

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Saluda County
Honorable Edward W. Miller, Circuit Court Judge

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S.C. SUPREME COURT

VICTOR ANTHONY JONES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002239

APPENDIX

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1 Facebook. I would want those pictures cut out
2 individually, not attached to things with multiple hearsay
3 if he's just going to show him blank pictures. But, like I
4 said, I know they couldn't show any foundation as to the
5 hearsay evidence in here, and I would object to there being
6 any mention that it's the Defendant's Facebook page or My
7 Space page that it came from. Just show them pictures, and
8 I wouldn't even want them to do that in front of the jury
9 unless he can show some relevance. And I think ultimately,
10 before the jury even saw or heard any of that, there would
11 have to be some finding by the Court that it was even
12 relevant evidence. And I just maintain that it's not, that
13 any relevance that it has to this case is far out-stripped
14 by its prejudicial effect.

15 THE COURT: I don't know. I'm trying to say I'll rule
16 on what's brought before me. Again, I'm trying not to jump
17 over my proper role. He can ask -- He can mark anything
18 that he wants for identification purposes which is what
19 these are marked. He can ask anything he wants as far as,
20 do you recognize the person in this photograph on defense
21 exhibit 1 for identification purposes. He can't say it's a
22 gang thing through this witness unless there's some further
23 ruling of the Court. He can't show the exhibit to the jury
24 until it's an exhibit and not for identification. And I'm
25 telling y'all things you know. But that doesn't mean he's

1 got to cut out the picture and just show him the picture.

2 Maybe I misunderstood your argument.

3 MR. MAYE: Your Honor, I just don't want him making
4 any description or giving narratives as to what the
5 pictures are because, if he's going to get up there and
6 cross examine him and talk all about what's in the pictures
7 and what they are -- If he's going to merely hand him a
8 picture and go, can you identify the person in this
9 photograph, and get, yes, out of it --

10 THE COURT: No. He can say who it is. Now, if he's
11 wrong, he's wrong; and that can be handled in redirect I
12 assume. But he can be asked, do you know the person in
13 this photograph, and he can say yes or no, and who is it,
14 and he can say. He could be wrong; he could be right.

15 MR. MAYE: I would then object. To the extent that he
16 can do that, the only thing that I would object to is any
17 kind of narrative or litany as to the origin of it because
18 I maintain that would be publishing information about the
19 photographs and, if they're not into evidence, I don't
20 think any of that should be published to the jury --

21 THE COURT: He can't.

22 MR. MAYE: -- including a description of the
23 photograph.

24 THE COURT: That's hearsay. If he reads off the top
25 of it, My Space, that's hearsay unless y'all can cite me to

1 a rule, an exception to the hearsay rule. I'd be happy to
2 hear it.

3 MR. STITELY: I'll have an answer to that. I mean, I
4 don't -- I'll look for it today specifically.

5 THE COURT: It has to be authenticated which may not
6 be that much of a hurdle, but I don't see how you can
7 authenticate it by a witness who never even brought it up
8 on a computer screen.

9 MR. STITELY: Yes, sir. I can --

10 THE COURT: Now, if somebody in your office did it,
11 you could call somebody in your office, a paralegal or
12 whoever, and say, did you do this and you searched it and
13 what happened. That might be admissible. But I'm beating
14 a dead horse. The second thing then that I brought out is
15 the hearsay issue. It's got to be either not hearsay under
16 the definition or it's got to fall within an exception to
17 the hearsay rule. And that makes just so much common
18 sense. How would you like it if you were on trial and
19 somebody could convict you with stuff on the internet?
20 There're more lies on the internet than you can shake a
21 stick at. It's got to be authenticated; it's got to be not
22 hearsay; if it is hearsay and you've got an expert who can
23 bring it in, then that's fine because the experts, they can
24 testify that it's the type of thing they normally rely upon
25 in rendering their expert opinions. Now, if it's just a

1 bunch of stuff out there, they can't get into hearsay
2 either. Mr. Holloway, during the break, you're not
3 permitted to discuss your testimony. Are there any other
4 issues that I can deal with today because I cancelled drug
5 court. I knew I wasn't going to get out of here in time to
6 get to do drug court. Anything else I can deal with today?

7 MR. MAYE: I'm close to done. I don't know what they
8 might have, but from my --

9 THE COURT: Well, they don't have to tell us what they
10 have.

11 MR. MAYE: I know. I don't know --

12 THE COURT: If y'all see this thing's going into
13 tomorrow night, please let me know as soon as you can.
14 It's no skin off my back, but y'all know I do the radio for
15 the football team and they're in the playoffs, and I need
16 to let them know to have somebody else to do the radio for
17 the football as soon as they can. All right. Thank you.
18 We're in recess until 9:30.

19 (The following proceedings were concluded for November
20 1, 2012.)

21 (The following proceedings were held on November 2,
22 2012.)

23 THE COURT: All right. Do we need to put anything on
24 the record before the jury comes in?

25 MR. MAYE: Your Honor, the only thing I have is I was

1 informed that the defense in this case is not going to put
2 up any hearsay evidence; they're only going to ask him to
3 identify photographs and identify the defendant -- that was
4 my understanding -- without any reference to any of the
5 hearsay that would be contained in and around those
6 photographs.

7 MR. STITELY: Judge, before we go down that path, I
8 may be able to save us a couple hours today if I ask the
9 question ultimately. And I know it's -- I don't want to
10 put the cart before the horse; but, assuming all things
11 were to go in my favor and he identifies, I have an expert
12 to say that's what they are. If the Court doesn't intend
13 to allow me to offer that testimony for the strict purpose
14 of impeaching credibility as a whole, I think we can avoid
15 having six hours of testimony today. I know it's, like I
16 said, putting the cart before the horse on that issue; but,
17 ultimately, if the Court's going to make a determination
18 that I can't use it just to impeach credibility generally,
19 I don't think it's worth me even getting into it with the
20 officer and going down that line of questioning at all.

21 THE COURT: Well, my stop phrase is I can't rule in a
22 vacuum. What I've been struggling with is I don't know how
23 you link the gang membership to any issues relevant in this
24 case. I entirely read those cases you had given me
25 yesterday, and I understand those. Those make perfect

1 sense. You've got members of the same gang who have some
2 bias toward one another, and then you have a situation
3 where it goes to the bias. Unless you -- Unless you show
4 that your client and he are in some sort of gang
5 relationship or that gang activity has anything to do with
6 it, I don't see how it's relevant to the case and I don't
7 see how it goes to any issue. Now, if you put up an expert
8 that says every gang member hates courts and would never
9 tell the truth in one, I'll hear what he has to say. But
10 that's kind of stretching it when it's in his own self-
11 interest and there's no indication that there's any
12 connection to gang activity. So I'm not going to rule in a
13 vacuum.

14 MR. STITELY: Yes, sir. The only other issue
15 that's -- And it's not Mr. Holloway specifically. But, in
16 doing more research last night, I found some convictions
17 for Mr. Bookman for a gun charge, shooting a gun as well as
18 unlawful carrying of a gun. He has testified, earlier when
19 I was asking questions, he had no record. I've provided
20 certified copies of the convictions to the Solicitor. I
21 would like the right to recall him on cross to go over --
22 He said he definitely didn't have convictions, and I have
23 convictions on him from the past four years for two gun
24 charges. So I would like the opportunity to recall him on
25 cross to go over what he's already testified to.

1 MR. MAYE: Your Honor, he did not testify in front of
2 the jury as to whether or not he had any record or not.
3 There was an in-camera proceeding the first day that we
4 began in this case. Specifically, I did not ask him
5 whether or not he had any criminal record. There's nothing
6 before the jury in regard to his record. He would be, at
7 this point in time, calling him purely to impeach him based
8 on something that was said in camera. And, Your Honor, in
9 all fairness, it may be my fault in this case. I ran his
10 rap sheet. What he handed me there are two municipal court
11 convictions. Nothing showed on his rap sheet. You know, I
12 talked with him earlier and told him, there's nothing
13 showing on your rap sheet, do you have anything. And he's
14 told me that he relied on that and did not know that those
15 were convictions for which he should disclose. So that may
16 be my fault because, like I said, I ran his rap sheet.
17 Obviously, I wasn't trying to conceal anything from the
18 defense. They asked me if he had any criminal conviction.
19 I ran his rap sheet; nothing showed up. What he's handed
20 me here are City of Newberry municipal ordinance
21 violations, which don't get reported back and end up on
22 somebody's rap sheet, for discharging a firearm in city
23 limits and carrying a weapon unlawfully in town. That's a
24 city ordinance. And, like I said, Your Honor, that may be
25 my fault because I told him that he had no criminal history

1 showing; and he told me that he relied on that and was not
2 trying to willfully deceive anyone. Now --

3 THE COURT: What did he say that you want to use this
4 to impeach him on?

5 MR. STITELY: Judge, during the -- It was I guess in
6 camera. I asked him specifically, do you have a criminal
7 record, convictions; and he said no. Your Honor, I did not
8 ask him in front of the jury because he had already said no
9 and I didn't think it was appropriate to ask that question.
10 As Mr. Maye had already pointed out that I'm going on a
11 fishing expedition just to hear him say something on the
12 stand. He said no. He did it in court on the record. He
13 was untruthful; he flat out lied. And it's particularly
14 relevant in this case because it's gun charges. He lied
15 about having gun convictions in a hearing in front of this
16 Court. I didn't get to cross him on it originally because
17 I was relying upon his statement that he said he didn't
18 have any convictions. During my research during the trial,
19 through other things that have come out, I found his
20 convictions. I just think it's unfair to my client
21 fundamentally if I don't have the opportunity to ask
22 Mr. Bookman why he lied during that hearing. And I think
23 that, granted, it was inside an in-camera hearing; but I
24 think that it's an inconsistent statement now and I should
25 have the right to cross him in front of the jury. At the

1 time, it wouldn't have been relevant because he said he had
2 no convictions; now, he absolutely does, and they're part
3 and parcel to what we're talking about in this case, gun
4 charges.

5 THE COURT: What did he say earlier about not knowing
6 anything about guns?

7 MR. STITELY: Well, earlier when I asked him about
8 what kind of gun it was, he said, I didn't know much about
9 it. That was pretty much his line. I asked him, what kind
10 of gun it was; he said he's not sure, he doesn't know too
11 much about guns.

12 THE COURT: Anything else?

13 MR. MAYE: Your Honor, like I said, to the extent that
14 I contributed to that, I apologize; but, like I said, I did
15 directly tell him there was nothing showing on his rap
16 sheet.

17 THE COURT: Did you tell the defense that?

18 MR. MAYE: Do what?

19 THE COURT: Did you tell the defense that?

20 MR. MAYE: Yes. I told the defense --

21 THE COURT: Well, because of that, I'll allow it but
22 for no other reason. Are y'all ready for the jury or not?

23 MR. STITELY: Yes, sir.

24 THE COURT: You're sure?

25 MR. STITELY: Yes, sir.

1 THE COURT: Where were we with this witness? Cross?

2 MR. STITELY: Yes, sir.

3 THE COURT: Bring the jury in.

4 (The jury returns to the courtroom at 9:50 a.m.)

5 THE COURT: All right. You may continue with cross.

6 MR. STITELY: Thank you, Your Honor. May it please
7 the Court.

8 THE COURT: Yes.

9 **CROSS EXAMINATION**

10 BY MR. STITELY:

11 Q Officer Holloway, I have just a couple questions for
12 you. And I know we've had a day break. Going back -- Do
13 you still have your notes in front of you?

14 A Yes, sir.

15 Q All right. Going back to the time that you
16 interviewed Mr. Bookman on the 10th of July, 2009 --
17 Correct?

18 A Correct.

19 Q That was the day you interviewed him?

20 A Yes, sir.

21 Q That's when he gave you his statement. Correct?

22 A Yes, sir.

23 Q And that's pretty much the only time you really talked
24 to him about what happened that day?

25 A Yes, sir.

1 Q Okay. At that time, did he tell you -- Is there
2 anything in your notes to indicate that he told you that he
3 thought Amber was a part of it?

4 A No, sir.

5 Q Had he told you that, would you have viewed Amber as a
6 suspect at that time potentially?

7 A Yes, sir.

8 Q And it's true that you did not view Amber as a suspect
9 initially?

10 A No, sir.

11 Q Okay. So would it be fair to assume that nothing in
12 your investigation lead you to believe that from things you
13 were told by Mr. Bookman?

14 A Yes, sir.

15 Q Okay. And, again, he didn't say anything about
16 striking, getting struck that day?

17 A No, sir.

18 Q He didn't say anything about a conversation with the
19 assailants before about having the money, showing it to
20 them, nothing about that?

21 A No, sir.

22 Q He didn't say anything about the description of this
23 gun?

24 A No, sir.

25 Q And, of course, you weren't there; so you pretty much

1 rely on what you're told by witnesses?

2 A Yes, sir.

3 MR. STITELY: I have no other questions for Officer
4 Holloway on cross. Thank you.

5 THE COURT: Redirect?

6 MR. MAYE: Just a couple, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. MAYE:

9 Q Investigator Holloway -- and I know this is getting
10 pretty far afield -- you were asked questions about getting
11 speakers out of a car or getting a box out of the back of
12 the car, regarding how wiring and all is hooked up. Are
13 there not multiple methods of wiring and hooking up those
14 stereo speakers?

15 A Yes, sir.

16 Q Are not some of them push-in friction locks where you
17 push the speakers in and they lock in place?

18 A Yes, sir.

19 Q Some of them on those boxes have the little thumb
20 screws that you screw and unscrew and you pull the wires
21 right out?

22 A Yes, sir.

23 Q Investigator Holloway, a speaker box in the back of
24 the car, you would need a screwdriver if you were going to
25 remove the wires and remove it without tearing anything up.

1 Correct?

2 A Correct.

3 Q But, if you wanted to yank out a box in the back of a
4 car, you could yank it out and run with it. Correct?

5 A. Yes, sir.

6 Q If you didn't care about -- If you were stealing it
7 and you didn't care about protecting someone's property,
8 you could certainly yank something out and pull it out,
9 could you not?

10 A Yes, sir.

11 Q Investigator Holloway, when you were initially told
12 that the suspect in this case had a tattoo around his
13 neck --

14 A Yes, sir.

15 Q -- Victor Jones, does he have a tattoo around his
16 neck?

17 A He has one on I think it's his right side, T.J. or
18 something like that?

19 Q But he's got a visible tattoo on his neck?

20 A Yes, sir.

21 Q The victim in this case told you that this guy had
22 visible tattoos. Correct?

23 A Yes, sir.

24 Q And Victor Jones has got tattoos in multiple places
25 around, doesn't he?

1 A Yes, sir.

2 Q Okay. In fact, that was one of the things that led
3 you to him as the suspect in this case, the tattoo around
4 the neck and the statement of the victim that this guy had
5 tattoos?

6 A Yes, sir.

7 Q That's one of the things that led you to putting him
8 in the lineup, wasn't it?

9 A Yes, sir.

10 Q You were asked on cross examination about this being a
11 confession in this case. I want to show you this. What's
12 a lick?

13 A A lick in their term --

14 MR. STITELY: I'm going to object. It calls for
15 speculation.

16 THE COURT: Yes, sir.

17 MR. MAYE: I will ask him some other questions to lay
18 a foundation if I could.

19 MR. STITELY: It's still going to be speculation.
20 He's going to ask what another person's frame of mind was
21 by writing one word.

22 THE COURT: The objection's sustained at this point.
23 If you want to ask questions, you may.

24 BY MR. MAYE:

25 Q Investigator Holloway, based on your -- How many years

1 have you been in law enforcement?

2 A Seventeen.

3 Q Based on your experience in law enforcement and your
4 training, have you seen the term, a lick, used?

5 A Yes, sir.

6 Q That phrase?

7 A Yes, sir.

8 Q Is that common parlance or street talk and do you know
9 what the term lick means based on your experience and
10 training as a law enforcement officer?

11 A Yes, sir.

12 Q Have you had cases in which that word was utilized in
13 the past?

14 A Yes, sir.

15 Q Multiple times?

16 A Yes, sir.

17 Q Based on that experience and training in law
18 enforcement and your expertise in that area, do you know
19 what the common parlance is or what the term lick is used
20 for?

21 MR. STITELY: Judge, I'm still going to object to
22 speculation. He hasn't put anything in the frame of
23 reference to say that my client is going along with the
24 same definitions that Officer Holloway intends to use.
25 It's speculation. He's attempting to use one word out of a

1 statement to form a speculative opinion as to what my
2 client's state of mind was.

3 THE COURT: Anything else on this issue?

4 MR. MAYE: Nothing else, Your Honor.

5 THE COURT: He's not been qualified as an expert
6 witness. The objection's sustained.

7 Q Investigator Holloway, in his statement that's now
8 into evidence, he said, Amber Salaam text my phone.
9 Correct?

10 A Correct.

11 Q He talks multiple times in his own statement about
12 texting going back and forth. Correct?

13 A Correct.

14 Q So you knew, by what he told you, that he was
15 communicating with Amber Salaam involving setting this
16 up by his own admission.

17 A Yes, sir.

18 Q Correct?

19 A Correct.

20 Q It further goes on to say, after he says, I text her
21 back, she then said she have a lick so she said he's pussy
22 and then she said it's going to be easy. That's what he
23 told you --

24 A Yes, sir.

25 Q -- in the communication going back and forth between

1 them just prior to the time of this robbery?

2 A Yes, sir.

3 Q Then she text me back she's on Newberry Highway.

4 Correct? Is that what he said?

5 A Yes, sir.

6 Q Then she text me back met her at the Burger King; then

7 Carlos told me to text her back follow us and I did.

8 Correct?

9 A Correct.

10 Q So when we -- So we when [sic] on a dirt road and

11 stop, Lil Tim jumped out the car and went to the driver's

12 door and got the money and Carlos took the speaker and Lil

13 Tim told them to ride on and they did and -- What does that

14 last part say?

15 A Left.

16 Q And left?

17 A Left, yes, sir.

18 Q Based on just his admission that he was setting this

19 deal up with her and then he went with these guys to carry

20 out this armed robbery, would you have charged him just on

21 that basis even if you believed he wasn't the person that

22 went to the car?

23 A Yes, sir.

24 Q You would have sought armed robbery charges under the

25 hand of one is the hand of all. Correct?

1 A Correct.

2 Q By his own admission, you have him setting up a deal
3 to do an armed robbery --

4 A Yes, sir.

5 Q -- arranging all of the meeting, going with them,
6 being present, going along with the individuals that
7 carried it out even if you believe his version of it.
8 Correct?

9 A Correct.

10 Q Certainly, you would have -- It would have
11 strengthened your belief that it was an armed robbery when
12 you heard the identification through the lineup by the
13 victim picking him out as the person that was actually
14 holding the gun. Correct?

15 A Yes, sir.

16 MR. STITELY: I'm going to object at this point. I
17 think he's asking the officer to draw legal conclusions.

18 THE COURT: Do you wish to be heard?

19 MR. MAYE: Nothing, Your Honor.

20 THE COURT: Sustained.

21 MR. MAYE: Nothing else. Thank you.

22 THE COURT: All right. Recross?

23 MR. STITELY: Very briefly, Your Honor. If it please
24 the Court.

25

RECROSS EXAMINATION

1
2 BY MR. STITELY:

3 Q Mr. Holloway, you still have the statement in front of
4 you. Right?

5 A Yes, sir.

6 Q And it's interesting that Mr. Maye said setting up a
7 deal. Have you ever worked a drug case?

8 A Yes, sir.

9 Q How many?

10 A Hundreds.

11 Q Hundreds. Do drug cases typically involve things like
12 conversations between buyers and sellers on phones?

13 MR. MAYE: Your Honor, I'm going to object at this
14 point in time. I think it's outside the scope of any of
15 these questions. I don't think it's relevant evidence in
16 this case.

17 MR. STITELY: Your Honor, he specifically asked, he
18 set up a deal. That was Mr. Maye's question in redirect.

19 THE COURT: The objection's overruled.

20 BY MR. STITELY:

21 Q Frequently in drug transactions, do people use cell
22 phones to communicate?

23 A Yes, sir.

24 Q In your experience, is it the common practice for them
25 to say in a marijuana deal, hey, I've got a bunch of

1 marijuana, do you want to buy it? Or do they say something
2 different?

3 A I mean, it's slang.

4 Q Slang. But they don't typically use the words that we
5 would normally say. They don't use the drug moniker like,
6 in a cocaine case, they wouldn't always say, hey, I have
7 some cocaine, would you like to buy it. They would say
8 something different. Right?

9 A Correct.

10 Q And, in this case, you don't have the records.

11 Correct? Any text records?

12 A No, sir.

13 Q And, in his statement, Mr. Jones does say that Little
14 Tim or Carlos and Mr. Bookman exchange money. Correct?
15 Got the money?

16 A Right.

17 Q He doesn't say anything about a gun?

18 A No, sir.

19 Q Doesn't say anything about an armed robbery?

20 A No, sir.

21 Q Ms. Salaam, did you see how many cell phones she had
22 on her?

23 A No, sir, I didn't.

24 Q What is a common element regarding cell phones in your
25 investigation of a drug case? Do they usually have one or

1 more?

2 A We have some that have one, some that have more.

3 MR. STITELY: I have no other questions at this time.

4 Thank you.

5 THE COURT: Anything further?

6 **REDIRECT EXAMINATION**

7 BY MR. MAYE:

8 Q Investigator Holloway, in his statement, doesn't he
9 say they took his money and the speakers?

10 A Yes, sir.

11 Q Correct?

12 A Correct.

13 Q Does he say anything about doing a drug deal?

14 A No, sir.

15 Q Did Victor Jones, when he gave you a statement, tell
16 you one thing about this being a drug deal gone bad or
17 anything about a drug deal?

18 A No, sir.

19 Q Told you it was a robbery, didn't he?

20 A Yes, sir.

21 Q And wrote it in his own words, didn't he?

22 A Yes, sir.

23 SOLICITOR: Nothing else.

24 THE COURT: Anything further of the witness?

25 MR. STITELY: Not from the defense, Judge.

1 THE COURT: Thank you, sir. You may step down. Any
2 further witnesses for the State?

3 MR. MAYE: The State rests.

4 THE COURT: Do you wish to recall a State's witness at
5 this point?

6 MR. STITELY: Yes, sir. I wish to recall Mr. Bookman
7 to complete cross.

8 THE COURT: Mr. Bookman, would you come back up
9 here, please, and have a seat. You're still under oath.

10 MR. MAYE: Your Honor, the only thing I would ask --
11 this is cross for a specific purpose in this case, only for
12 a limited purpose -- you're allowing it for that purpose?

13 THE COURT: Yes, if I allow it.

14 MR. MAYE: Okay. Thank you.

15 JERRELL BOOKMAN,

16 having been previously duly sworn, testified as follows:

17 CROSS EXAMINATION

18 BY MR. STITELY:

19 Q Mr. Bookman, do you remember when I asked you a
20 question, do you have any criminal record, criminal
21 convictions?

22 A Yes, sir.

23 Q And you told me what?

24 A No.

25 MR. STITELY: Your Honor, may I approach?

1 THE COURT: Yes, sir.

2 BY MR. STITELY:

3 Q Is your name Jerrell Devon Bookman?

4 A Yes, sir.

5 Q You live in Newberry?

6 A Yes, sir.

7 Q I'm going to show you two things. Isn't it true that
8 you were, in fact, convicted of firing a firearm inside the
9 city limits of Newberry and unlawful carrying of a weapon
10 in 2008?

11 A Yes, sir.

12 Q So, when you told me you didn't have any criminal
13 convictions before, were you telling the truth or were you
14 lying?

15 A I ain't know I had it on my background. I ain't know.
16 I couldn't remember because it was so far back.

17 Q Okay. This is 2008. You told this jury that you
18 don't remember that you got convicted of two charges
19 involving a gun?

20 A Yeah, cause it wasn't on my background. I ain't know
21 it was on my background. It ain't. My background is
22 clear.

23 Q Were you convicted?

24 A What?

25 Q Were you convicted of those two charges?

1 A Yes, sir.

2 Q And you just want to tell them, because it ain't on
3 your background, it don't matter?

4 A I can't -- I ain't -- I couldn't even remember I did
5 that it was so far back.

6 Q But you got convicted in 2008 for possessing a gun
7 unlawfully and firing it in the Newberry city limits
8 unlawfully. Correct?

9 A The first one, what you just said, that wasn't about
10 no gun.

11 Q Okay. What was it?

12 A It was about when I got caught with a razor.

13 Q Okay. And you didn't think --

14 A And I ain't know I had it on me. It's like one of
15 them razors (indicating) that was in my pocket.

16 Q Okay. What about firing the gun?

17 A Yes, but I was shooting at targets and --

18 Q What kind of gun was it?

19 A I can't remember.

20 Q You have a lot of guns?

21 A No, sir.

22 Q So what kind of gun was it?

23 A I can't remember.

24 Q How many guns did you have?

25 MR. MAYE: Your Honor, I object to the relevance of

1 that line of questions. It's outside the scope of
2 inquiring on his record. I've let it go now, but I object.

3 THE COURT: Do you wish to be heard?

4 MR. STITELY: No, Your Honor.

5 THE COURT: Overruled. You can answer the question if
6 you know it.

7 A Could you repeat?

8 Q How many guns did you have?

9 A I ain't have none because it wasn't mine.

10 Q Okay. But you were definitely convicted of it and
11 convicted of a razor blade?

12 A Yes, sir.

13 Q And you still maintain that you don't have a record,
14 or do you, in fact, have a record?

15 A I don't have a record.

16 Q But you were convicted?

17 A I was convicted of them two.

18 MR. STITELY: Your Honor, I'd ask that these just be
19 put in the Court's record, but that's all. I have no other
20 questions for Mr. Bookman.

21 THE COURT: Wait a minute. I don't understand. You
22 want them as Court's exhibits?

23 MR. STITELY: Yes, as Court's exhibits.

24 THE COURT: Mark those as Court's exhibits, please.

25 (Court's exhibits 3 and 4 marked for identification.)

REDIRECT EXAMINATION

1
2 BY MR. MAYE:

3 Q Mr. Bookman, let me ask you this. When you came to
4 court, were you provided with information by law
5 enforcement that you have no criminal history, that your
6 background had been run and you had no criminal history?

7 A Yes, sir.

8 Q Did you testify on that basis?

9 A Yes, sir.

10 Q Did you recall having these municipal court
11 convictions?

12 A Yes, sir. Repeat that?

13 Q These are city ordinance charges in Newberry.

14 Correct?

15 A Yes, sir.

16 Q Did you willfully conceal these or did you rely on us
17 telling you that you had nothing on your record?

18 A I told them I ain't have nothing on my record.

19 Q Okay. Were you provided by law enforcement a copy of
20 your criminal history and told that you had no criminal
21 convictions showing on your record?

22 A Yes, sir.

23 Q Did you rely on that in testifying earlier?

24 A Yes, sir.

25 Q Okay. But you do have two municipal court charges,

1 one for discharging a firearm in the city limits and one
2 for carrying a weapon unlawfully. And you don't deny that,
3 do you?

4 A Yes, sir, I don't deny it. I forgot all about it.

5 Q Okay. And you were told that nothing was showing on
6 your record?

7 A Yes, sir.

8 MR. MAYE: Nothing else.

9 THE COURT: Anything else of this witness?

10 MR. STITELY: No, Your Honor.

11 THE COURT: Thank you, sir. You may step down.

12 Ladies and gentlemen of the jury, if you recall when I
13 talked to you on Tuesday, on Wednesday, I told you that,
14 when we reach the stage where the State rests, I have to
15 confer with the attorneys. So that's where we are. I have
16 to talk to the attorneys about some legal issues. We'll go
17 through those, and I will get you back out here and tell
18 you where we go from there. Don't discuss the case,
19 please. Step in the jury room.

20 (The jury retires to the jury room.)

21 THE COURT: Motions?

22 MR. STITELY: Your Honor, at this time, the defendant
23 would make a motion for a directed verdict on the basis
24 that the testimony, taken in the light most favorable to
25 the State, there is insufficient evidence to proceed

1 forward to a jury verdict.

2 THE COURT: There is sufficient.

3 MR. STITELY: Insufficient.

4 THE COURT: I'm saying there are sufficient bits of
5 evidence for the jury to consider every essential element
6 of the armed robbery as alleged in the indictment, and the
7 motion's respectfully denied. Mr. Jones, I've got to go
8 over some things, and I have to do it with you on the
9 record under oath. I placed you under oath earlier in the
10 proceeding, so understand you're still under an obligation
11 to tell me the truth. Do you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: All right, sir. You can have a seat.
14 Just speak up because the court reporter has to take down
15 everything we say. We've reached the stage of the trial
16 where the State has rested. And the next thing that would
17 happen is that your side would be given the opportunity to
18 present evidence for the jury to consider. Do you
19 understand where we are in the trial?

20 DEFENDANT: Yes, sir.

21 THE COURT: Okay. Now, your side does not have to put
22 up any evidence; but, if you want to, you may. If you want
23 to call witnesses, you may. If you, yourself, want to
24 testify, you may. But, as far as your testimony, nobody
25 can make you testify. You understand that?

1 DEFENDANT: Yes, sir.

2 THE COURT: You have an absolute right to remain
3 silent; and, if you choose not to testify, I'm going to
4 tell that jury they cannot hold your silence against you in
5 any way at all, that they're not to discuss it in their
6 deliberations and they're not to let it enter their mind in
7 making their decisions about whether you are guilty or not
8 guilty. Do you understand?

9 DEFENDANT: Yes, sir.

10 THE COURT: Now, if you choose to testify, then
11 obviously you would subject yourself to cross examination.
12 Do you understand that?

