kelly called me. He ID'd him. He circled it. He
10 signed his name to it. He signed his name to a
11 document that says this is the man that committed the
12 crime.

13 And he has the audacity to walk in this
14 courtroom today and say, well, I changed my mind.
15 There's someone else that committed the crime. And I
16 said, well, how did you have any information that
17 Terrell Scott committed this crime? What information
18 do you have that Terrell Scott is the one that
19 committed this crime?

20 Officer Shumpert, what did he say? Well, I got
21 a call. And what a gratuitous event. Officer
22 Shumpert after receiving that name from Lawrence
23 Kelly, he placed this document on his desk. Do you
24 remember this document? He places it on his desk and
25 he says, that's the guy. Well, isn't that

1 interesting? It's all a script in a story. And they
2 want you to buy into it and believe it.

3 Number one, we have bad police work because they
4 did not substantiate anything that occurred that
5 night. They don't even have a murder weapon before
6 you today and they brought you a gun that belonged to
7 somebody staying inside of the house. There was so
8 much attention given to putting this gun in the
9 evidence. And the gun has no bearing, no relevance
10 with regards to any issues before this court. They
11 want you to buy into it. Or as the officer says, you
12 solve the crime, because we certainly can't do it.

13 We're just told that John Jones committed the
14 crime. We go get a picture of John Jones. We say,
15 is this the man? And they turn around and say, okay,
16 let's put everything in motion. They have already
17 put one man through that horror.

18 And Lawrence Kelly panicked again. I don't
19 think I have it right. That's not the guy. Now he's
20 back again and here today he says -- what did he say?
21 I loves my weed. Mr. AKA Detroit. I have
22 credibility.

23 So if we carefully evaluate the testimony and
24 whether there's a bias or whether there's a prejudice
25 and what's been given by the State in this particular

1 case, John Randolph fails on all counts.

2 If we move to the others, Will T. Gilliard, he
3 is the one who vouched for the man who came in the
4 room he said. Shorty Straight; I know him from 45.
5 All right. He is the man that got up and opened the
6 door and allowed two people to come in. He is the
7 man that was in the car when the body was dumped. He
8 is the man that had conversations with "Pookie" when
9 "Pookie" took off and cleaned the car. He is the man
10 that got with Randolph and went back to the hospital
11 and I asked Officer Ethridge on the stand.

12 I said, what about their statements? Do they
13 make any sense? They kept adding more to their
14 statements, over and over again. These are the
15 people handling the car. These are the people that
16 delivered the body to the hospital. And I won't use
17 the word dumped. Let's just say they took him out of
18 the car and left him there and jumped back in the
19 car. These are the people they want you to believe
20 in.

21 He then goes on and testifies that he heard one
22 shot. But then you've got to ask yourself, why did
23 Mr. Kelly hear two or three shots? If you've got an
24 expert from SLED saying that that gun was fired one
25 time, you would know it inside of this room.

1 Everyone would know it.

2 Then he is forced to go back to the hospital.
3 Mr. Gilliard actually gets into a car and says who is
4 going to go back and who is going to explain what
5 went on. And Terrell Scott is not a party to any of
6 this. But then Officer Shumpert in this particular
7 case, he follows up, and he goes after this
8 particular man. He finds out, well, there's nothing
9 there because Mr. Kelly has come back and he's
10 changed his mind. So this abandoning him at the
11 hospital is all somehow covered up.

12 But if we move on and we go through the
13 credibility of the witnesses that are brought in to
14 testify, they then begin a process of searching the
15 jails. And they begin this process of searching the
16 jails. We'd end up with the three jailbirds that
17 come forward. It's called Let's Make a Deal.
18 Everybody wants a deal at the jail. It's a snitching
19 process. I tell on you. I'll tell on anyone. I'll
20 tell on my mother, my grandmother. Just get me out
21 of this jail. Just do whatever you have to do but
22 get me out of this jail. Just give me a name. Just
23 give me an opportunity.

24 And if you carefully look at the stories that
25 have been put forward, first there's Clinton Jones.

1 In his testimony, and he admitted in his statement,
2 he said they made me go to Iraq. Can you believe
3 that ludicrous statement? Someone made him go to
4 Iraq. And they want you to believe that. But Jones
5 says in front of you: I changed my mind. I changed
6 my story. I changed my story today when I testified.

7 In a statement he says, we were outside the
8 house, outside the apartment. Never says that he
9 went inside the apartment. But he says today, I
10 changed my mind. I want you to support me. I want
11 you to work a deal. Something has got to be done. I
12 could go to jail.

13 In addition to that, we had Maurice Cheeseboro.
14 But before we got through with Mr. Jones, in his
15 statement, what did he say? He said, I know him from
16 Maxcy Street. He's one of the boys. We hang out
17 together. I've seen him before. You know, we talk.
18 We said, well, what type of car were you in? I
19 forgot what kind of car I was in that day.

20 Let's move to Mr. Maurice Cheeseboro. Do you
21 remember one of these boys that's out on bond? Now
22 he's committed murder and he goes to O.C. Tech. That
23 tells you something about our law enforcement and
24 prosecution. He is out on murder charges.

25 **MR. SORENSON:** I'm going to object to that.

1 What does that have to do with prosecution, whether
2 he's out on bond? I mean, how --

3 **THE COURT:** Stick to the facts of this case.

4 **MR. WALTERS:** Maurice Cheeseboro, his testimony
5 is we were in a gray car. But the testimony has
6 consistently been that there was a blue Caprice that
7 was used. Then there was a Nissan Sentra. Then it
8 was a blue or gray car. Now we're in a gray car with
9 Mr. Cheeseboro. So you pick the vehicle that was
10 used in this particular crime, because the police
11 don't know. The prosecution doesn't know. So let
12 the people solve the crimes.

13 But then they go on and argue that we stayed
14 inside the car. That's Mr. Cheeseboro's testimony.
15 He never went inside the apartment. But then he came
16 in this courtroom and said, well, I changed my mind.

17 Then we move to Daniel Young. Daniel Young in
18 this particular case, facing almost life in prison,
19 working with the Feds. He says, I know these people.
20 I have an association with them. He goes through all
21 the details. He says that the arm was placed around
22 the neck and a gun was put to someone's head. But he
23 was never there. He says he was told this
24 information.

25 But what happened when Mr. Culler was cross

1 examining one of the jailbirds? He came up and said,
2 I grabbed him on the arm and I had the gun in my left
3 hand. They couldn't get their story together. Do
4 you remember when the solicitor, Mr. Sorenson said,
5 did you take any jewelry? Do you remember you took
6 that jewelry? And what did he say? No, I didn't
7 take any jewelry.

8 The whole story is choreographed to try to put
9 it together to make it ebb and flow and get you to
10 buy into it. But where is the police work that
11 should have been done? What we have is a group of
12 people that are rotten to the core that engage in all
13 type of deceit. I will tell on you. I will tell on
14 my sister. Just give me a name and I'll give you a
15 story.

16 And you have to ask yourself, based on all of
17 these statements, how do these individuals in this
18 particular case come up with such details, around the
19 neck, I grabbed someone and I held the gun in my
20 other hand. In addition to that there was a bag that
21 was on the stove there.

22 These people will lie and do anything to get out
23 of jail. You remember the questions that were asked.
24 What would you do to see your daughter? What would
25 you do to see your mama? What would you do to get

1 out of jail and not spend the rest of your life
2 there?

3 The police have engaged in their work. And
4 guess what their work was? We're going to go down to
5 the jail and see if we can find somebody that wants
6 to make a deal. But we don't have to go out and do
7 the police work. The police work is simply the hard
8 evidence and what the facts show.

9 Now, in this particular case there's a lack of
10 physical evidence. The script has been written. And
11 most importantly in this particular case were these
12 inconsistent statements. The only way they can
13 explain, do you remember Mr. Sorenson, what he said?
14 Mr. Sorenson said, well, you were sleepy when you
15 talked to the police and as a result of being sleepy
16 you gave a statement that may not have -- might not
17 have been that right. Okay. But they've had over
18 two years to try to get their story together, and
19 consistently they have failed to do so.

20 I ask that you carefully evaluate the testimony,
21 the drawings they put into evidence. This was
22 supposed to be a drawing of the shooter in this
23 particular case. There was testimony, all the
24 statements show this, the people were wearing masks.
25 There was testimony somebody was wearing a baseball

1 cap. This is a soccer cap. That's what it said in
2 the statement. And this is the same drawing that was
3 used to go out and pick up Mr. Washington.

4 They don't have their act together. And when
5 inquiring of the police department as to why did you
6 do this, why did you approach this case in this
7 manner, Officer Shumpert said, well, I wasn't
8 responsible for that. I said, well, you were in
9 charge. You walk in this courtroom, there is no
10 question as to who's in charge of this particular
11 courtroom. His Honor. We all know who's in charge.

12 He was in charge of that crime scene. He had a
13 responsibility to address those issues. But based on
14 the facts and the evidence that's been presented and
15 the credibility of the witnesses that have been
16 presented before us, there is one big issue that the
17 prosecution really, really harps on. They attempted
18 to do this yesterday.

19 They said, oh, they called him a snitch. Do you
20 remember that? Yeah. In this particular case that's
21 what they kept saying. Well, you know what? If
22 placed in a jail cell with someone that wants to take
23 away my life and my freedom, I probably would say
24 something more egregious than snitch. I would
25 probably call him every name in the book. Because if

1 you're going to lie and cheat and deceive to try to
2 get your position in life, you see what this case is
3 about, this case is really about what the Bible says.
4 You reap what you sew in life. You reap what you
5 sew. And that's exactly what's happened to these
6 boys in their behavior and the way that they carried
7 on.

8 God is a righteous God. And if you live the
9 life that they have lived and engage in the behavior
10 that they have engaged in, it can only bring their
11 downfall. And what's being exposed now to their
12 families and to their friends and everyone else, if
13 they can't fool the police department any more, they
14 can't fool themselves any more.

15 The bottom line is that a judgment is being
16 passed, and they're trying to pass it off on someone
17 else, because all of you are asking the same
18 question. Who really killed this young man? And the
19 only conclusion that you can reach based on the
20 inconsistencies is Mr. Randolph, Mr. Gilliard
21 Mr. Kelly, all of them had something to do with it
22 and they are hoping that through these so-called
23 snitches and people that work their stories and want
24 to work their charges off and a police department
25 that will react to anything they had to say, they are

1 hoping that that will take the blame away from them
2 and their behavior.

3 When you go back there in that jury room, you
4 remember the righteousness that's been. Because it's
5 all being brought out today. Don't allow a judgment
6 to be passed on someone just if they attempted to do
7 it on someone else. The evidence is not there. The
8 inconsistencies of the statements is just not there.

9 The bottom line is the police have failed to do
10 their job. They have failed to address these issues.
11 And now they've allowed three men to engage in all
12 types of behavior and have made enough money through
13 illegal means, they came in front of this jury and
14 said, yeah, we smoke our weed. We're breaking the
15 law again. But now we're going to change our
16 statements and want you to buy into it.

17 The bottom line is is that a judgment is being
18 passed here. And they are being exposed today for
19 what they have done. And if you carefully evaluate
20 the evidence, they must prove their case beyond a
21 reasonable doubt. And if you honestly sat down, I
22 can sit down and solemnly say that beyond a
23 reasonable doubt that Terrell Scott was involved in
24 this or particular event, you can only reach one
25 conclusion. I just can't say it enough. If you

1 don't know what to be around, if you don't want to
2 hear that discussion, if you believe it is a part of
3 their life and they're saying, believe me, an
4 upstanding citizen, I came forward. But the facts
5 show that most of our lives and they played everybody
6 under the sun, including Orangeburg's finest.

7 So when you sit down and you go in that jury
8 room, you want to be able walk out of that jury room
9 when you go home tonight and take a nice bath and go
10 to bed. When you get up in the morning, do you know
11 what you want to be able to say? When you look in
12 the mirror and you look at yourself, you want to say
13 while you're combing your hair or you're shaving your
14 face, you want to be able to say, I did right by my
15 neighbor. I did what was just and what was fair.

16 But in this particular case, when you go back in
17 that jury room, he gets the last argument. Make him
18 explain why there's no blood. Make him explain --
19 and talk about his forensic experts that he brought
20 in. What did Tyler Simmons say? Remember she was
21 the expert with the gunshot residue kit? And what
22 did she say? You can sweat it off or wash off
23 anything from a gunshot in a couple of minutes.

24 Well, what happened in this particular case? A
25 man was shot, taken to the hospital. Everybody fled.

1 They met. Then they went back to the hospital. And
2 they said, okay. Yeah. We'll give you the gunshot
3 residue kit. We'll do whatever you want us to do.
4 And in addition to that, we'll blame a man for the
5 crime that didn't really commit the crime.

6 What did the expert say? Mr. Paavel? If the
7 gun is fired, everybody knows it. He never checked
8 the nail clippings. In addition to that, if we go
9 forward with the evidence presented by Gerald Carter,
10 make him explain this, make the prosecution explain
11 why the physical evidence does not corroborate
12 anything that was said.

13 If you sit down and just write a list out: No
14 blood, no gun, no bullets, no damage to the
15 apartment, no gunshot residue kit where these kids
16 disappeared and then they turned around and called
17 police back, the inconsistent statements, the only
18 thing they have on their side is we've got jailbird
19 number one, jailbird number two, 94 years, 100 years,
20 20 years; jailbird number three, jailbird number
21 four; Mr. Randolph who soon may be a jailbird. We've
22 got all these people that somehow can come forward
23 and we want you to believe that.

24 Oh, in addition to that, he was in the back and
25 he got in an argument with somebody and called the

1 snitch. I'd call you more than a snitch. I'd call
2 you everything under the sun if you're going to take
3 my life away, my family from me.

4 What evidence do they have that they can put on
5 this side of the bar that says we have physical
6 evidence that proves that you committed this crime?
7 All they've got a group of people that says I will
8 lie to anybody under the sun, I was smoking weed, I
9 was having a ball, I've got guns, I've got ammo, I've
10 got everything under the sun. I'm going to O.C., I'm
11 going to school while I'm charged with murder. I'm
12 walking around in this community, in and out of this
13 courthouse, and I've got eight charges for marijuana,
14 for anything else under the sun. Please believe me.
15 Just put this thing away. Just buy into the script.

16 It's sort of like putting somebody's picture on
17 your desk and they walk in and you say, oh, did you
18 notice that? Oh, we've got a person here. I don't
19 know why I had this on my desk; but, nevertheless,
20 you saw it and we're going to roll with it and we're
21 going to blame this person, just like we blamed the
22 person before.

23 Over and over and over again, they seem to be
24 trapped by their own sword. They seem to be trapped
25 by the testimony and the inconsistencies. In

1 addition to that, I would ask that in this particular
2 case when you consider the jailbirds and you consider
3 the three boys and you consider the confrontation of
4 that man in the holding cell that you do one thing,
5 that you do justice. Simply ask yourself one
6 question. Did they prove their case beyond a
7 reasonable doubt? And I would argue that under the
8 circumstances and the evidence that's been presented
9 they failed miserably.

10 This is Mr. Sorenson's chance. I can never talk
11 again. This is the only opportunity I'll have to
12 plead for my client and that justice prevails. This
13 is so important. Because your decision is final with
14 regard to my client, final, I ask that you strongly
15 consider it.

16 And whatever your conviction is, when you go in
17 that back room, stand your ground and stand your
18 position. Because the bottom line here is that while
19 judgment is being passed, while our Sheriff's
20 Department is being exposed, these boys are being
21 exposed; but as far as the evidence against Terrell
22 Scott, we've got a bunch of jailbirds that are
23 willing to say anything.

24 They'll dance. It's like going to a Jukebox and
25 dropping the quarter in. You pick the song and

1 they'll sing it. Right now they're playing anybody
2 sitting in this room just so they can get out of
3 jail.

4 So, in totality, after looking at all the facts,
5 the evidence and the circumstances, the information
6 presented before you, I believe that the State has
7 failed miserably to prove their case.

8 Please stand your ground and understand that
9 this family is suffering. They've lost a loved one.
10 My words are not against their family. If they lose
11 a child, God knows nobody wants that to happen. And
12 God knows a family doesn't want to have any of their
13 business exposed to the public. But that's what's
14 happened here under the circumstances because of
15 those boys' behavior. And we have to deal with it.
16 Do justice. Do justice. Do justice.

17 **THE COURT:** Thank you, sir. Mr. Sorenson.

18 **MR. SORENSON:** May it please the Court, Your
19 Honor.

20 **THE COURT:** Yes, sir.

21 **MR. SORENSON:** Ladies and gentlemen, if there's
22 one thing I've learned unfortunately due to the job
23 now over 13 or 14 years is that you never really know
24 when your time is going to come. You never do know.

25 One minute you can be sitting in an apartment

1 with family and friends goofing around, getting ready
2 to go out to a club the day before Christmas; never
3 would you ever imagine, would you ever imagine that
4 less than 11 hours later you could be laying naked on
5 a pathologist's metal table getting ready to be cut
6 open for her to determine what caused your death.

7 Harry Mack had no idea that night that was what
8 his future held. His family had no idea in the early
9 morning hours of December 24th right after midnight
10 of 2006 that 24 hours later, instead of planning
11 their holidays and getting together for a joyous and
12 happy time of year they'd be making arrangements to
13 bury their 21-year-old son, 21-year-old brother,
14 21-year-old nephew. But that's the bad man's actions
15 right there that brought that family to that holiday
16 season.

17 As I told you, ladies and gentlemen, at the
18 outset, you never know when your time is going to
19 come. It would be nice to know, however, that when
20 it does come it was for more than a couple of hundred
21 dollars and a little bit of marijuana. Because
22 that's what Terrell Scott, Clinton Jones and Maurice
23 Cheeseboro, that's the value that they ultimately
24 placed on Harry Mack, Jr.'s life, a couple of hundred
25 dollars and some marijuana. I submit to you that's a

1 shame. That is a shame.

2 I'm going to take a little bit of time. I
3 promise I'm going to try not to be too long-winded
4 here. I'll talk to you about what I submit the facts
5 are in this case. The facts. Not the speculation,
6 not the innuendo, not the accusations which you've
7 had to listen to from Mr. Walters, but the facts.

8 And I'm going to break it down, ladies and
9 gentlemen, into three different categories. Okay.
10 First I'm going to talk about the incident, the
11 actual armed robbery and the murder of Harry Mack.
12 Then I'm going to talk about Mr. Young,
13 Mr. Cheeseboro, Mr. Jones, and then ultimately about
14 the thing that you didn't hear a single word out of
15 Mr. Walters about, that's about his case they put up.

16 To start off, you know, let's talk about the
17 incident that occurred dealing with Mr. Randolph, Mr.
18 Gilliard and Mr. Kelly. It is unbelievable,
19 unbelievable, the defense wants so bad, so bad to
20 focus the attention away from Mr. Scott.

21 I mean, they have gone all the way to the point,
22 I mean, they want to paint these three young men in
23 as horrible a light as they possibly can, all the way
24 to the point of Mr. Walters actually accusing them,
25 calling them murderers, that they did it, that they

1 killed their cousin. Unbelievable, ladies and
2 gentlemen.

3 Now, keep in mind I want to go through what
4 happened out there. Okay. And while dealing with
5 all of this, I want you to keep in mind the
6 credibility. Because as I told you from the outset,
7 that's what you all are ultimately going to have to
8 determine. All right. Let's talk about what
9 happened that night and the early morning hours of
10 December 24th of 2006.

11 You've got four guys sitting around in an
12 apartment smoking some marijuana getting ready to go
13 out to a club, waiting for two of them to get ready.
14 That is undisputed. I mean, all three of their
15 testimonies is absolutely consistent to that effect,
16 that Mr. Kelly and Mr. Gilliard showed up there
17 sometime before midnight, smoked a little bit of
18 marijuana waiting for Mr. Randolph and Mr. Mack to
19 get ready so they all could go out to a club.

20 Okay. At that point in time there's a knock on
21 the door. Mr. Mack goes and answers the door. There
22 is a man standing there, initially in the doorway, a
23 conversation back and forth between initially Mr.
24 Mack and Mr. Randolph with this individual that they
25 will all later identify as being Terrell Scott, about

1 not knowing who he was.

2 He is asking for some weight or some drugs or
3 something to that effect. I submit to you that is
4 uncontradicted, that all three of those witnesses
5 testified, and that he ultimately stepped in when Mr.
6 Gilliard said, I recognize you. I recognized him. I
7 told him that, that I'd seen him before in Santee.
8 Okay. Then again, uncontradicted between the three:
9 Mr. Randolph, Mr. Gilliard, and Mr. Kelly.

10 And at that point in time, after he'd been in
11 there for a few minutes, Mr. Gilliard gets up and
12 goes to the door to get out and go outside and get
13 some air because he is getting an uncomfortable
14 feeling about what's going on in there.

15 And so at that point in time two masked men come
16 rushing in, both armed. And at that point in time,
17 ladies and gentlemen, keep in mind, so now up to that
18 point in time their testimony is I submit to you
19 almost 100 percent consistent between the three of
20 them. Okay.

21 And the little inconsistencies start here.
22 Okay? Keep in mind. Now I want to go over what
23 happened within the next five or ten minutes of these
24 young men's lives. There are two masked men rushing
25 in armed with guns. We've got another man inside the

1 apartment that pulls out a big .357 revolver and
2 fires a shot, a loud deafening shot inside that
3 apartment. We've got Harry running to the back. He
4 has been shot now as he is running back to that back
5 bedroom, rounding the corner, shot on his left side
6 going towards the bedroom.

7 Everybody is hitting the floor. They've got
8 guns pointed to their heads, people rifling through
9 their pockets. One is lifted up in the kitchen with
10 a gun put to his head demanding money, demanding
11 drugs. Property is taken off of them. Then the
12 three people leave.

13 Ladies and gentlemen, I would be concerned if
14 those three witnesses all came in here and told you
15 word-for-word identically the exact same thing. This
16 is where your common sense comes into play, your life
17 experiences.

18 Think about it. Any time you have multiple
19 people that see a stressful event, now, keep in mind
20 it doesn't end there because they didn't realize when
21 they go back to the bedroom that Harry was shot.
22 They take him to the hospital. They're panicking at
23 that point in time. Because, I mean, there's no
24 doubt about it. They were up to no good.

25 Harry was smoking marijuana and probably is

1 selling marijuana out of that apartment. There isn't
2 any question about it. That is the whole motive for
3 why this happened to begin with. That's why
4 Mr. Jones, Mr. Cheeseboro and Mr. Scott went there in
5 the first place, because they thought there was going
6 to be drugs in that apartment.

7 Then they get back. Law enforcement shows up.
8 They're taken to the police station. They proceed to
9 then spend essentially about the next 12 to 16 hours
10 at the Sheriff's Office being questioned over and
11 over by law enforcement.

12 It's common sense, ladies and gentlemen, that
13 every time they are talked to they will not go into
14 tell every single, little, minute detail of what
15 happened. They have now been up the since the day
16 before. They have gone through what hopefully is
17 probably the most stressful situation any of those
18 young men will ever go through in their lives.

19 They have had guns pointed at them. They have
20 now learned that for two of them a family member, a
21 first cousin is dead. You know, nobody sat down with
22 the three of them at 11:30, 12:00 that night and told
23 them, all right, you know, in five minutes something
24 horrible is going to happen to you and I need for you
25 to make sure that you pay attention to every single

1 detail because God forbid if you come into this
2 courtroom two and a half years later and make a
3 mistake about what hand somebody was holding their
4 gun in, because that means that you're a liar, not
5 only a liar but that you are probably also the
6 murderer. Nobody sat down with them and told them
7 that, ladies and gentlemen, because it doesn't work
8 that way. It doesn't work that way.

9 I submit to you that inconsistencies are
10 expected. Okay. The fact of the matter, when you
11 look at all three of their testimony though, it is
12 essentially corroborated. Okay. Three of them all
13 talk about the initial person coming in. They
14 describe them all. Five-foot-eight, kind of short,
15 chubby, facial hair. They all describe the other two
16 individuals that come rushing in with the guns, their
17 faces covered consistently. They all describe being
18 put to the floor.

19 And you saw them. I mean, you'll have all these
20 pictures back in the jury room. Consistent with what
21 the victim said, that there was some sort of he said
22 a struggle about people being thrown to the floor in
23 the living room and stuff being overturned.

24 And you've got a lamp knocked off the end table,
25 consistent I submit to you with where Harry would

1 have been running rounding that corner from here into
2 the bedroom when that shot was fired hitting him in
3 the left side. Stuff knocked over in the kitchen
4 where Mr. Randolph was put to the floor; that table
5 upside down, stuff all over it. I think it's
6 consistent with what that say happened inside that
7 apartment.

8 Mr. Walters makes a big deal out of this is
9 something I told you to look out for. Okay. I told
10 you that what we tell you is not evidence. Okay.
11 What we tell you is not evidence. Just like the
12 questions that are asked by the lawyers are not
13 evidence. It's the answers to those questions.
14 Okay.

15 And Mr. Walters can say to the witness over and
16 over, isn't it true the sky is red? But, you know,
17 if the witness says no over and over and over again,
18 no matter how loud you ask it, no matter how many
19 times you ask, it doesn't make that a fact. Okay.

20 And some of these things here, I mean, we heard,
21 I don't know how many times I've heard Mr. Walters
22 talk about John Randolph driving 23 miles away to The
23 Oaks. I don't recall hearing a single witness
24 testify anything about them driving 23 miles away or
25 knowing what some place called The Oaks is. That's

1 his questioning. Nobody answered. I mean, I don't
2 know where that's coming from. Okay.

3 Dumped him outside the hospital. Yet again, his
4 terminology, his accusation. I submit to you not the
5 evidence, not the evidence.

6 There was three shots fired. And if you
7 remember this in his opening argument two days ago
8 when he had those little flip cards up here and he
9 was listing a bunch of things that he said were
10 undisputed. It's undisputed that there were three
11 shots fired in that apartment.

12 You now have heard testimony from five witnesses
13 that were present inside that apartment, five of
14 them. John Randolph, one shot fired. Will Gilliard,
15 one shot fired. Maurice Cheeseboro, one shot fired.
16 Clinton Jones, one shot fired. Even Daniel Young
17 testifying about what Terrell Scott told him, one
18 shot fired.

19 The only place that number three comes up is
20 Lawrence Kelly who says it was either two or three
21 shots, not that it was three. Okay. Yet again, that
22 is the little inconsistency that you expect when you
23 have a traumatic event, you have people rushing in
24 all with guns, people being thrown to the floor,
25 people running, a shot being fired. People are going

1 to remember things slightly differently.

2 Mr. Walters wants you to believe that because of
3 that, because of that inconsistency, the fact that
4 Mr. Kelly said it was two or three shots that it
5 didn't happen. That it didn't happen? Well, that
6 makes no sense. It makes no sense.

7 I'll talk to you briefly about the line-ups
8 here. Basically Mr. Walters told you in his closing
9 just a few minutes ago, where is the testimony, where
10 is the testimony about them having a baseball cap on?
11 Do you remember Lawrence Kelly's testimony? That's
12 exactly what he testified he was wearing, a skull
13 type cap with a bill on it. That's exactly what he
14 said. So I don't know what he's remembering.
15 Obviously not what is from this witness stand.

16 As I told you earlier when I was up before you,
17 some of the factors that you look at. Opportunity to
18 observe. All three of these young men told you that
19 they had ample opportunity, ample opportunity to
20 observe that initial person that came into that
21 apartment.

22 Nothing obstructing his face, he didn't have his
23 shirt pulled up. Had didn't have a handkerchief on.
24 He didn't have a ski mask on. He didn't have a
25 hoodie pulled, cinched tight around his face. They

1 had ample opportunity to observe him. Light on
2 inside the apartment. Nothing in the way. He
3 actually stepped into the apartment. Ample
4 opportunity to observe him.

5 Okay. What was their degree of attention?
6 Degree of attention, that's important. This isn't
7 just some passing person on the street. This isn't
8 somebody that they happened to take a glance at and
9 glanced back and see somebody standing in the back of
10 the courtroom and then look away. This is somebody
11 that all three of them testified that they know.
12 They had a reason to pay attention, a reason to pay
13 attention to him.

14 When he first comes in, John Randolph is the one
15 that's initially engaging him in conversation. It is
16 John's apartment. He's trying to figure out who is
17 this guy in my apartment? I don't know him. I don't
18 know him. He's looking at him trying to figure that
19 out. His degree of attention is heightened.

20 This isn't somebody that's just run up to him,
21 you know, put a gun in his face, taken his wallet and
22 run off. I mean, this is somebody that he is
23 face-to-face, 15 feet away from, staring at him in a
24 lighted room for multiple minutes.

25 That night he even comes in here and tells you,

1 I had seen him before. That's not something that
2 he's just come up with today. He told the police
3 that that night, that I had seen him before. He told
4 Mr. Randolph, Mr. Kelly and Mr. Mack that inside the
5 apartment. I have seen him before from Santee, in
6 Santee. Obviously his attention is heightened enough
7 where he is looking at him enough to know that I've
8 seen him before.

9 And then Mr. Kelly, he is the one that initially
10 had a funny feeling when he got there. He's sitting
11 there. He is sitting basically off in the corner
12 minding his own business watching this whole thing
13 play out. What did he testify to you about?

14 He said, I never took my eyes off that man's
15 face from the minute he walked in the apartment, the
16 entire time. He said, I was focused on that man's
17 face, enough to be able to create this. No matter
18 what they say, I submit to you it's pretty darned
19 consistent, it's pretty darned consistent with
20 Terrell Scott.

21 So the level of attention is high. Okay. They
22 all gave a description to you that is consistent with
23 him. And then you look at now the level of certainty
24 of that identification. All right.

25 Let's talk about Mr. Randolph first. Mr.

1 Randolph is shown two days later, on the 26th, these
2 two items. He looks at them. He doesn't ID anybody.
3 He doesn't ID anybody. You know, if they're out to
4 accuse somebody, out to accuse somebody to get the
5 attention I guess off of them, I mean, he doesn't do
6 that. He doesn't do that.

7 We all know that this line-up here, Mr. Kelly
8 picked somebody out. But Mr. Kelly picked somebody
9 out of this same line-up. If they're all lying again
10 to just deflect the attention away from them and
11 they're all in this together trying to trick the
12 police, why aren't they all picking that same person?

13 I'm going to talk about Mr. Kelly in a second.
14 But Mr. Randolph, these two line-ups here, 4 and 5,
15 nobody. Then several weeks later, on January 28th,
16 he's shown this line-up. He identifies number 1,
17 number 1, the defendant, Terrell Scott. What did he
18 tell you? What did he tell Investigator Shumpert
19 that night when he identified him?

20 They come in and tell you, no doubt about it,
21 that's the man that entered my apartment, came into
22 my apartment looking for drugs who ultimately pulled
23 out a .357 revolver in my apartment back on
24 December 24th. He then identified that man. Then
25 again, no doubt about it in his mind, that's the man

1 that he saw that night.

2 You have Mr. Kelly. Like I said, he wasn't
3 positive initially, wasn't positive initially. Then
4 he's shown State's Exhibit No. 11 and he picks out
5 number 6. And yet again, what did he tell them?
6 What did he tell law enforcement that night?

7 He was 75 to 80 percent sure, not positive, but
8 that looks like the guy. Okay. Lieutenant Shumpert
9 testified to that, too. Is he making that up also?

10 He did his job. I'm going to talk to you a
11 little bit about that in a minute now about that.
12 But then also he shows them a 12-person line-up,
13 State's Exhibit No. 12. He picks out Terrell Scott
14 in State's Exhibit No. 5, I mean picture number 5.
15 He says there's no doubt in his mind, no doubt in his
16 mind that's the person.

17 And Mr. Gilliard, keep in mind that Mr. Gilliard
18 is the one that has told them from the outset, told
19 them from the outset that I recognize the guy. Okay.
20 I don't know his name but I recognize him. Okay.