13 DEFENDANT: Yes, sir.

14 THE COURT: Now, does he have a prior criminal record
15 that would subject him to impeachment?

16 MR. MAYE: Your Honor, he has a 2003 assault and
17 battery of a high and aggravated nature charge; he's got a
18 sale of a stolen pistol in 2007; he's got a resisting
19 arrest in 2008; he has a criminal domestic violence first
20 which is magistrate's court, Your Honor, in 2008; he has
21 another magistrate court conviction for entering the
22 premises after warning; simple possession first but it's
23 magistrate court. He has about three driving and public
24 disorderly that are tagged magistrate court charges which I
25 would not maintain would be eligible. I have that he has

1 an assault on a corrections officer or employee, assault on
2 a corrections employee 9/20 of 2004, Your Honor, and that
3 he went on that and an ABHAN -- this is a juvenile record
4 -- it says, committed to DJJ. That's all I have, Your
5 Honor. He has a use of vehicle without owner's consent in
6 2002, December of 2002, use of a vehicle without owner's
7 consent as a juvenile conviction. That was 12/31 of 2002 I
8 think. And I'll retract that, Your Honor. It says
9 suspended commitment to Evaluation Center. I don't know if
10 he got convicted of that or not; I can't say. And he's got
11 a -- This is outside of the ten years, 5/21/2001. And he
12 got an arbitration sentence on carrying a weapon on school
13 grounds. So, Your Honor, I guess what I would have would
14 be the ABHAN and the assault on a corrections officer or
15 employee that he got as a juvenile. I would think those
16 would be convictions for which he could be impeached.

17 THE COURT: What does sale of a stolen pistol carry?

18 MR. MAYE: That I'm going to have to check on, Your
19 Honor. Begging the Court's indulgence.

20 (Pause.)

21 MR. MAYE: That was out of Richland County, Your
22 Honor; and I have the indictment number and the warrant.
23 And I'll look that up if you can give me just a moment. I
24 can go on the criminal index and we can look that up.

25 THE COURT: That's okay. Let's assume it carries --

1 MR. MAYE: It's a 16-23-30 felony charge, 16-23-30.

2 THE COURT: I think that's that section that's a five-
3 year felony.

4 MR. STITELY: I think that's right, Your Honor. I
5 think that's what I found too when I looked it up.

6 MR. MAYE: That's correct, Your Honor. It is a
7 felony.

8 THE COURT: All right. Bear with me just a second.

9 (Pause.)

10 THE COURT: Rule 609 of the South Carolina Rules of
11 Evidence provides, evidence that an accused that has been
12 convicted of a crime shall be admitted if the Court
13 determines that the crime was punishable by death or
14 imprisonment in excess of one year under the law in which
15 the accused was convicted and that the probative value of
16 admitting the evidence outweighs its prejudicial effect to
17 the accused. There's a ten-year time limit. Evidence that
18 a witness has been convicted of a crime is admitted if it
19 involved dishonesty or false statement regardless of
20 whether it carries more than a year in jail as possible
21 punishment. So the only ones that I see that will be
22 possible will be a 2004 assault on a corrections officer
23 and assault and battery of a high and aggravated nature and
24 the 2007 sale of a stolen pistol. The Court is unable to
25 make a finding that the probative value of admitting that

1 evidence would outweigh the prejudicial effect to the
2 accused. What that means, Mr. Jones, is that I'm ruling
3 that, if you take the stand, the State cannot ask you about
4 those prior convictions. You understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Now, that doesn't prevent them from asking
7 you about it if you, in some way, open the door to it. And
8 your lawyer can explain to you what I mean by opening the
9 door; but; to give you an example of what's happened in the
10 past, I have made a similar ruling in cases and told the
11 defendant, if you take the stand, they're not going to be
12 allowed to ask you about your prior conviction for this and
13 this and then have the defendant get on the stand and make
14 some statement like, I've never been in trouble with the
15 law. Well, that's just a flat-out lie, and that opened the
16 door for the State to be able to ask him about those
17 convictions. But, unless, in some way, a door gets opened
18 that lets them go into it, the State's not going to be able
19 to ask you about your prior criminal history. You
20 understand that?

21 DEFENDANT: Yes, sir.

22 THE COURT: This decision about whether you testify or
23 not, it's your decision to make and yours alone. Now, I
24 expect that you might confer with family members or friends
25 or anyone whose opinion you value on important decisions;

1 but, ultimately, this is your call to make. You're the
2 person on trial, and you're the one who has to decide
3 whether you wish to testify or not. You understand?

4 DEFENDANT: Yes, sir.

5 THE COURT: Now, if you offer no evidence at all, that
6 is, neither you nor anyone on your behalf testifies, and if
7 nothing is put in as far as an exhibit, if the defense
8 offers no evidence at all, your lawyer gets to make the
9 last argument to the jury; otherwise, the State gets to
10 make the last argument. Do you understand that?

11 DEFENDANT: Yes, sir.

12 THE COURT: All right. So, Mr. Jones, whatever
13 decision you've made about whether you testify or not, you
14 can change your mind until you actually come up here and
15 testify. But I need to ask you if, whatever your decision
16 is, that's your decision made of your own free will. Do
17 you understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: All right. I'm going to make some
20 findings right now, and then I'll take a break. I'll let
21 you talk to your lawyer, and then y'all can tell me how
22 you're going to proceed. But, at this point, I'm going to
23 find that you understand that you have a right to testify,
24 you have a right not to testify; you understand you have an
25 absolute right to remain silent, that you're presumed

1 innocent, you have no obligation to present any evidence at
2 all; if you choose not to testify, I'm going to tell the
3 jury they cannot hold your silence against you in any way
4 at all; you understand that the decision about whether you
5 testify is your decision to make and yours alone; and you
6 understand the rulings that I've made about the State not
7 being allowed to ask you about your prior criminal record
8 unless you, in some way, open the door for them to do it.
9 And I'm going to make a finding that your decision,
10 whatever it is, is free, knowing, voluntary and
11 intelligently made. So, if anybody does attempt to
12 improperly influence you about testifying, you need to let
13 me know right away. All right?

14 DEFENDANT: Yes, sir.

15 THE COURT: Do you need a few minutes to talk to him?

16 MR. STITELY: Please, Judge.

17 THE COURT: All right. We're at ease for a few
18 minutes. Thank you.

19 (Brief Recess.)

20 THE COURT: Does the defendant wish to offer any
21 evidence.

22 MR. STITELY: Your Honor, we do not. I would put on
23 the record that I spoke with my client. I received an
24 offer from Mr. Maye; we discussed it. We're not inclined
25 to go on that route at the moment. Mr. Jones has gone back

1 and forth over whether or not he wants to testify. I've
2 directed him I don't think it would be in his best
3 interest. We don't have any other witnesses we intend to
4 call. At the end before we left, he did say that he was
5 agreeing with me that he would not testify. I just put
6 that on the record. He did go back and forth. I laid it
7 out for him, explained all the ramifications if he
8 testifies, that I would lose the last argument as well as
9 he would open himself up to cross examination that the
10 Solicitor may have, that, regardless of his record, that he
11 would have to withstand cross examination. I told him, in
12 my legal opinion, I did not think it would be in his best
13 interest, and he has agreed with me that we would proceed
14 on without putting up a defense.

15 THE COURT: Mr. Jones, did you hear what your lawyer
16 told me?

17 DEFENDANT: Yes, sir.

18 THE COURT: Do you wish to testify or not?

19 DEFENDANT: No, sir.

20 THE COURT: Is that your own decision made of your own
21 free will?

22 DEFENDANT: Yes, sir.

23 THE COURT: All right. Are y'all ready to argue?

24 MR. MAYE: The State's ready.

25 THE COURT: Defense?

1 MR. STITELY: Your Honor, I would just, before we
2 argue, I would like to talk about the charges.

3 THE COURT: All right.

4 MR. STITELY: Judge, I'm going to ask for an
5 additional charge of common-law robbery and an additional
6 charge of petit larceny.

7 THE COURT: Where is there any evidence of anything
8 but armed robbery?

9 MR. MAYE: There is not. It's armed robbery or
10 nothing. There's nothing in the record. Any cross
11 examination questions are not evidence in this case. The
12 only evidence in this case -- The questions, themselves,
13 are not evidence; there's nothing but armed robbery.
14 There's nothing in here to suggest common-law robbery, and
15 there's nothing in the record for a lesser-included. It's
16 either armed robbery or nothing would be the State's
17 contention.

18 MR. STITELY: I think there's varying testimony as to
19 how the events took place. One witness talked about how
20 there were guns the whole time, another one saying there
21 weren't. In fact, there weren't any guns recovered that
22 were put into evidence. In fact, even the Defendant's own
23 statements make no mention whatsoever of a gun or armed
24 robbery at all. His statement does talk about a larceny,
25 but there's no reference -- And his statement has been put

1 into evidence now. It simply says that they got money and
2 the speakers. It says nothing about armed robbery. I
3 think that I can make an argument for either a common-law
4 robbery, and/or I think I can make an argument for a petit
5 larceny because the amounts don't add up to over two
6 thousand dollars.

7 (Pause.)

8 THE COURT: Yes, I'm ready.

9 MR. STITELY: Judge, I have the charge from Judge
10 Anderson's book about common-law robbery. It does talk
11 about accomplished by violence, intimidation or putting in
12 fear or just intimidation in the presence of others. I
13 think it would be sufficient to reach that one. And then
14 the larceny claim, as I said, I think his statement is as
15 sufficient evidence as I need. Mr. Maye says there's been
16 nothing through cross. They put his statement into the
17 record, and it does not reference any form of armed
18 robbery. I think, at best, I can make a reference that it
19 talks about taking the speakers which is larceny.

20 (Pause.)

21 THE COURT: Let me see his statement here. May I see
22 his statement?

23 (Mr. Maye hands document to the Court.)

24 (Pause.)

25 THE COURT: The only evidence in this record is that

1 the robbery was committed while armed with a deadly weapon.
2 The mere fact that a statement of a defendant does not
3 mention a robbery or a deadly weapon I don't think creates
4 evidence that it was anything other than armed robbery.
5 Now, I know, when he asked to speak with me at the very
6 beginning of the trial, he made reference that it wasn't
7 any armed robbery, it may have been a common-law robbery,
8 if I recall. But he hasn't testified. Every case I've
9 looked at indicates that you don't get a lesser-included
10 offense charge unless there's some evidence to support that
11 the defendant is guilty of only the lesser offense.
12 There's a case that says the contention that a jury might
13 accept the State's evidence in part or reject it in part is
14 not sufficient to satisfy the instruction on a lesser-
15 included offense. That's *State v. Franks*, a 2008 Court of
16 Appeals' case. I note your request for a lesser-included
17 offense on common-law robbery or strong-arm robbery, but
18 there's nothing in this record except that the robbery was
19 committed while using threats of coercion with a deadly
20 weapon. Petit larceny is -- I'm struggling to see that at
21 all.

22 MR. MAYE: Your Honor, we would almost maintain that
23 was subsumed by the armed robbery. It's not like a
24 burglary and a grand larceny where we've got what has
25 happened. He could have taken even a dollar on the armed

1 robbery. I don't think he could be charged -- I mean, I
2 don't think you can be convicted of both.

3 THE COURT: Well, the elements are the same except for
4 a larceny. Whether it's grand or petit larceny does not
5 require that the property be taken from the person or
6 presence; a robbery does. An armed robbery with force or
7 intimidation is accomplished through the use of a deadly
8 weapon. The request is denied. Do y'all -- I mean, I
9 typically print out the proposed charge. Do you have
10 something else, Mr. Stitely?

11 MR. STITELY: I just want to make sure that I make
12 Mr. Jones' record clear. My position on the petit larceny
13 -- I understand your ruling -- I just don't know if I've
14 said it well enough to protect it.

15 THE COURT: Go ahead.

16 MR. STITELY: Your Honor, my position on that is that
17 the evidence presented has come in through evidence now, a
18 statement purported to be from my client, a retelling of
19 his accounting of the facts indicating the taking of items
20 without any mention of force. I think that does establish
21 the elements of a larceny. The amount in question, as
22 stated through the testimony of the other witnesses, does
23 not indicate a value in excess of two thousand. That's why
24 I asked for petit larceny. So it would be the defendant's
25 position that, because his statement, which is in the

1 record now as evidence, indicates what a reasonable person
2 could come to the conclusion of a larceny without any
3 presence of force, that's why we'd ask for that charge.

4 THE COURT: Well, the only thing that causes me
5 concern about the ruling is, when Ms. Salaam testified,
6 there was some point where she said something about it not
7 being an armed robbery, but I don't recall. She said so
8 many different things. I don't know. I don't get to pick
9 and choose, and I don't get to decide what's true and
10 what's not true. I mean, that's not my role.

11 MR. MAYE: Your Honor, that was during a point in time
12 when I objected to a question that was posed to her on
13 cross examination where he said, so it wasn't an armed
14 robbery. And I objected to that question, Your Honor. And
15 I don't think there's anything in the record from her where
16 she ever said that. That was a question, and she did not
17 answer that that wasn't an armed robbery. I objected to
18 that and said that was an improper statement by the defense
19 attorney in this case. Your Honor, like I said, cross
20 examination questions don't create that evidence. They're
21 going to have to put up evidence. There's nothing in the
22 record to support a common-law robbery. And, in this case,
23 I specifically asked Investigator Holloway about this
24 statement or confession, was it a confession involving an
25 armed robbery. There was no objection to that, and that's

1 in the record, that his confession or statement was related
2 in regards to an armed robbery. And I know that's in the
3 record because I asked Investigator Holloway that today.

4 THE COURT: There's abundant evidence that it was an
5 armed robbery. I was trying to think if there was any
6 evidence that would allow the jury to find something other
7 than an armed robbery, and that's the only thing that's
8 gnawing at me because I can't recall exactly.

9 MR. STITELY: She did answer that question in the
10 affirmative; so I said, isn't it true that this wasn't even
11 an armed robbery. She said, yes, sir. And then I repeated
12 myself. And then Mr. Maye objected. I'm sure we can find
13 that. I intended to argue it, so maybe it's relevant that
14 we find that now before I argue it.

15 THE COURT: See if y'all can find it. See if they can
16 find that. We're at ease.

17 MR. STITELY: Thank you, Judge.

18 (Brief Recess.)

19 THE COURT: All right. We have all listened to the
20 backup, and we may have heard three different things. I
21 don't know. I'll tell you what I heard. She was being
22 asked questions, and what I heard was basically the
23 question by the defense counsel that was suggesting that it
24 really wasn't an armed robbery; and the words I heard her
25 say were, if that's what you say, no, sir. Now, I'll let

1 y'all put on the record whatever you want to put on the
2 record.

3 MR. MAYE: Your Honor, the reason that I objected is,
4 and what I saw in the court reporter's transcript there,
5 she said, that's what you say, no, sir. And my -- The way
6 I interpreted that was she was saying, that's what you say;
7 and that's not right, Your Honor. That's why I jumped up
8 and objected, because he said, oh, that's right. And that
9 was not a question; he made the statement, that's right,
10 that's what I thought, afterwards. And I knew that was a
11 total mischaracterization of what she had said. She has
12 never -- and we can recall her -- she has never agreed with
13 the fact that it wasn't really an armed robbery; she's
14 always testified that it was an armed robbery. She was
15 disagreeing with his statement. She said, that's what you
16 say, no, sir. And that's the way I interpret it, and I
17 think that he mischaracterized it. And that's why I
18 objected in front of the jury, Your Honor. I don't think
19 there's any evidence that there was a common-law robbery.
20 Like I said, a statement of the defense counsel would not
21 amount to evidence in this case, and he repeated that
22 trying to make that -- Your Honor, I just think that's a
23 total mischaracterization of her answer.

24 MR. STITELY: And, Judge, I think the audio speaks for
25 itself. The way I asked the question, I said, well, isn't

1 it true that this wasn't even an armed robbery. She pauses
2 and she smiled at the jury at that point and smiled at me.
3 I said, it's okay, go on, you can say it. I said, isn't it
4 true this wasn't an armed robbery. She's like, if that's
5 what you say, and then she shook her head and she smiled,
6 smirked, and goes, no, sir. And then I said, that's right,
7 it wasn't an armed robbery. And then Mr. Maye objected. I
8 think it's very clear she understood exactly what I was
9 saying; you can hear it in the pause. It wasn't that she
10 was contradicting me; she was agreeing; she said, no, sir,
11 it wasn't an armed robbery. I think I can argue that to
12 the jury. I think it gives further weight to my jury
13 charges that it wasn't an armed robbery. I have a position
14 that I can put forward with evidence in the record through
15 a statement that it was a petit larceny; and I also, of
16 course, can argue ultimately that there was no crime. But,
17 I mean, I think at least I've met that burden to move
18 forward on that jury charge as well.

19 THE COURT: Do y'all need anything else on the record?

20 MR. MAYE: Your Honor, the only other thing I would
21 say is this is a search for the truth and I would maintain
22 that it's a mischaracterization. If they need to clear it
23 up, we can recall her with leave of the Court. But, like I
24 said, I don't think she's ever answered inappropriately. I
25 think that's just playing words games in an attempt to try

1 to interject a defense when they've not put one up in this
2 case. They're trying to get a lesser-included charge when
3 we would maintain there's nothing, no meaningful evidence
4 in this record with which a jury could come back with a
5 verdict for common-law robbery rather than armed robbery.
6 And we would just respectfully maintain that it's armed
7 robbery up and down.

8 THE COURT: Anything else?

9 MR. STITELY: Nothing from the defense, Your Honor.

10 THE COURT: My understanding of the witness' response
11 after she had testified repeatedly that there was an armed
12 robbery, that there were pistols involved, that a pistol
13 was put to her head, that she was saying, if that's what
14 you say, she was just -- I do not take that to be her
15 saying there was not an armed robbery. I don't know how
16 else to interpret it. Now, if I'm wrong, I apologize to
17 everyone; but I think that's the slimmest of evidence that
18 could possibly be produced under any construction. And I
19 don't think that that's what she -- her answer was. I
20 don't think she -- Her answer wasn't, there was not an
21 armed robbery; she was saying, if you say so, basically.
22 Do y'all want to see the proposed charge?

23 MR. STITELY: As long as it's your standard charge,
24 Judge, I don't have a problem with it.

25 MR. MAYE: No, sir, Your Honor.

1 THE COURT: Are you ready to argue?

2 MR. MAYE: The State's ready.

3 THE COURT: Defense?

4 MR. STITELY: Yes, sir.

5 MR. MAYE: Your Honor, may I have one minute to go to
6 the restroom?

7 THE COURT: All right. We're at ease.

8 (Brief Recess.)

9 THE COURT: Do you have something, Mr. Stitely?

10 MR. STITELY: Just, before we bring in the jury, I
11 want to renew all of my post-trial motions and during-trial
12 motions for the record as well as saying the defense has
13 now rested. And we would again make a motion for a
14 directed verdict as the evidence as a whole in the trial is
15 still insufficient to go forward to the jury.

16 THE COURT: There is sufficient evidence to go to the
17 jury. Now, before I tell the jury that he's not
18 testifying, do you need to talk with him any more to see if
19 he wants to testify or to put in evidence that might create
20 a charge of strong-arm robbery?

21 MR. STITELY: He's still not going to testify, Judge.

22 THE COURT: Is that right, Mr. Jones?

23 DEFENDANT: Yes, sir.

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

25 (The jury returns to the courtroom.)

1 THE COURT: All right. Ladies and gentlemen, we went
2 ahead and did several different things while you were out,
3 several stages that normally you would come in and go back
4 out. So I apologize for the length of that delay, but we
5 just ran them all together instead of bringing you in,
6 sending you out, bringing you in, sending you out. You
7 have all the evidence you're going to have to decide the
8 case, and what I need to do now is to give you an
9 instruction that you must follow. So please listen
10 carefully. I emphasize to you, ladies and gentlemen, that
11 the fact that the defendant in this case elected not to
12 testify is not a factor to be considered by you in your
13 deliberations and in your consideration on the question of
14 whether he is guilty or not guilty. That decision not to
15 testify must not be considered by you in any manner
16 whatsoever against Mr. Jones. An accused has a
17 constitutional right to remain silent, and the assertion of
18 that constitutional right cannot and must not be considered
19 by you in any manner whatsoever against Mr. Jones. So,
20 under the oath you've taken, you are to reach no inference
21 and you're to draw no conclusion whatsoever from the fact
22 that the defendant elected not to testify. His decision
23 not to testify should not be discussed by you in your
24 deliberations; it should not enter in your minds in any way
25 in making your decision of whether he is guilty or not

1 guilty. The burden of proof, as I've told you repeatedly,
2 is entirely on the State to prove every essential element
3 of the offense charged against Mr. Jones; and the
4 defendant, the accused, has no obligation to prove anything
5 at all. All right. There are two stages that remain in
6 the trial now, the closing arguments and the charge. The
7 charge is where I tell you the law. In the closing
8 arguments, the attorneys are permitted to use the art of
9 advocacy to attempt to get you to see things as you would
10 like -- as they would like you to see them on behalf of
11 their respective positions. Now, that does not change the
12 burden of proof. The burden of proof remains entirely with
13 the State. The State has to prove every essential element
14 of the offense charged beyond a reasonable doubt. The way
15 this works is that the State will go first and the
16 Solicitor will make his closing argument. When he
17 finishes, Mr. Stitely will get up and make his closing
18 argument. I always take a break between the closing
19 arguments and the charge so I can get set up out here and
20 let you clear your minds or stretch your legs. It's
21 usually a short break. I sometimes take a break between
22 the closing arguments. We'll just play it by ear and see
23 how long the lawyers talk. But that's what we'll do; we'll
24 play it by ear. I invite your close attention, ladies and
25 gentlemen. We've ordered your lunch. I've told them to

1 have it here at 1:00 o'clock. So, hopefully, we'll be
2 ready, be through with these two stages by then or close to
3 it. All right. Mr. Maye, you're recognized.

4 MR. MAY: May it please the Court, Your Honor.

5 CLOSING ARGUMENTS

6 MR. MAYE: Ladies and gentlemen, I talked to you about
7 this being the last compulsory public service. With all
8 the stopping and starting and sitting back there that y'all
9 have done -- it's now 11:43 on Friday; y'all were compelled
10 to come on Tuesday -- y'all got the full version this week;
11 you were here all week. But, again, we can't do this
12 without you. The 12 of you that go back in that jury room
13 and deliberate sit as the judges of the facts in this case
14 just as surely as Judge Keesley sitting up there on the
15 Bench is the judge of the law and presiding over everything
16 that goes on here. And, at the conclusion of all this,
17 he's going to charge you with what the law is in this case,
18 give you a detailed charge telling you all about armed
19 robbery. But we talked about that at the outset. It's
20 pretty simple; it doesn't need a lot of explanation. It's
21 going and taking up a gun and taking something from
22 somebody else that doesn't belong to you by force or
23 intimidation or threat of that gun, pointing it at them,
24 taking something armed with a deadly weapon. And I submit
25 to you, ladies and gentlemen, you've heard all of the facts

1 up here, every bit of it, because all the evidence is in in
2 this case. You've heard two eyewitnesses that were there,
3 one that was a thug admittedly. You heard the officer; you
4 heard the investigation; and, above all and most
5 importantly, you've got the confession of the defendant in
6 this case, Victor Jones. You even heard from him in this
7 case; you got it right here in front of you. And, with
8 that, I probably need to just sit down, but I don't know
9 that that would be doing my job. Some people think that
10 arguing first and last and that sort of thing is some big
11 advantage or disadvantage. If you get to go first or not,
12 it doesn't make any difference. The 12 of you that sit
13 there bring into this courtroom the sum total of all of
14 your life experiences. No one person anywhere on earth has
15 more collective wisdom than the 12 of you collectively
16 because you bring into this courtroom your common sense,
17 your wisdom, all of your knowledge, your life experiences.
18 I don't care what subject matter we're talking about, when
19 we combine the collective wisdom of the 12 of you, it out-
20 strips that of any one person. Y'all know what's going on
21 here. All of you here are from here in Saluda County.
22 You heard what went on in this case, and it's just not
23 complicated. You've got a young man over here, Mr. Bookman
24 from Newberry, who's driving a car, a Crown Victoria. We
25 talked about that, and I went through a little bit of that

1 in my opening statement. It doesn't make -- The one
2 constant that I was trying to get at in this case is it
3 doesn't matter what era that you're in. I don't care if
4 we're talking about A-Model Fords or 57 Chevrolets with
5 glass packs on them or 67 Chevelles jacked up in the back
6 with air shocks -- I don't care what you're talking about
7 -- five-liter Mustangs in the 80's. Now, it's the hoopty
8 mobiles with the 23 and the 24 and the 26-inch rims. And
9 all that's a status symbol. And what's that about? Like
10 it always was, being popular, getting girls if you're a
11 young man, having something as a status symbol so much so
12 -- and that's so obvious -- Amber Salaam in this case saw a
13 young man that she did not know and he's driving a Crown
14 Victoria which is a popular car that people raise up and
15 lift up, and she sees someone that would be susceptible to
16 wanting those rims or she thinks she might see a willing
17 customer. And we could start and go on from right there.
18 Is Amber Salaam telling the truth about all of this
19 nonsense? Did she even have any rims to sell him? Who
20 knows? She's a thug. Who knows? She says no up here; she
21 lied to start with. The bottom line is maybe she had some
22 rims for him; maybe she didn't; maybe it was all a set up.
23 But we know one person she's conspiring and scheming with
24 in this case in regard to the whole deal that led to a gun
25 being put to this young man's head here right in Saluda.

1 Is she and he getting together on this deal? Maybe she had
2 some 22-inch rims; maybe she just wanted to set this young
3 man up and lure him over. That's what he says in his
4 statement: Going to sell you some 22-inch rims, oh, but
5 let me show you a picture that I got text messaged to me by
6 Victor Jones, the defendant in this case, some 23's, you
7 know, I can even get you some bigger, better rims for a
8 cheaper price, but it's from somebody else, but, here, I
9 can show you text messages of these rims. So they load up
10 and here they come over to Saluda. Amber Salaam tells you
11 in this case, oh, yeah, I was talking, texting, we were
12 going to meet out here. But they can't meet out here in
13 the light of day and carry out an armed robbery; they've
14 got to get him off somewhere. So they go to the Caper
15 House first, and there are text messages exchanged. They
16 roll up there to the Burger King parking lot; well, that's
17 too much of the light of day out here. Good folks driving
18 around in Saluda are going to see that. What happens when
19 they get up there? A gold four-door car, no hub caps,
20 faded paint, motion for them to come on. And what do they
21 do? They go to one of the absolute nearest places. Y'all
22 are from here in Saluda. This is a secluded spot right
23 here within the immediate vicinity of downtown, still
24 within the city limits of the Town of Saluda. But they
25 snaked their way down the road, and they go back there

1 around the crook of the bend and onto this dirt road where
2 there are no houses and there're trees; and there they
3 stop. And they got him. And whether two jumped out,
4 whether three jumped out, whatever it was, but an armed
5 robbery took place. The victim in this case, Mr. Bookman,
6 got robbed, a gun got pointed at him, 750 dollars in cash
7 got taken from him, his cell phone got taken, the speakers
8 got taken, and he got robbed at gun point. He knows that.
9 He got up here and he told you under oath, a kid that's
10 working for a living at Wal-Mart, saving his money trying to
11 get something for his car. What did he get for his trouble
12 for coming to Saluda? He's not from here; he's from over
13 in Newberry. But that doesn't make a nickel's worth of
14 difference. He's lives over there; he's working over
15 there. He's just as deserving of the protections of the
16 law no matter where he's from. He came over here expecting
17 to get some rims for his car, and what he got was robbed.
18 Now, he told you in this case, and you already heard, there
19 were suspicions right from the outset. Here, he's dealing
20 with Amber Salaam, somebody he does not know that well,
21 comes over here to Saluda to get those rims, gets over
22 there in a secluded spot. He's 20 years old; he's a kid.
23 Who does he show back up with the next day after whatever
24 bluster there was or him wanting to go see his cousin,
25 Duke, to find out what this is or anything else? He goes

1 back home. But here's the mark of a kid. Like I said,
2 y'all bring into this courtroom your life experiences in
3 dealing with children and everything else. Who does he go
4 to? His mama and his grandma, two people he can rely on.
5 And he comes back the next day with his mama and his
6 grandma. No, he didn't go down to the Police Department.
7 I'm sure you're going to hear it in this case. Like I
8 said, we don't get to argue first. The defense in this
9 case -- We argue first, but the defense is going to argue
10 last in this case. You're going to hear, oh, goodness, he
11 should've run right down there to the Police Department and
12 the fact that he didn't go down there immediately and get
13 Charles Holloway -- now, he's not from Saluda and he didn't
14 know his way around -- the fact that he didn't run right
15 down there that day, oh, there's something crazy going on
16 here, couldn't have been an armed robbery. The fact that
17 he wanted to get this young lady out of his car -- In fact,
18 he went to go see his cousin. Y'all know what happened in
19 this case. He went home, he talked about what happened
20 with his mama and his grandma, and they came back up here
21 the next day to the Police Department. That's what
22 happened in this case; there's nothing sinister about that.
23 He comes back up and he tells his side of it. Investigator
24 Holloway does what he's supposed to be doing in this case;
25 he starts thinking about it, he listens to the evidence, he

1 listens to the description in this case, gold four-door
2 car, no hub caps, faded-out paint, young man with tattoos
3 around. And, oh, you're going to hear, oh, he couldn't
4 have had tattoos, not here above the collar; and you're
5 going to hear every imagination that you can. But the
6 bottom line, you can look right here and you can see he's
7 got a tattoo on his neck. A young man with a tattoo on his
8 neck, red hat, wifebeater, light-skinned black male.
9 That's what Investigator Holloway's got to start with. And
10 he'll tell you in this case, oh -- later on, I'm sure
11 you'll hear about it -- Investigator Holloway doesn't know
12 a thing, oh, he didn't take this, he didn't do this, he
13 didn't do that. But I'll tell you what he did do; he did
14 good solid police investigative work and he went out to the
15 road officers that ride the roads sharing with them the
16 information about the description. It isn't much time
17 later that he's got a lineup prepared from the South
18 Carolina Law Enforcement Division. You're going to have it
19 right back there to take a look at, State's 3, six
20 pictures, six young men close to the same haircut, pretty
21 close to the same age. That's what they're supposed to do;
22 they're supposed to make up something. They're not going
23 have a midget and a giant and a Mexican person. They're
24 going to get people that are generally of the same physical
25 description to make this somewhat meaningful. They're not

1 going to have some men and some women. They want to do
2 this so this is a meaningful identification, that the
3 person is not just speculating or guessing, but that the
4 people look close or similar enough. Now, everybody looks
5 different in some regard unless I guess we're talking about
6 identical twins. But they want to make this thing
7 meaningful. Investigator Holloway has done his job. Based
8 on the limited information he had to start with, he was
9 smart enough to get Victor Jones contained in this lineup.
10 What does he do? He goes to see Mr. Bookman, takes this
11 lineup and he shows it to him. And you've already heard
12 him say, I didn't do one thing to tell who these people
13 were, didn't do one thing, I showed it to him and said, is
14 anyone that was involved in doing this armed robbery
15 against you, are they here. And, boom, number three
16 without hesitation. We're talking about the next day. You
17 think that made an impression on him? You think coming
18 over here expecting to get a set of rims and getting robbed
19 at gun point for his trouble, you think that don't make an
20 impression on him? Oh, you're going to hear in this case
21 I'm quite sure, oh, what was his demeanor like, was he
22 upset, this is crazy. Well, Investigator Holloway said he
23 was mad, upset. I'm sure he was embarrassed. There's a
24 certain macho thing that goes when somebody's getting over
25 on you and robbing you. You know he was embarrassed about

1 it; you know he was upset about it; you know he was mad
2 about it. He thought he was going to get a set of rims and
3 what he got was a gun shoved in his face and robbed for his
4 trouble. And, at this point in time, he's already figuring
5 that he got duped by Amber because it's just not adding up,
6 it's just not holding water. What else does Investigator
7 do? Well, he's already got an identification of Victor
8 Jones in hand; so he goes to get Amber Salaam, takes it out
9 -- the only difference between these two is I guess one's
10 in color and one's in black and white -- and he shows it to
11 Amber. But the truth's not in her. She doesn't want to be
12 a snitch. I told you -- you heard about her record --
13 she's a thug; no question. I don't see anybody in there
14 that I know. You think she knows Victor Jones, T.J., the
15 person she's been talking with, text messaging with Lord
16 knows for how long, about eight months? You think she
17 knows him? You think she can identify him? They've done
18 set this boy up for this deal in this case conspiring,
19 scheming together for an armed robbery to take place. Now,
20 she tells you, oh, I didn't know he was going to get
21 robbed. Who knows? It doesn't seem right. He gets
22 robbed; he gets his car picked clean. They're yanking
23 speakers out; they're tearing his car apart; they're
24 robbing him; they're getting all his money with Amber
25 Salaam sitting there. They don't even ask her for a dime.