21 So every time Investigator Shumpert comes up
22 with any name that could possibly be connected at
23 this point in time, he is showing those line-ups to
24 Will Gilliard because he knows that if he sees the
25 person that he recognizes that they then have a lead

1 to follow up on.

2 And he shows him all five of these line-ups that
3 you'll have back there. He doesn't pick the person
4 out of any of these five, including this one. Yet
5 again, if they're all getting this together, trying
6 to deflect the blame elsewhere, I mean, don't you
7 think all three of them would have picked out this
8 guy right here?

9 And he ultimately though comes up with a name.
10 It was at the end of January, January 23rd. Terrell
11 Scott. He provides that to Investigator Shumpert.
12 Mr. Walters wants you to believe that somehow now
13 Investigator Shumpert -- I'm not sure what he thinks
14 he should do with that information. Because you know
15 he does what he's supposed to do with it, you know,
16 puts him in a line-up to show the witnesses, gets Mr.
17 Gilliard in to talk to him. But that somehow then is
18 playing Investigator Shumpert. What's he supposed to
19 do? Ignore that? Just ignore that?

20 But he gets him in. You heard the testimony.
21 He gets him in. Look at the credibility of the
22 witnesses not only, not only of Mr. Gilliard but also
23 of Investigator Shumpert. Because you basically have
24 to find that they're both lying. Okay.

25 But this piece of paper was sitting on his desk

1 amongst a bunch of other pieces of paper and before
2 he even had a chance to sit down and start talking to
3 Mr. Gilliard and possibly show him one of these
4 line-ups, Mr. Gilliard is saying, that's the man
5 right there. That's the man. Okay.

6 No doubt about it. That leads then to these
7 other two line-ups being shown. I submit to you he
8 does his job. He does his job. You know, he shows
9 Mr. Kelly this line-up on January the 25th when he
10 picks out Terrell Scott. You know, he doesn't go
11 then and show this very same line-up to Mr. Randolph
12 and risk the defense coming in here saying, well, you
13 know, they probably talked, so that's why he picked
14 him out.

15 No. He gets an entirely different line-up with
16 a totally different picture. The hair is different,
17 different colored shirt, everything. He puts him in
18 a different spot in the line-up and then it's shown.
19 I submit to you that's him doing his job, doing it
20 properly.

21 You look at the credibility of these witnesses,
22 the credibility of these three witnesses. Like I
23 said, Mr. Walters, you know, after I sat here and
24 listened to his closing arguments, I literally would
25 have thought these three guys right here are the

1 three worst people in Orangeburg County, I mean,
2 literally the three worst people in Orangeburg
3 County. I mean, they have got convictions for, you
4 know, just the most heinous crimes out there, out
5 there.

6 Ladies and gentlemen, you heard, I mean,
7 witnesses that came in here and testified, Clinton
8 Jones, Daniel Young that have prior records that you
9 got to hear about. You didn't hear anything about
10 Mr. Gilliard having any prior convictions, Mr. Kelly
11 having any prior convictions or Mr. Randolph having
12 any prior convictions.

13 No doubt about it, he has got a lot of very
14 serious charges that he has been charged with from
15 back in February of this year, back three month ago,
16 four months ago. Okay. There's a lot of stuff that
17 was pending back in 2006 until February of 2009. And
18 he might potentially be looking at a lot of time in
19 prison on these at some point in time.

20 But when he first talked to the police back in
21 December of 2006, he didn't have anything pending.
22 So it wasn't like he was trying to somehow work
23 something out at that point in time. Okay.

24 But, you know, the funny thing is about it, here
25 again, I don't know if he's guilty of those charges

1 or not. I don't know anything about them other than
2 what they are. Okay. But Mr. Walters wants you to
3 convict him and sentence him and put him away for 100
4 years just based on the fact that he's been charged
5 with those eight or ten crimes. Okay. Which I
6 submit to you is not what our justice system is
7 about. Okay.

8 The fact that he was charged with armed robbery
9 and murder doesn't make him guilty. He still has the
10 burden of coming in to prove it. Mr. Randolph is
11 entitled to that same thing. He'll have his day in
12 court at some point in time in the future. And
13 Mr. Walters seems to suddenly now, you know,
14 something that's the most important right that his
15 client has, suddenly doesn't want that to apply to
16 anybody else, you know.

17 Mr. Randolph is suddenly the worst criminal in
18 the world because he has got these pending charges
19 and he's out on the streets. That's somehow my
20 fault? I don't control whether the defendants get
21 bond and whether they're out of jail or not.

22 One of the other things that kind of popped into
23 my mind initially, you know, why would this initial
24 person come into the apartment? Maybe he was high on
25 drugs or something at the time. You know, why would

1 somebody come in if they were planning on robbing the
2 place without their face covered? Okay. Well, we
3 kind of get the answer to that from the
4 co-defendants, also just from a little bit of common
5 sense.

6 You know, he may have went there that night, you
7 know, going in to rob the place. You're not just
8 going to go rushing in, because you don't know what
9 you're rushing into. Okay. And obviously, you know,
10 they of course made a big deal about showing all
11 these little boxes of ammunition, boxes of guns, you
12 know. Mr. Walters makes a big deal about why we put
13 this gun in evidence.

14 Well, you know, the reason I put this in
15 evidence is because if I didn't they would have. And
16 then they'd be yelling out, well, look at what the
17 State's trying to hide, look at what the State's
18 trying to hide.

19 When Mr. Scott goes in that apartment initially,
20 ladies and gentlemen, he wants to make sure
21 everything is clear. He wants to make sure he knows
22 where everybody is in there, that somebody is not
23 sitting in there on the couch, I mean, with a sawed
24 off shotgun sitting in their lap that they're going
25 to go rushing into.

1 You heard what Mr. Jones and Mr. Cheeseboro
2 testified. The plan was he was going to go in, make
3 sure the coast is clear. When he opens the door,
4 we're going to come rushing in. Okay.

5 The additional thing, ladies and gentlemen, is
6 that he -- you know, all the testimony, Mr. Randolph
7 said, I've never seen him before. Mr. Scott
8 testified he'd never seen him, didn't know Mr.
9 Randolph or Mr. Mack. Okay. He wasn't expecting
10 somebody to be there that would recognize him. He
11 goes in that door initially. He wasn't expecting
12 somebody to be sitting on that couch that knew who he
13 was from Santee, and that's where things started to
14 unravel.

15 You see, if Will Gilliard isn't there, if Will
16 Gilliard isn't there, I don't know if we'd have ever
17 captured him. I don't know if we'd ever have
18 captured him.

19 Next I want to talk just very briefly about the
20 crime scene, the crime scene. You know, Mr. Walters
21 made a big deal about, you know, no blood in the
22 apartment, no finding of fingerprints in the
23 apartment, finding a footprint back in the kitchen
24 area that doesn't -- is never compared to my client.
25 There is no gunshot residue, no bullets or shell

1 casings found, no weapons recovered.

2 Ladies and gentlemen, we know that somebody
3 killed Harry Mack. Okay. That's a fact. No doubt
4 about that. Just because all that stuff wasn't found
5 doesn't mean that the crime didn't occur. Okay.

6 I want to talk to you just briefly about those.
7 Fingerprints. Well, you know it's an apartment that
8 two people are living in, that multiple people -- I
9 mean, look at it. You can see the pictures. No
10 doubt it is a lived in apartment. You heard the
11 testimony. Unfortunately this isn't television.
12 This isn't CSI. This isn't a Patricia Cornwell book.
13 Okay. You're not always going to find fingerprints.
14 Okay. Just because somebody touches something
15 doesn't mean they're always going to leave a
16 fingerprint.

17 You've got some items that multiple people will
18 constantly touch. Doorknobs people are constantly
19 touching, turning. So there is going to be nothing
20 but smudges. You're not going to find any
21 fingerprint that he would then be able to match to
22 somebody. Okay. I mean, the fact that they found no
23 identifiable fingerprints doesn't mean that nobody
24 was ever in the apartment. Okay.

25 The footprint. Okay. The footprint. I think

1 there is a couple of pictures that you have of the
2 impression back in the kitchen. Okay. Keep in mind,
3 ladies and gentlemen, I mean, I don't doubt they took
4 these footprints or whatever, but the one thing the
5 testimony is consistent with, consistent with that
6 back where that substance is spilled in the kitchen
7 there, nobody ever puts him going back into the
8 kitchen area. Nobody. Okay. Nobody puts him back
9 in there. So what would be the purpose of, I mean,
10 if they had gotten his footprint and compared it to
11 anybody? The testimony is that he is by the door
12 with a .357 barking out orders to everybody.

13 There's no blood in the apartment. Yet again
14 you heard the testimony from Dr. Ross that he was
15 shot right in this area here. The bullet didn't
16 exit. It's underneath the skin on the other side
17 over here. Okay. There wouldn't have been a whole
18 lot of bleeding initially outside of his body. He
19 was bleeding internally from all the organs that were
20 hit: His lung, his liver, his spleen, his stomach.

21 All that bleeding, all that blood they found
22 inside the body cavity wasn't in the house.
23 Eventually it would have started coming out, but he's
24 got clothes on also. It wasn't like that's where the
25 body was ultimately found. They got him up. They

1 got him out of there and within a few minutes after
2 the shooting occurred. Okay. They weren't going to
3 find any blood. It wasn't like he was shot in the
4 head where there's no clothing or anything covering
5 it and it's an exit wound so there is going to be
6 blood everywhere. Yet again, that's just kind of
7 something to try to get you to take your eyes off the
8 facts, ladies and gentlemen.

9 There's no bullets or casings or anything like
10 that. Just like I mentioned earlier yet again, I
11 submit to you, Ladies and Gentlemen, there was one
12 shot in that apartment. One shot. It hit Harry and
13 stayed in Harry. Okay. There's not going to be any
14 other projectiles found.

15 All the testimony is that it was a revolver that
16 was used. You remember the testimony about a
17 revolver. Just like this one. When you pull the
18 trigger, the shell casing stays in the cylinder and
19 doesn't come out. So you're not going to find any
20 shell casings at the scene.

21 He took the weapon with him. He didn't leave
22 the weapon behind. So I don't know what else we were
23 supposed to be finding. The projectile that was
24 recovered, consistent, consistent with the testimony
25 and the description that night. You know, they're

1 giving out statements that night to the police that
2 the guy who came in had a large .357 revolver. Well,
3 they don't have benefit of having the report back
4 from SLED yet to know -- I mean, the autopsy hadn't
5 even been done yet, let alone the report back from
6 SLED that it was, lo and behold, a .357.

7 As far as gunshot residue, you know, we don't
8 find any that night. We don't find Maurice
9 Cheeseboro or Clinton Jones that night. You heard
10 the testimony there is a six-hour window. After that
11 it would be obviously -- you know, a month later it
12 doesn't matter because the gunshot residue would be
13 gone then.

14 Next I want to talk about briefly about, I want
15 to touch on this a little bit about Investigator
16 Shumpert. Okay. As I said, I submit to you he did
17 his job. You know, there are crimes out there.
18 There are homicides, robberies, rapes, burglaries
19 that sometimes are not witnessed by anybody. And
20 homes are broken into when nobody is home. Those are
21 obviously crimes that you rely upon physical evidence
22 at the scene.

23 You know, if a person doesn't leave
24 fingerprints, the person is not cut and doesn't leave
25 some blood behind, solving those crimes sometimes is

1 pretty difficult.

2 Okay. There are other crimes where there is no
3 physical evidence left behind. Okay. Just like this
4 one, where you're going to have to rely upon people
5 to solve those crimes. You know, obviously if nobody
6 was willing to talk to the police at all, if nobody
7 ever gave a statement, nobody ever looked at a
8 line-up, we'd have never solved this crime. You'd
9 never solve any crime like this. He did his job. He
10 did his job.

11 You know, when Mr. Kelly initially identified
12 the wrong person in this line-up, you know, he didn't
13 just end it right there and say, hey, I've got my
14 guy. I've got my guy. Did they go run out, lock him
15 up, case closed, put the file away and move on to the
16 next one?

17 No. He looked into this guy. He looked into
18 him, was able to clear him from the evidence that he
19 developed, showed the same line-ups to the other two
20 witnesses, to the other two witnesses. Neither one
21 of them was able to identify that person. So he
22 continued with his investigation, continued
23 developing other leads, ultimately leading to Terrell
24 Scott, Terrell Scott.

25 I submit to you he has 13 years of law

1 enforcement, 13 years of law enforcement. You would
2 have to believe that he has some sort of personal
3 vendetta against Terrell Scott. Because if you
4 believe his testimony about the way that he conducted
5 things, I submit to you it corroborates and makes
6 every other witness credible.

7 Now, if I stop right there, you know, if I stop
8 right there, let's say these witnesses never even
9 testified, I submit to you there's no doubt about it,
10 beyond a reasonable doubt, a reasonable doubt Terrell
11 Scott is guilty of murder and armed robbery. No
12 doubt about it. But it doesn't stop there. It
13 doesn't.

14 We've got these other three individuals. I want
15 to start off with Daniel Young. Daniel Young. The
16 federal people had to bring him in here. Okay. They
17 make a big deal out of DNA, you know, he was looking
18 at 15 to life on a possession alone. Okay. 15 to
19 life. And he made an agreement with the U.S.
20 Attorney's Office, ATF, the federal government, to
21 cooperate, okay, to tell whatever he knows about any
22 crimes out there, okay, and hope for some leniency.

23 He recognized his sentence is 15 years of
24 prison, he may have to spend 15 years of his life in
25 prison for possessing a gun because of his prior

1 record. Okay.

2 We didn't go hunting for Danny Lee Young. You
3 know, Danny Lee Young was brought to Investigator
4 Shumpert. Okay. Keep in mind kind of the timeframe
5 we're talking about here. Okay. Terrell Scott was
6 arrested at the end of January of 2007. Okay. At
7 that point in time, his name; and we knew three
8 people were involved, but his is the only name we'd
9 been able to develop. Because, you know, the
10 statement he gave to Investigator Shumpert when they
11 arrested him was, I don't know anything about it.
12 Okay. So we didn't hear any other information in
13 regards to the co-defendants with him. Okay.

14 Then, you know, the two of them both had their
15 faces covered, so the victims couldn't ID them. So
16 we're kind of struck right there. You know, it was
17 at a -- it was pretty much over. You know, Terrell
18 Scott was it. Okay.

19 October of 2007 Daniel Young's name is brought
20 to Investigator Shumpert. He goes to talk to him.
21 Investigator Shumpert doesn't have any earthly idea
22 who Daniel Young is at that time. He doesn't have
23 any earthly idea who Maurice Cheeseboro or Clinton
24 Jones is at that time. Okay. He sits down to talk
25 to them. And what does he hear? A story that is

1 surprisingly consistent with what our three victims
2 say happened from a young man who says, I know
3 Terrell Scott, I've known him for years. He told me
4 about it and tried to recruit me to come do it. He
5 told me some comments about it after the fact. Okay.

6 You know, I could see maybe their argument that
7 Daniel Young is trying to get something, is trying to
8 get something. You know, if that's where it ended,
9 where he could make the argument, well, you know,
10 maybe he, you know, kind of heard Terrell Scott in
11 jail talking about what he was accused of. Okay.
12 You know, that, yeah, they accused me of going into
13 this apartment, killing this guy and, you know, he
14 did a little more digging into it and asking around
15 and found out a little more information about it and
16 he decided to take it up, I'm going to get -- this is
17 my way out. I'm going to tell the police that I know
18 all about this case. Okay.

19 He had to have heard about it from Terrell
20 Scott. But then again, he's just saying maybe what
21 he's charged with and maybe he has some of his
22 paperwork. Maybe he looked at some of the statements
23 against him. That would be well and good. I could
24 see where maybe that's a problem. Okay.

25 But here's the problem with that. Here's the

1 thing that makes him credible. It makes it where you
2 can't -- you know, there's no way he could be making
3 this up, because it doesn't end there.

4 What else does he provide to Investigator
5 Shumpert in October of 2007? The names of Clinton
6 Jones and Maurice Cheeseboro, two names that he has
7 never heard before. Okay. He couldn't have gotten
8 those names from Terrell Scott because Terrell Scott
9 supposedly doesn't know either one of them and
10 doesn't knows anything about the armed robbery and
11 the murder.

12 So where do those names come up from? Well, you
13 can say, all right, well, that's great. I mean,
14 maybe he's just making up some other names. So we've
15 got to go check that out; and, you know, if you can't
16 corroborate that the two of them are involved, we
17 come back to square one.

18 All right. So what does Investigator Shumpert
19 then go do over the next several days? He finds
20 Maurice Cheeseboro. And remember at that time
21 Maurice Cheeseboro wasn't in jail. It wasn't like
22 he's sitting locked up somewhere waiting to get out.
23 Yeah, I've got to find somebody to get myself out of
24 jail.

25 I mean, he doesn't have no prior record. He is

1 out on the streets minding his own business at this
2 point in time essentially. And he gets confronted by
3 Investigator Shumpert about an incident that occurred
4 ten months earlier. His initial response at that
5 point in time is, I don't know what you're talking
6 about. I don't know anything about it. I don't know
7 anything.

8 All right. That's fine. So Investigator
9 Shumpert then goes and finds Clinton Jones. Where is
10 Mr. Jones? He's in the Department of Corrections.
11 He is not sitting over here in jail pending charges.
12 He has been convicted already. He's at the
13 Department of Corrections. He's been there for seven
14 month now, April 4th of 2007, hasn't had any contact
15 with Mr. Cheeseboro in that period of time.

16 Lo and behold, he gets asked the same thing.
17 Investigator Shumpert shows up down in Turbeville at
18 the Department of Corrections. He talks to him. And
19 what does he do? He admits to being there. He
20 admits to being there.

21 He doesn't admit to going in. No doubt about
22 it, he wasn't totally truthful. We know that about
23 him. I mean, that's not even a question. But he
24 admits to being present at the time Harry Mack was
25 killed outside that apartment. He puts him with

1 Maurice Cheeseboro. He implicates that man, Terrell
2 Scott. Okay.

3 He has got nothing to do with it according to
4 his testimony, doesn't even know Clinton Jones. How
5 on earth when Investigator Shumpert is showing up at
6 the Department of Corrections just out of the blue to
7 talk to this young man, this 22-year-old young man,
8 November, or October 31st to November 2nd he went out
9 there to talk to him the first of November, how does
10 his name get brought up but for the fact that he was
11 involved? I mean, it makes absolutely no sense.

12 I mean, and then he comes back and gets
13 Mr. Cheeseboro back in the next day and talks to him
14 again and says, look, I have talked to Mr. Jones and
15 you need to come clean. You need to come clean. And
16 what does he tell him? Almost the exact same story
17 that Mr. Jones told him. But what does he possibly
18 gain from that?

19 I mean, you know, it's obvious that they were
20 involved because it makes absolutely no sense that
21 two people just out of the blue are going to admit to
22 some involvement in an armed robbery and a murder
23 that's going to result in them now spending the next
24 ten to thirty years of their life in prison if they
25 weren't involved. I mean, that makes no sense.

1 So we know they were involved. We know Clinton
2 Jones and Maurice Cheeseboro were involved. And with
3 that we know that they were telling the truth. See,
4 they corroborate them. Okay. So all that bad
5 mouthing of the three of them we now know is nothing
6 but smoke. Okay.

7 But what do they possibly have to gain? You
8 know, if they just sat there and said, I don't know
9 what you're talking about, you know, if he stuck to
10 that initial story and Clinton Jones stuck to that
11 initial story, we'd have never been able to -- we'd
12 have never had enough evidence to charge either one
13 of them.

14 Now they have come in here to court and told you
15 what happened. The two of them will ultimately go to
16 prison. Maurice Cheeseboro was out of jail at that
17 time, out on bond, and he is going to go to prison in
18 the next couple of months for the next ten to thirty
19 years of his life. We're supposed to believe that he
20 is somehow getting something out of that?

21 The only evidence we have against them was
22 Daniel Young bringing their names up. Yet again,
23 we'd never heard of them before. When you look at
24 their credibility, ladies and gentlemen, there is
25 absolutely no reason whatsoever for them to be lying

1 in implicating that man, Terrell Scott. Both of
2 them.

3 You know, Clinton Jones who supposedly doesn't
4 know him, Daniel Young who supposedly doesn't know
5 him, and Maurice Cheeseboro who claims he just had
6 some passing acquaintance with him, knew who he was,
7 and that was it, but had no beef with him.

8 Mr. Walters makes a big deal about, you know,
9 the fact that they didn't tell the truth initially.
10 They lied. They lied to law enforcement. You know,
11 it's part of these games that are being played. We
12 know why. We know why. Clinton Jones told you why.
13 You know, the two of them were out on the street at
14 the end of January of 2007. And what happened? What
15 happened to kind of scare the daylights out of those
16 two?

17 You know, a month had gone by. They thought
18 they had gotten away with what they did. He gets
19 arrested. He is charged with an armed robbery and
20 ultimately the murder of Harry Mack. The two of them
21 get together. What did he tell you they did? They
22 talked about what they're going to say if the police
23 ever talk to us, you know, that we were there just
24 outside. We went over there just to -- but he didn't
25 go in. We didn't go in. And that's corroborated by

1 the fact that that's a story that the two of them
2 then give when he finds them separately nine or ten
3 months later.

4 **THE COURT:** Do you need a break? All right. Go
5 ahead. I thought he needed a break.

6 **MR. SORENSON:** Okay. I'm almost done. All
7 right. Here again, still focusing back on Lieutenant
8 Shumpert's credibility. Okay. That would mean you
9 would have to believe that Lieutenant Shumpert would
10 come in here and lie to you under oath about how all
11 this went down, about how all this went down in
12 talking to them and what he told them, what
13 information he gave them.

14 He testified to you that he didn't tell -- you
15 know, I talked to Maurice Cheeseboro and Clinton
16 Jones and never told them anything about Terrell
17 Scott's name. I never showed them any witness
18 statements or anything of that nature.

19 He talked about them all having a lot to lose
20 with you. On the other hand, they all have all the
21 incentives in the world to be as truthful as they
22 possibly can be. It doesn't do anybody any good to
23 come in here and lie and make this up. How does that
24 help them? How does that help them?

25 Now, the last thing I want to talk to you about

1 is the defendant's case. Okay. It's the same thing.
2 Just if I stop right here, you know, if we stop right
3 here, I submit to you now that it's not only beyond a
4 reasonable doubt, it's beyond any doubt. I mean,
5 there should be no doubt in any of your minds when we
6 rested our case yesterday that that man was guilty of
7 murder and armed robbery. No doubt.

8 But, you know, just as I told you when talking
9 about credibility, you know, when the defendant takes
10 the stand and testifies, he is subject to the same
11 scrutiny as any other witness, no different, no more
12 special than any other witness.

13 I want to talk to you just briefly about a
14 couple of things that he had to say. The first
15 thing, you know, he admits to having connections to
16 the Santee area. You know, his whole family is from
17 there basically. So that corroborates, corroborates
18 what Mr. Gilliard testified about. All right.

19 Something else I found kind of interesting, you
20 know, was he had such a hard time hearing up there.
21 You know, he was talking about trying to blame it on
22 loud music. It's something interesting that the
23 defense made such a big deal with Agent Paavel about,
24 you know, if you fired a .357 and it's so loud it can
25 cause hearing problems, you know. So you wonder if,

1 you know, the hearing problem is entirely from work
2 or is it from playing around with that big .357
3 revolver of his? We don't know.

4 All right. Now I want to get back to his
5 testimony yesterday. Okay. You know, he gets up
6 there and lies a lot for himself. Okay. He went
7 through with his lawyer, he went through this
8 elaborate, you know, long, drawn-out story about
9 everything he did, you know, supposedly the day
10 leading up to the night that this happened. Okay.

11 You know, I went shopping. You know, we did all
12 this stuff. You know, I had to go looking for a
13 house that my wife deserves, how she wanted a white
14 house. And I went to Friedman's Jewelers to get her
15 jewelry, you know, because she's so wonderful for
16 taking in my kid. You know, we did some Christmas
17 shopping, yada, yada, you know, all this stuff, this
18 long, drawn-out story about what he did that day.

19 Then they went home. They played Dominoes after
20 eating dinner. They maybe had a couple of drinks, me
21 my wife, my mother, my child. Then we went to bed.

22 And Mr. Walters asked him, what did you do when
23 you got up the next morning then? Well, that's
24 Christmas morning. We went to eat with my -- some
25 other family member. He tried to kind of correct

1 him, but he wasn't able to. So I got up and kind of
2 went through the whole thing again. And you know he
3 was adamant to me that, you know, yet again all this
4 stuff happened. He got up the next morning,
5 Christmas morning.

6 Well, who cares? Okay. The incident happened
7 the night before. Okay. All that stuff could have
8 happened; you're still guilty of murder and armed
9 robbery. Okay. You're still guilty of murder and
10 armed robbery. I just think it's kind of -- I don't
11 understand. I don't understand it.

12 All right. Then something else. This is some
13 significant detail, you know, something that should
14 enlighten us about this incident. I asked him -- you
15 know, he brought up the fact that he'd just gotten
16 married. Okay. And I can't remember if he said
17 December 16th or 18th. It was one of those two
18 dates, 16th or 18th, 2006. They had just gotten
19 married. That's why I was spending so much time with
20 my newlywed wife and that's why I know I was clean
21 shaven at that time because I thought -- well, you
22 know, not much I can do with that.

23 You know, we don't hear from the wife. Because
24 if I obviously would have asked the question of her,
25 she would have had to answer. And I assume he didn't

1 think that his mother was going to be asked that
2 question. Do you remember yesterday when his mom
3 testified? And I want to talk about her testimony in
4 just a second. But when I asked her, I mean, when
5 and who was living in the home? When did your son
6 get married? She said it was either December 16th or
7 18th of 2003. 2003. Three years earlier. Three
8 years earlier.

9 I mean, ladies and gentlemen, I mean, he lied to
10 you. I mean, it's just unbelievable. Unbelievable.
11 And, see, he makes out it's a lie that there's no way
12 he could possibly be caught in that lie. And it's an
13 insignificant detail. Plus the fact that he's using
14 that to try to establish why he knew what was going
15 on around that period of time and why he knew that he
16 was clean shaven, unlike the witnesses describing
17 him. It's unbelievable.

18 Then he called his mother, Ms. Fields, to
19 testify. You know, I have no doubt, no doubt in my
20 mind that she loves her son. She wants to believe
21 that he didn't do that. There is no mother that ever
22 wants to believe that their child could possibly do
23 what he did two and a half years ago.

24 And she came in and she testified about, you
25 know, he was home with me that night. He had been

1 home basically all night. He had gone out at some
2 point in time to get some cigarettes; and other than
3 that, you know, it was just an ordinary -- you know,
4 he was home all night, got up the next morning.

5 I made sure with her that she was talking about
6 the right day, and she was. She said the next day
7 was Christmas day, that it was the 23rd. The day of
8 the murder was on the 24th.

9 The problem with that, ladies and gentlemen, is
10 the first time anybody ever, ever sat down and asked
11 her, I mean, what was Terrell Scott doing the night
12 of December 23rd into the early morning hours of
13 December 24th, she testified it was in March, March
14 of 2007. It was three months later.

15 Think about it. Use your common sense here.
16 You know, if somebody came to you and asked you what
17 you were doing three months ago on a specific night,
18 I could understand if, you know, you looked back at
19 your calendar and you know the concert you went to
20 that night or if there was a sporting night you went
21 to or if it was the night of the Super Bowl and you
22 were at a Super Bowl party or there was a family
23 member's birthday. I mean, those are all some things
24 that call some attention to that day where you can
25 corroborate it.

1 Okay. Her testimony is basically we did nothing
2 out of the ordinary, nothing out of the ordinary. So
3 there is no way you could possibly remember three
4 months earlier on a specific night the fact that you
5 just hung out and did nothing, and did nothing.

6 Then the last little part of his testimony, you
7 know, he testified, I asked him about the three
8 co-defendants and Mr. Young. Clinton Jones, he had
9 never seen him before. Yet again we've got to
10 believe that Mr. Jones has just somehow pulled
11 Terrell Scott's name out of the air to put in his
12 statement.

13 Well, Mr. Cheeseboro, you know, I've seen him
14 around but don't really know him either. But, I
15 mean, yet again, he had to have just pulled Terrell
16 Scott's name out of the air and implicated him.

17 But then the most damning of all is Daniel
18 Young, Daniel Young. He testified that I've never
19 seen that person before, never before. He walked in
20 here and testified yesterday morning. Never. And
21 then again we have to believe that Daniel Young had
22 somehow pulled out of mid air this whole situation
23 and decided to implicate somebody that he doesn't
24 even know then in a murder. It makes no sense.

25 But we know that was a lie because we know he

1 knows who he is. And how do we know that? Because I
2 asked him about the incident that occurred two days
3 ago back in those holding cells. Okay.

4 Keep in mind now he was adamant that he had
5 never seen him before. He was adamant when I asked
6 him about the incident the day before in the holding
7 cells. I had to put Officer Ervan (ph) on the stand.
8 What did he testify to you about yesterday? That he
9 had the two of them back there in the holdings cells
10 and they were kind of drawing back and forth to each
11 other and that he was calling him a snitch, calling
12 him a snitch.

13 First of all, he denies that ever happened. He
14 says Mr. Young lied. The second thing is, well, why
15 on earth if you didn't know who he was, how do you
16 know why he was up here? How did he have any earthly
17 idea that that was Danny Young sitting back in that
18 holding cell? There's a reason that he knows who he
19 is, that he knows why he was coming to testify.

20 Ladies and gentlemen, I appreciate the attention
21 that you've given me. I'm sorry if I went a little
22 longer than I intended. There is nothing, ladies and
23 gentlemen, that I can do, there is nothing that
24 Investigator Shumpert can do or the Sheriff's Office
25 can do; unfortunately there's nothing that the 12 of

1 you, that anyone can do to undo what happened back on
2 December 24th, 2006.

3 There's nothing that can be done to turn back to
4 pages of time and bring Harry Mack back to his
5 family. Those decisions were made, ladies and
6 gentlemen, back on December 24th of 2006 when that
7 man, Terrell Scott, and his two associates,
8 Mr. Cheeseboro and Mr. Jones, just placed a value of
9 Mr. Mack's life of a couple of hundred dollars and
10 some marijuana. There's nothing that can be done to
11 undo that.

12 But, ladies and gentlemen, in a short while
13 after Judge Williams has charged you, you're going to
14 have an opportunity to go back into your jury room,
15 okay, and to deliberate and reach a verdict. Verdict
16 comes from the Latin word "verdicto" which means to
17 speak the truth. Speak the truth. All I ask of you,
18 all anyone can ask of you is that you return a
19 verdict that speaks the truth, speaks the truth about
20 what happened in that apartment back on December 24th
21 of 2006.

22 I submit to you, ladies and gentlemen, the only
23 truthful verdict that can be reached is that that man
24 is guilty of murder, guilty of armed robbery.

25 I respectfully, ladies and gentlemen, on behalf

1 of the State of South Carolina, the people of
2 Orangeburg, and most importantly on behalf of the
3 family of 21-year-old Harry Mack, Jr., ask you to
4 return a verdict of guilty, find Terrell Scott guilty
5 of murder and guilty of armed robbery. Thank you.

6 **THE COURT:** Do you want to keep going? Do you
7 need a break? All right. Retire to the jury room,
8 please. Do not talk about the case. Knock on the
9 door and tell the bailiff when you are ready to come
10 back and we'll bring you right back in.

11 (Jury out)

12 **THE COURT:** All right. While we take a short
13 break, will you gentlemen gather up the evidence and
14 be sure you've got all the exhibits.

15 **MR. SORENSON:** Yes, sir.

16 **THE COURT:** All right. The State ready to
17 proceed?

18 **MR. SORENSON:** The Plaintiff [sic] is ready,
19 Your Honor.

20 **THE COURT:** The defense ready?

21 **MR. WALTERS:** Yes, sir, Your Honor.

22 **THE COURT:** I'm taking your name off my list,
23 Mr. Walters.

24 **MR. WALTERS:** Great.

25 **THE COURT:** I'm putting Mr. Sorenson's on it.

1 **MR. WALTERS:** It's nice to be off the list.

2 **THE COURT:** All right. Bring them in, please.

3 (Jury in)

4 **THE COURT:** All right, ladies and gentlemen. As
5 you know certainly by now, the State has charged Mr.
6 Scott in these two indictments with two separate
7 crimes, the crime of murder and the crime of armed
8 robbery. I've already read these indictments to you.
9 I'm not going to read them to you again. You will
10 have these indictments with you in the jury room when
11 you begin your deliberations.

12 What you need to remember is what I told you
13 earlier. These indictments are not evidence. These
14 indictments are documents drawn up by the State to
15 advise Mr. Scott of the charges he is facing so he
16 can prepare a proper defense to this case.

17 Now, to the charges contained in these two
18 indictments he has pled not guilty. That places the
19 burden of proving him guilty beyond a reasonable
20 doubt. A person charged with a criminal offense is
21 never required to prove himself innocent. It is a
22 vital, important rule of law that the defendant in a
23 criminal trial, no matter how great or how serious
24 may be the offense with which he is charged, must
25 always be presumed innocent until his guilt has been

1 proven beyond a reasonable doubt.

2 This presumption of innocence as we call it
3 remains with the defendant at all times from the
4 moment he appears into this court throughout the
5 trial until you have under the evidence presented in
6 this court reached a verdict of guilty beyond a
7 reasonable doubt. So it is your duty, ladies and
8 gentlemen, if you are not so convinced to find him
9 not guilty; but by the same token, it's your duty if
10 you are so convinced to find him guilty.

11 So if the burden of the State is to prove him
12 guilty beyond a reasonable doubt, what do we mean by
13 beyond a reasonable doubt? Well, some of you might
14 have served as jurors in a civil case and you were
15 told that it was only likely to prove or only
16 necessary to prove a fact was more likely than not
17 true. But in a criminal case the burden is greater
18 than that. Proof beyond a reasonable doubt is proof
19 that leaves you firmly in convinced of the
20 defendant's guilt.

21 There are very few things in this world that we
22 know with absolute certainty, and in criminal cases
23 the law does not require proof that overcomes every
24 possible doubt. If based on your consideration of
25 the evidence you are firmly convinced that the

1 defendant is guilty of the crimes charged, you must
2 find him guilty. On the other hand, if you think
3 there is a real possibility that he is not guilty,
4 you must give him the benefit of that reasonable
5 doubt and find him not guilty.

6 Now, ladies and gentlemen, as I told you, you
7 are the judges of the facts in the case. I don't
8 have a right to even express an opinion about the
9 facts of a case or the guilt or the innocence of a
10 defendant on trial. And you are the judges and the
11 only judges of the credibility or the believability
12 of the witnesses who have testified in this case.

13 In passing upon their credibility you should
14 consider a number of things, the demeanor or the
15 manner of testifying. Was the witness forthright or
16 was the witness hesitant? Did the witness have
17 reason to be biased or prejudiced in their testimony?
18 Was the witness's testimony contradicted on one hand,
19 or was it supported and corroborated on the other?

20 What was the witness's opportunity for
21 observation and knowledge of the matters about which
22 they have testified? How reasonable was the
23 witness's testimony when considered in light of the
24 other evidence which you've heard which you do
25 believe?

1 You don't determine credibility by counting the
2 number of witnesses for either side. You can believe
3 one witness against many or many against one. You
4 can believe all of a witness's testimony or none of a
5 witness's testimony or part of a witness's testimony.
6 You just use your good common sense in judging the
7 credibility or the believability of witnesses just as
8 you do every day in your relationship with your
9 friends.

10 Ladies and gentlemen, as I told you earlier, the
11 rules of evidence ordinarily do not allow witnesses
12 to testify about their opinions. They must testify
13 to you only what they know of their own firsthand
14 knowledge and experience. But certainly witnesses
15 who by their education or experience have become an
16 expert in some particular field can be allowed to
17 testify as an expert in that field and give you their
18 opinions in that field.

19 You consider expert testimony in the same manner
20 as you do any other testimony and give it such weight
21 as you think it should deserve when considered with
22 the all the other evidence in the case.

23 It is not given for the purpose of controlling
24 your judgment but for the purpose of enlightening you
25 and helping you understand the evidence which you

1 have heard. You determine how much weight to give to
2 the testimony of an expert witness as with any other
3 witness.

4 Ladies and gentlemen, the testimony of a witness
5 may be discredited or impeached by showing that he
6 previously made statements which are inconsistent
7 with the present testimony. The earlier statements
8 are also admissible to establish the truth of those
9 statements. It is the province of you, the jury, to
10 determine the credibility or believability to be
11 given to the earlier statements and to be given to
12 the testimony of a witness.

13 If a witness has shown knowingly to have
14 testified falsely concerning a material matter, you
15 may consider this in determining whether to trust the
16 witness's testimony in other particulars. You may
17 reject all the testimony of that witness or give all
18 or part of the testimony of that witness the weight
19 and the credibility which you think that part
20 deserves.

21 While the Court generally determines the
22 admissibility of evidence, ladies and gentlemen, I
23 instruct you that in regard to the alleged statement
24 made to the police by the defendant in this case, you
25 must make the ultimate determination as to whether or

1 not he made that statement. And if he did make it,
2 whether he was warned of his Constitutional rights
3 and whether he knowingly and intelligently waived his
4 Constitutional rights and whether the statement was
5 made by the defendant voluntarily and of his own free
6 will. And then it's up to you to determine how much
7 weight, if any, should be given to that statement.

8 You must determine if the statement was the
9 product of essentially free, unconstrained choice by
10 the defendant. If you determine it was, the burden
11 is upon the State to prove this fact, as all facts,
12 beyond a reasonable doubt. Then you may give the
13 statement such weight as you think that it deserves.
14 If you determine it was freely and voluntarily given
15 by the defendant, then you wouldn't consider it at
16 all.

17 Now, in determining whether the defendant's will
18 was overcome in obtaining a statement, you should
19 consider the characteristics of the defendant, the
20 details of the circumstances of interrogation of when
21 the statement was taken which is referred to as the
22 totality of the circumstances.

23 You consider his age, his education, his mental
24 abilities, his background, his environment, whether
25 or not he was advised of his Constitutional rights,

1 including the Miranda rights, that the statement
2 could be used against him in a court of law, that he
3 had a right to remain silent, that he had the right
4 to have a lawyer present, that if he was indigent, he
5 had a right to have a lawyer appointed to represent
6 him, and that if he chose to make a statement he
7 could stop at any time.

8 You must carefully scrutinize the factors
9 surrounding the statement before you give any weight
10 to it. You must be satisfied beyond a reasonable
11 doubt the statement was freely and voluntarily made,
12 and then you give it such weight you think it
13 determines or deserves.

14 Ladies and gentlemen, there are two types of
15 evidence from which you can find the truth in a case.
16 One is called direct evidence and the other is
17 indirect or circumstantial evidence. Direct evidence
18 means the evidence or testimony of persons who have
19 perceived the existence of this evidence by means of
20 one of their five senses: By sight, smell, taste,
21 sound and feeling.

22 And it comes into court to testify from a
23 witness who comes in and says, this is what I saw,
24 this is what I heard. It comes from a person who by
25 his or her own five senses had actual personal

1 knowledge that an event has occurred or not occurred
2 or a fact does or does not exist. And it can arise
3 from the use of any of our five senses.

4 Now, indirect or circumstantial evidence
5 involves testimony or evidence of surrounding facts
6 from which you may or may not infer that an event has
7 occurred or a fact has been established.
8 Circumstantial evidence exists where circumstances
9 are known through the exercise of one of our five
10 senses, and these facts give rise to a logical
11 inference that other facts exist without directly
12 proving those facts.

13 If you go back in the jury room in a minute and
14 the sun was -- I think the sun was shining when you
15 went in the jury room just a while ago and it was
16 bright outside. And when you go back, the sun might
17 be shining; it might be bright. But if you look and
18 you see water on the window and on the windowsill and
19 water running down the street and on cars out there,
20 you say, my goodness, it rained; you didn't use any
21 of your five senses. You didn't see it, hear it,
22 smell, taste it rain, but you did see water. You saw
23 circumstantial evidence that it had rained. That's
24 all we mean by circumstantial evidence. And you use
25 it every day without calling it that fancy legal

1 name.

2 And on some position you might have some direct
3 and some circumstantial evidence, and both are a
4 combination. And the law doesn't make any
5 distinction in regards to direct and circumstantial
6 evidence. It must be such as to convince you of the
7 guilt of the defendant beyond a reasonable doubt, no
8 matter from whom it comes or whether it's direct or
9 circumstantial evidence.

10 You should weigh all of the evidence in the
11 case, direct and circumstantial, and then if you are
12 convinced beyond a reasonable doubt of the guilt of
13 the defendant, you would find him guilty.

14 Ladies and gentlemen, the same law that makes
15 you the only judges of the facts in the case makes me
16 the only judge of the law in the case. And I'm
17 explaining the law to you and you must accept the law
18 as I give it to you. If you find that what the law
19 is, what I tell you the law is not what you thought
20 the law was, or even if you think it's not what the
21 law ought to be, you must put aside your position and
22 your opinion on the law and accept the law as I give
23 it to you, apply it to the facts as you find them to
24 be in order to reach your verdict in this case.

25 Now I'm going to explain to you or give you

1 definitions of what is the law for the two crimes
2 with which he is charged. And the first will be the
3 crime of murder. So what is murder by definition?
4 Well, murder is defined as the willful, felonious
5 killing of a human being by a human being with malice
6 aforethought, that malice being either expressed
7 malice or implied malice.

8 Willful, ladies and gentlemen, simply means
9 intentional or voluntarily as opposed to
10 accidentally. Felonious means unlawful. It can mean
11 without justification or excuse. So the willful,
12 felonious killing of a human being by a human being
13 with malice aforethought.

14 What do we mean by malice? Malice is an
15 essential element of the crime of murder. Malice is
16 a term of art, a technical term importing wickedness
17 and excluding just cause or legal excuse.

18 Malice in any form, whether it arises from
19 hatred, ill will or otherwise is still malice.
20 Malice springs from depravity, from a heart devoid of
21 social duty and fatally bent on mischief. Malice
22 must be aforethought. The law does not require that
23 malice should exist for any particular time before
24 the Commission of the act, but malice must exist in
25 the mind of the accused just before and at the time

1 of the commission of the act. There must be a
2 combination of the previous evil intent and the act
3 producing the result.

4 Malice may be either expressed or implied.
5 These words expressed or implied do not mean
6 different kinds of malice but merely the manner in
7 which the only kind of malice known to the law may be
8 shown to exist; that is, either by direct evidence or
9 by a necessary inference from the facts and
10 circumstances which are proven.

11 Expressed malice is shown when one by word of
12 mouth expresses his hatred or ill will for another or
13 where the State shows that he made preparation
14 beforehand to do the deed which was later
15 accomplished. Lying in wait for a person or any
16 actual preparation going to show that the deed was
17 within his mind would be expressed malice.

18 Implied malice, even though there is no express
19 intent to kill, implied malice may exist and it can
20 be proven, it can be inferred from the facts and
21 circumstances which are proven.

22 Malice may be inferred from the willful,
23 deliberate and intentional doing of an unlawful act
24 without just cause or legal excuse. In other words,
25 in its general signification, malice means the doing

1 of a wrongful act intentionally without justification
2 or legal excuse. It may be interred from conduct
3 showing a total disregard for human life.

4 The inference of malice may arise when the deed
5 is done with a deadly weapon, such as a knife, pistol
6 or dagger or some weapon of that nature which when
7 used with the intent to injure another is calculated
8 to produce death or serious bodily injury.

9 Malice does not necessarily import or impart ill
10 will towards the individual injured but rather
11 signifies a general malignant recklessness of the
12 lives and safety of others or condition of mind which
13 shows a heart devoid of social duty and fatally bent
14 on mischief. It is the wrongful intent to injure
15 another and indicates a wicked or depraved spirit of
16 intent on doing wrong.

17 So if facts are proven beyond a reasonable doubt
18 sufficient to raise an inference of malice to your
19 satisfaction, this inference would be simply an
20 evidentiary fact to be taken into consideration by
21 you, the jury, along with the other evidence in the
22 case and you would give it such weight as you think
23 it determines [sic].

24 So to repeat it, ladies and gentlemen, murder is
25 defined as the willful, felonious killing of a human

1 being by a human being with malice aforethought, that
2 malice being either expressed malice or implied
3 malice.

4 Armed robbery, ladies and gentlemen, the crime
5 of armed robbery includes robbery and includes all
6 the elements of larceny and common law robbery. So
7 let me explain to you what we mean by larceny.
8 Larceny is just stealing. And there are four
9 elements that must be proven by the State beyond a
10 reasonable doubt to establish larceny; first, that
11 there was a taking, taking and carrying away, that
12 the taking was of personal property.

13 Ladies and gentlemen, there are only two kinds
14 of law known to the law. Real property is houses,
15 building. Everything else is personal property. So
16 it must be the taking of the personal property. It
17 must be carried away, no particular distance, but it
18 must be proved in some manner with an intent to take
19 it away, and it must be done with the intent to steal
20 the property or permanently deprive the owner of the
21 property. So the taking and carrying away of
22 personal property with intent to steal that property
23 would permit -- form the crime of larceny.

24 Now, robbery includes those four elements plus
25 two additional. The first is that the property must

1 be taken from the person or presence of another
2 person or upon the person or presence of that person
3 or from his presence. For example, if you go in
4 somebody's tool shed to steal their lawnmower, that's
5 not a robbery because it's not taken from the person
6 or presence of the person.

7 The second thing that must have been taken and
8 accomplished by placing the other person in fear by
9 violence or threats of violence so as to make that
10 person surrender the property without their consent
11 and against their will, such as a stealing by purse
12 snatching. If somebody runs up and grabs a lady's
13 purse and runs off with it, the person turns around
14 and says, what happened to my purse, that wouldn't be
15 robbery. It was taken from the person or presence of
16 the person but it was not taken from that person by
17 placing them in fear by force or intimidation.

18 So the taking of the personal property from the
19 person or presence of another with the intent to
20 steal that property and by placing that person in
21 fear by force for intimidation would be robbery.

22 Now, armed robbery has one additional element.
23 You can figure out what that is. The person must
24 have been placed in fear by force or intimidation
25 using a deadly weapon. And so if the person [sic] is

1 taken from the person or presence of another person,
2 the personal property with intent to steal it, they
3 have used a deadly weapon to remove that property by
4 force or intimidation, then that person would be
5 guilty of armed robbery.

6 Now, ladies and gentlemen, there's a statute in
7 South Carolina, 16-11-330 says that a person who
8 commits a crime of robbery while armed with a pistol,
9 dirk, slingshot, metal knuckles, razor or other
10 deadly weapon commits the crime of armed robbery.
11 The State must prove each of those elements beyond a
12 reasonable doubt.

13 Ladies and gentlemen, an issue in this case of
14 course is identification of the defendant as the
15 person who committed the crime. It is the State's
16 burden of proving identity beyond a reasonable doubt.
17 You must be satisfied beyond a reasonable doubt of
18 the accuracy of the identification of the defendant
19 before you make identification of the defendant.

20 Identification testimony is an expression of
21 belief or impression by a witness. You must
22 determine the accuracy of the identification of the
23 defendant. You must consider the believability of
24 each identification witness the same way as any other
25 witness. You may consider whether the witness had an

1 adequate opportunity to observe the offender at the
2 time of the offense. This will be affected by things
3 like how long or how short a time was available, how
4 far or close the witness was, lighting conditions,
5 where they had the person, had a chance to see or
6 know the person in the past.

7 The burden of proof extends to every element of
8 the crime and certainty the element of the identity
9 of the defendant. The State must prove that beyond a
10 reasonable doubt.

11 Ladies and gentlemen, I further charge you that
12 if several persons in pursuance of a common design to
13 commit an unlawful act set out together and each
14 person takes the part agreed upon or assigned to him,
15 some to assist in preparation, some to commit the
16 act, others to watch at proper distances and stations
17 to prevent interference or surprise, some to
18 encourage the commission of the unlawful act or to
19 favor the escape of those immediately engaged in the
20 commission of the unlawful act or to do whatever part
21 the plan required, under these circumstances, if the
22 unlawful act is committed, the act of one is the act
23 of all, or the hand of one is the hand of all as we
24 say in the law, and all are guilty.

25 When a person does an act in the presence of and

1 with the assistance of another, the act is done by
2 both or all. It may be more than two. Where two or
3 more acting with a common plan or intent are present
4 at the commission of a crime, it does not matter who
5 actually commits the crime. All are guilty. The
6 hand of one is the hand of all.

7 Ladies and gentlemen, I further charge you that
8 when two or more persons combine to commit an
9 unlawful act such as carjacking or some other act and
10 in the execution of that criminal act a homicide is
11 committed by one of the actors as a natural or
12 probable consequence of the acts done in pursuance of
13 the common design or plan, then all present
14 participating in the lawful undertaking are as guilty
15 at the ones who committed the fatal act.

16 The common purpose may not have been to kill and
17 murder, but if it was unlawful, for instance, as in a
18 carjacking, and in the execution of this common
19 purpose a homicide is committed by one as the
20 probable or the natural consequence of the acts done
21 in pursuance of the common design, then all persons
22 who participated in the common unlawful design are as
23 guilty as the actual slayer.

24 Now, ladies and gentlemen, nothing that I've
25 said or done during the course of this trial has been

1 in any way intended to suggest to you that I have an
2 opinion as to the facts of the case, the weight of
3 the evidence or the credibility of the witnesses or
4 what your verdict should be. And if anything I've
5 said or done seems to indicate to you I've got an
6 opinion on my part, please disregard that and form
7 your own opinion as to each of those matters.

8 You've been selected as fair and impartial
9 jurors. You are sworn to impartially try and
10 determine the facts of this case. And when you
11 comply with your oath to do so, then no one will have
12 a right to criticize your verdict and you will have
13 fully discharged your duty as jurors.

14 You are to decide this case according to the
15 testimony that you have heard from the lips of the
16 witnesses along with the other evidence introduced.
17 You must decide the issues in this proceeding without
18 bias and without prejudice to any party. You cannot
19 allow yourself to be governed by passion, by unfair
20 sympathy, by prejudice for or against either party,
21 by public opinion or any other arbitrary factor.

22 Both the State and the defendant has the right
23 to expect that each of you will carefully and
24 impartially consider all of the evidence in the case
25 and that you will follow my instructions to you on

1 the law in reaching your deliberations.

2 All right, Ladies and Gentlemen. Your verdicts
3 must be reached separately on each of these two
4 charges, and it would be based on my general charge
5 of the law and the specific charge as to the elements
6 of each particular crime and the evidence you have
7 heard in regards to that crime.

8 In other words, you don't take one or the other
9 and say, well, we'll do this one first. If we find
10 him guilty of this one, we just automatically find
11 him guilty of the other one, or vice versa. You must
12 weigh each one based on the evidence and the law on
13 that particular criminal offense.

14 Your verdict must be unanimous. All 12 of you
15 must agree before any verdict can be reported out as
16 the verdict of the jury.

17 Now, ladies and gentlemen, there are only two
18 verdicts as to each of these possible offenses, and
19 there is no significance to the order in which I
20 state these verdicts. If I am going to state one out
21 of two things, I have to state one before the other.
22 Your verdict on each indictment would be either
23 guilty or not guilty.

24 If you find that the State has proven the
25 elements of, for instance, murder, beyond a

1 reasonable doubt, your verdict would be guilty. If
2 you find that the State has not proven each of those
3 elements beyond a reasonable doubt, your verdict
4 would be not guilty.

5 By the same token, if you find the State has
6 proven all of the elements of armed robbery beyond a
7 reasonable doubt, your verdict would be guilty. If
8 you find that the State has not proven those elements
9 beyond a reasonable doubt, then your verdict would be
10 not guilty.

11 Ms. Burns, where are you, please? Mrs. Burns,
12 I'm going to ask you if you would serve as our
13 foreperson. That means that you will preside as the
14 jury begins its deliberations and that when the jury
15 reaches a unanimous verdict it will be your duty to
16 report that verdict on behalf of the entire jury.

17 Now, as I said, you will have with you the
18 indictments. One side of the indictment, it just
19 happens to be the murder indictment, it gives you the
20 basic facts that I read to you Monday or Tuesday or
21 whenever it was about the murder.

22 On the other side, there's a block right down
23 here. There's a block that says verdict. And you
24 would simply write the appropriate verdict, whatever
25 the jury has unanimously decided in regards to this

1 charge. It would either be guilty or it would be not
2 guilty, whatever the jury has decided. And then you
3 would sign your name. You'll put today's date which
4 I think is May the 15th, 2009. That indicates that
5 that is the unanimous verdict of the entire jury.
6 You do the same thing on the indictment for the armed
7 robbery.

8 If you have any questions during your
9 deliberations, you will knock; you will write them
10 down. The bailiff will see that you have a pad and
11 pencil. You will write those questions down. You
12 will knock on the door and say: We have a question.
13 The bailiff will bring me the question and I'll take
14 whatever action I need to take in response to your
15 question.

16 If we have any smokers and the smokers need to
17 have a little break, knock on the door, tell the
18 bailiff you need to smoke or need a break. The
19 bailiff will take you out on the porch somewhere I
20 think to smoke. If the smokers leave, the rest of
21 you have to stop your deliberations. You can only
22 deliberate when all 12 of you are there.

23 When you have reached a verdict, knock on the
24 door. You'll tell the bailiff: We have reached a
25 verdict. You do not tell the bailiff the verdict.

1 You do not give the bailiff your verdict form or the
2 indictments. The bailiff will notify me so that we
3 can get everybody together. We'll bring you back in
4 the jury room and you'll present, pass up these
5 verdict sheets in the courtroom.

6 I am going to ask you to retire to the jury room
7 in just a minute but not to discuss the case yet for
8 this reason. I have to discuss my charge with the
9 lawyers. Sometimes I make a mistake. I don't tell
10 you everything I need to tell you or I might have
11 made a misstatement through some error I've made. If
12 I need to correct any portion of my instructions to
13 you, I'll bring you back out in just a few minutes.

14 If I don't need to do that, then I will send in
15 to you the indictments and all of these exhibits that
16 have been introduced in this trial. When I send in
17 to you the indictments and the exhibits, then you can
18 begin your deliberations but not until that time.

19 Now, we can order you lunch. And so the first
20 decision you need to make, and you can do this while
21 I'm dealing with the lawyers, is whether you want us
22 to order you lunch. I don't think we use The Four
23 Moons, do we? But I think it's just -- where do you
24 get it?

25 **THE CLERK:** House of Pizza or Billy Banquet.

1 **THE COURT:** House of Pizza or Billy Banquet?

2 **THE CLERK:** Or The Dairy-O.

3 **THE COURT:** Or The Dairy-O. Well, that's your
4 choices. So if you want us to order lunch -- now, we
5 can't order from all three. You'll have to agree on
6 one. So if you would discuss that first. It's noon
7 now. We'll be glad to do that. Just let us know and
8 I'll send the clerk back in to take your lunch
9 orders. Then when you get the indictments and
10 exhibits you can begin your deliberations but not
11 until that time.

12 Now, for the two alternates, I'm going to ask if
13 you would wait in the Grand Jury room. You cannot
14 deliberate with the jurors. You cannot really be
15 with them any more. But I'm not going to excuse you
16 yet. If they order lunch, we'll order your lunch,
17 too. But I want y'all to remain in the jury room.
18 And just remember y'all should not talk about the
19 case at all, the two of you. And the other ones,
20 don't talk until I send in the indictments and send
21 in the exhibits. Thank you very much. Please follow
22 the bailiff into the jury room.

23 (Jury out)

24 **THE COURT:** Any exceptions from the State?

25 **MR. SORENSON:** No, sir.

1 **THE COURT:** From the defense?

2 **MR. WALTERS:** No, sir.

3 **THE COURT:** All right. Have you gathered up all
4 the exhibits?

5 **MR. SORENSON:** Yes, sir.

6 **THE COURT:** And you're sure you've got them?

7 **MR. SORENSON:** Yes, sir.

8 **THE COURT:** All right. Madam Bailiff, you can
9 take the exhibits and the indictments and tell the
10 jury they can begin their deliberations. Just let us
11 know whether they want lunch. Hold on one minute.
12 Do y'all want to send the bullets in there with the
13 pistol?

14 **MR. WALTERS:** No, Your Honor. I don't see any
15 need to do that.

16 **MR. SORENSON:** I'll leave that up to the Court,
17 Your Honor. The gun has a safety. It has a gun lock
18 in it. So we don't need to worry about them firing a
19 bullet. But, I mean, there's been testimony about
20 the bullets, I mean.

21 **THE COURT:** I don't think they can fire a
22 bullet. I hope not.

23 **MR. SORENSON:** It's got a gun lock in it. So, I
24 mean, they'd have to saw that off.

25 **THE COURT:** And they can't take that out, can

1 they?

2 **MR. SORENSON:** No. They would have to have a
3 key.

4 **THE COURT:** All right. We'll be in recess then
5 until we hear from the jury.

6 (Jury deliberating)

7 (Whereupon, a break is taken)

8 **THE COURT:** Do you want to wait on Mr. Culler?

9 **MR. WALTERS:** Yes, sir.

10 **THE COURT:** See if he's close by. I don't think
11 we really need to if he is going to be a while.

12 (Pause)

13 **MR. WALTERS:** Your Honor, we're ready to go
14 forward.

15 **THE COURT:** All right. We have a question.
16 Actually there are two questions. While we're on the
17 record, where is Court's Exhibit 1?

18 **MR. WALTERS:** We sent it back into the jury
19 room.

20 **THE COURT:** There are two questions. The first
21 question was: Can we see the marriage license? It
22 didn't say of who, but I assume they are talking
23 about the defendant. Not that it matters.

24 And the second question was: Can we see the
25 clothes the victim was wearing? And after conferring

1 with the attorneys I wrote on that that we could not
2 introduce new evidence at this time and sent it back
3 to the jury. We conferred, did we not, Mr. Walters,
4 by telephone?

5 **MR. WALTERS:** Yes, sir. That's correct.

6 **THE COURT:** And, Mr. Sorenson, we've conferred
7 about that?

8 **MR. SORENSON:** Yes, sir.

9 **THE COURT:** All right. Now, we have a second
10 note. Number one: Can you be tried for the same
11 charges twice? And, number two: What charges are
12 pending for Maurice Cheeseboro and Clinton Jones?

13 And I discussed this in chambers with the
14 attorneys. I am going to bring the jury out. I am
15 going to tell them that if you are tried for a
16 criminal charge and you are found not guilty that you
17 cannot be tried again for those charges. But if you
18 are tried on a criminal charge and for some reason no
19 verdict is reached, such as a hung jury or some other
20 type of mistrial, then you could be charged again.

21 Any exception to that, Mr. Sorenson?

22 **MR. SORENSON:** No, sir.

23 **THE COURT:** Mr. Walters?

24 **MR. WALTERS:** No, sir.

25 **THE COURT:** And the second one, I think the

1 parties have agreed that both Mr. Cheeseboro and
2 Mr. Jones are charged at the present time with murder
3 and with accessory after the fact of murder. Right?

4 **MR. SORENSON:** I know Mr. Jones is. I actually
5 think Mr. Cheeseboro is only charged with murder
6 right now. I think that his accessory charge was
7 dismissed about four months ago.

8 **THE COURT:** So you're telling me -- all right.
9 Which is which?

10 **MR. SORENSON:** Mr. Jones I believe currently has
11 pending both accessory after the fact of murder and
12 murder. Mr. Cheeseboro only has the murder pending.
13 I believe that's what was showing up. It was showing
14 up on his rap sheet that accessory had been
15 dismissed.

16 (Pause)

17 **THE COURT:** This says Jones was charged with
18 accessory after the fact.

19 **MR. SORENSON:** He is charged with murder also.
20 I don't know why it's not showing up on the jail
21 list, but he has been indicted for murder also.

22 **THE COURT:** Normally I wouldn't go by the jail
23 list as to what somebody is charged with, but I just
24 thought it might have shown up on the clerk's record.

25 **MR. SORENSON:** Right.

1 **THE CLERK:** Jones has accessory after the fact.

2 **MR. SORENSON:** Who?

3 **THE CLERK:** Jones.

4 **THE COURT:** Okay.

5 **THE CLERK:** And ABWIK.

6 **MR. SORENSON:** I didn't know about that. That
7 should have come out during the testimony because I
8 didn't even know that.

9 (Pause)

10 **THE COURT:** What have you got for Cheeseboro?
11 For Jones the clerk's record has both.

12 **MR. SORENSON:** Right. That's my -- that's what
13 my understanding is --

14 **THE COURT:** Cheeseboro has both?

15 **MR. SORENSON:** I think there's murder pending.
16 I think just murder pending.

17 **THE CLERK:** I'm looking that up right now,
18 Cheeseboro's. Murder for Cheeseboro.

19 **THE COURT:** So that's part of your recollection?

20 **MR. SORENSON:** That's my understanding. That's
21 all we testified about.

22 **THE COURT:** And I think that testimony is in the
23 record. Do you agree, Mr. Walters?

24 **MR. WALTERS:** Yes, sir.

25 **THE COURT:** All right. Mr. Jones has both;

1 Mr. Cheeseboro just the murder.

2 **MR. WALTERS:** Yes, sir.

3 **THE COURT:** And I'll tell the jury that he can
4 only be convicted of one of those two. Okay. Bring
5 the jury in.

6 **THE CLERK:** You had an alternate to stay. Do
7 you want her?

8 **THE COURT:** No. I want her out, too. I want
9 you to bring her out with them, too. The alternate
10 has been held separately in the back, but just bring
11 her out when you bring out the jury.

12 (Jury in)

13 **THE COURT:** All right. Madam Alternate, what's
14 your name?

15 **JUROR:** Elaine Jeffcoat.

16 **THE COURT:** Ms. Jeffcoat, the other alternate,
17 do you remember her name?

18 **JUROR:** Sauls.

19 **THE COURT:** Ms. Sauls. All right. I excused
20 Ms. Sauls earlier. She had a conflict this
21 afternoon, and we didn't really need to keep but one.
22 And Ms. Sauls was being held separately in a
23 different jury room and separated from the jury. She
24 has not been in contact with the jury since I sent
25 the jury in the jury room before lunch. But Ms.

1 Jeffcoat is back in the courtroom now with all 12
2 members of the jury.

3 Now, ladies and gentlemen, I have got your
4 questions, and I can't answer these with a simple yes
5 or no. I brought you back in to tell you the answer
6 to these questions.

7 The first question that you've asked me is: Can
8 you be tried for the same charges twice? If a person
9 is charged with a criminal offense and that person is
10 found not guilty, that is forever ended. He cannot
11 be charged again with that crime. That's what we
12 call double jeopardy. It would be a violation of a
13 Constitutional right to be free of double jeopardy.
14 So once a person is found not guilty, they cannot be
15 tried again for that charge.

16 Now, if a person goes to trial on a criminal
17 charge and there is no verdict rendered, and there
18 are several legal reasons there could not be a
19 verdict rendered, the most common is when the jury is
20 unable to reach a verdict, a unanimous verdict. I've
21 told you that the verdict has to be unanimous. And
22 for that reason or for some other reason, if a
23 mistrial is declared in a case, then there is no
24 decision in that case. Jeopardy does not attach and
25 that person can be tried again for that same crime.

1 So I needed to explain that to you. If a person
2 is found not guilty of any crime, no matter what it
3 is, if it's for petit larceny to right on up, they
4 can never be tried for that crime again.