1 She's sitting there with her head down. That's why she's
2 charged with armed robbery in this case and she's
3 testifying. That's why she was charged with armed robbery.
4 Does that make any sense to you? They didn't touch her,
5 didn't even ask her for any money. Now, how many people go
6 to the trouble to go and run around at gun point in cars
7 that would show. That wouldn't have made any sense. Now,
8 whether two people went to one side, I'm sure you're going
9 to hear a bunch about that, picking apart any tiny
10 inconsistency they possibly can. And I submit to you,
11 ladies and gentlemen, that's nothing but kicking up a cloud
12 of dust to try to obscure the simple testimony that you
13 heard up here on the stand under oath in this case, picking
14 apart any little detail you possibly can. Whether or not
15 which window which one went to, how many got out of the
16 car, there was an armed robbery. They didn't take anything
17 from Amber Salaam. They took everything he had that they
18 could conceivably haul off at that point in time, ripped
19 out the speaker box out of the back of his car. And I'm
20 sure you'll hear, oh, it was wired down, bolted down, the
21 rod, the capacitor, the big 'ol wires, it couldn't have
22 possibly happened that way, the box couldn't fit in this
23 little bitty car -- I'm sure you're going to hear all about
24 that -- it couldn't have happened that way. The bottom
25 line is they ripped that box out. Use your common sense

1 and the collective wisdom of all 12 of you. I'm sure there
2 are people that have turned rigid before and worked on
3 automobiles. The bottom line is there's a box laying up
4 there in the back of the car with little 'ol speaker wires
5 hooked to it, whatever kind of gauge wires, some of those
6 big 'ol fat thick ones that they run up there for show, all
7 these amps and all that. All they did was grab the box and
8 yank it out. Do you think they gave a hoot about what
9 condition they left the wires in? Maybe a technician at
10 Circuit City that was installing and did install your
11 stereo equipment under controlled conditions might be
12 worried about how he was going to get it out or whether or
13 not you needed a Phillips screwdriver. But that's what you
14 heard them angling for. That's the purpose of all that
15 cross examination, sowing seeds of doubt, kicking up a
16 cloud of dust, talking about that mumbo jumbo about, well,
17 you've got to have a special tool to take it out, you know,
18 you've got to have a Phillips screwdriver. That was the
19 whole purpose in getting Investigator Holloway, who said he
20 didn't really know all these questions, that was the
21 purpose of that, calculating, kicking up a cloud of dust.
22 The bottom line is they yanked it out and they took it and
23 they took anything else they could get from him; but, low
24 and behold, miraculously, they didn't touch Amber Salaam.
25 Based on the information that Investigator Holloway had at

1 that point in time, he gets an arrest warrant for Victor
2 Jones, T.J., the man that the victim in this case, the
3 person close enough to see him there, the person with his
4 attention intently focused on the man that was poking a gun
5 in his face and hitting him with it and robbing him and
6 that he was looking at eye-to-eye. Oh, you're going to
7 hear all these questions, oh, I couldn't tell you anything
8 about whether he was fat, tall, skinny, whether he was
9 muscular or whether he was lean, going through all of
10 those. That's just kicking up a cloud of dust. The bottom
11 line is he looked that man in the eye and in the face
12 enough to be able to pick him out of this lineup the next
13 day. We know he paid that much attention because the truth
14 all fits together. Nobody's got a good enough memory to be
15 a successful liar; the truth always fits together, the
16 consistency in this. They arrest Victor Jones. What
17 happens? It isn't but just a little bit, he wants to talk
18 to Charles Holloway; absolutely, he does. Investigator
19 Holloway, he does his job. But whatever they're going to
20 tell you he didn't do, he knew what to do when he talked to
21 him because he had him go through -- Before, his
22 constitutional rights have got to be protected if they're
23 going to use any evidence or obtain anything, so this
24 officer went through and gave him all of his rights. He
25 initiated the communication, said he wanted to talk. But,

1 even after that, the officer did what he's supposed to do
2 because he's a trained investigator. And he went back
3 there -- And you may think this is tedious, but we're
4 making sure we're complying with the law in this case.
5 That's why I take all this time to go through all these
6 details and you've got to ask all these questions, because
7 he's got his day in court. He said he's not guilty. The
8 State's got the burden of proof in this case, and we
9 welcome it. That's why you heard all these questions. The
10 officer went through and asked him about all of his rights,
11 and he said that he understood every one of them and that
12 it could be used against him if he talked, and he said that
13 he wanted to talk. Sure, he does. He's in jail for armed
14 robbery; he's going to spread it around to Amber Salaam in
15 this case. What does he say? On July 9th, Amber Salaam
16 text my phone do I have some rims, I text her back yah;
17 then she said have a lick so she said he's pussy. Maybe
18 that's supposed to be he's a pussy; maybe the grammar is
19 not too great. And then she said, she have a lick so she
20 said he's pussy. She's already told you up here that they
21 had communications, Amber Salaam. And what he wants to
22 know prior to even coming over there, does he have a gun.
23 Why? Because they're going to do a robbery; it's going
24 through his mind right then. Why is he worried about
25 whether or not this guy's got a gun or he's armed? Because

1 they're not bold enough to go in there and try to do an
2 armed robbery on somebody they think might have a gun
3 because you might get shot; you might get killed if you
4 decide you're going to go do an armed robbery on somebody
5 that's got a gun. That's why he wanted to know from Amber
6 Salaam whether or not this guy's got a gun. What's his
7 version of what she says? He's a pussy; that's what she
8 tells him. That's why that's significant; that's why he
9 wrote it in his statement, he's a pussy, don't worry about
10 it, he's the kind of person you can stick a gun in their
11 face and take what they got; he's a pussy, don't worry
12 about it. That's some bad talk for me to have to be
13 proffering up here, but that's the ugly truth of what we're
14 talking about up here; that's the selfishness that we're
15 talking about, who can we pray on, who can we victimize. I
16 guess somebody who they think is a pussy. She said, it's
17 going to be easy. What would they be talking about other
18 than him being a victim? He doesn't have a gun; he's
19 nobody that's a threat. This is going to be easy because
20 they've duped him. Then she text me back she's on the
21 Newberry Highway, planning, scheming, conspiring. Meet at
22 the Burger King. This is what he's saying. Now, then he
23 starts interjecting Carlos, then Carlos told me to text her
24 back. 'Ol bad 'ol Carlos, he's the one that's directing
25 what's going on in this case. 'Ol Carlos, he suddenly

1 jumps in at this point in time. He changes gear right here
2 in the middle of his statement. He's all in the middle of
3 it gathering information. When you get down here, you can
4 tell. The wheels are already turning; he's already sat for
5 Investigator Holloway in this case. 'Ol bad 'ol Carlos, he
6 starts directing it then at this point in time. You can
7 see the wheels turning. That's why he wanted to talk to
8 Investigator Holloway. Carlos told me to text her back
9 follow us and I did. So he's following the leadership of
10 Carlos at this point in time, never mind that he's the one
11 wanting to know whether or not he's got a gun and whether
12 or not he's an easy mark. So we when [sic] on a dirt road
13 out of the light of day and stop, Lil Tim -- Now, suddenly,
14 Little Tim gets involved in this; he's going to put it off
15 on somebody else here, never mind that two eyewitnesses
16 told you under oath up here that the man that got out and
17 robbed the victim in this case with a gun was Victor Jones,
18 T.J., the man with the wifebeater, the man with the tattoo,
19 the man in the red cap, the man in the gold car with no hub
20 caps. They've told you under oath up here. Victor Jones
21 sat right here and he pointed him out, that man sitting
22 right there in between those two others -- he had on a
23 striped shirt when they identified him under oath up here
24 in this courtroom -- the man that each of them picked out
25 of this lineup. Even if you give Amber Salaam a discount

1 because she only tells the truth when she has to, when she
2 gets caught, they picked out the same person out of the
3 same lineup without any corroboration between the two of
4 them. Amber Salaam comes back in there after she gets
5 arrested; she makes an ID of the same person. Y'all think
6 that's coincidence? It's not coincidence because the truth
7 fits together; they identified the same person because it
8 was the same person. Use your common sense when you go
9 back in that jury room because that man right there
10 (indicating), they picked him out separately. Each of the
11 two of them took Investigator Holloway to the same spot
12 separately. One thing I told you, we've got the burden of
13 proof in this case and we welcome it. Did it happen here
14 in the Town of Saluda? That's one thing we've got to
15 prove. It happened in Saluda County; it's right in the
16 indictment, on or about a certain day it happened here in
17 Saluda County. We've got the burden of proof; we welcome
18 it. Each of the two of them took Investigator Holloway to
19 the same little secluded spot, neither one of them even
20 from Saluda. It's got the ring of truth because it is the
21 truth, ladies and gentlemen; it adds up; it matches up.
22 Lil Tim jumped out the door and went to the driver's door
23 and got the money, and Carlos took the speaker and Lil Tim
24 told them to ride on and they did. Now, again, oh, yeah,
25 Little Tim and this 'ol bad Carlos that Investigator

1 Holloway can't find, oh, they're the bad ones, because he's
2 going to spread it around; he's going to throw Amber under
3 the bus; he's going to throw these unknown co-defendants
4 under the bus, Carlos and Little Tim. They must be cousins
5 of who, Brian, the person that Amber Salaam pulled out of
6 thin air to begin with? She's giving him a false name;
7 she's giving the police a false name right from the get-go.
8 It was a scam they were pulling on this guy. She gave them
9 the wrong name to start with. This young man is talking
10 about Brian right from the outset because that's who he
11 thinks he's going to meet, and that's right out of Amber
12 Salaam's mouth. And I submit to you that's along the same
13 milk as Carlos and Little Tim; they must all be cousins.
14 Picture who they are. Who knows? You can bet they're not
15 Carlos and Little Tim because that's why he wanted to get
16 Investigator Holloway from the jail because he's scheming;
17 he's going to go down there, going to scheme his way out of
18 this. That's why he sent for Investigator Holloway. The
19 bad thing about it is the hand of one is the hand of all in
20 South Carolina. The Judge will charge you with what the
21 law is in this case, and that's the law. If you set up an
22 armed robbery, if you make these phone calls, if you set
23 the wheels in motion and you go with two thugs, even if
24 you're the get-away driver, if you go down to the bank and
25 decide to do an armed robbery, the man sitting in the car

1 that drove the two guys to the location who went in with
2 guns pointed is just as guilty as the two that went in the
3 bank and took the money. In South Carolina, the hand of
4 one is the hand of all. So he wasn't real smart because
5 his confession, his admission in this case, still amounts
6 to armed robbery, still amounts to armed robbery. No
7 matter how he tries to distance himself from it through
8 playing word games and playing games with this statement,
9 he puts himself there, he's setting it up, he knows it's
10 going down, he's asking whether or not he's got a gun, he's
11 asking whether this is an easy mark. She has a lick.
12 What's a lick? Use your common sense. It's going to be
13 easy. That's the long and short of what was going on here.
14 Investigator Holloway did his job; he developed a suspect
15 from a pretty vague and pretty broad description there, but
16 he got the right man to put in the lineup and the right man
17 got picked out. The victim identified him; he's identified
18 him here in court; he identified him in the lineup. Amber
19 Salaam identified him here in court, picked him out of the
20 lineup. They each took him to the same spot separately.
21 It happened here in Saluda County, and the young man got
22 ripped off. As I told you before, it doesn't matter who
23 argues first or who argues last; it doesn't matter how much
24 of a cloud of dust gets kicked up; it doesn't matter how
25 much talk there is about how thick the wires were or how

1 hard it was to get that box out or what Investigator
2 Holloway did or didn't do. It comes down to the simple
3 truth, the facts that you heard from the stand up here
4 under oath. That's the evidence in this case no matter
5 what somebody tries to do to kick up a cloud of dust and
6 obscure the simple truth in this case. It's just not
7 complicated. You've got all the evidence; you've got your
8 collective wisdom. The Judge is going to charge you with
9 what the law is in this case. All that I ask that the 12
10 of you do is go back in that jury room and come back with a
11 verdict that speaks the truth because that's what the word
12 verdict means, *verdicto*, to speak the truth, not to reward
13 anybody or to punish anybody, but just to answer the simple
14 question of what's the truth in this case. Ladies and
15 gentlemen, the State submits to you the truth is this young
16 man from Newberry thought he was going to get some rims
17 when he came to Saluda and he got duped by some thugs who
18 were working together, conspiring and scheming before they
19 got arrested, after they got arrested, game playing, trying
20 to wiggle their way out of this. He's had his day in
21 court; he's had his trial. You've heard all the evidence
22 in this case. The Judge is going to give you the law.
23 Come back with a verdict that speaks the truth, that does
24 justice for everyone here in Saluda County, that does
25 justice for the victim in this case, Mr. Bookman, and you

1 will have fulfilled your obligation of the highest duty
2 that a citizen has during peacetime. I appreciate your
3 close attention.

4 THE COURT: Ladies and gentlemen, we'll take a
5 ten-minute break. Then we'll let you hear the closing
6 arguments of the defense. Don't discuss the case.

7 (The jury retires to the jury room.)

8 THE COURT: Court's in recess for ten minutes.

9 (Brief Recess.)

10 THE COURT: You have something that you need to put on
11 the record, Mr. Stitely?

12 MR. STITELY: Just very briefly, Your Honor, at my
13 client's request. During the closing and in the interim
14 break, Mr. Jones keeps telling me he would like to tell the
15 jury now that Mr. Maye is lying. I told him it's not the
16 appropriate part of the trial, that he doesn't have that
17 option anymore. He wanted me to make sure that I put on
18 the record that he wants a chance to tell the jury he's
19 lying, that's not what happened. I told him at this point
20 in the trial it's my argument and we don't have the right
21 to go up there now and take the stand and contradict the
22 testimony or the arguments, closing arguments. He asked me
23 to put that on the record, Your Honor, so I wanted to do
24 that to make sure I'm doing my job.

25 THE COURT: All right. Does the State want to put

1 anything on the record?

2 MR. MAYE: I don't know that there is any response to
3 that, Your Honor, no, sir.

4 THE COURT: The testimony part of the trial is over.
5 And I don't know how long y'all talked about the decision
6 about whether he testified or not, but it seemed to be over
7 a half an hour. I'm sure that you all had talked about
8 that a long time before the trial, probably during the
9 trial. I talked about his rights with him. I explained
10 everything to him; and then, after I made the ruling but
11 before I brought the jury out, I again asked him if he
12 wanted an opportunity to put some evidence in the record.
13 It's too late. Well, you can bury your head in your hands
14 all you want to. I gave you chance after chance after
15 chance. I don't know what else to do.

16 DEFENDANT: I just want to prove my innocence.

17 THE COURT: Well, why didn't you take advantage of the
18 opportunity?

19 DEFENDANT: Because my lawyer wanted to let it go as
20 it is. He thinks that's enough.

21 THE COURT: That's not what you told me. You told me
22 under oath that it was your own decision of your own free
23 will. I went over it and over it and over it again.

24 DEFENDANT: (Inaudible comment.)

25 THE COURT: Sir? Bring the jury in.

1 (The jury returns to the courtroom.)

2 THE COURT: All right. Ladies and gentlemen, you're
3 about to hear the defense's closing argument. You're
4 recognized, Mr. Stitely. I invite your close attention,
5 ladies and gentlemen.

6 MR. STITELY: If it please the Court.

7 THE COURT: Yes.

8 MR. STITELY: This is the last time you're going to
9 get to hear from a lawyer; then you'll get to hear from the
10 Judge -- well, he's a lawyer too -- but that you're going
11 to get to hear from one of us arguing. And my name's Ben
12 Stitely; I'm a lawyer out of Lexington, and I represent
13 Victor Jones. At the very beginning of the case -- and I
14 know that was Tuesday, four days ago from now, and I don't
15 think anyone knew we were going to be here this long, but
16 we are -- the first thing the Solicitor told you, Mr. Maye
17 told you, was how serious this was, how important this is.
18 And I agree with that wholeheartedly. Mr. Jones is at risk
19 here of a serious, most serious crime, as the Solicitor
20 characterized it, of armed robbery. During his closing
21 argument, he said now I'm going to get up here and I'm
22 going to just cloud up some dust. My job is to point to
23 the evidence, what's in evidence and what's not. Your job
24 as reasonable people, 12 reasonable people -- the two
25 alternates don't get to go back there -- is to use your

1 common sense. You come from all walks of life, all ages,
2 genders. Everyone's seen something different. And it's
3 interesting in a trial as to what's important, and that's
4 why you go back there and deliberate and you talk about it.
5 And the Judge will tell you that your opinion needs to be
6 your own. But each of you bring something to the table to
7 talk about. Before I start going into it, I want to tell
8 you what the standard is, and then I'll come back to it.
9 The standard in a criminal case -- and I don't know if
10 anyone's served on a jury before in a civil case; I've
11 never been on a jury -- is beyond a reasonable doubt. It
12 sounds pretty. The judge will give you a charge about it's
13 the kind of doubt that would make a reasonable person
14 hesitate to act, to make an important decision in their
15 life. Of course, this is a very important decision. So
16 you ask what kind of doubt that is and what is that
17 standard. The first thing you think about is, well,
18 someone said something happened. Might it have happened?
19 You say, yeah, that might have happened. But that's not
20 reasonable doubt; that's not guilty, not reasonable doubt.
21 Someone says something and you say, I can see where that
22 happened. That's not reasonable doubt, beyond a reasonable
23 doubt. Then next thing you say, that probably happened,
24 that makes sense, that probably happened on the scales
25 we're tipping. That's not beyond a reasonable doubt;

1 that's what they call a preponderance of the evidence, you
2 know, one side's a little better than the other. That is
3 not the standard in a criminal case; that's the standard in
4 a civil case. The next one is, I'm fairly certain that
5 happened that way. That is not beyond a reasonable doubt.
6 I'm pretty certain that happened, again not beyond a
7 reasonable doubt. I'm firmly convinced without a
8 reasonable doubt that that is exactly what happened.
9 There's your standard. And it's very, very important
10 because that's why we have soldiers fight wars to protect
11 our constitution. That is the standard that's been the
12 standard of this country since its inception, beyond a
13 reasonable doubt. The Judge will tell you a defendant
14 comes in the courtroom with a robe of righteousness upon
15 his shoulders and not until that is stripped from him and
16 you've weighed all the evidence, every last piece, and
17 found every single element beyond a reasonable doubt does
18 that go away. That's why our system works. It's not
19 clouding it up, building this smoke screen. It's asking
20 you, the finders of the facts, to come to a conclusion
21 through your life experiences as to what makes sense and
22 what happened beyond a reasonable doubt. Let's talk about
23 this case. It starts off fishy. That's the best way I can
24 put it. A girl sitting at an apartment complex in
25 Prosperity talking to her friend, miraculously, she sees a

1 man roll up and says, come over here, you want to buy my
2 rims. That's the story. When did it happen? A week
3 before the robbery. What's the problem? Well, Amber was
4 in jail. So I don't know if that adds up. That's a
5 factual question. You, the jury, get to look at that. Is
6 it possible they really met a week before the robbery when
7 she's in jail in Newberry or does it not add up? So they
8 meet randomly. I'm going to sell you some wheels. Some
9 rims is how they kept terming it. Mr. Maye keeps calling
10 it a status symbol, he wants to elevate himself. Who does
11 he want to elevate himself in the eyes of? We don't know.
12 So let's play it out. So she says a week later he texts
13 her and says, all right, I want to get your rims; and she
14 says, come on to my house. He says that too. A girl he's
15 met once in his life is what they told you initially, once
16 in his life, although in the end he says, well, I mean,
17 I've seen her around and stuff but I didn't know this girl
18 from Adam. And she says, well, let me show you these rims.
19 And it's funny because the Solicitor got up here in his
20 closing and said maybe she didn't even have rims. Come on
21 now. Use your reasonable common sense. What's he doing
22 going over there if he doesn't even know that she had the
23 rims? The Solicitor kept using the word scam. There might
24 have been a scam, but it had nothing to do with an armed
25 robbery. It does not make sense. You, as a reasonable

1 juror, would say, yeah, I just met someone off the street,
2 I'm going to go over and pick them up at their house and go
3 riding with them to buy some rims I've never seen. No.
4 These are ones she had on a text, a picture of them. Where
5 is the picture? Where is the text? They text back and
6 forth. Where are the text messages? You judge the facts
7 on what's in the record and what's omitted from it. Where
8 are these texts? Y'all don't have them; I don't have them.
9 So they ride down to Saluda; they go out to a country road.
10 Let's start talking about why this is interesting. As
11 described, the other car is a small little four-door car
12 with a bunch of people in it. Let's pretend we're still
13 talking about rims, 22-inch wheels that look liked this,
14 four of them inside this tiny little car that's crammed
15 full of people. So where is he putting those rims in his
16 car when he said his trunk is all but taken up by a pair of
17 speakers? How does that add up? He said, yeah, you might
18 be able to fit a bag of golf clubs in there. He had no
19 space in his car to get rims if that's what we're believing
20 this is all about. He rolls down to Saluda to pick up four
21 big 'ol wheels. He's wanting the 24's now, so we're not
22 talking -- We're talking big 'ol wheels, heavy pieces of
23 steel. He didn't have anywhere to put them. How does that
24 add up or is it something else? We know what kind of
25 person Amber is; she told you what kind of person she is,

1 what she does for a living or what she's spent a lot of
2 time in jail doing for a living. So we go out to this dirt
3 road to get these wheels even though we have nowhere to put
4 them and we've never seen them. We have no text. He can't
5 even tell you about what kind of pattern of lugs they have
6 on them. I mean, I think, maybe as an informed consumer if
7 I'm really buying something, I would at least want more
8 than an alleged picture to know if it's even going to work
9 with my car. But we'll leave that alone too. Here's where
10 we'll get to something that I've harped about, and y'all
11 have heard it and I'm sure you're tired of hearing me talk
12 about it. The Solicitor missed it completely as to why I
13 was asking these questions. Let's talk about the speakers
14 first. Besides the fact that I want to point out how
15 important it was that there was no room in the trunk for
16 these four wheels that he was allegedly going to bring home
17 with him to Newberry, he described it as a box almost four
18 feet wide, two feet deep, heavy, with two 15's in it. And
19 it just magically gets out of his car and goes into another
20 one, a tiny car as he described it. Both of them said it
21 was a small car full of people. There's nowhere to put
22 those speakers, but let's go on with that any way. So the
23 thing I asked about -- And he said they just ripped it out,
24 and that was fascinating to me. And I asked Officer
25 Holloway -- And, if any of you guys have ever had anything,

1 be it speakers, be it a lamp, be it a lighting fixture --
2 And I asked specifically Mr. Bookman, the car was running,
3 right? Oh, yeah, I never turned my car off. And Amber
4 says, I don't really remember, but I didn't see him take
5 the keys out. If you pull something hot out of an electric
6 socket by cutting a cord or, as Mr. Maye describes it, by
7 just yanking some cords free, what happens? Two things.
8 One, you get electrocuted; and, two, you short something
9 out. I asked about it because it's important because those
10 wires, as Mr. Holloway described it, nickel-thick wire,
11 runs straight to your car's battery; it's hot. If you rip
12 it out, your car is going to short and you're going to get
13 shocked. The reason we ground amplifiers in cars, that
14 green wire I talked about, is so, if a charge gets loose,
15 your car doesn't electrify it. If we're ripping wires out,
16 the car's going to short and we're going to get shocked.
17 That's simple mechanics of electricity. And we know it was
18 working because Amber told you, yeah, we was thumping
19 driving down there, he didn't have it up too loud, but I
20 knew they were back there. It's also an interesting
21 question when you think about it, the whole time
22 Mr. Bookman and Ms. Salaam said -- and we'll get to whether
23 or not we can believe which statement she made -- this was
24 only about some rims. Why randomly then, if we're to
25 believe that it's just a random chance armed robbery, why

1 are they going to ask him to open his trunk to get speakers
2 out? I mean, it's not the first thing you think about. It
3 sounds more like a payment was made, money was given and
4 something else was exchanged out in a quiet place where no
5 one could see. But let's talk about it. I think it's
6 important; Mr. Maye doesn't. You're the jury so you get to
7 decide. He saw him at his window, and he definitely picked
8 this gentleman out of the lineup randomly. And I made a
9 big deal about it -- and it might have drove y'all nuts --
10 but I really wanted to know where the tattoos of the
11 assailant were. Now, those of you who have been around for
12 a couple of years may not like tattoos; they weren't
13 common. But it's something that's definitely come into
14 vogue. It's interesting -- more of my generation thing.
15 The only people that used to have tattoos were those, you
16 know, in the Navy used to have their anchor and their unit
17 on their arms. But I asked very, very specifically three
18 times of Mr. Bookman on the stand, where was the tattoo.
19 Right here (indicating), front of his neck above his
20 collarbone clearly visible where a shirt would have been,
21 where a collared shirt is, right at his Adams apple where
22 his -- Well, guys have Adams apples, but girls can probably
23 figure out where it is. You can see Victor over there, and
24 you can see his neck. And I asked Officer Holloway who can
25 see him much closer than y'all, does Victor have a tattoo

1 there. He doesn't; he doesn't. So how did he randomly
2 pick him out of the lineup? I think I have an answer to
3 that. Ms. Salaam kind of even got into it the other day
4 when we were talking -- they was beefing on Facebook. They
5 knew each other; they were friends or mutual friends or
6 whatever; they're beefing on Facebook not just the next
7 day, this is nine months later and they're still talking
8 about it, planning what they're going to talk about. It
9 doesn't make sense. Mr. Bookman got up here on the stand.
10 In the opening, Mr. Maye said he's going to tell you he got
11 struck, at least that was the first time I had heard it.
12 And he said he got struck. And I asked Officer Holloway.
13 And Mr. Maye kept telling you I'm going to trash
14 Mr. Holloway. I'm not going to trash Mr. Holloway. I
15 think he did his job; he interviewed witnesses. I said,
16 Mr. Holloway, you're a good police officer, you've been
17 doing it for 17 years -- yes -- not your first rodeo --
18 nope -- won't be your last -- nope. What are the kinds of
19 things we talk about when we have an armed robbery, an
20 alleged armed robbery? I asked him isn't one of those
21 things you'd want to know, were you struck, did he tell you
22 he was struck -- no, he didn't say that. He wanted to say
23 it up here today or yesterday, but he didn't tell Officer
24 Holloway that because it didn't happen. Wouldn't another
25 thing you would want to know about be the gun so we can

1 look for some guns if an armed robbery actually took place
2 -- sure, that's what I'd say and, if he told me, I'd put it
3 in my report or I'd have him put it in his statement.
4 There's nothing about a chromed-out 45. He made that up.
5 That's the first time anyone had heard about it, not
6 Officer Holloway who investigated the case. He did his
7 job. Mr. Bookman didn't bother bringing his car down to
8 the police station and say, here's my car, y'all want to
9 look at it, you want to see how they ripped my speakers
10 out, you want to take some prints, you want to do anything.
11 He didn't want to bring his car down there; he had someone
12 else take him. It just doesn't add up; it doesn't make
13 sense. So they drive away. He says -- and this is
14 important too -- I knew Amber had something to do with it.
15 That's what he told you on the witness stand. I asked
16 Officer Holloway; he said he'd never said that before. I
17 asked Officer Holloway specifically, if someone told you
18 they thought she was in on it, you would've done your
19 investigation a whole lot differently -- absolutely. He
20 didn't tell him that. He made that up because it was
21 convenient yesterday. That's the first time any of us had
22 heard about it. He told you, we want y'all to believe it
23 because he only told the truth on this stand, except for he
24 lied about having a record. I had to get it and print it
25 out and show him something before he would admit that he