5 But if they go to trial and there is a mistrial
6 for some legal reason, suppose three of the jurors
7 got sick and had to go to the hospital, they couldn't
8 finish the trial, suppose the judge got sick and had
9 to go to the hospital and couldn't finish the trial,
10 those would be reasons. Or if the jury gets
11 deadlocked and can't reach a decision, there is a
12 mistrial. So if it is a mistrial, the person can be
13 tried again. I couldn't answer that yes or no, so I
14 hope that explains that answer.

15 The second question is: What charges are
16 pending for Maurice Cheeseboro and Clinton Jones?
17 All right. Mr. Cheeseboro presently has pending a
18 charge of murder related to this case. Mr. Clinton
19 Jones has a charge of murder and a charge for
20 accessory after the fact of murder.

21 Let me tell you that Mr. Jones could not be
22 guilty, he could not be found guilty of both of those
23 charges. It's not unusual to have a person charged
24 with more than one charge related to the same
25 conduct. And one example would be, if somebody is

1 charged with burglary in the first degree, and that's
2 entering a dwelling at night for the purposes of
3 committing a crime, included in that charge is a
4 lesser-included offense, burglary in the second
5 degree, which would be entering a dwelling in the
6 daytime with intent to commit a crime.

7 And that person couldn't be found guilty of both
8 burglary in the first degree and burglary in the
9 second degree. It would be up to the jury to
10 determine based on the facts whether he was guilty of
11 the first degree or the second degree.

12 It's kind of like that with murder and accessory
13 after the fact of murder. Of course murder I charged
14 to you. Accessory after the fact of murder just
15 means that the person didn't commit the murder but
16 had something to do with promoting it or keeping
17 somebody from being apprehended or something after
18 the murder occurred.

19 So even though he is charged with those two,
20 ultimately he could only be found guilty of one of
21 those two. So I didn't want you to get the wrong
22 impression about that.

23 Does that answer your questions? All right.
24 Mr. Cheeseboro has just a murder charge. Mr. Jones
25 has both. Yes, ma'am.

1 **JUROR:** Is Mr. Cheeseboro and Mr. Jones not
2 being charged with armed robbery?

3 **THE COURT:** Apparently not at the present time.
4 Now, you understand charges can come and go. I mean,
5 you're asking what they are presently charged with.
6 That's what they are being charged with presently.
7 That doesn't really give you any clue as to how those
8 cases will ultimately be disposed of. There's too
9 many variables for me to tell you that.

10 So I'm not sure that you need to be worrying
11 about whatever it is you're worrying about. Because
12 as long as charges are pending, there is nothing
13 final about that. They can be dropped. They can be
14 changed. They can be increased. They can be
15 decreased.

16 There's just nothing final about charges until
17 that person is brought to trial in a court and a jury
18 is given a charge to consider. That makes it pretty
19 final as long as a jury reaches a verdict, but until
20 that time the charges can be changed. And anyway,
21 like I said, they can be dropped. They could be
22 increased. They could be changed. They could be
23 decreased.

24 So I don't know, and I don't even want to know,
25 why you're even talking about that, but I'm not sure

1 it's anything important. Because, you know, if you
2 just, like say you're driving down the highway at
3 70 miles an hour and the speed limit is 65 and you
4 haven't been caught yet. You're still driving 70.
5 You can be caught the next mile or you might drive
6 all the way to New York and never get caught. So
7 there's just nothing final about you speeding right
8 now and not getting caught, you know.

9 It's kind of like the man who jumped out of the
10 40-story building and when he passed the 20th floor,
11 he said: All is well so far. Well, it just doesn't
12 mean anything that all is well so far because
13 somebody could catch him before he hits the ground or
14 he could splat on the cement.

15 So I hope that explains it to you. I don't know
16 that you need to be worried about. But you just
17 can't draw any further conclusions about what
18 somebody is charged with. Okay. Thank you very
19 much. Please continue your deliberations.

20 (Jury out)

21 **THE COURT:** Madam, please, you go back as an
22 alternate back in the other room, in the Grand Jury
23 room. Thank you, ma'am.

24 Any exceptions from the State?

25 **MR. SORENSON:** No, sir.

1 **THE COURT:** From the defense?

2 **MR. WALTERS:** No, sir, Your Honor.

3 **THE COURT:** Well, we'll be in recess.

4 (Whereupon, a break is taken)

5 **THE COURT:** All right. Bring in the jury,
6 please.

7 (Jury in)

8 **THE COURT:** All right. We have the jury and our
9 alternate has been held separate. Madam Forelady, I
10 have your note asking what you should do if you are
11 deadlocked. I could give you some additional
12 instructions about how you could communicate with
13 each other and talk with each other and better
14 understand each other's positions. And I don't mind
15 doing that. Do you think that would be helpful, or
16 do you think there's any chance?

17 **MADAM FORELADY:** I think it might be helpful.

18 **THE COURT:** Helpful?

19 **MADAM FORELADY:** Yes, sir.

20 **THE COURT:** Does everybody agree that might be
21 helpful? All right. I'll be glad to do that. All
22 right, ladies and gentlemen of the jury. I'm going
23 to give you some additional instructions having to do
24 with trying to reach a verdict because hopefully you
25 can make another effort and reach a verdict in this

1 case.

2 As I've told you, you are the sole judges of the
3 facts and the evidence in the case. And as I have
4 already told you, I'm not permitted to give you a
5 hint about how I feel about the facts in this case
6 and what your verdict should be in this case. It is
7 my duty to state the law of the case as I have done,
8 and it is your duty to bring in a verdict if you
9 possibly can.

10 I can tell you, ladies and gentlemen, that it's
11 not easy for two people to agree a lot of times. And
12 when 12 people must agree, it's obviously more
13 difficult. But it is important that litigation be
14 ended if it can be ended without one of you doing
15 violence to your own conscience. No juror is
16 expected to give up an opinion based on reasoning
17 satisfactory to himself merely for the purpose of
18 being in agreement.

19 You aren't called upon very often to try cases,
20 but I am. And there are 46 of us, or 49, as I said,
21 over this state to try cases. And we can tell you
22 that usually we get a verdict in a case. And it's
23 very seldom that people agree immediately when they
24 go right in and starting deliberating, but usually
25 they are able to reach a verdict.

1 And so that means that when jurors who really
2 conscientiously want to reach a verdict and can lay
3 aside all extraneous matters, they are usually able
4 to reach a verdict. It's never been intended that a
5 verdict should be the verdict of any one person. On
6 the other hand, the verdict of the jury is the
7 collective reasoning of all persons on the jury put
8 together. That's why we have a jury, so that we can
9 have the benefit of the collective thought and
10 collective reasoning.

11 It becomes your duty to tell the other jurors
12 how you feel about the case and why you think as you
13 do. And I'm sure you have been doing that. On the
14 other hand, it becomes the other jurors' duty to
15 exchange views with you. And you should listen to
16 each other and give to each other's thoughts such
17 meaning as you think it should have.

18 And to some degree it can be said that juror
19 service is a matter of give and take. Each of you
20 must decide the case for yourself, but you should do
21 so only after an impartial consideration of the
22 evidence in the case with your fellow jurors.

23 In the course of your deliberations do not
24 hesitate to express your own views and change your
25 opinions if you become convinced it is erroneous. It

1 is not easy to back away from an opinion that has
2 been earlier expressed. Whether you are in the
3 majority or in the minority, do not hesitate to
4 reconsider your position in the light of the fact
5 that other jurors who are just as conscientious and
6 just as impartial as you and who are bound by the
7 same oath as you have come to a different conclusion.

8 Every juror should reflect upon the correctness
9 of his preliminary appraisal of the evidence. Even
10 if you have a firm conviction about the case one way
11 or the other, that doesn't mean that you shouldn't
12 listen and reason with the others and listen with a
13 disposition to be convinced.

14 Each juror who finds themselves to be in the
15 minority should reconsider their views in light of
16 the opinions of the jurors of the majority, and each
17 juror finding himself to be in the majority should
18 give an equal consideration to the views of the
19 minority.

20 If you don't agree on a verdict, the case is not
21 over. It just means that at some future term of
22 court before me or some other judge some other jury
23 will sit where you are. And the same parties will
24 come. The same lawyers will come. They will ask
25 basically the same questions. They'll presumably get

1 the same answers, and we'll go through this whole
2 process again. And I don't know that we can get a
3 jury more qualified than the 12 of you to do that.

4 So it is important, as I said, that litigation
5 be ended, but it is more important that issues be
6 ended in the form of a verdict by no juror doing
7 violence to your own conscience. No juror is
8 expected to give up an opinion based on reasoning
9 satisfactory to yourself, as I have said, merely for
10 the purpose of being in agreement.

11 So I will ask you to consider those
12 instructions, Madam Forelady, and continue your
13 deliberations. Thank you very much. All right.

14 (Jury out)

15 **THE COURT:** Any exceptions from the State?

16 **MR. SORENSON:** No, sir.

17 **THE COURT:** From the defense?

18 **MR. WALTERS:** No, sir, Your Honor.

19 **THE COURT:** We'll be at ease.

20 (Whereupon, a break is taken)

21 **THE COURT:** Thank you very much. You may be
22 seated. I have a note. It says: We are ready. We
23 have reached a verdict.

24 Is the State ready to receive the verdict?

25 **MR. SORENSON:** Yes, sir.

1 **THE COURT:** Defense ready?

2 **MR. WALTERS:** Yes, sir.

3 **THE COURT:** There will not be any emotional
4 outburst from anybody in this courtroom when the
5 verdict is announced. If you don't think you can
6 control yourself, I would ask you to step outside the
7 door. And it won't be just a minute delay and you
8 will know what the verdict is. You won't have to be
9 subjected to possibly going to jail yourself tonight.
10 Okay. Bring in the jury.

11 (Jury in)

12 **THE COURT:** All right, Madam Forelady. I
13 understand you have reached a verdict?

14 **MADAM FORELADY:** Yes, we have.

15 **THE COURT:** And is the jury verdict unanimous?

16 **MADAM FORELADY:** Yes, it is.

17 **THE COURT:** All right.

18 (Pause)

19 **THE COURT:** All right. I find that the verdicts
20 are in the proper form. 2007-GS-38-640, The State
21 vs. Terrell Scott, indictment for murder: The
22 verdict of the jury is not guilty.

23 Indictment 2007-GS-38-480, The State vs. Terrell
24 Scott, indictment for armed robbery: The verdict is
25 guilty.

1 Any requests to poll the jury?

2 **MR. WALTERS:** No, sir, Your Honor.

3 **MR. SORENSON:** No, Your Honor.

4 **THE COURT:** All right. Madam Forelady, this was
5 the unanimous verdict of you and the entire jury?

6 **MADAM FORELADY:** Yes. Absolutely.

7 **THE COURT:** All right. That concludes your
8 services, ladies and gentlemen. I appreciate your
9 patience in working with us this week. I'm sure you
10 have a lot better understanding of the legal system
11 now, having spent the last three or four days here in
12 the courtroom.

13 Now if you want to talk about the case, you are
14 welcome to talk about it all you want to, but you do
15 not have to talk about the case. If someone contacts
16 you and talks with you about how you reached your
17 verdict in this case and you want to discuss it, you
18 are welcome to do that, but you don't have to.

19 And if someone persists in trying to get you to
20 talk about the case after you have made it clear to
21 them that you don't want to discuss it, please report
22 that back to the Clerk of Court's office, and we'll
23 deal with that very appropriately. We don't allow
24 any harassment of our jurors.

25 I'm going to excuse you at this time. If you

1 want to stay, you're welcome to stay. I'm going to
2 hear some motions and then I will sentence the
3 defendant right away. We'll do that in a few
4 minutes. But you are free to leave if you would
5 like. You can sit right in the jury box. Or if you
6 would like, you can go sit out in the audience, or
7 you can go home.

8 You will be getting a check in the mail. Good.
9 The checks are ready already. They've got the checks
10 ready. And so they'll have the checks right here for
11 you. They'll give them to the bailiff. Why don't
12 you give them to -- I don't know. If you want to
13 leave, just walk on out and the clerk will come
14 around and she'll bring the checks back there. If
15 you don't want to leave right there, she'll have them
16 when you get ready to leave. But you are free to
17 leave if you would like to leave. Thank you very
18 much for your service. Okay. It looks like they all
19 want to stay.

20 Any motions?

21 **MR. WALTERS:** May it please the Court. At this
22 time, Your Honor, we make a motion to arrest the
23 judgment itself.

24 **THE COURT:** All right, sir.

25 **MR. WALTERS:** And I believe that's a standard

1 motion that's made with regards to a criminal
2 proceeding. At this time we make that motion, Judge.

3 **THE COURT:** All right, sir. I would deny your
4 motion. I think the evidence was very strong against
5 your client. I understand the verdict of the jury,
6 and I think it's an appropriate verdict under the
7 circumstances. I don't have any quarrel with the
8 verdict one little bit. So I would deny your motion.

9 **MR. WALTERS:** Thank you, Your Honor.

10 **THE COURT:** Anything else?

11 **MR. WALTERS:** No, sir, Your Honor.

12 **THE COURT:** Solicitor, you got the sentence
13 sheets for me?

14 **MR. SORENSON:** Give me one second, Your Honor.

15 **THE COURT:** Just give me two blank ones.

16 (Pause)

17 **THE COURT:** All right. I'll be glad for you --
18 I have heard the facts of the case of course. I'll
19 be glad to hear from any members of the victim's
20 family and then I'll be glad to hear from anybody
21 that wants to speak on behalf of the defendant.

22 (Pause)

23 **MR. SORENSON:** Beg the Court's indulgence, Your
24 Honor.

25 **THE COURT:** Yes, sir. Yes.

1 (Pause)

2 **THE COURT:** All right. Have her come on around,
3 please, and state her name so the court reporter can
4 get that. And I'll be glad to hear from you. Yes,
5 ma'am.

6 **MS. SHULER:** Sonya Shuler, his aunt. This has
7 been really a tough thing to deal with for our
8 family. Four months before my nephew was killed I
9 took him with me to San Diego not knowing this was
10 the last time that I would have to spend with him.

11 And I know that you have heard a lot of evidence
12 and testimonies [sic] over the last couple of days,
13 but none of it spoke to who my nephew was. And we
14 respect the opinions of the jury, the verdict of the
15 jury, but we just hope you in your sentencing will be
16 able to see through some of the things that perhaps
17 the jury couldn't see and prosecute him to the
18 fullest extent of the law. Thank you.

19 **THE COURT:** Thank you, ma'am. Yes, sir.

20 **MR. SHULER:** Yes. I feel the same way.

21 **THE COURT:** Your name, please?

22 **MR. SHULER:** Kenneth Shuler. And I am the uncle
23 of the deceased. And, you know, we raised Harry
24 right. We taught him right. And, you know,
25 sometimes they take little steps to the left; and it

1 still doesn't discount the fact that, you know, his
2 life was taken in that manner.

3 And it's just really hard to wrap our minds
4 around, you know, what just took place. I feel like
5 we don't have a choice but to respect the verdict
6 that the jury gave. But if it would please you, or I
7 don't know how to say it, but we would prefer that he
8 be prosecuted to the fullest extent of the law.

9 Because as a family, we have to live with the
10 fact that when we go home we'll never see Harry
11 again. He has an opportunity to be out again. I
12 don't think anybody in this courtroom would be
13 comfortable if that happened to your family member.
14 And it's a sad day for us, but we have to live with
15 it. And as Attorney Walters said, God will judge
16 him, and we'll live with that. What I want to say I
17 can't say, so I'll quit.

18 **THE COURT:** All right. Thank you, sir. Mr.
19 Walters.

20 **MR. SORENSON:** Your Honor.

21 **THE COURT:** Yes, sir.

22 **MR. SORENSON:** Could I put a couple of things on
23 the record, Your Honor?

24 **THE COURT:** yes, sir.

25 **MR. SORENSON:** One thing just for the record,

1 Your Honor. Mr. Scott as far as a prior record has
2 from 2000 a conviction for possession with intent to
3 distribute crack cocaine.

4 Additionally, there is one other thing I'd like
5 to put on the record. I had a chance to ask
6 Mr. Randolph and Mr. Kelly who are still in the
7 courtroom, and neither one of them wish to address
8 the Court; I did want to put something on the record,
9 Your Honor.

10 I've had an opportunity now over the last
11 probably two months to deal with and meet with not
12 only Mr. Randolph, Mr. Kelly and Mr. Gilliard on
13 multiple occasions but also to deal with his family
14 several times leading up to the preparation.

15 And I would just like to say, I mean, I realize
16 that the portrait, the picture that was portrayed by
17 Mr. Walters in this courtroom to this jury, I have
18 never seen that with any of these people. They have
19 been nothing but respectful when they have met with
20 me. They showed up when I'd asked them to come to my
21 office.

22 And I can say, I mean, I've been doing this for
23 almost 14 years now. And, I mean, his family is as
24 nice a family as I have dealt with. And these three
25 witnesses who were portrayed to this jury to be the

1 worst citizens in Orangeburg County, I can also say I
2 have not seen it, Your Honor.

3 I mean, obviously I respect the jury's verdict.
4 They have convicted him of armed robbery. This is
5 not your run-of-the-mill armed robbery. It's an
6 armed robbery that involved a young man losing his
7 life. And we would respectfully then ask Your Honor
8 to sentence him to the maximum sentence allowed.
9 Thank you.

10 **THE COURT:** And do Mr. Randolph or Mr. Kelly
11 either one want to speak? All right. Mr. Walters.

12 **MR. WALTERS:** May it please the Court?

13 **THE COURT:** Yes, sir.

14 **MR. WALTERS:** Your Honor, do you want the
15 defendant up here?

16 **THE COURT:** He can stand right there. It will
17 be fine.

18 **MR. WALTERS:** Yes, sir. Thank you. Your Honor,
19 in this particular case, as you're aware, Mr. Scott
20 is before the court. He's 30 years old. And as
21 stated in the testimony, he lives in Orangeburg
22 County. And as you're aware, he is married to
23 Ms. Aisha Scott. He has one child, and, Your Honor,
24 that child is about six years old now.

25 During the time he was growing up he was

1 attending Mt. Everett (ph) Church in Santee, South
2 Carolina. And of course you know about his
3 educational history from his own testimony.

4 His mother was before the court, Ms. Angela
5 Fields, and she is before the court at this time.
6 Your Honor, under the circumstances this has been a
7 tumultuous trial for everyone involved. And of
8 course we have to respect the verdict that has been
9 given by this jury.

10 And of course as I stated in my closing about
11 God passing a judgment and resolving this issue, I
12 think that there is good in everyone in this
13 particular matter. I think, as Mr. Shuler said,
14 sometimes we go astray and do the wrong things; and
15 as a result, terrible events occur in hurt lives.
16 And sometimes we go so far we don't know how we can
17 get back. And the only way we can return is being
18 resolved in this courtroom or someone passing.

19 Under the circumstances Mr. Scott has had his
20 day in court. He has to accept responsibility for
21 what has occurred and respect for the jury. In my
22 feelings with Mr. Scott, I believe there is still
23 good in him. Many people ask me, they say, Glenn,
24 how can you defend people that do the things they do?
25 I always say I'm not here to judge anyone. But, most

1 importantly, I believe in second chances for
2 everyone. I think every person walking this earth
3 deserves a second chance in life. And but by the
4 grace of God can I stand in the position that I'm in.

5 I'd ask that you consider his youth. He has to
6 be incarcerated. I ask that you consider the fact
7 there's a possibility that he may still do good and
8 he may still be contributing. He may be a
9 contributing member of this society. We don't know.
10 We don't know what the future holds. But I ask that
11 in a situation such as this, when everyone says turn
12 off all the lights, I draw from what you said before
13 in some other cases. And I've never said it to you
14 before but I thought it was very profound.

15 You said it in one of my cases. You talked
16 about the victim. And you said under the
17 circumstances I believe this victim would want
18 someone to have a second chance or the possibility of
19 some light in their life.

20 Because I know Harry Mack, Jr. was -- he's a
21 young boy, a young man. And you have all this
22 opportunity in life that you can take advantage of
23 when you're young like that. I raised -- I've got
24 boys myself, and I don't know what could happen to
25 them. I've got a daughter. I don't know what could

1 happen to her. But within each of these children
2 there is good and there's also forgiveness and
3 there's also mercy.

4 Harry suffered a terrible death. And I can't
5 speak for Harry. As far as the family representing
6 him, the family that I have seen here today, these
7 are not bad people. I know Harry wasn't a bad
8 person. Because, as Mr. Shuler said, he went down
9 the wrong road, just as Terrell Scott has gone down
10 the wrong road, they can never see Harry again. And
11 Mr. Terrell Scott, he has to pay a price as a result
12 of what occurred.

13 If you could find it in your heart to find some
14 window of hope, then he can somehow see in this dark
15 tunnel that he's headed in, if you can offer some
16 light. Because I've never looked at it from the
17 victim's standpoint as you have done. When you did
18 that day, I just walked home and I said, man, that
19 was really deep. I didn't say anything to you, Judge
20 Williams, about it, but it really messed with me.

21 And right now we've got this young man and
22 everybody has lost. His family has lost a loved one.
23 His mother is going to lose a child. He's going to
24 lose his freedom for a while. I ask that you take
25 that all into consideration, the totality of what has

1 been said here.

2 And the picture that was painted by defense
3 counsel in this particular case, we are touched, Your
4 Honor. And certainly whatever was said was not meant
5 to degrade or hurt anyone ever. It's just that we're
6 paid to do a job, we've got to abide by the court
7 rules, and there are certain rules that we are held
8 to also.

9 And we'll start another trial Monday, Judge.
10 It's just another trial. But I know these people
11 that have come in this for this one opportunity, they
12 leave, they might come back in here three years
13 later.

14 Your Honor, as a result, I'd ask that you take
15 into consideration the totality of what has occurred,
16 the circumstances of the events, the complete
17 decompensation of the young boys as a result of what
18 happened here, we would ask that Court consider
19 something reasonable. Thank you.

20 **THE COURT:** Thank you, sir. Any members of the
21 family or anybody want to speak?

22 **MR. WALTERS:** I don't think so, Your Honor.

23 **THE COURT:** All right. That's it?

24 **MR. WALTERS:** Yes, sir.

25 **THE COURT:** All right. Well, it's certainly a

1 sad case and there's no win in the case. Mr. Scott,
2 I complement your attorneys on the job that they've
3 done for you. I hope you appreciate the job they've
4 done for you.

5 I can understand the jury's verdict. It doesn't
6 mean I have to agree with it. And I'm not saying
7 whether I do or I don't. But I can tell you that
8 there was sufficient evidence there to convict you of
9 murder. And I don't believe you'd have much of a way
10 to escape had the jury convicted you of murder. And
11 you would be looking at life in prison and you would
12 spend the greatest portion of that life in prison had
13 the jury convicted you of that murder.

14 I think you're a very lucky young man, and I
15 hope you appreciate the job that your lawyers did you
16 for you. I think the jury has shown you a great
17 measure of mercy.

18 I agree with Mr. Walters. I'm sure there's a
19 lot of good in you. But this was a bad act that
20 night. All the evidence leads me to believe that you
21 were the ringleader there that night. And as I said,
22 the jury has shown you a great measure of mercy.

23 It is the sentence of the Court that you be
24 committed to the State Department of Corrections for
25 a period of 30 years. You will get credit for the

1 time that you have served. Good luck to you, sir.

2 **MR. SORENSON:** Thank you, Your Honor.

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

4 **THE COURT:** Take Mr. Scott out while we still
5 have everybody else in. We'll keep everybody in the
6 courtroom until y'all get him taken out back to the
7 complex.

8 Ladies and gentlemen, anybody on the jury have
9 any questions? Any comments or anything you'd like
10 to say? And let me tell you something. You did your
11 job. I did my job. You are not responsible for the
12 sentence I gave. How about get out of the way?

13 **THE BAILIFF:** I'm sorry.

14 **THE COURT:** You are not responsible for the
15 sentence. If you think it's too harsh, it's not your
16 fault. That's my job. I did my job. I do it the
17 way I think I should do it. I just think it's
18 appropriate under the circumstances.

19 And again, I appreciate your patience. I know
20 you have been back there deliberating since 12:00. I
21 have never had to do that, and I know that's not an
22 easy job. I know it's never pleasant to find anybody
23 guilty of anything when you're sitting in judgment of
24 a fellow man. But you have done your job. I have
25 every reason to think that you took it very

1 seriously, that you followed my instructions, and I
2 don't quarrel with your verdict. So I wish you well.

3 Madam Clerk, are you going to go in the back
4 with them?

5 **THE CLERK:** Yes, sir.

6 **THE COURT:** If you'll just hang around in the
7 jury room one minute, the clerk will bring you your
8 checks. Thank you very much. You are dismissed at
9 this time.

10 Everybody else please remain in the courtroom
11 until we can confirm that the defendant has been
12 taken from the courthouse, please. Officer, will you
13 look back there and tell me if they have gone? Are
14 they still in the hall?

15 **MR. SORENSON:** They're not going to go anywhere
16 for a second.

17 **THE COURT:** All right. You'll have to fill out
18 the rest of this.

19 **MR. SORENSON:** Yes, sir.

20 **THE COURT:** All right. Court is adjourned.
21 Sine die.

22 (Whereupon, the proceedings are concluded)
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, having transcribed this for Court Reporter Melissa Singletary who recorded same, 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 Orangeburg County, South Carolina, on the 21st day of May, 2009.

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

March 6, 2010

Jenny H. Williams

Jenny H. Williams, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF OrangeburgTerrell Scott # 334699

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

FILED IN RECORD
WINNIE S. CLARK
CLERK OF COURT
ORANGEBURG, SC

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Leitch Corr. Inst
2. Name and location of Court which imposed sentence Orangeburg County
3. Name(s) of co-defendant(s) (if any) Clinton Jones, Maurice Cheesebrooks (leaf 45)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Case Number: 07-GS-38-480
 - (b) 07-GS-38-640
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 13, 2009
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Direct Appeal (S.C. Court of Appeals)
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Upheld Conviction
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MARCH 16, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: NO PROBABLE CAUSE, GOLDEN RULE, BOLSTERING WITNESS, WAVE TO REQUEST ALIBI INSTR., MALICE IMPLIED FROM DEADLY WEAPON, NO INTENT INSTRUCTIONS DIDN'T INSTRUCT LESSEE INCLUDED OFFENSE

- (a) _____
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? ~~NO~~ YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. Direct Appeal
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. S.C. Court of Appeals
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Conviction upheld
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. march 6, 2012
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- 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. _____
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Wrong Court
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

STATE OF SOUTH CAROLINA

County of Orangeburg

VERIFICATION

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

Todd Scott

SWORN to and subscribed before me this 13th
day of June, 2012.

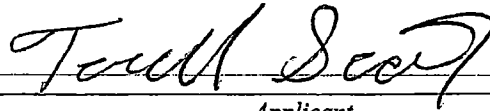
Ludheen Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

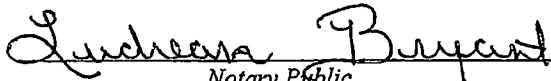
I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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



Applicant

SWORN or affirmed to and subscribed before me this
13th day of June, 2012.


Notary Public

My Commission Expires: May 26, 2020

FORM 5

STATE OF SOUTH CAROLINA)

County of Orangeburg)

IN THE COURT OF COMMON PLEAS

2012-CP-38-01158TERRILL SCOTT #3341699)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Coll. Institution
Richville, S.C.
2. Name and location of Court which imposed sentence Orangeburg County
Courthouse
3. Name(s) of co-defendant(s) (if any) Clinton Jones, LEAFUS MAURICE
Cheeseboro
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) WARRANT NO#: 20070 HB18 / Decret NO#: 2007 GS38-480

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MAY 15, 2009
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. U.S. Supreme Court - Direct Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction upheld
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
 (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Innl. Assistance of Counsel
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Golden Rule, NO probable Cause, Violated due process
 (b) Vouching / Bolstering witness
 (c) Failure to Challenge Indictment

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. Direct Appeal
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. U.S. Supreme Court
 ii. _____
 iii. _____

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

reverse, remand or vacate

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Blanchburg)

I, Terry Scott #334699, 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.

Terry Scott

JHM
SWORN to and subscribed before me this 24th
day of May, July, 2012

Janice Hickman-Miller (L.S.)
Notary Public

My Commission Expires: 2017

JANICE HICKMAN-MILLER
Notary Public, South Carolina
My Commission Expires
December 17, 2017

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

I, Terrell Scott #3341699, 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:

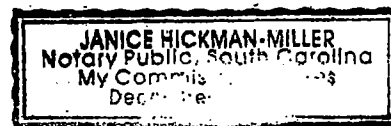
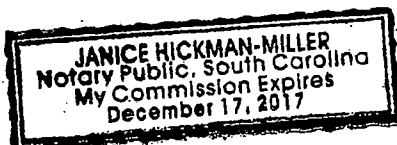
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Terrell Scott
Applicant

SWORN or affirmed to and subscribed before me this 27th day of July, 2013

Janice Hickman-Miller
Notary Public

My Commission Expires: 2017



STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Terrell Scott, #334699,)

2012-CP-38-00968

2012-CP-38-01158

Applicant,)

v.)

ORDER FOR MERGER

State of South Carolina,)

Respondent.)

The applicant in the above-captioned matter has filed two applications for post conviction relief, one on June 15, 2012, and a second on July 31, 2012 (2012-CP-38-00968 & -01158). Since an applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction (*See Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991); *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. §17-27-90), this Court hereby orders that the two proceedings be merged. The second application for post-conviction (2012-CP-38-01158) will be considered an amendment to the initial application for post conviction (2012-CP-38-00968).

The Clerk of Court is therefore ordered to merge the two cases, with docket number 2012-CP-38-00968 being the surviving case. Hereafter, the word "Application" will refer to docket number 2012-CP-38-00968; the word "Amendment" will refer to docket number 2012-CP-38-01158, which will be considered an amendment to the application for post conviction relief.

ATTEST: TRUE COPY

Winnia B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

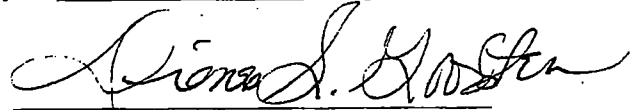
IT IS THEREFORE ORDERED that the Orangeburg County Clerk of Court merge docket number 2012-CP-38-01158 into docket number 2012-CP-38-00968, with file 2012-CP-38-00968 being the surviving file and all future pleadings bearing docket number 2012-CP-38-00968. Docket number 2012-CP-38-01158 will be dismissed upon the merger.

AND IT IS SO ORDERED this

7

day of

December, 20 12



DIANE S. GOODSTEIN
Chief Administrative Judge
First Judicial Circuit



, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Terrell Scott, #334699,

Case No. 2012-CP-38-00968

Applicant,

v.

RETURN

(Appointment of Counsel Requested)

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief, filed June 15, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted at the April 2007 term of the Orangeburg County Grand Jury for Murder (2007-GS-38-0640). During the May 2009 term of the Orangeburg County Grand Jury, the Applicant was indicted for Armed Robbery (2007-GS-38-0480). Glenn Walters, Esquire, and Michael Culler, Esquire, represented him. On May 12-14, 2009, Applicant proceeded to a jury trial before the Honorable James C. Williams, Jr. On May 15, 2009, Applicant was found guilty of Armed Robbery and not guilty of Murder. Judge Williams sentenced Applicant to thirty years imprisonment for Armed Robbery.

Applicant appealed his convictions, and following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Scott, 2012-UP-136 (Ct. App. filed February 29, 2012). The Remittitur was sent on March 16, 2012.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "No probable cause;"
2. "Golden Rule;"
3. "Bolstering witness;"
4. "Fail to request alibi instruct.;"
5. "Malice implied from deadly weapon; and"
6. "No intent instructions didn't instruct lesser included offense."