1 was convicted of gun charges in Newberry. But he don't
2 know nothing about guns. That's what he told you. Only
3 he'd been convicted a year before of firing them,
4 possessing weapons unlawfully. He couldn't tell you about
5 how many guns he had because he didn't remember. I think
6 it makes it sound weird, like when the Solicitor was
7 talking about Amber's statement, he asked about some guns
8 in some text message. I don't know where that is, but it's
9 not in anyone's statement. But he had guns. So that even
10 doesn't make sense. He had to admit up here he had
11 shotguns, and he didn't remember how many he had but he had
12 them. So he had guns. So that doesn't make any sense.
13 All right. So what do we do after we're robbed? A
14 reasonable person -- and this is where it's so important --
15 first thing you do is call 9-1-1. Maybe the argument could
16 have been made, they took our cell phones. They didn't
17 take the cell phones though. Amber said, I had it right
18 there and Mr. Bookman said, don't call the law. I don't
19 know what to believe of what Amber says. Mr. Bookman told
20 you he knew she had a cell phone though, so I guess we at
21 least have two people saying that they had a cell phone in
22 the car after the robbery. I don't know if we can believe
23 Amber or not. Y'all get to decide that, if you believe one
24 word, every word, no words, certain words. I think her
25 name was Amber. Call 9-1-1, I've been robbed. If you

1 believe where they say it happened, Utah Street is right
2 there a block away; the police station is right there a
3 block the other way. But, no, don't call the law.
4 Mr. Bookman said that, don't call the police, I don't want
5 the police to know what's going on, I'm angry, I'm going to
6 get Duke to deal with it. Duke, he don't know his name. I
7 asked him what's his name -- I don't know, just Duke --
8 he's your cousin -- yeah, but I don't know his name. So
9 we're going to get Duke to handle it. What does this sound
10 like? Does this sound like someone who got robbed or sound
11 like something else may have went down and he was going to
12 the strike to deal with some other individuals who he
13 doesn't want to identify with his drug-dealing girlfriend
14 who he rode down from Newberry with? It sounds like
15 something else to me. You're the reasonable finders of
16 fact, and you make the call. I said to Amber, you must
17 have called the police when you got home then because you
18 didn't have to worry about Mr. Bookman telling you not to
19 do it -- no, he wasn't worried about it so I wasn't worried
20 about it. He wasn't worried about it so I wasn't worried
21 about it; that's what she said. That's kind of what he
22 said -- I didn't want to involve the law, I wanted to
23 involve Duke. So we go home I guess after we've dealt with
24 Duke, looked around the strip, talked to people, hung out
25 with Amber some more, and the next day we come in with a

1 story. And the story he told Officer Holloway, I've
2 already told you it's not the story he told from the stand.
3 He keeps changing the number of people. He told me the
4 first time two people came to his window, told Officer
5 Holloway three people got out of the car, tells the jury
6 only two people got out of the car. I mean, that doesn't
7 make sense. What's interesting is he told you that, when
8 the individuals came up to his window, they talked about
9 money, they conducted some business, he showed him the
10 money. I said very clearly, did they have guns at this
11 point -- no, no guns, we were just talking about a deal.
12 That's not what he told Officer Holloway. That's not what
13 he wrote in his statement, but it's more convenient to tell
14 the jury that because, as much as the Solicitor wants to
15 talk about me clouding the evidence, this whole situation
16 is a cloud that doesn't make sense. Why? Why do you go
17 with someone who's a complete stranger down to somewhere
18 you don't know with money, even though there's no
19 verification, to buy some rims to put in a car that has no
20 space for those rims? Come on. If he was going to go buy
21 rims, he would've brought a pick-up truck to put the big
22 'ol things in the back of it. If he was robbed, he'd have
23 called the police then and there or he'd have gone to the
24 police. It doesn't matter if your cell phone doesn't work;
25 you can always call 9-1-1 from it if you have service or

1 not. It does not make sense. Mr. Jones is accused; and
2 they arrested him, charged him with armed robbery. I asked
3 Mr. Holloway -- he wanted to give a statement. I said,
4 well, why is that -- well, he knew he wasn't going anywhere
5 for a while. That's what he said, Mr. Jones couldn't get a
6 bond, he was going to be held in jail until he said what
7 happened. Let's go through it. In the first part, he
8 talks about Amber setting up some kind of deal. We've
9 heard about Amber's deals; we know who she works with.
10 And then he says that two guys got out, went up and talked
11 to him, got his money and his speakers -- it kind of adds
12 up -- and then they left. Read it. Y'all will get to look
13 at it in the jury room. Robbery is not in here; guns
14 aren't in here. He talks about a deal, a scam run by Amber
15 who was in jail a week before for selling drugs. I'm not
16 pretending Victor's an angel. I think he says that. He
17 was in with it; he was friends with a drug dealer. He
18 admits to that. He may have been involved in a shady deal
19 that day. Whatever it was -- a scam as the Solicitor used
20 the word three times -- it wasn't armed robbery. It
21 doesn't add up. You don't go to buy something without a
22 way to get it home. It doesn't add up. You don't just
23 pull speakers out of a car that are wired in with an aught-
24 gauge nickel-thick wire to your battery without bad things
25 happening, and it sure doesn't happen that quick. I even

1 asked him. He said, well, the wires were all about because
2 it was just laying in my trunk. But nothing happens that
3 quickly. It was deliberate that the money and the speakers
4 left that car. And he went to Duke to deal with it. Him
5 and Amber went to Duke. And then afterwards, the next day,
6 we got to come up with something, so we got robbed and I'm
7 going to tell you about the guy who robbed me. But, when
8 he's on the stand, the one most important identifiers that
9 makes the most sense -- and it's as clear as the light of
10 day even from this part across the room -- is, in the front
11 of his neck, he had a tattoo right here on his Adam's
12 apple. Victor doesn't have it. It wasn't him; there was
13 no gun; there's been no proof of it. I asked Officer
14 Holloway, did you find the hat, did you find the shirt, did
15 you find the gun -- no -- did you see if Mr. Jones owned a
16 gold car, check DMV records -- no associates with a gold
17 car, none of that. Where are the text messages -- not
18 here. Beyond a reasonable doubt, and I hate to come back
19 to it, but it's so important. If y'all think something
20 shady went on that day, that's one thing. But the Judge is
21 going to charge you. We are only here today to decide if
22 Victor Jones committed the act of armed robbery, not if him
23 and some people get in a little bit of trouble and did
24 something else, but did he commit armed robbery, are you
25 firmly convinced beyond any and all reasonable doubts that

1 that is the only way this went down. You get to decide
2 credibility from the stand. You've heard how many
3 different stories people have told. They keep telling
4 different stories. Mr. Holloway stated -- He had the first
5 facts, and they were not what you heard from the witness
6 stand. They changed; they evolved because people was
7 beefing on Facebook. Mr. Jones is not guilty beyond a
8 reasonable doubt of armed robbery. He may not be a saint;
9 but you, as a juror, have a sworn oath to measure the facts
10 as it relates to an armed robbery. And that's not what
11 happened. Use your common sense. It wasn't an armed
12 robbery. It doesn't make sense. Thank you.

13 THE COURT: Thank you, Mr. Stitely. Ladies and
14 gentlemen, I'm going to ask you to step in the jury room.
15 You won't be back there very long. As soon as I get
16 something printed out, I'll bring you back out and tell you
17 the law. The law's going to take about 22 minutes. Thank
18 you.

19 (The jury retires to the jury room.)

20 THE COURT: We're at ease.

21 (Brief recess.)

22 THE COURT: Is the defense ready?

23 MR. STITELY: Yes, sir, Your Honor.

24 MR. MAYE: The State's ready, Your Honor.

25 THE COURT: During the charge, please stay still and

1 stay quiet. Don't move around. Don't make noises. Don't
2 do anything to distract the jury. Absent an emergency, I
3 expect you to stay still and quiet. Bring in the jury.

4 (The jury returns to the courtroom.)

5 THE COURT: Members of the jury, all of the evidence
6 has been presented. You've heard the arguments of counsel,
7 and now it's time for me to instruct you on the law that
8 applies to the case. Please continue to pay close
9 attention during this next stage. Now, first, you need to
10 understand some basic ground rules. As I've told you, you
11 are the sole judges of the facts. You decide all the
12 issues of fact; you alone determine the truth of the
13 evidence, its effect, its value and its weight. You alone
14 judge the credibility of witnesses, in other words, whether
15 or not a witness' testimony is believable. Now, in that
16 regard, you may believe all that a witness said or none of
17 it. You may believe part of what a witness said and not
18 believe the balance. You may believe one witness against
19 many or many against one. You may consider any interest,
20 bias or prejudice that you feel that a witness has in the
21 case. You may consider the demeanor and the appearance of
22 the witness and the opportunity for knowledge that the
23 witness had. You may consider whether a witness is being
24 consistent or inconsistent. You may consider the lack of
25 evidence presented by the State. But you're not to

1 exercise these considerations arbitrarily. What you are to
2 do is to use your common sense, use your sense of logic and
3 reason and your good judgment. It's not proper for me to
4 give you a charge on the facts of the case. I'm not
5 permitted to convey to you an impression as to what, if
6 any, personal opinions I may develop about the facts of a
7 case. So, if during any stage of this trial you develop an
8 impression that I've got a personal opinion about the
9 facts, you must remove that totally from your mind. You're
10 the sole judges of the facts. Now, I am the judge of the
11 law that applies to the case; and, under your oath, you
12 have to accept and apply the law as I give it to you. Now,
13 that means, if you've got conflicting ideas about what the
14 law is or what it should be, you have to abandon those. I
15 give you the law; you apply it to the facts as you
16 determine them to be; and, in that way, you reach your
17 verdict. It's also my job to decide what evidence is
18 admissible. If I've ruled something inadmissible or told
19 you to disregard something, you're not to consider those
20 things in arriving at your verdict. Base your verdict on
21 the competent evidence before you. Consider the testimony
22 of the witnesses and the exhibits admitted in the trial.
23 Now, I remind you once again and emphasize to you that the
24 fact that the defendant elected not to testify is not a
25 factor to be considered by you in any way in your

1 deliberations and in your consideration on the question of
2 whether he is guilty or not guilty. His decision not to
3 testify must not be considered by you in any manner
4 whatsoever against Mr. Jones. An accused has a
5 constitutional right to remain silent, and the assertion of
6 that right cannot and must not be considered by you in any
7 way against him in your deliberations. Under your oath,
8 you are to reach no inference and you're to draw no
9 conclusion whatsoever from the fact that the defendant
10 elected not to testify. You should not discuss his
11 decision not to testify in the jury room; it should not
12 enter your minds in making your decision on the question of
13 whether he's guilty or not guilty. The burden of proof, as
14 I've told you repeatedly, remains entirely upon the State
15 to prove every essential element of the offense charged
16 beyond a reasonable doubt and an accused has no obligation
17 and no burden to prove anything at all. Now, Mr. Jones is
18 presumed to be innocent. This is no mere legal theory; it
19 is a fundamental and substantial right to which everyone is
20 entitled. It's been described as being like a robe of
21 righteousness that's placed around an accused and it
22 remains with him and protects him through every stage of
23 the trial. It continues to exist after you go back to your
24 jury room to deliberate so that he is presumed to be
25 innocent; he is cloaked with innocence unless and until

1 you, the jury, determine that the State has proven him
2 guilty beyond a reasonable doubt. A defendant is not
3 required to prove his innocence; he's not required to prove
4 anything at all. The burden is on the State to prove the
5 guilt of the defendant beyond a reasonable doubt and to
6 prove every essential element of the offense charged beyond
7 a reasonable doubt. That doesn't mean that the State has
8 to prove the guilt of the defendant beyond all doubt or
9 beyond every doubt. The appropriate standard is proof
10 beyond a reasonable doubt. Now, some of you may have
11 served as jurors in civil court. And, if you've ever done
12 that, you know that the burden of proof in a civil case is
13 a lesser one. It's a requirement that the party with the
14 burden of proof has to establish that the thing is
15 probable, that it's more likely than not. We call that the
16 greater weight or preponderance of the evidence. But, in a
17 criminal court setting which is what we're in now, the
18 standard is much higher and the proof has to be much
19 stronger than what is required in a civil case. The burden
20 of proof in every criminal case, including this one, is
21 proof beyond a reasonable doubt. So what do I mean by that
22 term? Proof beyond a reasonable doubt is proof that leaves
23 you firmly convinced of the defendant's guilt. Now, there
24 are few things in the world that we know with absolute
25 certainty; and, in criminal cases, the law does not require

1 proof that overcomes every possible doubt. If, based on
2 your consideration of the evidence, you are firmly
3 convinced that the defendant is guilty of the crime of
4 armed robbery, then you are to find him guilty of that
5 crime. If, on the other hand, you think there is a real
6 possibility that he is not guilty, you have to give him the
7 benefit of the doubt and find him not guilty. There is no
8 obligation on the part of Mr. Jones to raise any doubt or
9 any other possibility. He's presumed innocent; and the
10 State has the burden of proof, and the State has to prove
11 to you that Mr. Jones is guilty to the exclusion of any
12 other real possibility. Now, I need to explain to you that
13 there are two types of evidence generally presented during
14 a trial. There's direct evidence, and there's
15 circumstantial evidence. Direct evidence is evidence of
16 direct perception including the testimony of a person who
17 asserts or claims to have actual knowledge of a fact such
18 as an eyewitness. Now, circumstantial evidence is proof of
19 a chain; it's proof of a chain of facts and circumstances
20 indicating the existence of a fact. The law makes
21 absolutely no distinction between the weight or the value
22 to be given to direct or circumstantial evidence nor is a
23 greater degree of certainty required of circumstantial
24 evidence than of direct evidence. What you do is weigh all
25 the evidence in the case; and, after weighing all the

1 evidence, if you're not convinced of the guilt of the
2 defendant beyond a reasonable doubt, you must find him not
3 guilty. Now, one of the issues in this case is the
4 identification of the defendant as the perpetrator of the
5 crime, this charge. The burden of proof as to identity is
6 upon the State, so the State has the burden of proving
7 identity of the defendant as the perpetrator of the crime
8 beyond a reasonable doubt. Unless you are firmly convinced
9 beyond a reasonable doubt that the State has proven that
10 the defendant is the person who perpetrated the crime, you
11 cannot convict this defendant of the charge.

12 Identification testimony is an expression of belief or
13 impression by a witness. You must determine the accuracy
14 of the identification of the defendant; you must consider
15 the believability of each identification witness in the
16 same way as you do any other witness. You may consider
17 whether the witness had -- I'm sorry; I thought I had
18 changed that. You must consider all the relevant evidence
19 going to the issue of identification, and you must be
20 convinced that the State has proven the identity of the
21 defendant as the perpetrator of the crime beyond a
22 reasonable doubt. Consider all the factors relevant to the
23 issue of whether the identification testimony proves that
24 the identification is credible and reliable. If, after
25 examining all of the evidence, you have a reasonable doubt

1 as to the accuracy of the identification of the defendant,
2 then you must find the defendant not guilty. I also need
3 to explain to you, ladies and gentlemen, that there's been
4 testimony presented about an alleged statement made by the
5 defendant to a law enforcement officer while in custody.
6 And I have to go through some things related to the jury's
7 ability to consider such statements. In order for you to
8 consider that evidence in any way against the defendant,
9 you must be satisfied that the State has proven beyond a
10 reasonable doubt certain things. First, that the
11 defendant, in fact, made the statement. If not, then you
12 cannot consider that alleged statement in any way against
13 the defendant. Second, was the defendant properly given
14 *Miranda* warnings prior to any custodial interrogation. And
15 the *Miranda* warnings are that the person has a right to
16 remain silent, that any statement made can and will be used
17 against him in court, that he has the right to an attorney
18 and, if he does not have the resources to hire an attorney,
19 that one will be appointed for him at no expense, that he
20 has the right to consult with an attorney before answering
21 any questions or making any statement, that he has the
22 right to have a lawyer present at all times during all
23 interviews and all interrogations and that he may stop
24 answering questions or ask for an attorney to be present at
25 any time. Now, those exact words do not have to be

1 recited, but the State has to prove to you that the
2 defendant was given the substantial equivalent, that he was
3 properly warned of his rights, his constitutional rights,
4 given his *Miranda* warnings prior to questioning and giving
5 the statement in response to questioning by police while in
6 custody. The third thing the State has to prove is that
7 the defendant knowingly and intelligently waived his
8 constitutional rights and made the statement to the police.
9 And the final requirement is that the statement in question
10 must have been given voluntarily. The State has to prove
11 to you that the statement was the expression of the
12 defendant's own free will and it was not improperly induced
13 by compulsion or duress, force or fear or by the promise of
14 some reward or hope of reward. Unless the statement was
15 given freely and voluntarily, you may not consider it
16 against the defendant. If a statement was made while in
17 custody to a law enforcement officer in response to the
18 officer's questions, I instruct you that you cannot use
19 that statement against the defendant unless you are
20 satisfied that the State has proven beyond a reasonable
21 doubt every requirement that I just covered with you, that
22 the *Miranda* warnings were given, that the statement was
23 made, that there was a knowing and intelligent waiver of
24 his rights and that the statement was given freely and
25 voluntarily. Now, let's turn to the specific charge that's

1 made in this case. As you know, Mr. Jones is charged with
2 the offense of armed robbery. Basically the charge alleges
3 that on July 9th, 2009, Victor Anthony Jones, Jr., did, in
4 Saluda County while armed with a pistol, feloniously take
5 from the person or presence of Jerrell Bookman, by means of
6 force or intimidation, goods or monies of Mr. Bookman
7 described as speakers and 750 dollars in United States
8 currency with the intent to deprive the owner permanently
9 of the property. I remind you, ladies and gentlemen, that
10 an indictment is a charging paper; it's not evidence; and
11 this indictment has no evidentiary value. It's merely the
12 formal means by which someone is charged and brought to
13 court. Now, the law provides that a person who commits a
14 robbery while armed with a deadly weapon is guilty of armed
15 robbery. So armed robbery is what the name suggests,
16 robbery while armed with a deadly weapon. To establish the
17 offense of armed robbery, the State has to prove to you
18 beyond a reasonable doubt the following elements: First,
19 that the defendant took and carried away personal property
20 of the person named in the indictment, Mr. Bookman.
21 Personal property is anything, any property other than real
22 estate basically. Second, that the defendant did so with
23 felonious intent, that is that he did so willfully, with a
24 criminal intent to steal the property, to permanently
25 deprive the owner of it and to convert that property to the

1 defendant's own use. Third, the State has to prove that
2 the property was taken from the person or the presence of
3 Mr. Bookman. Now, being within the person or being within
4 the presence -- excuse me -- of Mr. Bookman refers to being
5 within his reach, inspection, observation or control so
6 that he could have retained possession of the property if
7 not overcome by violence or prevented by fear. The fourth
8 element is that the taking must have been accomplished with
9 violence or the threat of violence. And, fifth, that the
10 defendant was armed with a deadly weapon while performing
11 the robbery. Here, the deadly weapon is alleged to be a
12 pistol. The State has to prove to you that a deadly weapon
13 was used to obtain possession of the property either by
14 violence or by placing Mr. Bookman in fear of violence.
15 The State has to prove all of these essential elements
16 beyond a reasonable doubt in order for you to find the
17 defendant guilty of the armed robbery and must prove that
18 it occurred in Saluda County, South Carolina. Now, I need
19 to explain to you that a person can be guilty of a crime
20 either by directly perpetrating it himself or by being
21 present and aiding, abetting and assisting in the
22 commission of the crime. That's known as accomplice
23 liability; it's sometimes referred to as the hand of one is
24 the hand of all. The State has to prove to you that
25 Mr. Jones personally committed the crime of armed robbery

1 or that he was present at the scene of the crime and that
2 he intentionally, through a common design, aided, abetted
3 and assisted in the commission of the crime so that it
4 could be accomplished. Intentionally means willful,
5 intending the result that actually occurs, not something
6 that happens accidentally or involuntarily. To aid means
7 to help, promote the course of or the accomplishment of, to
8 give support to or to give assistance to. Abet means to
9 encourage or appear to favor or support something. And
10 assist is a term that you give its plain and ordinary
11 meaning. Everybody knows what assist means. Now, the
12 final thing I have to tell you, ladies and gentlemen, is
13 that the defendant is entitled to every reasonable doubt
14 that arises in the entire case. If, upon any issue of fact
15 essential to a conviction, you have a reasonable doubt as
16 to how that should be resolved, you have to resolve that
17 doubt in favor of the defendant. If, upon reviewing the
18 entire case, you have a reasonable doubt as to whether the
19 State has proven Mr. Jones guilty of armed robbery, he is
20 entitled to that reasonable doubt and a verdict of not
21 guilty. But, on the other hand, if, upon reviewing all the
22 evidence, you find that the State has proven beyond a
23 reasonable doubt every essential element of the offense
24 charged against Mr. Jones beyond a reasonable doubt, you
25 must find him guilty of that charge. That's the law. Now,

1 ladies and gentlemen, when you go back to your jury room to
2 decide the case, you're going to have with you the exhibits
3 admitted in the trial and you're going to have this verdict
4 form. On this form, you're going to tell us your decision.
5 I'm supposed to tell you that you should not infer from the
6 order in which I state these that I'm trying to suggest
7 anything to you. I've got to list one thing first and one
8 thing second. You'll see this verdict form has the
9 caption, that is, the name of the case and the case number;
10 and then it reads, as to the charge of armed robbery, we,
11 the jury, unanimously find the defendant -- and you have
12 two options; you may find the defendant not guilty or you
13 may find the defendant guilty of armed robbery. Mr.
14 Foreman, part of your job is to fill this form out for me.
15 I think you'll find it self-explanatory. Just check the
16 response chosen by the jury and sign your name on the
17 signature line. Now, folks, how you go about your
18 deliberations, how you go about taking your votes, all of
19 that is in your discretion subject to this requirement.
20 The verdict must be unanimous; all 12 people must agree in
21 order for it to constitute a verdict. You cannot do
22 anything to change the requirement of unanimity. All 12 of
23 you must agree in order for something to be a verdict.
24 When you come back out and your verdict is read in the
25 courtroom, you can be asked individually if it was your

1 verdict and if it is still your verdict, so please
2 understand the requirement that the verdict must be
3 unanimous. So don't tell me you've got a verdict unless
4 all 12 are in agreement. Folks, I've told you a dozen
5 times or more not to discuss the case, and it's not time
6 yet. The law says that I have to go over with the
7 attorneys what I've just told you, and that's just common
8 sense. We don't want you back there deciding the case
9 using the wrong law. So, if I've said something wrong,
10 they have to be given a chance to point it out to me; and,
11 if I agree with them, I'll bring you out and I'll correct
12 it. If, however, I'm satisfied with what I told you, this
13 is the signal you need to be looking for. I will send the
14 exhibits and the verdict form into the jury room by a
15 bailiff; the two alternates will be brought out; it'll just
16 be the 12 of you in there then with the exhibits and the
17 verdict form; and, at that moment, you can start talking
18 about the case. You don't have to wait another second.
19 But don't talk about it until then. If your food's in
20 there, then you can start eating; but don't start eating
21 until I bring the alternates out. All right? Y'all do
22 that for me because, if I have to bring you out and give
23 you instructions, then you'll be in the middle of fixing
24 your food or whatever. Okay? It shouldn't take long. It
25 usually doesn't take more than five minutes to go through

1 this next part. Thank you very much for your attention.

2 Knock on your door when you've reached your verdict.

3 (The jury retires to the jury room.)

4 THE COURT: Please state for the record exceptions,
5 additions or objections to this charge from the State.

6 MR. MAYE: None from the State, Your Honor. Thank
7 you.

8 THE COURT: From the defense?

9 MR. STITELY: Judge, of course, the defendant would
10 again ask for the charge of the lesser-included offenses,
11 common-law robbery and petit larceny. And I rely on my
12 previous arguments on that. We'd also, in light of the
13 reading of your charge of accomplice liable, we'd ask for
14 mere presence.

15 THE COURT: Do you want to be heard on mere presence,
16 Solicitor?

17 MR. MAYE: I just don't think the facts would support
18 that charge in this case, Your Honor, not with the
19 confession and what we have. I don't think there's any
20 evidence to support it, but I'll leave it in the Court's
21 discretion.

22 (Pause.)

23 THE COURT: Bring the jury back out.

24 (The jury returns to the courtroom.)

25 THE COURT: All right, ladies and gentlemen, I want to

1 give you one additional instruction. Mere presence at the
2 scene of a crime is not sufficient to prove someone guilty
3 of committing the crime. A defendant's presence where a
4 crime is being committed or mere association with a person
5 who commits a crime does not make a defendant an accomplice
6 or an aider or abettor of the person committing the crime.
7 The burden is on the State to prove every essential element
8 of the crime charged. If you find, after reviewing all of
9 the evidence, that the State has proved that the defendant
10 was only present at the scene of the crime but has not
11 proved beyond a reasonable doubt the other necessary
12 elements related to participation in the crime, then you
13 must find the defendant not guilty. Mere presence at the
14 scene where a crime is being created is not enough to prove
15 someone guilty of a crime. All right. Step back in the
16 jury room. Wait for that signal I told you about.

17 (The jury retires to the jury room.)

18 THE COURT: The Court declines to request the charge
19 on the lesser-included offenses of common-law robbery and
20 petit larceny. As to the mere presence charge, is there
21 any exceptions, additions, objections to that from the
22 State?

23 SOLICITOR: None from the State, Your Honor.

24 THE COURT: From the defense?

25 MR. STITELY: No, sir.

1 THE COURT: Thank you. All right, folks, check the
2 exhibits and check the verdict form. When you're
3 satisfied, please give those to the bailiff.

4 (Pause.)

5 MR. STITELY: We're good, Judge.

6 THE COURT: Bring the two alternates out, please, and
7 give those documents to the jury.

8 THE COURT: Y'all just have a seat for one second.
9 I'll be through with you in just a minute. Mr. Miller?

10 JUROR: Yes, sir.

11 THE COURT: Mr. Gilliam?

12 JUROR: Yes, sir.

13 THE COURT: Y'all made it through the case as well as
14 all the other 12 jurors, and we didn't have to use an
15 alternate. I do use an alternate in about half of the
16 cases that I have, so I had you over there because I had to
17 have you over there. I hope you understand. We got lucky
18 this time and we didn't lose anybody along the way. You're
19 through with jury duty. You're excused from jury duty as
20 soon as I stop talking to you. If you need a slip for
21 work, you can check with Ms. Doris. They'll mail a little
22 check to you for your jury pay; it won't be much money.
23 And I told them to let you get your sandwiches first. If
24 you want to stay here and eat, you're welcome to stay. If
25 you want to leave, you're welcome to leave. If you don't

1 want a sandwich, you don't have to eat a sandwich. It's up
2 to you. Thank you very much.

3 (The alternates were excused.)

4 THE COURT: All right. We're at ease pending a
5 verdict.

6 (Jury commenced deliberations at 1:25 p.m.)

7 (A recess transpired.)

8 THE COURT: I received a note from the jury that
9 reads, distinguish between the meaning of the hand of one
10 is the hand of all and the last statement that the Judge
11 had us out for, which was the mere presence. When I had
12 redone the charge last night, I had taken out the
13 accomplice liable because I really didn't think it was
14 anything anybody was going to talk about. When the
15 Solicitor mentioned it in the closing argument and there
16 was no objection to it -- and it was proper; I'm not saying
17 it was improper -- but, when there was a mention of it,
18 then I felt like I had to put it back in. I had it in the
19 version that I had drawn, the draft, up until last night,
20 so I put it back in. And then there was a request for mere
21 presence, and I thought that was fair so I put that in.
22 And all I can do is just give them the charges. Hopefully
23 they'll understand the distinction. I'll try my best.

24 MR. MAYE: It might be better, Your Honor, it may be
25 more understandable to hear them all together than just in

1 a vacuum, just hearing all that in a vacuum --

2 THE COURT: Right.

3 MR. MAYE: -- you know, giving particular inference to
4 one thing or another. Hearing it all I think would be more
5 appropriate.

6 MR. STITELY: Judge, the defense's position is the
7 jury has heard the charge; and we'd ask you just to tell
8 them they've heard the charge, they've heard the law and
9 they now have their opportunity. So we would object to any
10 additional charges.

11 THE COURT: You want me to tell them what?

12 MR. STITELY: Judge, we're just going to object to any
13 additional charge about that or any additional reading of
14 the charge.

15 THE COURT: Okay. They've asked me to explain the
16 law. I'm going to do my best to explain the law. If I'm
17 wrong, I apologize. Bring the jury in.

18 (The jury returns to the courtroom at 2:16 p.m.)

19 THE COURT: Mr. Foreman, I received a note from the
20 jury that reads that you want me to distinguish between the
21 meaning of the hand of one is the hand of all and the last
22 statement that I went over with you which was mere
23 presence. Is that right?

24 MR. FOREMAN: Yes, Your Honor.

25 THE COURT: All right. I'm going to read this to you,

1 but I'll be reading them together so maybe they'll flow
2 better this way. A person can be guilty of a crime either
3 by directly perpetrating it himself or by being present at
4 the scene of the crime and aiding, abetting and assisting
5 in the commission of the crime. That's known as accomplice
6 liability, being an accomplice; and it's sometimes referred
7 to by using the phrase the hand of one is the hand of all.
8 The State has to prove that Mr. Jones personally committed
9 the crime or the State has to prove that he was present at
10 the scene of the crime and that he intentionally and
11 through a common design aided, abetted or assisted in the
12 commission of the crime. Intentionally means willfully,
13 intending the result that actually occurs, not something
14 that happens by accident or involuntarily. To aid means to
15 help, to promote the course of or the accomplishment of, to
16 give support to or to give assistance to. Abet means to
17 encourage or appear to favor or support. And assist is a
18 term you should give its plain and ordinary meaning. Now,
19 so you see, accomplice liability involves being present at
20 the scene of the crime and being in the crime, aiding,
21 abetting and assisting in the commission of the crime. I
22 apologize to you, but these two charges are in two
23 different locations, so bear with me a second.