In an Amendment, Applicant set forth the following additional grounds:

1. Ineffective assistance of counsel.
 - a. "Golden Rule, no probable cause, violated due process.
 - b. "Vouching/Bolstering witness."
 - c. "Failure to challenge indictment."

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the 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, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the 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, the 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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

January 11, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	2012-CP-38-0968
	)	
TERRELL SCOTT, 334699,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Carl B. Grant, Esquire
Post Office Box 1203
Orangeburg, SC 29116

DATED this 11th day of January, 2013.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
	)	Case No. 2013-CP-38-0968
Terrel Scott, #334699	)	
Applicant,	)	
	)	
VS.	)	
	)	AMENDMENTS TO POST-CONVICTION
State of South Carolina,	)	RELIEF APPLICATION
	)	
Resondent.	)	

The Applicant, by and through his undersigned counsel, hereby amends his Application for Post-Conviction Relief, filed June 5, 2012, to include the following grounds:

1. Counsel was ineffective for failing to file a notice of alibi defense as required by Rule 5.
2. Counsel was ineffective for failing to request alibi jury instruction and/or object to jury charge without instruction.
3. Counsel was ineffective for failing to object to Solicitor's statements during closing arguments which impermissibly shifted the burden of proof from State to Defendant.
4. Counsel was ineffective for failing to investigate the contact Defendant had with Witness Daniel Young while in Orangeburg Detention Center.
5. Counsel was ineffective for failing to object and/or ask for a curative instruction to Daniel Young's testimony about Defendant's alleged prior bad acts.
6. Counsel was ineffective for failing to challenge indictment before jury was sworn pursuant to State v. Gentry.
7. Counsel was ineffective for failing to properly conduct/argue Neal v. Biggers hearing.
8. Counsel was ineffective for failing to object to Object to State's #10 and #12 (line-ups) and make objection to in-court identifications thus resulting.
9. Counsel was ineffective for failing to make motion for DV and renew objections at close of all evidence.
10. Counsel (Culler) was ineffective for failure to prepare (Neal v. Biggers hearing).
11. Counsel was ineffective for failure to object to relevance of State's #21 (gun).

12. Counsel was ineffective for failure to properly show bias of witness Daniel Young.
13. Counsel was ineffective for failure to retain an expert in eyewitness identification.

Respectfully,



Jonathan D. Waller, Attorney for Applicant
SC Bar No.: 76290
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 256-0011

This 22 day of May, 2014

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF ORANGEBURG 2012-CP-38-0968

3

4 TERRELL SCOTT) TRANSCRIPT OF RECORD
5 VS.)
6) MAY 18, 2015
7 STATE OF SOUTH CAROLINA) ST. GEORGE, SC

8

9 B E F O R E:

10 THE HONORABLE MAITÉ MURPHY

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

12 JONATHAN D. WALLER, ESQUIRE
13 Attorney for the Plaintiff

14 J. CLAYTON MITCHELL, ESQUIRE
15 Attorney for the State of South Carolina

16

17 Ruth L. Mott, RPR, CRR
18 Certified Court Reporter

19

20

21

22

23

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1

I N D E X

2

3

WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

4

TERRELL SCOTT

MR. WALLER

4

22

5

MR. MITCHELL

14

6

MICHAEL CULLER

MR. WALLER

23

7

MR. MITCHELL

31

8

GLENN WALTERS

MR. WALLER

37

62

9

MR. MITCHELL

55

10

CERTIFICATE OF REPORTER

70

11

12

E X H I B I T S

13

NO.

DESCRIPTION

ID

EVD

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A1

PHOTO LINEUP

43

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A2

PHOTO LINEUP

43

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1 MR. MITCHELL: Next case is Terrell Scott versus State
2 of South Carolina Case No. 2012-CP-38-00968. Mr. Scott was
3 indicted in April of 2007 for murder and armed robbery. He
4 was represented on those charges by Mr. Glenn Walters and Mr.
5 Michael Culler. He proceeded to trial May 12th through the
6 14th of 2009 before the Honorable Judge James C. Williams.
7 He was acquitted on the murder charge convicted on the armed
8 robbery. He was sentenced to 30 years imprisonment on the
9 armed robbery.

10 Mr. Scott filed a notice of appeal in that case, and an
11 Anders brief was submitted on his behalf. The remittitur on
12 that was issued March 16th of 2012. Mr. Scott filed this PCR
13 application on June 15th of 2012. He also filed a second
14 application in this case which has since then merged. We
15 made a return on January 11, 2013. He's represented by Mr.
16 Jonathan Waller at this time. He's going forward today on I
17 believe 10 or 11 allegations. I'll let Mr. Waller articulate
18 those for the Court.

19 I note that Mr. Scott is present here today and
20 represented by Mr. Jonathan Waller, and at this time I turn
21 it over to him.

22 THE COURT: Mr. Waller.

23 MR. WALLER: Thank you, Your Honor. Do you have a copy
24 of the filed amendments?

25 THE COURT: I do.

1 MR. WALLER: Okay. Your Honor, there's a few that we
2 are not going forward on.

3 THE COURT: Okay.

4 MR. WALLER: To help Your Honor out, No. 6, No. 12 and
5 No. 13.

6 THE COURT: All right. You may proceed.

7 MR. WALLER: Thank you, Your Honor. At this time I will
8 call Terrell Scott.

9 THE COURT: Mr. Scott, if you'd come on up to the
10 witness stand.

11 TERRELL SCOTT,
12 being first duly sworn, testified as follows:

13 THE COURT: Your witness.

14 DIRECT EXAMINATION BY MR. WALLER:

15 Q. Good morning, Mr. Scott. How are you today?

16 A. I'm fine.

17 Q. Mr. Scott, can you -- I need you to speak loudly and
18 slowly so this lady right here can write down everything.

19 A. Yes, sir.

20 Q. Mr. Scott, how old are you?

21 A. I'm 36.

22 Q. Okay. Where are you from?

23 A. I'm from Santee, South Carolina.

24 Q. Did you grow up there?

25 A. Yes, sir.

1 Q. And how long -- have you lived there all your life?

2 A. I moved to Orangeburg when I was about 13.

3 Q. Okay. So but around the same area forever.

4 A. Yes, sir.

5 Q. Okay. Where were you living at the time of this
6 incident back in '06?

7 A. ■ Northwood Court.

8 Q. Okay. And where is that?

9 A. Orangeburg, South Carolina.

10 Q. Okay. And where were you arrested?

11 A. At ■ Northwood Court.

12 Q. Okay. How long after this incident took place were you
13 first arrested?

14 A. About three or four months.

15 Q. Okay. And once you were arrested, did you get a lawyer?

16 A. Yes, sir.

17 Q. Okay. How long after you were arrested did you get a
18 lawyer?

19 A. I got a lawyer same day.

20 Q. Okay. And who was that lawyer?

21 A. Mr. Glenn Walters.

22 Q. Okay. How did he come to be your lawyer?

23 A. My mother hired him.

24 Q. Okay. How about Mr. Culler?

25 A. I didn't met Mr. Culler until like a week or two before

1 I went to trial. I never -- I never had no conversation with
2 him or anything.

3 Q. Okay. Did you hire Mr. Culler?

4 A. No.

5 Q. Okay. But you did -- you said you met him about a week
6 before?

7 A. No, I met him like -- he was involved with the case like
8 two weeks before, but I met him the day of trial.

9 Q. Okay. So you and Mr. Culler -- did you all ever have
10 any conversations --

11 A. No, sir.

12 Q. -- just you and him?

13 A. No, sir.

14 Q. Okay. Did you and Mr. Walters go over the charges
15 against you?

16 A. We did.

17 Q. About how many times did you all meet?

18 A. I want to say like on several occasions.

19 Q. When you say several, can you kind of ballpark a number
20 for me?

21 A. I want to say like maybe eight, nine times.

22 Q. Okay. When you all met, what did you all talk about?

23 A. We basically talked about, you know, I'm saying every
24 time we met, he keep telling me like, we gotta do it, go to
25 trial, gone do this, and we gone do this, but he never really

1 had a trial strategy or anything like that.

2 Q. Let me back you up just a little bit. When you all met,
3 did you all go over the evidence that the State had against
4 you?

5 A. Yes. We talked about -- see, the thing was, like, I
6 never had any codefendants until ten months later. You know,
7 that's kind of shocking. Like, I didn't know anything about
8 codefendants until ten months after I was arrested.

9 Q. Okay. Did you and Mr. Walters talk about that?

10 A. Ten months later, yes.

11 Q. Okay. Did you all talk about the delay in there being
12 codefendants?

13 A. No. He just said the State came up with codefendants.

14 Q. Did you understand the penalties the two charges had?

15 A. Yes, sir.

16 Q. When you and Mr. Walters first met, did you give him
17 some information?

18 A. Yes, sir.

19 Q. What information did you give him?

20 A. I gave him the information that, when this crime was
21 committed, I was nowhere in sight. I gave him alibi and
22 stuff like that.

23 Q. Did you give him the names of any witnesses?

24 A. Yes, sir.

25 Q. And I'm going to fast-forward a little bit. When you

1 went to trial, you testified; is that right?

2 A. Yes, sir.

3 Q. And your mother also testified.

4 A. Yes, sir.

5 Q. Were there other witnesses that you had given Mr.

6 Walters that were alibi witnesses?

7 A. Yes, sir.

8 Q. Were they there?

9 A. Yes, sir, one of them was.

10 Q. Were they called to testify?

11 A. No.

12 Q. Was your understanding of -- who was it that wasn't --

13 that was there, excuse me.

14 A. Aisha Scott.

15 Q. Was her testimony going to be similar to you and your

16 mother's?

17 A. We was all at the same place, so we was testifying that

18 we was all at the same place.

19 Q. But it was going to be similar to what you and your

20 mother already testified to.

21 A. Yes, sir.

22 Q. Did you and Mr. Walters discuss the fact that you had

23 given a statement?

24 A. I never -- I never really gave a statement. You know, I

25 just -- I just -- when I got arrested, I never gave a

1 statement. See, it occurred because they went to my
2 grandmother house first, and that's how I found out, by my
3 aunty. My aunty called me and told me they was at my
4 grandmother's house. That's how I found out they was looking
5 for me, so I turned myself in.

6 Q. Okay. Did you and Mr. Walters discuss the lineups that
7 the State had?

8 A. Not really. I mean, he showed them to me, but we didn't
9 really discuss them. He just told me I was picked out of a
10 lineup here, and I was picked out of a lineup here, and he
11 told me how I was picked out.

12 Q. Okay. We already talked a little bit about an alibi.
13 Did you all discuss any potential defenses that you might
14 have?

15 A. Yes, sir, we discussed an alibi defense.

16 Q. To the best of your knowledge did Mr. Walters file a
17 notice of intent to present alibi with the Clerk of Court?

18 A. I think so. I'm not exactly sure, but I think he did.

19 Q. Okay. Now, did you feel confident in your decision to
20 go to trial?

21 A. Yes, I did.

22 Q. Did you think that you were prepared?

23 A. I mean, I think it could have been better. I think
24 that, you know, I felt like Mr. Culler wasn't prepared enough
25 to go to trial. In the beginning of my trial Mr. Walters

1 wasn't there. Mr. Culler was. So he wasn't familiar with
2 the case enough because the Judge asked him a question, and
3 he told the Judge he couldn't answer that question; so I felt
4 like he wasn't, you know, I'm saying enough -- familiar
5 enough with the case to proceed at that time but we did.

6 Q. Okay. Once the trial got started, were you able to
7 communicate with your lawyers?

8 A. Yes. We sat at the table together.

9 Q. Did you have like a notepad or a pen and paper or
10 anything like that?

11 A. No.

12 Q. Were you able to take notes at all?

13 A. No.

14 Q. Were you able to talk to them, though?

15 A. Yes.

16 Q. Did you all have any conversations while the trial was
17 going on?

18 A. Not much.

19 Q. Okay. Did you and your attorneys have a chance to
20 discuss the witness list?

21 A. I didn't.

22 Q. The State's witness list?

23 A. All I know is he told me six people was gonna testify
24 against me, and that was it.

25 Q. Did you all discuss a witness named Daniel Young?

1 A. We did.

2 Q. Did you tell your attorneys about any -- anything about
3 Mr. Young?

4 A. I told my attorneys that Mr. Young was a federal inmate
5 and that it was no way possible that we was -- we was in the
6 county jail together because the county jail house federal
7 inmates and state inmates differently, so there's no way that
8 we could have been together to have a conversation.

9 Q. When did you tell your attorneys that?

10 A. When he first came to me and told me he was going to
11 testify against me.

12 Q. When was that?

13 A. I want to say like the middle of '07. I don't remember
14 exactly what date, but it was like the middle of '07.

15 Q. Okay. So he came to you and said he was going to
16 testify against you?

17 A. Yes, he told me we had some more witnesses. Like I
18 said, I didn't know anything about codefendants or witnesses
19 until like ten months later. So when he came to me and start
20 telling me about them, I was like, you know, there's no way
21 possible we could have had a conversation; no way possible I
22 could have told him anything because if you ask the county
23 jail, they house state and federal inmates totally separate,
24 so there's no way possible we could have had a conversation.

25 Q. Okay. Ultimately you decided to testify, is that right?

1 A. Yes, sir.

2 Q. Okay. What did you and your attorneys discuss about you
3 choosing to testify?

4 A. Well, after the State rest, me and Mr. Walters went back
5 in the back; and he was like, you know, I think it's in your
6 best interest to get on the stand. I was like, why? He was
7 like, because if you don't, the jury might presume you
8 guilty. So I was like, I don't understand. So we talked
9 about it for a little minute and I decided to testify to tell
10 my behalf of the story.

11 Q. Okay. And part of your testimony concerned your alibi
12 defense, is that right?

13 A. Right.

14 Q. Leading up to the trial what did you and your attorneys
15 discuss as the trial strategy going into the trial?

16 A. Basically was no trial strategy because, like I said, I
17 never -- I never met with Mr. Culler -- Mr. Walters, he
18 wasn't there at the beginning of the trial for the Neil
19 versus Biggers hearing, you know, I'm saying, but he came in
20 at the end and did the closing arguments at the Neil versus
21 Biggers hearing. But he wasn't there for the beginning of
22 it, so I was kind of confused because if you don't know what
23 they testify to, how can he do proper closing arguments? So
24 I was kind of confused with that.

25 Q. Okay. Now, ultimately you were convicted on one of the

1 two charges, is that right?

2 A. Yes, sir.

3 Q. An appeal was filed on your behalf?

4 A. Yes, sir.

5 Q. Did you have any communications with your appellate
6 attorney?

7 A. Limited. I got a letter or two from him.

8 Q. Did you respond to his letters?

9 A. Yes, sir.

10 Q. Mr. Scott, I've asked all the questions that I have. Is
11 there anything you think I've left out or that you think the
12 Court needs to be aware of about Mr. Walters' or Mr. Culler's
13 representation of you?

14 A. I just feel like it's a lot of issues they left out.
15 Like at the end of my trial, like, he failed to ask for an
16 alibi charge on the jury. You know, I mean, that's a
17 critical issue right there. I feel like he failed to object
18 to a certain kind of things like bad prior acts, vouching and
19 boasting on the witness behalfs and stuff like that. It's
20 like a lot of things I feel like he failed to object to. So
21 it's like I'm not -- I'm not really familiar with the law,
22 but from reading it, from being in prison now, reading it, I
23 just feel like if he would have asked the jury or asked the
24 judge for an alibi charge, the outcome of the trial would
25 have been different.

1 Q. Leading up to the trial starting, so before the trial
2 actually started, is there anything that you want the Court
3 to be aware of?

4 A. Just those few issues I want to put on the record like
5 the alibi charge for the jury, the bad prior acts issue,
6 vouching for the witnesses, issues like that that I just want
7 them to be aware of those type of issues.

8 MR. WALLER: Okay. No further questions. Please answer
9 any questions Mr. Mitchell has.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION BY MR. MITCHELL:

12 Q. Good morning, Mr. Scott.

13 A. Good morning.

14 Q. Let's see, you were charged with murder and armed
15 robbery; is that correct?

16 A. Yes, sir.

17 Q. You were acquitted on the murder.

18 A. Yes, sir.

19 Q. Okay. Then you were sentenced to 30 years on the armed
20 robbery, is that right?

21 A. Yes, sir.

22 Q. Mr. Walters was hired by you?

23 A. By my mother, yes, sir.

24 Q. And then Mr. Walters, as you were coming up to trial,
25 reached out to Mr. Culler to assist with the case, is that

1 right?

2 A. From my understanding, yes, sir.

3 Q. Okay. So leading up to everything Mr. Walters had
4 represented you the entire time, right?

5 A. Right.

6 Q. Okay. Now, you talked about a little bit discovery just
7 a second ago. Did you go over the statements that were made
8 that implicated you in the crime?

9 A. I read them.

10 Q. Okay. So you knew what they were and you knew -- you
11 kind of knew what to expect when these guys were going to
12 testify, is that right?

13 A. I knew what to expect from some of them, but like I
14 said, I didn't know what to expect from the rest of them
15 because it was like ten months later, you know, I'm saying,
16 before I actually got another discovery, you know, I'm
17 saying, before I knew what was going on.

18 Q. So you had three potential victims testify against you,
19 is that right?

20 A. Yes, sir.

21 Q. Mr. Randolph, Mr. Gailliard and Mr. Kelly?

22 A. Yes, sir.

23 Q. They ID'd you during the trial; is that correct?

24 A. That's correct, but they didn't ID me in the photo
25 lineup like...

1 Q. But they -- they testified that it was you that
2 committed the crimes, right?

3 A. That's what they said.

4 Q. Okay. And then you also had Mr. Cheeseborough and Mr.
5 Jones testify against you too?

6 A. Yes.

7 Q. The State alleged that they were your codefendants,
8 correct?

9 A. Yes, sir.

10 Q. Okay. And that was what was presented to the jury.

11 A. Yes, sir, but they was never in my indictment.

12 Q. Okay.

13 A. Like I was never put on notice about it.

14 Q. Okay. But they testified that you came up with this
15 plan to go rob the victim in this case, correct?

16 A. That's what they said.

17 Q. Okay. Now, in your discussions with your attorney, with
18 Mr. Walters and with Mr. Culler, you gave -- you gave them
19 the identity of witnesses that you thought would be helpful
20 to your case, right?

21 A. I never talked to Mr. Culler.

22 Q. Okay. But to Mr. Walters.

23 A. Right.

24 Q. Just to both of them but Mr. Walters, right?

25 A. Yes.

1 Q. And that was your mother, your wife, and is that your
2 sister, Aisha, is that correct?

3 A. No, that's my wife.

4 Q. Okay. I'm sorry, so wife and your mother, right?

5 A. Yes, and Mr. Johnny Benjamin.

6 Q. Okay. Now, with the alibi you told the investigators
7 that you were with them during the incident, right?

8 A. Correct..

9 Q. And that was kind of unprovoked. They didn't even tell
10 you what incident they were talking about, is that right?

11 A. That's not true.

12 Q. But that's kind of the way the State presented it at the
13 trial, is that right?

14 A. But that's not true though.

15 Q. Okay. But that is what the solicitor, how he phrased it
16 and how he thought about it, right?

17 A. That's what he said, but it wasn't true.

18 Q. Okay. Now, you testified at the trial, correct?

19 A. Yes.

20 Q. And you testified that you did not commit the crimes,
21 right?

22 A. Correct.

23 Q. And you testified that you were shopping with your wife
24 that day?

25 A. Earlier that day, yes.

1 Q. Okay. Earlier that day.

2 A. My wife and my mother.

3 Q. And then you had dinner with your mother and wife that
4 night?

5 A. Right.

6 Q. But you got a little hung up on the dates, didn't you?

7 A. No.

8 Q. Now, when you testified, you kept referring to the next
9 day as Christmas, right? So you got a little confused on the
10 dates, is that right?

11 A. No, sir.

12 Q. During your testimony you kept saying that on Christmas
13 Eve we went shopping, right?

14 A. On Christmas Eve?

15 Q. Right, Christmas Eve, that afternoon you were shopping,
16 right?

17 A. The day before Christmas?

18 Q. Now, the incident took place December 23rd, late that
19 night or early Christmas Eve morning, correct?

20 A. Correct.

21 Q. Okay. And some of your testimony was that you were
22 shopping in the afternoon on the 24th, Christmas Eve; is that
23 correct?

24 A. Actually, I was with my family the whole entire weekend
25 like from Christmas and on, you know, I'm saying, like

1 because my daughter first Christmas and we was all together,
2 you know, I'm saying, that's what I was telling them from the
3 beginning.

4 Q. And that's what you testified at the trial, correct?

5 A. I told them that I was with my mother my wife and my
6 daughter, yes.

7 Q. Okay. And that you went shopping, you bought some
8 roses, went out for presents for your daughter, is that
9 right?

10 A. Correct.

11 Q. Okay. And your mother testified as well, is that right?

12 A. Correct.

13 Q. And her testimony was that you were -- she -- she
14 testified that she was with you that day, correct, the 23rd;
15 December 23rd, she testified that she was with you that day,
16 right?

17 A. Correct.

18 Q. Okay. Then she testified that you may have left to go
19 get some cigarettes as well?

20 A. Right.

21 Q. Okay. Now, you testified that you had married your wife
22 just recently before the incident, is that right?

23 A. Correct.

24 Q. And that would have been December of 2006?

25 A. Correct.

1 Q. And your mother testified that you got married in
2 December of 2003, is that right?

3 A. I don't know, but I know when I got married. I got
4 marriage certificate to prove it.

5 Q. Okay. But your mother's testimony was different than
6 what you testified to.

7 A. It couldn't have been because we got married on December
8 18, 2006, at the courthouse.

9 Q. Okay. Moving to Mr. Daniel Young, you testified that
10 you had never met him before, is that right?

11 A. I mean, I don't know him.

12 Q. You didn't know him at all?

13 A. No.

14 Q. You didn't know him from any of your dealings growing up
15 in Santee?

16 A. No, he not from Santee.

17 Q. He's from Orangeburg, right?

18 A. Yes.

19 Q. Now, you testified just a second ago that you couldn't
20 have had that conversation with Mr. Young.

21 A. Correct.

22 Q. And that's because he would have been held in a separate
23 facility?

24 A. All I'm saying is that at the county jail they do not
25 house state and federal inmates together, so it's physically

1 impossible for us to have that type of conversation.

2 Q. Right, but it would have been during the trial, when he
3 was prepared to testify at the courthouse, isn't that what
4 they alleged?

5 A. No.

6 Q. So what they allege was that Mr. Young -- that you
7 called Mr. Young a snitch while in a holding cell, correct?

8 A. I don't know what they alleged.

9 Q. That's what he testified to, right, Mr. Young?

10 MR. WALLER: Your Honor, I'm going to object. I think
11 Mr. Mitchell is misinterpreting the record. I don't think
12 Mr. Young ever testified to that. That was an incident that
13 occurred, but I don't think it was ever -- my understanding
14 of his testimony was that while in pretrial detention years
15 earlier that he alleges Mr. Scott gave him all the details of
16 this crime.

17 THE WITNESS: Exactly.

18 THE COURT: Mr. Mitchell, what's your position?

19 MR. MITCHELL: I may be incorrect on the dates on that,
20 so I may not -- I'll move on from that because it's not
21 consequential anyway.

22 Q. So the State ending up calling an Officer Ravinder too,
23 is that correct?

24 A. Correct.

25 Q. And she corroborated Mr. Young's assertion that you

1 called him a snitch, right?

2 A. Correct.

3 MR. MITCHELL: No further questions. Thank you.

4 THE COURT: Any redirect.

5 MR. WALLER: Just briefly.

6 REDIRECT EXAMINATION BY MR. WALLER:

7 Q. Mr. Scott, you testified that you did not know Daniel
8 Young growing up.

9 A. No, I didn't.

10 Q. You weren't from the same home town as he was, is that
11 right?

12 A. No, I'm not.

13 Q. Okay. You did run into him at the jail at some point,
14 is that right?

15 A. No. That's where he said we met at, know I'm saying,
16 said we was in the same holding cell and stuff like that, but
17 it's physically impossible.

18 Q. Okay. But you testified a little while ago that he said
19 he was going to testify against you.

20 A. We was in the holding tank when he said that. That was
21 the day of my trial.

22 Q. Okay. Had you met him before that?

23 A. No.

24 Q. Had you seen him since then?

25 A. No.

1 MR. WALLER: No further questions.

2 THE COURT: You may step down, sir. Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: Any other witnesses.

5 MR. WALLER: Yes, Your Honor, I would call Michael
6 Culler.

7 MICHAEL CULLER,
8 being first duly sworn, testified as follows:

9 THE COURT: Your witness.

10 DIRECT EXAMINATION BY MR. WALLER:

11 Q. Mr. Culler, how did you get involved in this case?

12 A. Mr. Walters and I had been talking about this case I
13 think for I would say a month or two, and he had a lot of
14 witnesses that he was going to have to cross-examine, one of
15 whom, as I recall, I think was Mr. Young, had a federal deal
16 in place. And so he asked me to help him on that, and I
17 said, okay, fine, and that's sort of how it happened.

18 Q. Okay. What would you say your level of involvement in
19 the overall theme of the case was?

20 A. Well, I think my overall role was to cross-examine the
21 witnesses and try to deal with the federal plea bargain that
22 I think Mr. Young had made, in addition to which I contacted
23 an expert, Don Girndt, who was formerly a SLED agent, and he
24 came down and met with us to go over some of the file.

25 But in terms of strategy, our strategy was to discredit

1 their stories, their statements. I think, as you've noted,
2 there are multiple witnesses that identify Mr. Scott as being
3 there, so that was really the thrust of it.

4 Q. Okay. Did you have an opportunity to meet with Mr.
5 Scott prior to the trial starting?

6 A. I don't remember meeting him. I don't remember that.

7 Q. Okay. About how long were you actively involved in the
8 case before the trial?

9 A. I would guess a month, maybe; sort of casually before
10 that but really got intense -- I remember we met with Mr.
11 Girndt on a Sunday, and I had gotten in touch with the feds
12 to get the plea agreement, so we sort of put it together
13 pretty quickly. I think this had been scheduled before and
14 had been continued.

15 Q. Okay. You were present for the pretrial hearings, is
16 that right?

17 A. Yes.

18 Q. Okay. And you actually began the Biggers hearing.

19 A. Right.

20 Q. Mr. Walters was not present at the beginning of that
21 hearing; is that correct?

22 A. Yes, that's correct.

23 Q. Before that morning were you aware that you would be
24 conducting that hearing?

25 A. No, we hadn't discussed that. We had not discussed

1 that.

2 Q. Were you prepared to conduct that hearing?

3 A. I think that I was, having as -- as I heard in another
4 hearing, been in the public defender's office for 17 years
5 and having done this work exclusively for that period of
6 time, Neil versus Biggers is not a rocket-science sort of
7 thing.

8 Q. And you -- I believe you testified that you -- you all
9 hadn't discussed it, but were you under the impression that
10 he was going to conduct it, or you were going to conduct it,
11 or it just hadn't been discussed?

12 A. We hadn't discussed that.

13 Q. Okay. Do you have a copy --

14 A. But, I beg your pardon.

15 Q. No, go ahead.

16 A. Let me say this: In terms of in court identification,
17 we didn't believe, and nor have I in my experience had great
18 success with that. The thrust of it was what can we do about
19 these statements.

20 Q. Okay.

21 A. So as important as it is now, I think to us at that
22 point it was important, but it was not something we were
23 hanging our hat on.

24 Q. Okay. Mr. Culler, have you had a chance to review a
25 transcript of the trial --

1 A. Yes.

2 Q. -- before coming here today?

3 Do you have a copy with you?

4 A. I do.

5 Q. If you could, could you turn to page 15, please?

6 A. You can go ahead.

7 Q. And beginning on line 4 the Court asks: So my question
8 is, do you see any prejudice in us proceeding with the Neil
9 versus Biggers hearing prior to the indictment being
10 true-billed, the one with the correct victims' names. And
11 your response begins on page 8 where you tell the Court --

12 A. You mean Line 8?

13 Q. Yes, sir, Line 8. I apologize.

14 A. No, I can read it. I see it. I can read it for you.

15 Q. That would be great.

16 A. "Your Honor, I apologize. I'm as familiar as I can be
17 with it. I don't know that I can intelligently answer that
18 question."

19 Q. My question is, what did you mean by that and why --

20 A. Well, I frankly think that I don't remember talking to
21 the solicitor beforehand, and so I wasn't exactly sure who
22 they were going to put up that morning; and I think Mr. Scott
23 was asking some questions, so I can't really tell you that I
24 had any special meaning with that.

25 Q. Okay.

1 A. You'll have to infer what you will.

2 Q. Okay. Were you aware that they were going to add the
3 three victims to the indictment?

4 A. I'm sure that I was.

5 Q. Okay. It wasn't a surprise to you that they were going
6 to add three additional victims?

7 A. No. I think we discussed that.

8 Q. Okay. You did the cross-examination of Will Gailliard?

9 A. I'm sure I did. I did a lot of cross. As I said, that
10 was sort of the thrust of my involvement.

11 Q. His identification was part of the Biggers hearing, and
12 then once the trial started, he makes an out-of-court
13 identification that wasn't part of a lineup; it was just a
14 picture. Do you recall that?

15 A. I don't.

16 Q. Okay. If you could turn to page 273, please.

17 A. Sure. You can go ahead. I've got it.

18 Q. What was -- that identification is admitted into
19 evidence without objection by you. What was the trial
20 strategy behind not objecting to that picture being admitted?

21 A. I don't have any recall whether we had any strategy
22 about the picture other than we didn't object for a reason, I
23 assume.

24 Q. Do you recall what that reason was?

25 A. No. As I've said, I don't. I'm sorry.

1 Q. That's fine. The following page, 374, he makes the
2 in-court identification following the out-of-court, and there
3 was again no objection. What was the trial strategy behind
4 not objecting?

5 A. I'd give you the same answer.

6 Q. Okay.

7 A. It became -- well, let me say this: The one thing I do
8 remember is it was pretty clear, whether it was choreographed
9 or not, these guys were all coming in to identify him; so the
10 question was, are their stories credible. Identification was
11 a no-brainer. Okay. Fine. But can you really tell us what
12 happened in a cohesive, comprehensive, intelligent way; and
13 we felt like, frankly, that we were going to win the whole
14 trial.

15 Q. Okay.

16 A. Because we had done I think a fairly good job of
17 addressing their witnesses.

18 Q. Okay. You did the cross-examination of Mr. Daniel
19 Young, the jailhouse snitch.

20 A. Is that the guy that was in federal custody?

21 Q. Yes.

22 A. Yes.

23 Q. How prepared were you, prior to the trial being called,
24 that he would be testifying?

25 A. I don't remember that. I do remember talking to the

1 public defender's -- the federal public defender's office in
2 Florence talking to Mike Meetze and Bill Nettles. They would
3 not tell me what was going on. I think they had represented
4 a codefendant. And I remember getting on the Pacer system to
5 print off his plea agreement. I don't remember when I did
6 that, but I remember doing it.

7 Q. . Okay. On page 498 of the transcript he testifies two
8 different times that Mr. Scott was high on cocaine at the
9 time of the incident, or he's relating what Mr. Scott told
10 him. Do you recall that testimony?

11 A. No.

12 Q. Was there any evidence from any other source that Mr.
13 Scott may have been on some sort of narcotics that night?

14 A. Frankly, I don't remember.

15 Q. Okay.

16 A. I would say this: Again, while that's very important
17 today, I think he was really a very good witness for us in
18 the end, in spite of that particular issue because he was so
19 uncredible based on his plea agreement. It was obvious that
20 he was going to have to tell the story they wanted him to
21 tell, and if he didn't, I think he was looking at a life
22 sentence; so he was not, in my view, helpful to them, in
23 spite of that allusion to the drugs it was.

24 Q. Okay. I'm wrapping up here with you. A codefendant
25 Maurice Cheeseborough testified in this case against Mr.

1 Scott. Do you recall that?

2 A. I do remember that.

3 Q. He was represented by the public defender's office.

4 A. Right.

5 Q. Were you still working at the public defender's office
6 at this time?

7 A. No.

8 Q. You had left the public defender's office?

9 A. Yes. That was one of my pet peeves which was -- I don't
10 know how they're addressing it now, but we never kept
11 codefendants ever.

12 Q. Did you feel it was a conflict of interest for you to be
13 part of this trial when there was a codefendant represented
14 by the public defender's office?

15 A. Given that I was no longer in the office?

16 Q. Well --

17 A. Well, let me say this: I understand where you're going.
18 No, I didn't. I don't remember anything about talking to a
19 codefendant or any information being exchanged, and that
20 would not have been something I would have done.

21 Q. Okay. Just very briefly, on the second portion, I'm not
22 sure how your transcript is, but mine has two portions.

23 A. Yes.

24 Q. On the second portion on page 550.

25 A. Okay.

1 Q. That same witness publishes his statement to the jury.

2 A. Mm-hmm.

3 Q. What was the strategy behind not objecting to that
4 statement being published?

5 A. I don't remember other than I'm sure, hindsight being
6 20/20, that we felt like, okay, fine, great, put that in, do
7 everything you can, but your people are not credible, and
8 it's obvious you're having to bolster them.

9 MR. WALLER: Beg the Court's indulgence, please.

10 No further questions for this witness.

11 THE COURT: Mr. Mitchell?

12 CROSS-EXAMINATION BY MR. MITCHELL:

13 Q. Good morning, Mr. Culler.

14 A. Good morning.

15 Q. Thank you for being here with us today. How long have
16 you been practicing law?

17 A. I think 26 years.

18 Q. You mentioned being part of the public defender's
19 office. What was your role immediately before you went into
20 private practice?

21 A. I ran the office.

22 Q. What was your title?

23 A. Chief public defender for Orangeburg County.

24 Q. Can you go over how you were involved in this case? I
25 know you testified Mr. Walters approached you about

1 assisting?

2 A. Yes. We frequently would talk about cases with each
3 other, and I'm sure -- I don't remember how far in advance we
4 began talking about it, but it sounded like it was a case
5 that could be won based on the lack of credibility of the
6 State's witnesses; and then it really became incumbent on us
7 to try to prepare to attack their credibility. We ran into
8 some problems along the way, but that was really the gist of
9 it.

10 Q. Can you give us a brief rundown of the factual situation
11 of what the State alleged?

12 A. They alleged that Mr. Scott had gone into an apartment,
13 I think it was on the 22nd of December, and there were
14 multiple people inside, he'd gone in, brandished a gun,
15 allegedly robbed them, killed a gentleman while he was in
16 there, fired shots.

17 Q. So the people who testified against him were the three
18 people that were in the apartment, right?

19 A. Yes.

20 Q. And then his two codefendants as well?

21 A. Yes.

22 Q. Okay. To the Biggers hearing, you testified that you
23 did not -- you weren't going to hang your hat on the Biggers
24 hearing. Did you think that an objection to it -- a
25 contemporaneous objection to the in-court identification, do

1 you think that would have been successful after the Court's
2 ruling in the Biggers hearing?

3 A. No.

4 Q. Okay. So you testified that the ID's were not that
5 important. You thought it was more of a credibility case
6 than whether it was actually Mr. Scott at the scene?

7 A. Our belief was that the identifications were going to be
8 made but that they were lying and that the thrust of it was
9 not so much to undermine the identification, it's him; as to
10 point out all the lies they were telling so that as part and
11 parcel of the whole thing the jury would discount the
12 identification. The identification was coming in. That was
13 going to happen. That's a no-brainer. It was can we take
14 enough speed out of them and make them look like the liars
15 that we believe them to be so the jury would not find it
16 credible.

17 Q. And the witnesses that testified for the State, they did
18 have inconsistent stories --

19 A. Yes.

20 Q. -- a bit.

21 A. Yes.

22 Q. And inconsistent statements?

23 A. Yes.

24 Q. Okay. To the indictment issue, you testified there was
25 no surprise to adding more victims.

1 A. No.

2 Q. Can you explain that situation? What happened? They
3 issued a new indictment at that point?

4 A. I can't remember. I know we talked about them doing
5 that. I don't remember when we talked to Mr. Sorenson about
6 it, but I have some recall about it. I just don't remember.

7 Q. The only thing that changed in the indictment is they
8 added two names as victims, is that right?

9 A. Yes. The story wasn't going to change.

10 Q. Mr. Scott was well on notice that he was charged with
11 murder and armed robbery -- it was the armed robbery
12 indictment, excuse me, so he was well on notice that he was
13 charged with armed robbery.

14 A. That it existed, so, yes, I would assume so.

15 Q. Okay. Now, your cross-examination of Mr. Young who was
16 the federal inmate.

17 A. Yes.

18 Q. What was your goal to do with his testimony?

19 A. Just make it abundantly clear that he had a deal in
20 place that was quite important to him and that he was lying
21 and basically was doing it for that reward. He had quite a
22 lot at stake.

23 Q. And you harped on that he was facing nearly a life
24 sentence.

25 A. Yes, I'm sure I did.

1 Q. And that he would be rewarded by giving favorable
2 testimony to the State's case.

3 A. There was a motion that had to be made by the federal
4 prosecutor, as I recall, and they were only going to do that
5 based on his performance in that state court prosecution; so
6 had he not lived up to his end of things, so to speak, he
7 wouldn't have gotten that.

8 Q. Moving to Mr. Cheeseborough, the witness, he was
9 represented by -- do you recall who he was represented by?

10 A. I don't.

11 Q. Ms. Hinds, does that sound correct?

12 A. I don't remember.

13 Q. Okay. The record will speak for itself on that. In
14 your cross-examination of him you kind of accused him of not
15 sticking to the story. What did you mean by that line of
16 questioning, that he was kind of getting off the story the
17 State wanted to present?

18 A. Well, I'm sure, you know, the -- again the inference the
19 jury needed to draw was that these people were -- had a sort
20 of prepared story; that their statements that they initially
21 gave didn't match. I can't remember which witness it was who
22 said he remembered things more clearly in Court than he'd had
23 two and a half years earlier or something crazy like that.
24 It was just good stuff for us.

25 Q. You highlighted that he testified he didn't take any

1 jewelry, when there was conflicting statements to the
2 contrary, and that he didn't take the necklace, and that he
3 had the gun in his left hand; do you recall your questioning
4 on that?

5 A. I don't, but I'm sure I did.

6 Q. Okay. So when he published that statement -- will you
7 turn to page 551 --

8 A. Sure.

9 Q. -- when he published that statement there.

10 A. Mm-hmm.

11 Q. So the strategy in just allowing that is just -- well, I
12 guess the reason you didn't object to that being read in
13 completely was because, as you said before, you believed it
14 to be a credibility case, not an identification case.

15 A. Right.

16 Q. And that by reading it in would show the inconsistencies
17 in his testimony to that statement.

18 A. Sure.

19 MR. WALLER: Your Honor, I'm going to object. He is
20 testifying, Mr. Mitchell is.

21 THE COURT: It's cross-examination. He can lead.

22 THE WITNESS: I really thought, not in response to
23 anything but sort of in general with regard to that, that the
24 State's witnesses did a pretty good job for us really.

25 Q. Do you recall why Mr. Walters was not at the beginning

1 of the Neil v. Biggers hearing?

2 A. That was in 2009. I don't know. He may have been
3 trying to -- I just don't remember. I'd be speculating.

4 Q. Well, Mr. Scott was not present; is that correct?

5 A. No, he was not.

6 Q. So the Court had to issue a bench warrant at that point.

7 A. The Court did, yes.

8 MR. MITCHELL: Okay. No further questions. Thank you.

9 THE COURT: Any redirect?

10 MR. WALLER: Nothing further, Your Honor.

11 THE COURT: You may step down, Mr. Culler. Thank you.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Are you planning on calling Mr. Walters?

14 MR. WALLER: Yes, ma'am.

15 THE COURT: Go ahead with that.

16 MR. WALLER: I will call Glenn Walters.

17 GLENN WALTERS,

18 being first duly sworn, testified as follows:

19 THE COURT: Your witness.

20 DIRECT EXAMINATION BY MR. WALLER:

21 Q. Good afternoon, Mr. Walters.

22 A. Good afternoon.

23 Q. Mr. Walters, how did you come to represent Mr. Scott?

24 A. If memory serves me correct, they paid a retainer, said
25 he had a problem, and we went over the charges, they paid it,

1 and I was retained to represent him on his criminal charge.

2 Q. Okay. Now, was he locked up, or was he able to make
3 bond prior to his trial?

4 A. I can't remember. I think he was out. Prior to trial
5 he was out on bond.

6 Q. How many times do you think you met with Mr. Scott prior
7 to his trial commencing?

8 A. Might have been eight or nine times.

9 Q. During those meetings did you all discuss the charges he
10 faced?

11 A. Yes.

12 Q. Did you all discuss the evidence the State had against
13 him?

14 A. Yes.

15 Q. Did you all come up with a strategy on how to proceed at
16 trial?

17 A. Yes.

18 Q. What was the strategy you all came up with?

19 A. Well, there were two codefendants, and we had to take
20 both codefendants down and attack their statements. If I
21 remember, they gave statements, and then of course he alluded
22 to an alibi defense. We talked to his mother; can't
23 remember, I think we talked to his wife. We looked at every
24 option that was available for him, but he made clear he
25 wanted to go to trial.

1 Q. Now, talk about the alibi for just one second. Did you
2 file a notice of intent to raise an alibi defense?

3 A. Can't remember.

4 Q. Do you have anything in your file that would help you,
5 any notes or anything like that?

6 A. No. I just remember that the reality is that they
7 couldn't get their story together, and the transcript
8 reflects what was going on. He couldn't even remember the
9 date he was married. His mother couldn't remember the date
10 he was married. In addition to that, when he testified with
11 regards to the alibi defense, he couldn't remember whether --
12 we kept explaining this to him, look, December 24th is
13 Christmas Eve, December 25th is Christmas Day. And for some
14 reason they just kept botching it. He said he got married on
15 December 18th of 2006. His mother said he got married three
16 years before that. With regards to the alibi defense, he
17 alleged that on that day he was shopping with his wife and it
18 was -- he said it was Christmas Eve, then he said it was a
19 day before, then he also testified that he had dinner with
20 his mom, and then they testified he left and went out for a
21 moment and came back. So what happened was, as with many
22 alibi defenses, he was all over the place.

23 Q. But, nevertheless, you all did produce an alibi defense?

24 A. Okay. We did, fine; but that's -- the record speaks for
25 itself. He botched it. He was all over the place. And his

1 mom botched it too because she gave the wrong date. I
2 remember my son got married on December 18th, and they
3 alleged that he committed the crime two or three days later.
4 You'd probably be on your honeymoon or doing something else,
5 but they botched it. She said it was three years before. He
6 said it was that week, and that's in the record. It's the
7 same thing that was going on in our conversations. It was
8 all over the place.

9 Q. Okay. Back to before the trial started there were
10 several identifications made.

11 A. Yes.

12 Q. What's your recollection of when the identifications
13 were made?

14 A. I believe they were going up to Officer Shumpert's
15 office, and they were identifying from the photo ID lineup,
16 what was going on. And the defendant has alluded to the fact
17 that you were not there, you did not show up in court. The
18 problem we had was he didn't show up. And Judge Williams
19 made it clear, I'm going to put him in jail, Glenn; where is
20 your client? And I told Mr. Culler, I said, look, you can
21 cover the Neil v. Biggers. I've got to find this guy. I
22 don't know where he is. If you look at page 11 of the
23 transcript, that's where he said he's going to issue the
24 bench warrant. The page before that is where Mr. Culler
25 makes it clear, in my car -- I guess I was in my car, but I

1 had him on speakerphone, told him to be there, what time to
2 be there, what we were going to do, and he didn't show up.
3 Judge Williams made it clear, Glenn, I'm going to put him in
4 jail. You're going to have a problem here. And he goes on
5 the record and says, I guess we'll have to do a bench
6 warrant, but, you know, this train is going to move. I
7 panicked, of course, and contacted my staff, and my first
8 reaction was where is he? Did we do something wrong? Did we
9 drop the ball? He showed up and then when he showed up he
10 disobeyed -- I don't want to use the word disobeyed. I
11 instruct my clients on how to dress when they come to Court,
12 what they're supposed to wear, what will be pleasing to the
13 jury. He walked in and had the wrong clothes on, so he was
14 late, and then he showed up with the wrong clothes on.

15 Q. Okay. Mr. Walters, my question was about the ID's that
16 were made, when they took place relative to the incident
17 taking place.

18 A. Sure.

19 Q. Do you recall that?

20 A. I believe they were done in Officer Shumpert's office,
21 and I think there was a series of questions on the ID and how
22 it was performed and, I mean, whatever's in the transcript,
23 it is what it is.

24 Q. Was there a gap of time when the incident took place and
25 the IDs were made?

1 A. I'm not exactly sure.

2 Q. Okay.

3 A. I don't remember.

4 Q. Did you have an opportunity to review your file before
5 you came today?

6 A. I looked through this transcript, and I looked through
7 the file. The transcript is a more accurate record, and I
8 remember some of the things that went on in the courthouse
9 and what was done with regards to this case.

10 Q. Okay. If I told you it was a month later, would you
11 have any reason to disagree with me?

12 A. I don't remember.

13 Q. Okay. Do you recall that the name of Terrell Scott was
14 provided to Investigator Shumpert by the victims and not
15 through independent investigation?

16 A. I'm not exactly sure, but I believe the testimony was
17 that Terrell Scott knocked on the apartment door -- and this
18 was alleged by the victims -- and somebody inside the
19 apartment recognized him, and that's how he was able to enter
20 the apartment. He entered the apartment. They felt uneasy.
21 I think they wanted to go and close the door, and that's when
22 two other people rushed the door. And, of course, as in
23 numerous cases, you know a guy, you see his face, you might
24 even know his nickname, but you're not solid on exactly what
25 his name is.

1 Q. Okay. So you recall that they did not remember his name
2 at the time.

3 A. I don't recall that. All I know is that he was
4 identified as the person that walked in. The testimony was
5 that he did not have a mask on, so they recognized his face.
6 There were two other individuals that were wearing masks.
7 One was a dark-skinned guy that was tall, and there was a
8 light-skinned guy that was short.

9 Q. Okay. Mr. Walters, I am --

10 MR. WALLER: Could I get these marked?

11 (Applicant's Exhibits A1 and A2 marked for
12 identification.)

13 Q. Mr. Walters, I'm going to hand you what's been marked
14 for identification purposes as Applicant's A1 and A2, ask you
15 to take a look at those.

16 A. Yes, sir.

17 Q. To the best of your recollection, are those the lineups
18 that were identified by two of the victims and admitted into
19 court during the trial?

20 A. I'm not exactly sure but if this is the information that
21 was submitted with the Rule 5. I wouldn't remember a lineup
22 from a crime that occurred in 2006 and I think went to trial
23 in 2009.

24 Q. Okay. Looking at the top right corner of each of those,
25 do you see a State's Exhibit marked?

1 A. To right-hand corner of which document? There are four
2 sheets of paper here which one.

3 Q. Right. Two of them are stapled together. Each one
4 should have a red sticker at the top.

5 A. Right. I have State's Exhibit No. 10 in my hand and
6 State's Exhibit No. 12 that's on the desk here.

7 Q. Okay. The bottom of the first page of each of those
8 there's a -- they're dated; is that correct?

9 A. Yes, sir.

10 Q. What is the date?

11 A. The date on the State's Exhibit 10 is 1/28/07, 10:33,
12 and for Exhibit 12 it's dated 1/25/07, and the time is 4:10.

13 Q. Okay. So a little over a month after this incident was
14 alleged to have taken place; is that correct?

15 A. Yes, sir.

16 Q. Okay. Mr. Walters, I'm going to jump right into the
17 actual trial. Do you have a copy of the transcript?

18 A. Yes, sir.

19 Q. If you would, please turn to page 324.

20 A. Yes, sir.

21 Q. Okay. The assistant solicitor -- excuse me, 325. The
22 assistant solicitor attempts to admit into evidence two
23 lineups where no one was picked out; is that correct?

24 A. Well, you referred to page 325.

25 Q. Yes, sir.

1 A. It refers to the Director John Randolph by Solicitor
2 Sorenson. And Sorenson says they need to decide.

3 The Court says, so which one.

4 I respond, I will, Your Honor.

5 Court says okay.

6 Mr. Walters, I said, sorry.

7 Solicitor Sorenson: Thank you. Did you have an
8 opportunity then to view these two lineups?

9 Answer: Yes, sir.

10 Did you recognize anybody in either one of these that
11 was involved in that incident two days earlier where your
12 cousin was killed?

13 Answer was, no, sir.

14 Solicitor Sorenson said, Your Honor, at this time we'd
15 offer State's Nos. 4 and 5 into evidence.

16 And the Court said, any objection?

17 And I stated, Your Honor, again I renew my objection.
18 He said he didn't identify anyone. What's the purpose of
19 putting that information before the jury if it's irrelevant
20 to the case?

21 The Court responded I think it would be relevant. I
22 overrule your objection.

23 The court reporter said, let me take the ID.

24 Q. And Mr. Walters, I apologize. I'll be more specific in
25 giving you a line in the future. But essentially my question

1 was two lineups were offered into evidence, and you objected
2 to them to the relevancy; is that correct?

3 A. Yes.

4 Q. Okay. If you would turn to page 327, line 21.

5 A. Yes, sir.

6 Q. One of those two lineups, State's Exhibit No. 10 that I
7 handed you earlier for identification purposes, was offered
8 into evidence and admitted without objection from you.

9 A. Yes, sir.

10 Q. Is that correct?

11 What was the trial strategy behind not objecting to that
12 identification?

13 A. I don't remember.

14 Q. Page 329 of the transcript, Mr. Randolph makes an
15 in-court identification of Mr. Scott, is that your
16 recollection?

17 A. Page 329?

18 Q. Yes, sir. About half way down the page.

19 A. What line are you referring to?

20 Q. Line 14 is the question.

21 A. Says, will you point him out for the jury.

22 And the answer was, the white shirt and striped tie.

23 And line 16 says the white shirt, let me ask this
24 question, is there anything about him that's different today
25 than it was -- than it as (sic) two and a half years ago.

1 Answer was, his facial hair.

2 And the question was, okay, what's different about that?

3 Answer was, it's not there.

4 Question: How much facial hair did he have back then?

5 Answer: He had a full beard.

6 Question: A full beard?

7 Answer: Yes.

8 Q. Okay. What was the trial strategy behind not objecting
9 to the in-court identification?

10 A. I can't remember.

11 Q. Okay. If you would, please, turn to page 432, beginning
12 on line 21 this time.

13 A. Says, at this time we'd offer State's 12 into evidence.
14 My response was, no objection, Your Honor, and then the
15 Court admitted it without it.

16 Q. Okay. And State's No. 12 is one of the items I handed
17 you marked for identification purposes earlier. It's the
18 lineup. What was the trial strategy behind not objecting to
19 that lineup being admitted into evidence?

20 A. I do not remember.

21 Q. Okay. Mr. Walters, a weapon was admitted into evidence
22 during this trial. Do you recall that?

23 A. No. I saw it in the transcript. I didn't remember.
24 It's been a while now. That's been six years.

25 Q. Okay. Do you have any notes in your file about any

1 weapons?

2 A. If it was produced in a Rule 5, then I'd be aware of it
3 but...

4 Q. Okay. But you don't recall a weapon -- specifically a
5 weapon being entered?

6 A. I believe we met with Don Girndt, and Girndt is a
7 firearms expert, that's what he was, for SLED, and we may
8 have discussed it with him. Don was an expert at firearms
9 and reviewed some other cases where, if someone's shot and
10 it's bloody, how the blood splats all over the place. He's
11 an expert in that too.

12 Q. Was the firearm, to your recollection, was the firearm
13 that was admitted, was it ever alleged to have belonged to
14 Mr. Scott?

15 A. I'm not sure if it was alleged to have belonged to Mr.
16 Scott. All I know is that I think it was three or four guys
17 in the apartment, and when they rushed the door, there were
18 three people in the apartment, and a gun went off and...

19 Q. Okay. Is it possible that it was alleged to have been
20 the gun owned by Mr. Mack, the deceased victim?

21 A. I think we tried to argue in the case that, you know,
22 maybe someone was -- the individual was shot by one of the
23 individuals in the apartment. We argued everything under the
24 sun, and of course he wasn't convicted of murder.

25 Q. Okay. What was the trial strategy behind not objecting

1 to that weapon being admitted into evidence?

2 A. I can't remember at this time.

3 Q. Okay. We've discussed a little bit about the alibi
4 defense. Were there any other witnesses that you and Mr.
5 Scott had discussed that might be able to aid in an alibi
6 defense?

7 A. There may have been other individuals, but the problem
8 was that each person that we talked to, there were
9 inconsistencies and contradictions and reluctance on their
10 part to come forward and help Mr. Scott. His mother was with
11 him all the way, but she couldn't get her story together.
12 And I believe his wife showed up, and then she disappeared.
13 She showed up one time. Then she disappeared. And, of
14 course, she could exercise the privilege too. But the
15 problem was that, when you've got a client that's a moving
16 target -- I was there on the 23rd, wait a minute the 23rd is
17 not Christmas Eve. The 24th is Christmas Eve. I'm not sure
18 what date I got married. Mom says you got married three
19 years ago. You testified you got married that week of the
20 crime that was committed. The problem is, when you get in a
21 room and you start cornering people, you say, look, you need
22 to tell me an honest statement. Usually what I do is I pull
23 out a sheet of paper that is an affidavit that simply says,
24 if you give a false statement, you know you can be convicted
25 of a crime; you can be prosecuted. And, of course, they have

1 the right to come out and interview you after it was
2 submitted. And once they understand the implications of
3 that, that's when people start moving around. So the bottom
4 line with the alibi defense is you rake them over the coals,
5 you make sure it's sound, you make sure it's good, and then
6 you present it the to the prosecution. Just having
7 conversation in private, people saying, I'm with you all the
8 way, and when you finally corner them and say, look, I want
9 it in black and white, and I want you to give me this, and I
10 want you to tell me the truth, what happens is you have to
11 make a strategic judgment as to whether you need to go down
12 that road or let it go. The problem here was the defendant
13 didn't have his act together, and his mother didn't have her
14 act together.

15 Q. Okay. But you went down the road; is that right?

16 A. Sure.

17 Q. Were there other witnesses that you all had spoken with
18 that would have aided an alibi defense?

19 A. If we didn't call them, we probably said, let's stay
20 away from them, because we know the mom's not going to give
21 up on her kid; and hopefully the defendant will do what he
22 thinks is in his best interest. But as far as the wife is
23 concerned, he's facing a murder charge and an armed robbery
24 charge. He could go away for life. Got a feeling that she
25 was saying, I'm not getting in that boat either. And as far

1 as any other individuals, they were cagey about it.

2 Q. Okay. At the end of the close of evidence or at the
3 close of evidence what was the strategy behind not making a
4 motion for directed verdict?

5 A. I can't remember.

6 Q. During the trial there was a charge conference; is that
7 correct?

8 A. Yes.

9 Q. Okay. What was the trial strategy in not requesting an
10 alibi charge from the judge?

11 A. I can't remember, I think sort of the spoiler in the
12 game was the issue where it was in the holding cell at the
13 courthouse. There's been a lot of talk about, well, they
14 don't house the inmates in the same place. There was a
15 holding cell at the courthouse where the individual that was
16 called a snitch, I think it happened at the courthouse. So
17 what happened was, you know, solicitor impeached him because
18 he was -- he went into this rant with the -- with another
19 person that was testifying in a case like it, you know, was a
20 Scarface Tony Montana thing where, snitches, you snitch and
21 you tell things, blah, blah, blah, and that really disrupted
22 the trial. That was the catalyst that turned everything over
23 in the case.

24 This guy had five people testifying against him, and he
25 walked on the murder charge. He probably could have walked

1 on the armed robbery charge, only problem was he's back there
2 and he calls somebody a snitch, they find out about it, and
3 it exploded.

4 Q. Okay. Mr. Walters, I'm going to ask my question again
5 because you did not answer it. What was the trial strategy
6 in not requesting an alibi charge during the charge
7 conference?

8 A. I'm not exactly sure. I just knew that we were all over
9 the place with that alibi charge and where he was and what he
10 was doing and whether it was solid and whether it wasn't
11 solid, and then of course our witnesses had been impeached.

12 Q. Okay. And, again, the "jailhouse snitch" testified
13 before Mr. Scott or his mother testified; is that correct?

14 A. Sure.

15 Q. Okay. So you knew what he was going to say before you
16 put up the alibi defense.

17 A. To say I knew what Mr. Scott was going to do in that
18 courtroom, I can't say that. Each time you met with him
19 about this alibi defense it was fluid, it was moving. It was
20 a -- it wasn't a constructive dialogue where you had your
21 facts nailed down. It was always moving.

22 Q. I'm talking about Mr. Young. You knew what he was going
23 to testify to.

24 A. Mr. Young, we knew that he had federal charges, and we
25 were not present with regards to the exchange that -- I think

1 it was made in the courthouse about him being a snitch and
2 what was said about him being a snitch or what could be done
3 to him because he was a snitch. All I know is that that
4 compounded the problems that the defendant had.

5 Q. But you were aware of that entire circumstance
6 surrounding Mr. Young prior to putting up a case.

7 A. I would say that I'm aware of the allegation that was
8 made. I'm aware of the rant that went on with Mr. Young. As
9 far as the full content of what was being said between these
10 people, it was people walking by, I guess, and someone said
11 that someone's screaming someone's a snitch, but I didn't
12 have full -- I wasn't present when the conversation went on.

13 Q. But Mr. Young had already testified also; is that
14 correct?

15 A. Yes, mm-hmm.

16 Q. If I could get you to turn to the second volume of the
17 transcript to page 784.

18 A. 784?

19 Q. Yes, sir. And if you look to page -- or excuse me, line
20 23. It's down at the beginning of the very last paragraph.

21 A. Yes.

22 Q. The solicitor makes a comment that Mr. Scott's wife
23 didn't testify and says that he would ask certain questions
24 of her but she didn't testify.

25 A. Yes.

1 Q. What was the trial strategy behind not objecting to
2 those comments?

3 A. Well, it's my understanding that it's a privilege with
4 your wife; but in this particular case Mr. Scott wanted his
5 wife to testify and participate in the trial because he
6 believed that she could substantiate his alibi. The problem
7 with his wife was that, being that we got -- the connotation
8 from what she was saying was that I'm not all on board with
9 this. I think the solicitor's prohibited from alleging that
10 the defendant did not testify.

11 Q. So you had no issue with that comment.

12 A. Probably not but also, when a closing argument goes on,
13 you have to sit down, strategically, and decide where you're
14 going to object, where you're not going to object and where
15 you believe the jury is moving. Sometimes you can do more
16 harm by objecting during a closing argument if you don't know
17 the tempo and have a read on the jury. And our read on the
18 jury was that we were in pretty good shape, we've got a
19 problem with the snitch issue, this guy's facing 30 to life
20 on the murder charge; and guess what they did, they pop him
21 with an armed robbery charge and they let him go on murder.

22 Q. Okay. So what was your strategy behind not objecting to
23 that comment?

24 A. I can't remember at that time, but usually if I don't
25 object, it's because strategically I've set there and looked

1 at the jury and I've got a read on them and said don't get up
2 now because you're just going to create more problems for
3 your client.

4 Q. Okay.

5 A. Plus the jury wouldn't even understand it anyway.

6 Q. After the closing arguments, the Judge obviously charges
7 the jury. What was the trial strategy behind not objecting
8 to the jury charge that did not contain an alibi charge?

9 A. I think the more we go near the alibi and the more we
10 bring up the alibi, we highlight the issues with regards to
11 our client and the inconsistencies and the contradictions
12 over and over again in his testimony.

13 MR. WALLER: Okay. Beg the Court's indulgence one
14 second.

15 No further questions, Your Honor.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION BY MR. MITCHELL:

18 Q. Good afternoon, Mr. Walters.

19 A. Good afternoon.

20 Q. Thank you for being here with us today.

21 A. It's a pleasure to be here.

22 Q. How long have you been practicing law?

23 A. 26 years.

24 Q. What percentage of your practice is devoted to criminal
25 defense?

1 A. I guess at one time it was close to 70, 80 percent. Now
2 it's about maybe 50 percent.

3 Q. You were a public defender before you opened up your own
4 practice?

5 A. I was a public defender in Richland County, and I was a
6 public defender in Orangeburg County, and I now have a public
7 defender contract and I handle juveniles in Orangeburg.

8 Q. So you were retained on this case to represent Mr.
9 Scott?

10 A. Yes, sir, that's correct.

11 Q. All right. How would you describe the State's evidence
12 against Mr. Scott?

13 A. Overwhelming. We had two codefendants, and we had the
14 individuals inside of the apartment. So we had essentially
15 five different individuals that would testify that he
16 committed this crime. Under the circumstances it looked
17 pretty bleak.

18 Q. So moving to the alibi, you reasoned that it wasn't
19 grounded in a solid factual basis to go forward with that --

20 A. Yes, sir.

21 Q. -- completely?

22 But I know that's what Mr. Scott kind of testified, that
23 he kind of wasn't there, he was doing things earlier in the
24 day, but that doesn't quite amount to a true alibi; is that
25 correct?

1 A. The problem is he said he ate dinner and he left, and
2 you couple that with the inconsistencies about the marriage,
3 the inconsistencies in his wife's reluctance to jump in and
4 simply state, my husband was with me, we ate dinner, we went
5 to bed that night, this is what we did. When you tie all
6 things together, the totality of it, you're out there on a
7 wing and a prayer, and that's exactly where we were. And we
8 put him up and said, let's go ahead, let's see what happens,
9 but let's be careful. So if you're going to do that, you've
10 got to control certain variables. We've got the defendant
11 and we've got his mom. Let's cut it there. Let's get them
12 in, get them out.

13 Q. And the more you harped on the fact that he wasn't
14 there, it's kind of the -- your position looks a little less
15 credible when they have five witnesses, eyewitnesses, saying
16 something completely contrary; do you agree with that?

17 A. Two codefendants that state he was there, plan was is
18 that he could get the door open because they knew his face,
19 once you get the door open, we'll rush the door, the two of
20 us will wear masks, and we'll get in. They had individuals
21 inside of the apartment, the one that allowed him in because
22 he knew who he was, and you've got multiple -- two
23 codefendants and multiple victims that are testifying, we
24 know this guy, this is the person, this is -- we know who he
25 is.

1 Q. In the State's closing argument, the portion that we
2 just looked at on page 784, did you find that objectionable?

3 A. No, we didn't object to it. It's nice to look at the
4 transcript, and hindsight's always 20/20; but when you're in
5 the middle of a trial, you have to decide, is it appropriate
6 to object at this time, or is there a possibility that I've
7 got the jury in my corner and they're going to go with me but
8 am I going to ruin it for my client if I jump up and I say
9 objection, and does it really make a difference here. And
10 these are strategic issues that you have to take into
11 consideration. This isn't an issue that's going to really
12 make a difference in a trial.

13 Q. So you think it would have highlighted something that
14 was sort of peripheral?

15 A. If we go back to that alibi, we've got problems. They
16 couldn't even get together what day he was married. Any man
17 who can't remember the day he was married and it just -- it
18 clustered from there, and any woman sitting on the jury would
19 have a problem with that.

20 Q. With the State's lineup there -- the State's 10 and 12,
21 that would be A1, A2 in this hearing, those were lineups
22 where there was no identification made; is that correct?

23 A. If the record reflects that. I don't remember. It was
24 in 2007.

25 Q. You objected to it on -- earlier in the -- I guess on

1 page 325, and then you sort of withdrew the objection a few
2 pages later. Is that because you had a second thought that
3 this may be helpful to the case actually?