24 (Pause.)

25 THE COURT: So mere presence at the scene is not

1 sufficient; it's not sufficient just to prove that someone
2 was present at the scene of a crime, where a crime is being
3 committed. A person's presence where a crime is being
4 committed or merely associating with people who commit a
5 crime does not make a defendant an accomplice or an aider,
6 an abettor and an assistant in the crime. The burden of
7 proof is on the State to prove every element of the crime
8 charged. And, if, after reviewing all the evidence, the
9 State has proved to you only that the defendant was present
10 at the scene of the crime and you have a reasonable doubt
11 as to whether they have proven to you that he participated
12 in the crime, then you have to give him the benefit of the
13 doubt and find him not guilty. The State has to prove to
14 you that he either directly perpetrated this crime himself
15 or that he was present at the scene of the crime and aided,
16 abetted and assisted others in the commission of the crime.
17 But merely being there or associating with other people is
18 not enough. There has to be a common design, an intent to
19 commit a crime that's proven by the State beyond a
20 reasonable doubt. I hope that explains it.

21 MR. FOREMAN: Yes, sir.

22 THE COURT: Thank you.

23 (The jury retires to the jury room to continue
24 deliberations at 2:20 p.m.)

25 THE COURT: Please state for the record exceptions,

1 additions or objections to the charge from the State.

2 MR. MAYE: Nothing from the State, Your Honor. I
3 think that makes a whole lot more sense when read together
4 rather than out of context like that. I think that's far
5 more clearer.

6 THE COURT: Defense?

7 MR. STITELY: Nothing specific as to what the Court
8 said. Of course, we'd just renew for the record our
9 request that those other charges be given.

10 THE COURT: Thank you. We're at ease pending the
11 verdict. Madame Clerk, would you hand that to the court
12 reporter to mark?

13 (Court's exhibit number 5 marked for identification.)

14 (A recess transpired.)

15 THE COURT: All right. We're back on the record in
16 the State v. Victor Anthony Jones. I've been informed the
17 jury has a verdict. Obviously, I have no way of knowing
18 what the jury has decided. I say this in every case, so
19 please don't think I'm singling anyone out. When the
20 verdict is read, whether it's good, bad or indifferent to
21 you, I expect you to stay still and stay quiet. Don't show
22 signs of approval or disapproval. Don't shake your heads
23 in agreement or disagreement. Don't make any sounds. Just
24 stay still, stay quiet. We'll get through this just fine.
25 Bring the jury in.

1 (The jury returns to the courtroom at 2:43 p.m. with
2 the verdict.)

3 THE COURT: Madame Clerk?

4 THE CLERK: Mr. Foreman, do you have a verdict?

5 MR. FOREMAN: Yes, ma'am.

6 (The Clerk hands the verdict to the Judge).

7 THE COURT: All right. The State of South Carolina,
8 County of Saluda, in the Court of General Sessions, the
9 State v. Victor Anthony Jones, Jr., case number
10 2011-GS-41-0150, as to the charge of armed robbery, we, the
11 jury, unanimously find the defendant guilty of armed
12 robbery, signed by the foreman. Mr. Foreman, ladies and
13 gentlemen of the jury, if I've accurately stated your
14 verdict, that is, guilty of armed robbery, please signify
15 by raising your right hand.

16 (Jurors comply.)

17 THE COURT: All 12 hands are raised. Are there any
18 matters to take up prior to the jury being discharged from
19 the State?

20 MR. MAYE: Nothing from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. STITELY: I would ask for polling of the jury,
23 Your Honor.

24 THE COURT: All right. Ladies and gentlemen, what's
25 going to happen is the Clerk's going to call the roll.

1 When she calls your name, please raise your hand so she
2 knows who to look to. And she's going to ask you -- some
3 ask it as one question; some ask it as two -- but basically
4 what they ask you is, was this your verdict and is it still
5 your verdict. Answer her truthfully. Madame Clerk, are
6 you ready?

7 THE CLERK: Logan M. Autry, was this your verdict and
8 still your verdict?

9 MR. AUTRY: Yes.

10 THE CLERK: Ashley W. Buzhardt, was this your verdict
11 and still your verdict?

12 MR. BUZHARDT: Yes.

13 THE CLERK: Freddie Dublin, was this your verdict and
14 still your verdict?

15 MR. DUBLIN: Yes, ma'am.

16 THE CLERK: Linda L. Edwards, was this your verdict
17 and still your verdict?

18 MS. EDWARDS: Yes.

19 THE CLERK: Jesse E. Efird, was this your verdict and
20 still your verdict?

21 MR. EFIRD: Yes.

22 THE CLERK: Ann C. Holstein, was this your verdict and
23 still your verdict?

24 MS. HOLSTEIN: Yes.

25 THE CLERK: Austin H. Jumper, was this your verdict

1 and still your verdict?

2 MR. JUMPER: Yes.

3 THE CLERK: Quincy T. Kenley, was this your verdict
4 and still your verdict?

5 MR. KENLEY: Yes, ma'am.

6 THE CLERK: Jennifer L. Lake, was this your verdict
7 and still your verdict?

8 MS. LAKE: Yes.

9 THE CLERK: Johnnie R. Miller, was this your verdict
10 and still your verdict?

11 MR. MILLER: Yes, ma'am.

12 THE CLERK: Donald Ray Perry --

13 MR. PERRY: Yes, ma'am.

14 THE CLERK: -- was this your verdict and still your
15 verdict?

16 MR. PERRY: Yes, ma'am.

17 THE CLERK: Langley K. Wash, was this your verdict and
18 still your verdict?

19 MS. WASH: Yes.

20 THE COURT: All jurors are polled. Anything else from
21 the defense?

22 MR. STITELY: Not for the jury, Your Honor.

23 THE COURT: All right. Now, ladies and gentlemen,
24 that's going to conclude your jury service. They will mail
25 a little check to you for your jury pay; it won't be much

1 at all. If you need a slip for work, if you'll stay in the
2 jury room, the Clerk will come back there and talk to you
3 and give you your slip. I need the foreman to stay and
4 sign the original documents that I have up here rather than
5 just the verdict form. But I have to attend to some
6 matters before I can get back there. So I'll work as
7 quickly as I can. I'll get back there as soon as I can,
8 but I need the foreman to wait on me. The rest of you will
9 be free to go as soon as you get what you need from the
10 Clerk. Thank you very much, folks. You have an exemption
11 from jury duty for three calendar years so 2012, 13 and 14;
12 and you're disqualified from jury service for one year at
13 this level. I used to go back at the end of the week and
14 talk to the juries to give them an opportunity to ask me
15 questions. Judges are not permitted to comment on a jury's
16 verdict, any jury's verdict; so I can't talk about the
17 particular case with you, but just how things run and
18 things like that, and it always -- I got a lot out of it; I
19 thought the jurors appreciated it; it worked real well.
20 But there were some instances where some jurors said some
21 things that the judge then had to report and then they had
22 to go through all this stuff, and it put the judge in a
23 position of being a witness, and none of it's on the
24 record. So the Chief Justice decided it's a better
25 practice not to go back and talk to the jurors. So I won't

1 be doing that. If you have some serious burning issue that
2 you need to let me know about, you can write me -- I'm
3 pretty easy to find -- and I'll do my best to attend to
4 it. I haven't gotten a response on that recently except I
5 was in Aiken not too long ago and a lady complained because
6 there was a fellow juror who kept pushing Avon on them the
7 entire time they were in there. She was trying to set up
8 Avon parties and things on the jury, and she didn't like
9 that. I referred her to the judges in Aiken. But, if
10 you've got some issue that you want to address with me,
11 I'll do my best if you'll just put it in writing. All
12 right. If you'll retire to the jury room. As soon as
13 you're through with the Clerk, you're free to go. Thank
14 you.

15 (Jury excused.)

16 THE COURT: Motions?

17 MR. STITELY: Your Honor, I make a motion to set aside
18 the verdict of the jury and to grant a motion for a new
19 trial on the grounds that the evidence as a whole was
20 insufficient for a jury to achieve a verdict of guilty.
21 We'd make a motion for a new trial.

22 THE COURT: Okay. The jury had the option to believe
23 or disbelieve, and they chose to believe. The motion's
24 denied. There's ample evidence to support each element.
25 Anything from the State on sentencing?

1 MR. MAYE: Yes, sir, Your Honor. I have that his
2 first criminal conviction was June 2nd of 2003, Your Honor;
3 actually it shows a June 19th, 2003, date. He was
4 convicted of assault and battery of a high and aggravated
5 nature in front of Judge Sawyer as a juvenile in Family
6 Court. Judge Sawyer found him in contempt of Family Court
7 that same day, Your Honor. While he was serving that
8 sentence in DJJ, he was convicted of assault on a
9 corrections employee. Your Honor, after his release, he
10 was convicted 5/3 of 2007 of possession of a stolen pistol.
11 In 2008, he was convicted of resisting arrest and received
12 nine months suspended on the service of 61 days time served
13 in 2008; that was in Richland County. He also, at the same
14 time, was convicted of criminal domestic violence first
15 offense and got 30 days; that occurred April 2nd of 2008.
16 He was convicted of entering premises after warning, a
17 magistrate's court conviction, 6/12 of 2008. He was
18 convicted of simple possession of marijuana on 9/30 of
19 2008. He was convicted of simple possession of marijuana
20 on 11/19 of 2008. He was convicted of driving without a
21 license, public disorderly conduct and various traffic
22 offenses 12/12 of 2008. He was convicted again 2/10 of
23 2011 with failure to give proper turn signal, seatbelt
24 violation, insurance and giving false information to the
25 police and driving under suspension; that was in January of

1 2011. Your Honor, this event occurred in July of 2009. In
2 November of 2009, he was charged with driving without a
3 license, public disorderly conduct, operating a vehicle
4 without insurance or registration and another, like
5 standing in the highway, offense in magistrate's court just
6 a couple of months later. He got a parole revocation on
7 3/4 of 2011, Your Honor. Your Honor, he's just been
8 difficult and defiant throughout this whole process. We've
9 had to chase him around; we've had to issue bench warrants
10 to try to get him here to court. He has been as difficult
11 and defiant as any person that we've ever prosecuted here.
12 We just request respectfully that you sentence him in
13 accordance with his record, Your Honor, and the gravity of
14 this offense. Your Honor, the last thing that I have is he
15 is on the criminal gang database. I thought that was
16 somewhat ironic, but he is listed on the State's criminal
17 gang database, 73-550, and has been designated as an active
18 member of a criminal gang. It's noted on his rap sheet,
19 Your Honor. My understanding of the gang affiliation is
20 the Bloods. I don't expect the Judge to give that much, if
21 any, consideration as to his sentence, Your Honor, but it
22 is on his rap sheet.

23 THE COURT: All right. Mr. Stitely?

24 MR. STITELY: Yes, sir. If it please the Court,
25 Victor, of course, still, Your Honor, he respects the

1 jury's verdict. He's maintained from the get-go, and he
2 still maintains, that there wasn't a gun, that wasn't what
3 happened. We respect the jury's verdict. I'm going to
4 tell you a little bit about him. He has small children,
5 Your Honor; he has a three-year-old and a two-year-old now.
6 He's been incarcerated since June of this year. He had
7 gotten a bench warrant, Your Honor. He had Max Singleton.
8 I think they were here one day and then they left, and he
9 got a bench warrant. He's been in jail since that next
10 week. Your Honor, he had gotten a call from his probation
11 agent that said he had a warrant. He turned himself in up
12 in Richland. They went and got him. So he's done those
13 five months. He did around a month when he was charged
14 originally. Also, one of the elements that went into that
15 probation violation or parole violation you heard about,
16 Your Honor, was, in fact, this charge was a major
17 contributing element to it. He did 18 months on that. He
18 has served nine or ten months, but it was an 18-month
19 revocation. He also, when he originally got charged with
20 this, got -- his YOA got cancelled or whatnot from those
21 juvenile charges or whatever he had when he was a young
22 man. He did 13 months on that. I don't think that
23 actually applies to this time, but he would like to ask
24 that you consider the 18-month probation revocation that he
25 got directly, at least in part, involving this charge, and,

1 of course, credit for the time that he served before, when
2 he was originally arrested, and the time that he served
3 since June on the bench warrant. Your Honor, he's worked
4 as a painter. In his criminal record, there's some traffic
5 stuff; there's drugs; there is the one transfer of a
6 firearm; he had an ABHAN when he was -- in 2004; he's 24
7 now, 23 now -- so he was 16 at the time, Judge. It's not a
8 good life choice. He tried to tell you from the get-go.
9 What's he told me is, in 2009, he was a bad dude, Judge, he
10 was running the streets. He says he was selling. That's
11 what he -- I mean, that's what he was doing; that's how he
12 knew Ms. Salaam. They were in the same circle. He wanted
13 to point out to the Court that that's what this was. The
14 jury's found him guilty of armed robbery. He just wants
15 the Court to know that that's not who he wants to be
16 anymore. When he got out from his 18-month probation
17 revocation, he actually went and got a job. I understand
18 he actually started paying his probation money. He
19 actually said he had a decent relationship with his
20 probation officer for what it's worth. I mean, he's not an
21 angel, Your Honor. I understand they have other charges.
22 What they intend to do with those, that's down the road.
23 Your Honor, I'd ask you to consider giving him the minimum
24 mandatory in this case, give him credit for, of course, the
25 credit he gets and consider giving him credit for the other

1 18 months which are, at least in point, partially related
2 to this. Thank you, Judge.

3 THE COURT: Did Mr. Bookman want to say anything?

4 MR. MAYE: Mr. Bookman, do you want to address the
5 Court in any regard? No, sir, Your Honor; he declines.

6 THE COURT: Mr. Jones, I'll be happy to hear anything
7 you want to tell me on sentencing. Most attorneys tell
8 their clients to be very careful of what they say related
9 to the incident itself; but, if you want to address me
10 about anything, you're welcome to do so.

11 DEFENDANT: I'm just asking can you have mercy on me,
12 sir.

13 THE COURT: Thank you, sir. Now, Mr. Jones, you have
14 a right to appeal this decision; and I would suggest that
15 you do that. You can always withdraw an appeal if you
16 change your mind later; but you can't do the reverse. So
17 tell Mr. Stitely, if you wish to appeal, to go ahead and do
18 it. It has to be in writing; it's a very narrow timeframe.
19 So make sure you tell your lawyer if you want to appeal.
20 All right. Now, tell me how long you've been in jail.

21 DEFENDANT: Right now, I've been incarcerated since
22 May, six months.

23 THE COURT: You've been in the Saluda Jail since May?

24 MR. STITELY: Richland and Saluda, Judge.

25 THE COURT: All right. You went into the Richland

1 Jail in May of 2012 for what?

2 DEFENDANT: For a bench warrant. I turned myself in.

3 THE COURT: All right. And, before that -- What's he
4 talking about 18 months?

5 DEFENDANT: That's where I got violated for these
6 charges. I violated my --

7 THE COURT: You were out on parole, and they violated
8 you for picking up this armed robbery charge?

9 DEFENDANT: Yes, sir.

10 THE COURT: Now, what was going on in Richland County?
11 Was there anything else or you just happened to get picked
12 up in Richland.

13 DEFENDANT: I just got picked up in Richland.

14 THE COURT: All right. And you turned yourself in?

15 DEFENDANT: That's where I worked. I worked there.

16 THE COURT: Okay.

17 MR. STITELY: To my knowledge, Judge, he has no other
18 outstanding charges anywhere in the State besides what Mr.
19 Maye has.

20 THE COURT: So you're telling me you've done two years
21 counting the 18 months on probation, I mean, on the parole
22 violation?

23 DEFENDANT: Yes, sir.

24 MR. STITELY: If Your Honor would consider that as
25 time -- and, as I said, I don't think -- It's part and

1 parcel of why he got revoked; it's because he picked up
2 these charges. It wasn't that he was held because of these
3 charges exactly, but that was the major driving force
4 behind his revocation. He said he wanted to tell you one
5 more thing, Judge.

6 THE COURT: Sure.

7 DEFENDANT: Just please have mercy on me if you can.
8 Can you give me enough time just so I can be able to come
9 home to my kids?

10 THE COURT: Mr. Jones, you mean after you get through?

11 DEFENDANT: Yes, sir.

12 THE COURT: Mr. Jones, I still haven't written a
13 number on here. I'm still thinking. I don't know what I'm
14 going to do. And I think you heard me say the other day I
15 don't have any other greater wisdom than anybody else; I do
16 what I -- I just do what I think is appropriate under the
17 circumstances. And I'm still trying to figure out what I
18 think is appropriate. I will say that, despite the
19 frustration that I demonstrated, I do think your lawyer did
20 an excellent job. I had no idea what the jury was going to
21 do; I really did not. I thought he did -- It's neither
22 here nor there, but I really thought he did an excellent
23 job of attacking Ms. Salaam in particular and the decisions
24 he made. I don't think y'all would have ever got any of
25 that gang stuff in there. I never really understood where

1 it was going, but I certainly would have entertained it if
2 it had been presented. But I don't know where he would've
3 gone. And I asked for some input from another judge who
4 does a lot of criminal cases, and we weren't able to figure
5 out where that was going. All right. Have a seat.

6 (Pause.)

7 THE COURT: All right. If there's nothing further,
8 there is a new law, and we don't even have the forms for it
9 yet. But I've written on this sentence sheet that, since
10 this is a violent crime, the Clerk is to notify the DMV.
11 Ms. Holmes, if you can figure out what forms they want
12 sent. We're supposed to notify the DMV, and they're
13 supposed to put some sort of notification on everybody's
14 driver's license that has a violent crime conviction. That
15 way, if they get stopped, when they hand the officer the
16 driver's license, they'll see it or I guess they run the
17 background check and it shows up. So I want to make sure I
18 cover that before I forget about it because it's brand new.
19 The sentence of the Court is that you be committed to the
20 South Carolina Department of Corrections for 11 years plus
21 costs and assessments. You're given credit under 24-13-40.
22 The Department of Corrections will calculate it and apply
23 it. I have written on your sentence sheet to credit you
24 for two years served; hopefully they will. If they don't,
25 your lawyer can contact them. Restitution is deferred.

1 The Clerk is to notify the DMV. Pay your court costs at 50
2 dollars a month beginning 120 days after you're released
3 from maximum incarceration in prison. Do you understand?

4 DEFENDANT: Yes, sir.

5 THE COURT: Good luck to you, sir.

6 MR. STITELY: Thank you, Judge.

7 THE COURT: Court's at ease.

8 **WHEREUPON, TRIAL CONCLUDED.**

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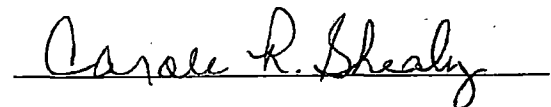
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C E R T I F I C A T E

I, the undersigned CAROLE R. SHEALY, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Saluda County, South Carolina, on the 30th and 31st days of October, 2012, and the 1st and 2nd days of November, 2012.

I do further certify that I am neither of kin, counsel or interest to any party.

March 4, 2013.

A handwritten signature in cursive script, reading "Carole R. Shealy", is written over a horizontal line.

CAROLE R. SHEALY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SALUDA) COURT OF GENERAL SESSIONS

State of South Carolina,)
)
)
 PLAINTIFF,) Guilty Plea
) 2013-GS-41-0076
 -VS-)
)
 Victor Anthony Jones, Jr.,)
)
 DEFENDANT.)
 _____)

BEFORE THE HONORABLE THOMAS A. RUSSO, JUDGE

FEBRUARY 14, 2013

SALUDA, SOUTH CAROLINA

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

Ervin May, Esq.
 For the State

Ben Stitley, Esq.
 For the Defendant

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

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E X H I B I T S

THERE WERE NO EXHIBITS MARKED TO THIS PROCEEDING.

1 (The defendant, together with
2 counsel, was personally present in the courtroom.)

3 THE COURT: All right, if I can have
4 everybody's attention. Ladies and gentlemen, it's
5 my understanding that there are some of you that are
6 here today that may wish to resolve your cases by
7 entering a plea. If that's the case, I need to go
8 over with you your constitutional rights.

9 Now, when I do guilty pleas, I do them
10 individually. But the rights that I'm going to go
11 over with you, I'm going to do those as a group.
12 And the reason is simply because of this. These are
13 rights that are common to all of us.

14 We all have these same constitutional
15 rights. They don't change. It doesn't matter who
16 you are, what agency brought the case against you,
17 what charges you're facing. These rights are common
18 to all of us. So rather than go over them with each
19 one of you individually 25 times and me repeating
20 the same thing 25 times, trust me, you don't want to
21 hear it 25 times, and I don't want to say it 25
22 times, okay.

23 So I'm going to go over them with you now
24 as a group. If you have any question about anything
25 that I go over, I'll give you whatever time you need

1 to talk to your attorney and get those questions
2 answered so I won't blindside you with anything.
3 Also, the fact that I'm going over these rights with
4 you right now as a group does not bind you or commit
5 you to do anything.

6 In other words, if the State calls your
7 case and you've changed your mind and you don't want
8 to go forward, that's fine. That's your call to
9 make. No one is going to force you to go forward
10 and do something against your will. But if you do
11 want to go forward and take care of your case, then
12 it's important that you understand these rights.

13 Now, all of us have these rights, as I
14 said earlier. We all have the right to a jury
15 trial. We all have the right to remain silent. But
16 when you plead guilty, by entering that you plea you
17 waive or give up both of those important
18 constitutional rights.

19 And when you give up your rights to a jury
20 trial, you give up all the rights that are
21 associated with it or connected with it. For
22 example, if you had a jury trial, you'd be presumed
23 innocent of the charges that you're facing. That
24 presumption of innocence would remain with you
25 throughout that trial. And it places upon the State

1 the burden of proof.

2 The State has to prove guilt in a criminal
3 trial, and the way they would attempt to do that is
4 during the course of that jury trial, they would
5 call witnesses to the witness stand. Those
6 witnesses would be placed under oath, and they would
7 testify. More than likely, they would be testifying
8 against your best interest.

9 The Constitution of the United States says
10 that every person that is charged with a criminal
11 offense in this country has the right to face their
12 accusers or to confront their accusers. That means
13 that during the course of that trial, if you were to
14 have a trial, you would have the right to question
15 the State's witnesses through your attorney.

16 You would have the right to cross-examine
17 those witnesses about their testimony before the
18 jury. That's your right of confrontation under the
19 Constitution. But when you plead guilty, by telling
20 the Court that you are guilty you give up or you
21 waive that presumption of innocence, and you relieve
22 the State of their burden of proof.

23 And since they no longer have to prove
24 your guilt, they're not required to bring their
25 witnesses into court. And so therefore you give up

1 the right to confront or to face those witnesses.

2 Now, if you had a jury trial, the State's
3 not the only one that can call witnesses. You could
4 call witnesses in your defense. You yourself could
5 take the witness stand and testify in your defense.
6 You could do either one of those things, or you
7 could do both of those things if you chose to do
8 that.

9 But you don't have to do anything. In
10 this country, no person charged with a criminal
11 offense is ever required to prove themselves
12 innocent. The burden of proof is always on the
13 State. So if you had a jury trial, you could
14 exercise your right to remain silent if you chose to
15 do so.

16 And if you did that, I would instruct the
17 jury when I give them the instructions on the law.
18 I would tell the members of the jury that the State
19 has the burden of proof and that the defendant
20 doesn't have to prove anything. And the fact that
21 you chose to exercise your right to remain silent
22 could not in any way be considered by the jury in
23 their decision on your guilt or innocence.

24 As a matter of fact, I would instruct the
25 jury that the fact that you chose to remain silent

1 could not even be discussed in the jury room at all.
2 It has no bearing on the case, because you don't
3 have to prove anything.

4 Now, as I told you, the State has the
5 burden of proof. They have to prove you guilty
6 beyond a reasonable doubt, and they have to do it to
7 a unanimous decision. In other words, if you have a
8 jury trial, all 12 members of the jury would have to
9 agree that you were guilty, or they could not
10 convict you.

11 If you did have a jury trial and if you
12 were convicted, you could appeal that conviction to
13 a higher court if you felt that that was
14 appropriate. Now, you also have an appellate right
15 with regards to this proceeding here today. In
16 other words, if you decide to go forward with a
17 guilty plea today, you have an appellate right with
18 regards to that.

19 At the end of that plea, if you wish to
20 appeal my decision, you may do so, but you must file
21 that notice of intent to appeal within 10 days of
22 today's date. Now, ladies and gentlemen, these are
23 rights that we all have.

24 As I said earlier, if you decide to come
25 forward and enter a guilty plea, then for purposes

1 of your plea you waive or you give up these rights.
2 You will not have a jury trial, and your case will
3 be resolved pursuant to your plea.

4 And like I said earlier, if you have any
5 question about any of these rights that I've gone
6 over, I will give you whatever time you need to talk
7 with your lawyer and to have those questions
8 answered.

9 So, Solicitor, whatever order you'd like
10 to call them, sir.

11 MR. MAY: Victor Anthony Jones, Jr., come
12 around.

13 May it please the Court, Your Honor,
14 before you stands Victor Anthony Jones, Jr., charged
15 on Indictment 2013-GS-41-076 with armed robbery.
16 Your Honor, pursuant to plea agreement he has
17 indicated a willingness to enter a guilty plea to
18 common law or strong arm robbery, Your Honor. And
19 we have negotiated a sentence in this case of five
20 years consecutive to the armed robbery sentence for
21 which he is currently now serving time in the South
22 Carolina Department of Corrections.

23 Mr. Stitley, his attorney in this case,
24 and I tried this case here in Saluda I believe at
25 the last term of court that we had, and he was

1 convicted of armed robbery on Indictment 2011-GS-41-
2 150. I had asked the Department of Corrections to
3 transfer Mr. Jones here today for the purposes of
4 serving him with a notice of our intent to seek life
5 without parole on the second armed robbery charge,
6 the one that he is now pleading to common law
7 robbery.

8 And rather than accept service of that
9 life without parole notice, we have negotiated a
10 resolution of this case. I am going to decline to
11 seek life without parole sentencing, and this will
12 conclude -- he had some other charges pending here,
13 some drug charges. And this is going to clean the
14 slate for him in Saluda.

15 THE COURT: Okay.

16 MR. MAY: I'm going to nol pros everything
17 else he has. He's going to plead to strong arm
18 robbery, five years consecutive to the armed robbery
19 sentence that he's now serving. That would conclude
20 any business that we have against him or any
21 outstanding charges that we have against him here in
22 Saluda County.

23 THE COURT: All right. Thank you,
24 Solicitor.

25 Sir, you're Victor Anthony Jones, Jr.?

1 MR. JONES: Yes, sir.

2 THE COURT: Mr. Jones, you heard the
3 Solicitor indicate that 2013-GS-41-76 is a true
4 billed indictment charging you with armed robbery.
5 However, it is my understanding, sir, that you are
6 here before the Court entering a plea to the lesser
7 offense, that being strong arm robbery or common law
8 robbery. That charge, common law robbery, carries a
9 maximum penalty of up to 15 years. Do you
10 understand that, sir?

11 MR. JONES: Yes, sir.

12 THE COURT: And, Mr. Jones, understanding
13 the nature of the charge against you as well as the
14 possible punishment that is associated with that
15 offense, how do you plead to that charge, sir,
16 guilty or not guilty?

17 MR. JONES: Guilty.

18 THE COURT: Thank you, sir.

19 Mr. Stitley, you represent Mr. Jones on
20 this case?

21 MR. STITLEY: I do, Your Honor.

22 THE COURT: Have you reviewed with him the
23 charge that he's before the Court on and his
24 constitutional rights to a trial?

25 MR. STITLEY: I have, Your Honor.

1 THE COURT: All right.

2 Mr. Jones, am I correct that you're 23
3 years of age, sir?

4 MR. JONES: Yes, sir.

5 THE COURT: Before you got locked up, were
6 you working anywhere, or what type of work do you
7 do, sir?

8 MR. JONES: Before I got locked up, I was
9 working with a painting company.

10 THE COURT: Okay. Are you married or
11 single, sir?

12 MR. JONES: Single.

13 THE COURT: Any children?

14 MR. JONES: Yes, sir.

15 THE COURT: How many?

16 MR. JONES: Three.

17 THE COURT: And did he serve any time in
18 jail on this charge when he was served with this
19 one?

20 MR. MAY: There was probably some, Judge.
21 We're just asking you to write credit. They'll
22 calculate it. I think they do it automatically, but
23 we'll just ask you to write it on there so they can
24 make the calculation.

25 THE COURT: All right.

1 MR. MAY: As you can see, it's actually
2 from '09. The other case was actually a year and a
3 half later.

4 THE COURT: All right.

5 MR. MAY: But we ended up trying the
6 first. This is just the last one.

7 THE COURT: Mr. Jones, you understand that
8 I will mark the sentencing sheet that you are to be
9 given credit for any time that you have served on
10 this charge, all right?

11 MR. JONES: Yes, sir.

12 THE COURT: Now, the State, Mr. May, has
13 indicated to the Court that the State has withheld
14 their right to seek life without parole on this
15 charge. And what they have recommended or
16 negotiated is that if the Court accepts this
17 negotiation that I would sentence you on this charge
18 to five years and that to run consecutive with the
19 time that you are serving on the earlier armed
20 robbery conviction.

21 And also they're dismissing everything
22 else that they have pending so that if you go
23 forward with this plea and we finish this plea
24 today, then as far as any criminal activity in
25 Saluda County, that will all be taken care of. Is

1 that your understanding of the negotiations?

2 MR. JONES: Yes, sir.

3 THE COURT: Other than those negotiations
4 that I just went over, has anybody promised you
5 anything, held out any hope of reward, or threatened
6 you in any way to get you to enter this plea?

7 MR. JONES: No, sir.

8 THE COURT: Are you satisfied with the
9 representation and the advice that Mr. Stitley has
10 provided?

11 MR. JONES: Yes, sir.

12 THE COURT: Do you have any complaints
13 against him or any member of his office?

14 MR. JONES: No, sir.

15 THE COURT: Mr. Jones, as you appear
16 before the Court today, are you under the influence
17 of any substance that would affect your ability to
18 understand what you're doing?

19 MR. JONES: No, sir.

20 THE COURT: Okay. Are you pleading guilty
21 on this charge of your own free will, sir?

22 MR. JONES: Yes, sir.

23 THE COURT: And are you guilty of this
24 offense?

25 MR. JONES: Yes, sir.

15

1 THE COURT: All right. I'm going to get
2 Mr. May to give me the facts. If you would please
3 listen carefully, and I'll get back with you in just
4 a minute.

5 Mr. May.

6 MR. MAY: If it please the Court, Your
7 Honor, this occurred here in the Town of Saluda on
8 May 26, 2009. The victim in this case was a
9 Hispanic male by the name of Gregorio Lopez
10 Carbrera. He was robbed by at least four
11 individuals, Your Honor.

12 There five people's names that have been
13 associated with this. But, Your Honor, they took
14 from him his wallet. He was robbed at gunpoint.
15 And his wallet was taken from him. He subsequently
16 picked out two of the co-defendants out of a lineup,
17 Your Honor.

18 They have cooperated in this case, giving
19 information against Mr. Jones that is pleading
20 before you today. Mr. Jones is the last of all of
21 the co-defendants, Terence Davenport, Dominique
22 Smith, Cortez Terry, and Joe Aaron Johnson. I have
23 resolved all of their cases, Your Honor.

24 Mr. Jones was the last one that was
25 outstanding. Each of those have implicated the rest

1 in being involved in the robbery on May 26, 2009.
2 That's the factual basis of the strong arm plea,
3 Your Honor. Pursuant to the plea agreement, I'm
4 reducing that to common law robbery here in Saluda
5 County.

6 THE COURT: All right, thank you very
7 much, sir.

8 Mr. Jones, those facts that the Solicitor
9 gave the Court regarding the charge, are those
10 essentially correct, sir?

11 MR. JONES: Yes, sir.

12 THE COURT: All right, I find that the
13 State has provided a substantial factual basis to
14 support the charge that Mr. Jones has pled guilty
15 to. I find his decision to enter this plea to have
16 been done freely, voluntarily, and intelligently.

17 He's had the advice and counsel of an
18 outstanding attorney in Mr. Stitley. Mr. Jones has
19 indicated to the Court he is satisfied with that
20 representation, and I'm going to accept his plea.

21 Mr. Stitley, I would be happy to hear from
22 you.

23 MR. STITLEY: Yes, sir. If you're willing
24 to go along with the negotiations, I don't think I
25 have to be too long. I can tell the Court that

1 Saluda County is the only place he had any
2 outstanding charges. So this it, done now, Your
3 Honor. And I think Mr. May have said it, but the
4 co-defendants got this five-year sentence as well.
5 So that's why we went with this sentence.

6 THE COURT: All right.

7 MR. STITLEY: We just ask that you
8 indicate credit for any time that they gave him. I
9 know I've had to go back with SCDC after the fact on
10 that unless it's specifically written on sheets.

11 THE COURT: All right, anything further,
12 Mr. Jones? You don't have to say anything to the
13 Court, but you're welcome to if you want to.

14 MR. JONES: I believe all my time ran
15 concurrent. I've already got 11 years.

16 THE COURT: Okay, now, I'm just going to
17 let you know that's not the negotiation.

18 MR. JONES: I'll take it.

19 SENTENCE OF THE COURT

20 THE COURT: You want to go forward? Okay,
21 all right. On Indictment 2013-GS-41-76, the
22 sentence of the Court is that you be committed to
23 the State Department of Corrections for a period of
24 five years. That is to run consecutive to the
25 charge on Indictment 2011-GS-41-150 that you're

1 currently serving and that any time that you are
2 entitled to on this charge, you're to be given
3 credit for any time that you have served on this
4 charge.

5 Good luck to you, sir.

6 MR. STITLEY: Thank you, Judge.

7 --End of Transcript of Record--

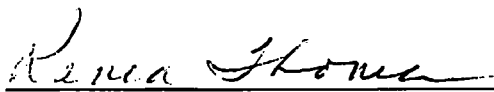
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT
REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND EVIDENCE
INTRODUCED IN THE ABOVE-CAPTIONED CASE ON FEBRUARY
14, 2013, IN SALUDA, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
FIFTEENTH DAY OF JULY, 2015.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Saluda County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VICTOR ANTHONY JONES,

APPELLANT

APPELLATE CASE NO. 2012-213343

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**Cases**

<u>United States v. Abel</u> , 469 U.S. 45, 105 S.Ct. 465 (1984)	6
<u>United States v. Hackney</u> , 203 F.3d 1160 (9 th Cir. 2000).....	6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to allow evidence of the complaining witness's possible gang membership to show bias and to impeach his credibility?

STATEMENT OF THE CASE

Appellant was convicted of armed robbery after a jury trial held before the Honorable William P. Keesley on October 30 – November 2, 2012, in Saluda County. An eleven (11) year sentence was imposed. Benjamin A. Stitely, Esquire, was trial counsel. Ervin J. Maye, Esquire, was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to allow evidence of the complaining witness's possible gang membership to show bias and to impeach his credibility.

Appellant was tried for armed robbery for feloniously taking from Jerrell Bookman car stereo speakers and \$750.00 in cash on July 9, 2009, in Saluda County. According to appellant's own statement, he got a text message on his phone from Amber Salaam wanting to know if he had some tire rims to sell. She said she had an easy person to set up to rob. That person, Jerrell Bookman, was looking to buy some large tire rims for his car to make it ride higher above the ground. She went on to tell appellant that she was driving on the Newberry Highway and to meet her at the Burger King in Saluda. Salaam was riding with Bookman pretending that they were going to Saluda to buy the tire rims. Appellant texted her back and told her to follow him and two other guys to a dirt road where Bookman was robbed. (Tr. p. 433, line 20 – p. 434, line 15).

Bookman testified that Salaam showed him some 23-inch rims and that they would cost him \$750.00. He drove to the Burger King in Saluda and followed a gold-ish car with no hubcaps to a dirt road in a secluded area where he was robbed at gun point of his \$750.00 and his car speakers. (Tr. p. 199, line 1 – p. 207, line 20).

Defense counsel proceeded on a theory that this was really a drug deal gone bad. (Tr. p. 329, lines 15 – 25). He also wanted to impeach Bookman over possible gang membership. (Tr. p. 481, line 11 – p. 486, line 11). The trial court would not allow impeachment over gang membership. (Tr. p. 505, line 21 – p. 506, line 13). That ruling was in error.

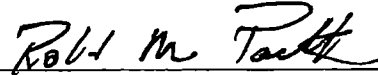
In United States v. Abel, 469 U.S. 45, 105 S.Ct. 465 (1984), the Supreme Court of the United States held that evidence showing membership of the defendant and a defense witness in a prison gang and showing that gang's tenets required its members to lie, cheat, steal and kill to protect each other was sufficiently probative of defense witness' possible bias toward the defendant to warrant its admission into evidence in a prosecution for bank robbery. In United States v. Hackney, 203 F.3d 1160 (9th Cir. 2000), the Court held that the district court did not abuse its discretion in admitting, for the purpose of impeaching a co-defendant's exculpatory testimony for bias, the testimony of a police gang expert concerning the gangs' "code of silence."

In light of the above case, defense counsel should have been allowed to impeach Bookman over his gang involvement.

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robt M Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of May, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VICTOR ANTHONY JONES,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Victor Anthony Jones states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William P. Keesley, which was held on November 2, 2012, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Victor Anthony Jones.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of May, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Saluda County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VICTOR ANTHONY JONES,

APPELLANT

APPELLATE CASE NO. 2012-213343

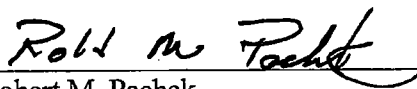
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript

I certify that this designation contains no matter which is irrelevant to this appeal.

May 3rd, 2013


Robert M. Pachak
Appellate Defender

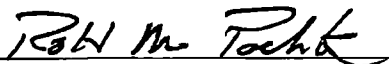
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

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

May 3, 2013


Robert M. Pachak
Appellate Defender

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

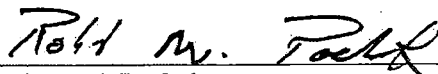
V.

VICTOR ANTHONY JONES,

APPELLANT

CERTIFICATE OF SERVICE

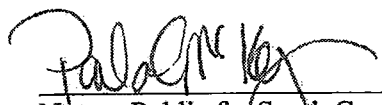
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Victor Anthony Jones, #337908 at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 3rd day of May, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of May, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Victor Anthony Jones, Appellant.

Appellate Case No. 2012-213343

Appeal From Saluda County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2014-UP-046
Submitted November 1, 2013 – Filed February 5, 2014

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

FEW, C.J., and PIEPER and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 25, 2014

The Honorable Doris B. Holmes
Cty Courthouse
100 E Church St Ste 6
Saluda SC 29138-1444

REMITTITUR

Re: The State v. Victor A. Jones
Lower Court Case No. 2011GS4100150
Appellate Case No. 2012-213343

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

Enclosure

cc: Victor Anthony Jones
Salley W. Elliott, Esquire
Robert M. Pachak, Esquire
Alan McCrory Wilson, Esquire

FILE FORM 5

STATE OF SOUTH CAROLINA)

2013 OCT 31 PM)

IN THE COURT OF COMMON PLEAS

County of Saluda)

CLERK OF DISTRICT COURT)

Victor Anthony Jones Jr.)
Full name and prison number (if any) of Applicant)

2013-CP-41-217

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 Kershaw C.I. 4848 Goldmine
Highway Kershaw, SC 29067
2. Name and location of Court which imposed sentence Saluda County Court
of General Sessions
3. Name(s) of co-defendant(s) (if any) Amber Salaam
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-41-150
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) "11-2-12", was Found guilty by Jury and
- (b) Sentenced 11-Years 1/10th
- (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. Appellate Court,
- ii. State of South Carolina Courts of Appeals,
- iii. Appeal from Saluda County Courts
- (b) the result in each such Court to which you appealed:
- i. The appointed Counsel Filed to be relieved as counsel,
- ii. because counsel indicated that the appeal was with
- iii. out merit. "Possible Denial that it was Denied"
- (c) the date of each such result:
- i. May 3, 2013
- ii. May 6, 2013
- 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) My lawyer told me not to get on the stand because
 (b) he ~~was~~ would get the last closing Argument, and that it
 (c) wouldn't be good to go on the stand with my Record, but I feel I was Force Not To.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) ineffective, Representation of Counsel my lawyer
 (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
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- 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) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. _____

 ii. _____

 iii. _____

(b) the proceedings at which each such attorney represented you:

i. _____

 ii. _____

 iii. _____

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

I'm seeking a sentence reduction of my sentence, or
a new trial based on after discovered evidence.

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

No

STATE OF SOUTH CAROLINA)

County of Saluda)

VERIFICATION

I, Victor A. Jones Jr., 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.

x Victor A. Jones

SWORN to and subscribed before me this 30
 day of October, 2013.

Catharine A. Ammer (L.S.)
 Notary Public

My Commission Expires December 22, 2018

My Commission Expires: _____

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

I, Victor A. Jones Jr., 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.

Victor A. Jones
Applicant

SWORN or affirmed to and subscribed before me this
30 day of October, 2013.

Catherine A. Conner
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

Victor Anthony Jones, #337908,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2013-CP-41-0217

RETURN AND MOTION TO DISMISS

In response to the post-conviction relief (PCR) application filed October 31, 2013, the Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Saluda County. Applicant was indicted at the February 2011 term of the Saluda County Grand Jury for Armed Robbery (2011-GS-41-0150). Applicant was represented by Benjamin A. Stitely, Esquire. Applicant proceeded to trial before the Honorable William P. Keesley from October 30, 2012 to November 2, 2012. The jury found Applicant guilty as indicted. Judge Keesley sentenced Applicant to eleven (11) years confinement.

Applicant filed a timely notice of appeal on November 6, 2012. Assistant Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense represented Applicant on his appeal. Mr. Pachak submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967) and petitioned the court to be relieved as counsel on October 30, 2012. The South Carolina Court of Appeals dismissed the appeal and granted counsel's request to be relieved.

State v. Victor Anthony Jones, Op. No. 2014-UP-046 (S.C. Ct. App. February 5, 2014). The remittitur was issued on February 25, 2014.

II.

In his current application for post-conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that
 - a. "My lawyer told me not to get on the stand because he would get the last closing argument, and that it wouldn't be good to go on the stand with my record, but I felt I was forced not to."
 - b. "Ineffective representation of counsel my lawyer."

In his application, Applicant states "Im [sic] seeking a sentence reduction of my sentence, or a new trial based on after discovered evidence."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (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 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.

To the extent Applicant requests a reduction in his sentence, Respondent submits that this allegation should be dismissed for failing to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are not considered collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 525 S.E.2d 886 (2000). In Cooper the South Carolina Supreme Court stated that by challenging the duration of the sentence, as here, the Applicant is in fact trying to enforce the sentence and is therefore *not* making a collateral attack on the sentence.

Pursuant to Rule 12(b)(6), SCRCP, this Court should summarily dismiss Applicant's allegations relating to a reduction in his sentence because they do not state a claim for which relief may be granted.

V.

Next, Applicant vaguely contends there is some sort of newly discovered evidence which would require him to be retried. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence

have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Applicant has failed to set forth any "facts which support each ground" and failed to explain with any specificity whatsoever, the actual facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires Applicant to "*specifically* set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent requests that Applicant's claim of newly discovered evidence should be dismissed.

VI.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claims of ineffective assistance of counsel.

(signatures on following page)

Respectfully submitted,

ALAN M. WILSON
Attorney General

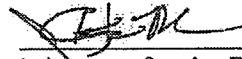
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for the Respondents.

Columbia, South Carolina

June 19, 2014

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

VICTOR ANTHONY JONES

Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH CIRCUIT

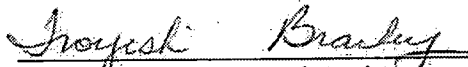
2013-CP-41-0217

AFFIDAVIT OF SERVICE BY MAIL

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:

Kristy Grafton Goldberg, Esquire
1720 Main St, Ste. 301
Columbia, SC 29201

DATED this 19th day of June, 2014


Troyeshi Brailey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS
 2013-CP-41-0217

VICTOR JONES)
 SCDC # 337908,)

Applicant,)

vs.)

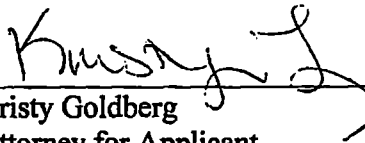
AMENDED APPLICATION
 FOR POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA,)
Defendant.)

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective assistance of trial counsel – counsel failed to advise Applicant of his right to testify in a limited capacity during the Jackson v. Denno hearing.
- (b) Ineffective assistance of trial counsel – counsel was ineffective by improperly persuading Applicant not to testify in front of the jury during the trial.
- (c) Ineffective assistance of trial counsel – failure to investigate.


 Kristy Goldberg
 Attorney for Applicant

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 1720 Main Street, Suite 301
 Columbia, SC 29201
 803-252-2299
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina
 This 25th day of November, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF SALUDA)

VICTOR JONES)
 SCDC # 337908,)

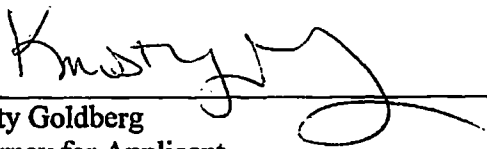
Applicant,)

STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
 2013-CP-41-0217

CERTIFICATE OF SERVICE

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Applicant

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Columbia, South Carolina

This 25th day of November, 2014

1	State of South Carolina	)	In the Court
		)	Of Common Pleas
2	County of Saluda	)	Case No.: 2013-CP-41-0217
		)	
3	Victor Anthony Jones,	)	
	Junior,	)	
4	Applicant,	)	
	vs.	)	Transcript of Record
5		)	
	State of South Carolina,	)	
6		)	
	Defendant.	)	
7		)	

8

9

August 1, 2016

10

Lexington, South Carolina

11

12

BEFORE:

13

The Honorable Edward Miller, Judge

14

15

APPEARANCES:

16

17

Kristy G. Goldberg, Esquire
Attorney for the Applicant

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19

Johanna C. Valenzuela, Assistant Attorney
General
Attorney for the Defendant

20

21

ALSO PRESENT:

22

Victor Anthony Jones, Junior

23

24

25

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16 NO. DESCRIPTION ID EVDS.

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1 Thereupon, the following proceedings were had,

2 MS. VALENZUELA: Your Honor, may it please the
3 Court. This is the case of Victor Jones versus the State
4 of South Carolina. Case number 2013-CP-41-0217. Would
5 you like me to lay out the procedural history of the
6 case?

7 THE COURT: Okay. Yes, ma'am.

8 MS. VALENZUELA: The applicant filed his post
9 conviction relief application in October of 2013. He is
10 presently confined in the Department of Corrections
11 pursuant to orders from the Clerk of Court of Saluda
12 County. He was indicted in February of 2011 for armed
13 robbery. At the time he was represented by Mr. Ben
14 Stitely. The applicant ended up proceeding to trial
15 before Judge Keesley and that was from October 30th, 2012
16 to November 2nd, 2012. He was found guilty by a jury and
17 then Judge Keesley sentenced him to 11 years confinement
18 and gave him credit for two years time served.

19 The applicant ended up filing a timely notice of
20 appeal in November of 2012 and the Office of Indigent
21 Defense submitted a brief pursuant to Anders. The South
22 Carolina Court of Appeals dismissed the appeal and
23 granted appellate counsel's requested to be relieved.
24 That remittitur was issued on February 25th, 2014.

25 Additionally, and I don't see this laid out in the

1 procedural history with this return in motion to dismiss.
2 There is - we know that there's a separate guilty plea in
3 which the applicant was sentenced to a consecutive period
4 of time and that's going to be important when applicant's
5 counsel lays out the issues in this case.

6 He has filed the application and alleged that his
7 attorney did not tell him to get on the stand because he
8 would get the last closing argument and it wouldn't be
9 good to get on the stand but I felt I was forced not to
10 and ineffective representation of counsel by his lawyer.

11 Now, the applicant is represented by Ms. Kristy
12 Goldberg who filed an amendment limiting the issues and
13 very clearly adding the second conviction that we
14 mentioned and outlining that this had specifically only
15 to do with recognizing his time served and how that
16 corresponded to the credit that the Department of
17 Corrections was giving him.

18 Before I turn it over to opposing counsel to outline
19 the exact sentencing issues that she would like to
20 present to the Court, I would like, if I could, to
21 approach with a case, Your Honor.

22 THE COURT: Okay.

23 MS. VALENZUELA: A copy has been given to opposing
24 counsel. This is the case of Cooper versus The State.
25 That's 338SC2002. It's a 2000 case from the South

1 Carolina Supreme Court and in that case it makes clear
2 that, and I'm looking on, if you turn to the second page
3 underneath pin cite 888, that under Al-Shabazz we find
4 that Cooper's claim is not subject to the statute of
5 limitations but it goes on to say that his challenge to
6 the entry of his starting date in order for credit for
7 time served is not cognizable under the PCR Act. And
8 then on the paragraph over to the right under the 234, I
9 can't find the pin cite, it ends up mentioning that
10 although future claims challenging the sentencing start
11 dates will be handled under the APA approach outlined in
12 Al-Shabazz, we find, and then it goes on to say that in
13 this limited case with Cooper the court found that they
14 could go ahead and address Cooper's time served argument
15 but it does explain that moving forward under Al-Shabazz
16 any time served arguments need to be handled under APA.

17 And so we would argue that, of course, that would
18 apply in 2016 that PCR is not the right venue for this to
19 be heard. However, we do think in order for you to make
20 the decision you will need to hear the exact allegations
21 as outlined by PCR counsel.

22 THE COURT: Okay. Ms. Goldberg.

23 MS. GOLDBERG: Thank you, Your Honor. May it please
24 the Court. A couple things to clarify before we begin.
25 Does Your Honor have a copy of the second amended

1 application filed April 23rd, 2015?

2 THE COURT: We have it on the computer but if you
3 have a --

4 MS. GOLDBERG: I do have an extra copy. Sometimes
5 they don't make it to the file so I just wanted to make
6 sure you have it.

7 THE COURT: Yeah. Great. Thank you.

8 MS. GOLDBERG: All of my arguments today -- As the
9 Attorney General explained, Mr. Jones originally went to
10 trial on an armed robbery incident. Later he pled guilty
11 to a strong armed robbery charge, received a consecutive
12 five year sentence. All of our arguments today are going
13 to involve credit that he should be serving that should
14 apply to that consecutive five year sentence only. So we
15 are not making any arguments regarding the original 10
16 year sentence. I just wanted to kind of clarify that.

17 The second issue, I just wanted to respond. I think
18 the Attorney General is right that the information needs
19 to be presented for the Court to fully understand, but we
20 are presenting this as an ineffective assistance of
21 counsel claim. That's due to the fact that there are
22 some errors allegedly in the paperwork in that counsel in
23 this case, it's alleged counsel in this case should have
24 and could have, one, clarified this information to the
25 sentencing judge so the sentencing judge could make their

1 sentence clear, and, two, could have provided the
2 sentencing judge with additional information about time
3 that may be discretionary where the judge may have
4 decided to give him or not.

5 I believe Cooper has to do with time that he was, in
6 fact, entitled to under the statute. Some of this what
7 we are talking about today might have been discretionary.
8 So the end result of what we are requesting today would
9 either be an order by this Court to find that he is by
10 law entitled to a particular amount of time toward his
11 sentence and/or just a remand for resentencing as to that
12 one plea that he received the five years on, if that's
13 clear. All right. Your Honor, at this time I am ready
14 to present my case.

15 THE COURT: Okay.

16 MS. GOLDBERG: I'm going to call attorney Ben
17 Stitely.

18 Thereupon,

19 BENJAMIN A. STITELY

20 after having been first duly sworn, testified as follows,

21 DIRECT EXAMINATION

22 BY MS. GOLDBERG:

23 Q. Good afternoon.

24 A. Hey. How are you?

25 Q. Good. How are you?

1 A. Good.

2 Q. All right. Mr. Stitely, before we get into the
3 details and the nitty-gritty, can you give us a general
4 overview of your representation beginning with when you began
5 to represent Mr. Jones?

6 A. I was looking. The file is really old and it was at
7 the barn. I had him for a couple months prior to the first
8 trial that we had. He had a weird situation. They had sent
9 him all over the place between the county, a probation rev, so
10 he was in and out of Saluda and I think I met with him a
11 couple times in Saluda and then he was gone and back. But I
12 had it for a good couple months before the trial on the armed
13 robbery case.

14 Q. Now, the original incidents that he was convicted of
15 occurred allegedly in 2009 and that's when he was originally
16 arrested. Does that sound right?

17 A. Yes.

18 Q. You didn't represent him back starting right after
19 he was arrested?

20 A. No. I probably didn't have him for two years after
21 that point because he had gone to SCDC on a probation rev if
22 I'm not mistaken.

23 Q. Do you think that's when his family may have
24 retained you while he was there?

25 A. I think he was back in Saluda by the time I got him.

1 I dealt with his mom and his grandma. They're very nice
2 people from Saluda.

3 Q. Do you recall generally -- Mr. Jones had several
4 charges pending; is that fair?

5 A. Yes.

6 Q. Out of Saluda do you recall how many incidents those
7 charges stem from?

8 A. He had two separate robbery type cases. There might
9 have been a drug charge that I never had any touch with
10 either. But that might have been what caused the probation
11 violation. Saluda unfortunately has a tendency not to deal
12 with things at one time which creates a lot of problems.

13 Q. Okay. As far as robberies are concerned there are
14 basically two big incidents there that you were handling?

15 A. Correct.

16 Q. All right. And then just a little bit, uhm, just
17 for the Court's information, how were those two handled
18 procedurally?

19 A. One of them wasn't much. I don't want to down play
20 a charge of alleged robbery. One of them was not an armed
21 robbery per se and it was actually the older case. The 2009
22 that we tried that was indicted in 2011 that was tried in 2012
23 in front of Judge Keesley actually I'm fairly certain was the
24 second event and it was what the Solicitor found to be a
25 stronger case. The first one was, it would have been a

1 complete toss-up I think in the best of terms for the
2 Solicitor's Office.

3 That being said -- I knew you were going to ask the
4 question later. I might as well say it now. -- the reason we
5 talked about doing a plea is if they would have been able to
6 hit him, they could have two striked him which could have
7 really opened the door for some problems. That's why we went
8 ahead and did the plea after the fact.

9 The second case was the one we actually tried if my
10 memory serves. Once again we're five, six years out now.

11 Q. Okay. I think that makes sense. Do you offhand, I
12 know this is a crazy question, do you remember the victim's
13 name on the actual jury trial?

14 A. I have the transcript.

15 Q. Okay. Probably this will just kind of make things a
16 little clearer for you with my next questions.

17 A. Sure. His name was Jerrell Bookman. That's
18 J-e-r-r-e-l-l Bookman.

19 MS. GOLDBERG: Your Honor, may I approach?

20 THE COURT: Yes.

21 BY MS. GOLDBERG:

22 Q. Now, I'm gonna hand you, Mr. Stitely, a set of
23 documents. I'm going to hand the Court one as well and I have
24 given Ms. Madam Attorney General the same packet. Let's do it
25 this way. Mr. Stitely, can you tell me what these are or what

1 these appear to be?

2 A. These are 2009 indictments for a conspiracy, a
3 possession of a firearm during the commission of a violent
4 offense and an armed robbery. This was the other incident, if
5 I'm not mistaken.

6 Q. So these would have been the original warrants and
7 indictments for the charge he pled to and received the five
8 year sentence?

9 A. Right. The one we pled to after the fact.

10 MS. GOLDBERG: Right. Your Honor, I have spoken
11 with the Attorney General. I believe that these
12 documents should have been made a part of the court's
13 file and they are not because they are just the
14 indictments and warrants from one of the underlying
15 convictions. I'm not sure if we need to worry about
16 entering them as an exhibit or just consider them to be
17 a part of the file. I don't know if Your Honor has a
18 preference or if the Attorney General.

19 MS. VALENZUELA: Whatever the Court's preference is.
20 You do have the clerk's records for the trial which was
21 the original case that got started and as we clarified
22 that this was gonna be an issue they should have been
23 added to it. I didn't notice it until last night and Ms.
24 Goldberg said that she had a copy to bring to the Court.
25 If y'all feel more comfortable, I have no objection to it

1 being an exhibit but I would consider it part of the
2 Clerk's records that should be part of the original
3 packet to the Judge.

4 THE COURT: Whatever you prefer.

5 MS. GOLDBERG: I think what we can do is just
6 specifically refer to indictment numbers and warrant
7 numbers and if anyone in the future needed to pull them,
8 that's where they would find them.

9 THE COURT: Okay.

10 BY MS. GOLDBERG:

11 Q. All right. Mr. Stitely, can you read --

12 MS. GOLDBERG: Well, I'm just going to read those
13 into the record, Your Honor. The first indictment is
14 2009-GS-41-517 for criminal conspiracy. That indictment
15 lists on its face that it's related to warrant H995739
16 which is attached to the indictment. The second
17 indictment is 2009-GS-41-519 for possession of a firearm
18 during commission of a crime. That indictment lists on
19 its face that it's related to warrant H995738 which is
20 attached. And the third indictment is 2009-GS-41-520 for
21 armed robbery which states on its face that it is related
22 to warrant H995737 which is attached to the indictment.

23 BY MS. GOLDBERG:

24 Q. All right. Mr. Stitely, looking at that, how are
25 you able to tell that these applied to the plea and not the

1 jury trial?

2 A. Just reading the back of the indictments and what
3 the allegations were.

4 Q. Okay. And specifically the armed robbery
5 indictment, can you read the language of that for the Court?

6 A. Sure. And this is the one, as I said it, it wasn't
7 a very strong case and it's written all over but I'll read it
8 for the Court. That Victor Anthony Jones, Junior along with
9 others did in Saluda County on or about May 26th, 2009 while
10 armed with a pistol to wit Victor Anthony Jones, Junior
11 feloniously take from the person or presence of -- it's
12 scratched and changed here but -- Gregorio Lopez Cabrera,
13 C-a-b-i-e-r-a, by means of force or intimidation goods or
14 monies of Gregorio Lopez Cabrera described as follows; a
15 wallet, set of keys with intent to deprive the owner
16 permanently of such property in violation of section
17 16-11-330(A) South Carolina Code of Laws 1976 as amended.

18 Q. And you were able to tell by looking at all these
19 documents that all of these indictments and warrants related
20 to the same incident?

21 A. That's correct.

22 Q. Can you look at the warrants briefly and tell me if
23 you can tell on what date Mr. Jones was arrested for these
24 charges?

25 A. Yeah. He was arrested back on July 23rd of 2009.

1 They were served on him after his arrest for the new case.
2 The case we tried. It looks like they sat on the warrants for
3 a couple months before they went and got him.

4 Q. Now, looking at the face of the indictment, each one
5 of these three indictments, does it appear that they were all
6 actually nolle prossed?

7 A. Yes. They were nolle prossed on the date of the
8 plea which would have been February 14th, 2013.

9 Q. All right. I'm now going to hand you a copy of
10 indictment 2013-GS-41-076. I have one for the Court and one
11 for the Attorney General as well. Mr. Stitely, what does this
12 document appear to be?

13 A. This would have been the actual indictment that the
14 Solicitor created and true billed in order to do the plea.
15 It's the same alleged allegations in the one I just read
16 except for this time it's actually typed where you could read
17 it and make sense of it.