4 A. I don't remember.

5 Q. Would you think it would be helpful to show that the
6 eyewitness picked out the wrong guy?

7 A. It may have been. I don't remember the strategy at that
8 time. You know, I remember the case. I remember the facts.
9 I remember the result. But at that time, it's 2015, I don't
10 remember what was going on in 2007.

11 Q. If you recall, one of the eyewitnessss picked out a Mr.
12 Washington, who was then subsequently arrested for the
13 murder. Do you remember, as part of your strategy where you
14 really took issue with law enforcement's handling of the
15 case, where you kind of attacked their tactics and attacked
16 their procedures in investigating this case?

17 A. You always attack law enforcement, and there are issues
18 that pop up that can assist you in your case; so, you know,
19 you're betwixt and between, when you're a defense lawyer,
20 things that occur that are great for your case and
21 inconsistencies and contradictions that you attack for
22 certain issues, so you have to be very careful.

23 Q. As far as the in-court identifications, you didn't
24 believe those were going to be -- you didn't think those were
25 going to be successfully kept out, did you?

1 A. No.

2 Q. And the Judge ruled at the Biggers hearing that they
3 were going to come in during the trial likely; is that
4 correct?

5 A. Yes.

6 Q. We talked about the weapon that was entered into
7 evidence. Would it have been part of your strategic -- or
8 strategy, in not objecting to that, to show that this is a
9 group of guys who had guns, who had drugs, and that had been
10 around these type of things before?

11 A. I think we argued that we don't know who shot the
12 victim; we know that these guys were involved in the sale and
13 distribution of drugs, and they allowed someone in the
14 apartment, and I believe one witness's testimony was that he
15 hit the floor and he heard a gun go off; we don't know
16 whether they were fighting among themselves or whether it was
17 the three individuals that came in the apartment. We were
18 successful in arguing that point. He was not convicted of
19 murder, despite the fact that there were five people that
20 identified him.

21 Q. So you think it was helpful that that gun came in to
22 show that this is an apartment filled with drugs, guys
23 selling drugs, with guns?

24 A. Everything we did was helpful. What destroyed that case
25 was going back in that holding cell and calling somebody a

1 snitch.

2 Q. And to clear that up, that happened at the courthouse
3 holding cell as far as you recall?

4 A. In my opinion in my 26 years of practicing law, he was
5 going home that day. He had no business going in the holding
6 cell and calling someone a snitch. If he'd just kept his
7 mouth shut, in my opinion, he would have walked. It is
8 inconsistent for a jury to find him not guilty of murder and
9 find him guilty of armed robbery. He would have walked on
10 the entire package. We took down five witnesses that
11 testified against him. We wiped the prosecution out. He
12 walked into a holding cell, and he turned around and called
13 somebody a snitch and went into this Scarface rant about what
14 they do to snitches, and he put himself in that position. He
15 compromised his case.

16 Q. If you would turn to page 646, this is at the close of
17 the State's case. I'll direct you to the bottom of that
18 page. What motion did you move for there?

19 A. What line, sir?

20 Q. What's that? I'm sorry?

21 A. What line, sir, page 646.

22 Q. The very bottom, would have run over to the next page.

23 A. Line 25, may it please the Court, Your Honor, at this
24 time we'd make a motion for a directed verdict.

25 Q. Okay. What was the Court's ruling on that?

1 A. Court's response was, all right.

2 Mr. Walters: Of course Your Honor's aware of the
3 standard that's required in order to initiate a directed
4 verdict in a criminal case. We'd make a motion at this time
5 because they have failed to prove the elements of the offense
6 itself with regards to the charge of armed robbery and
7 murder. And of course the Court has been here for the entire
8 record put before the Court, so I'm not going to belabor the
9 point and argue that before Your Honor. With all due
10 respect, we'd make a motion for a directed verdict.

11 The Court's response was, all right. I deny that
12 motion. I think there are six people who have testified that
13 they saw the defendant shoot the guy, or pretty well maybe, I
14 think six, I think all six of them said that, but anyhow,
15 based on all the evidence I've heard, especially having to
16 take it in the light most favorable to the State, I would
17 deny that motion.

18 MR. MITCHELL: I have no further questions. Thank you,
19 Mr. Walters.

20 THE COURT: Any redirect?

21 MR. WALLER: Just briefly, Your Honor.

22 REDIRECT EXAMINATION BY MR. WALLER:

23 Q. Mr. Walters, I know we've kind of beat it to death, but
24 I have just a few more questions about the alibi issue. Mr.
25 Walters, you testified earlier that you, as the attorney,

1 make strategic decisions; is that right?

2 A. That is correct.

3 Q. Including what witnesses to call.

4 A. Yes.

5 Q. You called Mr. Scott's mother to testify, is that right?

6 A. Yes, sir.

7 Q. So at least in some realm of possibility that you were
8 trying to put up an alibi defense, is that valid?

9 A. Yes.

10 Q. And yet you did not request a jury charge for alibi to
11 the Court.

12 A. Yes.

13 Q. Or object to the jury charge when it was read to the
14 jury.

15 A. Yes. The jury doesn't understand that there's a charge
16 that's being put forward for an alibi defense. The jury
17 doesn't understand that. All a jury does is they sit there
18 and listen. And if mom walked in and said, he ate dinner
19 with me that night, he couldn't have been present, he
20 testified that he was there and he ate dinner and he was with
21 me that night, that creates doubt. The jury doesn't need a
22 charge. The position we were in, we were throwing the
23 kitchen sink and everything else at the prosecution. This
24 guy was going home.

25 MR. WALLER: No further questions, Your Honor.

1 THE COURT: You may step down, Mr. Walters. Thank you.

2 Mr. Waller, how many more witnesses do you have?

3 MR. WALLER: That's it for witnesses, Your Honor.

4 THE COURT: How about you, Mr. Mitchell?

5 MR. MITCHELL: No witnesses from the State, Your Honor.

6 THE COURT: Any arguments.

7 MR. WALLER: Yes, Your Honor. Your Honor, I would ask
8 the Court, normally in a trial situation I would ask the
9 Court -- I normally would not ask the Court to review the
10 entire transcript. Given the age of this trial, it was an
11 '09 trial, some of the recollections of all three of the
12 witnesses were a little bit tenuous, I guess. I would ask
13 the Court to review at least some of the relevant portions
14 we've discussed today.

15 I would also ask the Court to review, if I can approach
16 two cases. I believe one of these cases Mr. Mitchell will
17 also be citing to, Your Honor. It's Gibbs v. State. Your
18 Honor, it's a three-to-two Supreme Court decision that
19 addresses both failure to contemporaneously object to
20 identification issues and the alibi issues. Your Honor,
21 while it is a -- while it is a three-to-two opinion, I would
22 ask you to also note the dissent written by Chief Justice
23 Toal. Your Honor, that opinion says that it is ineffective
24 assistance of counsel to fail to request an alibi charge when
25 an alibi is presented to -- presented to the Court. The

1 majority finds that there wasn't prejudice to the defendant,
2 however, it does say that it was ineffective.

3 Your Honor, the other case I handed up is McKnight v.
4 State. In that case a defendant was -- defendant was
5 deprived of his right to counsel during a key portion of the
6 trial. In this situation Mr. Walters was not present for the
7 beginning of the Neil v. Biggers hearing. Mr. Culler, while
8 very competent at what he does, was not fully -- wasn't his
9 hired attorney. He wasn't fully prepared, as he testified,
10 there to cross-examine witnesses.

11 So, Your Honor, I would ask you to review those cases.
12 Your Honor, I think the testimony has shown that, while they
13 did present a good defense and do a good job during the
14 trial, there were mistakes that were made, mistakes that rise
15 to the level of ineffective assistance of counsel, and that
16 Mr. Scott was prejudiced by them; particularly, failing to
17 object and preserve for appeal identification issues and for
18 failure to request an alibi charge, both to the judge and
19 object to it to the jury. Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. MITCHELL: May it please the Court, Your Honor.

22 THE COURT: Yes, sir.

23 MR. MITCHELL: We ask that you deny the application and
24 the relief requested. I'll start with the alibi allegation,
25 and I'll cite to Gibbs. What Gibbs did, it was a three-two

1 decision but it was three -- Justice Pleicones concurred in
2 result only, as he does a good bit, so the reasoning there
3 was not adopted. Chief Justice Toal wrote a dissenting
4 opinion there, but either way you look at it, if you say --
5 you can look at prejudice or ineffectiveness, you can look at
6 them separately. The Court doesn't have to find
7 ineffectiveness to get to prejudice. You can just start with
8 prejudice as it's easier to do that in a lot of cases. What
9 Gibbs said, the majority opinion there, the three-two, or the
10 two-two really, is that it was the clear charge and that the
11 charge was so clear that there was no prejudice in that case.

12 And in this case I'd say the same thing is applicable in
13 that on page 805 during the jury instructions the Court
14 specifically said that it's the State's burden to prove
15 identification, so the jury definitely knew that, you know,
16 just because there wasn't an alibi charge, they still had to
17 find Mr. Scott was the man who committed these crimes, and
18 that's in there word for word. That's the State's burden.

19 And that's very similar to what happened in Gibbs where
20 it said it's the State's burden, something along those lines,
21 of finding him definitely a positive ID. But in the dissent
22 there Justice Toal says that the analysis should be a little
23 bit different, that it should be viewed as whether the result
24 of the trial would have been different and whether there was
25 overwhelming evidence of guilt.

1 I think in this case the result of the trial would not
2 have been different without an alibi charge. The jury could
3 have found that he -- they could have believed what he said
4 on the stand. They could have believed that he did some
5 other things that day and then ate dinner with his family
6 that night and found that he wasn't there, but that's
7 contrary to what the jury found.

8 I think, if you look at the charge as a whole, the
9 State's burden, 805 is where I'd really direct you to there.
10 I'd also, on the prejudice argument, make a point that there
11 is overwhelming evidence of guilt. I think there's five or
12 six eyewitnesses to the incident. I'd note that he was
13 acquitted on the murder, but he was convicted on the armed
14 robbery. Besides his testimony, there's no evidence that he
15 was not there. The State presented numerous witness of
16 everyone who was involved in the incident and even to Mr.
17 Young who was propositioned to take part in the incident and
18 then ended up not, so that's where I'd stand on the alibi
19 charge.

20 I think on the ID's I think you have to show that an
21 objection to those -- a contemporaneous objection would have
22 been successful. I don't think that's the case here. You
23 could not prove prejudice on that regard.

24 And I also -- Mr. Waller mentioned that it was not able
25 to be brought up on appeal. I think, if we went that far

1 with it, you would have to show that that would have been a
2 meritorious issue on appeal and that it would have been
3 reversed, I think.

4 And to the point that Mr. Walters was not present for
5 the beginning of the Neil v. Biggers hearing, I think that's
6 all due to Mr. Scott absconding and not showing up for the
7 hearing. I think a lot of that -- a lot of the blame there
8 is on Mr. Scott himself. But you would have to find that Mr.
9 Culler was ineffective in his questioning during the Neil v.
10 Biggers hearing. I don't think we've got anything -- any
11 evidence showing that at all. I think he questioned on, you
12 know, how well the lights were lit, how good of a view. He
13 went through and pretty much diagrammed the entire situation
14 for the Judge, and he still overruled those objections and
15 let the IDs in.

16 For those reasons I'd ask that the application be
17 denied.

18 THE COURT: Thank you, gentlemen. I'll take the time to
19 review the record as well as the evidence presented.

20 MR. WALLER: Your Honor, there was one thing I neglected
21 to touch on if I could -- I won't go into those issues. With
22 respect to the closing argument made by the solicitor, it's
23 the applicant's position that that is improper burden
24 shifting. It does tie back into the alibi situation. And I
25 would also note that Mr. Walters, while he did say they were

1 strategic decisions on not objecting to that, he didn't
2 recall or was unable to identify specific strategic decisions
3 as to why he did not object to that issue. I would just like
4 to present that to the Court as well.

5 THE COURT: All right. Thank you.

6 --- END OF TRANSCRIPT OF RECORD ---

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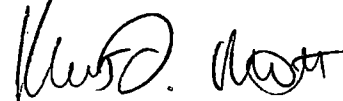
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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF ORANGEBURG
4

5 I, the undersigned Ruth L. Mott, Certified Court
6 Reporter for the State of South Carolina, do hereby certify
7 that the foregoing is a true, accurate and complete
8 transcript of record of all the proceedings had and evidence
9 introduced in the matter of the above-captioned case,
10 relative to appeal, in the First Judicial Circuit Court for
11 Orangeburg County, South Carolina, on the 18th of May, 2015.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 October 25, 2017

16 

17 Ruth L. Mott

18 Certified Court Reporter
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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Terrell Scott, #313126,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2012-CP-38-0968

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 15, 2012. Applicant then filed a second application on July 31, 2012 (2012-CP-38-01158). Respondent requested that the cases be merged. On January 11, 2013, the Court issued an order dismissing the second application while considering it an amendment to the first application. Respondent filed a Return on January 14, 2013, requesting an evidentiary hearing be convened. Jonathan D. Waller was appointed by the Orangeburg Clerk of Court. Applicant filed an amended application on May 23, 2014, setting forth the allegations. An evidentiary hearing was held on May 21, 2015, at the Dorchester County Courthouse. Applicant was represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's trial counsel Michael R. Culler, Jr., Esquire, and Glenn Walters, Sr., Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, appellate records, the PCR application, the Return, the amended application, and the transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted at the April 2007 term of the Orangeburg County Grand Jury for Murder (2007-GS-38-0640). During the May 2009 term of the Orangeburg County Grand Jury, Applicant was indicted for Armed Robbery (2007-GS-38-0480). Counsel Walters and Counsel Culler represented him. On May 12-14, 2009, Applicant proceeded to a jury trial before the Honorable James C. Williams, Jr. On May 15, 2009, Applicant was found guilty of Armed Robbery and not guilty of Murder. Judge Williams sentenced Applicant to thirty (30) years' imprisonment for Armed Robbery.

Applicant appealed his conviction, and following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Scott, 2012-UP-136 (Ct. App. filed February 29, 2012). The Remittitur was sent on March 16, 2012.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of trial counsel in:
 - a. Failing to file of alibi defense;
 - b. Failing to request an alibi jury instruction, and/or object to the jury instructions;
 - c. Failing to object to the solicitor's statements during closing arguments;
 - d. Failing to investigate Applicant's contact with Witness Daniel Young;
 - e. Failing to object and/or ask for a curative instruction to Witness Daniel Young's testimony
 - f. Failing to properly show bias of Witness Daniel Young
 - g. Failing to challenge indictment before the jury was sworn;
 - h. Failing to properly conduct and prepare for the Neil v. Biggers hearing;
 - i. Failing to object to the lineups entered into evidence;
 - j. Failing to make a motion for directed verdict, and failing to renew all objects at close of all evidence;
 - k. Failing to object to the gun being entered into evidence;
 - l. Failing to retain an expert in eyewitness identification.

II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced 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.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject

convictions, the transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Alibi

Applicant alleges Counsel were ineffective in failing to file a notice of alibi defense as required by Rule 5, SCRCrimP. He also alleges Counsel were ineffective in failing to request an alibi jury instruction. Applicant testified that he relayed information regarding an alibi to Counsel Walters. He testified at trial and at the PCR hearing that he was with his wife, Ieisha Scott, at the time of the incident. Counsel Walters testified that Applicant alluded to an alibi during their discussion. Counsel Walters explained that Applicant could not keep his story straight and kept confusing the dates on which he was allegedly shopping with his wife. He described Applicant's statements on the issue as a moving target. Counsel Walters also noted Applicant's wife was reluctant to help or give any testimony. Counsel Walters testified that he did not know what Applicant would say when he was put on the stand.

Applicant's mother, Angel Fields, also testified in his defense. She testified that Applicant was at home with her the night of December 23, 2006. But on cross examination by the solicitor, Ms. Fields conceded that Applicant may have gone out that night to buy a pack of cigarettes. (Trial Tr. p. 686, lines 9-25). Ms. Fields was also confused about when Applicant was married, testifying that he was married on either December 16th or December 18th of 2003. This testimony conflicted with Applicant's testimony. Counsel Walters ~~believed~~ cited these credibility concerns in his justification for not pursuing an alibi jury instruction. Ms. Fields also did not come forward with the alleged alibi information until around three months after the incident.

Notice of Alibi

This Court finds Applicant failed to meet his burden in proving Counsel were ineffective in failing to file a notice of alibi. “[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused’s guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all.” State v. Robbins, 275 S.C. 373, 377, 271 S.E.2d 319, 321 (1980). Further, an alibi which makes it only *less likely* the accused is the guilty party is no alibi. See Walker v. State, 397 S.C. 226, 723 S.E.2d 610 (Ct. App. 2012). Applicant has failed to provide this Court with sufficient evidence to establish a *physical impossibility* that he ^{was MM} involved in the robbery and murder.

Counsel Walter’s testimony is credible and persuasive on the issue. Applicant was unable to provide a firm alibi and confused the dates in his discussions with Counsel Walters. This Court questions Applicant’s credibility just as Counsel did in his representation. Ms. Fields’s testimony at the trial does not form the basis for an alibi defense either because she conceded that Applicant could have left the house to buy cigarettes. (Trial Tr. p. 667, lines 9-18; p. 686, lines 17-20). Ms. Fields was also not able to account for Applicant’s whereabouts through the night as she had to have gone to sleep at some point. This Court is further persuaded by Applicant’s trial testimony where he refers to the night in question as Christmas Eve instead of December 23rd. (Trial Tr. p. 667, line 8 – p. 668, line 17). It was reasonable for Counsel not to have filed a notice of intent to seek an alibi defense.

This Court was also not presented with any evidence to show that if Counsel had filed a notice of alibi defense that he would not likely have been convicted. Rule 5, SCRCrimP provides a remedy for the failure to file a notice: “If either party fails to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by either

party.” Both Applicant and his mother were able to testify to the alleged alibi. The more appropriate challenge is to Counsel’s failure to request a jury charge on alibi. There is also overwhelming evidence of Applicant’s guilt which is fully discussed below.

Alibi Jury Instruction

This Court also finds Applicant failed to meet his burden in proving Counsel were ineffective in failing to request an alibi jury instruction. The Court incorporates its analysis above in addressing this allegation. “To establish an alibi defense and thus be entitled to an instruction of alibi, a defendant must present some evidence that he was at another place at the time of the crime and could not therefore have committed the crime.” State v. Diamond, 280 S.C. 296, 297, 312 S.E.2d 550 (1984), quoting State v. Robbins, 275 S.C. 273, 271 S.E.2d 319 (1980). “A simple denial of one’s presence at the scene does not constitute an alibi.” Id.

It was reasonable for Counsel to not request a jury charge on alibi. Applicant testified that he was shopping with his family that day. (Trial Tr. p. 654, line 15 – p. 655, line 3). He then recounts that he had ^{dinner} ~~dinner~~ at his house, played dominos, and then went to bed. (Trial Tr. p. 658, lines 9-13). Ms. Fields testified that Applicant could have left the house sometime that night to buy cigarettes. Importantly, Applicant testified that he went shopping with his family and was at the house on *Christmas Eve*. (Trial Tr. p. 658, lines 14-16). The crimes were committed either late December 23rd or in the early morning hours of December 24th. The testimony is insufficient to warrant an alibi jury charge because it fails to establish that Applicant could not have been present at the incident. Counsel Walter’s testimony that he did not believe Applicant’s testimony to constitute an alibi is persuasive.

It is clear Counsel’s strategy was to impeach the cooperating codefendants and to strongly emphasize the lack of physical evidence. Counsel Walters explained at the hearing that

he was throwing everything he could at the State's case, and that included presenting Applicant and his mother's testimony to the jury. Counsel did not pursue the alibi defense because he had other more viable defense strategies. Therefore, Counsel was not ineffective in failing to request the trial court charge the jury on an unsubstantiated alibi.

Even assuming Counsel was deficient in failing to request an alibi charge, he has not met his burden in proving the result of the trial would likely have been different. As noted, there is overwhelming evidence of Applicant's guilt, including the testimony from his two codefendants implicating him as the ringleader. See Gibbs v. State, 403 S.C. 484, 744 S.E.2d 170 (2013) (applicant failed to show prejudice resulting from trial counsel's failure to request an alibi jury instruction where there was overwhelming evidence of guilt). This allegation is denied and dismissed.

Solicitor's Closing Argument

Next, Applicant alleges Counsel were ineffective in failing to object to comments made by the solicitor in his closing argument. Specifically, he refers to the following:

I asked him – you know, he brought up the fact that he'd just gotten married. Okay. And I can't remember if he December 16th or 18th. It was one of those two dates, 16th or 18th, 2006. They had just gotten married. That's why I was spending so much time with my newlywed wife and that's why I know I was clean shaven at that time because I thought – well, you know, not much I can do with that. You know, we don't hear from the wife. Because if I obviously would have asked the question of her, she would have had to answer. And I assume he didn't think that his mother was going to be asked that question.

(Trial Tr. p. 784, line 14 – p. 785, line 2). Applicant argues that it was improper for the solicitor to comment on Applicant's wife not testifying because it improperly shifts the burden of proof from the State to the defendant.

The State's closing argument must be confined to the evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 468 S.E.2d 620 (1996).

This Court finds Applicant failed to meet his burden in proving Counsel deficient. Counsel Walters did not believe the comments warranted an objection. Counsel Walters noted that the solicitor is prohibited from commenting on whether the defendant testifies. He explained that he believed he had a read on the jury and that the defense was in good shape. Applicant was acquitted of the murder charge. Counsel Walters testified that objecting during closing argument can do more bad than good and that he does not routinely object during closing arguments. This was a reasonable strategy in not raising an objection.

This Court does not find it likely that an objection to the comments would have been sustained. The law is clear that a solicitor cannot comment on a defendant's failure to testify at trial. Doyle v. Ohio, 96 S.Ct. 2240 (1976); Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001). But, the solicitor is allowed to comment on a defendant's failure to present witnesses at trial when defendant presents evidence *and* there are witnesses accessible to him who are or should be aware of material and relevant facts and whose testimony would presumably aid him. Douglas v. State, 332 S.C. 67, 504 S.E.2d 307 (1998). This Court finds the objection would likely have been overruled as the solicitor was within his bounds to comments on Applicant's failure to call his wife as a witness.

Further, Applicant has failed to show how an objection would have likely changed the result of the trial. See Brown v. State, 383 S.C. 506, 517, 680 S.E.2d 909, 915 (2009) (holding the State's improper argument did not infect the trial with unfairness and result in prejudice when the argument "came at the very end of closing argument and [was] limited in duration").

Here, the solicitor's comment was only a couple of sentences long and was made near the end of his argument and therefore did not prejudice Applicant. Finally, the Court still finds that overwhelming evidence bars it from finding any prejudice. See State v. Primus, 341 S.C. 592, 535 S.E.2d 152 (App. 2000), aff'd in part, rev'd in part 564 S.E.2d 103 (2002) (employing a harmless error analysis when a defendant's failure to call a witness to corroborate his alibi defense, when the defendant neither testified nor called any witnesses). This allegation is denied and dismissed.

Witness Daniel Young

Next, Applicant alleges Counsel were ineffective in failing to investigate Applicant's communications with Witness Daniel Young. He also alleges Counsel were ineffective in failing to object to Young's testimony regarding Applicant's alleged prior bad acts and in failing to highlight Young's alleged bias. Young was a cooperating witness for the State and, testified that Applicant previously planned this robbery^{and MM} had actually offered Young an opportunity to participate in the robbery. (Trial Tr. p. 494, lines 6-22). Young testified that Applicant's codefendant, Maurice Cheeseboro, was also involved in these discussions. (Trial Tr. p. 495, lines 18-22). Young spoke to Applicant after the robbery and murder and was told that it was successful but that the victim flinched like he wanted to reach for something so Applicant shot the victim. (Trial Tr. p. 498, line 3 – p. 499, line 8). Applicant recounted the incident to Young while they were in jail together. (Trial Tr. p. 503, lines 2-9).

The Court will address the allegations regarding Young in turn.

~~MM~~ Investigate

Applicant alleges Counsel ^{were} ~~was~~ ineffective in failing to investigate Applicant's contact with Young.

Alleged Prior Bad Acts

Applicant alleges Counsel were ineffective in failing to object when Young testified that Applicant was high on cocaine during the robbery. Specifically Young testified: "He was telling me [robbery] went down, but he got, he was saying that they did the robbery and that he, you know what I'm saying, due to the fact he was on cocaine, but Scar, no, Harry, I meant, was steady flinching . . ." (Trial Tr. p. 498, lines 4-10). He then mentioned the cocaine again: "Like he wanted to reach for something. So, he had to do what he had to do because he was on cocaine." (Trial Tr. p. 498, lines 14-15).

Evidence of other bad acts is not admissible to prove the defendant's guilt except to show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. Rule 404(b), SCRE; see also State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). This Court finds this testimony does not implicate Rule 404(b) and does not constitute impermissible Lyle testimony. The testimony regarding cocaine use is relevant for the jury to consider Applicant's motive and intent. See State v. Dickerson, 341 S.C. 391, 397, 535 S.E.2d 119, 122 (2000)(Evidence is not improper if the drug use has some relevant connection to the crime charge.). This testimony was relevant to Applicant's state of mind. The testimony would likely be also be admissible under the theory of *res gestae*, and would also survive an objection raised under Rule 403, SCRCP. Counsel were not ineffective in failing to object to the testimony regarding cocaine. Applicant also failed to show he was prejudiced by this testimony. It was not propensity evidence and was not evidence to prove his guilt.

Bias

Next, Applicant alleges Counsel were ineffective in failing to highlight Young's bias on cross-examination. The Court finds this contention without merit.

A defendant has the right to cross-examine a witness concerning bias under the Confrontation Clause. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991). The Confrontation Clause permits a defendant to cross-examine a State's witness as to possible sentences faced when there exists "a substantial possibility the witness would give biased testimony in an effort to have the solicitor highlight to a future court how the witness cooperated in the instant case." State v. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002); State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (App. 2004). " 'On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality' of the witness." State v. Brewington, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976) (citing 98 C.J.S. Witnesses s 560a). Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by any other evidence. SCRE 608(c); State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991).

Here, the very first question Counsel Culler asked Young was in reference to his agreement with the federal government. (Trial Tr. p. 506, lines 3-6). He then proceeded to have Young read his plea agreement into the record and to explain it to the jury. (Trial Tr. p. 506, line 25 – p. 511, line 22). This went on for pages in the transcript and shows that Counsel Culler absolutely highlighted that Young could be giving favorable testimony to the State in hopes of helping himself in the future. It was also Counsel Culler's strategy to show the jury that Young would adopt any narrative the State presented him with because he was so dependent on them in receiving a downward departure on his charges.

Further, Applicant has not presented this Court with any other means of highlighting Young's bias. This allegation is denied and dismissed with prejudice.

Indictment Challenge

Next, Applicant alleges Counsel were ineffective in failing to challenge the indictments prior to the jury being sworn. Applicant cites State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005), in support of his argument. This allegation is without merit.

Subject matter jurisdiction is the power of a court to hear a particular class of cases. State v. Gentry, 363 S.C. at 100, 610 S.E.2d at 498. An applicant may challenge the subject matter jurisdiction of the trial court at any time. Id. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Id. at 101, 610 S.E.2d at 499. Thus, an applicant challenging subject matter jurisdiction must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Furthermore, “subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts[.]” Id. at 101, 610 S.E.2d at 499. An indictment is a notice document and any insufficiency in the indictment does not deprive the circuit court of jurisdiction. Id. at 102, 610 S.E.2d at 500. Rather, challenges to the indictment must be raised prior to the swearing of the jury or they are waived. Id. (citing S.C. Code Ann. § 17-19-90). Thus, a PCR applicant may only raise challenges to the sufficiency of an indictment by alleging ineffective assistance of counsel for failing to properly move to quash the indictment in accordance with section 17-19-90. Applicant has failed to show any issues with the indictments. He was on notice of the charges against him and the circuit court clearly exercised proper jurisdiction over the case.

Neil v. Biggers/Lineups and In Court Identification

Applicant further alleges Counsel were ineffective in their handling of the Neil v. Biggers hearing. He also alleges Counsel failed to object to the in court identification.

Neil v. Biggers Hearing/Lineups

Applicant argues Counsel failed to properly conduct and argue the Neil v. Biggers hearing. Counsel Culler and Counsel Walters both handled the hearing for the defense. Applicant did not show up for the pretrial hearing and a bench warrant was issued by the trial court. An extension hearing was held to determine the admissibility of the identifications and lineups. Seven witnesses testified and were cross examined. Counsel Walters argued that the identifications were unduly suggestive and were likely the product of misidentification. (Trial Tr. p. 162, line 25 – p. 167, line 24). The trial court ruled that the descriptions were for the most part consistent and deemed them not to be unnecessarily suggestive. (Trial Tr. p. 173, line 2 – p. 174, line 4).

This Court finds Applicant failed to meet his burden. Counsel Culler testified that he and Counsel Walters had not discussed who would conduct the hearing beforehand. He explained that they were not hanging their hats on having the identifications excluded. He believed the identifications were likely coming in. This Court finds Counsel were ineffective in failing to contemporaneously object to the introduction of the photo lineups. However, Applicant cannot show that he was prejudiced by this deficiency. The trial court was clear in its pretrial ruling that the lineup procedure ^{did not} ~~was~~ not violate of Applicant's Due Process Rights. The trial court would have properly overruled any such objection. Further, this Court was also not presented with any evidence to support its argument that the identifications were suggestive other than what was raised during the pretrial hearing. Therefore, the Court dismisses this allegation.

In Court Identifications

As to Applicant's argument that Counsel did not contemporaneously object to the in-court identification, Applicant cannot show that if such objection was made that it would have been granted. The trial court made it very clear that the identifications would be admissible in the

pre-trial suppression hearing. "An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created 'a very substantial likelihood of irreparable misidentification.'" State v. Tisdale, 338 S.C. 607, 611, 527 S.E.2d 389, 392 (Ct. App. 2000) (citations omitted). Here, the out-of-court identification was ruled reliable and nonsuggestive. The Court does find Counsel were ineffective in failing to contemporaneously object to the in court identification, but finds Applicant has failed to meet his burden in proving prejudice. Therefore, this allegation is denied and dismissed.

Motion for Directed Verdict and Renew all Objections

Next, Applicant argues Counsel were ineffective in failing to make a motion for directed verdict and failing to renew objections at the close of all evidence. Counsel Walters did make a motion for directed verdict after the State rested. (Trial p. 647, lines 4-13). The trial court denied the motion and emphasized that six eyewitnesses testified that Applicant was responsible. (Trial Tr. p. 647, lines 14-20).

A directed verdict motion ~~is~~^{was} made at the close of the State's case is insufficient to preserve an issue for review unless it is renewed at the close of all evidence because once the defense presents its proof, the propriety of a directed verdict must be tested in terms of all evidence. State v. Harry, 321 S.C. 273, 277, 468 S.E.2d 76, 79 (Ct. App. 1996) (citing Kimbrough v. Commonwealth, 550 S.W.2d 525 (Ky. 1977) with approval). "When the defendant presents testimony, he loses the right to have the court review the sufficiency of the evidence based on the State's evidence alone." Id. (quoting Kimbrough). If the defendant fails to move for a directed verdict at the close of all evidence, then the trial court has been denied the opportunity to pass upon the sufficiency of the evidence as it was presented to the jury. Id. (quoting Kimbrough).