18 Q. Do the documents show any corresponding warrant
19 number or simply that it was directly presented?

20 A. It just shows it as a direct presentment on the face
21 of this document.

22 Q. And attached to this is the sentencing sheet from
23 the plea?

24 A. That's correct. We pled in to strong arm under the
25 old common law for a five year consecutive to his previous

1 armed robbery conviction which was the one we tried.

2 Q. Does the sentencing sheet reflect that the judge
3 ordered that the defendant was entitled to credit for any time
4 he served?

5 A. It does.

6 Q. Is there anything specific written out beside that
7 to designate how much time that should be?

8 A. There is not. Unfortunately it was a different
9 judge so I don't think he had any idea what we went through
10 with Judge Keesley. I think it was Judge Russo.

11 Q. I believe you just started, you testified a second
12 ago about when the indictment may have been served on him?

13 A. Oh, he would have served this indictment that
14 morning when we were standing there.

15 Q. The day of the plea?

16 A. The day of the plea which would have been February
17 14th, 2013.

18 Q. Since this is a directly presented indictment served
19 on him the day of the plea, would the Department of
20 Corrections have any way to know that Mr. Jones had already
21 spent time in jail for warrants related to this?

22 A. Outside of my knowledge realm. I have no idea.

23 Q. Whose responsibility would it be to tell the Court
24 about this time that he did spend in jail?

25 A. I mean, I would -- All I know I would have said is

1 that, Judge, he probably was continually incarcerated since
2 2009. Judge Keesley was nice enough to actually indicate the
3 amount of time. Judge Russo just checked the box so maybe
4 everyone was just hoping SCDC would get it right. We probably
5 could have clarified that a little bit better.

6 Q. Have you reviewed the plea transcript in this
7 case?

8 A. I don't know that I have the plea transcript. I
9 have the trial transcript.

10 Q. Okay. I have a copy I can hand to you and that
11 should already be in the Judge's packet. The Attorney General
12 has it as well.

13 MS. VALENZUELA: It should have been on your digital
14 packet. Do you have that?

15 THE COURT: Yes.

16 BY MS. GOLDBERG:

17 Q. All right. Mr. Stitely, on page 12 of the
18 transcript if you will follow along with me. Generally do you
19 see that the Judge asks everyone if Mr. Jones should have any
20 time he spent in the jail credited towards him?

21 A. Yes, ma'am.

22 Q. And what was the response to that?

23 A. The Solicitor did. He said there probably was some,
24 Judge. We ask you just to write credit. They'll calculate
25 it. They do it automatically. We just ask that you mark it

1 so they do the calculation.

2 Q. Okay. And then on page 17 I believe you address
3 this issue as well?

4 A. We ask you to indicate credit for any time that they
5 gave him. I know I have had to go back to SCDC before if it's
6 not specifically written on these sheets.

7 Q. Okay. Were you - did you ever contact the
8 sentencing judge after the fact to make sure that they were
9 aware of how much time he spent in jail for this incident?

10 A. I don't recall doing that. I know Victor and I had
11 some letters back and forth but I don't think we ever got - we
12 never got back in front of Judge Russo and I don't recall if
13 Judge Russo ever responded or anything. I think we might have
14 sent a letter but I don't remember. Because he brought it to
15 my attention he didn't think he was getting his time. He sent
16 me a letter and I know I responded and I think I sent a letter
17 to the Clerk and usually the jail is what I would do but I
18 don't know. We never went back in front of Judge Russo.

19 MS. GOLDBERG: All right. Your Honor, at this time
20 just because I think factually it would assist the Court
21 I would like to enter this as applicant's exhibit number
22 1. This is not a document Mr. Stitely would be aware of
23 or that I'm necessarily entering through him. I just
24 think it makes sense here logically. This is a letter
25 from the Saluda County Detention Center written by

1 Captain Kelley to me which just states what days he was
2 incarcerated on, what charges or warrants and that's it.
3 I believe that given the fact that I have relayed this to
4 the Attorney General and she understands it came directly
5 from Saluda County, based on that representation she has
6 no objection to allowing it to be entered. I just wanted
7 the Court to be aware. Is there any objection?

8 MS. VALENZUELA: That's right. Based on counsel's
9 representation that she got this straight from the Saluda
10 County Detention Center from Captain Kelley I have no
11 objection to this exhibit.

12 THE COURT: Okay.

13 MS. GOLDBERG: Here's a copy for you to look at,
14 Your Honor. I have handed the court reporter one to
15 mark.

16 (Whereupon, Applicant's Exhibit #1 marked for
17 identification and received in evidence.)

18 BY MS. GOLDBERG:

19 Q. All right. Mr. Stitely, you're aware that Victor
20 Jones originally went to jail. At some point thereafter is it
21 your understanding that he bonded out?

22 A. He got out for about a month, a month and a half but
23 he was continually incarcerated after the mid summer of
24 2009.

25 Q. Do you know where he went after he got out of Saluda

1 jail the first time?

2 A. I know he went on a probation rev or on that drug
3 case. I didn't have it but he was at SCDC for at least a
4 year, 14 months, something like that.

5 Q. Okay. You said that you do have a copy of the trial
6 transcript?

7 A. I do.

8 Q. All right.

9 A. I know he never got out after the summer of 2009.

10 Q. If you will look with me on page 613 of the trial
11 transcript. This is just the mitigation portion talking about
12 sentencing.

13 A. Yes.

14 Q. Are you there?

15 A. Yes.

16 Q. I guess 612 actually.

17 A. Got it.

18 Q. If you could read for the Court at the bottom of
19 page 612 you begin talking and just until you're finished
20 talking about what he had done, the credit and where he had
21 been, read that entire portion please.

22 A. I go on and say, we respect the jury's verdict. I'm
23 gonna tell you a little bit about him. He has small children,
24 Your Honor. He has a three year old and a two year old now.
25 He's been incarcerated since June of this year. He had gotten

1 a bench warrant, Your Honor. He had Max Singleton who is an
2 attorney out of a different part of the state. I think that
3 they were here one day. Then they left. He got a bench
4 warrant and he's been in jail since that next week. Your
5 Honor, he had gotten a call from his probation agent that said
6 he had a warrant. He turned himself in in Richland. They
7 went and got him so he's done those five months.

8 That would be me referring to the time he spent over
9 in Alvin S. Glenn or in Saluda once they brought him over
10 there.

11 He did around a month when he was charged
12 originally. That was I want to say from the first incident in
13 2009. Also, it was one of the elements that lead to his
14 probation violation or parole violation that you heard about.
15 Your Honor, this was, in fact, a major contributing element to
16 it. He did 18 months on that. He served nine or 10 months of
17 an 18 month revocation. He also when he originally got
18 charged with this, got his YOA cancelled or whatnot from
19 juvenile charges he had when he was a young man and he did 13
20 months on that. I don't think that actually applies to this
21 time but we would like to ask you to consider the 18 month
22 revocation that he got directly at least in part involving
23 this charge, credit for the time he served before when he was
24 originally arrested and the time he served since June on the
25 bench warrant.

1 Q. Okay. And you can stop there. So you were aware of
2 all those different periods of time and where he was and the
3 situation, correct?

4 A. Yeah. He was locked up all but a month or so.

5 Q. And you were aware enough to be able to inform the
6 judge of all that during the time of the jury trial and then
7 ask for some sort of credit for that time?

8 A. Yes, ma'am. And Judge Keesley did it up and came up
9 with right around two years which is about what we thought he
10 was entitled to.

11 Q. Did you understand that from your explanation there
12 that some of that time that you had discussed should have been
13 mandatorily credited to him but some of it would have been
14 discretionary to a judge?

15 A. As a defense lawyer I'm a big proponent, if you're
16 arrested and they're serving warrants, you should get credit
17 for the entire time you're in jail. I think it's always up to
18 the Circuit Court judge what they call the mandatory and what
19 SCDC determines goes to whatever charges. I have four right
20 now that I'm going back in front of Circuit Court judges
21 because the judge clearly wanted them to get the time and SCDC
22 doesn't want to do it. He was in that whole time. I never
23 trust that statute to say what they should be incarcerated
24 for. That's why we try to ask the judge to put a number on
25 the sheet because if they put a number on the sheet, SCDC does

1 tend to go with that and Judge Keesley was nice enough to
2 actually put the number on the sheet because we were worried.
3 Particularly Victor. He was worried he wasn't going to get
4 any credit for the probation rev because once again, I think
5 it might have been the same thing. They served some of the
6 warrants but then they waited like almost 18 months to serve
7 other warrants even though he was in custody for that event.

8 Q. Okay. I am going to now hand you indictment number
9 2011-GS-41-150. Mr. Stitely, what does that appear to be from
10 or related to?

11 A. This is the conviction on the trial case. The
12 indictment and sentencing sheet from the case we tried.

13 MS. GOLDBERG: No further questions.

14 THE COURT: Okay. Cross.

15 MS. VALENZUELA: Yes, sir, Your Honor.

16 CROSS EXAMINATION

17 BY MS. VALENZUELA:

18 Q. Mr. Stitely, is there anything that is preventing
19 you from going in front of the sentencing judge, Judge Russo
20 to ask about what he meant when he wrote time served, credit
21 for time served on the sentencing sheet for the guilty plea?

22 A. I don't know. I typically would have gotten off my
23 involvement in the case once a PCR attorney is -- I don't
24 think it's appropriate for me to proceed forward on anything
25 for a client once they have new counsel on something else. So

1 my honest answer is I'm sure once Victor sent me the letters
2 -- Mr. Jones. Sorry. -- once he sent me the letters saying
3 there's something wrong, I know we at least sent something to
4 the Clerk's Office or the jail to get one of those printouts
5 but other than that, once he gets PCR counsel I typically try
6 not to interact with them. Actually I usually would send them
7 a letter saying you have other counsel. It's not appropriate
8 for me to talk to you at this point.

9 Q. The cases that you mentioned that you're dealing
10 with right now, the four different ones where you're going
11 back in front of the Circuit Court judge, why are you going
12 back in front of the Circuit Court judge to ask about the
13 sentencing?

14 A. I have a probation case with Judge Hood that SCDC
15 has determined that they wanted to do a CSP instead of just a
16 straight termination which is what Judge Hood had ordered so
17 that was one of them. I have another case, I believe, with
18 Judge Gee where they did a YOA and an adult sentence and they
19 messed, I say they, maybe they did it right, SCDC wasn't sure
20 what they wanted to do so they ran them consecutive and that
21 was not the intent. I have another one in front of judge
22 McMahon where he gave someone Shock incarceration and he
23 wanted it Shock incarceration on the adult sentence but SCDC
24 made a determination they didn't think the judge could do that
25 so they went ahead and tried to give him eight years where the

1 judge wanted him to do 90 days and I can't remember the other
2 one but I know I have another one out there.

3 Q. Why are you going in front of the actual sentencing
4 judge to do that?

5 A. Because they're the one who wrote on the sentencing
6 sheet.

7 Q. So the sentencing judge is the one who decides how
8 much credit he's going to get, the applicant in this case?

9 THE COURT: Ask that again.

10 BY MR. VALENZUELA:

11 Q. Yes. The sentencing judge is the one who decides
12 how much time he's gonna get for the credit that's due in this
13 case?

14 A. I think it's a combination between the sentencing
15 judge and the way SCDC makes whatever determinations they want
16 to. In the one case with Judge Hood he's now issued three
17 separate orders and SCDC still doesn't want to comply. So I
18 would like to say it's the sentencing judge but I think SCDC
19 also does, unless the judge in my experience, and I have been
20 doing it about 12 years now, not as long as a lot of people,
21 if we can't get the Judge to write I want this much time on
22 the sentencing sheet, it usually doesn't work out that way.

23 Q. So let's back up a little bit. With the Judge
24 Keesley sentencing sheet that you have there, this started off
25 with a trial and the Court has the transcript, but correct me

1 if I'm wrong, Mr. Stitely, but this started off with a trial
2 where your client was indicating to the Court he really wished
3 to plea but he just felt like he was being forced into a trial
4 situation because the Solicitor's Office would not give him
5 any sort of offer and he just did not feel like it was an
6 armed robbery?

7 A. The whole time still even after the jury came back
8 Mr. Jones maintained he never had a weapon of any kind. I'll
9 say this was a drug deal gone bad. That was his position from
10 the beginning. We stood up before we put the jury in the box
11 and he asked to speak to Judge Keesley and he told the judge,
12 look, this is what really went down. I never had a gun. I
13 don't want to go to trial. The Solicitor, Mr. Maye, is like
14 that sometimes. He would not come off of it whatsoever. He
15 told them there would be no offer which he likes to do. At
16 some point he wrote that there was on this sheet but that
17 never really happened. I don't know why he wrote it that way.
18 He told Mr. Jones that he was going to make him do this one
19 and then LWOP him on the other one so we went ahead and tried
20 it.

21 Q. And this is all before Judge Keesley the sentencing
22 judge, correct?

23 A. Yes, ma'am. It was in open court right before the
24 jury was sworn. I think we picked the jury and then he asked
25 to speak to the judge before the jury. I don't remember the

1 timeline exactly, but yeah, in open court.

2 Q. And Judge Keesley indicated that if he went to trial
3 and he was found guilty, Judge Keesley would have to sentence
4 him to the mandatory minimum of 10 years, correct?

5 A. Between 10 and 30. I think it was only one
6 indictment that we went forward on. So I'm sure Judge Keesley
7 told him I can't tell you what will happen but if you are
8 convicted, you will be sentenced between 10 years and 30
9 years.

10 Q. Okay. And then to change to the Judge Russo case,
11 this is a few months later and this is your client appearing
12 before Judge Russo to plead guilty and the Solicitor in the
13 case informed Judge Russo that your client had been brought to
14 the courthouse in order to be served with life without parole,
15 with LWOP notice; is that correct?

16 A. It sounds like something the Solicitor would have
17 done. I don't specifically recall. But he told us and I
18 don't know if it was that day or another day or I relayed it
19 to Mr. Jones if you don't plea to -- initially I think he
20 wanted six years -- to five years on the common law, I'm going
21 to serve you with an LWOP notice on top of this indictment.

22 Q. So the Solicitor informs Judge Russo and the Court
23 has the guilty plea transcript to look at, but does not, in
24 fact, serve LWOP notice and in fact reduces the charge as part
25 of this agreement and dismisses associated charges, correct?

1 A. That's correct. That was what we did.

2 Q. And Judge Russo was informed of this plea
3 agreement?

4 A. Yes.

5 Q. And Judge Russo elected to sentence the applicant to
6 a consecutive period of time consecutive to Judge Keesley's
7 sentence in the trial?

8 A. It was negotiated to five years consecutive on the
9 non violent common law or the non 85 percent version. That
10 was a negotiated sentence that Judge Russo agreed to go along
11 with.

12 Q. And is there any question that your client received
13 the two years credit on Judge Keesley's sentence?

14 A. He got the two years on Judge Keesley's sentence
15 from what I can tell looking at the SCDC records. I have the
16 SCDC time calculator sheet but it looks like they didn't give
17 him any credit for the strong arm.

18 Q. And then in the guilty plea during the guilty plea,
19 and I think this is part of what you read out earlier, you did
20 inform Judge Russo that it can be tricky if he doesn't write
21 the exact credit that he would like to give the applicant?

22 A. Yes.

23 Q. And then Judge Russo at the end of the transcript
24 says that he is going to give him credit for anything that
25 SCDC terms credit for time served, correct?

1 A. Correct.

2 MS. VALENZUELA: Nothing further, Your Honor.

3 MS. GOLDBERG: Briefly, Your Honor.

4 THE COURT: Okay.

5 REDIRECT EXAMINATION

6 BY MS. GOLDBERG:

7 Q. Mr. Stitely, the cases you were talking about,
8 unrelated cases you were talking about that are pending, did
9 you file a motion to reconsider on all of those?

10 A. I don't think so.

11 Q. You just sent a letter to the judge?

12 A. Pretty sure.

13 Q. Okay. And you don't recall if you did in Mr. Jones'
14 case?

15 A. Oh. Oh. You're talking about -- I'm sorry. I
16 thought you were talking about his other cases.

17 Q. No.

18 A. Usually we probably would have e-mailed the judge's
19 law clerk and said, judge, this is what's going on. Can we
20 sneak in front of you? Judge Hood is really good about
21 responding to those. Knowing Judge McMahon, he said SCDC is
22 gonna do what they're gonna do. I didn't do anything else on
23 this one. If it was my calculation, I would have said he
24 should have gotten credit back to the original date. I don't
25 ever try to tell -- I think Judge Russo said give him credit

1 for the time he's done. I don't know how SCDC does that. We
2 probably could have went back in front of him to clarify but
3 at that point he did have PCR counsel and I would not have
4 thought it would be appropriate to file additional things on
5 his behalf because in theory we are against each other.

6 Q. So your belief was that Judge Russo was saying that
7 he should get credit for the time that he has done for his
8 events?

9 A. He said he should get all, and I think he said all
10 the time that he has done as it relates to this charge. I
11 think that's what the transcript said.

12 Q. And even if Saluda - even if SCDC took the
13 affirmative step to contact the Saluda County Detention Center
14 and find out how much time that is, would they have any way of
15 knowing based on the directly presented indictment?

16 A. Yeah. And you spoke to me about this. It would
17 have been difficult and I didn't even think about it at the
18 time but the indictment doesn't reference the original
19 warrants or the original indictments so I have seen it plenty
20 of times in the past if you plea to a direct presentment, the
21 jail doesn't know to credit you that time when they send the
22 forms over to SCDC. I have no idea internally how that goes
23 down or what steps either SCDC or Saluda County would have
24 taken to find his credit. But it was a negotiated sentence.
25 Like I said, I would have said he should have gotten credit

1 back to 2009 but I don't know. Obviously it didn't work out
2 that way for him.

3 MS. GOLDBERG: No further questions.

4 THE COURT: Step down.

5 MS. GOLDBERG: Your Honor, at this time I would like
6 to call Victor Jones.

7 Thereupon,

8 VICTOR JONES

9 after having been first duly sworn, testified as follows,

10 THE COURT: State your full name for the record.

11 THE WITNESS: Victor Anthony Jones, Junior.

12 DIRECT EXAMINATION

13 BY MS. GOLDBERG:

14 Q. Good afternoon, Mr. Jones. Do you recall when you
15 were arrested? What date you were arrested?

16 A. Yes, ma'am. I was locked up on July 14th, 2009.

17 Q. By who? What entity?

18 A. Uhm, Lexington County.

19 Q. At some point after, were you served with the Saluda
20 County warrants and indictments we are talking about today?

21 A. Yes, ma'am. Two weeks later I was served.

22 Q. Do you remember the date?

23 A. It was like the 22nd. I can't recall exactly but it
24 was around the 22nd. When I bond out of Lexington County, I
25 was served.

1 Q. If the records indicated July 23rd, does that sound
2 accurate to you?

3 A. Yes, ma'am.

4 Q. You are aware that you were charged with two
5 separate robbery incidents generally speaking --

6 A. Yes, ma'am.

7 Q. -- in Saluda?

8 A. Yes, ma'am.

9 Q. Did you get warrants for both incidents on the same
10 day?

11 A. On the same day I received like five, six different
12 charges. Uhm, two armed robberies, a conspiracy, uhm, a
13 distribution charge and I think a gun charge or something like
14 that.

15 Q. And that was for two separate incidents, correct?

16 A. Yes, ma'am.

17 Q. Did you bond out from Saluda at some point?

18 A. Yes, ma'am.

19 Q. Do you know when that was?

20 A. That was on I think October or November. I can't -
21 I can't recall the exact date but it was around the 9th or
22 something like that. I went to Richland County.

23 Q. If the Saluda County Detention Center record
24 indicates that you bonded out November 9th, does that sound
25 accurate?

1 A. Yes, ma'am.

2 Q. You didn't go home?

3 A. No, ma'am.

4 Q. You went to Richland County?

5 A. Yes, ma'am.

6 Q. What did you go to Richland County for?

7 A. I went to Richland County for probation violation.

8 Q. When you bonded out, did you know you were going to
9 be transferred, transported to Richland County?

10 A. No, ma'am.

11 Q. Okay. What was the basis of the probation
12 violation?

13 A. Uhm, what was the basis of it?

14 Q. Why did they violate you?

15 A. They violated me because I had more charges in
16 Saluda County.

17 Q. The robberies?

18 A. Yes, ma'am.

19 Q. At some point did you go to -- At some point did you
20 go home from Richland County?

21 A. No, ma'am.

22 Q. Where did you go next?

23 A. I went to, uhm, Kirkland. It's SCDC.

24 Q. Do you remember when you went to SCDC?

25 A. Like in November. Like I was in Richland County for

1 three days and one morning they just came and get me.

2 Q. So just a few days later you went ahead and went to
3 Kirkland?

4 A. Yes, ma'am.

5 Q. When were you released from SCDC?

6 A. I was released like in 2011 or something like
7 that.

8 Q. Do you remember about what month?

9 A. Uh, I don't know if it was January or something. It
10 was '12, '11, one of the two.

11 Q. Possibly January?

12 A. Yes, ma'am.

13 Q. 2011 or 2012?

14 A. 2000 -- I really can't recall but I know it was
15 around one of those years '11 to '12.

16 Q. After you were released from SCDC, did you go
17 home?

18 A. Oh, yeah. I had went home in 2012, January the 31st
19 or the 15th. No. January the 13th, 2012.

20 Q. 2012. That's when you went home from SCDC?

21 A. Yes, ma'am.

22 Q. Had there been anything else during this time or
23 just the probation violation?

24 A. Probation violation. I was going back for -- When I
25 got out, they was just letting me know, well, you gonna have

1 to come to court for all of your charges in Saluda County, the
2 armed robbery and recharges or whatever.

3 Q. So you got out in January 2012 and you started going
4 to rollcalls. Is that what you're talking about?

5 A. Yes, ma'am.

6 Q. Did you actually go to some of your roll calls?

7 A. Yes, ma'am. I went to all of them.

8 Q. How often were they?

9 A. They have it every -- When they start court up in
10 Saluda County, they have it everyday whenever they started
11 that month or whatever.

12 Q. So every month there would be a week you would have
13 to go?

14 A. No. Every month every -- That month you go.
15 Whenever they have court, it's like a two week period and you
16 go everyday.

17 Q. When you got out of SCDC, how did you find out about
18 your court dates?

19 A. Uhm, I had, uhm, was served in SCDC. They had came
20 to get me to go to court for the armed robbery to make a plea
21 but I didn't plea to it so I did the rest of my little time at
22 SCDC for the probation violation.

23 Q. Did they tell you when you went to court when you
24 would need to show back up for roll call?

25 A. No. My probation officer had told me.

1 Q. They got word to you through your probation
2 officer?

3 A. Yes, ma'am.

4 Q. When you started going to roll call, were you
5 appearing for all of your charges on the same days or did you
6 have different court dates for different charges?

7 A. All of them.

8 Q. So when you went to rollcall, you were there for all
9 of your pending charges?

10 A. Yes. That's what I conclude.

11 Q. At some point did you receive a bench warrant?

12 A. I had received a bench warrant like four months
13 later for no reason.

14 Q. And then you were arrested on the bench warrant?

15 A. Yes, ma'am.

16 Q. And when was that?

17 A. It was in May. Like May the 20 something.

18 Q. And you stayed in jail until your jury trial?

19 A. Yes, ma'am.

20 Q. Did you see a copy of your bench warrant?

21 A. No, ma'am.

22 Q. Did you believe that you had been bench warranted on
23 all of your charges?

24 A. I know -- I really didn't know. I just knew my
25 mother had contacted me and said I have a bench warrant. You

1 need to turn yourself in and that's what I did.

2 MS. GOLDBERG: No further questions.

3 MS. VALENZUELA: Nothing for this witness, Your
4 Honor.

5 THE COURT: Thank you. Step down.

6 MS. GOLDBERG: Your Honor, no further witnesses from
7 the applicant. I do have argument.

8 THE COURT: Anything from the State?

9 MS. VALENZUELA: No, Your Honor. Just argument when
10 Your Honor is ready.

11 THE COURT: Okay. Tell me about it.

12 MS. GOLDBERG: Thank you, Your Honor.

13 THE COURT: How many days are you asking for?

14 MS. GOLDBERG: Well, I'm going to try to break that
15 down for you now. There are three different periods of
16 time here that are at issue for different reasons. The
17 first would be from his arrest which was on July 23rd,
18 2009 until he bonded out November 9th, 2009. That's 110
19 days.

20 THE COURT: What was the date of the arrest?

21 MS. GOLDBERG: The date of the arrest was July 23rd,
22 2009.

23 THE COURT: Okay. Until?

24 MS. GOLDBERG: He bonded out November 9th, 2009.

25 THE COURT: For a hundred and how many?

1 MS. GOLDBERG: 110.

2 THE COURT: What was he arrested for?

3 MS. GOLDBERG: He was arrested for all of his
4 charges and I do --

5 THE COURT: All of the warrants served at that time?

6 MS. GOLDBERG: They were all served at that time and
7 the warrants at issue here that I'm really arguing about,
8 those are some of the warrants that I handed up to the
9 Court The arrest warrant says the date he was served on
10 it so that's clear.

11 THE COURT: All right.

12 MS. GOLDBERG: Your Honor, the only reason he hasn't
13 received credit for this time is because he pled on a
14 directly presented indictment. My best guess is the only
15 reason the State nolle prossed the original indictments
16 and then directly presented one is because there was so
17 many typos and errors on the original ones as can be seen
18 in the documents that I have provided, the handwriting.

19 THE COURT: Are these the only days you are
20 concerned about?

21 MS. GOLDBERG: This is the first block. But I think
22 this section is the clearest that he should receive time
23 for this because he did, in fact, do this 110 days on
24 this particular incident that he was convicted of when he
25 pled guilty to strong armed robbery and received a five

1 year sentence. The only reason that he is not, like I
2 said, is because SCDC doesn't know that these nolle
3 prossed warrants correspond to the same charge and
4 because it was directly presented there's just no
5 paperwork correlation without putting forth an
6 explanation before the Court That's number 1. I think
7 that that is very clear.

8 Section number 2, which is actually on the back end,
9 has to do with when the bench warrant was served. The
10 bench warrant was served on May 18th, 2012 and he
11 remained incarcerated on that until he was sent to SCDC
12 on November 9th of 2012. And the number of days is --

13 THE COURT: And the bench warrant was for what
14 charge?

15 MS. GOLDBERG: That is the other paperwork error
16 that I'm gonna allege here. The document that I provided
17 you from SCDC - I mean from Saluda County jail says that
18 the bench warrant is only for the indictment ending in
19 150.

20 THE COURT: Which one is that?

21 MS. GOLDBERG: That is actually, in fact, the one he
22 had a jury trial on.

23 THE COURT: That's the armed robbery. Okay.

24 MS. GOLDBERG: Correct. The problem is that his
25 court dates he was going to were for all charges and when

1 he missed a court date, he missed the court date for all
2 charges. The bench warrant should have reflected all
3 pending charges on the bench warrant. It did not. I
4 assume there's some sort of ease of paperwork or laziness
5 by the Solicitor's Office here by them only listing one
6 indictment number. So my argument is that out of
7 fairness he should be entitled to that time between the
8 bench warrant at least when he went to SCDC or his plea
9 because he should have been serving time on that bench
10 warrant as well. He had missed those court dates. It
11 was the exact same court dates and that document should
12 have been clear. That is the second block of time, Your
13 Honor.

14 THE COURT: Who has the burden of proof in these
15 things?

16 MS. GOLDBERG: The applicant.

17 THE COURT: Okay.

18 MS. GOLDBERG: The third would simply be the time he
19 was in on the probation violation or the parole
20 violation. That's simply just due to the fact that these
21 charges were, in fact, pending. He wasn't being held on
22 them. There was no detainer. I can't make that argument
23 but they were, in fact, pending during that time. He was
24 violated because of his pending Saluda County charges.

25 My argument there is not necessarily a question of

1 whether he is statutorily or legally entitled to that
2 time because quite frankly I don't think that there is a
3 law that says he is. However, the argument is
4 ineffective assistant of counsel because Mr. Stitely
5 could have presented that information to the sentencing
6 judge and allow the sentencing judge to consider it in
7 sentencing just as he did during the jury trial. He
8 didn't present any of this detailed information at the
9 time of sentencing to the five years, not the original
10 time that I think he definitely is entitled to and not
11 either of the other which I think is discretionary.

12 For that reason I think it may be appropriate to
13 remand for a new sentencing for the sentencing judge to
14 actually be aware of and consider all of this. However,
15 at a minimum I do think that he should legally be
16 entitled to that original 110 days.

17 Just as far as case law goes, Your Honor, the
18 Attorney General originally mentioned Cooper v. State
19 where she argued that these issues are not cognizable
20 under PCR. I'll point out in this case, in Cooper the
21 Court says Cooper is trying to enforce his sentence under
22 the law. He was trying to enforce the sentence without
23 any explanation. He just thought SCDC was interpreting
24 it incorrectly. That's not what we are doing here.
25 Especially as to some of our issues we are arguing that

1 Mr. Stitely should have presented this information to the
2 Court for the Court to consider. That can't be addressed
3 any way other than ineffective assistance of counsel.

4 Further, there is a case Blakely versus State which
5 actually was decided around the same time, March of 2000
6 which does allow a PCR judge to consider credit. That
7 has to do with a detainer in another jurisdiction at that
8 time. It did say it was allowed during PCR. So I don't
9 think it's a clear question of what Your Honor should
10 consider but I would argue that you should be allowed to
11 consider all of it and that's all, Your Honor.

12 THE COURT: Okay. Thank you. Yes, ma'am.

13 MS. VALENZUELA: Your Honor, just starting going
14 backwards Blakely versus State was decided in the same
15 year as Cooper versus State. The Supreme Court
16 acknowledges in Cooper versus State that because that
17 kind of new timeline and you need to start bringing this
18 under APA starts in 2000; that the Supreme Court was
19 going to hear and address these issues in a different
20 manner than it would need to be brought in the future and
21 so it falls within the same kind of procedural footing as
22 Cooper meaning the Court said from here on out this is
23 not the way to bring these cases.

24 I understand that counsel is trying to argue that
25 this is ineffective assistance of counsel, however,

1 counsel did testify today and the transcript does show
2 that he asked the Court -- First that the prosecutor
3 asked the Court for the time served that was appropriate
4 in this case and then that the defense attorney also
5 asked the judge and pointed out to the judge things that
6 could make it a little bit clearer if he writes down what
7 the exact dates are that he wanted to do and that would
8 include any sort of discretionary discussion of the time
9 served that he wanted to give.

10 And then I would point out to the Court that the
11 point that the State was trying to make that it may not
12 have been clear based on the cross and so I want to make
13 sure that I communicate that clearly is that it is up to
14 the sentencing judge how much he determines needs to be
15 granted in terms of the credit for time served and I
16 think that it is not the appropriate way to go in front
17 of a separate judge who did not hear the facts presented
18 to him or her and ask that judge to decide something that
19 was really within the other court's decision to make and
20 within that court's gambit.

21 So not only is this not appropriate for PCR in terms
22 of the challenge, the credit for time served is most
23 appropriately presented to Judge Russo since he was the
24 sentencing judge for this case, Your Honor.

25 THE COURT: Okay. That was the first one. I'm

1 concerned about the 110 days. The other two no. But if
2 he served time on this, he should get credit for it.

3 MS. VALENZUELA: If he served time with the direct
4 indictment. I still don't think that this is the
5 appropriate way.

6 THE COURT: I'm not sure how I do it. I can't do
7 anything other than send it back.

8 MS. GOLDBERG: Your Honor, that is what we are
9 asking for, just to remand for sentencing.

10 MS. VALENZUELA: I don't know that --

11 THE COURT: I mean, he could be looking at 15
12 years.

13 MS. VALENZUELA: On his sentence.

14 MS. GOLDBERG: Well, Your Honor, not if it's
15 remanded for sentencing which is allowed by case law. If
16 it's remanded for resentencing, then the negotiations
17 would stay in place which means the plea would not be
18 overturned. The plea negotiated sentence for five years
19 would not be changed. It would only be basically
20 mitigation discussed. It would be a resentencing hearing
21 which means, A, an attorney could present to the judge
22 the credit issue and the sentencing judge could amend as
23 necessary.

24 MS. VALENZUELA: I don't know what case law counsel
25 is referring to that he would be able to do a

1 resentencing at the most favorable position where you get
2 to keep your negotiated plea and only present additional
3 favorable information and have nothing else changed. I
4 don't believe that that would be the case that you could
5 order that.

6 THE COURT: Yeah. What case are you talking about?

7 MS. GOLDBERG: I've got it. I can send the Court
8 that. I think that's pretty standard. There's actually
9 a lot of case law out there because there are cases that
10 are remanded, overturned in their entirety and then there
11 are cases that are remanded just for resentencing.

12 THE COURT: Well, I would like to -- I would be
13 interested in seeing that, that you could send it back
14 and go send it back for sentencing but he's limited to
15 the top end.

16 MS. GOLDBERG: Well, Your Honor, I guess that --

17 THE COURT: I would like to see that.

18 MS. GOLDBERG: If I could explain it a little bit
19 more. I know for a fact there are several cases out
20 there that remand for resentencing.

21 THE COURT: What are they?

22 MS. GOLDBERG: Well, I can provide the Court with
23 that. I didn't know that that was going to be an
24 argument today because I thought that was clear. But he
25 wasn't charged with his conviction. We was charged with

1 armed robbery. He pled when the negotiations were that
2 he would plea to strong armed robbery for five years. So
3 I think if this is remanded for sentencing, that can't
4 undo the terms of the negotiation because that would, in
5 fact, overturn the case as a whole. So I think it would
6 just be remanded for sentencing for any remaining issues
7 which were not a part of the negotiation because if the
8 five years isn't guaranteed, the mental - the agreement
9 for strong armed is affected as well so that's not what
10 we are trying to do.

11 THE COURT: I would like to take a look at those
12 cases. The issue before me is whether or not there's
13 ineffective assistance of counsel that would negate the
14 judgment that's been entered. I don't think there's any
15 exception in South Carolina that carves out what you're
16 talking about.

17 MS. GOLDBERG: Your Honor, I would be happy to
18 provide the Court. I think, in fact, there's two
19 different types of cases. There's cases that do allow a
20 case to be remanded for resentencing. There's also, I
21 believe, although I would have to be more clear, I would
22 have to look at it before I want to promise anything,
23 that there's cases that say that a PCR court can fashion
24 whatever remedy they think best fits.

25 For instance, there are cases out there where a plea

1 offer wasn't extended to an applicant and if the Court
2 finds, which they have in a few cases, evidence that the
3 plea offer did, in fact, exist and the applicant did not
4 know about it and it was unfair, the Supreme Court has
5 remanded those cases back for the plea offer that the
6 applicant never received. It's very specific in remedy
7 and these type of cases are allowed. I'm happy to
8 provide the Court some examples.

9 THE COURT: I'm familiar with that case.

10 MS. GOLDBERG: I'm sorry.

11 THE COURT: I am familiar with the case that you're
12 talking about.

13 MS. GOLDBERG: So similar cases have said that PCR
14 courts can tailor a judgment to the proper remedy rather
15 than overturning a conviction in whole when justice
16 dictates.

17 THE COURT: Well, I would be curious to see that.
18 I'm not familiar with it. Okay. I'll take it under
19 advisement. Send it to me. Okay.

20 MS. GOLDBERG: Do you want me to e-mail your clerk
21 with kind of just a memo or a brief outline on some of
22 those cases and that particular issue only or were you
23 gonna ask for proposed full orders from both sides?

24 THE COURT: Well, that's unnecessary work. Send me
25 a little memo with the case cites and let's take a look

1 at what the cases say. I don't think -- You know, it
2 would be very difficult for me to say that counsel was
3 ineffective in this case. It's just a question whether
4 or not how the remedy is --

5 MS. GOLDBERG: And if we're only talking about the
6 110 days, the only way that counsel was ineffective was
7 just by not informing the Court how much time he had been
8 in jail that he was actually entitled to and the only
9 person who can let the Court and SCDC know that in this
10 situation is trial counsel until a PCR.

11 MS. VALENZUELA: I will say that there was no
12 testimony today as to what SCDC communicates with the
13 Saluda County Sheriff's Department in terms of the
14 warrants and I think the only testimony that was elicited
15 was Mr. Stitely saying that he's not sure if whenever
16 they reach back and say that this was a direct indictment
17 if the warrants were linked to it and so I would just
18 clarify that I don't think factually it was presented in
19 terms of a clear cut.

20 THE COURT: It may be that they haven't met their
21 burden of proof, but do you disagree that this guy got
22 short changed 110 days?

23 MS. VALENZUELA: If I knew for sure that SCDC was
24 not calculating those 110 days, then I would agree that
25 those 110 days would be to count towards his sentence.

1 MS. GOLDBERG: Well, I can show you that right now.
2 This is an SCDC inmate detail report that was printed out
3 today. I'll hand this up to Your Honor. The first line
4 on current offenses, the strong armed robbery, five year
5 sentence with the corresponding indictment number.

6 THE COURT: I take your word for it. You're an
7 officer of the Court.

8 MS. GOLDBERG: Thank you, Your Honor. It says that
9 the start date on that sentence is February 14th, 2013
10 which was the date of the guilty plea so that is the
11 start date for that sentence. He's not receiving any
12 credit on that five years prior to the day of his plea
13 which is the day he was served with the directly
14 presented indictment.

15 THE COURT: All right. Let me talk with the lawyers
16 up here for a minute.

17 (Side bar off the record.)

18 THE COURT: Mr. Jones, I'm taking it under
19 advisement to make a decision about what to do and when
20 you do get out, don't be a frequent flyer, okay? Turn
21 around. Take some classes and rehabilitate yourself.
22 That's the best thing for you in the long run, okay?

23 MR. JONES: Yes, sir.

24 THE COURT: Make your family proud of you. Okay.
25 Thank you.

1 MS. VALENZUELA: Thank you, Your Honor.

2 MS. GOLDBERG: Thanks.

3 WHEREUPON, THE HEARING WAS CONCLUDED.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

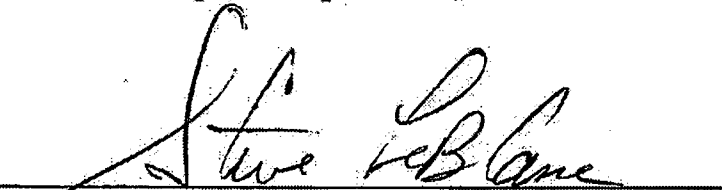
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 1st day of August, 2016.

11 I FURTHER CERTIFY that the forgoing 49 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 14th day of September, 2017.

17
18 
19 Steven E. LeBlanc, Sr., R.P.R.
20 Eleventh Circuit Court Reporter
21 State of South Carolina.
22
23
24
25



SALUDA COUNTY DETENTION CENTER

Janice B. Ergle, Jail Administrator

October 19, 2015

Re: Victor Anthony Jones

To whom it may concern:

Victor Anthony Jones was incarcerated at the Saluda County Detention Center on July 23, 2009 on Warrant numbers H-995739, H-995737, H-995740, H-995741 and H-995738. Victor Anthony Jones was released from the Saluda County Detention Center on November 9, 2009. Also he was booked in on May 18, 2012 for bench warrant 2012B4100100001 arising out of indictment 2011GS4100150, and released on November 9, 2012.

Captain L. Kelly

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)

INDICTMENT: 2013-GS-41-0076

vs.)

Victor Jones,)

CONSENT ORDER REGARDING
CREDIT FOR TIME SERVED

Defendant.)

2016 SEP 12 AM 9:04
CLERK OF COURT
SALUDA CO. S.C.

1. WHEREAS, Victor Jones was served with warrants H995737 for Armed Robbery, H995739 for Criminal Conspiracy, and H995738 for Possession of a Firearm during commission of a crime on July 23, 2009. A surety bond of \$125,000 was set for this offense. Victor Jones remained in jail until on or about November 9, 2009 when he was bonded out. During this time he served approximately 110 days in jail.

2. WHEREAS, on October 7, 2009 Victor Jones was indicted for this incident under indictment numbers 2009-GS-41-520 for Armed Robbery, 2009-GS-41-517 for Criminal Conspiracy, and 2009-GS-41-519 for Possession of a Firearm during commission of a crime.

3. WHEREAS, on February 4, 2013 the State directly presented indictment 2013-GS-41-076 for Armed Robbery related to the same incident as the above referenced indictments. The language on the indictment including the date of the offense, description of the offense, and listed victim and co-defendant names makes it clear that this indictment was for the same incident as the others listed above.

4. WHEREAS, on February 14, 2013, the Defendant was transported to court from SCDC and entered a guilty plea to the directly presented indictment 2013-GS-41-076. This indictment had not been served on the defendant prior to the date of the plea. On this same date indictments 2009-GS-41-520, 2009-GS-41-517, and 2009-GS-41-519 were *nolle prossed*.

5. WHEREAS, it is clear that the defendant was incarcerated on these charges for 110 days originally (July 23, 2009 through November 9, 2009) prior to his guilty plea.

6. WHEREAS, during the plea on February 14, 2013, the Solicitor and Defense counsel requested that the Court provide notate that the Defendant should receive credit for the time he had served for this incident but did not explain to the Court how much time that should include. Further, neither counsel informed the Court that the Defendant was pleading on a previously un-served and directly presented indictment and that the time he should receive credit for was time he served on *nolle prossed* indictments for the same incident and the time he served prior to his guilty plea.

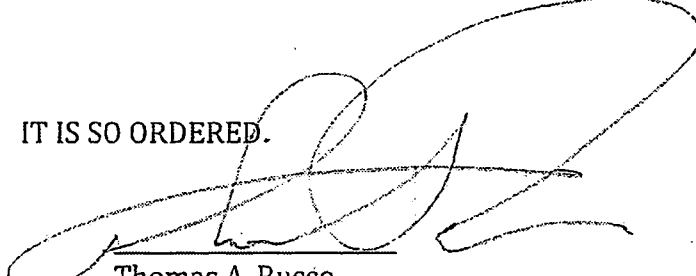
7. WHEREAS, the South Carolina Department of Corrections was not previously aware of any time Victor Jones had served on the other dismissed indictments and therefore he is not receiving credit for the time he served in jail.

8. WHEREAS, the parties to this consent order are aware and agree that indictment 2013-GS-41-076 was for the same incident as indictments 2009-GS-41-520, 2009-GS-41-517, and 2009-GS-41-519 and the confusion regarding credit for the time he served was caused by the duplicate indictment issued. The parties agree that the

Defendant should be given credit towards his sentence for the ~~time~~TH 110 days he served in jail prior to his guilty plea.

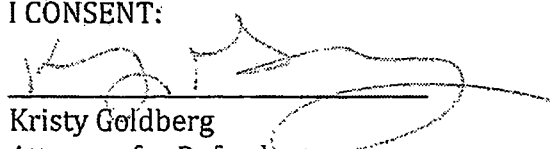
IT IS HEREBY ORDERED, with the consent of both parties, that Victor Jones shall receive pre-trial incarceration credit towards his sentence on Indictment 2013-GS-41-076 in the amount of 110 days.

IT IS SO ORDERED.


Thomas A. Russo
Eleventh Circuit Court of General Sessions

Florence, South Carolina.
August 30, 2016

I CONSENT:


Kristy Goldberg
Attorney for Defendant

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
803-667-6633
803-799-4059 (fax)
kristy@kristygoldberglaw.com

I CONSENT:


Johanna C. Valenzuela
Senior Assistant Deputy Attorney General
On behalf of the State of South Carolina
1000 Assembly Street
Columbia, SC 29201
(803) 734-3733
jvalenzuela@scag.gov

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

FILED

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Victor Anthony Jones, #337908,)

CLERK OF COURT
SALUDA CO. S.C.
C/A No.: 2013-CP-41-0217

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

This matter comes before the Court by a *pro se* application for post-conviction relief filed October 31, 2013, by Victor Anthony Jones (Applicant). Respondent, through Assistant Attorney General J. Clayton Mitchell, made a return dated June 19, 2014. Kristy Goldberg, Esquire, was appointed as counsel. On August 1, 2016, Applicant presented his claims in an evidentiary hearing. Respondent was represented by Senior Assistant Deputy Attorney General Johanna C. Valenzuela. Applicant and trial counsel Benjamin A. Stitely, Esquire, presented testimony. The Court had before it the Clerk of Court records, the South Carolina Department of Corrections' records, and the trial transcript. This Court has been provided a transcript of the PCR hearing of August 1, 2016. This Court also has reviewed the attached consent order filed September 12, 2016, signed by both parties and the Honorable Thomas A. Russo, in which Applicant is granted credit for time served for his pre-trial detention of one hundred ten days.

Upon review of the plea testimony, the appellate court record, the records of the Clerk of Court, the evidence presented in this proceeding, and the filed consent order signed by Judge Russo, this Court dismisses the application for post-conviction relief.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant

to orders of commitment of the Clerk of Court for Saluda County. Applicant was indicted at the February 2011 term of the Saluda County Grand Jury for Armed Robbery (2011-GS-41-0150). Applicant was represented by Benjamin A. Stitely, Esquire. Applicant proceeded to trial before the Honorable William P. Keesley from October 30, 2012 to November 2, 2012. The jury found Applicant guilty as indicted. Judge Keesley sentenced Applicant to eleven years confinement.

Applicant was also indicted for armed robbery (2009-GS-41-520), criminal conspiracy (2009-GS-41-517), and possession of a firearm during commission of a crime (2009-GS-41-519). Applicant was served warrants for these charges on July 23, 2009. Applicant pled guilty February 4, 2013, to strong arm robbery (2013-GS-41-076) related to these charges. In exchange for his plea, Applicant received a consecutive term of five years' imprisonment with credit for time served.

II.

In his *pro se* application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that
 - a. "My lawyer told me not to get on the stand because he would get the last closing argument, and that it wouldn't be good to go on the stand with my record, but I felt I was forced not to."
 - b. "Ineffective representation of counsel my lawyer."

On November 25, 2014, Applicant, via PCR counsel, amended his application to also allege:

- (a) Ineffective assistance of trial counsel - counsel failed to advise Applicant of his right to testify in a limited capacity during the Jackson v. Denno hearing.
- (b) Ineffective assistance of trial counsel - counsel was ineffective by improperly persuading Applicant not to testify in front of the jury during the trial.
- (c) Ineffective assistance of trial counsel - failure to

investigate.

Subsequently on April 23, 2015, Applicant filed a Second Amended Application for Post-Conviction Relief, which amended the indictment for which Applicant sought relief (now 2013-GS-41-076, Strong Arm Robbery) and withdrew his prior claims of ineffective assistance regarding indictment 2011-GS-41-1150. In his Second Amended Application, Applicant alleged, "Trial counsel failed to ensure that the Court awarded him credit for time served as statutorily required."

Applicant proceeded only under the second amended ground at the PCR evidentiary hearing.

III.

At the hearing, plea and trial counsel Benjamin Stitely testified Applicant was in and out of jail in Saluda County on probation revocations when he first attempted to make contact with his client. (T. p. 8.) Applicant's family retained counsel for several pending charges. (T. p. 8-9.) Counsel said Applicant had two separate robbery cases, the second one of which was a stronger case for the State. (T. p. 9.) The other case, which occurred first in time, was "a complete toss-up" for the State. (T. p. 10.) Counsel said the solicitor proceeded to trial on the stronger charge and Applicant then pled guilty after the trial to the weaker charge to avoid the enhanced sentencing of the recidivism statute. (T. p. 10.) Applicant received a five year consecutive sentence for the robbery to which he pled. (T. p. 11.)

Counsel testified Applicant was initially charged with criminal conspiracy (2009-GS-41-517), possession of a firearm during the commission of a crime (2009-GS-41-519), and armed robbery (2009-GS-41-520) for an incident occurring on May 26, 2009. (T. p. 12.) Applicant was not served with these warrants until he was arrested on July 23, 2009 for a separate armed

robbery charge. (T. p. 13-14.) Following the trial for the other armed robbery charge, the indictments listed above were nolle prossed, and Applicant pled guilty to strong arm robbery (2013-GS-41-076). (T. p. 14.) Applicant received a sentence of five consecutive years, with credit for time served. (T. p. 14-15.) Counsel testified that because the solicitor presented the indictment for strong arm robbery the day of the plea, Applicant's records would not have reflected any amount of time served on warrants related to that indictment. (T. p. 15.) Counsel also acknowledged that during the plea hearing, he indicated to the plea judge he would contact the Department of Corrections to clarify how much time Applicant had served prior to his plea, and then he would inform the court of the credit to which Applicant was entitled. (T. p. 17.) However, Counsel did not recall ever going before the plea court again to address Applicant's credit for time served. (T. p. 17.) After reviewing Applicant's records, Counsel testified Applicant received the benefit of two years' credit on the armed robbery case tried before the Honorable Judge Keesley, but Applicant did not receive any credit toward the strong arm robbery plea. (T. p. 27.) Counsel also testified he would have ceased representation of Applicant once Applicant was appointed PCR counsel. (T. p. 29.)

PCR counsel argued Applicant was entitled to one hundred ten days credit for time served after the date of Applicant's arrest until Applicant was bonded out of jail. (T. p. 36.) PCR counsel argued the Department of Corrections likely was not aware Applicant was entitled to credit for those days because the original indictments were nolle prossed, and the new indictment created for the strong arm robbery plea did not indicate the corresponding charges. (T. p. 38.) PCR counsel asked this Court to remand the matter back to Judge Russo for resentencing. (T. pp. 40-46.) The State agreed that if the Department of Corrections had not included Applicant's one hundred ten days of detention after his arrest and prior to his bond, then Applicant was entitled to

those days. (T. p. 47.)

IV.

On August 30, 2016, PCR counsel Kristy Goldberg and Senior Assistant Deputy Attorney General Johanna C. Valenzuela signed and submitted a Consent Order Regarding Credit for Time Served to Judge Russo. Within the consent order, the parties agreed Applicant was incarcerated on charges related to indictment 2013-GS-41-076 for one hundred ten days prior to his guilty plea. The parties also agreed Applicant was entitled to credit for this time served in calculating his five year consecutive sentence for the strong arm robbery plea. Judge Russo signed the consent order, which was then filed September 12, 2016. As a result, this is no longer an issue to be decided by this Court and is moot.

V.

Applicant further alleges counsel was ineffective for his failure to present Judge Russo with additional information regarding his pre-trial detention at the plea hearing. PCR counsel for Applicant asked the Court to remand for resentencing to allow Applicant to present this additional mitigating information to the original sentencing Judge. Specifically, PCR counsel argues two blocks of time at issue.

The first block of time is between May 18, 2012 and November 9, 2012 when Applicant was at the detention center pursuant to a bench warrant. Applicant testified that his Court dates in Saluda were appearance dates for all pending charges. (Tr. 35). At some point Applicant received a bench warrant for missing a Court date, but the bench warrant only named one of his pending charges instead of all of them and did not reference any warrant numbers or indictment numbers related to the incident for which he plead guilty. (Tr. 35, 38-39). PCR counsel for Applicant argued that, if the bench warrant had been complete and correct, it would have

referenced all pending warrant numbers/indictment numbers including the ones related to the incident for which he plead guilty, and accordingly, this time would count towards indictment 2013-GS-41-076.

The second block of time at issue would be the time for which Applicant was in the Department of Corrections on a parole violation while these charges were pending. This was from approximately November 9, 2011 through January 13, 2012. (Tr. 33). PCR counsel argued that the Court had the discretion to award Applicant credit for that time towards his sentence if the information had been presented, but due to trial counsel's failure to provide this information the Court was unable to exercise its discretion. (Tr. 39-40).

Whether or not facts and arguments alleged by Applicant have merit, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered non-collateral attacks on the conviction. *Cooper v. State*, 338 S.C. 202, 525 S.E.2d 886 (2000). A credit-related claim or challenge to other conditions of confinement does not fall into that category. *Id.* Here, Applicant is in fact trying to enforce the sentence and is therefore is *not* making a collateral attack on the sentence.

Further, this Court finds plea counsel was not ineffective for failing to present this information to the sentencing judge. Although Applicant argues the plea court had discretion to award credit for the second and third blocks of time, Applicant certainly was not entitled to credit for time served on charges unrelated to the incident for which he plead. Prejudice is not met where this Court can only speculate as to how the information would have aided Applicant

at his plea hearing. Therefore, this application for post-conviction relief is denied and dismissed.

Applicant has withdrawn all prior allegations of ineffective assistance of counsel, and no other allegations were presented at the PCR evidentiary hearing. Accordingly, the Court finds Applicant has abandoned any such allegations.

VI.

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from 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, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 3 day of OCTOBER, 2017.

EDWARD MILLER
EDWARD MILLER
Presiding Judge
11th Judicial Circuit

Granville, South Carolina

WITNESSES

SPD

FULMER

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: FEB 04 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-41- 076

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

THE STATE

vs.

VICTOR ANTHONY JONES, JR.

CDR#0139

Indictment for

ARMED ROBBERY

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY

Don B. Johnson
Clerk of Court
Saluda, S. C.

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on February 4, 2013 the Grand Jurors of Saluda County present upon their oath:

That VICTOR ANTHONY JONES, JR., along with others did in Saluda County on or about May 26, 2009, while armed with a deadly weapon, a pistol take money or goods from another, to wit: Victor Anthony Jones, Jr., did feloniously take from the person or presence of Gregoria Lopez Cabiera, by means of force or intimidation other goods or monies of Gregoria Lopez Cabiera described as follows: a wallet and a set of keys, with intent to deprive the owner permanently of such property, in violation of §16-11-0330(a) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

FULMER

SPD

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

FEB 22 2011

VERDICT

GUILTY

Foreperson of Petit Jury

Date: NOVEMBER 2, 2012

DOCKET NO. 2011-GS-41- 150

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2011

THE STATE

vs.

VICTOR ANTHONY JONES

CDR# 0139

Indictment for

ARMED ROBBERY

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY

Clerk of Court
Saluda, S. C.

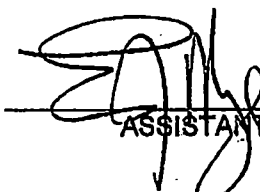
STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on February 22, 2011 the Grand Jurors of Saluda County present upon their oath:

That VICTOR ANTHONY JONES, JR., along with others did in Saluda County on or about July 9, 2009, while armed with a pistol, to wit: Victor Anthony Jones, Jr., feloniously take from the person or presence of Jerell Bookman, by means of force or intimidation the goods or monies of Jerell Bookman described as follows: speakers and \$750.00 in US currency, with intent to deprive the owner permanently of such property, in violation of § 16-11-0330(a) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Saluda

VS.

Victor Anthony Jones Jr

AKA:

Race: Sex: M Age: 23

DOB: -1989 SS

Address: St. Andrews Road

City, State, Zip: Columbia, SC 29201

DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Strong Arm / Common Law

in violation of § 16-11-330 C/L of the S.C. Code of Laws, bearing CDR Code #

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or 2nd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2011-65-41-150☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-65-41-076

A/W#: DIRECT

Date of Offense: 5/26/2009

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-330 C/L of the S.C. Code of Laws, bearing CDR Code # 0137

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or 2nd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2011-65-41-150☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

☐ Appointed PD or appointed other counsel

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2141

Sentence Date: 2-14-2013

ATTEST: TRUE COPY
Clerk of Court
Saluda, S. C.

STATE OF SOUTH CAROLINA
COUNTY Saluda
STATE

VS.
Victor Anthony Jones

AKA:
Race: Sex: M Age: 21
DOB: -1989 SS#: _____

Address: Canebreak Road
City, State, Zip: Saluda, SC 29138-7777

DL# _____ SID# _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery

In violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/in or 1st or Lowd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)
The plea is ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, X Recommendation by the State.

ARREST: 10 YEARS

Solicitor 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 11 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. CREDIT 2 YEARS SERVED.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	_____
\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
\$56-5-2995 (DUI Assessment)	\$12	\$ _____
\$56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
\$14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$14-1-213 (Drug Court Surcharge)	\$150	\$ _____
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2842(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
\$44-53-450(C) (Conditional Discharge)	\$350	\$ _____
3% to County (If paid in Installments)	\$	\$ <u>39.00</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/Deputy Clerk: Don B. Nelson

Court Reporter: Stacy Steppard
SCCA/217 (08/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 201-LS-41-150

AW#: DIRECT

Date of Offense: 1/23/2011

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ~~RELEASED~~

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: Check to notify DMV to place
resident crime conviction on his
driver's license; pay dt. costs @ \$5/m
☐ Conditional Discharge, §44-53-450(C) requires begin
\$350 be paid to the Clerk prior to case disposition 120
☐ Appointed PD or appointed other counsel, day after
\$47.12 requires \$500 be paid to Clerk release from
during probation. actual residence

Presiding Judge: William P. Harding

Judge Code: 2050

Sentence Date: Nov. 2, 2012

ATTEST: TRUE COPY

Clerk of Court
Saluda, S.C.

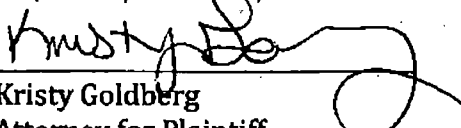
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SALUDA	)	
	)	2013-CP-41-217
VICTOR JONES, SCDC # 337908,	)	
Applicant,	)	
	)	SECOND AMENDED APPLICATION FOR
v.	)	POST-CONVICTION RELIEF
	)	
STATE OF SOUTH CAROLINA	)	(ACTION FILED OCTOBER 31, 2013)
Respondent.	)	

FILED
 2015 APR 23 PM 1:00
 CLERK OF COURT
 SALUDA CO. S.C.

1. Place of Detention: Allendale Correctional Institution.
2. Name and location of Court which imposed sentence: Saluda County Court of General Sessions, Saluda County Courthouse, Columbia, South Carolina.
3. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
 - a. 2013-GS-41-076 Strong Arm Robbery
4. The date upon which sentence was imposed and the terms of the sentence:
 - a. February 14, 2013 5 years consecutive to other charges.
5. A finding of guilty was made after a plea of guilty.
6. Did you appeal the judgment of conviction or the imposition of sentence? No
7. Not applicable.
8. Not applicable.
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - a. Ineffective assistance of counsel regarding the above listed indictment
 - b. Applicant specifically withdraws all prior claims of ineffective assistance regarding Indictment 2011-GS-41-1150.
10. State concisely and in the same order the facts which support each of the grounds set out in (9).
 - a. Trial counsel failed to ensure that the Court awarded him credit for time served as statutorily required.
11. Prior to this application have you filed with respect to this conviction:
 - a. Any petition in a State Court under South Carolina Law? No
 - b. Any petitions in State or Federal Courts for habeas corpus or post-conviction relief? No

- c. Any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in # 7? No
 - d. Any other petitions, motions or applications in this or any other Court? No
12. Not applicable.
13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No
14. Not applicable.
15. If any ground set forth in (9) 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: All issues in Section (9) are being presented for the first time and were not presented because issues of ineffective assistance of counsel were not cognizable on direct appeal.
16. Were you previously represented by an attorney at any time during the course of:
- a. Your arraignment and plea? yes
 - b. Your trial, if any? N/A
 - c. Your sentencing? Yes
 - d. Your appeal, if any, from the judgment of conviction or imposition of sentence? N/A
17. If you answered "yes" to one or more parts of (16), list:
- a. The name and address of each attorney who represented you:
 - i. Benjamin Stitely.
 - b. The proceedings at which each such attorney represented you:
 - i. Plea and Sentencing
18. State clearly the relief you seek in filing this application: Sentence corrected or remand for new sentencing hearing.
19. Are you now under sentence from any other court that you have challenged? No.

Respectfully submitted,


Kristy Goldberg
Attorney for Plaintiff

Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
Phone (803) 252-2299
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 20 th day of April, 2015