Here, Applicant's allegation fails for numerous reasons. First, he has not shown that his renewed motion for directed verdict would have been granted. Second, he has not shown that if the renewed motion was denied that it would have been a successful issue on appeal. Third, there is overwhelming evidence of Applicant's guilt. Counsel did fail to renew their motion for directed verdict at the close of their case, but it is certain that the motion would have been properly denied. Viewing the evidence in the light most favorable to the State, there were six eyewitnesses who testified that Applicant took part in the robbery. As to Applicant's argument that Counsel failed to renew all previous objections, it is without merit. There is no requirement that defense attorneys renew objections to ensure their preservation. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal."). This allegation is denied and dismissed with prejudice.

Gun's Admission

Finally, Applicant alleges Counsel were ineffective in failing to object to the admission of State's exhibit 21, a gun. Applicant argues the gun was not relevant to the charged crimes of armed robbery and murder. This Court finds otherwise. Counsel Walters testified that he wanted the gun to be introduced to show that the victims had a gun accessible to them. The introduction of the gun helped the defense show that the victims were involved in the drug trade and were illegally in possession of a pistol. This Court finds this was a reasonable strategy. There was also no evidence that Applicant was prejudiced by the gun. The gun did nothing to prove that Applicant was involved in the crimes. It only showed that the victims were in possession of a pistol the night of the incident. This allegation is denied and dismissed.

Overwhelming Evidence of Guilt

This Court further finds that Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt). Both codefendants who took part in the armed robbery scheme testified that Applicant hatched the plan to steal money from the victims. (Trial Tr. p. 522, line 12 – p. 523, line 23; p. 562, line 4 – p. 563, line 17). The codefendants both detailed the events that took place the night of December 23, 2006, and the early morning hours of December 24, 2006. The three victims who lived through the robbery also all testified and fully implicated Applicant in the crimes. Applicant also admitted committing the crimes while in a holding cell with Daniel Young. As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of trial counsel could have reasonably changed the outcome of trial.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

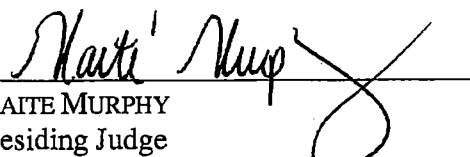
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
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 23 day of May, 2016.


 MAITE MURPHY
 Presiding Judge

St. George, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Terrell Scott, #313126,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
1st JUDICIAL CIRCUIT**MOTION PURSUANT TO RULE 59(e)
SCRPC, TO AMEND**

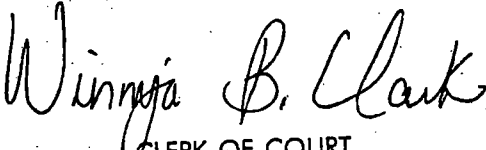
Case No. 2012-CP-38-0968

FILED FOR RECORD
WINNIE B. CLARK
JUN 20 P 2:10
CLERK OF COURT
ORANGEBURG, SC

YOU WILL PLEASE TAKE NOTICE that the Applicant, Terrell Scott, by and through his undersigned counsel, hereby gives notice of his intent to move and does so move the Court pursuant to Rule 59(e), SCRPC, for an Order of the Court to alter or amend its prior Order filed June 2, 2016 and served on counsel June 8, 2016.

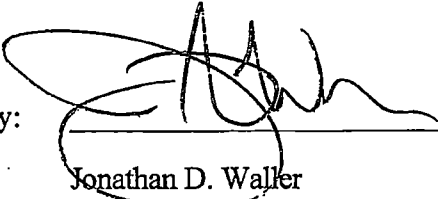
The Applicant filed a timely application for post-conviction relief (PCR) on June 15, 2012. In his application, and subsequent amendments, Applicant alleged various claims of ineffective assistance of counsel. One of Applicant's allegations was that counsel was ineffective for failing to investigate Applicant's contact with Daniel Young, a witness who testified that Applicant and he were housed together at the Orangeburg County Detention Center and that Applicant had made disclosures of facts to him while they were both detained. While the Order of Dismissal has a heading for "Investigate" regarding findings of fact and conclusions of law for Daniel Young, there is finding of fact or conclusion of law regarding this issue. There is merely one sentence outlining Applicant's allegation. Applicant respectfully requests that this court amend its Order to include a ruling on the issue.

ATTEST: TRUE COPY


CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

For the foregoing reasons, Applicant requests that the Court amend its previous Order to include a full finding of fact and conclusion of law regarding the above referenced issue.

Respectfully submitted,

By: 

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ATTORNEY FOR THE APPLICANT

June 17, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Terrell Scott, #313126,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2012-CP-38-0968

AMENDED ORDER OF DISMISSAL

This matter comes before the Court pursuant to Applicant's Motion Pursuant to Rule 59(e) SCRPC, to Amend filed June 20, 2016. An Order of Dismissal was issued by the Court on June 2, 2016. In his motion Applicant asks the Court to amend its ruling to include an analysis on the allegation regarding the investigation into witness Daniel Young. This Court grants the motion and substitutes the prior order with this Amended Order of Dismissal.

Applicant filed an application for post-conviction relief (PCR) filed June 15, 2012. Applicant then filed a second application on July 31, 2012 (2012-CP-38-01158). Respondent requested that the cases be merged. On January 11, 2013, the Court issued an order dismissing the second application while considering it an amendment to the first application. Respondent filed a Return on January 14, 2013, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed by the Orangeburg Clerk of Court. Applicant filed an amended application on May 23, 2014, setting forth the allegations. An evidentiary hearing was held on May 21, 2015, at the Dorchester County Courthouse. Applicant was represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

ATTEST: TRUE COPY
Winniford B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's trial counsel Michael R. Culler, Jr., Esquire, and Glenn Walters, Sr., Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, appellate records, the PCR application, the Return, the amended application, and the transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted at the April 2007 term of the Orangeburg County Grand Jury for Murder (2007-GS-38-0640). During the May 2009 term of the Orangeburg County Grand Jury, Applicant was indicted for Armed Robbery (2007-GS-38-0480). Counsel Walters and Counsel Culler represented him. On May 12-14, 2009, Applicant proceeded to a jury trial before the Honorable James C. Williams, Jr. On May 15, 2009, Applicant was found guilty of Armed Robbery and not guilty of Murder. Judge Williams sentenced Applicant to thirty (30) years' imprisonment for Armed Robbery.

Applicant appealed his conviction, and following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. Scott, 2012-UP-136 (Ct. App. filed February 29, 2012). The Remittitur was sent on March 16, 2012.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of trial counsel in:
 - a. Failing to file notice of alibi defense;
 - b. Failing to request an alibi jury instruction, and/or object to the jury instructions;
 - c. Failing to object to the solicitor's statements during closing arguments;
 - d. Failing to investigate Applicant's contact with Witness Daniel Young;

- e. Failing to object and/or ask for a curative instruction to Witness Daniel Young's testimony;
- f. Failing to properly show bias of Witness Daniel Young;
- g. Failing to challenge indictment before the jury was sworn;
- h. Failing to properly conduct and prepare for the Neil v. Biggers hearing;
- i. Failing to object to the lineups entered into evidence;
- j. Failing to make a motion for directed verdict, and failing to renew all objects at close of all evidence;
- k. Failing to object to the gun being entered into evidence;
- l. Failing to retain an expert in eyewitness identification.

II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced 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.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Alibi

Applicant alleges Counsel were ineffective in failing to file a notice of alibi defense as required by Rule 5, SCRCrimP. He also alleges Counsel were ineffective in failing to request an alibi jury instruction. Applicant testified that he relayed information regarding an alibi to Counsel Walters. He testified at trial and at the PCR hearing that he was with his wife, Ieisha Scott, at the time of the incident. Counsel Walters testified that Applicant alluded to an alibi during their discussion. Counsel Walters explained that Applicant could not keep his story straight and kept confusing the dates on which he was allegedly shopping with his wife. He described Applicant's statements on the issue as a moving target. Counsel Walters also noted Applicant's wife was reluctant to help or give any testimony. Counsel Walters testified that he did not know what Applicant would say when he was put on the stand.

Applicant's mother, Angel Fields, also testified in his defense. She testified that Applicant was at home with her the night of December 23, 2006. But on cross examination by

the solicitor, Ms. Fields conceded that Applicant may have gone out that night to buy a pack of cigarettes. (Trial Tr. p. 686, lines 9-25). Ms. Fields was also confused about when Applicant was married, testifying that he was married on either December 16th or December 18th of 2003. This testimony conflicted with Applicant's testimony. Counsel Walters cited these credibility concerns in his justification for not pursuing an alibi jury instruction. Ms. Fields also did not come forward with the alleged alibi information until around three months after the incident.

Notice of Alibi

This Court finds Applicant failed to meet his burden in proving Counsel were ineffective in failing to file a notice of alibi. "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." State v. Robbins, 275 S.C. 373, 377, 271 S.E.2d 319, 321 (1980). Further, an alibi which makes it only *less likely* the accused is the guilty party is no alibi. See Walker v. State, 397 S.C. 226, 723 S.E.2d 610 (Ct. App. 2012). Applicant has failed to provide this Court with sufficient evidence to establish a *physical impossibility* that he was involved in the robbery and murder.

Counsel Walter's testimony is credible and persuasive on the issue. Applicant was unable to provide a firm alibi and confused the dates in his discussions with Counsel Walters. This Court questions Applicant's credibility just as Counsel did in his representation. Ms. Fields's testimony at the trial does not form the basis for an alibi defense either because she conceded that Applicant could have left the house to buy cigarettes. (Trial Tr. p. 667, lines 9-18; p. 686, lines 17-20). Ms. Fields was also not able to account for Applicant's whereabouts through the night as she had to have gone to sleep at some point. This Court is further persuaded by Applicant's trial testimony where he refers to the night in question as Christmas Eve instead of

December 23rd. (Trial Tr. p. 667, line 8 – p. 668, line 17). It was reasonable for Counsel not to have filed a notice of intent to seek an alibi defense.

This Court was also not presented with any evidence to show that if Counsel had filed a notice of alibi defense that he would not likely have been convicted. Rule 5, §CRCrimP provides a remedy for the failure to file a notice: “If either party fails to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by either party.” Both Applicant and his mother were able to testify to the alleged alibi. The more appropriate challenge is to Counsel’s failure to request a jury charge on alibi. There is also overwhelming evidence of Applicant’s guilt which is fully discussed below.

Alibi Jury Instruction

This Court also finds Applicant failed to meet his burden in proving Counsel were ineffective in failing to request an alibi jury instruction. The Court incorporates its analysis above in addressing this allegation. “To establish an alibi defense and thus be entitled to an instruction of alibi, a defendant must present some evidence that he was at another place at the time of the crime and could not therefore have committed the crime.” State v. Diamond, 280 S.C. 296, 297, 312 S.E.2d 550 (1984), quoting State v. Robbins, 275 S.C. 273, 271 S.E.2d 319 (1980). “A simple denial of one’s presence at the scene does not constitute an alibi.” Id.

It was reasonable for Counsel to not request a jury charge on alibi. Applicant testified that he was shopping with his family that day. (Trial Tr. p. 654, line 15 – p. 655, line 3). He then recounts that he had dinner at his house, played dominos, and then went to bed. (Trial Tr. p. 658, lines 9-13). Ms. Fields testified that Applicant could have left the house sometime that night to buy cigarettes. Importantly, Applicant testified that he went shopping with his family and was at the house on *Christmas Eve*. (Trial Tr. p. 658, lines 14-16). The crimes were committed either

late December 23rd or in the early morning hours of December 24th. The testimony is insufficient to warrant an alibi jury charge because it fails to establish that Applicant could not have been present at the incident. Counsel Walter's testimony that he did not believe Applicant's testimony to constitute an alibi is persuasive.

It is clear Counsel's strategy was to impeach the cooperating codefendants and to strongly emphasize the lack of physical evidence. Counsel Walters explained at the hearing that he was throwing everything he could at the State's case and that included presenting Applicant and his mother's testimony to the jury. Counsel did not pursue the alibi defense because he had other more viable defense strategies. Therefore, Counsel was not ineffective in failing to request the trial court charge the jury on an unsubstantiated alibi.

Even assuming Counsel was deficient in failing to request an alibi charge, he has not met his burden in proving the result of the trial would likely have been different. As noted, there is overwhelming evidence of Applicant's guilt including the testimony from his two codefendants implicating him as the ringleader. See Gibbs v. State, 403 S.C. 484, 744 S.E.2d 170 (2013) (applicant failed to show prejudice resulting from trial counsel's failure to request an alibi jury instruction where there was overwhelming evidence of guilt). This allegation is denied and dismissed.

Solicitor's Closing Argument

Next, Applicant alleges Counsel were ineffective in failing to object to comments made by the solicitor in his closing argument. Specifically, he refers to the following:

I asked him – you know, he brought up the fact that he'd just gotten married. Okay. And I can't remember if he December 16th or 18th. It was one of those two dates, 16th or 18th, 2006. They had just gotten married. That's why I was spending so much time with my newlywed wife and that's why I know I was clean shaven at that time because I thought – well, you know, not much I can do with that. You know, we don't hear from the wife. Because if I obviously would have asked the

question of her, she would have had to answer. And I assume he didn't think that his mother was going to be asked that question.

(Trial Tr. p. 784, line 14 – p. 785, line 2). Applicant argues that it was improper for the solicitor to comment on Applicant's wife not testifying because it improperly shifts the burden of proof from the State to the defendant.

The State's closing argument must be confined to the evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 468 S.E.2d 620 (1996).

This Court finds Applicant failed to meet his burden in proving Counsel deficient. Counsel Walters did not believe the comments warranted an objection. Counsel Walters noted that the solicitor is prohibited from commenting on whether the defendant testifies. He explained that he believed he had a read on the jury and that the defense was in good shape. Applicant was acquitted of the murder charge. Counsel Walters testified that objecting during closing argument can do more bad than good and that he does not routinely object during closing arguments. This was a reasonable strategy in not raising an objection.

This Court does not find it likely that an objection to the comments would have been sustained. The law is clear that a solicitor cannot comment on a defendant's failure to testify at trial Doyle v. Ohio, 96 S.Ct. 2240 (1976); Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001). But, the solicitor is allowed to comment on a defendant's failure to present witnesses at trial when defendant presents evidence *and* there are witnesses accessible to him who are or should be aware of material and relevant facts and whose testimony would presumably aid him. Douglas v. State, 332 S.C. 67, 504 S.E.2d 307 (1998). This Court finds the objection would likely have been overruled as the solicitor was within his bounds to comments on Applicant's failure to call his wife as a witness.

Further, Applicant has failed to show how an objection would have likely changed the result of the trial. See Brown v. State, 383 S.C. 506, 517, 680 S.E.2d 909, 915 (2009) (holding the State's improper argument did not infect the trial with unfairness and result in prejudice when the argument "came at the very end of closing argument and [was] limited in duration"). Here, the solicitor's comment was only a couple of sentences long and was made near the end of his argument and therefore did not prejudice Applicant. Finally, the Court still finds that overwhelming evidence bars it from finding any prejudice. See State v. Primus, 341 S.C. 592, 535 S.E.2d 152 (App. 2000), aff'd in part, rev'd in part 564 S.E.2d 103 (2002) (employing a harmless error analysis when a defendant's failure to call a witness to corroborate his alibi defense, when the defendant neither testified nor called any witnesses). This allegation is denied and dismissed.

Witness Daniel Young

Next, Applicant alleges Counsel were ineffective in failing to investigate Applicant's communications with Witness Daniel Young. He also alleges Counsel were ineffective in failing to object to Young's testimony regarding Applicant's alleged prior bad acts and in failing to highlight Young's alleged bias. Young was a cooperating witness for the State and, testified that Applicant previously planned this robbery and had actually offered Young an opportunity to participate in the robbery. (Trial Tr. p. 494, lines 6-22). Young testified that Applicant's codefendant, Maurice Cheeseboro, was also involved in these discussions. (Trial Tr. p. 495, lines 18-22). Young spoke to Applicant after the robbery and murder and was told that it was successful but that the victim flinched like he wanted to reach for something so Applicant shot the victim. (Trial Tr. p. 498, line 3 – p. 499, line 8). Applicant recounted the incident to Young while they were in jail together. (Trial Tr. p. 503, lines 2-9).

The Court will address the allegations regarding Young in turn.

Investigate

Applicant alleges Counsel were ineffective in failing to investigate Applicant's contact with Young while in the Orangeburg County Detention Center. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). Applicant has not provided this Court with any evidence that could have been discovered by Counsel regarding the jail conversation. Counsel Culler testified he spoke to Young's federal public defender in hopes of learning more about Young and Scott's discussion, but he did not discover any helpful information. On cross examination of Young, Counsel Culler questioned Young on his version of the jail conversation. As noted below, Counsel Culler emphasized that Young entered into a plea deal with the State in exchange for his full cooperation. He hoped to highlight Young's bias and show that he would say anything that fit with the State's theory of the case to have his charges dropped. Applicant has not provided this Court with any testimony as to the circumstances regarding Applicant and Young's conversations while at the jail. This allegation rests on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Applicant failed to present any evidence to this Court as to how this investigation could have changed the result of the trial.

Alleged Prior Bad Acts

Applicant alleges Counsel were ineffective in failing to object when Young testified that Applicant was high on cocaine during the robbery. Specifically Young testified: "He was telling me [robbery] went down, but he got, he was saying that they did the robbery and that he, you know what I'm saying, due to the fact he was on cocaine, but Scar, no, Harry, I meant, was steady flinching . . ." (Trial Tr. p. 498, lines 4-10). He then mentioned the cocaine again: "Like he wanted to reach for something. So, he had to do what he had to do because he was on cocaine." (Trial Tr. p. 498, lines 14-15).

Evidence of other bad acts is not admissible to prove the defendant's guilt except to show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. Rule 404(b), SCRE; see also State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). This Court finds this testimony does not implicate Rule 404(b) and does not constitute impermissible Lyle testimony. The testimony regarding cocaine use is relevant for the jury to consider Applicant's motive and intent. See State v. Dickerson, 341 S.C. 391, 397, 535 S.E.2d 119, 122 (2000)(Evidence is not improper if the drug use has some relevant connection to the crime charge.). This testimony was relevant to Applicant's state of mind. The testimony would likely also be admissible under the theory of *res gestae*, and would also survive an objection raised under Rule 403, SCRCP. Counsel were not ineffective in failing to object to the testimony regarding cocaine. Applicant also failed to show he was prejudiced by this testimony. It was not propensity evidence and was not evidence to prove his guilt.

Bias

Next, Applicant alleges Counsel were ineffective in failing to highlight Young's bias on cross-examination. The Court finds this contention without merit.

A defendant has the right to cross-examine a witness concerning bias under the Confrontation Clause. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991). The Confrontation Clause permits a defendant to cross-examine a State's witness as to possible sentences faced when there exists "a substantial possibility the witness would give biased testimony in an effort to have the solicitor highlight to a future court how the witness cooperated in the instant case." State v. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002); State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (App. 2004). " 'On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality' of the witness." State v. Brewington, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976) (citing 98 C.J.S. Witnesses § 560a). Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by any other evidence. SCRE 608(c); State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991).

Here, the very first question Counsel Culler asked Young was in reference to his agreement with the federal government. (Trial Tr. p. 506, lines 3-6). He then proceeded to have Young read his plea agreement into the record and to explain it to the jury. (Trial Tr. p. 506, line 25 – p. 511, line 22). This went on for pages in the transcript and shows that Counsel Culler absolutely highlighted that Young could be giving favorable testimony to the State in hopes of helping himself in the future. It was also Counsel Culler's strategy to show the jury that Young would adopt any narrative the State presented him with because he was so dependent on them in receiving a downward departure on his charges.

Further, Applicant has not presented this Court with any other means of highlighting Young's bias. This allegation is denied and dismissed with prejudice.

Indictment Challenge

Next, Applicant alleges Counsel were ineffective in failing to challenge the indictments prior to the jury being sworn. Applicant cites State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005), in support of his argument. This allegation is without merit.

Subject matter jurisdiction is the power of a court to hear a particular class of cases. State v. Gentry, 363 S.C. at 100, 610 S.E.2d at 498. An applicant may challenge the subject matter jurisdiction of the trial court at any time. Id. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Id. at 101, 610 S.E.2d at 499. Thus, an applicant challenging subject matter jurisdiction must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Furthermore, “subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts[.]” Id. at 101, 610 S.E.2d at 499. An indictment is a notice document and any insufficiency in the indictment does not deprive the circuit court of jurisdiction. Id. at 102, 610 S.E.2d at 500. Rather, challenges to the indictment must be raised prior to the swearing of the jury or they are waived. Id. (citing S.C. Code Ann. § 17-19-90). Thus, a PCR applicant may only raise challenges to the sufficiency of an indictment by alleging ineffective assistance of counsel for failing to properly move to quash the indictment in accordance with section 17-19-90. Applicant has failed to show any issues with the indictments. He was on notice of the charges against him and the circuit court clearly exercised proper jurisdiction over the case.

Neil v. Biggers/Lineups and In Court Identification

Applicant further alleges Counsel were ineffective in their handling of the Neil v. Biggers hearing. He also alleges Counsel failed to object to the in court identification.

Neil v. Biggers Hearing/Lineups

Applicant argues Counsel failed to properly conduct and argue the Neil v. Biggers hearing. Counsel Culler and Counsel Walters both handled the hearing for the defense. Applicant did not show up for the pretrial hearing and a bench warrant was issued by the trial court. An extension hearing was held to determine the admissibility of the identifications and lineups. Seven witnesses testified and were cross examined. Counsel Walters argued that the identifications were unduly suggestive and were likely the product of misidentification. (Trial Tr. p. 162, line 25 – p. 167, line 24). The trial court ruled that the descriptions were for the most part consistent and deemed them not to be unnecessarily suggestive. (Trial Tr. p. 173, line 2 – p. 174, line 4).

This Court finds Applicant failed to meet his burden. Counsel Culler testified that he and Counsel Walters had not discussed who would conduct the hearing beforehand. He explained that they were not hanging their hats on having the identifications excluded. He believed the identifications were likely coming in. This Court finds Counsel were ineffective in failing to contemporaneously object to the introduction of the photo lineups. However, Applicant cannot show that he was prejudiced by this deficiency. The trial court was clear in its pretrial ruling that the lineup procedure did not violate of Applicant's Due Process Rights. The trial court would have properly overruled any such objection. Further, this Court was also not presented with any evidence to support its argument that the identifications were suggestive other than what was raised during the pretrial hearing. Therefore, the Court dismisses this allegation.

In Court Identifications

As to Applicant's argument that Counsel did not contemporaneously object to the in-court identification, Applicant cannot show that if such objection was made that it would have been granted. The trial court made it very clear that the identifications would be admissible in the

pre-trial suppression hearing. "An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created 'a very substantial likelihood of irreparable misidentification.'" State v. Tisdale, 338 S.C. 607, 611, 527 S.E.2d 389, 392 (Ct. App. 2000) (citations omitted). Here, the out-of-court identification was ruled reliable and nonsuggestive. The Court does find Counsel were ineffective in failing to contemporaneously object to the in court identification, but finds Applicant has failed to meet his burden in proving prejudice. Therefore, this allegation is denied and dismissed.

Motion for Directed Verdict and Renew all Objections

Next, Applicant argues Counsel were ineffective in failing to make a motion for directed verdict and failing to renew objections at the close of all evidence. Counsel Walters did make a motion for directed verdict after the State rested. (Trial p. 647, lines 4-13). The trial court denied the motion and emphasized that six eyewitnesses testified that Applicant was responsible. (Trial Tr. p. 647, lines 14-20).

A directed verdict motion made at the close of the State's case is insufficient to preserve an issue for review unless it is renewed at the close of all evidence because once the defense presents its proof, the propriety of a directed verdict must be tested in terms of all evidence. State v. Harry, 321 S.C. 273, 277, 468 S.E.2d 76, 79 (Ct. App. 1996) (citing Kimbrough v. Commonwealth, 550 S.W.2d 525 (Ky. 1977) with approval). "When the defendant presents testimony, he loses the right to have the court review the sufficiency of the evidence based on the State's evidence alone." Id. (quoting Kimbrough). If the defendant fails to move for a directed verdict at the close of all evidence, then the trial court has been denied the opportunity to pass upon the sufficiency of the evidence as it was presented to the jury. Id. (quoting Kimbrough).

Here, Applicant's allegation fails for numerous reasons. First, he has not shown that his renewed motion for directed verdict would have been granted. Second, he has not shown that if the renewed motion was denied that it would have been a successful issue on appeal. Third, there is overwhelming evidence of Applicant's guilt. Counsel did fail to renew their motion for directed verdict at the close of their case, but it is certain that the motion would have been properly denied. Viewing the evidence in the light most favorable to the State, there were six eyewitnesses who testified that Applicant took part in the robbery. As to Applicant's argument that Counsel failed to renew all previous objections, it is without merit. There is no requirement that defense attorneys renew objections to ensure their preservation. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal."). This allegation is denied and dismissed with prejudice.

Gun's Admission

Finally, Applicant alleges Counsel were ineffective in failing to object to the admission of State's exhibit 21, a gun. Applicant argues the gun was not relevant to the charged crimes of armed robbery and murder. This Court finds otherwise. Counsel Walters testified that he wanted the gun to be introduced to show that the victims had a gun accessible to them. The introduction of the gun helped the defense show that the victims were involved in the drug trade and were illegally in possession of a pistol. This Court finds this was a reasonable strategy. There was also no evidence that Applicant was prejudiced by the gun. The gun did nothing to prove that Applicant was involved in the crimes. It only showed that the victims were in possession of a pistol the night of the incident. This allegation is denied and dismissed.

Overwhelming Evidence of Guilt

This Court further finds that Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt). Both codefendants who took part in the armed robbery scheme testified that Applicant hatched the plan to steal money from the victims. (Trial Tr. p. 522, line 12 – p. 523, line 23; p. 562, line 4 – p. 563, line 17). The codefendants both detailed the events that took place the night of December 23, 2006, and the early morning hours of December 24, 2006. The three victims who lived through the robbery also all testified and fully implicated Applicant in the crimes. Applicant also admitted committing the crimes while in a holding cell with Daniel Young. As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of trial counsel could have reasonably changed the outcome of trial.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
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 1 day of March, 2016. 7

J. George South Carolina

Maite Murphy
MAITE MURPHY
Presiding Judge

Page 18 of 18

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 07/24/12
 OMCOMITA RELEASE DATE SCREEN C051123
 SCDC# > 334699 LOC: LIEBER
 SCOTT, TERRELL - SCDC CLASSIFICATION... VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS...: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION...:
 CURRENT SENTENCE: 030-00-000 CONSECUTIVE SENTENCE ...: N
 030-00-000 CURRENT SENT START DATE: 06/03/2008
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 12/21/2035 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000006 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000038 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
 TOTAL SERVICE TIME EARNED ...: 001512 ISS.....:

PFKEYS: 5: HISTORY OF DATE CHANGES

4-® 1 Sess-1 167.7.50.33 SCDC1631 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 07/24/12

C0511

SCOTT, TERRELL - FBI # 437390FB9 SID# SC01134242 SCDC # 334699

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... LIEBER CORRECTIONAL INST.

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 30 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES SEPREQ

SOCIAL SECURITY #... [REDACTED]

DORM.....: CB0064A

RACE.....: B SEX...: M

PROJ MAXOUT DATE: 12/21/2035

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 EEC LEVEL:

ASSIGNMENT...: GENERAL DETAIL UNEM

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 33 DATE OF BIRTH.. [REDACTED]/78

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE				COUNTY	SENTENCE				V/NV	CATEGORY
	YRS	MOS	DYS			START					
ARMED ROBBERY	30	0	0		ORANGEBURG	6/	3/20	8	V		4

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

11/18/ 6 OTHER ESCAPE RELATED CODE NOT IN TABLE

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

7/26/11 POSSESSION OF A WEAPON DROPPED MAJOR

NON-ASSAULTIVE DISCIPLINARIES:

6/11/12 POSSESSION OF CONTRABAND CONVICTED ADMIN

3/15/12 USE, POSS NARC, MARIJ, UNAU CONVICTED MAJOR

1/25/11 USE, POSS NARC, MARIJ, UNAU CONVICTED MAJOR

6/21/10 POSS. OR/ATTEMPT TO POSS CONVICTED MAJOR

4/ 8/10 USE, POSS NARC, MARIJ, UNAU CONVICTED MAJOR

HISTORY OF MOVEMENTS:

6/22/ 9 LIEBER INCARCERATED ADMINISTRATIVE

5/18/ 9 KIRKLAND INCARCERATED NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
FOOD SERVICE AIDE	06/28/11	1/ 4/12	DISCIPLINARY/LOCK-UP	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

WITNESSES

LT. SHUMPERT/OCSD

Arresting Agency:
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

2007ORB24

Arrested: Mar 29, 2007

TRUE BILL
ACTION OF GRAND JURY

Handwritten Signature

APR 04 2007

Date
Foreperson of Grand Jury
Date: April 4, 2007

VERDICT

NOT Guilty

Handwritten Signature **5-15-09**
Foreperson of Petit Jury
Date:

DOCKET NO. 2007GS38-0640

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

April 02, 2007 TERM

THE STATE
vs.

Terrell Scott

Indictment for

MURDER

SC Code: 16-03-10
CDR Code: 0416
Class: FEL-EXM

 After being fully advised as to my legal rights, I
 hereby waive presentment to the Grand Jury.

Defendant

 I
 hereby appear in my own proper person and
 plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

 2007-11-11 11:46

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

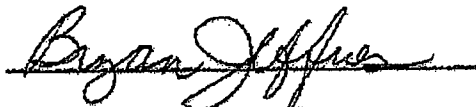
INDICTMENT
2007GS38-0640

At a Court of General Sessions, convened on April 02, 2007 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That Terrell Scott, did in Orangeburg County, on or about December 24, 2006, with malice aforethought, kill one Harry Lee Mack, Jr. by means of shooting the victim, and the said victim did die as a proximate result thereof. This offense being in violation of the Common Law of South Carolina, and Section 16-3-10 of the Code of Laws of South Carolina, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Bryan S. Jeffries SOLICITOR

WITNESSES

James Shumpert

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2007ORB18

Arrested: January 29, 2007

ACTION OF GRAND JURY

TRUE BILL

Carol Heltner

Foreperson of Grand Jury
Date: May 13, 2009

VERDICT

Guilty

MAY 13 2009

Michelle B. Adams 5-15-09
Foreperson of Petit Jury
Date:

DOCKET NO. 2007GS38-0480

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

May 11, 2009 TERM

THE STATE
vs.

Terrell Scott

Indictment for
ARMED ROBBERY

Winnys B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2009 MAY 13 A 9:05

FILED FOR
WARRANT
CLEANED
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2007GS38-0480

At a Court of General Sessions, convened on March 05, 2007 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That Terrell Scott, did in Orangeburg County, on or about December 24, 2006, commit robbery by feloniously taking from the person or presence of the victim, Harry Mack, Jr., by means of force or intimidation goods or monies of Harry Mack, Jr., such goods or monies being described as U.S. Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using 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. All in violation of Section §16-11-330 of the South Carolina Code of laws, (1976 as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Bryan S. Jeffries SOLICITOR

11:18:10

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Orangeburg
STATEINDICTMENT/CASE#: 07 -GS- 38 - 480VS.
Terrell ScottA/W#: 200702B18

AKA:

Date of Offense: 12-24-06Race: BSex: MAge: 30S.C. Code §: 16-11-330(A)DOB: 18

SS#: _____

CDR Code #: 0139

Address: _____

City, State, Zip: _____

DL# _____

SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed RobberyIn violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(GSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant Initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor7512
SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211(A)(1) (Conv. Surcharge)	\$	_____
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>100.00</u>
\$56-5-2995 (DUI Assessment)	\$12	\$ _____
\$56-1-286 (DUI Breath Test)	\$25	\$ _____
\$35.13 (Public Def/Prob)	\$500	\$ _____
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
\$50-21-114(BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
\$90.11 TP (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP, requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 0114Sentence Date: 5-15-09Clerk of Court/ Deputy Clerk [Signature]Court Reporter: Melissa Singletary